

Equitable Reverse Mortgage Company (dba for Reverse Mortgage GRP, Inc.)
105 W. Adams St. #1325, Chicago, IL 60603 | 1-800-966-7211 | all@equitablereverse.com

7-27-09

Mr. Eugene Steppe
3270 Gifford Lane
Miami, FL 33133

Mr. Steppe:

This letter is to confirm in writing what we had spoken about. If there is any lien on your property at the above address then we will not be able to give you a Reverse Mortgage on that property.

Please feel free to contact me if you have any questions.

Regards,

Harold Bremser Jr.
Reverse Mortgage Specialist
Direct 954-499-0618
1-800-966-7211 ext 146



Equal Housing Opportunity. Reverse Mortgage GRP, Inc is an authorized mortgagee in:
AK, CA, CO, FL, HI, IA, IN, IL, KY, MI, MO, MN, NE, NM, VA

E

Reverse Mortgage Comparison

Prepared for:
Eugene Step

, FL 33133

Prepared by:
Eric Watterson

Generation Mortgage Company

3 Piedmont Center
 3565 Piedmont Road, NE Suite 300
 Atlanta, GA 30305-1538

Phone: (678) 439-3955

Primary Borrower BirthDate: 1/1/1942

	HECM LIBOR Monthly	HECM Fixed Retail		
Max Claim Amount	\$500,000.00	\$500,000.00		
Margin	3.250%	0%		
Expected Rate	6.960%	5.750%		
Initial Loan Rate	3.536%	5.750%		
Initial Growth Rate	4.036%	6.250%		
Lifetime Cap	13.536%	5.750%		
Principal Limit	\$261,500.00	\$323,000.00		
ServicingSetaside	\$4,406.25	\$5,002.33		
Principal Available	\$257,093.75	\$317,997.67		
Financed Closing Costs	\$24,982.50	\$24,982.50		
Liens	\$0.00	\$0.00		
Initial Draw	\$0.00	\$293,015.17		
Cash to Close	\$0.00	\$0.00		
Net Principal Limit	\$232,111.25	\$0.00		
Setasides	\$0.00	\$0.00		
Payment Plan	Line of Credit	Line of Credit		
Line Of Credit	\$232,111.25	\$0.00		
Monthly Payment	\$0.00	\$0.00		
Payment Term	0	0		

Eugene Step

Date

E

Reverse Mortgage Comparison

7/23/2009

Prepared for **EUGENE STEPPE**

Application Number: 4604505

Youngest Borrower Birthday: 7/20/1943

Estimated Closing Date¹: 7/23/2009

FROM:

Harold Bremser
 Reverse Mortgage GRP, Inc
 105 W Adams St. Suite 1325 Chicago, IL 60603
 Phone: 800-966-7211 Fax: 888-298-7509

Index	FHA/HUD Monthly Adj	FHA/HUD Monthly Adj	FHA/HUD Monthly Adj
Margin	LIBOR	LIBOR	CMT
Initial Interest Rate	2.750%	3.000%	4.500%
Expected Interest Rate	3.036%	3.286%	4.98%
Interest Rate Cap	6.460%	6.710%	8.05%
Monthly Service Fee	13.036%	13.286%	14.98%
Estimated Home Value	30.00	30.00	30.00
Lending Limit	500,000	500,000	500,000
Max Claim/Adj. Property Value	625,500	625,500	625,500
Credit line Growth Rate	500,000	500,000	500,000
Principal Limit	3.536% ²	3.786% ²	5.48% ²
Service Fee Set Aside	274,000.00	262,000.00	208,500.00
Available Principal Limit	4,710.99	4,587.03	4,006.43
Up Front MIP	269,289.01	257,412.97	204,493.57
Financed Origination Fee	10,000.00	10,000.00	10,000.00
Other Financed Costs	6,000.00	6,000.00	6,000.00
Cash From Borrower At Closing	6,667.00	6,667.00	2,066.00
Net Principal Limit	0.00	0.00	0.00
Debt Payoff Advance	246,622.01	234,745.97	186,427.57
Net Available to You	0.00	0.00	0.00
Cash Requested	246,622.01	234,745.97	186,427.57
Credit line Requested	0.00	0.00	0.00
Remaining Cash	246,622.01	234,745.97	186,427.57
Potential Tenure Payments	0.00	0.00	0.00

1. The figures listed in the comparison above are estimates only and are particular to the estimated interest rates and/or the borrower(s) age(s) at the estimated closing date listed above.
 2. The credit line growth rate is an estimate and will change in accordance with HUD guidelines.



 Borrower Signature Date



 Co-Borrower Signature Date

F



Florida Power & Light Company
 PO Box 025576
 Miami, FL 33102

/ 27

8501303577027409803100000

Please request changes on the back.
 Notes on the front will not be detected.

The amount enclosed includes the following donation:

Paid 02/09/ 9V508-657VL

FPL Care To Share \$ _____



6,7,8 8501 0



AUTO **CO 3336 035076

EUGENE STEPPE
 3270 GIFFORD LN
 MIAMI FL 33133-5115

Make check payable to FPL in U.S. funds
 and mail along with this coupon to:

FPL
 GENERAL MAIL FACILITY
 MIAMI FL 33188-0001



Account number	Total amount you owe	New charges due by	Amount enclosed
30357-70274	\$130.89	Feb 24 2010	\$

Your electric statement

Account number: 30357-70274

For: Jan 04 2010 to Feb 03 2010 (30 days)
 Customer name: EUGENE STEPPE
 Service address: 3270 GIFFORD LN

Statement date: Feb 03 2010
 Next meter reading: Mar 04 2010

Amount of your last bill	Payments (-)	Additional activity (+ or -)	Balance before new charges (=)	New charges (+)	Total amount you owe (=)	New charges due by
83.64	83.64 CR	0.00	0.00	130.89	\$130.89	Feb 24 2010

Meter reading - Meter 5C23398

Current reading	12674
Previous reading	- 11627
kWh used	1047
Energy usage	
	Last Year This Year
kWh this month	934 1047
Service days	32 30
kWh per day	29 35

Amount of your last bill	83.64
Payment received - Thank you	83.64 CR
Balance before new charges	\$0.00
New charges (Rate: RS-1 RESIDENTIAL SERVICE)	
Electric service amount	95.41**
Storm charge	2.71
Gross receipts tax	2.52
Franchise charge	6.04
Utility tax	7.27
Actual electric charges	113.95
Budget billing charges	\$130.89

****The electric service amount includes the following charges:**

Customer charge:	\$5.69
Fuel:	\$40.85
<i>(First 1000 kWh at \$0.038570)</i>	
<i>(Over 1000 kWh at \$0.048570)</i>	
Non-fuel:	\$48.87
<i>(First 1000 kWh at \$0.046190)</i>	
<i>(Over 1000 kWh at \$0.057210)</i>	

Total amount you owe \$130.89

**FPL Budget Billing
 Deferred Balance
 \$52.90**

- Payment received after **February 24, 2010** is considered **LATE**; a late payment charge of **1.50%** will apply and your account may be subject to an adjusted deposit billing.
- If this bill appears higher than your previous bill, remember your previous bill was lowered by a one-time fuel rebate. If you used a heater during the cold front, this bill may also be higher because heaters cost two to three times more to run than air conditioners.
- New rates were recently approved by the Public Service Commission and will apply to your March bill. Pursuant to Commission order, an adjustment to the storm surcharge will occur in March as well. Go to www.FPL.com/rates or call 888-615-9595 for details on rates for your account.

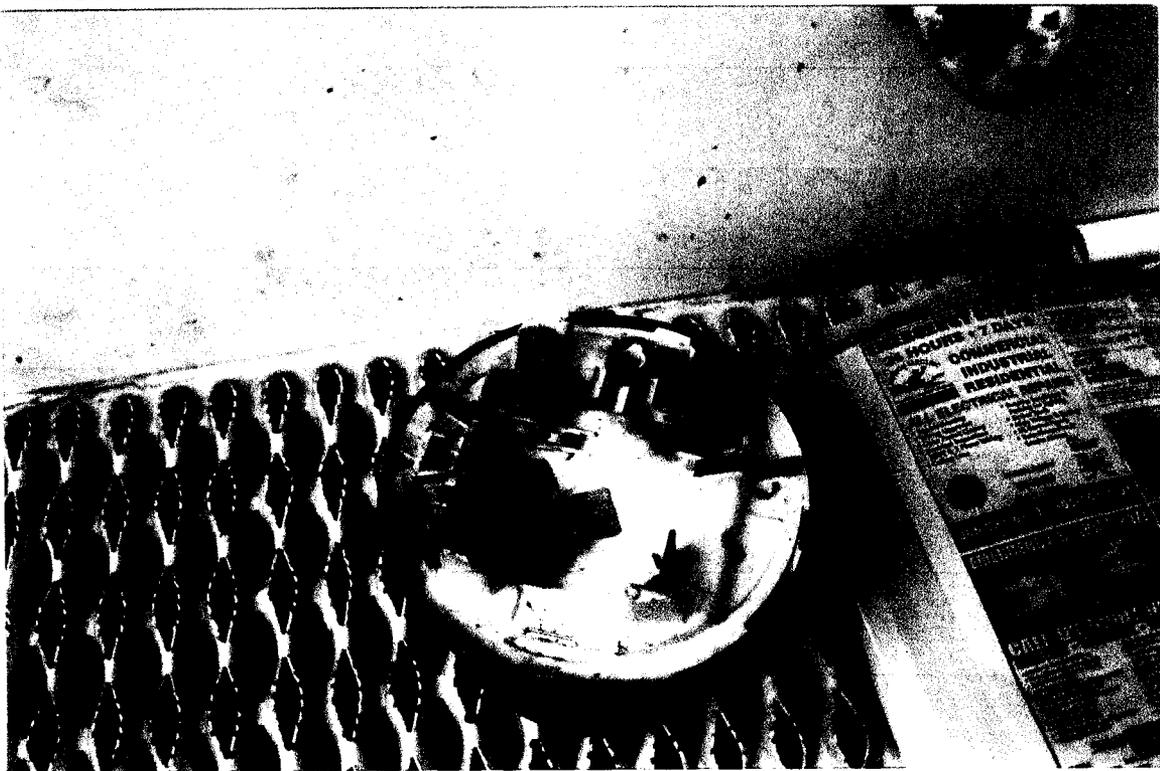
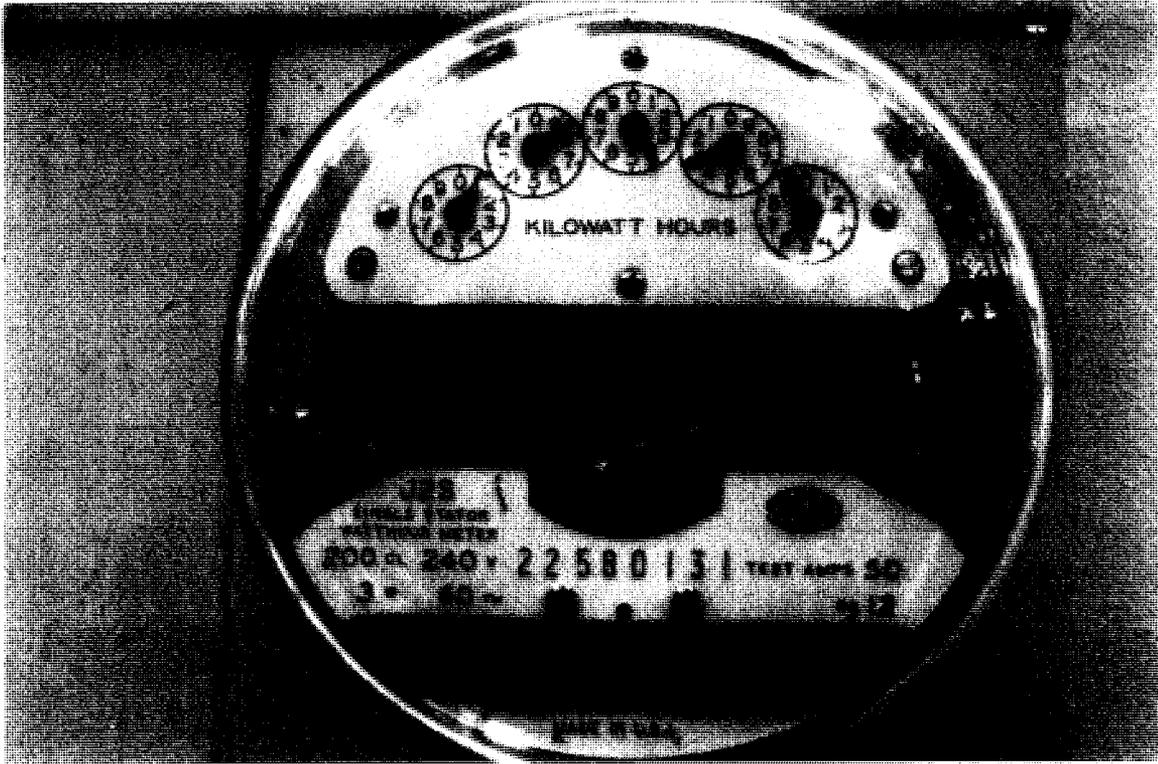


