IN THE SUPREME COURT OF OHIO
2013-1856

SUNSET ESTATE PROPERTIES, LLC, ET AL,	)	On Appeal from the Medina County Court of Appeals, Ninth Appellate District
Appellees,	)	Court of Appeals Case No. 12CA0023-M
vs.	)	
VILLAGE OF LODI, OHIO,	)	
Appellant.	)	

REPLY BRIEF OF APPELLANT VILLAGE OF LODI

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I. INTRODUCTION

Meadowview and Sunset ask this Court to hold that "[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." (Appellees' Br. 23.) If Sunset and Meadowview's proposition of law is adopted, it will signify the end of, and wholly eradicate, nonconforming-use law that has existed in this state for more than sixty years. *See Akron v. Chapman*, 160 Ohio St. 382, 116 N.E.2d 697 (1953). Under this law, "[u]ses which do not conform to valid zoning legislation may be regulated, and even girded to the point that they wither and die." *Columbus v. Union Cemetery Assn.*, 45 Ohio St.2d 47, 49, 341 N.E.2d 298 (1976), *citing Chapman* at paragraph one of the syllabus, *Curtiss* v. *Cleveland*, 170 Ohio St. 127, 163 N.E.2d 682 (1959), *and Davis* v. *Miller*, 163 Ohio St. 91, 95-97, 126 N.E.2d 49 (1955) (Taft, J., concurring).

Notwithstanding the disfavored status of nonconforming uses, Meadowview and Sunset advocate for the affirmance of the Ninth District Court of Appeal's decision which invalidated as facially unconstitutional L.Z.C. 1280.05 (a)—a municipal ordinance which was enacted in conformity with R.C. 713.15 and governs the elimination of nonconforming uses within the Village of Lodi. In support of their position, Meadowview and Sunset employ the same tortured analysis as the Ninth District, using a convoluted mixture of standards wholly irrelevant to the singular issue of whether the ordinance is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. The faithful application of this standard readily establishes the facial constitutionality of the ordinance. If permitted to stand, the Ninth District's decision will set a dangerous and utterly confusing

precedent for both courts and litigants; consequently, it must be reversed and judgment entered in favor of Lodi.

II. LAW AND ARGUMENT

A. THE NINTH DISTRICT DID NOT APPLY THE CORRECT STANDARD IN INVALIDATING L.Z.C. 1280.05(a) AS FACIALLY UNCONSTITIONAL.

The United States Supreme Court and this Court have consistently applied the test set forth in *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 71 L.Ed. 303 (1926) to determine the constitutionality of a zoning ordinance. Under this test, a zoning ordinance is constitutional unless its provisions are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Id.* This standard has been reaffirmed in a line of cases decided by this Court, including: *Jaylin Invests., Inc. v. Moreland Hills*, 107 Ohio St.3d 339, 2006-Ohio-4, 839 N.E.2d 903, ¶ 13; *Shemo v. Mayfield Hts.*, 88 Ohio St.3d 7, 9, 722 N.E.2d 1018 (2000); *and Goldberg Cos., Inc. v. Council of Richmond Hts.*, 81 Ohio St.3d 207, 690 N.E.2d 510 (1998), syllabus. The analysis under this test is narrow and has a "single criterion," specifically whether the ordinance is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. *Shemo* at 9.

Rather than applying this well-established standard, the Ninth District used a host of irrelevant considerations to hold the subject ordinance facially unconstitutional. These included whether Lodi's actions were authorized by the ordinance (¶¶21-27 [Appx. 0012 – 0016]), the legitimacy of the ordinance under home-rule principles (¶15 [Appx. 0010]), and whether the ordinance constituted a taking of their properties (¶¶17, 26 [Appx. 0011, 0015]). *See Sunset Estate Properties, LLC v. Lodi,* 9th Dist. Medina No. 12CA0023-M, 2013-Ohio-4793 [Appx.

0004 – 0018]. The Ninth District's analysis was neither narrow in scope nor deferential in nature. These improper considerations led the Ninth District to erroneously deem L.Z.C. 1280.05(a) unconstitutional on its face.

Meadowview and Sunset's arguments suffer from the same deficiencies. They primarily focus on the alleged loss of revenue from their properties due to the zoning ordinance. (*See* Appellees' Br. 11.) Again, such considerations are irrelevant to a facial constitutional challenge. Meadowview and Sunset also assert that the Ninth District's opinion will inform municipalities that "singling out one type of business cannot constitutionality stand under any set of facts." (*Id.*) This too is fundamentally inconsistent with the standard for a facial constitutional challenge established by this Court. By their nature, zoning ordinances and resolutions "single out" particular types of uses when the legislative bodies decide what should be permitted uses, conditionally permitted uses, and prohibited uses. In addition, Meadowview and Sunset overlook the fact that L.Z.C. 1280.05(a) regulates all types of properties, not just mobile homes. Sunset and Meadowview's arguments are simply erroneous, and unfortunately, the Ninth District used these irrelevant and legally unjustified arguments to find that this zoning ordinance was facially unconstitutional.

The fact is that Lodi, and any other political subdivision, when enacting or amending its zoning laws, has a right and a duty to make legislative determinations about what types of uses belong in particular zoning districts. Moreover, protecting property values and encouraging the development of surrounding properties are permissible goals of zoning legislation. *See Clark v. Woodmere*, 28 Ohio App.3d 66, 68, 502 N.E.2d 222 (8th Dist.1995) (stating that "economic considerations related to increased aesthetic values" is a permissible objective for a zoning ordinance); *see also Cent. Motors Corp. v. Pepper Pike*, 73 Ohio St.3d 581, 585, 653 N.E.2d 639

(1995) (stating that courts have "consistently recognized that a municipality may properly exercise its zoning authority to preserve the character of designated areas"). By gradually eliminating all nonconforming uses throughout the Village of Lodi, L.Z.C. 1280.05(a) unquestionably is rationally related to those goals. Even the Ninth District conceded this fact by stating that this ordinance did "address a valid public interest." *Sunset Estate* at ¶ 24 [Appx. 0014]. Accordingly, Meadowview and Sunset have not met their burden of proving beyond fair debate that L.Z.C. 1280.05(a) has no relational relationship to a legitimate government purpose.

B. L.Z.C. 1280.05(a) IS NOT UNCONSTITUTIONAL AS APPLIED TO MEADOWVIEW'S AND SUNSET'S PROPERTIES.[1]

A zoning ordinance can be held unconstitutional as applied only if the party challenging the ordinance can demonstrate, beyond fair debate, that the ordinance is "clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community" as applied to a particular property. *Jaylin Invests.*, 2006-Ohio-4, at ¶ 11. Rather than use this standard, Meadowview and Sunset argue that "Section 1280.05(a) is unconstitutional as applied to individual lots because it deprives [them] of the economically viable use of their property without just compensation." (Appellees' Br. 23.) This Court has flatly rejected consideration of the economic viability of the subject property in connection with an "as applied" constitutional challenge. *See Goldberg Cos.*, 81 Ohio St.3d at 213-14. Economic viability of the subject property is relevant only when a party alleges that the zoning constitutes an unconstitutional taking. *Id.*; *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *State ex rel. Shelly Materials, Inc. v. Clark*

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[1] Although the Ninth District did not determine whether the trial court properly concluded that L.Z.C. 1280.05(a) was constitutional as applied or whether it gave rise to a compensable taking, Lodi has urged this Court to address these issues in order to provide guidance to Ohio courts and litigants by comparing how these separate and distinct standards should be applied to the same municipal ordinance. (*See* Appellant's Br. 22.)

Cty. Bd. of Commrs., 115 Ohio St.3d 337, 2007-Ohio-5022, 875 N.E.2d 50, ¶24. Thus, Meadowview and Sunset improperly have employed a takings analysis to support its contention that L.Z.C. 1280.05(a) is unconstitutional as applied.[2]

In addition to using the wrong standard, Meadowview and Sunset rely almost exclusively on the testimony of their expert witness, David Hartt, to support their arguments on nonconforming-use law. For example, based on his testimony regarding the "fundamental principles governing nonconforming uses," Meadowview and Sunset assert that it is "unreasonable and arbitrary to deny the business the right to continue *indefinitely* * * * ." (Emphasis added.) (Appellees' Br. 20, 22.) This, however, is exactly what the law permits municipalities to do to nonconforming uses: eradicate them by regulating the nonconforming uses on a piecemeal basis until they "wither and die." *See Brown v. Cleveland,* 66 Ohio St.2d 93, 96, 420 N.E.2d 103 (1981). It simply is irrelevant what Hartt decided were the "fundamental principles governing conforming uses"; the only opinion that matters is that of this Court and that has already been established.

In a similar vein, Meadowview and Sunset cite Hartt's declaration as "uncontroverted evidence" that nonconforming use provisions are to be used sparingly. (Appellees' Br. 20.) Not only is this statement disputed, but nonconforming use provisions are governed by law, not a party's expert. In fact, it is the law that nonconforming uses are disfavored, and, therefore, nonconforming-use provisions are encouraged to eradicate the nonconforming uses. As aptly stated by the Second District Court of Appeals:

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[2] L.Z.C. 1280.05 does not constitute a taking of their properties because they still collect rent from mobile homes. Moreover, their properties could be developed with residential homes in accordance with current zoning laws. (McCann Depo. p.32 [Supp. 0113]); Sparano Depo. pp. 20, 24-25) [Supp. 00096, 0098-0099].)

> Nonconforming uses * * * are not favorites of the law. The reason for their disfavored position is clear: if the segregation of buildings and uses, which is the function of zoning, is valid because of the beneficial results which this brings to the community, to the extent this segregation is not carried out, the value of zoning is diminished and the public is thereby harmed. Nonconforming uses are allowed to exist merely because of the harshness of and the constitutional prohibition against the immediate termination of a use which was legal when the zoning ordinance was enacted. The rights of a nonconforming user are limited, and the clear intent and purpose is to eliminate such nonconforming uses as rapidly as possible.

(Internal citations omitted.) *Kettering v. Lamar Outdoor Advertising, Inc.*, 38 Ohio App.3d 16, 18, 525 N.E.2d 836 (2d Dist.1987). For the reasons previously discussed, L.Z.C. 1280.05(a) is a legitimate exercise of Lodi's police power for the public welfare. Moreover, Meadowview and Sunset have not shown, beyond fair debate, that it is "clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community" as applied to their properties. *Jaylin Invests.*, 2006-Ohio-4, at ¶ 13.

C. APPELLEES DEVOTE SIGNIFICANT PORTIONS OF THEIR BRIEF TO OTHER ARGUMENTS NOT DECIDED BY THE NINTH DISTRICT.

Meadowview and Sunset devote a significant portion of their brief to two additional issues left undecided by the Ninth District: (1) whether L.Z.C. 1280.05(a) applies to mobile home parks (Appellees' Br. 14-18); and (2) whether a state statute supersedes L.Z.C. 1280.05(a) (*id.* at 11-14). Just as the Ninth District used rationales for, but did not decide, Meadowview and Sunset's "as applied" constitutional challenge and claim of a compensable taking, it touched upon these additional considerations in reaching its holding. It cited these considerations even though they are wholly irrelevant to a facial constitutional challenge based on substantive due

process rights. Neither issue, however, compels a judgment in Meadowview and Sunset's favor.[3]

1. L.Z.C. 1280.05(a) Classifies Individual Mobile Homes as the Nonconforming Use.

Meadowview and Sunset cite no prohibition against treating individual mobile homes within a manufactured home park as individual nonconforming uses. In fact, Meadowview and Sunset concede that "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." (Appellees' Br. 15.) Even the Ohio Attorney General's opinion upon which they rely clearly acknowledges that " '*[i]n 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.' " (Emphasis added.) *Sunset Estate* at ¶ 16 [Appx. 0010], *quoting* 2000 Ohio Atty.Gen.Ops. No. 2000-022, 2000 WL 431368. Thus, municipalities have the ability to denominate individual mobile homes or lots within a mobile home park as the nonconforming use. Lodi has done just that.

L.Z.C. 1280.05 authorizes the application of nonconforming uses to individual mobile homes. The ordinance explicitly states that "[i]n the case of nonconforming mobile homes, their absence or removal from the lot shall constitute discontinuance from the time of absence or removal." L.Z.C. 1280.05(a) [Appx. 0030]. It thus clearly treats a mobile home as the nonconforming use and not the mobile home park as a whole. In arguing to the contrary,

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[3] In its amicus brief in support of neither party, the State of Ohio asserts that judicial restraint required the Ninth District to decide the aforementioned issues before passing upon the facial constitutional challenge; thus, the State of Ohio urges this Court to vacate the Ninth District's decision and remand the matter to the Ninth District for consideration of these issues. These issues so clearly lack merit that a remand to the Ninth District would not result in a decision in Meadowview and Sunset's favor, thereby rendering a decision on the constitutional question presented in this appeal a virtual certainty.

Meadowview and Sunset improperly focus their attention on the fact that the zoning code does not define "lot" and makes no reference to "dwellings." (Appellees' Br. 14.) These facts are of no consequence because L.Z.C. 1280.05 refers to nonconforming mobile homes, not to nonconforming lots, and Lodi is free to deal with nonconforming mobile homes whether or not they exist on individual lots or parcels or whether the space on which they are located is leased from the mobile home park operator.

Next, Meadowview and Sunset attempt to distinguish the cases cited by Lodi in which courts have recognized individual mobile homes or lots as separate nonconforming uses. (Appellees' Br. 16-17, *citing Beck v, Springfield Twp. Bd. of Zoning Appeals*, 88 Ohio App.3d 443, 624 N.E.2d 286 (9th Dist. 1993), *Rolfes v. Bd. of Zoning Appeals of Goshen Twp.*, 1st Dist. Clermont No. 565, 1975 Ohio App. LEXIS 7287 (Sept. 15, 1975), and *Baker v. Blevins*, 162 Ohio App.3d 258, 2005-Ohio-3664, 833 N.E.2d 327 (2d Dist.).) Meadowview and Sunset assert that municipalities "may only eradicate [nonconforming uses] by prohibiting their expansion" and, based on this mischaracterization of the law, contend that these cases are distinguishable because they discuss the expansion of manufactured home parks. (Appellees' Br. 16-17.) These statements are fundamentally incorrect.

As repeatedly held by this Court, municipalities have the power and authority to enact zoning legislation that not only prohibits expansion of nonconforming use but also allows them to gradually eliminate nonconforming uses by prohibiting alteration, substantial modification, or substitution. *See, e.g.*, *Chapman*, 160 Ohio St. 382, 116 N.E.2d 697; *Petti v. Richmond Hts.*, 5 Ohio St.3d 129, 130, 449 N.E.2d 768 (1983); *Beck*, 88 Ohio App.3d at 446, 624 N.E.2d 286; *Hunziker*, 8 Ohio App.3d at 89, 456 N.E.2d 516. In fact, *Beck*, the case that Meadowview and Sunset cite for this proposition, states that municipalities may prohibit "substantial alteration of a

nonconforming use, in an attempt to eradicate that use" and that "those uses may even be regulated to the point they 'wither and die.' " *Beck* at 446.

Further, Meadowview and Sunset's attempts to distinguish *Beck* and *Rolfes* are in vain because, in trying to reestablish a nonconforming use that has been abandoned, Meadowview and Sunset are in effect attempting to expand the existing nonconforming use. It is likewise inconsequential that *Baker* involves only one mobile home because, once the mobile home was removed, it constituted a discontinuance of the nonconforming use and the owner was not permitted to reestablish the nonconforming use. These cases show that courts have recognized that individual mobile homes or lots within a mobile home park are separate nonconforming uses. (*See* Appellant's Br. 20-21 (citing cases).)

In a last ditch attempt to salvage their position, Meadowview and Sunset make the argument that because the lots allegedly had their utilities intact, they could not be deemed to have discontinued the nonconforming uses, notwithstanding the absence of a mobile home on the pad. (Appellees' Br. 17-18.) It appears that they are arguing that so long as there is a road and utility hookups (albeit not in use), there can never be a discontinuance of a nonconforming use. (*See id.*). Such a rule would make it nearly impossible for municipalities to eliminate nonconforming uses within their borders, and the cases cited by Meadowview and Sunset for this proposition do not support such a blanket rule of law. In *Ward*, for instance, the court merely ruled that the municipality failed to present sufficient evidence of abandonment at the hearing in order to prove guilt beyond a reasonable doubt. *See Lodi v. Ward*, 9th Dist. Medina No. 1918, 1991 Ohio App. LEXIS 1155 (Mar. 20, 1991). And *Schreinver* did not even involve the removal

of a residence from a lot. *See Schreinver v Russell Twp. Bd. of Trustees*, 60 Ohio App.3d 152, 573 N.E.2d 1230 (8th Dist.1990).[4]

Based on the foregoing, L.Z.C. 1280.05(a) addresses the gradual elimination of nonconforming uses in Lodi and specifically authorizes the treatment of mobile homes as individual nonconforming uses. Meadowview and Sunset's arguments are completely irrelevant to the constitutionality issue and is instead an attempt to distract this Court with unnecessary and irrelevant facts.

2. R.C. Chapter 4781 Does Not Supersede L.Z.C. 1280.05(a) in Violation of Home-Rule Principles.

"In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa." *Stary v. Brooklyn*, 162 Ohio St. 120, 127 (1954), *citing Struthers* v. *Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923). Furthermore, a police ordinance such as a zoning ordinance does not conflict with a general law addressing the same subject "merely because certain specific acts are declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law * * *." *Stary* at paragraph three of the syllabus.

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[4] Meadowview and Sunset posit that Lodi "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" and cite to former Mayor Goodrow's deposition transcript in support. (Appellees' Br. 16.) Meadowview and Sunset have mischaracterized Goodrow's testimony. He testified that, in his personal opinion, he was simply unsure whether the zoning ordinances were appropriate but that Lodi, through the council, determined they were appropriate by voting down the proposal to eliminate the clause referring to the removal of mobile homes. (Goodrow Depo. Tr. 34, 40-41.) In fact, Goodrow proceeded to state that Lodi had no financial liability because Lodi was acting under an existing valid ordinance "and the only way to change the ordinance was to have a reason to do so." (*Id.* at 40-43.) Lodi clearly believed the zoning ordinance was constitutional and did not conflict with state law. (*Id.* at 42-43.)

Meadowview and Sunset argue that any zoning regulation related to mobile homes is in conflict with R.C. 4781.26 to 4781.31, specifically R.C. 4781.30(A),[5] because this state law regulates licensing for the location, layout, density, construction, and operation of manufactured home parks. (Appellees' Br. 12, 23). This argument is misplaced. R.C. Chapter 4781 does not create a "statewide zoning board" that supersedes all other local regulation. R.C. 4781.31(F). In fact, the Ohio General Assembly expected R.C. Chapter 4781 to be implemented in a manner that complies with local zoning ordinances. *See* Ohio Adm. Code 4781:12-05.1(B)(18) [Appx. 0035 – 0037] *and* 4781:12-09(I) [Appx. 0038 – 0039]. The mere fact that Chapter 4781 does not address the elimination of nonconforming uses does not mean that any local zoning ordinances which regulate such elimination conflict with R.C. Chapter 4781. L.Z.C. 1280.05 does not conflict with R.C. Chapter 4781, but instead regulates an issue, *i.e.*, the abandonment of nonconforming uses, which is not addressed in R.C. Chapter 4781, and which is reserved to and properly determined by the local legislative authority.

Furthermore, L.Z.C. 1280.05 was enacted pursuant to another general law, R.C. 713.15, which states:

> 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. The legislative authority of a municipal corporation shall provide in any zoning ordinance for the completion,

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[5] R.C. 4781.30(A) 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."

> restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning ordinance.

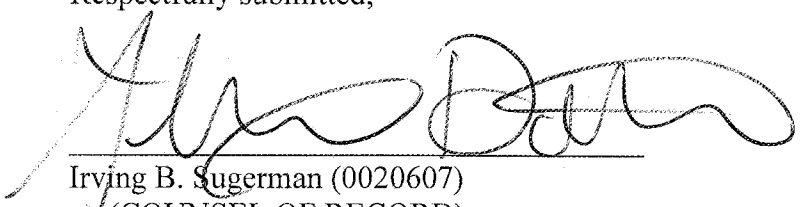
R.C. 713.15 [Appx. 0034]. R.C. 713.15 expressly allows a municipal corporation such as Lodi to enact an ordinance that provides that, if the nonconforming use of any dwelling, building, or structure and of any land is voluntarily discontinued for a period of not less than six months but not more than two years, any future use shall be in conformity with current zoning. Neither the parties nor the Ninth District have even remotely suggested that R.C. 713.15 is unconstitutional, and Ohio courts have consistently upheld municipal zoning ordinances enacted in conformity with R.C. 713.15. *See, e.g.*, *Bell v. Rocky River Bd. of Zoning Appeals*, 122 Ohio App.3d 672, 675, 702 N.E.2d 910 (8th Dist. 1997).

Finally, this case is not about "the thinnest attempt to eliminate 'mobile home parks' – the only housing use targeted by the Village of Lodi's statute," as contended by Amicus Curiae Ohio Manufactured Homes Association ("OMHA"). (OMHA Br. 3.) Indeed, Lodi has enacted a zoning district – "MH" – specifically for manufactured home parks. Lodi clearly recognizes and permits this type of use, which provides housing opportunities to those with the desire to purchase a home – any home. Lodi, as it is clearly permitted to do, however, has divided its village into separate zoning districts and has made a thoughtful legislative decision to keep manufactured homes out of its R-3 zoned residential district. If adopted by this Court, Meadowview, Sunset, and OMHA's argument would mean that a mobile home park could be located in *any* district in *any* political subdivision in the State of Ohio. This would include any single family residentially zoned area and even open-space conservation districts. Because L.Z.C. 1280.05 does not conflict with state law, it does not offend home-rule principles and may be enforced.

III. CONCLUSION

For all the reasons stated in its merit brief and this reply brief, Appellant Village of Lodi respectfully requests that this Court hold that a municipal zoning ordinance, such as L.Z.C. 1280.05(a), which precludes property owners from re-establishing a nonconforming use after a specified period of nonuse does not facially violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution or Section 16, Article I of the Ohio Constitution. In accordance with that holding, Appellant Village of Lodi respectfully requests that this Court further declare that L.Z.C. 1280.05(a) is constitutional on its face and as applied and does not give rise to a compensable taking in this case.

Respectfully submitted,



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ATTACHED TO MERIT BRIEF OF APPELLANT VILLAGE OF LODI

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APPENDIX

OAC Ann. 4781-12-05.1

This document is current through the Ohio Register for the week of May 26, 2014 through May 30, 2014

Ohio Administrative Code > *4781 Ohio Manufactured Homes Commission* > *Chapter 4781-12 Manufactured home parks*

4781-12-05.1. Submission for review and approval of development plans.

(A) Any person who proposes to develop a manufactured home park shall prior to submitting plans to the commission for approval do the following:

(1) Request that the commission conduct an evaluation of the proposed location, which shall include, but not be limited to, its topography, soil conditions, previous uses, and available utilities;

(2) Obtain flood level information for the proposed location of the manufactured home park to ensure that the manufactured home park will be protected from flooding. Flood level information shall include the elevation of the one hundred year flood as well as a delineation of the floodway limits. Flood level information can be found on maps published by the federal emergency management agency. For locations where the federal emergency management agency had not identified flood levels, or where the federal emergency management agency maps do not indicate one hundred year flood elevations or delineate floodways, the commission may require the submission of such flood information prepared by a registered engineer.

(3) If the proposed manufactured home park or any portion thereof is located within a one hundred year flood plain, submit an application to the commission for any permits under rule *4781-12-07.2 of the Administrative Code* for development in a one hundred year flood plain area.

(B) The plans submitted to the commission for approval shall be prepared by a professional engineer registered to practice in Ohio, shall be submitted in quadruplicate, and shall be accompanied by or include the following:

(1) A completed plan review application on a form prescribed by the commission and signed by the owner of the manufactured home park and the person who prepared the plans. The form shall contain identifying information about the licensee or prospective licensee of the manufactured home park, the person who prepared the plans, and the contractor, if known;

(2) Location and complete identification of any wetland areas as defined in paragraph (EE) of rule *4781-12-01 of the Administrative Code* within the manufactured home park site and written verification that the permit required for the development in wetland areas has been obtained from the United States army corps of engineers;

(3) Written verification by the local fire protection authority or authorities having jurisdiction in the area that adequate fire protection is provided and that applicable fire codes will be adhered to in the construction and operation of the manufactured home park;

(4) Four copies of the completed manufactured home park data sheet form prescribed by the commission and signed by the person who prepared the plans. The form shall contain identifying information about the owner of the manufactured home park, the person who prepared the plans, and the contractor for the project and information about the location and dimensional design of the manufactured home park relative to the lots, driveways, walkways, auto parking, lighting, solid waste collection and storage, storm water drainage, and water and sewer systems;

(5) The total area of land to be used for manufactures home park purposes;

(6) Plot plan of total park and development phases which includes area, dimensions, and elevations. If the proposed manufactured home park or any portion of the park is to be located within a one hundred year flood plain, a map shall be submitted which has been prepared by a registered professional engineer and which shows the elevation and exact boundaries of the one hundred year flood plain, the specific areas of the park and lots within the one hundred year flood plain, and the location of the regulatory floodway if it is within the boundaries of the manufactured home park;

(7) Design plans for all entrance and exit streets, the internal street system and parking areas, including pavement designs and cross sections;

(8) Location, numbers, and sizes of manufactured home lots;

(9) Design and design plans for drainage of surface and storm waters;

(10) Location of public and private service buildings;

(11) Design plans for any electrical, natural gas, propane, and fuel oil distribution systems including individual manufactured home service connections;

(12) Are lighting plan;

(13) Method and plan for blocking, base support, and anchorage of manufactured homes, freestanding auxiliary buildings, room additions, or other accessory structures connected to the manufactured home;

(14) Method of storage and collection of solid wastes;

(15) Method and layout for fire protection;

(16) The design plans and profiles of the sanitary sewerage system and the design plans for the water system;

(17) Written verification that the plans for the sanitary sewerage system and the water system, if the water is to be from a public water system, have been approved by the Ohio environmental protection agency;

(18) A copy of the location evaluation completed by the commission under paragraph (A)(1) this rule; written verification from the local zoning authority that the land use has been zoned and approved for the development of a manufactured home park: and

(19) A check payable to the treasurer, state of Ohio for the review fee in an amount determined under paragraph (E) or paragraph (F) of this rule. The commission upon the request of the applicant for plan approval, may waive submission of any of the items required by this paragraph if the commission determines that they are not necessary to review the plans effectively.

(C) If plans submitted to the commission are incomplete, the commission may request additional information or may return the incomplete plans without review to the person who submitted the plans. However, within thirty days after receipt of the additional information requested or receipt of complete plans which comply with paragraph (B) of this rule, the commission shall approve or disapprove the plans.

(D) The commission may disapprove plans if:

(1) The person submitting plans for review fails to comply with any requirements of *sections 4781.26* to *4781.35 of the Revised Code* or this chapter;

(2) The proposed development would not comply with any requirement of *sections 4781.26* to *4781.35 of the Revised Code* or this chapter; or

(3) The plans submitted for review do not comply with the requirements of paragraph (B) of this rule or the person submitting incomplete plans fails to respond to the commission's request for additional information.

Any person aggrieved by the commission's disapproval of plans under *section 4781.31 of the Revised Code* or this rule may request a hearing on the matter within thirty days after receipt of the director's notice of disapproval. The hearing shall be held in accordance with Chapter 119. of the Revised Code.

(E) The fee for plan review under this rule shall be equal to three per cent of the total cost of the proposed development up to a maximum fee of three percent of total cost not to exceed five thousand six hundred sixty-nine dollars. This fee does not include the cost of any inspections performed under rule 4781-12-06.1 of the Administrative Code.

(F) Notwithstanding paragraph (E) of this rule, the minimum fee for plan review of new development that is not a base support system for projects received by the commission on or after December 1, 2012, is four hundred five dollars. This fee does not include the cost of any inspections performed under rule 4781-12-06.1 of the Administrative Code.

Statutory Authority

Promulgated Under:
119.03.

Statutory Authority:
4781.04, 4781.26.

Rule Amplifies:
4781.31.

History

History:
Effective: 12/01/2012.
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Ohio Administrative Code > *4781 Ohio Manufactured Homes Commission* > *Chapter 4781-12 Manufactured home parks*

4781-12-09. Streets; walkways; auto parking.

(A) Each manufactured home lot in each manufactured home park constructed on or after December 16, 1951, but prior to January 1, 1961, shall abut on a street which has a clear unobstructed width of not less than twenty feet.

