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

CASE NO.: 2013-36012 CA 01 (02)

HERMINE RICKETTS and LAURENCE "TOM" CARROLL, a married couple,

Plaintiffs,

v.

VILLAGE OF MIAMI SHORES, FLORIDA; MIAMI SHORES CODE ENFORCEMENT BOARD, et al.,

Defendants.
_____/

DEFENDANTS' (AMENDED)[1] MOTION FOR SUMMARY JUDGMENT

Defendants, Village of Miami Shores, Florida (a/k/a Miami Shores Village) and Miami Shores Code Enforcement Board[2] (collectively, the "Village"), by and through undersigned counsel and pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, hereby move for summary judgment in their favor as to all counts of Plaintiffs' Complaint. Because the Ordinance is constitutional as a pure matter of law, the Village is entitled to summary judgment on Plaintiffs' claims.

INTRODUCTION AND PROCEDURAL HISTORY

Plaintiffs' claims hinge entirely on the false claim of an inalienable, fundamental, and constitutional right to grow vegetables in their front yard. This fatal defect causes each of the various "kitchen sink" challenges alleged by Plaintiffs to fail as matter of law.

[1] Defendants file this Amended Motion for Summary Judgment as they inadvertently neglected to attach the exhibits and to rectify two scrivener's errors.

[2] Plaintiffs have sued the Miami Shores Code Enforcement Board. However, the Code Enforcement Board is not a separate or independent entity, but rather, is part of the Village.

Plaintiffs own and reside in a home located in Miami Shores Village. The Miami Shores Village Code of Ordinances has long contained landscaping Design Standards requiring, *inter alia*, that all open space in residential yards be planted with certain specified types of living ground cover, which would preclude vegetable gardens. *See* Miami Shores Village Code of Ordinances, Part II, App. A, Section 536 (the "Ordinance) (A copy of the Ordinance is attached hereto as Exhibit "A"). The Ordinance defines "Ground Cover" as "[a] planting of low growing plants that provide a complete cover over an area in one growing season and including the area of lawful mulch around the plant." *See id.* at § 538. However, for years, this Section of the Zoning Code has also contained an express exception allowing vegetable gardens in rear yards. *Id.* at § 536(e).[3]

Plaintiffs admit they planted a very extensive vegetable garden in the *front* yard of their home, and were found by the Miami Shores Village Code Enforcement Board to be in violation of this section of the Code. Plaintiffs sue the Village seeking a declaration that the Village's prohibition of vegetable gardens in the front yard violates the Plaintiffs' constitutional rights.

As a pure matter of law, there is no "fundamental constitutional right" to have a vegetable garden *in your front yard*. The Plaintiffs cannot cite a single case recognizing any such fundamental constitutional right. As a pure matter of law, then, the constitutionality of a municipal ordinance that does not infringe upon a fundamental constitutional right is tested by the "Rational Relationship Test" (also known as the "Rational Basis Test").[4] Under this highly deferential standard, the Ordinance, again as a pure matter of law, must be upheld if it bears a

[3] Plaintiffs suggest that a Code Amendment in 2013 changed the impact or effect of the requirement of ground cover, or the exception for vegetable gardens in the back yard. As a matter of law this is simply incorrect and both provisions were in the Code for decades.

[4] *Kuvin v. City of Coral Gables*, 62 So. 3d 625, 629 (Fla. 3d DCA 2010). In *Kuvin*, the Third District affirmed a summary judgment in favor of Coral Gables, upholding the constitutionality of its ordinance prohibiting the parking of pick-up trucks on residential streets.

rational relationship to any legitimate public purpose. *See Kuvin*, 62 So. 3d at 632. This is "the most relaxed and tolerant form of judicial scrutiny," and "municipal ordinances, which are legislative enactments, are presumed to be valid and constitutional." *Id.* (citations omitted).

Plaintiffs herein propounded wide ranging discovery including both Interrogatories and Requests for Production of Documents asking for the identification and description of all documents, correspondence and other information (including but not limited to legislative findings, studies, reports, records, memoranda, investigations, interviews or testimony) upon which the Village relied in considering or adopting the Ordinance in question.

On March 11, 2015, this Court denied Plaintiffs' motion to compel responses to the discovery. In a clear and concise order, this Court properly found that under established Florida law:

> It is well recognized that the motives and reasons behind a legislative body's adoption of an enactment are not relevant to a constitutional challenge. *City of Pompano Beach v. Big Daddy's Inc.*, 375 So. 2d 281 (Fla. 1979) ("it is a fundamental tenet of municipal law that when a municipal ordinance of legislative character is challenged in court, the motives of the commission and the reasons before it which induced passage of the ordinance are irrelevant"); *Rainbow Lighting Inc. v. Chiles*, 707 So.2d 939 (Fla. 1988); *Housing Authority of the City of Melbourne v. Richardson*, 196 So. 2d 489 (Fla. 4th DCA 1967) ("[T]he motives of a governing body of a municipal corporation in adopting an ordinance legislative in character will not be the subject of judicial inquiry"); *See also City of Miami Beach v. Schauer*, 104 So. 2d 129, 131 (Fla. 3d DCA 1958).

(A copy of the Court's Order Denying Plaintiffs' Motion to Compel Answers and Overrule Objections is attached hereto at Exhibit "B"). The Court concluded that because the motives and reasons for the enactment are irrelevant to this proceeding, Plaintiffs' discovery requests were impermissible under Fla. R. Civ. P. 1.280(b)(1). (Ex. B at p. 3).

No genuine issues of material fact exist in this case. "[C]onstitutional challenges to statutes or ordinances involve pure questions of law…." *Kuvin*, 62 So. 3d at 629. It is not the

province of this Court to engage in courtroom fact finding when deciding constitutionality under the rational basis test. *See Fed. Comm. Commission v. Beach Comm., Inc.*, 508 US 307 (1993) (on rational basis review, legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data); *Heller v. Doe*, 509 U.S. 312 (1993) (legislative body need not actually articulate at any time the purpose or rationale supporting the legislation as the legislative choice "is not subject to courtroom fact finding"); *see also City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 1119 (Fla. 4th DCA 2014) (same).

