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

CIVIL DIVISION

CASE NO. 2013-36012-CA-02

HERMINE RICKETTS and
LAURENCE CARROLL,
a married couple,

Plaintiffs,

v.

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

Defendants.
_________________________________/

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court for hearing on June 8, 2016 on cross-motions for summary judgment. The Court, having considered the motions, the Plaintiffs' memorandum in support of their motion, the Defendants' memorandum in opposition to the Plaintiffs' motion, Plaintiffs' memorandum in opposition to the Defendants' motion, Defendants' motion to strike, and Plaintiff's memorandum in opposition to the Defendants' motion to strike, and having heard the arguments of the parties, considered the case law submitted, and being otherwise fully advised in the premises, hereby **ORDERS** and **ADJUDGES** as follows:

INTRODUCTION

Hermine Ricketts and Laurence Carroll challenge the constitutionality of the Village of Miami Shores' prohibition of vegetable gardens other than in back yards. For the reasons set forth in this Order, the Court holds that the challenged ordinance is constitutional.

The prohibition is found in the Miami Shores Code of Ordinances, Article 5, Division 17, section 536. Division 17 is titled "Landscaping," and Section 536 is titled "Design standards." Section 536 provides, in pertinent part, that "(a) All green space shall be planted with grass, sod or living ground cover and a minimum of two trees," and "(e) Vegetable gardens are permitted in rear yards only." Section 538 defines "Green space" as "All areas of plot not occupied by buildings or impervious surfaces of any kind and that is located at ground level," and defines "Lawn, turf and sod" as "The surface layer of soil that is bound by a cover of grassy plants and roots."

Subsection (e) was originally enacted in 1992, at that time reading "vegetable gardens are permitted in rear yards." It was amended on March 19, 2013 to its present language, adding the word "only" to the end of the sentence.

The Plaintiffs moved into their home in 1993. Shortly after moving in, they began planting vegetables in their back yard, but according to their affidavits, since their back yard "is almost completely shadowed during fall and winter – Florida's main growing season – and partially shadowed the remainder of the year, [they] were unsuccessful." According to their response to the Defendants' first set of interrogatories, they "are sometimes able to grow a handful (in terms of both variety and quantity) of items in [their] backyard [but they] cannot reliably count on growing any vegetables there and certainly cannot satisfy [their] dietary needs there." Therefore, after a few years, and several failed attempts to grow vegetables successfully in their backyard, the Plaintiffs relocated their vegetable garden to their front yard, and had a pool installed in their backyard.[1]

The front-yard garden was successful, and the Plaintiffs kept it for seventeen years, until 2013. On May 8, 2013, the Plaintiffs received a "Courtesy Notice" from a Miami Shores Village Code Enforcement Officer, advising them that a "vegetable garden in front yard [is] prohibited" and advising them to "Please remove all vegetables gardens [sic] from front yard." Later, they received a formal notice of violation for violating section 536(e), again advising them that vegetable gardens are prohibited in the front yard and that they were required to "REMOVE ALL VEGETABLES GARDENS [sic] FROM FRONT YARD." The Plaintiffs appeared before the Village's Code Enforcement Board at two meetings. The Board ruled that the Plaintiffs were in violation of the prohibition of front-yard gardens, and instructed the Plaintiffs to remove their vegetable garden within 30 days or face fines of $50 a day. The Plaintiffs initially sought to appeal the decision of the Board to the appellate division of the circuit court, but in the face of the fines that would accrue during the appeal, they decided to drop their appeal, and they removed their garden.

The Plaintiffs then filed this lawsuit. In this suit, the Plaintiffs are not challenging the previous enforcement actions against them, but rather are seeking prospective constitutional relief against the prohibition of vegetable gardens that are not in a backyard.[2]

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1. The fact that the Plaintiffs are unable to grow a vegetable garden that is satisfactory to them in their backyard does not change the fact that the Village of Miami Shores clearly does not completely ban vegetable gardens. It only regulates the location of vegetable gardens, prohibiting them in the front yard and allowing them in the backyard. In *Kuvin v. City of Coral Gables*, 62 So. 3d 625 (Fla. 3d DCA 2010), Coral Gables' prohibition of trucks designed for commercial purposes was constitutional, in part, because the prohibition had a "garage exception," allowing such trucks to be parked in garages. Unfortunately for Kuvin, his property did not have a garage, but this did not change the Third DCA's analysis. It explained that "[t]he fact that the particular house Kuvin chose to rent in the City does not have a garage or an enclosed place where he could park his vehicle at night does not alter this conclusion. Kuvin was on notice regarding the City's ordinances when he chose to rent a location that did not have a garage." *Id.* at 638. Similarly, the fact that the Plaintiffs' backyard is not satisfactory for their vegetable growing needs, just like the fact that Kuvin's house did not have a garage, does not change the constitutional analysis.

