

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL, a married
couple,

CASE NO.: 13-36012-CA
CIVIL DIVISION: 01

Plaintiffs,

v.

MIAMI SHORES VILLAGE, FLORIDA and
MIAMI SHORES CODE ENFORCEMENT
BOARD,

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs Hermine Ricketts and Tom Carroll, by and through the undersigned counsel, hereby file this Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment as follows:

I. INTRODUCTION

For 17 years, Hermine Ricketts and Tom Carroll ("Hermine and Tom" or "the Plaintiffs") grew their own food in the front yard of their home in the Village of Miami Shores ("the City" or "the Defendants"). Hermine—a retired architect—took care to make the garden both productive and aesthetically pleasing. Hermine's garden was so successful that the majority of the couple's diet, and all of their vegetables, came from their own land.

But Hermine and Tom were required to uproot their garden in 2013, when the City prohibited residents from growing vegetables in their front yards. After a City inspector cited their garden for including "edible" vegetables, Hermine and Tom were threatened with \$50 fines per day if they continued to grow food in their front yard. They decided to uproot their garden—their main source of food—to comply with the new law. And they then sued to vindicate their constitutional rights to grow harmless vegetables in their front yard.

As shown below, the City's ban on front-yard vegetable gardens violates Hermine and Tom's fundamental rights, and as such, this Court must apply strict scrutiny in considering the City's purported justification, as well as the means used to further it. Here the City has one justification—aesthetics—and it does not hold up against the evidence. The record at this stage conclusively shows that the City's ban on front-yard vegetable gardens is arbitrary and wholly disconnected from the City's aesthetic objective. As a result, the ban not only fails strict scrutiny, it fails under Florida's reasonable relationship test as well. For these reasons, the Court should grant summary judgment in favor of Hermine and Tom.

II. FACTS

The material facts in this case are not in dispute. For nearly two decades, Hermine and Tom peacefully grew edible plants in their front yard for their own consumption. In 2013, the Village of Miami Shores amended its ordinances to prohibit vegetable gardens in all areas of a property, except the rear yard. The City threatened fines that were too severe for Hermine and Tom to bear, and as a result, the couple uprooted their vegetable garden. As the evidence discussed below demonstrates, however, a ban on front-yard vegetable gardens bears no connection to the City's purported interest in preserving aesthetics. To the contrary, the unrebutted record establishes that the City's ban is completely arbitrary because it defies any common understanding and its purpose is undermined by its very terms.

A. THE MATERIAL FACTS

1. For 17 Years, Hermine and Tom Grew Vegetables in their Front Yard Peacefully and Without Incident.

Hermine Ricketts and Tom Carroll are a married couple in their 60s, who have resided at their modest Miami Shores home for nearly 25 years. Ricketts Aff. ¶ 2, April 11, 2016; Carroll Aff. ¶ 2, April 11, 2016. Shortly after purchasing the home, they began examining the source and nutritional content of the foods they consumed. Ricketts Aff. ¶¶ 4-5; Carroll Aff. ¶¶ 4-5. In this way, Hermine and Tom came to prefer fresh, organic, and nutritionally-dense products. Ricketts Aff. ¶¶ 5, 12; Carroll Aff. ¶ 5. They concluded that there was only one way to completely ensure that their food was grown and processed in accordance with their desires: growing it themselves. Ricketts Aff. ¶ 15; Carroll Aff. ¶ 14.

Hermine and Tom first attempted to grow vegetables in their back yard. Ricketts Aff. ¶ 6; Carroll Aff. ¶ 6. But they soon discovered that their back yard had too little sunlight during Florida's fall/winter planting season, dashing any hope for a viable back-yard garden. Ricketts

Aff. ¶ 6; Carroll Aff. ¶ 6. So in 1996, three years after moving into their home, Hermine and Tom replanted their garden in the front yard. Ricketts Aff. ¶ 7; Carroll Aff. ¶ 7.

The front-yard garden thrived. For the next 17 years, Hermine and Tom continuously maintained an array of edible plants and greens, along with fruit and other ornamental plants, in their front yard. *Id.* Hermine, a retired architect, channeled her professional energies into her garden, carefully planning and planting throughout the year. Ricketts Aff. ¶¶ 3, 8-9, 18. Even as she was beset with severe medical issues, Hermine always took care to make sure that the garden was carefully maintained. Ricketts Aff. ¶¶ 8, 10-11, 16. In her recovery, the garden was a valuable source of mild exercise, helping her to revitalize her body and relax her mind. Ricketts Aff. ¶¶ 4, 10-11, 18. And with their savings depleted to cover Hermine's steep medical bills, the couple's ability to grow their own food took on even greater importance. Ricketts Aff. ¶ 38; Carroll Aff. ¶ 34.

Hermine and Tom's gardening involved a mix of edible and non-edible plants. Ricketts Aff. ¶¶ 14, 16; Carroll Aff. ¶¶ 13, 15. The edible items—for their own consumption—were grown harmoniously beside their other ornamental plants as part of one landscape. Ricketts Aff. ¶¶ 14, 16; Carroll Aff. ¶¶ 13, 15. As Hermine and Tom honed their skills as gardeners, their front-yard became more fruitful, and they added more color and character to the yard. Ricketts Aff. ¶ 9; Carroll Aff. ¶ 11. Here is a photo of Hermine and Tom's front-yard garden, before they were forced to uproot it:



Ricketts Aff. ¶ 16, Ex. A (including additional photos).

The productivity of Hermine and Tom’s front-yard garden meant that they lacked for nothing. At any given time, they rotated a diverse selection of nutritious, organic produce in their yard. Ricketts Aff. ¶ 13; Carroll Aff. ¶ 12. In all, Hermine and Tom grew approximately 75 different types of edible plants in their front yard, which provided them with a diverse selection of seasonal, nutritious food. Ricketts Aff. ¶¶ 12-14; Carroll Aff. ¶¶ 12-13. This type of continuous variety guaranteed that Hermine and Tom were almost completely food-independent, as they could provide for virtually all of their nutritional needs, and that they had full knowledge of the complete life cycle of all the plants and greens they consumed. Ricketts Aff. ¶¶ 12-14; Carroll Aff. ¶¶ 12-13. In this way, they were assured that the plants they consumed were sown, cultivated, harvested, and processed in accordance with their desired practices. Ricketts Aff. ¶¶ 12, 15; Carroll Aff. ¶¶ 14. This benefit is entirely unique to homegrown plants and cannot be

duplicated by purchasing or obtaining substitute items through any other means. Ricketts Aff. ¶¶ 12, 15, 39; Carroll Aff. ¶¶ 14, 35.

In time, Hermine and Tom's garden became the couple's primary source of food. Ricketts Aff. ¶ 14; Carroll Aff. ¶ 13. As a result, their trips to (and reliance upon) grocery stores decreased. Ricketts Aff. ¶ 14; Carroll Aff. ¶ 13. In fact, their vegetable garden became Hermine and Tom's only source for vegetables and they ventured to the store for non-produce items, such as condiments and fish. Ricketts Aff. ¶ 14; Carroll Aff. ¶ 13.

Many of the benefits the garden provided were less quantifiable. The plants Hermine and Tom grew were also fresher, and therefore nutritionally superior and better-tasting, than similar items found in grocery stores. Ricketts Aff. ¶ 40; Carroll Aff. ¶ 36. Growing their own food also provided Hermine and Tom with an affordable means to enjoy wholesome, organic produce. Ricketts Aff. ¶¶ 14, 41; Carroll Aff. ¶ 13; *see also* Expert Report and Curriculum Vitae of Falon Mihalic at 6, attached hereto as Exhibit C. Hermine and Tom also shared a deeper appreciation for their garden as a unique and therapeutic outlet that provided them with physical and mental benefits. Ricketts Aff. ¶¶ 10-11, 18, 41; Carroll Aff. ¶¶ 9-10, 37. Likewise, growing their own food allowed Hermine and Tom to do their part to protect the environment, as their garden served the dual purpose of "growing food organically on their property as a way to consume plant-based foods while limiting their exposure to the pesticides used in commercial agriculture." Ex. C, Mihalic Report at 5. Hermine and Tom employed "organic gardening methods [in] an environmentally-sound way . . . and in accordance with the Florida Friendly Landscaping Program." *Id.* at 6. These practices involved the cultivation of both edible and non-edible plants, and had the effect of saving and protecting water, protecting soil, and facilitating in pollination. *Id.* at 5-6. Thus Hermine and Tom's garden was far more than simply a vehicle for

self-reliance or a source of healthy food. Working their own soil was a proud endeavor that combined Hermine and Tom’s seemingly unrelated interests: Landscaping design, environmental consciousness, and a uniquely American, spirited self-determination. *See* Ricketts Aff. ¶¶ 3-5, 8, 10-18, 41; Carroll Aff. ¶¶ 4-5, 8-15, 37.

2. Hermine and Tom Were Ordered to Destroy their Front-Yard Vegetable Garden.

In March 2013, the Miami Shores Village Council adopted a new zoning code that clearly prohibited front-yard vegetable gardens. Whereas the previous zoning code had provided that “[v]egetable gardens are permitted in rear yards,” *see* Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) (amended March 19, 2013), the new law states plainly that “[v]egetable gardens are permitted in rear yards *only*.” (emphasis added).¹

Just over a month later, Anthony Flores, the City’s Code Enforcement Supervisor issued Hermine and Tom a “Courtesy Notice” instructing them to “remove all vegetables from front yard.” *See* Ricketts Aff. ¶ 19, Ex. B; Carroll Aff. ¶ 16. The notice advised Hermine and Tom that “[v]egetable gardens in [the] front yard [are] prohibited.” Ricketts Aff. ¶ 19, Ex. B; Carroll Aff. ¶ 16.

Hermine and Tom later received a formal Notice of Violation explaining that they had been cited for unlawfully growing vegetables in their front yard. Ricketts Aff. ¶ 20, Ex. C; Carroll Aff. ¶ 17. Threatening fines for noncompliance, the Notice directed Hermine and Tom to correct the violation by July 10, 2013, one day before they could even appear before the City to be heard on the matter. Ricketts Aff. ¶ 20, Ex. C; Carroll Aff. ¶ 17.

¹ Defendants have taken the untenable position that this change to the zoning code was stylistic only, and that vegetable gardens had always been prohibited. *See* Defs’ Resp. to Pls.’ Interrog. No. 10 (“The word ‘only’ was added in 2013 for clarity and emphasis.”). This contention, while ultimately irrelevant, is contradicted by the record in this case—particularly by the fact the City’s never cited Tom and Hermine under the former zoning code but did so immediately upon passing the new one.

On July 11, 2013, Hermine and Tom appeared before the City’s Code Enforcement Board. Ricketts Aff. ¶ 22; Carroll Aff. ¶ 19. Confused as to how or why their vegetable garden was suddenly in the City’s crosshairs, Hermine and Tom sought clarity on the meaning of the ordinance. *See, e.g.*, Ricketts Aff. ¶¶ 21-22, Ex. D, E (letter from Hermine Ricketts: “Please provide clarification on what vegetation is permitted in [the] front yard.”); Carroll Aff. ¶¶ 18, 22; Ramirez Aff. ¶ 7 (statement of Tom Carroll: “We’re seeking guidance and assistance.”). The Board’s members appeared confounded as to what a ban on front-yard vegetable gardens meant and what it was intended to accomplish.² Given their uncertainty, the Board elected to postpone its review of the matter until the next month’s meeting. In the meantime, the Board instructed Hermine and Tom to provide an itemized list of the plants growing in their yard. Ricketts Aff. ¶ 22; Carroll Aff. ¶ 19; Ramirez Aff. ¶ 8.

In advance of the second hearing, the couple dutifully prepared a two-page spreadsheet listing the approximately 91 plants—edible and otherwise—that they then grew or had previously grown in their front yard. Ricketts Aff. ¶ 23, Ex. F. The Board ignored this information and simply ruled that Hermine and Tom were in violation of the City’s ban on front-yard vegetable gardens, without providing any explanation as to why. Ricketts Aff. ¶ 24, Ex. G; Carroll Aff. ¶ 21; Ramirez Aff. ¶ 12. The Board instructed them to uproot their vegetable garden within 30 days or face fines of \$50 per day. Ricketts Aff. ¶ 24, Ex. G; Carroll Aff. ¶ 21; Ramirez Aff. ¶ 12.

² *E.g.*, Ramirez Aff. ¶ 9 (statement of unknown Enforcement Board officer: “Well it should be tabled Everybody beat up this vegetable thing. These vegetables are low vegetables. They don’t have okra growing in their front yard. They don’t have corn growing in their front yard, where they get eight foot stalks They’re green, they accent the house Pineapples are—bromeliads. That’s a[n] ornamental plant that you absolutely eat too, don’t you? . . . You guys go ahead and blabber on about these plants.”).

Forced to choose between crippling fines and uprooting their beloved garden, Hermine and Tom initially planned to appeal the Board’s decision. *See* Ricketts Aff. ¶¶ 25-27, Exs. H, J; Carroll Aff. ¶¶ 23-25. But after the Board insisted that fines would continue to accrue through the duration of the appeal, *see* Ricketts Aff. ¶¶ 25-26, Ex. I, Hermine and Tom became increasingly fearful of the consequences of non-compliance. They chose to comply with the City’s demand and uprooted their garden. *See* Carroll Aff. ¶ 25, Ex. B. Five days later, Mr. Flores inspected Hermine and Tom’s garden and confirmed that the property had been brought into compliance. Carroll Aff. ¶ 26, Ex. C. Shortly thereafter, once the City’s attorney informed them that “the underlying Code Enforcement case was officially closed,” *see* Ricketts Aff. ¶¶ 29, 34, Ex. L, N; Carroll Aff. ¶¶ 28, 30, Hermine and Tom voluntarily dismissed their appeal of the Board’s decision.³ They then filed this lawsuit.

B. PROCEDURAL HISTORY

In November 2013, Hermine and Tom filed this lawsuit to vindicate their fundamental right to make peaceful, productive use of their property. The Defendants moved to dismiss for failure to state a claim, and after two hearings on the matter, the Defendants’ motion was denied. *See* Order Den. Defs.’ Mot. to Dismiss, May 1, 2014. Defendants’ subsequent motion for reconsideration was also denied. Order Den. Defs.’ Mot. for Recons., May 20, 2014. In his ruling, Judge Eig explained that his ruling was based on his “agreement with Plaintiffs’ position that some factual discovery was necessary to create a record for weighing of the different factors that are involved in the constitutional analysis . . . [I]t is primarily predicated on the need for

³ Hermine and Tom filed their Notice of Voluntary Dismissal on October 31, 2013, and the Court dismissed the appeal a few days later, on November 5. *See* Ricketts Aff. ¶¶ 35-36, Exs. O, P; Carroll Aff. ¶¶ 31-32. The City had filed its own motion to dismiss the appeal on September 25, 2013, but Hermine and Tom never received a copy; thus they did not learn of it until October 22, when they received an order denying the motion, along with a letter from the City’s attorney explaining that the underlying enforcement action had been closed. Ricketts Aff. ¶¶ 30-34, Exs. K, N; Carroll Aff. ¶¶ 28-32.

facts.” Hr’g on Defs.’ Mot. for Recons. Tr. 6:6-22, May 20, 2014. Judge Eig then ordered that the parties move forward with discovery. *Id.* However, in light of this Court’s ruling on Plaintiffs’ motion to compel, *see* Order Den. Pls.’ Mot. to Compel, Mar. 11, 2015, only limited discovery was ultimately permitted.⁴ This motion for summary judgment is the result of that limited discovery.

C. EXPERT TESTIMONY AND THE TESTIMONY OF THE CITY’S WITNESS BOTH SHOW THAT A BAN ON FRONT-YARD VEGETABLE GARDENS IS ARBITRARY AND UNDEFINABLE.

In support of this motion for summary judgment, Plaintiffs rely on the testimony of two principal witnesses. The first is their expert, Falon Mihalic, a landscape architect who designs edible landscapes for her clients and possesses extensive experience in the Florida market. The second is the Village of Miami Shores’ Code Enforcement Supervisor, Anthony Flores. The testimony of both show that a ban on vegetables in a person’s front yard is utterly arbitrary.

Ms. Mihalic’s unrebutted testimony explains how a categorical ban on “vegetable[s]” is impossible to apply consistently in the real world. As Ms. Mihalic testified, the term “vegetable,” and thus the term “vegetable garden,” evades any common understanding, because “[t]he term vegetable is not botanically defined.” Ex. C, Mihalic Report at 6. In reality, the majority of so-called vegetables, if correctly described “[i]n botanical terms . . . [are] Angiosperms or flowering plants.” *Id.* at 7 (citation omitted). Thus, one’s understanding of the

⁴ In the course of discovery, Defendants lodged categorical objections to the entirety of Plaintiffs’ requests and refused to produce any information regarding the ban on front-yard vegetable gardens. *See, e.g.*, Pls.’ Mot. to Compel Disc., ¶ 8 (estimating that “[i]n sum, in response to Plaintiffs’ 17 total requests, Defendants have raised approximately 48 separate objections”). Plaintiffs moved to compel discovery in light of Judge Eig’s rulings, but before the matter could be heard, this Division was reassigned. Subsequently, this Court sustained Defendants’ objections in their entirety, effectively ruling that Plaintiffs would have to present their case without the benefit of any factual development. Although Plaintiffs maintain that, even without the opportunity for substantial factual development, they should prevail in this action, they hereby preserve the arguments they made in connection with their motion to compel and respectfully assert that this Court’s ruling on that motion—which denied Plaintiffs any discovery concerning the purpose of the challenged law, the City’s interpretation of the law, and the City’s investigation and enforcement related to the law—was erroneous.

term is completely subjective, because it is entirely “based on an arbitrary cultural and culinary definition with regards to the way we classify plants for human consumption.” *Id.* Mr. Flores testimony only reinforces this fact, as he testified that his understanding of what constitutes a vegetable—and thus informs his investigation of potential code violations—is based on what his mother taught him when he was a child. *See* Deposition Transcript of Anthony Flores at 122:22-24, attached hereto as Exhibit “E.” As Mr. Flores explained, his understanding of the ban “is subjective, yes,” *id.* at 127:3, again bolstering the testimony of Ms. Mihalic, who explained that the meaning of the ordinance is merely a product of Mr. Flores’ “subjective and variable understanding of the term vegetable,” Mihalic Report at 8, and a reflection of his “personal bias based on individual experiences.” *Id.*

This unknowable definition of the term “vegetable,” which, as the testimony of both Ms. Mihalic and Mr. Flores indicate, fluctuates depending on the eye—and cultural experiences—of the beholder, extends to how the City defines the term “vegetable garden.” In that regard, Mr. Flores’ testimony contained numerous—almost a dozen, in fact—explanations of what may or may not constitute a vegetable garden. *See infra*, Part IV.B.1. As one example, Mr. Flores testified that growing a single vegetable would be permissible, but two vegetables, if placed side-by-side, would be illegal. *See* Ex. E, Flores Tr. 80:7-12. But he provided numerous other explanations as well. *See infra*, Part IV.B.1.

The record is clear that whether or not a garden is actually attractive has no significance for enforcement purposes. *Id.* Rather, what matters to Mr. Flores whether or not he would eat it. *See* Ex. E, Flores Tr. 175:5-8. And to determine whether a plant is impermissibly edible or permissibly ornamental, Mr. Flores also weighs whether the apparent intent of the homeowner is to eat it:

Mr. Flores: Well, when I look at what the yard or what the garden is being used for, that would determine what action I would take.

Q: And if it's being used decoratively, then what?

A: If it's decorative, then no harm, no foul. [If] [i]t's used to grow vegetables, to cultivate and eat, it's an issue.

Id. at 206:9-13. An edible item would be legal only if, per Mr. Flores' subjective interpretation of the law, "[y]ou can't [eat it] according to me." *Id.* at 175:8. The City's ban is thus not grounded in any scientific or biological reality, but rather, ultimately turns on the palate of the code enforcement officer who enforces it.

The unrebutted record further demonstrates that the City's ban on front-yard vegetable gardens has no connection to aesthetics in several other ways. In many instances, the City's ban prohibits the growing of landscapes which Mr. Flores himself recognizes as attractive. *Id.* at 174:1-25. The ban also forbids items like potatoes and ginger, which grow almost entirely underground. *Id.* at 103:7-21; 189:1-7. In many instances, the ban on vegetables even operates to undermine its own purpose. For example, the City's ban actually favors a front yard of virtually nothing but turf grass over a thoughtfully designed and well-maintained edible landscape, like Hermine and Tom's property; this is true despite the fact that a yard's attractiveness hinges on whether it evinces "intentional planning and regular maintenance." Mihalic Report at 10. And yet, although "[a]esthetically, there is no difference between a landscape design that includes trees, shrubs, vines and annual plants to that of an edible landscape" *id.* at 11, Mr. Flores testified that fruit trees were necessarily ornamental, regardless of appearance, while vegetables are presumed illegal, unless, "you use them as an ornamental plant." Ex. E, Flores Tr.113:2-6.

In sum, the factual record in this case strips down the City’s ban on front-yard vegetable gardens to what it is—a prohibition on growing plants in one’s front yard, if the intention of the homeowner is to consume those plants as food. It does not matter whether the garden is attractive. It does not matter whether the alleged “vegetables,” are not in fact vegetables, so long as the City’s code enforcement officer believes that is what they are. And it does not matter whether the garden is artfully planned and meticulously maintained. As the argument below demonstrates, applying this un rebutted testimony to the legal standards conclusively establishes that Hermine and Tom are entitled to summary judgment as to all of their claims.

III. LEGAL STANDARDS

Summary judgment is appropriate where, as here, there are no issues of material fact. For purposes of applying this standard as it relates to the merits of the case, Plaintiffs’ claims fall into two categories: (1) Claims which implicate their fundamental rights as expressly protected by the Florida Constitution and are therefore subject to review under strict scrutiny analysis; and (2) if this Court disagrees that Hermine and Tom’s fundamental rights are implicated, claims which are subject to review under Florida’s rational basis or reasonable relationship test. Because the facts in this case are not in dispute, summary judgment is appropriate with respect to both.

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the moving party is able to show that there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(c); *see also CSX Trasp., Inc. v. Pasco Cnty.*, 660 So. 2d 757, 758 (Fla. 2d DCA 1995) (“The purpose of a motion for summary judgment is to determine whether any genuine issues of material fact exist for resolution by the trier of fact.”). The material facts in this case are undisputed, and summary judgment is therefore warranted, as the

only disputed issues remaining are pure matters of law. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

B. STRICT SCRUTINY STANDARD

Hermine and Tom's primary claims allege that the Defendants' ban on front-yard vegetable gardens violates their fundamental rights under the Florida Constitution. For this reason, the standard this Court must apply in reviewing the ban's constitutionality "is one of strict scrutiny." *G.P. v. State*, 842 So. 2d 1059, 1062 (Fla. 4th DCA 2003). This standard "imposes a heavy burden of justification upon the [government]." *Fla. Bd. of Bar Examiners re: Applicant*, 443 So. 2d 71, 74 (Fla. 1983). Under it, the ban "is presumptively invalid," *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003), and can survive only if the government "demonstrate[es] that the [ban] serves a compelling state interest and accomplishes its goal through the use of the least intrusive means." *Winfield v. Division of Pari-Mutuel Wagering, Dep't of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

C. REASONABLE RELATIONSHIP STANDARD

Even if this Court does not agree that a fundamental right is impacted by the ban on front-yard vegetable gardens, still, the ban is unconstitutional under the "reasonable relationship," or "rational basis," test. *Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) (holding that to survive the "rational basis test". . . [the law must] bear[] a reasonable relationship to a permissible governmental objective, and is not discriminatory, arbitrary, or oppressive."); *Haire v. Fla. Dep't of Agric. and Consumer Servs.*, 870 So. 2d 774, 782 (Fla. 2004) (explaining that the standard in Florida is "referred to as either the reasonable relationship or the rational basis test");

Dep't of Corrs. v. Fla. Nurses Ass'n, 508 So. 2d 317, 319 (Fla. 1987).⁵ Although this test is sometimes described in slightly different terms depending on whether the claim at issue is one for due process or equal protection, the actual application of the test is essentially the same in either type of case. See *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090, 1096 (Fla. 2005) (explaining that the “analysis involved in the due process determination closely resembles that of the equal protection analysis”). Under this test, the City can only prevail if its ban on front-yard vegetable gardens:

- “bear[s] a rational and reasonable relationship to a legitimate state objective,” *Estate of McCall v. United States*, 134 So. 3d 894, 901 (Fla. 2014) (setting forth test for equal protection purposes);⁶
- is not “arbitrarily or capriciously imposed,” *id.*; and
- is not “discriminatory, arbitrary, or oppressive,” *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1214-15 (Fla. 2000).

Regardless of phrasing, however, Florida’s application of this test demands more of the government than the federal “rational basis” test. See, e.g., *McCall*, 134 So. 3d at 897-99 (holding a law unconstitutional under Florida’s version of the reasonable relationship test, even though the United States Court of Appeals for the Eleventh Circuit ruled that the same law did not violate the federal rational basis test); *D.M.T. v. T.M.H.*, 129 So. 3d 320, 335 (Fla. 2013) (for

⁵ Florida’s version of this test is sometimes referred to as a “rational basis” test because it was originally based on federal rational basis precedent. See *Estate of McCall*, 134 So. 3d 894, 921 (Fla. 2014) (Pariente, J, concurring in result that statute failed Florida’s version of the rational basis test even after it survived under the federal rational basis test). However, Florida’s test has evolved separately over the years, leading to very different results for plaintiffs depending on whether the cause of action is asserted under the Florida Constitution or the U.S. Constitution. See, e.g., Anthony B. Sanders, *The “New Judicial Federalism” Before its Time: A Comprehensive Review of Economic Substantive Due Process Under State Constitutional Law Since 1940 & the Reasons for its Recent Decline*, 55 Am. U. L. Rev. 457, 487-89 (reviewing historical evolution of the various federal and state applications of the rational basis test and concluding that “the Florida Supreme Court has interpreted the Florida Constitution to protect economic liberty through economic substantive due process more than any other state court of highest review since 1940”).

⁶ See also *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1214-15 (Fla. 2000) (setting forth test for due process purposes).

some rights, the Florida Constitution provides “greater protection than is afforded by the federal constitution”); *Alcorn v. State*, 121 So. 3d 419, 429 (Fla. 2013) (same). This much is clear: This Court is required to review the evidence, including the “facts and circumstances surrounding the challenged [ban] and the subject matter it addresses,” *McCall*, 134 So. 3d at 905, in order to determine whether the ban actually serves a legitimate governmental purpose. *See id.*

IV. ARGUMENT

Hermine and Tom are entitled to summary judgment and a declaratory judgment holding that the Defendants’ ban on front yard vegetable gardens violates their rights under the Florida Constitution. *See* Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) (providing that “[v]egetable gardens are permitted in rear yards only”).

Specifically, Defendants’ ban on front-yard vegetable gardens violates the following fundamental rights protected by the Florida Constitution: (1) the right to make peaceful and productive use of their own property to feed themselves, which is protected by Florida’s Inalienable Rights Clause, Fla. Const. art. I, § 2 (providing that “[a]ll natural persons . . . have inalienable rights, among which are the right . . . to acquire, possess and protect property”); (2) their right to produce and consume the foods of their choice, which is protected by Florida’s Right of Privacy Clause, Fla. Const. art. I, § 23 (guaranteeing that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life”). Each of these rights is separately enumerated in the Florida Constitution, and as such, is deemed “fundamental” in nature. Therefore, this Court must apply strict scrutiny with respect to Plaintiffs’ fundamental rights claims and strike down the City’s ban as unconstitutional unless the City produces evidence that the ban is narrowly tailored to a compelling governmental interest. As the discussion below demonstrates, because the City cannot make such a showing,

summary judgment in favor of Hermine and Tom is appropriate with respect to each of their fundamental rights arguments.

In addition to their fundamental rights claims, Hermine and Tom also allege that the City's ban violates their right to equal protection of the laws, which is protected by Florida's Equal Protection Clause, Fla. Const. art. I, § 2 ("All natural persons . . . are equal before the law and have inalienable rights"), and their right to substantive due process, which is protected by Florida's Due Process Clause, Fla. Const. art. I, § 9 ("No person shall be deprived of life, liberty or property without due process of law"). As shown below, there are no genuine issues of material fact regarding any of these claims, and summary judgment in favor of the Plaintiffs is therefore warranted as to each.

A. THE CITY'S BAN ON FRONT-YARD VEGETABLE GARDENS VIOLATES HERMINE AND TOM'S FUNDAMENTAL RIGHT TO MAKE PEACEFUL, PRODUCTIVE USE OF THEIR PROPERTY, AS WELL AS THEIR RIGHT TO CONSUME THE FOODS OF THEIR CHOICE.

The City's ban on front-yard vegetable gardens separately violates two of Hermine and Tom's fundamental rights, both of which are expressly protected in the Florida Constitution's Declaration of Rights. First, the ban violates their right to "acquire, possess and protect property," Fla. Const. art. I, § 2—specifically, to peacefully and productively use their property to feed themselves and their family. Second, the ban violates their "right to be let alone and free from governmental intrusion into [their] private life," Fla. Const. art. I, § 23—specifically, intrusion into their decision to produce and consume the foods of their choice.⁷ Because these rights are fundamental, they must be accorded the utmost respect and protection by government and the courts, as the Florida Supreme Court has forcefully emphasized:

⁷ As discussed in Part IV.A.2.ii, *infra*, these rights are also protected by Article I, Section 2 and its protection of the rights to due process and to pursue happiness and the right to self-determination, respectively.

The text of our Florida Constitution begins with a Declaration of Rights—a series of rights so basic that the framers of our Constitution accorded them a place of special privilege . . . Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government . . . No other broad formulation of legal principles, whether state or federal, provides more protection from government overreaching or a richer environment for self-reliance and individualism than does this “stalwart set of basic principles.”

Traylor v. State, 596 So. 2d 957, 963 (Fla. 1992). It is this very ideal—that there exists a set of inviolable constitutional principles which operate to protect fundamental individual rights—that is at issue in this case. Because the City’s ban on front-yard vegetable gardens implicates Hermine and Tom’s fundamental rights, it is therefore “presumptively invalid” and cannot survive unless it satisfies strict scrutiny. *N. Fla. Women’s Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003). It cannot do so.

1. The City’s Ban on Front-Yard Vegetable Gardens Violates Hermine and Tom’s Fundamental Right to “Acquire, Possess and Protect Property.”

i. *The Right to “Acquire, Possess and Protect Property” is a Fundamental Right, and the City’s Ban is Therefore Subject to Strict Scrutiny.*

Property rights are fundamental rights under the Florida Constitution. *See, e.g., Palm Beach Mobile Homes, Inc. v. Strong*, 300 So. 2d 881, 884 (Fla. 1974) (“The right . . . to use one’s property as one wills [is a] fundamental right[] guaranteed by . . . the constitution of Florida.”).⁸ As the Florida Supreme Court held in *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So. 2d 64 (Fla. 1990), property rights are “woven into the fabric of Florida history,” *id.* at 67, and this District has expressed a similar, historically-rooted reverence for this “fundamental” classification, reaffirming, after *Zrillic*, that “[p]rivate property rights have long been viewed as sacrosanct *and fundamentally immune from government interference.*” *CNL*

⁸ In fact, every one of the rights enumerated in the Declaration of Rights is fundamental. *See N. Fla. Women’s Health and Counseling Servs.*, 866 So. 2d at 635 (“[I]t is settled in Florida that each of the personal liberties enumerated in the Declaration of Rights is a fundamental right.”).

Resort Hotel, L.P. v. City of Doral, 991 So. 2d 417, 420 (Fla. 3d DCA 2008) (explaining further that “[t]he strong tradition of protecting private property rights against government interference stems back to both English common law and Lockean philosophy” (citing James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* 10 (2d ed. 1998))) (emphasis added). Because the City simply cannot demonstrate that a ban on front-yard vegetable gardens only impinges on these “sacrosanct” and “fundamentally immune rights” in a manner which is narrowly tailored to a compelling governmental interest, using the least restrictive means available, the City’s ban cannot survive strict scrutiny.

ii. *The Right to “Acquire, Possess and Protect Property” Includes the Peaceful, and Harmless Activity of Using One’s Own Property to Grow Food.*

The harmless act of growing edible items in on one’s property is, necessarily, a constitutionally protected property right. This is axiomatic, as the Florida Supreme Court has long recognized “the liberty and property right[s] that every owner . . . possesses to use his property in his own way and for his own purpose.” *Palm Beach Mobile Homes*, 300 So. 2d at 885. This incorporated right to “possess and use,” *see id.*, the Florida Supreme Court has since explained, means that the right to “acquire, possess and protect property” including, specifically, the right “to use and enjoy property.”⁹ *Zrillic*, 563 So. 2d at 67 (internal quotation marks and citations omitted). In reaching this conclusion, the Florida Supreme Court defined the right to “acquire, possess and protect” on the basis of its text as well as its history—applying what it termed “a common sense reading of the plain and ordinary meaning of the language to carry out the intent of the framers as applied to the context of our times.” *Id.* (referring to a constitutional

⁹ Importantly, the ruling in *Zrillic* does not establish the boundaries of what is protected by the right to acquire, possess, and protect property. Rather, the *Zrillic* case illustrates the Florida Supreme Court’s interpretation of the clause as providing expansive protections for all forms of property rights. *See In re Estate of Magee*, 988 So. 2d 1, 3 (Fla. Dist. Ct. App. 2007) (“The court [in *Zrillic*] thus afforded testamentary rights the same constitutional protections normally provided to other real property rights.”).

term's dictionary definition to rule that "[p]ossess commonly means to have, hold, own, or control . . . property, for one's own *use and enjoyment*" (emphasis added) (quoting Black's Law Dictionary 23 (5th ed. 1979))). The word "use" means "to employ for the accomplishment of a purpose," Black's Law Dictionary (10th ed. 2014), like cultivating one's own property for sustenance. Similarly, the term "enjoy" means "[t]o have possess, and use (something) with satisfaction; to occupy *or have the benefit of (property)*." *Id.* (emphasis added). Thus, any "common sense" interpretation of the rights to use and enjoy must include the right "to have the benefit of" one's land to grow food for one's own sustenance.

This "common sense" analysis—a blend of textual interpretation and history—was applied in the only known case to have since expounded upon *Zrillic*'s "use and enjoyment" holding. *Snyder v. Bd. of Cnty. Comm'rs of Brevard Cnty.*, 595 So. 2d 65 (Fla. 5th DCA 1991) (per curiam). In *Snyder*, the court applied this textual and historical—or "common sense"—analysis in a full-throated endorsement of *Zrillic*'s expansive ("[a]ll incidents of property ownership") interpretation of property-rights protection:

The ownership of property is meaningful only to the extent that the owner has the right to use property in such manner as the owner desires . . . [T]he right of a citizen to own property is one of the most fundamental and cherished rights and is the cornerstone that anchors the capitalistic form of government guaranteed by the federal and state constitutions. ***The most valuable aspect of the ownership of property is the right to use it. Any infringement on the owner's full and free use of privately owned property . . . accordingly triggers constitutional protections. All incidents of property ownership are protected from infringement by the state*** unless regulations are reasonably necessary to secure the health, safety, good order, and general welfare of the public.

Id. at 69-70 (emphasis added) (internal citations omitted) (citing *Zrillic*), *rev'd on other grounds*, 627 So. 2d 469 (Fla. 1993). Accordingly, the plain terms of the clause, along with the *Zrillic* and *Snyder* courts interpretation of them, establish that the right to possess, use and enjoy property must include the harmless act of growing food on one's property. Interpreting the clause to

somehow exclude this activity would be both contrary to its obvious terms, and would also ignore the second element of *Zrillic*'s "common sense" approach—history.

Indeed, the "common sense" analysis which was at the core of the Florida Supreme Court's ruling in *Zrillic* also instructs this Court to consider "the intent of the framers as applied to the context of our times." *Zrillic*, 563 So. 2d at 67. Of course, at an intuitive level, there can be little doubt that the tilling of one's own land to provide material sustenance is a "use" of property consistent with one's legal, historically rooted right to "enjoy" her own land. *See, e.g., Ramon v. Saenz*, 122 S.W. 928, 929 (Tex. Civ. App. 1909) ("Certainly his right to plant and cultivate his land and enjoy the products thereof, were property rights which he was entitled to exercise and enjoy." (emphasis added)). But just as this Court must do here, the Florida Supreme Court in *Zrillic* engaged in an earnest analysis of the historical context framing the nature of the rights at issue. *Zrillic*, 563 So. 2d at 67 (looking back to feudal England to develop an understanding of the nature of the property rights at issue before the Court).

Looking to history in this case validates the intuitive expectation that "certainly" the right to work one's own land for sustenance is a protected constitutional right, *see, e.g., Saenz*, 122 S.W. at 929, because it is the sort of right that, as the Florida Supreme Court in *Zrillic* explained, is "grounded in natural law." *Zrillic*, 563 So. 2d at 67. In fact, John Locke, whose works on natural law greatly influenced America's Founders,¹⁰ explained that the very origins of property lay in the productive use of land—specifically, in "Till[ing], Plant[ing], Improv[ing], Cultivat[ing], and . . . us[ing] the Product" of land for the enjoyment of one's self and family. John Locke, *Second Treatise of Civil Government* ch. V § 32 (1690) ("As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his *Property*.").

¹⁰ *See, e.g.,* Michael Zuckert, *The Natural Rights Republic* 73–85 (1996).

This understanding of the foundational purpose of property as a source of sustenance—and of liberty, for that matter—was not lost on the Founders, whose vision for America was that of a people who were self-sufficient tillers of the soil and responsible stewards of the land. Likewise, early life in Florida also reflected these ideals of self-sufficiency. Following in the steps of America’s revolutionaries, *see* Joseph W. Little & Steven E. Lohr, *Textual History of the Florida Declaration of Rights*, 22 Stetson L. Rev. 549, 562 (1992-93), the framers of the constitution of the then-territory of Florida sought to enshrine the same principles as did the nation’s Founders when they declared their independence from England. *See* Fla. Const. of 1838, pmbl. & art. I, § 1 (recognizing that “to form ourselves into a Free and Independent State” it was necessary to formally acknowledge the “inherent and inalienable rights . . . of acquiring, possessing, and protecting property”). Without these rights, early settlers on Florida’s frontier, a lot which was “[h]ighly individualistic and . . . fiercely dedicated to popular democracy,” Michael Gannon, *The New History of Florida* 219 (1996), could not have survived.

This pre-statehood Constitution thus embodied the character of pioneers in the unexplored wilderness of Florida, who depended on the productive use of their property to survive and forge a new, independent Florida. *See* Charlton W. Tebeau, *A History of Florida* 136 (1971) (“[P]lanters [arrived] with possessions in wagons . . . [T]hey camped at night, opened up roads, and even built bridges on the way . . . and then they cleared the land to plant the first crops . . . [T]hese people [had] come with the resolution of founding a new country.” (internal quotations omitted)). And even after obtaining statehood, such protections for basic self-determination remained crucial to survival in the vast new state, where early settlers remained isolated and thus had no choice but to cultivate the land to survive:

We see very little meat and have never seen a butcher or a butcher shop. However . . . [a]t this moment I can step into my garden and pull dinner fresh

peas, fresh cabbages, fresh carrots, or I can pick a mess of collards, or a huge eggplant, and at any time can dig a mess of sweet potatoes . . . This is the kind of garden we have in Florida. Make it any time that you please.

Tales of Old Florida 223 (Castle Books 1987) (documenting Florida, in 1910, as “A Haven for the Gardener”).

The Plaintiffs in this case only wish to exercise the same deeply rooted right to support themselves with the products of their own land—a right which the Founders recognized. Hermine and Tom’s vegetable garden is merely the modern incarnation of the frontier garden that embodied the early American and early Floridian spirit, while reflecting “an advanced type of edible landscape that is different functionally and aesthetically from the tradition vegetable garden of the prior century.” *See* Ex. C, Mihalic Report at 3, 10 (“[T]he edible landscape maintained on the Ricketts’ property is a contemporary example of an edible garden that is integrated with non-edible plants.”). Thus, while Hermine and Tom’s garden differs from early gardens, primarily in that it is both functional and attractive, the rights which protect this use find their origins at the core of our founding philosophies. *See id.* at 3-4 (“A Twentieth Century American vegetable garden . . . can be traced back to American pioneer homesteads.”).

This historically rooted practice, which empowers the individual to provide for her own sustenance, is thus a vital component of self-sufficiency. Indeed, as the Founders understood—and as early Floridians learned through experience—without the ability to work their own land to provide for the needs of themselves and their families, Americans could never be truly independent.¹¹ The Florida Supreme Court has accordingly recognized the vital relationship

¹¹ In fact, the Founders were the original “locavores,” who encouraged self-reliance and non-dependency on foreign goods. *See, e.g.,* Andrea Wulf, *Founding Gardeners: The Revolutionary Generation, Nature, and the Shaping of the American Nation* 7 (2012) (“[A]s tension over the Stamp Act grew, [Benjamin] Franklin argued that the colonies would be able to pressure the British by boycotting their goods. ‘I do not know a single article,’ Franklin told MPs, that the colonies couldn’t either ‘do without or make themselves.’”); *id.* at 8-9 (“In response to the Stamp Act, [John] Adams . . . promised that he would not buy ‘one shilling worth of any thing that comes from old England.’”).

between property rights, sustenance, and liberty in discussing the Inalienable Rights Clause of the state’s 1885 constitution. *See Peavy-Wilson Lumber Co. v. Brevard Cnty.*, 31 So. 2d 483, 485 (Fla. 1947).

In short, the harmless act of using property to feed yourself and your family is a fundamental right—one rooted squarely within the inalienable rights to possess, use, and enjoy property. Any “common sense” interpretation of the clause—based on the plain and ordinary meaning of its terms, along with a consideration of its historical place—leaves no doubt that this is so. The right to grow food on one’s property is a right without which the Republic as we know it could not exist, and the framers of the Florida Constitution protected it as such.

2. The City’s Ban on Front-Yard Vegetable Gardens Violates Hermine and Tom’s Fundamental Privacy Right to Consume the Foods of Their Choice.

The City’s ban on front-yard vegetable gardens infringes Hermine and Tom’s fundamental right to consume the foods of their choice, as protected within their fundamental right of privacy. Specifically, by outlawing the sole source of Hermine and Tom’s vegetable diet—and the primary source of their overall diet—the City has deprived them of the freedom to grow and consume the foods of their choice. *See Ricketts Aff.* ¶¶ 37, 39-40; *Carroll Aff.* ¶¶ 33, 35-36; *see also* Ex. C, Mihalic Report at 13. This right is protected primarily by the Florida Constitution’s Right of Privacy Clause, which guarantees that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life,” Fla. Const. art. I, § 23, but also by its Inalienable Rights Clause—specifically, the clause’s protection of the right “to pursue happiness,” Fla. Const. art. I, § 2.¹² Under Florida law, the “right of

¹² Of course, in addition to the Florida Constitution’s explicit recognition of an individual’s Right of Privacy, similar safeguards for citizens’ privacy rights are provided by the constitution’s Due Process and Equal Protection Clauses. *See, e.g., D.M.T. v. T.M.H.*, 129 So. 3d 320, 334-35 (Fla. 2013). Moreover, there is a profound connection between the property rights discussed in the previous section and the right of privacy discussed in this one. *See, e.g., Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 963 (Fla. 1991) (holding that “property rights are

privacy is a fundamental right,” *N. Fla. Women’s Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 626 (Fla. 2003); *see also Winfield v. Div. of Pari-Mutuel Wagering, Dep’t of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985) (same). And as “one of at least four states having its own express constitutional provision guaranteeing an independent right to privacy,” *In re T.W.*, 551 So. 2d 1186, 1190 (Fla. 1989), the right “is much broader in scope than that of” its unenumerated counterpart recognized in federal constitutional law. *Winfield*, 477 So. 2d at 548.

The Florida Supreme Court has explicitly held that the right of privacy includes the right to make basic decisions about food and nutrition. Likewise, this same right, considered as it is to be inseparable from the common notion of liberty, also finds protection in the right to “pursue happiness.” For the reasons explained in the subsections below, Hermine and Tom are entitled to summary judgment in their favor under both of these protections, which are inherent in their fundamental right of privacy.

i. *Florida’s Right of Privacy Includes the Right to Grow and Consume the Foods of One’s Choice and Make Basic Decisions About Nutrition.*

The decision to grow and consume the food of one’s choice is a “deeply personal” decision at the very heart of the right of privacy. *See, e.g., Ex. C, Mihalic Report* at 13. In interpreting the right of privacy, the Florida Supreme Court has admonished, “[W]e begin with the premise that everyone has a fundamental right to the sole control of his or her person.” *In re Browning*, 568 So. 2d 4, 10 (Fla. 1990); *see also David C. Hawkins, Florida Constitutional Law: A Ten-Year Retrospective on the State Bill of Rights*, 14 Nova L. Rev. 693, 840 (1990) (“Privacy

particularly sensitive where residential property is at stake, because individuals unquestionably have constitutional privacy rights to be free from governmental intrusion in the sanctity of their homes and the maintenance of their personal lives”); *In re Forfeiture of 1969 Piper Navajo*, 592 So. 2d 233, 236 (Fla. 1992) (noting that the Right of Privacy Clause, Article I, section 23, protects property rights).

under this rubric includes matters about . . . personal health.”). The right of privacy thus includes the right to make basic decisions about health and nutrition because:

“Privacy” has been used interchangeably with the common understanding of the notion of “liberty,” and both imply a fundamental right of self-determination subject only to the state’s compelling and overriding interest These components of privacy are the same as those encompassed in the concept of freedom, and . . . are deeply rooted in our nation’s philosophical and political heritage.

In re Browning, 568 So. 2d 4, 9-10 (Fla. 1990) (citations omitted). In its finding that the “fundamental right of self-determination, commonly expressed as the right of privacy, controls this case,” the Court in *Browning* thus established the Court’s current interpretation of Florida’s Right of Privacy, as meant to broadly encompass “a ‘physical and psychological zone within which an individual has the right to be free from intrusion or coercion.’” *Id.* (quoting Gerald B. Cope, Jr., *To Be Let Alone: Florida’s Proposed Right of Privacy*, 6 Fla. St. U. L. Rev. 671, 677 (1978)).¹³ This includes, specifically, the right to make decisions about health and nutrition. *See Browning*, 568 So. 2d at 11 & n.6 (refusing to narrow its ruling to strictly medical matters) (“We conclude that a competent person has [a] constitutional right . . . that . . . extends to all relevant decisions concerning one’s health.”).

Browning is instructive in this case, because Hermine and Tom are prohibited from growing plants—which would have the benefit of providing for their nutritional needs—based on their intention to eat them. *See Ex. E*, Flores Tr. 206:11-13; *see also infra*, Part IV.B.1. Yet *Browning* explained that the right to privacy protects choices regarding food and nutrition in all

¹³ Florida’s framers intended for the clause to operate both broadly and decisively to protect against encroachments like the one at issue in this case, citing the need for “constant vigilance” in light of the “tendencies of other industrial societies toward the superstate and abuses by government officials in this country.” Uhlfelder & McNeely *The 1978 Constitution Revision Commission: Florida’s Blueprint for Change*, 18 Nova L. Rev. 1489, 1492 (1994) (quoting Talbot “Sandy” D’Alemberte, *Revision 1: The Pros and Cons*, Fla. Times Union, Oct. 28, 1978, at B7); *see also* Patricia A. Dore, *Of Rights Lost and Gained*, 609 Fla. St. L. Rev. 609, 655 (1978) (explaining that the drafters of the Clause rejected proposals to insert any qualifying language, opting instead “to place the right on the same plane with free speech press, association, and religion.”).

contexts—particularly as it relates to personal matters, such as medical care and, as is the case here, the zone of privacy within the home.¹⁴ In fact, the right of privacy is particularly heightened when exercised on one’s own property. *See Dep’t of Law Enf. v. Real Property*, 588 So. 2d at 964 (Fla. 1991) (holding that “property rights are particularly sensitive where residential property is at stake, because individuals unquestionably have constitutional privacy rights to be free from governmental intrusion in the sanctity of their homes and the maintenance of their personal lives”); *Ravin v. State*, 537 P.2d 494, 511 (Alaska 1975) (holding that “possession of marijuana by adults at home for personal use is constitutionally protected”).

The issue of privacy, and its protection of matters related to food and nutrition on one’s own property, has been addressed by the Supreme Court of Alaska—one of just a handful of other states like Florida with an express right-of-privacy protection in its constitution. *See* Alaska Const. art. I, § 22. The Alaska Supreme Court has squarely held that it protects choice in food matters: specifically, “the ingestion of food, beverages or other substances.” *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974) (holding that the right to privacy “clearly . . . shields the ingestion of food, beverages, and other substances”); *Ravin*, 537 P.2d at 515 (“Thus, the decision whether to ingest food, beverages or other substances comes within the purview of that right to privacy.”). Because the Florida Supreme Court’s ruling in *Browning* applied an analysis analogous to the Alaska Supreme Court’s rulings *Gray* and *Ravin*, this Court should rule similarly.

¹⁴ For both the *Browning* Court and individuals like Ms. Ricketts, who follow the Hippocratic teaching to “let food be thy medicine,” there is no distinction between food and nutrition as it relates to modern medical treatments and food and nutrition as it relates to basic matters of wellness. *Id.* (collecting cases) (concluding, collectively, that drawing a line between basic nutrition/hydration and treatment is “to create a distinction without meaning.”) (citations omitted). To interpret the Clause otherwise in this case would itself create a perverse (and constitutionally flawed) distinction.

As was the case with the right to acquire, possess and protect property, history also supports the conclusion that the right to produce and consume the food of one's choice falls within the fundamental right to privacy. And for many of the same reasons. Without question, the right to grow and consume the foods of one's choice, free of intrusion from the government, is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks and citations omitted) (setting forth standard for recognition of fundamental right under U.S. Constitution).

These historically rooted rights, designed to protect the right of the individual to provide for her own needs, are reflected in cases like *Browning*. Indeed, Hermine and Tom's garden is but a "contemporary example," Ex. C, Mihalic Report at 10, of a time-honored practice that "can be traced back to American pioneer homesteads." *Id.* at 3-4. Hermine and Tom's edible garden similarly reflects such a right, as historically enjoyed by early Floridians, "[t]he vast majority of [whom] were yeoman farmers [who] depend[ed] largely on the labor of the family," Charlton W. Tebeau, *A History of Florida* 150 (1971). And as the Florida Supreme Court stated in *Browning*, the right of privacy still operates to protect these same, personal matters today.

ii. *The Right to Grow and Consume the Food of One's Choice is Also Protected Under the Related Right to Pursue Happiness.*

The right to grow and consume the food of one's choice also finds textual protection in the Inalienable Rights Clause—specifically, its protection of the right "to pursue happiness." Fla. Const. art. I, § 2. In fact, Floridians enjoy a "constitutional right . . . [that] extends to all relevant decisions concerning one's health," *Browning*, 568 So. 2d at 11, which is a reflection of the state's overarching protections of the right to pursue happiness. *Id.* at 10 (citing *In re: T.W.*, 551 So. 2d 1186, 1191 (Fla. 1989) ("The makers of our Constitution undertook to secure

conditions favorable to the pursuit of happiness They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.” (quoting *Olmstead v. United States*, 277 U.S. 438, 478, (1928) (Brandeis, J., dissenting))).

