March 31, 1987

Joe Kelly
Manufactured Housing Association of Iowa
1400 Dean Avenue
Des Moines, IA 50316

Dear Mr. Kelly:

Thank you for your patience while the Department has reviewed the tax consequences of sales of water by mobile home parks to their customers.

The Department takes the position that where there is no separate charge for the water by the mobile home park, no sales subject to the tax will exist. The transfer of water would not be subject to the tax. However, the mobile home park would be treated as the consumer or user of the water. Tax would be due on any sale of water between a utility and the mobile home park.

If there is a separate charge by the mobile home park for the water, the water is subject to the tax. In this case, the mobile home park is a retailer and should have a retail sales tax permit and collect the sales tax. The Department's position is based on the Declaratory Ruling in the matter of Macombe Motel and Rule 701-16.15.

Any audits that have been completed are being returned to our field office for adjustment or cancellation.

This position of the Department is an opinion only. Under Rule 701 - 7.25, the only statements binding on the Department are through a Declaratory Ruling.

If you have any questions, feel free to contact me.

Sincerely,

David L. Casey, Manager
Audit Services Section
Audit & Compliance Division

DLC/nrc

TAXATION: Requirement of Tax Clearance Statement; County Liability for Rent on Abandoned Mobile Home. Iowa Code §§ 135D.24 (4), 135D.24 (6), and 562B.27 (1) (1985). A mobile home park owner is not required to obtain a tax clearance statement prior to removing an abandoned mobile home from the park. A county is not liable for rent and utilities due on an abandoned mobile home merely because it has a tax lien on the mobile home. If the county acquires a tax deed to the mobile home, it is liable for rent and utilities accruing after that date. (Mason to Richards, Story County Attorney, 1-20-87) #87-1-11(L)

January 20, 1987

Mary E. Richards
Story County Attorney
Story County Courthouse
Nevada, Iowa 50201

Dear Ms. Richards:

You have requested an opinion of the Attorney General concerning the interaction of Iowa Code Sections 135D.24 (4), 135D.24 (6), and 562B.27 (1) (1985).

Iowa Code § 135D.24 (4) states that the tax imposed on a mobile home pursuant to § 135D.22 "is a lien on the vehicle senior to any other lien upon it." Iowa Code § 135D.24 (6) states, in part:

> **′ Before a mobile home may be moved from its present site, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period.**

Iowa Code § 562B.27 (1) provides, in part:

> **If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the legal owner or lienholder of the mobile home and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the person is only liable for costs incurred ninety days before the landlord's communication. After the landlord's communication, costs for which liability is incurred shall then become the responsibility of the legal owner or lienholder of the mobile home.**

The specific questions presented by your opinion request are:

1. **Does § 135D.24 (6) require the mobile home park owner, i.e. the landlord, to obtain a tax clearance statement prior to moving an abandoned mobile home from its present site?**

2. **May the county, with a tax lien on an abandoned mobile home, be held liable for rent and utilities as a "lienholder" under § 562B.27(1) ?**

3. **Does the county become liable for the rent and utilities due on an abandoned mobile home after the county takes a tax deed to the mobile home?**

4. **Does a person who purchases the mobile home from the county, after the county acquired the tax deed, become liable for the rent and utilities due on the formerly abandoned mobile home?**

It is my opinion that Iowa Code § 135D.24 (6) does not require the mobile home park owner to obtain a tax clearance statement prior to moving an abandoned mobile home.

Section 135D.24 (6) states that before a mobile home may be moved from its present site, a tax clearance statement "in the name of the owner" must be obtained. This provision does not clearly and unambiguously require someone other than the owner to obtain a tax clearance statement prior to moving a mobile home. The phrase "in the name of the owner" indicates that the requirement of a tax clearance statement may not apply to everyone. In

the presence of an ambiguity in the statute, certain rules of statutory construction may be followed. First, where statutory provisions relate to the same thing and have identical purposes or objects, they should be read in pari materia and harmonized if possible. Metier V. Cooper Transport Co., Inc., 378 N.W.2d 907 (Iowa 1985). Iowa Code § 135D.29 (1985 Supp.) provides for a civil penalty against the owner of a mobile home who moves the mobile home without having obtained a tax clearance statement. Sections 135D.24 (6) and 135D.29 are both in the Code chapter dealing with mobile homes and parks and have the same purpose of preventing mobile home owners from evading the tax due on the mobile home. If the owner were to move the mobile home out of the county or to some location unknown to the county, the county would not have an effective means of collecting the tax due on the mobile home. Since §135D.29 penalizes only the owner of the mobile home, it is likely that § 135D.24 (6) also applies only to the mobile home owner, or to someone acting pursuant to the owner's directions.

Further, when one of two possible statutory interpretations leads to unconstitutionality and the other to constitutionality, the view must be adopted which upholds rather than defeats the statute. Iowa National Industrial Loan Company v. Iowa State Department of Revenue, 224 N.W.2d 437, 442 (Iowa 1974). In the case of an abandoned mobile home, requiring the park owner to obtain a tax clearance statement before moving the mobile home would result in the park owner being required to pay all of the tax due for previous years and for the current tax period before he would be able to rent the park space to another tenant. The park owner could be forced to pay a substantial amount of money to the county even though he had no legal interest in the mobile home and was not responsible for its abandonment. Therefore, in order to avoid an unconstitutional "taking" of property, § 135D.24 (6) should be construed so as not to apply to the mobile home park owner who wishes to move an abandoned mobile home. [1]

---

[1]The park owner who removes an abandoned mobile home form his park should notify the county sheriff of the removal. After the owner of the mobile home is notified, the sheriff may sell it if not claimed by the mobile home owner within six months. Iowa Code § 556B.1 (1985). Any proceeds remaining after deducting the cost of the sale and the park owner's costs of removal and storage go into the county treasury. Iowa code § 556B.1 (2) (1985).

With regard to the second question presented, it is my opinion that the legislature did not intend to make a county liable for the mobile home rent and utilities as a "lienholder" under § 562B.27(1) merely because of its tax lien on the mobile home.

Sovereign immunity has not been totally desiccated in Iowa, and statutes in derogation of sovereignty are strictly construed. State v. Dvorak, 261 N.W. 2d 486, 488-89 (Iowa 1978). Statutory provisions which are reasonably susceptible to being construed as applicable both to the government and to private parties are construed to exempt the government from their operation, in the absence of particular indicia supporting a contrary result in particular instances. Id. at 488; 3 Sutherland, Statutory Construction, § 62.01 (4th ed. 1986). This rule of construction is supported by Iowa Code § 4.4 (5) which states that "[i] n enacting a statute, it is presumed that public interest is favored over any private interest." See Sutherland, § 62.04.

> **[T]he rule exempting the sovereign from the operation of the general provisions of a statute is premised on a policy of preserving for the public the efficient, unimpaired functioning of government.**
>
> **There is a further basis for the rule in that the purpose of most legislation is to govern, i.e., to direct the application of the power of government in arranging the affairs of people who are subject to it. For this reason most statutes are intended and understood to apply to members of the public instead of to the government itself. As well states in a court opinion: "Statutes are ordinarily designed for the government of citizens and residents rather than the state, and… the state is not bound by general words of a statute or code provisions which would operate to trench upon its sovereign rights, injuriously affect its capacity to perform its function, or establish a right of action against it, unless the intent to bind it thereby otherwise clearly appears."**

(Footnotes and citation omitted.) Sutherland, § 62. 01.

Section 562B.27 (1) does not clearly apply to the county, and there are no particular indicia supporting county liability as a "lienholder" under that provision.

Further, the differences between voluntary lienholders and the county which has a tax lien support exempting the county form the liability imposed by §562B.27 (1). Unlike the county, voluntary lienholders could avoid liability under § 562B.27 (1) by releasing their liens. [2] The county has no choice regarding how or when to realize on the collateral. Whereas other lienholders may have the sheriff sell the mobile home at an execution sale without unreasonable delay, the county is required to comply with Iowa Code chapters 446, 447, and 448 in selling the mobile home to collect the delinquent tax. Iowa Code § 135D.25 (1985). These procedures involve substantial delay. There is a three year period of redemption before the tax sale purchaser may receive the tax deed. Iowa Code § 447.1, 447.9, 448.1 (1985). During those three years, additional tax would become due. The county would continue to have a tax lien on the mobile home during those years unless someone paid the taxes accruing after the tax sale. The county could not purchase the mobile home itself at a "scavenger sale" until after it remained unsold for want of bidders after being offered at tax sale for at least two years. Iowa Code §§ 446.18, 446.19 (1985). The county could not receive the tax deed to the mobile home until after an additional nine month redemption period. Iowa Code § 447.9 (1985). Again, there would be a substantial number of years in which the county could still have a tax lien on the mobile home.

The differences between voluntary lienholders and the county are among the reasons why the county should not be considered a "lienholder" under § 562B.27 (1). On the other side of the scale, there do not appear to be indicia supporting county liability under § 562B.27 (1).

The third question presented is whether the county's position changes upon the taking of a tax deed. Once the county acquires the tax deed, it becomes the legal owner of the mobile home. Beginning at that time, if the county leaves its mobile home in the mobile home park, it becomes liable for the rent and utilities the same as any other park tenant. The county could not constitutionally leave its property on the mobile home park space, depriving the park owner of the use of his land, without proper compensation. For the reasons discussed earlier, the county would not, [1]however, become liable for the rent and utilities which accrued prior to the county's acquisition of the tax deed.

---

[2]In the case where the owner and tenant both abandon a mobile home, the mobile home may be of insufficient value for the lienholder to want to keep its lien.

The final question concerns the liability for rent and utilities of a person who purchases the mobile home from the county after the county has acquired the tax deed. This subsequent purchaser would be liable for any rent and utilities accruing after he takes title to the mobile home. It is my opinion, however, that he does not become the "owner" under § 562B.27 (1) for purposes of paying rent and utilities accruing prior to his taking of the deed to the mobile home. Section 562B.27 (1) applies to mobile homes abandoned by the tenant. At the time the mobile home was abandoned, this subsequent purchaser may have had no interest in the property; he was not the owner and had no right of possession. There is no reason to require him to compensate the mobile home park owner for the park owner's loss caused by an earlier abandonment of the same mobile home he now owns.

Very truly yours,

Marcia Mason
Assistant Attorney General

WP4

DAVIS, HOCKENBERG, WINE, BROWN & KOEHN

ATTORNEYS AND COUNSELLORS AT LAW

A.ARTHUR DAVIS	JONATHAN C.WILSON	JEAN A.MENCIL	G.BRIAN PINGEL	2300 FINANCIAL CENTER
HARLAW D.HOCKENBERG	G.BRIAN PINGEL	FRANK A. CAMP	KENT A. MERINK	666 WALNUT STREET
DONALD A.WINE	PATRICIA A.SHOFF	KENT A MERINX	PATENTS	DES MOINES, IOWA 50309
DONALD J.BROWN	JOHN A.TEMPLER, JR.	ROBERT J. DOUGLAS, JR.		(515) 243 2300
A.J.GREFFENIUS	ROBERT C.GALBRAITH	C.S. STEINGER		TELECOPIER (515) 243-0654
WILLIAM J.KOEHN	EDWIN N.MCINTOSH	DAVID J. DARRELL	RUDOLPHL LOWELL	
JOHN D.SHORS	VINCENT G.ELLA	LEO L. FINKELSTEIN	PATENTS OF COUNSEL	
STEPHEW W.ROBERTS	ROBERT A.SIMONS	NORENE D.JACOSS		
WILLIAM R.KING	STEVEN L.NELSON	CARLA A. SCHOLTEN		
ROBERT F.HOLF, JR.	DAVID S.VANSICKEL	LUCY J. GAMON		TELEX: 478322
LEON R.SHEARER	WILLIAM W.SCHWARZ	DAVID M.LOFHOLM	HARLAM J. THOMA	(DAVIS LAW DMS)
DENNIS D.JERDE	JAMIE A.WADE	DANIEL J.WINEGARDEN	PAUL E. BROWN	CABLE:DAVIS LAW
C.CARLETON FREDERICI	LORNA A.GILBERT	NICHOLAS M. ROBY	T.JAMES McDonough	
GEORGE W.SULLIVAN	GENE R. LASUER	RONNI F. BEGLEITER	WILLIAM D. THOMAS	
MICHAEL G.KULIK	DAVID S. STRUTT	JAMES D. CHRISINGER	OF COUNSEL	
RICHARD E.RAMSAY	DIANE M.STAMLE	KATHERINE E. SCHMIDT		137 COLONY PARK BUILDING
F.RICHARD THORNTON	MARILYN S. SCHEER	GREGORY S. CRESPI		3737 WOODLAND
THOMAS E. SALSBERY	STEVEN C.GOODRICH	KIMBERLY K. MAUER	DAVID J. HENRY	WEST DES MOINES, IOWA 50261
E.RALPH WALKER	DEBORAM THARNISH CRAIG	MARK D. WALZ*	1948-1983	
FRANK J.CARROLL	DAVID W. DUNN	ADMITTED ONLY IN MISSOURI		(515) 225 3737
JOHN D.HINTZZ	BRIAN L.WIRT			TELECOPIER (515)225.9510
BRUCE I.CAMPBELL	CHARLES R.TAYLOR			

October 17, 1985

DEALING WITH TENANT ASSOCIATIONS

Mobile home park landlords are under increasing pressure to deal with tenant associations concerning terms and conditions of the landlord/tenant relationship. Such associations are sometimes formed by individuals living in the park who wish to present a united front to the landlord. Sometimes associations are formed by outsiders who come into the park to organize tenants to negotiate with the landlord. In both cases, the associations operate like a labor union, with representatives wanting to meet with the landlord to discuss matters that will affect all residents. The creation of an association can lead to a hostile atmosphere. It is important to know the landlord's legal rights and duties in dealing with such associations.

In Iowa, the Mobile Home Park Residential Landlord and Tenant Law (Iowa Code Chapter 562B) governs dealings with tenants individually. <u>There is no duty to meet or negotiate with representatives of an association.</u> The landlord only has a duty to deal in good faith with individual tenants about themselves. Section 562B.32 does provide that a landlord cannot retaliate by increasing rent, decreasing services, bringing or threatening to bring an action for possession, or failing to renew a rental agreement because a tenant has organized or joined a tenant association. If a landlord takes such action against a tenant within six months of that tenant joining such an association, a court will presume that the action was retaliatory, and the tenant can, on that basis, defeat eviction proceedings. To overcome this presumption, the landlord must present evidence to prove that the landlord's action was legitimately taken and was not merely a response to the tenant joining a tenant organization. Even if guilty of retaliatory acts, a landlord can still bring an action for eviction if the tenant is in default of rent three days after rent is due. If guilty of retaliation, the landlord will be liable for resulting damages sustained by the tenant.

(OVER)

Several things can be done to avoid charges that the landlord's actions are retaliatory. First, landlords should make sure that all rules and lease terms are in writing and are uniformly enforced. Nothing leads quicker to a charge of retaliation than a landlord's sudden attempt to enforce a rule or lease term against certain tenants when it has never been enforced before. Second, rent increases should be announced as far ahead of time as possible and be implemented uniformly. Third, landlords should build evidence to rebut a presumption of retaliation by sending letters to tenants involved in organizational activities, reassuring them that they will not be retaliated against for their activities. This approach is especially effective when an outside group is trying to organize the tenants. Often such organizations

will try to convince residents to join by saying that they will not be protected against eviction or other retaliation unless they join. Landlords should remind tenants that a tenant is protected from retaliation whether the tenant becomes a member of the tenant association or not. Fourth, landlords may counter an outside attempt to organize tenants by offering to meet and perhaps even help organize a residents' association. Associations formed by the residents themselves are usually more cooperative in ironing out problems. Such an association has a greater stake in finding solutions.

In summary, the best way to deal with tenant associations is to make them unnecessary by keeping good lines of communication with individual tenants so that all complaints are promptly addressed. If, however, residents are being asked to join an association, they should be reminded that they need not join a specific association or any association at all to protect their rights under the law.

Sincerely Yours,

DAVIS, HOCKENBERG, WINE, BROWN & KOEHN

Jonathan C. Wilson

JCW: bp
Enclosure

ZONING: Manufactured Homes. S.F. 2228 § § 1, 2. Enforcement of a zoning ordinance which restricts residential districts to residential structures that comply with Uniform Building Code standards and operates to exclude from residential districts manufactured homes that meet federal construction and safety standards under § 5401 et. Seq. violates Senate File 2228 if the exclusion is based solely on the variation between Uniform Building Code standards and federal construction and safety standards governing the same aspect of performance. (Pottorff to Davis, Scott County Attorney, 1/10/85) #85-1-7(L)

January 10, 1985

William E. Davis
Scott County Attorney
Scott County Courthouse
416 West Fourth Street
Davenport, Iowa 52801

Dear Mr. Davis:

You have requested an opinion of the Attorney General concerning the application of Senate File 2228 to the practice of restricting through zoning the location of certain manufactured homes. You state that Scott County has adopted the Uniform Building Code and has adopted a zoning ordinance which requires compliance with the Uniform Building Code for all residential structures. Manufactured homes which do not meet the Uniform Building Code are zoned into segregated "mobile home" districts. You point out that 42 U.S.C § 5401 et. seq. Preempts the application of state or local standards, including the Uniform Building Code, regarding construction or safety of manufactured homes. This preemption is limited to standards governing the same aspect of performance as federal standards. You further point out that Senate File 2228, which was enacted in 1984, prohibits zoning regulations or other ordinances which "disallow" plans and specifications of a proposed residential dwelling solely because the proposed dwelling is a manufactured home." In view of 42 U.S.C § 5401 et. Seq. and Senate File 2228, you

specially inquire whether Scott County may continue its past practice of utilizing zoning to restrict residential districts to residential structures which comply with uniform Building Code standards and, thereby, exclude from residential districts manufactured homes that are within the scope of 42 U.S.C. $ 5401 et. seq.

Manufactured homes are subject to federal statutes and regulations. A manufactured home is defined by federal law to mean:

> **a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter;**

42 U.S.C. $ 5402 (6). See 24 C.F.R. $ 3280.2(16). Manufactured homes, in turn, must meet federal construction and safety standards under the following language:

> **The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal manufactured home construction and safety standards. Each such Federal manufactured home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction.**

42 U.S.C. $ 5403 (a). These federal construction and safety standards expressly preempt the standards of any state or political subdivision of a state applicable to the same aspect of performance under the following provision:

> **Whenever a federal manufactured home construction and safety established under this**

> **chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.**

42 U.S.C. $ 5403 (d). Any structure shall be excluded from these federal statutes if the manufacturer certifies that the structure is:

(1) designed only for erection or installation on a site-built permanent foundation;

(2) not designed to be moved once so erected or installed;

(3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a State or local modular building code recognized as generally equivalent to building codes for site-built housing, or with minimum property standards adopted by the Secretary pursuant to Title II of the National Housing Act [12 U.S.C.A. $ 1707 et seq.] ; and

(4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

42 U.S.C. $ 5403 (h). Exclusion under this section must be initiated by the manufacturer who submits a certification.

In light of this statutory framework, a threshold issue arises whether the zoning scheme which you describe is preempted by $$ 5401 et. seq. The zoning ordinance does not expressly dictate construction or safety standards but does spatially segregate homes built by manufacturers who do not opt to remove themselves from federal standards pursuant to $ 5403 (h) and to comply with the Uniform Building Code. Generally, preemption comes into play whenever a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Chicago and North Western Transportation Co. v. Kalo Brick and Title, 450 U.S.311, 317, 101 S. Ct. 1124, 1131, 67 L. Ed.2d 258, 265 (1981). State law is invalidated where it conflicts with federal law, where it would frustrate a federal

scheme, or where the totality of the circumstances shows that Congress sought to occupy the field. Matter of Gary Aircraft Corp. v. General Dynamics Corp., 681 F. 2d 365, 369-70 (5th Cir. 1982). Under these principles, federal law may foreclose any activity by a state in a particular area or may preempt only those provisions of state law which conflict with federal law. Congressional intent is determinative. Hayfield Northern Railroad v. Chicago & Northwestern Transportation Co., 693 F. 2d 819, 821 (8th Cir. 1982). See Op. Att'yGen. #83-11-3. We need not resolve whether, under these principles, the zoning scheme which you describe is preempted, however, because state law separately prohibits this practice.

In 1984 the General Assembly enacted Senate File 2228. This statute prohibits counties and cities from adopting or enforcing zoning regulations which "disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home." S.F. 2228 $$ 1, 2. In construing this language, we note that rules of statutory construction are to be resorted to only when the terms of the statute are ambiguous. Hartman v. Merged Area VI Community College, 270 N.W.2d 822, 825 (Iowa 1978). In our view, this prohibition requires no further construction.

Applying this language to the zoning ordinance which you describe, we believe that continued enforcement may violate Senate File 2228. The prohibition of Senate File 2228 is triggered when the plans and specifications are disallowed "solely because the proposed structure is a manufactured home". The zoning ordinance about which you inquire does not expressly disallow manufactured homes in residential districts. The ordinance, however, disallows residential structures which do not meet Uniform Building Code standards in residential districts. Since manufactured homes must meet preemptive federal construction and safety standards, manufactured homes cannot comply with the Uniform building Code in these respects unless the manufacturer seeks an exemption pursuant to $ 5403 (h). Manufactured homes may be as effectively disallowed from residential districts by imposing zoning criteria which manufactured homes cannot meet as by express exclusion. See Tyrone Township v. Crouch, 129 Mich App. 388, 341 N.W.2d 218, 219 (1983). We must conclude that utilization of the variation between the Uniform Building Code standards and preemptive federal construction and safety standards to exclude manufactured housing from residential districts effectively disallows the plans and specifications of a proposed residential dwelling "solely because the proposed dwelling is a manufactured home."

We do not suggest that the county may not impose Uniform Building Code standards to manufactured homes on matters which

are not preempted and utilize zoning to restrict residential districts to residential structures which comply with these non-preempted Uniform Building Code standards. Under such circumstances, however, the disallowance would be based on the noncompliance with criteria applicable to all residential structures rather than based on criteria which, under federal law, are integral elements of manufactured homes.

In summary, we advise that continued enforcement of a zoning ordinance which restricts residential districts to residential structures that comply with Uniform Building Code standards and operates to exclude from residential districts manufactured homes that meet federal construction and safety standards under $ 5401 et. seq violates Senate File 2228 if the exclusion is based solely on the variation between Uniform Building Code standards and federal construction and safety standards governing the same aspect of performance.

Respectfully,

JULIE. F. POTTORFF
Assistant Attorney General

JEP/cjc

IN THE SUPREME COURT OF IOWA

SUNSET MOBILE HOME PARK, RAYMOND WRIGHT and BELLA WRIGHT,	)	
	)	**Filed September 29, 1982**
Appellees,	)	
vs.	)	
	)	**170**
GERALD E. PARSONS and ROSE PARSONS,	)	**66106**
Appellants.	)	

Appeal form Linn District Court – Thomas L. Koehler, Judge.

Appeal from district court ruling affirming a small claim decision of eviction in a forcible entry and detainer action. AFFIRMED.

Clemens Erdahl, Iowa City, for appellants.

John Titler, Cedar Rapids, for appellees.

Considered en banc.

SCHULTZ, J.

We granted discretionary review of a district court affirmance of a small claims court judgment that required the removal of the tenants in a forcible entry and detainer action pursuant to Iowa Code chapter 648. This review contains our first interpretation of the Mobile Home Parks Residential Landlord and Tenant Act, Iowa Code Chapter 562B (1981). We find no merit in the tenant's allegations of error and affirm.

Bella L. Wright and Raymond L. Wright operate a mobile home court known as Sunset Mobile Home Park in Hiawatha, Iowa. Gerald E. Parsons and Rose M. Parsons occupy a mobile home and are tenants of the Wrights. The Parsons are tenants under an oral lease with the Wrights for a mobile home lot. Their rent is due on the first of the month.

Testimony at trial revealed the series of events that let to this dispute between the parties. The first noteworthy event occurred on June 4, 1980, when Mr. Wright called the Hiawatha Chief of Police and requested his help in enforcing a tenant parking rule. The Parsons argued there was no violation of the mobile home park rules, but the landlords evidently disagreed. On June 5, Mr.Wright signed a sixty-day notice which stated that the Parsons tenancy was being terminated "for refusing to abide by the rules and regulations of Sunset Mobile Home Park." The notice was served on June 9. No further action, however, was taken by the Wrights with respect to that notice.

On June 10, the Parsons had a gathering on their Iawn outside their mobile home with other tenants. Mr. Parsons indicated that the rules and regulations of the mobile home park were discussed.

Finally, on July 10, the Parsons were served with a sixty-day notice of termination that is the basis for the forcible entry and

detainer action in the small claims court. They refused to move out on September 10 and were served with a three-day notice to quit shortly thereafter.

On appeal, the tenants assert: (1) the districts court erroneously used a substantial evidence standard in reviewing the magistrate's ruling rather than a de novo review; (2) the written offer of a written rental agreement provided by the plaintiffs-landlords did not comply with section 562B.14(1) which requires landlords to offer tenants a written rental agreement; (3) chapter 562B abrogates the landlords' common-law right to terminate a month-month tenancy without cause; (4) the sixty-day notice of termination required by section 562B.10(4) must be given at least sixty days before the last day of a rental period, rather than sixty days before the termination; and (5) plaintiffs-owners' termination of defendants' tenancy constituted "retaliatory action" prohibited by section 562B.32(1). Tenants have also made other claims which we reject without detailing.

The landlords claim that the rulings of the small claims and district courts were correct. The landlords also assert that the tenants have agreed, pursuant to district court order in an Unrelated replevin action by a bank, to vacate their mobile home. The landlords in the last division of their brief assert that this appeal should be dismissed as the case in now moot. We are forced to summarily dispose of this mootness issue adversely to the landlords as they have provided us no record of the matters contained in their argument. Our rules provide for motions to dismiss supported by affidavits or other papers. Iowa R. App. P. 22(c).

I. Standard of review. The district court in its ruling on the small claims appeal made an abbreviated finding of facts as follows:

> **The Court having reviewed the file and heard the arguments of counsel and being fully advised in the premises finds as follows:**
>
> > **Substantial evidence was presented at the trial of the above referenced case on October 2, 1980, to support the ruling of the Judicial Magistrate dated October 3, 1980.**

The tenants claim that the district court should have used the de novo, not substantial evidence, Standard of review. The tenants also claim that the district court incorrectly constructed ambiguities in the record to uphold the judgment of the magistrate. They then indicate that because no explicit findings or rulings were made by the district court on appeal, the remainder of their argument is on the errors made by the magistrate. The tenants request that we either reverse the district court based on the record from the original trial or remand for the presentation of additional evidence. We decline both requests.

