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Zoning Ordinances that Exclude Mobile Homes from Districts Reserved for Single-Family Dwellings

Approximately one North Carolinian in ten lives in a mobile home.¹ The demand for this form of housing has increased because of the steadily rising costs of conventional housing, as well as improvements in the design and construction of mobile homes.² No longer viewed as an unfortunate necessity, the mobile home has become a legitimate, even desirable, alternative to a traditional site-built home.³ As mobile homes begin to look more like conventional housing, the mobile home owner begins to resemble the conventional home owner. In age, occupation, number of children, and income, the demographic characteristics of the mobile home owner approaches the average home owner.⁴

The law, however, has failed to keep pace with these developments. Although the nation has experienced a serious low-cost housing shortage since World War II, state and federal governments only recently have passed regulations that enable mobile homes to help alleviate this problem.⁵ Local governments, which could stimulate the use of the mobile home through their zoning power,⁶ have responded even more slowly. Although local resistance to the mobile home may be eroding,⁷ many ordinances barring mobile homes

1. See Weber, *Mobile homes gain ground, respect in N.C. communities*, The Raleigh News & Observer, Jan. 8, 1984, at 30A, col. 2. Mobile homes are becoming known as "manufactured housing." *Id.*

2. B. HODES & G. ROBERSON, *THE LAW OF MOBILE HOMES* 7-8 (3d ed. 1974); Anderson, *The Regulation and Accommodation of Mobile Homes*, 1975 INST. ON PLAN. ZONING & EMINENT DOMAIN 151, 151.

3. Anderson, *supra* note 2, at 151.

4. See *Acceptance Grows for Mobile Homes*, 16 LAND USE DIG. Aug. 15, 1983.

5. See *infra* notes 27-28 and accompanying text.

6. Although regulation of the location of mobile homes is accomplished chiefly through zoning, other means are available. The state directly controls the location of mobile homes through floodplain control laws, see N.C. GEN. STAT. §§ 143-215.51 to -215.61 (1983), and coastal area management acts, see *id.* §§ 113A-100 to -128. See Brough, *State Laws and the Regulation of Mobile Homes*, POPULAR GOV'T, Summer 1975, at 12.

Municipal regulation of mobile home location may be accomplished not only through zoning but also through the power to abate nuisances. See N.C. GEN. STAT. § 160A-193 (1982). The North Carolina Supreme Court, however, has determined that mobile homes are not nuisances per se and therefore may not be excluded from a municipality acting under its power to abate nuisances. See *Town of Conover v. Jolly*, 277 N.C. 439, 177 S.E.2d 879 (1970). Local boards of health are the given authority under N.C. GEN. STAT. § 130-17(b) (1981) to make such rules and regulations as may be necessary for the protection of public health. This is a potential means of regulating the location of mobile homes. See Brough, *supra*, at 13. Mobile homes also may be restricted by private covenants. See Bartke & Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491, 514 (1970).

7. See Weber, *supra* note 1. See also 2 A. RATHKOPF & D. RATHKOPF, *THE LAW OF ZONING AND PLANNING* 19-4 to -5 (4th ed. 1983) (noting the increasing share of the low-cost housing market captured by the mobile home industry); 2 N. WILLIAMS, *AMERICAN PLANNING LAW* §§ 57.01, 57.42 n.280 (1974 & Cum. Supp. 1983) (noting the increase in litigation involving mobile homes). One writer has detected, perhaps over-optimistically, "a shifting of public attitudes from psychological rejection of manufactured homes to increasingly unqualified acceptance." Dean, *What is a Mobile Home? The Law and Manufactured Housing*, CASE & COM., Sept.-Oct., 1981, at 10, 16.

from residential districts still exist in city and county codes,⁸ and likely will remain there for the near future. This note discusses the development of mobile home law, the types of zoning ordinances that exclude mobile homes from residential districts, and two possible legal challenges to these ordinances.

The modern mobile home evolved from the travel trailers of the 1920s.⁹ Travel trailers originally were designed to be pulled by cars and to serve as temporary shelter for tourists and itinerant workers.¹⁰ Because these early mobile homes were not suited for use as permanent housing,¹¹ communities objected to their location in conventional neighborhoods. Mobile homes also were considered unsafe because they were not constructed in accordance with state or local building codes and their low cost aroused suspicions of shoddy design and workmanship. Some of the materials found in mobile homes were highly flammable, and fires posed a danger not only to the occupants of the mobile homes but to the lives and property of surrounding landowners. Early mobile homes also were relatively lightweight and when not securely affixed to the land could be overturned easily by high winds. They were also considered dangerous to public health because they lacked the sanitary facilities of conventional housing and were not subject to water and sewer regulation.¹²

Furthermore, mobile homes were considered a burden to the community. Their occupants had to be provided with all the municipal services afforded other residents of the community, such as garbage collection and access to public schools.¹³ When a large number of mobile homes were situated in a small area the high population density placed a considerable strain on municipal resources.¹⁴ Moreover, the low cost and rapid depreciation of mobile homes deprived municipalities of tax revenues that might have offset the burdens imposed.¹⁵ Mobile homes often were classified as personalty, and many states taxed personalty at a lower rate than realty.¹⁶ Consequently, the public accused mobile home owners of failing to pay their own way.

The public also objected to mobile homes on moral grounds. Mobile home occupants were considered undesirable nomads with no stake in the

8. See, e.g., ordinance cited *infra* note 116.

9. See, e.g., 2 R. ANDERSON, *AMERICAN LAW OF ZONING* § 14.01 (2d ed. 1976); B. HODES & G. ROBERSON, *supra* note 2, at 5.

10. See 2 R. ANDERSON, *supra* note 9, § 14.01.

11. See 2 N. WILLIAMS, *supra* note 7, § 57.03.

12. Early mobile homes were exempt from water and sewer regulation because municipalities viewed them as vehicles rather than houses. See, e.g., *Napierkowski v. Township Comm. of Gloucester*, 29 N.J. 481, 150 A.2d 481 (1959); *Midgarden v. City of Grand Forks*, 79 N.D. 18, 54 N.W.2d 659 (1952). See 2 R. ANDERSON, *supra* note 9, § 14.05; 2 N. WILLIAMS, *supra* note 7, § 57.09.

13. 2 R. ANDERSON, *supra* note 9, § 14.05; 2 N. WILLIAMS, *supra* note 7, § 57.09.

14. See, e.g., *Rezlar v. Village of Riverside*, 28 Ill. 2d 142, 190 N.E.2d 706 (1963); *Town of Yorkville v. Fonk*, 3 Wis. 2d 371, 88 N.W.2d 319, *cert. denied*, 358 U.S. 58 (1958). See also 2 R. ANDERSON, *supra* note 9, §§ 14.01, 14.05; 2 N. WILLIAMS, *supra* note 7, § 57.15.

