

IN THE SUPREME COURT OF OHIO

SUNSET ESTATE PROPERTIES, LLC,	)	
<i>et al.</i> ,	)	Case No.: 13-1856
	)	
Appellees,	)	On Appeal from the Medina County Court
	)	of Appeals, Ninth Appellate District
	)	
v.	)	Court of Appeals Case No.: 12CA0023-M
	)	
VILLAGE OF LODI, OHIO,	)	
	)	
Appellant.	)	

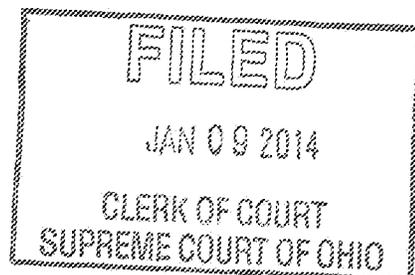
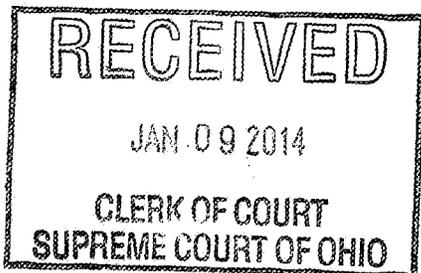
APPELLEES' MEMORANDUM IN OPPOSITION TO JURISDICTION

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**I. THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST.**

The Ninth District's opinion in this case in no way impedes a municipality's right to enforce its lawful zoning ordinances. The Ninth District's holding in this case merely prevents a municipality from using unconstitutional zoning laws to arbitrarily and selectively prevent manufactured home parks from engaging in lawful business. Appellant argues that this Court should accept jurisdiction in order to protect a municipality's right to enact and enforce zoning laws that eliminate nonconforming uses. Although such a statement suggests greater breadth and significance, the issue presented for this Court's review is, in fact, an exceedingly narrow one.

This case centers on Section 1280.05 of the Planning and Zoning Code ("L.Z.C.") of the Village of Lodi. Section 1280.05 allows a landowner to continue a nonconforming land use if the use was lawful when the Code was enacted. Under Section 1280.05, if an owner voluntarily discontinues a nonconforming use for six months, then the property owner may not reestablish the nonconforming use and any further use must comply with the L.Z.C.'s other provisions. The issue with Section 1280.05(a) is that it specifically singles out manufactured homes only by stating that a home's "absence or removal from the lot shall constitute discontinuance." In other words, if a property owner removes a single mobile home from a single lot for more than six months, then the property owner loses the right to ever rent that licensed pad again. Although the manufactured home park may continue to operate as a whole, the property owner is prevented from using that particular lot ever again.

Appellees challenged only the part of Section 1280.05(a) that unconstitutionally, arbitrarily applies to manufactured home parks as opposed to the thousands of other legally existing non-conforming uses. Appellees do not challenge a municipality's right to generally enact and enforce zoning laws, including zoning laws that eliminate nonconforming uses.

Rather, the issue in this case is limited and does not impinge on a municipality's right to enforce its generally applicable zoning laws. The Ninth District Court of Appeals invalidated Section 1280.05 based upon its "ambiguous, arbitrary, and unreasonable" provision singling out only manufactured homes. *See Sunset Estate*, 2013-Ohio-4973, at ¶18. In striking down Section 1280.05, the Ninth District did not ignore precedent that allows a municipality to prohibit a nonconforming use's expansion. The Court did not preclude a municipality from exercising its police power in enacting and enforcing zoning laws that constitutionally eliminate nonconforming uses. On the contrary, the Ninth District explicitly found that municipalities have such a power and may validly eliminate nonconforming uses, but only "where an ordinance accomplishes such a result without depriving a property owner of a vested property right." *Sunset Estate*, 2013-Ohio-4973, at ¶14 (emphasis added) (citing *Akron v. Chapman*, 160 Ohio St. 382, 386 (1953)). The Court found that Section 1280.05 did in fact infringe on Appellees' right to continue lawful business on their properties.

