

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

CASE NO: 2025-007768-CA-01

SECTION: CA02

JUDGE: Lourdes Simon

Charles Michael Trausch

Plaintiff

vs.

City of Miami

Defendant

_____ /

PLAINTIFF'S FIRST AMENDED COMPLAINT

INTRODUCTION

1. This case is a constitutional challenge to Miami’s abusive land-use permitting process that has been imposed on Plaintiff Charles “Chad” Trausch and hundreds of other Miami residents.

2. Years ago, the City determined that it might want to widen streets to reach existing base building lines (which often exceed the public’s right-of-way), which would require taking private property. Taking that property via eminent domain would require paying for it. But the City would rather not pay. Thus, the City has been taking the property it desires by systematically extorting hundreds of Miami residents.

3. This extortion is effected by the City’s land-use permitting process. Whenever someone needs any land-use permit—to build a bathroom addition, for example—the City demands the land that the City has already identified it wants: an expanded right-of-way to match the parcel’s base-building-line. The City makes that demand mechanically, without considering whether there is any relationship between the demand and any public impact presented by the project. Then, if the permit applicant requests a waiver, the City requires the applicant to *disprove* the existence of such a relationship—that is, to prove a negative, in the absence of any affirmative findings by the City.

4. The City subjected Chad to this process. In early 2024, Chad submitted a permit application to build a modest addition to the back of his home so his in-laws could stay to help care for the baby that Chad and his wife were expecting. The City took that as an opportunity to demand that Chad give up half his front yard—merely because the City had already determined, years ago, that it would like to have it. When Chad requested a waiver (explaining that the City’s demand made no sense), the City denied it without ever issuing any kind of finding or offering any kind of justification for its actions. For no legitimate reason, Chad’s project has been delayed

by more than a year (and counting), meaning that it will cost hundreds of thousands more to construct due to inflation, and meaning that his family has been denied the space they needed for their newborn, who is now a toddler. This same system has been imposed on hundreds of other Miami permit applicants and threatens hundreds more. Given the cost of project delay and of obtaining legal representation, Miami residents often accede to the City's demands rather than deal with this process.

5. The City's practice and process violates the Constitution. Due process requires that government follow reasonable, procedural safeguards before it may deprive people of their interests in property. Here, the City's procedures subject people to a shakedown; they are woefully deficient; and they have foreseeably resulted in many people—including Chad—being burdened with permitting demands that do not satisfy the substantive constitutional standard for land-use permit conditions (*i.e.*, the *Nollan-Dolan* tests). In these ways, the City has violated Chad's rights under both the Takings Clause and the Due Process Clause.

6. Nor can the City strategically moot this case. For twenty months, the City withheld Chad's permit because he refused to give up half his front yard. It denied his waiver application without explanation. When Chad filed suit *pro se* to challenge that condition, the City moved to dismiss his case. But months later—as soon as Chad obtained legal representation—the City suddenly decided to “approve[]” Chad's waiver request again without explanation. The City's voluntary cessation of its permit demand, as well as this amended complaint's request for retrospective relief, requires that Chad's case proceed.

JURISDICTION AND VENUE

7. Plaintiff brings this action pursuant to the Declaratory Judgments Act, Fla. Stat. §§ 86.011–.111, and under 42 U.S.C. § 1983, for violations of the Fifth and Fourteenth Amendment to the United States Constitution.

8. Plaintiff seeks prospective declaratory and injunctive relief against the City for its policy and practice of demanding an expanded public right-of-way as a permit condition for any project on his parcel.

9. Plaintiff further seeks damages against the City representing the costs of delaying his family’s project.

10. This Court has jurisdiction under Article V, Section 5(b) of the Florida Constitution and Fla. Stat. §§ 26.012(3), 86.011.

11. Pursuant to Fla. Stat. § 47.011, venue is proper in this circuit because the Defendant resides in Miami-Dade County; Chad’s causes of action accrued in Miami-Dade County; and Chad’s parcel is located in Miami-Dade County.

PARTIES

12. Plaintiff Charles “Chad” Trausch owns the home located at 38 NE 46th Street, Miami, Florida, where he lives with his wife, Stephanie, and their daughter.

13. Defendant City of Miami is a municipal corporation located in the state of Florida.

FACTUAL ALLEGATIONS

The City Wants An Expanded Right-of-way—Without Paying For It.

14. Chad’s home at 38 NE 46th Street is a single-family home on a 6,250 sq ft. lot.

15. The home was originally built in 1938, but the property was originally platted in 1920.

16. The standard right-of-way for public streets within the incorporated City of Miami has, for many decades, been 50 feet (*i.e.*, 25 feet as measured from the center of the street). Miami Code § 54-187.

17. The right-of-way at 38 NE 46th Street is also 25 feet from the center of the street. That is, the City owns the land up to 25 feet on each side as measured from the center of the street. The property line for 38 NE 46th Street then begins at the 25-foot line.

18. On March 24, 1983, the City first established mapped “base building lines,” *i.e.*, setback lines, wherein “[n]o building, structure, or part thereof, shall be erected, structurally altered, enlarged or extended,” with exceptions including those for “encroachments or temporary structures.” Miami Code § 54-186.

19. The stated purpose of those base-building-lines is to “assur[e] that sufficient space occurs between the street fronts of buildings and structures; to provide for natural light and circulation of air; to lessen the adverse effect resulting from fire, floods, tornadoes, and hurricanes; to provide for access for firefighting apparatus or rescue and salvage operations; to facilitate provisions for traffic, transportation and circulation; and to promote safety, health, amenity and general welfare within the city.” Miami Code § 54-186.