Florida is not alone. The Supreme Court of Arkansas has also recognized “the inalienable right of man to procure healthy and nutritious food” and, in so doing, has held that the right is secured by that state’s Inalienable Rights Clause, which, like Florida’s, protects the “inalienable right[]” of “pursuing . . . happiness.” *City of Helena v. Dwyer*, 42 S.W. 1071,1073 (Ark. 1897); Ark. Const. art. II, § 2.¹⁵ Laws that, in effect, “prescribe what the citizen . . . shall eat,” that court held, are “an invasion of his personal rights” and an impermissible “interference with the liberty of the citizen, which is not necessary to the protection of others or the public health.” *Dwyer*, 42 S.W. at 1073. Significantly, the original version of Florida’s Inalienable Rights Clause was adopted *verbatim* from the original version of Arkansas’ clause. *Compare* Fla. Const. of 1838, art. I, § 1, *with* Ark. Const. of 1836, art. II, § 1.

Similar to the Arkansas Supreme Court, the Kentucky Court of Appeals has recognized an inalienable right to choice in food matters and has similarly rooted it in personal privacy and the right to pursue happiness:

[A]mong the inalienable rights possessed by the citizens is that of seeking and pursuing their safety and happiness [T]he question of what a man will drink, or eat, or own, provided the rights of others are not invaded, is one which addresses itself alone to the will of the citizen. It is not within the competency of government to invade the privacy of a citizen’s life and to regulate his conduct in matters in which he alone is concerned, or to prohibit him any liberty the exercise of which will not directly injure society.

¹⁵ See also *Dwyer*, 42 S.W. at 1071-72 (“With the gift of life there necessarily goes to every one the right to do all such acts, and follow all such pursuits, not inconsistent with the equal rights of others, as may support life and add to the happiness of its possessor. . . . The right to procure healthy and nutritious food, by which life may be preserved and enjoyed, and to manufacture it, is among these inalienable rights It is involved in the right to pursue one’s happiness.” (quoting *Powell v. Pennsylvania*, 127 U.S. 678, 692 (1888) (Field, J., dissenting))).

Commonwealth v. Campbell, 117 S.W. 383, 385 (Ky. Ct. App. 1909). In short, the right to produce and consume the foods of one’s choice is a fundamental right firmly rooted in the very concept of liberty, and essential to one’s right to pursue happiness as protected under Florida’s—as well as other states’—right of privacy. A ban on growing vegetables on one’s own property simply cannot be squared with the obvious historical intention behind, and recent interpretations of, these provisions.

3. The City’s Ban on Front-Yard Vegetable Gardens Cannot Survive Strict Scrutiny.

Florida’s courts have repeatedly held that where *any* fundamental rights are implicated, even if only implicitly, the rights of the individual are to be so vigorously protected that the government cannot prevail unless it proves that the law in question substantially furthers a compelling state interest and uses the least restrictive means. *N. Fla. Women’s Health & Counseling Servs.*, 866 So. 2d at 644-645. Property rights, given their esteem as “one of the great rights preserved in our constitution and for which our forefathers fought and died,” *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (footnote omitted), are among Floridians’ fundamental rights. In fact, a law which infringes on property rights is all the more suspect in a case such as this one, as “property rights are *particularly sensitive where residential property is at stake*, because individuals unquestionably have constitutional privacy rights to be free from governmental intrusion in the sanctity of their homes and the maintenance of their personal lives.” *Dep’t of Law Enf. v. Real Property*, 588 So. 2d 957, 964 (Fla. 1991) (emphasis added). As such, any restriction which implicates the Florida Constitution’s explicit, fundamental right to “acquire, possess and protect property,” or the right of privacy, is subject to strict scrutiny. *N. Fla. Women’s Health & Counseling Servs.*, 866 So. 2d at 635 (“[I]t is settled in Florida that each of the personal liberties enumerated in the Declaration

of Rights is a fundamental right [and] [l]egislation intruding on a fundamental right is presumptively invalid.” (footnotes omitted)).

In this case, the City has not even attempted to argue that aesthetics is a compelling governmental interest, nor has the City articulated any other purported interest which might satisfy this requirement. Moreover, even if aesthetics were a compelling governmental interest (and it is not), there is no evidence to support the notion that a ban on front-yard vegetable gardens is the least restrictive means to that end. In fact, the City has produced no evidence whatsoever in this case. Therefore, should this Court conclude that any fundamental rights are implicated by the City’s ban, summary judgment in favor of the Plaintiffs is appropriate.

B. THE CITY’S ARBITRARY BAN ON FRONT-YARD VEGETABLE GARDENS CANNOT SURVIVE REASONABLE RELATIONSHIP SCRUTINY.

Even if this Court does not agree that the rights at issue in this case are fundamental, however, the City’s ban on front-yard vegetable gardens is still unconstitutional. In the absence of a fundamental right, Florida’s Equal Protection Clause still requires that statutory classifications drawn by the ban “be based at a minimum on a rational distinction having a just and reasonable relation to a legitimate state objective.” *Zrillic*, 563 So. 2d at 69. Likewise, Florida’s Due Process Clause requires: (1) that there be “a reasonable and substantial relation” between the ban and “the object sought to be attained,” *State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 1986); (2) that the ban “not be unreasonable, arbitrary, or capricious,” *id.*;¹⁶ and (3) that the

¹⁶ See also *In re Fla. Bar*, 349 So. 2d 630, 634 (Fla. 1977) (“[I]f it appears . . . that the means employed have no real and substantial relation to the avowed or ostensible purpose, or that there is wanton or arbitrary interference with private rights, the legitimate bounds of the police power may be exceeded.”).

ban be “reasonably necessary” to achieve a permissible governmental objective, *Maxwell v. City of Miami*, 100 So. 147, 149 (Fla. 1924).¹⁷

The evidence in this case establishes that the City’s ban effectively operates to prohibit only edible plants, without any consideration for their physical appearance. Consequently, the City’s ban fails in light of each of the above considerations because it lacks any connection to aesthetics, it is arbitrary and unreasonable, and it is wholly unnecessary. A law which fails to meet these criteria will, as a matter of law, operate to “deprive one of property without due process, or to deprive one of equal protection under law.” *Conner v. Cone*, 235 So. 2d 492, 494 (Fla. 1970). But because the City’s ban fails by any of these measures, it does both.

1. As a Threshold Matter, the City’s Ban on Front-Yard Vegetable Gardens is Arbitrary and Irrational Because it Evades Any Common Understanding and is Instead Based on Edibility, Not Aesthetics.

The term “vegetable” defies any definition in science, biology, or even common usage. *See* Ex. C, Mihalic Report at 6-7. And it certainly lacks any definition which is tied to the aesthetic appearance of a plant. *Id.* at 6-9. Rather, the term “vegetable” is based on “an arbitrary cultural and culinary definition with regards to the way we classify plants for human consumption,” *id.* at 6, an understanding that has nothing to do with aesthetics. *Id.* at 12; *id.* at 7 (“[T]he term vegetable is ultimately culturally determined based on how plants are prepared, cooked, and consumed.”). As a result, although all plants have a science-based botanical classification, *see id.* at 7, the generic term “vegetable” is used to refer to those one considers edible.¹⁸

¹⁷ The Inalienable Rights Clause would require as much, as well. *See Zrillic*, 563 So. 2d at 70 n.6 (recognizing that heightened scrutiny “may well” apply under Inalienable Rights Clause but resolving claim under rational-basis test).

¹⁸ Of course, not every edible plant is generically referred to as a “vegetable,” because the term also reflects one’s experiences of how and when the item is typically prepared and arrives to the plate. *Id.* at 7. For example, eggplants and okra, which are heartier items that are often eaten cooked, and as part of a main course, are illegal

Accordingly, whether or not a given plant is considered a “vegetable,” and is thus prohibited, is “reliant on a subjective and variable understanding of the term.” *Id.* at 8. Mr. Flores’ testimony agrees with Ms. Mihalic’s conclusion, as he testified that his determination of what constitutes a vegetable hinges on edibility:

Q: [W]hen you decide they are growing vegetables and they are in violation of [the ban], what do you look for to determine whether or not what is growing there is vegetables or is a typical ornamental plant?

...

A: I look at the ground cover that’s in there. If there are specific plants that are, you know, made for culinary purposes, vegetables and tomatoes, peppers and what not, to me it’s a vegetable garden.

Q: One of the things you just said you look to see whether or not somebody is growing something that would be used -- that has a culinary use; is that right?

A: Uh-huh.

Q: What other reasons might somebody grow vegetables?

A: I don’t know.

Q: What other definition might you apply other than just culinary use?

....

A: That’s my only definition.

Q: So you walk up to the property, you look, is there a culinary use for this, you ask yourself?

....

A: Perhaps.

Q: What other things might you take into account if not only that?

A: I’m not sure.

Q: Do you take anything else into account [other than] whether somebody else would eat it?

A: No.

under the City’s ban because Mr. Flores considers them “vegetables.” On the other hand, an orange, which is a sweeter item that is often eaten cold or as a dessert, is perfectly acceptable. Scientifically speaking, however, they are both fruit.

Ex. E, Flores Tr. 110:7-111:24. Mr. Flores further testified that his understanding of edibility—and thus, the basis for his decision to cite or not cite someone for a violation—is informed by his childhood, when, “[g]rowing up, [his] mom taught [him] what a vegetable, what’s a fruit.” *Id.* at 122:22-25.

In this way, the meaning of the City’s front-yard vegetable ban turns not on appearance or attractiveness, but rather, on perceptions of edibility. In fact, this is yet another instance in which Mr. Flores agrees with Ms. Mihalic, who testified that “the status of a plant as edible is mutable and dependent on fluctuating cultural norms,” meaning that the “enforcement of such a code is based on the personal opinion of individual code enforcement officers.” Ex. C, Mihalic Report at 8. Mr. Flores confirmed this in explaining how he addresses the age old question of what constitutes fruits (legal in Miami Shores) versus vegetables (illegal): “If you want to call it a fruit, I still call it a vegetable. It’s my opinion. . . . It’s my opinion.” Ex. E, Flores Tr. 125:10-14.¹⁹ One thing is clear: The City’s front-yard vegetable ban has nothing to do with the physical appearance of a garden and everything to do with Mr. Flores’s subjective view of each garden he inspects.

It is therefore evident that the City’s interpretation of its prohibition on front-yard vegetable gardens is divorced from any consideration of vegetables’ aesthetic qualities. Rather, it is a mechanism by which the City prohibits residents from using their properties to grow food

¹⁹ Mr. Flores is not the only person who has had difficulty drawing a line between vegetables and other plant products—indeed, the question has plagued the law and science for centuries. *See, e.g., Nix v. Hedden*, 149 U.S. 304 (1893) (holding that, although fruit for botanical purposes, tomatoes were vegetables for tax purposes); Ex. C, Mihalic Report at 6 (“Epidemiologists created this definition [of what is a vegetable] for convenient categorization in order to communicate recommended dietary guidelines.”). Whereas the Court in *Nix* conjured a loose definition of the term “vegetable” as a matter of sheer regulatory convenience, the question of what is or is not a vegetable is an unresolvable question everywhere else. Ex. C, Mihalic Report at 6-9 (explaining that the word “vegetable” is inherently meaningless “because the term vegetable is based on an arbitrary cultural and culinary definition.”). Even the entity which passed this ordinance, the Village of Miami Shores Code Enforcement Board, struggled to define it as anything other than a ban on using one’s property as a source of sustenance. *See Ramirez Aff.* ¶¶ 9, 11.

for themselves.²⁰ But regulating lifestyle choices under the auspices of a separate purpose, like aesthetics, is unconstitutional. *See Decarion v. Monroe Cnty.*, 853 F. Supp. 2d 1415, 1421 (S.D. Fla. 1994) (“Arbitrary and capricious for substantive due process purposes means that the County acted with an improper motive, without reason or upon a reason that was merely pretextual.”).²¹ Indeed, the Board has placed a great deal of emphasis not on what the Hermine and Tom grew, but on *why* they were growing it.²² And Mr. Flores testified that he too was preoccupied with deciphering whether a property owner was growing a vegetable for decoration versus growing it for consumption:

Q: [W]hen you decide they are growing vegetables and they are in violation of [the ban], what do you look for to determine whether or not what is growing there is vegetables or is a typical ornamental plant?

....

A: I look at the ground cover that’s in there. If there are specific plants that are, you know, made for culinary purposes, vegetables and tomatoes, peppers and what not, to me it’s a vegetable garden.

Ex. E, Flores Tr. 110:13-18. Thus, the true purpose of the law is to prohibit residents from using their front yards to grow food. But a given plant does not suddenly become more or less attractive the instant a code inspector determines whether or not he would eat it. Ex. E, Flores Tr. 175. Yet edibility—not attractiveness—is the determinative factor of illegality. *See id.*

²⁰ *See Craigmiles*, 312 F.3d at 229 (holding that a pretextual purpose was apparent even under rational basis analysis).

²¹ In considering whether the City’s asserted interests are indeed pretextual, the Court must look to the City’s reasoning in enacting the ordinance. *Decarion*, 853 F. Supp. 2d at 1421.

²² The City’s preoccupation with edibility was made clear during Hermine and Tom’s appearance before the Code Enforcement Board. *See, e.g., Ramirez Aff.* ¶ 11 (Chairman Vickers: “Do you have vegetables being grown in your front yard? . . . Are you cultivating these vegetables? Are they growing wild, or did you plant them and you’re growing and caring and pulling the weeds and making sure they grow so they’re edible?”); Ex. E, Flores Tr. 110:13-18.

110:13-18. This only further establishes that the ban regulates basic lifestyle choices—matters which have nothing to do with aesthetics.

Even if there were a governing definition on what is or is not an attractive vegetable according to the City (and there is not), the question of what constitutes an attractive vegetable *garden* is equally left to the subjective interpretations the City’s inspectors. As Mr. Flores testified:

A: You can’t have a vegetable garden in the front yard.

Q: Can you have a vegetable?

A: You can probably have a vegetable.

Q: Can you have two vegetables?

A: You can probably have two vegetables if they are not next to each other.

They are like an ornamental plant.

Q: If a vegetable is ornamental, you can have it?

A: You can probably have it.

Q: What does that – is that anywhere in the code?

A: No.

Ex. E, Flores Tr. 80:4-18. In fact, in his deposition alone, Mr. Flores indicated that he applies at least 11 different factors when enforcing the ban:

- Whether the garden’s contents are edible, *see id.* at 111;
- Whether “everything . . . looks harmonious and grown, pretty . . . [w]hatever that means to you.” *Id.* at 126.
- Whether the plant arrangement appears to be part of “a process,” *see id.* at 112;
- Whether there are too many vegetables in one area, *see id.* at 80;

- Whether an ornamental vegetable is intended to be decorative versus whether the owner plans to eat it, *see id.* at 1110:13-18, 113:5-6.
- Whether the plant bears fruit, *see id.* 175;
- Whether the plant is a male plant or a female plant, *see id.* at 183-184;
- Whether the vegetable is visible, *see id.* at 102, 189;
- Whether he can determine what type of plant it is, *see id.* at 103;
- Whether a given plant is a vegetable or fruit, based on both what his mother taught him growing up and his own cultural and personal experiences, *see id.* at 122-24; and;
- Whether the garden satisfied a separate provision of the code requiring adequate “ground cover.”

Ex. E, Flores Tr. 141:10-11; 142:25-143:8.

The evidence thus clearly establishes that there is no objective standard for determining what vegetables are allowable and which vegetables are not. In lieu of an objective standard, Mr. Flores conjured his own subjective standard which turns on edibility. *Id.* at 111:22-25. Yet there is absolutely no connection between edibility and attractiveness—the City’s purported justification for banning vegetables. Edibility is a matter of taste, personal preference, and nutrition; it has nothing to do with a plant’s physical properties. As discussed further below, the inherent irrationality of the City’s vegetable ban undermines the law in other ways as well, as an edibility-based distinction is an arbitrary classification and is both over- and under-inclusive.

2. The City’s Ban on Front-Yard Vegetable Gardens Violates Hermine and Tom’s Right to Equal Protection of Law.

The City’s ban fails the equal protection guarantee of the Florida Constitution, which provides protection from laws that irrationally distinguish between similarly situated persons.

Fla. Const. art. I, § 2 (“All natural persons . . . are equal before the law and have inalienable

rights”); *Zrillic*, 563 So. 2d at 69 (“It is well settled under federal and Florida law that all similarly situated persons are equal before the law.”). In this case, the classification drawn by the ban—between people who desire to grow vegetables in their front yard, and those who wish to grow virtually anything else—is irrational.²³ First, the distinction does not bear any connection to the City’s purported interest of aesthetics. To the contrary, the evidence establishes that the City’s ban—which prohibits front-yard vegetable gardens but nothing else—is entirely arbitrary because it is based on the subjective impressions of the code inspector regarding edibility. Second, this sweeping prohibition is at once over-inclusive and under-inclusive, thus failing to accomplish its purported aim. For each of these reasons, the ban violates the Equal Protection Clause.

i. *The City’s Ban on Front-Yard Vegetable Gardens Draws Arbitrary and Irrational Distinctions Between Vegetables and Everything Else.*

The City’s ban on front-yard vegetable gardens draws distinctions that are arbitrary and unrelated to the City’s claimed interest in aesthetics. As shown below, both *Zrillic* and *McCall* are similar to this case in that they both involved laws which drew bright-line distinctions that bore no relationship to the aims of the law in question. Consequently, the laws in *Zrillic* and *McCall* could not survive constitutional scrutiny. The Court should reach the same result here.

The Florida Supreme Court has repeatedly held that the classification drawn by a law must “be based at a minimum on a rational distinction having a just and reasonable relation to a

²³ Under *Membreno & Fla. Ass’n of Vendors Inc. v. City of Hialeah*, No. 3D14-2603, 2016 WL 889178 (Fla. Dist. Ct. App. Mar. 9, 2016), *petition for cert. filed*, (Fla. April 8, 2016), the Third District Court of Appeals held that despite *McCall*’s apparent ruling to the contrary, Florida’s rational basis or reasonable relationship test compels courts to avoid considering the propriety of the government’s actions. Notwithstanding, while the Court may defer to the City’s suggestion that the ban is meant to preserve aesthetics, the evidence of how the ban operates confirms that there is no nexus between the ban and its stated goal. *See* Ex. C, Mihalic Report at 11, 13 (“[I]t is my professional opinion that a prohibition on vegetable gardens in front yards in the Village of Miami Shores does nothing to preserve aesthetic character.”).

legitimate state objective.” *Zrillic*, 563 So. 2d at 69 (citations omitted). In *Zrillic*, for example, the Florida Supreme Court considered the constitutionality of a statute intended to prevent undue influence when property was inherited. Specifically, the statute enabled a spouse to void a testator’s gift to a “benevolent, charitable, educational, literary, scientific, religious, or missionary” entity if the will in which the devise was made was executed within six months of the testator’s death. *Id.* at 65 n.3. The asserted purpose for the statute was the protection of testators from undue influence from charitable organizations. *Id.* at 69.

But *Zrillic* held that the statute violated Florida’s Equal Protection Clause, in part, because the six-month trigger in the statute was not a rational classification. As the court explained, “[t]here is no rational distinction to automatically void a devise upon request when the testator survives the execution of the will by five months and twenty-eight days, but not when the testator survives a few days longer”; “[n]or is it rational to apply the statute in cases where the testator dies suddenly due to an accident during the six-month period after making the charitable bequest.” *Id.* at 70.

Similarly, in *McCall*, the Florida Supreme Court considered an aggregate ban on noneconomic damages—which was enacted to address a perceived medical malpractice insurance crisis. The Florida Supreme Court ruled that the cap violated equal protection because the law’s distinction, which effectively limited damages awards on the basis of the number of claimants, “d[id] not bear a rational relationship to the stated purpose that the cap [was] purported to address,” *McCall*, 134 So. 3d at 901. More specifically, the Court reasoned that “the arbitrary reduction of survivors’ noneconomic damages . . . lacks a rational relationship to the goal of reducing medical malpractice premiums.” *Id.* at 916 (Pariente, J., concurring). It was

this disconnect—which the Court referred to as the “critical missing link”—that led the Court to strike the law down. *Id.* at 920.

Zrillic’s and *McCall*’s equal protection analysis controls the outcome here. First, like the six-month distinction drawn by the statute in *Zrillic*, the distinction between persons who grow vegetables in their front yards and those who grow other plants is an irrational one. There is no rational reason to prohibit the growing of—and, in this case, *to have forced the destruction of*—peppers, lettuces, or onions but not pineapples, watermelons, sunflowers, or bamboo.

Like the aggregate damages cap in *McCall*, the City’s sole justification for its ban on front-yard vegetable gardens—the detached assertion that banning vegetables, but allowing everything else, somehow makes the city more attractive—is a mere “recitation[] amounting only to [a] conclusion[]” because it finds no support in the circumstance of reality. *Id.* (citations omitted). In this case, consideration of the effects of the ban—which is not the same as questioning the legislative motivations behind it—illustrates the presence of the same “critical missing link” that proved fatal to the damages cap in *McCall*. In fact, Mr. Flores own testimony confirms that this law, which draws a distinction that plainly does not further aesthetics, suffers from the same “critical missing link” that doomed the law in *McCall*:

Q: [D]oes substituting an ornamental plant with a plant that bears a vegetable render the garden unattractive?

A: No.

Ex. E, Flores Tr. 169:3-7. Thus, under a plain reading of *McCall*, such a disconnect establishes that the ban “not only fails the smell test, but the rational basis test as well.” *McCall*, 134 So. 3d at 920 (Pariente, J., concurring). This is because, like the tort reform measure in *McCall*, the

record establishes that the law at issue is completely detached from the government's asserted interest.

In sum, the City's ban amounts to a distinction which is unreasonable when considered in light of its purported objectives. Even if the *McCall* "critical link" requirement was somehow satisfied, the ban must still not be demonstrably arbitrary. Yet in the City's Code Enforcement Supervisor's own words, that is precisely what it is. *See* Ex. E, Flores Tr. 125:14 ("It's my opinion."). And as the following sections further illustrate, the City's ban on front-yard vegetable gardens shares many of the very same constitutional infirmities that led the Florida Supreme Court to find equal protection violations in *McCall* and *Zrillic* as well.

ii. *The City's Ban on Front-Yard Vegetable Gardens is Both Over-inclusive and Under-inclusive.*

The classification drawn by the ban fails the reasonable relationship test for another reason: it is at once over- and under-inclusive. It is over-inclusive because, as Mr. Flores admits, it prohibits a wide array of attractive items. Additionally, it is under-inclusive because it narrowly excludes only vegetables, while permitting virtually everything else. In each instance, the ban utterly fails to further its purported objective of aesthetics. As such, the law does not meet the threshold requirement that any distinction must, "without exception . . . appear to be based at a minimum on a rational distinction having a just and reasonable relation to a legitimate state objective." *Zrillic*, 563 So. 2d at 69 (internal quotation marks and citation omitted). As the Florida Supreme Court held in *Zrillic*, a law's classification must be "neither too narrow nor too broad to achieve the desired end," as "[s]uch underinclusive or overinclusive classifications fail to meet even the minimal standards of the rational basis test. . . ." *Id.* at 69-70. In that case, the six-month rule was simultaneously over- and under-inclusive. It was over-inclusive, the Florida Supreme Court held, "because it void[ed] many intentional bequests by

testators who were not impermissibly influenced or who d[id] not have immediate family members in need of protection.” *Id.* (internal quotation marks omitted). And it was under-inclusive because it did “not protect against overreaching by unscrupulous lawyers, doctors, nurses, housekeepers, companions, or others with greater opportunity to influence a testator.” *Id.*

Like the statute in *Zrillic*, the City’s ban on front-yard vegetable gardens is both over- and under-inclusive. It is over-inclusive because it prohibits *all* vegetables without any regard to their aesthetic character. It treats corn, for example, which can grow upwards of fifteen feet tall, the same as it treats cabbage, which grows low to the ground. And it forbids tubers, like potatoes (which are vegetables according to Mr. Flores), even though they grow invisibly, underground. *See* Ex. E, Flores Tr. 103:7-21.

The law even draws distinctions between “ornamental plants and edible plants [that] can often be confused with one another.” *Id.* at 188:5-15. Thus, even if aesthetic considerations such as height, color, and shape are legitimate bases on which to dictate what a person may or may not grow on her own property (a dubious proposition), the City’s vegetable ban sweeps far too broadly. This is because “[e]dible landscapes are aesthetically pleasing,” as was the case on Hermine and Tom’s property, simply where “human intention and care for the landscape are evident.” Ex. C, Mihalic Report at 10. In this regard, the City’s ban encompasses far more than is constitutionally permissible because it prohibits, in a well-planned and maintained garden, many “edible plants with closely related, non-edible species that are used for ornamental purposes.” *Id.* at 12. In sum, the City’s ban is over-inclusive because it categorically disregards the fact that “edible plants have no intrinsically good or bad aesthetic qualities . . . [and that] many of them look similar to plants used as ornamentals and many species can be used for

ornamental purposes.” *Id.* And once again, this is a matter on which Plaintiffs’ expert and Mr. Flores are in agreement:

Q: And isn’t it true that ornamental plants and edible plants can often be confused with one another?

....

THE WITNESS: To the naked eye, yes.

Id. at 188:5-10. Yet by encompassing *all* “vegetables”—including those that are either attractive or have identical, non-edible ornamental varieties, and still others that are completely *invisible*—the ban undercuts the very aesthetic considerations it purports to serve because it prohibits a multitude of items that would improve the appearance of any property.

Finally, the City’s ban is also under-inclusive. It fails to protect against the aesthetic threats that are just as easily posed by fruit trees, flowers, vines, and blueberry bushes—all of which are perfectly legal under the ordinance. The City’s Code Enforcement Supervisor, Anthony Flores, confirmed this:

Q: What else is prohibited in front yards? . . . Is there anything else that is singled out?

A: Not that I’m aware of.

Ex. E, Flores Tr. 129:13-21. But “[t]here is no reason to believe that [the public] need[s] more protection against” vegetables than against any of these other permissible items. *Zrillic*, 563 So. 2d at 70. Thus, the ban’s under-inclusivity—that is, its failure to promote aesthetics in any capacity—underscores its unreasonableness. *See, e.g., McCall*, 134 So. 3d at 919-20 (Pariente, J., concurring) (noting all the ways in which the law in question failed to address the government’s purported interest). This failure highlights the arbitrariness of the law, as it

demonstrates that the ban does not accomplish its purported purpose because it prohibits only one thing, vegetables, but permits virtually everything else.

3. The City's Ban on Front-Yard Vegetable Gardens Violates Hermine and Tom's Right to Substantive Due Process.

The City's ban on front-yard vegetable gardens also violates the Florida Constitution's substantive due process guarantees, which "protect[] the full panoply of individual rights from unwarranted encroachment by the government." *Dep't of Law Enf.*, 588 So. 2d 957, 960. Even assuming that a zoning regulation based solely on aesthetics is permissible, the City's ban is arbitrary and irrational. Specifically, a regulation will fail rational basis, or reasonable relationship, review and thus violate due process if:

- there is no evidence that the thing or activity regulated is a source of the evil to be cured;²⁴
- the premise underlying the regulation is unreasonable;²⁵
- the regulation is likely to undermine the purpose supposedly underlying it;²⁶
- the regulation reaches far more broadly than needed to achieve the stated ends;²⁷
or

²⁴ *E.g., In re Fla. Bar*, 349 So. 2d at 635 (holding maximum contingency fee schedule irrational because "there is no evidence that the existence of contingent fee agreements is a cause of such ignoble practices").

²⁵ *E.g., Zrillic*, 563 So. 2d at 69 (holding regulation of devisees unreasonable and unconstitutional and because "it is unreasonable to presume, as the statute seems to do, that all lineal descendants are dependents, in need, or are not otherwise provided for").

²⁶ *E.g., In re Fla. Bar*, 349 So. 2d at 634-35 ("[T]here is a complete absence of any evidence that the proposed [regulation] . . . has any real or substantial relation to the cure of the espoused evil. In fact, the converse appears more likely. . . . It is just as likely that the result would be to diminish the quality of service clients of these professions would receive or eliminate the services altogether for some."); *see also Cornwell v. Hamilton*, 80 F. Supp. 2d 1101, 1112 (S.D. Cal. 1999) (holding regulatory scheme governing African hairbraiding was irrational in part because the "licensing regimen may work against the State's professed interest in health and safety"); *Craigmiles v. Giles*, 312 F.3d 220, 226 (6th Cir. 2002) (holding regulation of casket sales irrational in part because "restricting sales of caskets to licensed funeral directors would seem to have an adverse effect on the quality of caskets").

²⁷ *E.g., Cornwell*, 80 F. Supp. 2d at 1106 (holding regulation governing African hairbraiding unconstitutional under rational basis test: "[W]hile a perfect fit is not required, the fit must be reasonable. There must be some congruity between the means employed and the stated end or the test would be a nullity."); *see also Clayton v. Steinagel*, 885

- the government’s proffered explanations are a pretext for some impermissible purpose.²⁸

Any one of these defects can render a law unconstitutional,²⁹ yet the City’s ban on front-yard vegetable gardens suffers *every* one of these defects.

i. *There is No Evidence That Vegetable Gardens Are a Threat to the Aesthetic Character of the Village of Miami Shores.*

First, “[r]esidential properties planted with edible plants are not aesthetically degrading nor do they present a threat to a community’s visual character.” Ex. C, Mihalic Report at 14. As such, an outright ban of this innocuous activity is inherently unreasonable because “[e]dible plants, including those culturally referred to as vegetables, have a varied range of visual appearances and do not have an intrinsically good or bad visual quality.” *Id.* In *Florida Bar*, the Florida Supreme Court recognized the importance of preventing “outrageous abuses” in the context of settlement and adjustment of automobile claims, yet it rejected a contingency-fee ceiling that would have purportedly curbed those abuses because there was “a paucity of

F. Supp. 2d 1212, 1215 (D. Utah 2012). Similarly, in *Department of Law Enforcement*, 588 So. 2d at 960, the Florida Supreme Court held that whether a law satisfies substantive due process under the Florida Constitution may depend, among other factors, on “whether less restrictive alternates were available.”

²⁸ *E.g.*, *Decarion v. Monroe Cnty.*, 853 F. Supp. 1415, 1421 (S.D. Fla. 1994) (“Arbitrary and capricious for substantive due process purposes means that the County acted with an improper motive, without reason or upon a reason that was merely pretextual.”); *Craigsmiles*, 312 F.3d at 229 (striking down law under rational-basis test: “No sophisticated economic analysis is required to see the pretextual nature of the state’s proffered explanations for the 1972 amendment.”); *see also St. Joseph Abbey v. Castille*, 712 F.3d 215, 227 (5th Cir. 2013) (striking down law under rational-basis test where true governmental purpose appeared to be “‘economic’ protection of the rulemakers’ pockets”); *Merrifield v. Lockyer*, 547 F.3d 978, 991-2 (9th Cir. 2008) (striking down law under rational basis-test where record suggested law was “designed to favor economically certain constituents at the expense of others similarly situated”).

²⁹ The Third DCA’s ruling in *Membreno* purports to hold that Florida’s rational basis test is identical to the federal rational basis test and eschews any meaningful consideration of evidence. *Membreno* at *9. Candidly, such an articulation of the standard is irreconcilable with the Florida Supreme Court’s ruling in *McCall*, in which the Court struck down, using the Florida rational basis test, the very same law upheld by the Eleventh Circuit under the federal rational basis test. Yet even applying *Membreno* to this case, it remains true that “courts should not act as rubber stamps when analyzing a law under the rational basis test.” *Id.* at *11. Because the law in this case, in order to survive, would require this Court to do just that, the correct outcome of this case is unaffected by the recently appealed ruling in *Membreno*.

evidence that any significant evil [was] being advanced through utilization of the contingent fee arrangement.” *In re Florida Bar*, 349 So. 2d at 634-35. This Court is faced with a similar disconnect between the evil sought to be prevented and the means chosen—which “does nothing to preserve aesthetic character,” Mihalic Report at 13,—to further that end. As in *Florida Bar*, where the Court emphasized “the lack of demonstrated necessity” for an arbitrary regulation, *id.* at 634, it is uncontested in this case that “there are no aesthetic differences between edible and non-edible gardens.” Ex. C, Mihalic Report at 13. Moreover, the landscape on the property in this case “was meticulously maintained and cared for,” and was thus “aesthetically pleasing simply because human intention and care for the landscape [were] evident.” *Id.* at 10. Mr. Flores agreed:

Q: Would you say the garden was well maintained?

A: Yes.

Q: Did you ever cite her for not having a properly maintained garden?

A: No.

Ex. E, Flores Tr. 131:19-24.

In addition to unfounded concerns regarding maintenance, there is simply no harm created by the presence of edible plants in a garden because an otherwise-lawful garden does not suddenly become ugly the instant a tomato grows where a tulip once did. Mr. Flores agrees:

Q: [D]oes substituting an ornamental plant with a plant that bears a vegetable render the garden unattractive?

A: No.

Ex. E, Flores Tr. 169:3-7. Clearly “[m]any of the edible plants used in [Hermine and Tom’s] property have ornamental properties.” Ex. C, Mihalic Report at 11.

In sum, the record shows that it is undisputed that: (1) Vegetables are often aesthetically indistinguishable from ornamental plants; (2) Hermine and Tom grew an array of ornamental plants, edible plants, and plants that are both ornamental and edible; and (3) Hermine and Tom's garden was well maintained. These undisputed facts alone show that there is absolutely no evidence that a ban on vegetable gardens preserves the City's aesthetic character. Moreover, even to the extent that a particular vegetable garden might become unsightly, the current existence of basic maintenance ordinances renders an outright ban arbitrary by virtue of its superfluity. *See In re Florida Bar*, 349 So. 2d at 635 ("By their very participation in such practices, they are already knowingly violating the law, prejudicing the administration of justice and, hence, violating existing provisions of the Code of Professional Responsibility.").

For example, in *Department of Insurance v. Dade County Consumer Advocates Office*, 492 So. 2d 1032 (Fla. 1986), the Florida Supreme Court struck down, on due process grounds, a regulation that impacted property rights in part because there were several already-existing statutes meant to protect against the purported ills the law was intended to cure. *Id.* at 1035 (referencing with approval *Dade Cnty. Consumer Advocate's Office v. Dep't of Ins.*, 457 So. 2d 495, 499 (Fla. 1st DCA)). The same is true here, as the City already has several tools to ensure the attractiveness of its residences. Thus, the only additional power conferred by the ban is the ability to cite properties which are attractive, but also have vegetables growing in their front yard.

- ii. *The Premise Underlying the City's Ban on Front-Yard Vegetable Gardens—That Front-Yard Vegetable Gardens are Per Se Unattractive—is Unreasonable.*

Second, laws are unconstitutional where unreasonable assumptions form the basis for a law. *See, e.g., Zrillic*, 563 So. 2d at 69 (holding that a regulation was unconstitutional because it

stemmed from an unreasonable and incorrect presumption regarding the status of those it purported to protect); *see also McCall*, 134 So. 3d 894, 920 (Pariente, J., concurring) (striking down an aggregate cap on damages because “the legislature could not have had any reasonable ground for believing” that the law would alleviate a purported medical malpractice insurance crisis). Thus, where, as here, a challenged law rests on a demonstrably false presumption, *see* Ex. C, Mihalic Report at 12, (“[E]dible plants have no intrinsically good or bad aesthetic qualities”), the Florida Supreme Court’s rulings in *McCall* and *Zrillic* compel courts to strike the law down.

This case is no different. It is unreasonable to presume that a front-yard vegetable garden will be *per se* unattractive. *See* Ex. C, Mihalic Report at 12 (“There is nothing aesthetically unique about edible plants, or those culturally referred to as ‘vegetables.’”); Ex. E, Flores Tr. 157:6-8 (agreeing that “vegetables often can have an ornamental value to them”). There are a multitude of factors—virtually all of which are already subject to some form of regulation by the City³⁰—which inform whether a garden is aesthetically pleasing or promotes desired community character. Whether the garden contains vegetables is not one of those considerations. A presumption that the presence of vegetables dictates whether a front yard is attractive is therefore unreasonable and, under both *McCall* and *Zrillic*, fatal to the law’s constitutionality.

iii. *The City’s Ban on Front-Yard Vegetable Gardens Actually Undermines the City’s Purported Objectives.*

Third, as *Florida Bar* concluded, a law is arbitrary and unreasonable where it undermines the government’s own intent. *Id.* at 634-35 (“[T]here is a complete absence of any evidence [of] . . . any real or substantial relation to the cure of the espoused evil. In fact, the converse appears more likely.”). That is precisely the case here. A ban on vegetables—which, much like fruit,

³⁰ *See infra*, Part IV.B.3.iii.

can be both ornamental and attractive, as Mr. Flores himself conceded—actually undermines the City’s purported aesthetic interest:

Q: Have you ever cited anybody for growing any other items that are commonly thought of as fruits?

A: No. Fruits are – they would be ornamental. You can grow them.

Q: But vegetables are not ornamental?

A: If you use them as an ornamental plant, then yes.

Ex E, Flores Tr. 112:24-113:6. And while a vegetable is seemingly permitted if it is ornamental, and ornamental plants are permitted alongside one another, a vegetable which is also ornamental cannot be planted next to another vegetable that is ornamental as well. This is because—to use the City’s logic—one ornamental plant is attractive, but a row of them is not.

Q: You can have an ornamental array?

A: I would say, yes.

Q: If your vegetable plants are ornamentals, you said you could have them; right?

A: Yes.

Q: Can you have an array of ornamental vegetable plants?

A: No.

Q: Why is that?

A: Because that in my opinion would be considered a vegetable garden.

Id. at 174:15-25. Thus, the City’s ban is not just unrelated to its purported objective of aesthetics, it is in fact so untethered to its stated purpose that it actually operates to undermine it.

Additionally, the outright ban on vegetable gardens undermines aesthetics because it empowers the City to cite attractive properties, as long as there are edible vegetables there.

Otherwise, code inspectors would generally only be able to cite homeowners for violations of provisions regulating general maintenance—codes which *are far more attuned* to aesthetics. Thus, even to the extent that a particular vegetable garden might become unsightly, the current existence of basic maintenance ordinances renders an outright ban both counterproductive and superfluous. *See In re Florida Bar*, 349 So. 2d at 635 (“By their very participation in such practices, they are already knowingly violating the law, prejudicing the administration of justice and, hence, violating existing provisions of the Code of Professional Responsibility.”). For example, in *Department of Insurance v. Dade County Consumer Advocates Office*, 492 So. 2d 1032 (Fla. 1986), the Florida Supreme Court struck down, on due process grounds, a regulation that impacted property rights in part because there were several already-existing statutes meant to protect against the purported ills the law was intended to cure. *Id.* at 1035 (referencing with approval *Dade Cnty. Consumer Advocate’s Office v. Dep’t of Ins.*, 457 So. 2d 495, 499 (Fla. 1st DCA)). The same is true here, as the City already has several tools to ensure the attractiveness of its residences. Perversely, the only additional power conferred by the ban is the ability to cite properties which *are attractive*, if there are vegetables growing in their front yard. As such, the law operates to undermine its purported objectives.

The ordinance undermines the City’s asserted interests in other ways, as well. For example, the City encourages home- and business-owners to follow the “Florida-Friendly Landscaping” practices set forth in *The Florida Yards and Neighborhoods Handbook*, published jointly by the Florida Department of Agriculture and the University of Florida.³¹ That publication, in turn, lists “raising vegetables” as a legitimate landscaping use. *See* Ex. C, Mihalic

³¹ *See Going Green Residential*, Miami Shores Vill., <http://www.miamishoresvillage.com/miami-shores-village/how-can-i-go-green.html> (last visited April 10, 2016).

Report at 14; *see also* Ex. E, Flores Tr. 149:18-19; 158:21-159:9; 198:18-199.³² It is undisputed that Hermine and Tom properly adopted and applied the Florida-friendly landscaping practices. Ex. C, Mihalic Report at 5-6. And although the City recognizes that it typically encourages compliance with Florida-friendly practices, *see* Ex. E, Flores Tr. 147:7-148:3, the City nonetheless renders vegetables an *impermissible* landscaping use.

The City's also sponsors an annual "Green Day" fair to "focus attention on our earth's natural resources, food, energy and environmnet [sic] – creating a unique festival marketplace for attendees to discover and celebrate the goddness [sic] of green."³³ In previous years, the occasion has included such events as "Green Eating: Eating to Reduce Your Environmental Impact," *Miami Shores Green Day Entertainment & Workshop Calendar*, Greater Miami Shores Chamber of Commerce, <http://www.miamishores.com/calendar/> (last visited April 10, 2016), and numerous vendors participated, including several that sold vegetable seeds and seedlings, and another that specializes in home vegetable gardening. *See Miami Shores Green Day Sponsors & Participants*, Greater Miami Shores Chamber of Commerce, <http://www.miamishores.com/greendaysponsors/> (last visited April 10, 2016); *see also* <http://knolllandscapedesign.com/edible-forest-landscape-design-miami/> (last visited April 10, 2016).³⁴

³² See Fla. Dep't Env'tl. Prot. & Univ. of Fla., *The Florida Yards and Neighborhoods Handbook* 15 (2009), available at <http://www.miamishoresvillage.com/miami-shores-village/how-can-i-go-green.html>. In fact, when asked, "[W]ould raising vegetables be mentioned as a reason for landscaping if that didn't comport with a Florida Friendly Landscaping practice?", Mr. Flores, the City's Chief Enforcement Officer, answered, "I guess they are saying, yeah, that you can grow it."

³³ *2015 Green Day: Miami Shores Street Fair*, Miami Shores Vill., <http://www.miamishores.com/greenday/> (last visited April 10, 2016).

³⁴ The same year the City admonished its Green Day vendors to "walk the walk," rather than just pay lip service to green habits, and even provided a list of eleven guidelines, along with a separate six-page pamphlet, to instruct them how to do so. *See 2015 Green Day: Miami Shores Street Fair*, Miami Shores Vill., <http://www.miamishores.com/greenday/> (last visited April 10, 2016); *Green Day 2015 Green Guide, Sustainable Practice Guidelines for Sponsors & Participating Organizations*, Miami Shores Vill.,

Hermine and Tom’s garden was well maintained, *see* Ex. C Mihalic Report at 10, and provided “an environmentally-sound way to maintain their private property affordably and in accordance with the Florida Friendly Landscaping Program.” *Id.* at 6; *see also* Ex. E, Flores Tr. 131:19-24. And although the City should welcome such practices, and encourages others to “walk the walk” in their application, it nonetheless flatly prohibits them here. Thus the ban on front-yard vegetable gardens is an affront to the City’s purported interest in nutritional and environmental consciousness, because it in fact undermines these very objectives. It is therefore irrational.

iv. *The City’s Ban on Front-Yard Vegetable Gardens Reaches Far More Broadly Than Needed to Achieve the Stated Ends.*

Fourth, a law is also irrational, and thus violates due process if, like the City’s ban, it is unreasonably overbroad. *See Cornwell*, 80 F. Supp. 2d at 1106 (requiring at least “some congruity between the means employed and the stated end”); *see also Zrillic*, 563 So. 2d at 69; *see also supra*, Part V.B.2.ii. *Cornwell*, for example, noted that although “a perfect fit is not required,” the government’s “inherent leeway” does not extend to regulations that go far beyond what is necessary to satisfy the desired end. *Cornwell*, 80 F. Supp. 2d at 1106. In this case, the City has ventured far beyond basic aesthetics-based regulations on maintenance and upkeep and has prohibited a whole swath of plants based solely on culturally-based culinary classifications—classifications that have nothing to do with aesthetics. *See generally, infra* Part IV.B.1. Therefore, while the City might have a rational interest in regulating or prohibiting *certain* items because of their physical (and thus aesthetic) qualities, a blanket ban on “vegetables” sweeps far too broadly, pulling in myriad items that have no detrimental impact whatsoever on the

http://www.miamishores.com/wp-content/uploads/2015/10/GreenDay2015_greenguide_FULL1.pdf (last visited April 10, 2014).

aesthetics of the City. *See Cornwell*, 80 F. Supp. 2d at 1106; *see also Clayton v. Steinagel*, 885 F. Supp. 2d 1212, 1215 (D. Utah 2012) (holding that a law was too broad because “[e]ven the relevant parts [were] at best, minimally relevant”). Accordingly, the City’s ban is overbroad to the point of irrationality, thus amounting to a violation of Hermine and Tom’s due process.

v. *The City’s Ban on Front-Yard Vegetable Gardens is Based on an Illegitimate Governmental Purpose.*

The City’s ban on front-yard vegetable gardens is also unconstitutional because it fails to satisfy the last component of the Florida reasonable relationship test, which requires the court to “‘identify [] a legitimate government purpose which the governing body could have been pursuing.’” *City of Miami v. Haigley*, 143 So. 3d 1025, 1034 (Fla. 3d DCA 2014) (quoting *WCI Comm’tys. v. Coral Springs*, 885 So. 2d 912, 914 (Fla. 4th DCA 2004)). Specifically, Hermine and Tom maintain that the governmental interest underlying the ban on front-yard vegetable gardens—aesthetics—is not, in itself, a legitimate governmental purpose. Although this argument may be foreclosed by Florida precedent, *see City of Lake Wales v. Lamar Adver. Ass’n*, 414 So. 2d 1030, 1032 (Fla. 1982), there is a good faith argument for overruling that precedent, and the Plaintiffs therefore preserve the argument for appeal. As Judge Shepherd explained in his concurring opinion in *Kuvin v. City of Coral Gables*, 62 So. 3d 625, 641 (Fla. 3d DCA 2010):

Aesthetic judgments necessarily are subjective in nature, defying objective evaluation The judgment of taste . . . is not a cognitive judgment, and so not logical, but is aesthetic—which means that it is one whose determining ground *cannot be other than subjective* Legislation of aesthetics risks the replacement of a property owner’s views with the views of a public official. Zoning based upon aesthetics also infringes upon personal freedom.

(internal quotation marks and citations omitted); *see also id.* at 647 (Cortiñas, J., dissenting)

(“These areas are simply out of reach of governmental regulation aimed at aesthetics. . . . [The majority’s] holding embraces George Orwell’s dystopia, where personal rights are subverted by

the government.”). In fact, given the impracticability and unfair subjectivity of aesthetic-based regulations, courts in approximately 12 states have prohibited zoning based solely on aesthetics, and courts in roughly 14 more have stated in dicta that zoning based on aesthetics alone may be improper. *See* Kenneth Regan, *You Can’t Build that Here: The Constitutionality of Aesthetic Zoning and Architectural Review*, 58 Fordham L. Rev. 1013, 1014 n.12 (1990) (collecting cases). It is time for Florida’s courts to do the same.

For all of these reasons, the City’s ban cannot satisfy even the baseline rational basis review applicable to a law under the Due Process Clause.

V. CONCLUSION AND REQUEST FOR RELIEF

The Florida Supreme Court has long-held that laws which implicate fundamental rights—like the right to acquire, possess and protect property, and the right to privacy—are subject to strict scrutiny. Because Defendants have not (and cannot) introduce any evidence to meet their burden under this standard, with respect to their fundamental rights claims, summary judgment in favor of the Plaintiffs is proper. This is especially true given that Plaintiffs have produced substantial, undisputed evidence that the City’s ban on front-yard vegetable gardens is not reasonably related to a legitimate governmental interest and is at once arbitrary, capricious, and oppressive. Accordingly, with respect to their claims of equal protection and substantive due process, summary judgment in favor of Plaintiffs is proper.

In light of the foregoing, Plaintiffs respectfully request that this Court grant Plaintiffs’ Motion for Summary Judgment and enter an order declaring the Village of Miami Shores’ ordinance which prohibits front-yard vegetable gardens unconstitutional under the Florida Constitution, along with whatever other judgment this Court deems just and proper.

RESPECTFULLY SUBMITTED this 12th day of April, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 2016, a true and correct copy of the foregoing PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT was served via eservice@myfloridaaccess.com on the following counsel of record:

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Exhibit B: Affidavit of Laurence “Tom” Carroll

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EXHIBIT A

AFFIDAVIT OF HERMINE RICKETTS

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL, a married
couple,

CASE NO.: 13-36012-CA
CIVIL DIVISION: 01

Plaintiffs,

v.

MIAMI SHORES VILLAGE, FLORIDA and
MIAMI SHORES CODE ENFORCEMENT
BOARD,

Defendants.

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

I, Hermine Ricketts, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of Miami Shores, Florida, and over the age of 18 years. I am also one of the Plaintiffs in the above-referenced action. I submit this affidavit in support of Plaintiff's Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. Since 1993, I have resided at 53 Northeast 106th Avenue, Miami Shores, Florida, 33138, a modest single-family home that I own, along with my husband and co-Plaintiff, Laurence "Tom" Carroll.

3. I am a retired architect and the former owner and operator of my own architecture firm, HER Architects. In my retirement years, I stay in touch with my creative side by painting, sculpting, and designing and cultivating the garden in my front yard.

4. Along with Tom, I am committed to maintaining my physical and mental well-being through a combination of sensible dietary practices, regular exercise, and enjoyment of the outdoors.

5. Over the last two decades, Tom and I have grown increasingly concerned about the practices employed by producers, processors and retailers in our highly-industrialized food system. Whereas we focus on nutrition and health, the food industry relies heavily on the use of fertilizers and pesticides to maximize yields. We understand that the only way to limit our dependence on that system is to narrow the gap between ourselves and our food sources, and, to the extent that it is possible, to grow our food ourselves. By doing so, we ensure that we have a reliable source for clean, wholesome food that is free of pesticides and artificial fertilizers.

6. To that end, shortly after moving into our current home, we began planting vegetables in our back yard. Unfortunately, because our back yard is almost completely shadowed during the fall and winter—Florida’s main growing season—and partially shadowed the remainder of the year, we were unsuccessful.

7. In 1996, after several failed attempts to grow vegetables in our back yard, we relocated our vegetable garden to our front yard. With the increase in sunlight, the garden thrived. Since then, until we were forced to stop, we had planted vegetables in our front yard every growing season, a period that spans more than 17 years.

8. About 14 years ago, I became seriously ill with pulmonary fibrosis, a rare autoimmune condition. The illness and lengthy recovery—which required extensive in-home rehabilitation and physical therapy—forced me into an early retirement from my architecture practice. Instead of working, I now devote more time to my other passions, like art and

gardening. I find these to be restorative, stress-relieving activities that I had only been able to enjoy in the past as hobbies.

9. Since first planting vegetables in our front yard nearly two decades ago, we have learned, mostly through trial and error, how to best grow vegetables on our property. And after retiring from my architecture practice, I had far more time to devote to our garden. As a result, the garden has been not only increasingly productive for us in recent years, but it has grown more intricately designed and attractive as well.

10. In 2008, I underwent total hip replacement surgery. As part of my recovery from that surgery, and still to this day, I use my gardening activities as a means to exercise and strengthen my body.

11. In 2010, I learned that I had developed a brain tumor. After yet another painful surgery, and a very unpleasant recovery, I resolved to adopt a lifestyle that is as healthful and stress-free as possible. Since that point, we have found great success with what we consider a much less aggressive form of healthcare: I look to my garden and my art for my therapy, and we use food as our medicine. But I have been effectively prohibited from doing these things since we were forced to uproot our garden. Late last year, I learned I had developed another brain tumor. I underwent surgery to remove the tumor in October 2015. Since then, recovery has been slow and stressful, and I have suffered negative side effects to my immune system and vision.