2. The Plaintiffs argue that subsection 536(e), which states that vegetable gardens are permitted in backyards only, bans vegetable gardens except in the back yard. The Defendants argue that subsection 536(a), which requires that all green space be planted with grass, sod, or ground cover, effectively bans vegetable gardens, and that subsection 536(e) creates an exception to that ban. If the Plaintiffs were challenging the notice of violation that they received,

STANDARD ON SUMMARY JUDGMENT

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials . . . show that there is no genuine issue as to any material fact from the record and that the moving party is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(c); *Reeves v. North Broward Hosp. Dist.*, 821 So. 2d 319, 321 (Fla. 4th DCA 2002); *see also Holl v. Talcott,* 191 So. 2d 40, 48 (Fla. 1966) (summary judgment should be granted when the facts are so crystallized that nothing remains but questions of law.)

In the instant case, the facts are undisputed, although the parties disagree as to the materiality of some of the undisputed facts, such as the opinion of the Plaintiffs' expert and the enforcement officer's deposition testimony regarding how he determines whether a property owner is in violation of the front-yard vegetable garden prohibition. Both sides agree that based on the record before the court, whether this prohibition passes or fails constitutional muster is a pure question of law for the court.

THE COURT APPLIES THE RATIONAL BASIS TEST

Although the Plaintiffs assert that strict scrutiny should apply to this case, this Court is not convinced that the prohibition of front-yard vegetable gardens impairs any fundamental right. Because the ban does not involve a suspect class or impinge upon a constitutionally protected right, it need only bear a rational relationship to a legitimate state purpose in order to withstand constitutional scrutiny. *See Kuvin v. City of Coral Gables*, 62 So. 3d 625, 629 (Fla. 3d DCA 2010).[3]

For such a law, "courts undertake only a limited review that is highly deferential to the legislature's choice of ends and means." *Silvio Membrano and Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 22 (Fla. 3d DCA 2016). "'[R]ational basis scrutiny is the most relaxed and tolerant form of judicial scrutiny.'" *Id.* at 25 (quoting *Kuvin* 62 So. 2d at 632). The law must be upheld "'if there is *any* reasonable relationship between the act and the furtherance of a valid government objective.'" *Id.* (quoting *Haire v. Fla. Dep't of Agric. & Consumer Servs.*, 870 So. 2d 774, 782 (Fla. 2004)).

The party challenging the law bears the burden of proving that the law does not bear a rational relationship to a legitimate state purpose, and that burden is "very heavy." *Id.* at 26. The challenging party must prove that "'there is *no conceivable* factual predicate which would rationally support the [law].'" *Id.* at 25. (quoting *Fla. High Sch. Activities Ass'n v. Thomas*, 434 So.

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which was explicitly for violating section 536(e), this argument might be relevant. But, since they are challenging the prospective application of the prohibition of vegetable gardens other than in the backyard, and both interpretations would ban such vegetable gardens, it is irrelevant which interpretation is correct. What matters is whether the Village's undisputed prohibition of front-yard vegetable gardens is unconstitutional.

3. Florida's rational basis test is essentially the same as the federal rational basis test. *Silvio Membrano and Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 19 (Fla. 3d DCA 2016); 2016 WL 3486427 (Fla. June 27,2016).

2d 306, 308 (Fla. 1983)(emphasis and alteration made in *Membrano*).

> Under this relaxed and tolerant standard for rationality, a law will be upheld if it is "fairly debatable;" meaning that it is fairly debatable whether the purpose of the law is legitimate and it is fairly debatable whether the methods adopted in the law serve that legitimate purpose. . . . "The fact that there may be differing views as to the reasonableness of the Legislature's action is simply not sufficient to void the legislation." *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090, 1096 (Fla. 2005). "Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the Legislature is entitled to its judgment." *West Coast Hotel*, 300 U.S. at 399, 57 S.Ct. 578.

Id. at 25-26.

