TAXATION AND REGULATION OF MOBILE HOMES-- BARRIERS TO GROWTH AND DEVELOPMENT OF THE MOBILE HOME INDUSTRY

by

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ABSTRACT

TAXATION AND REGULATION OF MOBILE HOMES--BARRIERS TO THE GROWTH AND DEVELOPMENT OF THE MOBILE HOME INDUSTRY

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The estimated total demand for construction output during the next 20 years equals approximately the present total inventory of all buildings and structures. Capacity projections based on present construction output growth rates indicate that the future demand cannot be met. This discrepancy is the governing perspective of this thesis. The needed increase in capacity and drastic reduction in cost can only be achieved by radical industrialization of building. This process first requires restructuring of the entire industry conglomerate producing shelter, of the supporting sectors and of the institutional framework within which the production and support functions operate. It appears necessary to develop and adopt a long-range Federal building policy designed to plan, initiate, stimulate, coordinate and direct this transformation. In developing this policy, the mobile home industry must be considered as an integral component of the entire shelter-producing industry conglomerate.

The thesis concentrates exclusively on the chaotic and intricate fields of taxation and regulation of mobile homes. Legislative inertia, administrative redundancy and judicial confusion intermingle with discrimination to impede growth and development of the mobile home industry. Repressive regulation is the major obstacle to the development of a mature industry structure and thus to innovation. In an effort to construct a comprehensive picture of the present situation, the writer first brings together and structures the fragmented information existing on this subject. He then tries to identify the critical growth-impeding factors. Finally, he attempts to develop a constructive taxation and regulation policy which would eliminate these barriers.

These final policy recommendations are designed to activate the potential role of the mobile home industry as a catalyst for the industrialization of building.

Thesis Supervisor: Langley C. Keyes
Title: Assistant Professor of City Planning, M.I.T.

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Much in this thesis may be criticized, and for that I alone am responsible. But for that which may be commendable, I wish to share credit with the following people:

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Bibliographical references in footnotes are impractical due to the length of the bibliography. The reference is given by bibliography and page number in brackets in the text. For example, (1072:408) means page 408 of number 1072.

SECTION I

INDUSTRIALIZATION OF BUILDING AND THE MOBILE HOME INDUSTRY. THE BROAD PERSPECTIVE.

This study on "Taxation and Regulation of Mobile Homes" is an integral part of a broader project on the "Structure, Operation, Performance, Problems and Development Trends of the Mobile Home Industry." The mobile home industry project itself falls within the writer's long term work on industrialization of the construction industry. The latter governing perspective will be introduced in this section, because it defines the focus of the highly specific study on taxation and regulation of mobile homes.

"During the next three or four decades the United States will need to build and replace more homes, apartment buildings, factories, commercial buildings, and other urban facilities than we have built since the landings at Jamestown and Plymouth Rock. By the year 2000 the urban population will more than double..." (355.1), Robert C. Weaver, former Secretary of Housing and Urban Development.

The estimates of total demand for construction output during the next 20 years indicate a minimum volume of construction approximately equal to the present total inventory of all buildings and structures. Capacity projections, based on present construction output growth rates show, however, that the actual total construction

volume during that period will hardly reach half of the required output.[1]

The housing situation is similar. In less than 20 years, the building industry must fabricate the equivalent of the entire 1960 housing stock of the United States. (43:5) Yet, "the annual need for new houses is going to be so phenomenal...that the U.S. will not have enough skilled labor, not enough traditional materials and not enough other resources to meet the demand..." (442:13)

Aside from the problem of capacity, the other question at issue is the allocation of fiscal resources. The Kaiser Committee recognized that its 10-year goal of 26 million more new and rehabilitated dwelling units--a minimum in the light of a 20 year perspective--can probably not be reached without diverting fiscal resources from other high priority activities. (371.1:3) Had the Commission been able to forecast the secondary construction needs (community facilities, public works) and the necessary public and social services, they would probably have formulated even more cautious recommendations. With respect to other important social objectives it appears that the actual proportion of GNP spent on construction is already unreasonably high. Even if a reranking of priorities could be achieved - recent

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[1] Analogous projections of total world demand for construction output and of total world supply for the year 2000 arrive at demand-capacity discrepancies which would leave more than 60% of the population unsheltered.

Congressional appropriations for HUD programs make this doubtful- diversion of funds means the allocation of a larger percentage of the gross national product to expenditures for new construction. Considering also the skyrocketing costs of construction and land,[2] it is unclear whether the flow of mortgage funds will even be adequate to finance only 2 million units per year (491), particularly because of the problem of making mortgages on low-income housing more competitive.

Thus the economy does not appear to be willing, given the other priorities to allocate the resources--labor, material and money--for meeting the total demand for construction during the next two decades. Especially so, if one recognizes that apart from satisfying the demand, a higher quality of the infrastructures will be necessary.

Yet, the future demand for construction must be met.

Since diversion of resources would be undesirable, the increase in demand must be met with reduced inputs of labor, materials and money. Can the productivity of the basic inputs be increased?

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[2]Since 1951 building costs have gone up 85% while land costs have skyrocketed 300%. A $10,000 house purchased in 1951 can not be built today for less than $18,500. (43:9)

The necessary degree of productivity increase can not be attained by mere corrections of the structural and operational characteristics of the construction industry, or of the institutional system within which it operates. The construction "industry" is a craft-oriented and highly fragmented trade. The entire organism is geared to respond flexibly to local needs by construction of specific custom-designed structures. The supplying sectors and the institutional framework are structurally defined by, and operationally synchronized with the industry. Production, supply and control functions constitute an inseparable and highly complex system. A system keyed to construction by exclusive individual standards can not by mere adaptation be oriented toward a high and continuous production for an anonymous mass market.

Yet, up to this date all attempts at innovating in the construction industry, in whichever country, whether initiated by governments or private concerns, were confined to this inconsistent, narrow approach. Even though the term "industrialization of building" has become a worn out phrase, there has never been an attempt at "industrialization"of construction simply because this notion is grossly misunderstood. Everything which has been, or is labeled "industrialization of building" represents mere attempts at "prefabrication," at a rationalization of the traditional building and organization methods

without challenging these concepts. This is not a matter of semantics. The misuse of the term "industrialization" has led distinguished institutions and committees into incorrect conclusions. A recent unfortunate example is the Kaiser Committee. It concludes that " the long string of failures experienced by outsiders who attempted to invade this industry with highly industrialized production methods...indicates that there is no easy panacea in rapid industrialization of housing production."(371.1:210) This erroneous conclusion is most unfortunate because it largely determined the committee's tendency to recommend reliance upon traditional methods. With very few exceptions, most studies make this mistake. As a result this misunderstanding has become firmly established. In summary, there has never been an attempt at industrialization of building; all past undertakings were inconsistent corrective measures. The only justifiable conclusion is that mere corrections can not solve the problem.

Thus the question remains, how can the dramatic demand-capacity discrepancy of the near future be overcome?

During the last four years, the writer has devoted his time to a study of determining the potential of comprehensive industrialization of the construction industry.[3]

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[3]Industrialization, implicitly, in the sense of a radical conceptual change.

The primarily empirical analysis concentrated on the respective experiences and situations in Germany, Great Britain and the United States. Interviews with hundreds of key individuals in government and industry in these countries and extensive work in specialized libraries were necessary to secure primary information. The support of the German and British Governments provided access to classified information.[4] In each country the writer viewed the producing and supporting sectors and the institutional framework as one system; and the analysis concentrated on structure, operation, performance, degree of industrialization, problems and trends. Special analytical emphasis was put on the history of central government initiatives; on the consistency, effectiveness and implications of present policies; on the degree of integration with the general economic policy; and on efforts to develop long range policies for the comprehensive industrialization of the construction industry.

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[4] Method: United States, Great Britain, Germany: 1) Surveys of existing information (1965-69: Work in 57 different specialized libraries; identification of some 6,000 relevant documents, reports, and articles; processing, classifying and filing of this material). 2) Systematic correspondence campaigns: government departments, corporations, research institutions, etc. (1965-69: Nearly 600 personal letters mailed; 85% returns). 3) Extensive nationwide travel. Personal interviews with key individuals in government and industry (1965-69: nearly 200 inspections of R. & D. activities, R. & D. plants and site operations).

As an intermediate result of this work the writer can state competently that (in regard to the American situation) comprehensive industrialization of building can:

> achieve the necessary expansion of capacity. (As a mere example, the mobile home industry could produce 1,000,000" relocatable homes" and 500,00 modular units by 1975);
>
> guarantee significant economies of scale which would obviate, for example, the need for Federal subsidies of low-income housing. (Again, as an example, house building construction costs--excluding land and development--can be reduced by 45-55%; the mobile home industry could produce dwelling modules for $4.00 per square foot. Further reductions are possible.)[5] (footnote on following page)

As stated, the <u>prerequisite</u> is comprehensive industrialization. The process of radical industrialization of building, of which adoption of automative mass production technology is only a component, <u>first requires</u>[6] (see footnote on page24) restructuring and synchronization of:

a. the operation and structure of the producing sector--the conglomerate of which includes

[5]The writer is aware that his statement about the existence of substantial economies of scale will meet with the argument (as used by the Kaiser Committee) that "highly industrialized systems...apparently can not achieve dramatic (i.e., over 20%) reductions in construction costs." (371.1:213) Such statements demonstrate how crucially more knowledge in this field is needed. A thorough analysis of all existing or past "industrialized" building systems reveals that they constitute prototype stages even though thousands of units may have been erected with such a system. In almost all of these cases the R. &. D. inputs--in terms of investment, talent and time--were absolutely insufficient. Further, such systems are mostly designed by architects with no experience in production engineering, and consequently with no knowledge about production functions. Thus, most systems are based on maximum annual outputs of less than 5,000 dwelling units per plant--an output order without any chance of accruing notable economies of scale. (Minimal optimal plant sizes for semi-automated mass production call for annual outputs of at least 30,000-50,000 units per plant) Another fallacy must be noted. Most manufacturers of building components or modules, when asked about their marginal unit costs at an annual output of, for instance, 10,000 or 50,000 units per year, instead of their present 5,000, are not aware that drastic output increase with a higher degree of automation inevitably involves a complete re-design of the product. For instance mass production of mobile homes in their present design would be ridiculously uneconomical; for purposes of mass production, structural designs would perhaps have to be based upon steel, aluminum or plastics. Thus, most of the economies of scale data HUD has obtained in connection with the "in-cities" project are grossly underestimating potential scale economies. In fact, the total amount of manhours spent in connection with the "in-cities" project by all contractors in evaluating systems seems wasted in light of the minimal R. &. D. inputs which went into these systems. If instead these hours had been used to develop a system from scratch, today HUD easily would have the best building system ever developed.

In summary there are no "industrialized" building systems in existence. There is only prefabrication; and any conclusion drawn from presently observable phenomena pertains to prefabrication and can not be used for projecting economies of scale attainable by industrialization.

[6] For the purpose of illustration, some probable prerequisites for industrialization of the construction industry are listed:

1 Re-structuring of the construction industry and of the building process
- 1.1 New approach to organization and management of the building process
  - 1.1.1 Development of adequate methods and procedures for the determination and formulation of building programs (problem of the anonymous client)
  - 1.1.2 Planning, organization and rationalization of the design process.
  - 1.1.3 New approach to the management of the product planning, bidding and contractural stages. Development of methods of comprehensive management, of exact methods of cost planning, of new adequate methods and procedures of financing, bidding and contract letting.
  - 1.1.4 Development or adoption of automative mass production technology for building product manufacture. Development of methods of supervision of production and assembly stages.
- 1.2 Promotion of a consistent nationwide system of standardization
- 1.3 Introduction of a viable nationwide system of modular dimensional coordination
- 1.4 Rationalization of the statutory control of building - introduction of a national building legislation, especially designed for the requirements of industrialized building.
- 1.5 Reorganization, planning, coordination and stimulation of building research.
- 1.6 Reorganization, planning, coordination and stimulation of the dissemination of information
- 1.7 Studies into new skills required by the industry and improvement or new development of arrangements for recruitment, education, training, and periodical re-training for all branches of the industry.

2 Synchronization of the construction industry and the national economy as a whole, e.g.:
- 2.1 Improvement of forecasts of volume and nature of future demand for construction work, for skilled manpower and construction materials. Long-term forward planning of public investment. Development of measures designed to guarantee continuity in the placing of orders.
- 2.2 Development of methods and instruments for coordination and high-volume concentration of demand.
- 2.3 Development of policies and measures for more economical use of professional, administrative and labor resources.

3 Development and Adoption of a Comprehensive and Consistent Building Policy related to the whole pattern of change and thus synchronizing (and initiating) the measures mentioned above,

the building materials and products industries; the building industry; the manufactured homes industry; the mobile home industry; and potentially, the container industry, the automobile industry and the aerospace industry.

b. The operation and structure of supporting sectors--such as finance and the real estate brokerage industry.

c. The complex political, economic and social framework, especially in an institutional sense, within which production and support functions operate.

Of course, such a program would call for the development and adoption of a long range Federal policy for the comprehensive industrialization of the building industry, aiming at long-range planning, initiation, stimulation, coordination and direction of the transformation process.[7]

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[7] This sounds heretical, iconoclastic and, even worse, idealistic. Yet, the writer learned during his work in Great Britain, that the British Government is formulating a long range building policy closely along these lines. And the German Federal Department of Housing and Planning wishes to arrange for the publication of a report by this writer which contains this very recommendation--not meaning of course that the Department would necessarily identify with this view.

The writer believes that such a policy is politically feasible, because of its inherently long-term character. The goal can be achieved within ten years. The development of sensitive strategies and tactics can ensure that critical political hurdles will gradually be overcome. All industries which are presently or potentially producing shelter stand to gain from a policy which aims at integrating, developing and maximizing all existing production potentials. This holds particularly true for the homebuilding industry which would be assured of maintaining its market by programs designed to help the industry accomplish necessary structural changes. The writer considers hopes for "innovation by invasion" unrealistic in light of the political power of the construction industry, and undesirable in light of the tremendous resource of skill and experience which only need activation by redirection. The cooperation of unions can be secured by employment and wage guarantees (though new trainees must be encouraged to acquire skills needed at later stages of the process).

In short, such a policy can be implemented gradually by measures no more drastic and controversial than those presently used. The Kaiser Committee foresaw "the necessity for massive Federal intervention" should their proposed approach fail. (371.1:5) Though the latter is not unlikely, the writer sees no need for "massive," but rather for

consistent measures.

Reliance upon private enterprise to tackle the problem does not recognize that the public sector such as public regulation has done much to retard the development of the construction industry. Thus, the government should take the initiative by removing critical barriers. Yet, the writer believes that the goal can and should be primarily attained by reliance on private enterprise.. Guidance through sensitive "lollypop" control, if developed in accordance with a long range policy, can accomplish the purpose. The alternative of continuing the present policy of panic stop-gap actions may indeed call for more drastic measures which, however, in the absence of any long range policy, are unlikely to be effective.

The basic difference of this approach is that individual programs and measures, which would be necessary in any event, would be molded as consistent intermediate steps in accordance with the long-range goal. At present the unfortunate practice is to design programs exclusively in response to the immediate need, thus sacrificing the chance of simultaneously utilizing the step for developing the industry. It is one thing to rely entirely on the free enterprise system; it is quite another to intervene from the Federal level without striving for maximization of effect. If one decides to preempt private initiative, then the public can expect

the maximum possible benefit for sacrifice of some degree of independence.

The writer is not proposing that such a policy should be adopted. Yet, he wishes to emphasize that only such a policy can secure the substantial advantages of industrialization. The widespread hope to achieve the desired breakthrough of industrialization of building without laying the necessary structural groundwork is unrealistic. There is no need to "plan" for a technological breakthrough in building. The breakthrough will occur automatically upon provision of the necessary conditions. Instead, there is need for a policy which aims to accomplish the prerequisite structural change. Industrialization of building is not a technological problem; it is primarily a political and economic problem.[8]

If this commitment to such a policy can not be made, then it would be consistent to refrain from any programs aiming to achieve the benefits of, but not providing the basis

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[8] It is discouraging to observe that the principle and the complexity of industrialization of building was much better understood at the government level during the forties than today. Then, there was much more awareness of the broad nature of this problem. The (misinterpreted) spectacular failures of two major ventures--LUSTRON and ALSIDE--discouraged bold appraoches and only recently, with Secretary Romney, has a bolder production orientation returned to the government level. Thus, the writer's statements about the need for a radical restructuring, would have seemed common during the forties.

for industrialization. The writer fears that Secretary Romney's new program[9] BREAKTHROUGH (225.1), for this very reason, might fail as have many other similar attempts in the past (for example LUSTRON).

The mobile home industry is of interest to the writer for four major reasons.

1. The development of the industry confirms this writer's theory that the industrialization of building first requires a restructuring of the entire socio-economic-political framework. The mobile home industry has grown rapidly because the Mobile Homes Manufacturers Association worked intensively for over two decades to solve problems of the post-distribution phase. Much work was directed towards removing institutional barriers, such as threatened building code imposition.[10] The industry had to educate the financial sector to finance mobile home retail purchases and mobile home park developments. And, perhaps most important, the industry virtually built its own market by stimulating mobile home park development.[11]

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[9] That is, with respect to the hope of achieving a technological breakthrough.

[10] cf. Chapter IV.2.3.2.

[11] Typically, the Mobile Homes Manufacturers Association is primarily active in the post-distribution phase. Their staff includes expert talent on mobile home parks and financing, yet the association could not help the writer appreciably with data on production techniques used by the industry.

2. The industry prefabricated housing; yet they called it "vehicle." Since the product was thus regulated as a vehicle, the industry could escape many of the innovation-impeding controls which apply to traditional housing. This was a decisive factor in its growth.

3. Accidentally the industry has created a product which corresponds to two principles of industrialization of building. One is that industrialization in this field can only develop along two lines: decentralized (site) assembly of massproduced interchangeable components, standardized and dimensionally coordinated on a nationwide basis;[12] and centralized factory assembly of finished dwelling modules, ultimately using the same components. Secondly, the principle of industrializing building is identical to the principle of minimizing site labor content, and thus, the points of contact between product and terrain. The mobile home[13] meets this criterion.

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[12]This is official building policy in some European countries.

[13]Official definition--mobile homes, Mobile Homes Manufacturers Association. "A mobile home is 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. It can consist of one or more units that can be folded, collapsed or telescoped when towed, and expanded later for additional cubic capacity, or of two or more units, separately towable but designed to be joined into one integral unit, horizontally or vertically, capable of being again separated into the components for repeated towing...Mobile homes are towed to their sites by trucks whose movements are controlled by state highway regulations or they are shipped on railroad flat cars...A mobile home should not be confused with a travel trailer which is towed by an automobile, can be operated independently of utility connections for only a few days, is limited in width to 8 ft., in length to

This does not mean that the mobile home is an industrialized product. But conceptually it is a valid point of departure.

4. It is the only firmly established industry which produces housing without thinking in terms of building construction.[14] Upon the guarantee of continuous high-volume demand, the major mobile home producers would explore methods of mass-producing modules without the prejudice of traditional concepts. This is also true for "outside" industries, which will however lack the valuable experience of dealing with the assembly of bulky products. One exception is the container industry.

The writer views the mobile home industry as an integral component of the entire industry conglomerate producing shelter.[15]

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13 cont. 32 feet, and is designed to be used only as a temporary vacation dwelling." (186)

[14] In the early fifties the industry departed from airframe oriented structural design, and from structural use of aluminum and steel because wood framing proved more economical for the larger units. Thus, while present construction techniques resemble those used in homebuilding, the industry would use vacuum-molded plastics in the future if it proved more economical.

[15] Already during the late thirties government officials considered the trailer a natural component of the national housing supply.

The industry has not yet structured itself. It now employs mere prefabrication; the whole industry is in a technological prototype stage. The trend towards modular concepts is being pushed by the Mobile Homes Manufacturers Association which has not yet aroused the general interest of the industry (which is still completely mobile home-oriented). Yet, the writer looks at the industry not as an immediate "houser" of low-income groups,[16] but rather as a potential catalyst for innovation.

To evaluate the potential role of the industry in influencing the formulation of a long term policy for industrialization of building, the writer analyzes the industry and its socio-economic-political environment in a detailed manner.[17] (see footnote on following page) This study on taxation and regulation of mobile homes is a first step. Since this aspect lends itself to demonstrating the crucial importance of environmental constraints for any progress in industrialization, and since taxation and regulation of mobile homes constitute the major barriers to a more mature development of the industry, a separate treatment is merited.

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[16] However, the writer has discussed the possibilities of cost reduction as a result of larger scale public purchasing with many manufacturers. If such purchases would be scheduled to guarantee individual manufacturers full-capacity year round operation, some manufacturers would cut their profits and bid at a per square foot cost of $5.00, without land and development costs.

[17]In connection with the longer term project on the mobile home industry in general, the writer, for example, tries to apply principles of industrial organization analysis: market structure (seller concentration, product differentiation, barriers to entry, demand growth, demand elasticity, and so forth); market operations (price policies, product policies, coercive conduct, and so forth); market performance (employment stability, price stability, progress, research, innovation, efficiency and so forth); market performance and public policy (implications of regulations, standards, codes, of taxation, of land planning practices, of housing policies, and so forth); additional focus will be directed on: social phenomena underlying the demand growth for mobile homes; social costs of mobile home living; social potential of mobile home living; and technological and organizational processes and methods employed by the industry, in production.

Before turning to the specific study on taxation and regulation, this perspective will be concluded with a warning.

The economist will correctly argue that in the future the aforementioned demand pressure would "automatically" set this industrialization process in motion, without any present efforts at planning, stimulating and directing this process. There are, however, some major reasons which do call for immediate efforts to plan this process comprehensively.

The significant barriers to industrialization of building pre-require an extremely high demand pressure built-up before the "automatical" industrialization could occur. Since, in addition, the process would require many years to gain efficiency, many functions and people would be inadequately sheltered or not sheltered at all during one or even two decades.

"Automatical" industrialization, forced by extreme demand pressure built-up, would most likely result in a short-term inconsistent effort, solely designed to alleviate immediate pressure. Like the many inconsistent post-war prefabrication attempts, inefficiency and resource misallocation would result. But, most important, such short-term, piece

meal efforts can not contribute to a logical long-term development of the construction industry. But the latter alone can guarantee a long-term demand-capacity congruence.

Since during the next two decades the whole man-made environment will have to be rebuilt, the intellectual and architectural quality of this process will determine the quality of the total man-built environment by 1990. This is a unique opportunity and a unique threat:

A panic-stricken short term drive at "emergency" industrialization could only concentrate on the quantitative solution of the problem, as after the war in hectic activity; potential slums, then in megalopolitan dimensions, would be built to respond to the increased demand. It would again be a waste of resources, and it would again be a waste of a unique change. It would be a successful effort to "massproduce" the environmental qualities of mobile home parks, of monotonous suburbia, of post-war emergency-house agglomerations, as well as to destroy irreversibly ction of the natural landscape. But it would of course be a commercial success.

Long term comprehensive planning of this process, however, would make it possible to meet the quantitative and the qualitative demand. The real problem is not to adequately shelter millions of individual human functions, to provide

and coordinate the innumerous subsystems supporting human activities. The challenge is to activate functioning urban organisms as creative and stimulating forces.

Standardization and massproduction as mere tools do not pre-define the quality of the product. Mass production of interchangeable, dimensionally coordinated components (or modules) with high combinatorial potential allows the creation of a multi-facetted man-built environment, with a higher order of variety and architectural and urban design quality than traditional techniques can achieve. But it is also possible to massproduce monotony. The first alternative requires intellectual inputs and planning; the second alternative does not. Since unguided development always takes the path of least resistance, the challenge is obvious.

SECTION II

TAXATION AND REGULATION OF MOBILE HOMES-- BARRIERS TO THE GROWTH AND DEVELOPMENT OF THE MOBILE HOME INDUSTRY. AN INTRODUCTION.

1 Significance and Purpose

Taxation and regulation of mobile homes are chaotic and intricate fields. Legislative inertia and inconsistency, administrative redundancy and inefficiency and judicial confusion intermingle to form, with prejudice and discrimination, a tangled web of impenetrable complexity.

Unfair taxation and regulation bar the growth and development of the mobile home industry. The barriers are not necessary, and are detrimental to the public interest. They are still largely insurmountable, although the Mobile Homes Manufacturers Association has for two decades employed considerable effort in a concerted attack. Their interest is proportionate to the stakes. Removal of these barriers would create within one or two years an output increase of 40 to 60 percent or 150,000 to 250,000 units p.a. within the industry.

A politically feasible degree of federal and state intervention can remove the barriers. By means of "lollypop-control" the industry can be persuaded to improve the quality of their product, thus ensuring that the additional 150,000 to 250,000 units per year would be third generation trailers: massproduced low-cost modules with a high degree

of combinatorial "urban" potential, and of acceptable architectural quality.

One-hundred-fifty-thousand to two-hundred-fifty-thousand low-cost dwelling units per year is a tremendous challenge. But the perspective of the writer is the development of a long-range government policy for the comprehensive industrialization of the entire industry-conglomerate producing shelter. Though the mobile home industry is only one component of this conglomerate, it has the greatest potential for gradual adoption of industrial massproduction technology. This potential can only be activated if the industry can develop a more mature structure. The removal of the obsolete and growth-impeding practices of mobile home taxation and regulation can stimulate this development, and thus activate the potentially strategic role of the industry as a nucleus of innovation. A policy for the removal of these barriers--the development of which is the purpose of this study--is therefore a necessary component of a comprehensive long-term policy for industrialization of the industry-conglomerate which produces shelter.

2 Scope

The title of this study literally defines its scope. The analysis covers taxation and regulation of the industry product--of its use and of its users; it does not cover taxation and regulation of the industry, either of the production or the distribution function. For this reason, regulation of the mobile home as a vehicle is excluded. The average mobile home uses the highways only once--when it is transported from the factory to the dealer's lot, and then to the mobile home park.

In relation to the regulation object, the scope of the study is more difficult to define. It must be emphasized that any consideration of the future situation of the mobile home industry must include the entire emerging industry conglomerate which will be producing more or less identical spatial dwelling modules. Analyses of the historic and present situation can properly focus on the mobile home industry as such. It is implicit, however, in any proposal for a new regulation and taxation system, that this system ultimately will be applied to modules produced by many different industries. The taxation and regulation of industrially produced spatial dwelling modules is of ultimate importance throughout this study, regardless of which industry may have originated them.

3 Organization

In Sections III and IV, the writer will subject the present methods of mobile home taxation and regulation to detailed analysis to identify the critical deficiencies. Then, in the final chapters of both sections, he will attempt to use these factors to develop a system of taxation and regulation which would eliminate the present barriers, while also proposing a strategy for implementation. In Section V, the writer will discuss the proposed taxation and regulation policy as a component of a comprehensive policy for industrialization of building. This last section also contains recommendations for further research.