Florida Power & Light Company
 PO Box 025576
 Miami, FL 33102

Please have your account number ready when contacting FPL
 Customer service: (305) 442-8770
 Outside Florida: 1-800-226-3545
 To report power outages: 1-800-4OUTAGE (468-8243)
 Hearing/speech impaired: 711 (Relay Service)
 Online at: www.FPL.com

F









**United States District Court
Southern District of Florida**

Case Number: 09-CV-23305

SUPPLEMENTAL ATTACHMENT(S)

Please refer to supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

NOT SCANNED

- Due to Poor Quality
- Bound Extradition Papers
- Photographs
- Surety Bond (Original or Letter of Understanding)
- CD, DVD, VHS Tape, Cassette Tape
- Other: _____

SCANNED

- But Poor Quality
- Habeas Cases (State Court Record/Transcript)

Date: 2/3/11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 09-23305-CV-LENARD/TURNOFF

EUGENE JOBIE STEPPE and
CRISTINA MARIA STEPPE,

Plaintiffs/Petitioners,

vs.

CITY OF MIAMI, FLORIDA, a
municipal corporation, and CITY
OF MIAMI CODE ENFORCEMENT
BOARD,

Defendants.

REPORT AND RECOMMENDATION

THIS CAUSE is before the undersigned upon Defendants' City of Miami and City of Miami Code Enforcement Board's (collectively "Defendants") Motion to Dismiss [**D.E. 30**], Plaintiffs' Motion for Summary Judgment [**DE26**], Plaintiffs' Motion for Writ of Certiorari [**DE27**], and Defendants' Motion to Dismiss Motion for Writ of Certiorari [**DE40**], and a prior Order of Reference entered by the Honorable Joan A. Lenard.

Upon review of the Motions, the Responses, the court file, and being otherwise duly advised in the premises, the undersigned makes the following findings.

I. Procedural History

This action¹ was filed by *Pro Se* Plaintiffs Eugene and Cristina Maria Steppe (collectively "Plaintiffs") on October 30, 2009. [**D.E. 1**]. A Motion to Dismiss followed on November 23,

¹The factual background of this matter is well reflected in the Court docket, as well as in this Court's prior Report and Recommendation. [**DE12**]. Same is hereby incorporated by reference.

2009. [DE7]. On December 11, 2009, the undersigned entered a Report and Recommendation (“Report”) recommending that the City of Miami Enforcement Board (“Board”) be dismissed as a Defendant, and that the entire matter be stayed pending resolution of a then pending appeal in the Appellate Division of the Eleventh Judicial Circuit Court, in and for Miami-Dade County, Florida. [DE12]. Plaintiffs filed objections to the Report and Recommendation. Approximately one year later, on January 19, 2010, the Honorable Joan A. Lenard entered an Order Adopting the Report and staying the case. [DE19]. On January 12, 2011, Defendants filed a Notice advising the Court that the state court appeal had concluded and that the matter should be reopened. [DE20]. Judge Lenard reopened the case on January 25, 2011. [DE22].

On that same day, Judge Lenard entered an Order Consolidating² this action with Case No: 10-24571, a related case³ filed by Plaintiffs against [DE23]. By way of separate Order, Judge Lenard dismissed both cases without prejudice and ordered Plaintiffs to re-file a single Amended Complaint that encompassed all of their claims. [DE24]. Plaintiffs filed an Amended Complaint on February 3, 2011 [DE25], which was followed by their Motion for Summary Judgment on February 9, 2011, and a Motion for Writ of Certiorari on February 9, 2011. [DE26]. Defendants’ Motion to Dismiss the Amended Complaint followed on February 23, 2011. [DE30]. Defendant has also filed a Motion to Dismiss Plaintiff’s Motion for Writ of Certiorari. [DE40].

²Pursuant to Judge Lenard’s Order, the Clerk was directed to file all documents under the lower case number, to wit: Case No: 09-23305-CV-Lenard. [DE23].

³Plaintiffs originally filed this action in the Circuit Court in November 2010. See Case No: 10-24571-CV-JAL [DE1]. Defendants removed it to this district in December 2010. Id. The Complaint raises many of the same allegations raised in the instant action. The allegations range from breach of contract and intentional infliction of emotional distress, to violations of the Americans with Disabilities Act. Id.

II. Motion to Dismiss

Defendants seek dismissal because: (1) the Board is not subject to suit, (2) Plaintiffs have failed to state a plausible claim, (3) Plaintiffs are estopped by judgment, (4) Plaintiffs have failed to exhaust administrative remedies, and due to (5) sovereign immunity. Upon review of the Motion, the Response, the court file and being otherwise duly advised in the premises, the undersigned finds that Defendants' Motion to Dismiss Amended Complaint [DE25] should be **GRANTED** for the foregoing reasons.

A. The Board is not Subject to Suit

Consistent with this Court's prior Report and Recommendation dated December 11, 2009 [DE12], this Court again finds that the Board is not subject to suit. As noted then, the Board, as an integral part of the city government and a vehicle by which the city government fulfills its policing functions, is not subject to suit. See Florida City Police Department v. Corcoran, 661 So. 2d 1409. (Fla. 3d DCA 1995). Accordingly, it is hereby **RESPECTFULLY RECOMMENDED** that all references to the Board as a Defendant should be stricken and that the Board be **DISMISSED**.

B. Failure to State a "Plausible" Claim

Defendants argue that Plaintiffs have failed to state a plausible claim under Rule 8, as well as the Twombly and Iqbal standard. The undersigned agrees.

As a general matter, Rule 8(a)(2) requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8 (a)(2). However, in Bell Atl. v. Twombly, 550 U.S. 554 (2007), the Supreme Court expanded on the liberal pleading requirements and explained that a complaint must offer more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 559. In so

doing, the Court distinguished “plausible” claims from allegations that were merely “conceivable,” and stated that the Court, “[did] not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face.” Speaker v. U.S. Dept. of Health & Human Service Centers, et al, 623 F. 3d 1371 (11th Cir. 2010). In other words, it is not enough that the pleadings merely leave “open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery.” Id. A few years later in Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009), the Court clarified that a claim “has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft, 129 S. Ct. at 1949. That has not occurred here.

Here, Plaintiffs’ Amended Complaint arises out of three (3) code violations imposed on Plaintiffs by the Board. **[DE25]**. The Amended Complaint specifically alleges: Invasion of Privacy (Count I), Trespass to Land (Count II), Negligence (Count III), Denial of Due Process (Count VI), Fraudulent Misrepresentation (Count IV), and Estoppel (Count VI). The Amended Complaint names the City of Miami (“City”) and the Board as Defendants. Plaintiffs’ seek \$200,000 “on each [count] for compensatory and/or punitive damages, cost and \$176,000, in attorney’s fees.” **[DE25]**.

The sixty-eight (68) page pleading is comprised mostly of a recitation of the underlying facts surrounding the alleged code violations according to Plaintiffs, as well as a list of alleged wrongful conduct by the City and the Board. Am. Compl. **[DE27]**. The pleading also contains repeated references to testimony given before the Board, as well as gripes, rants, and not a whole lot more.

For example, Plaintiffs contend that the City and the Board are responsible for “ [His][suffering] 2 minor heart attacks and 21 visits to the psychologist related to the stress,” and “ the enlargement of Plaintiff’s heart by 2% due to blood pressure and stress.” Id. at ¶ 95. As a result, Plaintiff claims

that he “has and is consuming an unhealthy amount of alcohol to ward off stress, and it does numb the senses, so it works.” Id. Plaintiff also notes that the stress has caused him to “[gain] 7 pounds [from] having to sit at a typewriter to keep pace with all of the CITY’S asininites.” Id.

The following is a sampling of the allegations made by Plaintiff in the enumerated counts.

As to Count I, Invasion of Privacy, Plaintiffs specifically allege that:

Intrusion upon Seclusion:

Code inspectors were negligent to trespass onto Plaintiff’s [sic] cartilage [sic] to conduct illegal unwarranted searches; taking picture[s] of Plaintiff’s home through windows and open doors of the interior of Plaintiff’s home and placing the pictures and reports into public files for anyone to view. Defendant’s [sic] threatened Plaintiff and his wife with arrest, fines, liens and foreclosure and described the contents of Plaintiff’s home with the news media, who quoted the inspectors.

Id. ¶ 73.

* * *

Publicity Given to Private Life:

Defendant’s employees were interviewed by the press and discussed the contents of Plaintiff’s home with direct quotes in various newspapers and TV News program[s] for public consumption. Defendant’s [sic] investigated Plaintiff’s financial data, business interest[s], credit reports, and private concerns. At a public hearings [sic] Defendant’s [sic] described Plaintiff [as being] in need of obvious medical attention, [and] that he displayed obvious mental difficulties and should stay in his back yard. Defendant’s [sic] were in possession of Plaintiff’s medical records and utilized same to attack Plaintiff.

Id. ¶ 74.