15. See, e.g., *New York Mobile Home Ass'n v. Steckel*, 9 N.Y.2d 533, 175 N.E.2d 151 (1961), *cert. denied*, 369 U.S. 150 (1962). See generally Kuklin, *Housing and Technology: The Mobile Home Experience*, 44 TENN. L. REV. 765, 809-26 (1977).

16. Kuklin, *supra* note 15, at 812.

community.¹⁷ The close quarters of the mobile home were suspected of producing an undesirable precocity in children, potentially causing moral harm.¹⁸

Finally, mobile homes were believed to lower the value of surrounding property.¹⁹ Mobile homes were considered ugly, or at least sufficiently different in appearance to disturb the architectural harmony of the neighborhood.²⁰ Furthermore, because mobile home occupants were considered undesirable, the presence of mobile homes was thought to lower the "social tone" of the neighborhood.²¹ In response to all these objections municipalities enacted zoning ordinances restricting the location of mobile homes.²²

Despite these zoning ordinances and objections to mobile homes, mobile home ownership has increased dramatically since the 1920s.²³ One reason for this growth is the serious national shortage of low-cost housing,²⁴ which has been aggravated by increased unemployment.²⁵ Since the conventional housing industry cannot meet the increased need for low-cost housing, more people have turned to the mobile home as their only form of affordable housing.²⁶ In the late 1960s the federal government recognized mobile homes as a means of solving the housing problem.²⁷ State and local authorities gradually have followed the lead of the federal government,²⁸ and mobile homes have become

17. See *In re Tradlock*, 261 N.C. 120, 122, 134 S.E.2d 177, 179 (1964) (referring to the "undesirable type of people who would live in the mobile homes"). See also *Streytle v. Board of Property Assessment, Appeals and Review*, 173 Pa. Super. 324, 98 A.2d 410 (1953); *Crane v. Board of County Comm'rs*, 175 Neb. 568, 122 N.W.2d 520 (1963). See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-4.

18. See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-4.

19. See, e.g., *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). See *Kuklin*, *supra* note 15, at 823.

20. See *Kuklin*, *supra* note 15, at 823. The aesthetic problem presented by mobile homes often is compounded by a proliferation of outbuildings around the unit due to a lack of storage space within. Insofar as zoning ordinances restricting the location of mobile homes are founded on aesthetic considerations, it should be noted that a majority of American jurisdictions have approved zoning on aesthetic grounds. See *Bufford, Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation*, 48 UMKC L. REV. 125 (1980). The North Carolina Supreme Court approved aesthetic zoning in *State v. Jones*, 305 N.C. 520, 290 S.E.2d 675 (1982). See Note, *State v. Jones: Aesthetic Regulation—From Junkyards to Residences?*, 61 N.C.L. REV. 942 (1983).

21. See 2 N. WILLIAMS, *supra* note 7, at 473.

22. See *infra* notes 57-63, 116 and accompanying text.

23. See B. HODES & G. ROBERSON, *supra* note 2, at 6; 2 N. WILLIAMS, *supra* note 7, at 448, 451; *Smith, The Impact of Mobile Homes on the Housing Market*, 41 POPULAR GOV'T 1, at 1 (1975).

24. See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-4.

25. See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-4.

26. See SHEPARD'S MOBILE HOMES AND MOBILE HOME PARKS, § 1.2 (L. Davis ed. 1975) [hereinafter cited as SHEPARD'S]; 2 N. WILLIAMS, *supra* note 7, § 57.01.

27. In 1968 Congress launched "Operation Breakthrough" in an attempt to help solve the nation's housing problem. The Department of Housing and Urban Development was authorized to subsidize or directly finance 4,000,000 new housing units, including mass-produced low-cost units, over a 10-year period. See *Flippen, Constitutionality of Zoning Ordinances Which Exclude Mobile Homes*, 12 AM. BUS. L.J. 15, 16-17, nn.16-17 (1974). In 1970 President Nixon, in a message to Congress, declared that an increase in the supply of mobile homes was necessary for the nation to reach its housing goals. M. DRURY, MOBILE HOMES 114 (2d ed. 1972). Later, Congress passed the National Mobile Home Safety and Construction Act of 1974, 42 U.S.C. §§ 5401 to 5426 (1976), recognizing mobile homes as a significant form of housing and regulating them.

28. Official recognition of the importance of the mobile home for North Carolina citizens

more acceptable to the public.²⁹

The transformation in design and construction of mobile homes also has contributed to their increasing popularity. The sudden and large scale demand for the mobile home as alternative permanent housing during and immediately following World War II led to changes in design and construction.³⁰ After the war the dimensions of the standard unit were increased steadily, first in length and then in width.³¹ Greater and more versatile interior space was introduced with the "double-wide,"³² the "expandable,"³³ and multistory units.³⁴ Mobile homes could no longer be pulled behind cars but had to be towed by large trucks or carried on flatbed trailers to their sites.³⁵ Today, mobile homes usually are stripped of their wheels and tongues and placed on permanent foundations.³⁶

As the mobile home has approached the conventional home in size and immobility, so also in appearance. Mobile homes now are equipped with all the amenities of site-built housing, including all major appliances and complete furnishings.³⁷ Pitched and shingled roofing and masonite or wood siding also are available.³⁸

Thus, many of the objections that led to restrictions on the location of mobile homes are no longer valid because of changes in design, construction, and regulation.³⁹ One objection, however, remains both widespread and ar-

includes the following statements: (1) By the North Carolina General Assembly: "[M]obile homes have become a primary housing resource for many citizens of North Carolina." N.C. GEN. STAT. § 143-143.8 (1983); (2) By the North Carolina Supreme Court: Mobile homes are "'a perfectly respectable, healthy and useful kind of housing, adopted by choice by several million people in this country today.'" *Town of Conover v. Jolly*, 277 N.C. 439, 443, 177 S.E.2d 879, 882 (1970) (quoting *Vickers v. Township Comm. of Gloucester*, 37 N.J. 232, 181 A.2d 129 (1962), cert. denied, 371 U.S. 233 (1963)); (3) By the Multi-County Planning Commission, Region G: "One technique for avoiding the high cost of housing is purchasing a mobile home. As the need for less expensive housing increases, the importance of the mobile home in housing the people of our region will emerge." B. CALLOWAY, L. COX, W. COLONNA, C. LOOP, M. BORUM & T. COOKE, REGIONAL HOUSING PLAN: STATE MULTI-COUNTY PLANNING REGION G 63-64 (1977) [hereinafter cited as B. CALLOWAY].