20. The standard base-building-line is, like the right-of-way, 25 feet as measured from the center of the street. Miami Code § 54-187.

21. However, there are many streets where the City has designated a base-building-line that extends beyond that 25-foot measurement. Miami Code § 54-190. The base-building-line for NE 46th Street, where Chad lives, is 35 feet as measured from the center of the street. Miami Code § 54-190(78).

22. At some point, the City determined that it would like to expand its right-of-ways to match established base-building-lines.

23. This meant that the City decided to take not only the front 10 feet of land from Chad's property, but also the front 10 feet from every property abutting 46th Street in Chad's neighborhood.

24. There is no present need to expand the 46th Street right-of-way in Chad's neighborhood. The City wants the expanded right-of-way, even though it has no current plan to utilize it.

25. Because a right-of-way grants the public a right to access private property in derogation of the common-law right to exclude, the City may not expand any right-of-way without paying the owner just compensation. This is a requirement of both the United States and Florida Constitutions.

26. The City could attempt to acquire the expanded right-of-ways by making offers of purchase to owners.

27. Because a public street is a public use, the City could attempt to acquire the expanded right-of-ways by exercising eminent domain (assuming other necessary elements were met), but if successful, that would nevertheless require paying the owner just compensation.

28. The City, however, would like to acquire the expanded right-of-ways without paying for them.

29. Therefore, the City has sought, and is seeking, to acquire the expanded right-of-ways through an "out-and-out plan of extortion," *i.e.*, through an abusive land-use permitting process. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987).

The City Takes Property Through An Abusive Land-Use Permitting Process

The City demands property as a matter of course—contrary to its own ordinance.

30. The City requires that all land-use permit applicants dedicate their land to the City for an expanded right-of-way whenever the established right-of-way is less than the base-building-line for the parcel.

31. The City has invoked Section 54-58(a) of its ordinance, which concerns land-use permit conditions, as authorizing this policy and practice.

32. However, the process codified in Section 54-58(a) differs from the City's actual policy and practice, in at least two ways.

33. First, Section 54-58(a) allows the City to demand only the transfer of land that is "within the city's officially established right-of-way to the public." That is, the City may require that "all portions of the [permit] applicant's lot, tract or parcel lying within the city's officially established right-of-way [be] dedicated to the public for street purposes." Miami Code § 54-58(a).

34. The City's policy and practice, however, is to demand an expanded right-of-way to match the base-building-line (when the existing right-of-way is less than the base-building-line). This is distinguished from transferring land that is already within an "established" right-of-way.

35. Put another way, the City views the "established right-of-way" as the base-building-line, and it is invoking Section 54-58(a) to demand that permit applicants dedicate all portions of land within the base-building-line as a right-of-way without the City paying for the dedication.

36. Second, Section 54-58(a), on its face, can apply only when the City's director of the department of public works (hereinafter the "Director") makes two determinations.

37. Section 54-58(a) applies only where the Director determines “that there is a rational and substantial connection between the burdens imposed by the proposed development or the change of use on the city services, including adjacent streets and the dedication of the portion of the applicant’s lot, tract or parcel of land lying within the city’s officially established right-of-way to the public for street purposes[.]” Miami Code § 54-58(a).

38. Under Section 54-58(a), even if the Director makes that determination, the City still may not issue a demand unless the Director also determines “that the dedication of the officially established right-of-way is reasonably necessary to mitigate the burdens that the proposed development or change of use places on the adjacent streets.” Miami Code § 54-58(a).

39. The City’s policy and practice, however, is to demand that people dedicate a right-of-way to match the parcel’s base-building-line—without requiring the Director to make either of the determinations required for invoking Section 54-58(a).

40. In other words, contrary to Section 54-58(a), the City routinely demands that land-use permit applicants dedicate a right-of-way in the absence of any determination that (1) “there is a rational and substantial connection between the burdens imposed by the proposed development or the change of use on the city services” and (2) the demanded property dedication “is reasonably necessary to mitigate [those] burdens.”

41. In fact, the City demands—as a matter of course—that permit applicants dedicate land to expand the right-of-way, to match the base-building-line (when the right-of-way is less than the base-building-line).

42. On July 3, 2025, the City’s director of public works, Juvenal Santana, was deposed in a federal case involving such demands made to Chad’s neighbor.

43. During that deposition, Director Santana testified that once “it’s been determined that there is undedicated right-of-way[,] [t]hen the right-of-way would be required We’ll always ask for the dedication.”

44. The City demands an expanded right-of-way, without providing the permit applicant any justification for the demand.

45. The City often demands an expanded right-of-way without any plan for utilizing it anytime in the foreseeable future.

46. In fact, as Director Santana testified, “sometimes the right-of-way being available [] will be the catalyst for creating the project.” In other words, the City takes the right-of-way first, then later decides what it would like to do with it.

47. The process described in the preceding paragraphs has been the City’s ongoing policy and practice for years.

48. As Director Santana testified, the City has subjected hundreds of people (and counting) to this policy and practice. In his words: “Have there been other properties that have been dedicated? Yes, a lot.”

49. The City has been, and is, executing this policy and practice through, and with full knowledge of, its officers—including, but not limited to, Director Santana.

The City’s waiver process requires applicants to prove a negative.