* * *

Publicity Placing the Person in a False Light:

Defendant’s [sic] placed in [the] public domain statements for public consumption that Plaintiff’s [sic] were a threat to their immediate community, public health, morality and well being and that Plaintiff’s property was a danger to life and property, that Plaintiff EUGENE JOBIE STEPPE was in need of obvious medical attention, had difficulties and should stay in his back yard. Defendant’s [sic] were in possession of Plaintiff’s medical records and utilized same to attack Plaintiff.

Id. ¶ 75.

* * *

Appropriation of Name or Likeness:

CITY appropriated a website from Plaintiff's [sic] under the threat of arrest, fines, liens and foreclosure compelling Plaintiff to turn over ownership of the website to CITY interest with a CITY phone number.

Id. ¶ 76.

As to Count II, Trespass to Land, Plaintiffs allege the following,

Defendant's [sic] employees trespassed onto Plaintiff's cartilage [sic] 3 times with intent. Each drove their CITY vehicles to Plaintiff's homestead and walked onto the property after having to "go through the fence" and walk about the cartilage [sic] taking pictures of the entire cartilage [sic] during each trespass and placing the pictures and their reports into CITY files proving the trespass from the positions and angles that the photos were taken.

Id. ¶ 79.

* * *

Each CITY code inspector received extensive training in federal and state laws and rules governing unwarranted trespass. Reasonable persons would know better. Defendant employees were intent [sic] and negligent. They took pictures through windows and open doors, removed electrical meters from energized circuits, causing a minor fire, filed reports stating that Plaintiff's cartilage [sic] was a danger to life and property. Defendant's [sic] describe each trespass in detail and placed their pictures and reports into CITY files, proving the trespass.

Id. ¶ 80.

* * *

CITY has interfered with Plaintiff's exclusive possession of his homestead via the 4 illegal unwarranted trespassing [sic], resulting in 8 or 9 bogus fraudulent code violations and 3 fines and liens placed upon Plaintiff's homestead, which has resulted in stress, loss of income, loss of two reverse mortgage[s] and the sale of his property. CITY'S actions were wilful and intentional. Reasonable people would not act out with such negligence.

Id. ¶ 81.

* * *

The damage occurred as the direct result of trespassing and CITY Attorney Barnaby Min['s] misrepresentation of facts and a letter authored by Min advised all code enforcement officers not to communicate with Plaintiff's [sic] to resolve the alleged code violations. This

selective enforcement procedure caused the inevitability that fines and liens would be applied to Plaintiff's homestead.

Id. ¶ 82.

* * *

Defendant's [sic] acted with extreme negligence: One inspector stated he was standing at Plaintiff's front door, looking inside. Plaintiff's [sic] alleges that the inspector opened the front door and stepped inside, surprising Plaintiff who rebuked the intruder harshly, who required medical attention resulting in the police being dispatch [sic] to Plaintiff's home. Inspector Canales once appeared at night and removed 2 FP&L meters from two energized circuits causing a minor fire from an arc. As Plaintiff confronted Mr. Canales on his cartilage [sic] Mr. Canales called 3 additional code personnel to Plaintiff's home. No physical altercations occurred and the 4 officers departed. FP&L [sic] personnel were dispatched and took pictures of the damage and filed a report. Mr. Ortiz took pictures on Plaintiff's cartilage [sic] of felled palms and departed when asked to do so.

Id. ¶ 83.

As to Count III, Negligence, Plaintiffs allege as follows:

Duty of Care: City inspectors were trained not to trespass. It is reasonable to assume the same inspectors would never sit by idly at their homestead and allow strangers to walk about taking pictures and opening their front doors and walk in - - - a reasonable person would not find these activities normal or acceptable and it would be foreseeable that all trespass unreasonable and negligent and could easily lead to all sorts of extreme reactions to the person or persons [sic] family being transgressed upon.

Id. ¶ 86.

* * *

Duty of Care - Relationship of Proximity: CITY code enforcement plays an important role in all aspects of modern life. but, the illegal unwarranted trespass upon private property does not. Respect is the they word. There would have been no problem if the three code enforcement officers took a few minutes to look up Plaintiff's phone number, make the call and ask permission to perform inspections and recommend some improvement (s). Florida Power & Light, A/C duct cleaners, gardeners, painters, tree trimmers, and other legitimate business entities employ telemarketers to pester us 24/7 on the phone and leave flyers and business cards hanging on security gates and mailboxes; but I cannot remember one of them, or some pesky magazine pusher or some pan handler to trespass past Plaintiff's security gate and known at the front door in the last 21 years.

Id. ¶ 87.

* * *

This activity does not represent *Close Proximity* with Plaintiff's [sic]; to love thy neighbor, to not harm thy neighbor. In fact, CITY actors, and /or reasonable people could easily determine that harm had to result (1) was reasonably foreseeable (2) there was a relationship of proximity between Plaintiff's [sic] and Defendant (3) it is fair, just and reasonable to impose liability against DEFENDANT'S [sic] for negligence, trespass and invading Plaintiff's privacy.

Id. ¶ 89.

* * *

Breach of Duty: The ultimate duty of code enforcement is to make our community a better, safer, cleaner place to live, work, raise children and prosper. The purpose of code enforcement is to create change for the good of the community. How does trespassing to conduct illegal unwanted searches, misrepresentations, lies and the application of fines and liens against Plaintiff's [sic] serve this community by wasting \$85,000 in taxpayers money to harass a 68 year old veteran practicing art for therapy and a kindergarten teacher help and serve to enhance this community.

Id. ¶ 90.

As noted above, Plaintiffs are appearing *pro se*. In this connection, a *pro se* complaint, however inartfully plead, must be held to a less stringent standard than formal pleadings by lawyers. Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007). "However, a court's duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it for [him or her]." Peterson v. Atlanta Hous. Auth., 998 F. 2d 904, 912 (11th Cir. 1993). Applying the Twombly and Iqbal standards to the instant case, the undersigned finds that Plaintiffs have failed to meet the pleading requirements. Accordingly, it is therefore **RESPECTFULLY RECOMMENDED** that Plaintiffs' Amended Complaint be **DISMISSED**.

Having determined that the action should be dismissed, the undersigned need not address Defendants' remaining arguments in detail. However, in the interest of making a complete record,

the undersigned shall very briefly address certain issues raised by Defendants.

C. Estoppel and Failure to Exhaust Administrative Remedies

As a general matter, code enforcement proceedings are quasi-judicial in nature. Verdi v. Metro-Dade County, 684 So.2d 870 (Fla. 3d DCA 1996). Administrative agencies, like the Board, conduct quasi-judicial proceedings in order to investigate and ascertain the existence of facts, hold hearings, and draw conclusions from those hearings as a basis of their official actions. Broward County v. La Rosa, 505 So.2d 422, 423 (Fla. 1987). The doctrine of estoppel applies to quasi-judicial administrative findings when judicial review of the findings has been exhausted. Jet Air Freight v. Jet Air Freight Delivery, Inc., 264 So. 2d 35 (Fla. 3d DCA), cert. denied, 267 So.2d 833 (Fla. 1972)(res judicata or collateral estoppel applies to actions by administrative agencies acting in a judicial capacity as to which the parties had an adequate opportunity to litigate).

In this connection, a party seeking review of administrative action must do so in the circuit court. See e.g., FPL v. City of Dania, 761 So. 2d 1089 (Fla. 2000). There, the circuit court must determine whether procedural due process was accorded, whether the essential requirements of law were observed and whether administrative findings and adjustments were supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982). If either of the above are answered in the negative, the circuit court must quash the decision and remand the matter to the local government agency for further proceedings. If the circuit court determines that all three elements were satisfied, the petition for writ of certiorari must be denied.

Review of circuit court decisions, in which the circuit court acted in appellate capacity in reviewing administrative action, is available in the District Court of Appeal, if at all, only by petition for writ of common-law certiorari. Davis v. Dept. of Highway Safety & Motor Vehicles, State of

Fla., 660 So. 2d 775 (1995); see also, Fla.R.App.P. Rule 9.030(b)(2)(B) (prescribing certiorari jurisdiction in the district courts of appeal for review of final orders of circuit courts acting in their review capacity). Such appeals must be commenced by filing a “notice of appeal” within thirty (30) days of rendition of the order to be reviewed. Fla.R. App.Rule 9.110(b). In such instances, the appellate court reviews the circuit court’s judgment and determines only whether the circuit court afforded procedural due process and applied the correct law. Id.

Defendants correctly note that Plaintiffs’ claims have either been determined by litigation, waived, or are otherwise barred due to Plaintiffs’ failure to exhaust all administrative remedies. Here, Plaintiffs’ first code enforcement violation, CE2008012300, charged Plaintiffs with, among other things, operating a business in residential zone. The Board held an evidentiary hearing and found Plaintiffs guilty. Its Findings of Fact and Conclusions of Law were issued on September 16, 2008. [DE1-1]. Plaintiffs filed an appeal in the Appellate Division of the Eleventh Judicial Circuit’s in Miami-Dade County. See Steppe v. City of Miami Code Enforcement, Case No: 08-841 AP. Their appellate brief was filed on February 24, 2010. [DE33-1]. On September 16, 2010, a three judge panel entered a *per curiam* affirmance of the Board’s findings. [DE20-1]. A motion for written certification was denied on October 21, 2010. Id. The Mandate was entered on November 10, 2010. Id. No appeal in the district court of appeal was ever taken by Plaintiff.

On February 10, 2010, Plaintiffs were issued a second code enforcement violation, CE2009020198, which charged them with failure to obtain a permit as it relates to tree removal/relocation/trimming/rooting. [DE35-2]. An Affidavit of Non-Compliance was entered February 18, 2010, after an inspection revealed that the violation had not been corrected. Id. Plaintiffs did not file a separate appeal on this violation. Instead, they mentioned the violation in

their appellate brief to the Circuit Court as to the first violation. [DE33-1].

The third violation, BE209024201, was the result of a visual inspection of the electrical wiring on Plaintiffs' property. A warning notice was sent on October 19, 2009. [DE35-1]. Plaintiffs did not pursue any separate administrative remedies as to this violation. However, it appears that they likewise raised their claims in their circuit court appellate brief noted above. [DE33-1]. Again, notwithstanding the fact that the action being appealed – Board's Findings of Fact and Conclusions of Law– only addressed the first violation. [DE 1-1, p. 98].

Consistent with the above and foregoing, and applying law to the facts of this case, it appears that Plaintiffs' claims may either be barred by estoppel, or otherwise prohibited due to failure to exhaust all administrative remedies, including, but not limited to, seeking timely review in the appropriate state appellate court.

In light of the Court's findings, it is not necessary to discuss Defendants' sovereign immunity issues. It is, however, worth noting that the arguments are colorable.