ANALYSIS

Thus, the questions in the instant case are (1) whether it is fairly debatable that the purpose behind the ordinance is a legitimate government objective, and (2) whether it is fairly debatable that the ban on front-yard vegetable gardens serves that purpose, or in other words, whether the ban is rationally related to a legitimate government interest.

Aesthetics is a Legitimate Government Purpose

In the instant case, the purpose that has been put forth for the front-yard vegetable garden ban is aesthetics. It is indisputable that, in Florida, promoting or protecting aesthetics is a legitimate government purpose. *See Eskind v. City of Vero Beach*, 159 So. 2d 209, 211 (Fla. 1963) ("We have recognized the importance of aesthetics in the planning and maintenance of various Florida communities.); *Kuvin*, 62 So. 3d at 633 ("measures designed to enhance or maintain the aesthetic appeal of a community are a valid exercise of a local government's police power . . . .").[4]

Is There a Rational Relationship Between the Prohibition of Front-Yard Vegetable Gardens and the Goal of Promoting Aesthetics?

Whether a limitation on vegetable gardens is rationally related to aesthetics does not appear to be a question previously addressed by Florida appellate courts. Although Miami Shores has not explained how a front-yard vegetable garden ban promotes the goal of aesthetics, the ordinance passes the rational basis test if there is any conceivable reasonable relationship between the ordinance and the goal. *See Membrano*, 188 So. 3d at 25. The Plaintiffs argue that there is no such rational relationship.

4. The Plaintiffs recognize that this Court is bound by precedent on this issue, but they nevertheless include an argument that aesthetics is not a legitimate government purpose in order to preserve their argument for appeal.

A legislative value judgment, such as a determination about the aesthetic qualities of vegetables or vegetable gardens, is not subject to judicial evaluation

One of the Plaintiffs' arguments that there is no reasonable relationship between aesthetics and the banning of front-yard vegetable gardens, is that there is no evidence that vegetable gardens are a threat to the aesthetic character of the Village of Miami Shores. This argument invites this Court to make a factual determination regarding the choice apparently made by the Village of Miami Shores that vegetable gardens are not aesthetically pleasing. However, under the rational basis test, a legislative choice is not subject to courtroom fact-finding. *Membrano*, 188 So. 3d at 26-27. Instead a legislature's finding may be based on rational speculation that is unsupported by evidence or empirical data. *Id.* If "there exists a good faith conflict over facts, some of which support the legislative finding, the court must uphold the finding because the law must be upheld if 'it is at least debatable.'" *Id. at 28* (quoting *Gallagher Motors Ins. Corp.*, 605 So. 2d 62, 70 (Fla. 1992)). Thus, courts should refrain from second guessing the legislature by evaluating evidence about a legislative finding that is a value judgment by the legislature.

Accordingly, the portions of the report submitted by the Plaintiffs' expert, which indicate that "properties planted with edible plants are not aesthetically degrading," that edible plants or vegetables "do not have an intrinsically good or bad visual quality," and the like, are not relevant because they simply contradict a value judgment (whether good or bad, and whether foolish or wise) that evidently has been made by the Village of Miami Shores that vegetable gardens are unaesthetic.

The ordinance is not arbitrary

Other evidence in the expert's report, however, does not go to the factual accuracy of Miami Shores' determination that vegetable gardens are not aesthetically pleasing. For example, there is evidence in the report that is relevant to whether the lack of a definition of either "vegetable" or "vegetable garden" in the ordinance banning front-yard vegetable gardens makes the ordinance ambiguous. Evidence of ambiguity is relevant to a rational basis analysis because a law that is ambiguous is capable of arbitrary enforcement, *see Easy Way of Lee County, Inc. v. Lee County*, 674 So. 2d 863, 866 (Fla. 2d DCA 1996), and "a law that is . . . arbitrary . . . cannot, by definition, bear a rational basis to a legitimate legislative purpose." *Membrano*, 188 So. 3d at n.6.

The expert's report indicates that "the term vegetable is based on arbitrary cultural and culinary definition with regards to the way we classify plants for human consumption." The report also asserts that the term vegetable is ambiguous, citing tomatoes as an example, which it indicates are botanically classified as a fruit, but are often culturally considered vegetables. The report also states that other "botanical fruits used as culinary vegetables" include eggplant, okra, pepper, and snap peas. This evidence is not directed at a legislative value judgment, but is instead relevant to whether a term used in the legislation being challenged, but not defined in that legislation, is ambiguous.