Also, this case does not involve an issue of public and great general interest. Section 1280.05 is nothing more than a municipality's attack on a land use which it deems undesirable. While other municipalities impose zoning restrictions precluding property owners from reestablishing nonconforming uses after a period of non-use, Appellant fails to identify even one like Lodi's that singles out manufactured home parks. In short, this appeal is unlikely to have much practical significance beyond this case's specific circumstances. Such a specific unconstitutional statute and a factually unique circumstance infrequently encountered do not merit the exercise of this Court's jurisdiction.

## II. STATEMENT OF THE CASE

### A. **Appellees' Continued Use of All Lots in Their Manufactured Home Parks is Lawful as a Prior Nonconforming Use.**

Appellees Sunset Estate Properties, LLC ("Sunset") and Meadowview Village, Inc. ("Meadowview") are manufactured home parks located in the Village of Lodi, Ohio ("Lodi"). Sunset and Meadowview are zoned in an R-2 Medium Density Residential District which permits single and double family homes. Because the R-2 District does not permit manufactured home parks, Sunset and Meadowview are nonconforming land uses.

However, Section 1280.01 permits prior nonconforming uses that existed as lawful uses prior to the current Code's enactment. Sunset and Meadowview's manufactured home parks were lawful land uses prior to enactment of the R-2 District. Sunset and Meadowview are licensed by the Ohio Manufactured Homes Commission for thirty-three (33) and forty-four (44) approved lots, respectively. The Medina County Health Department previously approved and licensed the parks.

On or about May 18, 1987, Lodi passed Ordinance No. 1679 which was later codified as Section 1280.05(a). Section 1280.05(a) provides:

Whenever a nonconforming use has been discontinued for a period of six months or more, such discontinuance shall be considered conclusive evidence of an intention to legally abandon the nonconforming use. At the end of the six-month period of abandonment, the nonconforming use shall not be re-established, and any further use shall be in conformity with the provisions of this Zoning Code. In the case of nonconforming mobile homes, their absence or removal from the lot shall constitute discontinuance from the time of absence or removal.

(emphasis added). Under Section 1280.05(a), Appellees' manufactured home parks are nonconforming land uses allowed to lawfully continue until Sunset and Meadowview voluntarily abandon the businesses. However, Lodi has interpreted Section 1280.05(a)'s abandonment

language to apply to individual manufactured home lots within the parks rather than to abandonment of the parks as a whole. Consequently, Lodi deems certain lots in Appellees' parks that have been unoccupied for more than six months as "abandoned" and thus refuses to reestablish electrical service to the lots, claiming that doing so would "expand" Appellees' nonconforming use. However, Appellees seek only to reconnect continually existing, State of Ohio licensed, and approved lots. Appellees do not seek approval to create new, additional lots.

**B. Appellees' Knowledge of Section 1280.05 is Irrelevant Because the Nonconforming Use was Permitted as a Continuation of Prior Lawful Use.**

Appellant argues that Appellees' alleged knowledge of the unconstitutional Section 1280.05 somehow makes the law less offensive. However, even if Appellees purchased the parks with knowledge of their nonconforming nature, such knowledge has no relevance to this case. Critically, the L.Z.C. prohibits expansion of the parks but does not prohibit continuation of lawful use. As stated, Appellees do not seek to expand the parks beyond the approved and licensed number of lots. Appellees only seek to continue to use the lots as prior nonconforming uses permitted by L.Z.C. Section 1280.01.

**C. The Ninth District Struck Down Section 1280.05(a) as Unconstitutional.**

On November 12, 2013, the Ninth District Court of Appeals held that Section 1280.05(a) was facially unconstitutional, in favor of Appellees. The Ninth District reasoned that Section 1280.05(a) failed to pass rational basis scrutiny, as it treated prior nonconforming uses of land with manufactured homes differently than land with other types of housing without legitimate justification. In its holding, the Ninth District reversed the Medina County trial court's decision of March 14, 2012, which had granted summary judgment to Lodi. The Court then remanded this case to the trial court to determine an appropriate remedy to compensate Appellees. Before

the trial court could determine Appellees' remedy, Appellant filed a Motion to Stay and a Memorandum in Support of Jurisdiction in this Court, taking issue with Section 1208.05's unconstitutionality and arguing that a much broader issue of general interest exists than this case actually presents. As Appellant has failed to show this Court's basis for jurisdiction under either basis, this Court should decline to exercise its jurisdiction.