50. The City, after demanding the right-of-way in the first instance, does not affirmatively inform permit applicants that they may seek a waiver.

51. Nevertheless, Section 54-58(b) of the City’s ordinance states that, after the City demands a right-of-way dedication, the permit applicant may submit a written request to the Director “for a determination that the proposed [project] will not burden the city services,

including adjacent streets,” whereupon that the Director “shall have the authority to waive the required dedication.”

52. Section 54-58(b) does not require the Director to issue any kind of formal findings or communicate any justification for a waiver denial.

53. The Director, in practice, does not issue any kind of formal findings or communicate to the applicant any justification for a waiver denial.

54. The Director, in practice, bases his waiver decision on factors other than whether the proposed project will burden city services (rendering the right-of-way dedication reasonably necessary as an impact mitigation measure).

55. If the Director denies a waiver request, Section 54-58(b) further states that the request should be referred to “a review committee,” which then votes to affirm or reverse the Director’s denial.

56. The review committee consists of three people: (1) the Director himself, (2) the director of the department of planning, building and zoning, and (3) an assistant city manager. Thus, the Director is one of the people deciding whether to affirm the Director’s decision.

57. The review committee acts by majority vote—meaning that, unless the Director votes to reverse his own decision, a reversal requires that both of his colleagues vote against him.

58. Section 54-58(b) states that the “applicant shall have the right to present its position to the review committee.”

59. The waiver applicant bears the burden of demonstrating that the property dedication is not reasonably necessary to mitigate a public burden presented by the project.

60. The City does not provide the waiver applicant any factual basis, or any specific finding, suggesting how the property dedication is supposedly reasonably necessary to mitigating a public burden presented by the project.

61. Therefore, Section 54-58(b) places the burden on the waiver applicant to prove a negative.

62. Section 54-58(b) states that any waiver decision should be based on a consideration of the public burden (if any) presented by the proposed project.

63. In practice, however, the City bases its waiver decision on other considerations.

64. One of those considerations is whether the City has already enforced this demand against owners of nearby parcels.

65. That consideration is irrelevant to determining whether a project presents a public burden making it reasonably necessary to expand the parcel's right-of-way to the base-building-line.

66. Another of the City's waiver considerations in practice is whether Miami-Dade County would like the right-of-way dedication—if the parcel, though within the incorporated City of Miami, is located on a County-maintained street.

67. In that case, the City refers the waiver request to County officers, then it defers to their recommendation.

68. The City does not ask the County to analyze whether the proposed project will pose a public burden making it reasonably necessary to expand the parcel's right-of-way to the base-building-line.

69. Instead, the City asks whether the County wants the right-of-way dedication for its own purposes.

70. That consideration is also irrelevant to determining whether a project presents a public burden making it reasonably necessary to expand the parcel's right-of-way to the base-building-line.

71. If the County says that it would like the right-of-way dedication, then the City denies the applicant's waiver request.

72. Section 54-58(b) does not require the City's review committee to issue any kind of formal findings or communicate any justification when affirming a waiver denial.

73. The review committee, in practice, does not issue any kind of formal findings or communicate any justification when affirming a waiver denial.

74. Section 54-58(b) sets time limits for waiver decisions: The review committee meeting must take place "within 30 days after receipt of written request from applicant," then the committee must render its decision "within 30 days after conclusion of the hearing."

75. However, the City does not provide applicants any documentation confirming that the review committee has reached a decision, or explaining the basis of that decision.

76. The City sometimes never affords the applicant a waiver hearing at all, even when one is requested.

77. On information and belief, the City's review committee has never voted in a waiver applicant's favor.

78. Very few people have subjected themselves to this waiver process. According to the City's director of public works, Juvenal Santana, only two people have ever requested a waiver within the entire time he has been a city employee.

79. Director Santana has been an officer in the City's public works department for more than a decade.

80. On information and belief, many people do not utilize the City's waiver process because they are not informed that it exists.

81. On information and belief, many people do not utilize the City's waiver process because it presents costs of project delay and potential litigation, which often exceeds the value of the demanded right-of-way dedication.

The City Subjects Chad To This Process, Delaying His Project For More Than A Year.

The City demands half of Chad's front yard, before he may add to the back of his house.

82. The City subjected Chad Trausch to the permitting process described in the preceding sections.

83. Chad is a Navy veteran who met his wife, Stephanie, while attending graduate school.

84. In 2021, Chad and Stephanie purchased the home located at 38 NE 46th Street.

85. The two-bedroom, one-bathroom home is adequate for newlyweds. However, Chad and Stephanie wanted to have children, and space would then be tight.

86. Moreover, Chad and Stephanie would like space in their home for Stephanie's parents to stay for extended periods, to assist with childcare.

87. Therefore, Chad and Stephanie decided to build a modest extension to the back (*i.e.*, non-streetside) of their home: two additional bedrooms and bathrooms, which would have no impact whatsoever on the front of the home.

88. For the new project, Chad employed an architect and consulted with various contractors, all of whom have been (and are) ready to begin construction of the project within four weeks of the permit's issuance.

89. Construction of the new project would take less than one year, start to finish.

90. In March 2024, Chad submitted a permit application to the City’s zoning department to receive a permit for the new project.

91. Before that, on November 7, 2023, the City’s Historic and Environmental Preservation Board approved of Chad’s project. In so doing, it found that Chad’s project would present no adverse impact on neighborhood compatibility, historic integrity, or public infrastructure.

