

REGULATION OF MANUFACTURED
AND INDUSTRIALIZED HOUSING

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Recent developments in Georgia law have considerably strengthened the ability of local governments to regulate manufactured homes. The continuing issue of federal preemption applies, prohibiting the regulation of construction and safety standards, but the Supreme Court has clearly authorized aesthetic and zoning regulations on manufactured homes, even if those regulations are relatively restrictive. Federal law has remained relatively clear in terms of what regulation is permitted by a local government and what is reserved exclusively for Federal regulation. Or as the courts call it, what regulation is preempted by Federal law and thus prohibited to local governments.

I. FEDERAL LAW ON MANUFACTURED HOUSING

A. National Manufactured Housing and Safety Standards Act of 1974,
42 U.S.C. § 5401 et seq.

The National Manufactured Housing and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq. (hereinafter, “the HUD regulations”) provides a national set of safety standards and building codes for manufactured housing. It applies to the construction or manufacturing of all manufactured homes in the country and requires uniform standards with which all manufacturers must comply. It contains detailed construction standards regarding building materials, wind loads, utilities and systems, and so forth. They are, in sum, building and safety regulations, much like a building code.

B. Preemption of Local Government Regulation

The Federal Courts have repeatedly held that local government regulation of manufactured homes may not intrude upon the standards for safety and building of manufactured homes set out in the HUD regulations. They contain a preemption clause which makes clear that local governments may not impose restrictions on manufactured homes to the extent that they would conflict with or compromise the construction and safety regulations dealt with in Federal law.

An example of how preemption works is seen in the case of Scurlock v. City of Lynn Haven, Fla., 858 F.2d 1521 (11th Cir. 1988). In this case, the city of Lynn Haven adopted a requirement that manufactured homes comply with certain local or state building codes. Failure to satisfy the building codes meant that a manufactured home was not permitted in the city.

But the court found that Lynn Haven was using a safety code to regulate land use of manufactured homes. It noted that the HUD regulations established the minimum construction and safety standards for all manufactured homes built in the United States. Thus, a local government could not regulate manufactured homes by requiring them to comply with local or regional building codes, electric codes or any other regulation which conflicted with the HUD regulations. The court held that the HUD regulations preempted this and noted that the city could not use local safety regulations to restrict manufactured home use.

Other Federal cases, however, have established the right of local governments to regulate manufactured home use other than by safety and construction standards. Texas Manufactured Housing Association, Inc. v. City of Nederland, 101 F.3d 1095 (5th Cir. 1996) is a good example of the lenient standards in land use regulation approved by the

Federal courts. Nederland enacted an ordinance which prohibited all manufactured homes in any residential districts within the city, other than trailer parks. The court approved the ordinance finding that preemption by the HUD regulations does not prevent a local government from regulating the placement of manufactured homes through zoning for the purpose of protecting property values. Thus, zoning regulations which restrict the placement of manufactured homes, but do not interfere with safety and construction standards, are permitted under Federal law. Note in this case that Nederland banned all manufactured homes from all residential districts in the city, yet the Federal court found that acceptable under Federal constitutional and statutory law.

C. Zoning Restrictions on Appearance and Use of Manufactured Homes Under Federal Law

A relatively recent Federal case on manufactured home regulation is from Georgia: Georgia Manufactured Housing Association, Inc. v. Spalding County, Georgia, 148 F.3d 1304 (11th Cir. 1998). In that case, Spalding County adopted an ordinance in which manufactured homes were divided into classes with different restrictions applying to the different classes. One class, identified as Class A, was subject to the following regulations: the roof pitch must be at least 4:12; the home must be greater than 16 feet wide; the roof must be finished with shingles commonly used in residential construction; the exterior siding must also be commonly used in residential construction; the area underneath the home must be enclosed by a masonry curtain wall; and the wheels and other transportation apparatus must be removed.

In its analysis, the Eleventh Circuit concluded that “aesthetic compatibility” is a legitimate goal of a local government. Looking at the difference between a 4:12 roof pitch versus a 3:12 or 5:12 roof pitch, the court concluded that as long as the objective of

the ordinance furthers the goal of aesthetic compatibility of manufactured homes with site built homes, it was a constitutional regulation. In considering the HUD regulations, the court found that the 4:12 roof pitch requirement is not preempted because roof pitch is not a construction or safety standard under the HUD regulations nor do the regulations deal with roof pitch. According to the court, the minimum required roof pitch is an aesthetic condition, not one going to safety in the construction of the manufactured home. For these reasons, the Spalding County manufactured home regulations were approved.

D. Conclusion

The HUD regulations are relatively narrow in scope. They deal specifically with construction safety standards which require uniformity throughout the country. So long as the local government stays away from construction safety standards, Federal law will not intrude.