### **III. ARGUMENT IN SUPPORT OF APPELLEES' POSITION**

#### **A. Jurisdictional Standard**

This Court has limited jurisdiction. The Ohio Constitution grants this Court jurisdiction over only those cases involving: (1) constitutional questions, or (2) questions of "public or great general interest." *DeRolph v. State*, 78 Ohio St.3d 193, 197-98, 677 N.E.2d 733 (1997) (citing Ohio Const. Art. IV, § 2(B)(2)(d)). A question of public or great general interest means an issue of interest to those beyond the case's parties. *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960). As Appellant fails to show that its proposition of law meets either jurisdictional basis, this Court should decline to exercise its jurisdiction.

In its Jurisdictional Memorandum, Appellant espouses the following proposition of law:

A MUNICIPAL ZONING ORDINANCE WHICH PRECLUDES A PROPERTY OWNER FROM RE-ESTABLISHING A NONCONFORMING USE AFTER A SPECIFIED PERIOD OF NONUSE DOES NOT FACIALLY VIOLATE THE DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.

Appellant's proposition of law does not involve a substantial constitutional question or present an issue of great public interest for three reasons. First, no constitutional question exists that warrants this Court's review: the Ninth District applied the correct standard to facially invalidate Section 1280.05 and thus did not create precedent that will "confuse" municipalities or lower courts. Second, the Ninth District correctly found the law to be arbitrary and unreasonable and

thus facially unconstitutional. Finally, invalidating Section 1280.05 involves no question of public or great general interest, as invalidating the Section affects only Appellant and Appellees and does not prevent municipalities from creating lawful zoning ordinances that gradually eliminate prior nonconforming uses. As no constitutional question or issue of public or great general interest exists on which to base jurisdiction, this Court should decline to exercise its jurisdiction.

**B. The Ninth District Applied the Correct Standard to Invalidate Section 1280.05(a).**

There are two methods of challenging a municipal zoning ordinance's constitutionality. A property owner may challenge either (1) the zoning ordinance's constitutionality itself; or (2) that a taking occurred because the ordinance denied him the economically viable use of his land. *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 212, 690 N.E.2d 510, 513 (1998). In challenging the ordinance's constitutionally, the challenger must show the ordinance is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare," regardless of whether it has deprived the landowner of all economically viable land uses. *Id.* (citing *Euclid v. Ambler*, 272 U.S. at 395, 47 S.Ct. at 121, 71 L.Ed. at 314). In contrast, challenging an ordinance under a takings analysis requires the challenger to show that the ordinance's application to his property has infringed on his rights to the point where no economically viable use of the land is left. *Id.* at 210.

Here, the Ninth District properly applied the correct constitutional challenge standard to invalidate Section 1280.05. The Ninth District stated the standard as such: "In a facial challenge, the presumption of constitutionality may be overcome by proof 'beyond a fair debate' that the ordinance is 'arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community.'" *Sunset Estate Props. v. Village of Lodi*,

9th Dist., No. 12CA0023-M, 2013-Ohio-4973, ¶ 13 (citing *Jaylin Investments, Inc. v. Moreland Hills*, 107 Ohio St.3d 339, 2006-Ohio-4, 839 N.E.2d 903, ¶ 11). The Court methodically examined each element of this standard, finding the ordinance “ambiguous,” *id.* at ¶¶ 20–23; “arbitrary,” *id.* at ¶¶ 24–26; and unreasonable. *See id.* at ¶ 27.

Appellant contends that the standard of review applied by the Appellate Court confused the constitutional challenge with the takings standard. However, a close reading of the Ninth District’s Opinion shows that the Court never applied the takings standard, as it did not weigh the manufactured home parks’ economic viability. Rather, the Court generally acknowledged and discussed an Attorney General Opinion about zoning ordinances and takings jurisprudence. *Id.* at ¶ 17. After finding the Attorney General’s Opinion persuasive only in its general discussion of prior nonconforming uses involving manufactured home parks, the Ninth District then engaged in its own constitutional analysis. *Id.* at ¶¶ 16–18. The Court expressly declined to address the takings issue and did not need to, as the ordinance was facially invalid. *Id.* at ¶ 28 (“we decline to address whether Lodi’s actions constitute a taking ....”).