The deposition testimony of the enforcement officer who previously cited the Plaintiffs, in

regard to how he determines whether a plant is a vegetable, is also relevant to the ambiguity analysis. When asked about the difference between a fruit and a vegetable, he testified that he was educated as he grew up as to what is a fruit and what is a vegetable, including being taught by his mother, and that allows him to determine whether something is a vegetable in his opinion. He further testified that his evaluation of whether something is a vegetable is whether it has a culinary purpose. He also conceded that the other enforcement officer in Miami Shores might have different beliefs about whether something is a fruit or vegetable.

Thus, there is some evidence, which it is proper for this Court to examine, that the term "vegetable" is ambiguous because it does not have an undisputed definition, as it is subject to being influenced by a person's background and education, and because it can be interpreted differently by different people.

However, the evidence also supports that one possible definition of "vegetable" is a culinary one. The culinary (or food- or kitchen-based) meaning of "vegetable" is the one that most people probably understand when the word vegetable is used in its most common context.[5] This Court has examined various dictionary definitions of "vegetable,"[6] and they support the idea that "vegetable," when not used broadly to mean "plant" (which is obviously not what is contemplated in the front-yard vegetable garden ban) is generally a culinary term.

Webster's New Twentieth Century Dictionary, Unabridged Second Edition (1964) at page 2024 defines "vegetable," in part, as:

> 1. broadly, any plant, as distinguished from animal or inorganic matter.
> 2. (a) specifically, any plant that is eaten whole or in part, raw or cooked, generally with an entrée or in a salad but not as a dessert, as the tomato, potato, lettuce, cucumber, cabbage, etc.;
>   (b) the edible part of such a plant, as the root of a carrot or seed of the pea.

Webster's New International Dictionary, Second Edition (1950) at page 2823 defines "vegetable" as:

> A plant; specif., in common usage, a herbaceous plant cultivated for food, as the cabbage, turnip, potato, bean, etc.; also the edible part or parts of such plants, as prepared for market or table. There is no well-drawn distinction between vegetables and fruits . . . in the popular sense; but it has been held by the courts that all those which, like potatoes, carrots, peas, celery, lettuce, tomatoes, etc. are

5. This excludes uses that are commonly understood, but less commonly used, such as those based upon broad classifications (as in whether something is an "animal, vegetable, or mineral" in the game twenty questions) or the definition which is a slang term for a person who leads a monotonous, passive or merely physical existence.

6. Only "noun" definitions are included in the quotations from dictionary definitions used in this order.

eaten (whether cooked or raw) during the principal part of a meal are to be regarded as *vegetables*, while those used only for desserts are *fruits*.

The modern, online, version of Webster's, at http://www.merriam-webster.com/dictionary/vegetable, defines "vegetable" as:

1. plant
2. a usually herbaceous plant (as the cabbage, bean, or potato) grown for an edible part that is usually eaten as a part of a meal; *also*: such an edible part

Another source, The American Heritage Dictionary of the English Language, Fourth Edition (2000) at page 1906 defines vegetable as:

> 1 a. A plant cultivated for an edible part, such as the root of the beet, the leaf of spinach, or the flower buds of broccoli or cauliflower; b. The edible part of such a plant. 2. A member of the vegetable kingdom; a plant.

The portions of the quotations above which define "vegetable" broadly to mean all plants are clearly not what is meant by the ordinance in question, because otherwise it would simply ban gardens rather than vegetable gardens. Therefore, the definitions which are more narrowly directed at a certain type of plant are what have been examined by the Court. These definitions of "vegetable" all share in common the concept of edibility. In fact, they also generally encompass the idea that a vegetable is grown or cultivated specifically in order to be eaten, and they generally indicate that the vegetable will be eaten as part of a meal. Thus, a vegetable is generally regarded as a plant (or a part of a plant) that is grown to be eaten as part of a meal.

When the legislature does not define a word in a law that it passes, "[t]he rules of statutory construction require that courts give statutory language its plain and ordinary meaning . . . ." *Newberger v. State*, 641 So. 2d 419, 420 (Fla. 2d DCA 1994). The Court believes that the concept of a vegetable as a plant grown to be eaten as part of a meal, culled from the dictionary definitions above, corresponds with the plain and ordinary meaning of the word.