29. See *Anderson*, *supra* note 2, at 152. Other factors leading to the increased popularity of the mobile home, include the adoption of industry-wide quality standards, see *SHEPARD's*, *supra* note 26, § 1.2, and the availability of more favorable financing to the mobile home purchaser. See *id.*; *M. DRURY*, *supra* note 27, at 93-94. Also, the development of more and better mobile home parks, see *SHEPARD's*, *supra* note 26, § 1.2, along with more creative land use planning, see *Anderson*, *supra* note 2, at 163, have helped foster public acceptance.

30. B. HODES & G. ROBERSON, *supra* note 2, at 2.

31. See 2 N. WILLIAMS, *supra* note 7, § 57.03.

32. See 2 N. WILLIAMS, *supra* note 7, § 57.03.

33. An "expandable" is a unit with "one or more room sections that fold, collapse, or telescope into the principal unit while transported on the highways and are firmly joined together when stationed on the site, provid[ing] additional living-room area." B. HODES & G. ROBERSON, *supra* note 2, at xxxvii.

34. *M. DRURY*, *supra* note 27, at 99.

35. *M. DRURY*, *supra* note 27, at 93-94.

36. 2 N. WILLIAMS, *supra* note 7, § 57.03.

37. *SHEPARD's*, *supra* note 26, § 1.1.

38. 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-5.

39. For the objections to mobile homes, see *supra* notes 11-21 and accompanying text.

One group of objections was based on a concern for the public safety. Mobile homes today are built in accordance with federal safety and construction regulations, see *supra* note 27, which

guably valid: that mobile homes reduce the value of surrounding property.⁴⁰ Even today some mobile homes, in terms of roof pitch, exterior siding, or other architectural details, differ from site-built homes. On the other hand, in size, shape, and materials, many modern mobile homes are "scarcely distinguishable from site-built homes."⁴¹ Thus, it is unrealistic to distinguish between mobile homes and site-built homes per se. The effect of a house on surrounding property values is a highly subjective determination. Size, age, appearance, condition, and upkeep must be considered, and in these respects mobile homes do not differ from other housing.

Given the strong policy arguments for opening more land to mobile homes,⁴² it is difficult to justify the persistence of ordinances excluding mobile homes from zoning districts reserved for single-family dwellings. The persistence of some of these ordinances undoubtedly is attributable to governmental inertia,⁴³ while the longevity of other ordinances may be the result of the personal prejudices of local officials.⁴⁴ Nevertheless, the majority of these ordinances have survived because some measure of public resistance to the mobile home also has survived.⁴⁵

Public attitudes toward the mobile home are in transition. Although the public accepts mobile homes much more today than it did before,⁴⁶ acceptance is by no means unanimous or unequivocal. Because of the shortcomings of early trailers, communities relegated them to the least desirable areas of the municipality—often highly visible commercial or industrial areas, or areas

specifically provide for the elimination of fire hazards. Additionally, the mobile home industry has established its own standards which, in some ways, are more stringent than the federal regulations. See SHEPARD'S, *supra* note 26, § 1.2. The danger of high winds also has been largely eliminated. The larger and heavier units manufactured today are less vulnerable to high winds than were their predecessors. The trend towards immobilization, *see supra* notes 35-36 and accompanying text, has reduced further the threat of wind damage. Both the North Carolina Building Code and the Office of the Commissioner of Insurance have issued rules regarding the secure anchoring of mobile homes.

The objections to mobile homes that were based on concern for public health also are no longer valid. Today, mobile homes are manufactured with all the sanitation facilities of site-built homes. *See supra* note 37 and accompanying text.

The modern mobile home owner and the site-built home owner are very similar, *see supra* note 4 and accompanying text. Thus, there is no longer reason for criticism that mobile home residents are less respectable than the rest of the population. *See, e.g.,* M. DRURY, *supra* note 27, at 71-72; Bartke & Gage, *supra* note 6, at 495; Kuklin, *supra* note 15, at 812-19.

Mobile home owners also were considered objectionable because they failed to pay their way in taxes. Many states today tax mobile homes as realty. Although North Carolina continues to tax mobile homes as personalty, personalty and realty are taxed at the same rate. It also has been argued that "higher-end" mobile homes actually appreciate over the years, as do site-built homes, thus enhancing local revenues. *See* B. CALLOWAY, *supra* note 28, at 37-38.

40. *See In re Tradlock*, 261 N.C. 120, 122, 134 S.E.2d 177, 179 (1964); 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-5.

41. M. DRURY, *supra* note 27, at 71-72.

42. *See supra* notes 24-26 and accompanying text.

43. *See* Bartke & Gage, *supra* note 6, at 496, 525; Kuklin, *supra* note 15, at 826.

44. *See* Bartke & Gage, *supra* note 6, at 525; Kuklin, *supra* note 15, at 827.

45. *See* Bartke & Gage, *supra* note 6, at 497; Kuklin, *supra* note 15, at 809. This residue of public hostility is the chief cause of the continued existence of zoning ordinances excluding mobile homes. B. CALLOWAY, *supra* note 28, at 36-38. *See also* M. DRURY, *supra* note 27, at 15; Kuklin, *supra* note 15, at 825-26.

46. *See supra* note 7 and accompanying text.

along highways.⁴⁷ These deteriorating units in unattractive locations continue to influence the public image of the mobile home. Newer and more attractive units, on the other hand, frequently are located out of public view.⁴⁸ Perhaps more fundamentally, the mobile home is resisted because it does not fulfill the public's image of ideal housing.⁴⁹ This ideal conflicts with the need for low-cost housing; until it changes those who cannot afford the ideal home will continue to suffer. Failure to change public attitudes could result in "an indefensible waste of this potentially powerful housing resource."⁵⁰ Unless the courts are willing to intervene, the ultimate success of the mobile home industry will depend on the ability of its proponents to convince the public that highly restrictive zoning ordinances no longer are necessary.⁵¹

Because such negative attitudes persist a variety of exclusionary zoning ordinances remain on the books. For example, ordinances establishing minimum floor space⁵² or minimum lot size⁵³ requirements indirectly exclude mobile homes. In addition, some zoning ordinances directly restrict the location of mobile homes. Some ordinances specifically have excluded mobile homes from the entire community.⁵⁴ Aside from the constitutional questions they raise,⁵⁵ these ordinances force mobile home owners to locate their units outside the city limits. This unregulated placement of units outside the city's jurisdiction, however, may hinder a city's expansion.⁵⁶

Rather than excluding mobile homes from the community entirely, most municipalities exclude them from districts reserved for single-family dwellings.⁵⁷ Three types of zoning ordinances have been used for this purpose. First, some ordinances *expressly* exclude all mobile homes from these dis-

47. See *infra* notes 57-63, 116, and accompanying text.

48. See Kuklin, *supra* note 15, at 814.

49. See M. DRURY, *supra* note 27, at 9.

50. See B. CALLOWAY, *supra* note 28, at 38. See also Note, *Mobile Homes—Some Legal Questions*, 75 W. VA. L. REV. 382, 401 (1973) (growing importance of mobile homes in housing industry mitigates heavily against their complete prohibition).