III. Conclusion

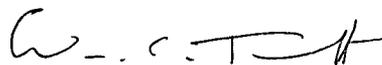
Consistent with the above and foregoing, it is hereby **RESPECTFULLY RECOMMENDED** as follows:

- (1) that Defendants' Motion to Dismiss [D.E. 30] be **GRANTED**;
- (2) that Plaintiffs' Motion for Summary Judgment [DE26] be **DEEMED MOOT**;
- (3) that Plaintiffs' Motion for Writ of Certiorari [DE27] be **DEEMED MOOT**; and
- (4) that Defendants' Motion to Dismiss Motion for Writ of Certiorari [DE40] be **DEEMED MOOT**.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the parties may file written objections to this Report

and Recommendation with the Honorable Joan A. Lenard, United States District Court, within fourteen (14) days of receipt. Failure to file objections timely shall bar the parties from attacking on appeal any factual findings contained herein. RTC v. Hallmark Builders, Inc., 996 F. 2d 1144, reh'g denied, 7 F. 3d 242 (11th Cir. 1993) (*en banc*); LoConte v. Dugger, 847 F. 2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988).

RESPECTFULLY RECOMMENDED in Chambers at Miami, Florida on this 24th day of March 2011.



WILLIAM C. TURNOFF
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Joan A. Lenard
Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-23305-CIV-LENARD/O'SULLIVAN

**EUGENE JOBIE STEPPE and
CRISTINA MARIA STEPPE,**

Plaintiffs,

vs.

**CITY OF MIAMI, FLORIDA, a
municipal corporation, et al.,**

Defendants.

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**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE (D.E. 44) AND GRANTING DEFENDANTS' MOTION
TO DISMISS (D.E. 30)**

THIS CAUSE is before the Court on the Report and Recommendation of Magistrate Judge William C. Turnoff ("Report," D.E. 44), issued on March 24, 2011. On March 28, 2011, Plaintiffs filed their Objections to the Report ("Objections," D.E. 45),¹ to which Defendants filed their response ("Response," D.E. 53), on April 11, 2011. Having considered the Report, Objections, Response, related pleadings, and the record, the Court finds as follows.

I. Background

On February 3, 2011, Plaintiffs Eugene Jobie Steppe and Cristina Maria Steppe filed their pro se Amended Complaint ("Complaint," D.E. 25), asserting five claims against

¹ Plaintiffs also filed an "Attachment" to the Objections on March 29, 2011, and a "Second Attachment" to the Objections on March 31, 2011. (See D.E. 46, 47.)

Defendants the City of Miami, Florida and City of Miami Code Enforcement Board (“Board”). The Complaint alleges: (1) invasion of privacy; (2) trespass; (3) negligence; (4) denial of due process; (5) fraudulent misrepresentation; and (6) estoppel. The claims relate to at least three inspections by City of Miami code enforcement personnel of Plaintiffs’ property which resulted in three code enforcement proceedings, Case Nos. CE2008012300, CE2009020198, and BE2009024201, and spawned subsequent litigation. As best can be distilled from Plaintiffs’ Complaint, the enforcement proceedings and Plaintiffs’ claims result from three separate incidents.

First, Plaintiffs claim that on June 27, 2008, a city inspector trespassed onto their property and they were subsequently issued a Notice of Violation Summons to Appear (D.E. 25 at 47), charging them with six violations of city ordinances including operating a business in a residential zone, not possessing a certificate of use required for operating a business, not having a valid occupational license, illegally parking a commercial vehicle in a residential zone, parking on unimproved surfaces, and outside storage of miscellaneous materials, equipment or debris. Plaintiffs believe the inspector improperly accessed their property by opening a fence gate and entering onto their property which contained a “No Trespass” sign. (See Complaint at ¶¶ 12-13.) In short, the city inspector believed Plaintiffs were operating a business selling artwork out of their home. The Board held a hearing and found Plaintiffs guilty of the violations. Plaintiffs allege they were kicked out of the hearing and unable to participate. On September 16, 2008, the Board issued its Findings of Fact and Conclusions

of Law. (See D.E. 5-2 at 2-5.) Plaintiffs filed an appeal in the Appellate Division of the Eleventh Judicial Circuit in and for Miami-Dade County which affirmed the Board's findings on September 16, 2010. (See D.E. 33-1, 20-1.) A mandate was issued on November 10, 2010, and no appeal to the state court of appeals was made. (Id.)

Second, Plaintiffs allege that on September 1, 2009, a city inspector trespassed onto their property and took pictures of felled palm trees without their permission. On February 10, 2010, Plaintiffs were issued a second code enforcement violation, charging them with failure to obtain a permit as it relates to tree removal/relocating/trimming/root pruning. (See D.E. 35-2.) Plaintiffs did not file a separate appeal of this violation but mentioned it in their first appellate brief to the circuit court. (See D.E. 33-1.)

Third, Plaintiffs allege that on October 19, 2009, a city inspector trespassed onto their property at night and attempted to remove two electrical meters as part of inspecting the property's electrical wiring. (See Complaint at ¶¶ 31, 83.) According to Plaintiffs, the city inspector caused a small fire and did not have permission to be on the property. The inspector also took photographs of the property and otherwise inspected the premises. Plaintiffs again did not pursue any separate administrative remedies as to this violation but included it as part of their claims raised on appeal to the circuit court.

On February 23, 2011, Defendants moved to dismiss the Complaint arguing: (1) the Board is not subject to suit and should be dismissed as a party; (2) Plaintiffs' claims should be dismissed for failure to state a claim under Rule 12(b)(6); (3) Plaintiffs' claims are barred

under the doctrine of estoppel by judgment or their failure to exhaust administrative remedies; and (4) Defendants are entitled to sovereign immunity as the Complaint describes willful and wanton misconduct by its employees. Prior to Defendants' Motion to Dismiss, Plaintiffs had filed their Motion for Summary Judgment (D.E. 26), seeking summary judgment on their claims, and their Motion for a Petition for Writ of Certiorari (D.E. 27). On February 24, 2011, Defendants filed their Motion to Dismiss Petition for Writ of Certiorari (D.E. 40). Finally, on June 22, 2011, Plaintiffs filed their Request that the Court Rule on Plaintiffs' Motion for Summary Judgment (D.E. 55).

II. Report and Objections

The Report recommends the Court: (1) grant Defendants' Motion to Dismiss (D.E. 30), filed on February 23, 2011, and dismiss Plaintiffs' Amended Complaint for failure to state a claim; and (2) deny as moot the various other motions including Plaintiffs' motion for summary judgment. Specifically, the Magistrate Judge found that "[a]pplying the Twombly and Iqbal standards to the instant case, the undersigned finds that Plaintiffs have failed to meet the pleading requirements." (Report at 8.) Additionally, the Report found that Plaintiffs' claims appeared to be barred by estoppel, a failure to exhaust administrative remedies, or potentially sovereign immunity. (Id. at 11.)

In their Objections, Plaintiffs object that the nature of their action is related to the city inspectors' repeated trespasses on their property. To the extent Plaintiffs acknowledge their pro se pleadings are confusing and rambling, they additionally seek leave to file a Second Amended Complaint. (Objections at 18.)

In response, Defendants reiterate those prior arguments raised in their Motion to Dismiss and addressed in the Report.

III. Standard of Review

Upon receipt of the Report and the Objections, the Court must now “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see FED. R. CIV. P. 72(b)(3). Review of the Magistrate Judge’s application of the law is always *de novo*, as the “application of an improper legal standard . . . is never within a court’s discretion.” *Johnson & Johnson Vision Care, Inc., v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246 (11th Cir. 2002) (citing *Univ. of Georgia Athletic Ass'n v. Laite*, 756 F.2d 1535 (11th Cir. 1985)). The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id. In making its determination, the district court is given discretion and “is generally free to employ the magistrate judge’s findings to the extent that it sees fit.” *Amlong & Amlong, P.A. v. Denny’s, Inc.*, 500 F.3d 1230, 1245 (11th Cir. 2007).

IV. Discussion

Pursuant to Federal Rule of Civil Procedure 12(b), a defendant may move for dismissal of a claim based on one or more of seven specific defenses, including failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). In reviewing a motion to dismiss, the Court accepts the facts alleged in the Complaint as true, and construes all reasonable inferences therefrom in the light most favorable to Plaintiffs. *Bank v. Pitt*, 928 F.2d 1108, 1109 (11th Cir. 1991). To survive a motion under Rule 12(b)(6), a

claim need not contain detailed factual allegations, but must provide sufficient grounds to show more than a merely speculative entitlement to relief. Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007); Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231-32 (11th Cir. 2000). The Supreme Court has previously explained that “a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Estelle v. Gamble, 429 U.S. 97, 107 (1976) (internal citations omitted); see also, Erickson v. Pardus, 551 U.S. 89, 94 (2007); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

As the Magistrate Judge notes, the Complaint contains its fair share of “gripes” and “rants.” It is also rambling, confusing, and incoherent at times. Moreover, under City of Miami Code and Florida statutes, the Board is an integral part of the city government through which the city fulfills its code enforcement functions. See City Code § 2-811, *et seq.*; Fla. Stat. § 162.01, *et seq.*; Fla. City Police Dep’t v. Corcoran, 661 So.2d 409, 410 (Fla. 3d DCA 1995); Masson v. Miami-Dade County, 738 So.2d 431 (Fla. 3d DCA 1999); Fla. Medical Ass’n v. Spires, 153 So.2d 756 (Fla. 1st DCA 1963). It also does not have the capacity to sue or be sued, nor is it an autonomous entity. See City Code § 2-816; Fla. Stat. § 162.08. The Complaint also fails to allege facts supporting any claims for negligence, fraudulent misrepresentation, or estoppel. There are no allegations that anyone promised anything to Plaintiffs or made any misrepresentation. Nor is it clear what duty was owed to Plaintiffs or how Defendants breached such duty.

Nevertheless, the Court finds Plaintiffs should be allowed to amend their Complaint one final time. First, Plaintiffs are proceeding pro se. Second, Plaintiffs request leave to amend their Complaint in their Objections and no deadline for amended pleadings has passed. Third, accepting all of the allegations contained in the Complaint as true and construing Plaintiffs' claims liberally, it appears Plaintiffs may be able to sufficiently state claims based upon an invasion of privacy,² trespass,³ and/or a violation of due process.

² Florida common law recognizes a cause of action for the tortious invasion of privacy whose "principal objective [is] the compensation of a party for the 'outrage' or 'mental suffering, shame, or humiliation' caused by" a wrongful intrusion into one's private activities. Rawls v. Conde Nast Publications, Inc., 446 F.2d 313, 316 (5th Cir. 1971). The Florida Supreme Court has identified four different categories of the common law tort of invasion of privacy: "(1) appropriation -- the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion -- physically or electronically intruding into one's private quarters; (3) public disclosure of private facts -- the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye -- publication of facts which place a person in a false light even though the facts themselves may not be defamatory." Allstate Ins. Co. v. Ginsberg, 863 So. 2d 156, 162 (Fla. 2003) (citing Agency Health Care Admin. v. Associated Indus. of Fla., Inc., 678 So. 2d 1239, 1252 n.20 (Fla. 1996)). Plaintiffs believe they state a cause of action under each of the four separate theories. Even construing the Complaint liberally and accepting as true the facts pled, Plaintiffs at best state a claim based upon an intrusion theory of invasion of privacy. From the Complaint, it appears Plaintiffs generally allege that city inspectors physically intruded on their private property.