12. I carefully selected the vegetables we grew, not only to ensure that we had an attractive yard and an assortment of our preferred items, but also to guarantee that we consumed an array of diverse, nutrient-dense items that are essential to good health. Likewise, we were assured access to vegetables that are often altered for presentation on supermarket shelves. For

example, we regularly consumed beet greens and celery leaves, highly nutritious items that are commonly trimmed or removed prior to sale.

13. While the vegetables we grew and harvested on our property changed from season to season, I estimate that we successfully cultivated no less than 75 vegetable varieties in our front yard. Many of those items—like nearly a dozen varieties of Asian cabbage—are unique and lack mass appeal, often making them difficult or impossible to locate in local grocery stores or farmer’s markets. The same is true for our two favorite varieties of bok choy, canton short and tatsoi, as well as several of the lettuces and approximately six varieties of tomatoes that we once grew in our front yard. The garden also provided continuous access to our preferred varieties of more conventional items, like green beans and cucumbers, which are sold only under their generic names in supermarkets.

14. While our garden was at its most productive, it accounted for approximately 80 percent of my overall diet, and 100 percent of my vegetable intake. It was a reliable source of affordable, organic produce, which virtually eliminated the need for us to make frequent trips to the supermarket. And because we only removed what we intended to eat, our garden allowed us to eliminate food waste almost entirely. Rather than selling or discarding anything we did not eat, we shared with family and friends. It was, and could be again, a peaceful and economical use of our private property.

15. By growing vegetables in our front yard, we ensured that we had full knowledge of the source of the vegetables we ate, from planting to consumption. As a result, we were assured that the vegetables we consumed were planted, grown, harvested and processed in accordance with our desired practices. This is a benefit that is entirely unique to homegrown vegetables and cannot be duplicated by purchasing or obtaining vegetables through other means.

16. Though the contents of the garden were ever-evolving, one constant has always been my steadfast commitment to regular maintenance, responsible design, and aesthetic appeal. I designed our garden to include a blend of both edible and non-edible plants, which grew harmoniously beside one another as part of one contiguous landscape. Hence, in the 17 years that Tom and I grew vegetables in our front yard, we never had any incidents or complaints regarding the existence or placement of our garden. We were never cited by the village or even approached by any code enforcement officials in connection with our vegetable garden. True and correct photographs of our garden, before we were required to uproot it, are attached hereto as Exhibit A.

17. In fact, just the opposite is true. Our garden adds character to our home and our community. On numerous occasions, neighbors and passers-by would stop me during my gardening to tell me how beautiful our garden was. Not long ago, a complete stranger approached me to tell me that my garden makes her happy. I cannot imagine that would have happened if, in place of my garden, there was just a grass lawn.

18. For me, my garden has also been a source of joy and healing. It has provided me relief from stress, solace, and a connection with the earth. Without my vegetable garden, I have lost not just a major food source; I have been deprived of a therapeutic and restorative practice that provided non-quantifiable rewards like independence and a very strong sense of purpose.

19. On May 8, 2013, after 17 years of gardening peacefully and without incident, we received our first notification from the village that our property was not compliant with village code. A true and correct copy of the Courtesy Notice from Code Enforcement Supervisor Anthony Flores is attached hereto as Exhibit B.

20. On June 12, 2013, we received a formal Notice of Violation for unlawfully growing vegetables in our front yard. A true and correct copy of the Notice of Violation from Code Enforcement Supervisor Anthony Flores is attached hereto as Exhibit C.

21. Tom and I were concerned about our property's alleged noncompliance, so we sought clarity from the village on the criteria it was applying to determine what was permitted. To that end, I sent two letters to Tom Benton, Village Manager of Miami Shores. True and correct copies of each letter are attached hereto as Exhibit D and Exhibit E.

22. On July 11, 2013, we appeared before the Code Enforcement Board. At that time, seemingly unclear on what was or was not prohibited, the Board elected to postpone ruling on our case until the following meeting. In the meantime, we were verbally instructed by the sitting chairman of the Code Enforcement Board to provide the Board with an itemized list of every plant growing in our yard.

23. In a letter dated July 17, 2013, I provided the list requested by the Chairman at the conclusion of the July 11 hearing, in which I detailed the 91 plants—edible and otherwise—that I grew or have ever grown in our front yard. A true and correct copy of that letter is attached hereto as Exhibit F.

24. On August, 1, 2013, in the presence of the Village Attorney, Richard Sarafan, we appeared before the Board on the issue of our front-yard vegetable garden. The Board ruled that we were in violation of the village's ordinance prohibiting front-yard vegetable gardens, and we were given 30 days to destroy the garden. We were threatened with fines of \$50 per day for noncompliance. A true and correct copy of the Board's Notice of Disposition is attached hereto as Exhibit G.

25. On August 22, 2013, I sent a letter to Robert Vickers, Chairman of the Code Enforcement Board, seeking a stay of fines in the event that we chose to appeal the Board's ruling, or alternatively, additional time to bring our property into compliance if we did not elect to appeal. A true and correct copy of that letter is attached hereto as Exhibit H.

26. On August 27, 2013, I received an email from Code Enforcement Supervisor Anthony Flores advising me that my request had been rejected. A true and correct copy of that email is attached hereto as Exhibit I.

27. On August 30, 2013, Tom and I filed a Notice of Appeal from the Board's ruling. A true and correct copy of the Notice of Appeal is attached hereto as Exhibit J.

28. On August 31, 2013, before either party had taken any action on the appeal, Tom and I decided that we could not bear the threat of such severe fines. As a result, Tom uprooted our vegetable garden and contacted Mr. Flores seeking reinspection and confirmation of compliance.

29. On September 4, 2013, Mr. Flores reinspected our property and advised that we were no longer in violation of the village's ban on front-yard vegetable gardens.

30. On or about September 25, 2013, without our knowledge, the village filed a Motion to Dismiss Appeal. A true and correct copy of that motion—obtained, as discussed below in paragraph 33, from Court records, as we never received a service copy—is attached hereto as Exhibit K.

31. On October 15, 2013, without any knowledge as to the existence or contents of the village's Motion to Dismiss Appeal, I wrote another letter to Chairman Vickers, seeking formal confirmation that our property had been brought into compliance. A true and correct copy of that letter is attached hereto as Exhibit L.

32. On October 10, 2013, the Court denied the village's Motion to Dismiss Appeal. On October 17, 2013, the Order was recorded by the clerk and subsequently mailed to the parties. A true and correct copy of that order, which I received by mail on October 22, 2013, is attached hereto as Exhibit M.

33. Upon receiving the Court's Order Denying the village's Motion to Dismiss Appeal, which was the first we had learned of the village's underlying motion, we obtained a copy of the motion from court records. Upon our review of the motion, we learned that the village had indeed documented a final disposition of our case. *See* "Exhibit C" to Miami Shores' Motion to Dismiss Appeal (attached hereto as Exhibit K).

34. On October 22, 2013, Tom and I also received a letter from Village Attorney Richard Sarafan, advising us that the code enforcement action against us had been closed and our property was in compliance. A true and correct copy of that letter is attached hereto as Exhibit N.

35. On October 31, 2013, Tom and I filed a Notice of Voluntary Dismissal of our appeal from the Code Enforcement Board ruling. A true and correct copy of that Notice is attached hereto as Exhibit O.

36. On November 5, 2013, the Court dismissed the appeal. A true and correct copy of the Court's Order of Dismissal is attached hereto as Exhibit P.

37. Since Tom uprooted our vegetable garden in late August, we have not grown any offending items in our front yard. As a result, we have incurred a significant increase in our household expenses, as we must now purchase our food from retail stores like Publix and Whole Foods. The cost of these retail substitutes (when available)—particularly of more rare items, like

purple mizuna lettuce or super rapini broccoli—far exceeds the expense of growing our preferred items ourselves.

38. This increase in costs has a very real impact on our ability to budget for other basic household needs, like utilities and insurance. Our savings were almost entirely depleted to cover years of my costly medical treatments. We saw growing vegetables in our front yard as our way to save money on food—a constant, major expense which is all but impossible to eliminate altogether. Without the savings we enjoyed from growing our own vegetables, we have had to make sacrifices in other areas to make up for the shortfall.

39. Our harms are not limited to financial damages. Because we now rely on external sources for all of our vegetables, we have no control over the practices used in the production and processing of our food. Federal labeling requirements do not sufficiently address all of our concerns, and often inaccurately describe the quality of produce purchased in a supermarket. As a result, we have lost the unique peace of mind that once came with our ability to produce our very own food.

40. Store-bought produce also lacks the unique freshness of items harvested just before eating and, consequently, does not taste as good or have the same nutritional benefit. Thus, we have lost both the pleasure and the health benefits we previously enjoyed by growing our food. Additionally, whereas we previously harvested only as much as we intended to consume, we must now purchase our vegetables in quantity. As a result, we are often forced to discard much of the produce we purchase because it spoils before we are able to eat it. And the only alternatives—daily trips to the grocery store and weekend farmers' markets—are simply not feasible for a one-car family like ours.

41. Our vegetable garden harms no one and provides our family with an affordable means to enjoy wholesome, organic produce. It is also an immeasurable source of joy and pride for me and adds character to our neighborhood.

42. If this Court grants our motion for summary judgment, I will immediately resume planting vegetables of all sorts—cabbages, tomatoes, leafy greens, broccoli, and others—particularly those that are too rare or expensive for me to purchase in stores, in my front yard. I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to (or affirmed) and subscribed before me this 11 day of April, 2016.

Hermine Ricketts
Hermine Ricketts

State of Florida
County of MIAMI-DADE

Hermine Ricketts personally appeared before me and took an oath that the above is true and correct

☒ Personally Known
☐ Produced Identification



REBEKAH S.H. RAMIREZ
MY COMMISSION # FF 952269
EXPIRES: January 24, 2020
Bonded Thru Budget Notary Services

Type and # of ID _____

Rebekah S.H. Ramirez

(Signature of Notary)

REBEKAH S.H. RAMIREZ

(Name of Notary Typed, Stamped, or Printed)



EXHIBIT A

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**















EXHIBIT B

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**



Miami Shores Village

10050 N.E. SECOND AVENUE
MIAMI SHORES, FLORIDA 33138-2382
TELEPHONE: (305) 795-2207
FAX: (305) 756-8972

COURTESY NOTICE

Date 5/8/13

Address 53 NE 106th

Dear Property Owner / Occupant

In an effort to maintain the appearance and property value of your home, Miami Shores Village has various codes for the upkeep and maintenance of the homes and properties within the community. We are sure that you will agree that a well-maintained home enhances the appeal of the entire neighborhood.

Occasionally, a deficiency may be noted at an individual residence. We have found that in most cases, residents were not aware that a problem existed. In this case, it was noted that the following item(s) require your attention:

- | | |
|---|--|
| <input type="checkbox"/> Property is in need of mowing / cleaning | <input type="checkbox"/> Vehicle parking areas must be paved |
| <input type="checkbox"/> Trash on site | <input type="checkbox"/> Vessel / boat not properly stored |
| <input type="checkbox"/> Exterior of structure requires maintenance | <input type="checkbox"/> Interior / exterior work requires permits |
| <input type="checkbox"/> Trees / bushes / hedges need trimming | <input type="checkbox"/> Swale / parkway deteriorated |
| <input type="checkbox"/> Commercial vehicle in residential zone | <input type="checkbox"/> Alleyway overgrown |
| <input type="checkbox"/> Inoperable vehicle on property | <input checked="" type="checkbox"/> Other: <u>VEGETABLE GARDEN</u> |
| <input type="checkbox"/> Vehicle parked in landscaped area | <u>in front yard prohibited.</u> |

Please correct the above noted item(s) by 6/1/13 :
(Date)

Please remove all vegetable garden from
front yard.

If you feel that you may require additional time or assistance in this matter, please contact me at 305-795-2207 ext. 4861 so that we can discuss your options for bringing the property into compliance.

Sincerely, Arthur Flores

Code Enforcement Officer
Miami Shores Village

EXHIBIT C

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**



NOTICE OF VIOLATION

Miami Shores Village Code Enforcement
10050 N.E. Second Avenue
Miami Shores, Florida 33138-2382
Telephone: (305) 795-2207
Fax: (305) 756-8872

COMPLAINANT: Miami Shores Village, Florida
VS.
VIOLATOR: CARROLL, LAURENCE & HERMINE;

Case Number: **CASE-5-13-11331**

Case Type: Zoning Violation

Date Case Established: 06/08/2013

Compliance Deadline: 07/10/2013

Mailing Address

Phone

53 NE 106 Street
MIAMI SHORES, FL 33138-

Notice of Violation:

You are hereby notified that an inspection of the following property:

Location Address

Parcel No.

Legal Description

53 NE 106 Street
Miami Shores, FL 33138-

1121360080290

36 52 41 PB 41-78 DUNNINGS MIAMI SHORES EXT
NO 2 LOT 13 BLK 207 LOT SIZE 75.000 X 123 OR
15826-2866 0293 1

disclosed that you are in violation of the following section(s) of the Miami Shores Village, Florida, Code of Ordinances:

Violation

Code #	Description
Sec. 536(e). [Vegetable Gardens]	Sec. 536. Design Standards Vegetable gardens are permitted in rear yards only.

for the following reasons:

VEGETABLE GARDENS IN FRONT YARD PROHIBITED.

REMEDY: REMOVE ALL VEGETABLES GARDENS FROM FRONT YARD.

You are directed to correct the above violation by **07/10/2013** and notify the Miami Shores Village Code Compliance office once the necessary corrective actions have been completed and the violation has been corrected. In order to correct the violation, you must undertake and accomplish the remedy in full.

If the above-described violation is not corrected and approved by the Miami Shores Code Compliance Office by the deadline set forth (or if it is corrected but recurs), you are required to appear before the Miami Shores Village Code Enforcement Board at Village Hall, Village Council Chambers 10050 N.E. Second Ave., Miami Shores Village, FL, at 6:00 p.m. on **07/11/2013**. If the violation is corrected and then recurs or if the violation is not corrected by the deadline set forth above, the case may be presented to the Code Enforcement Board even if the violation has been corrected prior to the board hearing.

If the property is not in compliance by the date set forth by the Code Enforcement Board, you will be required to appear on the first Thursday of the following month at 6:00 p.m. in the Village Council Chambers, which will be the Penalty Hearing Date.

You are advised to bring to the Enforcement Hearing any witnesses and documentary evidence that you want the Miami Shores Village Code Enforcement Board to consider on your behalf. Furthermore, you are advised that in the event that you decide to appeal any decision reached by the board with respect to any matter considered at the Enforcement Hearing, you will need a record of the proceeding and you will need to ensure that a verbatim record is made of the testimony and evidence presented at the hearing. At the hearing you have the right to be represented by an attorney at your own expense to present evidence and witnesses, and to cross examine witnesses.

Failure To Appear

Failure to appear will result in this matter being heard in your absence. If you are found not to be in compliance with the code and you fail to correct the violation, the Code Enforcement Board can impose fines against you of up to **\$250.00 per day per violation**, in addition to assessing against you the costs of the enforcement action.

If you fail to appear as scheduled to contest the citation, you will be deemed to have waived your right to contest the violation and an order may be entered against you imposing a fine which would become a Lien against your property.

If you have any questions, contact Anthony Flores immediately at (305) 795-2207.

MIAMI SHORES CODE ENFORCEMENT



Anthony Flores

EXHIBIT D

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

May 16, 2013

Tom Benton
Village Manager
Miami Shores Village
Code Enforcement
10050 NE 2nd Ave
Miami Shores, FL 33138

Dear Mr Benton,

On May 8, 2013 I received two courtesy notices.

The first notice stated that "planting on swale requires permission from Public Works. Obtain permission to plant on swale or remove bed and replace with grass".

I called Public Works on May 8 and spoke with Scott Davis. I requested to be referred to the section in the code that states that permission is required to plant on the swale and to be informed of the procedure to get approval to plant on the swale. I was referred to Sections 536, 537 and 538 of the Ordinance and informed that there is no formal procedure in place to obtain permission to plant on the swale. He stated that no fruiting or flowering trees are allowed to be planted on the swale and that there were no other restrictions on other plantings except that they not be "lanced" or restrict pedestrian or vehicular traffic.

Sections 536, 537 and 538 of the Ordinance state no requirement for permission nor identify the type plants allowed to be planted. I know of no tree that does not have fruit or flowers as this is the usual of plant reproduction. The many live oaks and palms being planted throughout the city has flowers and fruits.

The second notice requested that I "remove all vegetable garden from front yard".

Please provide me with the definition of the word "vegetable" as currently encoded in the city ordinance.
Please provide me with the specific sections in the code where specific plants are identified as allowed in front yards.

Please provide a complete and extensive list of plants allowed in front yard as per existing ordinance.

My understanding of the definition of vegetable is as follows

- 1 - In biological terms, "vegetable" designates ALL members of the plant kingdom.
- 2 - In culinary terms, a "vegetable" is an edible plant or its part, used for cooking or eating raw.

If the biological definition is encoded then all front yards must be made devoid of ALL plants including but not limited to the much used live oaks, palms and grasses

If the culinary definition is encoded then the following is a small list of edible plants to be removed from all front yards in Miami Shores (edible plants are found in almost every front yard of the city; the owner may not eat them but they are still edible by the culinary definition):

All roses must be removed from the front yard of all properties
All marigold plants must be removed from the front yard of all properties
All Begonias plants must be removed from the front yard of all properties
All Chrysanthemum plants must be removed from the front yard of all properties
All Gladiola plants must be removed from the front yard of all properties
All cultivated Impatiens plants must be removed from the front yard of all properties
All Lavender plants must be removed from the front yard of all properties
All Pineapple Sage, Salvia elegans plants must be removed from the front yard of all properties
All Daisy plants must be removed from the front yard of all properties
All Dandelion plants must be removed from the front yard of all properties
All Ixora plants must be removed from the front yard of all properties
All hibiscus must be removed from the front yards of all properties
All surinam cherry hedge must be removed from the front yard of all properties
All coconut palms must be removed from the front yard of all properties

All bromeliads must be removed from the front yard of all properties
All live oak must be removed from the front yard of all properties
All date palm, queen palm and fruiting palm trees must be removed from the front yard of all properties
All Ficus must be removed from the front of all properties.
All Bougainvillea plants must be removed from the front yard of all properties
All Viola and pansies plants must be removed from the front yard of all properties
All Geraniums plants must be removed from the front yard of all properties
All Coral vine plants must be removed from the front yard of all properties
All Carnation plants must be removed from the front yard of all properties
All Dianthus plants must be removed from the front yard of all properties
All Podocarpus hedges (seed's aril or "receptacle" is edible) plants must be removed from the front yard of all properties
All Gardenia plants must be removed from the front yard of all properties
All Citrus plants must be removed from the front yard of all properties
All Blue Porterweed, Stachytarpheta jamaicensis plants must be removed from the front yard of all properties
All Taro "elephant ears" plants must be removed from the front yard of all properties
All Sea Grapes plants must be removed from the front yard of all properties
All Creeping Fig plants must be removed from the front yard of all properties

In order to not be "arbitrary and capricious" in enforcing the code all property owners must be required to remove ALL "vegetable" (biological or culinary) from their front yards.

If the term edible is key to the definition used by the city; then one must ask - edible by who?:
Some people eat broccoli some do not; Some people eat roses; some do not.

Since any plant can be used either as an ornamental or as food; then the codification of the owner's "intent" is in question.

I have resided quietly and peacefully at this location for over 20 years and have planted many "vegetables" throughout my yard. Many passerbys have stopped to compliment on the beauty and variety of my garden; thus, I doubt that anyone's property value has been lost as a result of my gardening. They often stop and have a friendly chat about gardening and plants, which is the real value a neighborhood should seek to maintain - friendship and kindness.

My quiet and peaceful gardening activities harm no one and provide me with a healthful and non-destructive activity; I kindly request that my healing process and peace of mind not be disturbed by undue stresses caused by dealing with your requests that has no legal, lawful or logical basis.

Respectfully,

Hermine Ricketts
53 NE 106 Street
Miami Shores, FL 33138

EXHIBIT E

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

06/22/13

Tom Benton
Village Manager
Miami Shores Village
Code Enforcement
10050 NE 2nd Ave
Miami Shores, FL 33138

Dear Mr Benton,

In reference to your letter of June 6, 2013, I am requesting your assistance in obtaining compliance with the following cases:

Case number: CASE-5-13-11330

Please provide clarification on the procedure to obtain a review and approval by the Public Works Director for planting on the swale as applicable to the Miami Shores Village, Florida, Code of Ordinances.

Case number: CASE-5-13-11551

Please provide definition of vegetable as applicable to the Miami Shores Village, Florida, Code of Ordinances.

Case number: CASE-5-13-11551

Please provide clarification on what vegetation is permitted in front yard as applicable to the Miami Shores Village, Florida, Code of Ordinances.

Respectfully,

Hermine Ricketts

EXHIBIT F

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

07/17/13

Anthony Flores
Code Enforcement Supervisor
Miami Shores Village
Code Enforcement
10050 NE 2nd Ave
Miami Shores, FL 33138

RE: CASE-5-13-11331 - Request of planting list by Chairman Barry Asmus

Dear Mr Flores

Attached is a list of plants that I have planted in my front garden since 1993 up to the current date. The items currently in the front garden are identified as such.

Please note that my garden changes every year as I enjoy variety and am always seeking the optimal location for each plant. As I have noted in the meeting, my back garden which is on the north side of the house does not get sufficient sunshine for low growing plants during the prime South Florida growing season (late September thru April). The optimal location for growing plants that require extended hours of sunshine is on the south west side of the front yard. The variety of plants allow beneficial insects to be attracted to the garden hence I do not need to use toxic pesticide in my garden which would eventually gets into your drinking water.

By minimizing the lawn area I avoid the problem of being cited again by the Village for having a brown lawn in the middle of a severe drought. I have minimized water usage by reducing lawn areas, plant selection and using a drip irrigation system. These measures are sustainable in South Florida which is prone to periodic severe drought conditions. No pesticides or herbicides is needed to maintain extensive areas of lawn that seem to be preferred by the Village; thus we do not contribute to the poisoning of the water table and all who drink from it.

Please note that the type of garden edging allowed is not codified. Some people use brick, some use wood, some use plastic, some use fabric rolls. Some even use noisy weed whackers spewing gasoline fumes to maintain their garden edging. None violates any code, neither does planting in containers.

You seem to take issue with the containers and fabric rolls that I use in the garden. Just so you understand my reasons (though none is required) for planting in pots and fabric rolls – :

1. Health issues – I must do a large portion of my gardening in a standing position and lift only a certain number of pounds – hence the small pots and fabric roll edging. The American with Disabilities Act definitely allows for this accommodation on my own property
2. Invasive roots from large trees that steal nutrients from smaller plants.
3. Poor powdery sandy soil – Adding more top soil throughout the garden is costly and would change the contour of the property causing an increased rain run off onto neighbors property and under the house and possibly blocking the crawlspace venting.
4. Ease of relocating plants to find the best location without undue stress to my body.

Our garden is healthy, environmentally diverse and attracts a host of beneficial insects which eliminate the need for toxic pesticides.

My gardening is a source of joy and healing. I respectfully ask once again that I be left alone to continue gardening without interference. For the one person that supposedly complained there are at least 50 that have stopped to say how much they admire and enjoy the garden. Just last week a lady stopped and said “your garden makes me happy”; I do not think she would have said “your lawn makes me happy”. With all the positive comments I have received it is clear that the garden contributes to make the neighborhood nice and friendly. The design of our front yard garden has added value of our home and therefore to the neighborhood.

Respectfully,

Hermine Ricketts

cc

Barry Asmus, Member – Code Enforcement Board

John Patnik, Member – Code Enforcement Board

Manny Quiroga, Member – Code Enforcement Board

Rod Buenconsejo, Member – Code Enforcement Board

Tom Benton, Village Manager

Richard Sarafan, Village Attorney

EXHIBIT G

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

MIAMI SHORES VILLAGE CODE ENFORCEMENT BOARD
NOTICE OF DISPOSITION

Re: Miami Shores Village Code Enforcement Board Case No. S-13-11331

You have been given this form because the Code Enforcement Board has made finding of fact and a conclusion of law that a violation of the Village Code exists upon your property. After hearing evidence and testimony the Board has ordered that this violation be corrected by a specific deadline failing which the Board has authorized fines to be automatically assessed against your property in the amount of \$~~50~~ per day, for each day that the violation continues to exist, after the deadline ordered by the Board. These fines can be substantial and will generally constitute a lien on the real estate where the violation has been found to exist. Other additional remedies are also available to the Village to collect such fines. It is important that you give this matter your immediate attention.

THE DEADLINE FOR CORRECTION OF THE VIOLATION OR VIOLATIONS INVOLVED IN THIS CASE, IN ORDER TO AVOID THE IMPOSITION OF FINES, IS 30 days from 8/1/13.

It is very important that you take all necessary steps to correct the violation or violations on or before that date. If you have any questions concerning what steps need to be taken in order correct the violation you should contract the Code Enforcement Officer for this case at (305) 795-2207. The Officer's name is Anthony Flores.

The Code Enforcement Officer has certain limited authority to grant extensions of the deadline for correction of the violation under circumstances where the property owner is working in good faith to address and correct the problem and where there is good cause warranting such an extension. Any such extension should be confirmed by the Code Enforcement Officer in writing and you should not rely upon any purported unwritten extension.

Once the violation or violations have been corrected, you should immediately notify the Code Enforcement Officer, or the Code Enforcement Department at the Village that the violation has been corrected so that they may inspect the property to confirm that this is the case. **THE BURDEN IS UPON YOU TO NOTIFY THE CODE ENFORCEMENT DEPARTMENT WHEN THE VIOLATION HAS BEEN CORRECTED IN ORDER TO AVOID THE IMPOSITION OF FURTHER FINES.** If you do not promptly notify the Code Enforcement Department upon correction of the violation it is likely that your case will not be timely closed and that the imposition of fines could result.

Regardless of whether or not the violations are timely corrected, the Code Enforcement Board has assessed upon you a \$25 administrative fee to reimburse the Village for a part of the expenses of conducting the Code Enforcement Board hearing in your matter. This amount is due from you now and may be paid to the cashier in Village Hall any time during normal business hours.

Please direct any questions you may have concerning this matter either to your Code Enforcement Officer whose name appears above, or to the Director of the Code Enforcement Department at (305) 795-2207.

In accordance with Section 2-82 of the Miami Shores Village Code, and Florida Statutes Section 162.11, any aggrieved party may appeal the Order of the Code Enforcement Board to the Circuit Court, which appeal shall be limited to appellate review of the record created before the Board, and which appeal shall be filed within thirty days of the date of the written Order appealed.

Please sign below in order to confirm that you have been given a copy of this Notice.

I have received a copy of this Notice on the day of my hearing.

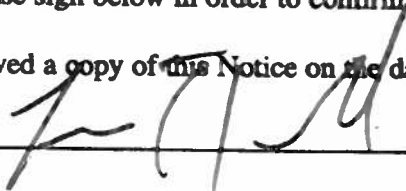


EXHIBIT H

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

08/22/13

Robert Vickers
Chairman, Code Enforcement Board
Miami Shores Village
Code Enforcement
10050 NE 2nd Ave
Miami Shores, FL 33138

RE: CASE-5-13-11331

Dear Mr Vickers

To the best of my understanding we are now in compliance. The following plants are currently no longer growing in our front yard: kales, onions, tomatoes, potatoes, collards, cabbage, pumpkins, lettuces, and beets.

I am hereby requesting an inspection by the Code Enforcement officer to verify said compliance. If there are additional plants to be removed, please request that the inspecting officer provide in writing what additional plants need to be removed.

If the code inspector finds that my property is not in compliance, please advise me of this determination by August 29, 2013, so that I may act quickly to meet approaching deadlines. My understanding is that I am entitled to appeal the enforcement board's decision to the local court if I feel that it has been decided incorrectly. Although I have not yet determined whether I will appeal the decision, I ask that the enforcement board be willing to grant me some flexibility with respect to my future dates for compliance:

- If I do choose to file an appeal of the board's ruling, I request that the enforcement board agree to not assess fines for the time period of the appeals process.
- If I do not file an appeal, I would request that the enforcement board grant me additional time to comply with its ruling that I remove my garden. I believe an additional 75 days from the current enforcement deadline (September 3, 2013) would be enough for that purpose. Most plants cannot be transplanted in the heat of the summer.

I have planted quietly and peacefully on my property for nearly 20 years. It is not fair that I must now choose between going to court or destroying my garden, a place that has been such a source of joy for me and my community. I trust the board will be understanding enough to delay the imposition of fines regardless of which path I may choose.

I am requesting an inspection and a written response on or before August 29, 2013.

Respectfully,



Hermine Ricketts

cc

Barry Asmus, Member – Code Enforcement Board
John Patnik, Member – Code Enforcement Board
Bob Smith, Member – Code Enforcement Board
Barry Perl, Member – Code Enforcement Board
Manny Quiroga, Member – Code Enforcement Board
Rod Buenconsejo, Member – Code Enforcement Board
Anthony Flores - Code Enforcement Supervisor
Tom Benton, Village Manager
Richard Sarafan, Village Attorney

EXHIBIT I

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

From: Anthony Flores <floresa@miamishoresvillage.com>
Date: Tue, Aug 27, 2013 at 9:58 AM
Subject: Fourth Letter - Inspection
To: "hericketts@gmail.com" <hericketts@gmail.com>

Ms. Ricketts,

I'm in receipt of your letter dated 8/22/13, as requested I visited your property yesterday to inspect the property to ensure all vegetables have been removed. The inspection failed, please remove the following items pictured below; kale, pepper type plant, lettuce and sweet potato vine and call or write for a re-inspection. No further continuance will be granted at this time.

Respectfully,

Anthony Flores
Code Enforcement Supervisor
Miami Shores Village
(305) 795-2207 ext. 4861
floresa@miamishoresvillage.com

EXHIBIT J

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

IN THE (1) Circuit Court of the Eleventh Judicial Circuit
Miami Dade County, Florida

(2) Hermine Ricketts & Lawrence Carroll Third DCA Case No.: _____
Appellant(s),

v. Lower Tribunal Case No.: (4) 5-13-11331

(3) Code Enforcement Board, Miami Shores Village
Appellee(s).

THE ORIGINAL FILED

ON AUG 30 2013

IN THE OFFICE OF
CIRCUIT COURT MIAMI-DADE CO.
CIVIL DIVISION

NOTICE OF APPEAL

NOTICE IS GIVEN that (2) Hermine Ricketts / Lawrence Carroll Appellant, appeals to
the 11TH CIRCUIT COURT OF MIAMI-DADE Order of this Court rendered [see Fla. R. App. P. 9.110(a)]
(5) August 1, 2013. The nature of the order is a final order
(6) from the Code Enforcement Board of Miami Shores Village

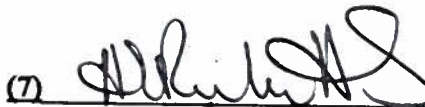
(7) 

Name: (8) Hermine Ricketts

Address: (9) 53 NE 106 ST
Miami Shores FL 33138

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to (10) Code Enforcement Board
of Miami Shores Village 10050 NE 2nd Ave.
Miami Shores, FL 33138 by
(11) Mail this (12) 30th day of (13) August, 20(14) 2013

(15) 

Signature

MIAMI SHORES VILLAGE CODE ENFORCEMENT BOARD
NOTICE OF DISPOSITION

Re: Miami Shores Village Code Enforcement Board Case No. 5-13-11331

You have been given this form because the Code Enforcement Board has made finding of fact and a conclusion of law that a violation of the Village Code exists upon your property. After hearing evidence and testimony the Board has ordered that this violation be corrected by a specific deadline failing which the Board has authorized fines to be automatically assessed against your property in the amount of \$~~50~~ per day, for each day that the violation continues to exist, after the deadline ordered by the Board. These fines can be substantial and will generally constitute a lien on the real estate where the violation has been found to exist. Other additional remedies are also available to the Village to collect such fines. It is important that you give this matter your immediate attention.

THE DEADLINE FOR CORRECTION OF THE VIOLATION OR VIOLATIONS INVOLVED IN THIS CASE, IN ORDER TO AVOID THE IMPOSITION OF FINES, IS 30 days from 8/1/13.

It is very important that you take all necessary steps to correct the violation or violations on or before that date. If you have any questions concerning what steps need to be taken in order correct the violation you should contract the Code Enforcement Officer for this case at (305) 795-2207. The Officer's name is Anthony Flores.

The Code Enforcement Officer has certain limited authority to grant extensions of the deadline for correction of the violation under circumstances where the property owner is working in good faith to address and correct the problem and where there is good cause warranting such an extension. Any such extension should be confirmed by the Code Enforcement Officer in writing and you should not rely upon any purported unwritten extension.

Once the violation or violations have been corrected, you should immediately notify the Code Enforcement Officer, or the Code Enforcement Department at the Village that the violation has been corrected so that they may inspect the property to confirm that this is the case. THE BURDEN IS UPON YOU TO NOTIFY THE CODE ENFORCEMENT DEPARTMENT WHEN THE VIOLATION HAS BEEN CORRECTED IN ORDER TO AVOID THE IMPOSITION OF FURTHER FINES. If you do not promptly notify the Code Enforcement Department upon correction of the violation it is likely that your case will not be timely closed and that the imposition of fines could result.

Regardless of whether or not the violations are timely corrected, the Code Enforcement Board has assessed upon you a \$50 administrative fee to reimburse the Village for a part of the expenses of conducting the Code Enforcement Board hearing in your matter. This amount is due from you now and may be paid to the cashier in Village Hall any time during normal business hours.

Please direct any questions you may have concerning this matter either to your Code Enforcement Officer whose name appears above, or to the Director of the Code Enforcement Department at (305) 795-2207.

In accordance with Section 2-82 of the Miami Shores Village Code, and Florida Statutes Section 162.11, any aggrieved party may appeal the Order of the Code Enforcement Board to the Circuit Court, which appeal shall be limited to appellate review of the record created before the Board, and which appeal shall be filed within thirty days of the date of the written Order appealed.

Please sign below in order to confirm that you have been given a copy of this Notice.

I have received a copy of this Notice on the day of my hearing.

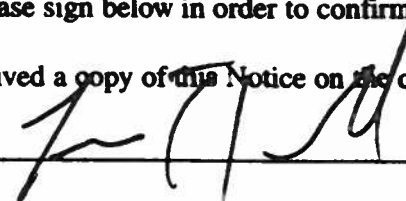


EXHIBIT K

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THIRD DCA CASE NO.: 13-320 AP
LOWER TRIBUNAL CASE NO.: 5-13-11331

HERMINE RICKETTS and
LAURENCE CARROLL

Appellants

v.

CODE ENFORCEMENT BOARD,
MIAMI SHORES VILLAGE,

Appellee.

MOTION TO DISMISS APPEAL

Miami Shores Village, a Florida Municipal Corporation, by and through its undersigned counsel, moves to dismiss this appeal and as grounds therefor states:

1. Hermine Ricketts and Laurence Carroll, pro se filed a Notice of Appeal in this Court on August 30, 2013, a copy of which is attached hereto as Exhibit "A."¹

¹ The only signature on the Notice of Appeal is that of Hermine Ricketts, who does not identify herself as an attorney and who, while permitted to represent herself in this action, may not lawfully represent Laurence Carroll unless she is an attorney admitted to the Florida Bar.

FILED FOR RECORD
2013 SEP 25 PM 2:50
CLERK OF DISTRICT COURT
DADE COUNTY, FLA.
CIVIL #13

2. According to the Notice of Appeal, Appellants seek to appeal a purported "Final Order" dated August 1, 2013, a copy of which is purportedly attached to the Notice of Appeal.

3. However, the document referenced in and attached to the Notice of Appeal is *not* an Order of the Miami Shores Village Code Enforcement Board at all, let alone a "Final Order." To the contrary, the document attached to the Notice of Appeal (signed only by the accused code enforcement violator) is merely a Notice explaining the events which occurred at the first hearing in this matter before the Miami Shores Village Code Enforcement Board. The actual Order entered by the Miami Shores Code Enforcement Board is signed by the Chairperson of the Board and attested to by the Clerk of the Board. (A copy the actual Order arising out of the first hearing in this matter is attached as Exhibit "B.")

4. Accordingly, the Appellants have specifically sought to appeal from a document which is not an Order of the Miami Shores Code Enforcement Board, have not complied with Florida Rules of Appellate Procedure 9.110(d) and the appeal should therefore be dismissed.

5. Moreover, even if the Appellants had sought to appeal from the actual Order of the Code Enforcement Board, this Court would still lack jurisdiction, and the appeal would still need to be dismissed, since the Order of the Code

Enforcement Board attached hereto as Exhibit "B" is not a "Final Order" as required to invoke the jurisdiction of this Court in accordance with Florida Statutes § 162.11 and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

6. Specifically, Florida Rule of Appellate Procedure 9.030(c)(1)(A) grants this Court jurisdiction to review by appeal final orders of lower tribunals as provided by general law.² The "general law" applicable is Florida Statute § 162.11 which provides, pertinent part as follows:

"An agreed party, including the local governing body may appeal a *final* administrative order of an Enforcement Board to the Circuit Court."

[Emphasis Supplied].

7. Thus, clearly for this Court to have jurisdiction to review, by appeal, an Order of the Code Enforcement Board, that Order must be the "final administrative order of an Enforcement Board."

8. In accordance with the provisions of Florida Statutes Chapter 162 the proceedings before a Code Enforcement Board generally require at least two orders before fines may be imposed. In accordance with the statute, the first hearing is for the purpose of determining whether or not a violation of the Code exists on the property and, if so, specifying a date for bringing the property into compliance

² Similarly, Florida Rule of Civil Procedure 9.030(c)(1)(C) grants this Court jurisdiction to review, by appeal, administrative action "if provided by general law."

with the Code; and a second order, if necessary, is required to determine whether or not compliance has been achieved by the specified date and, if not, to impose fines under the statute. See, Fla. Stat. § 162.09(1) and Fla. AGO 97-26 (“While a municipal code enforcement board, at its hearing to determine non-compliance, may establish a specified deadline for compliance and notify the violator of the amount of the fine that may be imposed for non-compliance, a second order of the board is required to impose the fine.”)

9. Accordingly, at the first hearing stage, where the existence of a violation has been found by the Code Enforcement Board and a deadline has been set for bringing the property into compliance to avoid entry of a second order imposing fines, it cannot be said that the judicial labor is at an end such as to render that finding a “Final Order” of the Code Enforcement Board. *Hallock v. Holiday Isle Resort & Marina, Inc.*, 885 So. 2d 459 (Fla. 3d DCA 2004) (“a judgment or an order is final when it adjudicates the merits of the case, disposes of the pending action, and leaves nothing further to be done by the trial court” citing *Howard v. Ziegler*, 40 So. 2d 776 (Fla. 1949)). See also, *South Winds Riding Academy v. Schneider*, 507 So. 2d 782 (Fla. 3d DCA 1987). Here, as of August 1, 2013 (the date of the purported Order on Appeal) it simply cannot be said that the judicial labor of the Code Enforcement Board in this case was at an end and that the matter had been finally adjudicated. At that time, the crucial issues of

compliance and enforcement (i.e., whether or not any fines would ultimately be imposed) remain undecided, unknown and unknowable.

10. Accordingly, even the correct Order on the first hearing (which the Appellants failed to attach to their Notice of Appeal) did not constitute a "Final Order" within the contemplation of the statute or rule, and this Appeal should be dismissed for lack jurisdiction.

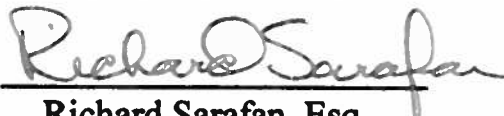
11. Moreover, there will never be a Final Order of the Code Enforcement Board imposing any fines in this matter, and indeed, this Appeal is moot, since the Appellants in accordance with the Order entered at the first hearing brought the property into compliance, corrected the Code Violation in a timely fashion, and, accordingly, the Miami Shores Village Code Enforcement Department closed this case without imposing any fines. [See disposition record attached hereto as Exhibit "C"].

12. Thus, there is simply no need for this improper appeal, as the matter before the Lower Tribunal has been closed. Accordingly, this appeal should also be dismissed as moot.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 25th day of September, 2013, on *Hermine Ricketts*, 53 NE 106 Street, Miami Shores, FL 33138.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Miami Shores Village
Miami Tower
100 Southeast Second Street, Suite 4400
Miami, Florida 33131-2118
Telephone: 305.349.2300
Facsimile: 305.349.2310

By: 
Richard Sarafan, Esq.
Florida Bar No. 296805
rsarafan@gjb-law.com

(7718-230 / 2033341 / #12)

EXHIBIT "A"

IN THE (1) Circuit Court of the Eleventh Judicial Circuit
Miami Dade County, Florida

13-320 AP

(2) Hermine Ricketts & Lawrence Carroll Third DCA Case No.: _____
 Appellant(s),

v.

Lower Tribunal Case No.: (4) 5-13-11331

(3) Code Enforcement Board, Miami Shores Village
 Appellee(s).

NOTICE OF APPEAL

NOTICE IS GIVEN that (2) Hermine Ricketts/Lawrence Carroll Appellant, appeals
 the 11th Circuit Court of Miami-Dade Order of this Court rendered [see Fla. R. App. P. 9:110(d)]
 (5) August 1, 2013. The nature of the order is a final order.

(6) from the Code Enforcement Board of Miami Shores Village

(7) [Signature]

Name: (8) Hermine Ricketts

Address: (9) 53 NE 106 St

Miami Shores, FL 33138

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to (10) Code Enforcement Board
of Miami Shores Village 10050 NE 2nd Ave
Miami Shores FL 33138

by (11) mail this (12) 30th day of (13) August, 20(14) 2013

(15) [Signature]

Signature

MIAMI SHORES VILLAGE CODE ENFORCEMENT BOARD
NOTICE OF DISPOSITION

Re: Miami Shores Village Code Enforcement Board Case No. 5-13-11331

You have been given this form because the Code Enforcement Board has made finding of fact and a conclusion of law that a violation of the Village Code exists upon your property. After hearing evidence and testimony the Board has ordered that this violation be corrected by a specific deadline failing which the Board has authorized fines to be automatically assessed against your property in the amount of ~~\$300~~ per day, for each day that the violation continues to exist, after the deadline ordered by the Board. These fines can be substantial and will generally constitute a lien on the real estate where the violation has been found to exist. Other additional remedies are also available to the Village to collect such fines. It is important that you give this matter your immediate attention.

THE DEADLINE FOR CORRECTION OF THE VIOLATION OR VIOLATIONS INVOLVED IN THIS CASE, IN ORDER TO AVOID THE IMPOSITION OF FINES, IS 30 days from 8/1/13.

It is very important that you take all necessary steps to correct the violation or violations on or before that date. If you have any questions concerning what steps need to be taken in order correct the violation you should contract the Code Enforcement Officer for this case at (305) 795-2207. The Officer's name is Anthony Flores.

The Code Enforcement Officer has certain limited authority to grant extensions of the deadline for correction of the violation under circumstances where the property owner is working in good faith to address and correct the problem and where there is good cause warranting such an extension. Any such extension should be confirmed by the Code Enforcement Officer in writing and you should not rely upon any purported unwritten extension.

Once the violation or violations have been corrected, you should immediately notify the Code Enforcement Officer, or the Code Enforcement Department at the Village that the violation has been corrected so that they may inspect the property to confirm that this is the case. **THE BURDEN IS UPON YOU TO NOTIFY THE CODE ENFORCEMENT DEPARTMENT WHEN THE VIOLATION HAS BEEN CORRECTED IN ORDER TO AVOID THE IMPOSITION OF FURTHER FINES.** If you do not promptly notify the Code Enforcement Department upon correction of the violation it is likely that your case will not be timely closed and that the imposition of fines could result.

Regardless of whether or not the violations are timely corrected, the Code Enforcement Board has assessed upon you a \$100 administrative fee to reimburse the Village for a part of the expenses of conducting the Code Enforcement Board hearing in your matter. This amount is due from you now and may be paid to the cashier in Village Hall any time during normal business hours.

Please direct any questions you may have concerning this matter either to your Code Enforcement Officer whose name appears above, or to the Director of the Code Enforcement Department at (305) 795-2207.

In accordance with Section 2-82 of the Miami Shores Village Code, and Florida Statutes Section 162.11, any aggrieved party may appeal the Order of the Code Enforcement Board to the Circuit Court, which appeal shall be limited to appellate review of the record created before the Board, and which appeal shall be filed within thirty days of the date of the written Order appealed.

Please sign below in order to confirm that you have been given a copy of this Notice.

I have received a copy of this Notice on the day of my hearing.

[Signature]

EXHIBIT "B"



ENFORCEMENT ORDER

Miami Shores Village Code Enforcement
10050 N.E. Second Avenue
Miami Shores, Florida 33138-2382
Telephone: (305) 768-2207
Fax: (305) 768-8872

Case Number: **CASE-5-13-11331**

COMPLAINANT: Miami Shores Village, Florida
VS.
VIOLATOR: CARROLL, LAURENCE & HERMINE;

Case Type: Zoning Violation
Date Case Established: 05/08/2013
Compliance Deadline: 08/31/2013

Enforcement Order:

THIS MATTER came before the Miami Shores Village Code Enforcement Board at a public hearing after due notice to the Defendant (s), and the board having received evidence under oath and having heard any argument(s), issues its Finding of Fact, Conclusion of Law and Order, as follows:

Findings of Fact

1. The above named Defendant (s) is/are the owner(s) and/or tenant of the property located at 53 NE 106 Street, Miami Shores, FL, legally described as follows:

Violator Information	Mailing Address	Phone
CARROLL, LAURENCE & HERMINE;	53 NE 106 Street MIAMI SHORES, FL 33138-	

Location Address	Parcel No.	Legal Description
53 NE 106 Street Miami Shores, FL 33138-	1121360080280	36 52 41PB 41-78 DUNNINGS MIAMI SHORES EXT NO 2 LOT 13 BLK 207 LOT SIZE 75.000 X 123 OR 15826-2866 0293 1

2. The following condition and violation:

Violation

Code #	Description
Sec. 536(e). [Vegetable Gardens]	Sec. 536. Design Standards. Vegetable gardens are permitted in rear yards only.

Was first observed on 05/08/2013 and found uncured on the following dates:

Case Inspection History

Inspection:	Date	Status	Inspector
Courtesy Notice Inspection	06/01/2013	IN VIOLATION	Anthony Flores
Notice of Violation Inspection	07/10/2013	IN VIOLATION	Anthony Flores
Notice of Violation Inspection	08/01/2013	IN VIOLATION	Anthony Flores

3. Defendants were issued a Notice of Violation on **07/12/2013** informing the Defendant (s) of the above violation and requiring such violations to be corrected by a date certain, however the Defendant (s) did not timely correct the condition and notify the Code Compliance Office that the violation had been corrected.

Conclusions of Law

4. The above defendant (s) by reason of the foregoing, is/are in violation of the aforesaid section(s) of the Miami Shores Village, Florida Code of Ordinances because the Defendant(s) has/have failed to correct the violation(s) and complete the following actions:


VEGETABLE GARDENS IN FRONT YARD PROHIBITED.

REMEDY: REMOVE ALL VEGETABLES GARDENS FROM FRONT YARD.

Order

5. Accordingly, the Miami Shores Village Code Enforcement Board hereby directs and orders the above named Defendant (s) to correct the violation described above, on or before **08/31/2013**. In the event the violation is not corrected on or before the such date, then and in that event there shall be imposed against the said Defendant(s) a fine of **\$50.00** a day thereafter. Further, an administrative fee of **\$30.00** shall be imposed. The burden shall rest upon the Defendant (s) to request an inspection by the Code Enforcement Department to determine whether the violation has been brought into compliance. A repeat violation, if observed, shall result in an immediate fine, even if corrected at a previous date.

6. In the event the board determines at a later hearing that the violation(s) has/have not been timely corrected, and fines are therefore imposed, a Certified copy of this Order may be recorded in the public records of Miami Dade County, Florida, and shall thereafter constitute notice to any subsequent purchasers, successors in interest, or assigns that the violation(s) exist(s), that the violation(s) was not timely corrected, that fines were imposed and that this recorded order shall constitute a lien against any real or personal property of the Defendant(s) that is not protected by the Florida Constitution.


Attest

MIAMI SHORES ENFORCEMENT BOARD

Chairperson

EXHIBIT "C"

**Code Enforcement Case Detail**

Miami Shores Village
10050 N.E. Second Avenue
Miami Shores, Florida 33138-2382
Telephone: (305) 795-2207
Fax: (305) 756-8872

Case Number: CASE-5-13-11331**Case Type: Zoning Violation****Date Case Established: 05/08/2013****Compliance Deadline: 08/31/2013****Compliance Date: 9/4/2013**

Location Address	Parcel No.	Addition	Block No.	Lot No.	Section	Range
53 NE 106 Street Miami Shores, FL 33138-	1121360060290					

Violator Information	Address	Phone
CARROLL, LAURENCE & HERMINE	53 NE 106 Street MIAMI SHORES, FL 33138-	

Current Status: Case Closed - Admin. Fee Pending **Case Description/Remedy:****NOV issued:**

VEGETABLE GARDENS IN FRONT YARD PROHIBITED

Citation issued:

REMEDY: REMOVE ALL VEGETABLES GARDENS FROM FRONT YARD.

Resolved: Yes**Violations****Fines:**

Code #	Description
Sec. 536(e). (Vegetable Gardens)	Sec. 536. Design Standards Vegetable gardens are permitted in rear yards only

Inspections

Inspection	Date	Status	Inspector
Courtesy Notice Inspection	6/1/2013 1:	IN VIOLATION	Anthony Flores
Notice of Violation Inspection	7/10/2013	IN VIOLATION	Anthony Flores
Notice of Violation Inspection	8/1/2013 1:	IN VIOLATION	Anthony Flores
Enforcement Order Inspection	8/4/2013 1:	IN COMPLIANCE	Anthony Flores

Case Activities

Activities	Date	Entered By
Courtesy Notice Sent	05/14/2013	Karen Banda
Notice of Violation Sent	05/04/2013	Anthony Flores
Notice of Violation Sent	07/12/2013	Anthony Flores
Enforcement Order Sent	08/02/2013	Anthony Flores

Invoice	Fee	Fee Amount	Date
INV-5-13-48851	Administrative Fee	\$ 30.00	08/02/2013

EXHIBIT L

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

10/15/13

Robert Vickers
Chairman, Code Enforcement Board
Miami Shores Village
Code Enforcement
10050 NE 2nd Ave
Miami Shores, FL 33138

RE: CASE-5-13-11331/Appellate Case No.: 13-320

Dear Mr Vickers,

As you are aware, we recently filed a notice of appeal in this case in the Miami-Dade circuit court. After filing the appeal, my husband and I removed all of the offending items from the garden necessary to bring our property into compliance. Our current understanding is that our property is no longer in violation of Miami Shores' codes. As a result, we are willing to withdraw our appeal.

We remain concerned about the lack of a resolution regarding the initial code violation. At the moment, all we have received from the city regarding our recent compliance is an informal post-inspection email dated September 4, 2013, from Code Enforcement Supervisor, Anthony Flores. Therefore, we are requesting official confirmation from the Miami Shores Code Enforcement Board that our front yard garden is compliant with Miami Shores' codes. Once we have received formal notice of compliance, we will dismiss the appeal.

