

## THE PRESUMPTION OF VALIDITY OF MOBILE HOMES AS A PREFERRED USE

In *Bristow v. City of Woodhaven*,<sup>1</sup> plaintiff's property was zoned single-family residential under the local municipal zoning ordinance.<sup>2</sup> Plaintiff sought a zoning amendment to the ordinance in order to construct a mobile home park on his property. Upon the city's refusal to amend the ordinance, plaintiff landowner brought suit, questioning the reasonableness of the ordinance and its particular provision of limiting mobile home parks to 75 sites.<sup>3</sup> The trial court found the ordinance, including the site limitation, unreasonable, enjoined its enforcement, and ordered the city to issue the necessary building permits.

On appeal, the city argued that plaintiff had failed to sustain his burden of proof against the presumption of validity traditionally granted such ordinances. The appellate court held, however, that where a local ordinance is at odds with the general welfare, that ordinance cannot be afforded presumed validity. The court, in reaching this conclusion, stated that certain land uses bear such a real, substantial, and beneficial relationship to the public health, safety, and welfare as to be afforded a "preferred status." When a use is given a preferred status, and that use is appropriate for a given site, the burden of proof shifts to the city to justify the exclusion of that use. Noting that legislative enactments geared toward the betterment of the general welfare give rise to a preferred use, the court relied on State statutes recognizing mobile homes as a legitimate use,<sup>4</sup> judicial precedent, and a nation-wide housing shortage in order to afford mobile homes a preferred use status. Accepting the trial court's finding that the ordinance had the effect of totally excluding

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1. 35 Mich. App. 205, 192 N.W.2d 322 (1971).

2. *Id.* at 209 n.1, 192 N.W.2d at 323 n.1. One-family residential districts were limited to: (a) one-family detached dwellings; (b) farms; (c) parks and libraries; (d) municipal uses; (e) schools; (f) accessory buildings. *Id.*

3. *Id.* at 209, 192 N.W.2d at 324. The city offered no defense of the 75-site limit.

4. MICH. STAT. ANN. §§ 5.278 (31)-(127) (1961) describes in detail the regulation, recognition and licensing of mobile home parks.

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mobile homes from the city,<sup>5</sup> the court stated that the citizen's right to decently-placed, suitable housing within their means could not be denied by the municipality. Equating this right with the general welfare, the court concluded that the city had not justified the exclusion of the mobile home park.<sup>6</sup>

The presumption of validity that defendant city relied on in *Bristow* was established by the Supreme Court in *Village of Euclid v. Ambler Realty Co.*<sup>7</sup> There the Court upheld the municipality's right to exclude certain uses,<sup>8</sup> and conferred upon the municipal ordinances a presumption of validity, unless the general public interest outweighs the interest of the municipality. Under such circumstances, the general public interest would prevail.

The *Euclid* standard of presumed validity has played a significant role in sustaining the validity of local zoning ordinances regulating mobile homes. Municipal authorities generally do not welcome mobile home parks because they allegedly crowd public facilities, present sanitation problems, tend to stunt the growth potential of the land,<sup>9</sup> hurt land values, and generally involve potential hazards to the public health.<sup>10</sup> As a result cities have excluded mobile homes from single-family residential areas by the use of minimum lot sizes<sup>11</sup> and direct exclusion.<sup>12</sup> Although mobile homes are not, as a matter of

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5. 35 Mich. App. at 220 n.9, 192 N.W.2d at 329 n.9. The trial court found that:

The practical effect of this zoning approach is to exclude all trailer parks from the city because the amount of land zoned B-3 is small in area and already substantially developed for commercial uses which serves to increase the vacant land price to a point where mobile home parks are not an economic alternative to other commercial uses. Of course the location of a mobile home park in a commercially zoned district also makes the park itself less attractive as a residence and discourages potential developers to that extent.

