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COMMENTS

Mobile Homes in North Carolina: Residence or Vehicle?

Mobile homes have been used for permanent residences for over forty years, but only in the last twenty years have they become an important substitute for conventional single-family detached dwellings. The modern mobile home originated in the 1920's and was ten to twelve feet in length; these first mobile homes were used for recreational purposes and can be compared to the present camp trailer.¹ By the 1930's mobile homes had increased in length to about twenty-two to twenty-eight feet, and they were used as an inexpensive form of housing during the depression.² However, the mobile homes of the depression years, although a needed supplement to the housing market, were not comparable to the conventional single-family housing of that time, since the mobile homes had no self-contained plumbing or sanitary facilities³ (if, in truth, most conventional dwellings of the 1930's had indoor plumbing). Since World War II, the mobile home has increasingly shed its mobility, the feature which prompted its original invention, and has begun to approach in design and structure prefabricated and modular housing.⁴ The unruly "trailer camps" of the past have become parks subject to extensive regulation.⁵

The federal government has recognized not only the popularity of the mobile home as a residence but also its potential as a partial solution to the nation's acute housing shortage. Mobile home dwellers may obtain FHA-insured loans to finance the purchase of mobile homes intended for occupancy by the buyers as their *principal* residence.⁶ The Department of Housing and Urban Development (HUD) also provides

¹B. HODES G. ROBERSON, *THE LAW OF MOBILE HOMES* 1 (2d ed. 1964) [hereinafter cited as HODES & ROBERSON].

²*Id.* at 1-2.

³*Id.*

⁴*See Instant Housing*, 25 J. HOUSING 467 (1968).

⁵Most of the states have enacted statutes providing for the licensing of mobile home parks. Although North Carolina has enacted no such statute, most municipalities in North Carolina have adopted ordinances to ensure that minimum standards are maintained in mobile home parks. *See Starr, Guidelines for Mobile Home Park Development*, 39 APPRAISAL J. 41 (1971). Furthermore, in order to obtain FHA assistance to finance construction or rehabilitation of mobile home parks or to obtain FHA financing of a mobile home to be placed in a mobile home park, the park must comply with comprehensive standards which HUD deems necessary. *See* 24 C.F.R. §§ 207.33(h), 201.525(b) (1971).

⁶12 U.S.C. § 1703 (a) (1970).

an FHA program to finance the construction and rehabilitation of mobile home parks.⁷ HUD recognizes that the mobile home is principally a movable dwelling and not an immobilized vehicle.⁸

Although many persons live in mobile homes by choice, others live in mobile homes by necessity. It is almost impossible to construct a brick and mortar house for 15,000 dollars because of skyrocketing land, materials, and labor costs.⁹ In contrast, in 1969 the mobile home industry sold sixty-seven percent of all single-family housing under 25,000 dollars (412,690 mobile homes), seventy-five percent of all the single-family dwellings under 20,000 dollars, and ninety-four percent of all those under 15,000 dollars.¹⁰ Purchasing a home for 15,000 dollars in most cases will be less expensive in the long run than renting an apartment or other conventional dwelling.

Generally, mobile home dwellers no longer can be classified as transients, although many persons reside in mobile homes because they are uncertain as to the length of time they will remain in a particular community.¹¹ A "transient" individual probably would not live in a modern mobile home since the structure is not as susceptible to ready movement as were the camp trailers of the 1930's.¹² Most of those who now live in mobile homes are permanent residents of the community who, by choice or necessity, have selected that particular structure as their dwelling.¹³

⁷12 U.S.C. § 1713(a)(1)(B) (1970).

⁸HUD regulations define a mobile home as "a movable dwelling unit designed and constructed for permanent occupancy by a single family which dwelling unit contains permanent eating, cooking, sleeping, and sanitary facilities." 24 C.F.R. § 201.501(j) (1971).

⁹Starr, *Guidelines for Mobile Home Park Development*, 39 APPRAISAL J. 41, 42 (1971).

¹⁰*Id.*

¹¹These include defense and construction workers who are concentrated in areas in which the increase in population has been rapid and is not likely to be permanent, military personnel, farm workers, and young married couples who are uncertain of their stay in a particular community. HODES & ROBERSON 5.

¹²The owner of a modern mobile home will usually have to detach the structure from plumbing, sewage, and electrical outlets if he wishes to move it to a new site. The owner may then be required to obtain a special permit from the state highway commission to tow the mobile home on the public highways. See, e.g. N.C. GEN. STAT. § 20-119 (1965). The local governing body of the place of destination probably will require a permit to park the mobile home and will subject the structure to other regulations.

¹³Classes of permanent residents who prefer mobile homes include young married couples who prefer ownership to renting but are not financially able to furnish and equip a conventional home, those who prefer the atmosphere of a mobile home park, retired persons who prefer a home of their own which combines a maximum of comfort and convenience with a minimum of effort and expense to maintain, and those permanent residents who are attracted to the low original cost and minimum maintenance of the mobile home and the simplicity and economy of housekeeping

North Carolina has not as yet enacted a comprehensive statute regulating the mobile home as a dwelling or listing the standards to be maintained in mobile home parks.¹⁴ However, the 1969 General Assembly recognized that the primary use of a mobile home is as a substitute for conventional single-family dwellings and adopted the Uniform Standards Code for Mobile Homes Act for the purpose of assuring the sound construction of mobile homes in North Carolina.¹⁵ In addition, the North Carolina Supreme Court has taken the attitude that the mobile home has developed from a camp-type vehicle into an accepted mode of living: "Trailer living is a perfectly respectable, healthy and useful kind of housing, adopted by choice by several million people in this country today."¹⁶ (The impact of the statement is clear, and the attitude is commendable, though some mobile home dwellers and manufacturers might be offended by the use of the term "trailer.")