Since regulation of the appearance of the Plaintiffs' property is a legitimate exercise of the City's police power as a matter of law, and allowing vegetable gardens in the backyard only is clearly reasonably related to that legitimate governmental purpose, as a pure matter of law, the Ordinance in question is clearly constitutional and Defendants are entitled to summary judgment on all of Plaintiffs' claims.

STATEMENT OF UNDISPUTED FACTS

1. Plaintiffs Hermine Ricketts and Laurence "Tom" Carroll own and reside in a home located at 53 Northeast 106th Street, in the Village of Miami Shores. (Complaint at ¶¶6, 7 and 19).

2. Plaintiffs admit that they grew a vegetable garden in their front yard. (Complaint at ¶¶6, 7, 19 and 24).

3. Village of Miami Shores Zoning Ordinance Part II, App. A, Art. V, Div. 17, § 536(e) has long required defined ground cover (not vegetable gardens) for all open space in all yards, but also contained an exception which permitted Village residents to grow a vegetable garden in their back yard, but not in their front yard. (Ex. A).

4. Plaintiffs admit that the Ordinance permits them to grow a vegetable garden in their back yard. (Complaint at ¶¶45-46).

ARGUMENT

As made plain by the scarcity of facts relevant to this proceeding, there are no issues of disputed material fact relevant to Plaintiffs' constitutional claims. Those claims are subject to summary judgment in Defendants' favor because the interpretation of the Ordinance and of the Constitution are purely legal questions not dependent upon issues of fact. The Village may legislate to protect the appearance of its community as a legitimate exercise of the Village's inherent police power. As a matter of law, there is no fundamental right to grow a vegetable garden in one's front yard, and the Ordinance treats all residents of Miami Shores the same. The landscaping measures of the Ordinance, designed to enhance or maintain the aesthetic appeal of a community, are a valid exercise of the Village's police power, and bear a rational relationship to a legitimate purpose, as a matter of law. As set forth below, the Ordinance is constitutional as a matter of law, and Defendants are entitled to summary judgment on Plaintiffs' claims.

A. Summary Judgment Standard

A motion for summary judgment should be granted if the "'pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Zabrani v. Riveron*, 495 So. 2d 1195, 1199 (Fla. 3d DCA 1986) (quoting Fla. R. Civ. P. 1.510(c); *see also City of St. Petersburg v. Norris*, 335 So. 2d 333, 334 (Fla. 2d DCA 1976). Once a movant for summary judgment meets his burden of demonstrating conclusively that no genuine issues of material fact exist, the burden shifts to the opposing party to come forward with evidence sufficient to reveal that an issue of fact exists. *See Slachter v.*

Abundio Inv. Co., 566 So. 2d 348, 349 (Fla. 3d DCA 1990) (citing *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966)). It is not enough for an opposing party to merely assert that an issue of material fact does exist. *Id.* (citing *Reflex, N.V. v. Umet Trust*, 336 So. 2d 473 (Fla. 3d DCA 1976)).

"A material fact is one essential to the result that is placed in controversy by the pleadings and affidavits. Thus, to preclude the entry of summary judgment there must be some fact essential to a resolution of the legal questions raised by the case which is genuinely controverted." *Wells v. Wilkerson*, 391 So. 2d 266, 267 (Fla. 4th DCA 1980). A trial judge has the power to decide a question of law on summary judgment where the material facts are clear and undisputed. *See Fredericks v. Sch. Bd. of Monroe County*, 307 So. 2d 463, 465 (Fla. 3d DCA 1975) (citation omitted).

In four (4) separate counts, Plaintiffs adopt a "kitchen sink" approach in their Complaint and allege that the Ordinance violates Plaintiffs' rights under one or more of four (4) different provides of the Florida Constitution. Each such argument is conclusively refuted as a matter of law below.

B. As a Matter of Law, Defendants' Ordinance Does Not Violate the Florida Constitution's Inalienable Rights Clause

Plaintiffs allege in Count I of their Complaint that, by limiting vegetable gardens to back yards, the Village deprived Plaintiffs of their right to use their property to feed themselves, and also imposed financial costs on them. (Complaint at ¶¶75-77). However, as Plaintiffs admit in their Complaint and as made clear in the Ordinance, Plaintiffs are allowed to grow vegetables in their rear yard. *Id.* at ¶¶45-46. (Of course, they may also grow vegetables elsewhere -- on other non-residential property, indoors, etc.) Thus, Plaintiffs' own Complaint shows that the Ordinance does *not* deprive them of the right to use their property to feed themselves and does not subject them to financial costs. As Plaintiffs' Complaint is internally inconsistent, Plaintiffs' claim fails

as a matter of law on this basis alone. *See Harry Pepper & Associates, Inc. v. Lasseter,* 247 So. 2d 736 (Fla. 3d DCA 1971); *Peacock v. General Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983) (citing *Hoopes v. Crane*, 47 So. 992 (Fla. 1908). Even if these allegations were consistent, Plaintiffs can point to no disputed material facts which bear any relevance to the legal determination that the Ordinance does not violate Florida's inalienable rights clause.

Article I, Section 2, of the Florida Constitution provides to all persons "the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property…." Fla. Const. Art. I, § 2; *see also In re Estate of Magee*, 988 So. 2d 1, 2 (Fla. 2d DCA 2007). No caselaw even comes close to construing this provision as invalidating any zoning code restrictions nor creating any "right" to grow vegetable gardens in a residential front yard. Unless an ordinance involves a suspect class or a fundamental right, it need only bear a rational relationship to a legitimate state purpose. *Kuvin v. City of Coral Gables,* 62 So.3d 625, 629 (Fla. 3d DCA 2010)*; see also Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) ("because fishing is not a fundamental right, and commercial fisherman do not constitute a suspect class, the rational basis test rather than the strict scrutiny standard applies in the instant case"); *WCI Communities, Inc. v. City of Coral Springs*, 885 So. 2d 912, 914 (Fla. 4th DCA 2004) (when legislation being challenged does not target a protected class, the rational basis test is applied.).