³ Courts have also recognized that code enforcement inspections of a residence can result in infringement of Fourth Amendment and due process rights, and provide a basis for a cause of action for trespass. See Dep't Environ. Protection v. Hardy, 907 So.2d 655, 661 (Fla. 5th DCA 2005) (acknowledging cause of action for trespass against state environmental inspectors but finding no trespass where the property was a commercial enterprise open to the public); Vaughan v. Fla. Dep't Agric. and Consumer Servs., 920 So.2d 650, 652, 654 (Fla. 4th DCA 2005) (citing Camara v. Mun. Ct. of the City of San Francisco, 387 U.S. 523 (1967)) (recognizing that code enforcement inspection of a residence to remove citrus trees could implicate the Fourth Amendment); Heilein v. Metro. Dade County, 216 So.2d 473, 473-74 (Fla. 3d DCA 1968) (reversing the trial court's entry of summary judgment on plaintiff's claim that county housing inspectors repeatedly trespassed upon plaintiffs' property without their consent); see also See v. City of Seattle, 387 U.S. 541, 545 (1967) (holding that administrative entry, without consent, upon commercial premises not open to the public implicated Fourth

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Consistent with this Order, the Report and Recommendation of Magistrate Judge William C. Turnoff (D.E. 44), issued on March 24, 2011, is **ADOPTED IN PART**;
2. Defendants' Motion to Dismiss (D.E. 30), is **GRANTED**, Defendant City of Miami Code Enforcement Board is **DISMISSED**, and Plaintiffs' Amended Complaint (D.E. 25) is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to Rule 12(b)(6);
3. Plaintiffs are granted leave to file a Second Amended Complaint, if they so choose, within fourteen (14) days of the date of this Order, setting forth their claims in as clear and concise a manner as possible;
4. All other pending motions including Plaintiffs' Motion for Summary Judgment (D.E. 26), Plaintiffs' Motion for Petition for Writ of Certiorari (D.E. 27), Defendants' Motion to Dismiss Petition for Writ of Certiorar (D.E. 40), and Plaintiffs' Request that the Court Rule on Plaintiffs' Motion for Summary Judgment (D.E. 55), are **DENIED AS MOOT**.

Amendment concerns).

DONE AND ORDERED in Chambers at Miami, Florida, this 13th day of September,
2011.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-23305-CIV-LENARD/KMW

MIAMI DIVISION

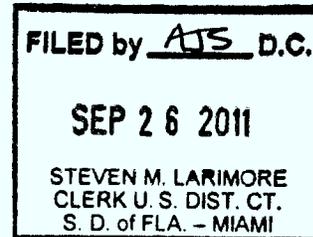
EUGENE JOBIE STEPPE and
CRISTINA MARIA STEPPE,

Plaintiffs'/Petitioners,

vs.

CITY OF MIAMI, FLORIDA
a Florida municipal corporation

Defendants'/Respondents'



_____/

PLAINTIFFS 2'd AMENDED COMPLAINT

COME NOW, Plaintiffs, EUGENE and CRISTINA STEPPE, (Plaintiffs) and sue CITY OF MIAMI, (CITY) a Florida municipal corporation and state as follows:

JURISDICTION

1. This suit is brought pursuant to 42 U.S.C. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in the action of law, suit in equity, or other proper proceeding for redress...

2. This Court has "Federal Question" jurisdiction pursuant to 28 U.S.C. 1331 to hear cases arising under the Constitution of the United States, under 28 U.S.C. 1343(3) to redress the deprivation under color of state law of any right, privilege or immunity

secured by the Constitution, and under 28 U.S.C. 1343(4) to secure equitable or other relief for the protection of civil rights.

3. The Court has the authority to issue declaratory judgments and permanent injunction pursuant to 28 U.S.C. 2201 and 2202, and Rule 65, Fed.R.Civ.P..

4. The Court may enter an award of attorney's fees pursuant to 42 U.S.C. 1988.

5. This Complaint seeks declaratory and injunctive relief to prevent violation of the Plaintiff's rights, privileges and immunities under the Constitution of the United States and Title 42 U.S.C. 1983 and 1988, specifically seeking redress for the deprivation under color of state statute, ordinance, regulations, custom or usage of rights, privileges, and immunities secured by the Constitution and laws of the United States. The rights sought to be protected in this cause of action arise and are secured under Art. I, 8, cl. 3 (the Dormant Commerce Clause) of the United States Constitution and under the First, Forth and Fourteenth Amendments to the Constitutions.

6. This action seeks a judicial determination of issues, rights and liabilities embodied in any actual and present controversy between the parties involving the constitutionality of certain Ordinance and policies of the Defendants. There are substantial bona fide doubts, disputes, and questions that must be resolved concerning the Defendant action(s) taken under color and authority of "state" law and procedures, in violation of Plaintiffs' right under Art. I, 8, cl. 3 of the United States Constitution (the Dormant Commerce Clause) and under the First, Forth and Fourteenth Amendments to the Constitution.

7. A component part of the declaratory and injunctive relief sought herein is based upon independent state constitutional guarantee's contained in the free speech clause, the due process clause, the equal protection clause and the right to privacy embodied in Article I, Sections 2, 4, 5, 9, 10, 12, 21, 23 and 24 and Article X, Section 6 of the Constitution of the State of Florida. To the extent this case involves such claims, this Court is entitled to exercise its pendent jurisdiction and derive from a common nucleus of operative facts in that they form an integral part of the same case of controversy as contemplated by Article III of the United States Constitution.

VENUE

8. Venue is proper in the Southern District of Florida, Miami division, since the laws and policies complained of are those of the City of Miami, Florida, which is within the district and geographical area assigned to the Miami Division.

THE PARTIES

9 Plaintiff's EUGENE and CRISTINA STEPPE are private citizens who jointly own the property, a duplex located at 3268 and 3270 Gifford Lane in Miami, Dade County, Florida 33133 and is the subject of this Complaint. Plaintiff's have lived at 3270 since 1989. CRISTINA STEPPE was named by Defendant (CITY) because her name appears on the titled, therefore falsely accused and implicated. 3270 is homesteaded 3268 is a rental legally zoned R-2 and has been rented since 1989.

10. The City of Miami is a municipal corporation, registered in the State of Florida.

INTRODUCTION

11. Plaintiff sustain brain damage serving in the U.S. Army in 1964, resulting in

a diagnoses of paranoia schizophrenia personality disorder, delusion disorder, short term memory deficit, is disabled, and was diagnosed with a heart condition in 1995. D.E.33-1,P32.

12. Evaluations reports read Plaintiff is incompetent due to short term memory difficulties and delusions. (See attached exhibits "A"). Plaintiff advised the CITY hearing board before the hearing and during the hearing he was unable to participate at the hearing under rules in the Americans With Disabilities Act – 1990. Both Plaintiff's were kicked out of the hearing and voted guilty of six (6) alleged bogus fraudulent code violations and a lien was applied to Plaintiff's property.

FACTS

13. CITY targeted Plaintiff's property due to a vendetta and charged Plaintiff CRISTINA MARIA STEPPE solely because she's listed as joint owner of Plaintiff's homesteaded property. Florida statutes prohibits such an action.

14. CITY fabricated, out of thin air and without proof alleging Plaintiffs live at, have web sites, corporations and vehicles registered at 3268 Gifford Lane. Plaintiff's have never lived at 3268 Gifford Lane or registered business at 3268 Gifford Lane.

15. CITY had no search warrant, keys or permission to inspect Plaintiff's property and testified at a hearing; "You open the fence to go to the front door and there inside - - more product". CITY did not knock, opened the front door and entered Plaintiff's home.

16. CITY issued Plaintiff's the following alleged code violation reports:

- a. June 27, 2008 CR:CE2008012300 - six (6) alleged violations
- b. September 10, 2008 . . One violation issued at a hearing at Miami City Hall
- c. September 01, 2009 . . CR:CE2009020198 - one (1) alleged violation
- d. October 19, 2009 CR:BE2009024201 - one (1) alleged violation

17. Plaintiff's were summoned and CITY ignored Plaintiff as he tried to present documents proving he was incompetence to proceed. D.E. 33-1 P35.

18. See: D.E. 34-1: transcript, where each time, below, Plaintiff's advised the hearing board he could not participate at the hearing and why;

P11, L23/25,	P14, L19/25	P60, L1/2	
P15, 1/12	P31, L19/22	P60, L4	
P15, 1/25	P38, L13/16	P60, L14/19	
P16, 1/15	P52, L11/13	P60, L23/25	This statement by me is not true.
P19, 11/16	P53, L19/22	P61, L1/3	
P20, L19/22	P55, L14/18	P63, L5/9	
P25, L 5/9	P57, L25		
P26, L3/11	P58, L1/4		
P27, L3/12	P58, L8/11		
P27, L15/21	P58, L17/18		
P29, L4/6	P58, L8/9		

19. The transcript proves Board members disrespected, belittled, berated and ignored Plaintiff's and kicked them out of the hearing and voted Plaintiff's guilty.

20. At the hearing CITY Attorney Barnaby Min began testifying by asking inspector Lezama the following (1 thru 6) leading misleading questions that contained misrepresentations that influenced the vote of hearing Board members.

(1) "Did you have an opportunity to inspect the property located at 3268 Gifford Lane"? D.E. 34/1 P5, L18/20.

footnote: CITY inspector Lezama had no search warrant, no key and didn't ask permission to inspect Plaintiff's property and did not enter 3268 Gifford Lane to inspect.

(2). "Okay. and there's not currently one for this residential property located at 3268 Gifford Lane; is that correct"? D.E. 34-1 P9, L19/21.

footnote: Lezama stated he had no proof Plaintiff's had sold anything to anyone at any time, so why should Plaintiff's have permits to operate rental property zone R-2?

(3). “And it list 3268 as a principal place of business”? D.E. 34-1 P10, 16/17.

footnote: See: D.E. 36-1 P9, The document reads the mailing address is 3270 Gifford Lane.

(4) “And when you visited the website, does it indicate that the place of business is 3268 Gifford Lane”? D.E. 34-1, P10, L24/25”?

footnote: See: D.E. 36-1, P25, the mailing address listed is 3270 Gifford Lane. In addition, Plaintiff’s web site is of no concern to The CITY of Miami because CITY was advised by the Honorable Judge Marcia G. Cooke that web sites in virtual space aren’t subject to zoning ordinances; See: Flava Works, Inc v. City of Miami Case No.: 07-23370-civ-MGC 09/10/2007.

(5) “How about when you go onto the porch, what - - can you please describe the porch”? D.E. 34-1, P9, L1/2.

footnote: Plaintiff’s have no porch. Lezama said he looked inside of Plaintiff’s home.

(6) “Okay, And just to be clear, Mr. Steppe’s address is 3268 Gifford Lane is that correct”? Yet, about the same dates, Mr. Min has send Plaintiff’s 4 letters addressed to 3270 Gifford Lane, See: D.E. 26-1, Exhibit “G”.

footnote: Plaintiffs have never lived at 3268. Plaintiff’s have lived at 3270 Gifford Lane for 22 years.

