Manufactured Housing Zoning

Constitutional Limitations and Recent Trends

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Nearly twenty years ago Justice Brennan penned the line "if a policeman must know the Constitution, then why not a planner?"[1] Most planners have at least a passing notion of takings law and the Fifth Amendment to the United States Constitution, which prevents the taking of private property for public use without just compensation.[2] Constitutional limitations on zoning, though, can go far beyond the Fifth Amendment.

Over the past several years two Constitutional doctrines which might seem esoteric to most non-attorneys, have been used with varying degrees of success in challenging zoning ordinances which discriminate against manufactured housing, preemption and the dormant Commerce Clause. The purpose of this article is twofold: first, to explain the two doctrines and review recent federal court cases from the last three years in which they were raised and second, to briefly divine from those cases some practical advice for planners and other local government decision makers.

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Constitutional Doctrines Related To Manufactured Housing Zoning Challenges

Preemption

Preemption is a federal doctrine that invalidates state and local laws that conflict or interfere with federal laws. The doctrine flows from the Supremacy Clause of Article VI of the United States Constitution, which states:

> This constitution, and the Laws of the United States which shall be made in pursuance thereof...shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby...[3]

Under the doctrine, preemption of state statutes or local ordinances occurs in one of three manners: (1) Congress may pass a statute which expressly preempts state or local law, (2) Congress, while not expressly preempting state or local law, implies that it is preempting the field by occupying the entire field of regulation so that there is no room for supplementary regulation at the state or local level, or (3) Congress neither expressly nor impliedly preempts state or local law, but state or local law neverthe less

conflicts with federal law in that compliance with both federal and state or local law would be impossible or when state or local law stands as an objective to the purpose of the federal law.[4]

Manufactured housing construction and safety standards are explicitly preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 ("the Act"):

> Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.[5]

That is, a state or local government cannot have a building code for manufactured homes, which differs from the Federal code which implements the Act.[6] While zoning decisions are traditionally the province of state and local governments, zoning decisions regarding manufactured housing can, and have, run afoul of the preemption doctrine when those decisions are based on construction codes and the perception of safety.

Homes built in a factory to the Federal Code and transported to a home site are usually referred to as "HUD Code manufactured homes" because the U.S. Department of Housing and Urban Development is responsible for promulgation and administration of the code.[7] Factory-built homes constructed to a local construction code such as the Uniform Building Code, on the other hand, are referred to as "modular homes."

Commerce Clause

Zoning decisions regarding manufactured housing can also run afoul of the Commerce Clause of the United States Constitution. Under the Commerce Clause, "Congress shall have the Power...to regulate commerce among the several states."[8] This grant to Congress implies a related restriction preventing state and local governments from adopting certain laws that have an economically protectionist intent or effect, essentially isolating a local economy from the national economy. This is often referred to as the "dormant Commerce Clause."[9]

There are two tests used to determine whether a local ordinance violates the dormant Commerce Clause. First, if a statute ordinance discriminates against interstate commerce on its face or its effects favor in-state interests at the expense of out-of-state interests, the law will be found to violate the dormant Commerce Clause unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism.[10] On the other hand, if the statute or ordinance operates even-handedly, is based on a legitimate governmental interest and has an "incidental impact" on interstate commerce, the regulation "will be upheld unless the burden imposed on such commerce is clearly excessive to the putative local benefit."[11] This balancing test is usually referred to as the "Pike test," so named for the Supreme Court case in which the test was first enunciated.

How might a local zoning ordinance regarding manufactured housing run afoul of the dormant Commerce Clause? The theory is actually quite simple. Manufactured homes are items of interstate commerce. They may be constructed out-of-state, or simply contain components, like fixtures or lumber, constructed or processed out-of-state. A zoning ordinance which restricts placement of a manufactured home, by implication a home built to a national building code, impedes the flow of interstate commerce in favor of local economic interests and locally site-built homes constructed to a local building code.

Courts have declined to apply the more restrictive economic protectionism Commerce Clause test to manufactured housing zoning disputes, but even under the Pike test plaintiffs have not fared all that well using the doctrine to challenge discriminatory manufactured housing ordinances. Nevertheless, the courts have spelled out some of what might be necessary for a challenge to succeed, a road map to which planners and other local government decision makers should pay heed.

