

ORIGINAL

IN THE SUPREME COURT OF OHIO

SUNSET ESTATE PROPERTIES, LLC, ET AL,)	Case No. 2013-1856
)	
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.)	

**MERIT BRIEF OF APPELLEES
SUNSET ESTATE PROPERTIES, LLC AND
MEADOWVIEW VILLAGE, INC.**

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STATEMENT OF FACTS

Appellees Sunset Estate Properties, LLC and Meadowview Village, Inc. (hereinafter “Sunset” and “Meadowview” or “Appellees”) are manufactured home parks located in the Village of Lodi, Ohio (“Lodi”). (Tr. 44, Ex. 1, 2). 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. (Tr. 44, Ex. 3).

Village of Lodi Zoning Code (hereinafter “L.Z.C.”) Section 1280.01 permits prior nonconforming uses that existed as lawful uses prior to the current Code’s enactment. Appellees’ manufactured home parks were lawful land uses prior to the enactment of the R-2 District. Sunset was licensed by the Medina County Health Department for thirty-three (33) approved lots through December 31, 2011 and has previously been licensed by the Medina County Health Department for thirty-three (33) approved lots annually for the last three years. (Tr. 44, Ex. 1). Meadowview was licensed by the Medina County Health Department for forty-four (44) approved lots through December 31, 2011 and has previously been licensed by the Medina County Health Department for forty-four (44) approved lots annually for the last eight years. (Tr. 44, Ex. 2).

On or about May 18, 1987, Lodi passed Ordinance No. 1679 which was later codified as L.Z.C. 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) (Tr. 44, Ex. 4). Under Section 1280.05(a), Appellees' manufactured home parks are nonconforming land uses allowed to lawfully continue until Appellees voluntarily abandon the use. 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 deemed certain lots in Appellees' parks that have been unoccupied for more than six months as "abandoned" and thus refused to reestablish electrical service to the lots, claiming that doing so would "expand" Appellees' legally existing, nonconforming use. However, Appellees seek only to continue to use and reconnect prior nonconforming, State of Ohio licensed, approved lots. Appellees do not seek approval to create new, additional lots.

Appellant argues that Appellees' alleged knowledge of the unconstitutional Section 1280.05 somehow makes the law less offensive. Yet even if Appellees purchased the parks with knowledge of their nonconforming nature, such knowledge has no relevance on this case. It is undisputed that Lodi did not enforce Section 1280.05(a) until just a few years ago. (Tr. 44, Ex. 5, 6). Lodi also arbitrarily and unreasonably chose to enforce Section 1280.05(a) against Sunset and Meadowview only and not against other nonconforming manufactured home parks located in Lodi. (Tr. 44, Ex. 6). Lodi created a situation in which manufactured home owners purchased homes only to later find out they had no utilities and would be facing the winter months with no heat. (Tr. 44, Ex. 1). Manufactured home owners made complaints to Lodi about the arbitrary enforcement of the zoning code, but Lodi made no written adjudication of the requests to occupy pads that Lodi had deemed abandoned. (Tr. 44, Ex. 5). As such, no administrative action and/or appeal could be taken.

Lodi knew that L.Z.C. Section 1280.05(a) conflicted with State law and that it was not appropriate to discontinue the use of a lot within a manufactured home park. (Tr. 44, Ex. 6). Lodi had knowledge of an opinion by the Office of the Prosecuting Attorney, Medina County, Ohio which found L.Z.C. Section 1280.05(a) in violation of R.C. 4781.30(A) (formerly R.C. 3733.06(A)). (Tr. 44, Ex. 1, 6). Recognizing the conflict between L.Z.C. Section 1280.05(a) and State law, Mayor Dan Goodrow proposed to the Village of Lodi Council that Council should revise the ordinance to eliminate the offending portions. (Tr. 44, Ex. 6). Mayor Goodrow initially approached Village Council to eliminate Section 1280.05 as it existed so Lodi could stop the discontinuance and abandonment clause. (Tr. 44, Ex. 6). On December 3, 2009, the Lodi Zoning Committee determined it was satisfied with Section 1280.05(a) as written and Mayor Goodrow's proposed revision to the law was voted down six (6) to zero (0).

L.Z.C. Section 1280.05(a) prohibits Appellees from using and/or renting individual lots for their intended use as home sites within a manufactured home park. (Tr. 44, Ex. 1, 2). The enforcement of the non-conforming use provision (Section 1280.05) against Sunset has resulted in twenty-one (21) home sites that are not eligible to be reused; conversely, the number of sites available to be rented had been reduced to twelve (12). (Tr. 44, Ex. 3). The "effective area" of each "pad site" is approximately 2,625 sq. ft. — approximately, 35 ft. by 75 ft. (Tr. 44, Ex. 3). This "effective area" includes the actual area of each "pad," plus one-half the space between each home and the area from the front of the home to the adjacent road or driveway. (Tr. 44, Ex. 3).

Sunset is at the north end of Sunset Drive which is a dedicated public street. (Tr. 44, Ex. 3). Most of the manufactured home pads, however, front on private driveways off of Sunset Drive to the east and west. (Tr. 44, Ex. 3). While the southern end of Sunset Drive is residential

and also zoned R-2, many of the residential lots do not conform to the R-2 minimum area and width requirements. (Tr. 44, Ex. 3). The R-2 minimum requirements for single family homes require a minimum lot size of 7,260 sq. ft. and a minimum lot width of 60 ft and two-family homes require a minimum lot size of 10,890 sq. ft. and a minimum lot width of 90 ft. (Tr. 44, Ex. 3). West of the subject site, the property with frontage on West Drive is zoned and used for industrial purposes. (Tr. 44, Ex. 3). As such, Sunset is unable to use and/or rent the twenty-one (21) lots for any other purpose other than for the intended use as manufactured home lots located within a manufactured home park. (Tr. 44, Ex. 1, 3).

