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Behind the Smokescreen: Exclusionary Zoning of Mobile Homes

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BEHIND THE SMOKESCREEN: EXCLUSIONARY ZONING OF MOBILE HOMES

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I. INTRODUCTION

The desire to own a single family home is the essence of the American dream.[1] Dramatic increases in housing costs,[2] however, are preventing many potential buyers from investing in a conventional site-built home.[3] New homebuyers, seeking a more affordable alternative,[4] choose factory-built mobile homes[5] as their permanent resi-

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1. Tremblay, Dillman & Dillman, *Acceptable Housing Alternatives*, CHALLENGE, Jan. 1981, at 25.

2. The average price of a new conventional home in July 1982 was $91,100. UNITED STATES DEP'T OF COMMERCE, BUREAU OF THE CENSUS, NEW ONE FAMILY HOMES SOLD AND FOR SALE, July 1982. The increase in housing costs is attributable to rapid inflation, spiralling construction costs and high interest rates. Hill, *Home Builders Expect a Persistent Slump With a Slow Recovery, Shrinking Industry*, WALL ST. J. Feb. 8, 1982, at 27, col. 4.

For a concise description of the evolution of the American housing conditions and economy, see R. FISHMAN, HOUSING FOR ALL UNDER LAW 1-4 (1978).

3. D. MANDELKER, C. DAYE, O. HETZEL, J. KUSHNER, H. MCGEE & R. WASHBURN, HOUSING AND COMMUNITY DEVELOPMENT 1 (1981). Although Americans as a whole are better housed than ever before, the reality of high inflation and fluctuating mortgage rates overwhelms the low-income buyer. The costs of owning and operating a home dramatically outstripped personal income. As a result, many low income families are priced out of the home ownership market. *Id.*

4. The options available include mobile homes, other manufactured housing, *see infra* note 5, townhouses or apartments. F. BAIR, REGULATING MOBILE HOMES 1 (1981).

dence[6] with increasing frequency.[7] The contemporary mobile home,

5. A mobile home, as defined by the original National Mobile Home Construction and Safety Standards Act of 1974, is:

> . . . a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

National Mobile Home Construction and Safety Act of 1974, 42 U.S.C. § 5402(6) (1976).

In 1980, Congress amended the National Mobile Home Construction and Safety Standards Act, and changed the term "mobile home" to "manufactured home." The amended version of the statute defined manufactured home as:

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

(emphasis added). National Mobile Home Construction & Safety Act of 1974, 42 U.S.C. § 5402(6) (Supp. IV) (as amended).

These changes reflect the fact that the "mobile home" label has become less accurate. For a more extensive discussion of this phenomenon, see *infra* notes 38, 39, 43-85 and accompanying text.

A double-wide mobile home consists of two mobile sections brought to the site on individual chassis, and attached horizontally on the site. B. HODES & G. ROBERSON, THE LAW OF MOBILE HOMES 4 (3d ed. 1974). As of 1981, about 24% of total mobile home shipments were double-wide units. Manufactured Housing Institute, Inc., Quick Facts, July 1982.

A modular home consists of one or more prefabricated sections combined on the site to make a home. B. HODES & G. ROBERSON, *supra*. Modular housing must conform with state and local regulations, in contrast to mobile homes which must also adhere to the federal regulations discussed here. Nutt-Powell, *Mobile Homes are Getting Classier*, 48 PLANNING 20, 20 (1982).

Both modular homes and mobile homes can be accurately described by the generic term "manufactured housing," e.g., housing that is built in a factory as opposed to site built housing. In the context of this Note, all references to manufactured housing imply only mobile homes, unless otherwise specified. For an up-to-date and comprehensive analysis of contemporary manufactured housing, including the construction, marketing, quality, and financing of manufactured housing, see generally T. NUTT-POWELL, MANUFACTURED HOMES (1982).

6. In Gates v. Howell, 204 Neb. 256, 262, 282 N.W.2d 222, 26 (1979), a witness stated that between 75 and 80 percent of mobile homes are never moved from their

in contrast to its historical predecessor,[8] is attractive,[9] safe,[10] and en-

original location. More recent sources contend that 97% of mobile homes remain at their original site location. Nutt-Powell, *supra* note 5, at 21.

For a discussion of the treatment of mobile homes as permanent entities in other contexts, see *infra* note 171.

During the Great Depression, trailer inhabitants had the reputation of being "footloose, nomadic people unlikely to make any positive contribution to community life." The use of trailers primarily by tourists and transient workers established this impression. Note, *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 YALE L.J. 702, 703-04 (1962). In contrast, mobile homes today are purchased primarily by young families, the elderly and childless couples. Nutt-Powell, *supra* note 5, at 21. *See also* THE CENTER FOR AUTO SAFETY, MOBILE HOMES, THE LOW COST HOUSING HOAX 14-15 (1975).

7. In 1981 manufactured homes comprised over 20% of new housing starts. Selling for an average price of $20,000, mobile home sales rose to 250,000 in 1981. This represents a 13% increase in the number of units sold over 1980. Nutt-Powell, *supra* note 5, at 23. In 1982, over 90% of all single family dwellings sold in the United States for less than $35,000 were manufactured homes.

As of November 1981, the cost of a double-wide manufactured home with three bedrooms and 2 baths, measuring 1,152 square feet included:

Retail price of basic unit ($19.80 per sq. foot)	$22,810
Transportation (35 mi. at $2 per mile per section)	1,400
Unit set-up ($30 per hour, two-person crew, 16 hrs)	480
Land purchase and preparation	7,000
Total	$31,690

Id. at 21.

Between the years 1974-1979, mobile home size increased by 15%, while total cost of the mobile home grew by 80%. During the same time period, the average size of a conventional home grew by 1.8% while the total cost grew by 87%. These statistics illustrate what is considered the single most important feature of new manufactured housing: the price advantage. Lightbody, *Manufactured Homes: Beating the High Cost of Housing*, CONSUMERS DIG. July/Aug. 1981 *reprinted in* T. NUTT-POWELL, MANUFACTURED HOUSING: A LOOK AT THE ISSUES 19-20 (1982) [hereinafter cited as MANUFACTURED HOUSING].

8. The economic conditions of the Depression followed by a severe post-war housing shortage forced thousands of flimsy trailers into use as permanent housing. Describing the mobile homes of this era, one author stated that:

> . . . Often these units were without running water or sanitary facilities. There were no construction standards to insure even minimum protection against fire or collapse. They were parked in areas which were usually crowded, poorly equipped, and generally unsuited to residential use. As a result, conditions in these parks seldom exceeded minimum health and sanitation standards. The specter of such parks teeming with tiny trailers made community apprehension understandable.

Note, *supra* note 6, at 702-3.

9 Brief of Manufactured Housing Institute, Inc., Amicus Curiae at 4, Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981) [hereinafter cited as *Robinson* Amicus Brief]. The modern mobile home, with proper landscaping and skirting,

can be as attractive as site-built housing. Many mobile home owners add additional rooms, carports, porches and decks to the initial unit. The interiors of modern mobile homes bear very little similarity to former travel trailers. Mobile homes commonly contain all the modern household conveniences in addition to amenities such as cathedral ceilings, atriums, panelling and built-in furniture. *Id.* at 4-5.

New mobile homes are usually sold fully equipped with major appliances, furniture, draperies, lamps and carpeting included in the purchase price. The optional features include air conditioning, automatic dishwashers, garbage disposals, trash compactors and central vacuuming systems. Manufactured Housing Institute, Inc., Quick Facts, July, 1982.

But see Robinson Township v. Knoll, 410 Mich. 293, 313, 302 N.W.2d 146, 150 (1981). The *Robinson* court stated: "To be sure, mobile homes inferior in many respects to site-built homes continue to be manufactured." *Id.*

10. Nutt-Powell, *supra* note 5, at 21. After passage of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401-5425 (1976), *as amended by* Housing and Community Development Act of 1977, Pub. L. 95-128, 91 Stat. 1149, all mobile homes produced must meet the detailed requirements of the Mobile Home Construction and Safety Standards, 24 C.F.R. §§ 3280.1-.904 (1983). The Act covers every facet of mobile home production and use. The purpose of the Act is "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and to improve the quality and durability of mobile homes." 42 U.S.C. § 5401 (1976). The Department of Housing and Urban Development (HUD) monitored the regulatory impact on structural safety and durability of mobile homes. Research indicated that mobile home standards equal or surpass those required of site-built housing. Nutt-Powell, *supra* note 5, at 21. The HUD research stated the following:

> The mobile home from an engineering point of view, is a more sophisticated structure than the conventional home. It is engineered to satisfy the same loading conditions of a conventional home while selling at a fraction of the cost. At the same time, it must meet the greater, sharper, and unpredictable, dynamic conditions caused by over-the-road movement . . .
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> . . . The claim that the mobile home is of inferior construction is not justified . . . Mobile home design principles are more efficient than those used in the structural design of the conventional home.

D. BERNHARDT, STRUCTURE, OPERATION, PERFORMANCE AND DEVELOPMENT TRENDS OF THE MOBILE HOME INDUSTRY 86, 93 (unpublished study for the Department of Housing and Urban Development) *reprinted in Robinson* Amicus Brief, *supra* note 9, at 22-23.

The National Mobile Home Construction and Safety Standards Act provides for an elaborate federal enforcement system. Manufactured home designs must be approved by HUD's design approval inspection agency and during one stage of production by an in plant inspection agency. Individual state agencies monitor compliance with HUD's standards. Those agencies are in turn monitored by a National Conference on States and Building Codes.

In contrast, site-built homes are controlled by both state and federal building code standards. The standards may not be consistent with the standards imposed by local inspectors in monitoring compliance. In addition, as technology changes, revisions are not made uniformly throughout the country. Rather, changes are made on the state and local levels, leaving open possibilities for wide variation, in addition to lags or delays in implementing those changes. Unpublished Comments on Behalf of Man-

ergy efficient.[11] Despite these innovations, the technological modernization of mobile homes has not been accompanied by a comparable development in zoning treatment.[12] Municipal zoning provisions

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ufacturers on Manufactured Housing Standards Revisions Submitted for Office of Management & Budget Review by Casey, Scott and Canfield, P.C., 19-20 [hereinafter cited as Unpublished Comments on Behalf of Manufacturers of Manufactured Housing].

The most common hazards of mobile homes include flammability and susceptibility to strong winds. The mobile homes built to HUD Code standards have shown little vulnerability to these dangers. Nutt-Powell, *supra* note 5, at 21. For a detailed analysis of the safety and quality of mobile homes, see MANUFACTURED HOUSING, *supra* note 7, at 26-40. For a critique of the former hazards of mobile homes, see THE CENTER FOR AUTO SAFETY, *supra* note 6, at 87-162.

In fall of 1982, Congress proposed numerous revisions to HUD's structural and performance standards for manufactured housing. Although the manufactured housing regulations form one of the most comprehensive federal regulatory schemes, it is financed entirely by manufacturers. As a result, the manufacturers are forced to pass the costs of regulation on to consumers in the form of higher prices. This phenomenon defeats the critical advantage of this form of housing while not significantly improving the safety or durability of the units. Unpublished Comments on Behalf of Manufacturers of Manufactured Housing, *supra*, at 48.