Established Florida case law confirms that the "reasonable relationship" or "rational basis" standard is the correct test to be used in evaluating statutes and regulations that allegedly infringe on property rights, but, as here, do not require the absolute destruction of property. *See Estate of Magee*, 988 So.2d 1, 5 (Fla. 2d DCA 2007); *see also Haire v. Fla. Dept. of Agriculture*, 870 So. 2d 774, 783 (Fla. 2004) ("reasonable relationship" or "rational basis" standard applies to

review a statute that potentially infringes on (but does not destroy entirely) property rights)). Plaintiffs admit that the Ordinance permits back yard vegetable gardens, and therefore there is no dispute that the Ordinance does not require the destruction of property. (Complaint at ¶¶45-46). Therefore, under this standard of review, the Village's Ordinance must be upheld if there is any rational basis between the act and the furtherance of a valid governmental objective. *Haire*, 870 So. 2d at 782.

The first step in determining whether the legislation survives the rational basis test is identifying a legitimate government purpose that the governing body could have been pursuing. *Kuvin*, 62 So. 3d at 629. The second step considers whether a "rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose." *Id.*

"Florida has long recognized that local governments may legislate to protect the appearance of their communities as a legitimate exercise of their inherent police power." *Id.* at 634; *see also City of Lake Wales v. Lamar Adver. Ass'n of Lakeland, Fla.*, 414 So. 2d 1030, 1032 (Fla. 1982) (recognizing that "[z]oning solely for aesthetic purposes is an idea whose time has come; it is not outside the scope of the police power") (quotation omitted); *Int'l Co. v. City of Miami Beach*, 90 So. 2d 906, 906 (Fla. 1956) (finding that zoning regulations based on aesthetics are relevant to maintaining the general welfare and well-being of a community); *Metro. Dade County v. Section 11 Prop. Corp.*, 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998) (reinstating administrative agency's denial of a special exception to develop land with an industrial-looking mini self-storage facility, finding that aesthetics may be properly considered by the agency); *Lamar–Orlando Outdoor Adver. v. City of Ormond Beach*, 415 So. 2d 1312, 1318 (Fla. 5th DCA 1982) (upholding an ordinance banning billboards and off-site advertising in Ormond Beach, a

primarily residential community, as a valid exercise of the police power); *Moviematic Indus. Corp. v. Bd. of County Comm'rs of Metro. Dade County*, 349 So. 2d 667, 669 (Fla. 3d DCA 1977) (holding that "zoning regulations which tend to preserve the residential or historical character of a neighborhood and/to enhance the aesthetic appeal of a community are considered valid exercises of the public power as relating to the general welfare of the community"); *City of Coral Gables v. Wood*, 305 So. 2d 261, 263 (Fla.3d DCA 1974) (recognizing that "[a]esthetic considerations have been held to be a valid basis for zoning in Florida" and finding that an ordinance prohibiting campers or other vehicles designed or adaptable for human habitation from being kept or parked upon public or private property within the City of Coral Gables, unless confined in a garage, was constitutional).

Additionally, the courts in this state have repeatedly held that "measures designed to enhance or maintain the aesthetic appeal of a community are a valid exercise of a local government's police power and these measures bear a rational relationship to a legitimate purpose." *Kuvin*, 62 So. 3d at 633.

Plaintiffs' claim under the Inalienable Rights Clause is subject to summary judgment upholding the Ordinance, because the interpretation of the Ordinance and of the Constitution are purely legal questions not dependent upon issues of fact. *See Kuvin*, 62 So. 3d at 629 (citing *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Commission*, 838 So.2d 492, 500 (Fla. 2003)). Under the rational basis test, a legislative enactment must be upheld if there is *any* reasonably conceivable state of facts that could provide a rational basis for the legislation. *Federal Comm. Commission v. Beach Comm., Inc.*, 508 US 307, 315 (1993) (on rational basis review, legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data); *Heller v. Doe*, 509 U.S. 312,

320 (1993) (legislative body need not actually articulate at any time the purpose or rationale supporting the legislation as the legislative choice "is not subject to courtroom fact finding"); *see also City of Fort Lauderdale v. Gonzalez,* 134 So. 3d 1119, 1121-22 (Fla. 4th DCA 2014) (same) (*citing Beach Comm.*).

Thus, the Ordinance is constitutional as a matter of law. It does not restrict Village residents from having a vegetable garden, but merely sets forth where it can be located. Plainly, therefore, Defendants are entitled to summary judgment on this claim.

C. As a Matter of Law, Defendants' Ordinance Does Not Violate Plaintiffs' Right of Privacy

Plaintiffs next posit the legal conclusion that the Ordinance, by regulating the appearance of front yards, somehow violates Plaintiffs' privacy rights under the Florida Constitution, *i.e.*, the alleged right to make decisions about what foods to grow and consume on their own property and to provide to their families. (Complaint at ¶87). Again, as Plaintiffs admit in their Complaint and as made clear in the Ordinance, Plaintiffs *are* allowed to grow vegetables on their residential property—in their rear yard. *Id.* at ¶¶45-46. Thus, Plaintiffs' own admissions show that the Ordinance does not deprive them of the right to make decisions about what foods to grow and consume on their own property and provide to their families. The fact that Plaintiffs do not (if indeed they do not) choose to grow a garden in their rear yard is of their own choosing.[5]

Merely alleging the legally insufficient conclusion that Plaintiffs are being deprived of certain rights does not create a disputed issue of material fact, particularly where those facts, taken as true, show the opposite. *See Reflex, N.V. v. Umet Trust,* 336 So. 2d 473, 474-75 (Fla. 3d

[5] In 1995, the Plaintiffs chose to build a pool in their backyard, instead of utilizing that space for vegetable gardening. (Hermine Ricketts Answers to Interrogatories 6(b) attached hereto as Exhibit "C").

