ROBINSON TOWNSHIP v. KNOLL
410 Mich. 293, 302 N.W.2d 146 (1981)

LEVIN, JUSTICE:

In this case we revisit the holding of *Wyoming Twp. v. Herweyer*, [33 N.W.2d 93 (Mich. 1948),] and consider whether a municipality constitutionally may provide that mobile homes are to be sited only in mobile home parks and exclude all mobile homes from other residential zones.

Robinson Township commenced this action against Donald and Merle Knoll, seeking removal of a mobile home from their 80-acre parcel of land.

Count I of the complaint alleged that the use of the mobile home was contrary to §_307.1 of the township's zoning ordinance,[1] which provides that mobile homes may be located only in mobile home parks, and to §_1302.1 of the ordinance, which requires that a building permit be obtained before the erection of a building or structure on any property in the township. Count II alleged that because of violation of the same sections of the ordinance, the mobile home was a nuisance per se.

The answer raised affirmative defenses based on the unconstitutionality of the ordinance in that it arbitrarily and capriciously prohibits a proper land use, and is overbroad, failing to establish clear standards to be observed by property owners and citizens of the township.

Trial was had on stipulated facts, including: the home had been placed on the parcel; the parcel was not a mobile home park; no building permit had been obtained; and the Knolls had dug a well, obtained a septic permit, applied for power from Consumers Power Company, cleared trees for a roadway and erected a rail fence around the site. No claim was made that the dwelling was not a mobile home within the meaning of the ordinance.

The trial judge, citing *Wyoming Twp. v. Herweyer*, held that "unless and until such decision is reversed," the provision that mobile homes are permitted only in mobile home parks was valid, and accordingly ordered removal within 30 days....

We agree with the Court of Appeals that the ordinance is unconstitutional, but on other grounds.

We hold:

(1) The per se exclusion of mobile homes from all areas not designated as mobile home parks has no reasonable basis under the police power, and is therefore unconstitutional. [Const. 1963, art. I, §_17.]

The reasoning on which the rule of *Wyoming Twp. v. Herweyer* was based is no longer valid in light of improvements in the size, quality and appearance of mobile homes, and that decision and cases to the same effect are overruled as to housing that is not a "trailer."

We add, however, that a municipality need not permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of on-site installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home.

The Robinson Township ordinance embodies a per se rule segregating mobile homes from residential zones that are not mobile home parks, and is therefore unconstitutional.

---

[1] "*Mobile Homes — Where Permitted:* Mobile homes are considered as dwelling units and are not permitted as an accessory use to a permitted principal use and are permitted only in approved mobile home parks." Robinson Township Zoning Ordinance, §_307.1.

(2) The complaint also alleged violation of the provision of the zoning ordinance relating to building permits. A building permit could not have issued because of the per se rule confining mobile homes to mobile home parks. It necessarily would have been futile for the Knolls to apply for one. For this reason, the township is entitled to no relief based on the Knolls' failure to apply for a building permit.

(3) We intimate no opinion whether building code provisions may now be invoked against the Knolls, leaving that question for consideration by the circuit court should the township seek further relief on that basis.

We vacate the judgment of the Court of Appeals, and remand to the circuit court for further proceedings not inconsistent with this opinion.

Municipalities throughout the state have assumed the continuing validity of the rule of *Wyoming Twp. v. Herweyer* in drafting their ordinances. We reserve the question whether our decision overruling that opinion as applied to housing other than "trailers" should be applied retroactively in other pending cases or to other ordinances and, if so, whether retroactivity should be conditioned upon compliance with reasonable standards designed to assure favorable comparison of the mobile home in question with site-built housing which would be permitted on the site.[2]

I

In *Kropf v. Sterling Heights,* [215 N.W.2d 179 (Mich. 1974),] this Court said that "[a] plaintiff-citizen may be denied substantive due process by the city or municipality by the enactment of legislation, in this case a zoning ordinance, which has, in the final analysis, no reasonable basis for its very existence."