An appeal from a small claims court to a district court is governed by Iowa Code § 631.13(4) (1981). The district court conducts a de novo review on the record before the magistrate unless it finds the record inadequate for the purposes of rendering a judgment, in which case it may order additional evidence to be presented. Ravreby v. United Airlines, Inc., 293 N.W.2d, 262 (Iowa 1980) While the language used by the district court may suggest that the district court did not use de novo review, no prejudice results. The underlying action on this appeal is a forcible entry and detainer action, which is tried as an equitable action. Iowa Code § 648.5 (1981). On discretionary review of equity cases our review is de novo. Iowa R. App. P.4, 203. Thus,

assuming, without deciding, that the tenants were denied de novo review in the district court, they have de novo review through this appellate process. This court will "review the facts as well as the law and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any preserved in trial proceedings." In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We also note, as a sidelight, that the tenants did not file a motion for enlargement of findings and conclusions.

i. Rental agreement. The tenants maintain that chapter 562B creates new statutory Scheme for the regulations of mobile home space rental. They make two attacks on the landlord's contention that an oral month-to-month lease arose from the notice. First, they assert that this chapter gives the tenant a right to a term of one year, or at least sixty days. Thus, they claim that the landlord's notice for a written lease constituted an unenforceable rental agreement. Secondly, they claim that this notice with the attached rules was unconscionable. Consequently, the tenants maintain that the magistrate and the district court erred in considering them as tenants at will and subject to removal at the whim of the landlords.

The legal status of the tenant in possession of a mobile home lot has importance on the claims of the parties. We find it appropriate to review briefly the forms of tenancy and the requirements of a termination notice prior to the enactment of chapter 562B and the effect of chapter 562B on them. Tenancies at will or tenancies for a term are two common forms of tenancies in Iowa. The former is easily created, for "[a]ny person in the possession of real estate, with the assent of the owner,

is presumed to be a tenant at will until the contrary is shown." § 562.4. This presumption is one of fact, not law, and is not conclusive; consequently, it may be shown that the tenancy was for a term. McCarter v. Uban, 166 N.W.2d 910, 912 (Iowa 1969). A third-day termination notice is required in a tenancy at will. A tenancy for a fixed period is a tenancy for a term. If there is an agreement for a termination date, the tenancy is for a term and is not a tenancy at will. Benschoter v. Hakes, 232 Iowa 1354, 1358, 8 N.W.2d 481 (1943). An agreement for a tenancy may be written or oral and may be inferred from the situation and surrounding circumstances; if it is oral, however, it may be subject to the Statute of Frauds (Iowa Code § 622.32(1981)). McCarter, 166 N.W.2d at 913. When an agreement is made setting the time for termination, "Whether in writing or not, it shall cease at the time agreed upon, without notice." § 562.6.

A third type of tenancy, periodic tenancy, is a tenancy that endures for a certain period and will continue for subsequent successive like periods unless terminated by one of the parties at the end of a period. 51 C.J.S. Landlord and Tenant § 130(1) (1986); 49 Am. Jur. 2d Landlord and Tenant §§ 70-73 (1970); Restatement (Second) Property § 1.5(1977); see also Iowa Code § 562.6 (farm tenancies continue for the following year upon the same terms unless written notice is timely given). At common law a month –to-month periodic tenancy required a thirty-day or a month notice to terminate prior to the end of a recurring monthly period. 51C.J.S.Landlord and Tenant, §§ 149, 150(3) (1968) ; 5 Am. Jur. 2d Landlord and Tenant §§ 1207, 1209 (1970); Restatement (Second) Property § 1. 5 (1977).

The Mobile Home Parks Residential Landlord and Tenant Act became effective on January 1, 1979. Act of June 26, 1978, ch. 1173 § 38, 1978 Iowa Acts. The avowed Purpose and policy of the chapter are: "(1) To simply, clarify and establish the law governing the rental of mobile home spaces and rights and obligations of landlord and tenant. (2) To encourage landlord and tenant to maintain and improve the quality of mobile home living." Iowa Code § 562B.2. Unless displaced by provisions of the Act. previous principles of law and equity supplement the Act. §562B.3. Responsibility was placed on the landlord to offer a tenant an opportunity for a written lease. § 562.14(1). Oral leases are not prohibited and were inferentially recognized by the clause "[i]f there is a written lease required. Further, the term and time period for cancellation of the rental agreement are specified in section 562B.10(4), Which provides: "Rental agreements shall be for a term of one year unless otherwise specified in the rental agreement. Rental agreements shall be cancelled by at least sixty days' written notice given by either party." Remedies for noncompliance with the rental agreement are provided in sections 562B.22-31, however, noncompliance is not an issue here.

A. <u>Termination</u>. On December 8, 1978, the landlords, apparently in response to section 562.14(1), gave a written notice to the tenants that they were prepared to offer a written rental agreement. The notice indicated that if the tenants did not want a written agreement, they were to acknowledge the offer. The landlords offered a month –to-month lease and the tenants testified that they "couldn't see any need for that."

The tenants claim that they were not given a meaningful opportunity to negotiate a lease. They further assert that the landlords should have offered a lease for the term of one year or, at the very least, for a term of sixty days. They urge that the landlords' actions resulted in an unenforceable rental agreement. We disagree for several reasons.

First, we do not interpret section 562B.10(4) to require a one-year lease. Chapter 562B was modeled after the Uniform Residential Landlord and Tenant Act approved by the National Conference of Commissioners on Uniform State Laws in August 1974. Lovell, The Iowa Uniform Residential Landlord and Tenant Act and The Iowa Mobile Home Parks Residential Landlord and Tenant Act, 31 Drake L. Rev. 253, 225 & n. 10(1981-82). One of the many modifications made by the Iowa Legistlature is contained in section 562B.10(4). In describing this section's deviation from the Uniform Act, one commentator states:

> **A number of jurisdictions require mobile home park owners to offer tenants at least a one-year lease. Others provide even greater security of tenure by limiting terminations by landlords to just cause. The Iowa Legislature considered both of these measures, but ultimately worked only a minor modification of the periodic tenancy in the mobile home space rental context. Thus, [chapter 562B] left the status quo relatively unchanged with regard to the security of tenure of tenants – they receive only modest protection.**
>
> **Section 10(4) of House File 2135, as introduced, amended and passed by the House provided as follows:**
>
> > **Rental agreements shall be for a term of one year and shall be automatically renewed on a yearly basis unless otherwise specified in the original written or oral rental agreement or any renewal thereof or may be canceled by at least sixty days written notice given before the expiration of any such lease by either party. A sixty-day notice to cancel a rental agreement initiated by a landlord shall be for just cause.**
>
> **This provision provided for a one-year lease automatically.**

> **renewable and, while the lease could be cancelled upon 60 days written notice, the landlord could only cancel for just cause. Unfortunately for tenants, neither of these provisions prevailed when the legislation reached the Senate. The State Government Committee of the Senate offered amendment S-5400B to the bill which was ultimately passed by the House. This amendment struck subsection 10(4) in its entirety and inserted in its place the language in present section B.10(4). The amendment passed as proposed and H.F. 2135, as amended, was passed by the Senate. The House subsequently concurred with the Senate version of H.F. 2135.**
>
> **. . . . .**
>
> **The legislature obviously elected to take a hesitant step toward a minimum one-year lease term, a step that will be for naught if mobile home park owners develop their own standard form lease specifying a fixed term, or even a periodic tenancy. The section is silent with regard to the renewal of tenancies, in contrast to the original text which made the one-year term automatically renewable on a yearly basis. In light of the changed text, it seems likely that a tenant who continues to reside on a mobile home space after the expiration of his term without a specific agreement will be subject to termination under the sixty days written notice procedure prescribed by the section. This change of course doubles the traditional notice requirement in the consensual holdover situation and apparently also in the periodic tenancy. It falls far short, however, of the security of tenure that seems warranted in light of the substantial expense involved in relocating a mobile home and the shortage of mobile home spaces to rent.**

Id. at 308-10 (footnotes omitted). By its deletion from H.F. 2135 of the requirement of a One-year term, the legislature plainly intended not to require a one-year lease. Rather, the purpose of section 562B.10(4) is merely to prescribe that "in the absence of an agreement as to the term, the term will be deemed to be for one year." Id. at 330 (footnote omitted).

Secondly, we do not interpret section 562B.10(4) to provide a lease for a term of sixty days. The language in this section "otherwise specified in the rental agreement" contains no reference to a specific time period, and the only reference to sixty days is confined to the minimum

cancellation notice. The practical effect of this language is to guarantee sixty days occupancy; however, this is because of the required notice, rather than a specified minimum term of the lease.

With the principles of tenancy in mind, our examination of this record indicates that the parties agreed orally to a month-to –month periodic tenancy. The tenants were given the opportunity to sign a written agreement but declined that offer. Because the tenants and the landlords agreed to a month-to –month tenancy, the tenants may not claim a lease for a longer term; they may still require the sixty days notice, however.

The tenants also claim that the entire rental agreement is void as unconscionable. They maintain that the rules and regulations of the mobile home park are at variance with various portions of chapter 562B. We find it unnecessary to address their specific claims before disposing of this issue. We discussed and adopted the unconscionability defense in leases in Casey v. Lupkes, 286N.W.2d 204, 207-08 (Iowa 1979), and will not repeat it here. Suffice it to say that "to create the relationship of landlord and tenant, it is only necessary to identify the parties, provide a definite description of the property, and include a statement of the term and the amount of rent to be paid." McCarter, 166 N.W.2d at 914. In the instant Case, the agreement between the parties clearly identifies the Wrights as landlords and the Parsons as tenants. The description of the mobile home space is unquestioned. The amount of rent and duration of the term are also established. There is thus a valid oral lease agreement. Even assuming portions of the mobile home rules are unconscionable, they will not invalidate an otherwise valid rental agreement. We hold that the oral lease agreement will stand, and

we therefore need not consider the conscionability of the rules. Further, we also note that even if the mobile home rules were unconscionable, the conscionable provision of the lease would nonetheless be enforceable. Commercial C&J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W.2d 169, 180 (Iowa 1975) (quoting with approval Restatement (second) of contracts $ 234 (Student Ed., Tent. Drafts Nos. 1-7, 1973)).

III. Termination notice. The tenants claim that the sixty-day notice of termination required by section 562B.10 (4) must be given at least of sixty days before the last day f a rental period, rather than sixty before the termination. It was agreed that the rental date was the first of the month and that the notice of termination was served on july 10. The notice of termination indicated that the tenancy would terminate sixty-one days after the service. The landlord accordingly served a notice to quit on September 9. However, the tenants maintain that this notice is invalid as their right of possession may only terminate on the last day of a rental period, which in this case would have been no earlier than September 30. We find in this contention.

We interpret that portion of section 562B. 10 (4) which requires "sixty days written notice given by either party" to establish both a minimum notice period and also an optional termination date for a month-to-month periodic tenancy. We recognize that this interpretation, which allows a month-to-month periodic tenancy to terminate at a date other than the end of a recurring monthly period, is at variance with the common law rule that we set out previously. Applying rules of statutory construction, however, we conclude that the statute abrogates the common law rule.

The clear language of the statute provides only for a sixty day notice to cancel the lease and contains no provision that the termination should fall at the end of a rental period. In interpreting a statute we may not add words of qualification or alter the plain terms of a statute. State v. Hesford, 242 N. W. 2d 256, 258 (Iowa 1976). To adopt the tenants' position would require the lease to extend beyond both the normal termination date and beyond the express languages of the statutes, and we reject it.

Other rules of construction aid us in our determination. A review of a related statutes strengthens our conclusion that the legislature did not intend that the tenancy could only terminate at the end of a rental period. See Wonder Life Construction. v. Liddy, 207 N.W.2d 27, 32 (Iowa 1973) (in searching for legislative intent, court should consider and examine statutes in related areas). The Uniform Residential Landlord and Tenant Act was enacted concurrently with chapter 562B and provides in section 562A.34 (2) that either party may terminate a month-to-month tenancy by written notice given at least "thirty days prior to the periodic rental date." It is evident that under chapter 562A the legislature intended that a month-to-month residential tenancy would terminate at the end of a monthly periodic rental date. In contrast, the legislature in enacting section 562B,10 (4) had the opportunity to require the lease to terminate at the end of the lease, but chose to reject section 10.4 of H.F.2135 which provided a sixty-day notice "before the expiration of any such lease." Lovell, supra, at 309. Instead, it made no reference to the periodic rental date. This apparently deliberate omission is evidence that the legislature intended that month-to-month tenancies of mobile home space may be terminated sixty days from the date notice is given.

The tenants point out that periodic rent is payable at the beginning of a term. They

argue that our interpretation of section 562B.10(4) would shorten the rental period after notice was given. They urge that the tenants would be confronted with either paying the monthly rent on September 1st or else moving out. We disagree.

Periodic rent is payable at the beginning of any term and thereafter in monthly installments under the provisions of section 562B.10(3), however, this section provides that "[r]ent shall be uniformly apportionable from day to day." The provision for daily apportionment provides a simple method to determine the rent due for a fractional period. It also indicates that the legislature anticipated that tenancies could be ended at a date other than the periodic rental date. This language is consistent with and adds further weight to our previously stated interpretation of section 562B.10(4). We hold that the statute does not provide that the lease must terminate on the periodic rental date.

<u>Termination</u>. The tenants claim that the landlords terminated the lease in retaliation for a gathering of the mobile home park tenants on or about June 10, 1980. The notice of termination, which formed the basis of the forcible entry and detainer action in this case, was served on the tenants on or about July 10, 1980. The tenants claim that the landlords' conduct violated section 562B.32 and thus the termination was defective. We disagree.

Section 562B.32(1) (c) provides in relevant part: "[A] landlord shall not retaliate … by brining ….. An action for possession ….after….. [t]he tenant has organized or become a member of a tenants' union or similar organization." Although the tenants were served with a notice of termination on July 10, it is clear that the landlords initiated their action for possession <u>before</u> the June 10

gathering of tenants. A notice to quit was signed by Mr. Wright on June 5 and served on the tenants on June 9. The tenants were later served with a notice of termination apparently because the landlords believed their first notice was procedurally inadequate. Since the landlords began their action before June 10 it is clear that they did not act in retaliation for the meeting of the tenants.

The tenants also urge us to adopt the defense of retaliatory conduct. They ask us to hold that whenever there is evidence that a tenant's alleged violation of a rule or other lease provisions forms any part of a landlord's motive for terminating the rental agreement, the court must require the landlord to disclose the actual reason for termination. We decline to so hold.

Tenants have been allowed to use retaliatory action by a landlord as a defense in eviction proceedings in several jurisdictions. However, this has generally been limited to specific retaliation by a landlord due to a tenant's complaints of a landlord's violation of housing statutes, participation in a lawful organization of tenants, or other exercises of first amendment rights. McQueen v. Druker, 438 F.2d 781, 785 (1st Cir. 1971) (exercise of first amendment rights of reporting code violation); Edwards v. Habib, 130 App. D.C. 126, 138, 397 F.2d 687, 699 (1968), cert. denied, 393 U.S.1016, 89 S. Ct 618, 21 L. Ed. 2d 560 (1969); Four Seas Investment Corp. v. International Hotel Tenants Assoc., 81 Cal. App. 3d 604, 610, 146 Cal. Rptr. 531, 533-34 (1978) (the defense of retaliatory eviction extends beyond warranties of habitability and into the area of first amendment rights); Portnoy v. Hill, 57 Misc. 2d 1097, 1098, 1100, 294 N.Y.S. 2d 278, 279, 281 (1968) (retaliation for tenant's reporting

of code violation is an affirmative defense); Sims v. Century Kiest Apts., 567 S.W. 2d 526, 527, 532 (Tex. Civ. App. 1978) (tenant may bring a cause of action for termination due to retaliation by the landlord for tenant's reporting code violation to city authorities). In the instant case, the tenants made no complaint of housing code violations, nor were the tenants' first amendment rights of free speech and assembly impaired. See generally State v. Elliston, 159 N.W.2d 503, 507 (Iowa 1968) (constitutionally protected rights of free speech and assembly are not unlimited). Thus, even if we were to adopt the defense of retaliatory action, the disputes between the landlords and the tenants do not fall within those cases that have allowed retaliation as a defense. There is thus no need to decide whether we will apply a defense of retaliatory action.

The tenants' final claim is that chapter 562B abrogates the landlords' common-law right to terminate without cause. A review of chapter 562B reveals no basis to support the tenants' position.

Chapter 562B provides the landlords with two methods of terminating the lease. One of these two methods is provided in section 562B.25:

> **[I]f there is a material noncompliance by the tenant with the rental agreement, the landlord may …. Terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. If there is a noncompliance by the tenant with section 562B.18 materially affecting health and safety, the landlord may ….. terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days.**

The landlords in the case at bar did not terminate pursuant to this fourteen/thirty-day termination procedure. Instead, the landlords elected to terminate pursuant to section 562B.10(4). When the legislature was considering the enactment of section 562B.10(4), it rejected the language "[a] sixty-day notice to cancel a rental agreement initiated

by a landlord shall be for just cause." Lovell, supra, at 309. The only condition imposed by section 562B.10(4) is that the landlords may not cancel the lease solely for the purpose of making the tenants' mobile home space available for another mobile home. This condition was met.. Thus, the landlords in this case may give sixty days notice to terminate without cause. Defendants' claims are clearly contrary to legislative intent.

Having found no prejudicial error in the small claims and district courts' rulings, we affirm.

- AFFIRMED.

All Justices concur, except Carter, J. takes no part.

IN THE SUPREME COURT OF IOWA

HILLVIEW ASSOCIATES d/b/a GRACIOUS ESTATES MOBILE HOME PARK,

Appellee,

vs.

TOM BLOOMQUIST and SANDRA BLOOMQUIST,

Appellants.

HILLVIEW ASSOCIATES d/b/a GRACIOUS ESTATES MOBILE HOME PARK,

Appellee,

vs.

RICHARD SWARTZ and NELLIE SWARTZ,

Appellants.

HILLVIEW ASSOCIATES d/b/a GRACIOUS ESTATES MOBILE HOME PARK,

Appellee,

vs.

KIMBER DAVENPORT and REVA DAVENPORT,

Appellants.

HILLVIEW ASSOCIATES d/b/a GRACIOUS ESTATES MOBILE HOME PARK,

Appellee,

vs.

DONALD RAY and JUDITH RAY,

Appellants.

Filed May 17, 1989

124
88-222

Appeal from the Iowa District Court for Polk County, Harry Perkins, Jr., Judge.

Appeal from district court order removing several tenants from mobile home park following summary forcible entry and detainer action. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

John C. Barrett and Griff Wodtke of Barrett & Trott, Des Moines, and Victoria L. Meade of Kuhle & Sanders, Des Moines, for appellants.

William R. Stiles of Smith, Schneider, Stiles, Mumford, Scharage & Zurek, P.C., Des Moines, for appellee.

Thomas A. Krause, Sioux City, for amicus curiae Iowa Coalition for Community Improvement.

Considered by Harris, P.J., and Larson, Neuman, Snell and Andreasen, JJ.

ANDREASEN, J.

This appeal concerns the eviction of tenants from the Gracious Estates Mobile Home Park. The affirmative defense of retaliatory eviction and other defenses raised by the tenants were rejected by the district court. On appeal we reverse the district court as to six tenants and affirm the result of the district court order as to two other tenants.

I. The underlying action on this appeal is an equitable forcible entry and detainer action. Iowa Code $ 648.5 (1989). Our review of this action is de novo. We review both the facts and the law and determine, based on the credible evidence, rights anew on those propositions properly presented. See Sunset Mobile Home Park v. Parsons, 324 N.W.2d 452, 454 (Iowa 1982). In equity cases, especially when considering the credibility of witnesses, we give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. p. 14 (f) (7). Where the defendant raises an affirmative defense, the defendant has the burden of proving that defense by a preponderance of the evidence. In determining if the burden of proof has been established, we consider all evidence, both in support and contrary to the proposition, and then each to determine which is more convincing.

II. Gracious Estates Mobile Home Park (Gracious Estates) is located in Des Moines. It is owned by Hillview Associates (Hillview), a partnership based in California.

The general partner of Hillview is William Cavanaugh, a resident of California. Management Of Gracious Estates has been delegated to a company known as Tandem Management Services, Inc. (Tandem), also owned by Cavanaugh and the other general partners of Hillview Tandem employed Kathy Nitz as a regional manager, Gennie Smith as park manager and Doug Cavanaugh as property manager at Gracious Estates.

In January 1987 tenants at Gracious Estates began to meet informally to discuss their concerns over the physical condition of the trailer court and recent increases in rent. On January 28, 1987, the first meeting of a tenant's association was held in the Clubhouse of Gracious Estates and approximately 125 tenants came to the meeting. This meeting resulted in an agenda of specific concerns for the health, safety and quality of living in Gracious Estates. A volunteer leadership committee was established for the association , now known as the Gracious Estates Tenant's Association. In the course of organizing and articulating complaints, tenants contacted the Iowa Attorney General's offices and their state representative.

On February 9, 1987, a meeting was held between approximately five members of the Association, Ms. Nitz and the park maintenance supervisor. The tenants lodged several complaints at this meeting. This meeting lasted approximately one hour and was relatively calm. The relationship between the tenant's association and the

Management of Gracious Estates began to erode. The tenants were frustrated with the lack of action taken by the management of Gracious Estates.

A meeting with Ms. Nitz was scheduled for April 15 between representatives of the tenants association and Ms. Nitz. This "meeting" was held in Nitz's private office and lasted approximately five to ten minutes. The discussion quickly disintegrated into a shouting match which climaxed in a physical alteration between Nitz and one of the tennats, Kimber Davenport.

After this meeting, the management of the trailer court served ultimatums on all tenants requiring them to sign the park rules or be evicted. Management also sought out tenants not in the tenant's association in an attempt to start a rival tenants' association favorable to management. April 22, 1987, Hillview served a thirty-day notice of termination on the following tenants: Tom and Sandra Bloomquist; Kimber and Reva Davenport; Richard and Nellie Swartz; and Donald and Judith Ray. At least one member of each of these married Couples was present at the April 15 meeting. A former secretary of Ms. Nitz testified that "they'd [Management] get these now, and then the rest later. That way it wouldn't look like they were doing it because they were members of an association.

Hillview later discovered that the thirty-day notice did not provide specific grounds for termination as required by statute. On June 4, 1987, Hillview again served each of these tenants with a notice of termination which provided a sixty-day period for them to leave. At the end of the sixty-day period, the tenants remained in possession. Hillview then served three-day notices to quit. The tenants remained in the park and Hillview filed a forcible entry and detainer action.

In this summary action for forcible entry and detainer, the tenants raised the defenses of retaliatory eviction and waiver. The trial court rejected these defenses and entered an equitable decree ordering the tenants to remove their mobile homes from the park. The cases of all eight tenants were consolidated for trial and remain consolidated on appeal.

III. The Iowa Legislature adopted remedial legislation for mobile home tenants in the Mobile Home Parks Residential Landlord and Tenant Act. Iowa Code S 562B.3 (1987). The purpose of this act to "encourage landlord and tenant to maintain and improve the quality of mobile home living." Sunset, 324 N.W.2d at 455. This act is recognition that the mobile home tenant is bargaining for more than simply a portion of real estate, and therefore, this act provides

certain considerations unique to a mobile home rental situation. See generally Sunset, 324 N.W.2d 452; Lovell, The Uniform Residential Landlord and Tenant Act and the Iowa Mobile Home Parks Residential Landlord and Tenant Act, 31 Drake L. Rev. 253 (1981-82).

The Iowa Mobile Home Act prohibits retaliatory conduct by landlords:

> **1. Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by failing to renew a rental agreement after any of the following:**
>
> **(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the mobile home park materially affecting health and safety. For this subsection to apply, a complaint filed with a governmental body must be in good faith.**
>
> **(b) The tenant has complained to the landlord of a violation under section 562B.16.**
>
> **(c) The tenant has organized or become a member of a tenant's union or Similar organization.**
>
> **(d) For exercising any of the rights and remedies pursuant to this chapter.**
>
> **2. If the landlord acts in violation of subsection 1 of this section, the tenant is entitled to the remedies provided in section 562B.24 and has a defense in an action for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. For the purpose of this subsection, "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.**

> **3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if either of the following occurs:**
>
> **(a) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household or upon the premises with the tenant's consent.**
>
> **(b) The tenant is in default of rent three days after rent is due. The maintenance of the action does not release the landlord from liability under section 562B.22. subsection 2.**

Iowa Code S 562B.32 (1987). This act also provides for termination by either party without cause, so long as a sixty-day notice is provided in writing. See Iowa Code S 562B.10.

IV. In 1968 the United States Court of Appeal for the District of Columbia held that a landlord was not free to evict a tenant in retaliation for the tenant's report of housing code violations. As a matter of statutory construction and for reasons of public policy, such an eviction would not be permitted. Edwards v. Habib, 397 F.2d 687(D. C. Cir. 1986), cert. denied sub nom. Habib v. Edwards, 393 U.S. 1016, 21 L. Ed. 2d 560, 89 S. Ct. 618 (1969). However, a tenant who proves a retaliatory purpose is not entitled to remain in possession in perpetuity. If the illegal purpose is dissipated, the landlord can, in the absence of legislation or a binding contract, evict the tenant for legitimate reasons or even for no reasons at all. The question of permissible or impermissible purpose is one of fact for the court or jury. Id. at 702.

In 1979 the Iowa Legislature adopted the Uniform Residential Landlord and Tenant Act and the Mobile Home Parks Residential Landlord and Tenant Act. Iowa Code chapters 562A & 562B. Both acts prohibit retaliatory conduct. See Iowa Code §§ 562A.36 & 562B.32. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. For the purpose of the statutory subsection "presumption" means the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which could support a finding of its nonexistence.

As a matter of statutory construction, we hold this statutory presumption imposes a burden upon the landlord to produce evidence of legitimate nonretaliatory reasons to overcome the presumption. The tenant may then be afforded a full and fair opportunity to demonstrate pretext. The burden of proof of the affirmative defense of retaliatory termination of the lease remains upon the tenant. If the landlord does not meet the burden of producing evidence of a nonretaliatory reason for termination, the statutory presumption would compel a finding of retaliatory lease termination. If the landlord does produce evidence of a nonretaliatory purpose for terminating the lease, then the fact-finder must determine from all the evidence whether a retaliatory termination has been proven by a preponderance

Of the evidence. Although the burden of producing evidence shifts to the landlord once the tenant has offered evidence of a complaint within six months of the notice of termination, the burden of proof remains with the tenant to establish the affirmative defense.

In deciding whether a tenant has established a defense of retaliatory eviction, we consider the following factors, among others, tending to show the landlord's primary motivation was not retaliatory.

(a) The landlord's decision was a reasonable exercise of business judgment ;

(b) The landlord in good faith desires to dispose of the entire leased property free of all tenants ;

(c) The landlord in good faith desires to make a different use of the leased property ;

(d) The landlord lacks the financial ability to repair the leased property and therefore, in good faith, wishes to have it free of any tenant ;

(e) The landlord was unaware of the tenant's activities which were protected by statute ;

(f) The landlord did not act at the first opportunity after he learned of the tenant's conduct ;

(g) The landlord's act was not discriminatory.

Restatement (Second) of Property § 14.8 comment f (1977) .