Furthermore, the Ninth District did not utilize an as applied constitutional analysis in its decision and properly invalidated the ordinance under a facial analysis. If a zoning ordinance is deemed facially constitutional, then a court may consider whether the ordinance is invalid as applied to a particular property. *Boice v. Ottawa Hills*, 6th Dist. No. L-06-1208, 2007-Ohio-4471. Here, the Ninth District properly analyzed Section 1280.05 as to all manufactured home parks—not simply Appellees’ particular properties—and found it facially unconstitutional. Consequently, the Court had no need for an as applied constitutional analysis.

In sum, the Ninth District’s Opinion creates no confusion about the proper standard to apply in adjudging similar ordinances’ constitutional validity. The Ninth District applied the

very test that Appellant asserts is correct from *Goldberg Cos., Inc. v. Council of the City of Richmond Hts.*, 81 Ohio St.3d 207, 210, 690 N.E.2d 510 (1998). Therefore, no constitutional question exists on which this Court could base its jurisdiction.

**C. The Ninth District Properly Found Section 1280.05 Arbitrary and Unreasonable and Therefore Facially Unconstitutional.**

Any zoning resolution or ordinance will be deemed unconstitutional if it is clearly arbitrary or unreasonable and with no substantial relation to the public health, safety, morals, or general welfare. *Goldberg*, 81 Ohio St.3d at 210. As the Ninth District recognized, “Zoning is a valid function of a municipality’s police power.” *Sunset Estate Props*, 2013-Ohio-4973 at ¶ 14 (citing *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)). Appellant claims it enacted Section 1280.05 in exercising its police power and to protect property values. However, while a municipality certainly can zone, it must zone in a way that is not arbitrary or unreasonable.

Here, Lodi’s provision regarding manufactured home parks is clearly arbitrary. Significantly, the ordinance targets only manufactured home parks that constitute continuing nonconforming uses but leaves out all other types of properties in which individual units may remain vacant for some time, such as apartment buildings, duplexes, multi-office buildings, and storage unit complexes. *Id.* at ¶ 24. The Ninth District Court correctly held that such a provision applying only to a particular type of business is clearly arbitrary. *Id.*

Lodi’s provision regarding manufactured home parks is also unreasonable. Lodi’s interpretation of Section 1280.05 imposes restrictions on manufactured home parks based on abandonment of individual lots rather than abandonment of the park as a whole. The Ninth District noted the absurdity of such a provision, as the individual abandoned lots within the park then cannot be used. *Id.* at ¶ 26. Specifically in this case, each abandoned lot in Appellees’ parks cannot be reused for a conforming single family or two-family home, as a lot does not contain

enough space to conform to current zoning regulations. Even if Appellees totally abandoned their parks, expecting redevelopment within Lodi's R-2 District regulations is unreasonable given the parcels' sizes and shapes and the surrounding zoning and development patterns.

To summarize, the Section 1280.05's existing nonconforming use regulation of manufactured home parks is arbitrary and unreasonable for the following reasons: (1) it is unreasonable and arbitrary to deny a manufactured home park business, operating permissibly as a prior nonconforming use, the right to continue indefinitely by squeezing the revenue side of the business; (2) no alternative conforming permitted uses for the property may exist; and (3) the property owner is increasingly denied any reasonable use of the property because the prior nonconforming use cannot happen when the municipality refuses to reconnect utilities to individual lots within a manufactured home park.

The Ninth District's reasoning in holding Section 1280.05 arbitrary and unreasonable followed the correct constitutional standard and thus will not confuse lower courts. Rather, the Ninth District's Opinion can guide municipal legislatures in declining to enact such unconstitutional zoning codes in the future, as such ordinances singling out one type of business cannot constitutionally stand under any set of facts. Thus, as no constitutional issue exists, this Court should decline to exercise its jurisdiction.