DCA 1976) (opposing party cannot forestall the granting of summary judgment by raising "purely paper issues").

Given the undisputed material facts, the Ordinance does not violate the privacy rights clause of Florida's Constitution as a matter of law. Article I, Section 23 of the Florida Constitution states:

> Right of Privacy—Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Fla. Const. Art. I, § 23. "This right of privacy protects Florida's citizens from the government's *uninvited observation of* or interference in those areas that fall within the ambit of the zone of privacy afforded under the provision." *City of Miami v. Kurtz*, 653 So. 2d 1025, 1027 (Fla. 1995) (emphasis added) (citing *Shaktman v. State*, 553 So. 2d 148 (Fla. 1989)).

However, Florida's privacy right is not intended to be a guarantee against all intrusion into the life of an individual. *Id.* at 1028 (citing *Fl. Bd. of Bar Examiners Re: Applicant*, 443 So. 2d 71 (Fla. 1983)). To determine whether Plaintiffs' rights under Article I, Section 23, have been violated, the Court must first determine whether a governmental entity is intruding into an aspect of Plaintiffs' lives in which they have a "legitimate expectation of privacy." *See id.* (Court was required to first determine whether job applicant of City of North Miami was entitled to protection under Article I, Section 23, by determining whether a governmental entity was intruding into an aspect of the Plaintiffs' life in which they have a "legitimate expectation of privacy"). If the court finds in the affirmative, only then must the court determine whether a compelling state interest exists to justify that intrusion and, if so, whether the least intrusive means is being used to accomplish this goal. *Id.*

The right of privacy ensures that individuals are able "to determine for themselves when, how and to what extent information about them is communicated to others." *Shaktman v. State*, 553 So. 2d 148, 150 (Fla. 1989) (quoting A. Westin, *Privacy and Freedom* 7 (1967)). The Ordinance does not implicate any privacy right because it does not intrude into an aspect of the Plaintiffs' lives in which they have a legitimate expectation of privacy. Whether Plaintiffs have a vegetable garden in their front yard is open and notorious for all to see. *See U.S. v.* Santana, 427 U.S. 38, 42, 96 S.Ct. 2406, 49 L.Ed.2d. 300 (1976) (threshold of one's dwelling is a "public" place as to which owner has no right of privacy); *State v. Kennedy*, 953 So. 2d 655, 56-57 (Fla. 1st DCA 2007) (no right of privacy in front yard). In fact, Plaintiffs admit in their Complaint that they often received comments about their front yard vegetable garden from neighbors and people who were passing by. (Complaint at ¶37). Plainly, therefore, given that Plaintiffs reveal to everyone who happens to see their house whether they have a front yard vegetable garden, Plaintiffs have no reasonable expectation of privacy in maintaining a front yard vegetable garden.

City of Miami v. Kurtz, is instructive. In that case, the City of North Miami adopted a policy designed to reduce the number of employees who smoke tobacco. *Kurtz*, 653 So. 2d at 1026. The city issued an administrative regulation which required all job applicants to sign an affidavit stating that they had not used tobacco or tobacco products for the past year immediately preceding their application for employment. *Id.*

The Plaintiff in that case applied for a clerical position and told the interviewer that she smoked and could not sign the affidavit. *Id.* at 1028. The plaintiff was told that she would not be considered for employment until she had been smoke-free for at least one year. *Id.* The plaintiff then filed suit seeking to enjoin the enforcement of the regulation and asking for a declaratory

judgment finding the regulation to be unconstitutional. The case made its way to the Florida Supreme Court, which ultimately held that the City's actions did not intrude into an aspect of the plaintiff's life in which she had a legitimate expectation of privacy. *Id.* The Court made this determination based on the conclusion that smokers in today's society are constantly required to reveal whether they smoke, such as when they are seated in restaurants, renting a hotel room, renting a car, etc. *Id.* Thus, the Supreme Court held that since the plaintiff had to repeatedly reveal whether she was a smoker in society, there could be no reasonable expectation of privacy in the disclosure in applying for a job. *Id.*

Similarly, in this case, Plaintiffs reveal every day whether they have a front yard vegetable garden, and thus, can have no reasonable expectation of privacy with regard to a front yard vegetable garden. Further, even taking as true Plaintiffs' allegation that they have a privacy right in making decisions about what foods to grow on their property (a proposition unsupported by any case law in Florida), the Ordinance *does not prohibit* Plaintiffs from deciding what foods to grow and consume on their property and to provide to their families. Again, the Ordinance allows Plaintiffs to grow any vegetables they wish—in their back yard (nor does the Ordinance restrict any indoor vegetable gardening nor gardening on other non-residential locations). Likewise, the Ordinance does not deprive Plaintiffs of their "preferred" source of sustenance and the ability to choose the foods they eat. To the extent that they use their rear yard for the purpose of growing vegetables, they may choose the foods from there or they may purchase them from wherever else they desire.

Simply stated, there is and can be nothing "private" about a front yard vegetable garden. As the Village Ordinance is not requiring Plaintiffs to disclose information about themselves and allows vegetable gardens to be grown in rear yards, Plaintiffs simply have no privacy right in a

vegetable garden in their front yard. Thus, Defendants are entitled to summary judgment on Count II of Plaintiffs' Complaint as a matter of law.

D. As a Matter of Law, Defendants' Ordinance Does Not Violate Florida's Due Process Clause

The Due Process Clause states that "[n]o person shall be deprived of life, liberty or property without due process of law…." Fla. Const. Art. I, § 9. Plaintiffs present the legal conclusion that substantive due process "protects, among other things, the right to be free from arbitrary and unreasonable government interference." (Complaint at ¶95). They then provide a second legal conclusion that the ban on front-yard vegetable gardens is arbitrary and unreasonable and violates the due process clause. *Id.* at ¶¶97 and 102.