V. We find the tenants have offered substantial evidence of a retaliatory termination. They were active, vocal members of a newly-formed tenant's association. They made good faith complaints about the landlord's failure to maintain the mobile home park in a clean and safe

condition. An employee of the landlord testified that certain leases were terminated because the tenants were active members of the tenants association. In response, the landlord has offered substantial evidence of a nonretaliatory reason for termination. The tenants who actively participated in the disturbance and physical abuse of Ms. Nitz during the April 15 meeting were notified of lease termination, other active members of the association were not.

According to Ms. Nitz, the tenants surrounded her desk on April 15 and implored her to call California. One of the tenants, Kimber Davenport, placed both hands in the middle of Nitz's desk, leaned over the desk, shouted that Nitz had a "truck-driver's mentality" and that she wasn't a lady. Nitz asked the tenants to leave and all but Mr. and Mrs. Rathburn refused. Ms. Nitz then left her office and, after a cooling-off period, returned and demanded that the other tenants leave the office. She again demanded that they leave and threatened to call the police if they did not. The tenants began to leave. Mr. Davenport was the last to leave, and as he left he continued the verbal abuse of Ms. Nitz and gestured to her with his finger close to her face. According to Ms. Nitz, she pushed his finger away and Davenport struck her in the face, knocking her into a doorjam. At that point, another tenant, Don Carlson, entered the room and physically removed Davenport.

Davenport's testimony concerning the April 15 meeting was very different from Ms. Nitz's testimony. Davenport testified at the forcible entry and detainer trial that he was polite and reasonable during this meeting. Further, he claimed that he did not place his hands on Nitz's desk, shout at her, or strike her. Rather, he testified that he pushed her away with an open hand. Davenport's testimony loses credibility when it is compared with his prior testimony in a criminal case concerning this incident. In his prior testimony, Davenport admitted that he placed his hands in the middle of Ms. Nitz's desk, shouted insults at her, and struck her.

Several conclusions can fairly be drawn from the evidence. First, the April 15 meeting was initiated by members of a tenant's association in an attempt to address grievances with the management of the trailer court. This meeting disintegrated into a shouting match. The tenants were told to leave three times and they left only after a threat to call the police. We, like the trial court, conclude that Davenport did strike Ms. Nitz in the face as he left the room. He was the principal agitator, quickly leaving the topic of improvements for the park and launching into a personal attack on Ms. Nitz.

Under Iowa law, tenants may organize and join a tenant's association free from fear of retaliation. The tenants may participate in activities designed to legitimately coerce a landlord into taking action to improve living conditions. The presumption of retaliatory

Eviction in Iowa Code section 562B.32 protects legitimate activities of tenant unions or similar organizations.

The resolution of landlord-tenant grievances will normally involve some conflicts and friction between the parties. Arguments, even heated arguments with raised voices, cannot fairly be described as being in violation of proper conduct. There is, however, a limit to the type of conduct that will be tolerated. Kimber Davenport crossed beyond the line of legitimate behaviour. Davenport has failed to establish by a preponderance of the evidence that the termination of the Davenports' lease was legitimate and thus cannot be said to be retalilation arising from his complaints or union activities.

Although the statutory presumption of retaliation has been neutralized by the evidence produced by Hillview, we find the evidence of retaliatory eviction concerning tenants Bloomquist, Swartz, and Ray, to be more convincing. Although they were present at the April 15 meeting and did participate in the arguments, they did not encourage or participate in the assault of Ms. Nitz. The landlord's response by an attempted termination of their leases can reasonably be attributed to their active membership in the tenant's organization and in response to legitimate complaints they had made.

We reject Hillview's argument that there must be specific intent to retaliate on the part of Hillview's general partner before the tenants can prevail on a defense

of retaliatory eviction. The evidence reveals that the local and regional managers of Gracious Estates made the decision to evict these tenants. The general partner ratified this decision without direct participation in the decision-making process.

The acts of an agent are attributable to the principal. In this situation, to require specific intent by the general partner of a multi-state real estate business would frustrate the intention of Iowa Code section 562B.32. Hillview's interpretation would allow mid-level managers to retaliate against tenant associations and seek refuge by keeping top-level directors uninformed of specific disputes with individual tenants. Tenants Bloomquist, Swartz, and Ray have established by a preponderance of the evidence. Tenants Davenport have not.

VI. The tenants also raised the affirmative defense of waiver based upon Iowa Code section 648.18. This section provides thirty days peaceable possession with the knowledge of the landlord after the cause of action accrues is a bar to a forcible entry or detention proceeding. There is no evidence that tenants Davenport had thirty days peaceable possession after the landlord served the sixty-day notice. The cause of action accrued at the end of the sixty days. The argument that tenant Davenport paid rent and continued in possession after the thirty-day

notice of termination had been given in April would serve as a bar to a forcible entry or detainer action only if the landlord had attempted to secure possession based upon the thirty-day notice. Because the tenants raise only this statutory defense of waiver in their brief and argument, we need not consider other equitable affirmative defenses raised at trial.

VII. This is an appeal from the court's ruling and judgment in an equitable forcible entry and detainer action. We find the landlord is not entitled to an order of removal of tenants Bloomquist, Swartz and Ray because the tenants have established their affirmative defense of retaliatory termination.

We find tenant Davenport has not established the affirmative defenses of retaliatory termination or statutory waiver. The trial court ruling holding the plaintiffs were entitled to possession of Kimber and Reva Davenport's described premises is affirmed and an order for removal may issue.

We tax eighty percent of the costs of this appeal against Hillview Associates and twenty percent again Kimber and Reva Devenport.

The order and judgment of the district court is affirmed in part, reversed in part, and remanded for entry of orders and judgment and further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

IN THE COURT OF APPEALS OF IOWA

GEORGE. D. FISCHER and PARTRICK F. FERRONE,	)	
Plaintiffs-Appellees,	)	
vs.	)	
JAY. D. DRIESEN and MARLYS. F. DRIESEN,	)	9-220 88-1075
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Marion County (22702) , Thomas W. Mott, Judge.

Defendants appeal the decision of the trial court which granted an injunction requiring them to remove their trailer from their lot due to restrictive convenants.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Bert. A. Bandstra, Knoxville, for defendants-appellants. Mark. R. Adams of Dreher, Wilson, Simpson, Jensen, Sellers, Buters, Adams & Kaiser, Des Moines, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Defendants appeal the decision of the trial court which granted an injunction requiring them to remove their double-wide house trailer from their lot due to restrictive covenants on the lot. We reverse.

Plaintiffs George D. Fischer and Patrick F. Ferrone are developers of an area of land called Dutchman's Landing on Lake Red Rock near Pella, Iowa. About 160 lots have been sold and approximately thirty-five homes built in the development. Defendants Jay D. Driesen and Marlys F. Driesen bought a lot at Dutchman's Landing in June of 1987. The sale contract included a number of restrictive covenants. Late in June of 1987 the Driesens moved what they believed is a manufactured home onto the lot. The home came in two parts on detachable wheels and axles. It is twenty-eight feet wide and sixty feet in length. The house rests on four steel beams which are supported by forty-four concrete piers that extend below the frost line. A screen has been placed on the bottom edge of the house. The house cost the Driesens $ 38, 832.

One of the restrictive covenants provided for an Architectural Control Committee. Defendants did not have their house plans approved by the Committee as required by the covenant. Plaintiffs brought this suit seeking to enjoin defendants from keeping the house on their lot. The trial court found the house was a trailer, which

violated paragraph eleven of the restrictive covenants. The trial court determined the house also violated paragraph ten, which requires a solid, continuous foundation. The court found the restrictive covenants had not been abandoned. The trial court issued an injunction requiring the defendants to remove their double-wide house trailer and forbidding their building or placing any structure on the lot without first submitting plans to the Architectural Control Committee. Additional facts will be outlined in the body of the opinion.

On appeal, the Driesens claim the trial court erred in: 1) finding their home was a house trailer in violation of paragraph eleven of the restrictive covenants; 2) holding they had violated Paragraph ten of the restrictive covenants which requires solid foundations on all homes in the development; and 3) holding their failures to present plans to the Architectural Control Committee was a material violation of the restrictive covenants. Our scope of review in equity actions is de novo. Iowa R. App. P. 4.

I. Initially we note the long-settled rule in Iowa with restrictions on the free use of property are Strictly construed against parties seeking to enforce them and will not be extended by implication or construction beyond the clear meeting of their terms, and doubts will be resolved in favor of unrestricted use of property. Maher v. Park

Homes, Inc., 258 Iowa 1291, 1296-1297, 142 N.W. 2d 430, 434 (1966).

With this principle of construction in mind, we address the issue of whether the structure which the Driesens have erected on their property is a house trailer prohibited by a restrictive covenant. The trial court determined the Driesens' home was a mobile home. Finding no practical difference between the structure in question and a house trailer, the trail court held developers and intervenors had a right to have the structure removed. The Driesens, however, have always maintained their home is not a mobile home. They contend it is a manufactured home, built at another location and moved to the house site.

The trial court, in its holding, relied on Jones v. Beiber, 251 Iowa 969, 103 N.W. 2d 364 (1960). In Beiber, the supreme court held there was a violation of a covenant in a warranty deed that prohibited trailers. In that case defendants had moved a trailer onto a lot. They removed the wheel from the trailer, placed the trailer on cement blocks, and left the axle and trailer hitch intact. They concealed this by siding placed around the base thereof. They also connected the trailer to water, electricity, and a septic tank. This trailer was used as their home. Id.

We find Beiber can be distinguished from the instant case. The trailer there was eight feet wide and fifty-one feet long and was in contrast to the other homes in the

subdivision. In addition, all the buildings were required to be placed on a foundation not less than fourteen feet by eighteen feet in size. Id. at 971, 103 N. W. 2d at 365. The Beiber court also noted the trailer involved maintained its basic character of "being designed to be hauled," because the hitch remained on the trailer, which had been placed upon cement blocks, leaving the axles intact.

The trial court also relied on Brownfield Subdivision, Inc. v. Mckee, 311 N.E.2d 194 (I11. App. 1974), to support its decision the Driesen home is a house trailer. The Illinois appellate court held a structure was a mobile home within a restrictive covenant prohibiting the use of mobile homes on a lot. That court stated:

> **The crux is in design. It is not so much that it is movable but that it was designed to be moved. It is not so much what kind of foundation it might have---here we can assume that it is permanent -- but was designed without a permanent foundation. Logically, therefore, we can say that a mobile home is a structure which is designed to be moved and has no foundation or the need for one.**

Id. at 196.

We do not find the rationale employed by the Illinois Court of Appeals convincing. Instead, we choose to follow the sound rationale employed by the Michigan Court of Appeals in North Cherokee Village Membership v. Murphy, 248 N.W. 2d 629 (Mich. Ct. App. 1976), faced with a restrictive covenant which stated "no house trailers or tents allowed on subdivision." The Michigan court distinguished both the

Illinois court decision in Mckee and the Montana case of Timmerman v. Gabriel, 155 Montana 295, 470 P.2d 528 (1970), stating:

> **The instant prohibition against "house trailers and tents" pales in comparison to the more comprehensive language of the restrictive convenants considered by the Illinois and Montana courts. Despite the dubious rationale of the Illinois appellate court in Mckee, . . . (a mobile home is a mobile home is a mobile home), the court there could at least cite restrictive language specifically banning mobile homes, whereas, this Court is asked to engage in semantic sleight of hand by declaring a two-piece mobile home, bereft of its chassis and securely joined together, to be a house trailer. We decline the invitation.**

North Cherokee Village Membership v. Murphy, 248 N.W.2d at 632.

The testimony of the developers indicates their primary concern centers around the permanence of the residence. The Driesen home is a permanent structure and uncontroverted testimony indicates the home, at this point, would be as difficult to move as a conventional "stick built" home. To move the home at this time would require hiring a home mover as well as extensive carpentry work which would include tearing off woodwork, carpenting, flooring, ceiling rafters, and roofing.

We also do not find compelling plaintiffs' argument this court should follow the definition of mobile homes set out by the legislature in Iowa Code chapter 135D in determining what the drafters of the covenant in question had in mind. We once again find the analysis of the

Michigan court in Murphy to be compelling. In response to a similar argument, the Michigan court determined:

> **We believe this argument miscarries. To ferret the meaning of "house trailer" by reference to the various definitional provisions of the Michigan Vehicle Code the MHPA is to pursue false leads. The quoted definitional sections in the these two statutes each begin with a caveat that the defined terms have the meaning so ascribed to them for purposes of the particular statute or section in which they are found. Hence, if this Court were to impute a statutory definition to the language in a private restrictive covenant, we would be rewriting the parties' respective obligations in a manner not contemplated by their original undertaking. (Emphasis supplied.)**

Id. at 630.

Just as in Murphy , section 135D.1 makes clear its definition of mobile homes is limited to matters contained in chapter 135D. In addition, there is nothing in the record to indicate the developers were familiar with chapter 135D at the time the covenants were drafted. We find the definition of section 135D.1 is not relevant in our task of constructing the restrictive covenant here. We hold the Driesens' manufactured home does not violate covenant number eleven, prohibiting house trailers or other trailers. The trial court holding as to this issue is reversed.

II. Next the Driesens argue the trial court erred in holding their failure to present their plans to the Architectural Control Committee was a material violation of the covenants. Driesens contend this covenant had been abandoned because of evidence showing the committee has not

reviewed all plans, and testimony which indicated the committee operated in a somewhat informal manner. On the record presented here, we decline to find the covenant has been abandoned. However, we determine in light of our holding in division I, injunctive relief is not the proper remedy for violating this covenant. It is well settled, the fact defendants have violated a covenant it does not automatically entitle plaintiff to injunctive relief. Johnson v. Pattison, 185 N.W.2d 790, 797 (Iowa 1971). The Pattison court went on to outline the factors to be considered in determining when injective relief was appropriate:

> **Equity usually invokes its extraordinary injunctive power only when necessary to prevent irreparable harm or when the complaining party is otherwise without an effective remedy. If the injury is light and an injunction would result in serious hardship or loss to defendant, courts have refused to enjoin, leaving the plaintiff to his claim for damages. Under this comparative injury doctrine, injunctions which are likely to cause greater injustice than they seek to prevent are properly refused.**

Id. at 797.

Contradictory evidence indicated nearly one-third of the homes in the development were not approved by the committee. Often plans were not submitted to the committee, but this was apparently rectified by a committee member inspecting the home while it was being built. Still another committee member testified he had seen plans for what amounted to less than ten percent of the homes in the development.

In addition, we note the continued existence of the Driesen home will not be a source of damages to the other property owners. The Driesen home totals nearly 1,680 square feet, nearly double the size of the smallest homes in the development. At least two homes are "seasonal" and a basement home is also in the development. Evidence also indicates one home has not been completed and has stood vacant for some time. We determine injunctive relief is not appropriate in the case before us.

III. Next, Driesens argue the trial court was incorrect in holding the manufactured home violated the restrictive covenant that requires continuous solid foundations. The covenant provides all exterior construction must be completed and enclosed within twelve months. The Driesens argue twelve months had not elapsed between the time the manufactured home was delivered to the Driesens (June 23, 1987) and the time the developers filed suit (July 22, 1987). This evidence is uncontroverted.

Because only one month had passed, any ruling on this issue is premature. Continued construction on the property following the filing of this suit would have been imprudent. We hold Driesens should be given eleven months from date of this decision to cure any exterior construction problems which stand in violation of the covenant. Therefore, we reverse and remand this case to the trial court with instructions.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Davis, HOCKENBERG, WINE, BROWN & KOEHN

ATTORNEYS AND COUNSELLORS AT LAW

A.ARTHUR DAVIS
HARLAW D. .HOCKENBERG
DONALD A.WINE
DONALD J.BROWN
A.J.GREFFENIUS
WILLIAM J.KOEHN
JOHN D.SHORS
STEPHEW W.ROBERTS
WILLIAM R.KING
ROBERT F.HOLF, JR.
LEON R.SHEARER
DENNIS D.JERDE
C. CARLETON FREDERICI
GEORGE W.SULLIVAN
MICHAEL G.KULIK
RICHARD E.RAMSAY
F.RICHARD THORNTON
THOMAS E. SALSBERY
E.RALPH WALKER
RICHARD M. TEMPERO
FRANK J.CARROLL

JOHN D MINTZE
BRUCE I.CAMPBELL
JONATHAN C.WILSON
G.BRIAN PINGEL
PATRICIA A.SHOFF
JOHN A.TEMPLER, JR.
ROBERT C.GALBRAITH
EDWIN N.MCINTOSH
VINCENT G.ELLA
ROBERT A.IMONS
STEVEN L.NELSON
DAVID S.VANSICKEL
WILLIAM W.SCHWARZ
JAMIE A.WADE
LORNA A.GILBERT
GENE R. LASUER
DAVID S. STRUTT
IANE M.STAMLE
MARILYN S. SCHEER
STEVEN C.GOODRICH
DEBORAM THARNISH CRAIG

DAVID W. DUNN
BRIAN L.WIRT
CHARLES R.TAYLOR
JEAN A.MENCIL
FRANK A. CAMP
KENT A MERINX
ROBERT J. DOUGLAS, JR.
C.S. STEINGER
DAVID J. DARRELL
LEO L. FINKELSTEIN
NORENE D.JACOSS
GLENN S. HANSEN
CARLA A. SCHOLTEN
LUCY J. GAMON
DAVID M.LOFHOLM
DANIEL J.WINEGARDEN
NICHOLAS M. ROBY
RONNI F. BEGLEITER
JAMES D. CHRISINGER
RICHARD B.PUMILIA

G. BRIAN PINGEL
KENT A. MERINK
PATENTS

RUDOLPHL LOWELL
PATENTS OF COUNSEL

HARLAM J. THOMA
PAUL E. BROWN
T. .JAMES McDonough
WILLIAM D. THOMAS
OF COUNSEL

DAVID J. HENRY
1948-1983

2300 FINANCIAL CENTER
666 WALNUT STREET
DES MOINES, IOWA 50309

(515) 243 2300
TELECOPIER (515) 243-0654

TELEX: 478322
(DAVIS LAW DMS)
CABLE:DAVIS LAW

137 COLONY PARK BUILDING
3737 WOODLAND
WEST DES MOINES, IOWA 50261

(515) 225 3737
TELECOPIER (515)225.9510

June 3, 1985

Mr. Joseph Kelly
Manufactured Housing Association
of Iowa
1400 Dean
Des Moines, Iowa 50317

Dear Joseph:

I have researched the question that we recently discussed about potential personal liability of City Council members for purposeful denial or impairment of rights granted by the statute recently adopted by the Iowa legislature allowing certain mobile homes to be placed outside designated mobile home parks. That research has led me to the conclusion that City Council members do have potential personal liability for actual damages sustained as well as for punitive damages. Such liability would arise pursuant to the provisions of Chapter 670 of the 1985 Code of Iowa. As members of the governing body, City Council members are considered "officers" of the municipality. An actionable tort includes the "denial or impairment of any right under any constitutional provision, statute or rule of law." While the municipality itself is immune from
liability for punitive damage claims, pursuant to Section 670.4, no such immunity exists for municipal officers according to Section 670.12. Moreover, while the municipality has an obligation to defend any claims brought against its officers, and to indemnify them against certain damages, such indemnification does not extend to awards for punitive damages, according to Section 670.8.

You should take special note of the applicable Statute of Limitations with respect to claims against municipalities or municipal officers. It is provided by Section 670.5 that claimants must either (1) commence an action within six months after the alleged, wrongful injury; or (2) within 60 days after the alleged, wrongful injury, file with the municipality a written notice and then commence an action within two years after such

notice. In any particular fact situation, it would appear that each successive refusal to afford the rights and privileges intended by the applicable state statute would constitute a separate wrong and recommence the limitation period.

I have not specifically researched the applicability of the foregoing analysis to county attorneys, but a brief perusal of various code sections relating to the office of county attorney did not identify any code section which would grant a county attorney any greater or different protection or potential liability.

Please give me a call after you have had a chance to digest this letter and perhaps review Chapter 670 of the 1985 Code of Iowa, and we can discuss further strategies.

Best wishes.

Sincerely yours,

DAVIS, HOCKENBERG, WINE, BROWN & KOEHN

Jonathan C. Wilson

JCW:bp

STATE OF

IOWA

DEPARTMENT OF REVENUE AND FINANCE
GERALD D. BAIR. DIRECTOR

May 17, 1993

Mr. Joe M. Kellu, Executive Vice-President
Iowa Manufactured Housing Association
1400 Dean Avenue
Des Moines, Iowa 50316-3938

Dear Joe:

The following is in response to your telephone call of May 11, 1993, and the material you faxed that same day.

You have identified an inconsistency between my letter of June 11, 1985, dealing with the sales tax exemption on "trade-ins" and a replacement of page 38 of the UT510 booklet we mailed to county treasurers in 1991 dealing with the same subject. The replacement page reflects the proper interpretation of Iowa law.

My 1985 letter was correct at the time it was written. However, in 1987 the Iowa General Assembly amended the "trade-in" criteria set forth in Iowa Code Section 422.42(6). See Section 6, Chapter 214, 1987 Session Acts. Prior to the law change, the traded property had to be subject to Iowa sales or use tax when resold in order for the exemption to apply. In 1986 the Iowa courts ruled that this requirement was a violation of the U.S. Commerce clause because traded property removed from Iowa prior to sale would not qualify for the "trade-in" exemption. In 1987 we asked that the General Assembly amend the statute by striking this provision and make the "trade-in" exemption constitutional which they did.

Currently, in order to qualify for the "trade-in" exemption the retailer must: (1) intend to ultimately sell the property at retail, or (2) intend to use the property or have another use the property in the remanufacturing of a like item. Whether a traded item will or will not be subject to Iowa tax at some future time is no longer a statutory requirement in order to obtain the "trade-in" exemption.

It is my understanding that some customers may have paid an excessive amount of vehicle use tax because we failed to notify the county treasurers and your membership of the statutory change

to the "trade-in" exemption in 1987. We apologize for any inconvenience this has caused and we will rectify our oversight. If you can identify customers who paid Iowa use tax in error, they can file for a refund by completing our form 843 or by sending us a letter with documentation of the erroneous use tax payment. Our statute of limitations for filing claims is 5 years form date of payment. See Iowa Code Section 422.73 (1).

I hope this information has been helpful. In summary, your members should rely on the UT510 booklet published in 1991 rather than my June 11, 1985, letter. Please let me know if I can be of further assistance. Again, I apologize for the confusion.

Sincerely,

Carl A. Castelda
Deputy Director

drj

UT510 EXEMPTION 8a.
MOBILE HOMES

Mobile homes are exempt from use tax if the mobile home has been previously subject to Iowa use tax and the tax has been paid (Rule 32.3). New mobile homes are taxed at 60% of their value.

Example 1: A new mobile home is purchased by the State Conservation Commission for use at a state park. No tax is paid at the time of initial registration. This mobile home is later sold to a resident of Iowa. When this person titles the mobile home in Iowa, use tax on 60% of the purchase price would be due since no Iowa use tax was previously paid.

Example 2: A resident of Nebraska, purchases a mobile home for use in Nebraska, titles it in Nebraska and lives in it there. The person later moves to Iowa and titles it here. No use tax is due since the person did purchase it for use in Iowa. (Use UT 510 Exception 8c. See page 28.) This person later sells it to a resident of Iowa. Use tax is due on 60% of the purchase price since tax has not previously been paid to Iowa.

When tax is paid on a mobile home, the amount of tax paid should be entered on the title.

New mobile homes are taxed only on the portion of the cost of the mobile home attributable to materials used in building the mobile home. For purpose of this exemption, 40% of the mobile home cost is attributable to labor so that *mobile home is to be taxed at 60%* of the purchase price. This exemption does *not* apply to RVs and travel trailers which are taxed at full value.

Mobile Home Trade Ins

In order for a trade-in to qualify as a reduction in sales price for purposes of computing tax on a reduced amount, it must (a) be the course of the retailers business and (b) must be intended to be ultimately sold at retail or used to manufacture a like item.

Even though an exemption is granted to used mobile home which have already been subjected to the Iowa use tax, these mobile homes will qualify as a "trade-in" for the purposes of computing use tax according to criteria (a) and (b) above. When the traded mobile home is ultimately sold at retail it will not be subjected to use tax again because of the exemption.

Example 1: A mobile home dealer receives from the factory a new mobile home that has a sales price of $20.000. The dealer sells it and takes the purchaser's old mobile home has been previously titled in Iowa and use tax was paid. The dealer lists the trade-in for sale. The Iowa use tax is computed as follows:

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($15,000 X 60%)	$ 9,000
Use tax at 5%	$450

The trade in allowance applies since the traded in mobile home will be ultimately sold at retail.

Example 2: Same facts as given in Example 1 with the exception that traded-in mobile home will be retained by the dealer as an office.

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($20,000 X 60%)	$12,000
Use tax at 5%	$600

The trade-in allowance does not apply since the traded-in mobile home will not be ultimately sold at retail or used to manufacture a like item.

Exemption Authority:
Iowa Code Section 423.4 (11)
Iowa Code Section 234.4 (12)
Department Rule 32.3

STATE OF

IOWA

ERRY. E. BRANSTAD, GOVERNOR

DEPARTMENT OF REVENUE AND FINANCE
PAUL H. WIECK II. COMMISSIONER

December 13, 1991

City of Brooklyn
City Council
138 Jackson
Brooklyn, Iowa 52211

Dear Madam and Sirs:

I am employed by the State of Iowa as a building Code Engineer in the Division of State Fire Marshal of the Department of Public Safety.

The intent of this letter is to clarify for you whereby an isolated footing and pier system necessary for a manufactured home would meet the standards for what is considered a permanent foundation in the Uniform Building Code.

Where the conditions set forth below are found to exist, a manufactured home and the foundation upon which it is placed would meet the Uniform Building Code requirements for a permanent foundation:

(a) The manufactured home meets the HUD Construction and Safety Standards, Part 3280.

(b) The home is placed on a permanent foundation which is a system of supports, including piers, either partially or entirely below grade and capable of transferring all design loads improved by or upon the structure into soil or bedrock, Piers installed upon footings below the frost-line (approximately 42 inches in Iowa) must maintain vertical continuity from each point of attachment to the home. such a design would structurally be rather than the exterior of the structure which is normally used on site-built dwellings.

(c) The unit must have some method of decreasing wind up-lift, i.e. exterior retaining wall, ; perimeter skirting, etc..

(d) The manufactured home is built to a federal standard, any alteration to the structure, such as adding to the exterior wall for installing on a perimeter type foundation would violate that standard.

When the above requirements have been met, a manufactured home will be deemed to have met the zoning requirements for placement on a permanent foundation.

If you have any questions, please do not hesitate to call or write, as I would be happy to discuss them with you.

