

Ordinances

The Myth of Mobility: Protecting Manufactured Home Communities

by Erich R. Eiselt, Assistant General Counsel

Modern mobile homes have largely ceased to be "mobile." Fixed to a rented pad and composed of numerous sections joined on-site, today's "mobile home" generally becomes a permanent structure. When a mobile home park is converted to a different use it can have a devastating effect on park residents. Even if alternate sites can be found, relocation costs are prohibitive.

Laws intended to protect mobile home dwellers are often found to contravene property rights of park owners. The history of such protective legislation in Washington State is instructive. There, roughly six mobile home parks closed every year from 1989 to 2002. That number grew to 14 closures per year between 2003 and 2009.

In 1993, the Washington legislature passed a law requiring owners who closed mobile home parks to contribute to tenants' relocation costs. That statute was struck down by the Washington Supreme Court as "unduly oppressive." *Guimont v. Clarke*, 854 P.2d 1 (Wash. 1993). State lawmakers then enacted legislation in 2000 granting mobile home tenants a right of first refusal if the park owner decided to sell the property. That law was also invalidated by Washington's highest court as an impermissible taking and transfer of private property. *Manufactured Housing Cmtys. of Wash. v. State,* 13 P.3d 183 (2000).

Lacking adequate protections for its mobile home residents, the City of Tumwater, Washington took action. The City Council passed two ordinances amending Tumwater's comprehensive plan, creating a new Manufactured Home Park (MHP) land use designation and MHP zoning. Six of Tumwater's ten manufactured home parks, and only those parks, were rezoned as MHP areas.

The new ordinances essentially prohibited multifamily development in MHP zones. Ten "permitted uses" were specified, including mobile home parks, open spaces and one single family home per lot. "Conditional uses" (available upon application) allowed development such as churches, cemeteries and cell tower sites. A third category of "use exception" required a showing by the MHP-zoned property owner that "they do not have a reasonable use of their property" or that "uses authorized by the MHP zoning are not economically viable."

The stated intent of the ordinances was to "promote development that is high density" and "single family in character," and to "provide sufficient land for manufactured homes."

In *Laurel Park Community, et al. v. City of Tumwater*, No. 11-35466 (9th Cir. October 29, 2012), three MHP-zoned park owners and a nonprofit challenged the ordinances under the Fifth and Fourteenth Amendments and state "takings" and due process grounds.

Noting that "as a general rule, zoning laws do not constitute a taking," the Ninth Circuit analyzed the Tumwater ordinances against the standards enunciated in *Penn Central Transp. Co. v. City of New York,* 428 U.S. 104 (1978). *Penn Central* examines (1) the economic impact of the regulation on the claimant; (2) whether the law interferes with "distinct investment-backed expectations;" and (3) the character of the governmental action.

Plaintiffs failed the "economic impact" test. One park owner claimed a 13% reduction in property value due to rezoning, while the other two owners did not document any decline. The Circuit Court found that such a modest financial impact "falls comfortably within permissible land use regulations."

The park owners also failed the "distinct investment-backed expectation" test. Although admitting to a strategy of building mobile home parks in the path of future development, they could point to no specific investment expectation. The lack of decline in value due to MHP rezoning further indicated that future redevelopment prospects were only speculative.

The "character of the governmental action" test fell slightly in favor of the plaintiffs. The Circuit Court noted that the government cannot generally force certain individuals to bear burdens which in all fairness should be borne by the public. Here, the City could have created a larger MHP district or funded a program to subsidize mobile home owners forced to move due to redevelopment. On balance, however, the first two tests outweighed the third. The MHP ordinances did not violate park owners' Fifth and Fourteenth Amendment property rights.

Plaintiffs' state-based claims also failed. The Ninth Circuit identified the fundamental property ownership rights protected under Washington law: to possess, to exclude others, and to dispose of property. Unlike the tenants' first refusal rights which had been invalidated in *Manufactured Housing*, the Tumwater zoning scheme did not transfer property rights to mobile home residents or prevent owners from selling their parks. The fact that the MHP zoning scheme might also reduce the potential uses of park properties was not actionable; the owner's property right was merely to make "*some economically viable use*" of the property. (citing *Guimont*). Therefore, there was no "taking" under the Washington Constitution.

The Tumwater ordinances also survived plaintiff's due process challenge. The ordinances had been adopted for a well-articulated and legitimate public purpose, used reasonably necessary means and were not overly oppressive to park owners. ML