With respect to substantive due process, a statute is valid if it "bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive." *Haire* 870 So. 2d at 782 (reasonable relationship test applied to substantive due process challenge). Again, Plaintiffs' Complaint completely ignores the established tenet that measures designed to enhance or maintain the aesthetic appeal of a community, such as the Ordinance at issue here, are a valid exercise of a local government's police power and that, as a matter of law, "these measures bear a rational relationship to a legitimate purpose." *Kuvin*, 62 So. 3d at 634; *Wood*, 305 So. 2d at 263. Therefore, Count III of Plaintiffs' Complaint for violation of substantive due process fails as a matter of law since an ordinance based on aesthetic grounds alone is a valid exercise of a city's police power. *See Merritt v. Peters*, 65 So. 2d 861, 862 (Fla. 1953).

Florida recognizes that local governments may legislate to protect the appearance of their communities as a legitimate exercise of their inherent police power, and Florida courts uphold zoning regulations that tend to preserve the residential character of a neighborhood and/or to

enhance the aesthetic appeal of a community. *See Kuvin*, 62 So. 3d at 634. The Village has an interest in maintaining certain basic residential community standards by limiting vegetable gardens to locations other than the front yard. Further, the Ordinance does not prohibit Plaintiffs or other homeowners from maintaining a vegetable garden in the rear yard of their property. Therefore, since this Ordinance, on its face, was plainly designed to maintain the aesthetic appeal of the community, it bears a rational relationship to a legitimate purpose as a matter of law.

E. As a Matter of Law, Defendants' Ordinance Does Not Violate Florida's Equal Protection Clause

Plaintiffs allege in Count IV of their Complaint that application of the Ordinance violates the Equal Protection Clause of the Florida Constitution, because it purportedly creates an arbitrary legal distinction between people who grow vegetable plants in their front yard and people who grow other plants in their front yard. (Complaint at ¶¶109-111).

Again, there are no material facts in dispute here—Plaintiffs' allegations are purely legal conclusions. The Ordinance does not violate the equal protection clause of Florida's Constitution as a matter of law. An equal protection analysis is appropriate only where similarly situated persons are treated differently. *Fredman v. Fredman*, 960 So. 2d 52, 59 (Fla. 2d DCA 2007). "Equal protection is not violated merely because some persons are treated differently than other persons. It only requires that persons similarly situated be treated similarly." *Id.* (quoting *Troy v. State*, 948 So. 2d 635, 645 (Fla. 2006)).

Assuming *arguendo* that the Ordinance treats similarly situated persons differently, this case does not involve a fundamental right or suspect class, so the rational basis test would apply. Again, as set forth above, unless an ordinance involves a suspect class or a fundamental right, which does not exist here, the ordinance need only bear a rational relationship to a legitimate

state purpose. *Kuvin*, 62 So. 3d at 629*; Chiles*, 698 So. 2d at 263; *WCI Communities, Inc.*, 885 So. 2d at 914.

Further, as previously stated, the Florida Supreme Court has set forth that the "reasonable relationship" or "rational basis" standard is the proper test to be used in evaluating statutes and regulations that allegedly infringe on property rights but do not require the absolute destruction of property. *See Haire*, 870 So. 2d at 783 ("reasonable relationship" or "rational basis" standard applies to review a statute that potentially infringes on (but does not destroy entirely) property rights). The Ordinance at issue does not violate Florida's Equal Protection Clause on these undisputed facts.

Moreover, in this case, similarly situated persons simply are not treated differently. As alleged in the Complaint, Plaintiffs claim that they, as people who want to grow vegetables in their front yard, are treated differently than people who grow other flowers or fruit in their front yards. However, the distinction that the Ordinance is drawing is not between persons, but rather, between the front yard and the back yard, or between types of gardens—not between people. Thus, there can be no equal protection violation.[6]

Additionally, even if the Court were to somehow find that similarly situated persons are being treated differently, under the rational basis test which applies to this matter, this Court must uphold the Ordinance if the classification bears any rational relationship to a legitimate governmental objective. *Fl. Dept. of Children and Families v. Adoption of X.X.G. and N.R.G.*, 45 So. 3d 79, 83 (Fla. 3d DCA 2010).

[6] To further illustrate, Plaintiffs' argument, if correct, would preclude the State, on equal protection grounds, from treating people who want to travel the highways at 100 mph differently than those who observe the speed limit. The Ordinance, like the traffic laws, treat people based upon their conduct, not based upon who they are.

Again, as set forth above, "Florida has long recognized that local governments may legislate to protect the appearance of their communities as a legitimate exercise of their inherent police power." *Kuvin*, 62 So. 3d at 634. Further, as a matter of law, zoning regulations that tend to preserve the residential character of a neighborhood and/or to enhance the aesthetic appeal of a community are constitutional. *Id.* Therefore, since this "Landscaping, Design Standards" Ordinance addresses the aesthetic appeal of the community, it bears a rational relationship to a legitimate purpose, and Defendants are entitled summary judgment on Count IV as a matter of law.

F. Plaintiffs' Claims are Barred as a Matter of Law Because They Should Have Been Raised in Their Prior Action

Defendants are also entitled to summary judgment on their Sixth Affirmative Defenses, because of Plaintiffs' failure to raise these constitutional claims in the prior proceedings. Plaintiffs were cited for Code violations for violating this Ordinance because of their extensive front yard vegetable garden. (Complaint at ¶49). The Village Code Enforcement Board held hearings and entered a ruling adverse to Plaintiffs, from which Plaintiffs appealed. *Id.* at ¶¶50, 51 and 53. During the appeal and without seeking a stay pending appeal, Plaintiffs complied with the Ordinance by removing the vegetable garden from their front yard, and then ultimately voluntarily dismissed their appeal. *Id.* at ¶¶54-56.

Plainly, Plaintiffs' Complaint is barred by the doctrine of *res judicata*, which applies to all matters actually raised and determined as well as to all other matters which could properly have been raised and determined in the prior action, whether they were so raised or not. *Ice Chem. Corp. v. Freeman*, 640 So. 2d 92, 93 (Fla. 3d DCA 1994). Here, the Village's Code Enforcement Order is a final order, and Plaintiffs' current constitutional claims could have and

should have been raised in their appeal to the Circuit Court, which Plaintiffs instead voluntarily dismissed. *See Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2001).

In *Kirby*, the city obtained a lien against a property owner based on fines imposed by the City's Code Enforcement Board. The fines levied against the property owner were based on the Board's findings, following a hearing, that the property owner violated an ordinance prohibiting the maintaining of certain types of vehicles on any real property in the city. *Id.* The property owner did not appeal the final order of the code enforcement board. *Id.*

The city then filed a foreclosure action against the property owner, and the trial court granted summary judgment. *Id.* On appeal, the property owner argued that the lower court erred in granting summary judgment in the foreclosure action, because among other things, the ordinance was allegedly unconstitutional. *Id.* In affirming the decision of the trial court, the appellate court stated that the property owner made his arguments too late, holding that the property owner's constitutional challenge could not be raised for the first time in the foreclosure action. The court explained that the constitutional claim was properly cognizable on appeal to the circuit court from the final order of the enforcement board, and was therefore waived. *Id.* (quoting *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970) ("[c]onstitutional issues, other than those constituting fundamental error, are waived unless timely raised").

Similarly, in this case, Plaintiffs are barred from asserting these constitutional claims now because they could have and should have been raised in the appeal from the Village's Enforcement Order, but were not. Plaintiffs dismissed their appeal, and cannot now assert their constitutional claims. *Id.* Thus, Plaintiffs' Complaint is barred as a matter of law, and Defendants are entitled to summary judgment on all of Plaintiffs' claims for this independent reason as well.

CONCLUSION

For the reasons set forth above, Plaintiffs have no fundamental right to have a vegetable garden in their front yard, and thus, Defendant is entitled to summary judgment on Plaintiffs' Complaint as a matter of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via *eservice@myflcourtaccess.com* this 27th day of January, 2016 on *Ari Simon Bargil, Esq.* (*abargil@ij.org*), 999 Brickell Avenue, Suite 720, Miami, FL 33131 and *Michael Bindas, Esq.* (*mbindas@ij.org*) 10500 Northeast 8th Street, #1760, Bellevue, WA 98004.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Defendant Miami Shores Village
100 Southeast Second Street, Suite 4400
Miami, Florida 33131-2118
Telephone:305.349.2300
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By: /s/ Nina Greene
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(7718-230 / 2458820 / #761)

Exhibit “A”

DIVISION 17. - LANDSCAPING

Sec. 536. - Design standards.

(a) All green space shall be planted with grass, sod or living ground cover and a minimum of two trees.

(b) The use of impervious material as ground cover shall be prohibited except for areas dedicated to vehicular driveways, patios, tennis courts or pool decks. Chatahoochie stone or similar materials shall not be substituted for grass, sod or living ground cover.

(c) A boat storage area of 200 square feet surfaced by gravel rock of one-half inch diameter, or greater, shall be permitted.

(d) Use of mulch as ground cover to enhance the growth of an adjacent shrub or tree is permitted in green spaces however; cypress mulch, shell, crushed stone pebbles, inorganic mulch, plastic, rubber and glass shall not be used.

(e) Vegetable gardens are permitted in rear yards only.

Sec. 537. - Maintenance standards.

(a) Property owners are responsible for the proper maintenance of landscaping on their property in accordance with the ordinances of Miami Shores Village. Maintenance shall include watering, mowing and trimming on a regular basis as required in each instance to keep said landscaping in healthy, attractive and growing condition. Fertilizing, treating, mulching, removal or replacement of dead or diseased plants and removal of refuse and debris shall be done as required to maintain the health and appearance of landscaping as follows:

  (1) The length of the grass and lawn shall be that necessary to provide a neat, well-kept appearance, but in no case shall exceed eight inches.

  (2) Ground cover used in lieu of grass shall be of one uniform type through a given lawn area and shall not be permitted to become adulterated with weeds.

  (3) Grass and ground cover areas shall be kept free of weeds and the total of all non-growth areas shall not exceed 25 percent thereof.

  (4) Property owners are responsible for maintaining the landscaping on parkway areas with the exception of trees. (See Section 20-17 of Code of Ordinances.)

(b) Shrubs and trees shall be trimmed in accordance with the Miami Shores Village Code of Ordinances. (See Section 10-10.)

(c) Maximum allowable heights for hedges parallel to property lines shall be maintained as provided by Section 518(1) of Zoning Ordinance 270, as amended.

(d) All required planting shall be a minimum grade of Florida No. 1, or better.

(e) The removal of living trees from property within the Village shall be governed by Sections 24-60 through 24-60.9, Miami-Dade County Code, except in the case of properties designated as "Historic Landmarks," in which case Section 11-6 of this Code shall govern.

(f) Dead trees shall be removed, and damaged or diseased trees shall be treated.

(g) Prohibited and controlled tree species, controlled plant species and prohibited plant species, that are listed in the Miami-Dade Landscape Manual and prohibited by Miami-Dade County shall not be planted in the village.

(h) The Miami-Dade County Landscape Ordinance and Landscape Manual shall be utilized to identify recommended and approved trees and ground cover except as otherwise provided by provisions of the Village Code.

(i) All landscaping, mulch or impervious material proposed to be placed in the swale/parkway, with the exception of grass, must be reviewed and approved by the public works director before it may be installed. Driveways or parking areas must be reviewed and approved by the planning director before they are installed.