As currently licensed, Meadowview Village is licensed for forty-four (44) home sites; the “effective area” of each site is approximately the same size and dimensions as Sunset. (Tr. 44, Ex. 3). The enforcement of the non-conforming use provision against Meadowview had eliminated at least seventeen (17) sites from being used. (Tr. 44, Ex. 3). According to Appellees’ expert witness, David B. Hartt, a well-known and well-respected land use expert whose expert opinion here is uncontroverted, the enforcement of Section 1280.05 has reduced the maximum revenue for Sunset and Meadowview to forty-three (43%) percent of potential with no corresponding reduction in costs. (Tr. 44, Ex. 3).

L.Z.C. Section 1280.05(a) clearly renders any such lot that has been vacated useless for any practical purpose. (Tr. 44, Ex. 1, 2, 3). There is no reasonable re-use of the property for a permitted use. (Tr. 44, Ex. 3). Each manufactured home pad site cannot be reused for a conforming single family or two-family home since the properties are too small and the sites would not front on a public street. (Tr. 44, Ex. 3). Furthermore, even if Sunset and Meadowview were totally abandoned as manufactured home parks, it is unreasonable to expect redevelopment

in compliance with the R-2 regulations given the size and shape of the parcels and the surrounding zoning and development patterns. (Tr. 44, Ex. 3).

Sunset and Meadowview's lots could not be rented to another manufactured home owner and no other use could be made of the lot so long as the park remained operational. (Tr. 44, Ex. 1, 2). Also, Lodi's ordinance interferes with the Sunset and Meadowview's right to conduct its business as a whole. (Tr. 44, Ex. 1, 2).

According to Hartt, the existing non-conforming use regulation (Section 1280.05) that applies to the subject sites is arbitrary and unreasonable for the following reasons: (1) it is unreasonable and arbitrary to deny the business the right to continue indefinitely by squeezing the revenue side of the business which is the effect of enforcing Section 1280.05; (2) there are no alternative conforming permitted uses for which the property can be used; and, (3) the Sunset and Meadowview are increasingly denied any reasonable use of the property because the non-conforming use cannot be economically sustained and there are no alternative uses that are permissible. (Tr. 44, Ex. 3).

As a result, Sunset has incurred and continues to incur damages from its failure to use and/or rent the twenty-one (21) unoccupied lots. (Tr. 44, Ex. 1). Also, Meadowview has incurred and continues to incur damages from its failure to use and/or rent seventeen (17) unoccupied lots. (Tr. 44, Ex. 2). In fact, Meadowview filed a Complaint Against the Valuation of Real Property with the Medina County Board of Revision on March 30, 2011 seeking a reduction for the real estate taxes on the Property as a result of lost manufactured home lots due to Lodi's enforcement of Section 1280.05(a). (Tr. 44, Ex. 2). The Medina County Board of Revision issued a Notice of Result of Board of Revision Case and ordered the County Auditor to reduce the 2010 market value of Meadowview property by \$111,400.00. (Tr. 44, Ex. 2).

Appellees filed a Complaint for Declaratory Judgment and Mandatory Injunction against Appellant on February 4, 2011. Appellees sought to have the trial court declare L.Z.C. Section 1280.05(a) unconstitutional and that it effects a taking of Sunset and Meadowview's properties. L.Z.C. Section 1280.05(a) states that once a manufactured home in a manufactured home park disconnects from utilities for a period longer than six (6) months, the park owner loses the right to ever rent that individual lot within the manufactured home park again. Unfortunately for Lodi, this provision directly conflicts with State law which grants the sole and exclusive right to regulate manufactured home parks in Medina County to the Medina County Health Department, and now to the Ohio Manufactured Homes Commission ("OMHC").¹ Appellees also requested that the trial court issue a mandatory injunction ordering Lodi to initiate appropriation proceedings to determine the compensation to be paid to Sunset and Meadowview.

Appellant filed its Answer on March 24, 2011. On October 18, 2011, Appellees filed a Motion for Leave to File an Amended Complaint *Instante* which the trial court granted. Appellees amended their Complaint to add a Count for Petition for Writ of Mandamus to order Appellant to initiate appropriation proceedings of Appellees' properties due to the regulatory taking of their respective property rights. On November 3, 2011, Appellant filed its Answer to the Amended Complaint.

On November 21, 2011, Appellees filed their Motion for Summary Judgment. On November 22, 2011, a day after the deadline to file such a dispositive pleading, Appellant filed its own Cross-Motion for Summary Judgment. On March 14, 2012, Judge Collier denied

¹ Prior to the inception of the OMHC on August 6, 2004 through the enactment of R.C. 4781.02, the Ohio Department of Health had the exclusive jurisdiction to issue licenses to manufactured home parks on an annual basis for their operation. The OMHC now has this exclusive jurisdiction.

Appellees' Motion for Summary Judgment and granted the Summary Judgment Motion of Appellant. Appellees timely appealed that judgment to the Ninth District on April 10, 2012.

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) fails to pass rational basis scrutiny, as it treats 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 Appellant. 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 1280.05's unconstitutionality. This Court denied Appellant's Motion for Immediate Stay of Court of Appeals' Judgment on December 24, 2013. On March 12, 2014, this Court accepted Appellant's appeal.