Because of pending deadlines, we request that you kindly provide a written response on or before October 18, 2013. Thank you.

Respectfully,



Hermine Ricketts and Laurence Carroll

cc

Barry Asmus, Member – Code Enforcement Board
John Patnik, Member – Code Enforcement Board
Bob Smith, Member – Code Enforcement Board
Barry Perl, Member – Code Enforcement Board
Manny Quiroga, Member – Code Enforcement Board
Rod Buenconsejo, Member – Code Enforcement Board
Anthony Flores - Code Enforcement Supervisor
Tom Benton, Village Manager
Richard Sarafan, Village Attorney

EXHIBIT M

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE
COUNTY, FLORIDA.

APPELLATE DIVISION

CASE NO.: 13-320 AP

LOWER COURT CASE NUMBER: 5-13-1333

HERMINE RICKETTS
and LAURENCE CARROLL,
Appellant(s)

vs.

CODE ENFORCEMENT BOARD,
MIAMI SHORES VILLAGE,
Appellee(s).

FILED FOR RECORD
2013 OCT 17 AM 8:24
CLERK OF COURT
DADE COUNTY, FLA.
CIVIL #91

Upon consideration by the court, Appellee's Motion to Dismiss Appeal is hereby:

☐ **Granted**

☒ **Denied**

DAVA J TUNIS, BRONWYN C MILLER, and NUSHIN G SAYFIE, JJ CONCUR

It is so ordered this 10th day of Oct, 20 13.


DAVA J TUNIS


BRONWYN C MILLER


NUSHIN G SAYFIE

CC: HERMINE RICKETTS, PRO SE
LAURENCE CARROLL, PRO SE
53 NE 106TH STREET
MIAMI SHORES, FL

RICHARD SARAFAN, ESQ.
100 SOUTHEAST 2ND STREET, STE 4400
MIAMI, FL 33131

EXHIBIT N

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**



Miami Shores Village

RICHARD SARAFAN
VILLAGE ATTORNEY

100 S.E. 2ND ST. 44TH FLOOR
BANK OF AMERICA TOWER
MIAMI, FLORIDA 33131
(305) 349-2300 - (305) 349-2310 (FAX)

Richard Sarafan
Direct Line: 305.349.2318
Direct Telefax: 305.428.8828
Email: rsarafan@gjb-law.com

October 22, 2013

Via U.S. Mail and
Email hermine@bellsouth.net

Ms. Hermine Ricketts
Mr. Laurence Carroll
53 NE 106 Street
Miami Shores, FL 33138

**Re: Hermine Ricketts and Laurence Carroll v. Code Enforcement Board,
Miami Shores Village
Third DCA Case No.: 13-320 AP**

Dear Ms. Ricketts and Mr. Carroll:

In my capacity as Village Attorney I am responding to your letter dated October 15, 2013 addressed to Mr. Vickers, Chairman of the Code Enforcement Board and copied to all members of the Code Enforcement Board, the Village Manager and myself. (As an aside, please be aware that I did not receive a copy of your letter directly from you but rather it was provided to me by the Code Enforcement Department. Please note my correct address above which is the same as reflected on my Motion to Dismiss the appeal).

Please cease communicating directly with members of the Code Enforcement Board. Future communication regarding this matter may be directed my attention as counsel for the Village in the pending appeal and you can feel free to copy the Code Enforcement Clerk as well if you like.

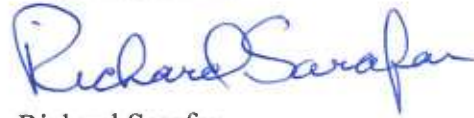
Your letter expresses your concern about the "lack of a resolution" regarding the initial code violation. Frankly, I don't understand this concern since, as clearly stated in the Motion to Dismiss your appeal, the underlying Code Enforcement case was officially closed some time ago, without the imposition of any fines. A copy of the official Code Enforcement record reflecting the closure of this case was attached to the Motion to Dismiss the appeal.

*Ms. Hermine Ricketts
Mr. Laurence Carroll
October 22, 2013
Page 2*

Concerning your request for some type of official confirmation that your "front yard garden is compliant with Miami Shores' codes" the Village Code Enforcement Department does not generate such documents and generally does not certify code compliance. Rather, the Department brings before the Board cases based on the issuance of notices of violation in order to seek adjudications that violations exist. In your case, the Board adjudicated the existence of a violation, that particular violation was cured and the case was closed. As I mentioned, the documents reflecting that were attached to our Motion to Dismiss the appeal filed on September 25, 2013 (with a copy mailed to you).

If you have any other questions concerning this matter, please do not hesitate to contact me.

Very truly yours,



Richard Sarafan

RS/dr

(7718-230 / 2053795 / #20)

EXHIBIT O

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL

CASE NO. 13-320-AP
LOWER TRIBUNAL CASE NO. 5-13-11331

Appellants,

v.

CODE ENFORCEMENT BOARD,
MIAMI SHORES VILLAGE

Appellee.

THE ORIGINAL FILED

ON OCT 31 2013

IN THE OFFICE OF
CIRCUIT COURT MIAMI-DADE CO.
CIVIL DIVISION

NOTICE OF VOLUNTARY DISMISSAL OF APPEAL

Appellants, Hermine Ricketts and Laurence Carroll, pursuant to Florida Rule of Appellate Procedure 9.350(b), hereby file this Notice of Voluntary Dismissal of Appeal in the above-styled action and, in support, state:

1. On August 30, 2013, Appellants filed their Notice of Appeal in this action.
2. On September 25, 2013, Appellee filed its Motion to Dismiss Appeal in this action.
Appellants never received the requisite copy of Appellee's motion, via U.S. Mail or any other means.
3. On October 15, 2013, without the benefit of the information contained in Appellee's Motion to Dismiss Appeal, Appellants sent a letter to Appellee informing them of their intention to voluntarily dismiss the appeal upon receipt of confirmation from Appellee that the code violation at issue had been rectified and officially resolved.
4. On October 22, 2013, Appellants received this Court's October 13, 2013, Order Denying Appellee's Motion to Dismiss Appeal. This Court's Order was the first indication to Appellants that a Motion to Dismiss Appeal had been filed.

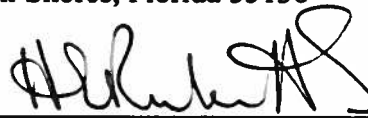
5. On October 22, 2013, Appellants received an email from Appellee's counsel confirming that Appellants' property has officially been deemed compliant with Miami Shores Code, and that the case had been closed.
6. In light of the foregoing, Appellants voluntarily dismiss their appeal in the above-styled action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 31st day of OCTOBER, 2013, on **Richard Sarafan, Esq., Genovese Joblove & Battista, P.A.**, Miami Tower, 100 Southeast 2nd Street, Suite 4400, Miami, Florida 33131-2118.

Hermine Ricketts and Laurence Carroll
Appellants
53 Northeast 106th Street
Miami Shores, Florida 33138

By: _____



Hermine Ricketts*

* Prepared with the assistance of counsel

EXHIBIT P

**AFFIDAVIT OF HERMINE RICKETTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE
COUNTY, FLORIDA.

APPELLATE DIVISION

CASE NO.: 13-320 AP
LOWER COURT CASE NUMBER: 5-13-11331

HERMINE RICKETTS/LAURENCE CARROLL,
Appellant(s),

vs.

CODE ENFORCEMENT BOARD,
MIAMI SHORES VILLAGE,
Appellee(s).

FILED FOR COURT
2013 NOV -5 AM 11:11
CLERK OF THE COURT
JAMES J. HARRIS, CLERK
CIVIL DIVISION #201

Let it be duly noted that the Notice of Voluntary Dismissal filed by the appellant in this cause is recognized by the Court and this appeal is hereby dismissed.

It is so ordered this 15th day of November, 2013.



MARCIA B CABALLEO
Associate Administrative Judge

CC: HERMINE RICKETTS, PRO SE
LAURENCE CARROLL, PRO SE
53 NE 106TH STREET
MIAMI SHORES, FL 33138

8RICHARD SARAFAN, ESQ.
100 SOUTHEAST 2ND STREET, STE 4400
MIAMI, FL 33131

EXHIBIT B

AFFIDAVIT OF LAURENCE “TOM” CARROLL

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL, a married
couple,

CASE NO.: 13-36012-CA
CIVIL DIVISION: 01

Plaintiffs,

v.

MIAMI SHORES VILLAGE, FLORIDA and
MIAMI SHORES CODE ENFORCEMENT
BOARD,

Defendants.

**AFFIDAVIT OF LAURENCE “TOM” CARROLL IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

I, Laurence “Tom” Carroll, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of Miami Shores, Florida, and over the age of 18 years. I am also one of the Plaintiffs in the above-referenced action. I submit this affidavit in support of Plaintiff’s Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. Since 1993, I have resided at 53 Northeast 106th Avenue, Miami Shores, Florida, 33138, a modest single-family home that I own, along with my wife and co-Plaintiff, Hermine Ricketts.

3. I am an IT professional, currently employed in that capacity by the village of Miami Gardens, Florida.

4. Along with Hermine, I am committed to maintaining my physical and mental well-being through a combination of sensible dietary practices, regular exercise, and enjoyment of the outdoors.

5. Over the last two decades, Hermine and I have grown increasingly concerned about the practices employed by producers, processors and retailers in our highly-industrialized food system. Whereas we focus on nutrition and health, the food industry relies heavily on the use of fertilizers and pesticides to maximize yields. We understand that the only way to limit our dependence on that system is to narrow the gap between ourselves and our food sources, and, to the extent that it is possible, to grow our food ourselves. By doing so, we ensure that we have a reliable source for clean, wholesome food that is free of pesticides and artificial fertilizers.

6. To that end, shortly after moving into our current home, we began planting vegetables in our back yard. Unfortunately, because our back yard is almost completely shadowed during the fall and winter—Florida’s main growing season—and partially shadowed the remainder of the year, we were unsuccessful.

7. In 1996, after several failed attempts to grow vegetables in our back yard, we relocated our vegetable garden to our front yard. With the increase in sunlight, the garden thrived. Since then, until we were forced to stop, we had planted vegetables in our front yard every growing season, a period that spans more than 17 years.

8. About 14 years ago, Hermine became seriously ill with pulmonary fibrosis, a rare autoimmune condition. The illness and lengthy recovery—which required extensive in-home rehabilitation and physical therapy—forced her into an early retirement from her architecture practice. Instead of working, she now devotes more time to her other passions, like art and gardening. I encourage her to engage in these restorative, stress-relieving activities that she had only been able to enjoy in the past as hobbies.

9. In 2008, Hermine underwent total hip replacement surgery. As part of her recovery from that surgery, and still to this day, she uses her gardening activities as a means to exercise and strengthen her body.

10. In 2010, we learned that Hermine had developed a brain tumor. After yet another painful surgery, and a very unpleasant recovery, Hermine resolved to adopt a lifestyle that is as healthful and stress-free as possible. Since that point, we have found great success with what we consider a much less aggressive form of healthcare: Hermine looks to her garden and her art for her therapy, and we use food as our medicine. But she has been effectively prohibited from doing these things since we were forced to uproot our garden. Late last year, we learned that Hermine had developed another brain tumor. She underwent surgery to remove the tumor in October 2015. Since then, recovery has been slow and stressful, and she has suffered negative side effects to her immune system and vision.

11. Since first planting vegetables in our front yard nearly two decades ago, we have learned, mostly through trial and error, how to best grow vegetables on our property. And after retiring from her architecture practice, Hermine has had far more time to devote to our garden. As a result, the garden has been not only increasingly productive for us in recent years, but it has grown more intricately designed and attractive as well.

12. While the vegetables we grew and harvested on our property changed from season to season, many of those items—like nearly a dozen varieties of Asian cabbage—are unique and lack mass appeal, often making them difficult or impossible to locate in local grocery stores or farmer's markets. The same is true for our two favorite varieties of bok choy, canton short and tatsoi, as well as several of the lettuces and approximately six varieties of tomatoes that we once grew in our front yard. The garden also provided continuous access to our preferred varieties of

more conventional items, like green beans and cucumbers, which are sold only under their generic names in supermarkets.

13. While our garden was at its most productive, it accounted for approximately 50 percent of my overall diet, and 100 percent of my vegetable intake. It was a reliable source of affordable, organic produce, which virtually eliminated the need for us to make frequent trips to the supermarket. And because we only removed what we intended to eat, our garden allowed us to eliminate food waste almost entirely. Rather than selling or discarding anything we did not eat, we shared with family and friends. It was, and could be again, a peaceful and economical use of our private property.

14. By growing vegetables in our front yard, we ensured that we had full knowledge of the source of the vegetables we ate, from planting to consumption. As a result, we were assured that the vegetables we consumed were planted, grown, harvested and processed in accordance with our desired practices. This is a benefit that is entirely unique to homegrown vegetables and cannot be duplicated by purchasing or obtaining vegetables through other means.

15. Though the contents of the garden were ever-evolving, one constant has always been Hermine's steadfast commitment to regular maintenance, responsible design, and aesthetic appeal. She designed our garden to include a blend of both edible and non-edible plants, which grew harmoniously beside one another as part of one contiguous landscape. Hence, in the 17 years that she and I grew vegetables in our front yard, we never had any incidents or complaints regarding the existence or placement of our garden. We were never cited by the village or even approached by any code enforcement officials in connection with our vegetable garden. In fact, just the opposite is true. Our garden adds character to our home and our community.

16. On May 8, 2013, after 17 years of gardening peacefully and without incident, we received our first notification from the village that our property was not compliant with village code.

17. On June 12, 2013, we received a formal Notice of Violation for unlawfully growing vegetables in our front yard.

18. Hermine and I were concerned about our property's alleged noncompliance, so we sought clarity from the village on the criteria it was applying to determine what was permitted. I also voiced my confusion when we appeared before the Code Enforcement Board.

19. On July 11, 2013, we appeared before the Code Enforcement Board. At that time, seemingly unclear on what was or was not prohibited, the Board elected to postpone ruling on our case until the following meeting. In the meantime, we were verbally instructed by the sitting chairman of the Code Enforcement Board to provide the Board with an itemized list of every plant growing in our yard.

20. In a letter dated July 17, 2013, Hermine provided the list requested by the Chairman at the conclusion of the July 11 hearing, in which she detailed the 91 plants—edible and otherwise—that we grew or have ever grown in our front yard.

21. On August, 1, 2013, in the presence of the Village Attorney, Richard Sarafan, we appeared before the Board on the issue of our front-yard vegetable garden. The Board ruled that we were in violation of the village's ordinance prohibiting front-yard vegetable gardens, and we were given 30 days to destroy the garden. We were threatened with fines of \$50 per day for noncompliance.

22. On August 18, 2013, I sent an email to Councilwoman Ivonne Ledesma, in which I indicated to her that I was deeply concerned about the government's violation of our private property rights. A true and correct copy of that email is attached hereto as Exhibit A.

23. On August 22, 2013, Hermine sent a letter to Robert Vickers, Chairman of the Code Enforcement Board, seeking a stay of fines in the event that we chose to appeal the Board's ruling, or alternatively, additional time to bring our property into compliance if we did not elect to appeal.

24. On August 30, 2013, we filed a Notice of Appeal from the Board's ruling.

25. On August 31, 2013, before either party had taken any action on the appeal, Hermine and I decided that we could not bear the threat of such severe fines. Knowing that Hermine simply could not bear to do it, I took it upon myself to uproot our vegetable garden. Once I had finished, I contacted Mr. Flores to seek a reinspection and confirmation of compliance. A true and correct copy of my email to Mr. Flores is attached hereto as Exhibit B.

26. On September 4, 2013, Mr. Flores reinspected our property and advised that we were no longer in violation of the village's ban on front-yard vegetable gardens. A true and correct copy of Mr. Flores' email to me is attached hereto as Exhibit C.

27. On or about September 25, 2013, without our knowledge, the village filed a Motion to Dismiss Appeal. Hermine and I never received a service copy of the motion.

28. On October 15, 2013, without any knowledge as to the existence or contents of the village's Motion to Dismiss Appeal, Hermine wrote another letter to Chairman Vickers, seeking formal confirmation that our property had been brought into compliance.

29. On October 22, 2013, Hermine and I received by mail the Court's Order Denying the village's Motion to Dismiss Appeal. It was the first we had learned of the village's

underlying motion, which we subsequently obtained from court records. Upon our review of the motion, we learned that the village had indeed documented a final disposition of our case.

30. On October 22, 2013, Hermine and I also received a letter from Village Attorney Richard Sarafan, advising us that the code enforcement action against us had been closed and our property was in compliance.

31. On October 31, 2013, Hermine and I filed a Notice of Voluntary Dismissal of our appeal from the Code Enforcement Board ruling.

32. On November 5, 2013, the Court dismissed the appeal.

33. Since I uprooted our vegetable garden in late August, we have not grown any offending items in our front yard. As a result, we have incurred a significant increase in our household expenses, as we must now purchase our food from retail stores like Publix and Whole Foods. The cost of these retail substitutes (when available)—particularly of more rare items, like purple mizuna lettuce or super rapini broccoli—far exceeds the expense of growing our preferred items ourselves.

34. This increase in costs has a very real impact on our ability to budget for other basic household needs, like utilities and insurance. Our savings were almost entirely depleted to cover years of Hermine's costly medical treatments. We saw growing vegetables in our front yard as our way to save money on food—a constant, major expense which is all but impossible to eliminate altogether. Without the savings we enjoyed from growing our own vegetables, we have had to make sacrifices in other areas to make up for the shortfall.

35. Our harms are not limited to financial damages. Because we now rely on external sources for all of our vegetables, we have no control over the practices used in the production and processing of our food. Federal labeling requirements do not sufficiently address all of our

concerns, and often inaccurately describe the quality of produce purchased in a supermarket. As a result, we have lost the unique peace of mind that once came with our ability to produce our very own food.

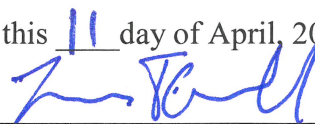
36. Store-bought produce also lacks the unique freshness of items harvested just before eating and, consequently, does not taste as good or have the same nutritional benefit. Thus, we have lost both the pleasure and the health benefits we previously enjoyed by growing our food. Additionally, whereas we previously harvested only as much as we intended to consume, we must now purchase our vegetables in quantity. As a result, we are often forced to discard much of the produce we purchase because it spoils before we are able to eat it. And the only alternatives—daily trips to the grocery store and weekend farmers’ markets—are simply not feasible for a one-car family like ours.

37. Our vegetable garden harms no one and provides our family with an affordable means to enjoy wholesome, organic produce. It is also an immeasurable source of joy and pride for me and adds character to our neighborhood.

38. If this Court grants our motion for summary judgment, I will immediately resume planting vegetables of all sorts—cabbages, tomatoes, leafy greens, broccoli, and others—particularly those that are too rare or expensive for me to purchase in stores, in my front yard.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to (or affirmed) and subscribed before me this 11 day of April, 2016.


Laurence "Tom" Carroll

State of Florida
County of Miami-Dade

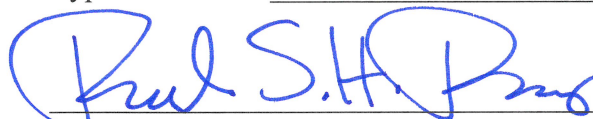
Laurence "Tom" Carroll personally appeared before me and took an oath that the above is true and correct

☒ Personally Known
☐ Produced Identification



REBEKAH S.H. RAMIREZ
MY COMMISSION # FF 952269
EXPIRES: January 24, 2020
Bonded Thru Budget Notary Services

Type and # of ID _____


(Signature of Notary)

REBEKAH S.H. RAMIREZ
(Name of Notary Typed, Stamped, or Printed)

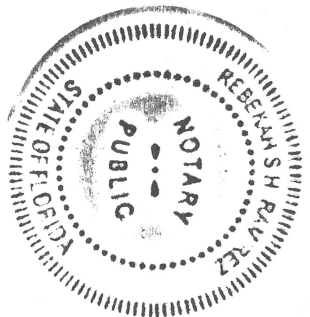


EXHIBIT A

**AFFIDAVIT OF LAURENCE “TOM” CARROLL IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

From: **Tom Carroll** <procltc@gmail.com>

Date: Sun, Aug 18, 2013 at 7:29 PM

Subject: For the Consideration of Councilwoman Ledesma - Request a Change in the Code Enforcement to allow vegetables to be grown in the front yard of Miami Shores homes

To: ivonneledesma@gmail.com

Dear Councilwoman Ledesma,

Recently a code enforcement supervisor sited our home as in violation of a code that does not allow vegetables (or plants as they are also known) to be included as part of the plant selection we selected to grow in our front yard.

The case number is 5-13-11331. The violation is Section(s) 536(e) of the Miami Shores Village Code.

We do not agree with the violation as there is no clear, common sense definition of a vegetable in the Miami Shores code. We view the violation process as a violation of our home ownership rights.

As members of the Miami Shores Village for over 20 years this is the first time that we have been so targeted by a wayward governmental process.

My wife, an artist and retired architect, has designed the front yard to not only enhance the beauty of the environment but also provides a diverse environment. The front yard design, integrating flowers, fruit trees and seasonal vegetables, has been complimented by many people. The front yard design also contributes to the value and appearance of the homes on the block.

I hate to be a provider of paperwork but attached for background reference is correspondence between my wife and the Village Manager regarding the violation.

Would further discussion on this subject be warranted? Would you be the right Council person who works with code related activities or does another Council person work on those tasks.

Your thoughts and recommendations would be appreciated.

Respectfully,

Hermine & Tom Carroll
53 NE 106 Street
Miami Shores, [305-775-0770](tel:305-775-0770)

EXHIBIT B

**AFFIDAVIT OF LAURENCE “TOM” CARROLL IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

From: Tom Carroll [mailto:procltc@gmail.com]
Sent: Saturday, August 31, 2013 1:50 PM
To: Anthony Flores
Subject: Fifth Letter - Inspection

As noted in the email letter titled, "Fourth Letter - Inspection",
all plants pictured have been removed.
An inspection is requested.

Thank you.

EXHIBIT C

AFFIDAVIT OF LAURENCE “TOM” CARROLL IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

From: Anthony Flores <floresa@miamishoresvillage.com>
Date: September 4, 2013, 4:35:46 PM EDT
To: Tom Carroll <procltc@gmail.com>
Subject: RE: Fifth Letter - Inspection

Mr. Carroll,

Your property was inspected today (8/4/13) and was found to be in compliance with Case – 5-13-11331. Your case is now closed.

Thank You

Anthony Flores
Code Enforcement Supervisor
Miami Shores Village
(305) 795-2207 ext. 4861
floresa@miamishoresvillage.com

EXHIBIT C

EXPERT REPORT OF FALON MIHALIC, PLA

Re: *Ricketts vs. Miami Shores* (Case Number: 13-36012-CA)

I have been retained by the Plaintiffs in this case in order to provide my expert opinion regarding the following: whether the term “vegetable” is capable of precise definition; whether plants commonly referred to as “vegetables” are aesthetically distinct from other plants; whether vegetables can be incorporated into home landscapes in a responsible sustainable manner; the reasons why a property owner might choose to grow vegetables on her property; and whether the Village of Miami Shores’ prohibition on front yard vegetable gardens has an aesthetic justification.

Facts and Data Considered. In forming my opinion in preparing this report, I reviewed the following: (1) Plaintiffs’ Complaint, (2) The list of plants¹, grown in Plaintiffs’ front yard, which the Plaintiffs provided in response to Defendant’s Interrogatory Number Two, (3) Photos of the Plaintiffs’ property that the Plaintiffs provided in response to Defendant’s Request for Production Number One, (4) The deposition transcript of code enforcement officer Anthony Flores, (5) Aerial and street views of the Plaintiffs’ property and surrounding properties using Google Maps, (6) The Miami Shores Village Code of Ordinances, Part II, App. A (“Zoning”), Section 536 (“Design Standards”), Section 537 (“Maintenance Standards”), and Section 538 (“Landscaping Descriptions and Definitions”), adopted March 2013, (7) Florida Statute Chapter

¹ The plant list included the family classification and the common name for each plant (e.g. Family: Ericacea, Common Name: Blueberry). In this report, I use my knowledge of plants within the family to include the genus and species for the plants I reference (e.g. Blueberries, *Vaccinium virgatum*). Where there are multiple edible species or related hybrids within the genus, I list only the genus and abbreviate the term “species” (e.g. *Vaccinium sp.*). Given my knowledge of family and genus, the inability to list a specific species does not impact my ability to form the opinions in this report.

373 Section 185 (“Local Florida-Friendly Landscaping Ordinances”), (8) The Village of Miami Shores’ Website, and, (9) The publications identified in the bibliography attached to this report.

Statement of Professional Experience. Landscape architecture is a profession regulated by state law with rules and requirements for the practice of landscape design and planning. I am a licensed landscape architect in Florida, Texas, and Illinois with a background in natural sciences and design. My initial licensure was by exam in the State of Florida and includes being authorized as a Florida Professional Mangrove Trimmer. I own a landscape architecture business, Falon Land Studio LLC, which currently provides landscape architecture services to clients in Texas and Florida. I have a Master of Landscape Architecture degree from the Rhode Island School of Design and a Bachelor of Arts in Natural Sciences from New College of Florida. My academic research has focused on the Florida landscape with my Master’s thesis project sited at the wastewater treatment plant in North Miami and my undergraduate thesis investigating invasive beehive pests in southwest Florida. I have experience designing edible landscapes in tropical and non-tropical climates in residential and institutional settings. Additionally, I taught a continuing education course, *Florida Edible Landscape Design*, at the 2014 Florida Chapter conference of the American Society of Landscape Architects. My professional work experience, training, industry publications, and academic research are described in further detail in my attached Curriculum Vitae.

Previous Expert Witness experience. I have never been an expert witness prior to this case.

Statement of Compensation. My compensation from the Institute for Justice is a pay rate of \$150 per hour for my work performed as a consultant in this case and in connection with the research and preparation of this report. If I am called to testify in this case, I will be compensated at an hourly rate of \$250 locally or a daily rate of \$2,000 if required to travel.

Report Summary. In section one, I describe how the Plaintiffs in this case, Tom Carroll and Hermine Ricketts, (herein after “the Ricketts”), had an edible garden that was a sophisticated and thoughtful planting scheme and explain the goals and benefits of their organic garden practices and how they were aligned with the Florida-Friendly Landscaping program². Section two discusses botanical terminology and how the term “vegetable” is determined based on culinary practices and cultural norms. Section three explains that edible landscapes and edible plant species are not aesthetically distinct from non-edible ones. Section four describes the deeply personal nature of the choice to grow edible plants on private property. The fifth section articulates my professional opinion that edible plants and gardens are not aesthetically distinct from non-edible ones and that, therefore, the ban on vegetable gardens in front yards in the Village of Miami Shores serves no aesthetic purpose.

SECTION ONE. EDIBLE GARDENS AS SUSTAINABLE LANDSCAPES

1.1 The Ricketts’ edible garden was a sustainable landscape

The Ricketts’ property was a responsible and sophisticated planting plan for growing food at home. The edible garden methods used on the Ricketts’ property used layers of different types of edible and non-edible plants that help increase productivity. This approach is an advanced type of edible landscape that is different functionally and aesthetically from the traditional vegetable garden of the prior century.

A Twentieth Century American vegetable garden, one that is separated and delineated as its own space, for home and family food consumption can be traced back to American pioneer

² A more thorough discussion of the Florida-Friendly Landscaping Program, and how the Ricketts’ property was aligned with its principles, is contained in section 1.2.

homesteads. A vegetable garden, at that time, was separated from the larger agricultural and rural landscape for efficiency and utility. Vegetable gardens, as based in the agricultural realm, relied on annual plants that required re-sowing from seed annually or multiple times within the year.

Edible landscapes, as classified within the profession of landscape architecture today, are landscapes that have been designed and planted to systematically produce food (Phillips, 2013). This approach to edible landscapes to grow food for personal consumption is supported by biological science and ecosystem functions. Additional plants that help to increase food production are integrated into today's edible landscapes and include plants for pollinators to attract bees and butterflies that pollinate flowers and subsequently increase fruit production, and nitrogen-fixing ground cover plants, like clover and rye, that convert inert atmospheric nitrogen into biologically active nitrogen in the soil for decomposition and eventual uptake by plants (Brown et al., 1999). In this way, edible landscapes are designed to improve in productivity and fertility as they age because biological processes that produce food become more enriched over time (Mollison, 1988 and Falk, 2013). Subsequently, the cost of long-term edible gardens decreases over time as they require less maintenance and plants are propagated vegetatively and by seed-saving from each growing season. Growing food in a private yard in this way is affordable, especially when compared to purchasing local, fresh, organic, high quality plant foods at a retail grocer. This supports the idea that edible landscapes are a deeply rooted American interest based on self-sufficiency and personal choice.

In preparing this report, I reviewed photographs of the Ricketts' front yard property prior to removal of the plants deemed "vegetables". Based on my review of the Ricketts' property photos, it is clear that their edible landscape implemented productive food system practices to maximize yields of edible plants using reliable organic methods in a residential setting. To do

this, their plant cultivation included both edible and non-edible plants, methods for efficient water use (drip irrigation), and productive soil management. Their planting included atypical edible plants not commonly available as fresh produce in retail grocery stores, like Miniature Corn (*Zea mays*), Miracle Fruit (*Synsepalum dulcificum*), Moringa (*Moringa oleifera*), and Purslane (*Portulaca oleracea*) as well as plants to aid pollination like Coneflower (*Echinacea sp.*), Blanket Flower (*Gaillardia sp.*), and Spanish Needles (*Bidens alba*).

1.2 The Ricketts' edible garden was aligned with the Florida-Friendly Landscaping Program

The Ricketts have a personal interest in growing food organically on their property as a way to consume plant-based foods while limiting their exposure to the pesticides used in commercial agriculture, as stated in the complaint filed with the court. The environmental benefits of organic practices in food production at home are many: protecting ground water, improving soil, and enhancing biodiversity (Rodale, 2001). Additionally, organic practices are a major tenet of the Florida-Friendly Landscaping Program developed by the Institute of Food and Agricultural Science at the University of Florida. The Florida-Friendly Landscaping Program is a set of design guidelines, maintenance practices, and approved plant species that help protect water resources and enhance biodiversity (A Guide to Florida-Friendly Landscaping: Florida Yards & Neighborhoods Handbook, 2007). Use of the Florida-Friendly guidelines and organic practices are particularly beneficial in South Florida where drinking water is sourced from surficial aquifers- the Biscayne and Floridan- that are vulnerable to contamination by pesticides and synthetic fertilizers (Fernald and Patton, 1984).

The Ricketts' property was aligned with the Florida-Friendly Landscaping Program, as defined in Chapter 373 Section 185 of the Florida Statutes, because it used diverse plantings

that attract wildlife, implemented water conservation practices, and had little to no pesticide use. Additionally, their garden contained herbs and vegetables included on the Florida-Friendly plants list (Haynes, et al., 2001). In addition to Florida-Friendly principles being defined and encouraged by Florida law, the Village of Miami Shores encourages homeowners to follow the Florida-Friendly Landscaping Program, as stated on its website, “The Village encourages homeowners and business owners to follow the Florida-Friendly Landscaping”. In summary, the Ricketts’ edible garden was for their own private use based on their personal preferences for an organic, plant-based diet, and their organic gardening methods were an environmentally-sound way to maintain their private property affordably and in accordance with the Florida-Friendly Landscaping Program.

SECTION TWO. THE ARBITRARINESS OF DEFINING THE TERM “VEGETABLE”

2.1 The term “vegetable” is not botanically defined

In my discussion thus far, I have intentionally used the terms “edible plants” and “edible landscapes” instead of “vegetable” or “vegetable garden” because the term vegetable is based on an arbitrary cultural and culinary definition with regards to the way we classify plants for human consumption. In scientific literature, epidemiologists who study Fruit and Vegetable consumption for their measurable health benefits have classified Fruits and Vegetables in culinary terms (International Agency for Research on Cancer, 2003). When evaluating individual fruit and vegetables for their health benefits, researchers broadly define them as “all edible plant tissues consumed in US diets excluding herbs, spices, nuts, seeds, and grains, except for those grains used as vegetables (e.g., sweet corn)”, (Smith et al., 1995). Epidemiologists created this definition for convenient categorization in order to communicate recommended dietary guidelines to healthcare practitioners and the general public (Smith et al., 1995). Accordingly,

the definition adopted reflects an effort to define the term “vegetable” in terms that best accommodate a person’s learned understanding of that word. Thus, the term vegetable is ultimately culturally determined based on how plants are prepared, cooked, and consumed.

In botanical terms, the majority of the plants cultivated for human consumption can be classified as Angiosperms or flowering plants (Madison, 2013). Angiosperms are defined by their reproductive morphology and process of producing flowers that attract pollinators or have wind-borne pollen for fertilization. The flowers, once pollinated, turn into fruit containing seeds. Therefore, all flowering plants create fruit as the vehicle for protecting, spreading, and supporting their reproduction. Plants in the Brassicacea family (i.e. cabbage, kale, and mizuna, all of which the Ricketts previously grew on their property) are an example of edible plants that have been selectively cultivated and bred to produce sweet and tender leaves for food. However, we also harvest their fruit and use their seeds (i.e. mustard seeds) for human consumption.

The ambiguity of the term “vegetable” is evident in the debate about tomatoes being classified as a fruit or vegetable. In botanical terminology and plant morphology, tomatoes are technically a fruit, but they are often categorized in our culture as a vegetable because of how they are prepared and cooked. They contain developed seeds for reproduction and their interior pulp provides water and nutrients to help the seeds germinate and grow, which defines them as botanical fruits. The same is true for many edible plants that some people culturally refer to as “vegetables”. Several examples of botanical fruits used as culinary vegetables growing on the Ricketts’ property include eggplant, okra, pepper, and snap peas. All of these are the botanical fruit of a species of plant. In fact, in the case of snap peas, the entire plant is edible including the shoots, twining stems, leaves, and flowers. Although one may culturally refer to snap peas and all of its parts as a “vegetable”, they are in fact referring to different plant parts, further

demonstrating that the term vegetable is mutable and cannot be defined. Thus, while today it is common to refer to snap peas as vegetables, this term is mutable and cannot be defined with certainty because it relies on culinary traditions and cultural context instead of on botanically precise criteria. As our global societies change, the plant based foods society grows and eats will also change and the meaning of the term “vegetable” will evolve over time.

2.2 We classify plants as vegetables based on shifting cultural norms.

Humans have cultivated plants for human consumption for thousands of years and the definitions for what constitutes a vegetable have changed over time as the way we use those plants as food has also changed. The evolution of plants used as food throughout history can be seen in native Florida plants that are used extensively in public and private landscapes but were once important sources of plant-based foods for indigenous people. In Florida, Yaupon Holly, *Ilex vomitoria*, was once used to make a caffeinated coffee-like beverage and Coontie Palm, *Zamia pumila*, had its roots ground into a flour by indigenous tribes in Florida (Brown, 1994). Today, those plants are popular selections for drought-tolerant species in low-maintenance native landscape designs (Haehle and Brookwell, 1999).

Clearly, the status of a plant as edible is mutable and dependent on fluctuating cultural norms. As such, the ordinance in Miami Shores which states, “vegetable gardens are permitted in rear yards only,” is reliant on a subjective and variable understanding of the term vegetable. Furthermore, the enforcement of such a code is based on the personal opinion of individual code enforcement officers. This personal bias based on individual experiences is evident in the deposition proceedings of code enforcement officer Anthony Flores who reviewed the Ricketts’ front yard and cited it for non-compliance with the code. In the deposition, he described his understanding of what constitutes a vegetable based on his personal experience growing up

where he states, “Growing up, my mom taught me what’s a vegetable what’s a fruit” (pg. 122, lines 22-24). He goes on to state that what constitutes a vegetable or fruit is based on his “personal opinion” (pg. 125 lines 6-11). Mr. Flores, without any training in horticulture, botany, or landscape design, enforced the arbitrary term ‘vegetable’ using his personal opinion as to what defines a vegetable. Any Village of Miami Shores code enforcement officer going out into the field to determine what is and what is not a “vegetable” growing in a yard is making the decision based in his cultural understanding and personal experiences with food, gardening, and cooking.

SECTION THREE: AESTHETICS OF EDIBLE LANDSCAPES AND PLANTS

3.1 Overall landscape design and front yard aesthetics.

In this section, I discuss aesthetics which is a highly subjective set of values based primarily on visual appearance and individual perception. To start, it is relevant to understand that the present-day American residential garden has historically been dominated by lawn and a mowed lawn has historically been emblematic of a desirable front yard aesthetic. However, public perception of front yard aesthetics has changed as several landscape trends, often driven by environmental concerns, have gained traction in residential gardens over the past two decades. One major shift in the visual appearance of front yards is the drastic reduction of area covered by turfgrass in order to reduce potable water demand. Turfgrass has the highest water demand of any planting type for two reasons: (1) its shallow root system is vulnerable to drought and must be watered regularly and, (2) it must be evenly irrigated with sprinkler heads that lose water to evaporation. As such, the local codes that dictate landscape design in front yards have also changed in response in order to allow for less turf and more diverse garden types. The edible garden is part of this changed aesthetic where a greater diversity of plants are present in the front yard allowing the front yard to be used for a productive purpose instead of being dominated by

turfgrass. Edible gardens use less water than turf because they can be irrigated with efficient drip line systems that deliver water directly to the roots instead of the inefficient sprinkler system required for irrigation of turfgrass. Public perception of greater diversity of planting types has changed as awareness of their environmental benefits has also grown. In response to changed notions of landscape aesthetics related to ecological functioning, researchers have surveyed the American public in an attempt to measure what qualifies as “aesthetically pleasing” in the residential landscape. Their results found that people have a preference for landscapes that look taken care of and landscapes where human intent and maintenance are apparent (Nassauer, 1995). It is my opinion that the Ricketts’ garden was meticulously maintained and cared for as an edible garden. Based on my review of the photos of the property prior to the removal of plants deemed “vegetables”, it is evident that the plants were well taken care of with consistent maintenance. Edible landscapes are aesthetically pleasing simply because human intention and care for the landscape are evident since edible gardens require intentional planning and regular maintenance.

As stated previously, the edible landscape maintained on the Ricketts’ property is a contemporary example of an edible garden that is integrated with non-edible plants. Planted in that way, it becomes difficult to visually distinguish their edible garden from non-edible gardens in the neighborhood. In reviewing the photos of the property when it was full of edible plants and comparing that to the street view photography of the front yard with the “vegetables” removed, I fail to see a major difference between the yard with “vegetables” and without “vegetables”. The only visually apparent change is that the yard without “vegetables” has less plant diversity. I also see no difference aesthetically between the Ricketts’ property and yards on the same street. The

Ricketts' property contains lawn, trees, garden beds, palms, native plants and exotic tropical plants just like other yards in the neighborhood.

Aesthetically, there is no difference between a landscape design that includes trees, shrubs, vines, and annual plants to that of an edible landscape design consisting of fruit and nut trees, berry shrubs, grape vines, and annual edible plants. On the macro level, an edible landscape can be designed following the same principles of non-edible landscapes (Brown et al., 1999). I have designed existing landscapes of lawn and ornamental plants into edible landscapes and I have used edible plants for their ornamental value in landscape design projects. I have also designed edible gardens to blend visually with non-edible neighboring gardens simply by mimicking the form, planting style, and garden bed layout. It is an easy task because there are edible plants that look analogous to non-edibles when comparing their overall form, structure, and growing habits. For example, many annual edible plants have small, colorful flowers that look similar to wildflowers when in bloom, including plants growing on the Ricketts' property in the Asteraceae and Lamiaceae families.

3.2 Edible plant species are not aesthetically distinct from non-edible species

There are many edible plants in Florida that are grown as ornamentals because of their desirable appearance (Hansen, 2013). Examples of edibles used as ornamental plants throughout public and private landscapes in south Florida include Edible Fig trees (*Ficus carica*), Loquats (*Eriobotrya japonica*), Sweet Potato Vine (*Ipomea batatas*), Taro (*Calocasia esculenta*) and Ornamental Pepper (*Capsicum annuum*). Examples of edibles that are also considered common ornamental plants from the Ricketts' property included Globe Amaranth (*Gomphrena globosa*) and Ornamental Cabbage (*Brassica spp.*). Many of the edible plants used in their property have ornamental properties, even if they are not commonly used as ornamentals elsewhere: squash

blossoms of plants in the Curcubit family are very large and brightly colored, all Brassicas have fleshy ornately veined leaves, and the Allium or onion family of plants look very similar to the green shoots of spring flowering bulbs. I list these examples to show that there are many plants that some cultures refer to as vegetables that also have highly ornamental properties and contribute positively to the aesthetics of a home garden.

There is nothing aesthetically unique about edible plants, or those culturally referred to as “vegetables”, compared to the multitude of plants that we, as a society, grow and cultivate for other purposes. In fact, there are many instances of edible plants with closely related, non-edible species that are used for ornamental purposes. One example comparison is edible and non-edible Ginger plants, all of which are classified in the same family, Zingiberaceae. Edible Ginger, (*Zingiber officinale*) has very similar leaves and growth habit to multiple non-edible tropical perennial gingers such as those in the *Alpinia*, *Curcumas*, and *Hedychiums* genera (Broschat and Meerow, 1991). Distinguishing between related edible and non-edible plants is achievable only with robust horticulture experience and botanical knowledge. It is not an easy task for the layperson because related edible plants have an array of varied visual appearances that can make them aesthetically indistinguishable from non-edibles. In the deposition of code enforcement officer Anthony Flores, he confirms that vegetables can be used as ornamental plants (pg 113, lines 4-6). This further supports the idea that edible plants have no intrinsically good or bad aesthetic qualities because many of them look similar to plants used as ornamentals and many species can be used for ornamental purposes. Furthermore, edible plants grown in front yards present no safety or public health threat to the community.

SECTION FOUR. GROWING EDIBLE PLANTS IS A PRIVATE AND PERSONAL CHOICE

As discussed throughout this report, there are no aesthetic differences between edible and non-edible gardens and edible gardens are a sustainable and environmentally responsible way to maintain a private yard. Furthermore, the types of plants grown and maintained in a home landscape is a private and deeply personal choice. South Florida has a favorable climate for growing a wide and diverse array of plants. Some prefer to grow and cultivate roses, or succulents, or shade trees, or rare tropical varieties, while others prefer a landscape of plants they can harvest and eat. I have requests from clients who desire specific plant species planned into their landscape design. In these instances, it is common that the requested species are based in a personal history related to their family memories, like specific types of trees they climbed in childhood or specific flowers tended by their grandparents. What plants someone chooses to grow in their private residential property is a deeply personal decision and my profession as a landscape architect is to honor a client's personal preferences with a landscape design that suits their needs, values, and lifestyle. Clients who want edible landscapes often request special species that are difficult to source as fresh, affordable, organic produce in a traditional grocery store. The Ricketts' property contained many specialty edible plants and growing them at home allowed them to control their personal consumption of plant-based foods.

SECTION FIVE. PROFESSIONAL OPINION REGARDING “VEGETABLE GARDENS” IN FRONT YARDS

In light of the discussion above, it is my professional opinion that a prohibition on vegetable gardens in front yards in the Village of Miami Shores does nothing to preserve aesthetic character. The selective removal of the plants deemed “vegetables” from the Ricketts' yard was a random decision based on the personal opinion of a code enforcement officer and an amorphous cultural context rather than a logical rule that classifies vegetables as distinct from

other plants growing on the property. Edible plants, including those culturally referred to as vegetables, have a varied range of visual appearances and do not have an intrinsically good or bad visual quality. The prevailing attitude about edible landscapes in front yards is that they are a positive addition when they are designed for productivity and support ecological function. It is my opinion that the Village of Miami Shores code is not aligned with the way that people want to use their private property for the production of food. Likewise, the code is not aligned with the Florida-Friendly landscape principles and environmental practices of organic vegetable gardening because it prohibits homeowners from choosing the best location for growing edible plants on their property.

To conclude, growing edible plants or “vegetables” using organic methods in the home landscape is an affordable and environmentally sound practice for personal food consumption and a private use of one’s own property. The term vegetable is arbitrary because it is not precisely defined in botanical terminology. Instead, it is based in an amorphous cultural and culinary context and informed by individual experiences. Residential properties planted with edible plants are not aesthetically degrading nor do they present a threat to a community’s visual character. Therefore, the Village of Miami Shores’ regulation that prohibits vegetables in the front yard is baseless and ineffectual to preserve aesthetic integrity.

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Houston, Texas 77005

FALON MIHALIC, PLA

Curriculum vitae

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EDUCATION

Master of Landscape Architecture, Rhode Island School of Design May 2012. Providence, RI

Thesis: Flooded Dry---Hydrourbanism in Flux. A design proposal for constructed wetlands as biological treatment for the North Miami wastewater treatment plant.

Bachelor of Arts, Natural Sciences, New College of Florida May 2006. Sarasota, FL

Thesis: Investigating the Red Imported Fire Ant, *Solenopsis Invicta* Buren, and the Crazy Ant, *Paratrechina Longicornis* Latrielle, as Potential Predators for Small Hive Beetle Larve, *Aethina Tumida* Murray (Coleoptera Nitidulidae)

RELEVANT PROFESSIONAL EXPERIENCE

Principal, Falon Land Studio LLC

Houston, TX. 2013-Present

Select Projects:

Private Residential Landscape Design. Multiple Cities in Texas, Florida, and Illinois

50 acre Landscape Vision Plan. St. George Island, FL

Ecological Parks and Nature Areas, St. George Plantation Owner's Association, FL

Corporate Courtyard Designs. Multiple Clients. Chicago, IL

Edible Landscape Design. Northern Illinois Food Bank. Geneva, IL

Landscape Architect, Sasaki Associates

Boston, MA. 2012-2013

Select Projects:

Arlington National Cemetery Millenium Expansion Project

New US Embassy Campus- N'Djemana, Chad, Central Africa

New US Embassy Campus- The Hague, The Netherlands

A1A Ft. Lauderdale Streetscape- Ft. Lauderdale, Florida

Landscape Designer, Mikyoung Kim Design

Boston, MA. 2012

Select Projects:

Exhale, Public Art and Plaza, Chapel Hill, North Carolina

Crown Sky Garden, Memorial Children's Hospital, Chicago, Illinois

Pier 4 Plaza, Public Art and Gardens, Boston, Massachusetts

Zoo Miami, Entry Plaza and Public Art, Miami, Florida

Urban Design Consultant, HartnessVision

Cambridge, MA. 2011

Select Projects:

Farm to Table Urban Design Master Plan. Jinnui, China

KACARE Zero Waste Urban Design Master Plan. UAE

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RELEVANT PROFESSIONAL EXPERIENCE, continued

Garden Designer, Marc Mazzarelli Associates

Cambridge, MA. 2010

Select Projects:

Green Roof Design, Back Bay. Boston, MA

Multi-Family Housing Courtyards, LEED certified. Somerville, MA

Ecologist, Greenhouse Manager and Beekeeper

Department of Natural Sciences, New College of Florida

Sarasota, FL 2002-2006

Managed on-campus beehives and greenhouse facilities for student and faculty research projects, lead conservation biology tours for the public in endangered ecosystems at Archbold Biological Station.

Plant Pathologist, University of Florida Institute of Food and Agricultural Science

Agricultural Research Extension Office

Bradenton, FL. 2003

Performed laboratory tests on genetically modified crops for resistance to white-fly transmitted begomo viruses.

PROFESSIONAL REGISTRATION & AFFILIATIONS

Licensed Landscape Architect

State of Florida #6667155, by exam

State of Illinois #157001498, by reciprocity

State of Texas #3082, by reciprocity

Certified Mangrove Trimmer, State of Florida

Member, American Society of Landscape Architects.

Member, Editorial Advisory Committee, Landscape Architecture Magazine

Vice Chair, Board of Directors. BikeHouston

Co-founder, RISD Alumni Association Houston Chapter

HONORS & AWARDS

Emerging Artist Grant, Houston Arts Alliance. 2015

Winning Competition Entry, RE: Projects. Dallas, Texas. 2015

Shortlisted Artist Team, Red Line Art-in-Transit. Baltimore, MD 2014

American Society of Landscape Architects Graduate Honor Award. 2012

The Dan Tuttle Endowed Scholarship Award for Design Excellence, RISD. 2011-2012

Graduate Studies Grant Award for New Work, RISD. 2010 & 2012

Architectural Research Travel Grant, RISD. 2011

Fellowship, Landscape Architecture, RISD. 2009-2012

New College Admissions Committee Scholarship. 2002-2006

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TEACHING EXPERIENCE

Mihalic, Falon A., and Dylan Terry. "Florida Edible Landscape Design." Florida Chapter of the American Society of Landscape Architects Annual Conference. Key Largo, Florida. 25 July 2014. Lecture. Provider #0002709 DBPR Course #0009526

Graduate Teaching Assistant, Rhode Island School of Design, Providence, RI August 2009-May 2012

Landscape History Seminar Teaching Assistant to Eric Kramer.

Workshop instructor: "Visual Research Methods for Landscape Architects" Site, Ecology, Design Studio Teaching Assistant to Scheri Fultineer.

Workshop instructor: "Hybrid Drawing Techniques in Landscape Representation" Constructed Landscape Studio Teaching Assistant to David DeCelis

Advanced Representation, 3D Modeling Teaching Assistant to Andrew Hartness Landscape Planning Seminar Teaching Assistant to Nick Pouder.

Workshop Instructor, "Geographic Information Systems (GIS) for Mapping Landscape Ecology"

Demonstration Garden Graduate Fellowship, Rhode Island School of Design.

Providence, RI July 2010 -May 2012

Designed and managed an on-campus teaching garden. Taught students how to grow edible plants.