92. However, on March 28, 2024, the City informed Chad that it would not issue a permit for his project unless Chad executed a permanent deed conveying a right-of-way adjacent to the street—ten feet deep by fifty feet wide (the width of Chad’s parcel)—in addition to the City’s current right-of-way for 38 NE 46th Street.

93. At five hundred square feet, this demand would require that Chad give the City approximately half of his entire front yard.

94. The City gave Chad no explanation for this demand.

95. The reason the City issued this demand, as indicated in the relevant Plan Review Comments Report (a document created by Miami’s department of public works), was that “the Base Building Line is 10 feet within the property along NE 46 ST. Dedicate this land for public Right of Way as required by City Code 54-58.”

96. The base-building-line for Chad’s parcel is 35 feet, as measured from the center of the street.

97. The right-of-way for Chad’s parcel is 25 feet, as measured from the center of the street.

98. Therefore, the City’s permitting demand reflects the difference between the base-building-line and the right-of-way. *I.e.*, if Chad ceded the 10 x 50 ft. right-of-way, then both the

base-building-line and the right-of-way for Chad's parcel would be 35 feet, as measured from the center of the street.

99. The City had determined years ago that it would like that strip of land for an expanded right-of-way.

100. As Director Santana later testified when deposed (in a federal case involving similar demands made to Chad's neighbor), the City demanded the expanded right-of-way without any near-term plan for how it would use it.

101. The City could offer Chad to purchase that strip of land.

102. If the time should come when the City would use that strip of land for a legitimate public use, the City could seek to take it via eminent domain. That, however, would require paying Chad just compensation.

103. Chad's permit application was an opportunity for the City to take Chad's land—without paying for it.

104. In demanding that Chad cede his land, the City did not follow its own ordinance. Section 54-58(a) of Miami's Code states that the City may require a dedication of land as a permit condition only when (1) "the director of the department of resilience and public works determines that there is a rational and substantial connection between the burdens [on adjacent city streets] imposed by the proposed development . . . and the dedication," and (2) "the dedication . . . is reasonably necessary to mitigate the burdens that the proposed development or change of use places on the adjacent streets."

105. Director Santana did not consider whether there was a rational and substantial connection between any public burden presented by Chad's project and the demand that he cede half his front yard to the City.

106. Director Santana did not consider whether taking Chad’s land was reasonably necessary to mitigate any public burden that Chad’s project would present on adjacent streets.

107. No other City officer made either of those determinations either.

108. It would not have been unduly burdensome for Director Santana, or another City officer with delegated authority, to have considered whether Chad’s project presents a public impact for which expanding the right-of-way is reasonably necessary. Indeed, this is what the City’s own ordinance requires.

109. Regardless, Chad’s project does not present a public impact making it reasonably necessary for the City to take half his front yard for additional right-of-way.

Chad undergoes the City’s Kafkaesque waiver process.

110. On June 13, 2024, Chad submitted a formal request, via electronic and physical mail, that the City waive its demand for his property. That request was addressed specifically to Director Santana.

111. Chad’s request explained that his request was made pursuant to Miami Code Section 54-58(b), which allows applicants to request a dedication be waived on the basis that it is not justified by a public burden presented by the proposed project.

112. Chad’s request explained, in detail, how his desired modest addition to the back of his house would not present a public impact making it reasonably necessary to take half his front yard.

113. On July 15, 2024, the City informed Chad that his waiver request was denied. Rob Diamond, an officer with the City’s department of public works, e-mailed Chad, saying that “[w]e looked into this one and discussed with Administration and unfortunately we’re not able to waive the right-of-way dedication requirement after all.”

114. Director Santana, or the officers with his delegated authority, did not base that decision on whether Chad's project presents a public burden rendering it reasonably necessary to take his land for an expanded right-of-way.

115. Instead, as explained in Mr. Diamond's e-mail, the City's officers denied Chad's waiver request because at least one other person on Chad's street had been asked to provide a right-of-way dedication. As Mr. Diamond stated, "[t]here's at least one other ROW dedication in process close to you on your street."

116. Director Santana was copied onto Mr. Diamond's e-mail.

117. In response, Chad requested a meeting of the review committee, pursuant to Miami Code Section 54-58(b).

118. That meeting occurred 41 days after Director Santana denied Chad's request, notwithstanding that Section 54-58(b) states that the meeting should be held within 30 days of the initial waiver denial.

119. The City notified Chad on August 21, 2024, that the day for his committee review hearing would be August 23, 2024.

120. Prior to that meeting, the City did not provide Chad any basis for the notion that Chad's project would present a public burden making it reasonably necessary to take half his front yard for right-of-way expansion.

121. Chad therefore was required to prepare his position, in the absence of any factual finding to rebut—*i.e.*, he had to prove a negative.

122. On August 20, 2024—days before the committee meeting—Director Santana forwarded Chad's waiver request via e-mail to a County official, asking her to "confirm whether or not the County wants this right-of-way dedicated[.]"

123. On August 22, 2024—the day before the committee meeting—that official responded that “[i]t is for the County’s best interest for the 10’ lying within the City of Miami zoned r/w to be dedicated since NW 46 Street is a County-maintained half-section line road at this location.”

124. In other words, the County stated that Chad’s waiver request should be denied because it is in the County’s interest to obtain property alongside the roads it maintains.

125. At the review committee meeting, Chad, accompanied by his architect, explained why his project would not present a public burden warranting that the City take half his front yard for right-of-way expansion.