Sec. 538. - Landscaping descriptions and definitions.

Florida Number One. The minimum standards for plant quality and acceptable method for installation and culture as established by the State of Florida Department of Agriculture in the publication, Grades & Standards for Nursery Plants, Part I and II.

Green space. All areas of plot not occupied by buildings or impervious surfaces of any kind and that is located at ground level.

Ground cover. A planting of low growing plants that provide a complete cover over an area in one growing season and including the area of lawful mulch around the plant.

Landscaping. Living plant material purposely installed for functional or aesthetic reasons at ground level and open to the sky.

Landscape maintenance. The irrigation and cultivation of landscaping to keep a neat and orderly appearance, including removal of debris, replacement of required plantings and the control of growth thereof.

Lawn, turf and sod. The surface layer of soil that is bound by a solid cover of grassy plants and roots.

Mulch. An organic soil additive or decorative topping such as chipped bark or wood chips used for reducing evaporation, weed control, soil enrichment or decorative purposes.

Exhibit "B"

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

CIVIL DIVISION
CASE NO.: 2103-36012 CA 01

HERMINE RICKETTS and
LAURENCE CARROLL,
a married couple,

Plaintiff,

v.

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

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL ANSWERS AND OVERRULE OBJECTIONS

THIS CAUSE having come before the court, upon Plaintiff's Motion To Compel Answers and Overrule Objections and Defendant's Objections to Plaintiff's Motion to Compel, and the court having reviewed the pleadings, court file and having heard argument of counsel on February 27, 2015, hereby DENIES Plaintiff's Motion to Compel Answers and Overrule Objections for the following reasons:

Procedural Background

1. On November 18, 2013 Plaintiffs filed the instant declaratory action seeking relief to enjoin Defendant from enforcing a City Ordinance disallowing the use of vegetable gardens in residents' front yards as a violation of their Constitutional Rights under the "[i]nalienable rights, Right of Privacy, Due Process and Equal Protection Clause" of the Florida Constitution. (See Plaintiff's Complaint, Ex. A).

2. On January 10, 2104 Defendant filed a Motion to Dismiss.
3. On May 6, 2014 the previous division Judge entered an Order Denying Defendant's Motion to Dismiss.
4. On June 2, 2014 Defendant filed its Answer and Affirmative Defenses.
5. Plaintiffs have since filed Interrogatories and Defendant objects to production of Interrogatories.

Findings and Analysis

Plaintiffs have propounded wide ranging discovery including both Interrogatories and Request for Production of Documents asking for the identification and description of all documents, correspondence and other information (including but not limited to legislative findings, studies, reports, records, memoranda, investigations, interviews or testimony) upon which the Village relied in considering or adopting the Ordinance in question.[1]

It is well recognized that the motives and reasons behind a legislative body's adoption of an enactment are not relevant to a constitutional challenge. *City of Pompano Beach v. Big Daddy's Inc.,* 375 So.2d 281 (Fla. 1979)("it is a fundamental tenet of municipal law that when a municipal ordinance of legislative character is challenged in court, the motives of the commission and the reasons before it which

[1] Plaintiffs argued at hearing that this discovery had been allowed by the prior judge during the Motion to Dismiss. Consequently, Plaintiffs argue it has become law of the case. It is clear from the record that in dicta the prior judge discussed discovery, but not any specific type of discovery. In any event, it is clear that the law of the case doctrine applies only when an appellate decision is binding on subsequent proceedings in a case and is not meant to bar reconsideration of a non-final order by the court. (*Merrill v. Westwind*, 442 So.2d 414 (2nd DCA 1983). (Law of the case is not established by a trial court's initial ruling, but rather by an appellate decision that binds a subsequent proceeding (*Empire Club Inc. v. Hernandez*, 974 So.2d 447 (2nd DCA 2007)).

induced passage of the ordinance are irrelevant"); *Rainbow Lighting Inc. v. Chiles*, 707 So.2d 939 (Fla. 1988); *Housing Authority of the City Of Melbourne v. Richardson*, 196 So.2d 489 (Fla. 4rth DCA 1967) ("[T]he motives of a governing body of a principal corporation in adopting an ordinance legislative in character will not be the subject of judicial inquiry). *See also City of Miami Beach v. Schauer,* 104 So.2d 129, 131 (Fla. 3rd DCA 1958).

Fla.R.Civ.P. 1.280(b)(1) governs the scope of discovery in civil matters and states; "[p]arties may obtain discovery regarding any matter, not privileged, that is **relevant** to the subject matter of the pending action" and be reasonable calculated to lead to the discovery of admissible evidence. (*Emphasis added).*

The Interrogatories which Plaintiffs seek to compel regarding legislative motives and data cannot be reasonably calculated to lead to admissible evidence as it is clear they cannot be the subject of judicial review upon a constitutional challenge. Additionally, the court finds the remaining interrogatories regarding prior violations, if any, and such enforcement are overbroad and unduly burdensome.

Conclusion

Plaintiff's Motion to Compel Answers and Overrule Objections is DENIED. Defendant's objections are sustained. This order does not prohibit Plaintiffs from continuing discovery as to other ongoing matters.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 03/11/15.

MONICA GORDO
CIRCUIT COURT JUDGE

No Further Judicial Action Required
on THIS MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Exhibit “C”

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

HERMINE RICKETTS and LAURENCE CARROLL, a married couple,

Plaintiffs,

v.