51. See Dean, *supra* note 7, at 10; Kuklin, *supra* note 15, at 838-42; Note, *Zoning Restrictions Applied to Mobile Homes*, 20 CLEV. ST. L. REV. 196, 205 (1971).

52. Even the largest mobile homes are limited in size. Setting minimum floor space requirements thus can effectively exclude mobile homes from an area. See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-23 to -24.

53. Minimum lot size requirements could place the cost of lots beyond the reach of those persons for whom the mobile home is the only affordable form of housing.

54. Few North Carolina municipalities have adopted this kind of ordinance. See Comment, *Mobile Homes in North Carolina: Residence or Vehicle?*, 50 N.C.L. REV. 612, 615 (1972). For the classic discussion of the total exclusion of mobile homes, see *Napierkowski v. Township Comm. of Gloucester*, 29 N.J. 481, 150 A.2d 481 (1959).

55. A full discussion of the validity of zoning ordinances that totally exclude mobile homes from a community is beyond the scope of this note. These ordinances, however, generally have been held unconstitutional. See 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-19 to -20. See also Brough, *supra* note 6, at 20. Although the North Carolina Supreme Court never has faced this issue, it has been suggested that the court would follow the weight of authority. See Comment, *supra* note 54, at 623. For cases upholding such ordinances, see Moore, *The Mobile Home and the Law*, 6 AKRON L. REV. 1, 8 n.39 (1973).

56. See Anderson, *supra* note 2, at 165. In North Carolina, cities and counties may mitigate this problem through their power of extraterritorial zoning. See, e.g., *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E.2d 870 (1957), *cert. denied*, 357 U.S. 343 (1958).

57. 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-21.

tricts.⁵⁸ Second, some ordinances restrict mobile homes to mobile home parks.⁵⁹ Both of these types of ordinances expressly distinguish mobile homes from single-family dwellings.⁶⁰ Third, some reserve a district for "single-family dwellings" without expressly restricting mobile homes from the district or to any other district.⁶¹ Mobile homes are then banned from these areas by construing the word "dwelling" to exclude mobile homes.⁶² All three types of ordinances can be oppressive if there is a shortage of land zoned for mobile homes or if this land is in an undesirable location.⁶³

Two issues frequently have arisen regarding zoning ordinances that exclude mobile homes from districts reserved for single-family dwellings.⁶⁴ The first involves the interpretation of the ordinance; the second involves its constitutionality.

Of the three types of ordinances, only the third presents a significant interpretation problem. Ordinances that expressly restrict mobile homes from residential districts or to mobile home parks usually avoid interpretation problems by defining the term "mobile home." Such definitions typically are very broad, classifying as a "mobile home" any unit designed to be transported on its own wheels regardless of whether it has become immobilized.⁶⁵ But the third type of ordinance, which merely limits a district to single-family dwellings without specifically defining or restricting mobile homes,⁶⁶ presents the question of whether a mobile home is a "dwelling" within the meaning of the ordinance.⁶⁷

58. See 2 N. WILLIAMS, *supra* note 7, § 57.22.

59. The majority of zoned municipalities in North Carolina have adopted this kind of ordinance. See Comment, *supra* note 54, at 615-16.

60. 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-23.

61. See, e.g., *Town of Manchester v. Phillips*, 343 Mass. 591, 592 n.1, 180 N.E.2d 333, 334 n.1 (1962). See 2 N. WILLIAMS, *supra* note 7, § 57.37.

62. See *Town of Manchester v. Phillips*, 343 Mass. 591, 180 N.E.2d 333 (1962).

63. See Comment, *supra* note 54, at 624-25; Moore, *supra* note 55, at 13. In North Carolina those cities that restrict mobile homes to mobile home parks typically regulate the parks to ensure some minimum level of quality. See Comment, *supra* note 54, at 616.

64. Of course, other issues also have arisen, such as whether a zoning ordinance is within the scope of the enabling legislation, see *infra* note 97 and accompanying text.

65. See, e.g., CHARLOTTE, N.C., CODE § 23-2(16a) (1970), HIGH POINT, N.C., CODE § 22-9.1(A)(1) (1971).

66. See *supra* notes 61-62 and accompanying text.

67. The problem of the proper classification of the mobile home, as dwelling or vehicle, realty or personalty, has arisen in many contexts. Classification may affect the application of building, health, and tax codes, the Uniform Commercial Code, statutes of descent and distribution, provisions of wills, restrictive covenants, insurance contracts, and the statute of frauds. See Kuklin, *supra* note 15, at 802-05. The question of whether the "automobile exception" to the requirement of a search warrant applies to mobile homes also has arisen. See *United States v. Wiga*, 662 F.2d 1325 (9th Cir. 1981); *United States v. Williams*, 630 F.2d 1322 (9th Cir. 1980).

The courts have held that classification of the mobile home for one purpose does not affect its classification for other purposes. See *Manchester v. Webster*, 100 N.H. 809, 128 A.2d 924 (1957) ("Mobile homes" might be "buildings" for tax and insurance purposes without being subject to local building codes.); *Streyle v. Board of Property Assessment*, 173 Pa. Super. 324, 98 A.2d 410 (1953) (a "house trailer" might be a "home" for the purposes of police power regulation without being "realty" for tax purposes).

Although the mobile home industry today rejects the vehicular classification of the mobile home, see *Amicus Curiae Brief, Duggins v. Town of Walnut Cove*, 63 N.C. App. 689, 306 S.E.2d

This question has arisen in two situations.⁶⁸ In the first, the ordinance limits improvements on realty to single-family dwellings. The mobile home owner argues that his unit is a "single-family dwelling," while the municipality argues that the mobile home is not a dwelling and therefore may not be placed on the property.⁶⁹ In the second situation the roles of the parties are reversed. The zoning ordinance requires that all dwellings on the property conform to certain requirements, such as minimum floor space. The mobile home cannot satisfy these requirements, so its owner argues that it is not a "dwelling" and is therefore not subject to the requirements. The municipality argues that the mobile home is a "dwelling" that fails to comply with the requirements of the ordinance, and thus cannot be located on the property.⁷⁰