A "reasonable basis" must be grounded in the police power,[3] which this Court has defined as including "protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public, or any substantial part of the public." [*Cady v. Detroit, 286 N.W. 805 (Mich. 1939).*]

The township's argument based on the land planning principle that like uses should be grouped and incompatible uses kept separate begs the question raised by the appeal: do mobile homes differ from other single-family dwellings in any constitutionally cognizable manner which would justify their per se classification as a different use? If not, then the ordinance limiting mobile homes to mobile home parks has "no reasonable basis for its very existence."

In *Kropf,* we reaffirmed the principle that "'[w]hile an ordinance must stand the test of

---

[2] This case was tried on a stipulation of facts. The record shows that the mobile home placed on the Knolls' land is 14_ x 70_, and that some improvements have been made. There is no indication that this mobile home is of a kind that the township could exclude. Our decision, however, is not based on a determination that this mobile home could not constitutionally be excluded.

[3] "The power of the city to enact ordinances is not absolute. It has been given power by the State of Michigan to zone and regulate land use within its boundaries so that the inherent police powers of the state may be more effectively implemented at the local level. But the state cannot confer upon the local unit of government that which it does not have. For the state itself to legislate in a manner that affects the individual right of its citizens, the state must show that it has a sufficient interest in protecting or implementing the common good, via its police powers, that such private interests must give way to this higher interest." *Id.*

reasonableness, the presumption is in favor of its validity and courts may not invalidate ordinances unless the constitutional objections thereto are supported by competent evidence or appear on their face.'"

The Knolls, having failed to produce any evidence in the circuit court, can succeed only if the rule that no mobile home may be located outside a mobile home park is invalid on its face.

We believe that it is.

II

Wyoming Twp. v. Herweyer, holding that a municipality may constitutionally limit trailers to trailer parks, would seem to be dispositive of this case, and was so treated by the trial judge. We conclude, however, that it does not control.

That case, decided over thirty years ago, dealt with trailers. Today, we consider the per se exclusion not of trailers, but of mobile homes — and more than the label has changed with time. The mobile home today can compare favorably with site-built housing in size, safety and attractiveness. To be sure, mobile homes inferior in many respects to site-built homes continue to be manufactured. But the assumption that all mobile homes are different from all site-built homes with respect to criteria cognizable under the police power can no longer be accepted.

A

Section 203 of the township's zoning ordinance defines "mobile home" as "[a] movable or portable dwelling constructed to be towed on its own chassis, connected to utilities and designed without a permanent foundation for year-round living as a single-family dwelling."

If mobile homes are to be excluded from all residential zones in Robinson Township other than mobile home parks, it cannot be because they are "movable or portable." Site-built homes are "movable or portable," although they are rarely moved.

We note in this regard that §_500.2 of the township's building code[4] specifically provides for the issuance of moving permits to allow the relocation of one- or two-family dwellings from outside the township or from another location within the township. Any dwelling covered by §_500.2 is, by the township's definition, movable. It would be arbitrary to discriminate against mobile homes on that basis.

Nor do the criteria "constructed to be towed on its own chassis" and "designed without a permanent foundation" identify characteristics which justify the exclusion and segregation of mobile homes.

One can agree that a community has a legitimate interest in safeguarding residents against, for example, windstorm damage, justifying a requirement that a mobile home be firmly

---

[4] The section provides in part: "*Moving Permit:* Any person desiring to move any one or two-family dwelling and/or accessory building from outside of the Township limits to any location within the township or from one location to another location within the township shall file a written application for a moving permit with the Township Board of Appeals. Said application shall set forth the present location of said building and/or buildings, the location of [sic] which said building or buildings are proposed to be moved within the township, the age of the building or buildings, a statement as to whether or not the building or buildings comply with the requirements of the building code and if not what improvements applicant proposes to make to bring said building or buildings in compliance with the building code. The application shall be accompanied by a site map as required by Sec. 501.1 of the Building Code and said map shall clearly indicate front, side and rear yards as required by Sec. 501.2 of the Building Code." Robinson Township Building Code, §_500.2.

