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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2310-21**

**BEST HORTICULTURAL  
SERVICES, INC.,**

Plaintiff-Appellant,

vs.

**TOWNSHIP OF MARLBORO,**

Defendant-Respondent.

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Submitted March 8, 2023 – Decided April 3, 2023

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law  
Division, Monmouth County, Docket No. L-1640-21.

Russell Macnow Attorney at Law, LLC, attorneys for  
appellant (Russell L. Macnow, on the brief).

Rainone Coughlin Minchello, LLC, attorneys for  
respondent (Brian P. Trelease, of counsel and on the  
brief).

PER CURIAM

Plaintiff Best Horticultural Services, Inc. appeals from a March 29, 2022 order dismissing its verified complaint for declaratory relief challenging an ordinance adopted by defendant Township of Marlboro (Township). We affirm.

The facts are undisputed. In December 2020, the New Jersey Department of Environmental Protection (NJDEP) disseminated a model stormwater ordinance designed to ensure stormwater would be free and clear of debris and pollutants. Consistent with the NJDEP's model ordinance, on March 4, 2021, the Township adopted the Ordinance 337-30A (Ordinance), amending portions of its municipal code governing stormwater management. Under the Ordinance, the Township required landscaping providers to register a list of their service locations within the municipality to prevent landscaping debris from clogging the municipality's sewer inlets and causing street flooding.

The Ordinance required:

All applications for registration shall be made on-line through the Township's website by the applicant or the authorized agent of the applicant, in a form required by the Business Administrator. Landscapers will be required to register for each service location. The application shall state the name of the contractor/landscaper, the correct name under which the business is being operated, contact information including phone and email address, the service location, and such other pertinent information as may be required by the Business Administrator.

The Ordinance defined "service location" as the "[t]he full legal street location address at which landscaping activities are to be performed."

According to the Township's Business Administrator, the Ordinance was adopted because many landscapers disposed of yard debris in the municipality's streets without regard to the Township's annual leaf and brush pickup schedule.<sup>1</sup> The Township's Business Administrator explained that the off-schedule dumping of yard waste in the Township's streets "cause[d] the roadways to become unsightly, dangerous to motorists, bicyclists and pedestrians, and [was] the primary cause of clogg[ed] storm sewer inlets and flooding in the Township." He further explained the "[O]rdinance was enacted to ensure adherence to the [NJ]DEP regulations and compliance with [the] Township [O]rdinance and the posted pickup schedule."

Plaintiff provides landscaping services to Township residents. On May 7, 2021, the Township sent a letter to plaintiff advising it of the requirement "to register each home in [the Township] at which they perform landscaping work." The letter also explained the Ordinance's purpose.

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<sup>1</sup> The Township conducts leaf and brush pickup approximately eight times per year and publishes a schedule of the pickup dates.

On May 12, 2021, plaintiff filed a single count verified complaint and order to show cause seeking a declaratory judgment that the Ordinance was unconstitutional because it "require[d] plaintiff to disclose a constitutionally protected property right and [was] vague and overbroad in that it gives the Business Administrator the ability to require plaintiff to provide unspecified information as he may require." The trial judge signed the order to show cause, granted temporary injunctive relief regarding enforcement of the Ordinance, and scheduled a hearing for July 30, 2021.<sup>2</sup> On the return date of the order to show cause, counsel agreed that there were no factual disputes requiring additional hearings or testimony.

On March 29, 2022, the judge entered an order denying plaintiff's order to show cause and dismissing its verified complaint. The judge issued a twelve-page written statement of reasons rejecting plaintiff's request to enjoin the Township's enforcement of the Ordinance. The judge found that the language in the Ordinance was not void for vagueness because it was "plain on its face" and "[was] not so unusual or obscure that people and/or landscapers of common intelligence must guess at its meaning."

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<sup>2</sup> The judge adjourned the return date of the order to show cause several times.