Courts agree that a mobile home is not a dwelling as long as it remains mobile.⁷¹ Most of the litigation has been concerned with whether a mobile home becomes a dwelling when it becomes permanently immobilized, that is, when its wheels and tongue are removed and it is placed on a permanent foundation. On this question the courts are divided.⁷² A slight majority have held that when its wheel and tongue are removed and it is placed on a permanent foundation a mobile home becomes a dwelling and may not be excluded from a district reserved for single-family dwellings.⁷³ This view is founded on the presumption that the distinguishing characteristic of a mobile home is its mobility, and when this characteristic is removed there is no reason to distinguish between site-built homes and mobile homes per se. Concerns over property values and architectural harmony can be satisfied by specific ordinances outlining criteria such as minimum floor space and architectural standards. Given the increasing similarity between mobile and site-built homes, this position is reasonable. A growing number of states have adopted the majority

186 (1983), at 2-3, one writer has argued that the success of the mobile home has been linked to its classification as a vehicle. See M. DRURY, *supra* note 27, at 123. Some writers have suggested that rather than trying to pigeonhole the mobile home into some inappropriate existing classification, it should be recognized as sui generis. See Carter, *Problems in the Regulation and Taxation of Mobile Homes*, 48 IOWA L. REV. 16, 57 (1962). One court anticipated this advice. See *Napierkowski v. Town Comm. of Gloucester*, 29 N.J. 481, 485, 150 A.2d 481, 485 (1959).

68. See *Bartke & Gage*, *supra* note 6, at 499-501; Carter, *supra* note 67, at 36.

69. See, e.g., *Town of Manchester v. Phillips*, 343 Mass. 591, 180 N.E.2d 333 (1962); *Sioux Falls v. Cleveland*, 75 S.D. 548, 70 N.W.2d 62 (1955).

70. *County v. Stanfill*, 7 Ill. App. 2d 52, 129 N.E.2d 46 (1955) (minimum lot-size requirement); *Kimsey v. City of Rome*, 84 Ga. App. 671, 67 S.E.2d 206 (1951) (minimum floor-space requirements).

71. See B. HODES & G. ROBERSON, *supra* note 2, at 66.

72. P. ROHAN, *ZONING & LAND USE CONTROLS* 390 (1983). Two distinct questions are presented by the immobilization of the mobile home: (1) Is an immobilized mobile home still a mobile home? and (2) If not, is it a dwelling? A court could find that when placed upon a permanent foundation a mobile home ceases to be a mobile home but does not become a dwelling. Courts, however, have not made this distinction. Evidently, it is assumed that if an immobilized mobile home is no longer a mobile home it must be a dwelling.

73. See, e.g., *Reed v. Zoning Bd. of Review*, 31 Pa. Commw. 605, 377 A.2d 1020 (1977); *Mosin v. Zoning Hearing Bd. Review*, 162 R.I. 457, 232 A.2d 393 (1967); *Lescault v. Zoning Bd. of Review*, 91 R.I. 1277, 162 A.2d 809 (1960); *In re Willey*, 120 Vt. 359, 140 A.2d 11 (1958). Among the cases holding that mobile homes are dwellings are *Kimsey v. City of Rome*, 84 Ga. App. 671, 67 S.E.2d 206 (1951) and *Town of Huntington v. Transon*, 43 Misc. 2d 912, 252 N.Y.S.2d 576 (1964).

view by legislation.⁷⁴

A minority of the courts have determined that placement of a mobile home on a permanent foundation does not transform it into a dwelling.⁷⁵ The minority view has been criticized for denying immobilized mobile homes the status of single-family dwellings merely because of their past mobility.⁷⁶ The minority view, however, appears to be tacitly based on an additional principle: a unit manufactured in a factory and designed to move on its own wheels must differ from conventional housing in many ways that survive immobilization. Because of the important changes in the design and construction of the mobile home, this reasoning no longer is valid. The original mobility of the mobile home is the last remaining distinction between mobile and conventional housing.⁷⁷

No reported North Carolina case has considered whether an immobilized mobile home is a dwelling. The North Carolina Court of Appeals, however, has twice considered whether an immobilized mobile home is still a mobile home. In *City of Asheboro v. Auman*⁷⁸ the court considered an ordinance restricting mobile homes to mobile home parks⁷⁹ and concluded that a unit stripped of its wheels and tongue and placed upon a permanent foundation remained a "mobile home."⁸⁰ In the 1983 case of *Barber v. Dixon*,⁸¹ the court construed a restrictive covenant⁸² providing that: "No structure of a temporary character (including house trailers) shall be used upon any lot at any time."⁸³ The court could have questioned whether a modern mobile home is a "house trailer." Instead, the court assumed that the unit in question was a

74. See, e.g., ILL. ANN. STAT. ch. 111 1/2, § 712.1 (Smith-Hurd 1966); S.D. New Laws, H.B. 1127 p. 105; UTAH CODE ANN. § 59-3-3 (Supp. 1983).

75. See, e.g., *New Orleans v. Louviere*, 52 So. 2d 751 (La. Ct. App. 1951); *Town of Manchester v. Phillips*, 343 Mass. 591, 180 N.E.2d 333 (1962); *Town of Marblehead v. Gilbert*, 334 Mass. 602, 137 N.E.2d 921 (1956). See also Comment, *supra* note 54, at 619; 2 R. ANDERSON, *supra* note 9, § 14.05.

76. 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-8 to -9.

77. See the discussion of design and construction changes, *supra* notes 30-36 and accompanying text, and the discussion of the invalidity of original objections to mobile homes, *supra* note 39 and accompanying text. The presumption of other distinctions between mobile and conventional housing based upon the original mobility of the mobile home is even more tenuous because of the growing tendency of the conventional housing industry to use prefabricated materials. Moreover, modular units, see 2 A. RATHKOPF & D. RATHKOPF, *supra* note 7, at 19-8 to -9, usually are classified as dwellings because they were not designed for mobility, although these units also are produced in factories.

78. 26 N.C. App. 87, 214 S.E.2d 621, *cert. denied*, 288 N.C. 239, 217 S.E.2d 663 (1975).

79. ASHEBORO, N.C., CODE § 609-12 (1972).

80. *Auman*, 26 N.C. App. at 88, 214 S.E.2d at 621.

81. 62 N.C. App. 455, 302 S.E.2d 915, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 732 (1983).

82. Most courts construe zoning ordinances and restrictive covenants according to the same principles, and decisions construing one often are cited in cases construing the other. See *Bartke & Gage*, *supra* note 6, at 515 & n.113. The Supreme Court of Maine, however, has treated restrictive covenants more liberally than zoning ordinances. For cases construing the word "dwelling" with regard to mobile homes as used in restrictive covenants, see *Carter v. Conroy*, 25 Ariz. App. 434, 544 P.2d 258 (1976); *Mitchell v. Killins*, 408 So. 2d 969 (La. Ct. App. 1981); *North Cherokee Village Membership v. Murphy*, 71 Mich. App. 592, 248 N.W.2d 629 (1976); *Wade v. Anderson*, 602 S.W.2d 347 (Tex. Civ. App. 1980); *Lassiter v. Bliss*, 559 S.W.2d 353 (Tex. 1977).

