Mobile Homes -- Zoning

Number: INFORMAL

Date: November 22, 2013

Mr. Marlin M. Feagle
Columbia County Attorney
Post Office Box 1653
Lake City, Florida 32056-1653

Dear Mr. Feagle:

You ask substantially whether Columbia County may exclude mobile homes from a zoning classification permitting conventional housing and manufactured buildings. In sum, it would appear that a county may exclude mobile homes from a zoning classification for conventionally constructed homes, as mobile homes, defined in section 320.01(2)(a), Florida Statutes, are not statutorily afforded the same protections given manufactured buildings in zoning areas where conventionally constructed homes are allowed, as long as the county's classification system does not unfairly discriminate against the placement of mobile homes and the exclusion of such homes from certain zoning classifications has a rational basis to protect the health, safety, and welfare of the county's residents.

Initially, I would note that Columbia County has a Code of Land Use Regulations which precludes mobile homes in certain zoning classifications, i.e., those for residential single family homes.[1] These regulations are presumed to be valid and enforceable as legislative enactments of the county. An anecdotal survey of various jurisdictions shows numerous jurisdictions which have ordinances which restrict the placement of mobile homes in certain zoning classifications.[2]

Your question appears to be posed in light of section 553.38, Florida Statutes, which recognizes that local governments may not discriminate in application of their zoning laws by distinguishing between a conventionally constructed or manufactured building.[3] While this legislative protection for the placement of manufactured buildings, which must comply with the state's building code, preempts the exclusion of such buildings by zoning classifications, you have not directed my attention to, nor have I located a statute or federal law affording the same protection to mobile homes.

Section 553.36(13), Florida Statutes, defines "[m]anufactured building," "modular building," or "factory-built building" as

"[A] closed structure, building assembly, or system or subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a

manufacturer certified in conformance with this part. *This part does not apply to mobile homes.*" (e.s.)

The plain language of the act excludes mobile homes from this part of the act and there does not appear to be any legislation which would include mobile homes in the same category as manufactured buildings. A "mobile home" is specifically defined under the motor vehicle laws of this state[4] and is separately defined in section 553.36(14), Florida Statutes.

Section 125.01, Florida Statutes, sets forth the powers and duties of the governing body of a noncharter county, including the power to "[e]stablish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public." Section 125.01(1)(t), Florida Statutes, empowers the county to "[a]dopt ordinances and resolutions necessary for the exercise of its powers" and paragraph (w) of this subsection provides that a county has the power to "[p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law." The powers and duties set forth in section 125.01(1), Florida Statutes, are to be liberally construed "to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."[5] Thus, a county's authority to zone land for a particular use may not contravene state law.

In *Scurlock v. City of Lynn Haven*,[6] the federal district court considered whether a municipal code provision excluding homes from designated zoning classifications if they did not comply with the city's electrical code or bear the seal of the Florida Department of Community Affairs (DCA) (applicable to manufactured buildings) would be preempted by state and federal law. A mobile home, while complying with federal regulations, did not bear the seal of the DCA, nor did such a home comply with the city's electrical code. The city's code, however, allowed mobile homes to be placed in unzoned areas of the city and in licensed trailer parks.

The court's discussion focused on federal law which precludes local construction and safety stands on mobile homes which differ in any respect from those imposed by the Department Housing and Urban Development. While the court acknowledged that cities may zone land to achieve any number of legitimate objectives related to the health, safety, morals, or general welfare of the community, the city could not exclude mobile homes from certain residential zoning classifications based solely on its electrical safety standards. Since the city's ordinance had greater safety requirements for a mobile home than was required by the federal act, the court found that the ordinance must give way to the federal act, specifically stating that "[t]he City cannot attempt land use and planning through the guise of a safety provision in an ordinance when that safety requirement is preempted by federal law."[7]

The *Scurlock* court further discussed state preemption of local ordinances and noted that section 320.8285(5), Florid Statutes (1987), generally addressing onsite inspections of mobile home installations, expressly reserves to municipalities (and counties) the right to enact zoning regulations that affect mobile homes, but also noted that the statute requires "local requirements and regulations and others [to] be reasonable, uniformly applied, and enforced without distinctions as to whether such housing is manufactured, located in a mobile home park or a mobile home subdivision, or built in a conventional manner." The court concluded, therefore, that the city could not require mobile homes to meet "other" construction and safety requirements in

order to be sited outside a mobile home park; to do so would distinguish them based upon their location within or without such a park in conflict with the provisions of section 320.8285(5), Florida Statutes (1987).