*Id.*

6. *Id.* at 221-22, 192 N.W.2d at 330. The court stated that the city must show that the restriction has such a relation to the health, safety, morals and general welfare as to outweigh the general interests of the region. *Id.*

7. 272 U.S. 365, 388 (1926).

8. *Id.* See also Fisher, *The General Public Interest v. the Presumption of Validity: A Debatable Question*, 50 J. URBAN L. 129, 131 (1972).

9. C. CRAWFORD, *MICHIGAN ZONING AND PLANNING* § 8.48, at 8-123 (1965) [hereinafter cited as CRAWFORD].

10. State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460, 462 (Mo. 1971).

11. Cutler, *Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe*, 1961 WIS. L. REV. 370, 381.

12. Carter, *Problems in the Regulation and Taxation of Mobile Homes*, 48 IA. L. REV. 16, 24 (1962) [hereinafter cited as Carter].

law, a nuisance per se,<sup>13</sup> or considered detrimental to the public health, safety, morals and general welfare,<sup>14</sup> the zoning ordinances regulating the parks have been accorded a presumption of validity;<sup>15</sup> and if the ordinance, as in *Bristow*, is enacted pursuant to a comprehensive plan, the presumption of validity becomes even stronger.<sup>16</sup>

The trend in favor of the validity of these ordinances is not free from exceptions. Ordinances have failed to pass the test of constitutionality where the municipality's total exclusion of mobile home parks conflicts with a state statute recognizing mobile homes as a legitimate use. Failure by the municipality to recognize this conflict between state recognition and local exclusion by showing a legitimate local interest which was protected by the exclusion has rendered some local ordinances unconstitutional.<sup>17</sup> Such findings against local exclusionary policies are not rare, but have not reversed the presumed validity of local zoning ordinances.

Although ordinances completely excluding mobile homes have generally been held invalid, ordinances excluding mobile homes from residential areas, while providing for mobile home parks in non-residential areas, have been almost universally upheld.<sup>18</sup> Such ordinances have been successfully attacked in the rare instances where it has been proven that the residential designation excluding mobile homes is inconsistent with the character of the neighborhood and, therefore, unreasonable.<sup>19</sup> Thus, prior to *Bristow*, courts had afforded

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13. *Smith v. Building Inspector*, 346 Mich. 57, 77 N.W.2d 332 (1956); *Richards v. City of Pontiac*, 305 Mich. 666, 9 N.W.2d 885 (1943); *CRAWFORD* at 8-124.

14. *CRAWFORD* at 8-123.

15. *Rodd v. Palmyra Township*, 42 Mich. App. 434, 438, 202 N.W.2d 446, 448 (1972); *Carter* at 39.

16. *Carter* at 37. Even if there is no comprehensive plan courts may presume that the ordinance restriction was based on a comprehensive plan absent a showing to the contrary. *Davis v. City of Mobile*, 245 Ala. 80, 82, 16 So. 2d 1, 3 (1943); *Cooper v. Sinclair*, 66 So. 2d 702, 705 (Fla. 1953).

17. *Gust v. Township of Canton*, 342 Mich. 436, 438, 70 N.W.2d 772, 773 (1955); *Carter* at 25.

18. *Carter* at 40; *see, e.g., June v. City of Lincoln*, 361 Mich. 95, 104 N.W.2d 792 (1960), where the court upheld a city ordinance allowing mobile homes only on land zoned commercial.

19. *Lakeland Bluff, Inc. v. County of Will*, 114 Ill. App. 2d 267, 279, 252 N.E.2d 765, 770 (1969), where the land in question was zoned for farming, but was the site of an abandoned strip mine and therefore unsuitable for farming. *See also Knibbe v. City of Warren*, 363 Mich. 283, 109 N.W.2d 766 (1961); *Dequindre Dev. Co. v. Charter Township of Warren*, 359 Mich. 634, 103 N.W.2d

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zoning ordinances the traditional presumption of validity, and have struck these ordinances down only when they conflicted with a state statute or created an unreasonable classification in relation to the neighborhood.