It is quite clear that the L.Z.C. Section 1280.05 is unconstitutional. Without legitimate justification, it treated prior nonconforming uses of land with manufactured homes differently than land with other types of housing. Accordingly, the Ninth Circuit correctly found that L.Z.C. 1280.05 to be unconstitutional and its ruling should be affirmed.

ARGUMENT

Proposition of Law:

A municipal zoning ordinance, which precludes a property owner from continuing a nonconforming use after a specified period of nonuse facially violates the due process clauses of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.

- A. The Ninth District applied the correct standard in finding Section 1280.05(a) facially unconstitutional.**

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., v. City Council of Richmond Hts.*, 81 Ohio St.3d 207, 212, 690 N.E.2d 510 (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 *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114 (1926)). 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*, No. 12CA0023-M, 2013-Ohio-4973, ¶ 13 (9th Dist.) (citing *Jaylin Invs., 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 the Ohio Attorney General Opinion about zoning ordinances and takings jurisprudence. *Id.* at ¶ 17. After finding the Ohio 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. The Ninth District 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*, No. L-06-1208, 2007-Ohio-4471 (6th Dist.). 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 Ninth District 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*, 81 Ohio St.3d at 210, 690 N.E.2d 510.

B. A municipal zoning ordinance that precludes a property owner from continuing a nonconforming use after a specified period of nonuse, such as Section 1280.05(a), is facially unconstitutional.

1. Section 1280.05(a) is facially unconstitutional because it is both arbitrary and unreasonable.

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; *see also Jaylin*, 107 Ohio St.3d at 341, 2006-Ohio-4, 839 N.E.2d 903. 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, Appellant’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. Appellant claims that manufactured home parks can be distinguished from other types of buildings where individual units may remain vacant since manufactured homes may be relocated or removed independently. Yet this distinction is arbitrary in considering how manufactured home parks, apartment buildings, duplexes, and multi-office buildings all rent living or working space to a person for a designated period of time. The Ninth District correctly held that such a provision applying only to a particular type of business is clearly arbitrary. *Id.*

Appellant’s provision regarding manufactured home parks is also unreasonable. Appellant’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. Appellant argues that both properties in this case can be redeveloped in accordance with the current zoning provisions either through themselves or by

selling the property to a developer. Yet 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, L.Z.C. 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.

2. Section 1280.05(a) is unconstitutional because it is in conflict with state law.

While a municipality has the authority to enact zoning ordinances as an exercise of its police power pursuant to Article XVIII of the Ohio Constitution, the Ninth District correctly noted that authority is not absolute. *Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 12 (citing *Sheffield v. Rowland*, 87 Ohio St.3d 9, 10 (1999)). A municipal zoning ordinance may not

conflict with the general laws of Ohio and must, of course, comply with the state and federal constitutions. *Pritz v. Messer*, 112 Ohio St. 628, 637, 149 N.E. 30 (1925)

The trial court previously found that the provisions of R.C. 3733.01-08 (now R.C. 4781.26-31) and L.Z.C. Section 1280.05 were not in conflict. However, the Ohio Supreme Court has found that in determining whether an ordinance is in conflict with general laws (such as R.C. 4781.30(A) (formerly R.C. 3733.06(A))), the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (paragraph two of the syllabus). The trial court only focused on R.C. 4781.26(A) (formerly R.C. 3733.02(A)(1)), which now provides, in pertinent part:

The manufactured homes commission, . . . shall adopt, and has the exclusive power to adopt, rules of uniform application throughout the state governing the review of plans, issuance of flood plain, management permits, and issuance of licenses for manufactured home parks; the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks . . .

The statute clearly provides the OMHC with the power to adopt rules governing review of plans, issuance of licenses, the location, layout, density and construction and operation of manufactured home parks. (Emphasis added). This clearly includes land use and planning. Further evidence that the OMHC has exclusive power to adopt rules concerning land use and planning is in R.C. 4781.26(B) (formerly R.C. 3733.02(A)(2)), which the trial court ignored and which states in pertinent part:

The rules pertaining to manufactured home parks constructed after June 30, 1971, shall specify that each home must be placed on its lot to provide not less than fifteen feet between the side of one home and the side of another home, ten feet between the end of one home and the side of another home, and five feet between the ends of two homes placed end to end.

Also, the trial court completely disregarded Ohio R.C. 4781.30(A) – Authority of Licensee to Rent Space (formerly R.C. 3733.06(A) - Rights of Operators of Manufactured Home Parks), which provides:

Upon a license being issued under sections 4781.27 to 4781.29 of the Revised Code, any operator shall have the right to rent or use each lot for the parking or placement of a manufactured home or mobile home to be used for human habitation without interruption for any period coextensive with any license or consecutive licenses issued under sections 4781.27 to 4781.29 of the Revised Code.

The Revised Code clearly provides Appellees with the right to use a manufactured home located on a pad in a manufactured home park to be used for human habitation without interruption for any period coextensive with any license or consecutive licenses. The Medina County Health Department issued licenses to manufactured home parks on an annual basis. (Tr. 44, Ex. 1, 2). Here, the Medina County Health Department had issued a license to Sunset for the calendar year 2011 which allows Sunset to operate its manufactured home park with thirty-three (33) manufactured home lots through December 31, 2011. (Tr. 44, Ex. 1). The Medina County Health Department had issued a license to Meadowview for the calendar year 2011 which allowed Meadowview to operate its manufactured home park with forty-four (44) manufactured home lots through December 31, 2011. (Tr. 44, Ex. 2). As such, Appellees have the right to use their State-licensed lots within their manufactured home parks for human habitation without interruption during that one year period and for as long as the Health Department (now OMHC) issues the annual license.

Appellant's zoning ordinance is clearly in conflict with Ohio statutory law. L.Z.C. 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.