126. At the review committee meeting, no one provided Chad any reason for supposing otherwise. That is, the City presented no evidence, study, data, or fact providing any basis for the notion that Chad’s project would present a public burden warranting the expanded right-of-way.

127. The meeting ended without the review committee taking a vote.

128. Miami Code Section 54-58(b) states that the review committee shall render its decision “within 30 days after conclusion of the hearing.”

129. The City did not send Chad any written documentation regarding the outcome of any review committee vote.

130. Instead, at the review committee meeting, City officials suggested a way forward that would be a compromise.

131. Specifically, City officials suggested that, instead of permanently and immediately conveying land for the expanded right-of-way, Chad could agree to conveying an

option for the City to take the right-of-way in the future—if and only if the City (or County) should need it for a specific project.

132. That compromise, according to City officials, would allow for Chad to keep his fence and maintain exclusive access to his front yard without any deed transfer—again, unless and until a government project should require otherwise.

133. The City told Chad that facilitating this compromise would require that he obtain the required partial release of mortgage and opinion of title from his lender.

134. Chad met with his mortgage lender, who informed him that the City’s documents, as drafted, would result in the permanent conveyance of the expanded right-of-way without compensation. The lender informed Chad that he was giving away his land without compensation. In other words, the compromise was no compromise at all.

135. On March 26, 2025, Chad e-mailed the City, wanting clarification of the City’s position.

136. On March 27, 2025—seven months after the review committee held its meeting—City officials informed Chad for the first time that the committee had rejected his waiver request (*i.e.*, that it had affirmed Director Santana’s denial).

137. Specifically, a section supervisor with the department of resilience and public works, Rob Diamond, e-mailed Chad on the City’s behalf.

138. Mr. Diamond included Director Santana on that e-mail.

139. Mr. Diamond’s e-mail explained that the review committee, including Director Santana, had already determined that Chad’s waiver request should be denied.

140. Mr. Diamond’s e-mail further explained that the waiver denial was a final decision, and “[s]ince a final decision has already been reached and is binding per City code, no

new decision will be made, and your permit will not be issued without complying with the decision of that committee.”

141. Chad did not receive any written indication as to the numbers for any vote conducted by the review committee in his case.

142. Chad did not receive any documentation showing that the review committee made any factual finding.

143. The review committee based its decision not on an analysis of any public burden presented by Chad’s project, but on the County’s statement that it would be in the County’s interest to acquire Chad’s land.

144. At that time, all other permitting conditions for Chad’s project had long been satisfied. The City’s right-of-way demand had been the sole outstanding hurdle to a permit issuance, since at least December 2024.

145. Chad’s contractors have been, and are, ready to proceed with the project pending its permit issuance. Had Chad’s permit been issued by December 2024, construction would have begun by February 2025, and construction likely would have concluded by 2026.

146. In other words, the City’s process regarding its right-of-way demand delayed Chad’s project for over a year, before Chad filed this lawsuit.

The City Tries To Strategically Moot Chad’s Lawsuit.

147. Faced with few options, Chad filed this lawsuit *pro se* on April 30, 2025.

148. On June 24, 2025, the City filed a motion to dismiss Chad’s lawsuit.

149. Months later, Chad obtained legal representation: the undersigned, who filed a notice of appearance (followed by a motion for admission *pro hac vice*) on October 16, 2025.

150. Twenty-two days later, the City filed a notice. Attached to that notice was a letter addressed to Chad, signed by Director Santana and dated November 7, 2025.

151. Director Santana's letter stated that "you have requested to waive the dedication of right of way," and that "[y]our request to waive the right of way dedication is approved."

152. Thus, it appears the City has unilaterally granted Chad's waiver request—sixteen months after rejecting it; five months after filing a motion to dismiss Chad's *pro se* lawsuit; and three weeks after learning that Chad obtained an attorney.

153. Director Santana's letter did not acknowledge that he (or his office) had denied Chad's waiver request sixteen months earlier.

154. Director Santana's letter did not acknowledge that the review committee, which included himself, subsequently affirmed that denial.

155. Director Santana's letter did not acknowledge that his subordinate, Mr. Diamond, had explained to Chad nearly eight months earlier—in an e-mail thread that included Director Santana—that the denial of Chad's waiver request was a "final decision . . . and is binding per City code, no new decision will be made, and your permit will not be issued without complying with the decision of that committee."

156. Likewise, Director Santana's letter did not explain by what legal authority the Director may unilaterally grant a waiver request after having denied it, and after that denial is affirmed in a final decision of the review committee.

157. Director Santana's letter did not explain the basis for reversing course on Chad's waiver request, particularly at such a late juncture.

158. The City has not provided any explanation or context regarding Director Santana's letter.

159. Director Santana's letter, in fact, reflects the City's attempt to manipulate this Court's jurisdiction. The City subjected Chad to its abusive permitting process; it was content to litigate against him when he was *pro se*; but now that he has obtained legal counsel, it wishes to evade responsibility for its actions.

160. However, even accepting that the Director does have the authority to waive the right-of-way demand at this stage, and even if Chad's permit is issued accordingly, that does not make up for the harm that Chad and his family suffered from the City's deficient permitting process.

161. In particular, Chad's project has been delayed for a year and counting, solely because of the City's right-of-way demand.

162. That delay entails real costs. Chad and Stephanie have been denied space that they needed for their newborn (and Stephanie's parents, who assist with childcare). In the absence of that space, Stephanie has had to stay with her parents in South Carolina (away from Chad), and the family has had to pay extra for hotels, etc.