The proposed policy runs counter to or goes beyond any proposals advanced so far. The latter come from authorities in the field with backgrounds in law. Usually, their argumentation is enormously detailed and relies heavily upon references to judicial opinions.[18] To demonstrate a convincing case for his proposals the writer was forced

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[18] Most of the literature on mobile homes does not merit individual review. Most studies are so unorganized and unstructured, that they are valuable only as sources of particular pieces of information. This study is unique in the field because it attempts to structure and order the information--which indeed was the major difficulty encountered by the writer.

to adopt the same method of argumentation (highly detailed, judicial) used by the authorities when countering their policies. The broader perspective is difficult to maintain due to the enormous detail thus necessitated. In Sections III and IV the writer will, therefore, concentrate exclusively on the immediate subjects of taxation and regulation of mobile homes. But much of the work will presuppose an awareness of the broader context.

4 Method

The information for this study was obtained by literature search, by a questionnaire and correspondence campaign, and by interviews with key individuals in the mobile home industry.

As a first step, an extensive survey of existing written information was undertaken. The literature search was conducted in seventeen specialized libraries in Cambridge, Massachusetts; New York, New York; and Chicago, Illinois. More than 1,200 publications and articles were examined. Since no comprehensive review of literature in this field has been made, a complete listing of all relevant material will be made in the bibliography.

A nationwide industry survey was undertaken. In the course of a questionnaire and correspondence campaign,[19] more than 200 personalized letters with attached questionnaires were sent to:

all trade associations representing the mobile home-and manufactured home industry,

nearly all mobile home manufacturers,

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[19] cf. Appendix II.4.

corporations outside the industries with relevant R. & D. underway (e.g., development of mass-produced modules),

and research institutions and government agencies.

Because of the rapid pace of development of the mobile home industry, several weeks of travel were necessary for personal interviews[20] with key individuals in the industry. The author interviewed many mobile home manufacturers in the "mobile home belt," Michigan-Indiana. He worked for one week at the headquarters of the Mobile Homes Manufacturers Association in Chicago (interviews, use of their files and library). The author also attended the 1969 Annual National Convention of the Mobile Homes Manufacturers Association in Louisville, Kentucky.

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[20] cf. List of interviews.

5 The Setting

The history of the mobile home is four decades old. By 1929, the first suitable trailers were commercially produced. A semi-permanent congregation of a few trailers in a town or village immediately created revenue and regulatory problems. But it was then only a community problem. The trailerite and the trailer industry were not yet affected. By 1937, after being ignored and unhampered by legislation, the trailer suddenly was in danger of being overwhelmed by restrictive statutes. "It has been estimated that some 10,000 laws regulating trailers will be laid before state, county, city and town legislatures and councils this year." (1937) (1143:221)

What factors were responsible for this development?

During the early thirties, though most trailerites were still vacationers, public officials recognized the trend towards use of the trailer as a substitute for housing. They were aware of the regulatory implications. Trailers were used as semi-permanent abodes, thus constituting housing. Thus, routine application of regulation for traditional housing seemed necessary and logical, yet proved impossible. How could local building codes be

applied to a vehicle? Many trailers were used as single-family residences, seemingly fitting the zoning definition; yet, if actually permitted in a conventional single-family district, trailers might have caused rioting. Many municipalities tried seriously to develop adequate regulatory measures. But the trailer developed rapidly in terms of basic characteristics, sheer numbers and social and economic impact. With rapid change any regulatory response was obsolete at the time of enactment. Many municipalities grew tired and gave up trying to amend carefully and seriously their regulations.

Meanwhile, the trailer industry and the trailer population stubbornly fought regulation attempts. The industry was immature and naive. The traditions of individualism and laissez-faire were still alive. Many segments of the industry and of the trailer population were against government interference of any kind, and viewed any regulation negatively. "The (Trailer Coach Manufacturers) association is...mobilizing lobbying groups that will endeavour to keep hampering legislation and taxation to a minimum." (1937) (1143:222)

The net effect of this clash of intentions and interests was the virtual absence of any consistent trailer regulation. Enforcement was lax or non-existent. The municipalities, though meanwhile providing the usual range of services and facilities to trailerites were slow to find means for

collection of costs.

Thus, during the thirties, the trailer movement enjoyed relative freedom from taxation and regulation--with unfortunate, far-reaching results.

"The next step was inevitable: Having discovered the cheapest living in the U.S., many of these gasoline Bedouins settled down at congenial bases: they...hiked up the trailer on blocks, and called it home."(1143:221) Slum-type trailer camp operators saw a chance for a "fast buck." In the absence of regulation they stuffed trailers into camps at intolerable densities, which were poorly equipped, often lacking basic sanitary facilities. The economic conditions of the thirties and the rapid relocation of the labor force forced thousands of unattractive trailers into permanent use, in the absence of construction standards without minimum protection against fire or collapse. The trailer population consumed public services, thus causing a drain on community budgets. Yet, they effectively escaped the obligation to pay, either by registering their units in states with low registration fees, or by simply enjoying the lack of a trailer tax. The per capita tax revenue from the trailer population was insignificant compared to that of the residential population. Naturally this was a violent point of contention, especially the issue of educational costs for school-age trailerite-children.

Finally there was a small group of unemployed or semi-employed nomads in slum-type trailers which sometimes constituted a moral and safety hazard to a community. "Every now and then there pop up in small town newspapers pictures of a man who is afloat in a trailer with his wife, mistress and three children.."(1937) (1143:221). Naturally, these people had no desire to make a positive contribution to community life.

Most trailer camps were not of slum-character; most trailerites did not try to evade (mostly non-existent) taxes; and most trailerites were not moral or safety hazards. But local residents paid more attention to abnormal behavior patterns than to normal ones. So it was largely these negative aspects which influenced generalizations about the trailer population.

In the late thirties a highly negative public image of the trailerite was firmly established.

"If trailers ever get into mass production--God help us" warned an official of the American Public Welfare Association in 1936. (1143:221) The Detroit Department of Health stated in 1939 that "the trailer is a more serious social problem than we realize. A nomad class, such as is apparently developing, can not be of any substantial

social usefulness. They contribute nothing." (60:23)

The prejudice remained. The Department of the Air Force stated in 1953: "...The Air Force Policy is to provide adequate family housing for its personnel. Trailers are temporary substitutes at best, and are acceptable only under emergency conditions. They are not to be considered in place of adequate housing facilities. The Air Force will not encourage its personnel to purchase trailers..."(356)

Mobile homes are still feared as blight on surrounding areas, and as causing falling property values; mobile home occupants are still viewed as personally undesirable; and the service costs attributable to the mobile home population are still expected to exceed the taxes they pay. Bair has characterized well the attitudes of many communities regarding the mobile home population: "'To admit them... will jam schools and overload other facilities. They don't pay their share of the costs they create. They undermine the financial soundness of the community and wreck community character. Rootless drifters live in such housing. They are politically irresponsible because they own neither land nor buildings. They are likely to be poor, immoral, or of unwisely selected origins. They won't participate in community affairs.' (Or as an alternate, 'They <u>will</u> participate in community affairs and push for the wrong things.')

'They won't live in the same kind of housing we have, and therefore they are not like us, and therefore they are undesirables, maybe Communists of worse.'...'Mobile homes are substandard housing, badly constructed. They don't meet our building codes. We can't inspect them because they arrive ready-built. A new mobile home robs a local contractor and workers of a chance to build a house, a local realtor of a chance to make a deal. Mobile homes escape local taxation by buying vehicular tags. Trailer camps look awful. If these so-called "mobile home parks" are allowed at all, keep them in commercial or industrial districts along major highways or down by the railroad tracks--preferably in swamps.'" (426)

Punitive regulation was the inevitable result.

The advocates of laissez-faire in the industry had not recognized that the result was a hostile atmosphere eventually resulting in attempts at complete exclusion of mobile homes. The mobile home and the mobile home park industries share in the responsibility for discriminatory and punitive regulation. With repeated attempts to escape entirely from regulation of any type, they have helped create an overabundance of regulation--most of it discriminatory. Since the early forties, mobile homes and mobile home parks have been governed by a formidable amount of mostly repressive of exclusionary legislation.

The effect is an enormous and multi-facetted social and economic pressure bearing upon the mobile home population. There are two major barriers to industry growth: lack of mobile home park space and mandatory confinement of mobile homes to licensed parks.

Repressive regulation obstructs or completely prohibits the development of mobile home parks, particularly of high-quality parks in desirable locations. The annual production capacity of the industry exceeds the annual rate of park space development by a considerable margin. Lack of park space is one of the most critical barriers to industry growth. The question asked first of every mobile home dealer by prospective buyers is: can he supply a park space? The reason that many dealers are developing mobile home parks is that park space availability is the major sales criterion. Today, if one buys a mobile home in Los Angeles, the closest available park space is 65 miles away. Thirty to forty percent of "safe" sales of mobile homes are lost because of lack of park space.[21] Yet, a sufficient supply of park space would stimulate a demand beyond 30 to 40%. Unavailability of new park space freezes replacement demand. Many mobile home owners must maintain old units because new parks with larger spaces are not available. One might conclude

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[21] Interview with Richard K. Beitler, Assistant Managing Director, Mobile Homes Manufacturers Association, and Director, Land Development and Finance Division, MHMA. (cf. List of Interviews).

removal of the barriers against park development would immediately expand the market at least 30 - 40% .

Most statutes and ordinances confine mobile homes to licensed parks. This constraint limits the potential market for the low-cost[22] product to those market segments which are prepared to accept the particular sociological characteristics of mobile home park living. A sizeable potential market segment is eliminated by this condition. Even today to decide for the "mobile way of life" may mean a complete and irreversible break with the previous social environment.[23] Thus, the mobile home industry can offer only one highly particular form of low-cost housing which is acceptable to only one particular segment of the potential market for low-cost housing. Removal of this artificial barrier would enable the industry to offer a low-cost product without any strings attached. When mobile homes particularly double-wide or sectionalized units are allowed

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[22] The mobile home industry is producing low-cost housing. For the typical mobile home, the cost advantages gained in production are largely sacrificed by the need to rely on add-on automobile-type financing arrangements, which involve much higher interest rates (up to 13% simple interest) and shorter terms than conventional real estate mortgages. Yet, for double-wide and sectionalized units, more favorable financing can be obtained which retains the advantage of low-cost.

[23] Interview with Richard C. Mitchell, Director, New Business Development Division, Mobile Homes Manufacturers Association. (cf. List of Interviews).

in normal residential districts, the present market of the industry will grow immediately by at least 20%.

The Kaiser Committee concluded in 1969: "Rapidly increasing sales in the face of these obstacles indicate that the mobile home industry must be doing something right." (371.1:158) This conclusion is questionable since it does not recognize a highly significant phenomenon; repressive regulation of mobile homes, though barring industry growth at present, contributed the most to the growth of the mobile home industry.

The very institutional conservatism that hampered the development of the prefabricated home (because it was considered a home) stimulated the development of the mobile home (because it was not considered a home). Official rejection by the institutional system of the mobile home as housing has enabled it to develop and continuously expand a new market precisely because it was ignored by the institutions which control the housing market. Practically by force, the mobile home was exempted from the traditional controls of housing. Instead of being recognized as housing, it was labeled and regulated as a vehicle. This classification made it virtually immune to the code, taxation, and labor restrictions which apply to conventional housing, and which so effectively bar industrialization in this field. And discriminatory zoning, which usually

relegated mobile homes to commercial districts, made the mobile home immune to the restrictions that apply to conventional housing in residential districts.

This immunity has enabled the mobile home industry to develop industrial production techniques which avoid the code-enforced redundancy and the union-enforced inefficiency of traditional construction. And the mobile home park industry benefitted greatly from the ability to exploit much higher population densities than permissible for traditional housing.

The primary reason for the phenomenal growth of the industry is that they produced a housing unit, yet tactically called it a vehicle. The relatively unsuccessful prefabricated home industry made the mistake of admitting that they "dared" to produce housing by industrial mass production methods.

Yet, while the industry benefitted, the mobile home population was hurt; living between junkyards, they were forced to bear the stigma of footloose nomads.

The study will determine whether some or all of these advantageous factors should be sacrificed in the interest of broader, long-range objectives.

SECTION III

MOBILE HOME TAXATION

1 Mobile Home Taxation - A Jungle of Conceptual, Legal, and Administrative Inconsistencies

The rapid development of the mobile home has greatly exceeded the ability of government to cope with the resulting problems: the mobile home has emerged too fast and has changed its basic characteristics too frequently. The problems associated with this development would build up so rapidly that immediate regulatory action became necessary. State and local authorities, in an effort to respond to immediate needs, have moved on from one stop-gap decision to another, hopelessly lagging behind the development of the mobile home. For many years local authorities found themselves occupied with disposing of immediate regulatory problems such as health, sanitation, and aesthetics. Local revenue problems associated with mobile home influx were recognized at an early date. Legislative action, however, has usually been postponed until problems were serious enough to require immediate action. Thus, most taxation laws are inconsistent and generally obsolete by the time they are enacted.

These conditions surrounding the origination of mobile

home taxation are clearly reflected in its present condition. From state to state, and for the nation as a whole, mobile home taxation is an impenetrable jungle of inconsistencies and impracticalities, whether seen from a theoretical, legal, or administrative point of view.

1.1 Aspects of Taxation

The mobile home involves many varied aspects of taxation. The major problem is the unsettled status of an object that is not clearly real or personal property, mobile or immobile, permanent or transient.

There is a wide range of taxation situations the mobile home may involve. Mass-produced in but a few hours, it may sit for weeks on a factory lot awaiting shipment, thus constituting inventory. While being hauled for hundreds of miles over the highways, it is considered a vehicle. Then on the dealer's lot, it again becomes inventory. Later it is likely to end up in a mobile home park on a rented park space, or in a mobile home subdivision on a privately owned lot. But it might also be located outside of a mobile home park on isolated private property. After having passed through the first stages of the filtering process, the mobile home finds a multitude of uses. Whether it serves as office on a construction

site or junkyard, as a mere storage facility, or as a semi-mobile workshop, from a taxation standpoint, every situation may call for different tax treatment.

Mobile homes present a multitude of taxation aspects and are difficult to fit into conventional tax categories. Accordingly, an amazing range of different taxes and fees have been imposed upon mobile homes. And the conceptual complexities are supplemented by another set of difficulties arising from the special multifacetted characteristics of the mobile home: the administrative problems of tax collection and revenue distribution.

1.2 Alternative Methods of Taxation

While on the highway, the mobile home is legally similar to any motor vehicle. Even though the mobile home may use the highway only once, in all states it is subjected to the state motor vehicle license fee. This practice, adequate in the thirties, is now anachronistic; the charge is no longer equitable. It is indicative of the time-lag between mobile home development and the states' awareness of this development, that no serious controversies have arisen over this outdated tax.

Used as a dwelling and located on an isolated private lot,

the mobile home may be taxed as realty together with the land, or separately as personalty. Yet, it may be exempt from property taxation by payment of an "in lieu" excise, ownership, or privilege tax, or by purchase of a vehicular license. Nearly every state has statutes with different provisions for this special case. Yet some states have no provisions at all.

More commonly the mobile home owner locates his unit on a rented space in a mobile home park. His unit thus may be taxed as personalty, as realty, by an "in lieu" fee, by a vehicle tax, or not at all. He may have to pay those taxes directly, or indirectly in the form of his rent. The range of alternative practices of taxation is the same as in the case of the unit on an isolated lot. It should be noted that in a very few states, governments are experimenting with the same taxation device in both cases. The rule, however, is that taxation in either case is figured by a different method. Apart from making or not making the park operator responsible (directly or indirectly) for collection of the tax imposed upon the units in his park, in all states the mobile home park owner pays a real estate tax on the land and physical improvements. The tax treatment of the other aspect of a mobile home park, namely the business of operating it, again fluctuates greatly from state to state. Since this is essentially a rental service

analogous to hotels and motels, the park operator is subject to the usual business and occupational licensing fees charged by the community. Usually these fees must be commensurate with the cost of park regulation. But in many cases the municipality is empowered to tax for revenue. If the mobile home owner locates his unit on an owned lot in a mobile home subdivision, the unit may be taxed by any one of the alternative methods used for taxing the unit in a rental park. Nevertheless, again, in most states different methods are applied in both cases. The lot is of course assessed to the owner. And in most cases the value of the unit plus the lot is the valuation for tax purposes. If in the subdivision case the lot owner rents his lot, in many states he gets confronted with complicated taxation problems. To even further confuse the situation, in most states methods of assessment differ radically from those of assessing traditional housing.

Bair excellently characterizes the general chaotic situation, though commenting on a specific case: "(W)here there is homestead exemption, complications may multiply. The mobile home on a foundation (or without foundation) which does (or does not) purchase a vehicular license may (or may not) qualify for homestead exemption on real property tax." (425:202)

In addition, in all states dealers in mobile homes, suppliers, repair and manufacturing activities, and other incidental business activities are, of course, subject to many taxes and license fees, e.g., sales tax, use tax, excise tax, and income tax.

The chaos of local tax treatments of mobile homes is aggravating. State and local governments attempt to raise more revenue from the mobile home population. But the legal and political problems in the taxation of mobile homes lead to widespread testing at state-scale of potential or available fiscal devices. Very often the courts invalidate statutes enacted by a state legislature. Then another revenue producing weapon will be chosen for experimentation. The variety of mobile home taxes and fees seems to increase, and the methods continue to differ radically from state to state.

1.3 The "Fair Share" Controversy

Since most states tax mobile homes differently than other types of housing, the owners of permanent dwelling units suspect that the mobile home owner is not paying his "fair share." This suspicion is not so much based upon facts, but mostly upon anti-trailer sentiments which developed during the depression and war years. Trailers were then

owned by low-income transients and the trailer parks were inadequately developed, crowded, and often caused sanitation, fire, and police problems. Large numbers of children often created educational problems.

Those conditions have changed almost completely. Yet the prejudice stays on. The different tax treatment of mobile home residents makes their actual contribution to the local government budget invisible to the rest of the community. But it can be easily observed that mobile home parks require additional sewer, water, and school facilities which constitute a strain upon small community budgets. Thus, still today one of the most quoted arguments in almost any discussion on mobile homes is that mobile home dwellers do not pay their share of local government costs. This verdict is obviously difficult to disprove. But it often serves to justify municipal ordinances which deal in a discriminatory manner with the mobile home. For example, it was held in Colt v. Bernard[24] that zoning could not be used as a device for upholding the tax base of a community. But this very argument has been used to exclude mobile homes from a community.

Thus, this "fair share" issue sheds light on the policy problems at the local level. Since the initial questions

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[24] 279 S.W. 2d 527 (Kansas City Ct. of App. Mo., 1955).

of mobile home policy in most localities center around the economics of providing local public services to the mobile home park, it will become necessary to subject this easily advanceable argument to considerable analysis.

The next chapter, therefore, will first examine the various aspects of the "fair share" issue, before turning in subsequent chapters to an analysis of presently employed alternative revenue measures. The writer will then, in the last chapter, attempt to develop an equitable and workable system of mobile home taxation.

TABLE 1 : TAXATION OF HOUSE TRAILERS IN THEIR NON-VEHICULAR ASPECTS, BY CATEGORY OF TAX AND BY STATE, 1956

CATEGORY AND STATE	TRAILERS TAXED AS REAL PROPERTY	TRAILERS TAXED AS PERSONAL PROPERTY	TRAILERS TAXED SPECIFICALLY IN LIEU OF PROPERTY TAX	TRAILERS EXEMPTED FROM PROPERTY TAX
CATEGORY I[a]: (31 states which tax trailers as real property or personal property or levy a tax in lieu of a property tax)				
Alabama*	No	Yes	No	No
Arizona	No	Yes, if not registered as a motor vehicle	Yes, if registered as a motor vehicle	No
Arkansas	No	Yes	No	No
California*	No	Yes, if not registered as a motor vehicle prior to Mar. 1	Yes, if registered as a motor vehicle (called a vehicle license fee)	No
Colorado	No	Yes, if not registered as a motor vehicle	Yes, if registered as a motor vehicle (called a specific ownership tax)	No
Connecticut	No	Yes	No	No
Georgia	No	Yes	No	No
Illinois	No	Yes	No	No
Indiana	No	Yes, if acquired before Oct. 1 of tax year	No	No
Kansas *	No	Yes	No	No
Kentucky	No	Yes	No	No
Maine	No	Yes, if not registered as a motor vehicle	Yes, if registered as a motor vehicle (called a vehicle excise tax)	No
Massachusetts	No	No	Yes (if in trailer park the tax is called a license fee; if not in a trailer park the tax is called a vehicle excise)	No
Minnesota*	No	Yes, if not registered as a motor vehicle	Yes, if registered as a motor vehicle (called a highway privilege tax)	No
Mississippi*	No	Yes	No	No
Missouri *	No	Yes	No	No
Montana *	No	Yes	No	No
Nebraska	No	Yes	No	No
Nevada *	No	Yes	No	No
New York	Yes	No	No	No
North Carolina	No	Yes	No	No
Oklahoma *	No	No	Yes (called a certificate fee)	No
Rhode Island*	No	Yes	No	No
South Carolina	No	Yes	No	No
Tennessee	No	Yes	No	No
Texas	No	Yes	No	No
Utah*	No	Yes	No	No
Vermont	No	Yes	No	No
Virginia	No	Yes	No	No
Washington*	No	No	Yes (called an excise tax)	No
West Virginia	No	Yes	No	No

TABLE 1 (Continued)

CATEGORY AND STATE	TRAILERS TAXED AS REAL PROPERTY	TRAILERS TAXED AS PERSONAL PROPERTY	TRAILERS TAXED SPECIFICALLY IN LIEU OF PROPERTY TAX	TRAILERS EXEMPTED FROM PROPERTY TAX
CATEGORY II: (11 states and the District of Columbia which tax trailers as real or personal property if they are not registered as motor vehicles. Mo tax in lieu of property tax is levied)				
District of Columbia	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
Florida*	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
Idaho*	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
Louisiana	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
Maryland	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
Michigan	Yes, assessed with land	No	No	Yes, if registered as motor vehicles
New Jersey*	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
New Mexico*	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
North Dakota*	No	Yes, if not registered as a motor vehicle and remain off highway one full year	No	Yes, if registered as motor vehicles
South Dakota	No	Yes, if not registered as a motor vehicle by May 1	No	Yes, if registered as motor vehicles by May 1
Wisconsin	Yes, if permanently attached to land	Yes, if not registered as a motor vehicle and not attached permanently to land	No	Yes, if registered as motor vehicles and not attached permanently to land
Wyoming*	No	Yes, if not registered as a motor vehicle	No	Yes, if registered as motor vehicles
CATEGORY III: (5 states, including Ohio, which tax trailers as real or personal property or levy a tax in lieu of a property tax under special conditions)				
Iowa*	No	Yes, if used as dwelling for 6 or more months during year	No	Yes, if not used as dwelling for 6 months during year
New Hampshire*	No	Yes, if used as dwelling for residents	No	Yes, if not used as dwelling for residents
Ohio*	No	No	YES	Yes
Oregon*	No	Yes, if used primarily for residential or business purposes	No	Yes, if not used primarily for residential or business purposes
Pennsylvania	Yes, if permanently attached to land	No	No	Yes, if not permanently attached to land

(a) This category probably includes Delaware although available data provide no conclusive evidence.

Source: (270:14,15)

*CHANGES SINCE 1956: TABLE 1 (Continued)

Alabama: now taxed as real property if affixed to land (97)
California: now registration required in any event, taxed in lieu of property tax only (39)
Delaware: now taxed as real property (252)
Florida: now taxed as real estate, if permanently attached to the land and used, or suitable for use, as a dwelling (97); otherwise taxed specifically in lieu of property tax
Iowa: now taxed specifically in lieu of property tax; taxed as real property, if affixed to land (97:110) (235.1)
Minnesota: since 1959, mobile homes are taxed as personal property (593)
Montana: now taxed as real property, if affixed to land (235.1)
Nevada: now taxed specifically in lieu of property tax (370)
New Hampshire: now taxed as real estate (97:130), if not moved on highways; if moved on highways, taxed as personal property (252)
New Jersey: now taxed specifically in lieu of property tax; if attached to land, taxed as real property (252)
New Mexico: now taxed specifically in lieu of property tax (97): taxed as real property, if affixed to land (235.1)
North Dakota: now taxed as real estate if attached to ground and owned by land owner; if upon wheels or upon leased ground, taxed as personal property
Ohio: now taxed as real estate if not registered as a motor vehicle and if attached to land (252)
Oklahoma: now taxed as personal property (252) if not registered as a motor vehicle (370)
Oregon: now taxed as real property if affixed to land (235.1)
Rhode Island: now taxed as real property if affixed to land (235.1)
Utah: now taxed as real property, if affixed to land (235.1)
Washington: now taxed as real property if permanently attached to land (252). In this case also exempt from registration (370)
Wyoming: now taxed as real estate if affixed to land owned by owner of mobile home; otherwise subject to vehicle registration and taxed specifically in lieu of property tax (97:110)

TABLE 1 (Continued)

COMPARISON: HISTORY OF TRAILER TAXATION

1936: Trailer owners relatively free from taxation, mostly only moderate annual state motor vehicle fees. Different bases for fee determination: flat fee; or graduation by length, age, gross weight, chassis weight, factory price. Only 20 states taxed trailers as personal property. (133:101,104)
1941: Still, trailers mostly classified as vehicles under state tax laws. 14 states: motor vehicles, including trailers, exempt from property taxation, subjected to "in lieu" state motor vehicle license fees. 3 states: motor vehicles, including trailers, exempt from property taxation along with all other personal property. 7 states: special state ad valorem taxation in lieu of personal property taxation. (5:22)
1954: In most states still classified as vehicles. 28 states: taxed as personal property. At least one state: taxed as real property. (133:104)

2 The "Fair Share" Controversy

2.1 Origins

During the thirties, in the absence of trailer taxation in many localities, a long series of reports and studies conclusively stated that the trailerite was a tax parasite. The language of many of those reports resembled reports on insect control or criminology. The following, with some variation of tolerance and formulation, is still the standard argument of most mobile home studies: "The mobile home owner does not pay his fair share of the costs of government." The qualification "fair" recognizes that the mobile home owner does pay taxes. But nobody really knows how much he pays. The myriads of mobile home studies shed no light on this issue. In the absence of facts, the prevalent trailerite prejudice leads to the assumption that whatever he does pay is not adequate.

During the thirties many trailerites searched for the best state to register their vehicle; the best state naturally had the cheapest annual license tax. (133:102) But "tax evasion" was actually widespread only because few specific or effective methods for trailer taxation

had been developed. So normally the local authorities were more at fault than trailerites who were evading non-existent or uncollectable taxes.

