

EXHIBIT C

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

In the Matter of ELBRIDGE LAND COMPANY, LLC
D/B/A CHAMPION PARK,

Petitioner

Index# 2006-4152
RJ# 33-06-2517

For a Judgment Under Article 78 of the Civil Practice
Law and Rules of the State of New York

-against-

THE TOWN BOARD OF THE TOWN OF ELBRIDGE,
KENNETH BUSH, Supervisor, MICHAEL COLLIER,
GEORGE L. BETTS, DAVID YOUNG, AND RITA
DYGERT, Councilors and JEFF BARTOSZEWSKI,
Codes Enforcement Officer of the Town of Elbridge,

Respondents.

DECISION

APPEARANCES:

Laurel J. Eveleigh, Esq.
Attorney for Petitioner
2689 Burlingame Road
Canastota, New York 13032

Michael C. Cogswell, Esq.
Attorney for Respondents
106 East Main Street
Post Office Box 1006
Elbridge, New York 13060

MURPHY, J.

This Article 78 proceeding challenges the respondent Town Board of the Town of Elbridge's denial of an annual mobile home permit to petitioner Elbridge Land Company, LLC, d/b/a Champion Park, ("Champion"), as well as a building permit to place a mobile home on an existing site within the park.

Petitioner seeks declarations that the section of the Mobile Home Code of the Town prohibiting the placement of mobile homes in excess of ten years old within mobile home parks in the town of Elbridge lacks any rational relationship to any legitimate government purpose, and that the Board's attempt to apply the Town's Zoning Code's provisions relating to non-conforming structures and lots to a single mobile home site within a non-conforming but properly permitted mobile home park is arbitrary and capricious, affected by error of law, in violation of lawful procedures, an abuse of discretion, in excess of jurisdiction, null, void and of no force and effect.

Petitioner also seeks an Order directing the Town of Elbridge Codes Enforcement Officer to issue a mobile home park permit to Champion and to issue a building permit for the placement of a 1990 Norris Pinecrest 14'x80' manufactured home on Lot 115 in Champion Park.

The facts of this case are largely undisputed. Elbridge Land Company, LLC is the owner and operator of Champion Park, a manufactured home community located at 1275

Route 5, Elbridge, New York. Champion Mobile Home Park is comprised of a number of "sites" or "pads" or "stands" which accommodate the placement of manufactured homes, an internal system of roadways and private drives, and common areas for recreation, mail delivery, school bus stops, and aesthetics.

Mobile home owners rent their individual site from Champion for a monthly fee. Champion provides maintenance of the common areas, access to utilities, garbage pick-up, water and sewage disposal.

Petitioner purchased Champion in August of 1983 which then consisted of 96 mobile home sites and it expanded the park to 197 permitted sites.

In response to the motion the Respondents submitted a Verified Answer to Notice of Verified Petition and Supporting Affidavit of the Town Supervisor.

An affidavit of Kenneth L. Bush, Supervisor of the Town of Elbridge, explains the purpose and background of mobile home park ordinances, and the necessity for updating local laws to assure health and safety of non-conforming mobile home parks, and counter the very visible negative image they created in the township.

Permit Violations

Chapter 28 of the Town of Elbridge Town Code has, since 1985, required that existing mobile home parks in the Town of Elbridge apply for and secure an annual permit to operate in the town. Champion dully applied for and received its permits each year of its operation until 2006.

On June 15, 2004, the Office of Code Enforcement for the Town of Elbridge issued a list of "concerns" relating to individual mobile homes in Champion's park. These concerns were addressed by the residents and its 2004 annual permit was issued. After addressing violations by residents a permit was issued for 2005.

A resolution (Local Law No.3) was passed by the Town Board on December 7, 2005. More extensive annual reporting requirements for owners of existing non-conforming mobile home parks was required. It required a resolution of the Town Board before the Codes Enforcement Officer could issue an annual permit to a mobile park owner and prohibited replacement of mobile homes greater than ten years old from the date of manufacture. The local law also provided that "all legal non-conforming mobile home parks that fail to obtain an annual permit shall be presumed abandoned and the non-conforming status shall terminate."

On March 28, 2006, Champion submitted a completed permit application to the Codes Enforcement Officer requesting issuance of an annual permit. On March 5, 2006, the Codes Enforcement Officer sent a list of apparent "concerns" to the Champion Park Office addressed to "residents" and directing that the listed concerns be addressed" at your earliest convenience.

Mr. Bartoszewski, Codes Enforcement Officer, sent a letter to Elbridge Land Company stating that the permit could not be approved "until all violations in the park have been remedied." A partner in Elbridge Land Company, Mark Seigle, responded that

because the application is in order and the park meets all standards for business, Champion's permit should be issued. At the time of making this motion Champion had not received a response from the Town.

It is unreasonable, arbitrary, and capricious, unlawful, and in excess of the Town's lawful jurisdiction to withhold Champion's operating permit under the circumstances before this Court.