attached to a solid foundation on the site. And a municipality may reasonably conclude that a dwelling the wheels and chassis of which are exposed is unsightly or is likely to lead to transience and should not be tolerated alongside site-built homes. These and similar considerations would justify requirements that certain on-site modifications be made as a condition to placement of a mobile home in an area not a designated mobile home park. The ordinance governing moving permits, discussed above, employs such a mechanism.[5]

Just as "the reasonableness of a zoning restriction must be tested according to existing facts and conditions and not some condition which might exist in the future," [*Christine Building Co. v. Troy,* 116 N.W.2d 816 (Mich. 1962),] so must an ordinance restricting the placement of mobile homes be directed to the dwelling as it will exist on the land, and not, as here, to its characteristics when delivered to the site.

B

While the characteristics specified in the ordinance are not themselves a basis for the disparate treatment of mobile homes, they do serve to identify "the mobile home." If that label implies the existence of other (but unspecified) characteristics which provide a basis for restricting mobile homes to mobile home parks, there is a valid purpose for the ordinance.

We are unable to identify any inherent characteristics of mobile homes that justify the per se rule of the ordinance.

Amicus curiae Michigan Townships Association argues that the segregation of mobile homes is justified on aesthetic grounds.

It appears that mobile homes can be designed or modified to compare favorably in appearance to many site-built homes. There is no longer reason to presume that mobile homes will fail to live up to a community's aesthetic standards. Reasonable requirements to assure favorable comparison with those standards, of course, can be imposed by a municipality.

Concerns based in health and safety are also illusory. A municipality, again, is free to deal with concerns of this type in a reasonable code. Standards to assure that mobile homes compare favorably to other housing in, for example, insulation, adequacy of plumbing, and size

---

[5]"The Board of Appeals shall make or cause to be made an investigation in regard to such application, and if it be determined that the building and/or buildings complies with and is in conformity to the Robinson Township Building Code or will be brought into conformity with said code by the applicant and that such building and/or buildings at the proposed new location will not be injurious to the contiguous property and the surrounding neighborhood, the Board of Appeals may grant a moving permit, and if the applicant is required to make any improvements or changes to bring said building or buildings into conformity with the Building Code the permit shall specify such requirements. If any improvements or alterations in the amount of $200.00 or more are required, the applicant shall apply for and secure a permit for such alterations pursuant to this ordinance before moving said building and/or buildings under the moving permit issued by the Board of Appeals.

"The foundations and all other new portions, improvements or alterations to said building or buildings shall be constructed in conformity with the Township Building Code and the use, location of said building or buildings and yard areas shall conform to the Robinson Township Zoning Ordinance and Building Code." *Id.,* §_500.2.

of the living space exist[6] or can be imposed. And, as we have noted, a community may impose requirements to assure protection from windstorm damage.

Another concern that has been voiced is that mobile homes are given to transient use. The practical necessities attending the installation of a single mobile home in an area in which site-built housing is allowed, along with conditions (such as those discussed above) that a township might reasonably attach to such mobile home use, vitiate this cause for concern. A parcel of land of sufficient size to meet community standards probably will have been purchased by the mobile home owner. Utility lines may be installed to the site; the municipality may require that a foundation to which the home will be firmly attached be laid, and other on-site modifications may be made to bring the mobile home and the parcel on which it is located into conformity with community aesthetic standards. In light of the investment required to so install a mobile home as a single family dwelling, it is unreasonable to assume the mobile home dweller will stay only a short time.[7]

---

[6] See Department of Housing and Urban Development, Mobile Home Construction and Safety Standards, 24 CFR §_3280.