Yet, it appears that the problems were of a rather imaginary nature. In 1936, Roger Babson predicted that "...within twenty years more than half the population of the United States will be living in trailers." And one year later, the American Municipal Association estimated that some 400,000 trailer coaches were occupied. (6:18) The latter estimate was probably the result of a misinterpretation of statistics which may have included truck trailer data. But at that time similarly bold predictions and estimates appeared plausible. The trailer was generally seen as providing substitute housing at a time when a serious housing shortage was feared. Furthermore, inter-and intraregional migration increased sharply during that period. So a fear of nationwide mass migration by trailer began to build up. Trailer invasions, seriously burdening local school districts and creating uncontrollable sanitory, medical and relief problems, were commonly envisioned in serious studies. Such reports prompted proposals for trailer taxation designed to cope with the feared problems. Even if trailers were taxed at that time, and many were taxed by motor vehicle taxation, the revenue was considerably less than the proposed disaster-geared taxation programs

would have yielded. Thus the "tax parasite" prejudice was only partially justified by trailerite conduct.

Finally the anticipated dimensions of trailer migration did not materialize, despite the drastic shifting of population resulting from the national defense program. Particularly, the anticipated drastic burden upon local school budgets did not materialize at all. In 1941, the American Municipal Association commented on the actual extent of the widely exaggerated problem: "...What was apparently an extreme problem was reported in the "Harry Morris" school district where thirty additional school children came from trailer camps to raise the school enrollment one-third..." (5:24)

But the notion of the trailerite as a tax dodger remained. Jack Elliot, city manager of Hot Springs, wrote in the March 1953 issue of "South Dakota Municipalities":
..."Many trailers are...worth more...than many small homes, but they are not taxed on this basis...They may send their children to the local schools, which are being paid for out of their neighbors' taxes. In short, they have much to gain, nothing to lose. It is the permanent resident and home owner who is footing the bill..."

"The situation in regard to schools is particularly bad.

All that a trailerite does now is to buy a license which exempts him from any further taxes on the trailer...The fees received from all trailer licenses are used primarily on state highways...The school gets no part of it...It should be included in the ordinance that any such trailer resident who is regarded as permanent, shall be placed on the tax roles for real property as well as for personal property... the problem of trailers needs the consideration... of municipalities so that...trailerites will cease to be parasites." (534)

This bias against the mobile home owner is one of the most serious problems the mobile home industry faces. The prejudice is responsible for widespread discriminatory zoning and regulation practices. Lack of parking space is a critical barrier to further industry growth. Many proposed park developments have been rejected by zoning commissions because of the fear of straining local government funds by admitting the "tin-can parasites" into the community.

2.2 Public Services Consumed by the Mobile Home Population

The mobile home is now part of the local housing supply. The mobile home owner uses more or less the same public services, though not yet necessarily to the same extent, as

the other segments of the residential population.

Mobile home owners have children who demand schooling. Statistics show that mobile homes are fire hazards to the same degree as traditional homes, thus there is a need for fire protection. The need for police protection is obvious. And the mobile home dweller will naturally use sewers, utility lines, trash disposal, roads and other facilities and services. The mobile home resident may use the local library system as well as public recreational facilities. If resident status is attained, and this is the rule today, the various benefits of public employment, of voting and of public relief accrue to the mobile home family.

There is no question then that the mobile home owner should pay for the services he consumes. Does he pay his "fair" share?

2.3 The Mobile Home Owner's Point of View

In two separate surveys, different mobile home owner samples answered the same question as follows:

Which of these statements regarding taxes do you think is most true?

	Survey 1, 1965 Percent	Survey 2, 1965 Percent
Mobile home owners have a tax advantage not enjoyed by house owners	28%	39.7%
Mobile home owners pay fair share of taxes compared to house owners	60%	60.3%
Did not answer	12%	
Sources:	(289.1)	(244)

The statements are, of course, pro domo biased. If, despite of this, 30% or 40% of the respondents "dare" admit they feel they enjoy a tax advantage over the house owner, then the question "Do they pay their share?" seems rather justified. And the tax parasite prejudice may not be so unfounded after all. It is more likely, however, that the survey results have no information value at all: mobile home owners like to demonstrate that they made a "clever" decision by choosing the mobile home way of life. Furthermore, they are just not competent to answer a question which the authorities in the field feel unable to answer.

2.4 Contribution of the Mobile Home Population in Indirect Taxes

The relative importance of indirect taxes paid by the

mobile home population is easier to determine and comprehend than their contribution in direct taxes. The mobile home resident is in a similar position as the traditional house owner regarding indirect taxes. But regarding direct taxes, he is taxed differently by confusing methods which do not immediately benefit local government budgets.

The mobile home population pays a substantial amount of indirect taxes by spending money in the local community. Any purchase of any commodity or service means a share in the tax burden imposed upon the total community. Since states increasingly take financial responsibility for local functions, by grants-in-aid for education or road construction, large percentages of state-collected sales tax money are thus returned to the local authority. So in bearing a share of the total community's tax burden, the mobile home resident also significantly contributes to the local government budget.

Utility taxes are levied by many municipalities. A utility tax, though often indirectly, reaches mobile home owners as well as owners of conventional dwellings. The same is true of sewer taxes if based on the number of hook-ups, and garbage and trash collection charges. Whenever municipalities pay substantial portions of their governmental costs by operating utility systems and selling at rates well in

excess of production costs, the mobile home owner again contributes to the cost of local government. (17:118)

About fifty percent of all mobile homes are located in mobile home parks. Through rent, the owners of those units permit the park owner to pay a variety of direct taxes on the park, such as business license fees and real estate taxes on land and physical improvements. He also naturally allows the park owner to pay a great variety of indirect taxes.

A special case in this connection are city-owned and operated mobile home parks which usually are excellent revenue sources. A well-managed park can produce a high return on investment. The nation's largest, and oldest city-owned mobile home park, Sarasota's Municipal Mobile Home Park, houses more than 900 units and is, thus, one of the biggest parks in the United States. The park, Sarasota's most solid business venture, finances other unprofitable city-owned facilities, and provides a city-wide business stimulus. (991)

In 1959, House & Home reported that the annual income of the average mobile home owner was slightly more than $1,000 above the national average, $5,300 versus $4,200. (651) A 1965 survey found that the median income

of mobile home owners was $7,800. (70) Since 1966, the median income for all U. S. families was $7,400, the average mobile home family has a well above average income level.

The purchasing power, therefore, of mobile home dwellers is high, by all indications higher than average. The sociological characteristics of the mobile home population indicate a pronounced orientation to demonstrative consuming. Most mobile home owners have more of the modern conveniences than the average home owner. This can provide an economic boost for the community. Some surveys indicate that trailer families spend an average of $62 per week in their communities. The California Division of Housing estimated in 1952 that there were about 100,000 families in mobile homes in this state with a combined purchasing power of about $450,000,000 a year. (190) Table 2 summarizes results of a survey on spending patterns of a mobile home park population. It should be noted that the survey was made in 1958, and that this particular park was populated largely by retirees with income levels below the average for the national mobile home population.

It has often been contended that the above-average purchasing power indicates that the mobile home dweller pays more in indirect taxes than the average local resident; and that

Table 2

Results of the Sarasota Mobile Home Park Survey, 1958

(Park population: above 3,000)

	Average	Annual Total
What is your weekly expenditure (estimated) per person for food?	$ 10.23	$ 749,269.75
What are your total assets, here and elsewhere?	$71,823.00	$64,640,700.00
Have you purchased a trailer locally, and if so, at what cost?	$ 3,574.00 500 answered yes	$ 1,780,000.00
Have you purchased a car locally, and if so, at what cost?	$ 2,832.88	$ 465,834.00
What do you spend for gasoline and car maintenance per week?	$ 6.27	$ 105,336.00
What do you spend for entertainment per week?	$ 4.04	$ 295,808.80
What do you spend for all expenses not covered above per week? This includes drugs, clothes, gifts, etc.	$ 8.97	$ 646,981.43
What do you spend for heating fuel per week?	$ .84	$ 10,607.62
How many weeks per year do you live in a mobile home in this park?	28	
Do you prefer a mobile home to a regular home?	793 answered yes	
What is the average age of the occupants of your trailer?	65.7	
Do you live in a trailer elsewhere?	117 answered yes	

From the above figures, the residents of the Sarasota Mobile Home Park spend $1,808,003.60 each year in addition to th $176,000 spent within the park itself for rent, utilities, etc.

Source (991)

he is, therefore, paying sufficient taxes to compensate for the value of community services consumed, without any need for the imposition of special legislation.

The role of the mobile home population in the payment of indirect taxes, as compared with the indirect tax burden borne by other residential population segments, can not be evaluated accurately. It is most unlikely that such an evaluation would provide data supporting the notion that the mobile home owner pays more indirect taxes. Very probably his payments of this type of taxes are equal to the traditional home owners, and no arguments can be advanced that additional direct taxation would be unnecessary.

2.5 Contribution of the Mobile Home Population in Direct Taxes

Many studies have attempted to collect data on the contribution of the mobile home population in direct taxes. Most of these studies, however, are unprofessional and biased (anti-, respectively pro-mobile home).

The seven studies reviewed in the following section provide some objective insight. As may be expected, they do not conclusively answer the "fair share" question, but they provide some factual evidence. Simultaneously the cases serve ideally to illustrate the "real life" problems

encountered in mobile home taxation.

None of the studies attempts an analysis at the national scale. Since taxation methods differ radically from state to state, a scope exceeding state-scale would appear meaningless. Two of the reviewed studies attempt to develop state-representative averages. The other studies are based on a county or municipality scale.

2.5.1 Case Study: Nevada

In 1959 the Planning Commission of the City of Reno, Nevada studied the mobile home problem in Washoe County, specifically to determine whether mobile home owners carry their proper tax burden. (289:15,16)

The study found that the average taxes paid per dwelling unit[25]

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[25] Average taxes paid by the mobile home and traditional house owner, broken down by the number of bedrooms:

Mobile Home

Average Assessed Value of Park Space	Average Assessed Value of Mobile Home	Tax Paid at Reno City Rate
$343	1 BR $1030	$68.65
343	2 BR 1160	75.15
343	3 BR 1640	99.15

Traditional House

Average Assessed Value of Post-War House & Lot	Tax Paid at Reno City Rate
2 BR $2977	$148.85
3 BR 3700	185.00

(289:15)

were $52.90 for high density multiple housing, $73.63 for mobile homes (including lot), $82.67 for low density multiple housing, and $126.05 for single family residences. The average for all multiple dwelling units was $67.79, and thus about the same as for mobile homes.

The study found that local assessment practice failed to place a realistic value on the improvements within mobile home parks.[26] Despite this, the average assessed value per square foot of dwelling area was slightly higher for mobile homes ($3.21/sq.ft.) than for post-war permanent multiple housing ($2.91/sq.ft.).

The "fair share" question implies a "benefits received" approach. The study, however, does not consider the costs of public services associated with alternative types of housing. Nevertheless, a vague conclusion appears justifiable. In its fundamental characteristics a mobile home park is similar to an apartment development. In Reno both housing types yield about the same taxes, per dwelling unit as well as per square foot. Thus, in a very vague sense the mobile home owner can be said to pay a share equivalent to his status.

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[26] The assessed value of a mobile home varied from 35% of the new sales price to 50% of the actual cash value. The assessed value of mobile home park spaces was less than 15% of actual cash value, while the assessed value of real estate in general (including improvements thereon) ranged from 20% to 25%.

2.5.2 Case Study: California

In 1962, the City Manager of Oceanside, California prepared a "Report on Trailers and Trailer Parks."[27] (269) The study is a serious attempt to compare the receipts from mobile home and traditional housing taxation. The California system of mobile home taxation is administered by the state. The state collected receipts are redistributed to the local government units. The California system has many deficiencies[28] which in effect prevent the mobile home population from paying their fair share. The study found that the returns to the City of Oceanside from the State were extremely small in comparison to receipts from other types of dwellings. The local mobile home population thus did not pay a proper share of local government cost--it was prevented from doing so by state legislation!

2.5.3 Case Study: California II

In a 1960 study conducted by Gillies at the University of California community revenues from mobile home parks were compared with those from single family residences and selected community costs were compared for the mobile home parks and single residences. (83.1)

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[27] The study is reviewed in detail in Chapter III.4.1.3.
[28] cf. Chapter III.4.1.3.

A comparative analysis of the cost-revenue picture of alternative land uses necessitates a consideration of the corresponding population characteristics, of the differing income levels and spending patterns, etc. Gillies' study is based on general averages for population and income structure of alternative types of developments. In addition, various assumptions were introduced, some of a rather questionable nature.[29] (Table 4 in Appendix III.2.5.3 shows the major steps of the analysis in a summarized form.)

Because of these questionable assumptions, the conclusion of Gillies' study can only be accepted with caution.

The findings[30] indicate that mobile homes and "traditional" residential developments of relatively low densities will probably yield a net revenue to the community. While those of medium or high densities will most likely produce a net loss. Gillies summarized (from a strictly cost-

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[29] The first deficiency that can be noted is the "per acre" basis. Many studies, undertaken to discover a relationship among the moneys paid by a conventional subdivision and those paid by a mobile home subdivision or park, found that total revenue per acre of mobile home parks tends to be greater than the per acre revenue of a conventional subdivision. If one considers that many old parks have densities of 15 to 25 units per acre, and even modern parks close to 10, then it becomes obvious that the only meaningful basis for comparison would be per capita. Two other assumptions that appear rather questionable, too: the existence of a local sales tax, and the relationship between varying densities and the corresponding number of school-age children. (cf. Appendix III.2.5.3)

[30] cf. Appendix III.2.5.3, table 4 .

revenue situation): "mobile homeparks are no more deficit to a community than a residential development of approximately the same density...and...in many instances a community is unquestionably better off with mobile home parks than residential tracts..."(85:7)

2.5.4 Case Study: Michigan

Probably the most realistic and thorough study on the "fair share" subject is the one from 1955 by Duke in Michigan (66). Because of the outstanding quality of this report, a detailed review appears justified. In order to secure the continuity of this chapter, the analysis of Duke's approach has been placed in the appendix.[31]

Duke broke down local government expenditures into major categories: education, health and welfare police and fire, roads, general government. He analysed the relative contributions to each category by the mobile home population and by the other segments of the residential population.

Duke concluded, that "...(i)n the school districts, and in the townships mobile home owners are paying amounts

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[31] cf. Appendix III.2.5.4.

approximately equal to those paid by owners of conventional homes, in light of the services rendered..."(66) On the county level, he identified inequalities in payment: the mobile home population contributed less than the traditional home population. For the same reason as in the Oceanside case: mobile homes, subjected to a statewide uniform fee system were taxed differently from traditional homes. They were prevented by an inconsistent system of taxation imposed upon them from paying their fair share in every respect (their contributions to the categories "education" and "roads" were higher than the respective payments of the rest of the residential population).

2.5.5 Case Study: Connecticut

In 1965, through a study on mobile home parks in the town of Groton, Connecticut, the Groton Planning Commission tried to determine the relationship between the amount of taxes paid by mobile home owners and mobile home park operators and the cost of educating the children of mobile home residents. (403:10,13)

The Commission concluded: "In Groton, as in most other Towns in the State of Connecticut taxes received from the residential dwelling units do not cover the cost of providing municipal services. The deficit...is made up by taxes on industry and commercial uses...However the taxes

paid in connection with mobile homes cover the cost of educating the children[32] and...the mobile home parks contribute a below average number of children to the school system...Then why do the people who object to mobile home parks insist on raising the bugaboo of flooding the school system with children and not providing adequate taxes to cover them? It would seem that we have substantiated the claim of the mobile home park operators...that they pay their fair share" (of the education costs)... "Those arguing against the expansion of mobile home parks and the possible construction of new parks must have other more basic reasons..."(403:13)

2.5.6 Case Study: Pennsylvania

A 1954 study on the problems created in Bucks County, Pa.,

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[32]The Assessor's office was assessing 490 park spaces in fourteen mobile home parks and 380 non-servicemen's mobile homes located thereon. In 1964, the average mobile home was assessed at $1,750, and at the current tax rate of 29 mills it produced a revenue of $50.75. The 380 mobile homes, on an assessed valuation of some $600,000, yielded a total of $17,400 in taxes. The average park space was assessed at $720.00, producing at the 29 mills rate $20.88 in taxes. The 490 park spaces with an assessed value of $346,420 yielded $10,046 in taxes. Thus, the average mobile home space produced $71.63 per annum in taxes, including the tax on land and improvements, and on the unit thereon. It was found that 175 mobile home children attended the Groton school system. The school department estimated the average annual cost of educating one student at $215. Of the 175 children, 98 were servicemen's offspring. The town of Groton received from the Federal government $195 for each of the servicemen's children. This sum almost covered the per capita cost of these pupils. The annual cost of educating the remaining 77 pupils, totaling $16,550 was substantially covered by the $25,330 derived from taxation of the 380 non-service connected spaces and unit.

by an enormous temporary influx of mobile homes of construction-based worker families (598) reported on the attitudes of mobile home parent toward contributing to the cost of local government:

"(O)ne does not find any serious objection among the trailer families to paying a school tax. Nor, as a matter of fact, to paying other types of taxes which support community services...The trailer residents are accustomed to paying such taxes wherever they have been. Local PTA's and school officials have found that trailer parents are interested in good educational facilities and programs, and are willing to pay their share of taxes in support of them."(598)

The study concluded that the problem was not unwillingness on the part of the mobile home owners to pay their share, but rather the failure on the part of the local authorities to activate this potential by initiating an adequate taxation program.

2.5.7 Case Study: Indiana

In order to break the "tax and school children myths," Edwards has devised a formula for compiling tax revenue information on existing or proposed mobile home parks versus surrounding conventional housing areas. (642)

The formula was intended to be used in reports to "prejudiced" zoning commissions. Since on a per acre basis mobile home parks return more in taxes than single house developments, the formula is based on this concept.

Edwards is certainly aware that comparisons of selected individual developments are not representative and thus meaningless. Careful selection of mobile home parks and residential developments allows him to arrive at any pre-defined "findings,"[33] and this is what the formula was designed for.

2.5.8 Conclusion

The studies do not answer the question: "Does the mobile home owner pay his fair share of local government costs?" They are inconclusive since there are as many cases in which he may not as there are in which he may.

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[33] One study using this formula compared a mobile home park with an adjacent moderately priced housing development. (642) The per acre tax yield was $688.10 for the park, and $528.22 for the subdivision. The school tax per acre was computed at $506.01 for the mobile home park, and $388.45 for the subdivision. The favorable, though rather meaningless, per acre picture for the mobile home changed when the author evaluated the school revenue per child at $167.67 for the park, and at $227.20 for the traditional community. "Fortunately," the author found another mobile home park with but three school children and was thus able to compute the school tax per child at $1,013.98 in that case. Upon combining the school taxes from both parks, the author finally could compute a combined rate of $250.72 per mobile home pupil.

But the author contends that the studies can lead one to the following statements: even if the mobile home owner does not contribute his share, to look upon him as a tax parasite is unjustified. If the sums collected from him are too low, the fault lies with the state legislature or with the local government units. There is no lack of means to make him pay his way. The studies show that in many cases the complaining authorities simply do not avail themselves of the fiscal weapons at their disposal. Bartley and Bair arrive at the same conclusion: "...(W)hat is lacking is determination on the part of the average community and the ingenuity to use the means available... Most communities already have ample authority for collecting a fair share of revenue from mobile homes...It is true that, in any given state, constitutional or legal barriers may bar a particular form of taxation. But the number of weapons in the revenue-producing arsenal is sufficient that any state legislature, if it be so inclined, may adequately arm its units of local government. Having the requisite legal authority, it is up to the policy-making instrument of the community to put up--or shut up." (17:113)

2.6 A Counter-Argument Based on the "Benefits Received" Concept

The "fair share" issue can be looked at from another point of view. It is questionable that the mobile home population

consumes local public services to about the same extent as the rest of the residential population. Some contend that they place a lighter burden on local government budgets.

One argument is that mobile homes produce substantially less students per unit than single family detached and duplex housing. A recent survey in Fairfax County, Virginia, found 1.08 students per unit in single family and duplex housing, 0.37 per unit in mobile home parks, 0.21 in garden apartments, and 0.09 in high-rise apartments. (425) Edwards in comparing particular local developments found that "(T)he ...number of school-age children is usually much less per mobile home than per house." (642)

While sample limitations result in somewhat different figures, other studies available to the author also show substantially less pupils produced per mobile home than per single family detached unit. Since the average mobile home family is smaller than the average apartment family (17), one might conclude that in the national average mobile homes produce even less school age children than apartment units.

Another argument is that the mobile home occupants' park rents enable mobile home park operators to furnish a significant range of facilities and services which otherwise would have to be provided by, and at the expense of, local

governments. In most communities, the park owner is responsible for water supply and sewerage treatment. Internal and walkway street systems, lighting, community buildings, laundry facilities, and recreational areas are usually provided for, and maintained by, the park owner. Other services, which are normally a function of local government, include garbage and trash collection for central truck pick-up (sometimes even with disposal), first aid, or "small" fire protection. Programs and facilities for social and recreational activities are often provided in more and more modern mobile home parks. Service oriented parks which cater primarily to retirement age groups are often virtually self-contained communities.

Furthermore, mobile home parks increasingly provide private police protection. Although there is still a tendency to assume that mobile home parks may require more "public" policing than other types of developments, this is not supported by evidence. In fact, the over-65 age groups patronizing service-oriented parks, naturally place so much emphasis on security that park operators have to provide protective functions as a major attraction element. Thus, it is sometimes claimed, that mobile home owners require less police protection.

The arguments are factually correct. But the conclusion

which is often advanced, that the mobile home owner would be justified in paying a smaller percentage of the total tax bill is untenable. It is based on the "benefits received" principle, which is not, as the next chapter points out, an accepted basis of taxation.

However, the very reason which rules out this pro-mobile home conclusion suggests that the entire anti-mobile home "fair share" question, so hotly debated over three decades, is an irrelevant one.

2.7 The Relevance of the "Benefits Received" Principle

Any "fair share" discussion implies the feeling that mobile home owners should be taxed in accordance with the "benefits received" principle; that is taxes imposed upon mobile home owners should have a direct relationship to the sum total of local public services actually consumed. However, the "benefits approach is not the basic principle behind the property tax on shelter" (436:460); "it is not an accepted basis of taxation" either (66:23). "In the framework of the general property tax, there is no actual or intended relationship between the amount of taxes paid and government services provided to any individual tax payer."(39:8) The benefits principle generally is applied to publicly provided utility services (streets, sidewalks and sewer systems) which may be paid for by special assessments and

to some degree to highways. (270:11) But with regard to tax equity, the principle is irrelevant. Thus, "fair share" discussions, by definition based on the "benefits received" principle, are irrelevant in connection with the question of equitable taxation.[34]

2.8 The Feasibility of "Fair Share" Analyses

Furthermore, "fair share" analyses present conceptual difficulties which appear practically insurmountable.

The accounting problems are highly complex and conceptually difficult. The data structures necessary are not available at that time. And above all the problem can not be accurately defined; none of the "fair share" analysts has yet offered a definition of that vague term "fair." This problem of definition is identical to the problem of how the operating costs of a municipality should be allocated to different land-use categories. Would it be appropriate to tax all land-use categories in the same way? Or, if with different tax treatment of individual categories, should industrial use be taxed higher than commercial or residential use? Is it meaningful to charge each type of land-use with

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[34] The principle of equitable taxation, as applied to mobile home taxation, suggests that mobile homes should receive tax treatment as equal as possible to that applicable to other residential property. (270:12)(436) The concept of tax equity has no relation to the cost-revenue concept. cf. Chapter III.6.5.2.

some portion of each cost component incurred in operating a city? As an example, is it justifiable to allocate to industrial land uses portions of the cost of operating cultural facilities? Gillies condemns such attempts to classify uses as "deficit" areas which absorb more in public expenditures than they yield in tax revenue: "...(I)n general this type of analysis is faulty inasmuch as it tends to break down the concept of the community as a complete entity...all types of land-use are necessary for the effective functioning of a metropolitan region and it is sometimes divisive to compare the yields and costs of different types of use." (85:6)

"Fair share" analyses lead directly into the areas of taxation theory and philosophy.

2.9 Conclusion

The previous two chapters argued that "fair share" analyses are irrelevant and unfeasible. The writer hastens to qualify: from the point of view of taxation theory! But prejudice cannot be eliminated by facts and academic reasoning. Prejudice has dwelled on the "fair share" issue; it will continue to do so. "Fair share" studies will commonly be undertaken, and the issue will remain a favorite weapon of mobile home

opponents. The only constructive (though unacademic) attitude is to accept the question, though the question is irrelevant, and to attempt an answer, even though an answer is impossible.

The "fair share" problem implies a "benefits received" approach; by definition a fair share analysis is a cost-revenue analysis. But most studies take the actual tax payments by various segments of the residential population as absolutes, without considering the varying public expenditures for different types of residential developments. This common mistake results in unfavorable findings for the mobile home population, and feeds the old tax parasite prejudice. Policies stemming from this prejudice may aim at stopping new park developments or at "encouraging" the development of parks which prohibit families with children. Some studies have shown that low density parks with retired or childless couples would be profitable for a community. (85) To quote an unfortunately typical example: "(T)his"young elder" approach has been used successfully...to break down local resistance. Jensen, developer of 22 parks, limits them to young marrieds and empty-nesters by hiking site rentals $8 a month as each child reaches school age." (1175)

"Fair share" studies that are unprofessional are dangerous; but if based upon the "benefits" received" principle, they

can do no harm.

When a "fair share" analysis is conceived as a cost-revenue study, and if a serious attempt is made to collect and analyze data impartially, the myth that owner-occupied homes produce the most significant share of local revenue is usually destroyed. Manvel summarizes in the January 1965 National Civic Review that "(o)nly about an eighth of the urban governmental bill is currently collected in the form of local property taxes on owner-occupied homes." And the cost-revenue picture usually looks like this: "(B)alancing local expenditures against revenues per dwelling unit, single-family detached housing is generally found to require greatest subsidy, garden apartments and mobile home parks come closer to paying their own way, and high-density (and particularly high-rise) apartments turn in a substantial surplus."(426)

This cost-revenue picture should be interpreted by considering the characteristics of mobile home parks. Unlike the situation in conventional single family areas and more like that in apartment developments, mobile home park management furnishes a considerable range of services and facilities (thus favoring mobile home parks--as well as apartments--over single family houses in cost-revenue studies). Though mobile home parks have some characteristics of single family developments including ownership of the home and in many cases relatively low density, the rental of lots brings mobile home parks

closer to apartment house characteristics. Mobile home parks can be seen as horizontal apartment house developments. Mobile home park residents should be viewed as similar to those living in multiple dwelling units. Mobile home owners share the advantages and disadvantages of both single and multi-family units. The mobile home lies somewhere between the two, having the characteristics of both.

Since in the cost-revenue picture the mobile home also lies somewhere between the two, the "fair share" question can probably be answered "yes." The mobile home park resident, considering his status, appears to pay his fair share. The positive answer includes the total mobile home population, because units located outside of parks are mostly taxed like any other residential property.