Nevertheless, a majority of North Carolina municipalities evidence a myopic conception of the modern mobile home and regulate the location of mobile homes in much the same manner as the trailer camps of the 1930's might have been proscribed.

I. TYPES OF MUNICIPAL ORDINANCES REGULATING THE USE OF MOBILE HOMES AS RESIDENCES

The authority of North Carolina municipalities to regulate mobile homes as residences is derived either from the power conferred by the state to municipalities to zone¹⁷ or from the power conferred to municipalities to abate nuisances.¹⁸ A city or town in this state has no inherent police power and can exercise only such powers as are expressly granted to it by the General Assembly or as are necessarily implied from those conferred.¹⁹ Pursuant to the authority given to the municipalities of

it offers. HODES & ROBERSON 5-6.

¹⁴For examples of comprehensive state statutes regulating mobile homes and mobile home parks, see CAL. HEALTH & SAFETY CODE §§ 18000-18475 (West 1964); ILL. ANN. STAT. ch. 111 ½, §§ 158-85 (1966); ANN. IND. STAT. §§ 35-2841 to -2881 (1969); MICH. STAT. ANN. §§ 5.278(31)-(127) (1969); MINN. STAT. ANN. §§ 327.14-.29 (1966); TENN. CODE ANN. §§ 53-3201 to -3220 (1966).

¹⁵N.C. GEN. STAT. §§ 143-144 to -151.1 (Supp. 1971). Compare CAL. HEALTH & SAFETY CODE §§ 19960-19997 (West Supp. 1972).

¹⁶Town of Conover v. Jolly, 277 N.C. 439, 443, 177 S.E.2d 879, 882 (1970), quoting Vickers v. Township Comm., 37 N.J. 232, 181 A.2d 129 (1962).

¹⁷N.C. GEN. STAT. § 160A-381 (1972).

¹⁸Id. § 160A-193.

¹⁹Id. § 160-1. See also State v. Furio, 267 N.C. 141, 148 S.E.2d 275 (1966); State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

North Carolina under the statutory grants, they have promulgated ordinances that prescribe in which areas and under what circumstances one may place a mobile home in the municipality or within a prescribed area beyond its limits.²⁰

A. Ordinances That Effectively Proscribe Mobile Home Parks and Individual Mobile Homes.

Few municipalities have absolutely prohibited the use of mobile homes as residences. However, at least one, the Town of Conover, has attempted to prohibit mobile homes under its authority to abate nuisances.²¹ The City of Chapel Hill, until 1971, had no provision for the establishment of mobile homes on individual lots and required special use permits for construction of mobile home parks.²² North Carolina courts have consistently held that the issuance of a special use permit is not a legal right but rather a concession to be made in exceptional cases in the discretion of the zoning board of adjustment. The zoning board's decision is subject to court review.²³ The zoning ordinance of the Town of Canton, for example, makes no express provision permitting mobile homes within the town's zoning territory. Rather, Canton's ordinance provides for the creation of mobile home parks districts by amendment to the zoning map whenever an applicant satisfies the board of aldermen that his land is suitable for such a purpose.²⁴ The City of Goldsboro does permit mobile home parks as a matter of right but only to a limited extent; mobile home parks are permitted only beyond the city limits (and, of course, within the one-mile farther reach of the city's zoning jurisdiction). Those parks within the city limits which existed at the time the ordinance was adopted may increase their area once by a maximum of two acres.²⁵

B. Ordinances That Permit Mobile Homes Only Within Approved Mobile Home Parks.

The majority of zoned municipalities in North Carolina permit

²⁰The North Carolina General Assembly has conferred upon the municipalities an extraterritorial zoning power beyond the limits of the municipality. N.C. GEN. STAT. § 160A-360 (1972).

²¹CONOVER, N.C., CODE § 12-22 (1970).

²²CHAPEL HILL, N.C., CODE § 4-D-14 (1972). Chapel Hill has now provided for a zoning district permitting individual mobile homes. *Id.* § 3-A-6.

²³See, e.g., *Joyner v. Zoning Bd. of Adjustment*, 267 N.C. 44, 147 S.E.2d 602 (1966); *Craver v. Zoning Bd. of Adjustment*, 267 N.C. 40, 147 S.E.2d 599 (1966).

²⁴CANTON, N.C. CODE § 19-9(c) (1971).

²⁵GOLDSBORO, N.C., CODE § 26-88 (1970).

mobile homes within the zoning territory but confine them to approved mobile home parks either by express language or by failing to include provisions permitting the location of mobile homes outside parks.²⁶ The exceptions generally granted for location outside parks are for the use of a mobile home for non-residential purposes. One or more of the following exceptions are usually permitted:²⁷

- (1) Mobile homes used as temporary offices for construction personnel.
- (2) Mobile homes used to supplement facilities of a church, school, or college.
- (3) Unoccupied mobile homes stored on the property on which the owner's dwelling house is located. (This exception is designed primarily to accommodate camp trailers.)
- (4) Mobile homes parked on a dealer's property and intended for sale.
- (5) Mobile homes used by watchmen.