The zoning ordinance provides that if a manufactured home is absent from a nonconforming manufactured home community for only six (6) months, such manufactured home is considered conclusive evidence of an intention to legally abandon that portion of the legally existing nonconforming use. This is in direct conflict with R.C. 4781.30(A) which provides for habitation without interruption for any period coextensive with any license issued under sections R.C. 4781.27 to 4781.29. As stated previously, said licensing period by the Medina County Health Department (now OMHC) is for a one (1) year period. As such, at a minimum, Appellees have the right to provide for habitation without interruption for one (1) year and Lodi's six (6) month period requirement is in conflict with state law and is unconstitutional.

3. **Section 1280.05(a) does not authorize nonconforming uses as to individual lots.**

The Ninth District held that there is nothing in Chapter 1280 of the Lodi Zoning Code to indicate that Appellant intended to classify individual manufactured homes or manufactured home lots as the contemplated nonconforming use. *Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 21. The trial court blindly found that Ohio R.C. 713.15 does not explicitly prohibit Lodi's zoning ordinance from classifying each lot in a manufactured home park as a nonconforming use and there is no authority that prevents Lodi from doing such in its ordinance. Yet the Lodi Zoning Code does not define "lot." *Id.* at ¶ 4. Unlike R.C. 713.15, L.Z.C. 1280.01 makes no reference to "dwellings." *Id.* Section 1280.05(a) does not authorize nonconforming uses to individual lots.

This issue was addressed by the Ohio Attorney General in 2000 upon the request of the Medina County Prosecuting Attorney. The Medina County Prosecuting Attorney asked the

Office of the Attorney General for guidance on whether in the absence of a zoning ordinance to the contrary, the manufactured home park as a whole rather than individual lots within the park shall be considered the nonconforming use. The Attorney General examined the respective authority of the Department of Health and the Public Health Council under R.C. 3733.01-08 (now R.C. 4781.26-31) and local zoning authorities to regulate the manufactured home parks. While the Attorney General's opinion does not constitute binding precedent, the Ninth District agreed with its reasoning. *Id.* at ¶ 17.

By statute, villages are required to provide for nonconforming use in their zoning codes, which is governed by R.C. 713.15 and provides:

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enacting a zoning ordinance or an amendment to the ordinance, may be continued, although such use does not conform with the provisions of such ordinance or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, or for a period of not less than six months but not more than two years that a municipal corporation otherwise provides by ordinance, any future use of such land shall be in conformity with sections 713.01 to 713.15 of the Revised Code.

Ohio R.C. 713.15 does not prohibit *per se* a zoning code from categorizing each lot within a manufactured home park as a nonconforming use. 2000 Ohio Atty.Gen.Ops. No. 2000-022, 2000 WL 431368 at *27 (Apr. 8, 2000). According to Ohio's Attorney General, in order to analyze whether a local zoning authority has the ability to apply the nonconforming use exception to a lot within a manufactured home park, rather than to the manufactured home park as a whole, it would first be necessary to examine whether its zoning code authorizes or may be interpreted as authorizing such application, and then, if it does, whether such provision is constitutional. *Sunset Estate Props.*, 2013-Ohio-4973, at ¶ 16.

Appellant's ordinance does not specifically authorize an application of nonconforming uses to individual lots within the manufactured home park. The Ninth District agreed with the

Attorney General's conclusion that in the absence of a zoning resolution or ordinance to the contrary, the manufactured home park as a whole, rather than individual lots within the park, shall be considered the nonconforming use. *Id.* at paragraph two of the syllabus.

Appellant knew Section 1280.05(a) conflicted with State law and it was not appropriate to discontinue the use of a lot within a manufactured home park. (Tr. 44, Ex. 6). Recognizing the conflict between the L.Z.C. Section 1280.05(a) and State law, Mayor Dan Goodrow proposed to the Village of Lodi Council that they revise the ordinance to eliminate the clause. (Tr. 44, Ex. 6). Mayor Goodrow approached Village Council to eliminate Section 1280.05 as it existed so Lodi could stop the discontinuance and abandonment clause. (Tr. 44, Ex. 6). However, on December 3, 2009, the Village of Lodi Zoning Committee determined they were satisfied with Section 1280.05(a) as written and it was voted down six to zero to recommend legislative actions to Village Council.

Second, municipalities may regulate nonconforming uses, but may only eradicate them by prohibiting their *expansion*. (Emphasis added). *Beck v. Springfield Twp. Bd. of Zoning Appeals*, 88 Ohio App.3d 443, 446, 624 N.E.2d 286 (9th Dist. 1993). Appellant points to several irrelevant cases, all discussing *expansion* of nonconforming manufactured home parks as purported evidence of instances where courts have recognized individual manufactured homes or lots as separate nonconforming uses. In *Beck v. Springfield Twp. Bd. of Zoning Appeals*, the property owners sought to add thirty-four brand new lots. 88 Ohio App.3d at 444, 624 N.E.2d at 287. In *Rolfes v. Bd. of Zoning Appeals of Goshen Twp.*, the property owners wanted to expand the park by adding thirty additional acres. 1st Dist. Hamilton No. 565, 1975 WL 181093, at *1 (Sept. 15, 1975). Additionally, *Baker v. Blevins*, 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. 162 Ohio App.3d 258, 2005-Ohio-3664, 833 N.E.2d 327 (2d Dist.).

Neither *Beck* nor *Rolfes* apply to this case, as Appellees are not trying to establish new lots on new land. Appellees do not seek to expand by adding brand new lots or by adding any additional acreage to their nonconforming use. Appellees do not seek and never sought to *expand* their manufactured home parks. Rather, Appellees simply aim to reconnect utilities to established lots, approved and licensed by the State of Ohio that existed prior to the enactment of Section 1280.05—something neither *Beck* nor *Rolfes* addresses. *Baker* does not deal with multiple lots, such as Appellees have on their properties, but with one manufactured home on private property.