It should be evident from the foregoing analysis that local politics regarding the mobile home population are primarily the result of what the community "thinks" about the mobile home. If a majority of the local residential population feels that mobile home dwellers are tax parasites, then chances are excellent that repressive or exclusionary regulations will be put into effect. This simple "fact of life" should be kept in mind when the writer discusses in the following chapters the advantages and deficiencies of alternative methods of mobile home taxation.

3 Revenue Measures for the Cost of Mobile Home and Mobile Home Park Regulation

The usual instrument for covering the cost of mobile home and mobile home park regulation is the imposition of a license fee. In the case of mobile home parks the license fee is usually imposed directly upon the park operator. The courts in upholding this practice have reasoned that the business of operating a park is the very object of regulation, and that the park operator should, therefore, pay a fee to cover the regulatory costs. Some courts, however, took this argument further and held the imposition of the license fee upon mobile homes on private lots invalid, because the latter involves no business activity.[35] Since in most cases units on private lots are also subject to inspections, they do incur regulatory expenses. It is, therefore, valid that in most cases such units should be subject to a fee.

The courts have held that the fee must be reasonable in relation to the costs and expenses of regulation, and that the fee may not be used as a general revenue measure. In most cases, however, where a license fee has been attacked by the licensee as being unreasonable, the courts

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[35] e.g., Morris v. Elk Tp., 40 N.J. Super. 34, 122 A.2d 15 (Super. Ct., 1956).

have sustained the fees. They have held that, in the absence of proof that the fee unreasonably exceeds the cost of regulation, the courts could not regard the fee as arbitrary, unreasonable, or confiscatory. And since this is difficult to establish by the licensee, the courts have upheld rather substantial fees, such as a flat $500 annual fee for a park (97:122)[36], or a $15 annual fee for each trailer space (97:123)[37]. The courts rarely uphold the usual arguments of a licensee: that a fee bears no relation to the additional burdens and expenses of regulation, or that a fee places so heavy a burden upon him that a profitable operation could not exist. In some cases, such decisions were probably based on the notion that a park operator should be able to absorb a higher fee by charging higher rentals.

The author found only two court decisions where license fees have actually been invalidated. But in both cases the fees were absurdly high. In one case, "(t)he park operator charged...$20 per month for occupied...and $15... for unoccupied trailers. The license fee prescribed by the ordinance was $10 per month per trailer, whether occupied or not. The average annual income of the park was $3,800. Operating expenses were $1,500 annually, exclusive of the license fee which would amount to $2,400 based upon the average number of trailers that would produce $3,800

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[36] City of Chicago v. Schall, 68 Pa.D.&C. 215(1949).

[37] Michaels v. Tp. Committee of Pemberton Tp., 3 N.J. Super. 523, 67 A. 2d 324 (1949).

in revenue. The license fee would thus amount to almost two-thirds of the gross revenue and if added to the operating expenses would result in a deficit. The court invalidated the ordinance as unreasonable, oppressive and confiscatory."[38] (97:125) In the other case,[39] "...(t)he county imposed a license fee of fifty dollars per year on each lot in a mobile home park...The park owner...owned two parks, one containing 322 lots, upon which the fee was $16,100, and the other fifty-five lots upon which the fee was $2,750. In holding that the fee was not commensurate with the cost of regulation, the court relied upon the following factors: '(T)he evidence shows no consideration given to the cost of regulation in arriving at the amount of the tax...it is clear that no effort was made to relate the amount of the tax to the cost of enforcing the regulatory measures provided for by the ordinance.'"(476:50)

The question of the reasonableness of the license fee is not a mere academic question. Undoubtedly in quite a few cases the fee places a severe burden upon the licensee. Because of the difficulty of accurately accounting for regulatory expenses, the fee is often unreasonable. And, the licensee rarely is able to establish that fact.

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[38]Hoffman v. Borough of Neptune City, 137 N.J.L. 485, 60 A. 2d 798 (1948).

[39]County Board of Supervisors v. American Trailer Co., 193 Va. 72, 68 S.I. 2d 115 (1951).

4 Revenue Measures for the Cost of Governmental Services Provided to the Mobile Home Population

States and their subdivisions tax mobile homes by one, and only one of the following taxes: the motor vehicle tax, the personal property tax, the real property tax, the fee system, and special systems. This applies to any one state's general system of mobile home taxation. Particular units may under particular circumstances receive different tax treatment--for instance, if they are permanently attached to the ground.

4.1 The Motor Vehicle Tax

The relatively permanent mobile home is still subjected to the state vehicle registration laws, ironically often by interpretation rather than by expression. Every state requires the registration of mobile homes as a vehicle and the payment of an annual registration fee. In addition, some states and their subdivisions impose a motor vehicle tax on mobile homes. This tax is not always a separate tax; in some cases registration fee and tax are lumped together under the term "registration or license fee." Character and administration of the vehicle tax systems differ widely from state to state.

The ever increasing immobility of the object of taxation is rarely recognized. Most states do not take into account whether or not a mobile home is actually moved on highways, and require

payment of the full fee in either case.

Decades ago, the payment of a simple flat annual registration fee was generally required from the trailer owner. A very few states used unsophisticated valuation techniques for fee graduation; weight, length, or number of axles were common criteria. Today, while many states still define flat rates, most states provide that the vehicle taxes be graduated by weight, length, or width, and in some cases by manufacturer's list price or fair market value.

The imposition of a state motor vehicle tax upon mobile homes and the usual road-highway oriented proceeds allocation seem to ignore the fact that today the average mobile home may utilize the highway use privilege only once during its entire life span. Although no legal controversies have arisen over those license fees, certainly because of the widespread notion of a "mobile" home, the very concept of such a tax appears inconsistent and questionable. But at least the tax rate should reflect the minimal highway use actually made by the average mobile home. The present apparent trend toward fee graduation by more refined valuation techniques operates in the opposite direction. Graduation schemes are likely to be derived from commercial vehicle tax rates. In some states mobile homes are charged graduated fees based on weight or size of the "trailer"

with no distinction between truck and mobile home trailers. It is obvious then, that a graduated fee tends to burden the mobile home with a disproportionate share of highway and road expenditures. A minimal flat fee appears to be the preferable, and probably the only acceptable solution.

This preference for a flat fee implies, of course, the notion that the fee ought to bear a reasonable relationship to the burdens and expenses placed by the mobile home owner on highway and road funds. Already in the 30's, however, the question of the reasonableness of the fee became purely academic, because the ease of administering the tax led to its use as a general revenue measure.

4.1.1 Advantages

From an administrative point of view, in the early days of the trailer era, the motor vehicle tax was a most efficient method of trailer taxation. Due to the high degree of potential and actual mobility of the trailer, the ease of collection and enforcement of such a tax led to its preference over other methods of taxation. By requiring trailers to display license plates, and by authorizing police to stop trailers in transit without such plates, enforcement was possible despite the high mobility of the old trailer. Probably, primarily for this reason, many states provided

that registration and payment of the resultant fees would exempt the trailer owner from local ad valorem taxation.

Of course, already during the first years of experimentation with this system, state and local government officials were aware of its inherent drawbacks.

4.1.2 Problems

Local property taxation, by assessment ratios and millage rates, could reflect the specific cost level of the provision of public services by a given unit of local government. State-wide motor vehicle tax rates, however, were by definition more or less uniform, and implicitly, could not flexibly respond to differences in the often considerable costs of local services provided to trailerites. Such a state tax thus had an inherent tendency towards either over- or under-taxing the trailer owner in a specific locality. Much more critical is the problem of proper redistribution of the state-collected fees to the local communities. This problem is so critical that later a separate discussion of this aspect will become necessary.

But during the early 30's the trailer was primarily used by vacationists and highly mobile population segments,

thus requiring frequent use of highway privileges and placing only a moderate burden on local government budgets. The motor vehicle tax, therefore, was a logical tool for taxing the mobile trailer, perhaps even when used as the only tax imposed upon the trailer owner.

Many states still use the latter concept of a state motor vehicle tax as the only tax imposed upon the mobile home owner. This concept, however, is now definitely obsolete. And even as a supplementary tax only, the motor vehicle tax is an inappropriate instrument for taxing the (im-) mobile home of today.

The history of the mobile home industry indicates clearly that the exemption of licensed trailers from local ad valorem taxation has created more severe and complex problems than the administrative-technical one which this policy tried to avoid.

Under the early programs of trailer taxation by state vehicle taxes, which as mentioned was often the only tax imposed, revenues were not redistributed to the localities where the trailers were actually located. The total proceeds were allocated more or less entirely to road or highway funds. The communities had to provide essential services to an ever incrasing number of trailerites, without benefitting

from the state-collected vehicle taxes. Admittedly, today motor vehicle tax revenues are usually returned to the communities in which the mobile homes are actually located. But they do not come directly to the local government unit. Such returns from the state are usually earmarked for particular purposes, mostly for road construction and maintenance, and not for expenditures relevant in this context: education, police and fire protection. The contribution of the mobile home owner is lost sight of in the general return from vehicular license fees. And the allocation restrictions on returns from the state level work towards the same end.

It is no surprise then, that already in the 30's, after a few years of experimentation with motor vehicle taxation as a general revenue measure, the trailerites were considered "parasites." The mobile home and mobile home park industries needed nearly three decades to overcome, and then only partially, this stigma and the resultant local hostility against the trailerite. Since three decades, restrictive zoning and discriminatory regulation constitute a significant barrier to mobile home park development and thus to industry growth. Many "(m)unicipal authorities have allowed their thinking on revenue problems to flavor their official actions in regard to regulatory problems. In Colt v. Bernard, 279 S.W. 2d 527 (Mo. App. 1955), the

municipal authorities tried to support a zoning provision excluding mobile homes from the community on the theory that the tax revenues from such inhabitants would not support the increase in governmental services attributable to their presence." (476:46) The quoted example is representative.

Perhaps more critical, from a sociological point of view, is that the discrimination against the trailerite alienated him from the community in a social sense. Even today, mobile home park communities are relatively closed social systems with limited social interaction with the community at large.

Notwithstanding those hardly disputable facts, many states still provide, that vehicle taxation of a mobile home exempts it from local ad valorem taxation. Since the affluent mobile home owner of today demands considerably more local public services than his comparatively humble predecessor, the trailerite, this taxation practice constitutes a serious problem.

4.1.3 Case Study: the California Statute

California has the most copied and one of the most refined systems of mobile home taxation by motor vehicle license

fees. The California system (39) demonstrates the potential and limitations of motor vehicle taxation of mobile homes.

In California a motor vehicle license fee is collected by the state in lieu of locally administered personal property taxes on motor vehicles. This provision includes mobile homes.

Every mobile home is subject to a registration fee of $8.00. The additional in lieu tax, the vehicle license fee, is an annual amount equal to two percent of the market value of the vehicle. For the determination of the market value, the Department of Motor Vehicles uses the actual sales price upon first registration. Thereafter this price is depreciated annually according to a statutory formula for nine years after which it remains at a flat 5 percent. (39:8)

The revenues derived from the tax are significant. For example, in 1963 some 260,600 travel trailers and mobile homes were registered in California. The total motor vehicle license fees collected from them in that year amounted to $5,038,741. (39:9) The revenues have since increased considerably. Two years later, between January 1 and June 30, 1965, some six million dollars was paid by mobile home owners. (970)

In California, the taxation of mobile home parks, of course, is entirely a local matter, with the revenues being allocated in exactly the same manner as revenues derived from the taxation of other kinds of property. Yet, the revenues derived from the state collected license fees imposed upon the mobile home owner are distributed as follows: revenues derived from mobile homes located in incorporated areas are allocated one third each to the city, to the county general fund and to the school districts within which the units are located. In the case of mobile homes located in unincorporated areas, the proceeds are apportioned one-half to the school districts and one-half to the county. (80) Thus, apart from a small charge for administrative costs, the local government units receive from the state controller the exact amount of license fees which have actually been paid by their local mobile home residents.

While the distribution system does not necessarily call for more refinement, the statutory value procedure has two basic defects.

The question of market valuation, of course, presents one inherent problem. Not only has the statutory formula established for the vehicle license fee been criticized because it decreases mobile home values at an unrealistically rapid rate (the same formula is used in determining

the value of automobiles!), but the contrast between the assessed value of the typical conventional house, which increases or fails to decrease, and the rapidly decreasing value of the mobile home appears to be an insurmountable problem. Proposals that the legislature should adopt a more realistic depreciation schedule for mobile homes could certainly increase the yield and improve the overall rationale and equity of the tax system, but can not,of course,solve the discrepancy between traditional house and mobile home valuation.

The other defect inherent in the valuation procedure, is that the standard state-wide rate of 2 percent does not take into account the differing locally fixed property tax rates and assessment levels. The general implications of this practice have been pointed out, but it is worthwhile to illustrate how differently the mobile home and the conventional home owner may be affected in the same community. As an example, "(a)s of March 1964, the assessment ratio of property in Alameda County was 21.7 percent and in Plumas County was 20.7 percent, a difference of one percentage point. In 1963-64 the average property tax rate in Alameda County was $9.73 per $100 of assessed value while in Plumas County the comparable rate was $4.36. This means that on an assessed value that is only one percentage point higher, a conventional homeowner in

Alameda County pays approximately 125% more taxes than... his counterpart in Plumas County...(but) owners of comparable mobile homes...pay identical license fees."(39:10)

Another notable inconsistency of the Vehicle Code and the Revenue and Taxation Code requirements is that a mobile home owner must register his unit and pay the license fee in any event, while the motor vehicle owner must do so only if he actually uses the highways of the state.(39:9)

Recognizing these basic deficiencies a Fact Finding Committee on Revenue and Taxation of the California Senate (39) proposed in 1965 an alternative program, which basically consists of a new depreciation schedule and aims thus primarily at increasing the tax yield. No consideration is given to possible solutions to the pressing problems inherent in this form of taxation.

A 1962 report on trailer parks by the City Manager of Oceanside, California (269) vividly illustrates as a paradigm the hopeless problems which a state-administered system of mobile home taxation may create at the local level: the California motor vehicle tax system in effect prevents the mobile home population from paying their fair share.

In 1961, the city had 19 mobile homes parks with 1,103 licensed lots. However, only 786 mobile homes were registered in Oceanside and of these 556 were located in parks. Thus, with its lots filled only to half their capacity by city-registered units, the city received a total of $4,360.83 through the redis-

tribution process from the state collecting agency. This amounts to an average of $3.95 per park space (many park spaces were probably occupied by units registered in other cities.)

The receipts appear to be extremely small: for 14% of the registered units, Oceanside received an annual fee of 33¢; for 36% the return was 66¢ to $1.33; and above $16.00 for only 14%. The reason for these absurd returns is obvious; the depreciation schedule used by the California Department of Motor Vehicles was unrealistic, and the tax rate of 2% standardized for the whole state was irresponsive to local cost levels.

The comparisons in tables X6A and X7B[40] of the receipts from mobile home and traditional housing taxation in Oceanside demonstrate the inequities that may arise.

Since the returns to the City from the state were extremely small in comparison to receipts from other types of dwellings, the local mobile home population presumably did not pay a proper share of local government cost. It was prevented from doing so by an inconsistent taxation system. The author of the report was aware of this fact: "...(i)n addition to an occupational license, the owner of a multiple dwelling must pay an ad valorem tax on the...dwelling

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[40] Appendix III.4.1.3.

unit, while the owner of a trailer park pays only the occupational license tax, and the trailer is licensed as a vehicle from which the City receives very little revenue. The City has little or no control over the assessment practices, and no control whatsoever over the vehicle license laws..."(269)

One of his final recommendations constitutes an unequivocal judgment about the effect of state-administered mobile home taxation upon local government operation: "(T)hat the City of Oceanside sponsor through the League of California Cities legislation which would tend to raise the revenue from Motor Vehicle Trailer Coach License Fees distributed to the cities, either by placing trailer coaches on an ad valorem tax basis or by a more realistic longer depreciation schedule for licensing purposes..."(269)

Recognizing, however, that his recommendation would hardly be implemented at the state level, he proposed some measures falling under local jurisdiction: the imposition of a health inspection fee upon park operators and a drastic increase of the occupational license fee. This illustrates that centralization of mobile home taxation does not mean streamlining. It may well force local authorities to resort to a jungle of compromises in order to equalize the receipts from mobile homes and multiple dwellings.

The report by the Fact Finding Committee on Revenue and Taxation of the California Senate (39) reviewed in this chapter discusses the compensation of school districts for services extended to mobile home children: "(W)ith respect to schools...there is little evidence that mobile homes unduly complicate their fiscal problems...the school district receives at least one-third of the mobile home license fees. If the trailers' registrations are in areas away from the school district, then...children of mobile home dwellers may put schools under pressure. This problem, however, is no different from that connected with apportioning motor vehicle license fees. Should the depreciation schedule...be revised ...then school districts will share in the resulting increased revenues. But regardless of revision of the depreciation formula, the evidence does not indicate that the present distribution of mobile home license fees results in any gross inequities to school districts, cities, or counties." (39) These are rather academic reflections. Seemingly the authors do not realize that the 33% of license fees disbursed to the school districts in many cases may be absolutely inadequate to meet the local school costs, even if the depreciation schedule would be revised. Compared with the afore reviewed situation in Oceanside, this quoted paragraph indicates how local problems may be little understood at the state level.

4.1.4 Conclusion

Quite apparently, the major problem is not to collect from

the mobile home owner an amount comparable to that which the local resident pays. The problem is to help him overcome the still prevalent view of the trailerite as a "parasite." And this means to tax him in a way which enables him to demonstrate clearly to the local community that he pays his fair share, and that his payments directly and fully compensate the municipality for all public services provided him. A State Motor Vehicle Tax as the only tax imposed upon mobile homes, as a substitute for other revenue measures, constitutes a barrier to the social integration of the mobile home park resident into the community at large, tends to incur considerable social cost, and appears therefore undesirable from a socio-economic point of view. Apart from this, this system of taxation is not equitable. The advantages - administrative efficiency and effectiveness - do not outweigh the deficiencies.

4.2 The Personal Property Tax

Today, a large portion of the public services provided on the local level are financed by the revenues derived from an annual property tax. Most states subject mobile homes to property taxation. The general concept of taxing mobile homes uniformly along with all other categories of property appears sound and has seldom been questioned. But most states have classified the historic system of a general property tax. Different tax rates and valuation principles

respond to specific problems of certain types of property. If classified property tax systems provide for a different treatment of personal and real property, the question invariably arises whether the mobile home should be considered as personalty or realty. It is a difficult question because of the characteristics of the mobile home, which is not clearly movable or immovable, permanent or transient. But it is also a critical question. The actual classification chosen may not only subject the mobile home owner to a different tax rate or valuation provision than under the alternative classification, but may indeed form a precedent for classification decisions in connection with public regulation. The mobile home industry for instance fears that classification as real property may be construed subsequently as an argument for subjecting the mobile home to local building codes. The necessity of taking these indirect implications into account requires a more detailed analysis of both alternatives.

The propriety of imposing the personalty tax upon mobile home owners has never been seriously questioned with the exception, of course, of the few states without direct personal property taxation. Water, sewer, and electrical connections have been ruled not to constitute a permanent fixture to the ground. The mobile home is thus implicitly held to constitute personal and not real property. Thus,

even in the absence of state laws expressly providing that mobile homes may be taxed as personal property, such a taxation appears legal under a general statute providing for taxation of all personal property.

In 1967, in at least 28 states mobile homes were taxed as personal property either by the state or county. (252) Some of these states exempt mobile homes from personal property taxation if they are registered as motor vehicles. In these states the motor vehicle tax is the only tax imposed. In some other states registration as a motor vehicle exempts them from the personal property tax, but subjects them to a special taxation expressly in lieu of the property tax. And, finally, a few states tax mobile homes as personal property under special conditions only, for instance, if used primarily for residential purposes, while exempting them otherwise. Many state provisions, nevertheless, treat the mobile home for tax purposes largely like other property.

4.2.1 Advantages

Through mobile home park rents, the mobile home owner indirectly pays a real estate tax for his lot. And since the tax rate is mostly the same for personal and real property, the ad valorem personal property tax he pays

for his mobile home more or less equals in amount what he would pay in real property taxes for his unit. Local assessment practices and locally determined millage rates rather accurately reflect the different cost levels of local public services. The local mobile home owner is therefore much more likely to pay for his share of local public services than under a system of uniform statewide fees. A large portion of expenditures for local public services is financed by the property tax. Most municipalities derive approximately two-thirds of their total tax revenue from the property tax. Thus, the mobile home owner is assured that his contribution does not go unnoticed by the community, though his subjection to a different tax than the "normal" resident will continue to perpetrate the notion that he is not really paying his share.

The taxation of mobile homes as personal property, however, involves significant conceptual and administrative problems.

4.2.2 Problems

The problems of assessment, valuation, and collection result from the fact that mobile home taxation inevitably is seen in comparison with the taxation of traditional homes. In this sense the problem is more severe than the assessment and valuation disputes in connection with personal

property taxation in general.

The short amortization period and the rapid depreciation of the mobile home constitute an inherent problem, obviously not only of personalty taxation, but of any ad valorem-oriented attempt at mobile home taxation. After eight to twelve years it is likely to be assessed at a value of zero. The conventional home, of course, has not depreciated and is likely to be taxed higher than ten years before. The relative revenue loss in the mobile home case is considerable. Many local government units have tried to compensate for the rapid depreciation by placing a relatively high assessment on the mobile home, instead of making the tax nominal, which is the usual local tax policy. But the mobile home owner felt he was put into an inequitable position.

The other problem is that the personal property tax imposed upon the mobile home can hardly be collected efficiently or even more unlikely, effectively. In many communities as many as fifty percent of all local mobile homes may be located on private lots, outside of mobile home parks. The difficulty of getting such isolated units on the tax rolls is obvious. Furthermore, potential enforcement procedures are difficult to apply to mobile homes: "(S)ome personal property tax statutes permit distraint, attachment, or

garnishment even before taxes are due. Before such severe sanctions are applied to mobile homes, however, cognizance ought to be taken of the uniform reluctance to invoke them against other forms of housing. Statutes which permit forced sales of real estate for delinquent taxes invariably provide substantial redemption periods; a sale of personal property for taxes, on the other hand, is almost always absolute--giving the owner no opportunity to redeem. It is difficult to justify disregard for the principle that a home should not be lost because its owner is temporarily unable to pay taxes on the ground that the home is mobile and therefore "personal" not "real" property." (1087:708)

Further, some inequities may arise because quite unlike the indisguisable mobile home, much other personal property is difficult to find and tax. But, of course, in many states the collection of personal property taxes is little short of farcical anyhow.

Some states and local governments which had taxed mobile homes as personal property have abolished this revenue measure, probably because mobile home taxation as real property or by the monthly fee system allow greater administrative efficiency and effectiveness. In other states resort has been made to special taxes upon mobile

homes.

Notwithstanding those inherent deficiencies, a few years ago the personal property tax generally was still considered an adequate instrument for mobile home taxation, especially since it presented no questions of legality, unlike attempts to tax mobile homes as real property.

4.2.3 Conclusion

It appears that the modest advantages can not possibly compensate for the difficult problems encountered in taxing mobile homes as personalty. To be sure, the only significant advantage lies in the fact that this concept does not involve questions of legalities. It is just generally assumed, and so held by the courts, that mobile homes are manifestly personalty. It is likely, however that before long the courts will recognize the fact that the mobile home today is practically as immobile as the traditional home. Such rulings, of course, would immediately make personal property taxation an invalid instrument for mobile home taxation. The concept of personalty taxation is theoretically sound; its application to the (im-) mobile home of today, while not (yet) challenged by the courts, appears at best questionable.

4.3 The Real Property Tax

Many states which subject mobile homes in general to one of the other alternative taxes--such as a motor vehicle tax, or a personal property tax, or a fee in lieu of a property tax--impose under certain circumstances real property taxation upon particular mobile homes. So, already during the forties, some states began to tax trailers as realty, if they were located outside of trailer parks or, respectively and if they were permanently attached to the land or to a permanent structure. This is the practice today in at least seventeen states.

Only two state legislatures have expressly declared that mobile homes constitute realty in general, whether or not located in mobile home parks. Even in these cases, however, there are some qualifications, such as exemption from the tax if located in a community not longer than a specified number of days per year.

43.3.1 Advantages

The underlying motivations of the efforts to tax mobile homes as real property are quite obvious.

Real property taxes have an overwhelming importance in financing local community services. Local authorities receive a direct flow of the resulting revenues and, therefore, would support this tax as an ideal solution to their difficulties.

This concept would also respond to the decade-long pressure of the local communities to "equitably" tax the mobile home owner by subjecting him to real property taxation. This form of taxation, simultaneously, appears to be the ideal weapon for the mobile home owner to demonstrate convincingly to the community that he is treated like every other resident, that he is subjected to the same tax and, therefore, he does pay his fair share. None of the other alternative methods of mobile home taxation offers him this chance to demonstrate his proper contribution to the local budget. Since more than five million mobile home residents still experience difficulties in intercommunication with the local communities, this factor can hardly be overestimated.

Even advocates of mobile home taxation by a personal property tax are aware of the practical complications which arise from taxing the mobile home park as real estate and the mobile homes therein as personal property. The states, which have passed statutes subjecting the mobile home to realty taxation, usually provide that the owner of the land on which the mobile home is parked be assessed for the total value of land and mobile home. This applies not only to the individual who also owns the mobile home(s) located on his land. Also in the case of the mobile home park owner, the statutes hold him responsible for the payment of the taxes for the land and the units located thereon, even though he does not hold title to the latter. The assessment to the mobile home park owner of the combined value of land and unit thereon, almost completely eliminates any collection problems. If the mobile home vacates, the municipality can still lien the land for the entire tax. The reasoning behind this provision is, of course, that the park owner should easily be able to reflect those levies in his rent levels. But even without this provision, the administrative machinery of real estate tax collection is in most cases much more efficient than personal property tax collection. Since in most instances personal and real property are equally taxed, the imposition of the realty tax probably maximizes the cost effectiveness of mobile home property taxation.

The advantages mentioned are impressive, but so are the questions of legality surrounding this taxation concept. But before turning to an analysis of the legal barriers to the adoption of this taxation method, it should be noted that there are several basic situations in which attempts at mobile home taxation as realty can not legitimately be challenged.

4.3.2 Situations Presenting no Questions of Legality

Whenever a mobile home, with the wheels removed, is permanently attached to land or to a permanent structure, owned by the same individual (as is mostly the case on scattered private lots in rural or sub-rural areas), no legitimate objections can, and in fact, have been raised to the application of the realty tax.

The same situation is true for mobile home park subdivisions. Since there is a trend towards the mobile home owner buying a lot in a mobile home park subdivision, rather than renting it in a mobile home park, it is important to note that in such cases the legality of taxing the mobile home together with the lot as real property has rarely been disputed. Alternate practices do develop. In many cases, lots in park subdivisions are offered for sale together with a mobile home already installed, often rather permanently

by attached or even completely enveloping additional structures. The same package may be offered for rent. Such and other operations are becoming more and more prevalent, and in all cases no serious legal problems arise from real property taxation of the whole package.