Moreover, what the Village of Miami Shores prohibits in front yards is not "vegetables," but "vegetable gardens."[7] The Court has also examined various dictionary definitions of "garden." Webster's New Twentieth Century Dictionary, Unabridged Second Edition (1964) at page 754 defines "garden," in part, as "a piece of land for the cultivation of herbs, plants, fruits, flowers, or vegetables . . . ." Webster's New International Dictionary, Second Edition (1950) at page1034 defines "garden," in part, as "A piece of ground appropriated to the cultivation of herbs, fruits, flowers, or vegetables . . . ." The American Heritage Dictionary of the English Language, Fourth Edition (2000) at page 724 defines "garden," in part, as "A plot of land used for the cultivation of flowers, vegetables, herbs, or fruit." Merriam-Webster online defines "garden," in part as "a plot

7. Also, when the Plaintiffs were cited in the past, the citation did not inform them that vegetables were prohibited in front yards and that they needed to remove the vegetables from their front yard, but that vegetable gardens were prohibited in front yards and that they needed to remove their vegetable gardens.

of ground where herbs, fruits, flowers, or vegetables are cultivated." Each of these consistent definitions indicates that a garden is a piece of land used for cultivating various types of plants, including vegetables. Thus, a "vegetable garden" is a piece of land used for cultivating vegetables. Or, incorporating the previously discussed definitions of "vegetable," a "vegetable garden" is a piece of land used for cultivating plants grown to be eaten as part of a meal.

Banning "vegetable gardens" rather than "vegetables" gives the ordinance more clarity than if it merely banned vegetables. For example, evidence has been submitted indicating that some vegetable plants might be used for ornamental purposes. This could cause uncertainty as to whether any individual such plant is still a vegetable since it is not being grown to be eaten. However, the common understanding of a vegetable garden would not be a garden of plants grown for ornamental reasons. The purpose of a "vegetable garden" would not be understood to be ornamental. Instead, the purpose of a vegetable garden is to cultivate food to be eaten. Thus, the phrase "vegetable garden" conjures an understanding of a group of plants grown to be eaten.

In other words, people would commonly only consider a piece of land used to cultivate plants grown to be eaten a "vegetable garden," and would not consider a piece of land used to grow any other type of plants, such as those grown to be ornamental, to be a "vegetable garden." This purpose-based understanding of "vegetable garden," premised upon the production of edible plants, makes the phrase "vegetable garden" capable of being commonly understood.[8]

However, the Plaintiffs argue that basing the front-yard vegetable garden ban on edibility is another reason the ban is arbitrary. The Plaintiffs argue that "the meaning of the City's front-yard vegetable ban turns not on appearance or attractiveness, but rather, on perceptions of edibility." They assert that there is no rational distinction between growing vegetables in front yards versus growing other plants in front yards: all vegetables are prohibited regardless of their aesthetic character, and all non-vegetable plants are allowed regardless of their aesthetic character. In fact, there is evidence that some ornamental plants and edible plants are identical to the naked eye. Thus, the Plaintiffs argue that the ban is arbitrary and does not accomplish its purported purpose because "it prohibits only one thing, vegetables, but permits virtually everything else." They assert that "[i]t is unreasonable to presume that a front-yard vegetable garden will be *per se* unattractive." Therefore, they argue, there is no connection between the front-yard vegetable garden ban and Miami Shores' interest in aesthetics.

However, Miami Shores' decision to ban front-yard vegetable gardens can be based on rational speculation, and it passes the rational basis test as long as it is fairly debatable that the ban serves an aesthetic purpose. Despite the fact that some edible plants may be aesthetically pleasing and some non-edible plants may not be aesthetically pleasing, and that some edible plants may be visually identical to non-edible plants, this Court finds that tying the concept of a vegetable garden ban to edibility is not irrational. This is so even though case law supports that a

8. Although it would perhaps have been preferable for the phrase to have been defined in the ordinance, it is still capable of being understood without such a definition. As the Defendant points out, the Plaintiffs use the phrase "vegetable garden" themselves, including in their motion for summary judgment and in their affidavits (presumably expecting the phrase to be understood).