PUBLISHED ARTICLES

Time Travel to Miami in 1945. The Field. Ecology and Restoration Roundtable. May 2015. Web

Beautiful Edible Gardens. One Fourteen Texas Lifestyle Magazine. pg. 23. August 2014. Print

Edible Gardening in Florida. Authentic Florida Blog. September 2013 Web

As a SWAT team crawls my street, how do I practice peace? Huffington Post Blog. April 19, 2013 Web

Featured Columnist, Landscape Design. Houzz.com. July 2014- present:

- 10 Top Native Plants for the U.S. Southeast
- 4 Ways Green Roofs Help Manage Stormwater
- 5 Reasons to Consider a Landscape Design-Build Firm for Your Project
- 5 Steps to Selecting the Right Plants for a Rain Garden
- 5 Ways to Get a More Beautiful Concrete Patio
- 7 Ways to Create Quiet in Urban Gardens
- 8 Rot-Resistant Woods for Your Outdoor Projects
- Bring Reclaimed Wood to the Landscape
- Erosion Control for Your Seaside Garden
- Finding the Perfect Home for a New House
- Garden Overhaul: Which Plants Should Stay, Which Should Go?
- Gardening Solutions for Dry, Sandy Soils
- Gardening Solutions for Heavy Clay Soils
- Got a Hot, Humid Landscape? Add Tropical Flair With Air Plants
- Great Design Plant: Calycanthus Floridus
- Great Design Plant: Cephalanthus Occidentalis

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PUBLISHED ARTICLES, continued

- Great Design Plant: Chasmanthium Latifolium
- Great Design Plant: Chionanthus Virginicus
- Great Design Plant: Cornus Florida Benefits Wildlife
- Great Design Plant: Crinum Americanum
- Great Design Plant: Gelsemium Sempervirens
- Great Design Plant: Hibiscus Moscheutos
- Great Design Plant: Millettia Reticulata
- Great Design Plant: Nourish Wildlife With American Beautyberry
- Great Design Plant: Rhododendron Canescens
- Great Design Plant: Serenoa Repens
- Great Design Plant: Southern Live Oak Offers an Unbeatable Canopy
- Great Design Plant: Southern Magnolia, Iconic U.S. Native
- Have Acidic Soil in Your Yard? Learn to Love Gardening Anyway
- How Grading Shapes the Ground and Manages Stormwater
- How to Design a Beautiful Shade Garden
- How to Design a Rain Garden That Loves Stormy Weather
- How to Design and Plant in Dry, Sunny Spots
- How to Find and Hire a Great Landscape Contractor
- How to Hire a Landscape Architect
- How to Move Water Through Your Landscape
- How to Screen a Seaside Garden From the Wind
- How to Shape a Rain Garden and Create the Right Soil for It
- How to Site and Size a Rain Garden for Your Landscape
- How to Switch to an Organic Landscape Plan
- How to Use Local Stone in Your Landscape Design
- Humble Corrugated Metal Brings Modern Style to the Garden
- Is a Rainwater Cistern Right for You?
- Landscape Paving 101: Cast-in-Place Concrete
- Landscape Paving 101: How to Use Bluestone in Your Garden
- Landscape Paving 101: How to Use Brick for Your Path or Patio
- Landscape Paving 101: How to Use Limestone for Your Patio
- Landscape Paving 101: Slate Adds Color to the Garden
- Landscape Paving 101: Some Reasons to Go for Granite
- Landscape Paving 101: Tiles Bring Bold Color and Pattern
- Landscape Paving 101: Travertine Keeps Its Cool in Warm Climates
- Learn Your Garden's Microclimates for a Resilient Landscape

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PUBLISHED ARTICLES, continued

- Living on the Edge of the Wild
- Natural Swimming Pools: More Beauty, No Chemicals
- Precast Concrete Pavers Make a Versatile Surface in the Garden
- Reclaimed Brick Brings History and Charm to the Garden
- Should You Use Composite Timber in Your Landscape?
- Soak It Up: How to Manage Stormwater in Your Landscape
- Stormwater Planters Manage Runoff in Small Gardens
- The Simple Secret to Gardening Success
- To Manage Stormwater Sustainably, Understand Your Site
- Understand Your Site Plan for a Better Landscape Design
- What a Landscape Architect Wants You to Know About What They Do
- What to Know About Concept Design to Get the Landscape You Want
- What to Know About Landscape Design Service Agreements
- What to Know About the Landscape Design Process
- Wildlife-Sensitive Ways to Light a Coastal Landscape
- Your Guide to 10 Popular Landscape Paving Materials

EXHIBIT D

AFFIDAVIT OF REBEKAH RAMIREZ

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE CARROLL, a married
couple,

CASE NO.: 13-36012-CA
CIVIL DIVISION: 01

Plaintiffs,

v.

MIAMI SHORES VILLAGE, FLORIDA and
MIAMI SHORES CODE ENFORCEMENT
BOARD,

Defendants.

**AFFIDAVIT OF REBEKAH RAMIREZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Rebekah Ramirez, swear under penalty of perjury that the following is true:

1. My name is Rebekah Ramirez. I am a citizen of the United States, a resident of Miami, Florida, and am over the age of 18 years. I make this Affidavit in support of Plaintiffs' Motion for Preliminary Injunction. I am fully competent to make this Affidavit, which I make based on my personal knowledge.

2. I am a paralegal with the Institute for Justice in Miami, Florida, which represents Plaintiffs Laurence "Tom" Carroll and Hermine Ricketts in the above-captioned matter.

3. On August 13, 2013, I attempted to locate the Minutes from the July and August Code Enforcement Board Meetings on the village website, but soon realized that the Minutes had not been updated since May of 2013. I then contacted the Board's Administrative Assistant, Karen Banda, to request assistance obtaining the Minutes and/or audio recordings from those meetings. Unsure as to how locate the Minutes and/or audio from the July and August meetings, Ms. Banda referred me to the Village Clerk for further assistance.

4. On August 13, 2013, I contacted the Village Clerk, Barbara Estep, to request the Minutes and audio from the July and August Code Enforcement Meetings. Ms. Estep informed me that she would make the requested audio recordings the next morning and look into why the Minutes for those meetings had not yet been posted online.

5. On the morning of August 14, 2013, Ms. Estep emailed me to let me know that the audio CDs were ready to be picked up at the Village Hall, for a total charge of \$10.00. Shortly thereafter I drove to Village Hall and retrieved two CDs containing the audio recordings from the Code Enforcement Board Meetings of July 11, 2013 and August 1, 2013.

6. On August 14, 2013, I transcribed the audio recordings from the July 11, 2013 Code Enforcement Meeting, wherein Hermine and Tom's alleged front-yard vegetable garden violations were addressed.

7. At 15:58 of the audio recording of the Code Enforcement Board meeting of July 11, 2013, in an effort to obtain clarification on the village's ordinance, Mr. Carroll expressed to the Board that "We're seeking guidance and assistance." Village of Miami Shores Code Enforcement Board Meeting at 15:58 (No. 5-13-11331) (July 11, 2013) (CD-ROM of audio on file with author).

8. Near the conclusion of this meeting, Mr. Carroll and Ms. Ricketts were instructed to provide an itemized list of all previous and current items growing in their front yard for the Board to consider. Village of Miami Shores Code Enforcement Board Meeting at 29:39 (No. 5-13-11331) (July 11, 2013) (CD-ROM of audio on file with author).

9. At 34:33 of the audio recording of the Code Enforcement Board meeting of July 11, 2013, after a lengthy and inconclusive discussion, an unknown officer said of the case: "Well it should be tabled Everybody beat up this vegetable thing. These vegetables are low vegetables. They don't have okra growing in their front yard. They don't have corn growing in

their front yard, where they get eight foot stalks. . . . They're green, they accent the house. . . . Pineapples are—bromeliads. That's a[n] ornamental plant that you absolutely eat too, don't you? . . . You guys go ahead and blabber on about these plants." Village of Miami Shores Code Enforcement Board Meeting at 34:33 (No. 5-13-11331) (July 11, 2013) (CD-ROM of audio on file with author).

10. On August 14, 2013 I transcribed the audio recordings from the August 1, 2013 Code Enforcement Meetings.

11. At 14:39 of the audio recording of the Code Enforcement Board meeting of August 1, 2013, Chairman Vickers focused much of his questioning on the edibility of the items in the garden: "Do you have vegetables being grown in your front yard? . . . Are you cultivating these vegetables? Are they growing wild, or did you plant them and you're growing and caring and pulling the weeds and making sure they grow so they're edible?" Village of Miami Shores Code Enforcement Board Meeting at 14:39–14:55 (No. 5-13-11331) (Aug. 1, 2013) (CD-ROM of audio on file with author).

12. At the conclusion of the hearing of August 1, 2013, the Board ultimately found Ms. Ricketts and Mr. Carroll in violation of the town's ban on front-yard vegetable gardens. Village of Miami Shores Code Enforcement Board Meeting at 22:00–23:10 (No. 5-13-11331) (Aug. 1, 2013) (CD-ROM of audio on file with author).

13. These transcriptions are a true and correct reflection of my understanding of the audio recordings.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to (or affirmed) and subscribed before me this 12 day of April, 2016.

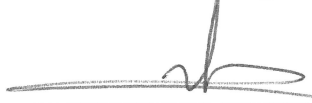

Rebekah Ramirez

State of Florida
County of Dade

Rebekah Ramirez personally appeared before me and took an oath that the above is true and correct

 Personally Known
 / Produced Identification

Type and # of ID FL DL R562-737-80-0


(Signature of Notary)

Michel Nicolas
(Name of Notary Typed, Stamped, or Printed)

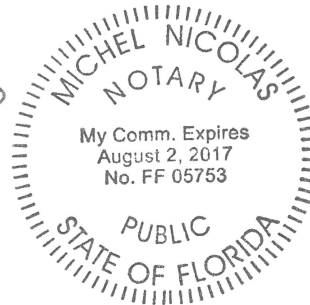


EXHIBIT E

**TRANSCRIPT OF AUGUST 27, 2015
DEPOSITION OF ANTHONY FLORES**

Page 1		Page 3	
1	IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL	1	I N D E X
2	CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA	2	Examinations
3	CIVIL DIVISION	3	DIRECT EXAMINATION
4	CASE NO. 13-36012-CA	4	BY MR. BARGIL
5	HERMINE RICKETTS and LAURENCE	4	CROSS-EXAMINATION
6	CARROLL, a married couple,	199	BY MR. SARAFAN
7	Plaintiffs,	201	REDIRECT EXAMINATION
8	vs.	6	BY MR. BARGIL
9	MIAMI SHORES VILLAGE, FLORIDA	7	E X H I B I T S
10	and MIAMI SHORES CODE	8	No. Description
11	ENFORCEMENT BOARD,	8	1 Code of Ordinance
12	Defendants.	9	2 Courtesy notice
13	_____ /	9	3 Notice of violation
14		10	4 Letter to Anthony Flores
15		10	5 E-mail to Ms Ricketts
16	DEPOSITION OF ANTHONY FLORES	11	6 Miami Shores Village website
17		11	7 Miami Shores Village website
18	THURSDAY, AUGUST 27, 2015	12	8 Miami Shores Village website
19	10:11 a.m. - 3:26 p.m.	12	9 Miami Shores Village website
20	999 BRICKELL AVENUE, SUITE 720	13	10 Florida Department of Environmental Protection
21	MIAMI, FLORIDA	13	website
22	- - -	14	11 "Vegetable Gardening" "Low-Maintenance
23		14	Landscape Plants for South Florida"
24	Reported By:	15	12 "Low-Maintenance Landscape Plants for South
25	Katiana Louis	15	Florida"
	Notary Public, State of Florida	16	13 "Minigardening"
	Miami Office #J0139196	16	14 "Edible Landscaping"
		17	15 "Florida Vegetable Gardening Guide"
		17	16 "Home Vegetable Garden Techniques"
		18	17 "Leek"
		18	18 "Kale"
		19	19 "Ginger"
		19	20 "Dandelion"
		20	21 "Chrysanthemum"
		20	22 "Swiss Chard"
		21	23 The Florida Yards & Neighborhoods Handbook
		22	
		23	
		24	
		25	
Page 2		Page 4	
1	APPEARANCES:	1	Thereupon:
2	On behalf of the Plaintiffs:	2	ANTHONY FLORES
3	ARI BARGIL, ESQUIRE	3	was called as a witness and, having been first
4	MICHAEL BINDAS, ESQUIRE	4	duly sworn and responding, "I do," was examined
5	ALLISON DAVIDSON, ESQUIRE	5	and testified as follows:
6	INSTITUTE FOR JUSTICE	6	DIRECT EXAMINATION
7	999 Brickell Avenue, Suite 720	7	BY MR. BARGIL:
8	Miami, Florida 3313	8	Q. Mr. Flores, good morning.
9		9	A. Good morning.
10	On behalf of the Defendants:	10	Q. Will you please state your name for the
11	RICHARD SARAFAN, ESQUIRE	11	record, your full name.
12	GENOVESE, JOBLove & BATTISTA, P.A.	12	A. Anthony Flores.
13	100 Southeast Second Street, Suite 4400	13	Q. What's your middle name?
14	Miami, Florida 33131	14	A. I don't have one.
15		15	Q. What is your date of birth?
16		16	A. March 9, 1972.
17		17	Q. Have you ever been deposed before?
18		18	A. No.
19		19	Q. We'll go over a couple of ground rules
20		20	since this is your first time.
21		21	First, if you need a break at any time,
22		22	say so and we'll take a break. It's important
23		23	that the court reporter get everything down, that
24		24	means you have to verbalize all of your answers
25		25	no huh-uh or uh-huh, or shakes of the head. You

<p style="text-align: right;">Page 5</p> <p>1 have to say yes or no or whatever. You have to 2 articulate your answers. For the same reason, we 3 can't interrupt each other. Please let me finish 4 my question, and I will let you finish your 5 entire answer so the court reporter can get it 6 all down. 7 If you don't understand any of my 8 questions, tell me I don't understand, or can you 9 please ask that in a different way or re-ask it, 10 and I will do that. 11 Do you have any questions? 12 A. No. 13 Q. Are you under the influence of any 14 substances that may influence your thinking? 15 A. No. 16 MR. SARAFAN: Do you have a 17 non-binding estimate of approximately 18 how long you expect to be today? 19 MR. BARGIL: No. It depends on a 20 lot of factors. No longer than 21 necessary. 22 BY MR. BARGIL: 23 Q. Did you get your \$5.60? 24 A. Not yet. 25 Q. Did you speak with anybody about this</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Do you remember any of your course work? 2 A. No. 3 Q. Did you take any science classes? 4 A. No. 5 Q. Any biology? 6 A. No. 7 Q. Any horticulture? 8 A. No. 9 Q. And then you said Saint Leo, was that 10 immediately after? 11 A. No, that was before. 12 Q. So why don't we go in order. 13 Did you go to college or do your some 14 college, as you put it, immediately after high 15 school? 16 A. No. 17 Q. What did you do between that time? 18 A. I worked. 19 Q. Where did you work? 20 A. For Marshalls department store, loss 21 prevention. 22 Q. What does that job entail? 23 A. Watching people shoplift or trying to 24 catch people shoplift. 25 Q. And that was your only job before you</p>
<p style="text-align: right;">Page 6</p> <p>1 deposition in advance? 2 A. Yes. 3 Q. Who did you speak with? 4 A. Mr. Sarafan. 5 Q. Anyone else? 6 A. Nina Green. 7 Q. What is your educational background? 8 A. Graduated high school and I have some 9 college. 10 Q. Where did you go to high school? 11 A. North Miami Senior. 12 Q. And you completed that with a diploma? 13 A. Yes. 14 Q. And when you say some college, where did 15 you go? 16 A. I went to Valencia Community College for 17 a short time, Saint Leo University for a little 18 bit and Broward College for a little bit. 19 Q. And Valencia Community College is in 20 Orlando? 21 A. Yes. 22 Q. How long were you there for? 23 A. Not long. Six months. 24 Q. What did you study there? 25 A. General studies.</p>	<p style="text-align: right;">Page 8</p> <p>1 went to Saint Leo? 2 A. No, I was in the Marine Corps. 3 Q. And that was after high school, after 4 Marshalls? 5 A. Yes. 6 Q. How long were you in the Marines for? 7 A. Four and a half years. 8 Q. And I guess you elected not to go 9 career? 10 A. Correct. 11 Q. And you returned back to Miami? 12 A. For a short time, yes. 13 Q. After you returned from the Marines, 14 where did you go? 15 A. I came home to Miami. 16 Q. And took a job at Marshalls? 17 A. No. 18 Q. What did you do after? 19 A. I worked for a staffing company called 20 Labor Ready. 21 Q. What else? 22 A. And then I transferred to Orlando with 23 the same company. 24 Q. And then you enrolled in college? 25 A. Well, while I was in the Marine Corps, I</p>

<p style="text-align: right;">Page 9</p> <p>1 went to Saint Leo University.</p> <p>2 Q. How long were you at Saint Leo for?</p> <p>3 A. About a year.</p> <p>4 Q. What did you study there?</p> <p>5 A. General studies again, math, English.</p> <p>6 Q. Any science?</p> <p>7 A. No.</p> <p>8 Q. Any biology?</p> <p>9 A. No.</p> <p>10 Q. Horticulture?</p> <p>11 A. No.</p> <p>12 Q. Design?</p> <p>13 A. No.</p> <p>14 Q. Landscaping?</p> <p>15 A. No.</p> <p>16 Q. Architecture?</p> <p>17 A. No.</p> <p>18 Q. Can we go back. After high school it</p> <p>19 was Marshalls?</p> <p>20 A. Yes.</p> <p>21 Q. And then the Marines?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And Saint Leo?</p> <p>24 A. Yes.</p> <p>25 Q. Saint Leo was where?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. For Labor Ready, the same staffing</p> <p>2 company.</p> <p>3 Q. And you did about six months at</p> <p>4 Valencia?</p> <p>5 A. Yes.</p> <p>6 Q. Anything between Labor Ready and</p> <p>7 Valencia?</p> <p>8 A. I don't understand.</p> <p>9 Q. Were you working and going to school at</p> <p>10 the same time?</p> <p>11 A. Working and going to school, yes.</p> <p>12 Q. So when did you -- strike that.</p> <p>13 You elected to leave Valencia?</p> <p>14 A. Yes.</p> <p>15 Q. And quit your job at the same time?</p> <p>16 A. No.</p> <p>17 Q. So you stopped going to school?</p> <p>18 A. Yes.</p> <p>19 Q. But you continued working?</p> <p>20 A. Yes.</p> <p>21 Q. How long did you do that for?</p> <p>22 A. I was there maybe two or three years.</p> <p>23 Q. Working for the same company?</p> <p>24 A. Yes.</p> <p>25 Q. And what year did you leave Orlando?</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Norfolk, Virginia. I don't know where</p> <p>2 their main campus is, but it was a satellite</p> <p>3 office on base.</p> <p>4 Q. Where were you stationed?</p> <p>5 A. Camp Le Jeune for about a year, and</p> <p>6 Norfolk, Virginia, for about two years and a</p> <p>7 half.</p> <p>8 Q. What brought you back to Orlando?</p> <p>9 A. I had a buddy of mine in the Marine</p> <p>10 Corps who also got out. He had an apartment. He</p> <p>11 needed help with the rent. I wanted to get out</p> <p>12 of my parents' place so we got a bachelor pad</p> <p>13 basically.</p> <p>14 Q. So you moved -- so between Saint Leo and</p> <p>15 before you were at Valencia, you were back in</p> <p>16 Miami?</p> <p>17 A. Right.</p> <p>18 Q. Living with your folks?</p> <p>19 A. Yes.</p> <p>20 Q. And then you moved up to Orlando; right?</p> <p>21 A. Yes.</p> <p>22 Q. And did you immediately enroll in school</p> <p>23 or did you start working there?</p> <p>24 A. I worked for a while.</p> <p>25 Q. Where did you work?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. May of 2002.</p> <p>2 Q. Where did you go from there?</p> <p>3 A. From there I came back home with my</p> <p>4 parents and my fiancée and looked for work,</p> <p>5 basically.</p> <p>6 Q. And where did you subsequently find</p> <p>7 work?</p> <p>8 A. In Miami Shores.</p> <p>9 Q. And you were hired in the same capacity</p> <p>10 you work as now?</p> <p>11 A. No, I was just a regular code</p> <p>12 enforcement officer.</p> <p>13 Q. So you were initially hired around 2002</p> <p>14 as a code enforcement officer?</p> <p>15 A. August of 2002, yes.</p> <p>16 Q. And you've been employed by the City of</p> <p>17 Miami Shores ever since?</p> <p>18 A. Yes.</p> <p>19 Q. Employed anywhere else during that time?</p> <p>20 A. I had a part-time job at Best Buy.</p> <p>21 Q. When was that?</p> <p>22 A. Four years ago, five years ago.</p> <p>23 Q. And you started -- what was your job</p> <p>24 title when you started with the City?</p> <p>25 A. I was a code enforcement officer.</p>

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1 Q. And how long did you have that title
2 for?
3 A. About three, four years.
4 Q. And were you promoted?
5 A. I was.
6 Q. To what title?
7 A. Code enforcement supervisor.
8 Q. And that is your current title today?
9 A. Yes.
10 Q. How long have you had that title?
11 A. About eight years.
12 Q. Going back to your first hiring by the
13 City of Miami Shores, was there any sort of
14 introductory education that you had to go
15 through?
16 A. There was on-the-job training by my
17 supervisor, yes.
18 Q. Who was your supervisor?
19 A. Richard Trumble.
20 Q. Is he still employed with the City?
21 A. No. He retired.
22 Q. And he was the code enforcement
23 supervisor at the time you were just a code
24 enforcement officer?
25 A. Yes.

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1 Q. And what did that training entail?
2 A. How to perform my duties as a code
3 enforcement officer, how to write out the forms,
4 how to present a case at the code board, how to
5 react with the public.
6 Q. Did you ride along with him?
7 A. Yes.
8 Q. Did you ever work separately --
9 MR. SARAFAN: Object to the form.
10 You mean during the training?
11 BY MR. BARGIL:
12 Q. -- during the training and really any
13 period thereafter?
14 A. Yes, I worked independently, yes.
15 Q. Did it start out initially with you two
16 riding together?
17 A. Yes.
18 Q. And then thereafter you were working
19 independently?
20 A. Yes.
21 Q. How long did you ride along with him,
22 work in tandem?
23 A. About three or four months.
24 Q. And what sort of education did you
25 receive from him in terms of what to look for to

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1 determine whether there is a code violation?
2 A. There is a multitude of things. Can you
3 be more specific?
4 Q. Did you have to learn the code?
5 A. Yes.
6 Q. What were you given to learn the code?
7 A. The code enforcement book. I was given
8 at the time a summary of what each code was, and
9 during training, what to look for and those
10 specific ordinances.
11 Q. Did you get any specific instruction on
12 landscaping?
13 A. No.
14 (A brief break was had.)
15 MR. BARGIL: Alli is a fellow
16 attorney here who called in.
17 Alli, will you state your name for
18 the record.
19 THE REPORTER: Allison Daniels.
20 MR. SARAFAN: This is the first
21 that we've been aware that there was
22 somebody on the phone. I just want to
23 put that on the record. Nobody
24 announced --
25 MR. BARGIL: My apologies. That

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1 was a miscommunication.
2 BY MR. BARGIL:
3 Q. Did you receive any specific instruction
4 about plant varieties?
5 A. No.
6 Q. Any instruction regarding greenery in
7 front yards?
8 A. It had to look harmonious. It had to
9 look nice. It had to be in keeping with the rest
10 of the community.
11 Q. Is that written in the code that the
12 gardens must be harmonious and nice?
13 A. Not specifically, but they have to have
14 -- there has to be certain ground covers. It has
15 to be sod, grass or living ground cover.
16 Q. So when you go around and you are
17 looking at properties throughout the city, are
18 you looking more for greenery that's harmonious,
19 or are you looking for specific items to make
20 sure that they comply?
21 MR. SARAFAN: Object to the form of
22 the question; no predicate.
23 You can answer.
24 THE WITNESS: Yes, I mean, it
25 doesn't state that it says harmonious in

<p>Page 17</p> <p>1 the code, but that's what we look for, 2 that everything flows and looks nice, 3 nice and green. 4 BY MR. BARGIL: 5 Q. Going back to your on-the-job training, 6 did you receive any specific instruction with 7 regard to any specific code provisions? 8 A. I don't understand the question. 9 Q. What was your code enforcement 10 supervisor's name? 11 A. Mr. Trumble. 12 Q. Did Mr. Trumble ever show you this is a 13 violation of specific code whatever? 14 A. I'm not sure. Probably, but I'm not 15 sure exactly. It was a while ago. 16 Q. Did he ever provide you any specific 17 instruction with regards to vegetable gardens? 18 A. No. 19 Q. Have you ever received any specific 20 instruction with respect to vegetable gardens 21 from anyone else? 22 MR. SARAFAN: Object to the form. 23 THE WITNESS: Only that they are 24 permitted in the rear yard. 25 BY MR. BARGIL:</p>	<p>Page 19</p> <p>1 A. He works for the city council, the 2 mayor. 3 Q. Do you have people underneath you? 4 A. Yes. 5 Q. Who are they? 6 A. I have one other code enforcement 7 officer, Mike Orta and I have an administrative 8 assistant. 9 Q. What is your administrative assistant's 10 name? 11 A. Mariana Gracia. 12 Q. With respect to Mike Orta, do you work 13 together? 14 MR. SARAFAN: Object to the form. 15 MR. BARGIL: I will be more 16 specific. 17 BY MR. BARGIL: 18 Q. Do you go out on the job site with one 19 another? 20 A. Not particularly, unless it's an 21 exceptional circumstance. 22 Q. Do you each operate independently of one 23 another? 24 A. Yes. 25 Q. Do you overlap in territory?</p>
<p>Page 18</p> <p>1 Q. And who instructed you of that? 2 A. As I was getting the tutorial, I guess, 3 we went through the section of landscaping, and 4 it said in the ordinance that vegetable gardens 5 are permitted in the rear. 6 Q. And that was with Mr. Trumble? 7 A. Yes. 8 Q. What else did he tell you about that? 9 A. Not much. 10 Q. Did you guys discuss whether people in 11 Miami Shores grow vegetables in their rear yards? 12 A. No. 13 Q. Did you guys discuss whether people in 14 Miami Shores grow vegetables in their side yards? 15 A. No. 16 Q. Did you guys discuss whether people grow 17 vegetables in their front yards? 18 A. We discussed they were only allowed in 19 the rear yard. 20 Q. But there was no other discussion about 21 where people in Miami Shores might grow them? 22 A. No. 23 Q. Who is your current supervisor? 24 A. The Village manager, Tom Benton. 25 Q. Who is his supervisor?</p>	<p>Page 20</p> <p>1 A. No. 2 Q. So you each have different sections that 3 you go to? 4 A. Yes. 5 Q. Do those sections change? 6 A. No. 7 Q. When were those sections divided? 8 A. Many years before I arrived at Miami 9 Shores. 10 Q. And so they have been the same for at 11 least 11 years? 12 A. At least 13 years. 13 Q. Now when Mike Orta came on board, did he 14 have a similar on-the-job training experience 15 that you had? 16 A. Yes. 17 Q. And you did ride together for a short 18 period of time? 19 A. Yes. 20 Q. And you went all over the city? 21 A. Yes. 22 Q. And did you provide him with any 23 specific instruction regarding any specific 24 provisions of the code? 25 A. Like same training, we went over the</p>

<p style="text-align: right;">Page 21</p> <p>1 code briefly with the same kind of training that 2 I got, summary of the codes and we went out and I 3 instructed him as to what to look for. 4 Q. And when you say you instructed him as 5 to what to look for, can you be a little bit more 6 specific. 7 A. For example, whether or not a roof was 8 dirty or not, examples of a clean roof and a 9 dirty roof. 10 Q. And a dirty roof being against the code? 11 A. Yes. 12 Q. And worthy of a citation? 13 A. Worthy of a business card or courtesy 14 notice. 15 Q. And in the course of your training of 16 Mr. Orta it was also learning how to fill out the 17 forms properly? 18 A. Correct. 19 Q. And how to deal with the public? 20 A. Correct. 21 Q. And how to present cases at the 22 administrative hearings? 23 A. Yes. 24 Q. So it's mostly an administrative 25 education?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. And that's what essentially divides the 2 north and south part of the city? 3 A. Yes. 4 Q. Is there any other dividing lines? 5 MR. SARAFAN: Object to the form. 6 For what purpose? 7 THE WITNESS: No. 8 BY MR. BARGIL: 9 Q. Is there anyone else who does code 10 enforcement for the city? 11 A. No. 12 Q. So if any property gets cited in Miami 13 Shores, it's either you or Mr. Orta who is 14 filling out the citation? 15 A. Yes. 16 Q. How do you spend your time within your 17 region in the city? 18 A. Can you be more specific. 19 Q. Do you patrol around? Do you visit 20 specific properties? Give me a sense. And you 21 can speak just freely about your typical day. 22 MR. SARAFAN: Object to the speak 23 freely. 24 Do you understand the question he 25 is asking?</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Pretty much. 2 Q. Did Mike Orta ever receive any training 3 regarding specific plants or vegetation? 4 A. No. 5 Q. Did he receive any particular 6 instruction as to the various ground cover and 7 the greenery that grows in Miami Shores? 8 MR. SARAFAN: Object to the form. 9 You can answer. 10 THE WITNESS: Only that there 11 though be ground cover, sod or grass. 12 BY MR. BARGIL: 13 Q. What is the section -- what are the 14 sections that the city is divided into for 15 purposes of code enforcement between you and 16 Mr. Orta? 17 A. Can you be a little more specific. 18 Q. So you and he don't operate in the same 19 areas within the city; correct? 20 A. Right. 21 Q. What is your area? 22 A. It's basically split north and south. 23 Q. What are the streets? 24 A. It would 96th Street, Northeast Second 25 Avenue and 103rd.</p>	<p style="text-align: right;">Page 24</p> <p>1 BY MR. BARGIL: 2 Q. Can you give me a sense of your typical 3 day. 4 A. In the mornings I come in, I check 5 e-mails. I talk with the other code enforcement 6 officer, Mike Orta, regarding cases. I talk to 7 Mariana about phone calls I've gotten, complaints 8 that have come in overnight. I do some 9 paperwork, payroll, what not. About an hour or 10 two of that, I go out and I patrol. I take 11 whatever inspections are due that day and I 12 inspect those properties, and I look until about 13 1:00. I look for other violations or -- if 14 people have questions, people stop me on the 15 street. 16 From 1:00 to 2:00, I have lunch. 17 From 2:00 to 4:00, I do the same thing, 18 go out patrol, look for violations. I will 19 answer the phone calls I had during lunch or 20 while I was out on patrol in the morning. 21 And then I come back at 4:00 or 5:00, 22 fill out the paperwork, put in the inspections I 23 saw. 24 Q. When you say you patrol, are you doing 25 this in a vehicle or on foot?</p>

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<p>1 A. In a vehicle. 2 Q. City vehicle? 3 A. Yes. 4 Q. Do you have a personal vehicle as well? 5 A. Not for the purposes of work. 6 Q. Do you drive your personal vehicle to 7 whatever office you operate out of? 8 A. Yes. 9 Q. And from there you take your city 10 vehicle and you ride around? 11 A. Yes. 12 Q. Are you able to patrol your entire 13 section in the course of a day? 14 A. Yes, pretty much. 15 Q. So for the most part you are able to see 16 every home in the city in one working day? 17 MR. SARAFAN: Object to the form. 18 THE WITNESS: I patrol the area. I 19 don't know if I specifically look at 20 every house every day. 21 BY MR. BARGIL: 22 Q. Do you inspect just residences? 23 A. There is some commercial. 24 Q. When you say some, what do you mean? 25 A. We don't have a really big commercial</p>	<p>1 THE WITNESS: Make sure the 2 buildings, the houses, they all look 3 good. That they are clean, that there 4 is no peeling, chipping paint, no 5 deteriorated lawns, dead grass. 6 If there is construction work going 7 on, I just make sure that the 8 construction -- the companies have their 9 permits. If there is work going on 10 without permits, I'll tell them to get 11 the permits, things like that. 12 BY MR. BARGIL: 13 Q. In the course of your day-to-day, do you 14 ever interact with the city manager? 15 A. Yes. 16 Q. Does he ever give you instructions with 17 respect to specific properties, check this place 18 out, check this place out? 19 A. No, unless he got a complaint through 20 his department. 21 Q. Do you get briefings from him? 22 A. No. We have a staff meeting once a 23 month, twice a month after the council meeting. 24 Q. Who is in the staff meeting? 25 A. All the department heads.</p>
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<p>1 area, so there are parts of Northeast Second 2 Avenue that are commercial and I do inspect 3 those. 4 Q. So to the extent that there are 5 commercial properties in your inspection, you do 6 inspect those? 7 A. Yes. 8 Q. Condo buildings or apartment buildings? 9 A. Yes, we have some of those. 10 Q. And you look at those as well? 11 A. Yes. 12 Q. So any property, it's not just limited 13 to single property homes? 14 A. Correct. 15 Q. What aspects of the city code are you 16 tasked with enforcing? 17 A. All the codes. 18 Q. Building codes? 19 A. No. You said city codes. We have the 20 city codes, the Code of Ordinance. Florida 21 Building Code is the code for the state, so I'm 22 not asked to look at those specific details. 23 Q. What are you looking for generally 24 speaking when you are out patrolling? 25 MR. SARAFAN: Object to the form.</p>	<p>1 Q. Who are they? 2 MR. SARAFAN: You want him to 3 recite the department head in the 4 village? 5 MR. BARGIL: What are there, like a 6 dozen or so departments? 7 THE WITNESS: Jerry Estep, 8 recreation department. 9 Scott Davis, public works 10 department. 11 Ismael Naranjo, the building 12 department. 13 Holly Hugdahl, finance department. 14 We have Barbara Estep; she's the 15 village clerk. 16 We have Michelle -- and I don't 17 know her last name, but she's the 18 library director. 19 We have Elizabeth Keeley, who is 20 our communication liaison and HR person. 21 We have the police chief, Kevin 22 Lifestat. 23 And we have our IT department, 24 Steve and I don't know his last name. 25 BY MR. BARGIL:</p>

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1 Q. And do you all give a basic briefing of
2 what's been going on in your department?
3 MR. SARAFAN: You mean at the staff
4 meetings?
5 MR. BARGIL: Yes.
6 THE WITNESS: If there is anything
7 that involves other departments, yes.
8 BY MR. BARGIL:
9 Q. Do you receive instructions at those
10 meetings?
11 A. Again, we do receive instructions as to
12 what came down from the council, if there is any
13 news that's changing, things like that.
14 Q. Is Mike Orta in these meetings?
15 A. No.
16 Q. Do you take some of the instructions if
17 you receive them to Mike?
18 A. Yes, I do.
19 Q. How frequently do you meet with
20 Mr. Orta?
21 A. Once a week.
22 Q. At the beginning of every week?
23 A. In regards to the staff meeting and then
24 I will have a meeting with my general staff.
25 Q. And who is in those meetings?

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1 A. Mike Orta and Mariana Gracia.
2 Q. And you do that once a week?
3 A. Well, once or twice a week, it depends
4 when we have a council meeting.
5 Q. Is your discussion in those meetings
6 limited to whatever was discussed in the council
7 meetings?
8 A. To whatever is pertinent to my
9 department and the employees as a whole.
10 Q. Do you ever give any specific
11 instruction directed at any specific properties?
12 A. Again, if the village manager has got a
13 complaint about a specific property, if it's in
14 Mike's area, then yes, I will have Mike go to
15 investigate it.
16 Q. What is the process for citing a
17 property? How do you go about doing that? You
18 have identified a property as potentially not in
19 compliance. What steps do you take from that
20 point?
21 MR. SARAFAN: Object to form.
22 THE WITNESS: It depends. If there
23 is a complaint called in or -- if there
24 is a complaint called in, we immediately
25 go to that property to look at that

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1 specific complaint. If we find that
2 there is a violation or somebody is not
3 doing something right per the code, then
4 we'll knock on the door, speak with
5 them. If they are not home, I will
6 leave my business card. If it's a
7 little bit more involved -- if it's
8 maybe problematic for the neighbors,
9 then I will leave a courtesy notice.
10 BY MR. BARGIL:
11 Q. What is a courtesy notice?
12 A. A courtesy notice is basically saying we
13 have found that there may be a problem with your
14 property. And there are bullet points there and
15 we write down what those points might be.
16 Q. Do you give them a deadline to fix it?
17 A. Generally, yes.
18 Q. When is that deadline?
19 A. Depending on what the type of problem it
20 may be. It may be five days if they just need to
21 move something out of the way; 10 days if they
22 need to cut their lawn; maybe 30 days if they
23 need to clean their roof or obtain a permit.
24 Q. So if the repair is a little bit more
25 extensive, you give them more time?

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1 A. Yes.
2 Q. And then you file that courtesy notice
3 with the city?
4 A. Yes.
5 Q. And what happens after that?
6 A. Mariana puts it into the system and then
7 schedules the inspection for the deadline that
8 was written on the courtesy notice.
9 Q. So you'll come in to work one day, and
10 she will provide you with the list of properties
11 that are --
12 A. No, I generally will print them out
13 myself.
14 MR. SARAFAN: Let him finish the
15 question.
16 BY MR. BARGIL:
17 Q. So you print out yourself the list of
18 properties that are due for inspection that day?
19 A. Yes.
20 Q. And say you go out to a property, and
21 upon inspection you find that what was not in
22 compliance, is still not in compliance, what
23 happens next?
24 A. I will take the inspection back, it's a
25 form that I can write on basically, and I'll put

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1 it into the system that it failed and I will
2 generate a notice of violation.
3 Q. So you don't write the notice of
4 violation on the spot?
5 A. No.
6 Q. So you go to the office and then
7 generate the notice of violation?
8 A. Yes.
9 Q. So you bring it back to the property?
10 A. No.
11 Q. What do you do then?
12 A. We mail it certified mail.
13 Q. What does the notice of violation say?
14 MR. SARAFAN: Object to the form.
15 You can answer.
16 THE WITNESS: Basically that there
17 is a violation on your property, that we
18 need to fix such-and-such problem. If
19 you feel there isn't a problem, it's
20 scheduled for the code enforcement
21 board, basically. You can have your day
22 in court, basically.
23 BY MR. BARGIL:
24 Q. Is there a deadline for compliance?
25 A. Generally, yes.

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1 Q. And there is also a notice of a hearing
2 date?
3 A. It's on the notice of violation.
4 Q. Are you required to attend the hearing?
5 A. Yes.
6 MR. SARAFAN: When you say "you,"
7 you mean the witness?
8 MR. BARGIL: No, the recipient of
9 the notice of violation.
10 THE WITNESS: They have to be
11 there.
12 BY MR. BARGIL:
13 Q. Do they have the option of simply
14 correcting the violation, having it reinspected,
15 and not going to the hearing?
16 A. Yes.
17 Q. Will the hearing take place on that
18 issue regardless of whether or not reinspection
19 has occurred?
20 A. If you are in compliance, no, the case
21 will be closed.
22 Q. Now moving to the hearing process, if
23 people come to the hearing after having received
24 a notice of violation, what happens at the
25 hearing?

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1 MR. SARAFAN: Object to the form.
2 You can answer.
3 THE WITNESS: When their case is
4 called, I will give a brief summary of
5 the case, what happened, what it
6 involves, what the alleged violation is.
7 And the chairman will ask the
8 defendant whether or not they agree with
9 the violation.
10 If they say yes, then the next
11 question will probably be, well, why are
12 you here? What do you need to do to fix
13 it? How can we help you in order to
14 comply with the code?
15 If they say no, they don't agree,
16 then they will put on their case as to
17 why they don't agree.
18 BY MR. BARGIL:
19 Q. At any point are you asked to provide
20 testimony?
21 A. Yes.
22 Q. At what point are you asked to provide
23 testimony?
24 A. Generally after the defendant has her
25 say and doesn't agree, and they will ask what

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1 happened during the time of the case.
2 Q. Does Mr. Orta also provide testimony?
3 A. On his cases.
4 Q. So it's split up between whose cases is
5 whose?
6 A. Yes.
7 Q. And if the finding is that the property
8 is still not in compliance, what happens then?
9 A. I'm not sure.
10 Q. At the hearing -- what is the outcome of
11 the hearing if the finding is that the property
12 is still not in compliance?
13 A. Then they will be found, I guess, guilty
14 of the violation and given additional time to
15 comply before fines are assessed.
16 Q. And there is a threat then imposed on
17 fines?
18 MR. SARAFAN: Object to the form.
19 Can you use a word other than
20 threat?
21 MR. BARGIL: No.
22 BY MR. BARGIL:
23 Q. Do you understand the question?
24 A. Yes.
25 Q. Do people then receive the threat that

<p style="text-align: right;">Page 37</p> <p>1 fines will be imposed if they don't remediate the 2 problem? 3 MR. SARAFAN: Same objection. 4 THE WITNESS: There is a penalty if 5 they don't comply. 6 BY MR. BARGIL: 7 Q. And how long is that time period that 8 they have to comply usually? 9 A. It depends on the situation, it depends 10 on the case, it depends on what's involved. So 11 the board may give anywhere from the next code 12 board date, which may be 30 to 60 days, to 60 to 13 120 days. It all depends on what they find is 14 suitable for that defendant. 15 Q. And what amount are the fines that are 16 generally threatened to be imposed? 17 MR. SARAFAN: Object to the form. 18 THE WITNESS: It could go up to 19 \$250 for the first violation. 20 BY MR. BARGIL: 21 Q. But never more than \$250? 22 A. If there is a repeat violation, if they 23 were found guilty of the same violation I think 24 within five years, it will be a repeat violation 25 and that could go up to \$500 per day.</p>	<p style="text-align: right;">Page 39</p> <p>1 Does the village keep record of how 2 many notices are issued a day? 3 THE WITNESS: No. 4 BY MR. BARGIL: 5 Q. Does it keep a record of how many 6 notices are issued? 7 A. No. 8 MR. SARAFAN: Just in the category 9 of trying to help you, every courtesy 10 notice goes into the file for that 11 property, so yes, they keep records of 12 courtesy notices, they just don't keep 13 them per day. 14 BY MR. BARGIL: 15 Q. On average, how many courtesy notices do 16 you write up and file? 17 MR. SARAFAN: Object to the form. 18 You can answer if you can. 19 THE WITNESS: It can be 10 to 30. 20 It all depends. 21 BY MR. BARGIL: 22 Q. And do you have any sense for how many 23 of those courtesy notices ultimately result in 24 notices of violation? 25 A. Not many. Do you want a specific</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And all of these fines are per day? 2 A. Per day. 3 Q. About how many courtesy notices do you 4 write do you think? 5 A. Can you be more specific. 6 Q. In the course of a day, I mean, it 7 depends on the volume. In the course of a day, 8 how many do you write? 9 A. I may write one, I may write 30. It 10 depends. 11 Q. Do you have any idea how that is 12 measured at all, what your rate is for courtesy 13 notices? 14 MR. SARAFAN: I don't understand 15 the question. 16 BY MR. BARGIL: 17 Q. Do you understand the question? 18 A. No. 19 Q. Do you guys keep records of how many 20 courtesy notices you write? 21 MR. SARAFAN: Again, I'm going to 22 object. 23 I think I know what you are trying 24 to do. If you welcome help, I will try 25 to help you.</p>	<p style="text-align: right;">Page 40</p> <p>1 number? 2 Q. Try your best, yes. 3 A. Since the board is on a monthly basis, I 4 will do it monthly. If there is a hundred 5 courtesy notices written, maybe 20 of those, 25 6 of those will be a notice of violation. 7 Q. That's exactly what I was looking for. 8 Are you required to write a certain 9 number of courtesy notices? 10 A. No. 11 Q. Are you the required to write a specific 12 number of notices of violation? 13 A. No. 14 Q. Do you have any requirements in your job 15 description associated with the number of 16 citations or courtesy notices that you write? 17 A. I believe that's the same question. 18 Q. There is no minimum, but is there a max? 19 A. There is no maximum. 20 Q. Is there a -- is your payment at all 21 tied to the number of courtesy notices that you 22 write? 23 A. No. 24 Q. How do you keep track of the courtesy 25 notices and notices of violation?</p>

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1 A. Each officer has their own filing files
2 to keep the courtesy notices. And basically they
3 are also on our software that we use. And once
4 the date of inspection comes, we'll look at the
5 notifications on the software and we'll print out
6 those inspections that are due that day.
7 Q. Do you have a logbook or an iPad or
8 anything with you?
9 A. No. We have a laptop in the car.
10 Q. So you are kind of doing it in realtime?
11 MR. SARAFAN: Object to the form.
12 I'm not sure what that means.
13 Do you know what he means?
14 THE WITNESS: I think so. If we're
15 inputting the inspections, is that what
16 you are saying, while we are in front of
17 the property?
18 MR. BARGIL: I can make it clear.
19 BY MR. BARGIL:
20 Q. At the beginning of the day, you said
21 that you take a printout of the properties you
22 need to visit; is that right?
23 A. Yes.
24 Q. And then you go out to those properties?
25 A. Correct.

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1 Q. And you are either finding they are or
2 aren't in compliance; right?
3 A. Yes.
4 Q. And are you inputting that data on the
5 spot into the laptop in your car?
6 A. No.
7 Q. You are waiting until you get back to
8 the office to input that data?
9 A. Yes.
10 Q. So what does the laptop in the car, what
11 purpose does it serve?
12 A. I usually use it for -- it's tied in
13 with the building department, and I usually use
14 it if I see a building under construction, I'll
15 type in the address and I will see what permits
16 they have to ensure what they are doing is what
17 they are supposed to be doing. And if I want to
18 knock on somebody's door, I like to know what
19 their name is, so I go to the property
20 appraiser's office and get their name.
21 Q. But you don't actually do any of the
22 more official record keeping via the laptop?
23 A. No, there is a little bit of a lag in
24 the connection so it takes a lot of time to do it
25 in the car.

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1 Q. You have a computer at your desk in your
2 office?
3 A. Yes.
4 Q. Do you have an office?
5 A. Yes.
6 Q. When you are out, I know this probably
7 varies by day, but when you are out in your car
8 patrolling, roughly what percentage of your time
9 or portion of your time is divided between
10 looking for violations that might exist and
11 following up on previous inspections?
12 MR. SARAFAN: Object to the form.
13 You can answer.
14 THE WITNESS: I would say there is
15 generally not many inspections for that
16 particular -- depending on the load, it
17 can take an hour or two to finish the
18 inspection, and then the rest of the
19 time I'm patrolling the area.
20 BY MR. BARGIL:
21 Q. When it comes to the receiving of
22 complaints, if I'm a resident of Miami Shores,
23 what do I do?
24 A. You can call the code enforcement
25 department, the building department or the

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1 village manager.
2 Q. And all of those calls, regardless of
3 what number I call, will they ultimately be
4 forwarded to a single person?
5 A. Generally, yes. They ask who do you
6 need to speak with -- we have different
7 extensions -- and they will transfer the call to
8 that extension.
9 Q. So when they say who do you need to
10 speak with, and I say I would like to report a
11 code violation --
12 A. It would probably go to Mariana. She
13 would take the complaint.
14 Q. Is she in the office all day?
15 A. All day.
16 Q. 9:00 to 5:00?
17 A. 8:00 to 5:00, with an hour break for
18 lunch.
19 Q. Is there any other way you can make a
20 complaint?
21 A. You can leave a voicemail.
22 Q. Can you do it online?
23 A. Not at this time.
24 Q. Once a complaint is received by Mariana,
25 she then gives it to whatever person is tasked

<p style="text-align: right;">Page 45</p> <p>1 with that specific zone?</p> <p>2 A. Yes.</p> <p>3 Q. How does she provide you with that</p> <p>4 information?</p> <p>5 A. Generally with a message that we got a</p> <p>6 complaint from so and so or maybe anonymous with</p> <p>7 an address and what the alleged violation may be.</p> <p>8 And then we take it from her and we inspect.</p> <p>9 Q. The hand gestures won't come up.</p> <p>10 A. It's a message slip.</p> <p>11 Q. And that is something she maintains?</p> <p>12 A. Yes.</p> <p>13 Q. Do you guys get e-mail on the fly while</p> <p>14 you are out?</p> <p>15 A. We can, yes.</p> <p>16 Q. Does she ever send, via e-mail, messages</p> <p>17 to you?</p> <p>18 A. No. When we are on the road, we have</p> <p>19 radios and she will contact us by radio.</p> <p>20 Q. And typically she will write out an</p> <p>21 address on the message slip?</p> <p>22 A. Yes.</p> <p>23 Q. And you will do what with that slip</p> <p>24 then?</p> <p>25 A. If there is a complaint, we usually keep</p>	<p style="text-align: right;">Page 47</p> <p>1 marked city vehicle?</p> <p>2 A. No.</p> <p>3 Q. What kind of vehicle is it?</p> <p>4 A. A Lincoln -- a Ford -- it's a Ford</p> <p>5 hand-me-down from the police department, so it's</p> <p>6 a Ford interceptor I think it's called.</p> <p>7 Q. Does it look like a police car?</p> <p>8 A. Well, it's painted.</p> <p>9 Q. Not in terms of paint, but body style,</p> <p>10 that's what people often think of when they see a</p> <p>11 police car?</p> <p>12 A. Yes.</p> <p>13 Q. But no sirens?</p> <p>14 A. No.</p> <p>15 Q. And no markings that say police?</p> <p>16 A. We have hazard lights, flashing hazard</p> <p>17 lights.</p> <p>18 Q. What color are those?</p> <p>19 A. Yellow and white.</p> <p>20 Q. Did you ever use them?</p> <p>21 A. Yes.</p> <p>22 Q. When?</p> <p>23 A. Say there is something in the middle of</p> <p>24 the road, and I will turn on the lights and I</p> <p>25 will go get it out of the road.</p>
<p style="text-align: right;">Page 46</p> <p>1 it with the courtesy notice or if we -- if there</p> <p>2 is no basis of a complaint, or if we took care of</p> <p>3 it, just on a speaking level with the resident,</p> <p>4 we usually just throw it away.</p> <p>5 Q. But when it does result in a courtesy</p> <p>6 notice being issued, will you attach the slip?</p> <p>7 A. It depends on the situation. If there</p> <p>8 is a point of contact on there with a phone</p> <p>9 number, I try to keep it so I can keep the</p> <p>10 complaint abreast of what is happening.</p> <p>11 Q. Going back to your patrol area, are you</p> <p>12 familiar with any of the demographics of those</p> <p>13 neighborhoods?</p> <p>14 A. Not particularly, no.</p> <p>15 Q. Do you know what the socioeconomic</p> <p>16 background is of people who live there?</p> <p>17 A. Are you asking me what income? Middle</p> <p>18 class? Lower class? I would say upper middle</p> <p>19 class.</p> <p>20 Q. Do you know what the racial demographic</p> <p>21 is?</p> <p>22 A. No.</p> <p>23 Q. Typical age?</p> <p>24 A. No. It varies.</p> <p>25 Q. When you are in your vehicle, is it a</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Is there any marking at all in the</p> <p>2 vehicle?</p> <p>3 A. No.</p> <p>4 Q. Just --</p> <p>5 A. Not on my vehicle. On Mike Orta's he</p> <p>6 has magnets that has the city emblem on it, says</p> <p>7 code enforcement.</p> <p>8 Q. And yours has nothing?</p> <p>9 A. No.</p> <p>10 Q. Why?</p> <p>11 A. They are old. I never got them.</p> <p>12 Q. Do you have an official license plate?</p> <p>13 A. Yes, city license plate, the yellow one.</p> <p>14 Q. Do you have the handheld flashlight that</p> <p>15 comes on the police cars?</p> <p>16 A. It's still attached, yes.</p> <p>17 Q. Do you ever use that?</p> <p>18 A. No.</p> <p>19 Q. Do you wear your official -- I see you</p> <p>20 are wearing your shirt today. Do you wear that</p> <p>21 shirt every day?</p> <p>22 A. Every day.</p> <p>23 Q. Or some other shirt with a marking on</p> <p>24 it?</p> <p>25 A. With an emblem on it, yes.</p>

<p style="text-align: right;">Page 49</p> <p>1 MR. SARAFAN: You mean every day 2 while he's at work. 3 THE WITNESS: Every day while I'm 4 at work from 8:00 to 5:00. 5 BY MR. BARGIL: 6 Q. Likewise do you carry any sort of 7 official ID with you? 8 A. We do have an ID, yes. 9 Q. Do you have to have that with you at all 10 times? 11 A. No. 12 Q. Do you have to wear any sort of ID badge 13 or anything like that? 14 A. No. 15 Q. So the only way -- if I come upon you on 16 the street, the only way I know you are a code 17 enforcement officer is that you are wearing that 18 shirt; right? 19 A. Yes. 20 Q. Do you have any other official dress, a 21 hat, anything like that? 22 A. A hat with an emblem on it because I'm 23 balding and I don't want to get burned. 24 Q. So you wear that when it's sunny? 25 A. Yes, a baseball cap.</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. SARAFAN: Object to the form. 2 THE WITNESS: No. 3 BY MR. BARGIL: 4 Q. Do you use binoculars ever? 5 A. No. 6 Q. If there are shrubs in your way, do you 7 move those aside? 8 A. No. 9 Q. So you never disturbed the landscape in 10 any way when you are investigating whether or not 11 a violation is taking place? 12 A. No. 13 Q. Would you peer over a fence? 14 A. No. 15 Q. Do you ever inspect the interior of 16 people's home? 17 A. Not without their permission. 18 Q. For what reason would you inspect 19 someone's interior? 20 A. For instance if a tenant called me 21 saying that her roof was leaking and the property 22 owner is not taking care of it, if she allowed me 23 into the house, I would inspect and see if there 24 is a leak going on. 25 Q. How do you ask for permission to enter?</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Do you ever have issues with people 2 wondering who you are? 3 A. Not generally. I've been there for a 4 long time. 5 Q. People pretty much know you? 6 A. Yes. 7 Q. Do people ever ask you why you are on 8 their property? 9 MR. SARAFAN: Object to the form. 10 You can answer. 11 THE WITNESS: I don't go onto 12 people's property without permission, 13 but if they are asking me why did I 14 knock on their door, it's usually 15 because there is an issue. 16 BY MR. BARGIL: 17 Q. So you say you don't go into people's 18 property without their permission, if you are 19 inspecting something you can't see from the 20 sidewalk, what do you do? 21 A. If I can't see it, there is no 22 violation, so I would first have to see it in 23 order for it to become an issue. 24 Q. You ever get creative in your ability to 25 see things?</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Can I come into your house. 2 Q. Do you have any training in the Fourth 3 Amendment? 4 MR. SARAFAN: He's referring to the 5 United States Constitution. 6 BY MR. BARGIL: 7 Q. The Fourth Amendment, I think we all 8 agree, protects people from unlawful searches and 9 seizures. Do you have any training on the laws 10 associated with search and seizure in the United 11 States? 12 A. Not specifically, no. 13 Q. What about under Florida's 14 interpretations of those laws? 15 A. No, not specifically. 16 Q. Have you ever obtained an administrative 17 warrant? 18 A. No. 19 Q. Do you know what an administrative 20 warrant is? 21 A. I can't explain it, but if we need to 22 enter somebody's property without their 23 permission, we would have to go through our 24 village attorney and get a warrant to enter the 25 house or enter the property.</p>

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1 Q. But you have never had to do that?
2 A. No.
3 Q. In instances where you ask may I enter
4 your property, has anyone ever said no?
5 A. Yes.
6 Q. What do you do at that point?
7 A. I turn around and walk away.
8 Q. And never come back?
9 MR. SARAFAN: Object to the form.
10 THE WITNESS: If I get another
11 complaint, I will go back.
12 BY MR. BARGIL:
13 Q. And you will ask once again to enter?
14 A. Yes.
15 Q. And if they say no?
16 A. I walk away.
17 Q. Are you familiar with my client's
18 property?
19 A. Yes.
20 Q. How frequently do you visit that
21 property?
22 MR. SARAFAN: Object to the form.
23 You can answer.
24 THE WITNESS: Very infrequently.
25 BY MR. BARGIL:

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1 Q. Is this the property located at 53
2 Northeast 106th Street in Miami Shores?
3 A. Yes.
4 Q. You said very infrequently?
5 A. Rarely.
6 Q. Can you elaborate on that a little bit.
7 MR. SARAFAN: Object to the form.
8 What are you asking?
9 MR. BARGIL: Try to actually
10 quantify; once a week, once a month,
11 something along those lines.
12 THE WITNESS: Before this incident
13 I don't think ever, maybe once.
14 BY MR. BARGIL:
15 Q. When you say "this incident," do you
16 mean the litigation or --
17 A. In regards to her case.
18 Q. So you are talking about the initial
19 code violation?
20 A. Right.
21 Q. And not the beginning of the litigation
22 against the city?
23 A. Right, the initial code violation.
24 Q. So you had been there up until the
25 initial code violation only once?