See A Comparison Between HUD's Mobile Home Construction and Safety Standards (1975) and Building Officials and Code Administrators (BOCA) Single Family Dwelling Code (1975), which is Appendix C in the brief of amicus curiae Manufactured Housing Institute, Inc.

[7] "At their location [mobile homes] are removed from the axles and wheels and placed on concrete pads and piers each about 6 to 7 feet apart. In addition, with units constructed during the last 3 years, hurricane bands built into the walls of the units are anchored with bolts augered 3 to 4 feet into the ground.

"[O]nce put in place and made immobile, they are often skirted around their bases. According to plaintiffs' witness, between 75 and 80 percent of mobile homes once located are never moved. When they are moved, it takes approximately three days to dismantle the mobile home and set it up for moving, and several more days to replace it in its new location. At present prices moving expenses will range from $500 for a single-wide, to $1000 for a double-wide." *Gates v. Howell,* 282 N.W.2d 22 (Neb. 1979).

"It need hardly be pointed out that these double width homes are intended to remain on site permanently, and that their removal by cranes or other heavy machinery would undoubtedly entail considerable difficulty and oftentimes considerable damage to the landscape. Insofar as the single width homes are concerned their removal would also entail some difficulty since in their current models they may be as much as seventy feet long and fourteen feet wide. Here, as with the double width homes, the intent that they remain on site permanently is entirely evident." *Koester v. Hunterdon County Board of Taxation,* 399 A.2d 656 (N.J. 1979).

Transient use could be expected, if at all, only of mobile homes located in, rather than away from, mobile home parks. But even this expectation is not supportable in fact, for "[w]hile mobile homes were originally for transient purposes, today about 60% of all mobile homeowners never move their home. The MHMA [Mobile Home Manufacturers' Association] reports that the average stay in one location by mobile home owners is 58 months, which is approximately the

The disparate treatment of mobile homes seems to be based on attitudes which once had but no longer have a basis in fact:

"Community fear of blight can be traced to the low quality of both the early trailers and their parking facilities. Economic conditions of the 'thirties, followed by wartime housing shortages and rapid relocations of the labor force, pressed many thousands of unattractive trailers into permanent use. Often these units were without running water or sanitary facilities. There were no construction standards to insure even minimum protection against fire or collapse. They were parked in areas which were usually crowded, poorly equipped, and generally unsuited to residential use. As a result, conditions in these parks seldom exceeded minimum health and sanitation standards. The specter of such parks teeming with tiny trailers made community apprehension understandable. But substantial improvements in the quality of both mobile homes and park facilities may have undermined the bases for this antipathy today. The mobile home currently produced is an attractive, completely furnished, efficiently spacious dwelling for which national construction standards have been adopted and enforced by the manufacturers' associations." [Note, *Toward an Equitable and Workable Program of Mobile Home Taxation,* 71 Yale L.J. 702-703 (1962).]

Decisions from other jurisdictions, while not directly on point, support the view that per se discrimination against mobile homes can no longer be legitimized.

In holding that mobile homes intended to be used as permanent dwellings are taxable as real property, the New Jersey Supreme Court explained that '[t]he early house trailers, which originated a half century ago, have been described as makeshift contraptions 'not really fit for permanent human habitation.' ... That they were then viewed as personal property can have little relevance when dealing with modern mobile homes.... These modern homes not only have all of the facilities of conventional homes, including sewage, water, lighting, heating and air conditioning, but also are more and more being constructed to look like and be used as conventional homes." [*Koester v. Hunterdon County Board of Taxation, supra.*]...

[The court discussed similar holdings in other cases.]

Moreover, Robinson Township's building code allows for prefabricated housing which is assembled at the site.[8] There can be no reasonable basis for distinguishing between mobile homes and other prefabricated dwellings. Both are "movable or portable," and may be similar in appearance and constructed of similar materials. It is not a valid basis for distinction under the

---

same residency duration as in conventional housing. About 70% of the mobile homes used since World War II have been used as permanent dwellings." Neithercut, *The Mobile Home: Problems With Its Recognition as a Valid Housing Source,* Newsletter, Real Property Section, State Bar of Michigan (No. 10, Dec., 1975), p. 25.

