

Where tall grass is greener – for municipal coffers

By **John M. Boehnert** - May 24, 2019 2:15 am



John M. Boehnert

“Cut that grass or lose your house!”

Most Americans aren't faced with that stark, binary choice. But then again, most Americans do not live in Dunedin, Fla.

Dunedin, pronounced DUH-nee-den, is apparently a law-and-order community, and given the way they police lawn maintenance, it is probably a tidy, little town.

What happened there to Jim Ficken, however, is a cautionary tale about governmental abuse of power. It merits particular attention for Rhode Islanders flocking to Florida as snowbirds in the winter or year-round retirees. The community in which you choose to settle can impact not only your happiness but your bank account as well.

Ficken's problems began in 2015, when he was given a warning that his grass was too tall. He mowed it.

Last May, Ficken traveled to South Carolina to settle his mother's estate. Mindful of the lawn police, he engaged a friend to cut his lawn regularly. Unfortunately, and unknown to Ficken, his friend died shortly thereafter. During Ficken's absence, the grass grew, the lawn police noticed and began fining him.

Because Ficken was a “repeat violator,” given his warning in 2015, the town fined him \$500 per day, twice the maximum fine for a first-time offender.

The city also did not provide notice to him of the accruing fines after he returned from South Carolina. The code does not require notice to repeat offenders. With notice, he could have cut the grass and stopped the daily fines.

When he was eventually served notice of the fines, they amounted to almost \$29,000. That's right, \$29,000 for not cutting his grass.

Unfortunately for Ficken, he is 69 years old, retired, has very little income, and does not have \$29,000 to pay the fines from his grass crime spree.

That is not a problem for the city. They simply voted to foreclose the liens and sell the property, effectively putting Ficken out on the street. Because his property is valued at \$125,000, after payment of the fines and costs of sale, Ficken likely will not be left with enough money to buy another house in tony Dunedin.

Fortunately for Ficken, the Institute for Justice has taken his case pro bono and they are suing Dunedin to prevent the foreclosure and to invalidate the administrative fines and lien process. Their 25-page court complaint alleges constitutional due-process and excessive-penalty violations.

The complaint notes that the city was not required to assert the highest per-diem penalty, but it did. It did not provide him notice of the fines accruing, so he could stop the meter running by cutting his grass. It failed to take into consideration his financial circumstances. It refused to reconsider the amount of the fines assessed. Also, it could have cut the grass, and charged Ficken, but this would have stopped the daily fines.

Ficken is by no means alone. Last year an elderly woman who travels much of the year was fined \$28,000 by Dunedin for property-maintenance issues.

This is just the tip of the iceberg, if one can use that phrase in referring to sunny Dunedin.

It seems the city knows a good thing when it stumbles on it. In 2007, the court complaint notes that Dunedin collected \$34,000 in code-enforcement fines. By 2017, Dunedin's total fine revenue was approximately \$870,000, of which \$703,000 was for code enforcement. And in 2018, total fine revenue for Dunedin soared to approximately \$1.2 million.

Clearly, city officials have discovered a gold mine in picking their citizens' pockets.

It is hard to look at Ficken's situation objectively and see anything other than a municipality preying on some of its citizens. Unbelievably, the mayor staunchly defended the city's actions. Can anyone say with a straight face that these excessive fines were necessary for protection of the public health, safety and welfare?

Dunedin officials will likely get a rude, if not bruising, awakening in court proceedings. Until then, if you are moving to Dunedin ... please bring your lawn mower. n

John. M. Boehnert practices real estate and environmental law in Providence.

Want to share this story? [Click Here](#) to purchase a link that allows anyone to read it on any device whether or not they are a subscriber.