11. Nutt-Powell, *supra* note 5, at 21. The HUD manufacturing code, *see supra* note 10, ensures that mobile homes are energy efficient by requiring heating, ventilation and thermal envelope provisions, as well as use of exceptionally high grade insulation. Additionally, the Code provides that homes located in certain states be equipped with storm windows or insulated glass. 24 C.F.R. § 3280 (1982).

12. Bair, *Mobile Homes—A New Challenge*, 32 L. & CONTEMP. PROB. 286, 290 (1967). Fifteen years ago, Bair recognized that zoning regulations were not responsive to the needs of mobile homes. He found that although mobile homes are single family residences, they were not permitted in most single-family residential areas. He also found that the density requirements in many zoning schemes were unable to accommodate mobile home parks. *Id.* These zoning issues remain significant obstacles to reaching the full potential of this important housing source. The two other main problems in manufactured housing use, which have largely been overcome are 1) the negative image and 2) the lack of adequate home financing. Manufactured Housing Institute Unpublished Commentary (April 1982).

Even though increased demand for mobile homes has resulted from both improvements in the product and a competitive price, zoning laws show continuing evidence of discrimination against manufactured housing. In April 1982 the President's Commission on Housing stated that

> . . . [m]anufactured housing can be as safe and healthy as comparable site-built housing. Housing systems or components satisfying a nationally recognized model code similarly should not be excluded from use in a locality. Exclusionary zoning provisions based on type of manufacture are arbitrary and unrelated to legitimate zoning concerns.

REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING 203-4 (April 1982) [hereinafter cited as COMMISSION REPORT].

Financing mobile home purchases was a major problem in the past because lenders financed the homes as personal rather than real property. In 1981, however, the Fed-

continue to embody the residual fears that mobile homes will blight and burden the community.[13] Responding to these impressions, local government often excludes mobile homes from entire municipalities, prevents their presence in residential districts, or forces them into undesirable areas of the community.[14]

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eral National Mortgage Association (FNMA) initiated a program whereby manufactured housing loans were treated as real estate mortgages. Through this mechanism, FNMA created a secondary market for manufactured home loans that created financing similar to that available for site-built housing. FNMA requires the manufactured homes to meet certain guidelines:

(1) The unit must be permanently attached to a real estate lot, and wheels and axles must be removed;
(2) The land and the home must be sold as a package and financed by a single real estate mortgage;
(3) The mortgage must be covered by a standard title insurance policy;
(4) The mortgage must exclude financing of furniture—except kitchen and laundry appliances, draperies, and carpeting—and any kind of insurance; and
(5) The property must be comparable to site-built housing in the local marketplace.

Federal National Mortgage Association News Release, August 6, 1981, *reprinted in* MANUFACTURED HOUSING, *supra* note 7, at 77-79. In addition to the FNMA program, HUD has also granted long-term mortgage insurance for new manufactured housing. Manufactured Housing Institute Unpublished Commentary (April 1982).

13. Lightbody, *supra* note 7, *reprinted in* MANUFACTURED HOUSING, *supra* note 7, at 16. Mobile home ordinances generally reflect attitudes that grew out of the Great Depression era. Carter, *Problems in the Regulation and Taxation of Mobile Homes*, 48 IOWA L. REV. 16, 17 (1962). Many communities fear that the trailers and their tenants will bring with them three major problems: 1) depressed property values and neighborhood blight especially in middle or upper class residential neighborhoods; 2) overburdened municipal services; and 3) socially undesirable people. Note, *Mobile Homes: A Partial Solution to West Virginia's Housing Problem*, 81 W. VA. L. REV. 251, 252 (1979). *See infra* notes 24-42 and accompanying text.

Municipal services are affected because traditionally, high density mobile home parks produce disproportionately low tax revenue compared to the costs they imposed on the community. These costs include: The need for more school services and facilities, additional capacity of public utilities, and increased police and fire protection. Communities must assume the burden of providing these services. Moore, *The Mobile Home and the Law*, 6 AKRON L. REV. 1, 3-4 (1973).

14. Note, *Regulation of Mobile Homes*, 13 SYRACUSE L. REV. 125, 125 (1961). In 1961, one commentator stated:

> . . . some municipalities have responded to the social and economic problems incident to the use of mobile homes by using their regulatory powers in a manner both intolerant and hostile. They have imposed . . . burdensome requirements, calculated to destroy rather than to regulate, and they have sought to confine trailer living to "ghettos" in areas unfit for residential use . . . .

Id. Twenty years later, the President's Commission on Housing acknowledged that discrimination against mobile homes still remains: "Despite the increasing attractive-

This Note examines methods of exclusionary zoning affecting mobile homes. As a threshold issue, the Note discusses the judicial and legislative definitions of a mobile home. The analysis demonstrates that the resulting characterization of the mobile home determines its treatment under the zoning ordinances. Subsequent sections focus on zoning methods that effectively exclude mobile homes from single family residential districts as well as from entire municipalities. Finally, the concluding portions examine recent attempts to accommodate the modern mobile home, and suggest future implications.

II. THE ZONING POWER APPLIED TO MOBILE HOMES

Municipalities obtain the right to regulate mobile homes through zoning by an extension of the State's police power.[15] This grant of authority permits municipalities to design measures to promote the general welfare and protect the public health and safety.[16] When a court evaluates a zoning ordinance, it initially identifies the purpose of the regulation in order to determine whether it legitimately serves

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ness of manufactured housing, local zoning laws continue to discriminate against mobile homes. In many localities, mobile homes are segregated into special areas, often in disadvantageous locations set aside as "trailer parks." COMMISSION REPORT, *supra* note 12, at 203.

15. 8 E. MCQUILLEN, MUNICIPAL CORPORATIONS § 25.32 (3d ed. 1976). Municipalities, having no inherent police power, have no inherent zoning power. States delegate zoning responsibility to local governments either through explicit constitutional provisions, *see, e.g.*, CAL. CONST. art. XI, § 7; COLO. CONST. art. XX, § 1; PA. CONST. art. IX, § 2; WIS. CONST. art. XI, § 3 (delegating the zoning authority to municipalities via a Home Rule provision), or via enabling acts. The Standard State Zoning Enabling Act of 1922, developed by the United States Department of Commerce, was adopted in principle by all the states. Enabling acts have three basic components: a) the grant of authority to local governments to control land uses, densities and dimensional requirements; b) the concept of the zoning district; and c) the outline of zoning purposes. D. MANDELKER & R. CUNNINGHAM, PLANNING AND CONTROL OF LAND DEVELOPMENT 217-222 (1979).

16. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926). According to the *Euclid* court, ordinances "must find their justification in some aspect of the police power, asserted for the public welfare." *Id.*

The police power includes all laws which further the public health, safety, morals or general welfare. A. RATHKOPF, THE LAW OF ZONING AND PLANNING § 2.01 (4th ed. 1982).

The concept of zoning "for the public welfare" is the subject of much criticism. Because zoning is an inherently political process, the particular ordinances may pursue goals such as controlling growth or reducing property taxes, at the expense of the public welfare. Delogue, *The Misuse of Land Use Control Powers Must End: Suggestions for Legislative and Judicial Responses*, 32 MAINE L. REV. 29, 29-30 (1980).

the public health, safety and welfare.[17] Goals which are traditionally advanced by zoning ordinances include the separation of inconsistent land uses;[18] the preservation of land values;[19] and the control of municipal growth.[20] Recently courts have also found aesthetic[21] and environmental preservation[22] to fall within the rubric of legitimate ends of zoning. If the regulation seeks to serve a legitimate purpose, the court then must determine whether it is rationally related to its stated purpose.[23]

Traditionally the courts upheld ordinances which sought to protect the public from the health and safety hazards supposedly attributable to mobile homes.[24] Additionally, the courts approved regulations which sought to promote the general welfare by excluding mobile homes on the grounds that they tended to overburden municipal services[25] and deplete adjacent property values.[26] These seemingly legitimate zoning concerns are often mere smokescreens for an underlying resistance to mobile homes on the part of municipalities and the courts.

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17. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926).

18. *Id.* at 394. *Euclid* upheld the separation of residential, business and industrial buildings as a means of promoting the public health, safety and welfare.

19. A. RATHKOPF, *supra* note 16, § 5.04.

20. P. ROHAN, ZONING AND LAND USE CONTROLS § 4.01[3] Communities "time" their growth to prevent overburdening public services and to avoid urban sprawl. Courts uphold reasonable regulations if they are intended to promote orderly growth. *Id.*

21. A. RATHKOPF, *supra* note 16, § 14.01. Traditionally zoning restrictions based on aesthetics alone were invalid. The modern attitude accepts aesthetics as a basis for zoning if the restrictions are "reasonable." *Id.*

22. *Id.* § 7.03. The preservation of environmentally and ecologically important regions has become a legitimate zoning purpose in some jurisdictions. *Id.*

23. *Id.* § 3.04.

24. A. RATHKOPF, *supra* note 16, § 19.03.

25. *E.g.*, Napierkowski v. Gloucester Township, 29 N.J. 481, 150 A.2d 481 (1959). In *Napierkowski*, plaintiff could not place a trailer on a piece of land outside a mobile home park. The court stated that this prohibition was properly within the police power. It promoted the general welfare ". . . by assuring that adequate provisions are made for drainage, sewerage facilities, water and lighting of trailers . . ." *Id.* at 497, 150 A.2d at 489.

26. Town of Manchester v. Phillips, 343 Mass. 591, 595, 180 N.E.2d 333, 336 (1962) (power to regulate mobile homes may be exercised to ensure no injury to the investment in conventional homes); Napierkowski v. Gloucester Township, 29 N.J. 481, 493-94, 150 A.2d 481, 487 (1959) (trailers may retard development of an area for residential purposes).

The underlying motivations of mobile home regulation can be said to fall into two groups: the "shouted" reasons and the "whispered" reasons.[27] "Shouted" reasons are those justifications that courts and legislatures openly announce as the legitimate basis for regulation.[28] Proponents of mobile home regulation claim that mobile homes overburden municipal services and fail to generate sufficient tax revenue.[29] They also claim that the unsightly and unattractive appearance of mobile homes cause adjacent property values to decline.[30]

The traditional rationales for regulation no longer comport with reality.[31] They arise from collective memories of conditions which existed during the Great Depression. In the early 1930's, mobile homes, then called "trailers," were often poorly designed housing units crowded into parks that lacked adequate plumbing and water facilities.[32] While modern mobile homes no longer support these outdated perceptions, widespread belief in their continued validity serves as the basis for excluding this form of housing.[33]

The "whispered reasons"[34] are those that cannot be alluded to overtly because they do not support even ostensibly legitimate zoning purposes. In the mobile home context, these reasons principally embody the underlying desire to exclude transients[35] and other people

27. *Cf.* Babcock & Bosselman, *Suburban Zoning and the Apartment Boom*, 111 U. PA. L. REV. 1040, 1059-72 (1963). In this article, Babcock and Bosselman analyzed the ways municipalities dealt with integration of apartment buildings into suburban communities. The authors discussed the resistance to apartment buildings in terms of "shouted" reasons, "whispered" reasons and "subconscious" reasons. Two of these categories provided an appropriate framework for discussing similar phenomena relating to attitudes towards mobile homes in communities. *See also* notes 127-33 *infra* and accompanying text.