Sincerely,

C. E. Peter Green
Building Code Engineer

CEPG/pjs

Brooklynltr

STATE OF

IOWA

TERRY. E. BRANSTAD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
PAUL H. WIECK II. COMMISSIONER

June 16, 1993

Mr. Gilbert A. Boxa, Director
Building and Zoning Administration
City of Cedar Rapids Building Department
Lower Level – City Hall
Cedar Rapids, Iowa 52401-1256

RE: Manufactured (Mobile) Homes/Modular Residential Structures

Dear Mr. Boxa:

In answer to your letter of June 15, 1993 concerning the above manufactured structures, the following should clarify the situation:

Manufactured homes from July, 1976 have been under HUD control and are exempt from state or local laws. However the installation of such units does come within the state's jurisdiction, See Iowa Administrative Code 661 Chapter 16, Section 16.626 Support and Anchorage of Manufactured Homes. Code of Iowa Chapter 364 Powers and Duties of Cities, Section 364.3, 5. dictates the control cities have over such units.

Modular units do come under the jurisdiction of the State and are required to comply with the latest adoption of model codes, however manufacturers are allowed to clear their inventory of units built to the previous codes. The One-and Two-Family Dwelling Code, 1989 is an option allowed for manufacturers of modular housing. These units unlike the tie-down system for HUD constructed manufactured homes are required to have an approved permanent foundation.

Section 1004 of UPC, 1991 does allow CPVC to be used for hot and cold water distribution systems within a building, installation standard IAPMO IS 20-90, I believe allows both mechanical and solvent fittings depending on the manufacturers recommendations.

I hope the above explanation has answered your questions. Please feel free to contact me should you need further assistance.

Sincerely,

C. E. Peter Green
Building Code Engineer
Iowa State Building Code Bureau

CEPG/pjs
Cc: City File
Joe Kelly/Mobile Home Association

ADDRESS REPLY TO:
HOOVER BLDG..
DES MOINES, IOWA 50319
515/281-5826

THOMAS J. MILLER
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

CONSUMER PROTECTION DIVISION

December 31, 1987

The Honorable Donald V. Doyle
State Senator
P. O. Box 941
Sioux City, IA 51102

Dear Senator Doyle:

We are in receipt of your request for an opinion regarding the three-day notice to quit as provided by Iowa Code § 648.3. Your question is:

> **When a landlord gives a tenant three-day notice to pay rent as provided in section 648.3, and the tenant is a mobile home park or is renting land for a mobile home, or is renting a mobile home, is there any reason an additional three-day notice must be given to the tenant before an action can be brought for a forcible entry or detention?**

Our answer to your question is "No" for the following reasons.

(I)

A brief overview of the history of the Iowa forcible entry statute is necessary to resolving your question.

The "Forcible Entry or Detention of Real Property" Act codified in chapter 648 of the Iowa Code was originally enacted in 1851. It provides a summary statutory remedy which enables a person entitled to possession of real property to obtain possession of real property when the action is brought to trial. See Reed v. Gaylord, 216 N. W.2d 327 (Iowa 1974); Steel v. Northrup, 168 N.W.2d 785 (Iowa 1969).

The question you have asked, the application of the three-

day notice to quit, deals with section 648.3. The original version follows:

> **Notice to quit. Before action can be brought in any except the first of the above claims, three-day notice to quit must be given to the defendant in writing.**

Iowa Code § 648.3. (1979).

The three-day notice to quit is not required in actions based on the first grounds listed in section 648.1 where the defendant has entered the real property by force, intimidation or fraud. The written notice to quit of section 648.3 is a necessary condition precedent to the maintenance of an action for forcible entry or detainer but is not the commencement of the action. Van Emmerick v. Vuille, 249 Iowa 911, 88 N.W.2d 47 (Iowa 1958).

When Iowa Code chapter 562A (1979), the Iowa Uniform Residential Landlord and Tenant Act (hereafter the Landlord-Tenant Act), and Iowa Code chapter 562B (1979), the Iowa Mobile Home Parks Residential Landlord and Tenant Act (hereafter the Mobile Home Parks Act), were enacted on January 1, 1979, the "Forcible Entry and Detainer" statute was left intact.

Both new chapters were modeled after the Uniform Residential Landlord and Tenant Act drafted and approved by the National Conference of Commissioners on Uniform State Laws.

The two purposes stated by the Mobile Home Parks Act are essentially the same as the first two purposes of the Landlord-Tenant Act. They are (1) to simplify, clarify and establish the law governing the rental of mobile home spaces and rights and obligations of landlord and tenant and (2) to encourage landlord and tenant to maintain and improve the quality of mobile home living. Iowa Code § 562B.2 (1979).

While the two acts are not duplicative in coverage, both acts may occasionally apply to the same transaction. One example of this dual coverage is the situation where a mobile home park operator rents not only a mobile home space but also a mobile home to the tenant. Because the definition of "dwelling unit" contained in section 562A.6(2) of the Landlord –Tenant Act is broad enough to include a mobile home, that portion of the rental agreement concerning the dwelling unit (mobile home) will be governed by the Landlord-Tenant Act while the portion concerning the mobile home space will be governed by the Mobile Home Parks Act. It should be noted that the Mobile Home Parks Act regulates the rental of mobile home spaces and not the rental of mobile homes. See Lovell II, The Iowa Uniform Residential Landlord and

Tenant Act and The Iowa Mobile Home Parks Residential Landlord and Tenant Act, 31 Drake L. Rev. 253 (1981-1982). See also 1980 Op.Att'yGen. 382.

Therefore, the first part of your question where the tenant "is in a mobile home park or is renting land for mobile home" is governed by the Mobile Home Parks Act and the second part, where the tenant is "renting a mobile home," is governed by the Landlord –Tenant Act.

(II)

As previously noted, Iowa Code section 648.3 (1979), Forcible Entry or Detention of Real property, was left intact when the Landlord-Tenant Act and the Mobile Home Parks Act were adopted in Iowa. The three-day notice requirements in sections 562A.27(2) and 562B.25 (2) upon which your question is based states identically as follows:

> **If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if rent is not paid within that period of time, the landlord may terminate the rental agreement.**

The issue of distinction between the three-day notice to cure of sections 562A.27(2) and 562B.25(2) and the three-day notice to quit of section 648.3 was addressed by this office in 1980 Op.Att'yGen. 279. In that opinion, we stated that the two notices serve different ends and purposes. We noted that the three-day written notice under chapters 562A and 562B is essentially a remedy available to a landlord to terminate a rental agreement upon a tenant's failure to pay rent when due while the three-day written notice under chapter 648 is condition precedent to the commencement of an action for forcible entry or detainer. We then concluded that they are separate and distinct notices. 1980 Op.Att'yGen. 279, 281.

As a result of the combination of the notice to quit of section 648.3 and the notice of right to cure of sections 562A.27(2) and 562B.25(2), the landlord was under a "double notice" requirement before commencing any possession actions. 31 Drake L. Rev. 253 at 265, n. 57. The procedural scenario under the "double notice" legislation then in effect would be as follows: the landlord would first give the tenant a notice of intent to terminate if the rent is not paid within three days. Iowa Code §§ 562A.27(2) and 562B.25(2) (1979). Upon expiration of the notice of intent to terminate, the landlord was then required to serve upon the tenant a three-day notice to quit,

until which time, the landlord was required to accept payment by the tenant. Iowa Code § 648.3(1979). If the tenant failed to vacate by the expiration of those three days, the landlord could file a petition for forcible entry and detainer, which requires at least a five-day notice to the tenant prior to the hearing. Iowa Code § 648.5 (1979). Considering the fact that the computation of time for notices excludes the date of receipt of the notice, the minimum amount of time required to remove a tenant was fourteen days:

Notice of intent to terminate	**4**
Notice to quit	**4**
Notice of forcible entry and detainer hearing	**6**
Total number of days to remove tenant (minimum)	**14**

28 Drake L. Rev. 407, 430, n. 148 (1979).

The above scenario described the situation before section 648.3 was amended, first in 1981 and then in 1984.

(III)

Section 648.3 was first amended by the 1981 legislation in House File 154 by adding a provision making the three-day notice to quit given by mobile/manufactured home landlords concurrent with the three-day notice to terminate for failure to pay rent. It was amended a second time in 1984 by Senate File 2119 by adding the three words "or the land" to the 1981 amendment. The second amendment appears to be an attempt to clarify the language of the section as to cover both rental situations governed by the Landlord-Tenant Act as well as the Mobile Home Parks Act. The final version of section 648.3 as it appears now in the Iowa Code is as follows:

> **Before action can be brought in any except the first of the above classes, the three-day notice to quit must be given to the defendant in writing. However, a landlord who has given a tenant three-day notice to pay rent and has terminated the tenancy as provided in section 562A.27, subsection 2, or section 562B.25, subsection 2, if the tenant is renting the mobile home or the land from the landlord may commence the action without giving a three-day notice to quit.**

With the 1981 amendment of section 648.3, the landlord no longer is required to give both a right to cure notice (under section 562A.27(2) or section 562B.25(2), whichever is applicable) and a notice to quit. Section 648.3 as amended , has

eliminated the "double notice" requirement previously imposed. Now, if the landlord has given the tenant the three-day right to cure notice (required by section 562A.27(2) or section 562B.25(2) as the case may be), and the tenant has failed to cure his rent default, the landlord can terminate the lease and immediately file suit for possession without giving the tenant any additional notice (other than that required as a result of the commencement of the suit). 31 Drake L. Rev. 253 at 265, n. 57.

Therefore, in the opinion of this office, when a landlord renting a mobile home or a mobile home space, or both, has given a tenant a three-day written notice to terminate a rental agreement for non-payment of rent, and the tenant has failed to cure the rent default, the landlord can commence an action for forcible entry or detention without giving the tenant an additional three-day notice to quit.

Sincerely,

TUE PHAN-QUANG
Assistant Attorney General

/kz

Legislation on this issue was passed in 1991. See section 435.26.

DAVIS, HOCKENBERG, WINE, BROWN, KOEHN & SHORS

ATTORNEYS AND COUNSELLORS AT LAW

A.ARTHUR DAVIS
HARLAW D.HOCKENBERG
DONALD A.WINE
DONALD J. BROWN
A.J.GREFFENIUS
WILLIAM J.KOEHN
JOHN D.SHORS
STEPHEW W. ROBERTS
WILLIAM R. WINE
ROBERT F. HOLF, JR
DENNIS D. JERDE
C. CARLETON FREDERICI
GEORGE W.SULLIVAN
MICHAEL G.KULIK
RICHARD E. RAMSAY
F. RICHARD THORNTON
THOMAS E. SALSBERY
E. RALPH. WALKER
FRANK J.CARROLL
BRUCE I.CAMPBELL
JONATHAN C.WILSON
PATRICIA A.SHOFF
ROBERT C.GALBRAITH

EDWIN N.MCINTOSH
ROBERT A.SIMONS
STEVEN L. NELSON
DAVID S.VANSICKEL
WILLIAM W.SCHWARZ
JAMIE A.WADE
LORNA A.GILBERT
GENE R. LASUER
DIANE M .STAMLE
DEBORAM THARNISH CRAIG
DAVID W. DUNN
BRIAN L.WIRT
JEAN A.MENCIL
FRANK A. CAMP
KENT A MERINX
ROBERT J. DOUGLAS, JR
C.S. STEINGER
DAVID J. DARRELL
NORENE D.JACOSS
CHARLES J.KALINOSRI
MARSARET M. CHAPLINSKY
NICHOLAS N.ROBY
KATHERINE E SCHMIDT

MARK D WALE
KELLY D LOVELL
GARY M MVERS
STANLEY J THOMPSON
DAVID A TANR
DAVID M ERICSON
C T MEWSUM
LORI TORGESON CHESSR
MARIA K M VRIES
DALE E MCALLISTER
MARTHA N FAGG
ELIZABETH E GOODMAN
SALLY A DUCK
JO ELLEN WHITNEY
JEFFREY M MERICK
RICHARD B JENKINS
DAVID W. .BODY
JAN D. HOSBARGER
BONITA K. JANSMA
STEVEN P WANDRO
CECELIA C. IBSON

KENT A HERINX
PATENTS

RUDOLPH L LOWELL
PATENTS OF COUNSEL

HARLAN J.THOMA
RICHARD F STAGEMAN
PAUL R BROWN
BARABARA M MACK
WILLIAM D THOMAS
OF COUNSEL

DAVID J HENRY
1948-1983

2300 FINANCIAL CENTER
666 WALNUT STREET
DES MOINES, IOWA 50309
(515) 243.2300
FACSIMILE(515) 24306454
TELEX: 62780053
(PROSECS)
CABLE: DAVIS LAW

2 STRATHEARN PLACE. SUITE 5
HYDE PARK SQUARE
LONDON W2 2NO. ENGLAND
(011-44-1) 262-9022
ANSWERING SERVICE; (011-44-1) 466-0321
INTN'L FACSIMILE (011-44-1) 706-4785
INTN'L FACSIMILE 291126(OPUS G)

October 10, 1989

Joe Kelly
Manufactured Housing Association
of Iowa
1400 Dean Avenue
Des Moines, Iowa 50316

RE: Manufactured Housing Association of Iowa/Security Interests

Dear Joe:

You have asked us to explain the priority of a security interest in mobile home that is converted to real estate under Iowa Code § 135D.26 for which the certificate of title is retained pursuant to the amendment to that section made by Senate File 291 in the 1989 legislative session as against the owner or encumbrancer of the real estate upon which it sits.

Senate File 291, among other things, amended Iowa Code § 135D.26 to allow a party having a security interest in a mobile home that is converted to real estate to retain the certificate of title an an alternative to obtaining a mortgage on the real estate as evidence of the security interest.

A security interest in a mobile home is perfected by its notation on the certificate of title by the County Treasurer. See Iowa Code § 321.50 (1) . For this reason, mobile homes are an exception to the general requirement that a financing statement must be filed to perfect a party's security interest in personal property. See Iowa Code § 554 . 9302(3) (b). Iowa Code § 554.9(302) (3) (b) provides that filing a financing statement is not necessary or effective to perfect a security interest in a titled vehicle subject to Iowa Code § 321.50.

Further, compliance with $321.50 is deemed to be equivalent to filing a financing statement, and a security interest in property subject to $ 321.50 can be perfected only by having it noted on the title as provided in that section, except in multiple state transactions governed by Iowa Code $554.9013. See Iowa Code $554.9302(4). All other aspects of security interests in titled vehicles are governed by Article 9 of Chapter 554, except the duration and renewal of perfection of the security interest. Id.

Although a mobile home is personal property, which ordinarily would not be considered collateral for a lien on real estate, a mobile home can be attached to the realty in such a way that it is considered a "fixture", and, therefore, an integral part of the reality, similar to a frame home. Title to a fixture ordinarily transfers with the real property, and a fixture is considered-collateral for a lien on the real property.

Iowa Code $135D.26 governs the conversion of a mobile home to real property for tax purposes. The Iowa Supreme Court has held in Ford v. Venard, 340 N.W.2d 270 (Iowa 1983), that $135D.26 does not control the question of when a mobile home becomes a fixture. In that case, Venard had attempted to enforce a judgement against Norman Van Sickel by attaching and forcing execution on the mobile home in which Van Sickel lived. Ford sued to obtain an injunction to restrain Venard from executing on the mobile home, claiming that as owner of the real estate the mobile home belonged to him.

The mobile home in question had been moved to the real estate and set on a concrete foundation. Van Sickel had welded the mobile home into a single unit, put a roof over it and joined the exterior together with siding. The Court noted that the home could not have been moved except by a house mover. Venard argued that because the mobile home had not been converted to real estate pursuant $135D.26 it could not be considered a fixture, and was therefore not part of the real estate which Ford had purchased. The Court held that $135D.26 did not supersede the common law of fixtures in cases involving mobile homes. Therefore, the determination of whether the mobile home was part of the real estate was a question of fact to be decided in accord with common law principles.

Before continuing with the discussion of the decision in Ford v.Venard, it should be noted that because of the Iowa Supreme Court's decision in that case, $135D.26 has no effect on the status of a mobile home as personal versus real property. Whether the mobile home becomes a fixture is a question of fact,

and a mobile home can become a fixture without conversion to real estate under $135D.26. Therefore, the amendments made to that section in Senate File 291 do not change the status quo with regard to priority of security interests between the party financing a mobile home and the party financing the real estate upon which it sits.

In Ford v.Venard, the Court articulated the principles for determining whether a mobile home is a fixture. As stated by the Court in Ford, personal property becomes a fixture when:

1. **It is actually annexed to the realty, or to something appurtenant thereto;**

2. **It is put to the same use as the realty with which it is connected; and**

3. **The party making the annexation intends to make a permanent accession to the freehold.**

However, the intention of the party annexing the improvement is the "paramount factor" in determining whether the improvement is a fixture. See Ford at 272. Although physical attachment to the soil or an appurtenance thereto is not essential to making the structure a fixture, a building which cannot be removed without destruction of a substantial part of its value is almost always considered to be part of the realty. Id. On the facts presented in Ford, the Court found that the mobile home had become attached to the land because it could not be removed from its present location except in the sense that any permanent home could be removed.

The priorities with regard to security interests in fixtures is governed by Iowa Code $554.9313. That section provides that a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if the debtor has an interest of record in or is in possession of the real estate and the security interest is perfected by a fixture filing before the conflicting lien on the real estate is recorded or, if it is a purchase money security interest, before the goods become fixtures or within 10 days thereafter. See $554.9313(4). A security interest in fixtures has priority, whether or not perfected, if the conflicting lienholder consents in writing to the security interest or disclaims interest in the goods as fixtures, or the debtor has a right to remove the goods as against the encumbrancer or owner of real estate. See $554.9313(5).

A "fixture filing" is defined as a filing of a financing statement describing the real estate upon which the fixture will be located in the office in which a deed would be recorded. See Iowa Code $554.9313(1) (b). However, because a notation of the security interest on the certificate of title for a mobile home is equivalent to filing a financing statement and is the only way a security interest in a mobile home may be perfected, it appears that, under a strict reading of the statute, a fixture filing is not required to maintain priority in a mobile home that becomes a fixture.

However, it should be noted that there is no case law in Iowa or elsewhere to confirm this view. One case decided by the Superior Court of New Jersey interpreting a prior version of the Uniform Commercial Code regarding fixtures indicates that once a mobile home becomes a fixture it is no longer exempt from filing under the certificate of title provisions. See Township of Commercial v. Block 136, Lot 2, Now Lot 13, 179 N.J.Super 307, 431 A.2d 862 (1981). While this decision is not binding on Iowa courts, it may be persuasive because the purpose of requiring a fixture filing is to give notice to purchasers of and encumbrancers on real estate of the existence of a lien on the fixture. Many mobile homes are attached to the realty in such a way that it is difficult to distinguish them from frame homes. Therefore, subsequent purchasers and mortgagees may not know to look in the County Treasurer's office to check for liens which would not be discovered in an abstract of title.

For this reason, although parties having their security interests noted on the certificate of title appear to be protected when the mobile home becomes a fixture, whether or not the mobile home is converted to real estate for tax purposes, we advise creditors who finance mobile homes to execute and record in the County Recorder's office where the mobile home is located the attached form of Notice of Titled Vehicle Status whenever a lien is noted on the title. This form would give notice to all encumbrancers and purchasers of the real estate of the creditor's perfected security interest in the mobile home.

The remedies available to a lender financing a mobile home do not change substantially when the home becomes a fixture if the lender maintains its priority. Iowa Code $554, 9313(8) provides that if the lienholder on a fixture has priority over all other owners or encumbrancers of the real estate, the lienholder may remove the fixture just as if it were unattached personal property so long as the lienholder reimburses the owner of the real estate (if the owner is not the debtor) the cost of repair of any physical injury to the real estate. The real

estate owner (who is not the debtor) may refuse to allow the fixture to be removed until the lienholder gives adequate security for the performance of this obligation. The lienholder has no obligation to reimburse the owner of the real estate for a diminution in value caused by the absence of the fixture or by any necessity of replacing it. The lienholder on the mobile home need not foreclose on the real property to repossess his security interest, but may use self-help repossession or a replevin action pursuant to Iowa Code Chapter 643 as appropriate for personal property.

Those financing mobile homes should keep in mind that even though a fixture filing is not necessary, to maintain priority the security interest must be properly noted in the certificate of title in accordance with Iowa Code $321.50 before or within 10 days after the mobile home becomes a fixture. Additionally, they must comply with all other Uniform Commercial Code provisions relating to security interests and remedies not superceded by $321.50. If any of the finance companies in your Association have questions regarding particular fact situations, we urge them to contact an attorney to advise them on all the applicable statutory provisions.

Sincerely,

DAVIS, HOCKENBERG, WINE, BROWN, KOEHN & SHORS

Jonathan C. Wilson

JCW/LTC/pjm

STATE OF

IOWA

DEPARTMENT OF REVENUE AND FINANCE
GERALD D. BAIR, DIRECTOR

August 17, 1990

Mr. Joe M. Kelly
Executive Vice President
Manufactured Housing
Association of Iowa
1400 Dean Avenue
Des Moines, IA 50316-3938

Re: Mobile Home Use Tax

Dear Mr. Kelly:

The Department is in receipt of your letter dated July 5, 1990. Mr. Castelda asked that I respond to your questions. I apologize for not responding sooner.

Your first question is whether a used mobile home for which use taxes have been previously paid will be subject to use taxes again if the dealer improves the home by putting in air conditioning or new furniture. Iowa Code section 423.4(11) exempts of a mobile home from use tax when the mobile home has previously been subject to the tax. So no use tax would be due on the improvements.

As to your second question, there is no distinction when the air conditioner or furniture is taken from one home to another. However, even though use tax would not be due on the improvements, retail sales tax would be due on the purchase of an air conditioner or furniture when newly purchased.

I hope this answers your questions. If you have additional questions or comments, please contact me.

Sincerely,

Susan E. Voss
Policy section
Technical Services Division

ES7901C

DON'T FORGET THE LANDLORD ' S LIEN

When originally adopted, both Chapter 562A (apartments and rental mobile homes) and Chapter 562B (mobile home part spaces) outlawed the landlord's lien otherwise available under Chapter 570 of the Iowa Code. The lien is still outlawed under Chapter 562A, but that provision of Chapter 562B was repealed several years ago. Most folks don't know that, or don't know how or when to use landlord's lien.

The landlord's lien is available to help recover unpaid rent. The lien covers the tenant's personal property, including the mobile home. The lien is "perfected" by commencing an action for the rent, and in that action, asserting the lien. The landlord is then entitled to a Writ of Attachment directing the Sheriff to levy upon the mobile home and contents. No bond is required for this Writ. One cautionary note: if there is such an attachment and it is ultimately determined that the landlord didn't have a valid rent claim, the landlord could be liable in damages for wrongful attachment. So be sure of your claim for rent if you're seeking this lien and attachment.

Because the statutory landlord's lien doesn't cover property that is exempt from execution in Iowa, you might also want to consider adopting a provision in new and renewed rental agreements that creates a contractual landlord's lien. A contractual landlord's lien can cover otherwise exempt property. It is perfected by filing a financing statement with the Iowa Secretary of State under Article 9 of the UCC. You can have both a statutory and contractual landlord's lien at the same time.

A statutory landlord's lien will probably be junior to a purchase-money security interest, and superior to all other security interests. A contractual landlord's lien will have priority only over subsequently perfected liens.

ASK THE COURTS TO HELP KEEP THE PEACE

What can be done about a park tenant who repeatedly plays loud music, drives at high speeds, or uses threatening, abusive language? These are probably violations of the lease or rules, but the remedy there would be a 14/30 day notice. Because of the off-again, on–again nature of these breaches, such a notice has limited effectiveness. Alternatively, you could give a 60-day notice cancelling renewal of the tenancy for no stated "cause". That may be too drastic for a tenant who is otherwise okay and pays rent faithfully. Such a course might also be vulnerable to attack on a variety of technical grounds (claims of civil rights discrimination; claims of retaliation; claims that the cancellation is merely to make the space available for someone else, which is prohibited).

There is another possible remedy that is unfamiliar or many and therefore rarely used. It is sometimes called a "peace bond", and resembles a court requiring an additional security deposit for specific, prohibited behavior. The tenant's behavior that we are talking about constitutes a "nuisance", which is defined as activity "injurious to health [speeding], indecent [bad language], or offensive to the senses [loud music], or an obstruction of the free use of property … [that interferes with the] …comfortable enjoyment of life." Iowa Code Chapter 657 recognizes a private, civil remedy for such nuisances. The Landlord/Tenant statute expressly preserves access to such remedies.

To get a peace bond, an action must be commenced and you have to prove that there was a nuisance. With that accomplished, the court can order it abated and require the tenant to post a bond in an amount calculated to assure that the nuisance is abated. The bond must be cash or otherwise secured. Then, if the nuisance is not abated, the bond will be forfeited. The possibility of forfeiting a bond, if the tenant choose to post one rather than terminate the tenancy and move, might just do the trick and prompt some better behavior from the tenant. Other tenants will appreciate that the landlord took action rather than helplessly ignoring the disruptions.

MOBILE HOME PARKS AND ANTITRUST LAW

So you own and operate a mobile home park, and you also happen to sell mobile homes. You are contemplating a policy where you will only rent space in your mobile home park to people who have purchased a mobile home from you. The last thing in your mind is that such a policy may violate the antitrust laws.

In fact, requiring new renters to buy a mobile home from you could constitute a per se illegal tying arrangement prohibited by both state and federal law. Per se means that if you engage in the alleged conduct, no legal defense exists, including any economic justifications which may have supported your new policy.

"Tying" arises where a party has market power over one product which he will only sell together with another product. Renting a mobile home space is "selling" the right of occupancy. Requiring that any new renter purchase a home from you ties the "sale" of that right of occupancy to the sale of a mobile home.

Not every tying arrangement is illegal. If each of the tied products (i.e., the right to occupy a rental space and the purchase of a new mobile home) can be readily purchased separately in a competitive market, one vendor's decision to market the two products as a package is not illegal. For example, if in a community with several food stores, one of them only sells flour if the buyer also buys sugar, no illegal tying arrangement will be found because flour and sugar can readily be purchased separately elsewhere from competitors in the community.

The essential characteristic of an illegal tying arrangement is found where a seller attempts to exploit its control over one, unique product (i.e., a space in a particular mobile home park) to force a buyer into purchasing another product that the buyer might have preferred to purchase elsewhere on different terms (i.e., a new mobile home). When control over one product is successfully exploited to force the purchase of a second product, an illegal tying arrangement will be found to exist. The seller's level of control over the one, unique product is called "market power". If that power is used to impair competition on the merits in another market (i.e., the sale of new mobile homes), a potentially inferior product (mobile home unit) may be insulated from competitive pressures. The United States Supreme Court has held that the greater the seller's share of the market for the desired product (i.e., a mobile home space), the more likely it is that market power exists and is being used to restrain competition in the separate market (i.e., sale of new mobile homes). When this occurs, a per se violation is found to exist.