In many states the ad valorem rates on real and personal property are identical. Provided that both taxes are equally enforced, on a practical level, it hardly matters whether the state legislature classifies mobile homes as realty or personalty. Though legal questions might be involved, the virtually equal effect of either classification obviates such disputes.

If all mobile homes located in a given state would meet the first two criteria, the state could impose the realty tax (and in many cases certainly would do so) without the risk of challenge by the courts. But most mobile homes, of course, do not fit these conditions. At any rate, few states meet the third criterion.

4.3.3 Barriers: Major Areas of Legal Controversy

Several legal controversies have arisen from attempts to subject mobile homes to real property taxation.

There is, first, a long history of belligerent argumentation about the proper and legitimate classification of the trailer respectively the mobile home. Is it really personalty?

It is interesting to note that this question was as controversial in the days of the highly mobile trailer, the early thirties, as it is today. There was then, of course, no debate about the "obvious" personalty character of the trailer, but neither was there any debate about the conception that a sufficiently ground-attached trailer constituted realty. The principal controversy was over the definition of that point at which the characteristics of the trailer change from personalty to realty. The potential criteria discussed, respectively criteria in laws actually enacted were: removal of wheels, connection to utilities, permanent foundations, attachment to a permanent structure, use as principal abode, or evident intention of permanency. The problem has not been solved despite a vast literature devoted to this issue and an impressive record of court decisions in the past three decades. And the discussion today uses the same arguments and centers around the same questions as decades ago. In the early days of the trailer, however, there was much more inclination to take a fresh principal look at the trailer phenomenon. During the thirties, there was a general awareness that most

trailers were used as some substitute for housing. Courts, therefore, did not generally hesitate to declare that trailers constituted real estate. Random but representative examples are these court decisions reported in the July 1939 issue of "The American City": "(A) decision by the Justice Court of Orchard Lake, Mich., held that application of housing acts to trailers is legal. In this case, a trailer was parked on a private lot and occupied as a dwelling...In New York, the State Supreme Court held in February that a portable (trailer) lunch wagon;;.set upon a brick foundation and provided with utility connections...is"erected upon or affixed to" the land and therefore taxable as real property even though it is readily removable upon termination of the lease. The U.S. District Court of West Texas held at San Antonio in March that an automobile trailer detached from the automobile is a building..."

Today the mobile home is actually used as a substitute for housing; it looks like and is as immobile as traditional housing. The wheels of the average mobile home now function solely to facilitate the transport of the unit from the factory to the site. The highly mobile trailer of decades ago and the (im-)mobile home of today are not equivalent. Courts should now be more inclined to hold the mobile home taxable as real property. But, surprisingly,

there is more hesitation today than decades ago to do so.[41] With very few exceptions, all recent court decisions have held that general taxation of mobile homes as realty is invalid. The question is far from settled. Those advocating personalty classification far outnumber the advocates of real property taxation.

One of the greatest difficulties inherent in mobile home taxation as real property will not be alleviated by rulings that the concept is legal. Today most mobile homes are located on rented lots in mobile home parks; and this will certainly be true for some time to come. The common provision that the realty tax for both the lot and the unit thereon shall be assessed to the land owner involves serious questions of legality for the mobile home park owner. The problem is serious because this procedure is not an arbitrary one. Classification of the mobile home as real property logically (though not necessarily) leads to the assessment of their value to the mobile home park owner. Many courts have held that statutes with this provision constitute a violation of due process, taxing one for property which actually belongs to another. A related though remote problem is that as a "(p)ossible consequence of defining real estate for property tax purposes so as to include mobile homes... the individual mobile homes are seemingly thereby made

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[41] The probable reason is that before the war, in light of the feared post-war housing shortage, trailers were generally looked at as a legitimate alternative form of housing.

subject to forced sale if the park owner fails to pay the tax." (476)

Another inherent problem of taxing mobile homes as real property is the difficulty of valuation. This problem has been discussed in general under Chapter 4.2 (Personal Property Taxation). But the practice of assessing to the mobile home park owner the combined value of units and land results in an additional complication. The assessment of the value of the mobile homes to him would be on an annual basis. He must try to pass his increased tax burden on to his customers on a monthly basis without knowing whether the vacancy rate upon which the assessment was based will remain constant. In addition, it would be particularly difficult for him to graduate his monthly rentals by considering the value of each individual mobile home. The inherent result is that inaccuracies in assessment and inaccuracies in the pass-on process will compound. Thus this system, while administratively efficient (i.e., for the taxing authority!) is not an accurate way of equitably taxing the ultimate tax payer. If, as in Connecticut, real estate is revalued only every ten years, because the mobile home depreciates greatly each year, an accurate valuation becomes simply impossible.

It must be noted that only one of those controversies

(and it is the least serious), the valuation problem, is caused by the inherent deficiency of mobile home taxation as realty. The other issues arise because of the discrepancy between the rapid change of mobile home characteristics over time and the inflexibility of the judicial system in responding to a changed situation. This does not prevent the courts from effectively barring attempts to impose the real property tax. But it does imply that judicial resistance is a temporary barrier only.

4.3.4 Case Study: the New York Statute

Many states are tending towards change due to the hope for more flexibility by the courts. They are beginning to see the advantages of treating the mobile home as real property for taxation purposes.

The case of the state of New York may serve to illustrate the complex problems and barriers such steps encounter.

In 1933, New York had abolished the taxation of personal property. The easiest and most commonly used method of mobile home taxation was therefore not available. This situation is common to other states. In Pennsylvania and in Delaware, for example, tangible personal property is not taxable. After World War II, logically, New York

tried to tax mobile homes as realty. In the absence of express statutory authority, however, the tax was held illegal, in one case in a very literal sense: "(T)he question was raised in a suit between lessor and lessee over the meaning of a covenant to pay "all taxes." The court construed this to mean all legal taxes and therefore did not include real estate taxes levied on mobile homes."(97:114)[42] In particular, attempts to assess the real property tax on the mobile homes to the park owner, were struck down by the courts whenever an intention of permanence was not evident.[43]

Pennsylvania, which also had to attempt this revenue measure, met with nearly identical rulings: "(T)he courts...held that mobile homes were personal property and could not be taxed as real estate...Attachment to the ground in such manner that they would become part of the realty...was necessary before the mobile home lost its status as personal property and became real estate. Water pipe, sewer and electric cord connections were not regarded by the courts as sufficient...the court held that mobile homes were not realty "so long as they remained mobile units and were not converted into real property by removal of wheels and mounting on permanent foundations."(97:113) In the absence of permanent attachment, the courts eliminated the value of the mobile homes from the assessment.

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[42]Erwin v. Farrington, 140 N.Y.S. 2d 379, 285 App. Div. 1212 (1935).

[43]E.g. Mason Appeal, 75 Pa. D.&C. 1 (1950), Fryer Appeal, 81 Pa. D.&C. 139, 67 Montg. 271 (1953).

This attitude of the courts is also reflected in another decision: Coyle Assessm. 17 Pa. D. & C. 2d 149 (1958): "A 1953 Pennsylvania statute...defined as... real estate, to-wit: houses, house trailers permanently attached to the land, buildings, land, lots of ground rents, trailer parks...Under the statute the Court upheld an assessment against three trailers which had been jacked up, wheels removed, and set upon concrete blocks and pieces of timber. They each had water, sewage, and electricity connections... The Court concluded that they were permanently attached to the land and taxable as real estate." (97)

Thus, states without the fiscal weapon of personalty taxation at their disposal, like New York or Pennsylvania, were forced to realize that the courts would not sanction real property taxation of mobile homes unless they were more or less irreversibly tied to the real estate. It should be noted in this context, that some ordinances, like "(a)n ordinance of the City of Pittsburgh in effect made it unlawful to convert a trailer into real estate by removing the wheels or otherwise fixing "the trailer permanently to the ground so as to prevent removal."" (1065) (In California removal of wheels is illegal on a state-wide basis.)

In view of insurmountable judicial resistance, Pennsylvania

refrained from further attempts generally to tax mobile homes as real estate.

But in New York, with defense areas attracting thousands of workers to the state, many communities became saturated with trailer camps. Their presence added new burdens to small communities which had to provide for them without taxing them for these services. In May 1953, at a conference of township officers in New York City, the levying of real estate taxes against residents of mobile home parks was again proposed. (946)

Finally the New York legislature responded to the constant judicial resistance. In an effort to secure reimbursement for the increasing burden on local budgets, and in order to equalize the means of taxing the owners of mobile and traditional homes," in 1954 the State Legislature amended its tax law so that "trailers" were included in the terms "land," "real estate" and "real property" of the original law," and that the combined tax for land and trailers would "be assessed to the owners of the real property on which they are located." (Chapter 726, New York Laws, 1954)

Some of the lower courts held the statute valid.[44] They argued that since the legislature is empowered to tax mobile homes, the specific classification actually chosen

[44]Feld v. Hanna, 4 Misc.2d 3,158 N.Y.S. 2d 94 (Sup. Ct.,1956);Beagell v. Douglas, 2 Misc.2d 361, 157 N.Y.S. 2d 461 (Sup.Ct., 1955).

can not defeat the validity of the tax.

The statute has been attacked by some lower courts in New York on constitutional grounds calling it a violation of the fourteenth amendment of the Constitution. They held that defining something as real property which "has always been considered, and inherently was, personal property," regardless of whether the common law test of affixation to the land has been met or not, was unconstitutional. But the primary reason for holding the statute invalid was that the courts felt the taxation of one person for property owned by another might lead to incongruities.[45] This latter problem especially kept the lower courts in confusion for some time.

Finally, however, in 1962, "...the New York Court of Appeals[46] held this statute constitutional. The court stated that the legislature has the power to classify trailers as real property for the purposes of taxation... In answering the argument that one person should not be taxed for another's property, the court discussed the analogous situation in which a lessee erects a building or other improvements but the lessor provides for the increased taxation in his lease. So too, the court reasoned, a trailer park owner has the means at his disposal by way of rent, to allocate the increased tax upon the owner of

[45] e.g. Barnes v. Gorham, 12 Misc.2d 285, 293-95, 175 N.Y.S. 2d 376, 383-86 (Sup.Ct., 1957).

[46] N.Y. Mobile Homes Ass'n v. Steckel, 9 N.Y. 2d 533, 175 N.E.2d 151, 215 N.Y.S.2d 487 (1961), appeal dismissed, 82 Sup. Ct. 685 (1962).

the trailer--the individual who rightfully should pay for it." (476:54)

The New York case demonstrates, in a representative way, that at this time attempts to tax mobile homes as real property, in the absence of express statutory authority, are bound to be challenged. The case suggests that the enactment by state legislatures of statutes expressly classifying mobile homes as real property is not only the most promising, but the safest method to convince the courts. A 1962 Decision by a Pennsylvania court[47] supports this conclusion: "(T)he legislature can change the usually accepted definition of real estate and can designate the subjects to be assessed and taxed as real estate within certain constitutional limitations..." (97:118)

4.3.5 Present Barriers and Their Future Significance

Returning to the major areas of legal controversy discussed above, the question arises whether these barriers might be eliminated in the near future.

At first sight, most recent literature on the classification issue favors personal property over realty taxation. This is discouraging. Most of these studies, however, lean

[47] In the Matter of the Assessment of Real Estate, Situated in Sandy-Creek Tp., Venango County, Pa., 199Pa. Super. 310, 184 A. 2d 127 (1962).

heavily on court decisions made years ago. Most reports analyze the situation today in a descriptive sense without regard to apparent trends. And in many cases authors allow their arguments to be flavored by apparent interests at stake. A trend analysis of the most recent developments indicates that the mobile home industry is beginning to sacrifice the mobility image of their product in a concentrated attempt to establish a traditional "home" image, demonstrating their potential as low-cost housing. The federal government has programmed six million new low-cost dwelling units for construction during the next decade. The mobile home industry hopes to secure a substantial share of this government subsidized building volume. This is possible only if the industry can meet certain basic standards for subsidization under relevant Federal programs. The trend toward sectionalized housing concepts, in response to this consideration, is simultaneously a trend towards increased permanency. The industry hopes to obtain F.H.A. insurance for their products; many mobile home manufacturers therefore, are beginning to adopt structural F.H.A. standards. These are factors indicating that before long the mobile home will be indistinguishable from the "normal" house in terms of (im-) mobility degree, appearance, and even terminology. The industry is beginning to consider a new name for their product - "relocatable home". There is no doubt then that the "relocatable" home will constitute real

property and be taxable as such. In interviews key individuals in the industry agreed with the author on this point.

Fortunately, this trend seems certain to continue. Otherwise, it would have become necessary to devote considerable analytical effort to the vast volume of literature devoted to the personalty-realty controversy. This literature has become obsolete in its basic argumentation because of these recent developments.

This conclusion settles the personalty-realty issue. It may be safely assumed that the "relocatable home" will be held taxable as real property. An interesting decision from 1959 supports this assumption.[48] The "(C)ourt of Common Pleas of Greene County, Pennsylvania...held that a mobile home occupied...as a residence was taxable as real estate. The wheels and tires remained attached...There was no permanent foundation...The mobile home was connected with the water,...electrical,...natural gas,... and the sewer system. It...was insured as personal property. The Court gave weight to the intention of the owners of the mobile home who were also owners of the land and concluded that within the meaning of the statute the unit was "permanently attached to land." (97:118)

The second controversy over the legality of taxing an indi-

[48] Appeal of W.E. Garner and H.M. Garner from the decision of the Greene County Board of the Assessment, Ct. of Common Pleas of Green County, Pa. Case No. 214 (1959).

vidual for property owned by someone else, is also likely to disappear. The New York Court of Appeals has held this practice valid, and other decisions indirectly have supported the same conclusion. So,"(i)n a case analogous to the mobile home situation, the Connecticut Supreme Court has upheld the town's right to assess against the owner of land the value of a summer cottage moved onto the land by one who retained title to the cottage. It would follow that a mobile home, if considered real estate, would become part of the land and the owner of the land responsible for the tax." (58) A 1962 Iowa Code provision points, though even more indirectly, into the same direction:[49] "...if a mobile home located on a private lot is removed without payment of the semiannual occupancy fee provided for by that chapter, the amount of the unpaid fee shall be assessed against the land from which the mobile home was removed." (476:54) One of the lower courts in which New York's enabling statute has been challenged "...suggested that the park owner's land assessment should be increased to make them "responsible for the proportionate cost of government which should be borne by the trailer residents upon such land." This is precisely what the realty tax, assessing homes to the landowner, seeks to accomplish." (1087:719)

These random examples are indicative of a growing tendency

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[49] Iowa Code §135 D.9 (1962).

by the courts to sanction statutes with this provision.

The next question, that of valuation, is relatively uncritical today when compared with the still significant barriers of the first two problems. In the near future this may be the only important defect in mobile home taxation.

One problem mentioned above was that the park owner could not possibly accurately pass on to his tenants the value of mobile homes assessed to him. The result was the inaccurate indirect taxation of the mobile home owner. Obviously this problem can not be solved. But only in the case of substantial fluctuation in occupancy since the time of assessment can substantial injustice occur. This is not likely to happen; the mobile home is rather immobile. And then this potential deficiency is an inherent weakness of annual assessment practice, and therefore does not make the practice unconstitutional.

The real difficulty stems from the relative low cost and the rapid depreciation of the mobile home, as evidenced by this summary of general real property taxation of mobile homes in New York: "(N)ow, the dilemma is that although the intent of the legislature was to provide a means whereby the mobile home would pay "its fair share of local taxes," ... its value will never be sufficient to raise an amount of

revenue from an ad valorem tax equal to that which may be raised on an average single family dwelling. The original cost of a new mobile home is rarely that of the average house, and the mobile home depreciates each year at least 5% of its original cost. In contrast...other types of real property typically tend to appreciate in value...over a long number of year..."(425:302) Some interesting alternative methods of assessment in cases of trailers taxed as real property had been tried in New York before 1949: "(T)he approximate value placed on the trailers, varies in amount and in the way in which it is measured..Dunkirk says that it would calculate a base square footage and apply the cost of construction to determine the value and also consider the location, utility service, etc. Ithaca uses a method generally comparable to the cubage method of rating dwellings - usually 50¢ to 80¢ per cubic foot... Ardsley places a value of $1,000, and Baldwinsville $500. Pleasantville says it assesses at "actual full value." " (1114)

The examples demonstrate that many avenues are available to raise an amount of revenue from mobile homes which at least would come closer to the tax yield from single family dwellings. To mention one other alternative, most mobile homes today have substantial permanent additions which can easily equal the mobile home value.

Some discernable trends work in the same direction. As a general policy, mobile home manufacturers are no longer emphasizing yearly model changes. In most cases the mobile home does not display the year of manufacture. The purpose is to combat the rapid depreciation and to reverse the trend in general. The trend toward sectionalized housing concepts and thus toward more permancy and the trend toward mobile home park subdivisions will certainly slow down the depreciation; it may, in fact, very slowly reverse the trend so that the sectionalized (mobile) home on the owned low would appreciate over time.

4.3.6 Conclusion

Since mobile homes are becoming indistinguishable from traditional homes, the taxation of the (im-) mobile home as real property seems a sound concept. The legal barriers are bound to give way. The inherent deficiencies will lose significance with the ever increasing immobility of the taxation object, and do not in any event outweigh the impressive advantages offered by this method of taxation.

4.4 The Fee System

Many state and local governments impose a periodic occupancy or parking fee upon the mobile home occupant. This fee,

usually payable on a monthly basis, is in most cases expressly in lieu of ad valorem taxation and ranges from less than $20.00 to more than $120.00 per year. While certain license fees, such as those imposed upon the mobile home park operator, are intended to cover the cost of public regulation, the occupancy or parking fees are designed as revenue measures. The fee is principally a charge for the local public services utilized by the mobile home resident.

4.4.1 Advantages

Local governments have seen certain advantages to the fee system, making it an increasingly employed measure.

While ad valorem taxation, due to the relative low value of the mobile home, produces less revenue from mobile home residents than from "normal" ones, the fee can be determined by the cost of the services actually provided.

Under most statutes, the proceeds go directly to the local government and school districts which actually have to provide services to the mobile home occupant. Only a few statutes have distribution provisions which allocate a small percentage of those revenues to state funds.

Regardless of whether the fee is imposed at a flat or at

a graduated rate, it is usually uniform on a state-wide basis. The administrative advantage is obvious; the problems of appraising individual units are circumvented. The common practice of holding park owners responsible for collecting the fees from their occupants adds further administrative convenience. The expense of locating the units and of collecting the fees is avoided by the local taxing authority. Thus, a direct fee is imposed upon the park owner, and in some cases his fee is simply graduated by his park capacity. While this procedure ignores variations in his vacancy rate, the local government is able to predict the tax revenue. This procedure is nearly identical with, and as problematical as, the taxing of the park owner for the assessed value of the land plus the mobile homes on the land.

And, finally, in states which consider mobile homes to be personal property non-taxable under state law or which exempt them from local taxation if they are registered as motor vehicles, the fee system may be the only means available for revenue collection from the mobile home population.

4.4.2 Problems

One basic disadvantage of the fee system is that it is not

keyed to property values; that it can not reflect differences in the value of the taxation objects; and that, therefore, the system treats the mobile home occupant differently from the "normal" resident. This is, of course, the very reason the system is gaining in popularity among those who feel that ad valorem taxation does not force the mobile home resident to pay his share of the cost of local government. The fee can be determined by the cost of providing services to the mobile home resident. The principal question, of whether the mobile home occupant pays this "fair" share, or whether he should be taxed by the fair share principle, is discussed elsewhere. But the basic objection to taxing the mobile home occupant by a different system than the "normal" resident, only in order to base the fee on the value of services provided, is that it constitutes discrimination among residents. "(T)his differential treatment has prompted some mobile home owners to challenge fees as a denial of their right to equal protection." (1087)

The other basic weakness of the fee system with uniform state-wide fees is that it does not respond to the differences in the costs of public services provided at the local level.

Apart from this, the fee system presents serious questions of legality. In some instances "(t)he courts have struck down occupancy fees levied upon mobile home dwellers. In

one of these cases, the court determined that the fee was in fact a property tax in disguise and hence invalid for not being related to the value of the mobile homes thus taxed." In a "(s)omewhat analogous case...the tax there involved was denominated as an annual license excise tax upon motor vehicles and mobile homes, which was to be in lieu of ad valorem taxation but in addition to vehicle registration fees. In holding the tax to be in violation of the state constitution the court relied in part on the fact that the constitution required a uniform and equal rate of taxation on all property." In another case, "(t)he fee was found to be discriminatory in its operation because the "occupancy" of other types of dwellings was not similarly taxed." (476)

Court decisions holding fee systems valid were often based on arguments such as the mobility of the mobile home opposed to the permanence of the traditional house. This argument is of course losing its force.

4.4.3 Case Study: The Michigan Statute

Mobile home taxation in Michigan is a paradigm for the typical monthly fee system. The park owner has to pay a fee of $1.50 per month for each occupied unit in his park. Fifty percent of the revenues collected are

credited to the school board for the district in which the units are located, 33-1/3% to the county treasurer, and 16-2/3% to the municipality. Duke, who did an excellent analysis of mobile home taxation in Michigan, made some suggestions which would help to overcome one of the basic drawbacks noted above. The uniform state-wide fee does not reflect different local cost levels. He proposed to vary the fee charged for mobile homes in particular localities in accordance with their respective millage rates. Since the present fee remains fixed regardless of rising or falling property taxes, his proposal would also correct this inflexibility. For the other basic disadvantage, that the fee system does not reflect variations in value, he had no solution to offer. He concluded that establishing a "Blue Book" listing a standard value for each model would prove too complicated in practice. (66)

This latter criterion of practicability is indeed the crucial point. It is, of course, possible to eliminate most of the drawbacks of the fee system mentioned. But the necessary measures, inevitably will complicate the system and sacrifice its administrative advantages.

The Wisconsin and Ohio statutes serve to demonstrate the trade-offs involved.

4.4.5 Case Study: The Wisconsin Statute

In order to respond to various local cost levels, the Wisconsin legislature has provided "that the municipalities themselves shall fix the monthly fee" (476), which shall be "equal to actual cost of services furnished by the school district...and the cost of municipal services." (97:128)

"(I)n Barnes v. City of West Allis,[50] it was contended that the language...was too ambiguous for enforcement. The court sustained the constitutionality of the statute holding: "We are of the opinion that the statute should be interpreted to require that a figure be reasonably fixed after consideration of the elements of cost, and that the figure should not be arbitrary...'" (97:129)

The procedure which determines the amount of the parking fee is established in detail by statute. The cost of services furnished by the school district is determined by the county or city superintendent of schools. The cost of municipal services is determined by the common council or village board. A preliminary determination of the fee is followed by the posting of a notice for a public hearing. The public hearing is followed by the final determination of the fee. This is a very brief summary of the much more detailed and complicated provisions.

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[50] 275 Wis. 31,81 N.W. 2d at 80.

For the many municipalities with perhaps only one small mobile home park, this procedure is absurdly overdesigned and unadministrable, even though the park operator is charged with the collection of the fees. Thus, Duke's proposal might constitute the most feasible method of taking different local cost levels into account.

4.4.6 Case Study: The Ohio Statute

Ohio provides an example of states with fee systems which take the value of the mobile home into account. Prior to 1961, an Ohio statute provided for the payment of a fee in lieu of general property taxation which was not graduated by value. A 1958 study by the Ohio Department of Taxation concluded that graduation of the fee by the value of the mobile home could result in a significant increase in tax yield (270). Thus, in 1961, the statute was amended to provide for an annual tax to be computed at the local tax rate upon the assessed value, which was stated to be forty percent of 80 percent of the cost or market value for the first calendar year of ownership, and thereafter at a decreasing scale. According to the distribution provision, four percent of the revenues go to the county auditor, two percent to the county treasurer, and the remaining 94% to the taxing subdivisions of the county, in the same ratio as real estate taxes are distributed.

The advantages gained by the Ohio provision of fee graduation by value obviously result in administrative complications.

4.4.7 Conclusion

By definition, the fee system treats the mobile home occupant differently than the occupant of a traditional house. This is an important inherent disadvantage of the system. Since other inherent drawbacks can only be eliminated by incurring other disadvantages, respectively by sacrificing inherent advantages, the fee system can not be considered a solution to the problem of mobile home taxation.

4.5 Miscellaneous Fees and Taxes

Because the mobile home presents some unique problems different from traditional housing, some state legislatures have tried to cope with the (often imaginary) special characteristics by enacting rather "special" taxation systems. Many of those systems have been struck down by the courts, and many have been upheld. But even in the latter case, those types of taxes are mostly used by but one state. They had no impact on any general thought about mobile home taxation, and they are not indicative of any trend. A more detailed analysis appears unjustified.

5. Administrative Problems of Mobile Home Taxation

5.1 Case Studies

5.1.1 The Cost-Benefit Problem: Case Study Ohio

The author could identify only one study which attempted to analyze the cost of administration of mobile home taxation. This 1958 study by the Ohio Department of Taxation (270) is often referred to and may indeed be the only such attempt. The experience revealed by this study appears to be representative of the problems encountered by many states.

Prior to 1961, when the Ohio legislature enacted an amendment providing for a mobile home tax taking the value of the unit into account, mobile home owners had to pay a standard annual tax in lieu of any property tax, regardless of the value of the mobile home. The administration of the tax was the responsibility of the auditor of the county. The tax collected was distributed among the political subdivisions sharing in the property tax in the same ratio as real estate and pubic utility taxes are distributed. A questionnaire circulated by the State Department of

Taxation among auditors of the eight-eight Ohio counties yielded data which are summarized in table 3.

The survey revealed that the cost of administration as a percentage of total revenues from the tax was: in four counties 50% - 100%, in thirteen counties 20% - 50%, and in thirty-six up to 20%. This represents a very high administrative cost relationship. But the finding represents no surprise after understanding the administrative problems pointed to by the survey.

Of the seventy-one counties reporting, thirty-nine had less than 200 mobile homes, twenty-one less than 100. Forty-two of the responding counties reported total revenues from the mobile home tax of less than $5,000.

This special system of mobile home taxation had to be administered together with personal and real property taxation by the existing staff. To administer a special tax system for only 100 units, especially if the revenue amounts to some $2,000 or $3,000, is likely to "constitute only an administrative nuisance" (270:12), but a costly one.

