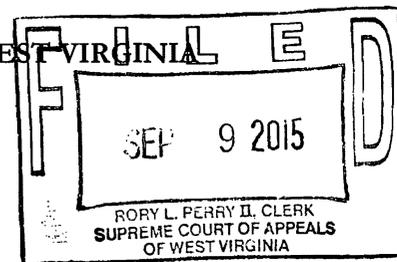


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PATRICK RUSSELL AND
SYLVIA SMITH,

Plaintiffs Below,
Petitioners,



vs.

/ / / NO. 15-0392

TOWN OF GRANVILLE,

Defendant Below,
Respondent.

RESPONDENT'S BRIEF

SUMMARY OF ARGUMENT

THE ORDINANCE OF THE TOWN OF GRANVILLE WHICH PROHIBITS THE PLACEMENT OF MOBILE HOMES ANYWHERE IN THE TOWN EXCEPT IN ESTABLISHED MOBILE HOME PARKS IS VALID AND ENFORCEABLE, NOTWITHSTANDING THE PROVISIONS OF WEST VIRGINIA CODE SECTION 8A-11-1.

STATEMENT REGARDING ORAL ARGUMENT

Respondent does not believe that oral argument is necessary in this appeal.

ARGUMENT

West Virginia Code Section 8-12-5 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; (emphasis added)

On September 10, 2013, The Town of Granville adopted an ordinance that prohibits the placement of mobile homes anywhere within the Town except in existing mobile home parks. A copy of this ordinance can be found in the Supplemental Appendix at page 10.

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. The Town of Granville did have spaces available in existing mobile home parks from at least January 2013 through January 13, 2015. (Affidavit of Mayor Patricia Lewis - Supplemental Appendix page 13).

The Petitioner's 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*. It is The Town of Granville's position that this argument is without merit.

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 8-12-15(30)* or to legislatively overrule the holding in *The Town of Stonewood vs. Bell, etc., supra*.

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 with respect to factory built homes at the request of the West Virginia Housing Institute. (Transcript of February 24, 2015.)

The West Virginia Housing Institute did want to repeal *West Virginia Code Section 8-12-5(30)* and thereby legislatively overrule the holding in *The Town of Stonewood vs. Bell, etc., supra*. To that

end, the West Virginia Housing Institute was instrumental in drafting the following failed bills:

(1) Senate Bill 553 entitled “A Bill to Amend and Reenact Section 8A-11-1 of The Code of West Virginia 1931 as amended relating to prohibiting local ordinances to discriminate against factory built housing (emphasis added). The bill, which did not pass through committee, provided that “A factory-built home as defined in section two, article fifteen chapter thirty-seven of this Code shall be a permitted residential use of property for the purposes of zoning and is a permitted use in zones or districts where single-family dwelling units or multi-family dwelling units are permitted. (Supplemental Appendix - page 14.)

(2) H.B. 4333 entitled A Bill to Amend and Reenact Section 8A-11-1 of The Code of West Virginia 1931, as amended relating to municipal zoning generally; and prohibiting discrimination against the location of factory-built housing units by units of local government. (emphasis added). Again, this bill did not make it out of committee. (Supplemental Appendix - page 16.)

(3) An early version of Senate Bill 47, which did not make it out of committee, contains in its title the language “relating to prohibiting local ordinances from discriminating against factory-built housing.” (emphasis added) (Supplemental Appendix - page 18.)

The final version of Senate Bill 47 which did pass, and is the current *West Virginia Code Section 8A-11-1*, unlike the bills that did not pass, does not contain any language in its title or in the body of the bill which states that it was intended to prohibit discrimination against factory-built homes. Further, the body of the bill does not contain language which requires governing bodies to permit factory-built homes in areas where single family homes are permitted. (Supplemental Appendix - page 20.)

Therefore, Petitioners’ 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. If it were the intention of the legislature to impliedly repeal the provisions of *West Virginia Code Section 8-12-5(30)* and legislatively overrule the holding in *The Town of Stonewood vs. Bell, etc., supra*, it would have passed one of the versions of the bills that

expressly stated that the intent was to prohibit discrimination by governing bodies regarding the placement of mobile homes.

The question then becomes, what was the purpose of the 2006 amendment to *West Virginia Code Section 8A-11-1*. The portion of *West Virginia Code Section 8A-11-1* that Plaintiff relies upon is as follows:

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. (Emphasis added)

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.

The Town of Granville has never enacted any zoning ordinances. (See Affidavit of Patricia Lewis, Supplemental Appendix - page 13.) 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-11-1C* 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.*

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 2that 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)

The Town of Granville is a small municipality that could not afford to implement a comprehensive plan and enact zoning. It is currently moving in that direction and when it does adopt zoning ordinances, it will be required to comply with the provisions of *West Virginia Code Section 8A-11-1*. However, until it does adopt zoning ordinances with design standards pursuant to a comprehensive plan, *West Virginia Code Section 8A-11-1* does not apply to its mobile home ordinance adopted pursuant to *West Virginia Code Section 8-12-15(30)*.

CONCLUSION

WHEREFORE, Respondent requests that the Court affirm the Order Denying Appeal of the Circuit Court of Monongalia County on March 20, 2015.

**THE TOWN OF GRANVILLE,
Defendant/Respondent, By Counsel,**

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2015, I served the foregoing **RESPONDENT'S BRIEF** upon counsel of record by placing a copy of same in an envelope, postage prepaid, in the United States Mail, addressed as follows:

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