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. *Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 27. The appellate court noted that Appellant has attempted to restrain manufactured home park owners' use of their properties by creating a situation that effectively extinguishes the nonconforming use of the properties on a piecemeal basis. *Id.* at ¶ 27. Rather than the parks abandoning their nonconforming use of the land as manufactured home parks, Appellant has caused the abandonment of pieces within the whole, “systematically squeezing the life out of the parks' businesses in an attempt to slowly extinguish the nonconforming use.” *Id.*

Lastly, there is authority for the proposition that even though no manufactured home occupies a lot within the manufactured home park for over six (6) months, the lot will not cease

to be a nonconforming use if utility connections remain. *Village of Lodi v. Ward*, 9th Dist. Medina No. 1918, 1991 WL 38042, at *2 (Mar. 20, 1991); *See also Schreiner v. Russell Twp. Bd. of Trustees*, 60 Ohio App. 3d 152, 156, 573 N.E.2d 1230 (11th Dist. 1990) (the presence of streets and utilities argued against the contention that the lots in question “were merely vacant and unused real estate,” and the trial court correctly determined the lots had a nonconforming use). The *Ward* Court determined that because the electric, sewer, and water connections remained intact at the lot sites, it precluded a discontinuance of the nonconforming use, even though the lots were not occupied by manufactured homes for more than six (6) months. *Ward*, 1991 WL 38042, at *2.

In the instant action, Appellees’ lots, which have been unoccupied for a period of six months, have both water and sewer lines that have remained intact. (Tr. 44, Ex. 1, 2). There is also the presence of a functioning road or private drive that goes into each of the lots located within Sunset and Meadowview’s properties. (Tr. 44, Ex. 6). The Ninth District, in referencing the opinion of the Ohio Attorney General, noted “the accessibility to the lots and other improvements the park operator is required to provide, as well as remaining utility connections” in finding a lack of proof that the nonconforming use had been discontinued. *See Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 17. As such, even though no manufactured home has occupied a lot within either of Appellees’ properties in question for over six (6) months, the lots have not ceased to be a nonconforming use since the utilities remain intact and there still exists a functioning road or private drive for each of the lots.

C. Even if Section 1280.05(a) is not facially unconstitutional, it is unconstitutional as applied to individual lots.

Any zoning resolution or ordinance will be deemed to be unconstitutional if it is clearly arbitrary or unreasonable, with no substantial relation to the public health, safety, morals, or

general welfare. *Euclid*, 272 U.S. at 395, 47 S.Ct. 114; *Goldberg*, 81 Ohio St.3d at 210, 690 N.E.2d 510.

The Ninth District cited to *Akron v. Chapman*, which held that

[T]he right to continue to use one's property in a lawful business and in a manner which does not constitute a nuisance and which was lawful at the time such business was established is within the protection of Section 1, Article XIV, Amendments, United States Constitution, and Section 16, Article I of the Ohio Constitution, providing that no person shall be deprived of life, liberty, or *property* without due process of law.

(Emphasis sic). *Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 14, citing *Akron v. Chapman*, 160 Ohio St. 382, 382, 116 N.E.2d 697, 697 (1953) (paragraph two of the syllabus). The *Chapman* court went onto note that property contemplates not only ownership and possession, but the substantial right of unrestricted use, enjoyment, and disposal— a right that encompasses *the right to continue a lawful business* on that property. (Emphasis added). *Id.*, citing *Chapman*, 160 Ohio St. at 388, 116 N.E.2d 697.

A local zoning resolution or ordinance must comport with constitutional guarantees, and may not deprive the owner or operator of a manufactured home park of the economically viable use of his land without just compensation. 2000 Ohio Atty.Gen.Ops., 2000 WL 431368 at *39. According to the Ohio Attorney General's opinion, an ordinance or resolution that denies the owner or operator of a manufactured home park the ability to rent a lot within the park to a new home owner after the lot has been vacant for a time longer than that allowed for reestablishment of a nonconforming use, even though the park as a whole is an ongoing concern, would be of *questionable validity*. (Emphasis added). *Id.*

Sunset and Meadowview are located in a district zoned R-2 Medium Density Residential District, which permits single family and two-family homes. (Tr. 44, Ex. 3). Since the R-2 District does not permit manufactured home parks, the subject parks are non-conforming uses in

the R-2 District. (Tr. 44, Ex. 3). The uncontroverted evidence is that the non-conforming use provisions are intended to be used sparingly when a use on a parcel is completely incompatible with the prevailing use and zoning characteristics of the surrounding area. (Tr. 44, Ex. 3). The intention is, over time, that such land use will be replaced with a conforming use consistent with the community's planning and zoning objectives. (Tr. 44, Ex. 3).

Hartt determined that there are three (3) fundamental principles governing nonconforming uses: (1) the *non-conforming use may continue indefinitely* as long as the *use or business* remains active – and the businesses premise is not vacated in the requisite time to satisfy the abandonment criteria; (2) as long as such non-conforming use continues, there is no public infringement on the property owner's ability to continue to carry out its normal business practices; and, (3) the zoning on the property does not preclude the reuse of the property with a conforming use – from either a regulatory or economic perspective. (Tr. 44, Ex. 3).

