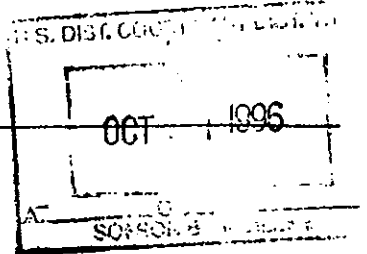


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN



WISCONSIN MANUFACTURED HOUSING ASSOCIATION,  
RENARD HOMES, INC. and PATRIOT HOMES,

Plaintiffs,

v.

Case No. 95-C-1288

TOWN OF SUAMICO and  
ROGER VANKAUWENBERGH,

Defendants.

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JUDGMENT

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The parties having appeared before this Court on September 24, 1996, plaintiffs by Joshua L. Gimbel and James Patrick Thomas of Michael, Best and Friedrich, and defendants by Paul P. Umentum of Soquet, Wanezek, Umentum & Jackels, S.C. and based upon representations made therein and upon the Consent to Judgment filed herewith, and the Court having been made aware of the contents thereof,

JUDGMENT IS THEREFORE ENTERED in favor of plaintiffs Wisconsin Manufactured Housing Association, Renard Homes, Inc. and Patriot Homes and against defendants Town of Suamico and Roger VanKauwenbergh, on the merits, as follows:

FINDINGS OF FACT

1. Plaintiff Wisconsin Manufactured Housing Association ("WMHA") is an incorporated association with its principal place of business at 202 State Street, Suite 200, Madison, Wisconsin.

2. Plaintiff Renard Homes, Inc. ("Renard Homes") is a Wisconsin corporation with its principal place of business at 1929 Shawano Avenue, Green Bay, Wisconsin.

3. Patriot Homes ("Patriot") is an Indiana business with its principal place of business at 57420 County Road 3 South, Elkhart, Indiana. (Collectively WMHA, Renard Homes and Patriot Homes are referred to as "Plaintiffs.")

4. Town of Suamico ("Suamico") is a Town under Ch. 60, Wis. Stats., located in Brown County, Wisconsin.

5. Roger VanKauwenbergh ("VanKauwenbergh") is the building inspector for Suamico, with offices located at 1745 Riverside Drive, Suamico, Wisconsin. (Collectively, Suamico and VanKauwenbergh are referred to as "Defendants.")

6. The Attorney General of the State of Wisconsin was served with a copy of the Summons, Complaint, Civil Cover Sheet and Certificate of Interest in this action, in compliance with §806.04(11), Wis. Stats., relating to constitutional challenges of a law or ordinance.

7. On or about May 16, 1995, Kurt White ("White") of Green Bay, Wisconsin, applied for a building permit (the "Application") seeking authorization to place a new, one-family manufactured home (the "Home") on a parcel of land within the Town of Suamico. The Home, manufactured by Patriot Homes was sold to White by Renard Homes.

8. The Application described the Home as containing a living area of approximately 1,352 square feet, plus a 576 square

foot garage. The Home was to have its own septic system, a private on-site well, three bedrooms, two full baths, a kitchen, dining area, living room, a utility room and a 1,352 square foot basement.

9. The Application was denied by Suamico, by and through VanKauwenbergh.

10. A handwritten notation by VanKauwenbergh on the Application states: "Denied Violation of Suamico Town Ordinance."

11. VanKauwenbergh indicated to White that the Application would not be approved because the Home did not comply with the Uniform Dwelling Code ("UDC").

12. Suamico, through VanKauwenbergh, also based the denial upon the mistaken belief that:

- (a) only manufactured dwellings under ILHR 20.07(52)(a), Wis. Adm. Code were permissible in the Town of Suamico; and
- (b) the Home was unacceptable because it did not have an ILHR 20.13, Wis. Adm. Code certification insignia.

13. Suamico, through VanKauwenbergh, also based the denial of the Application upon, in part, Article XV of the Town of Suamico Ordinances ("Suamico Art. XV") which states:

Mobile homes shall be prohibited in all zoning districts except within a mobile home park within the Town of Suamico ...

14. As a result of the denial of the Application, White decided not to purchase the Home, depriving Patriot Homes, Renard Homes and WMHA of income resulting from the sale.

15. There are no inherent characteristic of a manufactured home that justify a *per se* prohibition from locating outside of designated mobile home parks.

16. On August 7, 1995 Plaintiffs issued Notice of Claims Pursuant to §893.80, Wis. Stats. ("Notice"), detailing various claims against VanKauwenbergh and Suamico.

17. The Notice was personally served on both Suamico and VanKauwenbergh on August 17, 1995, within the 120 days after the happening of the event giving rise to the claims, as required by statute and was in compliance with the statute.

18. Neither of the Defendants responded in any way to the Notice within 120 days of being served; therefore, the claims therein are deemed "disallowed" under §893.80, Wis. Stats.

19. The denial of the Application by VanKauwenbergh and Suamico was the direct and proximate cause of damages to, and injuries sustained by, Plaintiffs.