Subsequent to the *Spurlock* decision, section 320.8285(5), Florida Statutes, was amended, as shown by the underlined portion, to provide:

"Such local requirements and regulations and others for manufactured homes must be reasonable, uniformly applied, and enforced without distinctions as to whether such housing is manufactured, located in a mobile home park or a mobile home subdivision, or built in a conventional manner."[8]

The statute was amended again to delete the reference to "others," leaving the present statute, section 320.8285(6), Florida Statutes, which in pertinent part states:

"Such local requirements and regulations for manufactured homes must be reasonable, uniformly applied, and enforced without distinctions as to whether such housing is manufactured, located in a mobile home park or a mobile home subdivision, or built in a conventional manner."[9]

A "manufactured home" for purposes of Chapter 320, Florida Statutes, is defined as "a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standards Act."[10] The legislative history attendant to the passage of the act establishing a definition for "manufactured home" explains that local requirements for manufactured homes are required to be reasonable.[11] There is no indication that local governments would otherwise be restricted in their application of reasonable zoning requirements.[12]

Thus, it would appear that counties may exclude mobile homes from a zoning classification for conventionally constructed homes, since mobile homes, as defined in section 320.01(2)(a), Florida Statutes, are not statutorily afforded the same protections given manufactured buildings in zoning areas where conventionally constructed homes are allowed. Such an ordinance establishing the zoning classifications, however, may not unfairly discriminate against the placement of mobile homes and must have a rational basis to protect the health, safety, and welfare of the county’s residents.

I trust that these informal comments will be of assistance.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* s. 4.7.4, Columbia County Land Development Regulations, relating to single family residential zoning areas:

"Prohibited uses and structures. Trade or service establishments or storage in connection with such establishments, storage or overnight parking of commercial or industrial vehicles in excess of one-ton capacity, storage of building materials (except in connection with active construction activities on the premises), *new mobile homes except as permitted in section 4.2 and article 14*, signs except as specifically permitted, the keeping of horses, cows, swine, sheep, goats, or poultry, and any use or structure not specifically, provisionally, or by reasonable implication permitted herein as a special exception." (e.s.)

Section 4.2 of the regulations contains several exceptions for mobile homes in otherwise restricted areas, such as replacement of a mobile home which existed prior to the enactment of the zoning regulation (4.2.15). Article 14 contains exemptions for the temporary placement of a mobile home in a single family residential area under specified conditions, such as temporary placement of a mobile home or RV in a residential district by a public agency when the mobile home or RV is not used for residential purposes (14.10.2[4.]).

[2] *See* Municipal Code Corporation Municode Library at http://www.municode.com/Library/FL.

[3] Section 553.38, Fla. Stat., states:

"The department shall enforce every provision of the Florida Building Code adopted pursuant hereto, except that local land use and zoning requirements, fire zones, building setback requirements, side and rear yard requirements, site development requirements, property line requirements, subdivision control, and onsite installation requirements, as well as the review and regulation of architectural and aesthetic requirements, are specifically and entirely reserved to local authorities. Such local requirements and rules which may be enacted by local authorities must be reasonable and *uniformly applied and enforced without any distinction as to whether a building is a conventionally constructed or manufactured building*. A local government shall require permit fees only for those inspections actually performed by the local government for the installation of a factory-built structure. Such fees shall be equal to the amount charged for similar inspections on conventionally built housing." (e.s.)

[4] *See* s. 320.01(2)(a), Fla. Stat.

[5] Section 125.01(3)(b), Fla. Stat.

[6] 858 F.2d 1521 (11th Cir. 1988).

[7] 858 F.2d at 1525, citing *Pacific Gas & Electric Co. v. State Energy Resources Commission*, 461 U.S. 190, 204-16 (1983).

[8] *See* s. 6, Ch. 92-148, Laws of Fla.

[9] Section 6, Ch. 2004-283, Laws of Fla.

[10] Section 320.01(2)(b), Fla. Stat.

[11] *See* House of Representatives Committee on Judiciary Final Bill Analysis & Economic Impact Statement, CS/HB 2179 (Ch. 92-148, Laws of Fla.), dated April 29, 1992.

[12] *Cf.* Op. Att'y Gen. Fla. 87-37 (1987) (local government cannot exclude manufactured housing from a zoning classification permitting conventionally constructed housing; local aesthetic regulations may be uniformly applied and enforced without any distinction as to whether a building is conventionally constructed or manufactured, but must be reasonable and bear relationship to aesthetic uniformity or safety).