Before *Bristow*, mobile homes had not been given a preferred status, but Michigan courts had given hospitals,<sup>20</sup> churches,<sup>21</sup> and natural resources<sup>22</sup> a preferred status. The courts held that the exclusion of these uses could not be held constitutional in light of the more predominant general policy in favor of these uses.<sup>23</sup> The fact remains, however, that prior to *Bristow* the invalidation of zoning ordinances on the basis of preferred uses and the general welfare had been rare. This may be explained by the fact that since *Euclid*, courts have had difficulty understanding exactly what situations require the subservience of municipal interests to the larger and more important public interests.<sup>24</sup> As a result, the constitutionality of the ordinances has been tested in light of internal interests such as property values and local tastes, rather than external conditions. The consequence has been enhancement of local interests at the expense of the poor and disadvantaged who need the housing that is deemed undesirable by the municipality.<sup>25</sup>

The reluctance of courts to examine the general welfare was shown in a recent Texas decision where the facts and circumstances were quite similar to *Bristow*. In *City of El Paso v. McArthur*,<sup>26</sup> plaintiff landowner argued that his proposed mobile home park would help alleviate the housing shortage. The *McArthur* court, unlike *Bristow*, refused to consider the general welfare and held that the mobile home park would hinder residential development. In refusing to

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600 (1960); *Edwards v. Township of Montrose*, 18 Mich. App. 569, 171 N.W.2d 555 (1969).

20. *Sisters of Bon Secours Hosp. v. City of Grosse Pointe*, 8 Mich. App. 342, 154 N.W.2d 644 (1967).

21. *Roman Catholic Archbishop v. Village of Orchard Lake*, 333 Mich. 389, 53 N.W.2d 308 (1952).

22. *Certain-Teed Prods. Corp. v. Paris Township*, 351 Mich. 434, 88 N.W.2d 705 (1958).

23. *See, e.g., Sisters of Bon Secours Hosp. v. City of Grosse Pointe*, 8 Mich. App. 342, 349, 154 N.W.2d 644, 651 (1967).

24. Feiler, *Metropolitanization and Land-Use Parochialism-Toward a Judicial Attitude*, 69 MICH. L. REV. 655 (1971) [hereinafter cited as Feiler].

25. Note, *Exclusionary Zoning and Equal Protection*, 84 HARV. L. REV. 1645, 1647 (1971).

26. 473 S.W.2d 322 (Tex. Civ. App. 1971).

consider regional needs, the *McArthur* court may have excluded those most in need of inexpensive housing, for the sake of local interests. Decisions such as *McArthur* have the effect of excluding low-cost housing, thus excluding low-income families from possible job opportunities within reasonable commuting distances.<sup>27</sup> In the past, communities have used zoning powers to accomplish private ends such as neighborhood protection, enhancement of property values, and the preservation of social amenities. These community interests have been reflected in zoning decisions such as *McArthur* because of the refusal of courts to examine the general welfare and, as a result, the decisions often conflict with the general welfare.<sup>28</sup>

Another aspect of the inability of courts to understand when the general welfare should be considered lies in the difficulty courts have had in actually knowing what "health, safety, morals, and general welfare" means. The phrase offers little guidance to judges,<sup>29</sup> and the end result has been to equate the public welfare with municipal needs.<sup>30</sup> What is needed is a judgment at the outset by the court that a regional need does or does not exist, and if so, an extension of the public welfare to include regional as well as local needs.<sup>31</sup>

A practical result of a determination that there is a regional interest involved is to shift the burden of proof from the landowner to the city. It has been held that plaintiff need only show that the municipal ordinance acts as a total exclusion of a use to shift the burden onto the city.<sup>32</sup> Although *Bristow* required more than a mere

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27. Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 781 (1969). See Comment, *Mobile Homes in Kansas: A Need for Proper Zoning*, 20 KAN. L. REV. 87 (1972), which suggests that as the cost of conventional housing moves upward, more and more people find themselves priced out of the new home market—thus they turn to mobile homes. *Id.* See also Note, *The New Jersey Judiciary's Response to Exclusionary Zoning*, 25 RUTGERS L. REV. 172 (1971), which defines exclusionary zoning as "the use of cost-inflating regulations to deny access to certain areas to lower and moderate income groups," and concludes that this is a tool for racial segregation. *Id.* at 173.

