

15-0392

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

PATRICK RUSSELL AND
SYLVIA SMITH,

Plaintiffs,

vs.

/ / / Civil Action No. 14-C-571

TOWN OF GRANVILLE,

Defendant.

ORDER DENYING APPEAL

On the 24th day of February, 2015 came the Plaintiff, Sylvia Smith, in person and with her counsel, Michael J. Sharley, and came the Defendant, The Town of Granville, by its counsel, Michael L. Solomon. The Plaintiff, Patrick Russell did not appear in person and it was represented to the Court that Mr. Russell could not attend the hearing due to health reasons.

The Court had set this matter for hearing for the purpose of hearing the argument of counsel and to allow the parties to present additional evidence if they so desired. At the outset of the hearing, both counsel represented to the Court that neither side desired to present any additional evidence or argument but would present any evidence that the Court would request be presented to aid in its decision.

The Court did request to hear the testimony of Christopher Fletcher who was a member of the committee that drafted the legislation which is now *W.Va. Code Section 8A-11-1*.

The Court having reviewed the briefs of the parties and, after having heard the testimony of Christopher Fletcher, hereby makes the following findings of fact and conclusions of law:

I. DENIAL OF PLAINTIFFS' REQUEST FOR TRAILER PERMIT

1. Plaintiffs requested The Town of Granville to allow them to place a mobile home on real estate owned by the Plaintiff, Patrick Russell and to occupy the mobile home during the renovation of Plaintiff

Patrick Russell's residence. This request was denied by The Town of Granville based upon the provisions of *Article 1739.02 of Part Seventeen, Chapter Five of The Codified Ordinances of The Town of Granville, West Virginia* which provides in its relevant part as follows:

“1739.03 UNLAWFUL ACTS. No person shall . . . locate, situate, keep or maintain a mobile home or trailer for occupancy upon any lot or tract of land located within the town other than such property which is currently designated to be a mobile home park.”

2. Plaintiffs contend that the above-referenced ordinance is invalid based upon the provisions of *W.Va. Code Section 8A-11-1* which provides as follows:

Section 8A-11-1. Standards for factory-built homes.

(a) Notwithstanding any existing provisions of law, municipal or county ordinance or state building code, the standards for factory-built homes, housing prototypes, subsystems, materials and components certified as acceptable by the Federal Department of Housing and Urban Development are considered acceptable and are approved for use in housing construction in this State.

(b) Appropriate building code compliance documentation attached to a factory-built home shall constitute prima facie evidence that the products or materials contained therein are acceptable.

(c) A governing body of a municipality or a county, when enacting residential design standards for the purposes of regulating the subdivision, development and use of land, shall uniformly apply such design standards and associated review and permitting procedures for factory-built and other single-family constructed homes.

(d) Factory-built homes, like other types of homes, shall be constructed and installed in conformity with the requirements of 44 C. F. R. Section 60.3 (1976) and any applicable statute or rule relating to building in a flood zone.

3. Defendant contends that the above-referenced Ordinance is valid based upon the provisions of *West Virginia Code Section 8-12-5* which provides in its relevant part as follows:

Section 8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by (i) of the Constitution of this State, (ii) other provisions of this chapter, (iii) other general law, and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except a special legislative charter, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

4. In *The Town of Stonewood vs. Bell* and *The Town of Barrickville vs. Griffin*, 165 W.Va. 653; 270 S.E.2d 787 (1980), the Supreme Court of Appeals of West Virginia upheld the validity of two municipal ordinances which were virtually identical to the Town of Granville's ordinance.

The Court in *The Town of Stonewood, supra*, did note that in both of the municipalities involved in the appeal, there was in fact space available in existing mobile home parks, and therefore, the ordinances did not completely prohibit the placement of mobile homes in the municipalities. Attached to Defendant's brief was the Affidavit of Patricia Lewis, Mayor of The Town of Granville, which verifies that from at least January 2013 through the date of the Affidavit, there were in fact spaces available in existing mobile home parks in the Town of Granville.