**D. Section 1280.05(a) Prohibits a Property Owner From *Expanding* Nonconforming Uses But Not From *Continuing* Prior Nonconforming Uses.**

Appellant urges that this case presents an issue of great public interest because municipalities must be allowed to gradually eliminate nonconforming property uses. Municipalities may certainly regulate nonconforming uses but may eradicate them only by prohibiting their *expansion*. *Beck v. Springfield Twp. Bd. of Zoning Appeals*, 88 Ohio App.3d 443, 446, 624 N.E.2d 286 (9th Dist. 1993) (emphasis added). Here, Appellees do not deny that a

nonconforming manufactured home park cannot be expanded under Section 1280.05. Appellees do not seek and never sought to *expand* their manufactured home parks. Appellees simply seek to reconnect utilities to established lots approved and licensed by the State of Ohio that existed prior to the enactment of Section 1280.05.

In attempting to manufacture an issue of broader interest, Appellant points to several irrelevant cases all discussing *expansion* of nonconforming manufactured home parks. In *Beck v. Springfield Twp. Bd. of Zoning Appeals*, 88 Ohio App.3d 443, 444, 624 N.E.2d 286 (9th Dist. 1993), the property owners sought to add thirty-four brand new lots. In *Rolfes v. Bd. of Zoning Appeals of Goshen Twp.*, No. 565, 1975 WL 181093, at \*1 (1st Dist. Sept. 15, 1975), the property owners wanted to expand the park by adding thirty additional acres. Neither *Beck* nor *Rolfes* apply to this case, as Appellees are not trying to establish new lots on new land. Additionally, *Baker v. Blevins*, 162 Ohio App.3d 258, 2005-Ohio-3664, 833 N.E.2d 327 (2nd Dist.) is similarly distinguishable from the current case, as it involved a single manufactured home located on private property rather than a park with multiple lots.

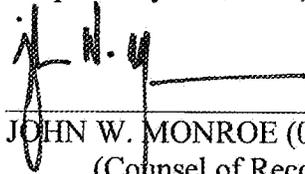
Invalidating Section 1280.05 does not create precedent that will prevent municipalities from lawfully eradicating prior nonconforming uses. Appellant argues that its zoning authority should allow it to eradicate Appellees' parks piecemeal by applying Section 1280.05's abandonment provisions to the parks' individual lots rather than the parks as a whole. The Ninth District found Lodi's logic—that absence of a single manufactured home on a single lot constitutes abandonment of the lot—to be faulty. *Id.* at ¶ 27. Appellant cites *Gem City Metal Spinning Co. v. Dayton Bd. of Zoning Appeals*, 2nd Dist., No. 22083, 2008-Ohio-181 in support of its logic. This reliance is misplaced. *Gem City* involved an entire property—not just portions of a property—used in a nonconforming way.

As such, invalidating Section 1280.05 does not create an issue of broad concern. Appellants contends that invalidating Section 1280.05 creates a broader issue—namely that municipalities’ ability to zone for the public welfare will be stalled by leaving them no way to eradicate prior nonconforming uses. However, no broader issue exists because a municipality could enact a lawful ordinance to eradicate a manufactured home park as a nonconforming use in a nondiscriminatory and non-piecemeal way. The fact that Appellant’s legislature drafted an unconstitutional ordinance does not mean that other legislatures have not and will not be able to draft lawful ordinances to eradicate nonconforming land uses for the general welfare. Therefore, as no issue of public or great general interest exists, this Court should decline jurisdiction.

**IV. CONCLUSION**

For all the above reasons, this Court should decline to accept jurisdiction. This case should be remanded to the trial court for further proceedings consistent with the Court of Appeals’ decision. Furthermore, any and all costs should be assessed to the Appellant.

Respectfully submitted,



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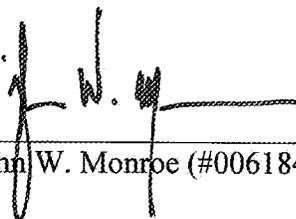
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**CERTIFICATE OF SERVICE**

I certify that a copy of *Appellees' Memorandum in Opposition to Jurisdiction* was sent to the following parties by email and regular U.S. mail on this 8<sup>th</sup> day of January, 2014:

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