In 1980 a federal court reviewed a typing claim involving a mobile home park. In that case, a prospective tenant sought to rent space in one of 25 mobile home parks in Cleveland, Ohio. The person was informed that he could not rent such a space unless he bought a mobile home from the prospective lessor. The

prospective tenant refused to do so and brought suit. Based on the specific facts of that case, the court held that the plaintiffs had sufficiently alleged that the mobile home park owner had significant market power because of the great demand which existed for mobile home sites in the area, the limited number of parks in the area which resulted in a limited number of unoccupied mobile home sites being available for rent, the defendant's ownership and control of "unique" mobile home sites, and the strategic location and unique attractiveness of the park. The court concluded that the tenant adequately alleged such "uniqueness" of the mobile home park that an illegal tying arrangement could be found in the park owner's attempt to require the tenant to purchase a mobile home from him.

Determining the amount of market power in any particular case is not an exact science. It is initially determined by analyzing two factors: the product market and the geographic market. A complaining tenant or competitor will likely argue that the relevant product market is the specific rental space sought by a prospective tenant. It can be argued to the contrary that the relevant product market is not only all mobile home rental spaces, but includes rental housing generally, housing generally, and vacant residential lots throughout the community (particularly given Iowa law which allows mobile homes to be sited on subdivision lots).

A complaining party may also argue that the relevant geographic market for determining market power is the specific municipality within which the desirable park is located, or perhaps only a portion of such municipality. It can be argued by a park owner that the relevant geographic market, given modern forms of transportation, is at least the entire metropolitan area, regardless of municipal boundaries within that area. Obviously, the larger the relevant geographic market, the lower one's market power and, therefore, the lower the likelihood that an illegal tying arrangement will be found to exist.

So why should you care? Is this just much ado about nothing? You need to be aware that penalties for an antitrust violation can be severe. The civil penalties for an antitrust violation under federal and Iowa law include actual damages, which are tripled, and payment of the claimant's attorney fees. For certain, egregious violations, criminal penalties actually exist. Antitrust violations are, therefore, something worth thinking about, and something worth planning to avoid.

In every area of the law, particularly in antitrust law, the different facts of each case can materially affect the outcome. This article summarizes the law and certain guiding principles,

but it is not intended to provide legal advice regarding particular fact situations. For that you will need to consult competent counsel.

DEPARTMENT OF JUSTICE

BONNIE J. CAMPBELL
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
FACSIMILE: 515-281-4209

February 13, 1992

The Honorable Joe Welsh, State Senator
State Capitol Building
L O C A L

Dear Senator Welsh:

You have requested an opinion of the Attorney General concerning enforcement of speed limits in mobile home parks. Your specific question (paraphrased) is:

> **May law enforcement officers enforce speed limits in mobile home parks which are lower than public road speed limits?**

The controlling statute, which was extensively amended in 1991, reads as follows:

> **321. 251 RIGHTS OF ONWERS OF REAL PROPERTY**
>
> **1. This chapter shall not be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring other or different or additional conditions that those specified in this chapter, or otherwise regulating such use as may seem best to such owner.**
>
> **2. a. This owner of real property upon which a mobile home park is located, may elect to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the real**

> **property by granting authority to any peace officer to enforce the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority as well as any regulations or conditions imposed on the real property pursuant to subsection 1. An election made pursuant to this subsection shall not create a higher priority for the enforcement of traffic laws on real property upon which a mobile home is located that exists for the enforcement of traffic laws on public property.**
>
> **b. A written notice of election shall be filed with the designated officials of the local authority whose ordinances, rules, or regulations will govern the vehicular traffic. The appropriate officials shall be the city clerk and chief of police of the city in which the real property is located and the county sheriff and the county recorder of the county in which the real property is located. The notice shall include the legal description of the real property, the street address, if any, and the date and time when the owner wishes the election to become effective. The notice shall be signed by every titleholder of the real property and acknowledged by a notary public.**
>
> **c. An election shall terminate fourteen days following the filing of a written notice of withdrawal with the designated officials of the local authority whose ordinances, rules, or regulations will govern.**
>
> **d. For purposes of this subsection, "titleholder of real property" means the person or entity whose name appears on the documents of title filed in the official county records as the owner of the real property upon which a mobile home park is located.**

Iowa Code Supp. $ 321.251 (1991) (emphasis added).

The statute presents two options for a mobile home park owner who wants to take advantage of the law. The first, and least problematic, arises where the owner elects to have the speed limits which are set by statute or local ordinance apply to private roads within the park. See Iowa Code, $$ 321.285 and 321.290. Those speed limits would be enforceable[1] upon the owner's giving notice to law enforcement officers by following the filing procedure in subsection 321.251 (2) (b), and giving notice to the public by posting signs. (The posting requirement is discussed below).

The second situation arises where the owner wants an enforceable speed limit lower than the speed limit for comparable public roads. We must first determine whether the owner has authority to set a lower speed limit. On the one hand we have the language in section 321.251 specifically authorizing the owner to adopt "regulations" or impose "other or different or additional conditions that those specified in [chapter 321]. " Iowa code $ 321.251(1) and .251(2) (a). On the other hand we have the numerous provisions in chapter 321 which emphasize the uniformity of traffic laws and which restrict the power of local authorities to establish their own speed limits. See Iowa Code $$ 321. 235 (provisions of ch. 321 are uniform throughout state; no local authority shall enact or enforce conflicting regulations unless expressly authorized); 321.236 (limited traffic regulation powers of local authorities enumerated); 321.285 (state-wide speed restrictions enumerated); 321.290 (based on engineering and traffic study cities may raise or lower speed limits on city streets, except primary road extensions; such speed limits not effective until appropriate signs installed); 321.293 (local authorities, subject to DOT approval, may authorize higher speed limits on highways within their jurisdiction).

The amendment to section 321.251 has pitted the authority of the property owner to set enforceable mobile home park speed limits "at will" against the expectations of drivers that enforceable speed limits are generally uniform throughout the state and nonexistent on private roads. To resolve this conflict we must attempt to harmonize section 321.251 with other statutes relating to speed limits. Coleman v. Iowa District Court for Linn County, 446 N.W.2d 806(Iowa 1989); Office of Consumer Advocate v. Iowa State Commerce Commission, 376 N.W.2d 878 (Iowa 1985). These

---

[1] **We use the term "enforceable" to mean that a peace officer may issue a citation for an alleged violation. See Iowa Code ch. 805.**

statutes must be construed so as not to render any part of them superfluous. Casteel v. Iowa Dept. of Transp., 395 N.W. 2d 896 (Iowa 1986). The goal is always to ascertain legislative intent. Beier Glass Co. v. Brundige, 329 N.W. 2d 280 (Iowa 1983); State v. Berry, 247 N.W.2d 263 (Iowa 1976). Specifically, we must attempt to give effect to the words in subsection 321.251(1) (a); "as well as any regulations or conditions imposed on the real property pursuant to subsection 1, "without offending any other provisions of chapter 321.

It is our opinion that the above quoted portion of subsection 321.251(2) (a), in conjunction with the specific reference to "this chapter" (ch. 321) in subsection (1), evinces a legislative intent to allow owners to set enforceable speed. Limits on private roads within mobile home parks which are lower than public road speed limits, notwithstanding section 321.235 and other statutory speed limit provisions. The legislature may well have concluded that the uniformity of speed limit laws in general would not be seriously eroded by allowing individual mobile home park owners to determine the speed limits on their property "as may seem best" to the owners, given the relatively small geographical areas involved and their character as private, generally residential property. See Iowa Code $ 135D.1 (2) ("mobile home park" defined). In this respect the grant of power to property owners in section 321.251 resembles the unrestricted grant of power to local authorities to regulate the speed of vehicles in public parks and alleys. Iowa Code $ 321.236(5) and (11). In order for the owner-set speed limit to be enforceable, the owner would first have to file a written notice ("election") with local officials and post signs.

The Posting Requirement

Section 321.251 does not explicitly require that the speed limit in a mobile home park be posted. However, it is our opinion that the owner must give the driving public notice of the speed limit in order for it to be enforceable, and the only practical way to do so is by the posting of adequate speed limit signs. The signing requirement would apply both to situations where the owner has elected to have statutory or local speed limits apply and where the owner has set lower speed limits.

This conclusion is based primarily on Iowa Code section 321.290 and the principles of notice and fairness upon which it is premised. See Op. Att'yGen. #80-7-6(L) (exceptions to general speed limits must be posted to be enforceable); 1963 Op. Att'yGen. 209, 211 (legislative purpose of $ 321.290 signing requirement is to give public reasonable notice of speed limits); City of Janesville v. McCartney, 326 N.W. 2d 785 (Iowa 1982) (elements of speeding offense are existence of local ordinance, posting of signs, and violation by motorist).

Conclusion

Peace officers may enforce speed limits on private roads in mobile home parks which are lower than public road speed limits if the property owner has filed the required notice with local officials and has erected appropriate signs. Statutory or local speed limits are also enforceable on mobile home park roads under the same preconditions.

Sincerely,

ROBERT P. EWALD
Assistant Attorney General

RPE: krd

IN THE COURT OF APPEALS OF IOWA

No. 2-264 / 91 – 1933

BEVERLY PARSON and ROVINA STANCLIFFE,

Appellees,

Vs.

WOODED LAKE MOBILE HOME PARK,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge.

Wooded Lake Mobile Home Park appeals a district court decision finding it has a duty to install gas fuel lines running underground from the meter to the mobile home and ordering it to remove and replace the underground gas lines. **AFFIRMED.**

Deborah L. Petersen of Perkins, Sacks, Hannan, Reilly & Petersen, Council Bluffs, for appellant.

Dennis P. Marks of Legal Services Corporation of Iowa, Council Bluffs, for appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Rovina Stancliffe entered into a rental agreement with Wooded Lake Mobile Home Park ("landlord") in August 1982. Beverly Parson entered into a rental agreement in March 1989. Both Stancliffe and Parson ("tenants") own mobile homes and have been in possession of their respective lots since executing the rental agreements. The tenants utilized underground gas lines to obtain gas service for their mobile homes.

When the tenants entered their rental agreements, they signed rules and regulations which included charging them with the responsibility for the gas service from the gas meter to the mobile home.

In July 1989, the City of Council Bluffs, Iowa, informed the landlord of several violations of the Uniform Plumbing Code which existed with the gas facilities in the trailer park. In August 1990, Peoples Natural Gas informed the landlord that the natural gas fuel lines from the meter running underground to the mobile homes failed to comply with the National Fuel Gas Codes.

In August 1991, Peoples Natural Gas informed that tenants that unless their underground gas lines complied with applicable local codes, their gas services would not be reconnected. The tenants were given until October 1, 1991, to replace the existing gas lines.

On September 16, 1991, the tenants filed a petition for specific performance and declaratory judgment requesting the court order the landlord replace the underground gas lines. The landlord stated pursuant to the signed rules and regulations, the tenants were responsible for the gas lines running from the gas meter to their mobile homes.

The parties stipulated to the facts. On November 12, 1991, the district court ordered the landlord to replace the existing gas lines. The district court found pursuant to Iowa Code section 562B.16(1)(b) (1991), the landlord had a duty to maintain the mobile home lot space in a fit and habitable condition. The lots would be unfit and inhabitable if they were unable to receive gas service. In addition, the district court found pursuant to Iowa Code section 562B.16(1) (d) the landlord had a duty to maintain all facilities supplied in good and safe working order. The district court also found the rules and regulations which place responsibility for the gas lines on lot tenants were unconscionable and unenforceable.

The landlord filed this appeal. We affirm.

Scope of Review

Although this is a declaratory judgment action under Iowa Rule of Civil Procedure 267, we review it as any other judgment. Our scope of review is governed by how the case was tried in district court. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W. 2d 783, 785 (Iowa 1988). This case was

tried in equity, so our review is de novo. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact-findings of the trial court, … but are not bound by them. Iowa R. App. P. 14(f) (7)

Discussion

This issue involves the construction and interpretation of Iowa Code chapter 562B, which governs the rights and responsibilities of mobile home park landlords and tenants. When interpreting a statute, our ultimate goal is to ascertain and give effect to the intention of the legislature. John Deere Dubugue Works v. Weyant, 442 N.W. 2d 101, 104 (Iowa 1989). We seek a reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result. Harden v. State, 434 N.W. 2d 881, 884 (Iowa 1989). When construing statutes, the entire act is considered and each section is construed with the act as a whole. Matter of Bivens Estate, 236 N.W. 2d 366, 369 (Iowa 1975).

Construed together, the provisions of Iowa Code chapter 562B require the landlord to replace the existing gas lines with gas lines which comply with applicable requirements. Iowa Code section 562B.16 (1) (a) requires the landlord to "comply with the requirements of all applicable …codes materially affecting health and safety..." Local

plumbing codes and national fuel gas codes require replacement of the existing gas lines. In a letter from Peoples Natural Gas to one of the tenants, the existing gas lines were described as "potentially hazardous," requiring "utmost attention". Thus, replacement of the existing gas lines falls squarely within the requirement that the landlord comply with applicable codes materially affecting health and safety.

Section 562B.16 (1) (b) establishes a landlord's duty to make all repairs and maintain the mobile home lot space in a fit and habitable condition. We agree with the district court. Failure to require the landlord to replace the existing gas pipes would render the lot space unfit and inhabitable since the appellees would be unable to obtain heat. The code provision is clear that the duty belongs to the landlord.

Section 562.16(1) (d) requires the landlord to maintain all facilities supplied or required to be supplied by the landlord. The landlord supplied the underground gas lines used by the tenants. The tenants have used the gas lines supplied by the landlord since they took possession of the lot spaces. The gas lines, as "facilities" supplied by the landlord, must be maintained by the landlord, pursuant to this code provision.

Finally, Iowa Code section 562.19(3) (e) prohibits a landlord from "requiring a tenant to furnish permanent

improvements which cannot be removed without damage thereto or to the mobile home space by tenant at expiration of rental agreement." Gas lines are a permanent improvement. We conclude the legislature did not intend for a tenant to install gas lines upon taking possession of a mobile home space and then to remove it upon expiration of the lease.

The landlord argues the applicability of Iowa Code section 562.16 (1) (f), which requires the landlord to provide"…. outlets for electric, water and sewer services." The landlord claims the omission of gas lines from the section was intentional and, as such, requires the tenant to replace the existing gas lines. We are not persuaded. We agree with the district court's application of the code's definition of "mobile home space" to require the landlord to replace the gas lines. Iowa Code section 562B.7 (5) defines "mobile home space" as "a parcel of land for rent which was designed to accommodate a mobile home and provide the required sewer and utility connections." Gas lines are a "utility connection" and covered by the code's definition. The statutory scheme as a whole does not lend itself to the interpretation that gas lines are specifically excluded in one section but included as a utility in other sections.

We find the statute requires the landlord to replace the existing gas lines. Thus, we are not persuaded by the landlord's argument that the rules and regulations signed

by the tenants relieves the landlord of its duty. While the code allows a landlord to impose reasonable requirements on tenants, they are enforceable only if they are not for the purpose of evading an obligation imposed on the landlord. Iowa Code section 562.19(1) (e). We find the landlord has an obligation to replace the gas lines and will not enforce agreements which relieve the landlord of that duty.

We affirm the decision of the trial court.

AFFIRMED.

STATE OF

IOWA

DEPARTMENT OF REVENUE AND FINANCE
GERALD D. BAIR, DIRECTOR

October 18, 1990

Joe Kelly, Executive Director
Manufactured Housing Association
of Iowa
1400 Dean Avenue
Des Moines, IA 50316-3938

Re: Interaction of Kansas and Iowa Sales Tax Law With Regard to Manufactured Housing, Your Letter, 9/25/90

Dear Mr. Kelly:

Your letter to Mr. Castelda on the above matter has been referred to me for reply. I am a technical tax specialist III with the Department's Policy Section. My particular area of concentration is Iowa sales and use tax law.

You inquire concerning a Kansas regulation which imposes an obligation to pay Kansas sales tax upon manufacturers of housing in that state. You ask how the existence of this regulation might affect an Iowa manufactured housing dealer's obligation to collect Iowa sales or use tax.

Like the law of most states, the law of Kansas treats building contractors as consumers or users of all building material which they purchase and requires those contractors to pay tax upon these building materials at the time of purchase. Kansas revenue regulation 92-19-66. Like Iowa law, Kansas law excludes from tax any services performed in connection with "original construction", that is the "first or original construction of a new building or facility". Kansas Rev. Reg. 92-19-66b. To achieve some parity or equality between contractors who assemble "stick-built homes" and assemblers of manufactured housing, Kansas requires the manufacturers of housing to pay a sales tax upon raw materials which those manufacturers use to fabricate the houses which they manufacture. Thus, both the construction contractor and the manufacturer pay sales tax upon the raw materials which they use to create the finished home. This desire for equality is doubtless the source of the regulation included with your letter. That regulation in subsection is 92-19-66d (c) treats labor services performed in a housing manufacturing facility in the same fashion as Kansas law treats taxable services used to create "stick-built housing" that is "Labor services performed to manufacture, construct or assemble a building in the factory shall be considered original construction and are exempt from sales tax."

HOOVER STATE OFFICE BUILDING / DES MOINES, IOWA 50319

Iowa law attempts to achieve parity between construction contractors and manufacturers of housing in a somewhat different manner. The owner or contractor who purchases a manufactured house and transforms it from tangible personal property into real property is required to pay sales tax upon the "gross receipts" from the purchase of that house. However, the owner or contractor is not required to pay sales tax upon the entire gross receipts from the sale of the house, but only upon that portion of the gross receipts which represent the cost of the raw materials used in the manufacture of the house. Excluded from taxable gross receipts is that portion of the price of the house which results from services used in its manufacture. Iowa Code §422.45(40) sets the nontaxable portion of the purchase price at forty percent.

The fact that the Kansas manufacturer has paid sales tax upon raw materials used in the fabrication of its houses does not excuse an Iowa dealer who purchases a home from that manufacturer from collecting sales tax when the home is sold to an owner or contractor. Iowa law does not provide for any tax exemption or credit in this situation, and the Department cannot create an exemption or tax credit where none is provided by the legislature. Taxes which a Kansas manufacturer pays on its raw material would add to the price charged by the Iowa dealer but so, of course, would other Kansas taxes incurred by a manufacturer such as corporate income taxes or property taxes. So, the requirements upon Iowa dealers who sell modular homes manufactured in Kansas to collect Iowa sales tax is in accordance with law and is not particularly unfair.

I hope that my observations have been of help to you. As I am certain you are aware from long-standing association with the Department, those observations are "informal" in nature only. Because of this, they are not legally binding upon the Department which could, in the future, take a position contrary to them.

Sincerely yours,

Darwin D. Clupper
Tax Specialist, Policy Section
Technical Services Division

ES10904C

Cc: Carl Castelda

LANDLORD VS. TENANT: A CASE STUDY

In a recent case, park owners implemented new leases and regulations in an effort to upgrade the mobile home community. The park submitted to all new and existing tenants a set of uniform documents. These documents included a Rental Agreement, a Registration form, a Disclosure Statement and Acknowledgment and an Application and Agreement. The documents requested financial information, among other things, which the park used to evaluate the creditworthiness of both existing and prospective tenants. Accompanying the documents was an explanatory letter which notified tenants that their current tenancy, if not renewed by the completion of the documents submitted to them, would expire 60 days hence.

One tenant, who had previously pursued a prolonged but unsuccessful HUD complaint, returned the documents, but failed to disclose the requested financial information. Instead, he inserted the initials "N/A" in the blanks where the information was requested. He also refused to sign the Acknowledgment and attempted to modify its language and the language of the Rental Agreement. The park asked this tenant several times to complete the Registration form fully and sign the Acknowledgment, without modifying the language. When the tenant expressed purported confusion and concern over the rationale behind several of the questions asked in the Registration form, the owner attempted to address these concerns, both orally and in writing. Despite multiple attempts to explain the necessity of receiving the information, the tenant persisted in the refusal to comply.

The tenant was then served with a 14/30-Day Notice of Breach of Rental Agreement and Termination of Tenancy. The legal basis for the park's service of the 14/30-Day Notice was Iowa Code § 562B.14 (5), which provides, in part, that a failure by a tenant to sign and deliver to the landlord one fully executed copy of the Rental Agreement within ten days after the Rental Agreement is executed by the landlord is a material non-compliance by the tenant with the Rental Agreement. The 14/30-Day Notice clearly explained to the tenant that he was required to complete all documents previously tendered to him in order to cure the breach. When he failed and refused to cure, he was served with a 3-Day Notice to Quit, followed by an action for Forcible Entry and Detainer.

At trail, the park argued that it was justified in demanding financial information from all residents of the mobile home community, contending that the information was necessary to make an informed decision as to whether to rent lot space or continue to rent lot space. It was further argued that the provisions in the Registration form did not render the Rental Agreement unconscionable under Iowa Code § 562B.8 (1) or Iowa judicial

decisions and, therefore, the park was justified in insisting that the information be provided. Further, the park argued that the tenant could not, under Iowa law, unilaterally modify the terms of the Rental Agreement and accompanying documentation without the agreement of the park.

After a two-day trial, the Associate District Court found that the information requested by the park was not "illegal or unconscionable and therefore [was] permissible." The Associate District Court also found that the tenant had failed and refused to provide the information requested. The Associate District Court granted possession of the premises to the landlord.

The tenant appealed the decision to the Iowa District Court. The District Court, after hearing, affirmed the decision of the Associate District Court. The tenant subsequently applied for discretionary review with the Iowa Supreme Court. Following submission of briefs, the Iowa Supreme Court declined to hear the case. In the end, the tenant was successfully removed from the park after an ordeal of almost two years.

The decision is an important one in that it confirms that a landlord can lawfully insist upon uniform financial information from existing tenants or prospective tenants to confirm creditworthiness, as a part of the decision to establish or continue a tenancy.

BI: 10525201.92

TAXATION OF MANUFACTURED (MODULAR) HOMES

The incidence of tax depends on several factors, such as, nature of manufacturer's business, point of delivery, contractual agreement for erection and sales for resale.

The following examples are intended to characterize who must collect and remit the sale or use tax.

Example 1

The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build in its factory a home. The manufacturer also contracts to completely erect the home and install the furnace, do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturers income relates to on site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa, however, a sales tax credit would be allowed for tax paid to another state.

Example 2

The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery and installation on the customer's foundation. The manufacturer delivers the home into Iowa on its own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on the 60% of the selling price to the Iowa builder/dealer.

Example 3

The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation the Iowa customer is required to remit use tax on 60% of the purchase price of the home.

Example 4

The manufacturer may be located in Iowa or outside of Iowa. The manufacturer sells a home to a dealer in Iowa or outside Iowa who will re-sell the home to the

STATE OF

IOWA

DEPARTMENT OF REVENUE AND FINANCE
GERALD D. BAIR, DIRECTOR

September 13, 1995

Mr. Joe M. Kelly
Executive Vice President
Iowa Manufactured Housing Assn.
1400 Dean Avenue
Des Moines, IA 50316-3938

Re: Construction Contractors, Your Letter, 8/30/95

Dear Mr. Kelly:

Thank you for your letter and your continuing confidence in my ability to answer your sales tax questions.

In your letter you ask: "If a retailer of mobile, modular, or manufactured homes places one of the aforementioned homes on private property, either performing the foundation work or finding a subcontractor to do the work, is the retailer a contractor under Iowa law?" The answer to your question is set out in the case of Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa 1985), and that answer is yes. In Sturtz, a "contractor" is characterized as a person who turns building materials into real estate. Sturtz purchased modular homes from a Wisconsin manufacturer and in turn resold those modular homes to its customers. As a part of the process of resale, Sturtz lifted the modular homes off the Wisconsin seller's trucks and onto its customer's foundations. Under those circumstances, the Department found that Sturtz was a contractor and the Iowa Supreme Court upheld that determination. Sturtz at p. 134. Under the above circumstances, as explained in Sturtz and required by § 422.42(12) of the 1995 Code, the sale of the "building materials" (that is the home) to the contractor is the taxable event, not the sale of the home to the contractor's customer. So the answer to your second question is that the retailer pays sales

tax to its seller and does not collect sales tax from its customer.

Of course, if a retailer maintains an inventory of homes rather than purchasing them one at a time as customers order them and has a retail sales tax permit, then the retailer contractor is a contractor/retailer and the following provisions of § 422.42(12) apply:

> ….. Where the …. contractor….. is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, ….. the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail.

I emphasize again in closing that for the above passage to apply, the retailer must 1) have a sales tax permit, 2) maintain a stock of goods (inventory) for sale, and 3) make sales of tangible personal property from that inventory. Keeping "spec" homes for customer to examine does not make a contractor a contractor/ retailer, Sturtz; supra.

In closing, I must issue my usual warning. The opinions which I have expressed in this letter are informal only. Because of this, the Department could, in the future, take a position contrary to them.

Sincerely,

Darwin D. Clupper
Tax Specialist, Policy Section
Compliance Division

ps-corr\barb\excise\ES89517C

IN THE SUPREME COURT OF IOWA

No.156 / 94-1883

Filed September 18, 1996

STATE OF IOWA,

Appellee,

and

IOWA CIVIL RIGHTS COMMISSION,

Intervenor-Amicus Curiae,

vs.

JOAN KEDING and FRED KEDING, Individually and d/b/a COUNTRY ESTATES MOBILE HOME PARK, an Unincorporated Association,

Appellants.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge.

Appeal from trial court's decision finding defendants violated the Iowa Civil Rights Act. **AFFIRMED.**

Harold J. DeLange, II, Davenport, for appellants.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant Attorney General, for appellee and Intervenor-Amicus Curiae.

Considered by McGiverin, C.J., and Lavorato, Snell, Andreasen, and Ternus, JJ.

SNELL, Justice.

Appellants, Joan and Fred Keding, appeal from a decision of the district court to grant a motion for judgment notwithstanding the verdict, finding that appellants violated the Iowa Civil Rights Act as a matter of law. We affirm.

1. Factual and Procedural Background

Joan and Fred Keding are the owners of the Country Estates Mobile Home Park, a residential development for mobile homes and trailers. In May 1992, the Kedings issued a policy statement in the park newsletter indicating they were "contemplating" making Country Estates an "adult park" and as a result would no longer sign rental agreements with people who had children or intended to have children. Tenants who already had children would be allowed to remain at the park so long as they followed the other rules and regulations. The statement was reiterated in an October 1992 newsletter to dispel any confusion over the new policy. Three plaintiffs commenced an action in district court alleging, among other things, housing discrimination on the basis of familial status, in violation of the Iowa Civil Rights Act and the federal Fair Housing Act. The State of Iowa intervened on behalf of the Plaintiffs for the civil rights claims. The State alleged that publication of the "adult park" policy in the newsletter illegally discriminated on the basis of familial status. By consent the matter was tried to a jury. During trial, the State sought a directed verdict on the grounds that the notice posted in the newsletter was discriminatory as a matter of law. The motion was denied and the jury returned a verdict in favor of the defendants. The State then moved for judgment notwithstanding the verdict, reasserting the grounds it had raised in its motion for directed verdict. The district court found that the publication was discriminatory as a matter of law and set aside the jury verdict. The Kedings were enjoined from further discrimination and were assessed a civil penalty of $5000 and costs in the amount of $1465. It is from this judgment that they appeal.