Certain standards regarding the appearance of manufactured homes may be imposed by local government ordinances. Some, which we saw in the Spalding County case, include minimum roof pitch, specific siding, masonry walls skirting, and other similar types of aesthetic or appearance standards. These are permitted under Federal law and, as we shall see later, are permitted under Georgia law.

In terms of zoning, the courts have approved exclusionary zoning as to manufactured homes. In fact, as we saw in the City of Nederland case, a local government may prohibit manufactured homes in all of its residential districts, except manufactured home parks. Whether the restrictions should go so far is obviously a matter of local government discretion, at least to the extent Federal law applies. But,

state law also applies in the regulation of manufactured homes, and it is different from Federal law. It is to state law that we shall turn in the next section of this article.

II. GEORGIA LAW ON MANUFACTURED HOUSING

A. Excluding Manufactured Homes from Residential Districts

The Federal courts have said that exclusion of all manufactured homes from residential districts, except for manufactured home parks, is constitutional under the Federal Constitution. For many years, it was argued that the Georgia Supreme Court took a different position as to the law in Georgia. In Cannon v. Coweta County, 260 Ga. 56, 389 S.E. 2d 329 (1990) the court found unconstitutional Coweta County's ordinances which banned manufactured homes from all residential districts and relegated them to manufactured home parks only. The court made this determination based on the skimpy justification provided by Coweta County. All Coweta County relied upon was the argument that manufactured homes hurt the tax base and reduce nearby property values. The Court found this insufficient. However, the seeds of its own destruction were contained in that decision, where the Court wrote:

this is not to say that a municipality must permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of installation on the site, to be placed wherever site-built single family homes have been built or are permitted to be built. Nor do we hold that a municipality may no longer provide for mobile home parks. We hold only that a *per se* restriction is invalid; if a particular mobile home is excluded from areas other than mobile home parks, it must be because it fails to satisfy standards designed to assure that the home will

compare favorably with other housing that would be allowed on that site, and not merely because it is a mobile home

Despite that language, the case was long read as stating that a local government could not ban manufactured homes from all residential districts. However, the situation changed dramatically in 2003 with the Court's decision in King v. City of Bainbridge, 276 Ga. 484, 577 S.E.2d 772 (2003). This case explicitly overruled Cannon, and authorized severe restrictions on manufactured homes.

In City of Bainbridge, King, a resident of the city, was sued for placing her manufactured home in the R-2 zoning district from which such homes were excluded under the zoning ordinance. In her defense of the action against her, she challenged the zoning ordinance in a two-pronged attack. One was under the National Manufactured Housing and Safety Standards Act of 1974, 42 U.S.C. §§ 5401-5426. King contended that the fact that manufactured homes were excluded from the R-2 district, while modular homes (Department of Community Affairs homes) were permitted, evinced a regulatory scheme in violation of the national act. The second attack relied on Cannon. King asserted that the exclusion of manufactured homes from the R-2 district exceeded the police power of the city as otherwise limited by Cannon; thus the ordinance according to her challenge was unconstitutional.

The Supreme Court's response was a sweeping rejection of both challenges. In upholding the city's zoning ordinance, the court concluded that the ordinance did not violate the HUD Act, nor was it an unconstitutional exercise of the city's police power. But, of significance to those of us who practice in the planning and zoning field are the rules laid down by the court which now guide us in crafting zoning ordinances. Those rules are as follows:

1. Cannon is dead and gone.
2. Local governments may draw a distinction in their zoning ordinances between manufactured homes (HUD homes) and modular homes (DCA homes). As was the case in City of Bainbridge, a zoning ordinance may exclude manufactured homes in a zoning district, but permit modular homes in the same district.
3. The City of Bainbridge's zoning ordinance excluded manufactured homes from all zoning districts, except manufactured home parks and subdivisions. Since this zoning ordinance was approved by the court, local governments may also adopt the same restrictions or similar variations with reasonable assurance that they will be upheld if challenged in court.

The purpose for excluding manufactured homes is still important, however. Without a purpose, a restriction in a zoning ordinance is arbitrary and unreasonable, and thus unconstitutional. In City of Bainbridge, the court found the zoning ordinance valid and constitutional because the restrictions were designed to regulate the quality of housing and advance general safety concerns. Other reasons may also be used and many of those are enumerated in this decision. The Supreme Court specifically noted, Courts routinely uphold zoning ordinances broadly restricting mobile home placement. A wide variety of rationales have been found sufficient to justify these ordinances: preserving land for low density, single-family dwellings, protection of property values, guarding against increased crime, guarding against traffic congestion, maintaining aesthetics, regulating population density, preventing waste and sewage problems, regulating quality of housing stock, and concerns about wind vulnerability. Hence, those reasons all appear to be legitimate. The reasons don't have to be stated in the

zoning ordinance, but it is a better practice to develop acceptable reasons when preparing the record prior to adopting a zoning ordinance. The best place to put the basis for manufactured home restrictions is in the comprehensive land use plan.