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

Defendants.
_____/

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

NOTICE OF SERVICE

COMES NOW Ari S. Bargil, attorney for the Plaintiffs, Hermine Ricketts and Laurence Carroll, and gives Notice that Plaintiff Hermine Ricketts has answered the Interrogatories propounded by Defendants and has attached the original Answers to the service copy of this Notice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2014, a true and correct copy of the foregoing was served via Email to the following counsel of record:

Richard Sarafan, Esq. (Email: rsarafan@gjb-law.com)
Nina Greene, Esq. (Email: ngreene@gjb-law.com)
Genovese Joblove & Battista, P.A.,
Miami Tower, 100 Southeast 2nd St., Ste. 4400
Miami, Florida 33131-2118

Attorneys for Defendants

By: /s/ Ari Bargil
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* Admitted *pro hac vice*

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

HERMINE RICKETTS and LAURENCE CARROLL, a married couple,

Plaintiffs,

v.

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

Defendants.
_____/

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

HERMINE RICKETTS' RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES

COMES NOW Plaintiff Hermine Ricketts, with the assistance of counsel, and hereby serves her responses to Defendants' First Set of Interrogatories pursuant to Florida Rule of Civil Procedure 1.340 as follows:

INTERROGATORY NO. 1: Please state whether or not you admit that the Miami Shores Village Code has prohibited vegetable gardens in the front yards of residences at least since the 1990s; and, if you do not so admit, please fully State the Basis of your contrary contention.

RESPONSE: Plaintiffs object to this interrogatory on the ground that the question calls for a legal conclusion. *See Marine Inv. Co. v. Van Voorhis*, 162 So. 2d 909, 909 (Fla. 1st DCA 1964). Subject to and without waiving said objection, Plaintiffs respond as follows:

Prior to March 19, 2013, the Miami Shores' zoning code was silent regarding vegetable gardens in front yards. For more than 17 years, we grew vegetables in the front yard of our home without incident or complaint. We were never cited or warned by the Village. Accordingly, our understanding was that we were not doing anything that was prohibited by law, and we had no reason to believe that such a simple, harmless activity could be illegal.

INTERROGATORY NO. 2: Please state each different type of vegetable grown by the Plaintiffs in the front yard of the subject property during the last three years, together with an approximation, for each different type of vegetable, of the quantity or volume thereof grown.

RESPONSE: Plaintiffs object to this interrogatory on the ground that it is vague and ambiguous. The Village code does not define the term "vegetable," and Defendants have not provided a definition in these Interrogatories. Subject to and without waiving said objection, Plaintiffs respond as follows:

See attached list, Document Bates labeled PLF000001-PLF000002. The attached list includes items grown in our front yard, including items commonly regarded as fruit.

INTERROGATORY NO. 3: Please state the date on which the Plaintiffs retained their current counsel for this action and fully set forth all of the terms and conditions of such retention.

RESPONSE: Plaintiffs object to this interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, or other applicable privilege. Having to reveal communications between Plaintiffs and their counsel, including the frequency, quantity, and/or timing of such communications, would intrude upon the attorney-client privilege. Plaintiffs further object to this interrogatory on the ground

that it seeks information that is not relevant to the subject matter of this lawsuit and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, Plaintiffs retained their current counsel on October 14, 2013.

INTERROGATORY NO. 4: In connection with each communication between either of the Plaintiffs on the one hand and any representative of the Institute of Justice, concerning the Defendant, the Subject Property or the Defendant's Code provisions prohibiting vegetable gardens in residential front yards, please state, in chronological order, the date of such communication, the means whereby such communication was effectuated, the Identity of the individual initiating such communication and a summary of the contents of such communication.

RESPONSE: Plaintiffs object to this interrogatory on the ground that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, or other applicable privilege. Having to reveal communications between Plaintiffs and their counsel, including the frequency, quantity, and/or timing of such communications, would intrude upon the attorney-client privilege. Plaintiffs further object to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this lawsuit and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs further object to this interrogatory on the ground that it is oppressive and unduly broad and burdensome.

INTERROGATORY NO. 5: Please state whether or not the Plaintiffs are able to grow vegetables anywhere else on the Subject Property other than the front yard thereof, and, if you contend that they cannot, please fully State the Basis for such contention.

RESPONSE: Shortly after we moved into our home, we attempted to grow a vegetable garden in our backyard but were unsuccessful because of a lack of sunlight, as our

backyard is heavily shaded during South Florida's peak growing season of September through April. After several years of planting in our backyard without success, we decided to plant in the front yard of our home, where the sunlight allowed our vegetable garden to flourish. Although, with great difficulty, we are sometimes able to grow a handful (in terms of both variety and quantity) of items in our backyard, we cannot reliably count on growing any vegetables there and certainly cannot satisfy our dietary needs there.

INTERROGATORY NO. 6: Please set forth the following regarding the Pool in the backyard of the Subject Property:

INTERROGATORY NO. 6a: Describe, what if anything, was present at the current location of the Pool, before it was constructed.

RESPONSE: Grass and dirt.

INTERROGATORY NO. 6b: State the date of construction and the purpose thereof.

RESPONSE: The pool was constructed in 1995. We constructed the pool for exercise.

INTERROGATORY NO. 6c: State whether or not you admit that, but for the Pool, that portion of the Subject Property could have been used as a vegetable garden, and if you do not so admit, State the Basis of your contrary contention.

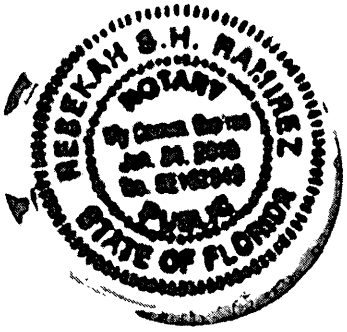
RESPONSE: We do not admit that the portion of our property occupied by the pool could be viably used as a vegetable garden. As noted in response to Interrogatory 5, our backyard is covered by shadows during South Florida's peak growing season of September through April.

HERMINE RICKETTS

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared HERMINE RICKETTS, personally known to me and who executed the foregoing Response to Defendants' First Set of Interrogatories and she deposes and says under oath that the attached Response to Defendants' First Set of Interrogatories are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this 3rd day of July, 2014.



Notary Public, State of FLORIDA

My Commission Expires: JAN. 24, 2016