II. Standard of Review

In reviewing the district court's ruling on a judgement notwithstanding the verdict, our review is for errors at law. Iowa R. APP. P. 4. A judgment notwithstanding the verdict must be based on the grounds stated in the motion for directed verdict and our review is limited to those grounds. *Watson v. Lewis*, 272 N.W.2d 459, 461 (Iowa 1978). We must apply the same standard as the district court by considering the evidence in the light most favorable to the party against whom the motion is directed and conduct our review in favor of upholding the jury verdict. *Id*. We then decide whether there was sufficient evidence to generate a jury question. *Id*. at 463.

III. Issues on Appeal

A. Appropriateness of Judgment Notwithstanding the Verdict Order

The outcome of this case turns upon whether the policy notice in the park newsletter is discriminatory as a matter of law, such that the district court was correct in granting the State's motion for judgment notwithstanding the verdict. The State's motion is based on the publication of park policies in monthly newsletters. These newsletters, which were published by the Kedings and distributed to the tenants of the park, twice contained statements the State contends are facially discriminatory. In May 1992, one section of the newsletter read:

> County Estates has been contemplating an all-adult park. Therefore, there will be no more rental agreements signed with people who either have children or are planning on having children in the future. Tenants with children that are registered and reside with Country Estates Mobile Home Park at present time may stay as long as they abide by all rules and regulations of Country Estates M.H.P.

Additionally, in October of 1992, the same policy was reiterated to the tenants:

> In May of 1992 a newsletter was sent out stating that Country Estates Mobile Home was contemplating an all-adult park. Therefore, there will be no more rental agreements signed with people who either have children or are planning on having children in the future. Tenants with children at present time may stay as long as they abide by all rules and regulations of Country Estates M.H.P. If problems arise their rental agreement will terminate. We apologize to those few of you who did not receive a newsletter and we hope this bulletin clears the controversy within the park.

It is the content of these two newsletters that serves as the basis for the State's motion for a directed verdict, and ultimately their motion for judgment notwithstanding the verdict.

The Iowa Civil Rights Act of 1965 as amended expressly prohibits, inter alia, housing discrimination based on familial status. Section 216.8(3) of the Iowa Code makes it illegal for any owner of rights to housing or real property

> To directly or indirectly advertise, or in any other manner indicate or publicize that purchase, rental, lease, assignment, or sublease of any real property or housing accommodation …… by persons of any particular……familial status is unwelcome, objectionable, not acceptable or not solicited.

Iowa Code § 216.8(3) (1995).

This portion of the Iowa Civil Rights Act was patterned after the 1988 amendments to the federal Fair Housing Act (FHA). The FHA contains an almost identical provisions which makes it unlawful for a person

> To make, print, or publish…….any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on …… familial status……or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. § 3604 (1994).

Given the similarities between the two pieces of legislation, federal court decisions interpreting the FHA are persuasive when we consider the provisions of the Iowa Act. *See, e.g., Lynch v. City of Des Moines*, 454 N.W.2d 827, 833 n.5 (Iowa 1990).

The standard for determining whether a particular statement or advertisement is discriminatory is an objective one. The analysis calls for a determination of how an "ordinary reader" would interpret the publication. *Ragin v. New York Times*, 923 F.2d 995, 995 (2d Cir.), *cert. denied*, 502 U.S. 821(1991); *United States v. Hunter*, 459 F.2d 205, 215 (4th Cir.), *cert. denied*, 409 U.S. 934 (1972). As the Second Circuit has recognized, "[t]he 'ordinary reader' is nothing more, but nothing less, than the common law's 'reasonable man': that familiar creature by whose standards human conduct has been judged for centuries". *Ragin*, 923 F.2d at 1002 (citation omitted). Thus in determining whether a particular statement or advertisement is discriminatory, we must look to the perspective of the reader and whether an objective person would find the statement to be discriminatory. *Hunter*, 459 F.2d at 215. Accordingly, the subjective intent of the Kedings is not controlling. *Ragin*, 923 F.2d at 1000. Their assertion that they merely "contemplated" the discriminatory policy and did not actually intend to implement it is irrelevant if an ordinary reader would find the publication discriminates on its face between prospective tenants with children and those without.

The Kedings attempt to distinguish the cases establishing the objective reader standard by pointing out the discriminatory statements in those cases were commercial advertisements, whereas their statements were published in internal newsletters. They contend the newsletters were neither solicitations for rental not were they commercial advertisements seeking rental or occupancy for the park. But we do not find this distinction to be apt. We construe the language of section 216.8(3) as pertaining not only to commercial advertisements, but to any other discriminatory publications as well. Distribution of the newsletter to members of the park falls within the scope of the statute that proscribes publication of discriminatory statements via advertisement or "*in any other*

manner." Iowa Code § 216.8(3) (emphasis added). The Seventh Circuit has come to a similar conclusion in interpreting the relevant section of the FHA, holding "Section 3604(c) prohibits the making or publishing of *any statement* or advertisement that 'indicates' any preference or limitation based on, among other factors, race or family status." *Jancik* v. HUD, 44 F.3d 553, 556 (7th Cir.1995) (emphasis added). In fact, the instant case presents an unusually blatant form of discrimination. Most of the cases interpreting section 3604(c) involve more subtle forms of discrimination, not a clear and unequivocal statement that rental would be denied to people with families. *See*, e.g., *Housing Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.,* 943 F.2d 644 (6th Cir.1991); *Spann v. Colonial Village, Inc.,* 899 F.2d 24 (D.C Cir.), *cert. denied*, 498 U.S. 980 (1990); *Fenwick-Schafer v. Sterling Homes Corp.,* 774 F. Supp 361 (D.MD.1991). Thus, we believe that both newsletters are discriminatory as a matter of law and there was no genuine issue of material fact to be submitted to the jury.

Defendants accuse the district court of using "tunnel vision" in granting the motion for judgment notwithstanding the verdict. But the court did exactly as is required. It must read the advertisement with objective eyes, thus necessitating the need for such a narrow consideration of the evidence. Despite the appellants' claim that they were only "contemplating" a discriminatory practice and that it was never instituted, the plain language of their notices states they will not rent to families. The Iowa statute only requires publication of such a notice; the State need not prove that the Kedings actually put their policy into practice. Thus, neither the testimony of the Kedings nor the testimony of the three individual plaintiffs is determinative in resolving whether the newsletter is illegal as a matter of law.

Appellants' contention that the judgment of the district court should be reversed merely because the court initially denied the State's motion for directed

verdict runs contrary to the purpose of the J.N.O.V. procedural device. To deny a judgment notwithstanding the verdict on the ground that the court had already refused to grant a motion for a directed verdict would render any motion for judgment notwithstanding the verdict useless. This court has adopted the "Uhlenhopp rule" which encourages the district court to deny a motion for directed verdict, even if it is clear the movant is entitled to judgment as a matter of law. *Reed v. Chrysler Corp.*, 494 N.W.2d 224,229 (Iowa 1992). Instead, the court should submit the case to the jury to avoid another trail in case of error. After the jury returns a verdict the court may grant a motion for judgment notwithstanding the verdict, as long as it is based on the same grounds as the original motion at the close of evidence and the movant is entitled to judgment as a matter of law. *Id.; Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). Accordingly, the district court was correct in granting the State's motion even though the motion for directed verdict was initially denied.

B. Attorney Fees

The Kedings contend that the district court erred in failing to rule on an award of fees and costs to them. Section 216.17A (11) of the Iowa Code provides for an award of attorney fees and reimbursement for court costs to the *prevailing party*. Since the motion for judgment notwithstanding the verdict is upheld, appellant's application for such fees is moot.

IV. Conclusion

As this court has noted before

> It rarely happens that a plaintiff is entitled to a directed verdict or judgment notwithstanding the verdict but when a case is clearly established and not refuted and the tendered defense is without support such a motion should be sustained.

Sorenson Health Studio, No.11, Inc. v. McCoy, 261 Iowa 891, 896, 156 N.W.2d 341, 344 (1968). This case is one where the illegality of the offending statement is clearly established and the defense presented does not dispel the fact that the

newsletter violates the Iowa Civil Rights Act as a matter of law. The order of the district court to grant the State's motion for judgment notwithstanding the verdict is supported by the record and is not erroneous. The decision of the district court is affirmed.

AFFIRMED.

STATE OF

IOWA

DEPARTMENT OF REVENUE AND FINANCE
GERALD D. BAIR, DIRECTOR

May 13, 1998

Roger K Brown
Assistant County Attorney
City of Des Moines Legal Dept.
City Hall
400 East First Street
Des Moines, IA 50309-1891

Dear Mr. Brown:

This is in response to your letter inquiring about eligibility for the urban revitalization property tax exemption where a mobile home park is geographically located within an area which is eligible for the tax abatement. The proprietor of the mobile home park owns all of the improvements within the park and some of the manufactured homes which are rented. The other manufactured homes are individually owned and a lot for their placement is rented from the proprietor. All of the manufactured homes are subject to the square footage tax.

The mobile home park is obviously being used by the proprietor as a commercial venture with the lots being rented to those who own their homes and both the homes and the lots being rented to those not owning their homes. This being the case, the eligibility criteria for commercial property contained in Iowa Code § 404.3(4) must be met for the property to qualify for the exemption. It appears the criteria that the property consist of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes has been complied with in the example you posed and, therefore, eligible for the exemption.

Please contact me at 281-8457 if I can be of any further assistance on this matter.

Sincerely,

Ed Henderson
Policy Section

The Accidental Lease

by Jonathan C. Wilson*

Many manufactured housing communities and many apartment complexes have community buildings or community rooms. They're there for the occasional use of residents and their guests. This is sometimes spelled out in the underlying lease or rental agreement, or in the applicable rules and regulations. Sometimes there is no formal, written provision regarding use of such community facilities, or the procedures for reserving them. In these latter situations, rights and liabilities regarding those procedures must rely to a great extent upon custom and usage over time. State law, modeled after the uniform residential landlord/tenant law, will typically require that terms of the rental agreement be applied uniformly between and among tenants. So what is done customarily turns into a requirement for everyone. Landlords who don't treat everyone the same create increased exposure to allegations of illegal discrimination based on various protected classifications.

Whatever procedure is used for reserving the community room, many landlords treat the arrangement very casually and with the potential for unintended consequences. The arrangement can amount to an "accidental lease" of the community room with unexpected (and very frustrating) rights and liabilities that necessary flow from the arrangement being characterized as a lease.

What is a lease? Basically, whatever is sufficient to show that one party intends to be divested of possession in favor of another party being put in possession for a determinate time and for a fixed rental is a "lease". Iowa law, 562.4, provides that: "a person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days' notice in writing must be served upon either party or a successor of the party before termination of the tenancy." This thirty days' notice is very problematic when the need arises to retake immediate possession of the community room.

If it is determined by presumption or the relevant facts that a lease exists covering the tenant's use of the community facilities, a long list of common law principles and statutory principles may inadvertency apply. These could include a landlord's right of access; the availability of (and potential penalties for) the landlord's self-help in retaking possession, cutting off utilities, etc.; the form of required notices; the requirements for service of notices; eviction remedies; public liability; violations of liquor laws; dram shop liability; rights to assign and/or sublet the premises; breach of rights to quiet enjoyment; consequential damages for denied/delayed access to the community facilities by third parties; and rights to recover attorney fees and costs.

Landlords in particular are better off having their rights and liabilities spelled out in a written form. While this is often done in conjunction with reserving community facilities, it is rarely done with the specific intention of avoiding the creation of a lease. In fact, landlords sometimes actually refer to a landlord/tenant relationship in the reservation form that they use, or even entitle the reservation form a "lease" or "rental agreement."

One alternative approach is to document the reservation of the community facilities as a licensed use and have the parties enter into a written "license agreement." With respect to real estate, a license is "permission or authority to do a particular act or series of acts on land of

another **without possessing any real estate or interest therein."** By general law, it is personal, can be revoked, and cannot be assigned. A "tenancy" implies some interest in the real estate, while a "license" conveys only a temporary privilege for the use of property that can usually be revoked at the will of the owner or in accordance with its expressed terms.

Such an approach substantially avoids the entire body of law that defines the rights and liabilities of landlords and tenants. It permits the property owner far greater control over the premises, to retake possession, and to remove the licensee (tenant). In fact, revocation of the permission (license) to use the facilities, coupled with a written trespass notice, can turn any continued occupancy from a mere civil trespass into a criminal trespass in some states. While law enforcement personnel may be reluctant to arrest the tenant, giving the "trespass notice" puts the risk of criminal sanctions entirely on the unwelcome individual(s), without any meaningful, corresponding risk to the property owner.

But first, the property owner has to reestablish the unequivocal right to possession and control of the premises. That can be done most quickly and effectively with a standardized form of license agreement, not a lease. The form which follows can be used as a starting point by your local attorney.

*Jonathan C. Wilson is an attorney in private practice with the firm of Davis, Brown, Koehn, Shors & Roberts, P.C. in Des Moines. He has taught Modern Real Estate Transactions at Drake University College of Law and has taught at the Australian National University Law School in Canberra, Australia. He serves as Executive Director of the Manufactured Housing Attorney Network.

THOMAS J. MILLER
TO:
ATTORNEY GENERAL
BUILDING

50319

5164

4209

Department of Justice

ADDRESS REPLY

HOOVER

DES MOINES, IOWA

TELEPHONE: 515/281-

FACSIMILE: 515/281-

MEMORANDUM

TO: Jeff Quigle
Fire Marshal's Office

FROM: Jeffrey D. Farrell
Assistant Attorney General

RE: Foundations for manufactured homes

DATE: April 29, 2002

You asked me to research the question whether cities may impose more stringent foundation requirements for manufactured homes than those provided in the state building code. Some cities require or seek to require manufactured homes to be installed on a different type of foundation than required by state law. Manufacturers oppose those requirements, and point to provisions of state law.

The legislature has directed the state building code administrator to adopt a state building code. Iowa Code section 103A.7. The state building code shall contain provisions regarding the installation of factory-built structures. Iowa Code § 103A.7 (3). For purposes of the building code, "factory-built structures" and "manufactured homes" are treated similarly. Iowa Code § 103A.3 (8) (2001 Supp.).

The state building code requires manufactured homes to be installed in accord with the manufacturer's recommended instructions and federal standards set forth in 24 CFR 3280.306(b). See 661 IAC 16.626. The state building code provides minimum requirements when there are no manufacturer's recommended instructions available or for units manufactured before June 15, 1976. The minimum requirements establish a pier foundation system.

A political subdivision may adopt the state building code or its own building code. Iowa Code §103A.12. However, some provisions of the state building code must be

adopted by all political subdivisions. For example, in this instance, provisions of the state building code relating to the installation of factory-built structures shall apply throughout the state. Iowa Code § 103A.10 (3). Factory-built structures approved by the commissioner shall be deemed to comply with "all building regulations applicable to its manufacture and installation and shall be exempt from any local building regulations." Id.

I also reviewed section 414.28, which concerns zoning regulations for manufactured homes. Section 414.28 places limitations on zoning restrictions for manufactured homes. The section provides that a political subdivision may require a manufactured home to be installed on a permanent foundation system, but that the political subdivision shall not require more than one foundation system. It also states that a permanent foundation system may be a pier footing foundation system, although it does not require a pier foundation system. Based on this section, a city may argue that section 414.28 permits a city to adopt a more elaborate foundation system than required by the state building code, notwithstanding section 103A.10(3).

When interpreting two provisions of the state code, we first attempt to consider the two provisions together to harmonize them if possible. Net Midwest, Inc. v. State Hygienic Laboratory, 526 N.W. 2d 313, 314 (Iowa 1995). These two statutes can be harmonized. One of the express purposes behind section 414.28 is to prevent cities from adopting zoning or other ordinances that would disallow a structure solely because it is a manufactured home. The section goes further to allow cities to adopt provisions concerning the foundation system, but within limits to ensure that a city does not regulate manufactured homes out of existence. Application of section 103A.10 (3) through adoption of the state building code has largely taken that decision out of the cities' hands, but while providing a minimum foundation system that protects public safety. It is possible that there are stricter standards that a city may impose, but those standards would violate the intent of both sections 103A.10 (3) and 414.28. In this way, the two provisions are consistent.

Accordingly, it is my opinion that political subdivisions cannot adopt building code or other regulations that have more stringent installation requirements than the state building code. The cities continue to have full authority to supervise the area to ensure that manufactured homes are properly installed pursuant to the state building code. See Iowa Code §103A.19.

IN THE COURT OF APPEALS OF IOWA

No. 1-522/00-1005
Filed January 28, 2002

JERRY SAYLOR and MARY SAYLOR,
Plaintiffs-Appellants,

vs.
GREEN TREE FINANCIAL n/k/a
CONSECO FINANCE SERVICING CORPORATION,
Defendant-Appellee,

and
SHIRLEY COLLINS,
Defendant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The plaintiffs challenge the district court's ruling that Green Tree had abandoned its security interest and was no longer a lienholder liable for past due rent on an abandoned mobile home.
REVERSED

AND REMANDED.

Fred J. Kreykes, Pella, for appellants.

Chip Lowe of Howe, Cunningham & Lowe, P.L.C., Urbandale, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran,JJ.

ZIMMER, J.

The plaintiffs, Jerry and Mary Saylor, filed a small claims action seeking past due lot rent and late charges from defendant Green Tree Financial, lienholder of an abandoned mobile home. The court ruled against the Saylors. On appeal, the district court affirmed. The court ruled against the Saylors. On appeal, the district court affirmed. The Saylors appeal, contending (1) because of its status as a lienholder, Green Tree is a "claimant" under Iowa Code section 562B.27(2)(a) (1997), and as such, is liable for the past due rent which accrued during the period defined in that statute, (2) the discharge in bankruptcy of the mobile home owner of the debts owed to the Saylors and Green Tree has no effect upon Green Tree's liability for the unpaid rent which accrued during the period set forth in section 562B.27, and (3) Green Tree owes a duty to the Saylors derived from quantum meruit principles. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

As a preliminary matter, we note that there was no transcript of the proceedings on appeal to the district court, and the tape recording of the small claims hearing was destroyed. Therefore, we rely on the district court's ruling on the Saylors' statement of evidence and proceedings and Green Tree's objections and proposed amendments to the statements pursuant to Iowa Rule of Appellate Procedure 10(c).

The Saylors are the owners of a mobile home park. Kate Carson was the prior owner of the park. Shirley Collins, a named defendant but not a party to this appeal, owned a mobile home in the park. Her son and daughter-in-law were the tenants. Green Tree held a first security interest in Collins's home. Collins's son and daughter-in-law abandoned the mobile home and ceased paying lot rent. Collins filed for bankruptcy and discharged her debts to the Saylors and Green Tree.

Carson notified Green Tree that she was having problem with Collins's lot, that she was seeking lost rent from Green Tree, and that she was demanding the mobile home be removed from the lot. A green Tree employee advised Carson that Green Tree believed it had no obligation for the rent since it had abandoned its interest in the mobile home and was releasing Green Tree's lien.

The Saylors became the owner of the park in December 1998. Jerry Saylor had several conversations with Green Tree demanding payment. Green Tree responded that it believed it had no obligation to pay because it intended to abandon the home and release its lien. The district court was of the opinion that the lien was never released because Green Tree had difficulty locating the title to the home. As of January 13, 2000, title to the home listed Green Tree as holder of the first security interest.

The Saylors filed a small claims action on January 28, 2000, seeking to recover past due lot rent and late charges from Green Tree. At the small claims proceeding, no party had any interest in possessing the mobile home. On March 3, 2000, the court dismissed the Saylors' suit. It ruled that Collins's rental obligations discharged in the bankruptcy proceeding and the Saylors were not entitled to past rent. It ordered Green Tree to sign over title to the Saylors so they could reduce their losses.

The Saylors appealed to the district court, which affirmed. The court concluded that "[o]nce Collins went into bankruptcy and discharged Green Tree as a creditor, it no longer held that security interest." It held that Green Tree had not become the owner of the mobile home and was therefore not liable for back rent. Our supreme court granted the Saylors' application for discretionary review.

II. SCOPE OF REVIEW

This matter appears to have been brought as an action at law. On discretionary review of a law action, this court's review is for the correction of errors at law. *D.R. Mobile Home Rentals v. Frost*, 545 N.W.2d 302, 304 (Iowa 1996).

III. WHETHER GREEN TREE WAS OBLIGATED TO PAY PAST DUE LOT RENT UNDER IOWA CODE SECTION 562B.27.

The Saylors contend on appeal that Green Tree was a lienholder and "claimant" obligated to pay past due rent under Iowa Code section 562B.27(2) (a). In construing statutes, we examine the legislature's intent as evidenced by what the legislature said, as opposed to what it might have said. *State v. Guzman-Juarez*, 591 N.W. 2d 1,2 (Iowa 1999). In addition, "[w]hen the text of a statute is plain and its meaning clear, the court should not search for a meaning beyond the

express terms of the statute…..” Henriksen v. Younglove Constr., 540 N.W.2d 254, 258 (Iowa 1995).

The legislature amended section 562B.27(2)(a) effective May 20, 1999. Prior to the amendment the statute read as follows:

> If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the mobile home owner or other claimant of the mobile home and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the person is only liable for cost incurred ninety days before the landlord’s communication. After the landlord’s communication, costs for which liability is incurred shall then become the responsibility of the mobile home owner or other claimant of the mobile home. The mobile home shall not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, and that all debts are paid in full, or an agreement reached with mobile home owner or other claimant and the landlord.

Iowa Code § 562B.27(2)(a) (1997). The amendment added the language “[a] claimant includes a holder of a lien as defined in section 555B.2.” 1999 Iowa Acts ch. 155, § 11.

An amendment to a statute does not necessarily indicate a change in the law. *Guzman-Juarez*, 591 N.W.2d at 3. Amendments may either clarify or modify existing legislation. *Id.* We construe revisions as altering a statute if the intent to change the law is clear and unmistakable. *Id.* Moreover, we presume that any material change in the language of a statute alters the law. *Id.* This presumption is not conclusive, however; “the time and circumstances of the amendment ……. may indicate that the legislature merely intended to interpret the original act by clarifying and making a statute more specific.” *Kroblin Refrigerated Xpress v. Iowa Ins. Guar. Ass’n,* 461 N.W.2d 175, 178 (Iowa 1990). This exception is recognized “when the law is amended as to minor details and some disputed question is made clear by the amendment. In such a case the amendment can be said to cast light on the legislature’s earlier intent.” *Slockett v. Iowa Valley Cmty. Sch. Dist*., 359 N.W. 2d 446, 448 (Iowa 1984).

We believe the exception applies here. The amendatory language does not evidence a clear and unmistakable intent to change the law. *See State ex rel. Schuder v.*

Schuder, 578 N.W.2d 685, 687 (Iowa 1998) (concluding amendment did not evidence a clear and unmistakable intent to change the law). Nor does the amendment materially change the law so as to give rise to a presumption that the legislature intended to alter the law. See *Guzman-Juarez*, 591 N.W. 2d at 3. We believe the amendment merely clarified the legislature's original intent to include leinholders as claimants.

Therefore, we must next consider whether Green Tree was a lienholder, and thus a claimant under section 562B.27(2)(a), during the times relevant to this appeal. Neither party has claimed on appeal that Green Tree was not a lienholder of the mobile home as defined in section 555B.2 at one time, so we proceed upon the assumption that Green Tree fit that definition. Green Tree argues that it is not liable for past due lot rent because it waived its interest in the mobile home in December 1998. *See Zimmerman v. Kile*, 443 N.W. 2d 99, 101 (Iowa Ct. App. 1989) (wavier is a voluntary relinquishment of a known right). In support thereof, Green Tree relies on its verbal statement to Carson that it abandoned its interest in the mobile home and was releasing its lien and to Jerry Saylor that it intended to abandon the home and release its lien.

We believe that these verbal statements were not sufficient to release Green Tree's lien on the mobile home. The Saylors could not follow the procedure under chapter 555B to dispose of the mobile home while Green Tree held a lien on the mobile home. Iowa Code § 562B.27(2) (b). The statements did not provide Carson and the Saylors with certainty that the lien had been released, *see* section 321.50(4) (when a security interest is discharged, the holder shall note cancellation of same on the face of the certificate and deliver it to the county treasurer), so that they could proceed under chapter 555B. Therefore, we conclude Green Tree did not waive its lien in December 1998.

The Saylors contend that Green Tree should not be allowed to release its lien, and it should be liable for past due lot rent and costs from September 10, 1998 through May 24, 2000, the date of the district court's ruling on appeal. Even if Green Tree validly released its lien, they argue, section 562B.27 should be interpreted as continuing the lienholder's duty to pay rent accruing until the mobile home is removed and as requiring the lienholder to pay removal of the home.

As previously mentioned, we examine the legislature's intent as evidenced by what the legislature said, as opposed to what it might have said. *Guzman-Juarez*, 591 N.W.2d at 2. The legislature has not restricted a lienholder's release of its security interest under section 562B.27, not has it continued the obligations of a lienholder beyond the release of its security interest. We do not believe the legislature intended the construction of section 562B.27 urged by the Saylors.

It appears from the record that Green Tree did not release its lien until March 2000, when the ruling was entered in small claims court. Therefore we conclude that Green Tree is responsible for past due lot rent and late charges under section 562B.27(2)(a) incurred until the lien was released in March 2000.

IV. WHETHER COLLINS'S DISCHARGE IN BANKRUPTCY HAD AN EFFECT ON GREEN TREE'S OBLIGATION TO PAY PAST DUE LOT RENT.

The Saylors contend that the district court erred in finding that Collins's discharge in bankruptcy of the debts owed to them and to Green Tree have no effect upon Green Tree's liability for the unpaid rent which accrued during the period set forth in section 562B.27(2)(a). The district court determined that once Collins went into bankruptcy and discharged Green Tree as a creditor, it no longer held that security interest, and since it was not the mobile home's owner, it was not liable for past due lot rent.

Under Iowa law, a discharge in bankruptcy does not affect or prevent the enforcement of valid liens existing prior to discharge. *Conklin v. Iowa Dist. Ct*., 482 N.W. 2d 444, 447 (Iowa 1992); *Moad v. Neill,* 451 N.W. 2d 4,8 (Iowa Ct. App. 1989). There is no contention or finding that Green Tree's lien was other than a valid lien that existed prior to discharge. Thus, the discharge did not affect Green Tree's lien and the district court erred in holding otherwise.

V. WHETHER PRINCIPLES OF QUANTUM MERUIT APPLY.

The Saylors claim that Green Tree owes them a duty derived from quantum meruit principles based upon their maintenance of the mobile home. Green Tree argues that this claim was not preserved, as it was not raised before the lower courts. We agree. The Saylors have failed to state how error was preserved. Iowa R. App. P. 14(a)(5). Our review of the records shows this claim was not raised in the small claims court or the district court on appeal. Issues must be presented to and ruled upon by the trial court before they can be raised and decided on appeal. *Metz v. Amoco Oil Co*., 581 N.W.2d 597, 600 (Iowa 1998); *Conner v. Stat*, 362 N.W.2d 449, 457 (Iowa 1985). Therefore we conclude the Saylors have failed to preserve error on this issue.