163. That delay also means that Chad's project costs will be higher because of inflation. Indeed, Chad will have to pay hundreds of thousands of dollars more now, just to obtain the exact same project.

164. That delay, combined with the manner in which Chad has been treated by his own government, has also caused Chad and his family disillusionment—which, at the very least, supports an award of nominal damages.

165. Moreover, nothing prevents the City from again subjecting Chad, as the owner of the parcel located at 38 NE 46th Street, to its abusive permitting process.

166. Most tellingly, Director Santana November 7, 2025 letter ends with “Note: All building setbacks and yard requirements of the Miami 21 Zoning Ordinance shall still be measured from the zoned base building line.”

167. By that “note,” Director Santana means that the City will continue viewing the base-building-line as synonymous with “the city’s officially established right-of-way” under Miami Code Section 54-58(a).

168. In other words, the City intends to continue subjecting the use of Chad’s parcel to its abusive permitting process.

169. Likewise, the City intends to continue subjecting Miami’s residents in general to its abusive land-use permitting process.

170. If Chad were to need any additional land-use permit in the future, the City would again withhold that permit unless and until he dedicates an expanded right-of-way of 500 square feet.

171. Chad anticipates that he will pursue further modifications to his home in the near future, even just in terms of maintaining the house as it is; and he does not wish again to be subjected to the City’s abusive permitting process.

172. Accordingly, this case is not moot, notwithstanding any eleventh-hour, unilateral grant of a waiver.

INJURY TO PLAINTIFF

173. Chad Trausch owns the parcel located at 38 NE 46th Street, which contains a two-bedroom, one-bathroom home where he lives with his wife and infant daughter.

174. Chad submitted a land-use permit application to the City to add on to their single-family home. Chad’s proposed project met all requirements except that the City demanded that

Chad permanently dedicate 500 square feet in front of his house for an additional right-of-way as a condition of receiving the permit.

175. The City did not explain why it was making this demand; only later did Chad learn the City wanted to bank land.

176. The City's demand lacks both an essential nexus with, and a rough proportionality to, a substantial public impact resulting from Chad's expansion of his home, and it is unacceptable to Chad and his family.

177. When Chad sought a waiver from the condition, the City placed the burden on him to show why the City's demand lacked a sufficient relationship to mitigating a public burden presented by his project.

178. The City denied Chad's waiver request for reasons entirely unrelated to the City's interest in impact mitigation.

179. Notwithstanding that all other permitting conditions were satisfied, the City for one year withheld issuance of Chad's permit unless he acceded to the City's demand for a right-of-way dedication.

180. This delay will cause substantial additional construction costs due to inflation.

181. This delay has caused Chad to lose use of the extra space his family needs. They will realize their project a full year later than they otherwise would have, solely because of the City's right-of-way demand.

182. Chad and his family have endured, and are enduring, significant hardship without that space. In particular, Chad's family has been forced to go without childcare assistance in Miami (given lack of space for their parents to stay); to split time away from each other (as Chad's wife has needed to spend time at her parents' home in South Carolina, in order to utilize

their childcare assistance); and spend money on travel (and lodging in Miami for friends and family) that they otherwise would not have spent.

183. Notwithstanding that the City claims to have waived the right-of-way demand for Chad's current project right-of-way, under Section 54-58, Chad remains subject to demands for the dedication of his property to the City for a right-of-way expansion any time he submits a land-use.

184. The City's policy and practice is to demand that people dedicate a right-of-way (reflecting the difference between the right-of-way and the base-building-line) before they may receive a land-use permit for their parcel.

185. Chad's use and ownership of his parcel, accordingly, remains burdened by the City's abusive land-use permitting process.

CLAIMS FOR RELIEF

Count 1

Fifth and Fourteenth Amendments to the U.S. Constitution (Facial and As Applied—Unconstitutional Condition; Takings Clause)

186. Plaintiff repeats and realleges every allegation above (at paragraphs 1–185) as if fully set forth herein.

187. The Fifth Amendment, incorporated against the states through the Fourteenth, prohibits uncompensated takings of private property or its value.

188. This right, in addition to guarding against outright takings of property, also protects owners against abusive governmental conditions on the use of their property.

189. The *Nollan-Dolan* doctrine establishes two tests that land-use permit conditions must satisfy, lest their enforcement impermissibly burden property ownership. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

190. Under those tests, government bears the burden of showing that a land-use permit condition shares both an “essential nexus” with, and a “rough proportionality” to, mitigating the negative public impact of the specific property’s use.

191. By “essential nexus,” government must demonstrate that the project “would substantially impede” the same legitimate interest served by the permit condition.

192. By “rough proportionality,” government must make an “individualized determination” that the nature and amount of its permit obligations reflects the likely public impact of the proposed project.

193. If government cannot show that its land-use condition satisfies both tests, then its enforcement of that condition burdens the parcel’s ownership in violation of the Takings Clause—even if no property of any kind was in fact “taken.”

194. The City’s officers, as described above, acted under “color” of law. That is, those officers acted in their official capacities, according to municipal policy and practice.

195. The City, under color of law, burdened Plaintiff’s parcel with the condition that he may not build his desired project unless he dedicate a right-of-way matching the parcel’s base-building-line.