The mobile home parks themselves are subject to regulations governing lot size; spacing between mobile homes; water, sewer, and garbage facilities; width of streets in the park; park size; access to public highways; drainage and condition of the land; required permits; inspections of the parks; automobile parking; maintenance of service buildings; and other regulations relating to the health and safety of the park residents.²⁸ These regulations, if not so onerous as to prohibit mobile homes altogether, are comparable to municipal regulations of subdivisions.²⁹

²⁶*E.g.*, ASHEBORO, N.C., CODE § 10-11 (1971); CANTON, N.C., CODE § 19-9(a) (1971); CHARLOTTE, N.C., CODE § 23-31 (1970); DURHAM, N.C., CODE § 24-12V (1971); FAYETTEVILLE, N.C., CODE § 30-7(1)(b) (1971); FOREST CITY, N.C., CODE § 23-23 (1971) (no provision for erection of individual mobile homes); GASTONIA, N.C., CODE §§ 23A-9, 25-15 (a)(15) (1971) (same); GOLDSBORO, N.C., CODE § 26-90(a) (1970); GREENSBORO, N.C., CODE § 21-10 (1971); RALEIGH, N.C., CODE § 24-12(h)(1) (1971); SALISBURY, N.C., CODE app., tit. II, § 10.07 (1970); WILSON, N.C. CODE § 17-3(c) (1971).

²⁷*See, e.g.*, DURHAM, N.C., CODE § 24-12V (1971); FAYETTEVILLE, N.C., CODE § 30-7 (1971); GOLDSBORO, N.C., CODE § 26-90 (1970); GREENSBORO, N.C., CODE § 21-10 (1971); HIGH POINT, N.C., CODE §§ 22-23.9(1)-(4) (1971); SALISBURY, N.C., CODE app., tit. II, § 10.07 (1970); WILSON, N.C., CODE § 17-3(c) (1971).

²⁸For example, Jacksonville regulates the division of a tract into mobile home lots in the same manner as a conventional subdivision. JACKSONVILLE, N.C., CODE § 25-10-1 (1971).

C. Ordinances That Permit Mobile Homes Either in Mobile Home Parks or on Individual Lots Outside of Parks.

A few municipalities in North Carolina have not confined mobile homes to approved mobile home parks but have regarded the mobile home that has been permanently affixed to the real estate as essentially equivalent to a single-family dwelling. Other municipalities have not accorded the mobile home the same status as a single-family dwelling but have recognized that the mobile home may be a necessary substitute for conventional housing in times of emergency or temporary housing shortages.

Morganton and Jacksonville are examples of municipalities that view the mobile home as a type of single-family dwelling. Morganton permits mobile homes on individual lots in a residential district provided the lot is the real property of the owner-occupant. In addition, the mobile home must have been inspected and must comply with all applicable ordinances.³⁰ Jacksonville provides that if mobile homes spaces are sold as individual lots in a tract, the park plan must be treated as a subdivision and all requirements of the city's subdivision and zoning ordinance pertaining to lot size, access to a public street, and other regulations must be satisfied.³¹

Other municipalities permit residence in mobile homes outside mobile home parks under more narrow circumstances. Albermarle, for example, permits one mobile home in a rear yard as temporary, accessory use if the board of commissioners finds that a personal hardship justifies a special exception to the ordinance restricting mobile homes to parks.³² Asheboro permits the use of a mobile home as a residence for no longer than thirty days provided the mobile home is located on premises upon which a conventional dwelling house is already located.³³ Winston-Salem allows individual mobile homes in a residential district only if the owner obtains a special use permit.³⁴

The City of High Point has a unique ordinance that recognizes the potential of the mobile home as an immediate solution to a paucity of adequate urban housing. Subject to the recommendation of the planning and zoning commission and approval by the city council, mobile homes used for temporary emergency housing are permitted in areas of the city

³⁰MORGANTON, N.C., CODE app. A, § 8K (1970).

³¹JACKSONVILLE, N.C., CODE § 25-10-1 (1971).

³²ALBERMARLE, N.C., CODE § 19-105 (1971).

³³ASHEBORO, N.C., CODE § 10-12 (1971).

³⁴WINSTON-SALEM, N.C., CODE § 29-7(F) (1971).

as to which there is evidence of a critical lack of adequate, safe, and sanitary housing.³⁵

D. Ordinances That Exclude Mobile Homes or Mobile Home Parks from Residential Districts.

Although most North Carolina municipalities confine mobile homes to mobile home parks, the parks themselves generally are permitted in residential areas. At one time it was common practice for municipalities throughout the nation to consider the operation of a mobile home park a commercial venture which should be confined to a commercial or other non-residential district.³⁶ This attitude seems spurious and may merely have been a subterfuge to separate mobile homes from conventional housing.³⁷ Some North Carolina municipalities retain this view. For example, the Town of Forest City permits mobile home parks only in the highway business or industrial districts.³⁸ The ordinance does not permit individual mobile homes to be located outside approved mobile home parks.³⁹ Charlotte takes a less restrictive but similar view; its zoning ordinance permits mobile home parks in a multi-family residential district but requires the park to adjoin a business or industrial district so that the park will constitute a transitional use between commercial or industrial development and a permanent residential development.⁴⁰

Several municipalities in North Carolina restrict mobile home parks to agricultural or agricultural-residential districts.⁴¹

Special "mobile home" districts for the location of mobile homes and mobile home parks have been created in some municipalities.⁴² Confining mobile homes to these special districts prevents mobile home dwellers from residing in residential districts comprised of conventional dwellings but at least allows their neighborhood to be residential in character.

³⁵HIGH POINT, N.C., CODE § 22-23.9(5) (1971).

³⁶See generally HODES & ROBERSON 156; STARR, *Guidelines for Mobile Home Park Development*, 39 APPRAISAL J. 41 (1971).

³⁷See generally BARTKE & GAGE, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491, 510 (1970).

³⁸FOREST CITY, N.C., CODE § 23-28, -37 (1971).

³⁹*Id.*

⁴⁰CHARLOTTE, N.C., CODE § 23-31 (1970) (see the table of permitted uses).

⁴¹See, e.g., CHAPEL HILL, N.C., CODE § 4-D-14 (1972); LUMBERTON, N.C., CODE § 29-44(h) (1969).

⁴²See, e.g., HIGH POINT, N.C., CODE § 22-9.1 (1971).

II. CONSTRUCTION AND APPLICATION OF ORDINANCES REGULATING THE LOCATION OF MOBILE HOMES

A. "*A Trailer is a Trailer is a Trailer.*"

The courts could circumvent the restrictive ordinances of North Carolina municipalities by holding that a mobile home that has been permanently attached to the real estate is no longer a "mobile home" or "trailer" as defined in the ordinance but rather is to be considered a single-family dwelling outside the ambit of the proscription. Admittedly, at first glance the proposition seems a bit abstruse, and most courts considering the theory have rejected it and have dogmatically reiterated the position that a structure constructed as a trailer remains a trailer even though it is affixed in a more or less permanent fashion to the real estate and is equipped with electrical, plumbing, and sanitary facilities similar to those of a conventional house.⁴³ Nevertheless, it is submitted that those decisions are supported by questionable logic. A prefabricated house or a modular dwelling does not remain a vehicle simply because it was transported to a dwelling site by a vehicle and may at some time be uprooted and again transported. The modern mobile home is comparable to these prefabricated or modular homes. The language of one representative holding indicates that the decisions rejecting the idea that a mobile home may be transformed into a dwelling house are based not on a rational distinction between mobile homes and conventional homes but upon the courts' concepts of aesthetics in architectural style of dwelling houses:

In ordinary parlance the unit shown in the exhibits will be spoken of as a trailer or a mobile home, even if it has not been sold with wheels or its wheels have been taken away, and even if it has been affixed to the land. It *looks* like a trailer, has the qualities of a trailer superstructure, and has been built as a trailer.⁴⁴

⁴³*E.g.*, Hebb v. Zoning Bd. of Appeals, 150 Conn. 539, 192 A.2d 206 (1963); Bixler v. Pierson, 188 So. (2d 681 (Fla. Ct. App. 1966)); Adams v. Cowart, 224 Ga. 210, 160 S.E.2d 805 (1968); City of New Orleans v. Louviere, 52 So. 2d 751 (La. Ct. App. 1951); Wright v. Michaud 160 Me. 164, 200 A.2d 543 (1964); Town of Manchester v. Phillips, 343 Mass. 591, 180 N.E.2d 333 (1962); Town of Brewster v. Sherman, 343 Mass. 598, 180 N.E.2d 338 (1962); Town of Marblehead v. Gilbert, 334 Mass. 602, 137 N.E.2d 921 (1956); Vickers v. Township Comm., 37 N.J. 232, 181 A.2d 129 (1962); People v. Clute, 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (Washington County Ct. 1965); Casella v. Stumpf, 29 Misc. 2d 460, 217 N.Y.S.2d 709 (Sup. Ct. 1961); City of Astoria v. Nothwang, 221 Ore. 452, 351 P.2d 688 (1960).

⁴⁴Town of Manchester v. Phillips, 343 Mass. 591, 596, 180 N.E.2d 333, 337 (1962) (emphasis added).

Another court held that since the petitioner repeatedly used the word "trailer" in his application for a building permit, the structure must indeed be a trailer and must always remain so. Accordingly, the court held that the "mobile home" could not be placed in a residential district.⁴⁵

A minority of jurisdictions have held that a mobile home that has been permanently attached to the land has lost its mobility and should be considered a single-family dwelling.⁴⁶ For example, the Supreme Court of Washington held that

[w]hatever features of mobility the home had originally, the mobility was of the home itself. It was not a vehicle, and did not become a proscribed immobilized vehicle when its mobile characteristics were removed and it was placed upon a foundation. It was prefabricated one-family dwelling unit which was not prohibited upon the land in question.⁴⁷

The reasoning of the Washington case and other cases in accord could easily be applied to municipal ordinances in North Carolina that emphasize the character of a mobile home as a vehicle.⁴⁸ However, many North Carolina municipalities have drafted provisions defining mobile homes very broadly, and these definitions would probably be construed to cover mobile homes regardless of their permanent attachment to real estate or the nature of their design. The City of Greensboro has couched its definition of a mobile home so as to encompass every style of mobile home, including double-wide mobile homes (which are probably more similar to modular housing than to mobile homes):

Mobile home shall mean a movable or portable dwelling over 32 feet in length and over 8 feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two or more units separately towable but designed to be joined into one integral unit, as well as a portable dwelling com-

⁴⁵*Casella v. Stumpf*, 29 Misc. 2d 460, 217 N.Y.S.2d 709 (Sup. Ct. 1961).

⁴⁶*E.g.*, *Douglass Twp. v. Badman*, 206 Pa. Super. 390, 213 A.2d 88 (1965); *Commonwealth v. Flannery*, 1 Pa. D. & C. 2d 680 (Cumberland County Ct. 1954); *Lescout v. Zoning Bd.*, 91 R.I. 277, 162 A.2d 807 (1960); *City of Sioux Falls v. Cleveland*, 75 S.D. 548, 70 N.W.2d 62 (1955); *In re Willey*, 120 Vt. 359, 140 A.2d 11 (1958); *State v. Work*, 75 Wash. 2d 204, 449 P.2d 806 (1969).

⁴⁷*State v. Work*, 75 Wash. 2d 204, 207, 449 P.2d 806, 808-09 (1969).

⁴⁸*See, e.g.*, CANTON, N.C., CODE § 19-2 (37) (1971); GASTONIA, N.C., CODE § 25-2(36) (1971); REIDSVILLE, N.C., CODE app. B, art IX, § 1 (1971); SALISBURY, N.C., CODE app., tit. II, § 4.02(15) (1970).

posed of a single unit. Such *vehicle* shall contain as an integral part of its construction kitchen facilities and a completely equipped bathroom containing a flush toilet, lavatory, and bathtub or shower.⁴⁹

It seems anomalous that the Greensboro ordinance expressly refers to the structure as a "vehicle" after emphasizing that it is basically a fully equipped and possibly a large-size home. Admittedly a mobile home is by one definition a vehicle, but this is not its essential purpose.⁵⁰

The ordinances of North Carolina municipalities often emphasize that a mobile home will remain a mobile home whether or not set on jacks, skirtings or masonry blocks, or other temporary or permanent facilities.⁵¹ Therefore, the only real distinction between the mobile home as broadly defined by ordinance and a prefabricated or modular house may be the fact that the mobile home is designed to be towed on its own chassis.⁵² The City of Fayetteville has abrogated even this gossamer distinction by defining a mobile home as a dwelling "[d]esigned to be transported after fabrication on its own wheels, or on a flatboard or on other trailers or detachable wheels."⁵³

It is doubtful whether a mobile home could ever be considered to be a single-family dwelling under these broad definitions; but the definitions themselves draw such tenuous distinctions between mobile homes and other homes that North Carolina courts might determine that the ordinances regulating the location of mobile homes are arbitrary and unreasonable and therefore an unconstitutional exercise of police power.

B. *The Constitutional Test: "Arbitrary and Unreasonable."*

Zoning and other regulatory legislation is presumed to be constitu-

⁴⁹GREENSBORO, N.C., CODE § 21-1(a) (1971). Compare with this the ordinance of Rocky Mount, which states that a mobile home as defined will be "considered a Mobile Home regardless of actual size and shape of the unit." ROCKY MOUNT, N.C., CODE app. B, § III (1970).

⁵⁰To illustrate this point by way of a loose analogy, a telephone pole or large log is often transported by attaching wheels and an axle to one end and towing it along public highways. However, one does not normally think of it as a type of *vehicle* but merely as a pole with wheels attached for easier transport to the site at which it is to be used for a specific purpose.

⁵¹See, e.g., CHARLOTTE, N.C., CODE § 23-2(16a) (1970); HIGH POINT, N.C., CODE § 22-9.1(A)(1)(1971); ROCKY MOUNT, N.C., CODE app. B, § III (1970). Compare the statutory provision of Illinois, which states that a mobile home "resting in whole on a permanent foundation, with wheels, tongue and hitch permanently removed shall not be construed as a . . . 'Mobile Home.'" ILL. ANN. STAT. ch. 111 ½, § 159 (1966).

⁵²See, e.g., CHAPEL HILL, N.C., CODE § 13 (1972); SALISBURY, N.C., CODE app. tit. II, § 4.02(15) (1970).

⁵³FAYETTEVILLE, N.C., CODE § 30-2(1)(b) (1971).

tional⁵⁴ and will be upheld if not arbitrary and unreasonable and if designed to promote some legitimate state interest.⁵⁵ The courts are not anxious to substitute their judgment for that of the legislative body charged with the duty and responsibility of determining social and economic policy.⁵⁶

When a municipality totally prohibits the residential use of mobile homes, the weight of authority holds that the ordinance is unconstitutional as an arbitrary and unreasonable exercise of the police power. Total exclusion of mobile homes bears no relationship to the health, morals, safety, or general welfare of the community.⁵⁷ The North Carolina Supreme Court, in *Town of Conover v. Jolly*,⁵⁸ held that Conover, which contained within its limits residential areas, neighborhood trading areas, manufacturing areas, and minor farming areas, could not totally prohibit the use of a mobile home as a permanent residence if the home presented no threat to the health or safety of its occupants or of any other person. The court found that the case did not involve any question as to the authority of a city or town, by a properly enacted zoning ordinance, to divide its territory into zones and to restrict the use of mobile homes to one or more such zones.⁵⁹ The case also did not concern the validity of an ordinance requiring mobile homes to conform to specifications as to construction, size of lot, equipment, connection with water or sewer systems, or other sanitary or safety measures.⁶⁰ The ordinance was construed as having been adopted pursuant to the municipality's authority to abate nuisances rather than its power to zone.⁶¹ Consequently, the court was able to avoid the constitutional issue by holding that since a mobile home is not a nuisance *per se*, the town exceeded its authority under the statutory grant of the power to abate nuisances.⁶² The court emphasized that it did not reach the serious

⁵⁴See, e.g., *Morey v. Doud*, 354 U.S. 457, 464 (1957); *United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 (1938); *City of Gastonia v. Parrish*, 271 N.C. 527, 157 S.E.2d 154 (1967).

⁵⁵See, e.g., *Dandridge v. Williams*, 397 U.S. 471, 487 (1970); *McGowan v. Maryland*, 366 U.S. 420, 426 (1961). See also *Zahn v. Board of Pub. Works*, 274 U.S. 325 (1927); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁵⁶See, e.g., *Dandridge v. Williams*, 397 U.S. 471, 486 (1970); *Helms v. City of Charlotte*, 255 N.C. 647, 122 S.E.2d 817 (1961).

⁵⁷See, e.g., *Borough of Mountville v. Miller*, 7 Pa. D. & C.2d 577 (1956); *In re Falls Twp. Trailer Ord.*, 84 Pa. D. & C. 199 (1952). See ANNOT., 96 A.L.R.2d 232, 237-39 (1964).

⁵⁸277 N.C. 439, 177 S.E.2d 879 (1970).

⁵⁹*Id.* at 442, 177 S.E.2d at 881.

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.* at 444, 177 S.E.2d at 882.

question of whether such an ordinance, if authorized by statute, would violate article one, section seventeen of the North Carolina Constitution, which provides that no person may be deprived of his liberty or property without due process of law.⁶³

If the ordinance of Conover had been adopted as a zoning ordinance, the court probably would have followed the weight of authority and held the ordinance unconstitutional. In fact, the lower court and the defendant mobile home owner were of the opinion that although the ordinance in question was not specifically designated a zoning ordinance, it was in the nature of one and that under the applicable law of zoning the ordinance was unconstitutional.⁶⁴ Even the Town of Conover conceded that where a zoning ordinance totally prohibits the use of mobile homes it exceeds the governing body's police power and is constitutional.⁶⁵

When ordinances do not totally prohibit mobile homes but merely confine their use to approved parks, the ordinances are generally held to be valid and enforceable and not an arbitrary and unreasonable exercise of the police power.⁶⁶ However, as mobile home manufacturers continue to lessen the distinction between the mobile home and prefabricated and modular housing, and as mass-produced housing begins to supplant traditional housing, the confinement of mobile homes to mobile home parks may begin to be construed as arbitrary and unreasonable. Many of the elaborate definitions discussed earlier in this comment and the restrictions imposed upon mobile homes as defined in the ordinances are susceptible to being construed as arbitrary and unreasonable. The zoning ordinance of Chapel Hill provides a good example of a meaningless distinction between mobile homes and prefabricated housing. A comparison of the definitions of both types of dwellings reveals that the only distinction is that a mobile home is designed to roll on its own chassis while a prefabricated house must be placed on a flatbed

⁶³*Id.*

⁶⁴Record at 17-19; Brief for Appellee at 3.

⁶⁵Brief for Appellant at 3. Conover argued, however, that because of the exceptions to the provision permitting the use of mobile homes as construction offices and other non-residential purposes, the ordinance was not a total prohibition. *Id.*

⁶⁶*See, e.g.,* Davis v. Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 702 (Fla.) (en banc), cert. denied, 346 U.S. 867 (1953); Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364 (1960); Wyoming v. Hermeyer, 321 Mich. 611, 33 N.W.2d 93 (1948); Mobile Home Owners Protective Ass'n v. Town of Chatham, 33 App. Div. 2d 78, 305 N.Y.S.2d 334 (1969); People v. Clute, 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (Washington County Ct. 1965).

trailer to be moved.⁶⁷ If the manufacturer simply construed the "mobile home" without axles or wheels and delivered it on a flatbed trailer, the dwelling could fall within the definition of a prefabricated house. When attached to the real estate, the mobile home is only slightly more mobile than a prefabricated house since the wheels and axles are often removed anyway.⁶⁸ However, the City of Chapel Hill restricts mobile homes to mobile home parks or to one residential district, while prefabricated housing is accorded the same status as a comparable conventional housing.⁶⁹

Although the court in *Town of Conover v. Jolly*⁷⁰ did not decide whether a mobile home could always be confined to a mobile home park, it did state that a mobile home that is well constructed and equipped and connected with public utility systems cannot be deemed detrimental to the health, morals, comfort, safety, convenience, and welfare of the people in the community without regard to the nature and use of the surrounding property.⁷¹ The language suggests that a mobile home may attain the status of a single-family dwelling and cannot be excluded from the appropriate district to be used for comparable dwellings.

Municipal ordinances that confine mobile home parks to districts that are not essentially residential in character have also generally been held valid.⁷² Mobile home parks do present problems of safety, sanitation, and lack of conformity with other residential uses, but the same problems exist with respect to other multi-family dwellings that are usually permitted in residential districts. It is also true that at least as far as the operator is concerned the mobile home park is a commercial enterprise, and, relying upon this excuse, many municipalities have confined mobile home parks to commercial or other non-residential districts.⁷³ This has occurred despite of the fact that the operation of

⁶⁷See CHAPEL HILL, N.C., CODE § 13 (1972). See also GREENSBORO, N.C., CODE § 21-1 (1971).

⁶⁸The municipal ordinance could reasonably require the mobile home to be connected to a permanent foundation and require a permanent enclosure around the base of the mobile home. E.g., MORGANTON, N.C., CODE app. A, § 8(k) (1970).

⁶⁹CHAPEL HILL, N.C., CODE § 3 (1972).

⁷⁰277 N.C. 439, 177 S.E.2d 879 (1970).

⁷¹*Id.* at 443, 177 S.E.2d at 881.

⁷²See, e.g., *Town of Greenland v. Hussey*, ____ N.H. ____, 266 A.2d 122 (1970); *Napierkowski v. Gloucester Twp.* 29 N.J. 481, 150 A.2d 481 (1959); *Corning v. Town of Ontario*, 204 Misc. 38, 121 N.Y.S.2d 288 (Sup. Ct. 1953).

⁷³See generally HODES & ROBERSON 156; *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E.2d 870 (1957).

mobile home parks is no more commercial than is the operation of apartment buildings. Arguably, mobile home parks should be considered in the nature of "horizontal apartment buildings" and should be permitted in multi-family residential districts. To those who dwell in mobile home parks—or apartments—their way of life is not a commercial venture but rather is simply one method of satisfying the requirement of shelter. The Town of Jacksonville has recognized that "[m]obile home parks are residential uses and should be located in appropriate residential districts."⁷⁴

The Supreme Court of North Carolina, in *City of Raleigh v. Morand*,⁷⁵ held that a Raleigh ordinance that prohibited the construction and maintenance of a mobile home park within a residential zone was a valid exercise of the police power and could be enforced by injunctive relief. The mobile home park in *Morand* was operated for profit.⁷⁶ Although the *Morand* decision has been reaffirmed in subsequent decisions,⁷⁷ it was handed down in 1957 and deserves reconsideration. The mobile home park of today, because it is usually subjected to stringent regulations of maintenance, facilities, and inspection, has little in common with the camps for transients which were widespread in the past. At present over four million people reside in mobile homes.⁷⁸ That many people should not be prohibited from living in residential areas of the community.

Municipalities have offered many reasons why ordinances regulating the location of mobile homes should not be held arbitrary or unreasonable. Three of the justifications most often raised deserve special mention. First, some municipalities have argued that the problem of taxing mobile homes has resulted in mobile home dwellers not paying for their share of neighborhood school expenses and community services.⁷⁹ However, since North Carolina levies a tax upon both real and personal property, the mobile home will be subject to taxation in any event. Furthermore, the mobile home is not likely to evade the county tax supervisor because of its mobility; mobile home park operators in North Carolina must report to the tax supervisor of the county the name

⁷⁴JACKSONVILLE, N.C., CODE § 25-10.1 (1971).

⁷⁵247 N.C. 363, 100 S.E.2d 870 (1957), *appeal dismissed*, 357 U.S. 343 (1958).

⁷⁶*Id.* at 365, 100 S.E.2d at 871.

⁷⁷*See, e.g.*, *Town of Garner v. Weston*, 263 N.C. 487, 139 S.E.2d 642 (1964).

⁷⁸*See* HODES & ROBERSON 161.

⁷⁹*Id.* at 10.

of the owner of and the description of each mobile home in the park,⁸⁰ and any mobile home on an individual lot within the municipality will be conspicuous to county officials. Secondly, some municipalities have argued that because mobile homes are usually manufactured outside the municipality that seeks to ensure their safe construction under the applicable building codes, there is no opportunity for inspection during construction for structural strength, adequacy of wiring, sufficiency of plumbing, and heating facilities.⁸¹ However, this argument has lost much of its vitality since the General Assembly in 1969 adopted the Uniform Standards Code for Mobile Homes Act to ensure safe construction of mobile homes sold in this state.⁸² At least one purpose of the act was to obviate the necessity of local concern over the quality of construction of mobile homes.⁸³ A third justification for severely restricting the location of mobile homes is the preservation of aesthetic qualities, and thus property values, of a particular neighborhood. This justification traditionally has been considered one of the legitimate purposes of zoning. The United States Supreme Court, in *Village of Euclid v. Ambler Realty Company*,⁸⁴ stated in dicta that the governing body has a legitimate interest in preserving a particular character of a neighborhood (in that case, a "high-class" neighborhood), and dwellings not of the same caliber or function as the other dwellings of the neighborhood may destroy the character of the neighborhood and "come very near to being nuisances."⁸⁵ However, the large number of people choosing to reside in mobile homes and the scarcity of adequate conventional housing and available land in municipalities may now lead to the conclusion that aesthetics alone is not sufficient justification to prohibit mobile homes in a particular district.⁸⁶ Changed conditions prompted the North Carolina Court of Appeals in a case dealing with the location of apartments in a low-density district to re-evaluate the impact of the *Euclid* decision:

That landmark case which first recognized municipal planning and regulation of land use as a valid exercise of the police power of the

⁸⁰N.C. GEN. STAT. § 105-311 (Supp. 1971).

⁸¹See, e.g., Brief for Appellant at 4, *Town of Conover v. Jolly*, 277 N.C. 439, 177 S.E.2d 879 (1970).

⁸²N.C. GEN. STAT. §§ 143-144 to -151.1 (Supp. 1971).

⁸³See Foreword to N.C. DEP'T OF INSURANCE, REGULATIONS FOR MOBILE HOMES (1970).

⁸⁴272 U.S. 365 (1926).

⁸⁵*Id.* at 394-95.

⁸⁶See, e.g., *Commonwealth v. Flannery*, 1 Pa. D. & C.2d 680 (1954).

states was decided in 1926. Since that time more and more people have turned to apartments as permanent homes—many by choice. Few, if any, cities today enjoy the luxury of having enough land available to accommodate substantially all their citizens in detached houses We are therefore not persuaded that conditions today are the same as those that prompted the dicta in the *Euclid* case almost half a century ago.⁸⁷

This reasoning would seem applicable to mobile homes or mobile home parks as well. This is not to say that mobile homes or mobile home parks should be permitted in zoning districts accommodating dwellings far more expensive than mobile homes.⁸⁸ Nevertheless, with only a modicum of imagination a municipality can devise a comprehensive zoning plan to determine how many classes of residential districts it requires and what types of dwellings should be assigned to each district.

C. *The Constitutional Test of "Rigid Scrutiny."*

Under the traditional tests of due process and equal protection, the mobile home owner or park operator has the difficult burden of showing that the restrictive ordinance is arbitrary and unreasonable and is designed to promote no legitimate purpose before it can be held unconstitutional. If, however, the aggrieved party can convince the court that the ordinance is based upon a classification of race, national origin, or lineage⁸⁹ or infringes upon a fundamental right,⁹⁰ the court will apply a standard of rigid scrutiny to test the constitutionality of the ordinance.

Municipal ordinances severely restricting the permissible locations of mobile homes have the effect of discriminating between classes of residents on the basis of wealth. An ordinance may exclude persons from living in residential districts because they can not afford to buy or rent a dwelling in that district. However, those same persons may be able to buy a mobile home and purchase or rent a lot.⁹¹ Even if the

⁸⁷Allred v. City of Raleigh, 7 N.C. App. 602, 611, 173 S.E.2d 533, 538 (1970), *rev'd on other grounds*, 277 N.C. 530, 178 S.E.2d 432 (1971).

⁸⁸However, permitting residence in a district according to one's ability to pay has come under increased attack. *See, e.g.,* Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1969).

⁸⁹*See, e.g.,* Loving v. Virginia, 388 U.S. 1, 9 (1967); McLaughlin v. Florida, 319 U.S. 184, 192 (1964); Korematsu v. United States, 323 U.S. 214, 216 (1944).

⁹⁰*See, e.g.,* Shapiro v. Thompson, 394 U.S. 618 (1969); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

⁹¹*See* notes 9-10 & accompanying text *supra*.

ordinance permits mobile homes in one or more residential districts but confines them to approved parks, the mobile home dweller may still be disadvantaged. Land costs applied to the mobile home dweller in the form of rents may be higher because of zoning regulations limiting the development of mobile home park sites.⁹² Consequently, the would-be mobile home dweller must either pay high rent in a mobile home park or pay a high price for a conventional dwelling in a residential area.

Nevertheless, classifications based on wealth are not sufficient to invoke the constitutional test of rigid scrutiny unless a fundamental right is involved. In *Dandridge v. Williams*,⁹³ for example, the Supreme Court upheld the validity of a state's limitation of welfare benefits to the poor even though the Court conceded that "[t]he administration of public welfare assistance . . . involves the most basic economic needs of impoverished human beings."⁹⁴ The Court declined to apply the constitutional test of rigid scrutiny: "The Fourteenth Amendment gives the federal courts no power to impose upon the states their view of what constitutes wise economic or social policy."⁹⁵ The mobile home, like public assistance, may also provide a basic need for those who can afford few other means of shelter, but a federal or state court is not likely to find a fundamental right to reside in a particular area regardless of the ability to pay for permissible dwellings. Federal courts have either reaffirmed the holding of *Euclid*⁹⁶ or have avoided the constitutional issue,⁹⁷ and state courts have consistently proceeded along classic due process and equal protection standards.⁹⁸

CONCLUSION

Municipal ordinances regulating the location of mobile homes may often be the result of stereotyped prejudices against mobile homes and mobile home dwellers; they may represent an attempt to prescribe aesthetics; they may even be motivated by a desire to protect local construction companies and other local industries related to the construction, maintenance, or furnishing of conventional dwellings. The ordi-

⁹²See D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL § 79 (1971).

⁹³397 U.S. 471 (1970).

⁹⁴*Id.* at 485.

⁹⁵*Id.* at 486.

⁹⁶See, e.g., *Zahn v. Board of Pub. Works*, 274 U.S. 325 (1927).

⁹⁷See, e.g., *People v. Stover*, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734, *dismissed for want of a substantial federal question*, 375 U.S. 42 (1963).

⁹⁸See, e.g., *City of Gastonia v. Parrish*, 271 N.C. 527, 157 S.E.2d 154 (1967).

nances may be simply a result of the reluctance to accept something that has the potential of changing the way of life in even the smallest of communities.⁹⁹ The mobility of mobile homes does create problems not encountered in the regulation of conventional housing, and reasonable, comprehensive regulation of mobile homes is necessary. But, all municipal ordinances regulating the location of mobile homes should be rooted in the underlying premise that the structures are basically single-family residences. The concept of mobile housing, whether termed mobile homes, prefabricated housing, or modular housing, is here to stay.

CHRISTIAN NESS

APPENDIX

Suggested Ordinance for the Erection of Single Mobile Homes

(1) *Installation Requirements.* Before a mobile home is erected and maintained as a single-family dwelling house outside a mobile home park, the following requirements must be met:

- (a) The tract upon which the mobile home is installed shall conform to the minimum lot size requirement of the district or zone in which the mobile home is to be located, or, if there is no such requirement, then the tract shall consist of at least _____ square feet if public water and sewage services are not available, or _____ square feet if such services are available;
- (b) The mobile home must be installed so as to conform with all front-yard, side-yard, and rear-yard set-back lines applicable to immobile housing in that district or zone. Otherwise, the mobile home shall be installed at least—feet from all property lines;
- (c) The mobile home must be installed upon and securely fastened to a frost-free foundation or footer, and in no event shall it be erected on jacks, loose blocks, or other temporary materials;
- (d) An enclosure of compatible design and material must be erected around the entire base of the mobile home. Such enclosure must provide sufficient ventilation to inhibit decay and deterioration of the structure;
- (e) The mobile home must be connected to public water and sewer systems, if available. If not, the owner must provide a potable water supply from his own or an adjacent well and must provide a septic

⁹⁹See generally R. BABCOCK, *THE ZONING GAME* 153-85 (1966). The author notes that many zoning ordinances are not the product of a sincere and disinterested concern for the health, morals, and welfare of the community but are influenced by political pressures.