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1 A. Maybe once. I can't recall.
2 Q. But you drive past it as you said every
3 day?
4 A. Almost every day.
5 Q. Is she now in compliance with the
6 village code?
7 MR. SARAFAN: Object to the form.
8 Are you talking about the property
9 or a person?
10 BY MR. BARGIL:
11 Q. You inspect properties and not persons;
12 correct?
13 A. Properties.
14 BY MR. BARGIL:
15 Q. Is her property and her husband's
16 property in compliance with village code?
17 A. No.
18 Q. What is wrong with it?
19 A. She has numerous signs on her property.
20 Q. What is the problem with those signs?
21 Why are they not compliant with the code?
22 A. They exceed the number of signs in
23 square footage that we allow.
24 Q. Why haven't you cited her?
25 A. Because of this pending litigation.

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1 Q. Has anyone told you not to cite her?
2 A. Yes.
3 Q. Who told you not to cite her?
4 A. The village manager.
5 Q. Anyone else?
6 MR. SARAFAN: You are not allowed
7 to reveal conversations with counsel,
8 but let's just say I'm aware.
9 THE WITNESS: The village attorney.
10 BY MR. BARGIL:
11 Q. Without telling me what your discussion
12 with Mr. Sarafan was, did he instruct you --
13 MR. SARAFAN: Well, you can't
14 answer that question without telling
15 what it was.
16 I want to make sure you heard his
17 first answer, which was the village
18 manager.
19 BY MR. BARGIL:
20 Q. Anyone else?
21 A. No.
22 Q. Have you received any instruction from
23 the village attorney with respect to the property
24 generally?
25 MR. SARAFAN: I'm going to instruct

<p style="text-align: right;">Page 57</p> <p>1 you not to answer about communications 2 with counsel. 3 MR. BARGIL: You can just get that 4 on the record then. 5 THE WITNESS: On the advice of my 6 attorney -- 7 MR. SARAFAN: Get what on the 8 record? I have instructed him not to 9 answer. 10 MR. BARGIL: I would like to hear 11 him say, on the advice of my attorney, 12 I'm not going to answer that question. 13 I would like to hear him say that on the 14 record. 15 MR. SARAFAN: I don't think he's 16 required to, but just to please you. 17 THE WITNESS: On the advice of my 18 attorney, I'm not going to answer. 19 BY MR. BARGIL: 20 Q. Any other issues of non-compliance with 21 her property? 22 MR. SARAFAN: You mean currently? 23 BY MR. BARGIL: 24 Q. Do you understand the question? 25 A. Currently?</p>	<p style="text-align: right;">Page 59</p> <p>1 A. I do. The property -- 518 doesn't allow 2 to put fabrics or plastics on fencing. 3 Q. And this is the rear yard; right? 4 A. Correct. 5 Q. And how did you come to learn that there 6 was tarp on the fence in her rear yard? 7 A. I also drive through the alleys. And I 8 saw there was tarp on her fence. 9 Q. When did you notice that? 10 A. Shortly after we resolved her case, I 11 believe. 12 Q. When you say resolved her case, you mean 13 the -- 14 A. That she came into compliance with her 15 case. 16 MR. SARAFAN: Please let him finish 17 his question before you answer. I 18 realize you know what he's going to say, 19 but it's a courtesy to the court 20 reporter. 21 BY MR. BARGIL: 22 Q. So in the course of the day when you are 23 on the job, you patrol through the streets, as 24 you said earlier; correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Yes. 2 A. She has some sort of plastic tarp 3 attached to the chain-link fence along the alley. 4 Q. And what provision of the code does that 5 violate? 6 A. The provision regarding fences. I think 7 it's section 518 of the zoning code. I don't 8 know particularly what line. 9 Q. What does 518 prohibit? 10 MR. SARAFAN: Object to the form. 11 THE WITNESS: It says what 12 materials you can use as fencing. 13 BY MR. BARGIL: 14 Q. And she's violating that provision why? 15 MR. SARAFAN: Object to the form. 16 The property is violating that 17 provision; is that your question? 18 BY MR. BARGIL: 19 Q. Is there any confusion when I'm talking 20 about these violations, whether it's the person 21 or the property? 22 MR. SARAFAN: Counsel, words 23 matter. 24 BY MR. BARGIL: 25 Q. Do you understand the question?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And also patrol through the alleys? 2 A. Not every day. 3 Q. How frequently do you go through the 4 alleys? 5 A. Maybe once a week. 6 Q. What are you looking for? 7 A. Generally in the alleys that they are 8 clear, that there is not vegetation growing into 9 them. That there is not trash, piles of trash 10 obstructing the right of way. 11 Q. Can you see into people's rear yards 12 from those alleys? 13 A. Can you be more specific. 14 Q. When you are driving through the 15 alley -- these alleys run through people's rear 16 yards; right? 17 A. Yes. 18 Q. So if you are in the alley, and 19 someone's rear yard is to your right or to your 20 left -- 21 A. It depends. If they have a wooden 22 fence, no I can't see through it. If they don't 23 have any fencing and it's open, yes, I can see 24 through it. If they have a chain-link fence, 25 with nothing obscuring it, yes, I can see through</p>

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1 it.
2 Q. Do you know why people put up wood
3 fences in their rear yards?
4 MR. SARAFAN: Object to the form.
5 THE WITNESS: No.
6 BY MR. BARGIL:
7 Q. Could it be for privacy?
8 MR. SARAFAN: Object to the form.
9 THE WITNESS: It could be.
10 BY MR. BARGIL:
11 Q. Do you know why people have hedges or
12 greenery lining their chain-link fences?
13 A. I'm sure there could be a vast amount of
14 reasons why.
15 Q. Could it be for privacy?
16 A. It may be.
17 Q. Do you know why somebody would put a
18 tarp around their rear fence?
19 A. No.
20 Q. Could that be for privacy?
21 MR. SARAFAN: Object to the form.
22 THE WITNESS: It could be.
23 BY MR. BARGIL:
24 Q. Is it part of your job to inspect rear
25 yards?

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1 A. If they are visible from the alley, then
2 yes.
3 Q. When you say visible, though, you
4 testified earlier that you would never move
5 shrubbery out of the way; is that correct?
6 A. Correct.
7 Q. And if you couldn't see easily into a
8 property, then you wouldn't inspect it?
9 A. No.
10 Q. When you inspect rear yards, what are
11 you looking for?
12 A. Again people aren't -- properties aren't
13 overcome with debris or household items,
14 chemicals, things of that nature, construction
15 debris.
16 Q. So is the reason why you inspect rear
17 yards different than the reason why you inspect
18 front yards?
19 A. Not generally. Front yards we make sure
20 they are a little cleaner. We make sure they are
21 green and good to look at, but if we can see the
22 house from the alleyway or the rear yard, and it
23 has the walls chipping or peeling, I will write
24 it up.
25 Q. Have you ever inspected my client's rear

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1 yard?
2 A. No.
3 Q. Have you ever inspected beyond just
4 noticing that there was a tarp there?
5 A. I believe like I said, infrequently that
6 I look at it. I believe once she had a dirty
7 pool.
8 Q. How many times have you inspected the
9 rear yard?
10 A. Infrequently, it's very rare.
11 Q. Less than 10?
12 A. Yes.
13 Q. Less than five?
14 A. Since this case probably about five.
15 MR. SARAFAN: Off the record.
16 (Off the record.)
17 BY MR. BARGIL:
18 Q. Have you ever peered through the bushes
19 of my client's rear yard?
20 A. No.
21 Q. Have you ever peered through an opening
22 in the tarp?
23 A. I'm not sure I understand what "peered"
24 means.
25 Q. Have you ever moved any obstruction out

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1 of the way to get a better look at anything in
2 the rear yard of my client's property?
3 A. No.
4 Q. Have you ever encountered anybody while
5 inspecting the rear yard of my client's property?
6 A. No.
7 Q. Has a resident of the home ever spotted
8 you as far as you are aware?
9 A. I wouldn't know.
10 Q. Has a resident of the home ever
11 approached you?
12 A. In the front yard, yes.
13 Q. I'm talking about in the rear yard.
14 A. I don't recall.
15 Q. You don't recall or it didn't happen?
16 A. No, I don't recall.
17 Q. When was the last time you inspected the
18 rear yard of the property?
19 MR. SARAFAN: Object to the form.
20 THE WITNESS: I'm not sure.
21 BY MR. BARGIL:
22 Q. You mentioned that she had a dirty pool;
23 is that correct?
24 A. Yes.
25 Q. Does that violate any provisions of the

<p style="text-align: right;">Page 65</p> <p>1 Miami Shores code? 2 A. Yes. 3 Q. Which provision? 4 A. It's chapter 12.103. 5 Q. And that says what? 6 A. Harboring -- it has to do with having a 7 condition where insects and animals can breed, 8 like mosquitos and stuff like that, so dirty 9 pools will do that. 10 Q. Does that refer to pools or standing 11 water? 12 A. Standing water. A pool that is green is 13 pretty much standing water. 14 Q. Does the code have any specific 15 provisions dealing with swimming pools? 16 A. Yes. 17 Q. What is that? 18 A. How they are built, construction of the 19 pool. 20 Q. What about with respect to their 21 maintenance? 22 A. Yes, with the plumbing, that it needs to 23 be operable. 24 Q. What about with respect to the physical 25 appearance?</p>	<p style="text-align: right;">Page 67</p> <p>1 enforcement to the city attorney? 2 A. Not typically, no. 3 Q. Under what circumstances will you bring 4 matters of code enforcement to the village 5 manager? 6 A. If there is a pending litigation on that 7 property. 8 Q. And that reason alone? 9 MR. SARAFAN: Object to the form. 10 THE WITNESS: Pretty much, yeah. 11 BY MR. BARGIL: 12 Q. Can you think of any other reason why 13 you would bring a matter of code enforcement to 14 the village manager? 15 A. Can I speak freely? 16 MR. SARAFAN: Well, I don't know 17 what you are going to say, but you are 18 here to tell the truth. If you can 19 think of another circumstance, tell him. 20 THE WITNESS: If it's an elected 21 official and I don't want to rock the 22 boat. 23 BY MR. BARGIL: 24 Q. You don't want to ruffle any feathers? 25 A. Right. I will tell them, you need to</p>
<p style="text-align: right;">Page 66</p> <p>1 A. I think that's general unsightliness. 2 Q. And what provision it that? 3 A. 10.1. 4 Q. And that applies to the backyard as 5 well? 6 A. To the property as a whole. 7 Q. So you are inspecting -- strike that. 8 Do you know if a notice of violation or 9 courtesy notice ever originated from the pool 10 issue? 11 A. No, I don't believe so. 12 Q. Do you know why that is? 13 A. I believe that it was because of 14 litigation, and I know that her pool is dirty, I 15 think I contacted either the village manager or 16 the village attorney and I believe it was handed 17 to you. 18 Q. And you subsequently reinspected it? 19 A. Yes. 20 Q. And you found that it was in compliance? 21 A. Yes. 22 Q. Do you typically bring matters of code 23 enforcement to the village manager? 24 A. Not typically, no. 25 Q. Do you typically bring matters of code</p>	<p style="text-align: right;">Page 68</p> <p>1 tell council person so and so. 2 Q. Ever cited a council member? 3 A. I have. 4 Q. How frequently do you do that. 5 A. Very, very infrequently. 6 Q. Was it a courtesy notice or a notice of 7 violation? 8 A. Just a courtesy notice. 9 Q. And was it fixed? 10 A. Immediately fixed. 11 Q. Do you notice potential violations on 12 village officials' properties though? 13 A. I do. 14 Q. But those don't always result in 15 courtesy notices? 16 A. I will talk to them if I see them or if 17 I don't see them, I will reach out to them 18 through the village manager. 19 Q. Why have you not cited my client's for 20 the tarp along their fence? 21 A. Again, on the advice of counsel, because 22 of the pending litigation, I didn't do it. 23 Q. Are there any other properties right now 24 in Miami Shores that you are instructed not to 25 cite?</p>

<p style="text-align: right;">Page 69</p> <p>1 A. No.</p> <p>2 MR. SARAFAN: Object to the form.</p> <p>3 BY MR. BARGIL:</p> <p>4 Q. Have you received specific instruction,</p> <p>5 do not cite this property?</p> <p>6 A. No.</p> <p>7 Q. My client's property?</p> <p>8 A. No.</p> <p>9 Q. Because of the pending litigation, you</p> <p>10 simply have not?</p> <p>11 A. Correct.</p> <p>12 Q. Are you familiar with the change to the</p> <p>13 zoning code that took place in March of 2013?</p> <p>14 A. Yes.</p> <p>15 Q. Can we agree that among other things the</p> <p>16 change to the zoning code included a modification</p> <p>17 of the ordinance --</p> <p>18 A. I didn't get the first part. I'm sorry.</p> <p>19 Q. I can provide you a current copy of the</p> <p>20 code to make it a little easier.</p> <p>21 MR. BARGIL: We'll we mark it as</p> <p>22 Exhibit 1.</p> <p>23 (Plaintiff's Exhibit No. 1 was</p> <p>24 marked for identification.)</p> <p>25 BY MR. BARGIL:</p>	<p style="text-align: right;">Page 71</p> <p>1 accurate -- this is accurate and correct as of</p> <p>2 today --</p> <p>3 A. Yes.</p> <p>4 Q. -- in terms of what the code allows or</p> <p>5 doesn't allow?</p> <p>6 A. Yes.</p> <p>7 Q. Are you familiar with the change to this</p> <p>8 zoning code that took place in March of 2013?</p> <p>9 A. Yes.</p> <p>10 Q. And what did the code say previous to</p> <p>11 this currently?</p> <p>12 A. Previously it said vegetable gardens are</p> <p>13 permitted in rear yards.</p> <p>14 Q. Do you know why the change was made?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you enforce this provision of the</p> <p>17 code any differently now than you did then?</p> <p>18 A. No.</p> <p>19 Q. Were you aware of my client's property</p> <p>20 prior to the change in the zoning code?</p> <p>21 MR. SARAFAN: Object to the form.</p> <p>22 THE WITNESS: I'm aware of all</p> <p>23 properties.</p> <p>24 BY MR. BARGIL:</p> <p>25 Q. Were you aware of the possibility that</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. If you can look at 536 E, do you know</p> <p>2 what this is?</p> <p>3 A. Yes.</p> <p>4 Q. What is it?</p> <p>5 A. It is section 536 design standards of</p> <p>6 the Miami Shores Village Code of Ordinance, and</p> <p>7 section 537, maintenance standards of the Miami</p> <p>8 Shores Code of Ordinance, and section 538,</p> <p>9 landscaping description and definitions of the</p> <p>10 Miami Shores Village Code of Ordinance.</p> <p>11 MR. BARGIL: Can we all agree this</p> <p>12 is an accurate version of the code?</p> <p>13 MR. SARAFAN: I don't believe that</p> <p>14 you would intentionally generate an</p> <p>15 inaccurate one, but I can't stipulate to</p> <p>16 it because I don't know where you got</p> <p>17 it, but it looks right.</p> <p>18 BY MR. BARGIL:</p> <p>19 Q. Here is what I can say, why don't you</p> <p>20 direct your attention to 536 E.</p> <p>21 A. Okay.</p> <p>22 Q. Can you read that?</p> <p>23 A. 536 design standards, E, "Vegetable</p> <p>24 gardens are permitted in rear yards only."</p> <p>25 Q. And can we agree that that is an</p>	<p style="text-align: right;">Page 72</p> <p>1 they were in violation of 536 E prior to the</p> <p>2 change in the zoning code.</p> <p>3 MR. SARAFAN: Object to the form.</p> <p>4 You can answer, if you understand</p> <p>5 it.</p> <p>6 THE WITNESS: There are potential</p> <p>7 violations on all properties.</p> <p>8 BY MR. BARGIL:</p> <p>9 Q. I'm asking you specific to this one.</p> <p>10 A. Not generally.</p> <p>11 Q. What do you mean not generally?</p> <p>12 A. I knew that her property was landscaped,</p> <p>13 well landscaped, but specifically, I didn't -- it</p> <p>14 didn't catch my eye.</p> <p>15 Q. Do you know whether or not she grew</p> <p>16 vegetables there?</p> <p>17 A. No.</p> <p>18 Q. You were not aware?</p> <p>19 A. No, I was not aware.</p> <p>20 Q. But again this is a property that you</p> <p>21 pass daily?</p> <p>22 A. I pass by it daily, yes.</p> <p>23 Q. Have you ever seen either of my clients</p> <p>24 in the yard?</p> <p>25 A. Always. Always. I see Ms. Ricketts in</p>

<p style="text-align: right;">Page 73</p> <p>1 the yard very frequently. 2 Q. She's out there all the time, isn't she? 3 A. Yes. 4 Q. But you never knew what she was doing? 5 A. I knew she was gardening, but 6 specifically what, no. 7 Q. Does part of your job require you to see 8 what people are growing? 9 A. No. 10 Q. Do you ever look to see whether or not 11 anyone is growing invasive plants? 12 A. No. 13 Q. Do you ever look to see if someone is 14 growing non-native plants? 15 A. No. 16 Q. When did you become aware that Ms. 17 Ricketts was growing vegetables? 18 A. I was across the street at the 19 neighbor's yard and -- the soil was quite 20 deteriorated across the street, so I knocked on 21 the door and nobody answered. So I went -- so I 22 went in my car to write up a courtesy notice, and 23 as I was approaching the door, the neighbor came 24 out. And I gave her the courtesy notice. 25 And I said, listen, we have an issue</p>	<p style="text-align: right;">Page 75</p> <p>1 A. Yes. 2 Q. Why were you there? 3 A. Again, she had deteriorated soil and she 4 needed to provide ground cover to the soil. 5 Q. Had anyone complained about that house? 6 A. No. 7 Q. How did you come to be aware? 8 A. I believe I was focusing on the city's 9 right of ways on that day and in that particular 10 area. And I noticed hers was quite deteriorated. 11 And as I did with many neighbors in that area at 12 the time, I instructed her to maintain or 13 replenish the ground cover a little better. 14 Q. Do you know when this was, roughly? 15 A. I think it was late April, early May of 16 2013. 17 Q. What was the name of the neighbor across 18 the street? 19 A. I don't recall her name. 20 Q. Was it directly across the street? 21 A. Slightly diagonal. 22 Q. What direction? 23 A. Southwest. 24 Q. Did you cite that neighbor? 25 A. I was writing a courtesy notice at the</p>
<p style="text-align: right;">Page 74</p> <p>1 here. The soil is quite deteriorated. It's 2 overgrown with weeds, there are bare areas of 3 dirt. It's the city's property and we need to 4 maintain it a certain way, if you can please 5 provide ground cover or grass to the soil. And I 6 gave her a deadline on the courtesy notice -- I 7 believe it was 30 days -- and said good-bye. 8 And when I said good-bye, she said, by 9 the way, can you look into the neighbor across 10 the street; her yard is very unsightly. 11 She didn't like the look of it. 12 So I said, yeah, I'll take a look. 13 So I walked over there and onto the 14 sidewalk, and I inspected the property. I 15 noticed there was burlap bags and pots sticking 16 out of the ground with plants in them. And I 17 noticed peppers and tomatoes and kale, different 18 types of salads or spinach, different types of 19 greens, leafy, edible stuff. I realized there 20 was a drip irrigation system. And unfortunately, 21 I had to tell her that we didn't allow that type 22 of ground cover in the front yard. 23 Q. I'm a little bit confused of how this 24 all happened. You were at the person across the 25 street's house?</p>	<p style="text-align: right;">Page 76</p> <p>1 time she came out, so yes, I handed her a 2 courtesy notice. 3 Q. Did a notice of violation ever result? 4 A. I don't believe so, no. 5 Q. So up until that time you were not aware 6 that my client's were growing vegetables in their 7 front yard? 8 A. No. 9 Q. And the first you saw of it was when you 10 approached that day? 11 A. Correct. 12 Q. And you said you knocked on the door? 13 A. I can't recall if I knocked on the door 14 or if Ms. Ricketts was in the yard or in the 15 backyard, but I remember I spoke with her that 16 day. I may have knocked on the door. I believe 17 she may have come out. I can't recall at this 18 time. 19 Q. What did you tell her? 20 A. I said, you know, growing this 21 particular type of material is not permitted in 22 the front yard as a ground cover and she would 23 have to, you know, move it to the back. 24 Q. Do you remember what she said? 25 A. I can't recall specifically what she</p>

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1 said. No, I can't remember specifically what she
2 said.
3 Q. Did you give her a courtesy notice?
4 A. Not at that time, no.
5 Q. When did you make a note to yourself to
6 return to the property?
7 A. A mental note, yes.
8 Q. And when did you return to the property?
9 A. About a week or two later.
10 Q. And what was the status of the property
11 then?
12 A. It hadn't changed.
13 Q. What did you do?
14 A. I then wrote up a courtesy notice.
15 Q. How did you leave that?
16 A. I taped it on her door.
17 Q. And what did the courtesy notice say?
18 A. I have it. Can I read it?
19 Q. Sure.
20 (Plaintiff's Exhibit No. 2 was
21 marked for identification.)
22 BY MR. BARGIL:
23 Q. Take a moment to read that over.
24 A. Okay.
25 Q. Did you write this notice?

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1 A. Yes.
2 Q. What is this notice?
3 A. It's a courtesy notice.
4 Q. What does it say?
5 MR. SARAFAN: Objection; it speaks
6 for itself.
7 BY MR. BARGIL:
8 Q. Is this a courtesy notice advising that
9 vegetable gardens in the front yard aren't
10 permitted?
11 A. Yes.
12 Q. And you mentioned earlier, that the
13 first time you went to the property you saw the
14 burlap bags and containers?
15 A. Containers, yeah.
16 Q. Are those permitted in the front yards?
17 MR. SARAFAN: Object to the form.
18 THE WITNESS: They are not a
19 typical ground cover. They are not
20 living. But I'm not sure. She has a
21 potted plant in the front yard; I don't
22 think that's against the code.
23 BY MR. BARGIL:
24 Q. Ultimately you cited her only for the
25 front yard vegetables; correct?

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1 A. Yes.
2 Q. There was no citation for having potted
3 plants; correct?
4 A. Correct.
5 Q. Or a citation for having burlap bags;
6 right?
7 A. Correct.
8 Q. And you mentioned a second ago, it
9 probably wouldn't have been -- I don't want to
10 put words in your mouth. It wouldn't have been
11 illegal to have a potted plant; right?
12 A. Can you say that again.
13 Q. Would it have been illegal to have a
14 potted plant in the front yard?
15 A. No.
16 Q. So the difference was that her plants
17 had vegetables on them, whereas a potted plant
18 does not?
19 MR. SARAFAN: Object to the form.
20 THE WITNESS: It depends. If the
21 plants that are in the pots are all
22 vegetables, I would have considered that
23 vegetables.
24 BY MR. BARGIL:
25 Q. Right. So I think we've got an

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1 understanding. So you can have a potted plant as
2 long as it's not growing vegetables; right?
3 MR. SARAFAN: Object to the form.
4 THE WITNESS: You can't have a
5 vegetable garden in the front yard.
6 BY MR. BARGIL:
7 Q. Can you have a vegetable?
8 A. You can probably have a vegetable.
9 Q. Can you have two vegetables?
10 A. You can probably have two vegetables if
11 they are not next to each other. They are like
12 an ornamental plant.
13 Q. If a vegetable is ornamental, you can
14 have it?
15 A. You can probably have it.
16 Q. What does that -- is that anywhere in
17 the code?
18 A. No.
19 Q. Is the idea that you just have to
20 maintain an attractive garden regardless of
21 whether or not there are vegetables in it?
22 A. Specifically you have to maintain a
23 garden with approved ground cover.
24 Q. Meaning what?
25 A. Meaning it has to be an approved ground

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1 cover.
2 Q. What is that approved ground cover?
3 A. Grass, sod, or living ground cover.
4 Q. And vegetables do not qualify as a
5 living ground cover?
6 A. No.
7 Q. Why not?
8 A. Because vegetables are -- they are not.
9 I don't understand what you mean by that
10 question.
11 MR. SARAFAN: Would you like help,
12 Counsel?
13 MR. BARGIL: No.
14 BY MR. BARGIL:
15 Q. I'm curious. You said a moment ago,
16 that the same plant in a pot, one with a
17 vegetable growing on it, one not, one would be
18 legal and the other one wouldn't be legal?
19 MR. SARAFAN: Object to the form.
20 THE WITNESS: I didn't say that.
21 BY MR. BARGIL:
22 Q. We're on the courtesy notice. Do you
23 recall whether or not all the vegetables were
24 removed from the front yard?
25 A. Eventually, yes.

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1 Q. Immediately in response to those, were
2 they?
3 A. No.
4 Q. Did you return to the property
5 subsequent to this courtesy notice being filed?
6 A. Yes.
7 Q. And what did you find?
8 A. I didn't. I found there was no change
9 in the yard.
10 Q. And at that time did you interact with
11 either of my clients?
12 A. No.
13 Q. And what was the result of that visit?
14 A. The inspection failed. And subsequently
15 I went back to the office at the end of the day
16 and I wrote up a notice of violation.
17 Q. And what was the reason why the
18 inspection failed?
19 A. Because the remedy was to remove all
20 vegetable gardens from front yard.
21 Q. And did she still have a vegetable
22 garden?
23 A. Yes.
24 Q. How did you know that?
25 A. There were still vegetables in her front

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1 yard.
2 Q. What was she growing?
3 A. Peppers, onions, kale, different types
4 of leafy greens.
5 MR. SARAFAN: Can we take a break?
6 (A brief break was had.)
7 BY MR. BARGIL:
8 Q. Mr. Flores, you realize you are still
9 under oath?
10 A. Yes.
11 Q. Other than your attorney, did you speak
12 about this case with anyone while on break?
13 A. No.
14 Q. Let's go back a little bit. You
15 mentioned earlier on you took some courses at
16 BCC; is that correct?
17 A. Yes.
18 Q. That's Broward Community College;
19 correct?
20 A. Correct.
21 Q. Is that while you were living in Miami?
22 A. Yeah -- no, I lived up in Pembroke
23 Pines.
24 Q. For how long were you there?
25 A. BCC or Pembroke Pines?

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1 Q. Pembroke Pines.
2 A. I live in Pembroke Pines.
3 Q. When did you do your course work at BCC?
4 MR. SARAFAN: I think they call it
5 Broward College now.
6 THE WITNESS: I believe five years
7 ago, six years ago, yeah.
8 BY MR. BARGIL:
9 Q. During the time you were employed with
10 the village?
11 A. Correct.
12 Q. And what did you study there?
13 A. I'm really bad at math. I was trying to
14 get through math. It was frustrating. Math and
15 I think a couple of electives.
16 Q. So math and electives?
17 A. Yes.
18 Q. Do you recall what the math class was?
19 A. Algebra.
20 Q. What were the electives?
21 A. I think one was psychology. There was
22 one on the Florida Constitution.
23 Q. You took a class on the Florida
24 Constitution. What did that class cover?
25 A. The Florida Constitution.

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<p>1 Q. Did it focus on any specific areas? 2 A. No, just generally what the Florida 3 constitution does for Florida. 4 Q. Was it more like a civics class? 5 A. No, it was specifically about the 6 Florida Constitution. 7 Q. Did you get to the provision that talks 8 about searches and seizures under the Florida 9 Constitution? 10 A. I can't recall. It's a blur. 11 Q. Did you get to any of the provisions 12 that are at issue in this case? 13 A. I don't believe so, no. I don't know. 14 Q. I will ask you one by one. Substantive 15 and due process? 16 A. Don't even ask me. I have no idea. It 17 was five, six years ago. It's an elective. I 18 got a B. 19 Q. Equal protection? 20 A. Maybe. 21 Q. The right to acquire, to protect and 22 possess property? 23 A. I remember that. I don't remember the 24 particulars, but I do remember that title. 25 Q. You just know that it's in there?</p>	<p>1 A. Yes. 2 Q. What are they? 3 A. I'm an assistant coach for my son's 4 little league team. I like to watch a lot of TV, 5 go out with my wife to go to the movies, pretty 6 much it, hang out with friends. 7 Q. Do you have green thumb? 8 A. I do have a green thumb. 9 Q. Do you have a garden? 10 A. Yes, I have a garden. 11 Q. What do you grow? 12 A. Various plants, mostly grass. I have a 13 vegetable garden in my backyard. 14 Q. In Pembroke Pines? 15 A. Yes. 16 Q. What do you grow there? 17 A. Tomatoes, peppers, green onions. 18 Q. Do you feed them to your family? 19 A. Yes, well, my wife. My kids don't eat 20 that crap. 21 Q. Do you eat them yourself? 22 A. I do. 23 Q. Do you find that they taste better than 24 the stuff you get in the grocery store? 25 A. Not particularly, my palate is not as</p>
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<p>1 A. Yeah. 2 Q. But you don't recall what it says? 3 A. Nope. 4 Q. What other electives did you take? 5 A. I think a Microsoft -- the whole Office 6 suite thing, that was pretty much it. 7 Q. How long did you study there? 8 A. Off and on. Six months, off and on. 9 Q. What spurred that? 10 MR. SARAFAN: Object to the form. 11 THE WITNESS: Personal growth. 12 BY MR. BARGIL: 13 Q. Did you take any science classes? 14 A. No. 15 Q. Any biology? 16 A. No. 17 Q. Any horticulture? 18 A. No. 19 Q. Design? 20 A. No. 21 Q. Any landscaping? 22 A. No. 23 Q. Any botany? 24 A. No. 25 Q. Do you have any hobbies?</p>	<p>1 refined as it probably should be. 2 Q. How big is the garden? 3 A. Eight by four. 4 Q. Who maintains it? 5 A. Me and my wife. 6 Q. Do you use organic and all natural 7 materials? 8 A. No. 9 Q. Do you use pesticides? 10 A. If I see a caterpillar, I'm shooting it 11 with pesticides. 12 Q. We're going to move back to where we 13 left off. 14 Actually, you are a hobby gardener 15 yourself? 16 A. I wouldn't say hobby gardener, I just 17 have a garden. 18 Q. How do decide what to plant? 19 A. Whatever my wife tells me to plant. 20 Q. Do you go down to Home Depot and pick it 21 up? 22 A. Sometimes, sometimes she will try to 23 grow it from seed. 24 Q. How does that work? 25 A. Not well.</p>

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1 Q. So the best way is to buy an infant
2 plant?
3 A. Or a nursery.
4 Q. You maintain it though, it looks nice?
5 A. It look like a vegetable garden in the
6 backyard.
7 (Plaintiff's Exhibit No. 3 was
8 marked for identification.)
9 BY MR. BARGIL:
10 Q. Are you familiar with this document?
11 A. Yes.
12 Q. And is this the notice of violation that
13 was received by my clients?
14 MR. SARAFAN: Object to the form.
15 THE WITNESS: I'm not sure if they
16 received it personally, but I know we
17 mailed it to them.
18 BY MR. BARGIL:
19 Q. This is not a trick question. This is
20 the notice of violation that you issued.
21 A. Yes.
22 Q. And at the bottom where it says
23 violation, there is a place for code number;
24 right?
25 A. Correct.

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1 Q. And it says section 536 E?
2 A. Yes.
3 Q. And that refers to the 536 E that we
4 went over before?
5 A. Correct.
6 Q. And that provision says what?
7 MR. SARAFAN: Hold on. The 536 E
8 that you referred to before says what,
9 or the --
10 MR. BARGIL: 536 E that we've
11 marked as Exhibit 1.
12 MR. SARAFAN: Objection; speaks for
13 itself.
14 THE WITNESS: "Vegetable gardens
15 are permitted in rear yard only."
16 BY MR. BARGIL:
17 Q. Did you cite them for anything else?
18 A. No.
19 Q. You mentioned earlier they didn't have
20 adequate ground cover; is that correct?
21 A. Yeah, what they have is not ground cover
22 as I see it.
23 Q. And ground cover is dealt with where in
24 the Code of Ordinances?
25 A. 536 A.

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1 Q. And is ground cover defined elsewhere in
2 the code?
3 A. Yes.
4 Q. Where is that?
5 A. 538 under ground cover.
6 Q. So there is a definition of ground cover
7 and the requirement that all green space shall be
8 planted with grass, sod or living ground cover?
9 A. Yes.
10 Q. Why did you not cite them for a
11 violation of 536 A?
12 MR. SARAFAN: Object to the form.
13 THE WITNESS: I'm not sure.
14 BY MR. BARGIL:
15 Q. Did you in your interaction with Ms.
16 Ricketts ever tell her she was also in violation
17 of 536 A?
18 A. No.
19 Q. And in any of your other courtesy
20 notices or notices of violation, did you ever
21 denote they were in violation of 536 A?
22 A. No.
23 Q. Why not?
24 A. I'm not sure. 536 E was in the
25 pertinent code that dealt with her situation.

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1 Q. But to be clear, your testimony is that
2 they were also in violation of 536 A at the time?
3 A. They could have been.
4 Q. And how frequently do you cite people in
5 Miami Shores for violation of 536 A?
6 A. It's more frequent.
7 Q. More frequent than what?
8 A. More frequent than 536 E.
9 Q. And when you cite people for that, what
10 are some of the things that they have got growing
11 in their yard?
12 A. Well, under the definition it needs to
13 be a low growing plant that provides coverage.
14 Sometimes it's not low growing, sometimes it
15 doesn't completely cover.
16 Q. Can you give some examples.
17 A. If they have patchy grass, if there is
18 large bare areas of dirt, if there is a certain
19 type of vegetation that they use that grows tall,
20 we don't allow that. So everything has got to be
21 low growing and cover the ground.
22 Q. If you've got like a flower plant, that
23 maybe grows a little taller, and leaves some
24 space underneath, would that be improper ground
25 cover?

<p style="text-align: right;">Page 93</p> <p>1 A. No.</p> <p>2 Q. It would not be improper ground cover?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. It defines it in our code that you can</p> <p>6 use -- you could have a plant with mulch around</p> <p>7 it.</p> <p>8 Q. Do you use this mostly in instances</p> <p>9 where there are bare areas?</p> <p>10 MR. SARAFAN: This being what?</p> <p>11 MR. BARGIL: The 536 A.</p> <p>12 THE WITNESS: If the property is</p> <p>13 really deteriorated, if it lacks major</p> <p>14 ground cover, then, yes. Otherwise, if</p> <p>15 it's a sporadic thing, it's a</p> <p>16 maintenance standards, we'll use the</p> <p>17 maintenance standards.</p> <p>18 BY MR. BARGIL:</p> <p>19 Q. Have you cited other properties in Miami</p> <p>20 Shores for violations of 536 E, the vegetable</p> <p>21 garden provision?</p> <p>22 A. To date, yes.</p> <p>23 Q. And did those properties also receive</p> <p>24 notices of violation or any sort of citation for</p> <p>25 violation of 536 A, failure to provide ground</p>	<p style="text-align: right;">Page 95</p> <p>1 violation of 536 E?</p> <p>2 A. Correct.</p> <p>3 Q. And not necessarily a violation of 536 A</p> <p>4 for purposes of writing your citation?</p> <p>5 A. I didn't, but now that you pointed it</p> <p>6 out, it could be.</p> <p>7 Q. What could be?</p> <p>8 A. 536 E and 536 A could be used, both.</p> <p>9 Q. But you didn't in any of the previous</p> <p>10 vegetable garden cases?</p> <p>11 A. No, I did not.</p> <p>12 Q. Now I'm going back to the notice of</p> <p>13 violation, Exhibit 3, do you recall what happened</p> <p>14 after --</p> <p>15 Now I'm going back to the notice of</p> <p>16 violation, Exhibit 3. Do you recall what</p> <p>17 happened after this violation was issued?</p> <p>18 MR. SARAFAN: Object to the form.</p> <p>19 THE WITNESS: With respect to what?</p> <p>20 BY MR. BARGIL:</p> <p>21 Q. With respect to the property, did they</p> <p>22 bring it back into compliance?</p> <p>23 A. No.</p> <p>24 Q. What happened?</p> <p>25 A. The property owners had their day in</p>
<p style="text-align: right;">Page 94</p> <p>1 cover?</p> <p>2 A. No.</p> <p>3 Q. Do you ever use 536 A or do you ever</p> <p>4 cite people for violations of 536 A --</p> <p>5 A. Specifically.</p> <p>6 Q. Let me complete my question.</p> <p>7 Do you ever cite people for violation of</p> <p>8 536 A, not having adequate ground cover, when</p> <p>9 also citing them for 536 E, for having a</p> <p>10 vegetable garden?</p> <p>11 A. No, I have not.</p> <p>12 Q. Why?</p> <p>13 A. My opinion doesn't correlate.</p> <p>14 Q. Can you explain that.</p> <p>15 MR. SARAFAN: Object to the form.</p> <p>16 THE WITNESS: The type of -- I</p> <p>17 consider E not what is allowed ground</p> <p>18 cover, basically, and so we have -- we</p> <p>19 do permit it, which it's not permitted</p> <p>20 in the front yard. If it's in the front</p> <p>21 yard, we ask them to relocate it and</p> <p>22 remove it and put approved ground cover.</p> <p>23 BY MR. BARGIL:</p> <p>24 Q. So when you see a garden with vegetables</p> <p>25 growing in it, you are only thinking this is a</p>	<p style="text-align: right;">Page 96</p> <p>1 court and they objected to the notice of</p> <p>2 violation.</p> <p>3 Q. Okay. And what was the -- when you say</p> <p>4 the court?</p> <p>5 A. The code board.</p> <p>6 Q. And what was the finding of the code</p> <p>7 board?</p> <p>8 A. July --</p> <p>9 MR. SARAFAN: The question was what</p> <p>10 was the finding?</p> <p>11 THE WITNESS: That she was in</p> <p>12 violation of the code.</p> <p>13 BY MR. BARGIL:</p> <p>14 Q. And was she given a period of time?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall whether or not she</p> <p>17 brought the property into compliance within that</p> <p>18 period of time?</p> <p>19 A. Yes, she did.</p> <p>20 Q. Do you recall an e-mail exchange or</p> <p>21 receiving any letters? Let me backtrack a little</p> <p>22 bit.</p> <p>23 Do you recall receiving a letter dated</p> <p>24 July 17, 2013, from my clients?</p> <p>25 MR. SARAFAN: Object to the form.</p>

<p>Page 97</p> <p>1 THE WITNESS: I believe so. 2 (Plaintiff's Exhibit No. 4 was 3 marked for identification.) 4 BY MR. BARGIL: 5 Q. And this is a letter addressed to code 6 enforcement supervisor Anthony Flores dated 7 July 17, 2013; correct? 8 A. Yes. 9 Q. Who is that from? 10 A. Hermine Ricketts. 11 Q. I would like to direct your attention to 12 the third sentence of the second paragraph. Just 13 read that to yourself. 14 A. Okay. 15 Q. Are you familiar with plant growing in 16 Florida? I believe you said you are. 17 A. A little bit. 18 Q. And are you familiar with the fact that 19 in order to grow vegetables you need sunlight? 20 A. Yes. 21 Q. And did she explain to you why she put 22 the vegetable garden in the front yard? 23 A. Yes. 24 Q. Do you know how long she had been 25 growing it there?</p>	<p>Page 99</p> <p>1 A. Sure. 2 Q. Do you know whether or not my clients 3 used pesticides in their e-mail? 4 A. I have no idea. 5 Q. Could you read the final sentence of the 6 second paragraph? 7 A. According to her, she does not. 8 Q. Why is that? 9 MR. SARAFAN: Object to the form. 10 Do you mean why she wrote it in the 11 letter? 12 BY MR. BARGIL: 13 Q. Do you understand why according to her 14 she doesn't use pesticides? 15 A. Looks like she doesn't want to get it in 16 her drinking water. 17 Q. And what else? 18 MR. SARAFAN: Objection. Are you 19 asking him to read what the letter says? 20 MR. BARGIL: I'm curious if he 21 knows. 22 THE WITNESS: I don't recall what 23 the letter says. I don't know. 24 BY MR. BARGIL: 25 Q. Does the city generally encourage people</p>
<p>Page 98</p> <p>1 A. No. 2 Q. Once she explained it to you why she put 3 it in the front yard, what did she tell you? 4 MR. SARAFAN: Object to the form. 5 The letter speaks for itself. 6 THE WITNESS: Yeah, like she said 7 in the letter, she needs sunlight in 8 order to grow the vegetables. 9 BY MR. BARGIL: 10 Q. Does the city generally encourage people 11 to grow vibrant gardens? 12 MR. SARAFAN: Object to the form. 13 THE WITNESS: Vibrant gardens? 14 BY MR. BARGIL: 15 Q. Does the city encourage green practices? 16 A. Yes. 17 Q. And is one of those practices growing 18 vegetation that attracts wildlife and creates 19 biodiversity? 20 A. Sure it could. 21 Q. Is one way to do that by growing a 22 vegetable garden? 23 A. In your rear yard, yes. 24 Q. Is another way to do that by not using 25 toxic pesticides?</p>	<p>Page 100</p> <p>1 to use less water? 2 A. There is a water restriction, if that is 3 what you are asking, yes. 4 Q. What's the water restriction? 5 A. That you can water your property on 6 certain days and certain hours. 7 Q. Do you know whether using a drip 8 irrigation system uses less water than a typical 9 irrigation system? 10 A. As far as I know, yes, it uses less 11 water. 12 Q. You mentioned earlier when you went onto 13 the property the first time you noticed things 14 were growing in containers? 15 A. Yes. 16 Q. Does the code prohibit growing in 17 containers? 18 A. No. 19 Q. Following the receipt of the notice of 20 violation and the subsequent hearing, do you 21 recall when my client's brought their property 22 into compliance? 23 A. I believe it was probably within a 24 couple of days of the deadline. 25 Q. Do you recall how many follow-up</p>

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1 inspections are required?
2 A. I think there are one or two.
3 Q. Do you recall whether the first
4 inspection was met with your satisfaction?
5 A. No, it wasn't.
6 Q. Do you recall why?
7 A. I believe there are still vegetables in
8 the garden.
9 Q. Do you remember what it was growing?
10 A. It wasn't approved ground cover, that's
11 for sure.
12 Q. Was there kale?
13 A. Yes.
14 MR. BARGIL: Let's mark this as an
15 exhibit.
16 (Plaintiff's Exhibit No. 5 was
17 marked for identification.)
18 BY MR. BARGIL:
19 Q. Again, I don't remember exactly what we
20 covered, but do you recall there based on your
21 reading of this, do you recall whether or not
22 there was still kale on the property?
23 A. Yes.
24 Q. And do you recall whether or not there
25 was a peppered-type plant on the property?

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1 A. Yes.
2 Q. When you say peppered-type plant, do you
3 know what color they were?
4 A. No.
5 Q. Do you know what kind of peppers they
6 were?
7 A. No.
8 Q. Do you know for sure they were peppers?
9 A. In my opinion they looked like a pepper.
10 Q. Do you recall whether or not there was
11 lettuce?
12 A. Yes.
13 Q. Do you recall what kind of lettuce?
14 A. Yes.
15 Q. Do you know there are many varieties of
16 lettuce?
17 A. Yes, many.
18 Q. Do you know what those varieties are?
19 A. Some. I eat it.
20 Q. Do some of those varieties look a whole
21 like ornamental plants?
22 A. They could, yes.
23 Q. Do you recall if there was still a sweet
24 potato vine growing there?
25 A. Yes.

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1 Q. Do you know where sweet potatoes grow?
2 Do they grow underground?
3 A. I think they grow underground on a vine.
4 Q. Do you recall how you actually saw the
5 sweet potatoes if they were growing underground?
6 A. I didn't see the actual vegetable.
7 Q. Can a person grow underground vegetables
8 and still be in violation of the code?
9 MR. SARAFAN: Object to the form.
10 THE WITNESS: Can you repeat that.
11 BY MR. BARGIL:
12 Q. Can we agree that a lot of vegetables
13 grow underground?
14 MR. SARAFAN: Object to the form.
15 THE WITNESS: Sure.
16 BY MR. BARGIL:
17 Q. If I had a garden that had just those
18 vegetables, would I be cited for having a
19 vegetable garden?
20 A. If it's not an approved ground cover and
21 I knew what it was, yeah.
22 Q. So that's two separate things. It's
23 growing in the ground; right?
24 A. Right.
25 Q. So is there an issue that it might be

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1 adequate or inadequate ground cover if it's
2 underneath the soil?
3 A. It's not an approved ground cover. I
4 don't understand what you are trying to say.
5 Q. Does ground cover pertain to things both
6 above and underneath the soil?
7 A. No, it's just the ground cover.
8 Q. It's what on top of the ground?
9 A. On top of the ground.
10 Q. So I'm referring only to things that are
11 under the ground.
12 MR. SARAFAN: So you are aware of
13 vegetables that have no part of them
14 that extend above the ground?
15 MR. BARGIL: I'm asking the witness
16 a question of whether a vegetable that
17 grows underground constitutes an
18 adequate ground cover.
19 MR. SARAFAN: Object to the form.
20 THE WITNESS: If I didn't know what
21 it was, no.
22 BY MR. BARGIL:
23 Q. So these were the ones that you spotted,
24 you knew what they were, and you said they still
25 have to come up?