28. *Id.* at 1062.

29. *See supra* note 25.

30. *See supra* note 26.

31. *See supra* notes 9-11.

32. *See supra* note 8.

33. As early as twenty years ago, commentators recognized the changing quality of mobile homes, and urged for more equitable treatment. *E.g.*, Note, *supra* note 6.

34. Babcock & Bosselman, *supra* note 27, at 1068.

35. Note, *supra* note 6, at 703-04. Mobile homes were originally used by tourists and transient workers. *Id.* In Clackamus County v. Dunham, 282 Or. 419, 579 P.2d 223 (1978), the dissenting opinion stated that one of the major justifications for excluding mobile homes from residential areas was the transient quality of mobile home dwellers. *Id.* For further discussion of *Clackamus*, see *infra* notes 55-61 and accompanying text.

of a lower socio-economic status from living in the community.[36] Clearly, these reasons are not and never have been accepted as legitimate zoning purposes.[37]

In the 1980's local governments continue to exclude mobile homes on the basis of rationales which are either unfounded in fact or patently illegal. The most common and effective method for exclusion is the manipulation of the definition of mobile home.[38] The language in mobile home regulations often wholly misstate the realities of modern mobile homes.[39] In addition, municipalities have supplemented the definitional methods of regulation with specific zoning techniques designed to isolate or totally exclude mobile homes.[40]

Notwithstanding the resulting inequities, courts traditionally have upheld ordinances with incidental exclusionary effects under the guise of promoting the local zoning jurisdiction's general welfare, while also satisfying the communities' "whispered" desires.[41] Although exclusionary zoning *per se* has generally become less prevalent,[42] mobile homes still remain susceptible to out-dated judicial

36. *Id.* at 1069. Housing cost is the primary factor determining the social status of the occupants. Cheap housing, like mobile homes, is likely to attract lower-income groups. *Id.*

37. A. RATHKOPF, *supra* note 16, at § 17.04.

38. *See infra* notes 43-85 and accompanying text.

39. *Id.*

40. *See infra* notes 86-147 and accompanying text.

41. Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection and the Indigent*, 21 STAN. L. REV. 767, 788 (1969). This approach has been traced to Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926). In *Euclid*, the Supreme Court upheld the constitutionality of zoning. *Id.* at 387-88. The Court prescribed a presumption of validity to zoning ordinances, declaring that courts should uphold zoning measures unless they are clearly arbitrary or unreasonable. *Id.* at 388. *Euclid* also sanctioned the use of zoning provisions to separate incompatible uses within a community in the name of general welfare. *Id.* at 390. For many years, courts relied on this theory to uphold ordinances separating industrial from residential areas. *Id.* at 394. Communities eventually extended the rationale to separate not only incompatible uses, but to exclude undesirable uses as well. *Developments in the Law—Zoning*, 91 HARV. L. REV. 1427, 1629 (1978).

42. In the past eight years, four states have invalidated exclusionary zoning practices. The states are: Michigan: Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974) (complete exclusion of a legitimate use has a "strong taint of unlawful discrimination" and is presumed unreasonable); New Jersey: Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A.2d 713 (zoning must promote general welfare of more than the local jurisdiction), *appeal dismissed*, 423 U.S. 808 (1975); New York: Berenson v. Town of New Castle, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975) (excluding multi-family housing did

attitudes.

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not adequately balance the community status quo with the greater public interest); Pennsylvania: Surrick v. Zoning Hearing Bd., 476 Pa. 182, 382 A.2d 105 (1977) (limiting multi-family housing to 1.14% of land for development failed to provide a fair share of land and unconstitutionally excluded multi-family units).

California, through legislative action, effectively prohibits exclusionary zoning. CAL. EVID. CODE § 669.5 (West 1981). For a discussion of this approach to exclusionary zoning, see Burton, *California Legislature Prohibits Exclusionary Zoning, Mandates Fair Share: Inclusionary Housing Programs a Likely Response*, 9 SAN FERN. V. L. REV. 19 (1981).

These decisions force municipalities to adopt a broad notion of general welfare by evaluating the impact of zoning decisions on the surrounding regions. In the context of housing, this approach prevents local government from excluding low-income populations from a region by failing to provide areas for affordable housing.

The Supreme Court, anticipating the circumstances which might call for a "fair share" zoning approach that looks beyond the individual municipality, found in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), that zoning could not be used as a tool to construct isolated municipalities without regard for the changing environment. The Court stated:

> [W]hile the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise.

Id. at 387.

In the State of New Jersey, Justice Hall, dissenting in Vickers v. Township Committee, 37 N.J. 232, 181 A.2d 129 (1962), astutely analyzed the constitutionality of exclusionary municipal ordinances. In *Vickers*, the New Jersey Supreme Court upheld a zoning ordinance that totally excluded mobile homes from a developing municipality. In his dissent, Justice Hall analyzed the problems of expanding suburban areas. He recognized the shortage of low-priced housing. He described the community's use of zoning procedures to exclude low income people now and in the future by banning mobile homes from a sparsely populated township. By upholding an ordinance which clearly erects barriers to low income families, the dissent contended that the majority over-extended the ordinance's presumption of validity. *Id.* at 252-270, 181 A.2d at 140-150. Justice Hall recommended that the concept of "general welfare" has some limit. He specifically advocated a scope of judicial review encompassing more than local concerns. *Id.* at 260, 181 A.2d at 144. For an excellent discussion of *Vickers*, see Comment, *Zoning—Townships—Complete Exclusion of Trailer Camps and Parks*, 61 MICH. L. REV. 1010 (1963).

The *Vickers* dissent became the basis for New Jersey's landmark case Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A.2d 713, *appeal dismissed*, 423 U.S. 808 (1975). In *Mt. Laurel* the New Jersey Supreme Court held that a municipality may not use its land use control mechanisms to make it economically or physically impossible to provide low and moderate income housing. The *Mt. Laurel* ordinance permitted only single family homes, and imposed such a large minimum lot size that most moderate income families were unable to move there. *Mt. Laurel* not only held that these zoning practices did not promote the general welfare, but it also imposed a duty on municipalities to provide a choice of housing opportunities for various income levels. The court required the communities to provide these opportunities to the extent of the municipalities' "fair share of the pres-

III. THE DEFINITIONAL PROBLEM: WHAT IS A MOBILE HOME?

While most municipal zoning ordinances provide for mobile home parks, the ordinances generally are ambiguous as to whether mobile

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ent and prospective regional need. . .". *Id.* at 174, 336 A.2d at 724. *Mt. Laurel* therefore established the first explicit notions of "fair share" and "regionalism." In Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A.2d 1192 (1977), the court expanded *Mt. Laurel*, by specifying that communities must not only provide for their "fair share" of housing, but that the community must also permit a form of "least cost" housing (*e.g.*, mobile homes).

In New York, the court adopted a different notion of fair share. In Berenson v. Town of New Castle, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975), the New York Court of Appeals established a two-part test which it applied to determine the validity of an ordinance excluding multi-family housing. The *Berenson* test analyzes 1) whether the community has a well-ordered and properly balanced plan and 2) whether the plan considers the needs of the region as well as the town for housing. *Id.* at 110, 341 N.E.2d at 242, 378 N.Y.S.2d at 680-81. *See* Mallach, *Exclusionary Zoning Litigation: Setting the Record Straight*, 9 REAL EST. L.J. 275, 291-92 (1981). The *Berenson* test is satisfied if another neighboring community meets the regional needs, as long as the community wishing to exclude the housing conducts the inquiry. In Robert E. Kurzius, Inc. v. Incorp. Village of Upper Brookville, 51 N.Y.2d 338, 414 N.E.2d 680, 434 N.Y.S.2d 180 (1980), *cert. denied*, 450 U.S. 1042 (1981), the Court of Appeals found that a zoning ordinance enacted with an exclusionary purpose would be invalidated. If it ignored regional needs or had an unjustifiable exclusionary effect, the court will also hold it invalid. In New York, however, the burden of establishing the exclusionary effect remains with the plaintiffs. P. ROHAN, *supra* note 20, at § 2.01[6].

In Pennsylvania, Surrick v. Zoning Hearing Bd., 476 Pa. 182, 382 A.2d 105 (1977), adopted the "fair share" test. *Surrick* stated that the fair share principle requires local government to plan and provide for the legitimate needs of all the categories of people who might live in the community. 476 Pa. at 188, 382 A.2d at 111. *See* Mallach, *supra*, at 290-91. For additional discussion of the Pennsylvania cases, see *supra* notes 92-97 and accompanying text.

In Michigan, prior to 1974, the courts adopted a doctrine of preferred uses. Mobile homes, along with hospitals, schools, churches, public utilities and mineral resources had been granted this status because the public interests served by these institutions required special protection under zoning laws. The preferred use doctrine, established in Bristow v. City of Woodhaven, 35 Mich. App. 205, 192 N.W.2d 322 (1971), holds that the municipality bears the burden of justifying the validity of any ordinance excluding a preferred use. The municipality must sustain a heavy burden of proof, unlike the usual presumption of validity given to the ordinances. In 1975, the Michigan Supreme Court reversed one aspect of *Bristow* in Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974), by destroying the preferred use doctrine in cases of total exclusion. In *Kropf*, the Michigan Supreme Court held that the total exclusion of multi-family units should be presumed unreasonable. *Kropf* also reversed the burden of proof, requiring the plaintiff to show that the ordinance was excusionary. *Id.* at 156, 215 N.W.2d at 189 (1974). For further discussion of the Michigan "preferred use" doctrine, see Comment, *The Michigan Preferred Use Doctrine as a Strategy for Regional Low-Income Housing Development: A Progress Re-*

homes may locate in single-family residential districts.[43] For a limited period of time, mobile homes possess characteristics of both a vehicle and a home.[44] When an individual attempts to place a mobile home on a lot in a single-family residential area, the courts must determine which feature predominates.[45] Identifying the mobile home either as a temporary vehicle or a permanent home often determines its fate under the local ordinance.[46]

Because each ordinance characterizes mobile homes uniquely, the judicial responses to mobile home designations do not fall into clear patterns.[47] Nevertheless, the cases do reflect distinct and recurring issues. Early decisions focused on the physical differences between

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port, 8 URB. L. ANN. 207 (1974) (hereinafter cited as Comment, *The Michigan Preferred Use Doctrine*); Casenote, 52 J. URB. L. 363 (1974).

For a discussion of the "fair share" principle and its development in the context of exclusionary zoning, see *Developments in the Law—Zoning*, *supra* note 41, at 1624-59; and Burns, *Class Struggle in the Suburbs: Exclusionary Zoning Against the Poor*, 2 HASTINGS CONST. L.Q. 179 (1975).