28. Feiler at 661.

29. *Id.* at 657.

30. Note, *Zoning: Looking Beyond Municipal Borders*, 1965 WASH. U.L.Q. 107, 118.

31. *Id.*

32. *Beaver Gasoline Co. v. Zoning Hearing Bd.*, 1 Pa. Commw. 458, 275 A.2d 702, remanded, 445 Pa. 571, 577, 285 A.2d 501, 505 (1971) (city allowed to produce evidence to justify the total exclusion of gas stations).

showing of complete exclusion,<sup>33</sup> the decision reflects the judicial trend of suspicion regarding exclusionary ordinances where they operate to inhibit the interests of the general public, thus resulting in the presumption of validity carrying little or no weight.<sup>34</sup>

This trend of distrusting exclusionary ordinances in the regulation of mobile home parks as evidenced by *Bristow* has been continued by courts in Michigan. In *Green v. Lima Township*,<sup>35</sup> the court relied on *Bristow*, stating that a proposed mobile home park should be given a preferred use status—that the interests of potential entrants into the area and their right to suitable housing within their means, in an aesthetically desirable area where there is a willing buyer, is so basic that it is encompassed in the general welfare.<sup>36</sup> The favored use classification was also used in *Simmons v. City of Royal Oak*,<sup>37</sup> *Kropf v. City of Sterling Heights*,<sup>38</sup> and in *Baker v. City of Algonac*<sup>39</sup> where the court equated the general welfare with the right and need for decent housing.

*Bristow* was distinguished in *Cohen v. Canton Township*,<sup>40</sup> where the court found that, unlike *Bristow*, the ordinance did not exclude mobile homes from the township and the area in which the proposed mobile home park was to be built was not served by either municipal sewage or water facilities.<sup>41</sup> Consequently, the *Cohen* court limited *Bristow* to only those ordinances that completely exclude mobile homes from the community.

The result of the *Bristow* analysis appears to be a more stringent standard in examining municipal zoning ordinances than the one established in *Euclid*, and a balancing of regional and local inter-

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33. 35 Mich. App. at 217, 192 N.W.2d at 328. The court looked to the exclusionary nature of the ordinance, state statutes, housing needs, and one's right to decent housing. *Id.*

34. Fisher, *supra* note 8, at 131.

35. 40 Mich. App. 655, 199 N.W.2d 243 (1972).

36. *Id.* at 661, 199 N.W.2d at 247.

37. 38 Mich. App. 496, 196 N.W.2d 811 (1972).

38. 41 Mich. App. 21, 199 N.W.2d 567 (1972).

39. 39 Mich. App. 526, 198 N.W.2d 13 (1972). *See also* Congregation of Dovid ben Nuchim v. City of Oak Park, 40 Mich. App. 698, 199 N.W.2d 557 (1972).

40. 38 Mich. App. 680, 197 N.W.2d 101 (1972).

41. *Id.* at 684-85, 197 N.W.2d at 103. *See also* Midland Township v. Rapanos, 41 Mich. App. 75, 199 N.W.2d 548 (1972), where the court refused to apply the *Bristow* favored use standard to billboards.

ests.<sup>42</sup> Hopefully, such analysis will put an end to municipal zoning in accordance with the tastes and values of the affluent members of the community, and include a judicial examination of the policies behind local zoning ordinances,<sup>43</sup> so that the policies of the municipal ordinances will not conflict with the regional interests.<sup>44</sup>

As for mobile homes, *Bristow* has given them a new status in land use control. What was once generally considered inferior housing<sup>45</sup> has now been given a favored status. The question now is whether mobile homes are to be considered comparable to apartments or single-family dwellings.<sup>46</sup> If such a comparison can be made, efforts on the part of municipalities to exclude mobile home parks from single-family residential areas while allowing them in other areas of the city may meet the same fate as the attempt to totally exclude mobile homes and apartments from the community.<sup>47</sup> The ordinances will no longer reflect the preferences of the affluent, but the needs of the region or the state.