[8] "*Approval of Alternate Types of Construction and Materials.* — The building inspector may approve the use of types of construction such as prefabricated houses or materials that vary from the specific requirements of this Code if, (1) such alternate types of construction or materials comply with the recommended standards of government agencies or other national organizations which publish recognized standards relative to building materials and workmanship, or, (2) reports of agencies or laboratories generally accepted as competent by engineering authorities indicate that alternate materials or construction equal or exceed the applicable Code requirements." Robinson Township Building Code, §_102.

police power that one is not only prefabricated but also preassembled, and "constructed to be towed on its own chassis."

This is not to say that a municipality must permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of installation on the site, to be placed wherever site-built single family homes have been built or are permitted to be built. Nor do we hold that a municipality may no longer provide for mobile home parks. We hold only that a per se restriction is invalid; if a particular mobile home is excluded from areas other than mobile home parks, it must be because it fails to satisfy standards designed to assure that the home will compare favorably with other housing that would be allowed on that site, and not merely because it is a mobile home.

We affirm the finding of the Court of Appeals that the ordinance is unconstitutional but vacate its judgment and remand to the circuit court for further proceedings not inconsistent with this opinion. No costs, a public question.

COLEMAN, CHIEF JUSTICE (dissenting):

....

[Most of the dissent is omitted, but the following comments on the differences between mobile and conventional homes is of interest:]

Although the construction of some modern mobile homes has improved and the area of some has been enlarged, basic differences between mobile homes and site-built homes remain. By definition, a mobile home is built without a permanent foundation and must be of a weight and dimensions that can be towed on a highway. They are more susceptible to windstorm and fire damage, which increases the possibility of injury to persons and property in the surrounding area. The police power extends to imposing reasonable regulations to safeguard residents and others against the dangers of such damage.

Plaintiff notes additional problems caused by a general lack of storage space in mobile homes. This lack of storage space may result in personal property being stored outside or the addition of lean-tos. Plaintiff notes that various practical problems result from these conditions.

Also, because a mobile home is designed to be towed on its chassis, they may lead to transience. Increased transience may also result in unsightly and possibly dangerous conditions in the land when the mobile home is removed. Even if the mobile home remains in one spot, it is generally subject to more rapid deterioration than a site-built home. Further, it would be unreasonable to assume or take judicial notice of the conclusion that all mobile homes compare favorably with site-built homes.

As provided in the statute, classifications may take into consideration the preservation of property values.[9] Accordingly, one widely acknowledged, reasonable governmental interest is the preservation of property values. The value of a piece of property or of property in a zone is dependent not only on the intrinsic nature of the property but also upon the nature and uses of neighboring property. For the most part, even the best of mobile homes (*e.g.*, double-width homes towed in two parts, mobile homes with bay windows on the ends, a porch attached or decorator steps, etc.) are significantly different from site-built homes or are so perceived by many. This perception can have a significant effect on property values if mobile homes are

---

[9] Although the preservation of surrounding property values and characteristics may not be sufficient by itself to justify these zoning restrictions, see *Senefsky v. Huntington Woods*, 12 N.W.2d 387 (Mich. 1943), these factors may be taken into consideration along with the other factors mentioned above, see M.C.L. §_125.273; M.S.A. §_5.2963(3).

scattered throughout any residential district. Regardless of whether the perception is valid, restricting mobile homes to designated areas furthers governmental interests by furthering the safety, sanitary and recreational needs of the occupants and others, and by grouping like uses together.

With only these surface considerations, it becomes apparent that the defendants have not overcome the burden of proving that there is no room for a legitimate difference of opinion concerning the reasonableness of this classification. The defendants have not overcome the presumption of constitutionality.