The problem was aggravated since administrative action on mobile home taxation peaked at a similar time as personal and real property taxation activity. Certainly this

Table 3

RESULTS OF SURVEY CONCERNING THE REVENUE AND ADMINISTRATIVE PHASES OF THE HOUSE TRAILER TAX IN 71 OHIO COUNTIES[a], 1955-1956

ITEM	NUMBER IN 71 COUNTIES	AMOUNT IN 71 COUNTIES	NUMBER OF COUNTIES
NUMBER OF TRAILERS PER COUNTY:			
1 - 50			7
50 - 100			14
100 - 200			18
200 - 500			14
500 - 1000			9
1000 - 5000			9
REVENUE RECEIVED FROM THE TAX:		$566,141.50	
Less than $1000.00			9
$1,000.00 - $5,000.00			33
5,000.00 - 10,000.00			14
10,000.00 - 20,000.00			7
20,000.00 - 50,000.00			7
50,000.00 - 80,000.00			1
HOUSE TRAILER REGISTRATIONS:			
Full Fee	25,486		
Three-Quarters Fee	1,887		
Half Fee	1,263		
One-Quarter Fee	700		
Total Registrations	32,931[b]		
METHOD OF PAYMENT:			
In Person			68
By Mail			34
To Field Worker			2
EMPLOYEES WORKING ON TAX[c]:			
0 - 1/2			43
1/2 - 1 1/2			18
Over 1 1/2			2
No answer			8
ESTIMATED COST AS A PER CENT OF REVENUE:			
0 - 20%			36
21 - 50%			13
51 - 100%			4
No answer			18
COLLECTION CONSIDERED PROPER FUNCTION OF AUDITOR:			
Yes			14
No			53
No answer			4
METHODS USED TO OBTAIN COMPLIANCE:			
Notices (to trailer owner in newspapers, etc.)			43
Previous years' records to locate trailers			57
Field work			57
Locate trailers through Board of Health records			23
Checking park registers for taxable trailers			42
Trailer to trailer check in parks			41
Searches for trailers on private property			46
Other[d]			13
ESTIMATE OF DEGREE OF COMPLIANCE:			
40 - 75%			5
76 - 90%			17
91 - 100%			35
No answer			14
PENALTIES:			
Penalties Assessed	324		11
Penalties Collected	100		10
No Penalties Assessed			47
No answer			13

(a) Questionnaire was distributed to all 88 county auditors, but at the time of publication only 71 had been returned.

(b) Includes 3,595 registered trailers for which the breakdown into fee categories was unavailable.

(c) Stated in terms of full-time equivalents.

(d) Includes 11 counties where county officers such as appraisers, deputy sheriff, and deputy sealer of weights constantly checked for trailers in their work, and two counties where trailer park owners were employed to fill our applications.

SOURCE: Questionnaires returned by Ohio county auditors. (270:16)

coincidence resulted in a relative ineffectiveness of mobile home tax administration.

Twenty-two of the counties reporting estimated the degree of compliance as below 90%. Since at that time half of all trailers might have been located outside of trailer parks, a substantial percentage of trailers may not have been found at all. The degree of compliance estimates are therefore likely to be too high, and substantial tax evasion can thus be assumed for quite a few counties. This conclusion is discouraging in light of the very high administrative cost mentioned.

The Ohio Study concludes then with the concession "that the house trailer tax, in the overall scheme of local government finance, does not weigh very heavily as a source of revenue.., that the tax lacks equity, and that its administration is difficult and costly." (270:11) The study further concluded that it would probably be unwise to move towards full property tax treatment, because the valuation problems would add further to the already high costs of enforcing the trailer tax.

5.1.2 The Effectiveness of Mobile Home Taxation: Case Study Michigan

Duke's study on the Michigan experience with mobile home taxation by a fee system (66) highlights one other common administrative difficulty. For 1953, he found some 13,000 mobile homes located in the Michigan mobile home parks, and an estimated 10,000 more occupied mobile homes located on private lots throughout Michigan. The Michigan mobile home taxation law imposes the monthly fee only upon units located in parks. Mobile homes on private lots, according to another subsequent act, are to be assessed as real estate. Since the latter are difficult to find, and since local tax assessors are "hesitant to take advantage of this (subsequent) law"(66:18), close to 40% of Michigan's occupied mobile home inventory is practically not taxed.

5.2 General Administrative Problems of Mobile Home Taxation

The two studies mentioned analyzed the operation of fee systems only by coincidence. The basic administrative difficulties of mobile home taxation experienced in Ohio and Michigan, are also representative, on a nationwide scale, for states which tax mobile homes as property.

The findings of the Ohio study are often misinterpreted, even by the authors themselves. The study does not discuss mobile home taxation as such. The difficulties reported

are mere results of enacting a mobile home taxation statute, designed without regard to the mobile home situation in that state and without regard for the machinery available for administration.

To some degree most states encounter the following problems which are inherent in mobile home taxation:

> A majority of local authorities find only an insignificant number of mobile homes located within their jurisdiction.
>
> In many cases a sizeable percentage of the local mobile home inventory is located outside mobile home parks. For the nation as a whole, various studies indicate, that only about 50% 1% and 70% of all occupied mobile homes are located on rented or owned park lots.
>
> A final factor, though decreasing in importance, is the mobility of the mobile home. This constitutes an obvious administrative problem.

5.3 Administrative Criteria for a Workable System of Mobile Home Taxation

In order to cope with those difficulties a system for mobile home taxation should correspondingly meet three basic criteria:

It should be simple enough to make its operation economically feasible for local authorities with an insignificant number of mobile homes. For all practical purposes, it must be designed to be administrable with existing machinery.

The statute should provide for the same treatment of units located in and outside of parks. And it should allow for effective measures to registrate units on isolated lots.

The system should be able to respond in an uncomplicated way to geographical moves of units.

5.4 Conclusion

Most systems of mobile home taxation are primarily the result of fiscal and legal considerations: yield maximization and judicial approval are primary goals. The administrative criteria mentioned, however, have commonly been ignored. The exceptions, of course, are states which tax mobile homes only by a Motor Vehicle Tax, by its nature an administratively efficient, but conceptually questionable measure.

Most states have such complex mobile home taxation laws.

that taxing districts with only a small mobile home population is impractical. The administrative costs are bound to be greater than the revenues. In such cases the mobile home tax may just not receive adequate attention, or the administration will be highly inefficient.

Many statutes expressly provide for a different taxation of mobile homes if located outside of licensed parks, while not providing for effective measures of finding those units. The practical result is that most of those isolated units are not being taxed at all. This is especially true in districts with an insignificant mobile home inventory.

And finally, though many states do safeguard against tax evasion by mobile home migration, those measures are rarely integrated components of the taxation system. Thus, municipal tax collectors complain that they collect a far less percentage of the taxes due from mobile home residents than from other home owners, because some mobile homes may have migrated. To combat such evasions some state statutes, such as the Connecticut General Statutes, allow a municipality to collect the property tax each month. But such measures are hardly more than curing symptoms.

Generally, one might conclude that for all those reasons,

mobile home taxation is administered inequitably, ineffectively, and inefficiently. And this is primarily because of statutes which do not allow better administration.

Though many of these drawbacks are being avoided by taxing the mobile home only by a state-collected motor vehicle tax, much of the administrative efficiency gained in such cases is lost due to the usual provision that units not registered become subject to property taxation. One only needs to imagine the administrative expense of taxing traditional housing by similar artificial categories in order to grasp the costs incurred by such provisions.

6 A Proposed System of Mobile Home Taxation

6.1 The Need for an Equitable and Workable System

The present situation of mobile home taxation is characterized by nationwide inconsistent experimentation. The methods employed differ radically from state to state. The programs are either inefficient, ineffective or inequitable; and in most cases all three characteristics apply. Principles and concepts do not recognize the rapidly changing characteristics of the mobile home; they have been formulated with a view towards past development stages and without any regard for probable future developments.

There is hardly any form of taxation with which tax experts would agree. The deficiencies which characterize the present state of mobile home taxation are typical shortcomings of many other taxes. But the hot disputes over many taxes are primarily academic exercises. In the case of mobile home taxation, however, rather serious implications are discernible.

The chaos has helped to establish the tax parasite myth. This myth results in discriminatory regulation and zoning

practices which exclude 5 million mobile home dwellers from many communities or force them into commercial or industrial zones. Those practices curb mobile home park development and thus the growth of an industry which, though immature at this time, holds significant potential as a future resource for low-cost housing.

State and local mobile home taxation programs are in most cases based on obsolete or indefensible assumptions. Mere corrections or changes will not suffice. It is time that state and local governments direct their attention to developing a consistent and workable system of mobile home taxation. State legislatures, county commissions and city councils in a concerted effort could easily accomplish this goal. Mobile home taxation is not chaotic because of insurmountable inherent problems, but because no adequate attention has been paid to it.

6.2 Basic Criteria for an Equitable System of Mobile Home Taxation

The preceding chapters can be molded into basic and definitive criteria for the development of an equitable and workable taxation system for mobile homes:

1. Horizontal tax equity is the primary goal for any taxing authority.

2. The system, contrary to accepted theoretical taxation concepts, should optically respond to the "benefits received" principle. A taxation program can not reverse discriminatory public attitudes towards the mobile home population unless it demonstrates convincingly that the mobile home population pays its "fair share" of local government costs. Since regulatory and zoning discrimination typically originate at the local level, the "fair share" contribution is only demonstratable by a system providing for a revenue flow directly to local budgets.

3. The system must have an inherent flexibility, permitting a consistent response to any future development in the mobile home industry.

4. The system must be workable; many present, and quite a few proposed programs are not.

5. The system must be politically feasible; there must be a reasonable change of implementability.

6. The system must be legally consistent. Many states have set up programs (and the necessary machinery) which have been invalidated by the courts.

Administrative convenience is not a criterion. The economic and social costs of the present chaotic "system" of mobile home taxation far outweigh any increases in administrative costs. But a consistent cost-benefit approach should ensure cost-efficient administration of the system which might meet the basic criteria.

6.3 A Proposed System of Mobile Home Taxation

The first criterion of equal tax treatment can be met only if people in like circumstances are taxed in the same manner. The data available show no significant difference between mobile home dwellers and other segments of the residential population. And horizontal equity can only be established if all segments are taxed by the same method. It is the manner of taxation, not the actual amount paid, which must be equalized. Thus, the motor vehicle tax, the personal property tax and the fee system, are inequitable methods of mobile home taxation, because the traditional house owner pays another kind of tax. Equal tax treatment of the mobile home owner can only be achieved by subjecting him to real property taxation.

This conclusion is predicated on the belief that the only other possibility of establishing horizontal tax equity (subjecting the entire residential population, inclusive of

the mobile home segment to one tax other than the realty tax) is only theoretically possible. This latter alternative poses the fundamental question of how residential property should be taxed. A problem analysis of the mobile home industry does not uncover any need for questioning the established manner of taxing the traditional house population; but it does point out the need to correct the unequal tax treatment of the comparatively small mobile home population. As a matter of political feasibility, the equalization can only be effected by adapting the treatment of the small group (still in an experimental stage) to the long established treatment of the whole. ("...(A)n estimated 85 percent of local government revenues, (and) 99 percent of their tax revenues..." (1087) are collected from real estate taxes!)

An extension of realty taxation is, therefore, the only possible way to meet the criterion of equitable taxation.

All the other criteria are met by two or more alternative methods of mobile home taxation. However, since the first criterion, as are all the others, is an absolute one, the only relevant question is whether real property taxation of mobile homes can meet the other criteria. It does--as the detailed analysis in the chapter on "The Real Property Tax" points out.

Thus, the necessary change in mobile home taxation will be effected only by an extension of real property taxation.

6.4 Advantages of the Proposed System

Many segments of the mobile home and mobile home park industries, and of the mobile home population generally argue that "it seems clear that a mobile home is personalty and not realty,"(97:73) and strongly oppose any real property taxation. In many states a switch toward real property taxation might result in somewhat or even considerably higher taxes for the mobile home dweller. Also, as mentioned, the industry fears that real property taxation of its product might be construed as a precedent for imposition of other controls applicable to traditional houses, such as building codes. But the mobile home industry apparently is not aware of their interests in real property taxation.

The traditional house owner will find no more justification for looking down at the mobile home owner as a tax parasite, the "fair share" cries will die away.

Soon communities will begin to consider mobile home parks financial assets, not liabilities. Public regulation will cease to be restrictive and exclusive. Many communities will open up to the mobile home; zoning laws will be inclined to allow mobile home parks into residential areas.

The mobile home owner will no longer feel discriminated against because he will be taxed, regulated and "zoned" in the same manner as a "normal" resident.

The mobile home population will escape social discrimination by the community at large; their social integration into the local community will be facilitated. The mobile home resident will gain a voice in local freeholder elections. The social potential of five million Americans will be activated.

From an administrative standpoint, mobile home taxation can utilize the existing realty tax machinery, instead of administering two separate programs. Economies of scale may accrue due to procedural unification and simplification.

Mobile home dwellers will no longer be denied benefits under various programs which they would receive automatically if they lived in traditional housing units. Exemption laws are a typical example. Because mobile homes are often taxed differently than traditional ones, groups that live in mobile homes that are elegible for exemption are practically ignored. This practice, of course, undermines the policy underlying the exemption statutes.

Mobile home taxation as real property constitutes an ideal

synchronization with the development trends of the industry. The mobile home is becoming immobile and indistinguishable in appearance from traditional housing. Double-wide and sectionalized units are now hardly distinguishable from conventional single family detached units. Modules will be stacked up to townhouses or garden apartment-like configurations, or will be plugged into, or suspended from, high-rise megastructures. The mobile home industry will become an integrated sector of the conglomerate industry producing housing.

The home building industry, as represented by the National Association of Homebuilders, has long maintained that the mobile home industry enjoys an economic advantage which gives them an unfair edge in the market, by relative freedom from real estate taxes. This argument, which is used to support hostile actions of the homebuilding industry lobby, will be nullified.

One of the major obstacles to further growth of the mobile home industry, lack of mobile home park space, will disappear. This stimulation of an industry with potential as a resource of low-cost housing is in the public interest.

Research and development activity in the mobile home industry will be stimulated. Today, the removal of the unnecessary

wheels on a mobile home is penalized in many states by subjecting the unit to real estate taxation, which as mentioned might mean higher taxes. Experimentation with combinatorial arrangements of basic units into forms with better functional, architectural, and "urban" qualities is discouraged. General subjection to real property taxation, however, will encourage the industry to develop a product suited to meet problems in urban areas. Again, this is in the public interest.

6.5 Administrative Feasibility of the Proposed System

The administrative problems encountered by taxing mobile homes as realty are similar to those present in the taxation of property, only temporarily accentuated by the small degree of mobility left.

6.5.1 Discovery

The first phase of the taxing process--finding the taxation object--naturally presents some difficulties in the case of the mobile home, particularly with those units located outside of mobile home parks.

Many means are available to require mobile home park owners to report on arrivals or in general on the units

located in his park. Only isolated units outside of parks present a problem, though not a unique one. The assessors who are now searching for recent additions to existing structures, among other things can at the same time search for mobile homes. Such periodic inspections can be supplemented by requiring a permit before any mobile home can be located in a community, similar to building permits required by ordinance. This procedure might ensure adequate compliance. Some other methods can, however, be developed for additional checks, or as sole alternatives to the inspection-permit approach.

Zoning provisions restricting mobile homes to licensed parks are rather commonly employed as regulatory measures, and would practically solve the discovery problem efficiently. Such regulation does not, however, recognize the trend of the mobile home toward the relocatable house and therefore seems unsuitable.

A workable method for insuring that the units are registered on the tax rolls would be to require any real property owner to report to the assessor any mobile home he might permit to park on his property.

Since all states still require registration of mobile homes as vehicles this anachronistic provision also could be

employed to keep the local assessor accurately informed about the location of units outside of licensed parks. As in California, the Department of Motor Vehicles could be required to report to the local tax assessor the address of each mobile home registered within his district. Provided that registration would be obligatory for any unit, and would be adequately enforced (as is the case in most states anyway), and provided further that a simple, efficient system of reporting movements would be developed and effectively administered (as could easily be integrated in the framework of special permit issuance for mobile home movements) rather accurate property tax rolls could be maintained. It should be noted that many states do still allow mobile home movements without permit, though usually only if certain length and width limitations are met. But some segments of the mobile home industry have already considered the production of fourteen-wides, and the average unit length is likely to increase. More states are likely to resort to the special permit practice. In all those cases, the mobile home owner can be required to declare his intended destination, and the permit issuing authority would notify the taxing authority at the prospective new residence. As a double check, any firm transporting a mobile home could be required to report on any move, with violation resulting in revocation of their license. Such a procedure can ideally be modified over time to meet the

continuing process of mobile home immobilization. With increasing immobility the vehicle registration will become obsolete, and at the same time unnecessary as a location identification device.

The most workable, and most logical, future solution would be generally to exempt mobile homes from motor vehicle registration, but to require a special moving permit for every move of any unit. This would be an equitable method of taxation for highway use, because the permit fee can reflect the costs incurred by the individual move. The many mobile home dwellers who never move their unit, and their number does increase, would not be required to pay for costs they do not incur. Such a nationwide special permit system can be coupled with an accurate system of notifying move originating and move receiving communities--a highly efficient procedure as a sole method of discovery. State legislatures should enact such legislation now.

As long as registration is still required, it could be employed as a supplementary enforcement measure. A requirement of registration could be, as in certain states, proof of payment of property tax on the mobile home.

6.5.2 Valuation

The valuation phase constitutes the only significant problem inherent in taxing mobile homes as realty. The deficiency is not of a conceptual, but of a practical nature. It is difficult to satisfy the irrelevant, yet pragmatically important "fair share" demand. Since the average retail price of a new mobile home is $5,700 (compared to the average price of a new traditionally built house of two to three times as much), a mobile home obviously adds less to the tax base of a community. Mobile homes <u>are</u> low-cost housing. It is, of course, an indefensible assumption that the mobile home should yield an amount of revenue equal to that an average single family dwelling would yield. Its characteristics place the mobile home somewhere between apartment houses and single family detached units. But even tax experts at the state government level can not avoid the house vs. mobile home bias.(425:302) While this prevalent prejudice can not influence the basic decision of how to tax mobile homes, it should be taken into account when defining the tactics of implementation.

For example, from the beginning, the valuation of the mobile home should be based on a realistic depreciation schedule, as opposed to the California case where an unrealistic schedule was adopted (39). Another rather common mistake which can be avoided is to place unrealistically low values on the improvements in mobile home parks. (289) Furthermore,

mobile homes usually have expensive additions whose cost might equal 50% of the cost of the unit. It should not be more difficult to assess such additions than other improvements to traditional structures. But because of administrative convenience, it might well be overlooked.

If these aspects were taken into account, the realty tax on mobile homes would produce substantial enough revenue to convince, at least partially, "fair share" advocates. Especially if it is recognized that the trend is toward more luxurious units with much more living area (double-wides, stacked-up modules). And in park development the luxury trend is even more pronounced. Thus, in the near future, the revenue produced by the realty tax on mobile homes will compare much more favorably to the yield from single-family housing. But surely there will always be a difference.

This difference can be justified to the "fair share" advocate by resorting to his own "benefits received" based argument. Currently mobile homes house fewer school age children. The average mobile home family is 2.9 vs. 3.4 persons in the average house. The modern mobile home park, which often is for adults only, provides recreational and other community services normally provided by government. I f fewer government services are used by the mobile home

owner than by the permanent house owner, then one might argue that the inevitably different tax yield is justified. Without sacrificing essentials of equitable taxation, no more can be done to meet the "fair share!" demand, which is irrelevant and unjustified, yet influences politics at the local level much more than logic argumentation.

It should be emphasized again that a community traditionally establishes a range of basic services, expressly available to all, and expressly without regard to the recipient's tax contribution. A substantial percentage of those services are financed by the property tax. The property tax is on the basis of the value of the taxpayer's property, independent of whether or not any specific government service is required, consumed, or desired by him. (39:8) Once it has been accepted that mobile homes can only equitably be taxed as realty, the only relevant question left is: "(w)hether the property has been properly valued in comparison with the values of other properties in the same taxing jurisdiction. If there are differences either in valuations or rates, or both, as applied to various properties, then the equity of the tax is violated." (39:8) "Benefits received" arguments are irrelevant.

6.5.3 Assessment

The question of whether the realty tax on the mobile home should be assessed to the owner of the unit or to the owner of the land is another problem. At present about 50% of all occupied units are located on rented lots in mobile home parks.

The possibility of assessing the unit to the owner of the rented lot has been subjected to legal analysis in the chapter on "The Real Property Tax." While it was concluded that the legal hurdles are definitely surmountable, one should note, that in some states negative court decisions might delay the introduction of this practice for some time. The advantages of this procedure are administrative efficiency and conceptual consistency with the development trend of the taxation object toward permanent attachment to the unit-owner's land. The administrative advantage is of course gained by shifting the burden of tax collection to the park owner. The obvious disadvantages accruing to the park owner have been discussed in the aforementioned chapter. Another difficulty is that tax exemption benefits could probably reach the eligible mobile home occupant only in the form of a rent reduction, and thus implicitly inaccurately. There is some probablility however that the park owner may profit from this procedure. "...(t)he park owner may get a wind-

fall if more valuable units enter after assessment date... (he) may profit from the system if, after collecting the tax before its due date, he is able to pocket the interest on these funds in the interim together with any discount the municipality offers for early payment of taxes."(1087:715) Since the park operator will pass on to his occupants any increase in operating expenses, in the form of a rent increase, he may indeed suffer no loss. Actually, then, the administrative convenience is paid for by the mobile home owner. But the situation is similar to the apartment dweller.

The alternative, to assess the value of a unit located on rented space to the unit owner, incurs some administrative complication. In that case the taxing authority has to cope with the problems of taxing arrivals after assessment day, respectively units moving shortly thereafter. Practically, this pre-requires substantial cooperation on the side of the park owner and, in effect, he may be similarly burdened. There is still a mobility problem involved. In the case of assessing the unit to the land owner, a tax-prompted move of the unit still leaves the land as a security for the delinquent tax--however questionable this might legally be. In the case discussed here, delinquent taxes probably would be considered a lien upon the unit only, the mobility of which makes it very poor security. It has been contended (1087:714) that a system which conditioned the issuance

of moving permits on the presentation of tax receipts might work if a statewide strict enforcement of the permit regulation could be ensured. But the same author still proposes as greater security to make the delinquent tax a lien or the land, because then the park owner would of course report promptly on any moves of his tenants. Again, the park owner would be burdened similarly as in the unit-to-land owner assessment. Perhaps experience should decide whether so much concern about tax evasion is justified. A good park space is a rare thing, and today mobile home owners have incomes which make tax prompted moves unlikely--especially since the carrier's bill may easily exceed the tax bill. And, over time, the "immobile" home will further discourage such behavior. So, primarily, this alternative suffers from administrative inconvenience. But it presents no questions of legality.

The author contends that the procedure of assessing the unit to the land owner is preferable. It corresponds with the probable situation of the near future. And it avoids the problems of assessment by different methods. Because in all cases where unit and land owner are identical, the procedure proposed must be followed anyway. There are not only mobile home subdivisions or parks where the owner rents a package lot-unit, but a significant percentage of the total mobile home inventory is located on private

property, especially in sub-rural ones. And the trend is in this direction.

In the case of either system, there is a theoretical complication with any units arriving in a given jurisdiction after assessment day. But, since for purposes of discovery, some movement control system will have to be established, it seems possible to tax those units by some method as they arrive. The relative immobility of the taxation object will certainly not necessitate periodic assessment.

6.5.4 Conclusion

The administrative criteria, which a system of mobile home taxation should meet were formulated in Chapter 4.3. An extension of real property taxation satisfies those criteria, as has been shown above.

6.6 Conclusion

Equitable taxation of the mobile home population can only be achieved by the imposition of a real property tax. There is no constitutional impediment to the extension of real property taxation to mobile homes. The administrative problems are reduced compared with other forms of mobile home

taxation.

The legal history of attempts to tax mobile homes as realty indicates that specific legislation is a prerequisite for achieving the change. Obviously the refusal of the courts to allow local taxing authorities to impose a real property tax upon mobile homes, was generally motivated by reluctance to proceed in the absence of specific enabling legislation. Thus, the initiative must come from the state.

SECTION IV

MOBILE HOME REGULATION

1 Mobile Home Regulation--A Chaos of Discrimination and Balkanization

During the thirties most communities unexpectedly found trailers in their midst. They noticed upsetting things. The trailerites disposed of their waste unconventially, bothered residents with a need for water, and even tried to send their children to local schools. This development accelerated as trailer camps formed. The local community suddenly had a public nuisance. And the municipal officials recognized that a unique regulatory problem had been created.

The city planning commission wanted to know where to locate trailers and how many to provide for, because zoning regulations had to be met and ordinances amended in some instances to meet new conditions which the trailers created. The local fire laws, health regulations, police and traffic codes had to be examined as for their applicability, or had to be changed in many states and their subdivisions. Trailers were not fireproof, and gathered in numbers on a limited area, were a definite fire menace. The health department was concerned with groups of people in small living quarters whose methods of waste-disposal could have a detrimental effect on the community. And the building department was

bewildered because the trailer was produced outside their jurisdiction, and could not be inspected for compliance with local building codes. Although the trailerites had not yet created a welfare and public assistance problem, the question of legal responsibility arose with more and more frequency as the trailer migrants encountered ill-health, financial embarrassment, expensive accidents, repairs and hospitalization. Schools were more and more called upon to educate trailer children suddenly thrust upon them by parents who had taken up local residence, from choice or from necessity, for financial or health reasons. Existing state housing codes had to be invoked or amended, and some states faced the need to study housing standards and to provide effective statutes. Trailers also presented tax problems--their effect on other taxable property, and their possibilities as a source of tax revenue. (646)

Many municipalities have evaded the issue by excluding trailers(and later mobile homes) from their town limits, or by imposing unreasonably severe restrictions, resulting in exclusion. Others have ignored them, handling the situation as well as possible under existing laws. And, finally, some have seriously tried to solve the problem in a constructive way; yet they have often failed because of a lack of understanding and knowledge of the problem.

1.1 Discrimination

Most municipalities were hostile towards the mobile home, and enacted repressive and punitive ordinances.

Local mobile home policy is a direct function of what the community "thinks" about the mobile home. If a dominant political, economic or social group is hostile towards the mobile home, repressive controls will reflect this. If a decisive majority wants to see drastic and punitive mobile home regulation, such regulation will probably be adopted.[51] Prejudice merely will be cloaked in legal language.

A purely legal approach to the regulatory problem is unrealistic. Local economics and politics are the decisive factors.

Almost everywhere local communities had similar thoughts

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[51] "Single family house owners are in the majority in most areas, so they get their way...public officials can't oppose the owners in favor of a business (mobile home park) which pays more than its costs of services because most of the votes come from the single house owners...In a pending court case, a town board opposed a park because it would bring in so many new voters the board could no longer depend on the single house owners for a majority. Since the board had publicly opposed the park, the board members knew the park residents undoubtedly would vote against them when given the opportunity and the board would be out of power." (642)

about the intruders: "They do not pay their 'fair share,' and they are undesirable transients, gypsies--immoral and a menace to the community." Mobile home manufacture, mobile home living, and mobile home selling were suspect.