#### CONCLUSIONS OF LAW

20. This Court has jurisdiction over this matter pursuant to 42 U.S.C. §5411(a) and 28 U.S.C. §§1331 and 2201. There exists between the parties an actual controversy, justiciable in character, as to which this Court can render adequate, effective and final relief. This Court also has pendent jurisdiction over the state law claims and remedies raised herein.

21. Venue is proper in the Eastern District of Wisconsin pursuant to 42 U.S.C. §5411(c) in that the act or transaction constituting the violation alleged herein occurred in this district, and the Defendants are located within this district. Venue is also proper under 28 U.S.C. §1391(b) in that this action is not founded solely on diversity of citizenship and the Defendants are located within this district. Further, the events or omissions giving rise to the claims asserted herein occurred in this district.

22. The Home was a "manufactured home" not a "mobile home" because it was manufactured after June 15, 1976. §101.91, Wis. Stats.

23. The Home complied with regulations at 24 C.F.R. §3280 et seq., promulgated under the National Manufactured Housing and Safety Standards Act of 1974, 42 U.S.C. §§5401-5426 (the "Act"), and was manufactured to federal specifications determined by the Department of Housing and Urban Development ("HUD-approved").

24. Congress passed the Act to regulate the entire manufactured home industry with regard to manufactured homes constructed after June 15, 1976. In furtherance of this intent, Congress expressly forbids any state or local government from enacting legislation which encroaches on this broad reservation of federal power. 42 U.S.C. §5403(d). The effect of this provision is to prohibit any state or local government from enacting construction or safety standards for manufactured homes which are different from the federal standards.

25. Use of the UDC to deny the Application is preempted by the Act. The continued enforcement of the UDC, as applied to manufactured homes in compliance with the Act, constitutes a violation of the Act and of the Supremacy Clause contained in Article VI, Section 2 of the United States Constitution.

26. Suamico Art. XV, as it relates to manufactured homes as defined above, discriminates between owners of conventional "site-built" and/or modular homes and owners of manufactured homes. This discrimination, as it relates to manufactured homes as defined above, has no rational basis or connection to any legitimate goal of Suamico.

27. Suamico's application of the UDC and Suamico Art. XV, as it relates to manufactured homes as defined above, has no rational basis or connection to any legitimate goal of Suamico; is therefore an arbitrary and capricious act on the part of Suamico; is therefore an invalid exercise of the police power of Suamico.

28. In enacting the Suamico Art. XV, the Town of Suamico was acting under color of statute, ordinance, regulation, custom, or usage of the State of Wisconsin and/or the Town of Suamico. Likewise, VanKauwenbergh, purporting to construe, apply, and enforce Suamico Art. XV, as it relates to manufactured homes as defined above, and the UDC was acting under color of statute, ordinance, regulation, custom, or usage of the State of Wisconsin and/or the Town of Suamico.

29. VanKauwenbergh's enforcement of Suamico Art. XV, as it relates to manufactured homes as defined above, and the UDC is actionable under 42 U.S.C. §1983.

30. This action, at least in part, was brought by Plaintiffs to enforce the provisions of 42 U.S.C. §1983. Plaintiffs, therefore, are entitled to their attorney fees under 42 U.S.C. §1988, having prevailed in this action.

31. Pursuant to §806.04, Wis. Stats. Plaintiffs are entitled to injunctive relief enjoining Defendants from engaging in any unlawful conduct related to the application of the UDC, because there is no adequate remedy at law for the injuries complained of, the parties-Plaintiff are irreparably harmed, Plaintiffs have prevailed on the merits, and the equities favor Plaintiffs.

32. VanKauwenbergh's intentional refusal to approve the Application, such approval being a ministerial act attendant to his office as building inspector, was wrongful and contrary to the provisions of the Act.

33. By such conduct, VanKauwenbergh intentionally and without privilege, interfered with Renard Homes' contract with White because White rescinded his contract with Renard Homes, interfered with Renard Homes' contract with Patriot Homes and interfered with Renard's contract with WMHA. VanKauwenbergh knew, or should have known, that the denial of the application would interfere with said contracts.

WHEREFORE, the following relief is hereby ordered:

34. As a direct, proximate, and reasonably foreseeable result of their foregoing conduct, Suamico and VanKauwenbergh are to pay to Plaintiffs their lost sales, revenues, fees, and/or profits as follows:


Wisconsin Manufactured Housing Association:	\$ 100.00
Patriot Homes	\$ 2,223.55
Renard Homes, Inc.	\$13,916.00

35. Plaintiffs, having prevailed in this action, are entitled to their attorney fees and costs under 42 U.S.C. §1988 in an amount totalling \$12,730.31.

36. Pursuant to §806.04, Wis. Stats. Defendants are enjoined from engaging in any unlawful conduct related to the application of the UDC.

37. Defendants, their employees and agents are permanently enjoined and restrained from applying or enforcing any ordinance, policy or procedure in contravention of the Act, including amendments.

Dated this 3<sup>rd</sup> day of October, 1996.

  
Hon. Thomas J. Curran  
United States District Court  
Eastern District of Wisconsin