In her written statement of reasons, the judge concluded:

The language used in the Marlboro Landscaper Registration Ordinance clearly provides that landscapers must adhere to the requirement to provide the town with its service locations and the means by which they are supposed to provide the information. The ordinance and its language fairly inform landscapers who provide services within the municipality, any members of the community who may read the ordinance, of what is required of the landscapers for each of its service locations. Considering these facts and the overarching purpose of the ordinance . . ., the ordinance is not deemed unconstitutionally vague.

The judge also rejected plaintiff's argument that the Ordinance violated its constitutionally protected property right to maintain the confidentiality of its customer list. She found the Township had the power to enact ordinances under its police power and the Ordinance was "rationally related to the legitimate governmental purpose of protecting the public's health and safety, while minimizing the negative environmental repercussions that the clogging of storm drains has on the Township of Marlboro."

The judge acknowledged that the disclosure of plaintiff's customer list "may place [it] at a competitive disadvantage." However, she explained that after "balancing the nature of any purported property right with the Township's legitimate government[al] objective, the challenge to the [O]rdinance fails."

The judge expressly found that the "registration of service locations does not implicate a fundamental property right as [a] landscaper's 'customer lists' and 'service locations' do not rise to the level of personal, sensitive or confidential information." Moreover, the judge noted "landscapers regularly advertise on their business vehicles which they park outside of a customer's home. As such, a landscaper cannot reasonably expect that their service locations would remain confidential."

The judge further found:

The Township's objective in protecting the public from unsightly and dangerous roadways as well as reducing the negative effects of the clogging of storm sewer inlets and flooding is a legitimate government[a] interest that outweighs [p]laintiff's desire to have such information remain confidential. As such, the [c]ourt finds that the Township's need to protect the public safety and satisfy the regulations put into place by the NJDEP outweighs the [p]laintiff's claim of harm by requiring them to provide customer lists and service locations. In balancing the equities, the [c]ourt finds that the balancing of same falls in the Township of Marlboro's favor.

On appeal, plaintiff argues that the Ordinance is unconstitutional because it impinges on a fundamental property interest—specifically, its confidential client lists—and the Township could accomplish its enforcement goal through other means. Plaintiff also contends that allowing the Township's Business

Administrator to request "such other pertinent information as may be required" is unconstitutionally vague or overbroad because it fails to identify the additional information that may be required. We are not persuaded.

We review a challenge to the constitutionality of a municipal ordinance de novo. State v. Clarksburg Inn, 375 N.J. Super. 624, 631 (App. Div. 2005). In reviewing a municipal ordinance, we apply a "presumption of validity and reasonableness" in considering the constitutionality of the enactment. Id. at 632. The party seeking to overturn an ordinance bears a heavy burden. Quick Check Food Stores v. Twp. of Springfield, 83 N.J. 438, 447 (1980). This principle is especially true when the ordinance is directed to "the preservation of the public health, safety and welfare of the municipality and its inhabitants." Clarksburg Inn, 375 N.J. Super. at 633.

When reviewing a municipality's exercise of its police power in adopting a legislative enactment, "the municipality is presumed to have acted upon adequate factual support." Singer v. Twp. of Princeton, 373 N.J. Super. 10, 20 (App. Div. 2004). The legislative enactment need not be the "best or only method of achieving a legitimate legislative goal," and does not have to "reflect mathematical precision . . . to withstand judicial scrutiny." Ibid. Additionally, a municipal ordinance may impinge upon a property right when the "legislated

objective outweighs impairment of the property interest and the means selected bear a 'real and substantial relationship' to the desired end." Id. at 22 (quoting Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 290 (2001)).

Here, the Township has a legitimate interest in protecting the health, safety, and welfare of its residents by deterring unauthorized placement of leaves, tree branches, and other debris in the street, which leads to stormwater inlet clogging and street flooding. Because the Ordinance serves this important and legitimate governmental objective, it is a valid exercise of the Township's police power. Moreover, the Ordinance effectuates NJDEP regulations governing stormwater management and protects the public's health and safety by ensuring stormwater runoff minimizes the entry of fertilizers, pesticides, and other chemicals into waterways. In fact, the NJDEP specifically recognized implementation of registration requirements as a method for enforcing stormwater management measures.