83. *Barber*, 62 N.C. App. at 456, 302 S.E.2d at 916.

"house trailer"⁸⁴ and considered the critical question to be whether a "house trailer" remains a "house trailer" after it is immobilized. Relying on its decision in *Auman*, the court concluded that an immobilized double-wide unit was still a "trailer and temporary structure"⁸⁵ because the two sections had been transported to the site "by wheels, tongues and axles that were bolted on at the place of manufacture and removed about two days after the units were located on the lot."⁸⁶ These decisions suggest that under North Carolina law a unit designed to be mobile is forever a mobile home, future immobilization notwithstanding. The two definitions of the term "mobile home" appearing in the North Carolina statutes also employ this classification.⁸⁷

Although the question of whether an immobilized mobile home is still a mobile home logically is distinct from the question of whether an immobilized mobile home is a dwelling, courts generally have considered the first question to be determinative of the second.⁸⁸ Consequently, if faced with the precise issue, a North Carolina court probably would adopt the minority view that an immobilized mobile home is not a dwelling.⁸⁹ Nevertheless, the distinction between all mobile homes and all site-built homes on the basis of the original mobility of the mobile home is tenuous and probably will spawn continued litigation.⁹⁰

As statutory terms become defined more specifically through legislation and litigation, complainants often will need to rely on constitutional challenges. Zoning ordinances that exclude mobile homes from districts reserved for single-family dwellings have been attacked as violating the requirements of substantive due process by going beyond the permissible bounds of the State's police power.⁹¹

The tenth amendment reserves the police power to the states.⁹² The police power is incapable of strict definition or limitation⁹³ but was described by Blackstone as:

84. Ten years earlier, in *Van Poole v. Messer*, 19 N.C. App. 70, 198 S.E.2d 106 (1973), the court of appeals ruled that a mobile home was a "trailer" and therefore was excluded from a lot by a restrictive covenant prohibiting "trailers."

85. *Barber*, 62 N.C. App. at 459, 302 S.E.2d at 917.

86. *Id.* at 458, 302 S.E.2d at 917.

87. N.C. GEN. STAT. §§ 143-143.9(6), 145(7) (1983).

88. *See supra* note 72 and accompanying text.

89. The North Carolina Attorney General has determined, however, that for the purposes of relocation assistance a mobile home is a dwelling. *See* 40 N.C. ATT'Y GEN. BIENNIAL REP. 762, 763 (Sept. 2, 1969). Furthermore, N.C. GEN. STAT. § 41-2.5(a) (1983) provides that a husband and wife occupying a mobile home are to be treated as tenants by the entirety. It is not clear, however, whether the premise of this statute is that mobile homes are realty or whether they are only to be treated as if they were in this situation.

90. *Bartke & Gage, supra* note 6, at 498, 500, 504.

91. *See, e.g., Robinson Township v. Knoll*, 410 Mich. 293, 302 N.W.2d 146 (1981); *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982).

92. *See Keller v. United States*, 213 U.S. 138 (1908); *Brewer v. Valk*, 204 N.C. 186, 167 S.E. 638 (1933). The tenth amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

93. *Pearsall v. Great N. R.R.*, 161 U.S. 646 (1895); *Brewer v. Valk*, 204 N.C. 186, 167 S.E. 638 (1933).

the due regulation and domestic order of the kingdom: whereby the individuals of the state, like the members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners; and to be decent, industrious, and inoffensive in their respective stations.⁹⁴

The police power may be exercised to require all citizens to yield property interests, for the public good, without compensation.⁹⁵

The political subdivisions of the states have no inherent authority to exercise the police power.⁹⁶ The states may, however, delegate to units of local government so much of the police power as they choose through "enabling legislation."⁹⁷ The power of municipalities to enact zoning ordinances has long been recognized as a proper exercise of the delegated police power.⁹⁸ In North Carolina, cities and counties have been granted general authority to exercise the police power⁹⁹ and specific authority to enact zoning ordinances.¹⁰⁰

The police power may restrain enjoyment of private property to further the public good, yet exercise of the police power must be limited to protect individual rights. The fourteenth amendment states that no state shall "deprive any person of life, liberty, or property without due process of law."¹⁰¹ In addition to its procedural mandate,¹⁰² this due process clause has been interpreted as placing substantive limitations on government action.¹⁰³ Legislative measures may be void as a violation of substantive due process if they are unreasonable, arbitrary, or capricious.¹⁰⁴

The courts have developed a three-part test to determine whether an exercise of the police power survives a substantive due process challenge.¹⁰⁵ First, the statute or ordinance must serve some legitimate purpose of the police power.¹⁰⁶ The purposes of the police power are defined broadly to include the promotion and protection of the public health, safety, morals, and general wel-

94. 4 W. BLACKSTONE, COMMENTARIES *162. Blackstone used the phrase "public power," but it is clear that the two labels are intended to refer to the same authority.

95. See Stoebeck, *Police Power, Takings, and Due Process*, 37 WASH. & LEE L. REV. 1057, 1058 (1980).

96. B. HODES & G. ROBERSON, *supra* note 2, at 190.

97. 1 T. MATTHEWS & B. MATTHEWS, MUNICIPAL ORDINANCES § 1.02 (rev. 2d ed. 1983); Note, *Regulation of Mobile Homes*, 13 SYRACUSE L. REV. 121, 126-27 (1961).

98. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

99. N.C. GEN. STAT. § 153A-121(a) (1983) (counties); *id.* § 160A-174(a) (1982) (cities).

100. *Id.* § 153A-340 to -348 (1983) (counties); *id.* § 160A-381 to -392 (1982) (cities).

101. U.S. CONST. amend. XIV § 1.

102. "Taken literally the term *due process* relates to the mode of proceeding that must be pursued by governmental agencies. Due process of law, in this sense, denotes *proper procedure*, and it was the meaning primarily intended by the men who drafted the Bill of Rights." B. SCHWARTZ, CONSTITUTIONAL LAW 165 (1972).