196. The City did not base its demand on factors relating to the *Nollan-Dolan* tests.

197. The City cannot show that its demand comported with the *Nollan-Dolan* tests. That is, Plaintiff’s project would not “substantially impede” any governmental interest making it necessary to expand the current right-of-way to his parcel’s base-building-line; nor has the City calculated that amount of right-of-way as roughly proportional to Plaintiff’s project (or other projects roughly similar).

198. That demand, therefore, violated the unconstitutional-conditions doctrine arising from the Takings Clause.

199. That demand has caused Plaintiff to suffer damages, including but not limited to increased cost of his project's construction due to delay; lost use and enjoyment of his property; and other injuries, both economic and non-economic in nature.

200. Section 54-58 continues to allow the City to make groundless, unexplained demands whereby virtually any new or expanded use of 38 NE 46th Street would require dedicating land up to the base-building-line as an expanded right-of-way.

201. That demand is not designed to mitigate, and does not reflect mitigation, of any substantial public impact of any project and, therefore, it is an unconstitutional burden on property under the *Nollan-Dolan* tests.

202. Plaintiff has no adequate remedy at law for preventing the ongoing harm arising from the continued burden on his parcel.

203. Therefore, Plaintiff is entitled to a declaration that the City's policy and practice of conditioning land-use permits on the dedication of property to the City, regardless of the project's lack of an "essential nexus" with, or a "rough proportionality" to, mitigating the negative public impact of the proposed use, violates the unconstitutional-conditions doctrine arising from the Takings Clause. Moreover, Plaintiff is entitled to an injunction prohibiting the City from making such conditional demands for the dedication of property.

204. Moreover, Plaintiff is owed compensatory, consequential, and nominal damages for past harms.

Count 2

Fourteenth Amendment to the U.S. Constitution (Facial and As Applied—Due Process)

205. Plaintiff repeats and realleges every allegation above (at paragraphs 1–185) as if fully set forth herein.
206. At all relevant times, Plaintiff possessed and possesses a constitutionally protected property interest in the use and enjoyment of the parcel located at 38 NE 46th Street.
207. At all relevant times, Plaintiff possessed and possesses a constitutionally protected property interest in obtaining a land-use permit for that parcel.
208. The City, by withholding Plaintiff’s desired permit unless he dedicate a right-of-way to match the base-building-line for his parcel, deprived Plaintiff of his interest in the use and enjoyment of his parcel.
209. Likewise, the City deprived Plaintiff of his interest in obtaining a land-use permit for that parcel.
210. The City deprived Plaintiff of those interests through a procedure whereby it demands that all land-use permit applicants, as a matter of course, dedicate a right-of-way whenever the base-building-line for their parcel exceeds the existing right-of-way.
211. That procedure is constitutionally inadequate because it does not afford owners with satisfactory protection of their right to use their own property.
212. Moreover, that procedure is constitutionally inadequate because it fails to satisfy the standard for sufficient administrative process articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That standard considers three factors: (1) the private interest at stake, (2) the risk of erroneous deprivation, and (3) the burden to the government of providing additional or substitute procedures.

213. The United States Supreme Court has repeatedly explained that private interests in real property are important. Thus, the first *Mathews* factor suggests that the City should afford robust procedural protection to people seeking to use their own parcels.
214. The City's procedure is essentially guaranteed to result in erroneous deprivations. Under the substantive standard (*i.e.*, the *Nollan-Dolan* tests), all land-use permitting demands must share both an essential nexus with, and a rough proportionality to, the substantial public impact resulting from the specific property's new or expanded use—and the government has the burden of making that showing. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Yet the City's policy demands an expanded right-of-way as a matter of course, wherever the parcel's base-building-line exceeds the right-of-way, without making the required determinations. It is extremely likely, or even inevitable, that this process results—and has resulted, hundreds of times—in the issuance of permitting demands that would fail the substantive *Nollan-Dolan* standard.
215. Indeed, the right-of-way dedication demanded of Chad does not satisfy the *Nollan-Dolan* standard. That is, the City's deficient procedure resulted in an erroneous deprivation in this very case.
216. Thus, the second *Mathews* factor confirms that the City's procedure in issuing these demands is constitutionally inadequate.
217. A procedural requirement that the City expressly make the *Nollan-Dolan* showing before it issues land-use permitting demands would substantially mitigate this risk of erroneous deprivation.

218. It cannot be unduly burdensome to require the City to consider the *Nollan-Dolan* standard before it issues land-use permitting demands.
219. Moreover, Section 54-58(a) of the Miami Code already requires the City to consider essentially the *Nollan-Dolan* standard. Section 54-58(a) specifies that the City may not issue these demands unless its administrative director first (1) “determines that there is a rational and substantial connection between the burdens imposed by the proposed development or the change of use on the city services . . . and the dedication” of a right-of-way and (2) determines “that the dedication of the . . . right-of-way is reasonably necessary to mitigate [those] burdens.”
220. It cannot be unduly burdensome for a city to follow its own ordinance.
221. The City, however, has a policy and practice of not following its own ordinance, not considering the *Nollan-Dolan* standard, and not expressly making the *Nollan-Dolan* findings.
222. Even if the City were not already required by the constitution and its own ordinance to perform this analysis, it still would not be unduly burdensome for it to determine these factors. That is because its officers already must review permit applications on an individual basis, considering individual characteristics of the parcel and the proposed project.
223. The City further provided constitutionally inadequate procedure by offering a waiver process that placed the burden on the Plaintiff, in the absence of any affirmative factual findings, to show why the right-of-way dedication should not be demanded.
224. The City’s waiver process is insufficient under the *Mathews* test.