law is not rationally related to aesthetics when some items are disallowed while virtually identical items are allowed. *See e.g. Kuvin*, 62 So. 3d at 636 (noting that disallowing only trucks actually used for commercial purposes rather than personal purposes would be irrational because "any vehicle that was designed for commercial use, regardless of whether it is used for commercial purposes, *looks the same* . . . . "Either way, the vehicle is the same vehicle and the effect upon the residential character of the City is the same . . . .")(emphasis added); *Campell v. Monroe County*, 426 So. 2d 1158, 1161 (Fla. 3d DCA 1983) (rejecting a ban of modular homes based in part because there was no relationship between the ban and aesthetics since there was evidence that "you can stand twenty feet away and not tell the difference" between modular construction and traditional construction because "*they both look the same*.")(emphasis added); *Eskind*, 159 So. 2d at 210-11 (finding no aesthetic justification for a prohibition on "motel signs advertising rates but permitting every other type of motel advertising sign imaginable," because a motel rate sign "is not aesthetically distinguishable from a sign advertising various aspects of a motel's services or conveniences" or from a rate signs for any other type of business."). What differentiates the instant case from such case law is that what is being banned in the instant case is not a particular edible plant that might look identical to some non-edible plant. Instead, as previously noted, what is being banned is a "vegetable garden." The Village of Miami Shores is not required to assume that a "vegetable garden" would be identical to, or aesthetically indistinguishable from, another type of landscape. It is entitled to rationally speculate that the aesthetic character of a vegetable garden is different than the aesthetic character of other landscapes.

It is not irrational to surmise that since the purpose of a vegetable garden is to grow food to eat, the primary purpose of such a garden is productivity,[9] not aesthetics. It is rational to surmise that people do not grow vegetable gardens for the purpose of being aesthetically pleasing, and therefore it is rational to conclude that a vegetable garden is less likely to be aesthetically pleasing than other landscape options. Therefore, it is fairly debatable that banning vegetable gardens in front yards will serve aesthetics.

Given the high degree of deference that must be given to a democratically elected governmental body when applying the rational basis test to one of its laws, the Village of Miami Shores' ban on vegetable gardens outside of the backyard passes constitutional scrutiny.

The Defendants' Objections to the Report of the Plaintiffs' Expert and the Deposition of the Code Enforcement Supervisor

The Defendants have objected to the introduction into evidence of the Plaintiffs' expert report and of the deposition of the code enforcement supervisor. Although the Court has discussed the report and deposition in its analysis, they did not convince the Court that the Plaintiffs met their heavy burden of proving that there is no conceivable factual predicate which would rationally support the front-yard vegetable garden ban. Thus, the ultimate determination of the motions for summary judgment would be the same regardless of whether or not the Court considered the report and deposition. Accordingly, the Defendants' objections are essentially

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9. In fact, the Plaintiffs' expert report states that the Plaintiffs' "edible landscape implemented productive food system practices to maximize yields of edible plants . . . ." Expert Report of Falon Mihalic, PLA at page 4 (attached as Exhibit C to Plaintiff's Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment).

moot, and need not be determined.

CONCLUSION

The Court finds, as a matter of law, that no fundamental right or suspect class is affected by the Village of Miami Shores' prohibition of vegetable gardens except in backyards. Thus, the rational basis test applies, and the prohibition must be upheld if it bears a rational relationship to a legitimate public purpose. The Court finds that the prohibition of vegetable gardens except in back yards is rationally related to Miami Shores' legitimate interest in promoting and maintaining aesthetics: Miami Shores was entitled to rationally conclude that the purpose of a vegetable garden is to produce food to be eaten, not to be aesthetically pleasing, and therefore would tend to be less likely to be aesthetically pleasing than other landscape options. Given the high degree of deference that must be given to a governmental body when applying the rational basis test to one of its laws, the Plaintiffs have failed to meet their heavy burden of establishing that it is not fairly debatable that a ban on vegetable gardens outside of the backyard is connected to aesthetics. The Village of Miami Shores' ban on front-yard vegetable gardens passes constitutional scrutiny.

Of Course, in our democracy, the Plaintiffs still have a remedy. They can petition the Village Council to change the ordinance. They can also support candidates for the Council who agree with their view that the ordinance should be repealed. In sum, the Court concludes that these fairly debatable issues should lawfully remain in the democratic arena.

Based upon the above findings of fact and conclusions of law, it is hereby

ORDERED and ADJUDGED as follows:

1. Plaintiffs' Motion for Summary Judgment is **DENIED**.
2. Defendants' Motion for Summary Judgment is **GRANTED**.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 08/25/16.

MONICA GORDO
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials MG

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.