Thus, under King v. Bainbridge, flexibility in placement of manufactured homes is now largely up to the discretion of the local government. A careful and reasoned approach to restrictions on manufactured homes best serves the community, as manufactured homes should be permitted in every community.

B. Regulation of Installation of Manufactured Homes

The only statutory regulation of manufactured homes which affects local governments regards the installation of manufactured homes. O.C.G.A. § 8-2-161 requires that the state fire commissioner publish rules and regulations governing the installation of manufactured homes in the state. It provides that the installation of the manufactured home shall follow the manufacturer's installation instructions where that is available. If such instructions are not available, then the fire commissioner has established regulations which govern manufactured home installation. These rules regarding installation deal primarily with safety requirements and other specification regarding tie-downs and other requirements related to installation of manufactured homes. Georgia law mandates these installation requirements and local governments may not impose other installation requirements which in any way conflict with the manufacturer's instructions or the commissioner's regulations.

This does not mean that a local government cannot require a concrete pad, for example, or that a local government may not require a concrete stoop or not require that the wheels used for transporting the manufactured home be removed. These are all well within the authority of the local government to require. But requirements relating to the

installation instructions established by the manufacturer or the fire commissioner may not be contradicted by local ordinance.

C. Regulation of Manufactured Homes by Special Use Permits

One method of regulating the location and use of manufactured homes by local government is by special use permits or special exceptions. No published cases have been decided in Georgia, but at least one trial court has considered the issue. It is not binding precedent in Georgia, except Newton County, but it offers a glimpse of what the appellate courts would likely agree to. In Georgia Manufactured Housing Association Inc. v. Newton County, Georgia, C.A.F.N. 94-001369-S, the Newton County Superior Court upheld the county's requirement that manufactured homes be placed only in specified residential districts upon the grant of a special exception by the Newton County Planning Commission. Finding that the special exception procedure was constitutional, the court reasoned that there were sufficient standards set forth in the ordinance by which the planning commission may determine appropriately whether a manufactured home was compatible with surrounding uses.

D. Conclusion

Georgia law now clearly recognizes that manufactured homes are not appropriate in all zoning districts, and may be excluded from certain districts. It is important for the zoning ordinance to have a legitimate purpose for this exclusion, but the Courts now recognize a wide variety of legitimate reasons. If manufactured homes are permitted, they should meet the standards applicable to site-built homes.

III. REGULATION OF INDUSTRIALIZED HOUSING

As can be seen from the King v. Bainbridge case, above, the Georgia Supreme Court recognizes a distinction between manufactured homes and modular or industrialized homes. Industrialized homes are not regulated by the HUD Act, and in Georgia are regulated by the Department of Community Affairs. Installation and construction are governed by O.C.G.A. § 8-2-110 et seq. and the Rules promulgated thereunder.

Under DCA regulations, manufacturers are required to obtain state approval for their manufacturing systems and quality control procedures. Field inspection of these systems and procedures, along with inspection of industrialized buildings during manufacture, is accomplished by the DCA through an inspection system that utilizes independent private engineers and construction experts. All state-approved industrialized buildings must be manufactured to meet the official Georgia State Construction Codes. Such buildings will have a DCA insignia indicating their compliance with the state's construction standards. An approved building is deemed to comply with all local ordinances and laws relating to its construction. However, local governments retain control over all matters relating to a building's installation at a site, including subdivision controls, zoning, grading, foundation installations and utility hook-ups.

Thus, industrialized homes are essentially built like a stick-built home, but in a factory setting, and thus should be treated identically to site-built homes. If aesthetic regulation is required, such standards can be adopted, but they should apply uniformly to all residential dwellings. For example, adopting a roof-pitch requirement should

apply to site-built, manufactured, and industrialized housing. Similarly, a foundation requirement could be applied, as long as it applies uniformly.

IV. OVERALL CONCLUSION

Under Federal law, manufactured homes are tightly regulated regarding construction and safety standards, and local governments cannot alter the safety standards. However, under Georgia law, manufactured homes can be restricted from various zoning districts, including being restricted to manufactured home parks and subdivisions exclusively, provided the restriction is based on sound zoning principals. Industrialized homes, in contrast, are built to the same standards as site-built homes, and should be treated similarly. If they create an aesthetic concern, a regulation broadly applicable to all residential housing is the best bet. Additional safety regulations would likely be found preempted by the DCA Rules and other state law, even despite the absence of Federal regulation.