A municipality lacks any power to condition the grant of a permit on issues unrelated to the property or use to be regulated (Triphammer Dev. Co. V. Village of Lansing, 154 Misc2d 369 [Sup.Ct. Tompkins co.1972]). The town seeks to withhold Champion's operating permit not on the basis of any "violations" associated with property that Champion owns, but based on alleged "violations" on property owned by others. Champion has no authority to remedy conditions on buildings owned and maintained by others even if those buildings are on land leased by Champion to the building owners.

The property maintenance Code of New York applies only to the owner's designated agent. (See Section 102.2)

Placement of Mobile Homes in Excess of Ten Years

On June 7, 2006, Elbridge Land Company submitted a building permit application and associated permit application fee to the Codes Enforcement Officer for the placement of a 1990 Norris Pinecrest 14'x80' mobile home on Lot 115 in Champion Park to replace a 1974 14'x70' mobile home removed from Lot 115 in August of 2005.

On June 14, 2002, the Codes Enforcement Officer wrote to inform Champion that the request was denied because the home was prohibited because it was in excess of ten years of age and it was proposed to be placed on a site within the parks that has been vacant in excess of six months.

The mobile home regulations prohibiting the placement of mobile homes in excess of ten years of age within the Town of Elbridge is arbitrary and capricious and is annulled.

For a zoning ordinance to be a valid exercise of the police power, it must survive a two part test. It must have been enacted in furtherance of a legitimate government purpose, and there must be a "reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end." (French Investing Co. V. City of New York, 39 NY2d 587 [1976]). If the Ordinance fails either part of this test it is unreasonable and constitutes a deprivation of property without due process of law under our State Constitution. (French Investing Co., Id)

As pointed out by Petitioners, there is no evidence in any of the Town's records that the Town actually undertook any analysis of possible measures that could be implemented to address the placement of appropriate, safe, and attractive mobile homes in the Town of Elbridge. In addition, respondents have not produced any studies or data that would support a finding that a ten year restriction was anything other than arbitrary. There is no relationship between the age of the home and a home's aesthetics or safety as

evidenced by the photographic exhibits. (See Herrington v. Town of Mexico, 91 Misc 2d 861, [Sup Ct., Oswego Co. 1977])

It is of note that the New York Department of State in a letter dated October 14, 2005, opined that "it does not appear that it would lawfully be within the authority of a local government to apply age restrictions to the siting of a mobile home. There is no basis under the zoning enabling statutes to conclude that a mobile home unit that complies in all other respects with the ordinary requisite of zoning (i.e, it is a permitted use in the district and it complies with all lot size and dimensional requirements) may be prohibited solely on the basis of its age."

Non-conforming Use

According to the Codes Enforcement officer, since Lot 115 was vacant for more than six months the proposed site had lost its non-conforming use status and is no longer a legal site for the placement of a mobile home.

The town seeks to apply non-conforming use principles on a site-by site basis to individual home sites within Champion Park and has denied Champion a building permit on that basis.

In a similar factual situation, the Appellate Division, Fourth Department determined that abandonment does not result unless the discontinuance of use is complete. (Daggett v. Putnam, 40 AD2nd 576 (4th Dept. 1972))

The Court concludes that the Town of Elbridge cannot lawfully apply non-

conforming use principles to the component parts of a legally established, non-conforming business.

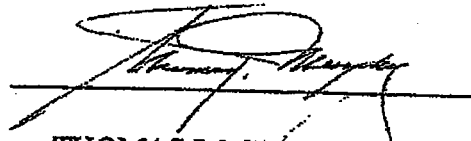
Therefore this Court declares that annual permits for the continuation of mobile home parks in the Town of Elbridge shall not be withheld based upon alleged "violations" of codes, rules and regulations applicable only to the individual homeowners, and declares that so much of Section 28.4(A) of the Mobile Home code of the town of Elbridge as prohibits placement of mobile homes in the town that are more than ten years old from the date of manufacture is irrational, unrelated to the health, safety and welfare of town residents, arbitrary and capricious, superseded by federal regulations governing the manufacture and safety of manufactured homes, affected by error of law, null, void and of no force and effect, and declares that the Town Board's interpretation of Town of Elbridge Zoning Code Section 30.45(E) so as to preclude the continuation of normal business operations in a non-conforming business is arbitrary and capricious, affected by error of law, in violation of lawful procedure, an abuse of discretion, in excess of jurisdiction, null, void and of no force and effect.

The determination of the Town Board denying Champion its annual permit for the operation of Champion Park, denying a building permit on Lot 115 based on the fact that the mobile home is over ten years of age, and that the proposed site has not been used for a period of over six months and has lost its non-conforming use, is annulled and vacated.

Submit a judgment in accordance with this decision.

DATED: November 22, 2006

Syracuse, New York



THOMAS J. MURPHY, J.S.C.