Hartt concluded that the Lodi non-conforming provision in Section 1280.05 does not comport with any of these principles. (Tr. 44, Ex. 3). First, each manufactured home park is considered a single business, with each home site being a component part of the business - a rental unit. (Tr. 44, Ex. 3). As the Ninth District stated, “the same business model is recognized in apartment buildings, duplexes, multi-office buildings, storage unit complexes and the like.” *Sunset Estate Props.*, 2013-Ohio-4973 at ¶ 24. The Ninth District further noted that L.Z.C. Section 1280.05(a) makes no provision for “delimiting the nonconforming use of any other type of business in which individual units on the property remain vacant and are not utilized within the scope of the nonconforming use.” *Id.* The non-conforming use provisions were never intended to interfere or prevent re-occupancy of tenant spaces in any of the other examples. (Tr. 44, Ex. 3). Only in the cases of absence or removal of manufactured homes

from portions of the park property does Appellant attempt to extinguish the nonconforming use of the property on a piecemeal basis. *Id.* The Ninth District correctly concluded that this creates an arbitrary result. *Id.*

Second, the effect of the Lodi provision unreasonably reduces potential revenue with each site that is removed from leasing (revenue) while the costs of operating the business are not necessarily reduced proportionally. (Tr. 44, Ex. 3). By refusing to provide utility services via utility lines and systems that remain intact, the Ninth District recognized that Appellant has forced the abandonment of various lots, systematically squeezing the life out of Appellees' business. *Id.* at ¶ 26. To slowly squeeze revenue from the business and reduce it to an unprofitable, or even potentially bankrupt status, is unreasonable from a planning and zoning perspective. (Tr. 44, Ex. 3).

Third, according to Hartt, there is no reasonable re-use of the property for a permitted use. (Tr. 44, Ex. 3). Appellant argues that both properties can be redeveloped with residential homes in accordance with the current zoning either through themselves or by selling the property. Yet Appellant ignores the fact that each manufactured home pad site cannot be reused for a conforming single family or two-family home since the properties are too small and the sites would not front on a public street. (Tr. 44, Ex. 3). The "effective area" of each "pad site" for both Sunset and Meadowview is approximately 2,625 sq. ft. – approximately, 35 ft. by 75 ft. (Tr. 44, Ex. 3). This "effective area" includes the actual area of each "pad," plus one-half the space between each home and the area from the front of the home to the adjacent road or driveway. (Tr. 44, Ex. 3). The R-2 minimum requirements for single family homes require a minimum lot size of 7,260 sq. ft. and a minimum lot width of 60 ft and two-family homes require a minimum lot size of 10,890 sq. ft. and a minimum lot width of 90 ft.

(Tr. 44, Ex. 3). Furthermore, even if Sunset and Meadowview were totally abandoned, it is unreasonable to expect redevelopment in compliance with the R-2 regulations given the size and shape of the parcels and the surrounding zoning and development patterns. (Tr. 44, Ex. 3).

Therefore, the existing non-conforming use regulation, set out in L.Z.C. Section 1280.05, that applies to the subject sites is arbitrary and unreasonable for the following reasons: (1) it unreasonable and arbitrary to deny the business the right to continue indefinitely by squeezing the revenue side of the business, which is the effect of enforcing Section 1280.05; (2) there are no alternative conforming permitted uses to which the property can be used; and, (3) Appellees are increasingly denied any reasonable use of the property because the non-conforming use cannot be economically sustained and there are no alternative uses that are permissible. (Tr. 44, Ex. 3).

Appellant's ordinance unequivocally prevents Appellees from the economically viable use of their property without just compensation. L.Z.C. Section 1280.05(a) prohibits Sunset from using and/or renting the twenty-one (21) lots for any other purpose other than for the intended use as a manufactured home park and Meadowview is prohibited from using and/or renting seventeen (17) lots for any other purpose other than for the intended use as a manufactured home park. (Tr. 44, Ex. 1, 2, 3).

As a result, Appellees have incurred and continue to incur damages from their failure to use and/or rent their respective unoccupied lots. (Tr. 44, Ex. 1). Even the Medina County Board of Revision issued a Notice of Result of Board of Revision Case and ordered the County Auditor to reduce the real estate taxes on the Meadowview property by \$111,400.00 due to the decrease

in revenue. (Tr. 44, Ex. 2). The evidence is overwhelmingly clear that the L.Z.C. Section 1280.05(a) provision as applied to individual lots is unconstitutional.

CONCLUSION

A municipal ordinance, which precludes a property owner from continuing a nonconforming use after a specified period of nonuse facially violates the due process clauses of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution. The Ninth District was correct in reversing the judgment of the Medina County Court of Common Pleas for the following reasons.

First, Section 1280.05(a) is arbitrary and unreasonable and therefore, facially unconstitutional. The Ninth District applied the correct standard in finding Section 1280.05(a) unconstitutional. Its reasoning in holding Section 1280.05 arbitrary and unreasonable followed the correct constitutional standard and thus will not confuse lower courts.

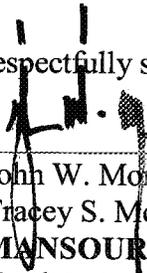
Second, it is unconstitutional because it is in direct conflict with Ohio R.C. 4781.30(a), which allows Appellees the right to use a manufactured home for human habitation without interruption for a one (1) year period.

Third, Section 1280.05(a) does not authorize nonconforming uses as to individual lots. Even though Appellees have lots which have had no manufactured home on them for over six (6) months, the lots have not ceased to be a nonconforming use.

Lastly, even if Section 1280.05(a) is not facially unconstitutional, Section 1280.05(a) is unconstitutional as applied to individual lots because it deprives Appellees of the economically viable use of their property without just compensation.

For the foregoing reasons, this case should be remanded to the trial court for further proceedings consistent with the Court of Appeals' decision. Any and all costs should be assessed to the Appellant.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Appellees' Brief was served upon the following by U.S. ordinary mail this 25th day of June, 2014:

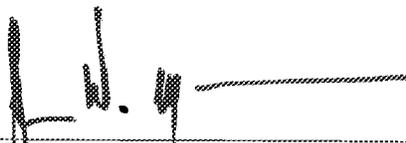
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Baldwin's Ohio Revised Code Annotated
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
General Provisions

R.C. § 4781.02

4781.02 Members; appointment; removal; vacancies

Effective: September 10, 2012
Currentness

(A) There is hereby created the manufactured homes commission which consists of nine members, with three members appointed by the governor, three members appointed by the president of the senate, and three members appointed by the speaker of the house of representatives.

(B)(1) Commission members shall be residents of this state, except for members appointed pursuant to divisions (B)(3)(b) and (B)(4)(a) of this section. Members shall be selected from a list of persons the Ohio manufactured homes association, or any successor entity, recommends, except for appointments made pursuant to division (B)(2) of this section.

(2) The governor shall appoint the following members:

(a) One member to represent the board of building standards, who may be a member of the board or a board employee not in the classified civil service, with an initial term ending December 31, 2007;

(b) One member who is registered as a sanitarian in accordance with Chapter 4736. of the Revised Code, has experience with the regulation of manufactured homes, and is an employee of a health district described in section 3709.01 of the Revised Code;

(c) One member whose primary residence is a manufactured home, with an initial term ending December 31, 2006.

(3) The president of the senate shall appoint the following members:

(a) Two members who are manufactured housing installers who have been actively engaged in the installation of manufactured housing for the five years immediately prior to appointment, with the initial term of one installer ending December 31, 2007, and the initial term of the other installer ending December 31, 2005.

(b) One member who manufactures manufactured homes in this state or who manufactures manufactured homes in another state and ships homes into this state, to represent manufactured home manufacturers, with an initial term ending December 31, 2006.

(4) The speaker of the house of representatives shall appoint the following members:

(a) One member who operates a manufactured or mobile home retail business in this state to represent manufactured housing dealers, with an initial term ending December 31, 2007;

(b) One member who is a manufactured home park operator or is employed by an operator, with an initial term ending December 31, 2005;

(c) One member to represent the Ohio manufactured home association, or any successor entity, who may be the president or executive director of the association or the successor entity, with an initial term ending December 31, 2006.

(C)(1) After the initial term, each term of office is for four years ending on the thirty-first day of December. A member holds office from the date of appointment until the end of the term. No member may serve more than two consecutive four-year terms.

(2) Any member appointed to fill a vacancy that occurs prior to the expiration of a term continues in office for the remainder of that term. Any member continues in office subsequent to the expiration date of the term until the member's successor takes office or until sixty days have elapsed, whichever occurs first.

(3) A vacancy on the commission does not impair the authority of the remaining members to exercise all of the commission's powers.

(D)(1) The governor may remove any member from office for incompetence, neglect of duty, misfeasance, nonfeasance, malfeasance, or unprofessional conduct in office.

(2) Vacancies shall be filled in the manner of the original appointment.

CREDIT(S)

(2012 H 487, eff. 9-10-12; 2009 H 1, eff. 7-1-10; 2004 S 102, eff. 8-6-04)

R.C. § 4781.02, OH ST § 4781.02

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.26
Formerly cited as OH ST § 3733.02

4781.26 Manufactured homes commission to make rules and
determine compliance with standards; inspection contracts

Currentness

(A) The manufactured homes commission, subject to Chapter 119. of the Revised Code, shall adopt, and has the exclusive power to adopt, rules of uniform application throughout the state governing the review of plans, issuance of flood plain management permits, and issuance of licenses for manufactured home parks; the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks; and notices of flood events concerning, and flood protection at, those parks. The rules pertaining to flood plain management shall be consistent with and not less stringent than the flood plain management criteria of the national flood insurance program adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended. The rules shall not apply to the construction, erection, or manufacture of any building to which section 3781.06 of the Revised Code is applicable.

(B) The rules pertaining to manufactured home parks constructed after June 30, 1971, shall specify that each home must be placed on its lot to provide not less than fifteen feet between the side of one home and the side of another home, ten feet between the end of one home and the side of another home, and five feet between the ends of two homes placed end to end.

(C) The manufactured homes commission shall determine compliance with the installation, blocking, tiedown, foundation, and base support system standards for manufactured housing located in manufactured home parks adopted by the commission pursuant to section 4781.04 of the Revised Code. All inspections of the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a manufactured home park that the commission conducts shall be conducted by a person the manufactured homes commission certifies pursuant to section 4781.07 of the Revised Code.

(D) The manufactured homes commission may enter into contracts for the purpose of fulfilling the commission's annual inspection responsibilities for manufactured home parks under this chapter. Boards of health of city or general health districts shall have the right of first refusal for those contracts.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

Notes of Decisions (13)

R.C. § 4781.26, OH ST § 4781.26

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.27
Formerly cited as OH ST § 3733.03

4781.27 Licenses; transfers; inspections; fire protection

Effective: September 10, 2012
Currentness

(A)(1) On or after the first day of December, but before the first day of January of the next year, every person who intends to operate a manufactured home park shall procure a license to operate the park for the next year from the manufactured homes commission. If the applicable license fee prescribed under section 4781.28 of the Revised Code is not received by the commission by the close of business on the last day of December, the applicant for the license shall pay a penalty equal to twenty-five per cent of the applicable license fee. The penalty shall accompany the license fee. If the last day of December is not a business day, the penalty attaches upon the close of business on the next business day.

(2) No manufactured home park shall be maintained or operated in this state without a license.

(3) No person who has received a license, upon the sale or disposition of the manufactured home park, may have the license transferred to the new operator. A person shall obtain a separate license to operate each manufactured home park.

(B) Before a license is initially issued and annually thereafter, or more often if necessary, the commission shall cause each manufactured home park to be inspected for compliance with sections 4781.26 to 4781.35 of the Revised Code and the rules adopted under those sections. A record shall be made of each inspection on a form prescribed by the commission.

(C) Each person applying for an initial license to operate a manufactured home park shall provide acceptable proof to the commission that adequate fire protection will be provided and that applicable fire codes will be adhered to in the construction and operation of the park.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

Notes of Decisions (4)

R.C. § 4781.27, OH ST § 4781.27

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.28
Formerly cited as OH ST § 3733.04

4781.28 Annual fees; distribution

Effective: September 29, 2013
Currentness

The manufactured homes commission may charge a fee for an annual license to operate a manufactured home park. The fee for a license shall be determined in accordance with section 4781.27 of the Revised Code and shall include the cost of licensing and all inspections.

Any fees collected shall be transmitted to the treasurer of state and shall be credited to the manufactured homes commission regulatory fund created in section 4781.54 of the Revised Code and used only for the purpose of administering and enforcing sections 4781.26 to 4781.35 of the Revised Code and the rules adopted thereunder.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2012 H 487, eff. 9-10-12)

Notes of Decisions (1)

R.C. § 4781.28, OH ST § 4781.28

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

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Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.29
Formerly cited as OH ST § 3733.05

4781.29 Powers over license as result of noncompliance with rule

Effective: September 10, 2012
Currentness

The manufactured homes commission may refuse to grant, may suspend, or may revoke any license granted to any person for failure to comply with sections 4781.26 to 4781.35 of the Revised Code or with any rule adopted under section 4781.26 of the Revised Code.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

R.C. § 4781.29, OH ST § 4781.29

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Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.30
Formerly cited as OH ST § 3733.06

4781.30 Authority of licensee to rent space

Effective: September 10, 2012
Currentness

(A) Upon a license being issued under sections 4781.27 to 4781.29 of the Revised Code, any operator shall have the right to rent or use each lot for the parking or placement of a manufactured home or mobile home to be used for human habitation without interruption for any period coextensive with any license or consecutive licenses issued under sections 4781.27 to 4781.29 of the Revised Code.

(B) No operator of a manufactured home park shall sell individual lots in a park for eight years following the issuance of the initial license for the park unless, at the time of sale, the park fulfills all platting and subdivision requirements established by the political subdivision in which the park is located, or the political subdivision has entered into an agreement with the operator regarding platting and subdivision requirements and the operator has fulfilled the terms of that agreement.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

Notes of Decisions (3)

R.C. § 4781.30, OH ST § 4781.30

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.301
Formerly cited as OH ST § 3733.07

4781.301 Fees to be exclusive

Effective: September 10, 2012
Currentness

Fees authorized or charged under sections 4781.31, 4781.32, and 4781.28 of the Revised Code are in lieu of all license and inspection fees on or with respect to the operation or ownership of manufactured home parks within this state, except that the licenser may charge additional reasonable fees for the collection and bacteriological examination of any necessary water samples taken from any such park.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

Notes of Decisions (2)

R.C. § 4781.301, OH ST § 4781.301
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Title XLVII. Occupations--Professions (Refs & Annos)
Chapter 4781. Manufactured Homes Commission (Refs & Annos)
Manufactured Home Parks

R.C. § 4781.31
Formerly cited as OH ST § 3733.021

4781.31 Approval of development plans

Effective: September 10, 2012
Currentness

(A) No person shall cause development to occur within any portion of a manufactured home park until the plans for the development have been submitted to and reviewed and approved by the manufactured homes commission. This division does not require that plans be submitted to the commission for approval for the replacement of manufactured or mobile homes on previously approved lots in a manufactured home park when no development is to occur in connection with the replacement. Within thirty days after receipt of the plans, all supporting documents and materials required to complete the review, and the applicable plan review fee established under division (D) of this section, the commission shall approve or disapprove the plans.

(B) Any person aggrieved by the commission's disapproval of a set of plans under division (A) of this section may request a hearing on the matter within thirty days after receipt of the commission's notice of the disapproval. The hearing shall be held in accordance with Chapter 119. of the Revised Code. Thereafter, the disapproval may be appealed in the manner provided in section 119.12 of the Revised Code.

(C) The commission shall establish a system by which development occurring within a manufactured home park is inspected or verified in accordance with rules adopted under section 4781.26 of the Revised Code to ensure that the development complies with the plans approved under division (A) of this section.

(D) The commission shall establish fees for reviewing plans under division (A) of this section and conducting inspections under division (C) of this section.

(E) The commission shall charge the appropriate fees established under division (D) of this section for reviewing plans under division (A) of this section and conducting inspections under division (C) of this section. All such plan review and inspection fees received by the commission shall be transmitted to the treasurer of state and shall be credited to the occupational licensing and regulatory fund created in section 4743.05 of the Revised Code. Moneys so credited to the fund shall be used only for the purpose of administering and enforcing sections 4781.26 to 4781.35 of the Revised Code and rules adopted under those sections.

(F) Plan approvals issued under this section do not constitute an exemption from the land use and building requirements of the political subdivision in which the manufactured home park is or is to be located.

CREDIT(S)

(2012 H 487, eff. 9-10-12)

Notes of Decisions (2)

R.C. § 4781.31, OH ST § 4781.31

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

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