This is not to say that exclusion of mobile homes should be invalidated across the board, for there are instances where an ordinance has the effect of excluding potential entrants and still may be in furtherance of the general welfare. A prime example is where the exclusion is a side effect of enforcing state health standards.<sup>48</sup> But even here the analysis centers on the regional needs balanced against the local interests and the policies behind the ordinance.

If preferred status can be given to mobile homes, once thought to

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42. Feiler at 673, suggests a balancing test as an improvement over the *Euclid* standard.

43. D. MANDELKER, *THE ZONING DILEMMA* 8-9 (1971) states that courts have been unwilling to examine municipal zoning policies. *But see* Washburn, *Apartments in the Suburbs: In re Appeal of Girsh*, 74 DICK. L. REV. 634, 658 (1970), stating that courts are showing a willingness to examine municipal zoning policy.

44. Feiler at 661.

45. Carter at 17.

46. *See Bonnie View Country Club, Inc. v. Glass*, 242 Md. 46, 217 A.2d 647 (1966), holding that apartments are comparable to single-family dwellings. *See also Rundell v. May*, 258 So. 2d 90 (La. App. 1972), holding mobile homes to be same as single-family dwellings; *Lakewood Estates, Inc. v. Deerfield Township Zoning Bd. of Appeals*, 37 Mich. App. 184, 186, 194 N.W.2d 511, 512 (1971), holding mobile homes to be no different than apartments; *In re Village 2 at New Hope, Inc.*, 429 Pa. 626, 241 A.2d 81 (1968).

47. *See In re Appeal of Girsh*, 437 Pa. 237, 263 A.2d 395 (1970), where the court prohibited the city from excluding apartments.

48. *Green v. Lima Township*, 40 Mich. App. 655, 661-62, 199 N.W.2d 243, 247 (1972).

be an undesirable type of housing,<sup>49</sup> it can certainly be extended to other residential uses, such as apartments,<sup>50</sup> and possibly even non-residential uses. This would definitely weaken the theory of *Euclid*, which seemed to give almost unlimited power to the cities to zone as they desire without regard to external interests.<sup>51</sup>

Extending the *Bristow* preferred status standard to various uses would put almost every municipal zoning ordinance under strict judicial scrutiny. Whatever the end result of the general welfare considerations in zoning mobile home parks and other land uses, the *Bristow* standard may lead to an end of zoning according to internal tastes and values, without sacrificing the necessary health and safety standards that further the general welfare. Perhaps then there will be a reconciliation between the demand for low-cost housing and the desire on the part of the affluent for restrictive zoning.<sup>52</sup>

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49. CRAWFORD at 8-123.

50. See *Rundell v. May*, 258 So. 2d 90 (La. App. 1972) holding mobile homes to be comparable to residential uses; *Lakewood Estates, Inc. v. Deerfield Township Zoning Bd. of Appeals*, 37 Mich. App. 184, 186, 194 N.W.2d 511, 512 (1971).

51. Fisher, *supra* note 8, at 131.

52. See *Golden v. Planning Bd.*, 30 N.Y.2d 359, 384-85, 285 N.E.2d 291, 306, 334 N.Y.S.2d 138, 157-58, *appeal dismissed*, 409 U.S. 1003 (1972) (dissenting opinion), where the dissent speaks of this conflict between those demanding housing and those trying to restrict entrance into the area, and suggests that state legislation is the proper solution to the problem.