21. The transcript proves it was Min & Lezama who arbitrarily misrepresented and invented the notion that 3268, a duplex zoned R-2, was an illegal business in a residential zone; otherwise it’s just a plain old rental unit. The transcript proves both Plaintiff’s advised the board numerous times that Min was misrepresenting the facts, and when Plaintiff’s tried to introduce documents proving Min was lying, Min objected stating the documents were irrelevant, immaterial and self-serving effectively denying due process. When Plaintiff’s objected they were kicked out of the hearing, again denied due process.

22.. Plaintiff's property is surrounded by a security fence, metal gate with lock and a sign that reads no trespassing. The gate is always closed. There are no signs or house numbers to indicate which unit is 3268 or 3270 and no signs indicating who is to park where, parking is random. CITY arbitrarily chose 3268 as the targeted property and in complicity said in numerous reports, written months apart, by four (4) separate CITY employees the subject property was 3268 Gifford Lane. One CITY employee could have applied the wrong address, but four (4) employees strongly indicates complicity.

23. During the hearing all of the alleged violations cleared:

24. Regarding 19. "a", (See D.E. 34-1, P8, L22/23),CITY testifies "He had some bottles and stuff, but he removed those". This clears one (1) code violation.

25. Regarding 19. "a", (See D.E. 34-1, P12, L15/25) CITY testifies he had no knowledge that Plaintiff's sold anything to anyone at any time. This clears three (3) code violations.

26. (See: D.E. 36-1, P8) dated July 07, 2008, Miami chief of code enforcement, Mr. Guidix cleared two (2) violations, but at the hearing he voted Plaintiff's guilty of the two violations that he had previously cleared. One (1) alleged violation remained, 1503- Illegally parking commercial vehicle in residential zone. .

27. (See DE. 34-1, P43, L3/22) CITY Attorney Min and Moralejo advise the hearing board that Plaintiff's "exchange emotions" and that this exchange represent a non profit business operation and a CITY code violation.

28. . (See DE. 34-1, P68, L9/11) Later during the hearing Moralejo, says you don't have to sell anything for it to be a business".

29. (See DE. 34-1, P71, L9/11) Moralejo says Plaintiff “lures people in so he could talk to them” - - - sounds as if Plaintiff is some crazed psychopath hiding in the bushes with a bag of candy waiting for children to pass by.

30. See: (DE. 34-1 P43, L14/15) CITY Attorney Min says: “- - it’s still a business. Just because it’s not a profitable - -“ and (L19/22) MR. MIN: “That is his (Plaintiff’s) position. Just because it’s not a profitable business, that’s totally irrelevant. The fact that it is a business - -“

31. See: (DE. 34-1, P86, L17/20) Mr. Guadix, Chief of Miami code enforcement testifies that a vehicle is considered to be non-commercial if used “for private non-profit transport of goods and/or boats.” Plaintiff’s own a boat & trailer. Min and Moralejo inadvertently cleared the last remaining code violation by stating the exchange of emotions represents a non-profit business enterprise.

32. The Chairman of the hearing Board, Mr. McEWAN stated (See DE 34-1, P81, L7/11) “Okay, so you - - everybody just said that this was not a commercial vehicle. Is that what we’re saying”? Board member Mathisen confirms with a “Yes”.

34. All violations cleared and Plaintiff’s were kicked out of the hearing and voted guilty and afforded no due process. In CITY’S Finding of Fact, Conclusions of Law, and Order CITY allowed Plaintiff’s 30 days from September 10, 2008, to come into compliance. CITY performed a re-inspection September 30, 2008, and cleared all violations (See attached exhibit “B”).

footnote: CITY filed a bogus fraudulent lien on Plaintiff’s home March 13, 2009.

35. . Regarding violation report 19. “c”. Plaintiff applied for an exception under

the Miami Tree Canopy, Sec 8.1.11 (c), which was granted, See DE 25-1 “C”. , Plaintiff felled the tree and was issued another CITY code violation. CITY issued no summons and offered no due process, Plaintiff’s were fined and a lien applied to Plaintiff’s homestead. (See exhibit “C” attached). CITY felled same tree, no permit.

36. Regarding violation report 19. “d”. CITY reports read 3268 represents “HAZARDOUS CONDITIONS TO LIFE AND PROPERTY” but include no pictures or description of the alleged violation. Plaintiff’s weren’t summoned to a hearing, there was no fine, lien or follow-up by CITY.

footnote: CITY had no warrant, no key and no permission to inspect Plaintiff’s property. CITY presented no evidence proving a business was being operated anywhere on Plaintiff’s property, but placed liens on Plaintiff’s home exceeding \$340,000.00.

MIAMI ZONING ORDINANCE

37. There is no mention of “exchanging emotions” in Miami’s ordinances. CITY Attorney Min invented the alleged code violations by asking leading misleading questions to a direct witness. Wherefore, these alleged Miami zoning ordinances do not apply to Plaintiff’s as they were fabricated via misrepresentations by a CITY Attorney.

CODE ENFORCEMENT PROCEEDINGS

39. Plaintiff’s received a summons to appear before a hearing board on September 10, 2008, and did appear and advised the Board he was disabled and could not participate. The Board ignored Plaintiff’s and proceeded with the hearing.

40. The testimony at the code enforcement hearing was entirely consistent with the allegations set forth in this Complaint, in particular, the testimony showed that no witness presented proof of the alleged illegal business in a residential neighborhood.

A. The transcript proves no business is conducted from the location at 3268 Gifford Lane or implicates 3270 Gifford Lane where Plaintiff's live.

B. The transcript proves nothing is sold from that location.

C. 3268 is zoned R-2, and is a legal rental business operation.

E. No customers, vendors or suppliers come on to the premises at 3268, but the tenant does have female guest from time to time. The tenant is quiet, polite, and professional, pays the rent on time, rides a bicycle and has 3 cats.

F. Board members asked Plaintiff to produce his art in the back yard indicating what illegal in the front yard becomes legal in the back yard. In addition, if Plaintiff is producing art on the easement right of way, why target and lien 3268 Gifford Lane?

G. 3268 Gifford Lane is used for rental residential purposes and the public is not invited to the premises. 3268 Gifford Lane has been rented since 1989. Plaintiff's have never lived at 3268 Gifford Lane

H. There had been no complaints from neighbors.

See, generally, Transcript of 9/10/2008, D.E 34-1

41. The only witness for CITY was CITY code inspector Mauricio Lezama. who did not testify. The transcript proves CITY Attorney Min asked a series of leading misleading questions that contained misrepresentations designed to influence the Boards vote. Plaintiff's were kicked out of the hearing, denied due process and found guilty resulting in a bogus fraudulent lien on their home.

42. Min asked Lezama; D.E. 34-1, P11, L4/6, "Did Mr. Steppe make any statement to you about receiving deliveries at his residence"? Lezama did not respond to

the question and stated; “He told me at one point that he “delivers the product” on that particular van that he has parked there at the grove”. Note that Lezama does not identify the product. In CITY’S Report titled “Finding of Facts” CITY writes: “While inspecting the property, Mr. Steppe spoke with Inspector Lezama and stated that he “receive deliveries at his residence concerning his artwork”

footnote: Receiving, delivering, receiving, which is it? Lezama say products, the CITY report reads artwork. Min, Lezama and the CITY reports takes liberty with reality!

See: D.E. 34-1, P65,L 16/18; Lezama says “So he uses 3270 as contact in “whatever business he’s running there”. Clearly, CITY Attorney Min has repeatedly testified with leading misleading questions that Plaintiff have vehicles, web sites, corporations and lives at 3268 Gifford Lane and Lezama in complicity says yes, yes, yes, yes, yes and yes, but now Lezama inadvertently and mistakenly tells the truth. Lezama has never reported or testified that Plaintiff’s are selling art - - - - Lezama said “product” and “whatever” business he running there. “**WHATEVER**” in the English language dictionary refers to an unknown. _ Where are the important, relevant material facts? Read on - - - - -

BOARD MEMBER JONES says “I’m confused” D.E. 34-1, P50,L15

BOARD MEMBER MORALEJO says “He (Plaintiff) lures people in so he could talk to them:” D.E. 34-1 P71, L9/10. The Board realizes Plaintiff is only talking with folks.

BOARD MEMBER MATHISEN says “Looks like a duck, quacks like a duck”. D.E. 34-1, P72, L8/9. With no proof what else could Board members utter?

BOARD MEMBER JONES says “Because it’s being done on the Internet someplace else” D.E. 34-1, P72, L5/7 - - - - Plaintiff can’t help but wonder where Ms. Jones thinks “someplace else is on the internet”, if not ethereal or virtual space, everywhere and no where? Plaintiff’s have lost their home, in the United States, for this?

BOARD MEMBER JONES says “he (Plaintiff) thinks because he’s not actually probably, transacting money on his property, that he’s not in business” D.E. 34-1, P72, L12/15. Plaintiff agrees with Ms. Jones; if Plaintiff’s are not actually probably transacting money on his property, he is actually probably not in business.

MORALEJO & CITY ATTORNEY MIN, D.E. 34-1, P 43, L17/18 “ Plaintiff’s are exchanging emotions. And it’s Plaintiff who is diagnosed delusional with brain damage!

end of footnotes:

43. The Order specifies that Plaintiffs must “correct the violations” on or before October 16, 2008. Plaintiff’s called for a re-inspection on September 30, 2008, and all of the alleged violations were cleared and a letter was issued from CITY code enforcement. (See attached exhibit “B”).

44. Both attorney’s representing CITY at the hearing have had previous unpleasant encounters with Plaintiff and should have recused, but did not. They ordered Plaintiff’s to “Sans Me.” and “Paraphrase”. Plaintiff’s do not speak esoterically and were confused.

footnote: Where’s the Beef? CITY Attorney Min created this thicket with disingenuous remarkably irresponsible outlandish remarks which the Board took as factual - - - - - swallowing hook, line and sinker.

Still, it beat the usual strategy of doubling down on stupid, seeking some loophole through which the incorrect can be proven correct.

But the fact is, facts don’t matter much to CITY. CITY is the avatar of a slimy ethos newly prominent in American politics and life. It is the elevation of end over means, the binding of conscience and the gagging of integrity. It is permission to say wherever outrageous thing will give you advantage, to lie your natural backside off if it will win the argument.

Facts? True believers don’t need facts. Facts don’t stop being facts just because you ignore them.

end of footnotes:

CONSTITUTIONAL VIOLATIONS

45. The Code Enforcement Board departed from the essential requirements of the law in its determination that an illegal business was being operated out of 3268 Gifford Lane, despite the uncontroverted facts recited above.

46. The CITY OF MIAMI cannot establish any public necessity or legitimate governmental purpose advanced by the subject provisions of the Miami Zoning Code as applied to Plaintiffs.