Plaintiff further argues that while the Ordinance may bear a relationship to the Township's interest in managing stormwater runoff and ensuring the safety of public streets, the municipality could have achieved its goal through other means, such as by placing the onus on landowners to comply or by investigating each case individually. However, the Township's method for



addressing stormwater runoff need not be the best possible solution nor be mathematically precise. The creation of a list of active landscapers and their customers enables the Township to identify and punish potential violators, meet stormwater management requirements, and maintain safe streets for pedestrians, bicyclists, and motorists.

Having reviewed the record, we are satisfied the Ordinance serves a legitimate public health and safety purpose, which is achieved through reasonable means. The Ordinance is limited to the disclosure of customer addresses. The Ordinance does not require disclosure of the amounts charged by landscapers to each customer. Nor does the Ordinance require any other information untethered to identifying those landscapers who ignore the Township's leaf and debris pickup schedule.

We next consider plaintiff's argument that the Ordinance impinges upon its constitutionally protected property right. Plaintiff asserts its customer list is confidential and that registering the list with the Township is tantamount to the disclosure of a protected trade secret. Again, we disagree.

Plaintiff relies on AYR Composition, Inc. v. Rosenberg, 261 N.J. Super. 495, 504 (App. Div. 1993), in arguing that its customer list contains information constituting a confidential trade secret. However, in AYR Composition, Inc.,

we found there was a protected right to the customer list because the names and addresses of the plaintiff's customers were "not open to and ascertainable by every[]one." Ibid. (quoting Abalene Extermination Co., Inc. v. Oser, 125 N.J. Eq. 329, 332 (Ch. 1939)). For a customer list to be protected as a trade secret, there must be "a substantial measure of secrecy." See Lamorte Burns & Co., Inc. v. Walters, 167 N.J. 285, 299 (2001).

Under the facts here, we are satisfied that registering the names and addresses of plaintiff's customers does not violate a constitutionally protected property right. The identity of plaintiff's customers is not highly sensitive, secret, proprietary, or confidential to constitute a trade secret. Landscaping businesses frequently mark their service locations with flags or signage. Additionally, landscapers often park their vehicles—which prominently display their corporate logo and name—outside their customers' homes or businesses. Based on these facts, any competitor driving through the Township could discern a rival landscaper's customer information. Because landscaping customer addresses are easily ascertainable, unlike the customer list at issue in AYR Composition, Inc., the information is not confidential and, therefore, does not constitute a fundamentally protected property right.

We next consider plaintiff's contention that the Ordinance is unconstitutionally vague or overly broad because it fails to specify the additional information that may be requested by the Township's Business Administrator.

"The vagueness doctrine is 'essentially a procedural due process concept grounded in notions of fair play.'" State v. Lenihan, 427 N.J. Super. 499, 512 (App. Div. 2012) (quoting State v. Lee, 96 N.J. 156, 165 (1984)). Ibid. (quoting Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498 (1982)). "The vagueness doctrine is premised on the notion that the law must 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited,' so that he may act accordingly." State v. Stafford, 365 N.J. Super. 6, 15 (App. Div. 2003) (quoting Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)). "In determining vagueness, a common sense approach is appropriate in construing the enactment in terms of the persons who may be subject to it, and in context with its intended purpose." Ibid. (quoting Chez Sez VIII, Inc. v. Poritz, 297 N.J. Super. 331, 351 (App. Div. 1997)).

We discern nothing in the Ordinance as unconstitutionally vague or overbroad based on the commonplace meaning of the words used in the Ordinance. By requiring landscapers to submit "other pertinent information as may be required by the Business Administrator," the Ordinance does not suggest

landscapers must predict the information to be provided. Rather, the Ordinance allows the Business Administrator to request additional relevant information on a case-by-case basis. Thus, landscapers would be fully apprised of any additional information requested and could challenge the disclosure of such "pertinent information" if the information is not rationally related to the purposes of the Ordinance. Clearly, any supplemental information requested by the Township's Business Administrator must be "pertinent" to the legitimate goal of identifying landscapers who improperly place leaves and other debris in the Township's streets without adhering to the Township's pickup schedule.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION