

ORIGINAL

IN THE SUPREME COURT OF OHIO

SUNSET ESTATE PROPERTIES, LLC,	)	Case No. 2013-1856
ET AL.,	)	
	)	On Appeal from the Medina County Court
Appellees,	)	of Appeals, Ninth Appellate District
	)	
v.	)	Court of Appeals Case No. 12CA0023-M
	)	
VILLAGE OF LODI, OHIO,	)	
	)	
Appellant.	)	

**AMICUS BRIEF OF THE  
 OHIO MANUFACTURED HOMES ASSOCIATION  
 IN SUPPORT OF APPELLEES SUNSET ESTATE PROPERTIES, LLC AND  
 MEADOWVIEW VILLAGE, INC.**

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## STATEMENT OF FACTS

For purposes of this Brief, the Ohio Manufactured Homes Association (“OMHA”) adopts and incorporates by reference the Statement of the Facts submitted by Appellees in their Merit Brief.

## ARGUMENT

### Proposition of Law:

**The Court of Appeals correctly reversed the trial court, which erred by denying Appellees’ Motion for Summary Judgment and granting Appellant’s Motion for Summary Judgment and the decision of the Court of Appeals should be affirmed.**

- A. Ohio R.C. Sections 4781.26(A) and 4781.30(A) permit manufactured home park owners to operate their parks coextensive with their license issued by the Ohio Manufactured Homes Commission.**

Ohio R.C. 4781.30(A) - Rights of Operators of Manufactured Home Parks provides that:

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 any park operator, such as Sunset Estate Properties, LLC (“Sunset”) and Meadowview Village, Inc. (“Meadowview”), with the right to use a manufactured home located on a pad in a manufactured home park, and to use the manufactured home for human habitation without interruption for any period coextensive with any license or consecutive licenses. The Ohio Manufactured Homes Commission (“OMHC”), an agency of the State of Ohio, has the exclusive jurisdiction to issue licenses to manufactured home parks on an annual basis for their operation; prior to the inception of the OMHC, this jurisdiction was the exclusive purview of the Ohio Department of Health. It is undisputed that the Medina County Health Department had this authority when it issued a license to Sunset for the year 2011 which allows Sunset to operate its manufactured home park with thirty-three (33) lots through

December 31, 2011. The Medina County Health Department has issued a license to Meadowview for the year 2011 which allows Meadowview to operate its manufactured home park with forty-four (44) lots through December 31, 2011. As such, Sunset and Meadowview have the right to use the 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, the Ohio Manufactured Homes Commission - issues the annual license. It is the purview and jurisdiction of the OMHC to decide the issue of the right to operate a manufactured home park. R.C. 4781.04. The Village of Lodi's usurpation of this jurisdiction is without support in Ohio law.

**B. The Village of Lodi Zoning Code Section 1280.05(a) is unconstitutional because it conflicts with R.C. 4781.30.**

The Village of Lodi's zoning ordinance is clearly in conflict with Ohio statutory law, specifically with R.C. Section 4781.30 (previously R.C. Section 3733.06) and the exclusive jurisdiction of the OMHC. Section 1280.05(a) of the Village of Lodi Zoning Code 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.)

The zoning ordinance provides that if a mobile home is absent from a lot inside a nonconforming manufactured home community for only six months, the absence of a manufactured home is considered conclusive evidence of an intention to legally abandon the nonconforming use. Essentially, the zoning ordinance removes from the state-issued license a lot that has been licensed for use by the Park. 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 R.C. sections 4781.27 to 4781.29.

As stated previously, said licensing period by the OMHC – then, the Medina County Health Department - is for a one year period. As such, at a minimum, Sunset and Meadowview have the right to the use of the lots within their respective Parks without interruption for one year. The Village of Lodi’s six month period requirement, as well as the Village’s usurpation of the state-licensed use of the lots, are in conflict with state law and the exclusive jurisdiction of the OMHC and are therefore unconstitutional.

Further, whatever one thinks of manufactured home communities, they are a recognized and permitted housing use under Ohio law, providing housing opportunities to those with the desire to purchase a home – any home. For many, it’s the first step to residential housing. The Village of Lodi’s statutory interference is only the thinnest attempt to eliminate “mobile home parks” – the only housing use targeted by the Village of Lodi’s statute. As such, it is unconstitutional.

**C. Because the Village’s Ordinance conflicts with the licensing authority of the Ohio Revised Code and deprives Appellees of a property right without due process, it must be struck down as unconstitutional.**

The Court of Appeals correctly determined the Village of Lodi Zoning Code Section 1280.05(a) was unconstitutional. The court reasoned the Village of Lodi’s ordinance was an invalid exercise of police power. OMHA agrees the Village of Lodi has the right and power to enact a zoning plan; however 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).

Section 3, Article XVIII of the Ohio Constitution provides, “Municipalities shall have

authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are *not in conflict* with general laws.” (Emphasis added.)

The court of appeals found the provisions of R.C. 3733.01-08 (now R.C. 4781.27-30) and the Village of Lodi Zoning Code 1280.05 to be in conflict and not in accordance with the laws of the state. The Supreme Court of Ohio has found that in determining whether an ordinance is in conflict with general laws (such as R.C. 4781.30(A) (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 2 of the syllabus).

R.C. section 3733.02(A)(1) clearly provided the public health council (and now 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 exclusive authority has been assumed by the OMHC, as set forth in R.C. 4781.26(A). This exclusive power to adopt rules concerning land use and planning is set forth in R.C. 4781.26(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

Ohio Adm. Code 4781-12-03 specifically addresses lots within a park as part of the license:

The license shall state the name and address of the person responsible for the maintenance and operation of the manufactured home park, the name and location of the manufactured home park, the maximum number of manufactured homes for which the manufactured home park is licensed on a form prescribed by the commission. Such license shall be displayed in a conspicuous place in the manufactured home park at all times. 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 owner.

Further, Appellant, in deleting lots within a manufactured home park for which the park has received a state license, is removing a property right of the park awarded through the obtaining of a license from the state. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487 (1985). Further, there is no question that Appellant is removing the use of lots within the park without due process of law. If the Appellant wanted to eliminate the business of manufactured housing in the Village of Lodi, its option was to purchase those businesses, not to utilize the law to deprive business owners of their livelihood. If anything, the spirit of the law and the intent of the law are to prevent just such a taking from Ohio business owners.

In summary, under Ohio law, the State of Ohio, previously through the local boards of health and now the OMHC, regulates the licensing of manufactured home parks and the lots within those parks. Local political subdivisions may enact zoning regulations regarding existence of manufactured home parks within their jurisdiction pursuant to the local zoning code and law, but the licensing of the park and its operations is within the exclusive jurisdiction of the State of Ohio. The local ordinance of the Village of Lodi conflicts with this state jurisdiction and must be struck down.

### CONCLUSION

The Court of Appeals correctly reversed the trial court's granting of Lodi's Motion for Summary Judgment and Sunset and Meadowview are entitled to Summary Judgment as a matter of law. OMHA urges that the Court uphold the decision of the Court of Appeals due to the fact

that the Village of Lodi Zoning Code Section 1280.05(a) is clearly unconstitutional as it is in direct conflict with Ohio R.C. 4781.30 (formerly R.C. 3733.06(A)), which allows Sunset and Meadowview the right to use a manufactured home for human habitation without interruption for a one year period. To permit local political subdivisions to enforce their own ordinances which conflict with the Ohio Revised Code would, and is, creating chaos in an already highly regulated and shifting housing market.

For the foregoing reasons, OMHA prays that this Court affirm the decision of the Court of Appeals and find that the third sentence of the Village of Lodi's Zoning Code Section 1280.05(a) is unconstitutional as it conflicts with State law.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Amicus Brief of Ohio Manufactured Homes Association* was served upon the following this 29<sup>th</sup> day of June 2014.

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