



Integrity. Intelligence. Diligence.

May 19, 2020

Mr. Clifford B. Shepard
City Attorney
City of Maitland, Florida
2300 Maitland Center Parkway, Suite 100
Maitland, Florida 32751

VIA ELECTRONIC MAIL

Dear Mr. Shepard:

I represent the Environmental Research & Education Foundation, Inc. (“EREF”), and write regarding the City’s consideration of an ordinance to amend Maitland City Code and restrict application by certified professionals of fertilizer within the City. EREF represents professional stakeholders in Florida’s green industry and advocates for science-based local fertilizer ordinances. EREF previously corresponded with City leadership (enclosed), so you may be aware of policy and technical issues associated with the City’s existing fertilizer ordinance and proposed amendment. I would like to raise to your attention a related, ongoing legal matter.

The City’s proposed amendment would position the City similar to the City of Naples, whom EREF sued this past December in the 20th Judicial Circuit (Case No. 2019-CA-4975). EREF argues in that lawsuit that the Naples ordinance is contrary to state law because the Legislature expressly preempted local government power to regulate nutrient content and application of fertilizer at sections 576.181 and 403.9337, *Florida Statutes*. EREF seeks to have the Court invalidate the Naples ordinance and award EREF attorney fees and costs under 2019 legislation codified at section 57.112, *Florida Statutes*. Because of similarities between the City’s ordinance (if amended) and the Naples ordinance, the City may find it appropriate to defer consideration of the proposed amendment pending adjudication of the issues in the Naples lawsuit.

In any case, EREF asks that the City reconsider its decision to agenda the proposed amendment for hearing next month. EREF understands that the amendment, if approved, would become effective in January 2021; thus, new restrictions on fertilizer application would not begin until June 2021. It appears unnecessary for the City to vote on this matter an entire year in advance. The City should not unnecessarily force EREF representatives and other potentially affected professionals to choose between professional desires to publicly share regulated entity perspectives with new City Council members, and personal desires to avoid public gatherings during this ongoing public health crisis.

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I can be reached at (561) 410-7797 if you have any questions about EREF's legal position on local fertilizer ordinances. If you would like to discuss the legal and factual issues raised in the City of Naples lawsuit, I would be pleased to provide EREF's perspective.

Sincerely,

MANSON BOLVES DONALDSON VARN, P.A.

A handwritten signature in blue ink that reads "Brian Accardo". The signature is written in a cursive style with a long, sweeping flourish at the end.

Brian Accardo

Enclosures



March 13, 2020

TO: The City of Maitland, Florida

RE: City Council Agenda Item IX.3. / Ordinance – Amending Orange County Fertilizer

Dear Members of the City Council:

Thank you again for your courtesy and the opportunity to speak with you on Monday about the proposed change to your fertilizer ordinance. We were obviously disappointed with your decision to forward this to a public hearing, particularly without any indication or intention of further fact finding.

There are a number of specific things discussed during the meeting which should be clarified or corrected, some of which were addressed in the material which we already provided to you.

- ❑ It was stated that all cities in Seminole County adhere to its “no exemption” version of the ordinance. The City of Sanford, the County seat, rejected the Seminole County staff’s persistent overtures to accept its version. Having been present at that public hearing, I can personally attest to the Sanford City Council’s strong rejection of those overtures, and its enthusiastic passage of the Orange County version of the ordinance including the professional exemption.
- ❑ There was a statement that local governments can enact a ban on the sale of fertilizers. Currently, Florida statute no longer allows such bans.
- ❑ The given reason the City is pursuing this amendment is to enhance the City’s sustainability initiative. The presumption is that your initiative is a science-based endeavor. However, as indicated in our testimony, the FDEP’s peer-reviewed fertilizer study clearly indicates that summer applications of fertilizer to lawns and landscapes are not a risk for nutrient movement. If you are aware of some other comparable research refuting this conclusion, it was not apparent in your discussion, and we would appreciate knowing more about it.
- ❑ In an appeal to your common sense, making Nitrogen applications unlawful in the high-uptake growing season leaves the off-season as the only lawful time for it to be applied. It should be self-evident that nutrients applied during the low-uptake period are far more likely to migrate toward local waters when root systems are seasonally inactive, all as clearly established by the published evidence. In other words, the proposed amendment mandates risky behavior.
- ❑ In an appeal to your sense of fairness, there was no comment from the City Council on the basis for putting experienced, trained and licensed professionals on the same footing as those who act irresponsibly or out of ignorance.
- ❑ It was encouraging to hear City Council Member Reponen acknowledge our industry’s transition to a zero-Phosphorus approach, which has been the case for

many years. This confirms our assertion that the industry's evidence-based practices are light years ahead of public opinion (reaction) and, more importantly, stand in contrast to inaccurate conventional wisdoms like fertilizer blackouts that rely on repudiated cause-and-effect narratives for their appeal.