47. Plaintiffs have a clear legal right to the use of their property without undue interference by CITY, their agents, servants or employees. The lawful use of the Plaintiffs' property may only be terminated or modified after Plaintiffs have been afforded due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 9, of the Constitution of the State of Florida. Plaintiffs have been denied due process of law by the unconstitutional application of the Ordinances at issue and their exclusion from the hearing, which was a tumultuous circus.

48. The Miami Zoning Code, and the enforcement of that Code against the Plaintiffs has deprived and will continue to deprive Plaintiffs of rights guaranteed under the First, Fifth and Fourteenth Amendments to the United States Constitution.

49. Plaintiffs have been denied their right of privacy and to be let alone and free from governmental intrusion into their private lives as guaranteed by the U.S. and Florida Constitutions.

50. The Miami Zoning Code is intended to regulate zoning districts comprised of physical uses of property lying within the municipality. The Ordinance cannot properly be applied to "cyberspace" which essentially lacks physical dimensions and is accessible throughout the United States and in other Countries.

51. The CITY OF MIAMI Zoning Ordinances being enforced against the Plaintiff's violate the rights guaranteed Plaintiffs by the Florida and United States Constitution in that they:

A. Abridge and restrain the Plaintiffs' rights to free expression as guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Florida Constitution;

B. Constitute a prior restraint on such expression through imposition of conditional zoning without the requisite constitutional safeguards;

C. Contain restrictions on First Amendment freedoms that are overbroad and far greater than are essential to the furtherance of any alleged government interest;

D. Constitute an impermissible “chilling effect” on constitutionally protected speech and expression; embrace your wife, hug your baby, say have a nice day to a neighbor, hit your finger with a hammer and yell out in pain, code violation in Miami. Ripley’s Believe it or Not; Why not, it happened to Plaintiff’s, read the transcript;

E. Deny equal protection of the law in that the legislation is arbitrary, oppressive and capricious and unreasonably requires the Plaintiff’s to submit to controls not imposed on other similarly situated persons or property;

F. Act in a way arbitrary capricious as applied to the Plaintiffs in violation of their substantive and procedural due process rights;

G. Exhibit an unlawful exercise of the state’s police power in that they fail to materially advance any legitimate governmental interest and bear no substantial relationship to the protection of the public health and welfare or any legitimate governmental objective; “exchanging emotions” what’s next, breathing air?

H. Use terms vague, such as “exchanging emotions” the hearing board members seldom finish a sentence before another board member cuts in “looks like a duck, quacks like a duck” or “but he thinks because he’s not *actually probably* transacting money on his property, that he’s not in business”, the boards failure to properly define all phrases, and fail to set out distinct criteria, thus leaving persons of common intelligence to guess as to their meaning;

I. Unconstitutionally infringe on Plaintiffs' rights to privacy;

J. Constitute an unlawful and unauthorized taking of private property without just compensation, without due process of law, and without a public purpose, in violation of the First Amendment of the United States Constitution and Article X, Section 6 of the Florida Constitution;

K. Manifest an improper purpose in that the Ordinances are not content-neutral and are not unrelated to the suppression of free speech.

52. Plaintiffs have suffered damages as a direct result of Defendants' Ordinances, policies and practices because the CITY is attempting to censor and prohibit Plaintiffs' free speech and the full enjoyment of their privacy rights, and those of their tenants, through the involuntary application of unconstitutional Ordinances and practices. Plaintiffs damages consist of infringement upon Plaintiff's constitutional rights as well as monetary losses. The monetary losses include lost profits. CITY has forced Plaintiff into a stressful obsessive compulsive battle to regain and retain ownership of his home, otherwise, Plaintiff would engage in gainful employment..

53. Plaintiff, MARIA STEPPE was raised in a country where the state came when they wanted and did what they wanted, as did CITY. MARIA was placed in fear by CITY. The CITY trespassed, removed electrical meters, took pictures through windows and doors, and placed documents threatening Plaintiff's with arrest, fines liens and foreclosure on the easement in front of their home for neighbors and passersby to read. MARIA was placed in fear and fled her home for three weeks until CITY of Miami police officer Jose Quell called her and assured her CITY could not arrest her, and only

then did MARIA return home. On one occasion, as Plaintiff was being interviewed by Fox News CITY vehicles with CITY logos drove by (11) times.

54. The Defendant's risk no possible harm, however, Plaintiff's harm, should the Defendant's continue their harassment is the loss of constitutional rights and their home. No government agent may deprive any person of a right guaranteed by the Constitution; Defendants will suffer no injury if they are prevented from suppressing Plaintiff's constitutional rights, including the right to freedom of expression. The public has no lawful interest in the enforcement of unconstitutional laws.

55 The public interest would be served by the granting of injunctive relief. In fact, the public interest is disserved by actions, such as those of the CITY. CITY is interfering with the public's right guaranteed under the First Amendment. This is not an isolated incident! If you type the words Miami Corruption into a search engine 10,800,000 examples appear.

56. The acts, practices and jurisdiction of CITY, as set forth herein, were and are being performed under color of state law and therefore constitute state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

57. Plaintiff's are pro se in these actions and are entitled to a reasonable fee, which fee Defendants must pay pursuant to 42 U.S.C. 1989.

COUNT I: BREACH OF SOCIAL CONTRACT

58. Plaintiff's realleges the allegations of paragraphs 1 through 57 and refer this Honorable Court to items line number 65 & 66 and state a **Claim and Cause of Action**.

59. Plaintiff alleged a *social contract* exist between CITY and all CITY citizens and such a contract exist between Plaintiff's and CITY.

60. Individuals unite into political societies by a process of mutual consent, agreeing to abide by common rules and accept corresponding duties to protect themselves and one another from violence and other kinds of harm.

61. Political authority must be derived from the consent of the governed and visa versa.

62. This case personifies a *social contract*; 400 hundred years ago Plaintiff would have boiled trespassers in hot oil, today he boils in frustrated in front of a word processor.

63. This concept of a *social contract* appears in many forms throughout recorded history and on caveman walls by way of many hunters surrounding some beast that would have otherwise eaten the individual. The notion of a *social contract* is the back bone of the United States Constitution and Bill of Rights by way of Lockean Liberalism influencing the Declaration of Independence.

64. Plaintiff's have played by the rules, worked hard, and purchased a home, and with complicity CITY employees have trespassed, lied and misrepresented facts under the color of law resulting in bogus fraudulent liens on Plaintiff's home.

65. This *social contract* and *duty of care* exist under common law as a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others.

66. CITY has breached this *social contract* for which Plaintiff have a *claim* and said claim shall be the same for each count and cause of action in Plaintiff's complaint and said *claim* is as follows:

CITY has a duty to Plaintiff's as citizens to train all CITY personnel to be truthful, to obtain search warrants and not to trespass upon private property.

CITY has a duty to Plaintiff's as citizens to train CITY Attorney's not to ask their witnesses leading misleading questions that contain misrepresentations in order to unduly influence a CITY hearing Board to vote Plaintiff's homestead guilty of bogus fraudulent code violations which result in bogus fraudulent liens on Plaintiff's homestead.

CITY has a duty to Plaintiff's and CITY taxpayers to train all CITY personnel when they act out in complicity against an innocent citizen under the color of law, as did City Attorney Min, and City code inspectors Lezama, Ortiz and Canales, they should at the very least;

- A. Coordinate reports and testimony to get the address correct,
- B. conspire in advance if Plaintiff is delivering, receiving or delivering and only after they coordinate, should they attack.
- C. train CITY electricians not to remove and replace electrical meters from hot energized circuits because doing so will create sparks, fires and obvious damage!
- D. not issue code violation reports without pictures or description of the alleged violations or allege Plaintiff's home represents "HAZARDOUS CONDITIONS TO LIFE AND PROPERTY", walk away and never return to protect the neighborhood, unless of course it was a bold face lie.
- E. not say Plaintiff's property, made of brick & mortar is "exchanging emotions".
- F. understand that saying "looks like a duck, quacks like a duck" does not substitute for sound, important, relevant factual proof, and most important - - -

G. CITY has a duty to Plaintiff's and taxpayers to calculate and avoid foreseeable Plaintiff's who might take legal action that require CITY to employ two (2) law firms and four (4) attorneys producing 18 inches of paperwork and attorney's fee's of \$400.00, per hour out of deep pocketed tax payers which so far exceed \$200,000.00, accruing daily;

See: See: M.C.L. 600. 204.(3): M.S.A. 27a 2041(3); The taxpayers of Miami, Dade County Florida "will sustain substantial injury or suffer loss or damage as taxpayers, through increased taxations and the consequences thereof." Waterford School District. 98 Mich. App. At 662. W. 2d at 331.1. See: Terlinde v. Neely 275 S.C. 395, 271 S.E.2d 786 (1980)

In this case a contractor produced substandard homes, Plaintiff's sued and prevailed.

Plaintiff's purchased a home in CITY and CITY put to work substandard CITY personnel causing Plaintiff's harm and damage under the color of law. CITY owes a duty of care to Plaintiff's and all CITY residents to ensure all employees understand, follow and appreciate the United States and Florida Constitutions, Bill of Rights and Declaration of Independence and should be taught to understand and appreciate PURJURY.

Foreseeability Test:

The harm to Plaintiff's was foreseeable. Plaintiff sent registered letters to and called: The CITY'S Mayor, Manager, Attorney, Chief & Manager of code enforcement, his commissioner, and the news media, who conducted interviews of same and all were made aware that Plaintiff's would file legal complaints. CITY responded with additional bogus fraudulent code violations, fines and liens. At the same time Colorado Congressman Tom Tancredo announced Miami was acting "as some third world country,

his words, not Plaintiff's. Plaintiff's are just ordinary citizens and bystanders, targeted by CITY and then ignored Plaintiff's warnings and it was back to business as usual.

WHEREFORE, Plaintiff's demand \$200,000.00 in damages and reasonable attorney's fee's of \$176,000.00, cost and other remedy found just by this Honorable Court pursuant to 42 U.S.C. 1989.

COUNT II: INVASION OF PRIVACY

67. Plaintiff's realleges the allegations of paragraphs 1 thru 57 and 58 thru 66 and refer this Honorable Court to items line numbers 65 & 66 and state a **Claim and Cause of Action** are the same for Count II.

68. Intrusion Upon Seclusion: In one day CITY drove past Plaintiff's home 11 times in vehicles with CITY logos. CITY trespassed three (3) times onto Plaintiff's property taking pictures, opened the front door and stepped inside of Plaintiff's home. CITY placed large code violation reports at the front of Plaintiff's property that neighbors, passersby and the news media read. CITY removed Plaintiff's electrical meter depriving them of electrical service, causing one computer to lose several months of records and school testing. See: Rawls v. Conde Nast Publications, Inc., 446 F.2d 313, 316 (5th Cir. 1971)

69. Publicity Given to Private Life: CITY placed several large code violation reports, about 18 x 24 inches at the front of Plaintiff's home where neighbors and passersby could be seen reading the reports, which read Plaintiff would be arrested, fined, liens applied, and their house foreclosed. CITY personnel were interviewed by the press and TV stations who reported that Plaintiff's had pre-Columbia art, statues, valuable

antiques, mosaics in their home, and was operating a gigantic gallery out of their home.

70. Publicity Placing the Person in a False Light: It was CITY who took hundreds of pictures of the contents of Plaintiff home interior through windows and sliding glass doors and the six patio areas showing outdoor patio furniture identifying Plaintiff's various art collections, antiques, statues, and fine glass as an illegal home based gigantic art gallery. The public believed CITY was telling the truth and began calling and driving to Plaintiff's home looking for a going out of business sale. Plaintiff enjoys talking with folks and found it amusing telling everyone CITY made a mistake. Had Plaintiff's been in business CITY would have made Plaintiff's a small fortune. CITY informed the public, referring to Plaintiff "that gentleman needs help" referring to Plaintiff's mental state of mind. CITY said Plaintiff "lures people in" making it appear Plaintiff was lurking in the dark with a bag of candy waiting for children to pass by. On one hand this is asinine, but Plaintiff MARIA STEPPE manages a kindergarten with 165 children; See: *Allstate Inc. Co. V. Ginsberg*, 863 So. 2d 156, 162 (Fla. 2003) (citing *Agency Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So. 2'd 1239, 1252 n.20 (Fla. 1996).

71. Appropriation of Name or Likeness: CITY ordered Plaintiff to transfer the defunct web site artbyjobie.com to CITY using a CITY address and phone number. Plaintiff complied hoping CITY would back off, calm down and relax. CITY'S response was to allege two additional code violations and apply one additional lien to 3268.

WHEREFORE, Plaintiff's demand compensatory damages of \$200,000, attorneys fees of \$176,000.00, cost and injunctive relief as this Honorable Court finds appropriate.

COUNT III: TRESPASS

72. Plaintiff's reallages the allegations of 1 thru 57, 58 thru 66 and 67 thru 71 and refer this Honorable Court to lines 65 and 66 and state the **Claim and Cause of Action** is the same for COUNT III.

73. CITY inspection reports allege CITY inspected 3268 Gifford Lane. The inspector had no key to gain entry, did not ask permission and trespassed upon Plaintiff's property, taking pictures and introduced said pictures into exhibits. See: Dep't Environ. Protection v. Hardy, 907 So.2d 655, 661 (Fla. 5th DCS 2005)

74. The inspector testified he had no proof Plaintiff's had ever sold anything to anyone at any time. CITY filed a Motion to Dismiss, alleging sovereign immunity to trespass because the CITY inspector believed an illegal business was being operated out of 3268 Gifford Lane, so he assumed the right to opened the door to 3270 Gifford Lane and step inside. See: Vaughan v. Fla. Dep't Agric, and Consumer Servs., 920 So.2d 650, 652, 654 (Fla. 4th DCA 2005) (citing Camara v. Mun. Ct. of the City of San Francisco, 387 U.S. 523 (1967)) See: Heilein v. Metro. Dade County, 216 So.2d 473, 473-74 (Fla. 3d DCA 1968; See also: See v. City of Seattle, 387 U.S. 541, 545 (1967).

75. A CITY inspector removed an electrical meter from Plaintiff's private property causing a minor fire and a loss of about 2 months of homework on Plaintiff's computer. A minor altercation, scuffle involving a weapon took place during one trespass, but it was not serious. Florida Power & Light responded to the blackout and issued a report available to this court upon subpoena.

76. Plaintiff confronted six (6) CITY code inspectors trespassing on three (3) separate occasions. One trespass involved four (4) CITY inspectors. A weapon was introduced during this trespass and the CITY inspectors deferred.

77. Information and material gathered during illegal unwarranted trespassing cannot be used at hearings or U.S. Courts of Law.

WHEREFORE, Plaintiff's demand \$200,000.00, in compensatory damages, attorney's fees of 176,000.00, cost and injunctive relief as this Honorable Court finds appropriate.

COUNT IV: PLAINTIFF DENIED DUE PROCESS

78. Plaintiff realleges paragraphs 1 thru 57, 58 thru 66, 67 thru 71 and 72 thru 77, and refers this Honorable Court to items numbers 65 & 66 and state the **Claim and Cause of Actions** are the same for COUNT IV.

79. CITY summoned Plaintiff's to a hearing September 10, 2008, to defend against the alleged code violations related to 19 "a" herein.

80. Two attorneys, representing CITY Ms Patricia Arias and CITY Attorney Barnaby Min should have recused due to having unpleasant previous contact with Plaintiff and such were noted in the transcript. Plaintiff could not present documents proving he was incompetent to proceed. The hearing proceeded; See: State v. Green, 232 S.W.2d 897, 903 (Mo. 1950; See: Pettit v. Penn., La.App., 180 So.2d 66, 69. "Black's Law Dictionary, 6th Edition, page 500.

81. See the Transcript D.E. 34-1.

82. The proceedings were anything but orderly. See: *Fiehe v. R.E. Householder Co., 123 So. 2, 7 (Fla. 1929)*; Plaintiff's requested two special considerations under American's With Disability Act of – 1990 the (ADA) which were denied making it *impossible* for Plaintiff's participation. See: *Fiehe v. R.E. Householder Co., 125 So. 2, 7 (Fla. 1929)*.

83. Plaintiff's were ordered to "Sans Me" and "Paraphrase" and did not understand this esoteric language and were perplexed confounded and taken aback.

84. Plaintiff's attempted to present documents to the board and were advised each time by the CITY attorneys the documents were self-serving, irrelevant and immaterial. See: *Kazubowski v. Kazubowski, 45 Ill.2d 405, 259, N.E. 2d 282, 290.*: Black's Law Dictionary, 6th Edition, page 500. The hearing was not orderly.

85. Plaintiff's entreated the Board 30-plus times, but was ignored. Plaintiff's were interrupted 37 – plus times. the hearing was disorderly, reminiscent of a circus side show, a kangaroo hearing, not representative of a quasi-judicial hearing.

86. Four Board members complained out loud, namely to themselves that they had other things to do that evening. The Chairman stated "We're going to move this along faster than you think". One Board member walked out of the hearing. A full quorum did not participate in the vote.

87. At the hearing Plaintiff was charged with a 7th code violation which CITY Attorney Min and a Board member characterized as a non-profit business that exchanged emotions, See: D.E. 34-1, Page 43, L3/23. See: *Fla AGO 2002-27-2002 WL 508796 (Fla.A.G. page , paragraph 1)*: No member of the code enforcement board

has the power to initiate enforcement proceedings [FN4]. section 162, Florida Statutes.

88. Plaintiff's received no summons to appear before CITY related to the felling of the palms. See: Mayor of Baltimore vs. Scharf, 54 Md. 499, 519 (1880).

89. Plaintiffs received no summons to appear before CITY related to the alleged electrical violations. CITY applied no fine or lien and to this date have ignored their own alleged report. Plaintiff's assumed the violation was an attempt at harassment and had no option, but to wait for CITY to take some action, which CITY has not. See: Mayor of Baltimore vs. Scharf, 54 Md, 519 (1880).

WHEREFORE, Plaintiff's seek compensatory damages for \$200,000.00, and reasonable attorney fees of \$176,000.00, cost, and injunctive relief as this Honorable Court finds appropriate.

COUNT V;
NEGLEGENT AND FRAUDULENT MISREPRESENTATION

90. Plaintiff's realleges the allegations of paragraphs 1 thru 57, 58 thru 66, 67 thru 71, 72 thru 77, and 78 thru 89 and refers this Honorable Court to item number 65 & 66 and state the **Claim and Cause of Action** are the same for COUNT IV.

91. CITY reports and testimony misrepresented Plaintiff's lived at and had vehicles, web sites and corporations registered at 3268 Gifford Lane resulting in liens on 3268 Gifford Lane. CITY Attorney Min knew these allegations were false.

92. CITY misrepresent this alleged address eight (8) separate times over a period of about 12 months on four (4) separate reports, and during testimony. At the same time of these misrepresentations, CITY mailed about fifteen (15) letters to Plaintiff's at

3270 Gifford Lane. CITY noted on a Motion to Dismiss that the subject property was 3270 Gifford Lane. See: Butler v. Yusem, No. SC09-1508, 2010 WL 3488979, at *3 (Fla. Sept.8,2010); See: Tardif v. People for the Ethical Treatment of Animals, 160 Lab. Cas. P 61065 (M.D. Fla 2010 (Case No. 2:09-cv 537-FtM-29SPC)).

93. In one instance, CITY was holding two (2) documents and misrepresented the address on the documents as 3268 Gifford Lane and introduced the documents as CITY'S Exhibits "A & B". Both documents were addressed to 3270 Gifford Lane. City lied!

94. It was negligent, fraudulent and asinine for the CITY Attorney to instruct the hearing Board that it is a CITY zoning violation to exchange emotions and that such an exchange is equal to exchanging money, which represented the operation of a non-profit illegal business operation at 3268, in a residential neighborhood leading to a guilty vote and liens in excess of \$340,000.00 on Plaintiff's homestead.

95. CITY Attorney Min uttered 3268 six times and three CITY code officers issued reports indicating they inspected 3268 Gifford Lane 3 times. Four CITY employees uttering the same lie reeks of complicity. Plaintiff's have no porch, yet Min testified that Plaintiff's had a porch. Misrepresentations and lies are not substitutes for truth and facts.

WHEREFORE, Plaintiff's seek \$200,000.00 in compensatory damages and \$176,000.00 in reasonable attorney's fees, cost, injunctive relief as this Honorable Court finds appropriate.

COUNT VI:
THE INTENTIONAL INFLICTION OF EMOTIONAL HARM
and
THE NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

96. Plaintiff realleges the allegations in paragraphs 1 thru 57, 58 thru 66, 67 thru 71, 72 thru 77 and 78 thru 89 and refer this Honorable Court to items number 65 & 66 and state the **Claim and Cause of Action** the same for COUNT VI.

97. Plaintiff's have listed six (6) Counts:

- I. Breach of Contract
- II: Invasion of Privacy
- III: Trespass
- IV: Plaintiff's Denied Due Process
- V: Negligent & Fraudulent Misrepresentation
- VI: The Intentional & Negligent Infliction Emotional Harm

In each count there is a **common thread** that indicates CITY employees have acted in complicity to cause Plaintiff's harm under the color of law.

A. Down town, at Miami CITY records department, Plaintiff's duplex is recorded as 3268 & 3270 Gifford Lane.

B. There are no signs or house numbers at the property to indicate which is 3268 or 3270 and no signs indicating who is to park where, parking is random.

C. CITY Attorney Barnaby Min has written four (4) letters to Plaintiff's at 3270 Gifford Lane. Other CITY Attorney's have written about fifteen (15) letters to Plaintiff at 3270 Gifford Lane. The Chief of CITY code inspectors wrote a letter to Plaintiff's addressed to 3270 Gifford Lane and the Federal Court addresses letters to Plaintiff's at 3270 Gifford Lane. There can be no dispute that Plaintiff's live at 3270 Gifford Lane, but CITY shall and will file some legal documents claiming some technicality to take Plaintiff's property under the color of law, rather than stop harassing Plaintiff's .
The CITY'S Attorney's office personifies "Birds of a feather, flock together".