<p style="text-align: right;">Page 105</p> <p>1 A. Yes.</p> <p>2 Q. Do you know whether or not there were</p> <p>3 still other things that could be considered</p> <p>4 vegetables that were still growing at the time?</p> <p>5 A. I didn't notice.</p> <p>6 Q. And do you recall what action my clients</p> <p>7 took after they received this letter, this e-mail</p> <p>8 from you?</p> <p>9 A. I believe they removed everything. And</p> <p>10 there was another e-mail sent out that she had</p> <p>11 completed the process and asked me for another</p> <p>12 inspection, and I went out there and inspected.</p> <p>13 Q. And the case was closed?</p> <p>14 A. The case was closed.</p> <p>15 Q. I have some questions a little more</p> <p>16 specific to -- so back to 536 E, that's still</p> <p>17 Exhibit 1. Do you know what the general purpose</p> <p>18 of that restriction is?</p> <p>19 A. 536 E?</p> <p>20 Q. Do you know what the general purpose of</p> <p>21 that restriction is?</p> <p>22 A. No.</p> <p>23 Q. When you go out and you are perhaps</p> <p>24 enforcing the provisions of 536 E, do you know</p> <p>25 what goals of the city you are furthering?</p>	<p style="text-align: right;">Page 107</p> <p>1 yards?</p> <p>2 A. No. It permits them in the rear yard as</p> <p>3 said there.</p> <p>4 Q. Can I have a vegetable garden in my side</p> <p>5 garden?</p> <p>6 A. Again, it wouldn't be approved ground</p> <p>7 cover because it says in the rear yard only.</p> <p>8 Q. Are you aware of vegetable gardens that</p> <p>9 are kept in rear yards in Miami Shores?</p> <p>10 A. No.</p> <p>11 Q. But again, you don't see the rear yard</p> <p>12 of every property?</p> <p>13 A. I don't see them.</p> <p>14 Q. They might be there in backyards;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Would you become aware of a vegetable</p> <p>18 garden if it became overrun with insects or</p> <p>19 something like that?</p> <p>20 A. In the rear yard, no.</p> <p>21 Q. Would you ever enforce against someone</p> <p>22 any provision of the code for having a vegetable</p> <p>23 garden in their rear yard?</p> <p>24 MR. SARAFAN: Object to the form.</p> <p>25 THE WITNESS: They allow it in the</p>
<p style="text-align: right;">Page 106</p> <p>1 A. I didn't write the codes, so no.</p> <p>2 Q. Had you ever spoken with anybody about</p> <p>3 the purpose of 536 E?</p> <p>4 A. No.</p> <p>5 Q. In your -- in the performance of your</p> <p>6 duty, when you cite somebody for any violation,</p> <p>7 do they ever wonder why are you citing me for</p> <p>8 this?</p> <p>9 MR. SARAFAN: Object to the form.</p> <p>10 THE WITNESS: I have questions like</p> <p>11 that, sure.</p> <p>12 BY MR. BARGIL:</p> <p>13 Q. What do you tell them?</p> <p>14 A. It doesn't coincide with the code. You</p> <p>15 are basically violating the code.</p> <p>16 Q. Do they ever ask you why is this part of</p> <p>17 the code?</p> <p>18 A. Yes.</p> <p>19 Q. And what do you tell them?</p> <p>20 A. I tell them I don't write the code, I</p> <p>21 only enforce it, basically. And if they need a</p> <p>22 change to it, they need to speak to their elected</p> <p>23 officials.</p> <p>24 Q. So as far as you know, the purpose of</p> <p>25 536 E is to prohibit vegetable gardens in front</p>	<p style="text-align: right;">Page 108</p> <p>1 rear yard, so no.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. Could there be any other problems with</p> <p>4 the garden itself?</p> <p>5 A. I'm sure there could be, but I wouldn't</p> <p>6 know of it.</p> <p>7 Q. So when you are going around and making</p> <p>8 your rounds and providing citations or inspecting</p> <p>9 properties specific to 536 E -- when you look at</p> <p>10 a property, how do you know whether -- how do you</p> <p>11 decide whether somebody is growing a vegetable</p> <p>12 garden?</p> <p>13 A. I guess the type of ground cover that</p> <p>14 they are using and with the irrigation or</p> <p>15 something as a structure, there is a vegetable --</p> <p>16 there is a box that they put in the front yard</p> <p>17 and the type of ground cover that they are using</p> <p>18 aren't approved.</p> <p>19 Q. Are the boxes themselves prohibited?</p> <p>20 MR. SARAFAN: Object to the form.</p> <p>21 THE WITNESS: They are not</p> <p>22 prohibited, but we ask that they go to</p> <p>23 the building department to see if that's</p> <p>24 something they need a permit for.</p> <p>25 BY MR. BARGIL:</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. And so there are two possibilities, 2 either they don't need a permit or they do and 3 they get the permit and they put it there? 4 A. Correct. 5 Q. Otherwise they are in violation for not 6 having a permit? 7 A. Correct. 8 Q. So let's assume that somebody they 9 either don't need a permit or they needed a 10 permit and they went and got one, that eliminates 11 the issue of whether or not the box is permitted? 12 A. Correct. 13 Q. The box itself is then legal under the 14 code? 15 MR. SARAFAN: Object to the form; 16 the hypothetical. 17 THE WITNESS: The structure, yes. 18 BY MR. BARGIL: 19 Q. And you look at what they are growing in 20 it? 21 A. Yes. 22 Q. And if they are growing vegetables, you 23 cite them? 24 A. It would not be an approved ground 25 cover.</p>	<p style="text-align: right;">Page 111</p> <p>1 something that would be used -- that has a 2 culinary use; is that right? 3 A. Uh-huh. 4 Q. What other reasons might somebody grow 5 vegetables? 6 A. I don't know. 7 Q. What other definition might you apply 8 other than just culinary use? 9 MR. SARAFAN: Object to the form. 10 THE WITNESS: That's my only 11 definition. 12 BY MR. BARGIL: 13 Q. So you walk up to the property, you 14 look, is there a culinary use for this, you ask 15 yourself? 16 MR. SARAFAN: Object to the form. 17 THE WITNESS: Perhaps. 18 BY MR. BARGIL: 19 Q. What other things might you take into 20 account if not only that? 21 A. I'm not sure. 22 Q. Do you take anything else into account 23 whether somebody else would eat it? 24 A. No. 25 Q. What about items that are typically</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. What would you cite them under? 2 MR. SARAFAN: Same objection. 3 THE WITNESS: 536 E. 4 BY MR. BARGIL: 5 Q. Not 536 A? 6 A. Seeing it, no, I would not. 7 Q. And when you decide they are growing 8 vegetables and they are in violation of 536 E, 9 what do you look for to determine whether or not 10 what is growing there is vegetables or is a 11 typical ornamental plant? 12 MR. SARAFAN: Object to the form. 13 THE WITNESS: I look at the ground 14 cover that's in there. If there are 15 specific plants that are, you know, made 16 for culinary purposes, vegetables and 17 tomatoes, peppers and what not, to me 18 it's a vegetable garden. 19 BY MR. BARGIL: 20 Q. So it's more if somebody can eat what's 21 growing then it's a vegetable garden? 22 A. No, vegetables are a vegetable garden. 23 Q. Sort of circular. 24 One of the things you just said you look 25 to see whether or not somebody is growing</p>	<p style="text-align: right;">Page 112</p> <p>1 thought of as fruit? 2 Do people typically eat fruit? 3 A. Yes. 4 Q. If you saw fruit growing, would you cite 5 somebody for a violation of 536 E? 6 A. I guess that depends on how they are 7 doing it. If it looks like a process, if it 8 looks like a -- if it looks unattractive, like a 9 vegetable garden would look like with poles and 10 drip irrigation, all that stuff, then yes, I 11 would probably write them up. 12 Q. Does 536 E say anything about how it's 13 being grown? 14 A. No. 15 Q. Just that it's there? 16 A. Yes. 17 Q. Have you ever cited anybody for having a 18 strawberry bush? 19 A. No. 20 Q. What about blueberries? 21 A. No. 22 Q. Orange tree? 23 A. No. 24 Q. Any other -- have you ever cited anybody 25 for growing any other items that are commonly</p>

<p style="text-align: right;">Page 113</p> <p>1 thought of as fruits? 2 A. No. Fruits are -- they would be 3 ornamental. You can grow them. 4 Q. But vegetables are not ornamental? 5 A. If you use them as an ornamental plant, 6 then yes. 7 Q. I want to go back a little bit, when you 8 got hired by the City of Miami Shores, I think 9 you mentioned when you first started working with 10 Mr. Trumble, that you received a little bit of 11 training materials? 12 A. Uh-huh. 13 Q. What were those again? 14 A. Just in our old software system we had 15 like a summary of the code and the section and 16 what it entailed, basically and then they wrote 17 in themselves, you know, a summary of the code, 18 basically. 19 Q. Who wrote that in? 20 A. Whoever was the secretary at that time, 21 whoever printed out those papers. 22 Q. You are not sure who it was? 23 A. No, before my time. 24 Q. Was it somebody in the code enforcement 25 department?</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. So whatever you got, he got? 2 A. Correct. 3 Q. So the answer would be the same that 4 there was no specific summary pertaining to 536 5 E? 6 A. Probably. 7 Q. Do you use anything else to help you 8 when you are out in the field? 9 A. Now? 10 Q. Yeah. 11 A. Well, since I have my laptop, I use a 12 laptop and I can punch up the code on the laptop. 13 Q. Do you ever look to some sort of a field 14 guide? 15 A. No. 16 Q. Do you carry any kind of native plants? 17 A. No. 18 Q. Ever consulted any authority or treatise 19 or anything like that to assist you in your 20 enforcement? 21 A. No, I have not consulted anybody. 22 Q. So when you are out enforcing, you are 23 doing that based on whatever instruction you've 24 received on the job and then whatever your own 25 personal knowledge is?</p>
<p style="text-align: right;">Page 114</p> <p>1 A. Probably the -- whoever was dealing with 2 the computer and putting it in the system, they 3 printed out the stuff. I was not educated on the 4 software. What we would generally do is we would 5 give all the paperwork to the secretary back then 6 and then she would put everything into the 7 system. 8 Q. Now is the purpose of these summaries to 9 kind of use common sense language to explain what 10 the code provisions meant? 11 MR. SARAFAN: Object to the form. 12 THE WITNESS: I believe so, yes. 13 BY MR. BARGIL: 14 Q. Do you recall if there was any summary 15 provided with respect to 536 E? 16 A. Not specifically. 17 Q. When you say not specifically, was there 18 something general about it? 19 A. There may have been. I don't recall. 20 It was long ago. 21 Q. And likewise when you hired Mr. Orta, 22 did he get the same training materials? 23 A. Yes. 24 Q. Have they been updated? 25 A. No.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Correct. 2 Q. What ultimately informs your 3 understanding of whether or not something is a 4 vegetable? 5 MR. SARAFAN: Object to the form. 6 THE WITNESS: I know it's not an 7 approved ground cover. So if it doesn't 8 look like an approved ground cover, then 9 it's not permitted. 10 BY MR. BARGIL: 11 Q. But you said earlier -- and correct me 12 if I'm mischaracterizing your testimony -- that 13 ground cover just refers to the way a plant grows 14 and the area that it covers; right? 15 A. I think ground cover as I defined it as 16 a low growing plant that completes coverage over 17 an area. 18 Q. If I have a vegetable plant and that 19 vegetable plant is a low growing plant that 20 provides complete cover over an area in a growing 21 season, is that adequate ground cover? 22 MR. SARAFAN: Object to the form, 23 but I think you are close to a really 24 good question. 25 THE WITNESS: Can you repeat it</p>

<p style="text-align: right;">Page 117</p> <p>1 back.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. If I have a vegetable plant that meets</p> <p>4 the definition of ground cover, is that vegetable</p> <p>5 plant ground cover?</p> <p>6 A. I don't think so.</p> <p>7 Q. Why is that?</p> <p>8 A. It's not approved ground cover, we</p> <p>9 wouldn't approve it.</p> <p>10 Q. Is there a separate definition of ground</p> <p>11 cover other than what's written in the code?</p> <p>12 A. No.</p> <p>13 MR. SARAFAN: The question is does</p> <p>14 the plant meet the definition of ground</p> <p>15 cover. Is it ground cover?</p> <p>16 THE WITNESS: Yes, I guess.</p> <p>17 BY MR. BARGIL:</p> <p>18 Q. So now back to the earlier question, we</p> <p>19 were talking about what is or what is not a</p> <p>20 vegetable. And I think my question was something</p> <p>21 along the lines of, how do you know whether or</p> <p>22 not something is a vegetable. You said there has</p> <p>23 to be adequate ground cover. So if the plant</p> <p>24 itself meets the definition of ground cover and</p> <p>25 happens to have a vegetable or not, how do you</p>	<p style="text-align: right;">Page 119</p> <p>1 growing vegetable? Nothing that I know of is low</p> <p>2 growing. You can have rows of lettuce heads</p> <p>3 covering the ground it's not permitted as an</p> <p>4 approved ground cover because it's a vegetable.</p> <p>5 Q. So are all vegetables, regardless of how</p> <p>6 they look, not adequate ground cover under the</p> <p>7 code?</p> <p>8 A. No.</p> <p>9 Q. Even if they meet every part of the</p> <p>10 definition for ground cover?</p> <p>11 A. Well, because --</p> <p>12 MR. SARAFAN: Objection.</p> <p>13 THE WITNESS: Yeah, it wouldn't be</p> <p>14 approved.</p> <p>15 BY MR. BARGIL:</p> <p>16 Q. But again, whenever you cite people for</p> <p>17 having vegetable gardens, you never cited them</p> <p>18 for not having inadequate ground cover; right?</p> <p>19 A. Yes.</p> <p>20 Q. If you have two plants one growing</p> <p>21 vegetables, one not -- strike that.</p> <p>22 If I have a plant that meets the</p> <p>23 requirements of adequate ground cover, and I put</p> <p>24 it side by side with another plant that looks</p> <p>25 exactly the same, but it has the ability to grow</p>
<p style="text-align: right;">Page 118</p> <p>1 decide whether or not it's legal, because we know</p> <p>2 it's adequate ground cover?</p> <p>3 A. It would be adequate ground cover, but</p> <p>4 it's also a vegetable and those are not permitted</p> <p>5 in the front yard as ground cover.</p> <p>6 Q. They are not permitted as ground cover</p> <p>7 or they are not permitted under 536 E?</p> <p>8 A. Both.</p> <p>9 Q. What I'm trying to do -- I'll explain to</p> <p>10 you what I'm asking. What I'm trying to do is</p> <p>11 set aside this issue of ground cover. We have a</p> <p>12 vegetable plant, and it meets every quality</p> <p>13 required for being adequate ground cover. So all</p> <p>14 we are left with is 536 E of whether or not it's</p> <p>15 permitted as a vegetable. And I know that</p> <p>16 vegetables are forbidden unless they are in rear</p> <p>17 yards under the code, but what I'm asking is how</p> <p>18 do you know that is a vegetable?</p> <p>19 MR. SARAFAN: Object to the form.</p> <p>20 THE WITNESS: It would have to be</p> <p>21 producing fruit -- what it's making,</p> <p>22 that's how I would know.</p> <p>23 BY MR. BARGIL:</p> <p>24 Q. And that's --</p> <p>25 A. What's low growing? What's a low</p>	<p style="text-align: right;">Page 120</p> <p>1 a vegetable -- imagine two identical looking</p> <p>2 plants, one that grows a vegetable and one that</p> <p>3 doesn't.</p> <p>4 MR. SARAFAN: Object to the form.</p> <p>5 BY MR. BARGIL:</p> <p>6 Q. Can you imagine that?</p> <p>7 A. Uh-huh.</p> <p>8 MR. SARAFAN: If they are</p> <p>9 identical, how does one grow vegetables</p> <p>10 and one doesn't.</p> <p>11 You mean two individuals plants of</p> <p>12 the same species and genus, one of them</p> <p>13 that has a vegetable on it and --</p> <p>14 MR. BARGIL: No. No.</p> <p>15 MR. SARAFAN: So how are they</p> <p>16 identical if one grows vegetables and</p> <p>17 one doesn't? I just don't follow you,</p> <p>18 Counsel.</p> <p>19 BY MR. BARGIL:</p> <p>20 Q. There are a lot of plants in the animal</p> <p>21 kingdom, aren't there?</p> <p>22 MR. SARAFAN: Object to the form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 MR. SARAFAN: Time out. There are</p> <p>25 plants in the animal kingdom?</p>

<p style="text-align: right;">Page 121</p> <p>1 MR. BARGIL: Your objection is 2 noted. You think that two plants can't 3 look identical. 4 MR. SARAFAN: I don't think plants 5 are animals basically. 6 BY MR. BARGIL: 7 Q. The question that I'm driving at and 8 it's relatively simple -- why don't we do it this 9 way: You go to the grocery store, don't you? 10 A. I do. 11 Q. How do decide whether something is a 12 vegetable or a fruit? 13 MR. SARAFAN: Object to the form; 14 lack of predicate. 15 MR. BARGIL: Why is there lack of 16 predicate? 17 MR. SARAFAN: You haven't 18 established that he ever does decide in 19 the grocery store whether they are 20 vegetables or fruits. 21 Do I want to buy it, do I not? You 22 don't have to characterize it. 23 BY MR. BARGIL: 24 Q. Have you been to a grocery store in your 25 life?</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. So how did she teach you that? 2 A. She took me to the grocery store. 3 Q. Did she cook you with? 4 A. No. 5 Q. She just brought you with her and you 6 learned by experience? 7 A. Yeah. 8 Q. What if she had told you something 9 different? 10 MR. SARAFAN: Objection; 11 hypothetical. 12 THE WITNESS: She would have been 13 cruel. 14 BY MR. BARGIL: 15 Q. Let's take a tomato for example. A lot 16 of people argue all the time about whether or not 17 a tomato is a fruit or a vegetable. What is your 18 belief on that? 19 A. It's a vegetable. 20 Q. Now, if you had grown up your entire 21 life being told that was a fruit, would you think 22 differently? 23 A. Probably. 24 Q. So it's basically a reflection of your 25 personal experience?</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Yes. 2 Q. Have you gone to the produce section in 3 a grocery store? 4 A. Yes. 5 Q. Have you ever been instructed by anyone 6 or even made up your own mind that today I'm 7 going to buy some fruits and I'm going to buy 8 some vegetables? 9 A. Yes. 10 Q. And that requires you to make the 11 distinction between what is a fruit and what is a 12 vegetable? 13 A. Correct. 14 Q. And so when you look at the vegetable 15 aisle or you look at the fruit aisle, and they 16 are all heaped together, what goes on in your 17 brain to tell you this is a fruit versus that's a 18 vegetable? 19 MR. SARAFAN: Objection; lack of 20 predicate. 21 You can answer. 22 THE WITNESS: Growing up my mom 23 taught me what's a vegetable, what's a 24 fruit. 25 BY MR. BARGIL:</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. SARAFAN: His beliefs are a 2 reflection -- 3 MR. BARGIL: Do you have an 4 objection? 5 MR. SARAFAN: We'll stipulate his 6 beliefs are a reflection of his personal 7 experiences, if that's what you would 8 like to -- 9 THE WITNESS: What was your 10 question? 11 BY MR. BARGIL: 12 Q. Are your beliefs basically a reflection 13 of your personal experience? 14 MR. SARAFAN: So you don't want to 15 stipulate that? 16 MR. BARGIL: Will you allow him to 17 answer this question? 18 MR. SARAFAN: I just want to get on 19 the record you don't want a stipulation 20 to that; you want his answers. 21 MR. BARGIL: That's why we're 22 having his deposition. 23 MR. SARAFAN: That's very 24 interesting. 25 THE WITNESS: Again, repeat the</p>

<p style="text-align: right;">Page 125</p> <p>1 question.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. Are your personal beliefs regarding</p> <p>4 whether or not something is a vegetable or not a</p> <p>5 reflection of your personal experiences?</p> <p>6 A. Well, there is education somewhere. As</p> <p>7 I grew up, I was educated as to what is a fruit</p> <p>8 and what was a vegetable. So with my education,</p> <p>9 I can determine what is a fruit and what is a</p> <p>10 vegetable. If you want to call it a fruit, I</p> <p>11 still call it a vegetable. It's my opinion.</p> <p>12 MR. SARAFAN: He wants to call it</p> <p>13 an animal.</p> <p>14 THE WITNESS: It's my opinion.</p> <p>15 MR. BARGIL: Do you have an</p> <p>16 objection to that?</p> <p>17 MR. SARAFAN: He answered the</p> <p>18 question.</p> <p>19 BY MR. BARGIL:</p> <p>20 Q. Have you ever in your work as a code</p> <p>21 enforcement supervisor or even before as a code</p> <p>22 enforcement officer, not come upon a vegetable</p> <p>23 garden in the front yard in Miami Shores and not</p> <p>24 provided a citation for it?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. So in some levels it's based on -- it's</p> <p>2 subjective?</p> <p>3 A. It is subjective, yes.</p> <p>4 Q. Is it safe to say, I know there was some</p> <p>5 back and forth on it, but now that we've kind of</p> <p>6 established your understanding of what is or what</p> <p>7 is not a vegetable is informed by sort of your</p> <p>8 personal education, beliefs and so on, safe to</p> <p>9 say that Mike Orta's belief of what is a</p> <p>10 vegetable or fruit is developed the same way?</p> <p>11 A. Safe to say.</p> <p>12 Q. Did he grow up in your household?</p> <p>13 A. No. We have similar backgrounds.</p> <p>14 Q. What are your backgrounds?</p> <p>15 A. We are both Hispanic, culture speaks for</p> <p>16 itself, mothers around the same age.</p> <p>17 Q. But it is possible that he has different</p> <p>18 beliefs of what is or is not a vegetable?</p> <p>19 A. He may have.</p> <p>20 Q. Have you gotten other complaints about</p> <p>21 vegetable gardens in Miami Shores?</p> <p>22 A. I have.</p> <p>23 Q. How frequently?</p> <p>24 A. Very rarely.</p> <p>25 Q. Can you attempt to quantify them? Do</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. So every time you've seen a vegetable</p> <p>2 garden, you would present that property owner</p> <p>3 with a courtesy notice or subsequently a notice</p> <p>4 of violation?</p> <p>5 A. If I see it, yes.</p> <p>6 Q. And in every instance were those -- do</p> <p>7 you recall whether or not those gardens were</p> <p>8 attractive?</p> <p>9 MR. SARAFAN: Object to the form.</p> <p>10 THE WITNESS: It's not for me to</p> <p>11 say.</p> <p>12 BY MR. BARGIL:</p> <p>13 Q. What's not for you to say?</p> <p>14 A. Whether that particular ground cover is</p> <p>15 attractive. The way they were growing it was not</p> <p>16 attractive, if that's what you are asking.</p> <p>17 Q. Is part of your job deciding whether or</p> <p>18 not something looks nice?</p> <p>19 A. Generally.</p> <p>20 Q. And how do you come to that</p> <p>21 determination?</p> <p>22 A. If everything looks harmonious and</p> <p>23 grown, pretty.</p> <p>24 Q. Whatever that means --</p> <p>25 A. Whatever that means to you.</p>	<p style="text-align: right;">Page 128</p> <p>1 you know how many there were?</p> <p>2 A. Before this instance, none.</p> <p>3 Q. And after?</p> <p>4 A. Two others.</p> <p>5 Q. Two others in addition to my clients?</p> <p>6 A. Yes.</p> <p>7 Q. And what is the status of those</p> <p>8 properties?</p> <p>9 A. One was adjudicated to our code board</p> <p>10 and she came into compliance, and the other one</p> <p>11 is going through the process now and she's</p> <p>12 scheduled to meet with the code board next month.</p> <p>13 Q. How about -- is part of your job making</p> <p>14 sure there are not improper ornaments in the</p> <p>15 landscape?</p> <p>16 A. Ornaments?</p> <p>17 Q. Like garden gnomes, flamingos, things</p> <p>18 like that.</p> <p>19 A. I believe it stipulates in the code</p> <p>20 somewhere that you are allowed only one landscape</p> <p>21 structure, one ornamental landscape structure.</p> <p>22 Again, I have not seen it.</p> <p>23 Q. Do you cite people for that?</p> <p>24 A. I haven't. I haven't come across it.</p> <p>25 Q. Is there anything else that you notice</p>

<p style="text-align: right;">Page 129</p> <p>1 is strictly prohibited other than vegetables? 2 MR. SARAFAN: Object to the form. 3 THE WITNESS: Again, vegetables 4 aren't prohibited. 5 BY MR. BARGIL: 6 Q. I'm sorry. Anything else that you 7 notice -- well, vegetables aren't permitted in 8 front yards? 9 MR. SARAFAN: Object to the form. 10 THE WITNESS: They are not approved 11 ground cover in front yards. 12 BY MR. BARGIL: 13 Q. What else is prohibited in front yards? 14 MR. SARAFAN: Object to the form. 15 THE WITNESS: Again, I'm not sure 16 where you are going. Is there 17 anything -- specifically like what? 18 BY MR. BARGIL: 19 Q. Is there anything else that is singled 20 out? 21 A. Not that I'm aware of. 22 Q. When you say not that you are aware of, 23 are there parts of the code that you are tasked 24 with enforcing that you don't know of? 25 A. The code is a big book so there may be</p>	<p style="text-align: right;">Page 131</p> <p>1 the property? 2 A. I have seen her many times. 3 Q. Do you know what she was doing there? 4 A. Gardening. 5 Q. Do you know what kind of things she was 6 doing in connection with her gardening? 7 A. No. 8 Q. Is it generally maintenance? 9 A. Yeah, I saw her doing general 10 maintenance stuff. 11 Q. Pruning? 12 A. Pruning, watering, probably digging a 13 hole for a plant. 14 Q. Are you aware that part of gardening 15 actually requires you to prevent overgrowth? 16 MR. SARAFAN: Object to the form. 17 THE WITNESS: Yes, I guess. 18 BY MR. BARGIL: 19 Q. Would you say the garden was well 20 maintained? 21 A. Yes. 22 Q. Did you ever cite her for not having a 23 properly maintained garden? 24 A. No. 25 Q. And again, once they removed the</p>
<p style="text-align: right;">Page 130</p> <p>1 some things in there. I haven't mastered every 2 single page. 3 Q. So as far as you know, vegetables are 4 the only thing that are singled out? 5 MR. SARAFAN: Object to the form. 6 THE WITNESS: They are not approved 7 ground cover in the front yard. 8 BY MR. BARGIL: 9 Q. Is there anything else that would fall 10 under that same category as under all 11 circumstances not approved ground cover in the 12 front yard? 13 A. Sure. If you have a snake plant, grass 14 that is very tall, if there is a whole yard full 15 of them, they exceed the height. 16 Q. Are snake plants singled out in the 17 code? 18 A. No. 19 Q. Is there anything else? 20 A. Not that I'm aware of. 21 Q. You mentioned before you had been by the 22 property pretty much every day as part of your 23 duties; right? 24 A. More or less. 25 Q. And you see Ms. Ricketts out in front of</p>	<p style="text-align: right;">Page 132</p> <p>1 vegetables, the property was in compliance; 2 correct? 3 MR. SARAFAN: Object to the form. 4 THE WITNESS: Yes. 5 BY MR. BARGIL: 6 Q. If they changed out their vegetable 7 plants for flower plants, would the property be 8 in compliance? 9 MR. SARAFAN: Object to the form. 10 THE WITNESS: If it's an approved 11 ground cover, yes. 12 BY MR. BARGIL: 13 Q. Do you know whether or not people in 14 town thought the garden was attractive? 15 A. No one has ever spoken to me outside of 16 the neighbor with the initial complaint. 17 Q. Did Ms. Ricketts ever tell you whether 18 other people had told her they liked her garden? 19 A. I think she mentioned that at the code 20 board, yes. 21 Q. Do you remember what she said? 22 A. I think she said her neighbors found it 23 attractive. All I know is I remember her saying 24 that, not anything else. I know she said a 25 couple of other things, but I can't recall</p>

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1 exactly what.
2 Q. And again the City of Miami Shores
3 encourages the citizens to use what it referred
4 to as green sustainable practices?
5 A. It doesn't specifically say that.
6 Q. It doesn't?
7 A. No. The code doesn't say that. Is that
8 what you are saying?
9 Q. I'm saying the city as a policy position
10 of the city, does it encourage its citizens to
11 use green or sustainable practices?
12 MR. SARAFAN: Form. He's not here
13 to represent the city.
14 THE WITNESS: Sure.
15 MR. BARGIL: I'm asking about his
16 general awareness.
17 THE WITNESS: My general awareness
18 is yes.
19 BY MR. BARGIL:
20 Q. Do you know whether Ms. Ricketts used
21 green and sustainable practices in her yard?
22 A. Well, I know the type of ground cover
23 she had required a lot of maintenance so I would
24 say no.
25 Q. Would you say she didn't use green

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1 practices?
2 A. I would say no, growing those type of
3 plantings require a lot of maintenance, a lot of
4 water.
5 Q. Maintenance in what sense?
6 A. Maintenance that's what you referred to
7 before about the policy, that it's low growing,
8 low maintenance, you know, drought tolerant,
9 plantings look -- vegetation, ground covering,
10 what not -- in my opinion, what she had was not
11 low maintenance. It was a lot of maintenance.
12 Like you said before, she was out there all the
13 time.
14 Q. That's physical labor?
15 A. Sure, but you have to be out there all
16 the time in order to maintain those type of --
17 that type of planting.
18 Q. Absolutely. Do you know whether or not
19 she enjoyed being out there all the time?
20 A. I have no idea. I'm not her.
21 Q. Do you know whether or not physical
22 labor is considered not a green or sustainable
23 practice?
24 A. I'm not an expert on that so I wouldn't
25 know.

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1 Q. You mentioned earlier on that you -- are
2 you familiar with the type of irrigation system
3 she used?
4 A. I believe she had drip irrigation and I
5 believe she has a conventional sprinkler system
6 as well.
7 Q. And a drip irrigation systems uses less
8 water or more water than a typical irrigation
9 system?
10 A. Less water.
11 (Lunch Recess taken.)
12 MR. BARGIL: Alli is not on the
13 line any longer.
14 BY MR. BARGIL:
15 Q. Mr. Flores, welcome back. You
16 understand you are still under oath?
17 A. Yes.
18 Q. Did you speak with anybody about this
19 case other than your attorney during the break?
20 A. No.
21 Q. I want to go back to some of your
22 testimony from earlier this morning and then
23 we'll move on quickly.
24 You mentioned earlier that -- when we
25 were talking about ground cover, do you recall

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1 that conversation?
2 A. Yes.
3 Q. Is it a requirement that a person has
4 adequate ground cover, is that specific to the
5 front yard or does the ground cover requirement
6 apply to anywhere in the property?
7 A. It doesn't specify in the code so I'm
8 going to assume it's the whole yard.
9 Q. So it would apply in the back yard as
10 well?
11 A. Yes.
12 Q. May you have vegetable gardens in rear
13 yards?
14 A. Yes.
15 Q. My understanding though is -- well, so
16 is a vegetable garden in a rear yard adequate
17 ground cover, but not in the front?
18 MR. SARAFAN: Object to the form.
19 You can answer.
20 THE WITNESS: Well, vegetable
21 gardens are permitted in the rear yard
22 as an exception to ground cover.
23 BY MR. BARGIL:
24 Q. So where in the code does it say that
25 vegetable gardens aren't adequate ground cover;

<p style="text-align: right;">Page 137</p> <p>1 does it say that anywhere? 2 MR. SARAFAN: Object to the form. 3 THE WITNESS: Specifically, it 4 doesn't say that anywhere, but ground 5 cover is stated, what it needs to be. 6 BY MR. BARGIL: 7 Q. And is there anything in the code that 8 says ground code is required and vegetables are 9 not ground cover unless they are in the rear 10 yard? 11 MR. SARAFAN: Object to the form. 12 You can answer. 13 THE WITNESS: It doesn't 14 specifically say that. 15 BY MR. BARGIL: 16 Q. So your testimony though, if I'm 17 understanding it correctly, is vegetable gardens 18 are permitted in rear yards as an exception to 19 the ground cover rules? 20 A. Correct. 21 Q. Now let's take a look at 536 again. Do 22 you still have that? Okay. Let's take a look at 23 536. As we know the ground cover is section A; 24 is that correct? 25 MR. SARAFAN: Object to the form.</p>	<p style="text-align: right;">Page 139</p> <p>1 gardens? 2 MR. SARAFAN: Object to the form. 3 THE WITNESS: Under 536 E? 4 BY MR. BARGIL: 5 Q. Anywhere in the code. 6 A. 537 under maintenance standards 7 paragraph A subsection two, it says "Ground cover 8 used in lieu of grass shall be of one uniform 9 type through a given lawn area." Is that what 10 you are asking? 11 Q. No, I don't think so. What I'm asking 12 is, is there anywhere in the code -- and if there 13 isn't, that's okay too. Is there anywhere in the 14 code that actually connects the requirement for 15 adequate ground cover and the seemingly unrelated 16 restriction on vegetable gardens? 17 MR. SARAFAN: Object to the form. 18 THE WITNESS: Not that I can recall 19 at this time. 20 BY MR. BARGIL: 21 Q. Now moving to section 538. Direct your 22 attention there to the section where ground cover 23 is defined. We talked a little bit about this 24 before. 25 Are there some vegetable plants that are</p>
<p style="text-align: right;">Page 138</p> <p>1 THE WITNESS: Yes. 2 BY MR. BARGIL: 3 Q. And the vegetable gardens are permitted 4 in rear yards only language is subsection E? 5 MR. SARAFAN: Same objection. 6 THE WITNESS: Yes. 7 BY MR. BARGIL: 8 Q. Is subsection E a subsection of A, or 9 are they two independent subsections? 10 MR. SARAFAN: Object to the form. 11 THE WITNESS: They are two 12 independent subsections. 13 BY MR. BARGIL: 14 Q. Is there any connection anywhere else in 15 the code that tethers the ground cover 16 requirement to the prohibition on vegetable 17 gardens outside of the backyard? 18 MR. SARAFAN: Object to the form. 19 THE WITNESS: I don't understand 20 your question. 21 BY MR. BARGIL: 22 Q. Can you point to anywhere in the code 23 other than right here where there is any 24 connection drawn between the requirement for 25 ground cover and the restriction on vegetable</p>	<p style="text-align: right;">Page 140</p> <p>1 low growing? 2 A. Yes. 3 Q. Are there some vegetable plants that can 4 provide a complete cover over an area over a 5 growing season? 6 A. Not that I'm aware of. 7 Q. No vegetable plant that you are aware of 8 -- let me make sure I understand your answer 9 completely. 10 No vegetable plant that you are aware of 11 can provide a complete cover over an area in one 12 growing season? 13 A. Not that I'm aware of, no. 14 Q. Is it possible that there are some that 15 you are not aware of that do this? 16 MR. SARAFAN: Object to the form. 17 THE WITNESS: There may be, but I 18 don't know. 19 BY MR. BARGIL: 20 Q. You mentioned earlier in your deposition 21 that you only cited my clients under section 536 22 E? 23 A. Correct. 24 Q. And anyone in fact in Miami Shores who 25 you have cited for a vegetable garden, you have</p>

<p style="text-align: right;">Page 141</p> <p>1 cited them only under 536 E; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Although is it your testimony that you</p> <p>4 could have cited them under 536 A?</p> <p>5 A. I could have, yes.</p> <p>6 Q. But you didn't do that; right?</p> <p>7 A. Correct.</p> <p>8 Q. When did it occur to you that you could</p> <p>9 do that?</p> <p>10 A. In this room as we were speaking</p> <p>11 earlier.</p> <p>12 Q. When you were growing up, you mentioned</p> <p>13 that you learned either from your mom or along</p> <p>14 with your education, what was or was not a</p> <p>15 vegetable; is that an accurate characterization</p> <p>16 of your testimony?</p> <p>17 MR. SARAFAN: Object to the form;</p> <p>18 asked and answered.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. BARGIL:</p> <p>21 Q. Did your mom ever say anything to you</p> <p>22 about adequate ground cover?</p> <p>23 A. No.</p> <p>24 Q. When is the first time you heard about</p> <p>25 adequate ground cover?</p>	<p style="text-align: right;">Page 143</p> <p>1 had about vegetables not being adequate ground</p> <p>2 cover is when you were discussing this with your</p> <p>3 attorney.</p> <p>4 A. Correct.</p> <p>5 Q. And when did those conversations -- were</p> <p>6 those conversations before or after this</p> <p>7 litigation commenced?</p> <p>8 A. After.</p> <p>9 (Plaintiff's Exhibit No. 6 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. BARGIL:</p> <p>12 Q. Do you recognize this?</p> <p>13 A. Yes.</p> <p>14 Q. Is this a printout of the main page of</p> <p>15 the Miami Shores Village code enforcement</p> <p>16 department?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see where it says in I believe</p> <p>19 the opening sentence, that the ultimate goal is</p> <p>20 "improving the quality of life for all Miami</p> <p>21 Shores as well as beautifying or streets and</p> <p>22 neighborhoods"?</p> <p>23 A. Yes.</p> <p>24 Q. Does a requirement that all vegetable</p> <p>25 gardens be confined to front yards improve the</p>
<p style="text-align: right;">Page 142</p> <p>1 A. When I started working at Miami Shores.</p> <p>2 Q. When did you first hear about vegetables</p> <p>3 not being adequate ground cover?</p> <p>4 A. Can you rephrase the question. I'm not</p> <p>5 sure what you're asking.</p> <p>6 Q. Well, you said you didn't think of</p> <p>7 adequate ground cover until you worked for Miami</p> <p>8 Shores.</p> <p>9 A. Uh-huh.</p> <p>10 Q. When is the first time that you heard</p> <p>11 that vegetables could not be adequate ground</p> <p>12 cover under the code?</p> <p>13 A. Under the code when I started working</p> <p>14 here.</p> <p>15 Q. Have you ever had any conversations with</p> <p>16 anyone with the city about whether vegetables are</p> <p>17 adequate cover?</p> <p>18 A. No.</p> <p>19 MR. SARAFAN: Other than with</p> <p>20 counsel in preparation for the</p> <p>21 deposition.</p> <p>22 THE WITNESS: Other than counsel,</p> <p>23 no.</p> <p>24 BY MR. BARGIL:</p> <p>25 Q. So the only conversation you really ever</p>	<p style="text-align: right;">Page 144</p> <p>1 quality of life of all Miami Shores residents?</p> <p>2 MR. SARAFAN: Object to the form.</p> <p>3 THE WITNESS: Can you repeat that.</p> <p>4 BY MR. BARGIL:</p> <p>5 Q. Does the requirement that all vegetable</p> <p>6 gardens be confined to backyards improve the</p> <p>7 quality of life for all Miami Shores?</p> <p>8 MR. SARAFAN: Same objection.</p> <p>9 THE WITNESS: In my opinion, no.</p> <p>10 I'm not sure what you are asking. Does</p> <p>11 the -- say that again.</p> <p>12 BY MR. BARGIL:</p> <p>13 Q. Does the requirement in the code which</p> <p>14 requires that all vegetable gardens be placed in</p> <p>15 rear yards, does that improve the quality of life</p> <p>16 for residents of Miami Shores?</p> <p>17 MR. SARAFAN: Same objection.</p> <p>18 THE WITNESS: That's not for me to</p> <p>19 say.</p> <p>20 BY MR. BARGIL:</p> <p>21 Q. Does it beautify the streets and</p> <p>22 neighborhoods?</p> <p>23 A. Again, not for me to say.</p> <p>24 (Plaintiff's Exhibit No. 7 was</p> <p>25 marked for identification.)</p>

<p style="text-align: right;">Page 145</p> <p>1 BY MR. BARGIL: 2 Q. This is Exhibit 7. Does it look 3 familiar to you? 4 A. No. 5 Q. Take a moment to familiarize yourself 6 with it. 7 A. Yes. 8 Q. Very briefly, does this depict a 9 commitment on the behalf of Miami Shores to go 10 green? 11 MR. SARAFAN: Object to the form. 12 He said he's not familiar with it. 13 BY MR. BARGIL: 14 Q. Have you had an opportunity to 15 familiarize yourself with this document? 16 A. Yes. 17 Q. Does this depict, based on your review 18 of the department, a commitment on the part of 19 Miami Shores to go green? 20 MR. SARAFAN: Same objection. 21 THE WITNESS: I couldn't tell you. 22 I'm not the creator of this website, or 23 the initiative to go green, so I don't 24 know who the author of this was, what 25 was their intent.</p>	<p style="text-align: right;">Page 147</p> <p>1 A. Okay. 2 Q. And just for the record it says "Most of 3 the Village landscaped medians follow the Florida 4 Friendly Landscape design and have been converted 5 to well water to save on drinking water." 6 A. Right. 7 Q. Are you familiar with the Florida 8 Friendly Landscaping Design? 9 A. I know of it. 10 Q. Do you ever -- have you ever been 11 instructed to employ its recommendations in any 12 of your code compliance work? 13 A. Per the code, yes. 14 Q. So the code requires that you follow the 15 Florida Friendly Landscape? 16 A. No, it doesn't require. It says you can 17 use it as an alternative to conventional 18 landscaping. 19 Q. When you say you can use it as an 20 alternative, are there instances where Florida 21 Friendly Landscape Design is at odds with 22 conventional landscaping? 23 MR. SARAFAN: Object to the form. 24 THE WITNESS: No. It has to be at 25 odds with our code of ordinance and it's</p>
<p style="text-align: right;">Page 146</p> <p>1 BY MR. BARGIL: 2 Q. Have you received any instructions with 3 regards to green practices? 4 A. No. 5 Q. Has anyone spoken to you at the city of 6 its policy of going green? 7 A. No. 8 Q. And so you are not ever encouraged or 9 instructed to use green policies in your work? 10 A. No. 11 Q. And you are not ever encouraged or 12 instructed to treat properties differently that 13 clearly demonstrates green practices? 14 A. No. 15 (Plaintiff's Exhibit No. 8 was 16 marked for identification.) 17 BY MR. BARGIL: 18 Q. This is Exhibit 8. Are you familiar 19 with what that depicts? 20 A. No. 21 Q. Take a look, especially the second page. 22 A. Okay. 23 Q. I would like to direct your attention to 24 the second page, the third bullet up from the 25 bottom.</p>	<p style="text-align: right;">Page 148</p> <p>1 usually not if you implement a code of 2 ordinance with the Florida Friendly 3 Landscaping. 4 MR. SARAFAN: So you are saying 5 there is no copyright on the second 6 page? 7 MR. BARGIL: It's not relevant 8 to -- 9 MR. SARAFAN: I thought you said it 10 was blank. 11 MR. BARGIL: I don't recall. I can 12 go print it out, would that make you 13 feel better? Why don't I go do that. I 14 think I should. 15 Go off the record for a minute. 16 (Off the record.) 17 (Plaintiff's Exhibit No. 9 was 18 marked for identification.) 19 BY MR. BARGIL: 20 Q. Have you had the opportunity to review 21 this document? 22 A. Yes. 23 Q. Have you reviewed the second page? 24 A. Yes. 25 Q. Have you got your \$5.60 yet?</p>

<p style="text-align: right;">Page 149</p> <p>1 MR. SARAFAN: I have it for him.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. Looking now on page one, are you</p> <p>4 familiar now with what this document is?</p> <p>5 A. After reviewing it, yes.</p> <p>6 Q. I would like to direct your attention</p> <p>7 to, I guess I would call it the third paragraph.</p> <p>8 Do you see where it says, "The village encourages</p> <p>9 home owners and business owners to follow the</p> <p>10 Florida Friendly Landscaping"?</p> <p>11 A. Yes.</p> <p>12 Q. And it provides a hyperlink for the</p> <p>13 Florida Yards and Neighborhoods Handbook?</p> <p>14 A. Right.</p> <p>15 Q. Are properties that incorporate Florida</p> <p>16 Friendly Landscaping compliant with the Miami</p> <p>17 Shores code?</p> <p>18 A. It depends on whether or not they follow</p> <p>19 the ordinance, not necessarily all the time.</p> <p>20 Q. If you follow the main practices</p> <p>21 described in Florida Friendly Landscaping and you</p> <p>22 are otherwise compliant with Miami Shores code?</p> <p>23 A. Then yes.</p> <p>24 Q. And do you see a little further down to</p> <p>25 where it says "Miami-Dade County invites you to</p>	<p style="text-align: right;">Page 151</p> <p>1 A. Yes.</p> <p>2 Q. It goes on and there is a hyperlink</p> <p>3 there?</p> <p>4 A. Uh-huh.</p> <p>5 Q. If I represent to you that Exhibit 10 is</p> <p>6 what that hyperlink takes you to, would you</p> <p>7 accept that?</p> <p>8 A. Yes.</p> <p>9 Q. I want to direct you about two-thirds of</p> <p>10 the way down where it says "Have a green</p> <p>11 Thanksgiving."</p> <p>12 A. Yes.</p> <p>13 Q. It says "Carry reuseable bags when you</p> <p>14 go grocery shopping"; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know if Ms. Ricketts used any</p> <p>17 bags at all in harvesting her vegetables in her</p> <p>18 front yard?</p> <p>19 A. I have no idea.</p> <p>20 Q. Do you know whether growing your own</p> <p>21 food allows you to purchase fewer processed</p> <p>22 foods?</p> <p>23 A. I can't make a determination on that.</p> <p>24 Q. Well, you also grow your own food, do</p> <p>25 you not?</p>
<p style="text-align: right;">Page 150</p> <p>1 become stewards of the environment"?</p> <p>2 A. I do.</p> <p>3 Q. "And join the Florida Department of</p> <p>4 Environmental Protection in promoting,</p> <p>5 sustainability in Florida businesses, schools and</p> <p>6 homes."</p> <p>7 A. Yes.</p> <p>8 Q. Has anyone ever briefed you or given you</p> <p>9 any instruction with respect to these things?</p> <p>10 A. No.</p> <p>11 Q. Has anyone ever told you that in the</p> <p>12 course of your administration of your duties as</p> <p>13 code compliance supervisor of Miami Shores that</p> <p>14 you should be mindful of people who are</p> <p>15 practicing these things?</p> <p>16 A. No.</p> <p>17 (Plaintiff's Exhibit No. 10 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. BARGIL:</p> <p>20 Q. This is Exhibit 10. Mr. Flores, I want</p> <p>21 you to refer briefly back to Exhibit 9 though.</p> <p>22 Do you see we spoke about this just a moment ago,</p> <p>23 where it says "The Florida Department of</p> <p>24 Environmental Protection is promoting</p> <p>25 sustainability."</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes.</p> <p>2 Q. What do you grow?</p> <p>3 MR. SARAFAN: Asked and answered.</p> <p>4 THE WITNESS: Peppers, tomatoes,</p> <p>5 onions.</p> <p>6 BY MR. BARGIL:</p> <p>7 Q. Do you buy the same or fewer peppers,</p> <p>8 tomatoes and onions?</p> <p>9 A. Fewer, obviously.</p> <p>10 Q. Because if you grow your own food, you</p> <p>11 buy less food from the store; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Do you also see where it says you should</p> <p>14 seek out locally grown foods or locally grown</p> <p>15 goods and organic foods?</p> <p>16 A. I see that.</p> <p>17 Q. Can you think of anything more local</p> <p>18 than your front yard?</p> <p>19 MR. SARAFAN: Object to the form.</p> <p>20 THE WITNESS: Farmer's market.</p> <p>21 BY MR. BARGIL:</p> <p>22 Q. That's more local than your front yard?</p> <p>23 A. Well, not more local, but less work.</p> <p>24 Q. The question was more local.</p> <p>25 And again, on the second page, if you</p>

<p style="text-align: right;">Page 153</p> <p>1 can flip to the second page at the very bottom, 2 do you see the second section that says "buy 3 local"? 4 A. Yes. 5 Q. Was Ms. Ricketts engaging in local -- 6 the local food economy? 7 A. I wouldn't know. I have no idea. 8 Q. How far do you think she had to drive in 9 order to harvest the vegetables in her front 10 yard? 11 A. She wouldn't have to drive. 12 Q. But to go to a farmer's market would she 13 have to drive? 14 A. Probably. 15 Q. On page four of six, do you see at the 16 very top where the Florida Department of 17 Environmental Protection advocates grass cycling? 18 A. Yes, I do. 19 Q. And it says this is something you do in 20 order to reduce water and fertilizer 21 requirements? 22 A. I see that, yes. 23 Q. Is another way to reduce the amount of 24 water you use to have something in lieu of a lawn 25 that uses less water?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. Right. 2 Q. So I would like you to refer to Exhibit 3 Number 9. 4 (Plaintiff's Exhibit No. 11 was 5 marked for identification.) 6 BY MR. BARGIL: 7 Q. We spoke a little bit before about the 8 Florida Friendly Landscaping practices? 9 A. Yes. 10 Q. Are you familiar with the University of 11 Florida IFAS extension? 12 A. Yes. 13 Q. Do they promulgate the Florida Friendly 14 Landscaping practices book? 15 A. I believe so. 16 Q. Are you familiar with any of the work 17 that the University of Florida IFAS extension has 18 done in connection with vegetable gardens? 19 A. No. 20 Q. Can we agree that what is in front of us 21 is a study that the University of Florida IFAS 22 extension has done on vegetable gardens? 23 MR. SARAFAN: Hold on. When you 24 say to him can we agree, can he swear to 25 it? Last time you asked if you could</p>
<p style="text-align: right;">Page 154</p> <p>1 MR. SARAFAN: Object to the form. 2 THE WITNESS: Excuse me. 3 BY MR. BARGIL: 4 Q. Is one way to reduce your water 5 consumption -- you can have a lawn, but is 6 another way to reduce your water consumption to 7 not have a lawn? 8 A. Define lawn. 9 Q. A grassy area with nothing planted in 10 it. 11 MR. SARAFAN: But grass. 12 THE WITNESS: But grass is planted 13 in. 14 BY MR. BARGIL: 15 Q. How about this, you are the code 16 compliance officer. You define lawn. 17 A. A lawn would be an area not covered by a 18 structure, or impervious area, like a driveway, 19 that has grass on it. 20 Q. So the less lawn area you have, the less 21 water you use; right? 22 A. Probably. 23 Q. Okay. And of course if you don't use 24 any fertilizer at all, that reduces your 25 fertilizer use, doesn't it?</p>	<p style="text-align: right;">Page 156</p> <p>1 represent it to him. That's a little 2 different. 3 BY MR. BARGIL: 4 Q. If I represent to you that this is a 5 study that the University of Florida IFAS 6 extension has done on vegetable gardening, will 7 you accept that? 8 A. I guess. 9 Q. Any reason to disavow it? 10 A. I have none. 11 Q. I would like to direct your attention to 12 page 2 at the top. The sentence begins with 13 "Choose a spot," but I'm looking at the sentence 14 that follows. 15 Do you agree that it says "Vegetables 16 may also be included in the landscape among 17 ornamental plants"? 18 MR. SARAFAN: Objection; the 19 document speaks for itself. 20 THE WITNESS: I agree it says that. 21 BY MR. BARGIL: 22 Q. I think you said it earlier, but you 23 agree that vegetables can be included among the 24 landscape of ornamental plants? 25 A. Yes.</p>

<p style="text-align: right;">Page 157</p> <p>1 Q. Even under the Miami Shores code?</p> <p>2 A. Sure.</p> <p>3 Q. And why is that, by the way?</p> <p>4 A. Why is what?</p> <p>5 Q. Let me ask it differently.</p> <p>6 Vegetables often can have an ornamental</p> <p>7 value to them; right?</p> <p>8 A. Sure.</p> <p>9 MR. BARGIL: In the interest of not</p> <p>10 printing off an immense amount of paper</p> <p>11 because this was a 65-page document and</p> <p>12 I only wanted to review two pages, I</p> <p>13 didn't print it out in its entirety. I</p> <p>14 want to disclose that to you.</p> <p>15 MR. SARAFAN: That's okay. I can</p> <p>16 is see it skips around it goes from page</p> <p>17 3 to 48 and 49.</p> <p>18 (Plaintiff's Exhibit No. 12 was</p> <p>19 marked for identification.)</p> <p>20 BY MR. BARGIL:</p> <p>21 Q. We talked a little bit more about how</p> <p>22 the University of Florida IFAS extension</p> <p>23 promulgates the Florida Friendly Landscaping</p> <p>24 practices?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 159</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. And then the sentence after that says,</p> <p>4 "Although not included in most landscapes, some</p> <p>5 herb and vegetables have ornamental value."</p> <p>6 Again, that comports with your understanding of</p> <p>7 the purpose of a vegetable, does it not?</p> <p>8 MR. SARAFAN: Same objection.</p> <p>9 THE WITNESS: True.</p> <p>10 BY MR. BARGIL:</p> <p>11 Q. Now it's numbered as page 48, but it's</p> <p>12 only a page beyond that. It's table 11. Do you</p> <p>13 see the table there that list a number of common</p> <p>14 names and scientific names --</p> <p>15 A. Yes.</p> <p>16 Q. -- for various herbs and vegetables.</p> <p>17 Do you know whether Ms. Ricketts grew</p> <p>18 dill in her garden?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Do you know whether Ms. Ricketts grew</p> <p>21 orach, or what is commonly known as French</p> <p>22 spinach in her garden?</p> <p>23 A. Not sure.</p> <p>24 Q. Do you know whether Ms. Ricketts grew</p> <p>25 coriander or what we probably call cilantro in</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. And if I were to represent you that this</p> <p>2 is a study done by University of Florida IFAS</p> <p>3 extension entitled "Low-Maintenance Landscape</p> <p>4 Plants For South Florida," is there any reason</p> <p>5 that you would disavow that?</p> <p>6 A. No.</p> <p>7 Q. And if I told you that this particular</p> <p>8 study were in fact linked from the MiamiDade.gov</p> <p>9 landscape code and manual page, would there be</p> <p>10 any reason for you to disavow that?</p> <p>11 MR. SARAFAN: Object to the form.</p> <p>12 THE WITNESS: No. It says it right</p> <p>13 there.</p> <p>14 BY MR. BARGIL:</p> <p>15 Q. I want to direct your attention to page</p> <p>16 3 on the left-hand side there are those lettered</p> <p>17 paragraphs. And I'm specifically looking at</p> <p>18 letter K. Take a minute and read that to</p> <p>19 yourself.</p> <p>20 A. Okay.</p> <p>21 Q. There is a portion right here that says</p> <p>22 "Vegetables are plants that produce edible parts</p> <p>23 that are grown for food." Does that comport with</p> <p>24 your understanding of the term vegetable?</p> <p>25 MR. SARAFAN: Object to the form.</p>	<p style="text-align: right;">Page 160</p> <p>1 her garden?</p> <p>2 A. Not sure.</p> <p>3 Q. Do you know whether she grew rosemary in</p> <p>4 her garden?</p> <p>5 A. Possible.</p> <p>6 Q. Do you know whether she grew Mexican</p> <p>7 tarragon in her garden?</p> <p>8 A. I have no idea.</p> <p>9 Q. You gave me a different answer for</p> <p>10 rosemary. Do you have a specific memory of that?</p> <p>11 A. Because I know what that looks like. I</p> <p>12 don't know what the others look like. I possibly</p> <p>13 saw rosemary in her garden.</p> <p>14 (Plaintiff's Exhibit No. 13 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. BARGIL:</p> <p>17 Q. This is Exhibit 13. Mr. Flores, why</p> <p>18 don't you take a moment -- let's do this first.</p> <p>19 If I were to represent to you that this</p> <p>20 is a study by the University of Florida IFAS</p> <p>21 extension entitled "Minigardening (Growing</p> <p>22 Vegetables in Containers)" any reason for you to</p> <p>23 disavow that?</p> <p>24 A. No.</p> <p>25 Q. Why don't you take a moment and read the</p>

<p style="text-align: right;">Page 161</p> <p>1 left-hand column on the first page. 2 A. Okay. 3 Q. You mentioned earlier in your deposition 4 that many of my clients' plants were placed in 5 small containers; is that correct? 6 MR. SARAFAN: Object to the form. 7 THE WITNESS: Correct. 8 BY MR. BARGIL: 9 Q. And I believe you also testified earlier 10 in your deposition that nothing in the code 11 specifically prohibits the use of small 12 containers in the front yard? 13 A. That's correct. 14 Q. And in fact according to this article, 15 "Minigardening," it is practical for those who do 16 not have sufficient yard space; is that correct? 17 A. According to this, yes. 18 Q. And could that also apply to somebody 19 who doesn't have the ability to grow in a rear 20 yard? 21 MR. SARAFAN: Object to the form. 22 THE WITNESS: Can you state that 23 again. 24 BY MR. BARGIL: 25 Q. Well, can we agree, maybe that that</p>	<p style="text-align: right;">Page 163</p> <p>1 THE WITNESS: No. 2 BY MR. BARGIL: 3 Q. Why is that? 4 MR. SARAFAN: Object to the form. 5 THE WITNESS: Not having the 6 ability to grow it in your rear yard for 7 what reason? 8 BY MR. BARGIL: 9 Q. For any reason. 10 A. I don't know if I can agree with that. 11 Q. Do you know whether Ms. Ricketts is able 12 to grow vegetables in her rear yard? 13 A. I'm not sure. I haven't seen her whole 14 rear yard. 15 Q. Assuming that she can't grow vegetables 16 in her own rear yard -- 17 MR. SARAFAN: Object to the form. 18 BY MR. BARGIL: 19 Q. -- would the front yard not be a 20 suitable place for minigardening? 21 MR. SARAFAN: Object to the form. 22 THE WITNESS: Well, she does garden 23 in the front. 24 BY MR. BARGIL: 25 Q. The question was a little bit different.</p>
<p style="text-align: right;">Page 162</p> <p>1 second paragraph talks about the person s for 2 whom minigardening is ideal? 3 MR. SARAFAN: Object to the form; 4 document speaks for itself. 5 THE WITNESS: I don't agree with 6 that. 7 BY MR. BARGIL: 8 Q. What would you say that second paragraph 9 means? 10 MR. SARAFAN: Object to the form. 11 THE WITNESS: Well, this is 12 specifically stating for people living 13 in apartments and condominiums. 14 BY MR. BARGIL: 15 Q. Read the first sentence. 16 A. "Minigardening is practical for those 17 who do not have sufficient yard space for a 18 larger garden." 19 Q. It says minigardening is practical; 20 correct? 21 A. Yes. 22 Q. And could one of those reasons be that 23 you don't have the ability to grow in your rear 24 yard? 25 MR. SARAFAN: Object to the form.</p>	<p style="text-align: right;">Page 164</p> <p>1 I'm asking you, assuming that she can't grow in 2 the back, based on your reading of this, would 3 minigardening or gardening in containers be a 4 suitable alternative not having the space to do 5 it elsewhere? 6 MR. SARAFAN: I'm going to object 7 to the form. 8 THE WITNESS: I don't agree that 9 her front yard is a minigarden. 10 BY MR. BARGIL: 11 Q. Does she grow -- 12 A. According to this, it would be a 13 maxigarden. It's very large. 14 Q. How does it define maxigardens in this? 15 A. Of an acre or more. 16 Q. Is her property an acre or more? 17 A. Probably close to it. Her whole 18 property? 19 Q. Her whole property. 20 A. No, probably not. 21 Q. And what about the front yard? 22 A. Definitely not. 23 Q. So is it a maxigarden or a minigarden? 24 MR. SARAFAN: Object to the form. 25 THE WITNESS: It's a medium garden.</p>

<p style="text-align: right;">Page 165</p> <p>1 MR. SARAFAN: Before you ask your 2 next question, you keep treating this 3 witness as if he's here as some expert 4 witness to opine -- 5 THE WITNESS: I'm just giving my 6 opinion. 7 MR. SARAFAN: I know, he's asking 8 for your opinion. That's what you do 9 with experts. He is asking you to opine 10 about things that you didn't write, and 11 I'm guessing you didn't see it until you 12 got here today. 13 Can I preserve all of those 14 objections so I don't have to keep 15 interrupting you? 16 MR. BARGIL: Yes. 17 BY MR. BARGIL: 18 Q. So we agree Ms. Ricketts was growing in 19 her front yard in small containers; right? 20 A. Yes. 21 Q. However the University of Florida IFAS 22 extension would define -- that maybe doesn't 23 matter. 24 Please direct your attention to the 25 third paragraph.</p>	<p style="text-align: right;">Page 167</p> <p>1 THE WITNESS: It certainly does. 2 BY MR. BARGIL: 3 Q. Do you know whether the containers 4 themselves were painted internally? 5 A. No, I don't know. 6 Q. Or externally? 7 A. No, I don't know that. 8 Q. But there was -- 9 A. I know there were different colors, but 10 I don't know if they were painted. 11 (Plaintiff's Exhibit No. 14 was 12 marked for identification.) 13 BY MR. BARGIL: 14 Q. Can you take a moment to familiarize 15 yourself with this. 16 A. Okay. 17 Q. If I were to represent to you that this 18 were -- that this is a study by the University of 19 Florida IFAS extension entitled "Edible 20 Landscaping," would you have any reason to 21 disavow that? 22 A. No. 23 Q. I would like you to read the first 24 paragraph. Let me know when you have completed 25 it.</p>
<p style="text-align: right;">Page 166</p> <p>1 A. Okay. 2 Q. It talks about areas suitable. 3 A. Yes. 4 Q. Do you know whether Ms. Ricketts grew in 5 containers along fences? 6 A. No, there is no fence in the front yard. 7 Q. Do you know whether she grew in and 8 around flower beds? 9 A. Yes, she did. 10 Q. Do you know whether she grew adjacent to 11 walks and drives? 12 A. Yes. 13 Q. Did she grow near the foundation of the 14 house? 15 A. Yes. 16 Q. Did she grow on patios? 17 A. I'm not aware of that. She doesn't have 18 a patio on the front. 19 Q. And do you see where it says "Such 20 small-scale container culture can be both 21 practical and ornamental if properly and 22 imaginatively done"? 23 A. Yes. 24 Q. It says regard and reflect imagination? 25 MR. SARAFAN: Object to the form.</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Yes. 2 Q. I would like to direct your attention to 3 the sentence that reads "An edible landscape can 4 be just as attractive as a traditional one. In 5 fact, the colorful fruits and foliage of many 6 edibles are quite beautiful." 7 A. Okay. 8 Q. Would you agree with that statement? 9 MR. SARAFAN: Object to the form. 10 THE WITNESS: In theory, sure. 11 BY MR. BARGIL: 12 Q. Not in theory, would you agree with that 13 statement? 14 A. Yes. 15 Q. And in fact, have some of the properties 16 that you've cited in Miami Shores for violating 17 the vegetable gardens ordinance been attractive 18 gardens? 19 A. Not at all. 20 Q. Now look at the first sentence, please, 21 where it says "Edible landscaping simply put 22 replaces plants that are strictly ornamental with 23 plants that produce food." Would you agree with 24 that statement? 25 MR. SARAFAN: Object to the form.</p>

<p style="text-align: right;">Page 169</p> <p>1 THE WITNESS: That's what it says. 2 BY MR. BARGIL: 3 Q. And we talked about this a little bit 4 before, but does substituting an ornamental plant 5 with a plant that bears a vegetable render the 6 garden unattractive? 7 A. No. 8 Q. Now on that same page under the second 9 heading which says "designing and managing the 10 edible landscape" I would like to direct you to 11 the third sentence of that first paragraph there. 12 A. Okay. 13 Q. Specifically where it says "Smaller 14 fruiting plants can substitute as shrubs and some 15 perennial herbs make nice ground covers. Both 16 can be inter-planted with existing landscape 17 plants." 18 A. The third and fourth sentence? 19 Q. Yes. 20 We talked a little bit before about 21 ground cover. Does this indicate to you that 22 small plants can in fact provide adequate ground 23 cover? 24 A. Small plants? 25 Q. Small fruiting plants.</p>	<p style="text-align: right;">Page 171</p> <p>1 adopted in the code? 2 A. No. It says in the code. 3 Q. Where does it say that? 4 A. Can we go back to -- 5 Q. It's Exhibit 1. I didn't print out the 6 entire code though. 7 A. It's on Exhibit 1. It says "The length 8 of the grass and lawn shall be that necessary to 9 provide a neat, well-kept appearance, but in no 10 case shall exceed eight inches." 11 Q. That doesn't refer to grass? 12 A. That refers to lawn. 13 Q. So anything in the lawn can't be over 14 eight inches? 15 A. Not if it's used as ground cover. 16 Q. So we talked a little before about what 17 does constitute adequate ground cover and what 18 doesn't and anything over eight inches -- 19 A. Wouldn't count as adequate ground cover. 20 Q. What about a rose bush? 21 A. No. 22 Q. What about any type of fruit plant? 23 A. Generally most fruit plants are 24 typically bigger than eight inches so no. 25 Q. So let me get a sense for what a yard in</p>
<p style="text-align: right;">Page 170</p> <p>1 MR. SARAFAN: Object to the form. 2 THE WITNESS: No, it doesn't say 3 small fruiting plants. It says some 4 perennial herbs make nice ground cover. 5 BY MR. BARGIL: 6 Q. Okay. We can talk about that. Can 7 smaller fruiting plants substitute as shrubs? 8 A. Sure. 9 Q. And are shrubs considered adequate 10 ground cover in Miami Shores? 11 A. No. 12 Q. Why not? 13 A. Because they are not low growing. 14 Q. Where do you shrubs grow -- what height? 15 A. Low growing for us is anything under 16 eight inches. Shrubs are a little bit bigger. 17 Q. Can you cut a shrub? 18 A. Yes. 19 Q. Can you cut a shrub to be under 20 eight inches? 21 A. You can. It won't do well. 22 Q. Where in the code does it say that 23 shrubs are under eight inches? 24 A. It doesn't say that. 25 Q. Is that an interpretation that you have</p>	<p style="text-align: right;">Page 172</p> <p>1 Miami Shores is supposed to look like. You have 2 everything eight inches or less. What can be 3 above eight inches? 4 A. Ornamental plants. 5 Q. And those are not -- 6 A. You have a row of hedges on the side, 7 you have a fruit tree in the middle of that lawn 8 or low growing thing that's 25 feet high. 9 Q. So we've also talked before about how 10 vegetables can be ornamental plants? 11 A. Sure. 12 Q. And an ornamental plant can be above 13 eight inches tall; right? 14 A. Right. 15 Q. And a smaller fruiting plant if used as 16 an ornamental can be over eight inches tall; 17 right? 18 A. Sure. 19 Q. And that comports with what this article 20 is talking about in that it can be used in 21 replacement of a strictly ornamental plant or a 22 plant that produces food? 23 MR. SARAFAN: Object to the form. 24 I don't understand the question. 25 THE WITNESS: Can you be more</p>

<p style="text-align: right;">Page 173</p> <p>1 specific.</p> <p>2 BY MR. BARGIL:</p> <p>3 Q. I'm really simply asking whether or not</p> <p>4 you can have an ornamental plant over eight</p> <p>5 inches in Miami Shores?</p> <p>6 A. Yes.</p> <p>7 (A brief break was had.)</p> <p>8 BY MR. BARGIL:</p> <p>9 Q. You mentioned a moment ago in your</p> <p>10 testimony that it's legal to have an ornamental</p> <p>11 plant over eight inches in Miami Shores?</p> <p>12 A. Yes.</p> <p>13 Q. Is it legal to have a non-ornamental</p> <p>14 vegetable plant over eight inches?</p> <p>15 A. Yes.</p> <p>16 Q. It is?</p> <p>17 A. Non-ornamental. What do you mean by</p> <p>18 non-ornamental?</p> <p>19 Q. What's the distinction between an</p> <p>20 ornamental vegetable plant and a non-ornamental</p> <p>21 vegetable plant?</p> <p>22 A. What's the difference -- a</p> <p>23 non-ornamental vegetable plant?</p> <p>24 Q. What's the difference between an</p> <p>25 ornamental plant and a non-ornamental plant?</p>	<p style="text-align: right;">Page 175</p> <p>1 Q. So what is the distinction I'm asking</p> <p>2 between an ornamental array of roses and an</p> <p>3 ornamental array of vegetables?</p> <p>4 A. Well, the roses don't bear fruit.</p> <p>5 Q. So it's a matter of what bears fruit?</p> <p>6 A. Yes.</p> <p>7 Q. And you can't eat a rose?</p> <p>8 A. You can't according to me.</p> <p>9 Q. Some people are different. So it's</p> <p>10 essentially a matter of whether it bears fruit</p> <p>11 and you can eat it?</p> <p>12 MR. SARAFAN: Object to the form.</p> <p>13 THE WITNESS: And how it's cared</p> <p>14 for, I guess, yes.</p> <p>15 BY MR. BARGIL:</p> <p>16 Q. Assuming it's cared for, it's a matter</p> <p>17 of whether it bears fruit and whether you can eat</p> <p>18 it?</p> <p>19 A. Yes.</p> <p>20 (Plaintiff's Exhibit No. 15 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. BARGIL:</p> <p>23 Q. This is Exhibit 15. Mr. Flores, if I</p> <p>24 were to represent to you this is a publication by</p> <p>25 the University of Florida, IFAS extension Florida</p>
<p style="text-align: right;">Page 174</p> <p>1 A. A ornamental plant, in my opinion, is</p> <p>2 something that you put in the ground that you</p> <p>3 want people to -- a plant that you want people to</p> <p>4 recognize in your garden, so if you put glass and</p> <p>5 a nice rose bush in the middle of your lawn,</p> <p>6 that's your ornamental plant. You want people to</p> <p>7 see it. It's beautiful.</p> <p>8 Q. Is it a matter of where it's placed?</p> <p>9 A. No, it can be placed in different areas.</p> <p>10 You just want it enhanced. In my opinion, you</p> <p>11 want people to see it, to recognize it.</p> <p>12 Q. Well, if you have a rose garden, that's</p> <p>13 an array of plants; right?</p> <p>14 A. Right.</p> <p>15 Q. You can have an ornamental array?</p> <p>16 A. I would say, yes.</p> <p>17 Q. If your vegetable plants are</p> <p>18 ornamentals, you said you could have them; right?</p> <p>19 A. Yes.</p> <p>20 Q. Can you have an array of ornamental</p> <p>21 vegetable plants?</p> <p>22 A. No.</p> <p>23 Q. Why is that?</p> <p>24 A. Because that in my opinion would be</p> <p>25 considered a garden.</p>	<p style="text-align: right;">Page 176</p> <p>1 Vegetable Gardening Guide, do you have any reason</p> <p>2 to disavow that?</p> <p>3 A. No.</p> <p>4 Q. I want to direct your attention to the</p> <p>5 third paragraph of that. Take a look at the</p> <p>6 first sentence.</p> <p>7 A. It's repeating what the other study</p> <p>8 says, almost.</p> <p>9 Q. Do you know whether -- and for the</p> <p>10 record, the first sentence says, "For</p> <p>11 convenience, locate the garden near the house, on</p> <p>12 a well drained site, close to a source of water,</p> <p>13 and in a location that receives at least</p> <p>14 eight hours of direct sunlight daily."</p> <p>15 A. That's what it says.</p> <p>16 Q. Do you know whether Ms. Ricketts located</p> <p>17 her garden near her house?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know why she placed it in the</p> <p>20 front yard and not the rear yard?</p> <p>21 A. From previous testimony it is because it</p> <p>22 gets adequate sunlight.</p> <p>23 Q. And were her gardening practices in</p> <p>24 compliance with the recommendations written here?</p> <p>25 MR. SARAFAN: Object to the form.</p>

<p style="text-align: right;">Page 177</p> <p>1 THE WITNESS: I guess. 2 (Plaintiff's Exhibit No. 16 was 3 marked for identification.) 4 BY MR. BARGIL: 5 Q. Mr. Flores, this is Exhibit 16. If I 6 were to represent to you that is a publication by 7 the University of Florida IFAS extension entitled 8 "Home Vegetable Garden Techniques: Hand 9 Pollination of Squash and Corn in Small Gardens" 10 would you have any reason to disavow that? 11 A. No. 12 Q. Are you familiar with this document? 13 A. No. 14 Q. I would like to direct your attention to 15 the second page. Why don't you read the entire 16 left-hand column beginning with "all squash" and 17 let me know when you are done. 18 A. Okay. 19 Q. This is a basically an explanation of 20 the life cycle of a vegetable; is that fair to 21 say? 22 MR. SARAFAN: Object to the form. 23 THE WITNESS: Of the squash, yes. 24 BY MR. BARGIL: 25 Q. And basically it goes from a plant that</p>	<p style="text-align: right;">Page 179</p> <p>1 A. If it only had flowers and no fruit 2 would it be objectionable under the ground cover, 3 is that what you're saying? 4 Q. Would it be objectionable under 536 E, 5 which is talking about vegetable gardens? 6 MR. SARAFAN: Object to the form. 7 THE WITNESS: I would say if there 8 is no fruit or vegetable, then I would 9 say no. 10 BY MR. BARGIL: 11 Q. Now, there is no reason to believe that 12 it's not an accurate statement that some 13 vegetable plants produce only male flowers and 14 only female flowers; right? 15 MR. SARAFAN: Object to the form. 16 That was a double negative. 17 THE WITNESS: I don't know. 18 BY MR. BARGIL: 19 Q. Did you understand the question? 20 A. No. 21 MR. SARAFAN: Please don't answer 22 any questions you don't understand. 23 BY MR. BARGIL: 24 Q. Can we agree that it says here that a 25 vegetable plant "may produce only male flowers or</p>
<p style="text-align: right;">Page 178</p> <p>1 generates a flower which then bears a fruit and 2 that fruit is the edible vegetable; is that fair 3 to say? 4 A. Yes. 5 Q. I have a question about when a vegetable 6 plant is no longer compliant with the Miami 7 Shores code. 8 MR. SARAFAN: Object to the form. 9 BY MR. BARGIL: 10 Q. If you look toward the bottom, the 11 second to last -- the final complete sentence on 12 the bottom of the left-hand side it says the 13 plant may produce only male flowers or only 14 female flowers; is that correct? 15 A. That's what it says. 16 Q. Now does a vegetable plant that is 17 flowered is that -- if you had an array of those, 18 would that be an unlawful vegetable garden under 19 536 E? 20 MR. SARAFAN: Object to the form. 21 THE WITNESS: If it only had 22 flowers? What? 23 BY MR. BARGIL: 24 Q. If it only had flowers on it, but no 25 fruit.</p>	<p style="text-align: right;">Page 180</p> <p>1 only female flowers"? 2 THE WITNESS: That's what it says. 3 MR. SARAFAN: Object to the form. 4 BY MR. BARGIL: 5 Q. Now if you look at the second paragraph 6 on the left-hand side. 7 A. Okay. 8 Q. Can we agree it says only the female 9 flowers bear fruit? 10 MR. SARAFAN: Objection; the 11 document speaks for itself. 12 Why do you need him to agree to 13 what it says, if that's what it says? 14 BY MR. BARGIL: 15 Q. Do you agree with what it says? 16 MR. SARAFAN: Same objection. 17 THE WITNESS: According to this, 18 yes. 19 BY MR. BARGIL: 20 Q. So a vegetable plant with only male 21 flowers would not bear fruit; that's right, 22 right? 23 MR. SARAFAN: Object to the form. 24 THE WITNESS: That is correct. 25 BY MR. BARGIL:</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. So a male vegetable plant would at no 2 point be noncompliant with 536 E? 3 MR. SARAFAN: Object to the form. 4 THE WITNESS: Can you repeat that. 5 BY MR. BARGIL: 6 Q. Well, your testimony earlier was that a 7 vegetable plant doesn't become noncompliant until 8 the actual fruit begins to form; as long as it's 9 just a flower, it's not noncompliant; right? 10 A. Right. 11 Q. So I'm asking a male plant, which we 12 agree doesn't bear fruit, would at no point be 13 compliant with 536 E; right? 14 MR. SARAFAN: Same objection. 15 THE WITNESS: Correct. 16 BY MR. BARGIL: 17 Q. And a female plant only becomes 18 noncompliant once it bears fruit? 19 A. Right. 20 Q. So the question whether the plant is 21 compliant or noncompliant depends on whether the 22 plants are male or female? 23 MR. SARAFAN: Object to the form. 24 THE WITNESS: I don't understand 25 what you are trying to say.</p>	<p style="text-align: right;">Page 183</p> <p>1 vegetable gardens are permitted in the 2 rear yard only. I don't understand your 3 questioning. The male is compliant with 4 E. 5 BY MR. BARGIL: 6 Q. I can explain a little better. That's 7 fair. 8 You've got two vegetable plants, side by 9 side of the type that bear both male and female 10 flowers. One of those plants, the one with 11 female flowers ultimately bears fruit. The other 12 one, the male plant bears male flowers and does 13 not. 14 If you have an array of female plants 15 bearing fruit, are those illegal under 536 E? 16 MR. SARAFAN: Object to the form. 17 THE WITNESS: In my opinion, yes. 18 BY MR. BARGIL: 19 Q. And the male plants are not? 20 A. Right. 21 Q. When I say they are not, they are not in 22 violation of 536 E? 23 A. Right. 24 Q. Thus the distinction being one is male 25 and one is female?</p>
<p style="text-align: right;">Page 182</p> <p>1 BY MR. BARGIL: 2 Q. Well, only the female plants bear 3 fruits? 4 A. Okay. 5 Q. And the male plants do not? 6 A. Okay. 7 Q. So a male plant can never be 8 noncompliant? 9 MR. SARAFAN: With? 10 MR. BARGIL: With the 536 E. 11 MR. SARAFAN: Same objection. 12 THE WITNESS: Right. 13 BY MR. BARGIL: 14 Q. And a female plant can become 15 noncompliant only after the flower turns to 16 fruit; right? 17 MR. SARAFAN: Object to the form. 18 THE WITNESS: Right. 19 BY MR. BARGIL: 20 Q. So the difference is that a male plant 21 as long as it meets other requirements of the 22 code will be compliant with 536 E? 23 MR. SARAFAN: Object to the form. 24 THE WITNESS: I'm not 25 understanding. 536 E says that</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. SARAFAN: Object to the form. 2 BY MR. BARGIL: 3 Q. Right? 4 A. Yes. 5 (Plaintiff's Exhibit No. 17 was 6 marked for identification.) 7 BY MR. BARGIL: 8 Q. Please direct your attention to 9 Exhibit 17. If I were to represent to you that 10 is a publication by the University of Florida 11 IFAS extension entitled "Leek Allium ampeloprasum 12 L" do you have any reason to disavow that? 13 A. No. 14 Q. I would like to direct your attention 15 briefly to the third sentence. Can we agree that 16 the University of Florida, classifies a leek as 17 being "attractive in appearance with its silvery 18 base and green top"? 19 MR. SARAFAN: Object to the form. 20 THE WITNESS: That is their 21 opinion. 22 BY MR. BARGIL: 23 Q. Do you have any reason to disavow that? 24 A. No. I have not seen it so. 25 Q. Do you know what a leek looks like?</p>

<p style="text-align: right;">Page 185</p> <p>1 A. No. I'm reading it, but is it an onion?</p> <p>2 A large green onion plant without a bulb. I have</p> <p>3 never seen one, no.</p> <p>4 Q. Do you know whether Mr. Ricketts or my</p> <p>5 clients grew leeks in their yards?</p> <p>6 A. I have no idea.</p> <p>7 (Plaintiff's Exhibit No. 18 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. BARGIL:</p> <p>10 Q. All right. This is Exhibit 18,</p> <p>11 Mr. Flores. If I were to represent to you that</p> <p>12 this is a publication by the University of</p> <p>13 Florida IFAS extension called "Kale." I'm going</p> <p>14 to leave out the scientific names from here on</p> <p>15 out -- would you have any reason to disavow that?</p> <p>16 A. No.</p> <p>17 Q. I would like to direct your attention to</p> <p>18 the second to last sentence there where it says</p> <p>19 in reference to flowering kale, "is very</p> <p>20 attractive for landscape planting and is edible,</p> <p>21 but not very palatable." Do you see that?</p> <p>22 A. No.</p> <p>23 Q. It's at the very end under culture and</p> <p>24 use. It's the second to last sentence.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 187</p> <p>1 A. I wouldn't know. I'm not an expert on</p> <p>2 vegetables.</p> <p>3 Q. I'm not talking about vegetables only.</p> <p>4 I'm talking about generally speaking.</p> <p>5 A. No, generally speaking, summer,</p> <p>6 everything grows in Florida.</p> <p>7 Q. It does?</p> <p>8 A. Yes, it's the rainy season.</p> <p>9 Q. So in your experience as a code</p> <p>10 compliance officer, you don't see gardens where</p> <p>11 people have planted annuals in the summertime not</p> <p>12 looking as nice?</p> <p>13 A. Sure.</p> <p>14 (Plaintiff's Exhibit No. 19 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. BARGIL:</p> <p>17 Q. Please, Mr. Flores, please direct your</p> <p>18 attention to Exhibit 19. If I were to represent</p> <p>19 to you that this is a publication produced by the</p> <p>20 University of Florida entitled "Ginger," would</p> <p>21 have any reason to disavow that?</p> <p>22 A. No.</p> <p>23 Q. Can I direct your attention to the first</p> <p>24 sentence under the heading description?</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. Do you know whether my clients grew kale</p> <p>2 in their yard?</p> <p>3 A. I do. They did, but it did not look</p> <p>4 like that.</p> <p>5 Q. What did it look like?</p> <p>6 A. Do you really want me to?</p> <p>7 Q. Sure.</p> <p>8 A. It was a long stem with one leafy green</p> <p>9 on top, not attractive at all.</p> <p>10 Q. What time of year was this? When was</p> <p>11 this?</p> <p>12 A. In May 2013.</p> <p>13 Q. Can you go up to the fourth sentence</p> <p>14 under culture and use?</p> <p>15 A. Okay.</p> <p>16 Q. Where it says, "For best results, it</p> <p>17 should be planted so that harvest takes place in</p> <p>18 the coolest months."</p> <p>19 A. Okay.</p> <p>20 Q. And you were not there in the cooler</p> <p>21 months, were you?</p> <p>22 A. No.</p> <p>23 Q. In fact many plants and vegetation do</p> <p>24 not look good in Florida in the summer months; is</p> <p>25 that true?</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Where it says "True ginger is often</p> <p>2 confused with related plants grown as ornamentals</p> <p>3 in Florida."</p> <p>4 A. You are right, yes.</p> <p>5 Q. And isn't it true that ornamental plants</p> <p>6 and edible plants can often be confused with one</p> <p>7 another?</p> <p>8 MR. SARAFAN: Object to the form.</p> <p>9 THE WITNESS: To the naked eye,</p> <p>10 yes. I guess so, yes.</p> <p>11 BY MR. BARGIL:</p> <p>12 Q. But you don't use anything other than</p> <p>13 the naked eye when doing your inspections; is</p> <p>14 that correct?</p> <p>15 A. Right.</p> <p>16 Q. Do you know whether or not my clients</p> <p>17 grew ginger in their yard?</p> <p>18 A. Not true ginger or any other ginger that</p> <p>19 I can think of.</p> <p>20 Q. Do you know where ginger grows?</p> <p>21 A. Where does it grow?</p> <p>22 Q. Yeah.</p> <p>23 A. Originally, no, I don't know. I guess</p> <p>24 it was tropical in nature.</p> <p>25 Q. That wasn't my question. I'm sorry.</p>

<p style="text-align: right;">Page 189</p> <p>1 Does a large part of the ginger plant</p> <p>2 grow underground?</p> <p>3 A. The large part, I wouldn't know a true</p> <p>4 ginger, but I know it's the root is what people</p> <p>5 use.</p> <p>6 Q. And the root goes where?</p> <p>7 A. Underground.</p> <p>8 (Plaintiff's Exhibit No. 20 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. BARGIL:</p> <p>11 Q. Mr. Flores, please direct your attention</p> <p>12 to Exhibit 20. If I were to represent to you</p> <p>13 this were a publication by the University of</p> <p>14 Florida IFAS extension entitled "Dandelion,"</p> <p>15 would you have any reason to disavow that?</p> <p>16 A. No.</p> <p>17 Q. What is a dandelion?</p> <p>18 A. To me it's a weed.</p> <p>19 Q. Is it prohibited in Miami Shores?</p> <p>20 MR. SARAFAN: Object to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. BARGIL:</p> <p>23 Q. If you see a property with dandelions</p> <p>24 growing in it, will you take action against that</p> <p>25 property?</p>	<p style="text-align: right;">Page 191</p> <p>1 going to going to cite somebody for one or two</p> <p>2 dandelions. Explain your question.</p> <p>3 Q. I mean that helps me. So you wouldn't</p> <p>4 cite someone for one or two dandelions even if</p> <p>5 they were growing them in their vegetable garden?</p> <p>6 A. I wouldn't know if they were growing</p> <p>7 them. I wouldn't know if they were growing them</p> <p>8 for the purpose of eating them.</p> <p>9 (Plaintiff's Exhibit No. 21 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. BARGIL:</p> <p>12 Q. Mr. Flores, please direct your attention</p> <p>13 to Exhibit 21. If I were to represent to you</p> <p>14 that this were a publication by the University of</p> <p>15 Florida IFAS extension, entitled "Chrysanthemum,"</p> <p>16 would you have any reason to disavow that?</p> <p>17 A. No.</p> <p>18 Q. If somebody grew an array of</p> <p>19 chrysanthemums in Miami Shores?</p> <p>20 MR. SARAFAN: Object to the form.</p> <p>21 THE WITNESS: Is somebody growing?</p> <p>22 BY MR. BARGIL:</p> <p>23 Q. May somebody.</p> <p>24 A. May somebody?</p> <p>25 Q. In their front yard.</p>
<p style="text-align: right;">Page 190</p> <p>1 A. Yes. I consider that a weed.</p> <p>2 Q. What section of the code would you cite</p> <p>3 them under?</p> <p>4 A. 537, under maintenance.</p> <p>5 Q. Are you aware whether people eat</p> <p>6 dandelions?</p> <p>7 A. I am aware.</p> <p>8 Q. And if somebody were cultivating</p> <p>9 dandelions for food, would that make a</p> <p>10 difference?</p> <p>11 MR. SARAFAN: Object to the form.</p> <p>12 THE WITNESS: I don't think it</p> <p>13 would make a difference, no.</p> <p>14 BY MR. BARGIL:</p> <p>15 Q. Do many people, as far as you know,</p> <p>16 consider a dandelion to be an attractive plant?</p> <p>17 A. In my opinion, no.</p> <p>18 Q. And when you cite -- again, I think you</p> <p>19 answered this, but I'm not sure. When you spot a</p> <p>20 dandelion in someone's property, even though they</p> <p>21 are growing them as part of a vegetable garden,</p> <p>22 you will cite them under 537 for a weed?</p> <p>23 A. If I see a dandelion?</p> <p>24 Q. If you see an array of dandelions.</p> <p>25 A. There would have to be a lot. I'm not</p>	<p style="text-align: right;">Page 192</p> <p>1 A. A chrysanthemum to me is a flower, so I</p> <p>2 have never seen a vegetable chrysanthemum. So if</p> <p>3 you are saying can you grow the flower, yes.</p> <p>4 Q. Now, would you agree that it says here</p> <p>5 the vegetable chrysanthemum looks very much like</p> <p>6 the leafy portion of the ornamental portion?</p> <p>7 A. That's what it says.</p> <p>8 Q. And so it's quite possible that you</p> <p>9 might mistake the flower for the edible version;</p> <p>10 is that fair?</p> <p>11 A. No. The flower isn't the edible version</p> <p>12 according to this.</p> <p>13 Q. So you would never mistake the two?</p> <p>14 A. No. You are saying that the flower is</p> <p>15 edible; it's not.</p> <p>16 Q. I didn't say the flower is edible.</p> <p>17 Let's go back.</p> <p>18 We agree that it says here that the</p> <p>19 vegetable looks very much like the leafy portion</p> <p>20 of the ornamental version?</p> <p>21 A. Okay.</p> <p>22 Q. Are you certain you can distinguish a</p> <p>23 vegetable chrysanthemum from an ornamental</p> <p>24 chrysanthemum?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 193</p> <p>1 Q. And if you look under culture. 2 "Vegetable chrysanthemum grows a flower that is 3 bright yellow and daisy like in appearance"; is 4 that right? 5 MR. SARAFAN: Are you asking him if 6 that's what it says? 7 THE WITNESS: That's what it says. 8 BY MR. BARGIL: 9 Q. If you determined that somebody were 10 growing a vegetable chrysanthemum that you 11 previously thought were an ornamental 12 chrysanthemum, an array of them in their front 13 yard, would you cite them under 536 E? 14 MR. SARAFAN: Object to the form. 15 THE WITNESS: No. No, I wouldn't. 16 BY MR. BARGIL: 17 Q. It wouldn't constitute a vegetable 18 garden? 19 MR. SARAFAN: Object to the form. 20 THE WITNESS: No. Because to me, I 21 have no idea what this is. So if I saw 22 that type of plant with flowers growing 23 on it, I wouldn't think nothing of it. 24 BY MR. BARGIL: 25 Q. You wouldn't cite them because to you</p>	<p style="text-align: right;">Page 195</p> <p>1 (Plaintiff's Exhibit No. 23 was 2 marked for identification.) 3 BY MR. BARGIL: 4 Q. All right. Mr. Flores, direct your 5 attention to Exhibit 23. If I were to tell you 6 that this publication is entitled "The Florida 7 Yards and Neighborhoods Handbook" of Florida 8 Friendly Landscaping publication, would you have 9 any reason to disavow that? 10 A. No. 11 Q. I would like to direct your attention to 12 page 15. 13 First of all, do you have any knowledge 14 as to whether this publication is made available 15 on the Miami Shores website? 16 A. I believe it is, but I'm not sure. 17 Q. Or is it hyperlinked to this 18 publication? 19 A. I think there is one, yes. 20 Q. I would like to direct your attention to 21 item number one on this landscape planning 22 worksheet. 23 A. Okay. 24 Q. Specifically the last sentence. 25 A. Okay.</p>
<p style="text-align: right;">Page 194</p> <p>1 this is a flower? 2 A. Right. 3 (Plaintiff's Exhibit No. 22 was 4 marked for identification.) 5 BY MR. BARGIL: 6 Q. Mr. Flores, please direct your attention 7 to Exhibit 22. If I were to represent to you 8 that this were a publication by the University of 9 Florida IFAS extension, entitled "Swiss Chard," 10 would you have any reason to disavow that? 11 A. No. 12 Q. I would like to direct your attention to 13 the right-hand column, the second sentence there. 14 A. Okay. 15 Q. And for the record, that says, "You can 16 grow it --" it referring to Swiss chard " -- as a 17 border around buildings because of its attractive 18 foliage." 19 A. That's what it says. 20 Q. Do you know whether or not my clients 21 grew Swiss chard on their property? 22 A. I can't be certain. 23 Q. But would you agree that Swiss chard is 24 used as an ornamental plant? 25 A. According to this it could be.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. So is it true that the Florida Yards and 2 Neighborhoods Handbook, which is a Florida 3 Friendly Landscaping publication, endorses 4 raising vegetables in its guide? 5 MR. SARAFAN: Object to the form. 6 THE WITNESS: I would have to see 7 where it says that. 8 BY MR. BARGIL: 9 Q. It says, "Your passion may be raising 10 vegetables or simply savoring a lovely view." 11 A. You asked if it endorses -- 12 Q. I can ask it differently. 13 Does it recognize that raising 14 vegetables is one of the reasons that somebody 15 would want to landscape? 16 MR. SARAFAN: Object to the form. 17 Speaks for itself. 18 THE WITNESS: Sure. 19 BY MR. BARGIL: 20 Q. And would it make that reference if 21 raising vegetables were not a Florida Friendly 22 Landscaping practice? 23 MR. SARAFAN: Object to the form. 24 THE WITNESS: I'm not an expert on 25 it, so I wouldn't know.</p>

<p style="text-align: right;">Page 197</p> <p>1 BY MR. BARGIL: 2 Q. Well, it's the Florida Friendly 3 Landscaping -- Florida Yards and Neighborhoods 4 Handbook. 5 A. Okay. 6 Q. And it's a Florida Friendly Landscaping 7 publication; right? 8 MR. SARAFAN: Object to the form. 9 THE WITNESS: Sure. 10 BY MR. BARGIL: 11 Q. So would they talk about raising 12 vegetables as a valid reason for landscaping if 13 it went against the Florida Friendly Landscaping 14 practices? 15 MR. SARAFAN: Object to the form; 16 it's been asked and answered. 17 THE WITNESS: I guess. 18 BY MR. BARGIL: 19 Q. You guess that it would say that? 20 A. I guess that it would say that. I would 21 have to see that. 22 Q. If you look at item one on page 15, the 23 last sentence says, "Your passion may be raising 24 vegetables or simply savoring a lovely view." 25 And my question to you is, would the Florida</p>	<p style="text-align: right;">Page 199</p> <p>1 THE WITNESS: I guess so. I guess 2 they are saying, yeah, that you can grow 3 it. 4 MR. BARGIL: I think that is all 5 for me. I'm done with my direct. 6 CROSS-EXAMINATION 7 BY MR. SARAFAN: 8 Q. Mr. Flores, are you here speaking for 9 the village? 10 A. No. 11 Q. Are you here as an expert of some sort? 12 A. No. 13 Q. Was the Ricketts property when cited by 14 you in compliance with the ground cover rules of 15 section 536? 16 A. No. 17 Q. Does the code enforcement board or code 18 enforcement department threaten anyone? 19 A. No. 20 Q. Are you a lawyer? 21 A. No. 22 Q. I want to follow up on an example that 23 opposing counsel gave you about a strawberry 24 bush. If people planted rose of strawberry 25 bushes in their front yard, would that qualify as</p>
<p style="text-align: right;">Page 198</p> <p>1 Friendly Landscaping publication include 2 references to raising vegetables as a reason for 3 landscaping -- 4 A. I guess it would. 5 Q. Please allow me to finish my question. 6 Would the Florida Friendly Landscaping 7 publication recognize growing vegetables as a 8 reason for landscaping if that went against what 9 the Florida Friendly Landscaping guide says? 10 MR. SARAFAN: Object to the form; 11 asked and answered. 12 THE WITNESS: Can you ask it in a 13 more simpler way? 14 BY MR. BARGIL: 15 Q. This is a Florida Friendly Landscaping 16 publication; right? 17 A. Yes. 18 Q. And within this Florida Friendly 19 Landscaping publication, there is a reference 20 here to raising vegetables being a reason for 21 landscaping. And so my question is, would 22 raising vegetables be mentioned as a reason for 23 landscaping if that didn't comport with a Florida 24 Friendly Landscaping practice? 25 MR. SARAFAN: Same response.</p>	<p style="text-align: right;">Page 200</p> <p>1 ground cover under the definition of the code? 2 A. No. 3 Q. Counsel made a lot of representations to 4 you about various documents being various things. 5 Do you know whether -- one way or the other 6 whether that's true? 7 A. No. 8 Q. Who writes the Miami Shores Village 9 code? University of Florida IFAS or the village 10 council? 11 A. The village council. 12 Q. You mentioned that there were small 13 containers on the Ricketts' property when it was 14 inspected. Was all that you considered to be a 15 vegetable garden contained in small containers? 16 A. No. 17 Q. Have you been giving your opinions here 18 today? 19 A. Yes. 20 Q. Your personal opinions? 21 A. Just mine, my own. 22 Q. Does section 536 E make plants compliant 23 or noncompliant or does it address gardens? Do 24 you want to look at it? It's Exhibit 1. 25 A. It addresses a particular type of</p>

<p style="text-align: right;">Page 201</p> <p>1 garden.</p> <p>2 Q. If somebody had appropriate ground cover</p> <p>3 throughout the open area of their front yard and</p> <p>4 had a tomato plant up against the house mixed in</p> <p>5 with various other plants, shrubs, et cetera,</p> <p>6 would that have been a violation of 536?</p> <p>7 A. No.</p> <p>8 MR. SARAFAN: That's all I have.</p> <p>9 MR. BARGIL: I have just a couple</p> <p>10 things.</p> <p>11 REDIRECT EXAMINATION</p> <p>12 BY MR. BARGIL:</p> <p>13 Q. Counsel asked you whether a rose or</p> <p>14 strawberry bush would be adequate ground cover?</p> <p>15 MR. SARAFAN: I never said a rose.</p> <p>16 I never mentioned a rose.</p> <p>17 MR. BARGIL: Just strawberry only?</p> <p>18 MR. SARAFAN: I said a lot of</p> <p>19 things, but I never mentioned rose. I</p> <p>20 mentioned strawberries.</p> <p>21 BY MR. BARGIL:</p> <p>22 Q. Your attorney asked you whether a</p> <p>23 strawberry bush not be adequate ground cover, I</p> <p>24 believe your response would be no; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 203</p> <p>1 cover?</p> <p>2 MR. SARAFAN: Object to the form.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. BARGIL:</p> <p>5 Q. Do you know whether or not Ms. Ricketts</p> <p>6 grew strawberries?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. Do you know whether or not she still has</p> <p>9 them?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Did you tell her to remove them?</p> <p>12 A. No.</p> <p>13 Q. Even though they are not adequate ground</p> <p>14 cover?</p> <p>15 MR. SARAFAN: You really aren't</p> <p>16 understanding, Counsel.</p> <p>17 BY MR. BARGIL:</p> <p>18 Q. Do you understand the question?</p> <p>19 MR. SARAFAN: Object to the form.</p> <p>20 THE WITNESS: She was using it as</p> <p>21 an ornamental plant. She wasn't using</p> <p>22 it as a ground cover. So that's why I</p> <p>23 didn't ask her to remove it.</p> <p>24 BY MR. BARGIL:</p> <p>25 Q. So there are instances where something</p>
<p style="text-align: right;">Page 202</p> <p>1 A. No.</p> <p>2 Q. And why is that not adequate ground</p> <p>3 cover?</p> <p>4 A. Because it needs to cover everything.</p> <p>5 It doesn't cover everything; there should be dirt</p> <p>6 in between them.</p> <p>7 Q. So it would need to be a little fuller?</p> <p>8 A. You have to cover everything.</p> <p>9 Q. When you say cover everything, every</p> <p>10 surface of a yard must be covered with something?</p> <p>11 A. Yes.</p> <p>12 Q. You can't have bare dirt patches?</p> <p>13 A. No.</p> <p>14 Q. So the issue with a strawberry bush is</p> <p>15 what?</p> <p>16 A. If it's a strawberry bush, it's very,</p> <p>17 very big. It doesn't cover the whole yard. And</p> <p>18 it can't grow fast enough to cover in a whole</p> <p>19 year.</p> <p>20 Q. So in the context of a yard that has</p> <p>21 many things growing in it and they are all</p> <p>22 compliant with the code, you can have a</p> <p>23 strawberry bush; right?</p> <p>24 A. Sure.</p> <p>25 Q. It's not per se an adequate ground</p>	<p style="text-align: right;">Page 204</p> <p>1 that might by itself not be adequate ground</p> <p>2 cover, but when used for other purposes is okay?</p> <p>3 MR. SARAFAN: I don't understand</p> <p>4 that question.</p> <p>5 BY MR. BARGIL:</p> <p>6 Q. Okay. Well, in response to the question</p> <p>7 that he asked you about a strawberry bush --</p> <p>8 MR. SARAFAN: I didn't ask about a</p> <p>9 strawberry bush.</p> <p>10 Would you like to read it back.</p> <p>11 (Whereupon the requested portion</p> <p>12 was read back.)</p> <p>13 BY MR. BARGIL:</p> <p>14 Q. So rose of strawberry bushes covering an</p> <p>15 entire property would not be adequate ground</p> <p>16 cover?</p> <p>17 A. No.</p> <p>18 Q. But a singular strawberry bush wouldn't</p> <p>19 violate the ground cover restrictions?</p> <p>20 A. It's not a ground cover. It would be an</p> <p>21 ornamental plant.</p> <p>22 Q. So you can use it as an ornamental</p> <p>23 plant?</p> <p>24 A. Sure.</p> <p>25 Q. As long as you have adequate ground</p>

<p style="text-align: right;">Page 205</p> <p>1 cover otherwise?</p> <p>2 A. Right.</p> <p>3 Q. So ornamental plants are not the same as</p> <p>4 ground cover in every instance?</p> <p>5 A. Sure.</p> <p>6 Q. So you can have an ornamental plant that</p> <p>7 isn't at all related to what you are using at all</p> <p>8 as ground cover?</p> <p>9 A. Sure.</p> <p>10 Q. He gave you an example about a tomato</p> <p>11 vine growing near your house. I don't want to</p> <p>12 mischaracterize that, but it was something along</p> <p>13 those lines.</p> <p>14 MR. SARAFAN: Close enough.</p> <p>15 BY MR. BARGIL:</p> <p>16 Q. At what point does one plant -- so one</p> <p>17 plant in that instance and in the example he gave</p> <p>18 would be permissible; right?</p> <p>19 A. Yes.</p> <p>20 Q. At what point does it become</p> <p>21 impermissible?</p> <p>22 MR. SARAFAN: Object to the form.</p> <p>23 THE WITNESS: In my opinion when it</p> <p>24 starts to --</p> <p>25 BY MR. BARGIL:</p>	<p style="text-align: right;">Page 207</p> <p>1 having one or two, or I'm not sure how many would</p> <p>2 be permitted; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. Why did you not tell them that they</p> <p>5 could keep a handful of their vegetables?</p> <p>6 A. She didn't ask me.</p> <p>7 Q. Is it not the policy of code compliance</p> <p>8 to instruct people what they need to do to be</p> <p>9 compliant with the code?</p> <p>10 A. She was instructed on what she needed to</p> <p>11 do to be compliant with the code.</p> <p>12 Q. Could she have kept a few of the plants?</p> <p>13 A. If she would have asked me, I would have</p> <p>14 let her keep a few ornamental plants, sure.</p> <p>15 Q. Do people have to ask you whether or not</p> <p>16 they can take a half measure in response to an</p> <p>17 order from the City of Miami Shores?</p> <p>18 A. I don't see it as a --</p> <p>19 MR. SARAFAN: Object to the form.</p> <p>20 THE WITNESS: I don't see it as a</p> <p>21 half measure.</p> <p>22 BY MR. BARGIL:</p> <p>23 Q. The code enforcement board determined</p> <p>24 that all her vegetables needed to be removed; is</p> <p>25 that correct?</p>
<p style="text-align: right;">Page 206</p> <p>1 Q. I don't want to cut you off, but in your</p> <p>2 -- given your specific knowledge as the code</p> <p>3 compliance supervisor of Miami Shores, not just</p> <p>4 kind of a general opinion, but in terms of how</p> <p>5 you enforce the code.</p> <p>6 A. Well, when I look at what the yard or</p> <p>7 what the garden is being used for, that would</p> <p>8 determine what action I take.</p> <p>9 Q. And if it's being used decoratively,</p> <p>10 then what?</p> <p>11 A. If it's decorative, then no harm, no</p> <p>12 foul. It's used to grow vegetables, to cultivate</p> <p>13 and eat, it's an issue.</p> <p>14 MR. BARGIL: We'll take a couple of</p> <p>15 minutes.</p> <p>16 (A brief break was had.)</p> <p>17 BY MR. BARGIL:</p> <p>18 Q. One final question, when you cited my</p> <p>19 clients for their vegetable garden in order for</p> <p>20 them to come into compliance, what did they have</p> <p>21 to do?</p> <p>22 A. Remove the vegetables.</p> <p>23 Q. All of them?</p> <p>24 A. Yes.</p> <p>25 Q. You mentioned a moment ago though that</p>	<p style="text-align: right;">Page 208</p> <p>1 A. Yes.</p> <p>2 MR. SARAFAN: Object to the form;</p> <p>3 outside the scope.</p> <p>4 BY MR. BARGIL:</p> <p>5 Q. And you instructed my client to remove</p> <p>6 all her vegetables; correct?</p> <p>7 MR. SARAFAN: Same objection.</p> <p>8 THE WITNESS: The board did, yes.</p> <p>9 BY MR. BARGIL:</p> <p>10 Q. And when you went to my client's</p> <p>11 property the first time you saw that there were</p> <p>12 some vegetables still remaining; is that correct?</p> <p>13 MR. SARAFAN: Same objection.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MR. BARGIL:</p> <p>16 Q. Why was that not enough?</p> <p>17 MR. SARAFAN: Same objection.</p> <p>18 THE WITNESS: Because according to</p> <p>19 the board she needed to remove all of</p> <p>20 them, and that's what she needed to do.</p> <p>21 BY MR. BARGIL:</p> <p>22 Q. You mentioned had she asked you, she</p> <p>23 could keep a few?</p> <p>24 MR. SARAFAN: Same objection.</p> <p>25 THE WITNESS: I would allow one or</p>

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