43 *See, e.g.*, Douglass Township v. Badman, 206 Pa. Super. 390, 213 A.2d 88 (1965). The ordinance defined mobile home as "any portable structure or vehicle . . . ." *Id.* at 391, 213 A.2d at 89. The issue presented by *Douglass* is whether a mobile home is "portable" when it has been attached to a permanent foundation. Because the town could not prove that a mobile home attached to a permanent foundation is a *mobile* rather than a *fixed* dwelling, the court permitted the home to locate in a single family residential area. *Id.*

44. B. HODES & G. ROBERSON, *supra* note 5, at 45. A mobile home could be characterized as a vehicle because it has wheels which enable it to be towed on a highway. Functionally, mobile homes are permanent housing, particularly when removed from the wheels, anchored to the ground and equipped with utility connections. *Id.*

45. D. MANDELKER, LAND USE LAW 107 (1982).

46. Comment, *Mobile Homes in Kansas: A Need for Proper Zoning*, 20 KAN. L. REV 87, 90 (1971).

47. Bartke & Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491, 501 (1970). During the past 10 years, at least half of the cases from higher courts characterizing mobile homes placed on their own foundations held that mobile homes always remain mobile homes. The other opinions found either that a mobile home should be treated as a conventional dwelling if it was on a permanent foundation, or simply admitted that there might be a distinction for certain regulatory purposes. "The variations [in these decisions] were not mere differences of judicial opinion. They represented . . . interpretation based on definitions appearing (or not appearing) in the ordinances involved." F. BAIR, *supra* note 4, at 3.

This definitional confusion has been reflected in the following books and articles which deal with the issue: R. ANDERSON, AMERICAN LAW OF ZONING, § 14.03 (2d ed 1976); A. RATHKOPF, *supra* note 16, § 19.02; Bartke & Gage, *supra* at 499-507; Comment, *supra* note 46, at 90-96 (1971).

mobile homes and traditional houses.[48] Emphasizing the inadequacy of the housing units, the courts found the small size of the trailers, the poor construction, and the lack of basic facilities constitute health and safety hazards.[49] Recent decisions analyze the character of a mobile home either by determining its status at the time of manufacture or by considering the mobile home's construction and ultimate use.[50] Those decisions choosing the first approach rarely conclude that a mobile home is a dwelling, while the cases following the latter scheme generally find that mobile homes are, in fact, dwellings.

A. *Mobility at the Time of Manufacture*

Mobile homes typically leave the manufacturer towed on a chassis equipped with wheels.[51] Upon arrival at the chosen site, most owners remove the wheels, and attach the unit to a permanent foundation.[52] Formerly, courts agreed that an owner's attempt to permanently integrate the mobile home into the foundation did not relieve the unit of its original mobile quality.[53] Courts also accorded little significance to the degree to which owners succeeded in integrating their mobile

48. *E.g.*, Manchester v. Phillips, 343 Mass. 591, 594, 180 N.E.2d 333, 336 (1962). The court found that the Manchester ordinance excluded mobile home units from the definition of a dwelling. The court contrasted mobile homes as self-contained units to the conventional houses appropriate for a single family residential district. *Id.*

49. Bartke & Gage, *supra* note 47, at 501.

50. *See infra* notes 70-82.

51. B. HODES & G. ROBERSON, *supra* note 5, at 1.

52. *Id.* at 8. *See supra* note 6.

53. City of Oakdale v. Benoit, 342 So. 2d 691, 695 (La. Ct. App. 1977) (municipality's definition of "dwelling" specifically excluded trailers. Defendant's attempts to make the mobile home permanent did not modify it sufficiently for it to "cease to be a mobile home and instead [become] a single-family dwelling."); Wright v. Michaud, 160 Me. 164, 174, 200 A.2d 543, 548 (1964) ("Such a structure [a mobile home], however elaborately it may be constructed or equipped, does not lose its appearance as a mobile home by becoming affixed to the realty."); Manchester v. Phillips, 343 Mass. 591, 596, 180 N.E.2d 333, 337 (1962) (Even if the trailer has been affixed to the land, "[i]t looks like a trailer, has the qualities of a trailer superstructure, and has been built as a trailer" and should be distinguished from dwellings); Courtland Township v. Cole, 66 Mich. App. 474, 477, 239 N.W.2d 630, 632 (1976) (present mobility not required for a structure to be a trailer coach); People v. Clute, 18 N.Y.2d 999, 999-1000, 224 N.E.2d 734, 735, 278 N.Y.S.2d 231, 232 (1966), *aff'g.* 47 Misc. 2d 1005, 263 N.Y.S.2d 826 (1965) (once mobile, the structure remains a "trailer" regardless of the manner in which it is affixed to a foundation); Gravatt v. Borough of Latrobe, 44 Pa. Commw. 475, 476-77, 404 A.2d 729, 729-30 (1979) (mobile home can be excluded from certain districts on sole basis that it travels to its site on its own running gear); County of Columbia v. Bylewski, 94 Wis. 2d 153, 169, 288 N.W.2d 129, 137-38 (1980)

home.[54]

In *Clackamas County v. Dunham*,[55] the zoning ordinance defined a single family dwelling as "a detached building . . . but not a trailer house,"[56] and a "trailer house" as ". . . a building designed in such a manner that it may be moved from one location to another."[57] The plaintiffs transported their double-wide mobile home from the factory, and immediately placed it on a concrete foundation.[58] The Oregon Supreme Court found that the home violated the single-family residence ordinance.[59] The court ruled that a building designed to be manufactured for possible movement between locations met the definition of a trailer house.[60] Focusing only on the original portability of the mobile home as it left the factory, the court decided that any later attempts to make the mobile home permanent would not change the essentially mobile character of the unit.[61]

In *Heath v. Parker*,[62] the New Mexico Supreme Court adopted a less restrictive view in holding that mobile home limitations should not apply to homes which are no longer mobile.[63] Plaintiffs purchased a residential lot and later placed a new mobile home on

(fact that a mobile home is anchored to the property by posts or on concrete blocks does not remove it from the "trailer" classification).

54. In City of Oakdale v. Benoit, 342 So. 2d 691 (La. Ct. App. 1977), the court stated that even though the mobile home had been mounted on a permanent foundation and connected to public utilities, the home remained "capable" of being mobilized again. The court held that the narrow width of mobile homes makes them permanently capable of travelling on a highway. *Id.* at 695. *But see* Anstine v. Zoning Bd. of Adjustment, 411 Pa. 33, 190 A.2d 712 (1963). In *Anstine*, the court stated that a mobile home which had been attached to a permanent foundation was as moveable as a conventional house. *Id.* at 36, 190 A.2d at 715.

55. 282 Or. 419, 579 P.2d 223 (1978).

56. *Id.* at 422, 579 P.2d at 224.

57. *Id.* The statutory issue raised by this definition is whether "designed" implies design for manufacture of the unit or design for installation of the unit. *Id.*

58. *Id.* at 423, 579 P.2d at 225.

59. *Id.* at 426, 579 P.2d at 226.

60. *Id.* Finding that "designed" meant "designed for manufacture, the court also implied that a building which is a mobile home thereby remains a mobile home forever. *Id.*

61. *Id.* at 426, 579 P.2d at 228. Two dissenting opinions recognized that the ordinance, passed in 1960, did not apply accurately to modern mobile homes. They found that the majority opinion perpetuates the myths associated with mobile homes. *Id.* at 428-31, 579 P.2d at 228-229.

62. 93 N.M. 680, 604 P.2d 818 (1980).

63. *Id.* at 681, 604 P.2d at 819.

the site.[64] After attaching the home to a permanent foundation, the owners removed the wheels, shingled the roof and added a large porch and garage.[65] A restrictive covenant[66] barred all temporary structures from the subdivision, including trailers.[67] The court held that the unit's original mobility could not render the mobile home "temporary"[68] within the meaning of the covenant. Finding the mobile home substantially the same as a conventional single family house, the court concluded that the restrictive covenant could not prevent plaintiffs from living in their mobile home.[69] Although *Heath* involved a restrictive covenant, rather than a zoning ordinance, the case clearly illustrates the modern judicial approach.

B. *Ultimate Use*

Perhaps the most sensible judicial approach to the definitional issue focuses on the mobile home's ultimate use.[70] In *State v. Work*,[71]

64. *Id.* at 680, 604 P.2d at 818.

65. *Id.*

66. In *Heath*, the mobile home definitional issue occurred within the context of a restrictive covenant. Restrictive covenants are a form of private rather than public zoning, commonly used in subdivision developments. A. RATHKOPF, *supra* note 16, § 74.01. Traditionally, courts have upheld restrictive covenants excluding mobile homes because the mutually enforceable agreements are based on contract law rather than on the police power. Comment, *supra* note 46, at 110-11. *See also* Moore, *supra* note 13, at 19-21. Notwithstanding this distinction, *Heath* clearly indicates the modern judicial approach towards treatment of mobile homes.

67. *Id.* at 680, 604 P.2d at 819.

68. *Id.* at 682, 604 P.2d at 820.

69. *Id.* For a discussion of *Heath*, see Dean, *What is a Mobile Home? The Law and Manufactured Housing*, 86 CASE & COM. 10 (Sept.-Oct. 1981).

70. Comment, *supra* note 46, at 97. The following cases find that the mobile home's ultimate use as a permanent residence eliminates any mobile qualities the unit once had. As a result, the decisions hold that mobile homes were permanent dwellings: Fedorich v. Zoning Bd., 178 Conn. 610, 424 A.2d 289 (1979) (mobile home used as a stable and lasting dwelling is not a trailer, but is a permanent dwelling); Your Home, Inc. v. Portland, 432 A.2d 1250 (Me. 1981) (mobile home used as a residence could come within definition of a dwelling if installed on a foundation); Cherokee Village Membership v. Murphy, 71 Mich. App. 592, 248 N.W.2d 629 (1977) (mobile home is no less permanent than other permanent pre-built dwellings); Hume Village v. Township of Middleton, 51 Pa. Commw. 465, 414 A.2d 768 (1980) (mobile home is used as permanent living quarters, while trailers are temporary vacation homes); Reed v. Zoning Hearing Bd., 31 Pa. Commw. 605, 377 A.2d 1020 (1977) (mobile home permanently attached to ground was within meaning of "building"); Douglass Township v. Badman, 206 Pa. Super. 390, 213 A.2d 88 (1965) (mobile home placed on foundation is a fixed dwelling and cannot be excluded because it is "portable"); In re

the Supreme Court of Washington inquired into the unit's characteristics as a home rather than on vague distinctions between mobile and immobile structures.[72] In *Work*, the mobile home owner placed his unit in a single family residential district. The home was attached to a permanent concrete foundation and connected to public utilities.[73] The zoning ordinance defined a single-family dwelling as "a building containing but one kitchen, designed and/or used to house not more than one family . . . ."[74] Claiming that the definition of "building" did not include "immobilized vehicles," the State argued that the mobile home violated the zoning ordinance.[75] The court held that the unit's original mobility did not transform what is primarily a home into a vehicle.[76]

Other cases distinguish mobile homes from sectional or modular homes.[77] A modular home consists of several units, fabricated wholly within the factory, and assembled on a single foundation at the site.[78] After being placed on permanent foundations, mobile and modular

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Willey, 120 Vt. 359, 140 A.2d 11 (1958) (when mobile home is attached to the land, it ceases to be a mobile home and becomes a residence).

For cases treating mobile homes as a permanent entity in other contexts, see *infra* note 171.

71. 75 Wash. 2d 204, 449 P.2d 806 (1969). This case was an appeal from a criminal prosecution for "unlawful habitation of a mobile home" in violation of a county zoning ordinance. *Id.* 449 P.2d at 807. Therefore, the court must sustain a greater burden in finding that the defendant violated the ordinance.

72. *Id.* at 207, 449 P.2d at 808. The court found it apparent that defendant's residence was a single family building. Any of the building's mobile features were those of the home itself and not those of a vehicle. *Id.* at 206, 449 P.2d at 808.

73. *Id.* at 205, 449 P.2d at 807.

74. KING COUNTY, WASH., ZONING CODE, Resolution 18801.

75. 75 Wash. 2d at 206, 449 P.2d at 808.

76. *Id.* at 207, 449 P.2d at 809. The court clarified its holding by specifying that the statute would bar an immobilized school bus—a vehicle—from serving as a residence. *Id.*

77. Town of Helena v. Country Mobile Homes, Inc., 387 So. 2d 162 (Ala. 1980) (modular home not a mobile home); Woodstock v. Boddy, 240 Ga. 477, 241 S.E.2d 236 (1978) (mobile home ordinance was unconstitutionally vague when applied to module home); Your Home Inc. v. Portland, 432 A.2d 1250 (Me. 1981) (modular homes distinguished from mobile homes on basis of chassis construction).

78. R. ANDERSON, *supra* note 47, § 14.15. B. HODES & G. ROBERSON, *supra* note 5, at 4, distinguished module homes from sectional homes. A modular home is "a factory fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure . . ." while a sectional home is "a dwelling made of two or more modular units factory fabricated and transported to the home site where they are put on a foundation and joined to

homes are often indistinguishable.[79] In fact, the only visible difference between the two homes is that a mobile unit has its own towing apparatus,[80] while modular homes have towing mechanisms which are not an integral part of the unit. Zoning ordinances, however, align modular housing with conventional housing more frequently than with mobile homes.[81] Similarly, courts express a decided pref-

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make a single house." *Id.* This Note discusses modular, prefabricated, and sectional housing as one entity: "modular housing."

79. Lightbody, *supra* note 7, at 17; F. BAIR, *supra* note 4, at 1; Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981). Mobile homes must comply with federal construction standards, *see supra* note 10. Modular or prefabricated housing is subject to state building codes. Because the state codes for prefabricated housing closely resemble those for site-built housing, there is some sentiment that modular housing is of superior quality to mobile homes. A comparison of state and federal guidelines reveals that this perception is mistaken because the standards imposed by the Federal government often exceed those required by the states. *Robinson* Amicus Brief, *supra* note 9, at 7.

The physical distinctions between modular and mobile homes become even less apparent with the growing popularity of double- and triple-wide mobile homes. Both types of manufactured housing involve similar concepts of units which are attached at the site. *See supra* note 5.

80. Comment, *Mobile Homes in North Carolina: Residence or Vehicle*, 50 N.C. L. REV. 612, 619 (1972). This comment argues that prefabricated and modular homes do not remain vehicles simply because they were brought to the site by a vehicle, and could possibly be moved at some future time. *Id.* In 1958 the Vermont Supreme Court recognized this concept stating:

> It is common knowledge that many homes today are of the "ready-cut" variety. Small ones may be moved in a complete form to the lot upon which they are to be situated. Others are brought to a site in pre-fabricated sections which are then assembled together to make the complete structure. Presumably, they could be disassembled and moved to another location without too much difficulty or damage. But we doubt that anyone would contend they were mobile in nature and not a house or building.

In re Willey, 120 Vt. 359, 364, 140 A.2d 11, 14 (1958). *See also* Your Home, Inc. v. Portland, 432 A.2d 1250, 1255 (Me. 1981) (the Maine State code distinguished modular homes from mobile homes solely on the basis of the mobile home having a permanent chassis). *But see* Kyritsis v. Fenny, 66 Misc. 2d 329, 330, 320 N.Y.S.2d 702, 704 (1971) ("the concept of a mobile home is entirely different from that of a modular home").

81. Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981). In *Robinson*, the local bulding code provided for prefabricated or modular housing in single family residential areas. At the same time, a local zoning ordinance precluded all mobile homes from all areas other than mobile home parks. The *Robinson* court found this distinction unreasonable because both types of housing "are 'movable or portable' and may be similar in appearance and constructed of similar materials." *Id.* at 321, 302 N.W.2d 154. For a further discussion of *Robinson*, see *infra* notes 148-167 and accompanying text.

Town of Helena v. Country Mobile Homes, Inc., 387 So. 2d 162 (Ala. 1980). In

erence for allowing modular rather than mobile homes in single-family residential areas.[82] The tenuous distinctions between the quality and appearance of mobile homes and modular residences disclose a basic inconsistency in zoning treatment.

C. *Critique*

A review of the court's analytical approaches reveals that ambigious terms in the zoning ordinances leave the courts wide discretion for determining their application to mobile homes. Some courts, finding the statutes unconstitutionally vague, have refused to resolve these specific definitional issues.[83] Of the courts addressing the substantive issues, those relying on the characteristic of mobility at the time of manufacture fail to recognize that mobile homes are no longer mobile. The "ultimate use" standard provides a more effective approach. Although courts apply this standard with increasing

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Helena, the court found that a modular home was *not* a mobile home. Because mobile homes, and not modular homes, are prohibited by the ordinance, the modular home was permitted in a single family residential district. *Id.*

In Kyritsis v. Fenny, 66 Misc. 2d 329, 320 N.Y.S.2d 702 (1971), the ordinances reflected the divergent attitudes toward mobile and modular housing. The local ordinance defined a mobile home as:

> Any vehicle or similar portable structure with or without a foundation or wheels, . . . designed or constructed to be towed, driven or otherwise transported to its resting site and which is further designed to permit occupancy for dwelling or sleeping purposes . . .

Id. at 329, 320 N.Y.S.2d 703. The *Kryitsis* court found that modular housing fell within the following definition:

> Dwelling: A detached building, designed or used exclusively as living quarters for one or more families; the term shall be deemed to include automobile court . . . or . . . mobile home trailer . . .

Id. at 329-30, 320 N.Y.S.2d at 703-4.

82. *See, e.g.*, Town of Helena v. Country Mobile Homes, Inc., 387 So. 2d 162 (Ala. 1980) (modular home would not violate an ordinance prohibiting mobile homes); Kyritsis v. Fenny, 66 Misc. 2d 329, 320 N.Y.S.2d 702 (1971) (modular home which was indistinguishable from site built housing did not fall within ordinance prohibiting mobile homes). *See also* F. BAIR, *supra* note 4, at 1 (manufactured housing other than mobile homes has with few exceptions disappeared from zoning concern). *But see* Warren v. Town of Gorham, 421 A.2d 624 (Me. 1981) (ordinance requiring modular home to be placed only in mobile home park upheld).

83. *See* City of Woodstock v. Boddy, 240 Ga. 477, 241 S.E.2d 236 (1978) (ordinance defining mobile home only as a "vehicle or portable structure used for dwelling or sleeping purposes" was unconstitutionally vague); Grant County v. Bohne, 89 Wash. 2d 953, 956, 577 P.2d 138, 139 (1978) (ordinance providing that no building could be "moved in on any lot in the district" was unconstitutionally vague).

frequency, its use is limited in some circumstances by a failure to acknowledge the similarities between mobile and modular housing.

Generally, ordinances defining mobile homes as anything other than a conventional dwelling provide merely a convenient opportunity for underlying exclusionary effects. Zoning ordinances should include precise definitions which accommodate the qualities and uses of the contemporary mobile homes. A successful scheme might adopt a broad definition of permissible housing applicable to all types of manufactured housing including modular housing.[84] The ordinance might also separate mobile homes into classes according to their specific physical attributes.[85] Distinguishing between types of mobile homes would permit residential areas continued control over the appearance and quality of the manufactured housing as they now control all other housing. Moreover, this method would not allow the exclusion of mobile homes based merely on semantic loopholes found in vague ordinances. Neither would the proposed scheme per-

84. F. BAIR, *supra* note 4, at 3-4. Bair has proposed a generic classification "manufactured building" which is "1.) mass produced in a factory; 2.) designed and constructed for transportation to a site for installation and use when connected to required utilities; 3.) either an independent, individual building or a module for combination with other elements to form a building on a site." *Id.*

85. *Id.* Bair suggests six classes of mobile homes with varying degrees of resemblance to site-built homes. Taking into account the fact that not all mobile homes are alike, this scheme would encourage placement of mobile homes that most clearly resemble site-built housing in residential areas. *Id.* Bair's six classifications include the following:

> . . . 1. Class A—New mobile homes certified as meeting the *Mobile Home Construction and Safety Standards* of the Department of Housing and Urban Development and approved as meeting "acceptable similarity" appearance standards. . . .
> 2. Class B—New mobile homes certified as meeting HUD *Mobile Home Construction and Safety Standards*, but not approved as meeting "acceptable similarity" appearance standards.
> 3. Class C—New mobile homes certified as meeting [acceptable prior code or codes], or used mobile homes certified as meeting either the HUD standards specified above or such prior code, found on inspection to be in excellent condition and safe and fit for residential occupancy.
> 4. Class D—Used mobile homes, whether or not certified as meeting HUD prior codes, found on inspection to be in good condition.
> 5. Class E—Used mobile homes, whether or not certified as meeting HUD or prior codes, found on inspection to be in fair condition.
> 6. Class F—Used mobile homes, whether or not certified as meeting HUD or prior codes, found on inspection to be in poor condition and unsafe and/or unfit for residential occupancy.

Id.

mit "whispered" judicial attitudes to tacitly control whether or not local ordinances permit mobile homes.

Solving only the definitional problem fails to ensure that mobile homes will receive appropriate zoning treatment. Municipalities still control the use and placement of mobile homes through exclusionary zoning techniques.

IV. EXCLUSIONARY ZONING

Mobile home ordinances, like other zoning provisions, traditionally carry a presumption of validity.[86] In deference to this underlying presumption, courts generally uphold ordinances which reasonably promote the public welfare.[87] This judicial attitude enables legislatures to impose a limited degree of restriction on particular uses of land. Courts in several states have invalidated as unreasonable regulations explicitly and wholly excluding a legitimate land use.[88] These decisions arise from ordinances which do not specifically exclude mobile homes. Rather, they comprehensively exclude many legitimate land uses. When an ordinance totally excludes an otherwise legitimate use, courts closely scrutinize the measure and its effect on the community.[89] Nevertheless, local governments may still achieve total or partial exclusion of a particular use through indirect means.[90]

86. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).

87. *Id.*

88. *See supra* note 42.

89. Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974). For a discussion of the Michigan cases on exclusionary zoning, see *supra* note 42; *see generally* Burns, *supra* note 42; Comment, *The Michigan Preferred Use Doctrine*, *supra* note 42; Comment, *The Presumption of Validity of Mobile Homes as a Preferred Use*, 7 URB. L. ANN. 296 (1974); Casenote, 52 J. URB. L. 363 (1974).

Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A.2d 713 (1975), *appeal dismissed*, 423 U.S. 808 (1975). For a discussion of the New Jersey cases on exclusionary zoning, see *supra* note 42.

Surrick v. Zoning Hearing Bd., 476 Pa. 182, 382 A.2d 105 (1977). For a discussion of Pennsylvania cases on exclusionary zoning, see *supra* note 42. *See also* Brower, *Courts Move Toward Redefinition of General Welfare*, 31 LAND USE L. & ZONING DIG. (1979).