Vested interests and bitter citizens pushed for repressive and punitive ordinances. Regulatory powers granted to local governing bodies were often grossly abused.

In 1941 the National Institute of Municipal Law Officers stated that to "discourage the use of the trailer as a permanent home...has been the most widely adopted practice, and the only reasonable one in view of the recognition of health, sanitation and other problems created by the living of human beings in such cramped quarters."(292) And still in 1953, the July-August issue of Urban Land reported that: "almost everyday of the week some community is urging restrictive legislation against trailers."

The results were disastrous. An abundance of zoning restrictions in most communities relegated mobile home parks to undesirable commercial or industrial areas or forced them out into the outlying areas beyond the limits of zoning control, far from schools and other facilities. The March 1937 issue of American City reported from an "analysis of 1,000 trailer camps...that between two-thirds and three-fourths of them are located outside the corporate

limits of cities and villages but near their borders..." In a 1965 study in Land Economics, French and Hadden found that the majority of parks were on the fringe of municipalities and urban areas, generally beyond the limits of local control. (575) Other recent studies found that most parks within city limits were still zoned into commercial districts.[52]

Forced by the hostile and intolerant attitude of many municipalities to live in areas surrounded by industries and heavy traffic and often located far from schools, there could be little incentive to participate in community life or to maintain the mobile home or the mobile home park in a residential character. This in turn nourished and confirmed prejudice and bias, and a self-perpetuating vicious circle was established.

1.2 Balkanization

By 1937 seventeen states had trailer camp regulations; by 1960 thirty state legislatures had enacted mobile home statutes; today at least forty-six states have such regulations.

Most statutes, ordinances and regulations deal with every

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[52] Cf. Chapter IV.2.7.

imaginable aspect of mobile homes and mobile home parks. Most of these have been enacted (or substantially amended) since the end of the war. Similarly, with regard to litigation, about 90 percent of all reported judicial activity in this field dates from after 1950.

This dramatic increase in legislative and judicial activity is indicative of industry growth; it points at the magnitude of problems that have been created with the ever-increasing output of the industry and with the increasing permanence and community penetration of the mobile home.

The development of the regulatory structure was characterized by panic action and disjointed incrementalism. "In almost every area of mobile home regulation, the United States is Balkanized by state, municipal and county laws which lack uniformity.."(133), consistency, and often logic.

The regulatory pyramid is a highly complex and redundant network.

The state may have regulations applying universally to sanitation in all mobile homes (and/or travel trailer parks within its boundaries) or applying only to those outside of urban jurisdictions. Thus, the state health departments may exercise general control over sanitation and water supply. The county may also have jurisdiction

over all such facilities within the county, or over those in incorporated areas in the county. And there may also be myriads of local units of government authorized to regulate mobile homes and parks. They may prepare special regulations in this field, and encumber themselves with duplicating administrative expense.

Fortunately, state, county and city governments do not always strictly enforce these regulations. Otherwise, three categories of enforcement officials would be bustling about in the same park, enforcing three slightly different sets of regulations.

Similarly, in zoning matters, parallel and often conflicting regulations have been prepared by municipalities on matters where the county or the state was already exercising jurisdiction. Or, in terms of county zoning, regulations are promulgated on matters already covered by state operation.

Local government units seeking to regulate mobile home parks were usually quick in passing a law. But less frequently did they study thoroughly existing regulations: for example, whether the State Board of Health might already enforce a mobile home park code. And in cases of particular local regulatory needs, the possibilities of encouraging amendments to the state code (or of enforcing only the necessary

supplementary regulations locally) were rarely considered.

Though the Federal government does not directly regulate mobile homes or mobile home parks, it does effectively regulate indirectly. FHA park standards in many localities have more impact than locally promulgated mobile home park rules; and the Small Business Administration's Guidelines for loan commitments may be in conflict with local codes. The development of a series of model codes by various Federal agencies further adds to the chaos, even though many of the individual models may have excellent qualities.

The enactment of separate mobile home park ordinances is a historically understandable, but now highly frustrating and obsolete practice. All matters relevant to mobile home park regulation, whether zoning or fire protection, are cramped into one ordinance. Many standards for control of construction and mechanical installation of buildings and other facilities in parks are contained in existing local codes. Yet, often slightly varying standards are developed for separate mobile home park ordinances. When typical mobile home characteristics have to be covered, local authorities often prefer to develop their own standards from scratch, instead of considering direct or adapted adoption of the many existing national model standards. And when adaptations for separate ordinances have

actually been made, they sometimes perverted a concise and workable model code into a vague, impractical and conflicting ordinance. The content structure of "Suggested Model Ordinance Regulating Mobile Home Parks,"(235) prepared for the Mobile Homes Manufacturers Association is a representative example.[53]

Thus, a frequent problem is conflict between Federal standards, general state statutes and county or local regulations. Often there is pre-emption. And in a horizontal respect, local mobile home ordinances vary from local building or housing codes, and sometimes even from the local zoning ordinance.

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[53] Section 1 Definitions
2 License and Temporary Permit
3 License Fees and Temporary Permit Fees
4 Application for License
5 Location (Zoning Material)
6 Mobile Home Park Plan
7 Water Supply
8 Sanitation Facilities
9 Service Buildings
10 Sewage and Refuse Disposal
11 Garbage Receptacles
12 Fire Protection
13 Animals and Pets
14 Supervision
15 Revocation of License
16 Posting of License and Temporary Permit
17 Separability of Provisions
18 Penalty.

(235)

The prospective mobile home park developer may have to meet FHA standards; he must meet requirements of the local mobile home park ordinance; and he must comply with local building, health and zoning regulations. All of these may vary from each other. If he decides to develop a park in an adjacent community, he will have to start from the beginning to familiarize himself with a different regulatory jungle. Furthermore, mobile home regulation was often adopted without regard to the lack of necessary administrative machinery. Yet, the prospective park developer can never be sure whether a provision long since forgotten by enforcement officials might suddenly be reactivated, solely to obstruct his plan.

Finally, there is a problem of definition. With the rapid development of the mobile home, terminologies changed (but not in <u>all</u> codes) at an equally rapid pace.

A bulk of statutes enacted before the trailer era, refer for example to "all buildings." An argument over terminology and interpretation characterizes most mobile home cases. Is a mobile home a "building?" Is it "erected?" Is it a "dwelling house" or a "dwelling unit" or does it have "characteristics of a Pullman-car?" And if so, are certain traditional codes applicable?

The advent of the term "mobile home" created more severe complications.

The early trailers were designed for mobility. The judiciary derived certain conclusions from this fact; the trailer is not permanent housing, should be regulated differently from permanent housing, and is undesirable in permanent residential districts. Legislation enacted during this era is based upon such assumptions.

But the shift from mobility and transiency to permanence has been accomplished. In the early fifties the old "trailer" began to develop into two basically different directions: the "travel trailer" and the "mobile home." In logical response many new statutes have completely different provisions for either type. Some states even have different statutes. Although both categories have little in common any more, still in 1968 at least 24 state statutes made no distinction between travel trailers and mobile homes referring simply to "trailers." The key question asked in myriads of cases, whether the pre-1954 term "trailer" means "trailer," "mobile home" or "travel trailer" has keept the judiciary hopelessly confused for years.

The courts are struggling through semantic labyrinths--often sharing their bewilderment (and prejudice) with many citizens and officials. Primarily for this reason, many serious legal problems have arisen.

Government officials are also bewildered, since they have

to cope with a problem that they do not understand and that can not be met by traditional regulatory approaches. Most legislative attempts at mobile home regulation, even at the state level, are based on misconceptions about the nature of the mobile home.

The regulatory and legal framework is outmoded and inadequate.

Officials, judges, developers, munufacturers, mobile home dwellers and travel trailer-"ites" are enmeshed in a tangled web which results in frustration and friction.

Mobile home regulation is obviously in need of a complete overhaul. The restructuring needs are so great, that a new system must be developed. Before turning to this in the final chapter of this section, the writer will subject present methods of regulation and enforcement to detailed analysis. It must be determined to what extent integration of established practices into a new system is possible. Minimization of new legislation is a prerequisite for political results.

2 Forms of Regulation

2.1 Special Restrictive Regulation

2.1.1 Time Limitations

Many ordinances contain provisions restricting the period during which an occupied mobile home may remain in a community. During the thirties and forties, after initial judicial approval, a great majority of municipalities limited the stay of trailers to periods ranging from thirty to ninety days. The time limits imposed were sometimes absolute, more commonly, however, maxima for any six or twelve months.

Today most communities no longer maintain a time limitation. But some more recent ordinances still have stay limitations of a month, ten days, or even seventy-two hours (97:66) in any one year.

The permitted maximum period of residence may be an absolute limit, expressly prohibiting a longer stay. A good example is the requirement of non-renewable occupancy permits. Other ordinances impose conditional

limits. After the stated maximum duration of stay, the mobile home is subjected to local sanitary or building codes. This latter form is exercised over mobile homes located both outside of and within mobile home parks.

In many communities enforcement of such provisions is lax. Though often a much longer stay is, in fact, allowed, the principle of enforced transiency remains.

Staying limitations force a legitimate segment of the total residential population into nomadic patterns of life. Naturally, the reasonableness of time limitations has met with legal questions.

The Question of Legality

Two New York statutes expressly permit towns and villages to impose "...time limits on the duration of the stay... of house trailers..."[54] An ordinance enacted under these statutes, restricting mobile home residence outside of parks to four weeks in any year, was held invalid. There were additional grounds for this decision. The following language of the court is the line of reasoning which is often followed: "...Such a trailer when suitably located

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[54]N. Y. Town Law, Sec. 130, Subd. 21; Village Law, Sec. 89, Subd. 69.

on a private lot is not considered a menace for 28 days. It is impossible to discern what causes it to be a menace on the 29th day."[55] One writer posed the argument as follows: "If a ninety-day limitation is valid, so is one for thirty days; how about a restriction to one day, or one hour?" (97:73)

This argument, though convincing at first glance, is based on a misconception. The objection focuses narrowly on the time-limit provision per se. By definition, however, the reasonableness of such provisions can only be evaluated by considering the underlying motivations. And the courts, of course, have concentrated on this cause-effect relationship.

Litigation

Most courts have found these provisions for enforcement of transiency valid. Three basically different lines of reasoning were usually followed in sustaining such practices.

Case Category I

One category of court decisions can be explained by the

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[55] Town of Southport V. Ross, 109 N.Y.S. 2d 196, 202 Misc. 766(1951); (sustained in 1954 by the New York Appellate Div., 132 N.Y.S. 2d 390, 284 App. Div. 598.

dwelling-vehicle dichotomy.

The trailer did supply relatively permanent housing, but was also highly mobile. Two different regulatory problems confronted the municipality. A transient trailer staying in a community for some days or weeks called for much less stringent regulation than a "permanent" trailer. Logically, ordinances responded with different regulatory provisions. For trailer camps as "...places of transient or temporary abode..." (5:18) the code requirements were usually considerably less than for trailers used as permanent abodes. Many municipalities provided for the regulation of the latter as ordinary dwellings under local building, housing and zoning ordinances. The American Municipal Association stated in 1941 that this latter "...practice...recognizes the right to occupy any type or character of dwelling that conforms to reasonable minimum standards of health and safety. If trailers meet such...standards, their occupancy can not be prohibited...(and) there seems no sound reason for limiting the time...(of stay)" (5:7). Municipal officials often considered it quite natural that a trailer placed on private land would be permanently occupied. They recognized that the trailer was a lawful form of private property and not a nuisance, and that the owner presumably had a valid right to use the private land. But, as

Planning & Civic Comment qualified in 1937, "...what the municipality objects to is allowing a trailer to become a home without complying with the building code and other laws that other homes must recognize. Municipalities will strongly object to allowing trailers to become a privileged class, enjoying all the advantages of a village or city without assuming any of the responsibilities." (429:13)

Thus, ordinances imposing a time limit of 28 days were not intended to suggest that on the 29th day the trailer would suddenly turn into a menace. In most cases such provisions were and are simply administrative measures to determine the dividing line between temporary and permanent residence.

The courts in many cases have followed this line of reasoning in sustaining conditional stay-limitation provisions.

In 1938 in Spitler v. Town of Munster,[56] the Indiana Supreme Court sustained an ordinance which limited the period of residence in trailer parks to thirty days with the imposition of local building and plumbing codes after that time. The court said that municipalities have the power to establish reasonable regulations for the protection of the

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[56] Spitler v. Town of Munster, 214 Ind. 75, 14 N.E. 2d 579 (1938).

health, safety and welfare of the community, and upheld the ordinance as a reasonable measure to maintain the transient character of trailer parks. "The town's building and plumbing code fixes requirements for places of permanent residences..." (197)

This precedent has been followed by many courts. Similar provisions were sustained upon the authority of the Spitler decision. In 1946, an imposition of restrictive building code provisions on mobile homes used as dwellings for more than one month was upheld.[57] In 1952, a New York Court[58] sustained a similar ordinance. The provision, that without consent of the Town Board residence for more than three days was prohibited, led the court to assume that unlimited occupancy would be permitted upon compliance with local health and safety requirements. (97:70) In 1956 another court,[59] considering the legality of an ordinance with a 2 week-per-year limit, held that mobile homes may remain longer in the community as "dwellings" upon compliance with the minimum area and lot frontage requirements established for residential districts.

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[57] Lower Merion Tp. v. Gallup, 158 Pa. Super. 572, 46A 2d 35 (1946); appeal dismissed, 329 U.S. 669, 67 S. Ct. 92, 91 L. Ed. 591.

[58] People v. Peck, 112 N.Y.S. 2d 379 (1952).

[59] Hunter v. Richter, 9 Pa. D. & C. 2d 58 (1956).

The afore-reviewed decisions implicitly hold the trailer *per se* unfit for permanent residential use. Only by structural and mechanical adaptation to code requirements for permanent abodes can the trailer qualify for a permanent stay. Before the advent of the independent trailer in the late forties this seemed to be a valid ruling. Were the courts correct in their rulings? Were their arguments sound?

Usually the very ordinance containing the stay-limitation did prohibit the removal of wheels. One court said: "... in order to expedite its hasty removal in case of emergency."[60] In fact, by 1941 "...most cities...prohibit(ed) the removal of ...wheels or running gears..."(5:6) This reveals the offer of exemption from time limitation by code compliance as farcical. Building inspectors, usually rather firm in their ideas about the traditional nature of a dwelling, had no conceptual difficulties in classifying "something with wheels," even if the trailer should otherwise have been adapted to local code requirements. But the latter possibility, too, was (and is) purely theoretical. Standards in local codes were drawn for stationary homes (as of A.D. 1700).

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[60] White v. City of Richmond, 293 Ky. 477, 169 S.W. 2d 315 (1943).

The authors of these ordinances were certainly aware of this inconsistency. The non-existent permanency-option was in most cases obviously offered only to cloak the real objective--to bar the trailerite from any sort of permanence. A "Zoning Round Table," conducted in 1937 by "Planning & Civic Comment, supports this suspicion rather bluntly: "If such camps became a problem... the city would fix a time limit within which each trailer should become a dwelling...or else move on. Why not? It would be a dwelling on wheels and...should have front, side and rear yards the same as any other dwelling. Undoubtedly no trailer owner would stay very long under these conditions. While he did stay he would be subject to sanitary...and fire rules...If the stay of the occupied sporadic trailer were limited to thirty days after which time the owner must obtain the equivalent of a building permit...not many trailers would stay. Add to this that the occupant must make sanitary connections and comply with the...building code and fire laws, it becomes rather certain that he will move on. If thirty days are too long, a week might be made the period of a stay....The reason why this method seems better than imposing penalties...is that this method is logical and can be administered the same as local laws for small homes... The courts will surely support it. They will see that an occupied trailer is nothing more than a movable home

and will see the justice of the owner's obtaining a building permit...On the other hand any system of penalizing...will be difficult to carry out effectively... magistrates and justices of the peace hesitate to be severe where there is no moral turpitude." (429:14) This quotation implies that the fake permanency-option might have been inserted as a bait for the courts. In any event, it was this "alternative," which persuaded the courts to sustain such "conditional" provisions.

It is suggested then that, in the afore reviewed cases, the courts erred by relying on indefensible grounds.

Case Category II

There are other decisions the errors of which are more difficult to reveal. They are, in principle, based upon the same assumption as the above cases: that a trailer is unfit as a permanent dwelling. But they are less articulate in their reasoning, naively believing this assumption.

A paradigm is a 1942 decision by the Supreme Court of Ohio. The court held an ordinance valid which limited occupation of a trailer to two months in any five months. The court stated that "...trailers and trailer camps

have their proper place in present-day life when they are used as temporary accommodations for transients..., but they can not be expected to meet the more exacting requirements of a permanent home."[61]

After 1950, the advent of the independent spacious mobile home, accompanied by a nationwide upgrading of mobile home parks, was ignored by the judiciary.

In 1951, a court sustained a time limit of three months in any six months by stating simply that: "The rule in question can not be pronounced lacking in rational purpose."[62] (97:69)

The following language of an Ohio court[63] clearly indicates the non-progressive tenor of recent court decisions. "Although the advance in the art of trailer construction, the increase in use of trailers...may be conceded, such changes...do not...materially affect the problem...in the regulation of...camps or present a situation legally different from that...in the Renker case. In fact, the

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[61]Renker v. Village of Brooklyn, 139 Ohio St. 484, 40 N.E. 2d 925 (1942).

[62]Gillam v. Board of Health of Saugus, 327 Mass. 621, 100 N.E. 2d 687 (1951).

[63]Stary v. City of Brooklyn, 162 Ohio St. 120, 121 N.E. 2d 11 (1954); appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724.

increase in...number...and the popularity of their use would seem to intensify the problem...rather than to alleviate it." The court expressed the belief that permanent residential use of mobile homes is a cause for slums, and that enforced transiency provisions are in the public interest. (97:71)

Though the basic assumption underlying these decisions is practically obsolete, it is legally defensible by referring to certain (equally obsolete) building or housing code requirements which even today's luxurious mobile home can not meet. This, however, constitutes indirect exclusion and is probably unconstitutional.

Case Category III

One other line of reasoning deserves mentioning. It is a function of the old fair-share problem. A Connecticut court, while upholding a sixty day limitation,[64] stated that: "...the legislative authority of the town properly could have determined that...more or less permanent occupancy would overtax the abilities of the town to cope with the problems which would arise."

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[64] Town of Hartland v. Jensen's Inc., 146 Conn. 697, 703, 155 A. 2d 754, 757 (1959).

The argument is faulty, another example of anti-mobile home sentiments. There seem to be no precedents for a community prohibiting new (non-trailerite) citizens from moving in because, for example, the schools are already overcrowded. "The real aim of such provisions is to exclude from the community people who live in mobile homes...(This was recognized by the court in Town of Hartland v. Jensen's, Inc.)" (476:27)

Implications of Stay Limitation

Ironically, enforcement of transiency fosters what it intends to prevent. It forces people to live permanently under conditions of transiency--psychologically, socially and physically. Enforcement of transiency perverts its very objective.

Furthermore, such provisions can not eradicate any of the social and health problems which advocates of this practice cite. Most ordinances with time-limitation provisions do allow licensed mobile home parks. Those parks can be fully occupied, despite the limitation on the duration of stay. For after the maximum period, though a particular mobile home must move, another unit may take its place. One of the two judges dissenting from the decision in the Renker case commented on the drastic and

oppressive features of such ordinances: "...a trailer may occupy the same space...continuously but the occupancy must be by a different trailer and different occupants every 60 days. Under this fantastic merry-go-round system of operation, what has been gained by village... or the residents of that village, except to witness the annoyance and inconvenience which has been caused to the ...trailer tenants about whose conduct no complaint has been made?"[65] (emphasis original). Almost all courts upholding such provisions justified their decisions by referring to the promotion of the public welfare. It is suggested that time-limitations expel people interested in permanent residency and desirous of social integration into the community. Instead, such provisions assure that the park occupants will be the very transient "tin-can parasites" which the ordinance hoped to keep out of the community.

Furthermore, such provisions constitute an indirect exclusion from the community. The (im-)mobile home makes it economically unfeasible to move every other week or month. The above analysis indicates that stay-limit-provisions often are only intended to cloak the desire to prohibit mobile homes. And in this respect those provisions are indeed successful, especially

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[65] 139 Ohio St. 492; 40 N.E. 2d 929.

because mobile homes can not legally be excluded by direct measures. (cf. Chapter IV.2.1.3)

Trends

The judicial success of these restrictive provisions is discouraging. The fact that even in 1954 the National Institute of Municipal Law Officers inserted a time-limit provision into their model ordinance for mobile homes indicates that there is little hope for sudden change.

N.I.M.L.O. Model Ordinance Section 8-911. Limitation on Length of Stay: "...(a) It shall be unlawful for any person to...live in any trailer...camp for more than ninety days in each 12-month period...except that one or more occupants of a trailer are engaged in vital national defense work, and that there exists in the community a shortage of...housing." (292)

Though there is little indication of any trend, some sporadic positiva are discernible.

There is a court decision[66] from 1940, invalidating an

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[66] Boxer v. Town of Harrison, 175 Misc. 249, 22 N.Y.S. 2d 501 (1940).

ordinance requiring a non-renewable two week-occupancy permit. The court rested its decision primarily on constitutional grounds: "...the owner of a...trailer, despite the fact that he owns the property on which it is situated, would be compelled...to either dispose of the trailer by sale, maintain it in a trailer camp, or remove it from...the town...The plaintiff could have neither the use of his real property for the storage of his trailer, nor the right to full enjoyment of his personal property."

This is not an isolated example of judicial awareness. In two states a clear pattern of judicial and legislative response to change is discernible.

In Michigan in 1939, a court[67] upheld the constitutionality of a three month in any twelve month time-limitation applicable to trailers inside or outside of parks, relying strongly on the city's contention, that "a trailer is not a proper permanent home." Following this decision, the Michigan legislature enacted a statute providing for the licensing and regulation of mobile home parks.[68] In a subsequent case,[69] an ordinance imposing a limitation on

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[67] Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939), appeal dismissed, 309 U.S. 620, 60 S.Ct. 470, 84L. (Ed.) 984.

[68] now: MICH. STAT. ANN. §§ 5.278 (31)-(127) (1961).

[69] Richards v. City of Pontiac, 305 Mich. 666, 9 N.W. 2d 885 (1943).

stay upon licensed parks has been invalidated as a contravention of state law. (476:26)

In Ohio, the Renker case in 1942 was followed by the enactment of a comprehensive mobile home park act.[70] In Stary v. City of Brooklyn a similar restriction was again upheld. The court felt that the state statute did not prevent the city from ordaining additional and more stringent regulations. Subsequently, the Ohio mobile home park law was amended[71] to guarantee unlimited stay in licensed parks. (476:27)

In their Annual Report dated November 29, 1963, the Massachusetts Mobile Homes Commission commented on this question: The "...Commission feels, that the (mobile home)...occupants should no longer be subjected to regulations that force them to move at the end of a specified period of time...If mobile homes are permitted in a community,...they should be entitled to remain there as long as the owner so desires,...the occupant of a mobile home should not be forced to move any more than we would consider it lawful to force an occupant of a standard home to move at the end of, say 90 days, as some local regulations now require." (127)

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[70] OHIO REV. CODE ANN. §§ 3733.01 - .99 (p. 1954).
[71] OHIO REV. CODE ANN. § 3733.06 (p. Supp. 1961).

Conclusion

Most decisions are predicated on the belief that the mobile home *per se* is not suitable for permanent occupancy. Relatively recent decisions still refer to the old *Spitler*, *Cady* or *Renker* cases. But the mobile home has little in common with the old trailer, and the modern mobile home park little with a slumlike trailer camp. The permanent mobile home resident, unlike the transient trailerite, pays taxes and lives under much more favorable conditions than some other segments of the population. Yet, many courts have failed to reappraise the old *Spitler*-*Cady*-*Renker* assumption. There is little hope for immediate change. In zoning for mobile home parks there is now a trend of requiring a minimum stay of thirty days; yet the adjacent municipality may still limit the stay to a maximum of ten days.

Some writers suggest mere correction. They may object to limiting the duration of stay on the part of all occupied mobile homes, but suggest that such provisions may serve a useful and valid purpose when imposed upon units located sporadically outside of parks. However, the mobile home is becoming indistinguishable from traditional housing. Thus time limitation provisions should be eliminated. A limitation of stay imposed on an

(im-)mobile home is as ludicrous as imposing this restriction upon a traditional home.

Change might come if the courts recognized that stay-limitation provisions were cloaked attempts at, and practically do constitute, complete prohibition and are thus unconstitutional. Housing programs for low-income segments, which would expressly define mobile homes as permanent housing, or imposition of real property taxation upon mobile homes, might encourage the courts to depart from the old transiency-bias. Precedent setting stimuli of some kind are necessary.

The quickest, safest and most direct way, of course, would be enactment of consistent mobile home statutes by state legislatures, expressly prohibiting stay limit provisions.

2.1.2 Limitations on the Number of Mobile Homes

Attempts to limit the number of mobile homes within a community take two indirect forms. Some municipalities have ordinances limiting the number of mobile home parks. Other ordinances place a limit on the number of mobile homes within any park. This writer knows of no attempts at limiting directly the total number of units located within a community, though, for example, under a Wisconsin statute it is theoretically possible.

Limitations on the Number of Mobile Home Parks

Ordinances which limit the number of licenses for parks might be held invalid because of unreasonable interference with, or restraint upon, trade or commerce. Mobile home parks are not nuisances per se.[72] Since the mobile home resident is no longer a transient, desirable ratios of permanent residents to transients is an irrelevant argument. Thus, there are no grounds for suppression of mobile home parks, nor for denial of the right of free competition.

Limitations on the Number of Mobile Homes per Park

Provisions limiting the number of mobile homes per park also appear to raise questions of legality. While determination of density is a proper exercise of zoning power, there is no rationale for limiting the number of units per park regardless of its acreage. Such provisions deny the park owner the right to exploit fully his real property.

An ordinance limiting the number of units in any one park to twenty-five was finally sustained by the

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[72] cf. Chapter Iv.2.13

Wisconsin Supreme Court[73] on the grounds that it bore a reasonable relationship to the welfare of the school district. The main argument advanced was that the school district could not otherwise adequately plan for the future. (97:66) This justification is district-oriented (as is the express language of the Wisconsin statute--quoted below--conferring this power to limit the number of spaces per park). Thus, for an individual school district, the provision might have a similar effect as zoning. But the restriction applies to any park, making it objectionable, though no court has considered the legality of such a provision if operative throughout an entire community.