5. The Plaintiffs' argument is that *West Virginia Code Section 8A-11-1(b)-(c)* impliedly repealed *West Virginia Code Section 8-12-5 (30)* and legislatively overruled the case of *The Town of Stonewood vs. Bell, etc., supra*.

6. The legislative history of *West Virginia Code Section 8A-11-1* clearly indicates that it was not the intention of the legislature to impliedly repeal *West Virginia Code Section 8-12-5(30)* or to

legislatively overrule the holding in *The Town of Stonewood vs. Bell, etc., supra.*

7. Christopher Fletcher testified that in 2006, the West Virginia Housing Institute (the representative for the factory built housing industry in West Virginia), The West Virginia Planning Association and The West Virginia Municipal League worked together to revise the zoning laws of the West with respect to factory built homes.

Mr. Fletcher further testified that the West Virginia Housing Institute did want to repeal *West Virginia Code Section 8-12-5(30)*, however, the committee which drafted *W. Va. Code Section 8A-11-1* did not agree to do so.

8. Plaintiffs' argument that *West Virginia Code Section 8A-11-1* impliedly repealed *West Virginia Code Section 8-12-5(30)* and legislatively overruled the holding in *The Town of Stonewood vs. Bell, etc., supra* must fail.

9. *West Virginia Code Section 8A-11-1* is part of the West Virginia law regarding zoning which is *West Virginia Code Section 8A-1-1 et seq.* Therefore, *West Virginia Code Section 8A-11-1* applies to zoning enactments by governing bodies.

10. The Town of Granville has never enacted any zoning ordinances. As such, the Town of Granville has never enacted any "residential design standards" as set forth in *West Virginia Code Section 8A-11-1*. Therefore, *West Virginia Code Section 8A-11-1(c)* does not apply to The Town of Granville because it has never enacted any zoning ordinances pursuant to a comprehensive plan as required by *West Virginia Code Section 8A-1-1 et seq.*

11. As stated by The Supreme Court of Appeals in *The Town of Stonewood vs. Bell, etc., supra* in upholding the validity of *West Virginia Code Section 8-12-5(30)*:

"By allowing municipalities to regulate mobile homes without a comprehensive zoning plan, the legislature may well have realized that difficulties many West Virginia towns might have in adopting a comprehensive zoning plan under *W. Va. Code Section 8-24-1 et seq.* Under those code sections a municipality must have a planning commission of

not less than five nor more than fifteen individuals who hold regular meetings and who employ necessary personnel. The planning commission is charged with the duty of making and recommending a comprehensive plan with maps, plats, charts and the like. Such activities, of course, would require the employment of professions skilled in land use planning. A review of the code provisions concerning zoning plans clearly discloses the problems a small municipality [**791] would have in administering such a comprehensive scheme. Accordingly, we are compelled to conclude that the legislature did not act [***10] arbitrarily or unreasonably in granting to municipalities the authority to regulate, with or without a comprehensive zoning plan, the placement of mobile homes within municipalities.”

(165 W. Va. 653, at 658; 220 S.E.2d 787 at 790, 791)

12. Therefore, the Court concludes as a matter of law that the ordinance of The Town of Granville which prohibits the placement and occupancy of a trailer or mobile home anywhere within the Town except for an existing mobile home park is valid and enforceable. Therefore, the Town of Granville acted properly in denying Plaintiffs’ request to place and occupy a mobile home on the real estate owned by Patrick Russell.

II. VALIDITY OF PROCEDURE FOLLOWED BY THE TOWN OF GRANVILLE TO CONDEMN THE PLAINTIFF PATRICK RUSSELL’S HOME

1. Plaintiffs contend that The Town of Granville failed to follow the procedures for the appeal of the condemnation of Patrick Russell’s home as set forth in Ordinance Number 1719.08 which requires a hearing before Granville Town Council.