90. Although *Euclid* did not intend to condone exclusionary zoning, 272 U.S. at 390, the concept of general welfare has expanded to such an extent that exclusionary techniques have been justified. *See* Sager, *supra* note 41, at 784-800 for an analysis of the development of exclusionary zoning.

A. *Total Exclusion from the Community*

1. Explicit Exclusion

Among the states which have invalidated exclusionary zoning practices,[91] only Pennsylvania has specifically struck down a total ban on mobile homes. In *Surrick v. Zoning Hearing Board*,[92] the Pennsylvania Supreme Court announced its exclusionary zoning doctrine in a case involving the exclusion of multi-family dwellings.[93] The court held that a municipality may not ignore the needs of the region by excluding low-income housing.[94] As a result, *Surrick* requires local government units to provide from the legitimate housing needs of those people who want to live within its boundaries.[95] The Pennsylvania Commonwealth Courts[96] subsequently extended *Surrick* to the mobile home context. The Pennsylvania cases consistently find that under the *Surrick* standard, a community-wide ban on mobile homes is unconstitutional.[97]

The *Surrick* court cited with approval the seminal decision of

91. *See supra* notes 42 and 89.

92. 476 Pa. 182, 383 A.2d 105 (1977).

93. *Surrick* was based on an earlier Pennsylvania case also dealing with apartment building exclusion. In *Appeal of Girsh*, 437 Pa. 237, 263 A.2d 395 (1970), a zoning ordinance completely excluded apartment buildings from the community based on the notion that apartments would burden the municipal services. The court invalidated the ordinance because the community was resisting the responsibilities of providing adequate housing opportunities in a developing community, *id.* at 239, 263 A.2d at 397. Because the *Girsh* opinion did not provide specific advice on dealing with this type of exclusionary zoning, *Surrick* has become the leading authority. D. MANDELKER, *supra* note 45, at 106.

94. 476 Pa. at 192-94, 383 A.2d at 111.

95. *Id.* The *Surrick* analysis required the court to consider the extent of the exclusion by identifying the proportion of land available for multi-family dwellings available to total undeveloped land in the community. *Id.*

96. The Pennsylvania Commonwealth Court is one of two intermediate courts in Pennsylvania. The Commonwealth courts are authorized by PA. CONST. art. 5, § 4 and 42 PA. CONS. STAT. ANN., §§ 761-764 (Purdon 1981).

97. Meyers v. Board of Supervisors, 38 Pa. Commw. 578, 394 A.2d 669 (1978) (mobile home parks are legitimate uses which cannot be excluded from a township); McKee v. Township of Montgomery, 26 Pa. Commw. 487, 364 A.2d 775 (1976) (banning mobile homes from entire township presumptively invalid); Board of Supervisors v. Moland Dev. Co., 19 Pa. Commw. 207, 339 A.2d 141 (1975) (banning mobile homes from entire town is presumptively invalid); East Pikeland Township v. Bush Bros., Inc., 12 Pa. Commw. 207, 339 A.2d 141 (1974) (banning mobile homes from entire town is presumptively invalid).

Southern Burlington County NAACP v. Township of Mt. Laurel.[98] In *Mt. Laurel*, an ordinance barring—among other things—all mobile homes from the township prevented the construction of a mobile home park.[99] The New Jersey Supreme Court recognized the municipality's duty to provide housing opportunities for people of all economic classes.[100] The court instructed the town to make reasonble housing opportunities, including mobile homes, available to all classes of people. On remand, the New Jersey Superior Court, acknowledging the development of attractive and well-constructed mobile homes, found that such homes provided satisfactory housing for low and moderate income families.[101] In light of these considerations, the municipality could not justify the total exclusion of mobile home facilities. Finding no legitimate basis for the ordinance, the court held the ordinance exceeded the constitutional limits of the police power.[102]

De Facto Exclusion

In addition to ordinances which explicitly exclude mobile homes from the community, many municipalities have ordinances that indirectly achieve similar results. Although facially valid, these ordinances have an exclusionary effect when applied to a specific situation.[103]

98. 67 N.J. 151, 336 A.2d 713, *appeal dismissed*, 423 U.S. 808 (1975).

99. *Id.* at 163, 336 A.2d at 719.

100. *Id.* at 174, 336 A.2d at 732.

101. 161 N.J. Super. 317, 357-59, 391 A.2d 935, 955 (1978). This case is the lower court remand considering the extent to which Mt. Laruel complied with the fair share duty imposed by the New Jersey Supreme Court in the 1975 *Mt. Laurel* case, 67 N.J. 151, 336 A.2d 713 (1975).

In the *Mt. Laurel* remand, 161 N.J. Super. 317, 391 A.2d 935 (1978), Davis Enterprises, a mobile home park developer, entered the suit. Davis claims that the exclusionary ordinances and the township government prevented consideration of his petition to construct a mobile home park. *Id.*

102. 161 N.J. Super. at 359-60, 391 A.2d at 957. The 1978 *Mt. Laurel* decision was appealed to the New Jersey Supreme Court in response to plaintiffs' allegations that Mt. Laurel has not met the requirements of the 1975 decision. Burton, *supra* note 42, at 22. In *Mt. Laurel II*, the court upheld the prior invalidation of the mobile home exclusion. The court, however, would not find that an ordinance totally excluding mobile homes is *per se* invalid. Slip Op., p. 123 (Jan. 20, 1983).

103. Numerous exclusionary zoning techniques operate to effectively exclude mobile homes in particular and low income people in general. These techniques include: large-lot zoning; minimum house size, bedroom number, or frontage and lot width requirements; overzoning for non-residential uses; prohibition of multi-family hous-

In *Meyers v. Board of Supervisors*,[104] the zoning ordinance both prohibited mobile home parks and utilized a minimum lot size requirement to effectively exclude mobile homes from being placed elsewhere in the community.[105] The township agreed to permit a mobile home park, provided that the units met the density, lot size and set-back requirements of the district in which the park was located.[106] The township's maximum allowable density restrictions permitted 2.1 mobile homes per acre.[107] Holding that the lot size requirement effectively excluded mobile homes from the township by imposing unreasonable burdens on mobile home park development, the court invalidated the ordinance.[108]

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ing; high subdivision requirements; and exclusion of mobile homes. R. FISHMAN, *supra* note 2, at 54-56.

Large-lot zoning restricts development to dwellings on lots usually of ½ acre or more. This technique allows a community to limit the number of building sites. It also keeps the price of the lots well above the range of low-income families. Minimum house size limitations keep the housing costs in an area uniformly high. In addition, minimum house size requirements can be tailored to exclude almost all standard mobile homes. High subdivision requirements involve requirements that a subdivision developer dedicate significant amounts of land for open or public space. The developer, in turn, passes these costs on to the homebuyers, thereby raising the cost of housing, and again excluding low income residents. *Id.* For a discussion of these and other exclusionary zoning techniques, see D. MANDELKER, *supra* note 45, at 109-11, 267-73 and Davidoff & Davidoff, *Opening the Suburbs: Toward Inclusionary Land Use Controls*, 22 SYRACUSE L. REV. 509, 520-522 (1971).

104. 38 Pa. Commw. 578, 394 A.2d 669 (1978). For a discussion of the Pennsylvania analysis, see *supra* notes 42 and 92-97.

105. *Id.* at 580-81, 394 A.2d at 670.

106. *Id.*

107. *Id.* at 583 n.2, 394 A.2d at 671 n.2.

108. *Id.* at 585, 394 A.2d at 671-72. *See also* Board of Supervisors v. Moland Dev. Co., 19 Pa. Commw. 207, 339 A.2d 141 (1975) (ordinance imposing minimum lot size of 31,250 square feet excludes mobile homes and is invalid). *But see* Delaware County Inv. Corp. v. Zoning Hearing Bd., 22 Pa. Commw. 12, 347 A.2d 513 (1975) (zoning ordinance permitting mobile homes but requiring 20,000 square feet minimum lot size not unconstitutional); Russell v. Penn Township Planning Comm'n, 22 Pa. Commw. 198, 348 A.2d 499 (1975) (15,000 square foot minimum lot size for mobile homes not unreasonable, and therefore not *de facto* exclusion).

In Martz v. Butte-Silver Bow Govt., 641 P.2d 426 (Mont. 1982), the ordinance permitted mobile homes on private lots in two residential areas. The majority of the land in the two areas required one acre minimum lot sizes. Plaintiffs installed their mobile home in an area not designated for mobile home use and when challenged, they contested the validity of the ordinance. The district court found that the ordinance had an unconstitutionally exclusionary impact on mobile homes because the practical effect was to exclude low and moderate income families, who could not afford one acre of land. The Supreme Court of Montana was not convinced that the ordinance was

Other municipalities exclude mobile homes by enacting ordinances that approve that particular use, but zone little or no land for mobile homes.[109] In *Nicholas Heim & Kissinger v. Township of Harris*,[110] the township provided for mobile home development on six out of 10,800 acres of privately owned land.[111] The court invalidated the ordinance, holding that the token allotment of land did not mask an essentially exclusionary measure.[112] Similarly, in *Smookler v. Township of Wheatfield*,[113] the local ordinance included mobile home parks as a permitted land use classification.[114] Nevertheless, the provision effectively barred mobile homes because the township failed to zone any property for mobile home development.[115] Although the ordinance appeared facially valid, the court found that it arbitrarily excluded mobile homes from the township.[116]

In addition to minimum lot size requirements and the failure to zone a reasonable amount of land for mobile home use, municipalities use other techniques to achieve a similar exclusionary effect. Some rural communities impose time limitations on mobile homes, preventing them from remaining in one location for longer than

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exclusionary because the municipality stated that mobile homes meeting both HUD standards, see *supra* note 10, and Uniform Building Code standards could be placed in any residential area. The court remanded the case to determine whether these requirements effectively excluded most mobile homes from the community. 641 P.2d at 431.

109. This technique is commonly known as a "floating zone." *See, e.g.*, Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951) (floating zone used to exclude garden apartments).

110. 31 Pa. Commw. 357, 375 A.2d 1383 (1977). For a discussion of the Pennsylvania analysis, see *supra* notes 42 and 92-97.

111. *Id.* at 360, 375 A.2d at 1384-85.

112. *Id.* at 362, 375 A.2d 1385. *See also* Nickola v. Township of Grand Blanc, 394 Mich. 589, 232 N.W.2d 604 (1975) (excluding mobile homes from all but .1% of the township constitutes unlawful use of zoning power). *But see* Villa, Inc. v. Zoning Hearing Bd., 57 Pa. Commw. 221, 426 A.2d 1209 (1981) (16.7% of municipality land area available for mobile home park use not a *de facto* exclusion of mobile homes).

113. 394 Mich. 574, 232 N.W.2d 616 (1975). For a discussion of the Michigan approach, see *supra* note 42.

114. *Id.* at 579, 232 N.W.2d at 617. Although the township had created a trailer park district, no land in the township was designated for this use. *Id.*

115. *Id.*

116. *Id.* at 585, 232 N.W.2d at 620. *But see* Town of Windham v. Sprague, 219 A.2d 548 (Me. 1966) (town can limit mobile homes to mobile home parks even when no land has been so authorized).

thirty days.[117] Other communities impose minimum building size regulations for residential areas which mobile homes cannot meet.[118] The diverse array of exclusionary techniques available to municipalities effectively eliminates the mobile home housing option from many communities.[119] When mobile homes are not expressly excluded, but are instead indirectly shut out by these *de facto* techniques, courts have more difficulty overcoming the ordinance's presumed validity.

