

CHARLES E. COLLINS, an individual,  
 Plaintiff,

v.

Case No. 92-CV-80

CITY OF БЕЛОIT, WISCONSIN, a  
 municipal corporation, BOARD OF  
 APPEALS AND BOARD OF ZONING  
 APPEALS, City of Beloit, Wisconsin,  
 and MERLE FALLIN, Building Inspector,  
 City of Beloit, Wisconsin,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
 ORDER FOR JUDGMENT AND JUDGMENT

This matter having been tried before me on November 10,  
 1992, and based upon the stipulations of the parties, the  
 testimony of Mr. Jeffrey Wick and the pleadings and briefs, the  
 following are the findings and order of the Court.

Findings of Fact

Charles E. Collins ("Collins") is the owner of property  
 located at 2629 North Robinson Drive, City of Beloit, Wisconsin  
 (hereinafter the "Property"). On or about March 11, 1991,  
 Collins submitted an application for a building permit, dated  
 March 11, 1991 (the "Application"), to the City of Beloit and  
 office of the Building Inspector seeking permission to locate a  
 manufactured home at the Property. By letter dated March 20,  
 1991 from the City's Building Inspector, Mr. Merle Fallin  
 ("Fallin"), Collins was informed that the Application and  
 accompanying fee were being returned. Included with the letter

was the original Application which had been marked "Denied" and signed and dated by "M. Fallin" on March 20, 1991. The basis for the denial of Collins permit was that the manufactured home did not conform to the State of Wisconsin Building Code ("UDC").

The manufactured home which Collins intended to place upon the Property was manufactured after June 15, 1976. It was approved by the United States Congress and manufactured to very strict federal specifications contained in the National Manufactured Housing Construction and Safety Standards as administered by the Department of Housing and Urban Development ("HUD" approved) 42 U.S.C. §5401 et seq.. These standards govern construction requirements for fire resistance, strength and durability, as well as regulating the performance of heating, air conditioning, plumbing, thermal and electrical systems.

As stated in the Application, the manufactured home would contain approximately 1,550 square feet including three bedrooms, two full baths, kitchen, dining room, living room and fireplace and an attached two-car garage.

This HUD approved manufactured home would have two-by-six construction stud walls which are at a right angles to the exterior wall; snow loads and wind loads; asphalt roof; and steel I-beams. The manufactured home was to be placed upon a permanent foundation with full basement. Further, the manufactured home would be hooked up to all public utilities, including water and sewer.

The manufactured home, like all other "stick built" homes, would come to the site by truck in pieces. Although the HUD approved manufactured home is transported on its own chassis, once it reaches its permanent site the wheels would be removed and not seen again. This home, once completed, would be indistinguishable from its neighboring homes.

Collins filed a Request For Review of Determination dated April 10, 1991 ("Request for Review"), addressed to the City of Beloit Building Inspector, the Board of Appeals, and Board of Zoning Appeals of the City of Beloit requesting that the determination of the Building Inspector denying Collins' Application be reviewed pursuant to the terms of Chapter 68, Wis. Stats., ILHR § 20.21 Wis. Adm. Code, § 9.09, City of Beloit Building Code and other applicable sections of the Beloit Code of Ordinances.

On November 11, 1991, the City, through Fallin, changed the basis for the denial of Collins' building permit. The City now based its denial upon Section 4.4-2 of the Zoning Code for the City of Beloit claiming that Collins' manufactured home was a "mobile home". There have been no "mobile homes" manufactured after June 15, 1976. Wis. Stats. § 101.91. On or about November 26, 1991, Collins filed a Notice of Appeal with the City of Beloit Board of Appeals requesting reversal of the Building Inspector's denial of his building permit. Collins based his appeal on the fact that the manufactured home he intended to place upon the Property was not a "mobile home" and that the

zoning ordinance was unduly restrictive, arbitrary, unreasonable, discriminatory and contrary to the equal protection and due process clauses of the United States Constitution.

On January 14, 1992, the Board of Appeals held a hearing and considered Collins' appeal. On January 30, 1992, the Board of Appeals filed its "Findings, Conclusions, Decision and Order of Board of Appeals" affirming the Building Inspector's denial of the building permit.

The real estate at 2629 North Robinson Drive in the City of Beloit is located in a "R-2" zoning district and is not in an approved park for mobile homes.

The building inspector, defendant Fallin, denied the application based upon the provisions of Sec. 4.4-2 of the Zoning Code of the City of Beloit. The Code states

"4.4-2 Mobile Homes and Travel Trailers No person shall park or occupy a mobile home or travel trailer for living purposes except in an approved park as determined by the Beloit Mobile Home Ordinance."

The City of Beloit has adopted the Uniform Dwelling Code of the State of Wisconsin which is contained in Chapters ILHR 21 through 26 of the Wisconsin Administrative Code. The Code regulates the construction of one and two family dwellings and manufactured dwellings (ILHR 20.01).

A manufactured dwelling (ILHR 20.07(52)) is defined as "any structure or component thereof which is intended for use as a dwelling and ... is a building of open construction which is made or assembled in manufacturing facilities away from the

building site for installation, connection, or assembly and installation on the building site and for which certification is sought by the manufacturer." If certification of the structure is not sought by the manufacturer, then the structure is not a manufactured building. Sec. 21.01 of the City of Beloit Code of General Ordinances defines a mobile home as "that which is, or was, as originally constructed, designed to be transported by any motor vehicle upon a public highway and designed, equipped and used primarily for sleeping, eating and living quarters, or is intended to be so used; and includes any additions, attachments, annexes, foundations and appurtenances."

There are no valid health, safety or welfare concerns regarding placement of a HUD approved manufactured home on any given site in the City of Beloit.

#### Conclusions of Law

1. The manufactured home, the subject of this lawsuit, is not a mobile home.
2. Any requirements which the City may impose through its adoption of the Uniform Dwelling Code promulgated by the State of Wisconsin, ILHR 20-25, Wisconsin Administrative Code, dealing with manufactured homes, are preempted by federal law established by HUD.
3. A HUD approved manufactured home can be located on any property zoned residential which the City restricts dwelling to those carrying a Wisconsin Uniform Dwelling Code insignia.

4. There are no inherent characteristics of a manufactured home that would justify a per se exclusion from locating outside of designated mobile home parks.

5. Section 4.4-2 of the Zoning Code of the City of Beloit which denies Collins' the right to place this home on his property violates the constitution and is void as being unreasonable, arbitrary and discriminatory and, therefore, in excess of the City of Beloit's municipal power.

Order for Judgment

Based upon the foregoing, the Court hereby orders that judgment be entered as follows:

1. The manufactured home, the subject of this lawsuit, is not a mobile home.

2. The City of Beloit's adoption of the Uniform Dwelling Code promulgated by the State of Wisconsin, ILHR 20-25, Wisconsin Administrative Code, as it relates to manufactured homes is pre-empted by federal law established by the Department of Housing and Urban Development ("HUD").

3. Section 4.4-2 of the Zoning Code of the City of Beloit is unreasonable, arbitrary and discriminatory and, therefore, unconstitutional to the extent that it restricts manufactured homes.

Dated at Beloit, Wisconsin this 15<sup>th</sup> day of February 1993.

  
HONORABLE J. RICHARD LONG