225. Again, it is well-settled that real property interests are important private interests. Thus, the first *Mathews* factor weighs in Plaintiff's favor.
226. By placing the burden on the waiver applicant to justify the waiver, rather than placing the burden on the City to justify the right-of-way dedication, the City is inviting a high risk of erroneous deprivation. That is because the substantive standard places the burden on *the government* to show that its permitting demand satisfies the *Nollan-Dolan* tests. Thus, the second *Mathews* factor confirms that more adequate procedural protection is needed.
227. It would not be unduly burdensome for the City to provide a waiver process whereby it, and not the applicant, bears the burden of justifying the land-use permitting demand. That is because Section 54-58(b) of the Miami Code already requires the City to offer applicants a waiver process, so the only difference would be whether that process is in fact meaningful and fair to the applicant.
228. Relatedly, the City's waiver process is inadequate because the City fails to provide notice to applicants of the City's actual standard for granting waiver requests. That is, Section 54-58(b) states that the standard is whether the proposed project would present a public burden justifying imposition of the dedication. However, in practice, the City denies waiver requests on the basis of whether the County wants to obtain the dedication, or whether similar dedications have been demanded of others in the parcel's vicinity.
229. The actions of the City's officers as they relate to this case were all taken under color of state law. That is, those officers acted in their official capacities, according to municipal policy and practice.

230. This policy and practice, on its face and as applied, violated Plaintiff's right to procedural due process, as guaranteed by the Due Process Clause.
231. The City's unconstitutional procedures caused Plaintiff to suffer damages, including but not limited to increased cost of his project's construction due to delay; lost use and enjoyment of his property; and other injuries, both economic and non-economic in nature.
232. Therefore, Plaintiff is owed compensatory, consequential, and nominal damages.
233. Moving forward, obtaining any permit for Plaintiff's parcel would once again require undergoing that policy and practice. That is, the City's policy and practice continues to burden the use of Plaintiff's parcel.
234. Plaintiff has no adequate remedy at law for preventing the ongoing harm arising from the continued burden on his parcel.
235. Therefore, Plaintiff is entitled to a declaration that the City's permitting procedures and practices violate the Due Process Clause because they do not require the City to expressly make or justify right-of-way dedications and place the burden on property owners to prove their property should not be demanded by the City. Moreover, Plaintiff is entitled to an injunction prohibiting the City from demanding property from land-use permit applicants in the absence of procedures that are consistent with due process.

REQUEST FOR RELIEF

Therefore, Plaintiff respectfully requests the following relief:

- A. A declaration that the City's policy and practice of requiring that land-use permit applicants dedicate a right-of-way to match their parcel's base building line without satisfying the *Nollan-Dolan* standards, on its face and as applied to Plaintiff, unduly

- burdens property ownership in violation the Fifth and Fourteenth Amendments to the U.S. Constitution;
- B. A declaration that the City’s land-use permitting procedure, policy, and practice violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution to the extent that it fails to consider the *Nollan-Dolan* standard, does not require the City to expressly make the *Nollan-Dolan* findings, and does not require the City to justify right-of-way dedications and instead places the burden on property owners to prove their property should not be demanded by the City, and thus fails to provide adequate procedures that would reasonably prevent erroneous deprivations of property interests;
- C. A permanent injunction prohibiting the City from issuing land-use permitting demands in the absence of adequate procedural safeguards;
- D. A permanent injunction enjoining the City’s practice of conditioning the use of parcels, including the parcel located at 38 NE 46th Street, on the dedication of an expanded right-of-way to match the parcel’s existing base building line, without any attempt to satisfy the *Nollan-Dolan* standard;
- E. An award of compensatory and consequential damages resulting from the violation of Plaintiff’s constitutional rights, including but not limited to damages reflecting the delay to Plaintiff’s project and the lost use and enjoyment of Plaintiff’s property;
- F. Nominal damages of \$1 for the violation of Plaintiff’s right to procedural due process;
- G. Nominal damages of \$1 for the violation of Plaintiff’s right to own property free of extortionate or abusive conditions on its use;

H. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988;

I. Any other legal or equitable relief that the Court deems just and proper.

Dated this 3rd day of December, 2025.

Respectfully submitted,

By: /s/ Ari S. Bargil

Ari S. Bargil (FL Bar No. 71454)
INSTITUTE FOR JUSTICE
2 S. Biscayne Blvd., Suite 3180
Miami, FL 33131
Tel: (305) 721-1600
Fax: (305) 721-1601
Primary Email: abargil@ij.org
Secondary Email: rramirez@ij.org
kherndon@ij.org

Suranjan Sen*
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
Email: ssen@ij.org

*Admitted *pro hac vice*

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December 2025, a true and correct copy of PLAINTIFF’S FIRST AMENDED COMPLAINT was served via email on the following counsel of record:

GEORGE K. WYSONG III, City Attorney
PATRICIA M. ARIAS,
Senior Assistant City Attorney
444 S.W. 2nd Avenue, Suite 945
Miami, FL33130-1910
Tel.: (305) 416-1800
Fax: (305) 416-1801
Primary Email: parias@miamigov.com
Secondary Email: dbailey@miamigov.com

Counsel for Defendant

By: /s/ Ari S. Bargil
Ari S. Bargil (FL Bar No. 71454)
INSTITUTE FOR JUSTICE