B. *Partial Exclusion: Exclusion from Specific Districts*

Given the widespread judicial disapproval of ordinances that totally exclude low-income housing from a municipality, local governments control mobile homes most effectively by simply restricting their locations. These ordinances frequently confine mobile homes to designated parks or prohibit mobile home placement in residential areas.[120] A majority of state courts uphold these provisions.[121] A showing that the regulations are only tangentially related to the public health, safety and welfare is generally insufficient to defeat the ordinance's presumed validity.[122]

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117. Town of Pompey v. Parker, 53 A.D.2d 125, 385 N.Y.S.2d 959 (1976) (a municipality may not wholly exclude mobile homes, but limiting mobile home permits to 1 year is valid), *aff'd mem.*, 44 N.Y.2d 805, 377 N.E.2d 741, 406 N.Y.S.2d 287 (1978).

118. Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52 (1980). In *Currituck*, the court held that mobile homes are sufficiently different from other types of housing to rationally sustain different requirements. The minimum size requirement imposed by the county permitted homes of 24' x 60' or larger. *Id.*, 266 S.E.2d at 53. This restriction effectively excluded all but double wide mobile homes. N. WILLIAMS, 2 AMERICAN PLANNING LAW § 57.34 (Supp. 1981).

119. The exclusionary techniques also maintain low density housing ratios which elevate housing prices in the entire community, precluding low and moderate income families from obtaining housing. R. BABCOCK & F. BOSSELMAN, EXCLUSIONARY ZONING 5-7 (1973). For a discussion of the impact of exclusionary zoning on housing costs, see Mallach, *supra* note 42, at 298-303. For a contrary view, see Rose, *Myths and Misconceptions of Exclusionary Zoning Litigation*, 8 REAL EST. L.J. 99 (1979).

120. Although increasing numbers of mobile homes are appearing in residential areas, the majority of mobile homes still exist in designated parks. Economic reasons originally forced mobile home owners into the parks because owners could rarely afford to buy their own land. Today many of the older parks have deteriorated, while the newer or rehabilitated ones are quite attractive. Nutt-Powell, *supra* note 5, at 22; Bartke & Gage, *supra* note 47, at 508-9.

121. P. ROHAN, *supra* note 20, at § 3.03[5] (1981).

122. Kolis, *Citadels of Privilege: Exclusionary Land Use Regulations and the Presumption of Constitutional Validity*, 8 HASTINGS CONST. L.Q. 585, 586 (1981).

1. Confinement to Mobile Home Parks

Municipalities originally justified restricting mobile homes to specified parks to ensure that the city could provide residents with adequate utility services, and police and fire protection.[123] By isolating the trailers in a park, either on the edge of town or in commercial districts, the municipality also protected the community from the aesthetic and moral nuisances commonly attributed to mobile homes.[124] Recent cases sustain these exclusionary ordinances on similar grounds.[125]

The arguments presented in cases confining mobile homes to parks are analogous to those made fifty years ago by legislators and courts regarding the integration of apartment buildings into residential ar-

123. Carter, *supra* note 13, at 33-35; Moore, *supra* note 13, at 11-13.

124. *Id.*

125. In City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex. 1982), plaintiffs challenged 2 ordinances regulating mobile home parks and restricting location of mobile homes to designated parks. The Court of Civil Appeals, 616 S.W.2d 333 (Tex. Civ. App. 1981), found that the ordinance was an unreasonable exercise of the police power because the sole public interest was the spacing between the septic tanks. The Supreme Court of Texas reversed that decision based on the community's need to provide police and fire protection, to regulate health conditions, and to provide services such as water, sewage and lighting. Plaintiffs argued that the needs of mobile home dwellers are no different than the needs of site-built housing residents. The court did not find these arguments persuasive:

> While we recognize the substantial improvements made in modern mobile homes, we do not perceive the similarities between mobile homes and conventional housing as sufficient to overcome the presumption of the ordinance's constitutionality . . . [T]he inherent structural differences . . . make them vulnerable to windstorm and fire damage; and their mobile nature may lead to transcience and detrimentally impact property values if scattered throughout a municipality.

633 S.W.2d at 795.

In the following cases, the courts upheld ordinances limiting mobile homes to designated parks based on the ease with which the city could provide police and fire protection, water and sewage services, and regulate health conditions. Village of Cahokia v. Wright, 57 Ill. 2d 166, 311 N.E.2d 153 (1974); Wright v. Michaud, 160 Me. 164, 200 A.2d 543 (1964); State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); Town of Stonewood v. Bell, 270 S.E.2d 787 (W. Va. 1980).

Communities also use the zoning power to limit the growth of mobile home parks. *See* Begin v. Town of Sabattus, 409 A.2d 1269 (Me. 1979) (no rational basis for ordinance limiting growth to 4 new mobile homes per park per year when there was no limit on growth of conventional housing); Village House, Inc. v. Town of Loudon, 114 N.H. 76, 314 A.2d 635 (1974) (ordinance limiting number of new mobile home parks not arbitrary); Town of Glocester v. Olivo's Mobile Home Court, 111 R.I. 120, 300 A.2d 465 (1973) (ordinance limiting number of mobile homes per park, but not limiting acreage of parks unconstitutional).

eas. The business of renting apartments is hardly distinguishable from leasing mobile home sites in a park.[126] Yet apartments are presently acceptable in residential areas[127] while mobile home parks continue to be frequently relegated to less desirable districts.[128] Communities resisted the integration of apartment buildings into residential areas for decades.[129] Fearing that multi-family dwellings were sources of dirt, noise and congestion, as well as transient and immoral tenants, the courts upheld the separation of single and multi-family uses.[130] As the design of apartment buildings improved and the suburbs began to develop, the skepticism dissipated, allowing multi-family housing to become an important alternative in the housing supply.[131]

The same fears that once motivated apartment exclusions have similarly led to exclusionary attitudes towards mobile home parks.[132] Communities have yet to recognize the similarities between apartments and mobile home parks. As a result, the courts and the legislators continue to focus on the unique aspects of mobile homes rather than on those characteristics which resemble more conventional dwellings. The apartment analogy in particular could provide a valuable model for approaching the mobile home problem.[133]

2. Exclusion from Residential Areas

Communities exclude mobile homes from single-family residential districts based on the belief that mobile homes are qualitatively different from and inferior to conventional housing.[134] Municipalities claim that mobile homes destroy the aesthetic uniformity of the residential area,[135] thus reducing the value of surrounding properties.[136]

126. Comment, *supra* note 46, at 96-97 (1971); Bartke & Gage, *supra* note 47, at 508.

127. R. BABCOCK & F. BOSSELMAN, *supra* note 119, at 8.

128. Kuklin, *Housing and Technology: The Mobile Home Experience*, 44 TENN. L. REV. 765, 793-94 (1977); B. HODES & G. ROBERSON, *supra* note 5, at 225-28.

129. Comment, *A Survey of the Judicial Responses to Exclusionary Zoning*, 22 SYRACUSE L. REV. 537, 553-57 (1971).

130. Babcock & Bosselman, *supra* note 27, at 1046.

131. D. MANDELKER, *supra* note 45, at 105-06.

132. *See supra* notes 8 and 130.

133. *See supra* notes 27-42 and accompanying text.

134. Delogue, *supra* note 16, at 41.

135. Note, *supra* note 13, at 265.

136. A. RATHKOPF, *supra* note 16, § 19.04. *See also* Manchester v. Phillips, 343

Although aesthetic preferences are one of the primary forces behind objections to mobile homes, aesthetic considerations alone rarely provide a sufficient basis for upholding exclusionary zoning.[137] Demonstrating that the appearance of mobile homes diminishes the value of surrounding properties, however, is sufficient to sustain an exclusionary measure in some jurisdictions.[138]

Finding these considerations persuasive, the Washington Supreme Court in *Duckworth v. City of Bonney Lake*[139] upheld an ordinance excluding mobile homes from a single-family residential district.[140] The court based its decision on three factors. First, the court stated that the structural qualities of mobile homes stunt the growth potential of a residential district because they depress property values.[141] The court's second consideration focused on an array of nuisances attributable to mobile homes.[142] Finally, the court evaluated the purely aesthetic qualities of mobile homes and concluded that the

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Mass. 591, 180 N.E.2d 333 (1962) (town can reasonably consider that mobile homes are frequently detrimental to values of adjacent homes and that they depreciate the amenities and appearance of a residential district); Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959) (there can be little doubt that the maintenance and use of a trailer in a particular locale would stifle development for residential purposes).

137. Rowlett, *Aesthetic Regulation Under the Police Power: The New General Welfare and the Presumption of Constitutionality*, 34 VAND. L. REV. 603, 605 (1981).

138. Gravatt v. Borough of Latrobe, 44 Pa. Commw. 475, 404 A.2d 729 (1979) (because general welfare includes consideration of aesthetic and property values, exclusion of mobile homes from residential districts is valid); County of Fayette v. Holman, 11 Pa. Commw. 357, 315 A.2d 335 (1973) (aesthetic and property values included in general welfare and can justify excluding mobile homes). It is interesting to note that *Gravatt* was decided after *Surrick*, discussed *supra* notes 42 and 92-97. Notwithstanding the *Surrick* rule, *Gravatt* upheld the exclusion of mobile homes because the evidence demonstrated the overall negative impact of mobile homes on neighborhood real estate values. 44 Pa. Commw. at 478, 404 A.2d at 730.

But see Anstine v. Zoning Bd. of Adjustment, 411 Pa. 33, 190 A.2d 712 (1963) (no evidence proving that aesthetic quality of mobile home would injure property values in surrounding area).

139. 91 Wash. 2d 19, 586 P.2d 860 (1978).

140. *Id.* at 32, 586 P.2d at 868-69.

141. *Id.* at 29-31, 586 P.2d at 867. The court specified that the economic damage results from the mix of mobile homes and conventional housing. Mobile homes located in a special district would do no damage. *Id.*

142. *Id.* Some of the nuisances the court cited include minimum storage capacity leading to excessive clutter, space needs which require additional municipal planning for parking, and an increased need for other municipal services. *Id.*

mobile units did not suit the surrounding residential architecture.[143] Finding these factors reasonable and the mobile homeowner's evidence insufficient to rebut the zoning scheme's presumption of validity, the court permitted the city to exclude mobile homes from residential areas.[144]

Although *Duckworth* represents the most common treatment of mobile homes in residential areas, the quality and appearance of contemporary mobile homes enable them to compete successfully with site-built housing on aesthetic grounds.[145] Nevertheless, aesthetic regulations are inherently vague and subjective.[146] A court that wants to strike down an exclusionary ordinance will find mobile homes aesthetically satisfactory. More frequently, however, a court's application of amorphous aesthetic standards leaves mobile homes even more susceptible to "whispered" judicial whims.

3. *Robinson Township v. Knoll*: A New View

Municipalities in a large majority of states may adopt ordinances which exclude mobile homes from single-family residential areas or confine mobile homes to specific parks.[147] One court recently dismissed traditional biases in favor of a new attitude toward the contemporary mobile home. In *Robinson Township v. Knoll*,[148] the Michigan Supreme Court found that mobile homes do not differ from other single-family homes in a manner which constitutionally justifies their *per se* classification as a different use.[149] Defendants placed a mobile home on an 80 acre plot of land in Robinson Township four weeks after the township passed an ordinance confining

143. *Id.*

144. *Id.* at 32, 586 P.2d at 868.

145. *See infra* appendix.

146. Despite the growing acceptance of regulation based solely on aesthetics, not all such regulations are valid. Courts find certain aesthetic regulations arbitrary or discriminatory because they are vague. *See, e.g.*, J.D. Contr. Corp. v. Board of Adjustment, 119 N.J. Super. 140, 290 A.2d 452 (1972). In *J.D.* the zoning ordinance restricted the number of vehicles that could be parked in a certain area. Although the restrictions served aesthetic purposes, the court invalidated the ordinance because it was vague and indefinite when applied to specific housing contexts. Bufford, *Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation*, 48 UMKC L. REV. 125, 130 (1980).

147. *See supra* notes 120-46 and accompanying text.

148. 410 Mich. 293, 302 N.W.2d 146 (1981).

149. *Id.* at 312, 302 N.W.2d at 150.

mobile homes to designated parks.[150] Prior to enactment of the ordinance, defendants installed a water and septic system on the property, along with several other site improvements.[151] Seeking removal of the home, the Township alleged that the owner's placement of the mobile home violated the new zoning ordinance.[152] The court found no reasonable basis for the zoning restrictions as a valid exercise of the police power.[153] Dismissing the traditional arguments for confining mobile homes to designated parks, the *Robinson* court declared the ordinance unconstitutional.[154]

The court first dealt with the definition of a mobile home. The Robinson Township ordinance defined "mobile home" as "[a] movable or portable dwelling constructed to be towed on its own chassis, connected to utilities and designed without a permanent foundation for year-round living as a single-family dwelling."[155] Refusing to limit its analysis to the character of the mobile home when delivered to the site, the court emphasized that the ordinance applied only to the existing conditions and uses of the home.[156] The court ruled that a mobile home's potential mobility could not provide a sufficient basis for exclusion because once implanted, modern homes are no more

150. *Id.* at 308, 302 N.W.2d at 148.

151. *Id.* at 309, 302 N.W.2d at 149.

152. *Id.* at 335, 302 N.W.2d at 161 (Moody, J., dissenting). The issue in this case, as stated by the court was "whether any and all local zoning ordinances which do not totally exclude mobile homes from a community but which restrict the location of mobile homes to mobile home parks and subdivisions within the community are invalid." *Id.*

153. *Id.* at 321, 302 N.W.2d at 154. The court found that there is no legitimate police power purpose to *per se* restrictions on mobile homes. The restrictions would only be justified if the mobile homes "fail to satisfy standards designed to assure that the home will compare favorably with other housing that would be allowed on that site . . . ." *Id. But see* City of Brookside Village v. Comeau, 633 S.W.2d 790 (Tex. 1982), discussed *supra* at note 125.

154. 410 Mich. at 322, 302 N.W.2d at 155.

155. *Id.* at 313, 302 N.W.2d at 151. The Robinson Township building code did allow for prefabricated housing in single family residential areas, while the local ordinance did not allow mobile homes. *Id.* For further discussion of the disparate treatment of mobile and prefabricated housing, see *supra* notes 77-82 and accompanying text.

156. *Id.* at 315, 302 N.W.2d at 152. A zoning ordinance's reasonableness will be analyzed with respect to existing and not future conditions. Similarly, this restrictive zoning ordinance must be analyzed in terms of its impact on the mobile home as it exists currently on the site, and not to its method of arriving at the site. *Id.*

mobile than small site-built houses.[157] The court also found that neither the mobile home's chassis construction nor its temporary foundation created conditions which the community has a legitimate interest in excluding.[158] Based on these considerations, the court held the ordinance's definition of mobile home invalid as arbitrary and discriminatory.[159]

The *Robinson* court recognized that characteristics formerly inherent to mobile homes do not exist today and, therefore, that *per se* exclusion is unreasonable.[160] Concerns about the health and safety of mobile home living, as well as the transiency of mobile home inhabitants no longer justify exclusions.[161] Mobile homes sufficiently resemble site-built housing, making blanket exclusions based on aesthetic objections unreasonable.[162] Limiting its holding, the *Robinson* court specified that a municipality may validly exclude mobile homes from residential areas only if the home fails to comply with the particular district's design standards.[163]

As indicated earlier, courts have invalidated ordinances which totally exclude mobile homes, whether they achieve that result directly or indirectly.[164] The ordinance challenged in *Robinson* limited mobile homes to designated parks, thus accomplishing something less than a total exclusion.[165] By invalidating this ordinance, *Robinson* forces courts and legislators to look beyond the characteristics traditionally attributed to mobile homes. At the same time, *Robinson* permits municipalities to control the quality, size and appearance of

157. *Id.* at 314, 302 N.W.2d at 151.

158. *Id.* Although Robinson Township had a legitimate interest in protecting the health and safety of its residents, it could do so by requiring that mobile homes be attached to solid foundations to prevent windstorm damage. Discrimination against all "movable" dwellings, however, is arbitrary discrimination. *Id.*

159. *Id.*

160. *Id.* at 316, 302 N.W.2d at 152.

161. *Id.* at 317, 302 N.W.2d at 152. *See supra* notes 34-37 and accompanying text.

162. *Id.* at 319, 302 N.W.2d at 153. *See supra* notes 134-46 and accompanying text.

163. *Id.* at 321, 302 N.W.2d at 154.

164. *See supra* notes 86-119 and accompanying text.

165. 410 Mich. at 308, 302 N.W.2d at 148. The township ordinance providing for mobile homes only in designated parks stated:

> Mobile Homes—Where Permitted: Mobile homes are considered as dwelling units and are not permitted as an accessory use to a permitted principal use and are permitted only in approved mobile home parks.

ROBINSON TOWNSHIP ZONING ORDINANCE, § 307.1. *Id.*

mobile homes that owners wish to place in residential areas.[166] While some mobile homes may not survive this examination, *Robinson* established a uniform standard[167] equally applicable to all dwellings in the residential area. The decision does not permit a residence to be excluded simply because it is a mobile home.

V. CONCLUSION

Municipalities continue to subject mobile homes to severe and exclusionary zoning restrictions. The *Robinson*[168] court has recognized the disparity between the purported and actual reasons for mobile home regulation. Isolating these issues, *Robinson*[169] illustrates that courts must raise doubts about the legitimacy of mobile home exclusions which are based solely on the label: mobile home. Modern mobile homes have clearly demonstrated their ability to serve as permanent residences.[170] In addition, the emerging concept of "region-

166. 410 Mich. at 321, 302 N.W.2d at 154. The community's ability to control the quality, size and appearance of mobile homes may still leave legislators and courts ample opportunity for use of exclusionary zoning techniques. *See supra* notes 91-105 and accompanying text.

167. Although the *Robinson* decision takes a significant step forward for mobile home acceptance, it is still uncertain how it will apply to some of the new mobile home concepts. The court holds that *per se* exclusion of mobile homes from other than designated parks is invalid. One of the developing solutions for dealing with modern mobile homes is the establishment of residential mobile home districts. The question remains whether *Robinson* also prevents the development of special residential subdivisions for mobile homes.

The concept of mobile home developments and districts enables a community to plan not only for its current low-income housing needs, but also for the future. The American Planning Association devised a Residential Mobile Home District model primarily intended for mobile home occupancy, either in special mobile home communities (cooperatives), or on individual lots. F. BAIR, *supra* note 4, at 4-5, 19.

168. 410 Mich. 293, 302 N.W.2d 146 (1981).

169. *Id.*

170. *See supra* note 6. Mobile homes should be treated as permanent fixtures, not only in the zoning context, but in the tax and home financing contexts as well. If mobile homes become a portion of the "primary housing market," mobile home buyers will be making an investment that will not depreciate as quickly as it has in the past. In addition, mobile homes could be insured as real and not personal property which gives them a greater degree of permanence. Finally, the concept of mobile home subdivisions, *see supra* note 168, and condominiums reinforces the permanence of this housing source. Jaffe, *Mobile No More*, FORBES, Sept. 14, 1981 at 140.

New Jersey and Nebraska indirectly treat mobile homes as permanent residences through their tax laws. In 1979 the New Jersey Supreme Court in Koester v. Hunterdon County Bd. of Taxation, 79 N.J. 381, 399 A.2d 656 (1979), held that the similarities between mobile homes and conventional dwellings are sufficient to justify

alism"[171] imposes a duty on communities to make low-cost housing opportunities available to all citizens. These factors, combined with a critical housing shortage, compel municipalities to integrate mobile homes into the community through reasonable regulation rather than subjecting them to total exclusion or segregation.

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taxing mobile homes as real property. Similarly the Nebraska Supreme Court in Gates v. Howell, 204 Neb. 256, 282 N.W.2d 22 (1979), refused to tax mobile homes as motor vehicles because of their close resemblance to residences.

Eight states have passed legislation specifically aimed at treating mobile homes more equitably. Vermont was among the first to enact legislation. The Vermont statute, enacted in 1976, provides that "no zoning ordinance shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded." VT. STAT. ANN., tit. 24, § 4406(4)(A) (Supp. 1982). According to the Vermont Agency of Development & Community Affairs, the intent of the legislation was to remove "some of the legally questionable local zoning barriers to low and middle-income housing and eliminate the resulting social and constitutional inequities against those who live in a certain kind and cost of dwelling." Among the states that have passed mobile home legislation, Vermont most clearly reflects the underlying policy concerns through its detailed provisions and explicit legislative history. California passed a statute in 1981 prohibiting local government from excluding certified mobile homes from lots zoned for single family dwellings. The manufactured housing may be subject to requirements applicable to all site built housing. CAL. GOV'T CODE § 65852.3 (Deering 1983).

In March 1981, Indiana passed legislation providing that local ordinances must "subject dwelling units and lots to identical standards and requirements, whether or not the unit . . . is a manufactured home or some other type of dwelling unit." IND. CODE ANN. 36-7-4-1106(b) (Burns 1982).

Nebraska passed legislation in May 1981 requiring at least one district in a municipality and city to include both land zoned for mobile home subdivision, *see supra* note —, and individually owned lots. The municipality may also develop reasonable and necessary requirements of the site development for mobile homes in these districts in accordance with local standards.

The New Hampshire legislation expressed many of the same policy concerns that the Vermont statute addressed. The bill recognized the state's commitment to providing adequate and affordable housing opportunities. It prohibits municipalities from excluding "manufactured housing completely from the municipalities, by regulation, zoning ordinances, or by other police power." The bill also provides that manufactured homes located on individual lots "shall comply with lot size, frontage requirements, space limits and other reasonable controls that conventional single family housing in the same area must meet."

Minnesota has also adopted legislation prohibiting the exclusion of manufactured housing that complies with all other relevant zoning ordinances. MINN. STAT. ANN. § 394.25(3) (West 1983). Similar legislative action has been taken in Kansas, KAN. STAT. ANN. § 19-2938 (1981) and Florida, FLA. STAT. ANN. § 320.827 (West 1983).

171. *See supra* note 42.