- ❑ With respect to our comments on jurisdictional chaos, City Council Member Lowndes stated that the simplicity of "no fertilizer applications" was the opposite of chaos, which is true as far as it goes. The real-time context of our comment referred to the indisputable chaos created by the existence of a multiplicity of regulatory schemes within the same watershed. Chaos is a reality when you can literally cross the street and have different rules of operation. By definition, evidence-based policy should have a single outcome. Such an outcome would emanate from the State's existing Urban Turf Rule and the clear language of Florida statute preempting formulation of fertilizers to the Florida Department of Agriculture and Consumer Services.

Members of the City Council, your eagerness to address water quality is admirable, and we certainly support your current ordinance. However, we strongly believe amending this ordinance runs counter to your goals. We reiterate our call on you to reach out to the University of Florida researchers on the FDEP study referred to in our prior communication and hear their conclusions for yourselves. Their recent testimony in Collier County, joined by the County's expert staff guidance, led the County to reject all fertilizer blackouts in their entirety.

In conclusion, we urge you to delay the consideration of this amendment subject to further fact finding. In the meantime, we have advised our stakeholders of your decision and feel certain they will have much more to ask about your justification for such an action.

Thank you for your continuing consideration.

Sincerely,

ENVIRONMENTAL RESEARCH & EDUCATION FOUNDATION



Mac Carraway, Executive Director



Issues Affecting the Development of Evidence-Based Fertilizer Policy

The following points identify important issues of evidence-based policy making related to protecting Florida's water quality. Local governments are charged with an implicit burden of developing policy based on facts, science and sober judgment, divorced of emotional, political and reactionary impulses.

- ❑ The impacts on the area's citizens, natural systems, and businesses because of nutrient loading need to be understood and addressed scientifically and are not something which can be addressed with policy based on conventional wisdom, however appealing it may seem.
- ❑ Any policy decision of this magnitude must be based on hard evidence and deserves a process of objective and deliberate public workshops and hearings.
- ❑ There is an absence of any substantive evidence that any of fertilizer blackouts in Florida, many of which have been in place for 10 years or more, have accomplished any substantive nutrient reductions. On the contrary, none have set up structured before-and-after testing to establish conclusive cause and effect. None have specifically tested for the specific signature of fertilizer among the many more common forms of Nitrogen (e.g. pet and wild animal waste, reclaimed water, sanitary sewer discharges, septic systems, atmospheric deposition, decayed vegetation, etc.). For those citing data showing general declines in nutrients or Total Nitrogen, all such declines clearly began BEFORE the implementation of the ordinances.
- ❑ The summertime blackouts depend on the upside-down proposition that it is unlawful to feed lawns and landscapes in the growing season when their need and ability to uptake nutrients is inarguably very efficient, and lawful to feed them when they are in their slower off-season growth mode when nutrients are more likely to migrate to local waters.
- ❑ After no measurable benefit from summertime blackouts, there is a need for new, collaborative and effective policy ideas. The Indian River Lagoon area is an example of the false hope of summertime fertilizer blackouts where years after lavish promises of a summertime blackout miracle, nothing has happened, and attention has instead become properly focused on sewer, septic and other large-scale infrastructure problems causing nutrient impairments, entirely consistent with recent statewide findings.
- ❑ The summertime blackouts are not supported by FDEP, FDACS, UF/IFAS or the State's water management districts.
- ❑ There continues to be an inexplicable refusal of blackout supporters to recognize the *FDEP WM869 Study* – its size, scope, authority and most importantly its unambiguous conclusions – which essentially eliminates any material contribution to

runoff from urban fertilizer applied in the active growing (summer) season. **This is the single most important piece of independent peer-reviewed research that addresses fertilizer fate from lawn fertilization, period.**

- ❑ There are documented successes in Orange County in removing impaired water bodies from their TMDL/BMAPS, all attributed to the success of a collaborative education-forward approach, versus a regulatory one.
- ❑ Florida's green industry professionals should be treated as partners – the benefits of their immense knowledge base as an asset in this mutual effort is often ignored and even disparaged. **Lumping them in with users who act irresponsibly or out of ignorance is like treating all drivers like drunk drivers. Punishing the innocent is never good public policy.**
- ❑ Education has repeatedly proven to be far more effective than regulatory approaches in reducing irresponsible behavior over the long term. Reference is made to the enormously successful water conservation education messaging undertaken by the state's water management districts (e.g. "Skip-A-Week" of off-season irrigation).

It should be noted that during the development of these points, the efforts related to the management of nutrient loads in the Chesapeake Bay were examined by EREF, with the following highlights:

- ❑ The Chesapeake Bay Total Maximum Daily Load (TMDL) is the largest nutrient TMDL in the world and serves as the gold standard for watershed nutrient management.
- ❑ The Chesapeake Bay turf fertilization rules were created by the University of Maryland and are a mirror image of Florida's Urban Turf Rule in terms of establishing limited local fertilizer application rates, and a confirmation of the *FDEP WM869 Study* that supports summertime nutrient applications.
- ❑ The Chesapeake Bay TMDL establishes that turf nutrition and turf health during the summer growing season are critical to the prevention of erosion and to the protection of the Chesapeake Bay. Erosion (the real mortal enemy of water quality) arising from nutrient-deprived turf stands and landscapes was determined to result in an increase in nutrient loading as well as in total dissolved solids.