VI. CONCLUSION.

We conclude that the district court erred in finding that Green Tree had no interest in the mobile home and that its interest was discharged in Collins's bankruptcy. Therefore, we reverse the district court's ruling, and we remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.

IN THE SUPEREME COURT OF IOWA

No. 108 / 01-1355

Filed December 18, 2002

MARTIN J. BAHL, LINDA C. BAHL,
and **TERRENCE G. BAHL,**

Appellees,

vs.

THE CITY OF ASBURY, IOWA **and the**
CITY COUNCIL OF THE CITY OF
ASBURY, IOWA,

Appellants.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

City appeals district court order holding city zoning ordinance violates Iowa Code section 414.28A (1999) and granting property owners' petition for writ for certiorari on basis of illegality of city's denial of property owners' rezoning application. **AFFIRMED.**

Stephen J. Juergens of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellants.

Brian J. Kane of Kane, Norby & Reddick, P.C., Dubuque, for appellees.

TERNUS, Justice.

The determinative issue in this case is one of statutory interpretation: does Iowa Code section 414.28A (1999) require that a city treat land-leased communities of manufactured housing the same as similar communities of site-built housing or does this statute merely require that a city allow land-leased communities of manufactured housing somewhere within the city limits? The district court held that section 414.28A requires equal treatment of manufactured housing developments and similar site-built housing projects. On the basis of this interpretation of the statute, the court ruled that the zoning ordinance of the appellee, City of Asbury, violated section 414.28A by relegating land-leased communities to R-4 zoning districts only when they contain manufactured homes. The court further held that the appellee, City Council of the City of Asbury, Iowa, acted illegally in denying a rezoning application filed by the appellants, Martin J. Bahl, Linda C. Bahl, and Terrence G. Bahl, because the Bahls planned to build a land-leased community of manufactured homes on their property.

The City and its council, sometimes hereinafter referred to jointly as the city, appealed. The City presents one issue for review: a claim that "the district court erred in concluding that, by restricting mobile home parks to R-4 districts….., the city zoning ordinance violated section 414.28A." We think the district court correctly ruled that the Asbury zoning ordinance violates state law. Therefore, we affirm the district court judgment in favor of the property owners.

I. *Background Facts and Proceedings.*

The Bahls own property located in the city limits of Asbury, Dubuque County, Iowa. In 1997, they submitted a request to rezone their property from A-1 (agricultural) to R-4 (high density residential) to allow for the construction of a manufactured housing development. Rezoning was necessary because the Asbury city zoning ordinance allowed "mobile home parks" only in R-4 districts.[1]

The Bahls' application proposed a phased development of man of manufactured homes known as Oak Meadows. The request for rezoning was supported by plans, drawings and other pertinent information. The plans submitted with the application showed the overall character of the development as well as anticipated landscaping including evergreen screening on the perimeters of the property. Proposed development conditions for Oak Meadows, which set appearance standards and provided for methods of enforcement, were also set forth. Finally, the Bahls' application contained detailed specifications and photographs of the types of manufactured housing and mobile homes that would be permitted in the development, with none over three years old being allowed.

The City's planning and zoning commission held a public hearing in June 1998 on the application. *See Generally* Iowa Code § 414.6 (providing for cit council's appointment of a zoning commission to recommend changes in zoning district boundaries to the council). Opposition to the proposed "trailer park" was nearly universal. There was concern that the development would lower property values and ruin the beauty of the area. Some members of the public who spoke at the hearing expressed stereotypical views. A retired school principal asked whether the citizens of Asbury wanted their children to go to school with kids from a "trailer court"? He said, "[Trailer court kids] come to school with a lot of baggage. I know from experience. These kids tend to be hyperactive and easily distracted. Mainly, it's due to the confinement. They are confined in these small little houses for long periods of time. You let them out in the open spaces and they are going to run." Another person commented that the road fronting the development would "be a drag way all of the time" if the proposed plan were allowed. The predominant sentiment appeared to be "not in my back yard".

The commission ultimately tabled the Bahls' request pending adoption of a new land use plan. Because the Bahls' farm has only recently been annexed into the City, the City's land use plan did not include their property. The commission decided

to defer action until it had the recommendation of the city's land use advisor with respect to the overall zoning plan for the area encompassing the land at issue.

In November 1998, an updated land use plan prepared by an outside consultant was presented to the commission. At that time the proposed plan showed the Bahls' property as R-4, a designation that would permit manufactured housing developments. Again, opposition was widespread and again it was focused on the location of a manufactured housing community on the Bahls' property. The dominant view was that the City of Asbury did not need that type of housing. Repeated references were made to a recent housing study done at the city council's request that recommended demolishing the only trailer park in the city and creating upper-end, single-family housing. Speakers relying on the housing study emphasized that the study did not recommend the construction of trailer parks. Several residents pointed out the "upper-end" character of the city and its housing. In line with these observations was the statement of one person who cited statistics from the housing study that "Asbury has 58% higher median household income, 36% higher average household income, and 5% higher per capita income that the state" and that "[t]he percent of families and people living below the poverty level in Asbury in significantly lower than that of the county and the state."

Another citizen claimed the Asbury "blood line" was R-2 and asked why couldn't Asbury continue just as it had? A later speaker expressed a similar feeling: " We like this community the way it is." Assertions were also made that individuals who wanted to live in a mobile home park could live in Dubuque, but they didn't need those things "right here in Asbury." This sentiment was echoed by a subsequent resident who said that if people want to live in that type of housing, "then let them live in Dubuque." Many questioned whether there was a need for any R-4 districts in the community, regardless of location.

One person said, “My first feeling is I don’t believe this community needs to have that type of zoning. I understand the political structure and that if a community needs to have it, then it ought to be in a certain place…….It probably deserves to be more down… towards the industrial area.” At the end of the hearing, a man accurately summarized the prevailing feeling: “ I don’t think there is one person here that is opposed to anything but trailer parks. I don’t think anybody in this room wants trailers.” Not surprisingly, a member of the commission then moved to amend the proposed plan in one particular: to change the zoning designation of the Bahls’ farm R-4 to R-3. After the unanimous approval of the amendment, the commission voted to recommend the new land use plan to the city council.

Two months later the city council met to consider adoption of the plan. The Bahls’ attorney spoke at that meeting and urged the council to reconsider the proposed specification of the Bahls’ property as R-3. He pointed out that the housing study had indicated a need for “housing for young families.” He observer the same study stated that 75% of the houses in Asbury were valued at $100,000 or more and 100% of the homes currently for sale had an asking price in exces of $100,000. Noting that such homes were not within the financial reach of many young people, the Bahls’ attorney argued that the proposed manufactured housing development “would address the need for affordable housing” and “the need for housing for a variety of living environments,” such as “low-to-moderate income housing, first-time homebuyers, and retirement [housing].” Notwithstanding these comments, the new land use plan was unanimously approved, including the designation f the Bahls’ property as R-3.

Thereafter, in March 1999, the commission met to consider the Bahls’ 1997 application to rezone their property to R-4. Despite the recently adopted land use plan sowing this property as R-3, the commission voted to recommend to the council that the Bahls’ rezoning application be granted.

Notwithstanding this favorable recommendation, the city council denied the Bahls' request, concluding that R-4 zoning was not consistent with the City's land use plan. The Bahls thereafter filed an amended rezoning application that, among other changes, reduced the density of housing in the proposed development. This time, the planning and zoning commission recommended denial of the application, and that was the ultimate decision of the city council.

The city's denial of the Bahls' rezoning applications successfully shelved the Bahls' plan to build a manufactured housing development on their land because such developments, as noted previously, are restricted to R-4 districts by the Asbury zoning ordinance. The city does not dispute the effect of the council's decision, acknowledging in its brief that under the City's zoning ordinance "trailer parks" are excluded from districts other than R-4.

Upon the denial of their second application for rezoning, the Bahls filed a petition for writ of certiorari in the district court, claiming the City acted illegally in several respects. See *generally* Iowa Rs. Civ. P. 1.1401-.1412 (governing certiorari actions challenging legality of board). One ground of illegality was a claim that the City's zoning ordinance required "that mobile home communities be placed only in R-4 districts," in violation of section 414.28A. The city answered, denying any violation of state law and claiming its denial of the Bahls' application was not "solely because the proposed structure(s) are manufactured homes."

The district court found that the City's exclusionary zoning ordinance lay at the heart of the council's decision to refuse rezoning of the Bahls' property. The court stated:

> If manufactured homes were by definition given an R-3 designation, plaintiffs would have been allowed to proceed with their development because this would have been consistent with the City's land use plan adopted on January 26, 1999. The only member of the city council who gave a reason for denying plaintiff's second rezoning request on March 22, 2000, was Ms. Nancy Wilson who "indicated that she believed it did not conform or fit into our…. plan. The council worked on that for a very long time and rezoning this to R-4 does not fit our land use plan and I still do believe that."

Based on its factual findings, the district court concluded that the City violated Iowa Code section 414.28A because one reason for denying the Bahls' rezoning request was the fact that "the [d]evelopment was a land-leased community of manufactured housing." Therefore, it granted the Bahls' petition for writ of certiorari and annulled the City's denial of their rezoning application. See Iowa R. Civ. P. 1.1411 (allowing reviewing court to sustain or annul board's action, but not to substitute a different or amended decision). This appeal followed.

II. *Scope of Review*.

The standard of review for district court decisions in certiorari actions is the correction of errors of law. *See O'Malley v . Gundermann*, 618 N.W.2d 286, 290 (Iowa 2000). Factual findings made by the district court are binding on appeal "if supported by substantial evidence." Id.

III. *Issues on Appeal*.

The City states in its brief that if "appeals only from the district court's holding that the City zoning ordinance violated section 414.28A." In the course of addressing this issue, the City does, however, complain of two factual findings made by the district court: (1) a purported finding that "the proposed development would qualify for the R-3 zoning classification" and (2) an implicit finding that the City's denial of the rezoning application was based upon the fact that the structures in the Bahls' development would be manufactured homes. Assuming these matters were adequately raised for review, we address them briefly before considering the validity of the City's ordinance.

IV. *Challenged Factual Findings.*

A. *Conformance to R-3 requirements*. In ruling on the Bahls' petition for writ of certiorari, the court observed that "[t]he record is replete with facts which support the conclusion that plaintiffs' proposed development would qualify for the R-3 zoning classification." The City claims the proposed development did not meet the density requirements for R-3 districts and so would not have been permitted in that classification regardless of the restrictions imposed upon manufactured housing projects.

We find it unnecessary to consider this contention because any dispute with respect to the density of the Bahls' project is not germane to the issue before us. As we discuss below, section 414.28A prohibits any ordinance that disallows land-leased communities if *one* of the reasons for disallowance is the fact the development contains manufactured housing. Here, as the City concedes, even if the development proposed bye the Bahls met the density requirements for an R-3 district, the development would still have been disallowed because land-leased communities of manufactured homes are not permitted in an R-3 district. Consequently, whether the project otherwise met the requirements of that classification is not determinative of whether the zoning ordinance violates section 414.28A. Accordingly, even if the court's comment could be construed as a finding that the Bahls' project satisfied the density requirements for an R-3 district, that finding is not pertinent to the legality of the zoning ordinance challenged by the Bahls.

Basis for City's denial. With respect to the second finding disputed by the City-that the City's decision was based on the use of manufactured housing in the proposed development-we disagree with the City's contention that "[t]here is not a shred of evidence" to support this finding. To the contrary, the record is overflowing with evidence that the City's desire to preclude such housing in this area was at the very heart of the City's action.

Prior to the hearings reviewed above, council members had indicated approval of the Bahls' plan to build a mobile home park as reflected by the council's approval in 1997 of a letter of intent in which the council agreed to "support rezoning of [the Bahls'] land after it has gone through the annexation process to [R-4] for the development of a mobile home community." Later, the City's outside consultant who was hired to update the City's comprehensive plan suggested that the Bahls' property be designated as R-4, a designation that would permit a manufactured housing development. Even the planning and zoning commission initially recommended that the city council approve the Bahls' rezoning request. Nonetheless, the City, after hearing a public outcry against "trailer parks," specified the Bahls' land as R-3 in the City's land use plan and thereafter refused to rezone the property to R-4. Although several relevant considerations came up at the various hearings, the discussion was overwhelmingly focused on the use of manufactured housing in the proposed development. This scenario of events supports the district court's finding that the City relied on its exclusionary zoning ordinance to disallow the Bahls' project because it contained manufactured housing.

We turn now to the definitive issue.

V. *Does the City's Zoning Ordinance Violate Section 414.28A?*

Section 414.28A, first enacted in 1997, currently provides in pertinent part:

> A city shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities because the housing within the land-leased community will be manufactured housing.

Iowa Code § 414.28A; see 1997 Iowa Acts ch. 86, § 4. This statute is very similar to a related statute adopted by the Iowa legislature nearly twenty years ago. In 1984, the General Assembly passed a bill that added the following provision to chapter 414:

> A city shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home……

1984 Iowa Acts ch.1238, § 2 (codified at Iowa Code § 414.28 (1985)).[2]

There appears to be very little difference between section 414.28 and section 414.28A with respect to the operative language. The primary distinction of course is that section 414.28 applies to "residential structure[s]" whereas section 414.28A governs "land-leased communities." Section 414.28A is also broader in scope, prohibiting subdivision regulations, as well as general zoning regulations. Originally section 414.28A, like section 414.28, only prohibited ordinances that "disallowed" manufactured housing developments "solely because" the homes were manufactured homes. 1997 Iowa Acts ch. 86, § 4 (codified at Iowa Code § 414.28A (1998)). Section 414.28A was soon amended, however, to enlarge the prohibition by barring regulations or ordinances that "make infeasible" manufactured housing developments, as well as those that outright disallow such developments. 1998 Iowa Acts ch. 1107, § 16 (codified at Iowa Code § 414.28A (Supp. 1998)). In addition to this change, section 414.28A was also amended to strike the word "solely", *see id.*, again broadening the reach of the statute so as to eliminate the requirement that the disallowance or infeasibility occur only because manufactured housing is involved.

While the prohibitions of section 414.28A are even broader and stronger than those contained in section 414.28, the basic structure of the prohibitions are, nonetheless, identical, indicating similar legislative intent and, accordingly, calling for similar interpretation. *See State v. Dann*, 591 N.W.2d 635, 638 (Iowa 1999) (stating court should seek to harmonize later-enacted statute with existing statutes on the same subject matter); 2B Norman J. Singer, *Statutes and Statutory Construction* § 51.02, at 197-98 (6th ed. 2000 revision) ("Unless the context indicates otherwise, words or phrases in a provision that were used in a prior act pertaining to the same subject matter will be construed in the same sense.")

Therefore, it is instructive in our search for the meaning of section 414.28A to consider what the legislature intended when it enacted section 414.28.

Although there is no legislative history explaining the legislature's objective in adopting section 414.28, it appears this statute was enacted in response to a perceived crisis in the supply of affordable housing. *See generally Brady v. City of Dubuque*, 495 N.W.2d 701, 705 (Iowa 1993) (noting that contemporary circumstances may be considered as an aid to interpretation of a statute); Iowa Code § 4.6(2) (stating that "the court, in determining the intention on the legislature, may consider……. [t]he circumstances under which the statute was enacted"). In 1981, then-president Reagan established the President's Commission on Housing to study the housing industry and make recommendations for national policy to address the housing recession caused by inflation and high interest rates. See Exec. Order No. 12,310, 46 Fed. Reg. 31,869 (June 16, 1981) (directing Commission "to develop housing ….. options which strengthen the ability of the private sector to maximize opportunities for homeownership"); *see also* Proclamation No.4988, 47 Fed. Reg. 46,837 (Oct. 19, 1982) (referencing the adverse impact on housing "from the twin afflictions of inflation and high interest rates" and the establishment of the Commission to study national housing policy.

One of the Commission's fundamental concerns was "the housing problems of low-income Americans," specifically the affordability of housing. Report of the President's Commission on Housing 3, 10-12 (1982). The Commission concluded that "[m]anufactured housing [was] a significant source of affordable housing for American families, particularly first-time homebuyers, the elderly, and low- and moderate-income families." *Id.* At 85. Nonetheless, it recognized that local action often impeded the ability of homebuyers from choosing this type of housing. *Id.* at 86. Therefore, the Commission recommended "removing zoning provisions that discriminate against manufactured housing."

Id.; see *id*. at 203 ("States and localities should remove from their zoning laws all forms of discrimination against manufactured housing…."); see also Proclamation No. 4988. 47 Fed. Reg. 46,837 (Oct. 19, 1982) (noting Commission's report "reaffirmed our national commitment to equal housing choice"). The following explanation was given in support of this recommendation:

> Because of sharply rising housing costs, manufactured housing today offers many households their only option for homeownership. Indeed, in 1980, manufactured ("mobile") homes amounted to 29 percent of all single-family homes sold. The marketplace demand for mobile homes has come from improvements in the product as well as from a competitive price.
>
> Despite the increasing attractiveness of manufactured housing, *local zoning laws continued to discriminate against mobile homes. In many localities, mobile homes are segregated into special areas, often in disadvantageous locations set aside as "trailer parks."*
>
> There is an increasing recognition that the quality of manufactured housing has improved. Since 1976, manufactured housing has been built under a national code, supervised by HUD, setting health and safety requirements. Vermont, California, and Indiana have enacted laws precluding discrimination against manufactured homes. The Michigan Supreme Court last year struck down a zoning law because it violated the State constitution: "The per se exclusion of mobile homes from all areas not designated as mobile home parks has no reasonable basis under the police power, and is therefore unconstitutional."
>
> Manufactured housing can be as safe and healthy as comparable site-built housing. Housing systems or components satisfying a nationally recognized model code similarly should not be excluded from use in a locality. *Exclusionary zoning provisions based on type of manufacture are arbitrary and unrelated to legitimate zoning concerns.*

Report of the President's Commission on Housing 203-04 (emphasis added). It was within this historical context that the Iowa legislature in 1984 adopted section 414.28.

Although this court has never interpreted section 414.28, Iowa's statute was discussed in a 1988 article appearing in Urban Lawyer. *See* Molly A. Sellman, *Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing*, 20 Urb. Law. 73, 84 (1988).

Noting that one solution to the affordable housing problem is "state enabling legislation demanding comparable or equal treatment of all forms of housing," *id*. at 81, the author observes, "Three states –Iowa, Minnesota, and Vermont—have enacted progressive codes encouraging the utilization of manufactured housing *by mandating equal treatment of all forms of housing*," *id*. at 82 (emphasis added). The author makes a similar statement later in discussing Iowa's specific statutory provisions, noting again that they "mandate *equal treatment* of manufactured housing with site-built housing." *Id*. at 84 (emphasis added) (citing Iowa Code Ann. §§ 358A.30, 414.28 (West 1976 & Supp.1986)).

The same interpretation of Iowa's statue was made by another in 1996, in a discussion of state legislation "prohibiting or restraining discrimination against manufactured housing." S. Mark White, *State and Federal Planning Legislation and Manufactured Housing: New Opportunities for Affordable, Single Family Shelter*, 28 Urb. Law. 263, 269 (1996). This writer also describes Iowa's statute as "equal treatment legislation." *Id*. at 270 & n.35. He explains such statutes prohibit "discriminatory treatment between manufactured and site-built homes, but preserve for local governments the right to impose zoning standards and procedural requirements……on the same terms as site-built housing ." *Id*. at 270.

We think the commentators are correct. The historical context in which section 414.28 was enacted indicates that the statue was intended to prevent local zoning authorities from discriminating against manufactured housing. The same purpose logically must be ascribed to section 414.28A. See 2B Norman J. Singer, *Statutes and Statutory Construction* § 51.02 , at 176-78 (6th ed. 2000 revision) (stating that when a new provision is enacted that relates to the same subject matter as previous statutes, "the new provision is presumed in accord with the legislative policy embodied in those prior statutes"). More importantly, this interpretation of the statute is most consistent with the language of section 414.28 as well as the language of section 414.28A.

Section 414.28 prohibits discrimination by providing that plans for a residential structure cannot be disallowed solely because the proposed structure is a manufactured home. Similarly, section 414.28A mandates equal treatment for manufactured housing developments by stating that plans for a land-leased community cannot be disallowed (or even made infeasible) because the proposed community contains manufactured homes. Nothing in the language of the statute supports the City's contention that section 414.28A simply prohibits a municipality from totally excluding manufactured housing developments from the community.

The Vermont Supreme Court reached the same conclusion that we reach here when it interpreted similar legislation enacted in that state. *See In re Appeal of Lunde*, 688 A.2d 1312 (Vt. 1997). In *Lunde*, the city's zoning regulations restricted mobile homes to certain locations, a restriction that was not placed on site-built homes, 688 A.2d.at 1313. A mobile home owner claimed the city ordinance violated a Vermont statute providing that "no zoning regulation shall have the effect of excluding mobile homes…….from the municipality, except upon the same terms and conditions as conventional housing is excluded ." *Id*.(quoting Vt. Stat. Ann. tit. 24, § 4406(4) (A)). The Vermont Supreme Court rejected an argument that the statute "was intended to prevent municipalities from excluding mobile homes 'from the municipality,' but to allow restricting mobile homes to mobile home parks or to a particular zone ." *Id*. at 1314. Rather, the court concluded, the legislature "intended municipalities to treat mobile homes in the same manner as conventional housing." *Id.*

Although the Vermont statute is not worded precisely the same as Iowa's statute, it too is "equal treatment" legislation. *See* Sellman, *Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing*, 20 Urb. Law. at 82. The *Lunde* case is persuasive authority that "equal treatment" statutes prohibit ordinances that treat manufactured housing developments differently from conventional housing developments, even though manufactured housing developments are not entirely excluded from the municipality.

In summary, the plain language of section 414.28A, particularly when considered in the statute's historical context, reveals a legislative intent to require equal treatment of land-leased communities that are composed of manufactured home with similar communities composed of site-built housing. Our interpretation of section 414.28A does not mean the City must allow mobile home parks in all zoning districts. Nor does it mean the City cannot regulate manufactured housing developments. The statute merely mandates that land-leased communities of manufactured housing be allowed in any district in which similar communities of site-built housing are allowed, under the same terms and conditions imposed on such developments containing traditional housing.

Turning to the facts of the case before us, we conclude the Asbury zoning ordinance contravenes section 414.28A by relegating "mobile home parks," not all condominium–type communities, to R-4 zoning districts. Without a doubt, this restrictive ordinance has made the Bahls' land-leased community infeasible because it contains manufactured housing, a clear violation of the statute. The facts of the present case present a classic example of exclusionary and discriminatory zoning regulations and decisions of the very type the President's Commission called on states to prevent. Moreover, the City's zoning ordinance is exactly the type of discriminatory treatment of manufactured housing projects our legislature intended to thwart when it enacted section 414.28A.

VI. *Conclusion and Disposition.*

We agree with the district court's ruling that the Asbury zoning ordinance violates section 414.28A. Accordingly, we affirm the district court judgment annulling the City's denial of the Bahls' second rezoning application.

AFFIRMED.

All justices concur except Streit, J., who dissents.

STREIT, Justice (dissenting).

I agree with the majority that the ultimate issue in this case is a matter of statutory interpretation. However, I respectfully disagree with the majority's interpretation of Iowa Code section 414.28A. The majority interprets section 414.28A to mean mobile home parks must be allowed in any district in which "similar communities of site-built housing are allowed". Given this interpretation, it concludes the Asbury ordinance is illegal under 414.28A because the ordinance assigns mobile home parks to the high-density residential district. The majority adds meaning to this statute where the plain language shows it was not intended by legislature.

The plain and unambiguous language of the statute is ignored under the guise of providing statutory interpretation. Where a statute is clear and unambiguous, resort to extrinsic aids is unwarranted. We need only look to the plain language of the statute to determine whether the ordinance, in assigning mobile home parks to R-4 districts, violates section 414.28A. The statute provides, in part,

> A city shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities because the housing within the land-leased community will be manufactured housing.

Iowa Code § 414.28A (1999). Before we examine the meaning of this section, we must look to the terms of the statute to determine its scope. Namely, we look to what is a "land-leased community" and what constitutes "manufactured housing".

Iowa Code section 414.28 defines a manufactured home as,

> a factory-built structure which…….is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles.

Iowa Code § 414.28. A land-leased community is "any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes…." Iowa Code § 414.28A. Given these statutory definitions, the simple reading of section 414.28A provides: a city shall not enforce zoning or subdivision regulations or other ordinances that prevent the construction of ten or more manufactured homes upon a site simply because the site will consist of factory-built, manufactured homes.

By assigning mobile home parks to R-4 districts, the ordinance does allow-and does not disallow or make infeasible- the construction of mobile home parks in the City. The statute contains no other language of limitation upon the actions of a city in regulating the development of land-leased communities.

The plain language of this section supports the conclusion that it protects land-leased communities only in so far as a municipality cannot ban mobile home parks from its districts. The statute makes it illegal for a municipality to reject or make infeasible a proposed land-leased community because it will contain manufactured housing, including mobile home parks. This statute protects manufactured homes in a limited fashion because the City still has power to regulate or place reasonable restrictions upon manufactured housing developments. *See Huff v. City of Des Moines*, 244 Iowa 89, 94, 56 N.W.2d 54, 57(1952) (regulation and restriction of mobile home parks is a "legitimate exercise of police power"). None of the language of this statute indicates that in order to comply with the section a city must allow mobile home parks in more than just the R-4 district. This section does not say the ordinance must allow mobile home parks in every zoning district. It does not say the ordinance must subject mobile home parks to the same conditions as it does all other "similar communities of site-built housing." It does not act as an absolute prohibition on the City's power to regulate the land under its control simply because a mobile home park is involved.

The majority avoids the simple reading of the statute and instead engages in an analysis of clear and unambiguous language. It attempts to characterize section 414.28A as a non-discriminatory or "equal treatment" statute that protects the civil rights of mobile home park developers. It does this by making a comparison between mobile home parks and "site-built houses in land-leased communities". Such a creature does not exist under this statute. The plain meaning does not support the majority's conclusion that the legislature intended that mobile home parks be treated in the same fashion as are site-built homes in similar communities. Rather the statute does nothing more than prevent a city from outright prohibiting mobile home parks.

The majority contends its holding does not mean the City must allow mobile home parks in *all* zoning districts, but only in some. Despite this declaration, it is not clear where the City can limit the placement of mobile home parks. In fact, the inescapable conclusion from the majority's opinion is that the City of Asbury must allow mobile home parks to be constructed in any and all of its districts. Such a result is beyond both the force of section 414.28A's prohibition and the legislative intent behind this statute.

The Asbury ordinance has not disallowed Bahls from building this mobile home park. It has not made Bahls' plan infeasible. Rather, Bahls are free to build it in the area in which mobile home parks are permitted. i.e. R-4. to arrive at the majority's result, section 414.28A would need to have an additional sentence reading, "A city shall not impose restrictions or conditions upon land-leased community comprised of manufactured housing which are different than those imposed upon site-built housing in similar communities." Because the statute does not mention site-built housing, its application is restricted to factory-built, manufactured homes.

