

July 19, 2024

VIA EMAIL (jsx@searcylaw.com, mmccann@searcylaw.com;
scarolateam@searcylaw.com)

Jack Scarola, Esquire
Searcy Denney Scarola Barnhard & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Re: Palm Beach Gardeners' & Landscapers' Association v. Town of Palm Beach

Dear Jack:

I have succeeded my partner Skip Randolph as Town Attorney for the Town of Palm Beach. Skip forwarded to me your letter of July 9, which arrived as three days of July Town Council meetings were underway last week (July 9, 10 and 11). I was then away on July 12 and 15, which explains my delay in responding to you. I have now had the opportunity to review the draft complaint that you attached to your correspondence.

The Complaint principally challenges the Town's exception of the operation of equipment relating to essential services of the Town from the prohibition against lawn maintenance noise before 9:00 a.m. Where an ordinance like the lawn maintenance ordinance does not affect fundamental rights or a protected class, as here, the court will presume the classification is valid. Member(s) of the association would have to show that they have been intentionally treated differently from others similarly situated, specifically, from others who are "prima facie identical in all relevant respects." *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1351-52 (11th Cir. 2021). Even if a similarly situated showing could be made, equal protection "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Commc'ns., Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096 (1993). Under rational basis review, a statute "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* at 313, 113 S. Ct. 2096.

Where the Town's lawn maintenance activity is largely comprised of tree trimming in roads rights-of-way and maintenance of public parks and golf courses, the Town is not similarly situated in all material respects to the "daily" gardening operations done by your clients, principally in residential neighborhoods. The Town trims Royal Palms and coconut trees just twice a year. Trimming of hardwoods occurs once a year on a rotating schedule. Because these trees are often located in



Joanne M. O'Connor
T 561 650 0498 O 561 659 3000
joconnor@jonesfoster.com

505 South Flagler Drive, Suite 1100 West Palm Beach, FL 33401
jonesfoster.com

rights-of-way, it is necessary to stage and begin this trimming activity early in the day to ensure that it can be done before commercial businesses begin to operate and to minimize parking disruptions and ensure public safety. Allowing such essential activities to begin slightly earlier in the day is readily supported by a rational basis.

The threatened complaint also appears to suffer from a fatal defect. The Plaintiff on whose behalf you would bring suit—the “Palm Beach Gardeners’ & Landscapers Association”—is not registered or incorporated with the Florida Department of State, Division of Corporations. An unincorporated voluntary association cannot sue or be sued in its common name, as opposed to under the names of its individual members. *Johnston v. Albritton*, 134 So. 563, 565 (Fla. 1931). Such an association lacks capacity to sue and any claim will be subject to dismissal. See *Asociacion De Perjudicados Por Inversiones Efectuadas En U.S.A. v. Citibank, F.S.B.*, 770 So. 2d 1267, 1269 (Fla. 3d DCA 2000). As a practical matter, my firm is unable to clear conflicts without knowing **the identities of the individuals/ corporate entities** that comprise this unincorporated voluntary association. Please promptly provide such information so we can comply with our professional responsibilities. I would also appreciate it if you can provide **the photographs or other exhibits** cited in paragraph 18 of the complaint, which were not attached.

In sum, the Town disputes the factual and legal allegations of the Complaint and believes it lacks any merit. Nevertheless, and even though the Town has heard from certain landscape contractors on these issues on numerous occasions previously, the Town Council President, Bobbie Lindsay, has agreed to place the identified concerns on the agenda of the next Town Council meeting. That meeting is scheduled for **Tuesday, August 12, 2024**. I would suggest that we schedule a call prior to that meeting to ensure it is as productive as possible. I am generally available Monday, Tuesday and Thursday next week.

Sincerely,

JONES FOSTER P.A.

/s/ Joanne M. O'Connor

Joanne M. O'Connor

Florida Bar Board Certified Business Litigation Attorney

JMO:mtm