THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Jean L. Goulet,	)	Consolidated	
Complainant	)	Docket Nos.	009-98
Doris T. Aiken,	)		
Complainant	)		010-98
Mr. and Mrs. Arthur Kimball,	)		
Complainants	)		011-98
v.	)		
Walter and Eleanor Eberhardt,	)		
D/B/A Lake Side Mobile Home Park	)		
Respondents	)		

Hearing held on December 7, 1998 at Concord, New Hampshire.[1]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Board of Manufactured Housing ("the Board") makes the following findings of fact and conclusions of law and issues the following Order in the above-referenced matters.

PARTIES

1. Lake Side Mobile Home Park ("the park") is a manufactured housing community located in Manchester, New Hampshire. Walter and Eleanor Eberhardt are the owners and operators of the park. For purposes of clarity, Mr. and Mrs. Eberhardt and the park shall be treated in this Order as a unified entity and shall be identified as "Respondent."
2. Jean L. Goulet was at all times relevant to this matter, a lawful tenant of the Park. He resides in a manufactured housing unit located on lot # 28.

[1] By pretrial order dated November 2, 1998, the Board determined that the issues raised in these matters presented substantially identical questions of fact and law and therefore consolidated them for hearing and decision. N.H. Admin R. 201.16.

3. Doris T. Aiken was at all times relevant to this matter, a lawful tenant of the park. She resides in a manufactured housing unit located on lot # 8.

4. Arthur and Gertrude Kimball were at all times relevant to this matter, lawful tenants of the park. She resides in a manufactured housing unit located on lot #29.[2]

ISSUE PRESENTED

5. Complainants seek a determination by this Board of the following issue:

> Whether Respondent's proposed rule change (Revised Rule 23) creating visitor parking spaces in areas in front of Complainants' homes is unreasonable and in violation of RSA 205-A:2, XI, in that (i) the rule change would deprive Complainants of unrestricted use of an area which has heretofore been treated as part of or appurtenant to their leased lot and (ii) would effect Complainants use and enjoyment of their homes disproportionately to those of other residents.

FINDINGS OF FACT

6. Complainants are each long time residents of the park.

7. This matter arises from the fact that Complainants' homes are positioned on lots which are configured differently from most other lots in the park. That is, Complainants' lots are placed along a stretch of the main park roadway, where the road widens considerably. Complainants' lots are therefore significantly smaller than those of most residents and lack front yard space as well as space for a driveway. In addition, Complainants' homes are each positioned directly off the roadway.

8. Traditionally, Complainants have compensated for the dimensions of their lots and the lack of a driveway by treating the paved area in front of their homes as dedicated to their use for parking of vehicles. Each of the complainants has maintained one or two vehicles for personal use in designated areas in front of their homes and lots.

[2] For purposes of clarity, Ms. Goulet, Ms. Aiken ands Mr. and Mrs. Kimball will be referred to collectively as "Complainants."

9. At some time in 1997, Respondent undertook to redraw the designated parking areas in front of the Complainants' lots. The effect of this redrawing was to add additional visitor parking spaces within the paved areas in front of the Complainants' homes and to narrow the spaces reserved for the Complainants' vehicles. Park management reserved two spaces for each unit affected by this change. [3]

10. On or about June 16, 1998, Respondent published a Notice of Amendment of Rules and Regulations which memorialized this change in parking configuration as follows:

> Manufactured housing lawns and driveways are not to be used for vehicle repairs under any circumstances due to noise and environmental concerns. All vehicles must be parked off roads in the homesite driveways. No vehicle may be parked on resident's lawn. Space constraints limit parking for each homesite to two vehicles. Parking for homesites numbered 7, 8, 27, 28, and 29 are designated with numbered painted spaces and are the exception to off-road parking requirements. Space is provided for visitor parking in painted areas on the street and physically designated as "visitor." Visitor parking is an additional exception to the off road parking requirement. As visitor parking is extremely limited due to the narrowness of roads, "visitor" spaces are reserved exclusively for guests of all members of the community and shall not be used by residents for parking their vehicles.

11. Mr. Eberhardt has testified that the reconfiguration of parking spaces and the subsequent rule change were necessary to address a long-standing issue in the park -- that the narrowness of the main park roadway meant that park visitors who parked in the street would often block easy egress from neighboring driveways, and could pose a safety hazard by blocking access to homes within the park by fire, ambulance or other emergency vehicles.

12. In view of these issues, Mr. Eberhardt concluded that he could not responsibly permit continued visitor parking along the narrow stretches of roadway in front of many homes in the park. Respondent was then faced with two alternatives.

[3] Technically, the parks rules purport to limit residents to ownership and storage of a single vehicle per household. All parties agree that this limit is outmoded and has not been enforced by the park. Respondent is in the process of

13. First, it could restrict visitor parking to an area located at the end of the park roadway. Mr. Eberhardt testified that this lot was located approximately a quarter mile from homes located at the front of the park.

14. Second, he could reconfigure parking spaces in the more centrally located area in front of the homes of Complainants' and other residents, where the width of the road does not present the problems caused the narrowness of the road in other areas.