In general, Iowa Code sections 414.28 and 414.28A are exceptions to the general zoning authority of a city.

A fundamental rule of statutory construction is that an exception in a statute, contrary to its general enacting clause, should be strictly construed and all doubts and implications should be resolved in favor of the general provision or rule rather than the exception.

Menke Hardware, Inc. v. City of Carroll, 474 N.W.2d 579, 580 (Iowa 1991). Because we must strictly construe these exemption statutes, we may not read into section 414.28A a requirement that the City must allow mobile home parks in every zoning district in which all other land-leased communities are allowed.

A municipality has authority to regulate the area of land within its control. Iowa Code § 414.1. Iowa code section 414.1 expressly grants cities the power

to regulate and restrict the heights, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes.

Such regulation is intended to promote the public health, comfort, safety, and welfare, including the maintenance of property values. *Plaza Recreational Center. V. Sioux City*, 253 Iowa 246, 251-52, 111 N.W. 2d 758, 762-63 (1961). Derived from this general zoning authority, the City has authority to regulate and restrict mobile home parks as a "legitimate exercise of police power." *Huff*, 244

Iowa at 94, 56 N.W.2d at 57.

Although mobile homes may serve a residential use, they are sufficiently different from other types of housing so that there is a rational basis for placing different requirements upon them. Thus, it is within the legislative discretion of a township to place mobile homes in other than purely residential districts, although the restrictions placed on mobile homes cannot amount to exclusionary zoning. 83 Am. Jur.2d *Zoning and Planning* § 254, 220-21 (1992).

Given the City's general zoning authority, it assigned mobile home parks to R-4 zoned districts. In contrast, an individual mobile home may be placed in any zoning district under the ordinance. Mobile home parks are assigned to R-4 districts because of their high density. I would find the district court erred in finding that the City, by assigning mobile home parks to R-4 districts, made them high density by definition. In sum, the ordinance permits mobile homes, including manufactured homes in all zoning districts. It restricts the parks to R-4 districts. Because the ordinance does not ban the development of mobile home parkas form all zoning districts, it is not in violation of Iowa code sects 414.28 and 414.28A. I also disagree with the majority's finding that the city council denied Bahls' application for rezoning based upon the fact that the proposed development consisted of mobile homes. The majority bases its conclusion upon one factor only-the inflammatory comments of neighbors regarding the proposed mobile home park. Based only upon the neighbors' offensive language, the majority impermissibly ascribes bad motive to the city council's denial of Bahls' petition for rezoning.

Other than the odious and sometimes loony comments themselves, there is no evidence in the record to indicate the city council made its decision based on the neighbors' comments.

All of the evidence considered by the city council indicates its decision to deny the application for rezoning was based on the same considerations the city council would apply to all other applications for rezoning. The ordinance states the regulations set by the

ordinance shall apply uniformly to each class or king of structure on land. There are no exceptions to this rule. The ordinance specifically provided the proposed project must comply with the City's long-range comprehensive plan. See ordinance § 3-13.4(1)(D). The evidence shows several grounds upon which the city council could have concluded the proposed project did not comply with the comprehensive plan and ordinance. Among the evidence presented to the city council, a professional city planner, two subdivision developers a home builder, and a professional realtor addressed this particular rezoning issue. The following are the considerations upon which the city council could have denied the Bahls' rezoning request.

First, the city council considered the overall size and density of the proposed development. Referring to city planning texts, the city council determined five dwelling units per gross acre is considered the highest density and one dwelling unit as the lowest density. Bahls' proposed development provided for anywhere between 3.5 and 3.7 units per gross acre. The proposed development would have created a much greater density of homes than surrounding subdivisions. The size of the proposed development is approximately 300 homes. At the time of the Bahls' proposal there were approximately 700 homes in the City of Asbury. Bahls' development would increase the number of total homes in the City by thirty percent. The city council also considered the relative size of the proposed lots. The proposed size was considerably smaller than that of existing lots. The area of each new lot would be 5000 square feet whereas the housing units currently in the area are required to have 7000 square foot lots. See ordinance § 3-5.6

The council considered evidence regarding the estimated cost of the new housing units and the planned size of streets in the proposed development. Each new unit would cost on average $32,500 in a neighborhood where nearly all 700 homes were estimated to be worth at least $100,000. The record reflects most of the homes surrounding the proposed development were valued at over $200,000. The Bahls' proposed development included streets twenty-eight feet wide in violation of the thirty-one foot minimum requirement in the ordinance.

In general, the city council had ample evidence to consider regarding the ultimate result of constructing the new housing units. The impact of putting 300 housing units on 110 acres of land would be significant. It would create substantial additional traffic and noise in the area. The size of the development would directly impact the City's fire, police, water, and sewer services. Moreover, the city council was told of claims of the Bahls' generally poor record of maintenance on their properties. As the Bahls proposed to complete the project in seven phases, the council could have found the project might ultimately fail and be left partially completed.

Bahls' application was denied based upon the same factors the city council would apply to all other zoning applications. The city council concluded the proposed development violated the ordinance and comprehensive zoning plan. In doing so, the city council determined that rezoning the Bahls' property was not in the best interests of the community. 101A C.J.S. *Zoning & Land Planning* § 62, at 246 (1979).

Because the reasonableness of the denial of the rezoning application is fairly debatable, the city council's discretion in this matter is controlling. *See Perkins*, 636 N.W.D 2d at 67. I would reverse the district court's ruling that the Asbury zoning ordinance violates section 414.28A.

[1]The City's zoning ordinance defines the term "mobile home park" in part as a "tract of land upon which two (2) or more occupied mobile homes are harbored, either free of charge or for revenue purposes." This definition tracks the statutory definition of "land-leased community," which is defined, in part, as "a tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes." Iowa Code § 414.28A. A "manufactured home" is defined in chapter 414, in part, as "a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C § 5403." *Id*. § 414.28. Under the ordinance, a "mobile home" includes "[a] factory-built structure manufactured or constructed under the authority of 42 U.S. Code, presently Section 5403."

The parties do not dispute that the development proposed by the Bahls is a land-leased community of manufactured housing within the meaning of chapter 414. Nor do they dispute that the Bahls' project is subject to the restrictions imposed on mobile home parks by the City's zoning ordinance.

[2]A comparable law was enacted placing the same limitations on county zoning authority. 1984 Iowa Acts ch. 1238, § 1 (codified at Iowa Code § 358A.30 (1985) and now found at Iowa Code § 335.30 (1999)). Section 414.28A has a similar counterpart, prohibiting county zoning authorities from discriminating against land-leased communities containing manufactured homes. *See* Iowa Code § 335.30A.

Fields of Opportunities

STATE OF IOWA

DEPARTMENT OF REVENUE AND FINANCE

GERALD D.BAIR, DIRECTOR

October 24, 2002

Joe Kelly,
Executive Vice President
Iowa Manufactured Housing Assoc.
1400 Dean Ave.,
Des Moines, IA 50316-3938

Dear Mr. Kelly:

Re: Asphalt paving, your letter, 10-03-02.

Thank you for your letter and your confidence, over the years, in my ability to answer your more difficult questions about Iowa sales tax law and its relationship to the manufactured housing industry.

On this occasion you ask about a relatively easy matter. One of your association members hired a contractor to overlay some existing streets with asphalt. The contractor is attempting to collect sales tax from the association member for this work, arguing that his service is performed on or in connection with repair rather than any sort of new construction. You have asked for my comments on the matter.

I would agree that no tax is due on the gross receipts from the contractor's performance of his services. My basis for this conclusion would be that the service of asphalt pouring is not taxable in the initial instance. Since asphalt pouring has never been subjected to tax, it is not necessary to consider whether it is exempt from tax because of a use on or in connection with new construction. It is one of several services having to do with stone or stone-like substances (e. g. brick laying and concrete pouring) which are not taxed even though many other services used by construction contractors are taxable. Of course, the contractor's purchases of materials used to complete the asphalt pouring contract are retail sales and are subject to Iowa sales tax as Code § 422.42 (15) clearly states.

-135DDDD-

In closing, I must issue my usual warning. The opinions which I have expressed in this letter are informal only. Because of this, the Department could, in the future, take a position contrary to them.

Sincerely,

Darwin D. Clupper
Tax Specialist, Policy Section
Compliance Division
515-281-3670

IN THE COURT OF APPEALS OF IOWA

No. 3-390 / 02-1233

Filed January 14, 2004

CRAIG A. KRUSE, and ANNETTE M. KRUSE,

ALLEN D. WEAVER and JENNIFER L. WEAVER,

SCOTT A. HARRIS and DENICE J. HARRIS,

RUPERT D. LYON and MARGARET M. LYON,

SCOTT A. CHASE and BETSY R. CHASE,

ALVIN J. EDMUNDS and SHARON K. EDMUNDS,

BRUCE R. BERNHARDS and JACQUELYN L.

BERNHARDS, BILLIE L. HARRIOTT, LYNN

W. FEHR and MARY ALICE FEHR, JENNIFER

L. HANSEN, and CURTIS L. BROWN and

JENNIFER D. BROWN,

Plaintiffs-Appellees,

vs.

DAN L. CLAAR, d/b/a CLAAR CONSTRUCTION

and BRADLEY and SANDRA KNOTT,

Defendants-Appellants.

135FFFF

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge.

Homeowners appeal from injunction that required the removal of two modular homes from a subdivision. **AFFIRMED IN PART; MODIFIED IN PART; REVERSED IN PART.**

Thomp J. Pattermann of Smith Peterson Law Firm, L.L.P., Council Bluffs, for appellants.

Anthony Tauke of Porter, Tauke & Ebke, Council Bluffs, for appellees.

Heard by Sackett, C.J., and Miller and Hecht, JJ.

MILLER, J.

Defendants Dan L. Claar d/b/a Claar Construction and Bradley and Sandra Knott appeal from an injunction entered by the district court that ordered the removal of two modular homes from the Parkwild Subdivision. While we disagree with the district court's determination that the modular homes erected by Claar constituted "dwellings" within the context of the subdivision's restrictive covenants, we do agree that Dan Claar willfully violated another covenant

provision. We nevertheless conclude it was inequitable to order removal of the homes, and reverse that portion of the district court's injunctive order.

Background Facts and Proceedings. Dan Claar is a contractor who constructs both modular and site-built homes under the name Claar Construction. His wife, KellySue Claar, acts as Claar Construction's business manager. In the late 1990s Claar gained title to Lots 3, 4, 5, and 6 in the Parkwild Subdivision (Parkwild).

The lots in Parkwild are subject to a Declaration of Covenants, Conditions and Restrictions (Declaration), that was executed by Mary A. Favara, trustee of the J.F. Schlott Residual Trust. Paragraph seven of clause two of the Declaration required plans and specifications for proposed buildings be submitted for approval:

> No building . . . or other structure shall be commenced, erected or maintained upon any residential lot . . . until the plans and specifications showing the nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to harmony of design of external design and location in relation to surrounding structures and topography by Mary A. Favara, Trustee, J.F. Schlott Residual Trust . . . . In the event said parties fail to approve or disapprove such design and location within ten days after said plans and specification[s] have been submitted to them, approval will not be required and this clause will be deemed to have been fully complied with.

Paragraph nineteen of clause two prohibited the moving of any "dwelling . . . to any lot within Parkwild development from outside the development."

In the summer of 2001 Claar contracted with Bradley and Sandra Knott for the erection of a modular home on Lot 3. On August 1, 2001 Mrs. Claar sent a letter to Mary Favara's husband Ron Favara of Charter Investments, the subdivision's developer, informing him that Claar Construction would be "constructing a home on site on lot 3." The evidence was in dispute as to whether plans for Lot 3 were attached to or enclosed with the letter. About this same time, early August, certain Parkwild homeowners learned that Claar intended to erect

modular homes on his lots. They became concerned about the impact the modular homes would have on the property values of the existing, site-built homes.

On August 17, 2001, attorney A.W. Tauke, counsel for the subdivision, sent Mrs. Claar a letter in response to her August 1 letter to Ron Favara. Attorney Tauke's letter expressed concerns over whether the building being constructed on Lot 3 was in conformance with the Declaration, and advised the Claars to review the Declaration to "avoid property owners in the area asking that you terminate the construction to comply with the covenants." Neither Claar nor his wife responded to the August 17 letter, and Claar proceeded to erect a modular home on Lot 3.

On October 5, 2001, a group of Parkwild residents (plaintiffs) filed an equitable action against Claar, seeking removal of the home from Lot 3, and a prohibition on future modular home construction on Lots 4, 5, and 6. Claar filed a counterclaim for a declaratory judgment on the issue of whether the modular home constructed by Claar constituted a "dwelling" within the context of the Declaration. Bradley and Sandra Knotts, who took possession of the home on Lot 3 on October 9, 2001, were later added as party defendants.

After the suit was filed Claar prepared to erect a home on Lot 4.[1] Attorney Tauke sent a letter to Claar's attorney, expressing the expectation that any construction on Lots 4, 5, and 6 would comply with the Declaration, including the requirement to submit plans and specifications. Claar erected another modular home on Lot 4, and the evidence was once again in dispute as to whether Claar provided the trust with the plans and specifications for the building, or even notified the trust that a building was to be erected on Lot 4.

In its June 3, 2002 ruling, the district court concluded that Claar had failed to submit plans for the home on Lot 3 as required by paragraph seven, had violated paragraph nineteen by moving a dwelling onto Lot 3, and could not "credibly state [he] did so without knowledge of the covenants and restrictions imposed . . . ." The court decreed the home on Lot 3 was in violation of paragraph nineteen and "must be removed as violative of the Declaration." It

further decreed that no other dwelling could be moved onto any of the lots owned by Claar without "compliance with the requirements as set forth in the Declaration." Granting a post-ruling motion filed by the plaintiffs, the court further decreed that the home on Lot 4 was also in violation of the Declaration, and must be removed.

Claar and the Knotts appeal. They contend the court erred in concluding that the homes on lots 3 and 4 were "dwellings," and in finding Claar had not submitted plans to the trust and had knowingly violated the Declaration. They also argue that ordering removal of the homes was an inequitable remedy.

Scope of Review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 6.4. Although not bound by the district court's factual findings, we give them weight, especially when assessing witness credibility. Iowa R. App. P. 6.14(6)(*g*).

Dwelling. The primary issue in this case was whether the modular homes on Lots 3 and 4 violated paragraph nineteen of clause two, because they constituted "dwelling[s that] shall [not] be moved to any lot within Parkwild development from outside the development." Since paragraph nineteen requires us to look to the time the homes were moved into Parkwild, it is necessary to have an understanding of the modular home construction process. The modular homes in this case were prefabricated in two sections, and then moved into the subdivision, where they were permanently affixed to their foundations. Once on site the two halves of each home were "married," which required additional drywall, siding, trim, paint, and other finishing work. Thus we focus, not on the completed structures, but on their prefabricated segments.

The term "dwelling" is not defined within the Declaration, and we have no direct testimony or evidence as to what the signers of the Declaration intended by the term. We therefore turn to the language of the Declaration itself, giving words their obvious and ordinary meaning. *See First Sec. Co. v. Dahl*, 560 N.W.2d 327, 332 (Iowa 1997). The plain and ordinary meaning of the term "dwelling" contemplates a building or structure where people live or reside.

See Webster's Third New International Dictionary Unabridged 706 (2002); Black's Law Dictionary 524 (7th ed. 1999). Accordingly, we find instructive two cases where courts of other jurisdictions, interpreting restrictive covenants similar to paragraph nineteen, determined that a modular home was not a building or structure within the context of the covenant.

In *Ussery Investments v. Canon & Carpenter, Inc.*, 663 S.W.2d 591, 592 (Tex. Ct. App. 1983), the first district of the Texas Court of Appeals was asked to interpret a restrictive covenant that provided "no 'structure' shall be moved onto any lot, but all buildings erected on said lots shall be of new construction." In concluding the covenant did not prohibit a modular home construction technique, the court determined:

> The term "structure," as used in the restrictions, clearly means a whole, pre-existing, and habitable building, and its clear purpose is to require that only newly-erected, permanent buildings be placed on the subdivision lots. . . . The restrictions did not require that the structure be "built in place" or otherwise indicate a prohibition against modular construction . . . . Here the separate elements were never joined together to form a structure until they were permanently anchored to the foundation at the building site. Until all of the component elements comprising the basic structure were actually assembled, the unit could not be considered a "structure" within the meaning of the restrictive covenant.

Ussery Inv., 663 S.W.2d at 594-95.

A similar result was reached in *Kennedy v. Classic Designs, Inc.*, 722 P.2d 504 (Kan. 1986). Relying on *Ussery*, the Kansas Supreme Court determined a covenant requiring that "no building shall be moved into the Addition" did not prohibit modular home construction:

> [U]se of the word "building" clearly imports some sort of assembled or completed structure, rather than various component parts that are intended to be attached together to comprise a finished product. We think it is clear that the restrictive covenant . . . contemplated a completed building rather than a method of construction. When the restrictive covenants are considered as a whole, it would appear the intent is to prevent moving used or inferior buildings or structures onto the property as opposed to new construction whether stick-built or modular.

Kennedy, 722 P.2d at 509.

We find the reasoning of these two cases persuasive. Paragraph nineteen indicates an intent to prohibit, not a mode or method of construction, but the moving of a completed structure into Parkwild. Although prefabrication of the modular homes was extensive, the fact remains that what Claar moved into Parkwild were incomplete segments; components to be used in the construction of a habitable dwelling, rather than the dwelling itself. *See Sturtz v. Iowa Dept. of Revenue*, 373 N.W.2d 131, 134 (Iowa 1985) (treating modular homes as building materials for sales tax purposes).

The plaintiffs argue that we must view the term dwelling not merely within the context of paragraph nineteen, but within the context of the entire Declaration. We agree. *See Koenigs v. Mitchell County Bd. of Supervisors*, 659 N.W.2d 589, 594 (Iowa 2003). We also agree the language of the Declaration indicates an overall intent to exclude from the subdivision structures that could negatively impact the beauty and marketability of the subdivision, as well the value of the various homes located therein. However, we do not agree that this underlying intent requires that the term dwelling be interpreted to include modular homes.

There is no evidence the modular homes on Lots 3 and 4 are of inferior quality or construction. Rather, evidence was introduced that the quality of modular homes is equal if not superior to that of typical site-built homes. The only substantiated complaint against the homes on Lots 3 and 4 went, not to their quality, but to their aesthetic appearance and architectural interest.

Concerns about aesthetic and architectural issues are not unique to, or inherent in, the mode of modular construction. While the home on Lot 3 is of simpler design than its site-built neighbors, the defendants submitted evidence that modular homes are available in a variety of styles, some similar to the homes of the plaintiffs. Moreover, the parties stipulated that, if called to testify, Mary and Ron Favara would state approval would have been withheld for the homes on Lots 3 and 4, even if they were to be site built, as their architectural plans did not conform to the other homes in the subdivision in style, looks, and location within the lot.

It is the long-settled rule of this state that a restriction on the free use of property is to be strictly construed against the party seeking to enforce it, and any doubts are resolved in favor of the unrestricted use of property. *Fischer v. Driesen*, 446 N.W.2d 84, 86 (Iowa Ct. App. 1989). Under this standard, the plain language of the Declaration demonstrates the term "dwelling," as used in paragraph nineteen, encompasses only completed or finished structures. To hold otherwise because the Declaration seeks to control the aesthetics of the subdivision, a concern addressed by paragraph seven's requirement to submit plans and specifications prior to construction, would both violate the rule of strict construction and go beyond the plain and ordinary meaning of the term. We therefore reverse the portion of the district court's order that found the homes on Lots 3 and 4 to be dwellings within the context of paragraph nineteen.

Submission of Plans. The Declaration clearly required Claar to submit the plans and specifications for the homes on Lots 3 and 4 to the trust for its approval. The parties presented conflicting evidence on the issue. Although the August 1 letter to Ron Favara made no reference to any enclosed or attached plans, Mrs. Claar testified that she stapled plans for the home on Lot 3 to the letter, and assumed the trust's failure to respond within ten days meant the plans were approved. Mrs. Claar further testified that she submitted to the trust a letter and plans regarding the home on Lot 4, but again received no response. She could not recall the date the second letter was sent, but indicated it had been sent in the fall of 2001, and that a copy had been provided to Claar's attorney. However, no letter regarding Lot 4 was admitted into evidence. In addition, the parties stipulated that, if called to testify, Mary and Ron Favara would state no plans had been submitted for Lot 3, that no notice was ever received as to any proposed improvements to Lot 4, and that if the plans had been submitted they would not have been approved.

In assessing whether the plans for the home on Lot 3 had been submitted, the district court specifically found the Claars' testimony was not credible. We not only give weight to the court's credibility assessment, Iowa R. Civ. P. 6.14(6)(*g*), but concur in it. Reviewing the totality of the evidence on this issue, we conclude, as did the district court, that the greater weight

of credible evidence supports the plaintiffs' claim that Claar failed to submit the plans for the home on Lot 3. Although no specific findings were made in regard to notification of and plans for the home on Lot 4, we similarly conclude the greater weight of credible evidence demonstrates Claar also failed to submit plans for that home. Both failures constituted violations of the Declaration. Because Claar knew of the Declaration provision, we conclude the violations by Claar were willful, particularly in regards to the home erected on Lot 4. We therefore turn to the question of whether ordering the removal of the two homes constituted appropriate and equitable relief for the violations.

Equitability of Relief. In assessing the equitability of the court's injunctive ruling, we apply the doctrine of comparative injury. *See Fischer v. Driesen*, 446 N.W.2d 84, 87 (Iowa Ct. App. 1989). The court must ask whether the plaintiffs will suffer irreparable harm or are otherwise without an effective remedy, and whether the injury to the plaintiffs is slight and the injury or loss to the defendants great. *Id.* "[i]njunctions which are likely to cause greater injustice than they seek to prevent are properly refused." *Id.* at 87-88 (quoting *Johnson v. Pattison*, 185 N.W.2d 790, 797 (Iowa 1971)).

Evidence of the plaintiffs' injury focused on the value of their own property, and assertions that allowing modular homes to remain in Parkwild would negatively affect those values. The complaints went, not to the quality of the modular homes, but their appearance. The only evidence of a specific monetary reduction in value was the testimony of one homeowner who, without foundation, estimated that if he were to sell his home he would "probably lose . . . 10 to 15 percent . . . ." There was no evidence presented as to what effect less drastic measures than removal, such as cosmetic alterations to the homes and lots, would have on the purported reductions in property values.

Conversely, evidence was presented indicating it would be difficult and costly to move the homes. The homes could be picked up in one piece and moved in the same manner as a site-built home, or significant effort could be expended to remove the finishing work and return

each home to two movable halves. In either event, moving the homes would likely cause some structural damage, and void the warranties. New lots would need to be located, and new foundations dug. Even without evidence of specific cost, it is clear the expense of such a move would be significant.

We are particularly loath to impose this expense on the Knotts. They appear to be relatively free from culpability in this matter, and are ill placed to bear the burden of a move.[2] They have also indicated a willingness to finish their home in a manner that will comply with the covenants.

The same cannot be said for Claar. Proceeding with the construction on Lot 4 without submitting plans and specifications to the trust, even though the plaintiffs had filed suit and despite the written reminder from attorney Tauke, strikes this court as particularly willful and obdurate. We nevertheless determine that requiring him to bear the expense of a move is inequitable, in light of the limited evidence of the plaintiffs' damages, and other evidence that indicated the home on Lot 4 had more aesthetic attributes than the home on Lot 3.

Conclusion. We reverse the district court's conclusion that the modular homes constructed by Claar constituted "dwellings" within the context of paragraph nineteen of clause two of the Declaration. We affirm the court's conclusion that Claar willfully violated paragraph seven of clause two of the Declaration by failing to submit plans and specifications for the home on Lot 3, and determine the same is true regarding the plans for the home on Lot 4. We reverse the district court's injunctive order to remove the homes from Lots 3 and 4. The district court's decree provided in part that, "No other dwelling may be moved to any of the lots owned by Claar without compliance with the requirements as set forth in the Declaration [of Covenants, Conditions and Restrictions]." We modify that part of the decree to provide that "no other building or structure may be moved to or constructed upon any of the lots owned by Claar without full compliance with the requirements as set forth in the Declaration."

AFFIRMED IN PART; MODIFIED IN PART; REVERSED IN PART.

[1] The plaintiffs were granted a temporary injunction on November 6, 2001, that barred Claar from further construction on Lots 4, 5 and 6. The injunction was subject to the plaintiffs posting a $150,000 bond. On November 28 Claar filed a motion to set aside the temporary injunction because the plaintiffs had yet to post bond. On December 3 the court entered an order directing that the temporary injunction would be set aside and dissolved unless bond was posted by December 13. No bond was posted.

[2] Sandra Knott testified that Claar's sales representative, Jim Rock, had informed them other subdivision homeowners were concerned about violations of the covenants, but that the Knotts did not need to worry as "things were being taken care of." She also testified she and her husband could not afford the expense of moving their home, and that any move could disrupt the status of their foster children.

1977 Iowa Op. Atty. Gen. 280, 1977 WL 18993 (Iowa A.G.)

Office of the Attorney General
State of Iowa

*1 Opinion No. 77-11-2
November 1, 1977

MUNICIPALITIES: State Building Code--§§ 103A.10(3), 364.1 and 364.2(3), Code of Iowa, 1977. The State Building Code for factory-built structures prevails over any local building regulation on factory-built structures. (Blumberg to Weisner, Office of Planning and Programming, 11-1-77)

Mr. G. R. Weisner
Office of Planning and Programming

We have your opinion request of October 10, 1977, regarding the State Building Code. The City of Burlington has adopted an ordinance rquiring a certain type of conduit wiring in factory-built structures. The State Building Code, pursuant to Chapter 103A of the Code, permits another type of conduit wiring in factory-built structures. You ask whether the Burlington ordinance is valid.

Section 103A.10(3), 1977 Code of Iowa, provides:

'Provisions of the state building code relating to the manufacture and installation of factory-built structures shall apply throughout the state. Factory-built structures approved by the commissioner shall be deemed to comply with all building regulations applicable to its manufacture and installation and shall be exempt from any local building regulations.' (Emphasis added.)

As can be seen from this provision, the State Building Code prevails. All factory-built structures approved by the State Building Code Commissioner shall be deemed to comply with all building regulations and shall be exempt from any local building regulation.

Assuming that the city is attempting to exercise its home rule powers, Burlington, or any other municipality, cannot circumvent the State Building Code for factory-built structures. A city can exercise its home rule powers only if not limited by the Constitution and not inconsistent with a statute. See, § 364.1. An exercise of municipal power is inconsistent with a statute if it is irreconcilable with that statute. See, § 364.2(3). There can be no doubt that any ordinance prescribing something other than what is in the State Building Code for factory-built structures would be inconsistent and irreconcilable with the State Building Code and § 103A.10(3). Accordingly, we are of the opinion that the State Building Code on factory-built structures prevails over any local building regulation on factory-built structures.

Richard C. Turner
Attorney General
1977 Iowa Op. Atty. Gen. 280, 1977 WL 18993 (Iowa A.G.)