(B) Each manufactured home lot in each manufactured home park or section thereof constructed on or after December 31, 1960, but prior to July 1, 1971 shall abut on a street within the manufactured home park which has a clear unobstructed width of not less than twenty-five feet exclusive of walkway.

(C) Each manufactured home lot in each manufactured home park or section thereof constructed on or after June 30, 1971, shall abut on a paved street within the manufactured home park which is designed and constructed in accordance with the following:

(1) All entrance and exit "two-way" streets shall have a minimum width of thirty-five feet exclusive of any median strip. One-way entrance or exit streets shall have a minimum width of twenty feet;

(2) All collector, minor, or cul-de-sac streets may have a minimum width of twenty feet and parking is not permitted;

(3) The operator may permit parking on both sides of streets having a minimum width of thirty feet;

(4) The operator may permit parking on both sides of streets having a minimum width of twenty-eight feet which have been designated as "one-way";

(5) The operator may permit parking on one side of "two-way" streets having a minimum width of twenty-eight feet;

(6) The operator may permit parking on one side of streets having minimum width of twenty feet which have been designated as "one-way";

(7) All materials and construction methods used in street, walkway, and parking construction, shall comply with the 1991 "Construction and Material Specifications" manual published by the Ohio department of transportation;

(8) If flexible paving is used it shall consist of a minimum of three inches of asphalt concrete placed on top of not less than six inches of properly prepared aggregate base. If rigid pavement is used, it shall consist of a minimum of five inches of plain Portland cement concrete having a minimum rating of three thousand pounds per square inch. Alternate pavements approved by the director having a strength equal to either of the above may be permitted for installation and use. The subgrade in either case shall be well drained, well compacted, and smoothly graded; and

(9) The operator shall provide an area or areas throughout the manufactured home park for visitor parking if the streets having a minimum width of twenty feet are designated as "two-way."

(D) No manufactured home lot constructed on or after January 1, 1961, shall have direct accessway for vehicles to a public thoroughfare. Those manufactured home lots constructed on or after June 1, 1979, which are adjacent to a public thoroughfare shall be separated from the thoroughfare by either a natural or artificial barrier.

(E) The street system in a manufactured home park shall be directly connected to a public thoroughfare.

(F) Each manufactured home lot in each manufactured home park or section thereof constructed on or after June 30, 1971, shall be provided with paved on-lot parking space for two automobiles. Paving shall be done either in accordance with paragraph (K) of this rule or with a minimum of two inches of asphalt concrete placed on top of not less than six inches of aggregate base.

(G) Each manufactured home lot in each manufactured home park or section thereof constructed on or after June 30, 1971, shall be provided with a walkway paved in accordance with paragraph (J) of this rule and having a minimum width of two feet leading from the manufactured home door to the adjacent street, any main

walkway, or parking area.

(H) Except as provided in paragraph (I) of this rule, each manufactured home park or portion thereof constructed after November 13, 1992, shall have a main walkway paved in accordance with paragraph (J) of this rule on at least one side of each of the manufactured home park streets. The walkway shall be parallel to the street and shall be at least three feet in width. This paragraph does not apply to cul-de-sac streets unless the cul-de-sac street is a main entrance or exit street to the manufactured home park.

(I) Notwithstanding paragraph (H) of this rule, a manufactured home park constructed on or after September 6, 1998 may be constructed without a walkway paved in accordance with paragraphs (H) and (J) of this rule, provided that the residential zoning classification in the political subdivision with jurisdiction does not require a paved walkway in all property zoned single family residential. This paragraph also applies to expansion of existing manufactured home parks, except that new walkways are not required if walkways do not currently exist. Any paved walkway either required by this rule, or provided within a manufactured home park, irrespective of whether the walkway is not required by this rule, shall be constructed in accordance with paragraphs (H) and (J) of this rule.

(J) For purposes of paragraphs (F) to (I) of this rule, paving shall be done with a minimum of four inches of plain Portland concrete having a minimum rating of three thousand pounds per square inch.

(K) All manufactured home park streets shall be maintained in a safe, passable condition at all times.

Statutory Authority

Promulgated Under:
119.03.

Statutory Authority:
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4781.31.

History

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