103. See, e.g., *Mugler v. Kansas*, 123 U.S. 623 (1887).

104. See, e.g., *Santiago v. Puerto Rico*, 154 F.2d 811, 813 (1st Cir. 1946).

105. See Stoebeck, *supra* note 95, at 1058.

106. See, e.g., *Tyson & Brother-United Theatre Ticket Offices v. Bantor*, 273 U.S. 418 (1927); *State v. Ballance*, 229 N.C. 764, 51 S.E.2d 731 (1949).

fare.¹⁰⁷ Second, assuming a valid purpose, the means adopted by the legislature must be rationally related to the attainment of the objective.¹⁰⁸ If there is any reasonable likelihood that the ordinance will tend to accomplish its objective, it will satisfy this second requirement.¹⁰⁹ Finally, assuming a valid purpose and a means rationally related to achieving that purpose, the means itself must still be reasonable,¹¹⁰ the courts may strike down unduly oppressive legislation.¹¹¹ This reasonableness requirement involves a balancing of public gain against private loss.¹¹² Courts are reluctant to question the legislature's exercise of the police power,¹¹³ but if the public gain is slight and the private burden great, courts may find a violation of substantive due process.¹¹⁴

The federal courts never have ruled on whether zoning ordinances that exclude mobile homes from residential districts violate substantive due process. Although the North Carolina Supreme Court has not faced this issue, the North Carolina Court of Appeals has considered the question twice.

In *Currituck County v. Willey*¹¹⁵ the court of appeals upheld as constitutional an ordinance excluding all mobile homes that did not meet certain dimensional requirements.¹¹⁶ The court cited a number of cases for the rule that an ordinance enjoys a strong presumption of validity and that "the burden is upon the complaining party to show its invalidity or inapplicability."¹¹⁷ In affirming a judgment for the county the court concluded "that defendant has not met her burden."¹¹⁸

The question was reconsidered by the court of appeals in *Duggins v. Town of Walnut Cove*¹¹⁹ in 1983. Duggins owned a lot in a district zoned by defend-

107. *State v. Ballance*, 229 N.C. 764, 51 S.E.2d 731 (1949).

108. *See, e.g.*, *Mugler v. Kansas*, 123 U.S. 623, 661 (1887).

109. *See, e.g.*, 1 T. MATTHEWS & B. MATTHEWS, *supra* note 97, § 2.10.

110. *See* B. HODES & G. ROBERSON *supra* note 2, at 204-217.

111. *See, e.g.*, 1 T. MATTHEWS & B. MATTHEWS, *supra* note 97, § 1.09; Note, *supra* note 51, at 197 n.6.

112. *See, e.g.*, *Dederick v. Smith*, 88 N.H. 63, 184 A. 595, *cert. denied*, 299 U.S. 506 (1936); *Mansfield & Swett v. Town of West Orange*, 120 N.J. 145, 198 A. 225 (1938).

113. *See* *Day-Brite Lighting v. Missouri*, 342 U.S. 421, 423 (1952) ("We do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare."). The party questioning an ordinance has the difficult burden of proving that it fails to satisfy one of the requirements of due process. *See* *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Nectow v. City of Cambridge*, 277 U.S. 183 (1928); *Village of Belle Terre v. Boraas*, 461 U.S. 1 (1974). *See generally* *Flippen*, *supra* note 27, at 18 & n.21; *SHEPARD'S*, *supra* note 26, § 10.5; *Carter*, *supra* note 67, at 39-40.

114. Note, *supra* note 50, at 197 n.10. The Supreme Court's extreme deference to the legislature in the area of substantive due process is evidenced by: *Agin v. Tiburon*, 447 U.S. 225 (1980) (upholding open space zoning); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (upholding historic landmark preservation). In *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) substantive due process was labelled a "treacherous field."

115. 46 N.C. App. 835, 266 S.E.2d 52 (1980).

116. The ordinance provided: "(a) Permitted uses of buildings, structures and land: Dwellings, one family detached including modular and double-wide mobile homes with minimum dimensions of 24' x 60', but no other mobile homes." *Id.* at 835, 266 S.E.2d at 52.

117. *Willey*, 46 N.C. App. at 836, 266 S.E.2d at 53 (quoting *State v. Martin*, 7 N.C. App. 18, 20, 171 S.E.2d 115 (1969)).

118. *Id.*

119. 63 N.C. App. 684, 306 S.E.2d 186 (1983), *appeal filed*, 52 U.S.L.W. 3760 (N.C. Mar. 3, 1984).

ant for residential use exclusive of mobile homes.¹²⁰ Under the ordinance, all mobile homes were excluded regardless of their size, appearance, or mobility, while all site-built homes were permitted.¹²¹ Plaintiff contended that this ordinance violated substantive due process because it bore no rational relationship to any legitimate objective of police power regulation.¹²² Plaintiff admitted that the ordinance was presumed constitutional, but argued that he could present evidence to overcome this presumption.¹²³ At the trial level, defendant's motion for judgment on the pleadings was granted.

The court of appeals affirmed,¹²⁴ mentioning its decision in *Willey*, but choosing to consider the question anew.¹²⁵ The court applied the three-part due process analysis, beginning its discussion by pointing out that the ordinance was entitled to a strong presumption of validity: "If any state of facts can be conceived that will sustain the zoning ordinance, the existence of that state of facts must be assumed."¹²⁶ The first prong of the due process test requires that the zoning ordinance be enacted to promote the public health, safety, morals, and welfare. Plaintiff did not allege that the ordinance had not been enacted for such a purpose, and defendant did not allege any particular purpose for which it had been enacted. Although the point thus was not in issue, the court reasonably assumed that the ordinance had been enacted to protect the value of the property in the zoned area.¹²⁷ Protection of property values has long been considered a valid purpose for police power regula-

120. Defendant's ordinance created three classes of single-family residences: mobile homes, modular homes, and site-built homes. *Id.* at 685-86, 306 S.E.2d at 187.

121. *Id.* at 686, 306 S.E.2d at 187.

122. Record at 7-8 (quoting plaintiff's complaint § 21).

123. Record, Plaintiff-Appellant's Brief at 11.

124. *Duggins*, 63 N.C. App. at 689, 306 S.E.2d at 189.

125. The court stated in *Willey*: "We hold that mobile homes are sufficiently different from other types of housing so that there is a rational basis for placing different requirements upon them as was done by Currituck County." *Willey*, 46 N.C. App. at 836, 266 S.E.2d at 53. Defendant in *Duggins* relied heavily on this "holding," contending that it established a rule of law binding on the court.

Thus, the Court of Appeals has unequivocally rejected Appellant's contention that ordinances such as Walnut Cove's violate any constitutional provisions. . . . Appellant's attempts to distinguish between the *Willey* holding and the facts of this case ignore the broad unambiguous language used there indicating that the issue of the rationality of mobile home zoning ordinances has already been conclusively determined. . . . In conclusion, defendants respectfully assert that previously issued opinions of the appellate court of North Carolina conclusively established that zoning ordinances like Walnut Cove's are constitutional.