Recent Court Cases

Over the past three years, federal courts from Colorado to Georgia have been confronted with

preemption and dormant Commerce Clause challenges to local manufactured housing zoning regulations, with divergent results, especially on the issue of preemption. The United States Supreme Court has made no pronouncements on the issue, so how a community may be affected depends on the area of the country in which the community is located. Viewing all the cases in context, however, including lower court decisions that may have been reversed on appeal, can provide planners and local government officials with guidelines that are sound from both a constitutional and planning perspective, guidelines which may help as they wrestle with the often thorny policy considerations that surround manufactured housing and zoning.

Not surprisingly, most of the cases come from the Southeastern United States, where the majority of manufactured homes are both constructed and sold.[12] Of most interest to North Carolina planners is the 1998 case from the U.S. District Court for the Western District, CMH Manufacturing, Inc. v. Catawba County Board of Commissioners ("Catawba County"), decided in February 1998.[13]

The case was a challenge to specific restrictions on exterior finish and roof pitch in the Catawba County zoning ordinance applicable to single section manufactured homes that otherwise met the HUD Code. The practical effect of the restrictions was to eliminate "metal on metal" single section homes from the County. Specifically, the restrictions challenged were as follows:

> Exterior Finish. The exterior siding shall consist predominantly of vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint), wood or hardboard comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.
>
> Roof construction. The roof shall be designed to have a minimum rise of 2 ½ feet for each 12 feet of horizontal run and finished with a type of shingle that is commonly used in standard residential construction.[14]

The basic analysis the court used in determining whether preemption applied was whether the restrictions were construction standards preempted by the Act or appearance standards expressly permitted by the North Carolina General Statutes.[15] The court held they were appearance standards allowed by North Carolina law. In making this determination, the court looked to legislative intent of the Act and concluded that Act and the federal regulation adopted thereunder were "directed at safety, and are not concerned with regulation of the appearance or aesthetic characteristics of manufactured housing."[16] Safety-related construction standards, the court implied, dealt with housing systems explicitly mentioned in the regulations implementing the Act, items such as the plumbing, heating, and electrical systems.[17] The implementing regulations, by contract, indicated no preference, in terms of safety for a particular siding or roofing material.[18] The court did recognize that regulating location of manufactured homes for aesthetic reasons made under the guise of safety could be preempted. What would evidence this, though, would be restrictions based on specific building codes, "which by their very nature address safety concerns," as a prerequisite for siting.[19]

Catawba County also provided justification unrelated to safety, indicating it had:

> enacted the amendments to its zoning ordinance as part of a comprehensive plan to balance the interests of citizens who oppose mobile home proliferation with those of the manufactured housing industry and its customer base. The amendments establish appearance criteria...for single-wide mobile homes in order to make them appear more attractive, less likely to drive down nearby property values, and generally more palatable to the objecting public.[20]

This last justification, however, may rest on grounds shaky for other jurisdictions which try to use it. Even though courts generally accept the rationale, as did the court here, the County provided no statistical or empirical evidence that the criteria would protect property values or that "metal-on-metal" homes devalued neighboring property or drained the County's tax base,[21] an

approach that could fail if empirical data to the contrary is introduced. Moreover, while the County claimed that the criteria were a compromise to citizen pressure to ban manufactured homes altogether from large swaths to the County, the County Commissioners continued to adopt such bans after the court issued its opinion. Within weeks of the court's opinion, the Board of County Commissioners voted to ban all manufactured homes from 2,600 acres along the N.C. Highway 16 corridor near the Anderson Mountain area of the county, and banned single-section homes from another 231 acres.[22] A similarly situated jurisdiction could leave itself open to charges that the otherwise legitimate zoning decision was a pretext for an improper decision based on construction standards.

A challenge based on the dormant Commerce Clause fared no better. Using the Pike test, which both sides agreed governed the dispute, the court first found legitimate local purposes for adopting the criteria. These included the divisiveness of the issue in Catawba County, and the desire to balance opportunities for affordable home ownership with concerns for aesthetic standards and decreasing property values.[23] By contrast the plaintiffs could only point to evidence that manufacturers who had previously sold metal-on-metal homes in the County no longer could. No concrete evidence of lost sales or lost profit was shown, nor was there evidence that a certain segment of the market would be shut out from all new home opportunities. In fact, the court found that, because manufactured homes are generally sold pursuant to installment sales contracts or other long term financing arrangements, the cost to consumers of complying with the criteria could be built into the financing with only a de minimus impact on a purchaser's monthly payment.[24] Under the Pike test, the burden placed on the manufactured home industry and its consumer base was not excessive to the declared local benefit.[25]

The federal Eleventh Circuit Court of Appeals[26] reached a similar conclusion in one of the most recent cases decided, Georgia Manufactured Housing Assn. v. Spalding County ("Spalding County").[27] In reaching its conclusion, though, it had to reverse the decision of the district court.

At issue in Spalding County was a zoning ordinance that placed manufactured homes into certain categories based on ostensibly appearance-related criteria. What the ordinance defined as a "Class A" manufactured home had not only to meet the HUD Code, but had to meet other criteria including a width of greater than 16 feet, a roof pitch of 4:12 or greater (four feet of rise for twelve feet of horizontal run), roofing shingles similar to those of site-built residential construction, exterior siding similar to that of site-built residential construction and a masonry curtain wall around the base of the home. "Class B" manufactured homes also had to meet the HUD Code, but none of the other additional criteria. Class A homes were allowed by right in residential zoning districts, but Class B homes were allowed only as exceptions.[28]

The state trade association for the manufactured housing industry, along with individual manufacturers, retailers and county residents who had been denied permits brought suit against the County, attempting to invalidate the ordinance on a number of grounds, including both preemption and the dormant commerce clause. The District Court for the Northern District of Georgia, agreed that the 4:12 roof pitch requirements was both preempted by the Act and violated the dormant commerce clause.[29]

That lower court held that the roof pitch requirement conflicted with one of the stated purposes of the Act, "to improve the quality and durability of manufactured homes, " and was thus preempted. The evidence before the court showed that 4:12 roofs were inferior in both quality and durability to roofs with a lower pitch because 4:12 roofs had to be built with a hinge system in order to be transported on state highways. The 4:12 roof pitch requirement also substantially impeded manufacturers' ability to comply with other safety regulations in the HUD Code, including factory installation of the venting and combustion air systems and "wind load" requirements.[30]

The district court also held against the County on dormant commerce clause grounds. Using the Pike balancing test, the court noted that the roof pitch requirement caused significant problems to manufacturers, both inside and outside Georgia, with the potential to significantly increase costs to both members of the industry, as well as the purchasing public. By contrast, according to the court the aesthetic value and value of compatibility with site-built structures which underpinned a 4:12 roof pitch requirement was "minimal, at best."[31]

The Court of Appeals rejected both of these arguments. As to preemption, the court reviewed the Act, its legislative intent and implementing regulations to conclude that the safety standards preempted by the Act are those which protect consumers from potential hazards associated with manufactured housing. A roof pitch requirement in a zoning ordinance is an aesthetic standard having no basis in consumer protection, and thus not preempted.[32]

As to the Commerce Clause, the Court of Appeals held the lower court used the wrong findings for the Pike tests. The lower court focused on the burden on commerce generally, rather than a specific burden on interstate commerce. It is that specific burden, though, that forms the basis for any violation of the Commerce Clause.[33] The roof pitch requirement creates significant problems in the manufacturing process for both in and out-of-state manufacturers, but the requirement imposes the same burden on all manufacturers, regardless of location. Laws that impose the same burden on both in and out-of-state manufacturers usually do not violate the Commerce Clause. Moreover, the court held, price increases, in and of themselves, generally do not violate the dormant Commerce Clause. Effect on price goes to the legislative wisdom of the ordinance, not the burden on interstate commerce.[34]

The court pointed to two areas of evidence that could show the specific burden on interstate commerce: that which shows whatever housing is built in lieu of HUD-Code manufactured homes is provided by in-state suppliers, and that which shows that a 4:12 roof pitch requirement will significantly benefit the local site-built home market at the expense of the manufactured home market.[35] The plaintiffs in Spalding County failed to provide that kind of evidence to the court leading the court to find that the burden on interstate commerce, based on relevant evidence, weighed in favor of the county.[36]

The 1998 decisions in Catawba County and Spalding County followed three decisions in 1996 from federal courts in Colorado and the Fifth Circuit Court of Appeals. The district court in Colorado and the Fifth Circuit Court of Appeals split on the issue of preemption, although both ruled against manufactured housing interests on the dormant commerce clause issue.

In Colorado Manufactured Housing Association v. Board of County Commissioners of the County of Pueblo,[37] the district court held that zoning ordinances which distinguished between HUD Code manufactured homes and modular homes and prohibited HUD Code manufactured homes in the jurisdiction while permitting modular homes was preempted by the Act. In challenging the plaintiffs' preemption claims, the defendant Cities maintained that their respective ordinances dealt only with land use and not with the manner in which the homes were constructed. Further, they claimed preemption wasn't applicable because the purpose of the ordinances was to regulate community appearance and protect the tax base, not to impose safety and construction standards on manufactured homes different from the federal standards.[38] The court rejected the cities' claims. All zoning ordinances have the purpose of regulating land use, the court said. Under the cities' reasoning, an ordinance could impose strict building and safety standards for manufactured housing that clearly conflict with the HUD Code, but preemption would clearly be inapplicable because the overall "purpose" of the ordinance was regulating land use. This reasoning is incorrect. "Under the preemption doctrine, if the local and federal law conflict, the local law is invalid and must be set aside...Either there is a conflict requiring preemption, or no conflict and, thus, no preemption."[39] Ordinances which require a factory-built home to comply with a building code other than the HUD Code are in conflict with the HUD Code, resulting in preemption.

The Court, in County of Pueblo, did not address the issue of whether an ordinance that banned all factory-built homes, regardless of whether they were manufactured to the HUD Code or a local building code, from a zoning district was preempted. The Court of Appeals for the Fifth Circuit,[40] though, did reach that issue and found no preemption in Texas Manufactured Housing Association v. City of Nederland ("City of Nederland"),[41] decided only several months after County of Pueblo.

In City of Nederland, the challenged ordinance prohibited the placement of "trailer coaches" within the City limits, defining a trailer coach as "a transportable single family dwelling unit which is or may be mounted on wheels suitable for year-round occupancy and containing the

same water supply, waste disposal, and electrical conveniences as immobile housing."[42] The City had interpreted the ordinance to preclude HUD-Code manufactured homes, but not modular homes. The decision noted that unlike manufactured housing, modular housing is not built on a permanent chassis,[43] although in reality modular homes can be built on a chassis and transported in a manner similar to HUD Code manufactured homes.

The court upheld the ordinance, although the decision appears to conflict directly with an earlier manufactured home zoning preemption case, Scurlock v. City of Lynn Haven ("Scurlock"), decided by the Eleventh Circuit in 1988.[44] In Scurlock, on which the plaintiffs in City of Nederland relied, the City excluded factory built homes from certain residential districts unless they met local building codes, in essence banning HUD Code manufactured homes while permitting modular homes. The City of Nederland court distinguished Scurlock, though, because the Nederland ordinance, among other things, did not expressly link its provisions to local safety and construction standards.[45] That is, the ordinance did not on its face, distinguish between HUD Code manufactured homes and modular homes. This difference between the Nederland's ordinances and that at issue in Scurlock led the Fifth Circuit to the conclusion that what was required to show preemption was evidence and an analysis of the specific differences between the HUD Code and whatever local building code was in use.[46] In fact, much of the evidence at trial in Scurlock dealt with specific differences between the HUD Code and the Southern Standards Building Code and electrical codes with which compliance was required before the city would permit a factory-built home to be located within the particular zoning district.[47] The plaintiffs in City of Nederland provided no such evidence or analysis.

> Plaintiffs have not cited evidence that identifies the actual requirements of the local building code that HUD-code homes fail to satisfy under the ordinance This omission is fatal to plaintiff's claim that the ordinance is a thinly veiled attempt to impose local safety and construction standards on HUD-code manufactured homes. The relevant deposition testimony, taken as a whole, does not distinguish between local safety and construction standards and all other aspects of local building regulation (including the ordinance at issue in this case.)[48]

The court, in City of Nederland, also dismissed the Commerce Clause claims. The burden on interstate commerce claimed was $900,000 in lost sales over a three-year period, but this was not the type of evidence sufficient to show a burden for Commerce Clause purposes. The City's ordinance treated in-state producers of manufactured homes equally to out-of-state firms. The Commerce Clause, through, protects interstate markets, not particular interstate firms. For evidence of lost manufactured housing sales to be relevant, the plaintiffs would have to show that the housing built in-lieu of HUD Code was and will be provided by in-state producers. In short, not only did plaintiffs have to show $900,000 in lost sales, but that any homes sales which replaced those lost to HUD Code manufactured homes would be provided by in-state producers. The plaintiffs did not provide this evidence.[49]

The benefit given by the City was protection of property values and at least one appraisal provided by the City stated that the presence of HUD Code manufactured homes in a residential neighborhood of conventional site-built homes had a negative impact on property values. The plaintiffs claimed that "numerous studies" concluded that property values are not diminished by the presence of adjacent HUD Code manufactured homes, but did not provide these studies to the court. This left the court with no alternative but to find in favor of the City and uphold the lower court's ruling that there was no genuine issue as to whether any burden the ordinance may impose on interstate commerce is clearly excessive to the local benefits..."[50]

The Court, in County of Pueblo, left the Commerce Clause issue for trial, but the eventual outcome, decided after City of Nederland, was identical.[51] In fact, the district court relied heavily on the City of Nederland analysis in eventually rejecting the Commerce Clause challenge.[52]

Guidelines for Planners and other Decision Makers

What does the sum total of these recent cases mean for manufactured home zoning? On the whole, the cases appear to conflict on the issue of preemption, and manufactured home proponents have been frustrated in their attempts to attack discriminatory ordinances on dormant Commerce Clause grounds. Nevertheless, even though use of the two doctrines have lost some of their luster, especially challenges based on the Commerce Clause, they retain some vitality and these recent cases provide some broad direction for planners and other decision makers.

An ordinance which explicitly distinguishes between HUD Code manufactured homes and homes built to the local building code, whether factory-built or site-built, are suspect if HUD Code manufactured homes are prohibited entirely from a particular jurisdiction or zoning district, City of Nederland notwithstanding.[53] Not only is the construction code the only inherent difference between HUD Code manufactured homes and any home built to a local building code, but attempting to ban modular homes puts a jurisdiction in the unenviable position of having to defend distinguishing between a site-built home and a factory-built home constructed to the same code. A zoning ordinance which distinguishes between HUD Code manufactured homes and homes built to local building codes based on anything other than exterior appearance, such as plumbing hook-ups, will also be suspect.

Appearance based regulations are more likely to pass muster if there is a legitimate and expressed policy rationale to form a basis for the restriction, preferably expressed prior to adopting the restrictions. A part of what saved the ordinance in Spalding County was the existence of language in its comprehensive plan dealing with aesthetic incompatibility. While the Spalding County comprehensive plan wasn't adopted until several months after the ordinance, that approach could leave a jurisdiction open to charges that concerns over aesthetic compatibility or property values are simply a pretext for regulation based on construction standards.

As cases like Catawba County and Spalding County imply, statistical or empirical data is not generally necessary for a local jurisdiction to justify legislative decisions like zoning. Such evidence might go to the wisdom of the legislation, but not the legality. When faced with data showing no impact of HUD Code manufactured homes on adjacent residential property values, though, the lack of any empirical data to support zoning which discriminates against HUD Code manufactured homes leaves local governments vulnerable to charges that the challenged ordinance is simply a pretext for regulation based on construction standards, and has no relationship to actually protecting property values. While no empirical data seems to have been introduced in these recent cases, academic studies indicating little or no impact of HUD Code manufactured housing are beginning to emerge.[54]

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Few legislative decisions over residential zoning engender debate as heated as that over manufactured housing, touching on issues as complex as class and community values. City councilpersons and county commissioners faced with heated debate over their legislative decision are too often confronted by threats of legal action. Legal theories used to limit legislative discrimination against HUD Code manufactured homes, though, cannot be discarded as the knee-jerk reactions of those on the losing side of the zoning decision. The two constitutional limitations addressed here, preemption and the dormant Commerce Clause, have some vitality, albeit a vitality limited in effectiveness over the past few years. Local ordinances should address the issues these doctrines raise as a way of keeping the legislative decision making out of the hands of the courts. CP

Endnotes

[1] San Diego Gas & Electric Co. v. San Diego, 450 U.S. 621, 661 n.26, 101 S.Ct. 1287, 67 L.Ed2d 551 (Brennan, J., dissenting).

[2] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
U.S. Const. Amend. V.

[3] U.S. Const. Art. VI, § 2.

[4] R.J. Reynolds Tobacco Co. v. Durham County, 479 U.S. 130, 107 S.Ct. 499, 93 L.Ed.2d 449 (1986).

[5] 42 U.S.C. § 5403(d)

[6] Federal regulations implementing the Act also contain explicit preemption language. See 24 C.F.R. § 3282.11.

[7] 24 C.F.R. § 3282.1.

[8] U.S. Const. Art. I, § 8, cl. 3.

[9] GSW, Inc. v. Long County, 999 F.2d 1508 (11th Cir. 1993); Oregon Waste Systems, Inc. v. Dept. of Environmental Quality, 511 U.S. 93, 114 S.Ct. 1345, 128 L.Ed.2d 13 (1994).

[10] Fort Gratiot Landfill v. Michigan Dept. of Natural Resources, 504 U.S. 353, 12 S.Ct. 2019, 119 L.Ed.2d 139 (1992).

[11] Pike v. Bruce Church, Inc., 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970).

[12] In January 1998, for example, nine of the ten top HUD Code manufactured home producing states were in the southern United States. The top five alone - Texas, North Carolina, Georgia, Florida and South Carolina - had a market share of 42.4% of the 26,362 homes shipped that month. Statistically Speaking, North Carolina Manufactured Housing News, April 1998, at 14.

[13] CMH Manufacturing, Inc. v. Catawba County Board of Commissioners, 994 F.Supp. 697 (W.D.N.C. 1998). The Western District comprises the counties of Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, and Yancey. 28 U.S.C. § 113.

[14] Catawba County, 994 F.Supp. at 700.

[15] N.C. Gen. Stat. §§ 160A-383.1, 153A-341.1

[16] Catawba County, 994 F.Supp. at 706.

[17] Id. at 705.

[18] Id. at 708.

[19] Id. at 707.

[20] Id.

[21] Id. at 702.

[22] Executive Director's Report, North Carolina Manufactured Housing News, April 1998, at p. 4.

[23] Catawba County, 994 F.Supp. at 709.

[24] Id. at 710.

[25] Id.

[26] The Eleventh Circuit includes the states of Alabama, Georgia and Florida. 28 U.S.C. § 41.

[27] Georgia Manufactured Housing Assn. v. Spalding County 148 F.3d 1304 (11th Cir. 1998)

[28] Id. at 1306.

[29] Georgia Manufactured Housing Assn. v. Spalding County, No. 3:94-cv-51 GET, 1996 U.S. Dist. LEXIS 21855 (N.D.Ga. June 13, 1996), reversed, 148 F.3d 1304 (11th Cir. 1998).

[30] Id. at *21.

[31] Id. at *26.

[32] The court looked to language in the County's comprehensive plan regarding aesthetic and land use compatibility as evidence that the roof pitch requirement was intended as an aesthetic regulation. Spalding County, 148 F.3d at 1310, n.9.

[33] Id. at 1308.

[34] Id.

[35] Id.

[36] Id.

[37] Colorado Manufactured Housing Association v. Board of County Commissioners of the County of Pueblo, 946 F.Supp. 1539 (D.Colo. 1996).

[38] Id. at 1548.

[39] Id. at 1551, n.9.

[40] The Fifth Circuit covers the states of Texas, Louisiana and Mississippi. 28 U.S.C. § 41.

[41] Texas Manufactured Housing Association v. City of Nederland, 101 F.3d 1095 (5th Cir. 1996).

[42] Id. at 1098.

[43] Id. at 1099.

[44] Scurlock v. City of Lynn Haven, 858 F.2d 1521 (11th Cir. 1988).

[45] City of Nederland, 101 F.3d at 1095.

[46] Id.

[47] Scurlock, 858 F.2d at 1523.

[48] City of Nederland, 101 F.3d at 1095. In addition to affirming the district court's decision (Cite to lower court), City of Nederland also validated another federal preemption case arising in Texas, Texas Manufactured Housing Association v. City of La Porte, 974 F.Supp. 602 (S.D. Tex. 1996). The city in that case focused on the perception of mobility and transportability of a HUD Code manufactured home and the perceived effect on property values as the basis for excluding HUD Code manufactured homes. Id. at 606-07.

[49] Id. at 1104.

[50] Ibid.

[51] Colorado Manufactured Housing Assn. v. City of Salida, 977 F.Supp. 1080 (D.Colo. 1997).

[52] Id. at 1087-88.

[53] Additionally, by state statute, cities and counties in North Carolina "may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes from the entire zoning jurisdiction." N.C. Gen. Stat. § 160A-383.1(c).

[54] See, e.g., Katherine Warner and Robert Johnson, Manufactured Housing Impacts on Adjacent Property Values (University of Michigan, January 1993); Guoqiang Shen and Richard A. Stephenson, The Impact of Manufactured Housing on Adjacent Site-Built Residential Properties in North Carolina (East Carolina University 1998). The East Carolina University study examined the impact in Carteret County, Henderson County, Pitt County and Wake County.