2. The Town of Granville did not condemn the Plaintiff Patrick Russell’s property pursuant to Ordinance 1719.08. Rather, the Town followed the procedures as set forth in Part Seventeen, Chapter One, Article 1713 of The Codified Ordinances of The Town of Granville, West Virginia which is more commonly known as The West Virginia State Building Code.

3. The West Virginia State Building Code is defined in *W.Va. CSR Section 87-4-2.8*.

2.8 - "State Building Code means the entire contents of this rule and the referenced national codes and standards."

4. The "referenced national codes and standards" are set forth in *West Virginia CSR Section 87-4-4. W. Va. CSR Section 87-4-4.1(e)* references the International Property Maintenance Code.

5. It was the provisions of *The International Property Maintenance Code* that The Town of Granville followed regarding the condemnation of the Plaintiff, Patrick Russell's property and Mr. Russell's appeal thereof.

6. In accordance with the provisions of *The International Property Maintenance Code Section 111*, the appeal of the condemnation of Patrick Russell's home was held before the "Board of Appeals". Board of Appeals is defined in *Section 111.2 of The International Property Maintenance Code. W. Va. CSR Section 87-4-4.1a2* modifies the provisions of *The International Property Maintenance Code* and provides that Board of Appeals shall consist of five members.

7. The Plaintiff, Patrick Russell, was afforded his appeal hearing before the Town of Granville International Code Council Appeal Board pursuant to the provisions of *The State Building Code, The International Property Maintenance Code* and *Part Seventeen, Chapter One, Article 1713 of The Codified Ordinances of The Town of Granville*.

8. Based upon the foregoing, the Court concludes as a matter of law that the appeal process afforded to the Plaintiff, Patrick Russell, regarding the decision of The Town of Granville's code enforcement official was proper.

It is, therefore, **ORDERED** that the Plaintiffs' Petition for Appeal is denied.

It is further **ORDERED** that the Clerk of the Circuit Court provide certified copies of this Order to the following:

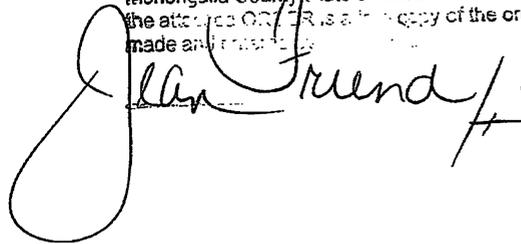
(a) Michael J. Sharley, counsel for Plaintiffs, 5 Dunkard Avenue, Westover, WV 26501; and

(b) Michael L. Solomon, counsel for Defendant, 330 Chestnut Street, Morgantown, WV 26505.

ENTER: March 30, 2015

Susan B. Tucker
SUSAN B. TUCKER, JUDGE

STATE OF WEST VIRGINIA, SS:
I, Jean Friend, Clerk of the Circuit and Family Courts of
Monongalia County, State aforesaid, do hereby certify that
the attached ORDER is a true copy of the original Order
made and returned to me.

 Circuit Clerk

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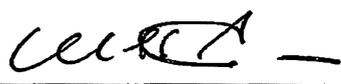
NOTICE OF PROPOSED ORDER AND CERTIFICATE OF SERVICE

NOTICE: Please take notice that the enclosed **Order Denying Appeal** has been forwarded to The Honorable Susan Tucker, Judge of Circuit Court of Monongalia County, West Virginia for entry. Pursuant to Rule 24.01© of the West Virginia Trial Court Rules, you have five days to express objections thereto, by mail or fax, by sending such objections, in writing to: Honorable Susan Tucker, Judge, Monongalia County Courthouse, Morgantown, WV 26505.

CERTIFICATE OF SERVICE: On the 18th day of March, 2015, I transmitted a copy of this Notice of Proposed Order and Certificate of Service along with the attached proposed Order, by United States Mail, postage prepaid, to: Michael J. Sharley, counsel for Plaintiffs, 5 Dunkard Avenue, Westover, WV 26501.

TOWN OF GRANVILLE,
Defendant, By Counsel,

SOLOMON & SOLOMON

By: 

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