15. Park management has opted for the second alternative. According to Mr. Eberhardt, this decision was dictated by his desire to balance the acknowledged inconvenience experienced by the Complainants and a few other homeowners caused by the proposed parking space reconfiguration against the potential inconvenience to the majority of park residents and visitors which could result from a restriction of visitor parking to an area some distance from the front of the park.

16. Complainants testified that the reconfiguration of parking in front of their homes and the designation of spaces within the area in front of their homes as visitor parking is both unfair and inconvenient.

17. For example, Mrs. Kimball, who has mobility problems, testified that she finds it more difficult to enter her and her husband's car when the narrowed parking slots next to their vehicle are filled.

18. In addition, each of the Complainants argue that the positioning of visitor parking in extremely close proximity to their homes imposes a burden on them -- in the form of noise, lights and other potential disturbances, many of which may occur during evening or night hours -- which is not imposed on any other group of residents in the park.

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promulgating revised rules which will memorialize the park's real limit of two vehicles per household.

19. Respondent notes, in turn, that the revised rule 23 does not impose an undue burden on the Complainants because, they, like all other residents, continue to have room for parking of two automobiles on or directly in front of their lots.

CONCLUSIONS OF LAW

1. This is not an easy question. The Board accepts Respondent's testimony that the proposed parking reconfiguration and the promulgation of revised Rule 23 constitute a good faith attempt to address a vexing community issue in a fair manner.
2. Moreover, the Board notes that nothing in the Complainants' ground lease, tenancy agreements or the prior rules and regulations of the park provide unqualified support for the position of either the Complainants or the Respondent in this matter.
3. Accordingly, the Board is faced with the task of deciding whether, under all circumstances presented, revised Rule 23 and the reconfiguration of parking slots undertaken in tandem with that rule are reasonable. See, RSA 205-A:2, XI.
4. In the absence of any documentary guidance, the Board must look to the practice of the parties and the reasonable expectations of the parties that may have grown out of that practice. Here, the Board finds persuasive three fundamental considerations.
5. First, there is no dispute that the Complainants' lots are significantly smaller than those of many of their neighbors; and their houses are consequently positioned much closer to the street than houses owned by other residents. In addition, the Complainants' lots are generally further disadvantaged in comparison with other residents' lots by their lack of useable driveways.
6. Notwithstanding these facts, Complainants have consistently been assessed and have paid a monthly rental fee no different from those of other residents with larger lots and greater set-back.

7. Seemingly in compensation for this fact, Complainants have been allowed since the inception of their tenancies to treat the widened street area in front of their homes as an exclusive parking area appurtenant to their lots. While there have been occasions on which these areas have been used by visitors for short-term parking, the Board sees no evidence that Complainants have ever acquiesced in Respondent's characterization of the areas as subject to common use.
8. Nor, significantly, is the Board aware of any act or claim by Respondent inconsistent with Complainants' use of the front areas as their exclusive parking area at any time before 1997.
9. Thus, Complainant's use of the parking areas has continued uninterrupted, and unchallenged by park management for as many as 12 years. It is on this basis that the Complainants have developed an understanding and expectation that their use of the area in front of their homes as an exclusive parking area was an intrinsic element of their tenancies, which they could reasonably expect to continue.
10. Accordingly, the Board finds that Respondent's reconfiguration of parking spaces and proposed revision to Rule 23 does in fact alter the terms of the Complainants' tenancies. No such alteration of the established terms of, and reasonable expectations regarding, the tenancy of any resident not residing along the widened stretch of roadway is effected by the revised rule.
11. It is the view of a majority of the Board that, notwithstanding the fact that the revised rule and reconfiguration of parking spaces are a good faith effort to remedy a vexing community problem, it is inherently unfair to require Complainants to bear the full burden of that remedy, particularly where that remedy would defeat their reasonable understanding and expectation regarding the nature and substance of their rights as tenants.
12. Accordingly, a majority of the Board believes that revised Rule 23 is unreasonable as applied in light of the reconfiguration of parking spaces in front of Complainants' homes.

ORDER

THEREFORE, the Board ORDERS that Respondent shall be and is hereby ENJOINED from enforcing Rule 23 of the park rules in any manner which would alter or impinge upon the Complainants' use of all space in front of their homes as their exclusive parking area, under conditions as they existed prior to January 1, 1997.

A decision of the board may be appealed, by either party, by first applying for a rehearing with the board within twenty (20) business days of the clerk's date below, not the date this decision is received, in accordance with Man 201.27 Decisions and Rehearings. The board shall grant a rehearing when: (1) there is new evidence not available at the time of the hearing; (2) the board's decision was unreasonable or unlawful.

ORDERED, this ____ day of _____, 1999
BOARD OF MANUFACTURED HOUSING

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Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:
Stephen J. Baker
Richard R. Greenwood
Rep. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Linda J. Rogers

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Jean L. Goulet, Doris T. Aiken, Mr. & Mrs. Arthur Kimball, Kathleen Goulet, Esq., Walter and Eleanor Eberhardt and Mark H. Tay, Esq.

Date

Anna Mae Twigg, Clerk
Board of Manufactured Housing

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