

IN THE COURT OF APPEALS OF IOWA

No. 3-518 / 92-1758

JAMES KRUMBHOLZ, JOHN KAPINSKI, WILLIAM HENDERCOTT, WILLIAM GUY, GREG SLY, RALPH FOWLER, and THEODORE SCHICK,

Appellants,

vs.

CITY OF BETTENDORF, IOWA,

Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva, Judge.

Plaintiffs appeal a district court ruling in their declaratory judgment class action a 1990 Bettendorf city ordinance regulating the storage of recreational vehicles was not unconstitutional. **AFFIRMED.**

John J. Carlin of Carlin, Hellstrom & Bittner, Davenport, for appellants.

Paul Macek and Gregory S. Jager of Dircks, Ridenour and Macek, Bettendorf, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Plaintiffs are residents of the City of Bettendorf who brought a class action challenging two Bettendorf zoning ordinances. The 1972 and 1990 zoning ordinances concern the storage of recreational vehicles (RVs) in residential areas. The 1972 ordinance restricted the storage of RVs in "R-1" zones to enclosed garages and in "R-2" zones to enclosed garages and back yards. The 1989/1990 amendment provided storage of RVs was limited to the buildable lot area in residential areas.

Plaintiffs' class action alleged the 1972 and 1990 ordinances are (1) void because they were based solely on aesthetic principles and not upon the general welfare, health, and safety of the community and (2) unconstitutional because they deny equal protection and constitute an unlawful taking without just compensation.

Following a bench trial, the district court found the 1990 ordinance was based upon a valid safety concern--the need to avoid spreading fire from one property to another. The court based its finding on the testimony of the City's fire chief who testified fire would spread more easily if RVs were parked in the setback areas between houses. The court ruled the 1990 ordinance was not unreasonable, arbitrary, or capricious. The court therefore held the 1990 ordinance was valid and dismissed plaintiffs' petition. The court did not specifically rule on the validity of the 1972 ordinance.

Plaintiffs appeal. They contend the zoning ordinances were enacted for aesthetic purposes only and are not necessary for the general welfare of the community. They contend the testimony at trial negates any claim the ordinances were enacted for a valid safety concern. They argue if the 1972 ordinance is considered an unconstitutional exercise of the City's police power but the 1990 ordinance is valid, any plaintiffs who owned their RVs prior to adoption of the 1990 ordinance should be deemed to have nonconforming uses. Finally, they contend those who bought RVs after adoption of the 1990 ordinance are denied equal protection. Plaintiffs maintain the 1990 ordinance is a "rich man's statute" which allows storage of RVs if the property owner is able to afford a large lot.

Our review is de novo. Iowa R. App. P. 14(b). "The test of whether a zoning ordinance is arbitrary and unreasonable is whether the means employed in the attempted exercise of the police power have any real, substantial relation to the public health, comfort, safety, and welfare, including the maintenance of property values. Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 742 (1969).

We first address appellants' contention the 1972 zoning ordinance and the 1990 amendment to the same ordinance is unconstitutional.

A zoning ordinance has a strong presumption of validity. "This means that if the ordinance is facially

valid and the reasonableness of the ordinance is fairly debatable, it must be allowed to stand." Id., 168 N.W.2d at 742. Further, it is well established the appellants have the burden of proof in this cause of action. 82 Am. Jur. 2d Zoning and Planning § 354 (1992). One who attacks such legislation on constitutional grounds has the burden of pleading its invalidity and unreasonableness and assumes the burden to negate every reasonable basis upon which the ordinance may be sustained. State v. McNeal, 167 N.W.2d 674, 677 (Iowa 1969).

The City provided an expert appraiser and evaluater of real estate who testified the ordinance would have a positive effect on property values within the City. This testimony relates to the general welfare of the residents of the City of Bettendorf. The City also provided evidence the ordinance enhanced the safety of the citizens. Specifically, the Bettendorf fire chief testified maintaining a safe distance between building lots was necessary in order to prevent the spread of fire. The evidence indicated fire code and building code required a minimum of ten feet between structures. RVs can be similar in size to residential structures and could be a safety hazard if allowed to sit between two structures ten feet apart. The community development director for the City of Bettendorf also testified in passing this ordinance safety considerations were made with regard to vehicular traffic and storage causing individuals to park their cars on the

street therefore interfering with the operation of street sweepers and snow removal equipment. All of the above clearly relates to the general welfare, safety, and health of the citizens of Bettendorf.

Appellants also complain the City's decision was made because of aesthetic considerations with regard to having a large RV parked on residential property. In view of the above evidence, it is clear aesthetics was not the sole purpose in instituting the ordinance. We determine the trial court was correct and affirm the ruling on appeal.

The appellants next contend the 1972 ordinance was void and therefore all persons storing an RV prior to the 1990 ordinance would have a nonconforming use.

The evidence indicates the City agreed fifty-six persons were legal nonconforming users prior to the 1972 ordinance. However, appellants provided no evidence to suggest there were other nonconforming users. The City was not asked to stipulate to any additional nonconforming users, and further the appellants presented no additional evidence with regard to these nonconforming users. We therefore affirm the trial court on this issue.

The appellants' last contention is the ordinance unconstitutionally discriminates in its application. They specifically argue the ordinance favors the rich because the rich can afford a larger lot and therefore can store their RV on the larger lot. They present nothing to substantiate this claim.

We affirm the ruling of the trial court.

AFFIRMED.