Record, Defendant-Appellee's Brief at 10-12.

Plaintiff in *Duggins* labelled the "holding" of the *Willey* court *obiter dictum*, asserting that the case actually had been decided on the grounds that defendant had failed to overcome the ordinance's presumption of validity. Plaintiff-Appellant's Brief at 22, *Duggins*. Plaintiff argued that whether a municipality can distinguish validly between mobile and site-built homes is a question of fact that must be determined on the basis of the complainant's evidence in each case. *Id.* at 23. The *Duggins* court's decision not to rely on *Willey* but to consider the matter anew suggests that the court accepted plaintiff's view of the "holding" in that case.

126. *Duggins*, 63 N.C. App. at 688, 306 S.E.2d at 189.

127. "The protection of property values in the zoned area is a legitimate governmental objective. We believe that the method of construction of homes [the basis of defendant's distinction between mobile and site-built homes] may be determined by a city governing board as affecting the price of homes." *Id.* at 688-89, 306 S.E.2d at 189.

tion,¹²⁸ and traditionally has been the primary reason given for excluding mobile homes from residential districts.¹²⁹

The second prong of the due process analysis requires that the means adopted by the ordinance be rationally related to the objective of the regulation. Plaintiff in *Duggins* argued that defendant's ordinance lacked a rational relation to any purpose within the police power.¹³⁰

Early zoning ordinances enacted to exclude mobile homes from residential districts were based on legitimate concerns about the dangers actually posed by trailers unsuited for permanent occupancy.¹³¹ These dangers, unique to mobile homes, could be eliminated best by excluding all mobile homes from residential districts. These early ordinances were substantially related to the ends for which they were enacted. Plaintiff in *Duggins* argued that if he could show that mobile homes no longer present these problems, an ordinance excluding mobile homes would not only be unnecessary, but would bear no rational relation to the purpose of eliminating those problems.¹³²

Because mobile homes today probably pose no danger to public health, safety, or morals, an ordinance excluding mobile homes is not likely to have any rational relation to these concerns.¹³³ But whether such an ordinance bears a rational relation to the protection of property values is not as clear.¹³⁴ Some mobile homes, like some site-built homes, can reduce the value of surrounding property. Plaintiff in *Duggins* contended that a zoning ordinance excluding all mobile homes while permitting all site-built homes, without regard to which homes actually would lower property values, is not rationally related to protection of property values.¹³⁵ The court correctly rejected this argument.¹³⁶ If some units of a particular class are likely to reduce property values, the exclusion of the entire class certainly will protect property values, and it is irrelevant that the ordinance does not also regulate another class that affects property values. Thus, ordinances such as that passed by the town of Walnut Cove satisfy the requirements of the second prong of the substantive due process analysis.

Finally, the due process analysis requires the ordinance to be reasonable. In determining reasonableness, the courts must balance public gain against private loss. If the public gain is insignificant and the private burden severe

128. Protection of property values is necessary to the general welfare. This is recognized by North Carolina statute. N.C. GEN. STAT. § 160A-383 (1982) lists protection of property values as a valid purpose of zoning. This statute must be considered as consistent with *id.* § 160A-381, which requires that zoning ordinances be enacted only for the protection of the public health, safety, morals, and general welfare.

129. See *supra* note 19 and accompanying text.

130. See Record, Plaintiff-Appellant's Brief at 12-19.

131. See *supra* notes 11-21 and accompanying text.

132. See Record, Plaintiff-Appellant's Brief at 12-19.

133. See *supra* note 39 and accompanying text.

134. See *supra* notes 40-41, 128 and accompanying text.

135. Record, Plaintiff-Appellant's Brief at 12.

136. "The prohibition of such buildings [mobile homes] is rationally related to the protection of the value of other homes in the area." *Duggins*, 63 N.C. App. at 689, 306 S.E.2d at 189.

the ordinance will be considered unreasonable.¹³⁷ Another issue is whether the restriction is necessary to secure the desired end; if a significantly less restrictive ordinance would achieve the same result, the ordinance may be unreasonable.¹³⁸

The court in *Duggins* granted defendant's motion for judgment on the pleadings without giving the plaintiff the opportunity to meet his burden of proof and overcome the ordinance's presumption of constitutionality. Instead, the court went beyond recognizing that the ordinance was presumed constitutional to a conclusion that the reasonableness of the ordinance was beyond the scope of judicial review. The court stated that it "cannot interfere with this legislative decision" and that it did "not believe [it] should make this factual determination. This is a matter for the governing board of Walnut Cove."¹³⁹ The court's reluctance to hear plaintiff's evidence is unfortunate because the reasonableness of this ordinance is highly questionable. The public benefit secured by the ordinance was slight. Although the ordinance protected against mobile homes reducing the value of nearby properties, it did not guard against a similar danger posed by site-built housing. An ordinance requiring that any improvements to the realty in the restricted area not lower property values would eliminate this danger without excluding mobile homes per se. Even granting that the ordinance achieved a significant public gain, it imposed a considerable hardship on plaintiff and others in his class. In its specific application the ordinance had the effect of denying to plaintiff the use of his property, as he could not afford any other type of housing. In its general application the ordinance required all those who could not afford traditional housing to live in mobile home parks. Given the public policy favoring the increased use of the mobile home¹⁴⁰ and the persistence of zoning ordinances defeating that policy, the North Carolina courts should be more willing to scrutinize this type of local regulation.¹⁴¹

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137. See *supra* note 112-114 and accompanying text.

138. See *supra* note 111 and accompanying text.

139. *Duggins*, 63 N.C. App. at 689, 306 S.E.2d at 189.

140. See *supra* notes 24-26 and accompanying text.

141. See Justice Hall's classic dissent in *Vickers v. Township Comm. of Gloucester*, 37 N.J. 232, 259, 181 A.2d 129, 143 (1962) (Hall, J., dissenting), *cert. denied*, 371 U.S. 233 (1963). "[O]ur courts have in recent years made it virtually impossible for municipal zoning regulations to be successfully attacked. Judicial scrutiny has become too superficial and one-sided." *Id.* at 259, 181 A.2d at 143 (Hall, J., dissenting). According to Justice Hall "[t]he judicial branch does not meet its full responsibility when, as here, its concept of review gives unquestioning deference to the views of local officials." *Id.* at 261, 181 A.2d at 145 (Hall, J., dissenting). See also Williams, *Planning Law and Democratic Living*, 20 LAW AND CONTEMP. PROBS. 317 (1955):

While controversy has often raged about judicial action in other areas, it has always been recognized that it is an essential part of the judicial function to watch over parochial and exclusionist attitudes and policies of local governments, and to see to it that these do not run counter to the national policy and the general welfare.

Id. at 318.