Limitations on the Number of Mobile Homes

In at least one state (Wisconsin) municipalities are authorized by statute to limit the number of parks and the number of units per park, thus having the power to limit the total number of mobile homes which may lawfully remain within their boundaries: "...They (city councils, village and town boards) may limit the number of... mobile homes that may be parked...in any one...park, and limit the number...of parks in any common school

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[73] Town of Yorkville v. Fonk, 3 Wis. 2d 371, 88 N.W. 2d 319 (1958).

district if the mobile housing development would cause the school costs to increase above the state average or if an exceedingly difficult...situation exists with regard to...sewage disposal..."[74] A corresponding provision authorizing municipalities to limit the total number of non-mobile home families in a community would be unconstitutional. Because of the present characteristics of the (im-)mobile home population, the quoted provision discriminates against one segment of the residential population, and might be unconstitutional as well.

The ordinances under discussion can have the effect of, or can be misused for, excluding all mobile home parks from the community. And, if mobile homes are prohibited outside of parks, it may mean exclusion of all mobile homes. Such attempts, which are probably unconstitutional, will be discussed in chapter 2.1.3.

Implications of Limiting the Number of Mobile Homes

Limitations on the number of parks within a community, or on the number of units per park, are provisions which ironically enforce by law the very conditions which are recognized as causes for sub-standard trailer camp slums.

Limiting the number of parks may create monopolies.

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[74] Wisconsin Stats. Sec. 66.058 (2) (6).

Lack of competition is a major cause for the many over-crowded sub-standard mobile home parks. Monopoly does not stimulate the development of desirable parks. A park owner in such a case, especially in light of the highly unsaturated demand for park space, will hardly improve his park beyond minimum code requirements. While this will assure adequate sanitary conditions, such parks will at best "...have all the charm of a motor pool in Kansas during August." (562) All such provisions accomplish is to assure the community that some blight and sub-standard housing will exist. By allowing competition, a municipality can discourage the under-financed developer (who could capitalize on a small investment and on low-standard operation) and instead attract large investments under the stimulus of free enterprise, thus benefiting the community in many ways. Modern mobile home parks can be definite assets to a community, but in the absence of competition they are unlikely to be developed properly.

The monetary return from small "mom and pop" parks is so slight that the physical appearance of the park may be allowed to degenerate. A mobile home park with less than fifty spaces is a rather marginal operation; the Mobile Homes Manufacturers Association discourages park developments below this size. Parks with at least 100

spaces may yield returns on investment which would allow proper buffering and facilities. Bartley proposes that zoning ordinances should specify not less than 50 spaces per park as a prerequisite for mobile home park developments. (17:96) Thus, hard economic facts definitely require a minimum number of units per park. Limitations on the number of units per park are most likely to prove detrimental to the welfare of the public.

Conclusion

The ordinances under discussion are at the least legally questionable. They enforce conditions which are detrimental to the general public welfare and to the growth of the mobile home industry. These provisions should be eliminated.

2.1.3 Exclusion of Mobile Homes from the Community

Anti-mobile home sentiments have led many communities to pass ordinances which outlaw mobile homes from within their jurisdiction. Complete prohibition "in lieu of regulation" constitutes the most extreme expression of local hostility.

Is the Mobile Home a Nuisance *Per Se*?

Attempts to justify such drastic provisions have declared that mobile homes or mobile home parks are nuisances *per se*. For the mobile home opponent, this is an ideal exclusionary device. "If the use of a property is so unquestionably and inherently detrimental to the public health and welfare that its continuation should not, under any circumstances, be permitted, it may be completely prohibited in the exercise of municipal police power." (97:80)

The courts, however, whenever they had to consider this question, have held clearly that mobile homes or mobile home parks are not inherently nuisances when in compliance with reasonable sanitary and safety standards; and that, therefore, they can not be declared nuisances *per se*.[75] Of course, mobile homes and parks can become nuisances *per accidens*. In *Richards v. City of Pontiac*,[76] the

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[75] Richards v. City of Pontiac, 305 Mich. 666, 9 N.W. 2d 885 (1943); County Board of Supervisors v. American Trailer Co., 193 Va. 72, 68 S.E. 2d 115 (1951); re Falls Township Trailer Ord., 84 Pa. D. & C. 199 (Q.S. Bucks County 1952); Gust v. Township of Canton, 342 Mich. 436, 70 N.W. 2d 772 (1955); Smith v. Building Inspector, 346 Mich. 57, 77 N.W. 2d 332 (1956); Kessler v. Smith, 142 N.E. 2d 231, 235 (Ohio, 1957); Schneider v. Wink, 350 S.W. 2d 504 (Ky. 1961).

[76] Supra note .

court responded properly in such a case: "...the operation of a trailer park is not a nuisance per se. If the ...park proves to be a nuisance per accidens, then regulation may be called for." County Board of Supervisors v. American Trailer Co.[77] similarly held that though some businesses are inherently harmful and may be prohibited, mobile home parks are not inherently offensive and, thus, may be subjected only to reasonable regulation.

Mobile homes or mobile home parks are not nuisances per se, nor inherently detrimental to the public health, safety, morals or general welfare. Exclusion is not justifiable as an exercise of police power.

Extent of Exclusionary Practices

In spite of such legal obstacles mobile homes are prohibited within the municipal jurisdiction of many communities.

In 1960, the National Association of Real Estate Boards, the N.A.R.E.B., Department of Research and the Realtor-City Planners Committee began a nationwide survey to identify the problems that mobile homes and mobile home parks pose for planning commissions, municipal officials and so forth.(61) An enquiry was directed to realtors who were members of planning or zoning commissions...

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[77] Supra note .

in their local areas. One hundred-forty-four communities scattered all over the nation responded.[78]

One question was: "Are trailer parks permitted within the city limits? Yes? No?" The survey found that mobile home parks were permitted within the city limits in three-fourths of the communities queried. Cities in which parks have not been permitted are not concentrated in any single state or region, but are scattered throughout the nation. They frequently are fast-growing municipalities in major standard metropolitan areas.

Trailer Parks Permitted Within City Limits
(Percentage Distribution)

Type of City	Yes	No
Under 25,000	93	7
25,000 to 50,000	69	31
Adjacent to SMSA	71	29
Satellite of SMSA	63	37
SMSA	71	29
Nationwide Summary	74	26

(61)

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[78] The regional location and population type of communities represented in the survey range from small cities to major metropolitan ones.

Population of Areas Represented in Survey

Type of Community	Total	Reg. 1	Reg. 2	Reg. 3	Reg. 4
Under 25,000	29	1	8	11	9
25,000 to 50,000	16	1	5	8	2
Adjoining SMSA & functioning as part of SMSA	38	4	16	10	8
SMSA, Satellite	25	6	5	4	10
SMSA, Center City	36	1	9	11	15
TOTALS	144	13	43	44	44

(61)

The writer, having no access to the primary data, can not determine whether the survey is representative for the nation. But the present distribution pattern may be approximately the same. Still, in 1968, two-thirds of the nearly 600 municipalities in New Jersey prohibited mobile home parks.

A 1937 survey of the American Municipal Association which compared 53 municipal ordinances, found 9 which completely barred trailers. (10:12)

Indirect Exclusionary Devices

Indirect attempts at exclusion either avoid any mention of mobile homes or even conditionally permit mobile home parks. An "effective" method is permission upon compliance with local building or housing codes which have no specific provisions for mobile homes. The zoning power also offers many possibilities. An inclusively worded zoning ordinance may fail to specify any district where mobile home parks are permitted; or an inclusive-type ordinance may provide for such districts; but the schedule of district regulations may set forth requirements which practically can not be met. One ordinance limited mobile home parks to business districts on areas containing at least one acre. There were,

however, no available properties in these districts of one acre.[79] Or, as an equivalent to the notorious large lot zoning practice, minimum lot sizes for mobile home parks may be set forth in the schedule, often as much as 10,000 or 20,000 sq.ft. (291:3) which make the development of a park economically unfeasible. Or finally, a large minimum number of lots per park, respectively a large minimum total acreage, may be required for a district where the accumulation of large plots may be practically impossible. It was mentioned that provisions with limitations on stay or on number of mobile homes respecting parks can be employed as exclusionary devices. Ordinances may permit mobile home parks within the city limits if "...city water and sewer connections and fire protection facilities are available." (292) "Availability" is a matter of discretion. A Michigan court[80] had to direct a city to issue permits authorizing water, sewer and electrical services for the plaintiff's mobile home park, holding that the denial of permits was motivated by the city's efforts to prohibit mobile home parks. (97:85) A paradigm for another frequently employed indirect method--approval by owners of adjoining properties--is this provision of the trailer ordinance of the City of Winston-

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[79] June v. City of Lincoln Park, 361 Mich. 95, 104 N.W. 2d 792 (1960) (held valid).

[80] Knibbe v. City of Warren, 363 Mich. 283, 109 N.W. 2d 766 (1961).

Salem, North Carolina: "There shall be no limit upon the duration of a trailer permit in any area having available sewer and water services, provided...(b) the application for permit is accompanied by the written approvals of the owners of the immediately adjoining properties or their agents." This dual requirement, "availability" (at the discretion of the city) and approval by (almost certainly anti-trailer biased) neighbors, is indeed an effective safeguard against mobile home parks. Frontage consent provisions, in essence a species of zoning regulation, have often been misused for exclusionary purposes.

These indirect attempts will be discussed in later chapters. But it should be mentioned that such methods have often succeeded in courts which may not have been aware of any latent constitutional problems. Some courts remain unaware of the change towards permanence and sanitation in mobile homes.

Direct Exclusionary Devices

The list of direct exclusionary devices includes ordinances which expressly prohibit mobile homes and parks, without integrating such exclusion into, or justifying it by, zoning or other local regulation. Direct exclusion may also take the form of an (exclusive-type) zoning ordinance

provision, expressly prohibiting mobile homes and parks from all zoning districts. More recently, the latter provisions are often being justified by long-term comprehensive plan objectives. This is, of course, a prerequisite for valid zoning regulation, but it also is a general, successful tactic to gain the sympathy of the courts.[81]

A provision of the California Mobile Home Park Code deserves quotation: "The provisions of this part shall not prevent local authorities...within the reasonable exercise of their police power, from prohibiting mobile homes or mobile parks, travel trailers, travel trailer parks, recreational trailer parks, temporary trailer parks, or tent camps within all or certain zones..."(28)

Litigation

In all pre-1955 cases known to the writer, the courts invalidated all direct attempts at complete exclusion. Since 1955, the courts in most cases held complete exclusion invalid, although a few ordinances have been sustained.

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[81]Hohl v. Township of Readington, 37 N.J. 271, 181 A. 2d 150 (1962).

Invalidated Direct Prohibitory Ordinances

Whenever the courts invalidated direct exclusionary provisions, they have rested on constitutional grounds, conflicts with state statutes, or absence of proper municipal authority.

An ordinance which related in part to gypsies and other transients prohibited "any person...from parking...any trailer which is or can be used for living quarters on any lot, property or street within the limits of the township...,or to maintain or use any trailer camp... within the township..." The restriction was ruled in violation of the Fourteenth Amendment of the Constitution. The prohibition on parking a trailer upon private lots, irrespective of the time factor, was found particularly "unreasonable and arbitrary."[82] Another Pennsylvania court[83] in 1961 invalidated a zoning ordinance prohibiting permanent occupation of mobile homes with a floor area of less than 550 sq.ft., and prohibiting the establishment of mobile home parks. The court held the floor area provision discriminatory since it applied to only one class of dwelling; it also found that the effect of the ordinance

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[82] Commonwealth v. Amos, 44 Pa. D. & C. 125 (Q.S. Delaware County 1941).

[83] Shellhamer v. Zoning Board of Adjustment, 29 L.J. 228, 52 Mun. L.R. 315 (Pa. 1961).

was to exclude mobile homes and parks from the township and, therefore, in no way related to the preservation of public health, safety, morals and general welfare. The court quoted: "...zoning boards...must remember that property owners have certain rights which are ordained, protected and preserved in our Constitution..." (97:86)

Other direct attempts were struck down by the courts because of conflicts with state statutes.

Two Michigan courts[84] invalidated township zoning ordinances which they held to be in irreconcilable conflict with a state statute authorizing the licensing of mobile home parks. The ordinances expressly prohibited the development of parks. Both decisions are important because underlying each case was the implicit premise that a municipality can validly prohibit what the state permits, if it claims reasonable relation to the public welfare. Thus, both decisions clearly hold that municipal prohibition of mobile home parks does not bear a relation to the public welfare. (97:84) In 1959 another Michigan court[85] invalidated a zoning ordinance on grounds

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[84] Gust v. Township of Canton, 342 Mich. 436, 70 N.W. 2d 772 (1955); Smith v. Building Inspector for Tp. of Plymouth, 346 Mich. 57, 77 N.W. 2d 332 (1956).

[85] Kremers v. Alpine Township, 355 Mich. 563, 94 N.W. 2d 840 (1959).

of conflict with the state statute, which attempted to empower the Board of Appeals to exclude mobile homes from the township.

In re. Falls Township Trailer Ordinance[86] a Pennsylvania court considered an ordinance that prohibited the presence or use of house trailers within the township at any time, for any reason or for any purpose other than uninterrupted transit. The ordinance was not invalidated because it was authorized by delegation of the police power. The Court ruled that although the township had power to adopt building regulations or zoning ordinances which might regulate house trailers, it had no authority flatly to prohibit them. This was particularly true because second-class townships lacked broad, general police powers such as had been granted to other classes of municipalities in Pennsylvania.(1064) The court added that "...while...a trailer park might, under particular circumstances, constitute a nuisance in fact, such possibility provides no warrant for outlawing them entirely."

Sustained Direct Exclusionary Ordinances

A few courts have upheld direct prohibitory ordinances. These decisions are commonly ignored as unfortunate judicial errors, or indications of the lack of awareness

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[86] 84 Pa. D.&C. 199 (Q.S., Bucks County 1952).

of any latent constitutional problem. This might be true for two or three of the decisions in question.[87] The remaining cases which have been sustained, however, might be indicative of a recent judicial trend.

In Carlton v. Riddell[88] the court decided that a township could prohibit a mobile home park anywhere within its jurisdiction: "We find it difficult to understand how any comprehensive zoning plan can be adopted by a township if in every such plan, provisions must be made for all types and kinds of businesses, and if the zoning regulution is void if any specific business is prohibited." The provision in question did not relate to any comprehensive plan objective, but sought to justify the exclusion by declaring specifically that mobile home parks were nuisances. Though the court may have erred in its ruling, it may have set a precedent in the wording of the decision.

In another Ohio case (not involving mobile homes) the United States Court of Appeals[89] held that a village had

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[87] e.g. People v. Lederle, 206 Misc. 244, 132 N.Y.S. 2d 693 (1954); Davis v. McPherson, 132 N.E. 2d 626 (Ohio App., 1955); Vickers v. Township Committee of Gloucester Tp., 68 N.J., Super. 263, 172 A. 2d 218 (1961).

[88] Carlton v. Riddell, 132 N.E. 2d 772 (Ohio Ct. App., 1955).

[89] Valley View Village v. Profett, 221 F. 2d 412 (6th Cir. 1955).

the power (under the Ohio statutes and constitution) to incorporate its entire area into a single residential district. The court held that the test of validity of a zoning ordinance is not in the number of districts provided, but the substantial relationship of the ordinance to the general public welfare. (306:235) In the reviewed Gust v. Township of Canton case the court also conceded that lawful land use may be prohibited in certain districts by ordinances bearing a "substantial relationship to the general public welfare."

In a 1962 case[90] this principle was used as grounds to sustain a prohibitory ordinance. The court stressed the planning of the township to develop a low-density population area and to eliminate houses on small lots, apartment houses, and mobile home parks. The court held that the township could define a desired future development as a long term goal and plan the type of land use consistent with it. (97:88)

This line of reasoning is valid. Different communities can constitutionally use their land in different ways. "The very nature of township existence is such that not all facets of urban community living are included. Reasonable planning arguments can be made for the adoption by a suburban

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[90] Hohl v. Township of Readington, 37 N.J. 271, 181 A.2d 150 (1962).

township legislature of a comprehensive zoning plan that does not include many of the business and even residential uses found in other types of communities." (306:234) Especially in smaller communities mobile home parks may be so incompatible with the comprehensive plan that exclusion might be valid.

Since it seems that in the future more courts will use this argument, its inherent danger should be recognized. This device is an ideal tool for communities hostile towards mobile homes. Reference to a "comprehensive plan" (in most cases a vague plan anyway) can be used to cloak the real objective--exclusion.

The courts certainly will have difficulties declaring such exclusionary ordinances invalid. They could test the validity by considering the regional context. But under the present system of zoning legislation, it would be practically impossible to establish the invalidity of an ordinance in relationship to the regional plan. Thus, there is danger that this device may be misused. And the courts should attempt to identify the real motivation in each case.

Conclusion

The frequent exclusion of mobile homes constitutes a severe barrier to the growth of the mobile home industry.

The courts have invalidated most direct attempts to exclude mobile homes from a city or township. "If the use of a particular type of property or conduct of a particular type of business is not inherently detrimental to the public welfare, its absolute prohibition is a denial of equal protection of law and of due process of law." (97:82) It can be assumed that the courts will continue to declare total exclusion unconstitutional with one probable exception: express exclusion by zoning ordinances based upon a consistent comprehensive plan. Since comprehensive plan objectives can be misused to cloak real intentions, the courts must not hesitate to strike down ordinances which have such an aim.

Unfortunately, however, it is likely that prohibitory ordinances with indirect exclusionary provisions may continue to be upheld in the courts.

The high number of municipalities which still outlaw mobile homes is largely due to the lack of challenge of these ordinances. A small prospective park developer is unlikely

to take such a step. With more and more big corporations moving into the mobile home park industry, this may change. Most exclusionary ordinances would probably be invalidated if challenged.

Municipalities hopefully will soon realize that exclusion is a dangerous policy. "If courts are not allowed within the city limits, they will probably be established just outside. Future city growth will bring these courts within the city limits anyway and not having been regulated by a city code they will likely be sub-standard in nature. The demand for first-rate courts exists." (289:9) An appropriate plan for attaining an attractive community is to permit mobile home parks, while insuring (by carefully designed requirements) that only high quality parks will be developed. A modern mobile home subdivision (especially if characterized by double-wide units, easily stimulated by specifying requirements), hardly looks different from a traditional single family development. And before long the "relocatable home" will anyway penetrate the community, in spite of provisions outlawing "mobile homes." In the long run, prohibitory ordinances are ineffective.

2.2 Housing Regulation

2.2.1 A New Regulatory Tool

To enforce minimum housing standards for individual dwelling units and their immediate environment, states and municipalities have developed housing codes. Distinct from building codes, whose objective is to protect the public against faulty structural design or construction of essentially new buildings, housing codes are primarily intended to maintain minimum standards of living in existing structures. Housing codes prescribe regulatory measures requiring that the existing housing inventory be brought up to minimum standards of health, safety, and sanitation. The main objective is the conservation of housing quality. This control, however, through code enforcement programs, is used to revitalize blighted housing and neighborhoods by stimulating rehabilitation, respectively removal of substandard units. Implicitly such codes also cover and influence the design and construction of new structures. Housing code regulation primarily establishes minimum standards for facilities and equipment, for maintenance, and for conditions of occupancy (room and area crowding).

Housing code regulation is a relatively recent regulatory

tool. Responding to the generally recognized need for minimum housing standards, in 1952 the American Public Health Association published "A Proposed Housing Ordinance." At that time only a few cities had such codes. Since 1954, however, as a prerequisite for receiving federal grants for public housing in connection with urban renewal projects, federal law requires communities to demonstrate progress in preparing housing codes. Thus most housing codes were adopted after 1954. By 1962 some 700 communities had promulgated housing laws.[91] Since then, model housing codes have received wide acceptance. An educated estimate suggests that about one third of the communities with building codes now also have housing codes.

Unfortunately, the nature and scope of many such codes are vague or redundant. Too often requirements are vaguely phrased and subject to individual interpretation. When anti-mobile home feeling is widespread, there is a temptation for discriminatory misapplication of such provisions as "sufficient ventilation" and "safe condition." Frequently housing codes are loaded with references to, or provisions of other codes. Often, "housing" codes nearly duplicate building codes, or vice versa. In fact housing and building code regulation are frequently used

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[91]Usually, housing codes cover multiple dwellings. In some cases, however, "Multiple Dwelling Laws" have been developed as separate codes. Only a few codes expressly cover mobile homes.

synonymously. Enforcement of housing codes is often lax. Limited staff or funds is a frequent cause of ineffective housing regulation.

2.2.2 Restrictive Housing Code Regulation of Mobile Homes

Even though most housing codes were enacted in the post-trailer era, they usually do not expressly attempt to regulate mobile homes. The relevant question is to what extent should mobile homes be subjected to codes which apply to "all forms of housing?"

Prior to 1954, with specific housing codes still an exception, relevant requirements were contained in other codes (usually building codes), especially minimum floor space requirements. Chapter IV.2.3 discusses the frequent employment of local building code provisions as an exclusionary device. While courts often invalidated such practices if the provisions in question were obviously inapplicable to mobile homes (such as chimney or rain downspout requirements), they generally sustained attempts to impose housing standard related requirements upon mobile homes.

Thus, in all cases known to the writer, where mobile homes were subjected to "traditional" minimum floor area requirements, the courts upheld these attempts,, even though

they resulted in exclusion.

In 1937 Justice Green in a famous case People v. Gumarsol[92] upheld an ordinance, applicable to trailers, which required a minimum total usable floor area of 400 sq.ft. for every "building used for dwelling purposes." In the days of the small trailer this was outright exclusion. An ordinance subjecting mobile homes (after 30 days) to normal minimum floor space requirements was held valid by a Pennsylvania court[93] in 1951. "The township is not bound to exempt house trailers from the requirements applicable to ordinary dwellings." In 1953 another ordinance, requiring a minimum of 900 sq.ft. for any "building" or "structure", was held applicable to mobile homes:[94] "...A metamorphosis has occurred; the mobile vehicle has become a fixed residence."

The imposition of these unrealistic code requirements effected elimination of trailers from the community. The practice is subject to the same constitutional objections.[95]

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[92] People v. Gumarsol, Justice Court, Village of Orchard Lake, Oakland County, Mich. (1937).

[93] Commonwealth v. McLaughlin, 168 Pa. Super. 442, 78 A. 2d 880 (1951).

[94] Corning v. Town of Ontario, 204 Misc. 38, 121 N.Y.S. 2d 288 (1953).

[95] This objection does not apply to similar cases where minimum floor area requirements such as 700 sq.ft. (e.g. Kinsey v. City of Rome, 84 Ga. App. 671, (1951). specified by zoning ordinances for particular zoning districts, were held applicable to, and effected prohibition of mobile homes. It is likely that such provisions would be upheld

as direct attempts at exclusion. After the trailer had long been recognized as a legitimate alternative form of housing by state legislatures and some courts, the lack of a few square feet of floor space is a highly questionable argument for exclusion--especially since such codes were usually enacted long before the advent of the trailer. And, no substantiation has ever been offered that mobile homes are by their nature inadequate for permanent residence.

The courts' inclination to sustain such practices is still considered a serious problem by many writers. Particularly provisions specifying an absolute minimum amount of floor space per "dwelling unit," and thus not necessarily preventing overcrowding, "...may...be unrelated to the interests of public health. Any deprivation of the use of the mobile home owner's property is unconstitutional unless related to the public welfare." (97:79)

The rapid development of the mobile home has obviated these concerns. Minimum floor space requirements, effectuating exclusion a few years ago, can often be met by the larger units of today,[96] and almost always by the modern

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even if no other districts with less space requirements were provided for. (cf. Chapter Iv.2.1.3)

[96] A 65 ft. long twelve wide has some 720 sq.ft. of living area, a 60 ft. x 24 ft. double wide some 1440 sq.ft.

double-wide. Typically, the writer did not find any court decisions after 1954 upholding minimum floor space subjections. Perhaps this is because of the larger units[97] which were more likely to meet such requirements, especially if of the space-per-occupant type. Another reason may be that many such requirements may have been transferred (possibly in revised form) into newly promulgated housing codes.

The adoption of housing codes by local government units is a discernible trend. Incorporation of housing regulation related provisionsinto building codes, though still common, is a declining practice.

2.2.3 Non-restrictive Housing Code Regulation of Mobile Homes

In 1952 the American Public Health Association published a "Proposed Housing Ordinance." Mobile homes were not considered when developing the standards. It is interesting to note that today's mobile home nevertheless meets all the requirements specified.

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[97] 1954: introduction of ten-wides.

The mobile home passes all equipment, facility, lighting, heating and ventilation requirements; in fact, the modern mobile home shows more strength in these aspects than many traditional houses. The critical problems rather are "Minimum Space, Use and Location Requirements" as specified under section 8.1. Minimum requirements for each dwelling unit are 150 sq.ft. of floor space for the first occupant and 100 additional sq.ft. for every additional occupant. Obviously, modern mobile homes exceed those standards. Section 8.2 requires rooms occupied for sleeping purposes to contain at least 70 sq.ft. if occupied by one person and 100 sq.ft. if occupied by two. If one includes space occupped by built-in wardrobes in the floor space computation, then virtually all modern units meet or exceed those standards. Even if built-in wardrobe space is deducted, most mobile homes still meet the criteria. Another provision, section 8.3, relating to the spatial inter-relationship of bedrooms and bathrooms is also met by practically all units, as are minimum ceiling height provisions.

The mobile home inventory does not, of course, consist only of modern units. Ten year old models often can not meet the minimum standards for bedrooms. There is then an apparent need for special temporary adaptation to ensure that all mobile homes are covered which meet reasonable

standards.

The New York State Division of Housing has accepted this challenge and developed a "Model Housing Code Applicable to One and Two Family Dwellings Multiple Dwellings, Mobile Homes and Mobile Home Courts." (265) Chapter I, which closely parallels the APHA ordinance provisions, deals with residential premises; Chapter II, on "Mobile Homes and Mobile Home Courts," contains provisions specifically adapted to the mobile home.

Adaptions in terms of occupancy standards, minimum room dimensions (including ceiling heights), light and ventilation, and foundation requirements are most commendable. In all these cases the inherent characteristics of the mobile home have been considered carefully without lessening the requirements as to endanger the objectives of housing regulation. For example, the minimum habitable floor space requirements per occupant are logically nearly the same for mobile homes and residential premises. But for residential houses, the number of occupants is determined on the basis of the floor areas of habitable rooms, while for mobile homes on the basis of floor area of habitable total space, however subdivided. The requirements for mechanical systems and equipment in mobile homes are logically more severe. An older trailer can be upgraded

by installing a space heating system, but it can not be made wider. These provisions, for example, in effect prohibit any dependent trailer. Sections B-201 and -202 attempt to specify design and construction criteria, closely related to safety or living comfort, which can be checked locally without disassembling the unit. This would remove structurally unsound, poorly insulated, or non-weather tight units from the inventory.

The New York State Model Housing Code follows the concept of the nationally famous New York State Building Construction Code; both are performance-type codes. It is one of the rare attempts at positive regulation of mobile homes.

The code also contains a section on mobile home courts. The authors attempted to eliminate any material which has its proper place in other regulations, such as health and sanitation codes or zoning ordinances. The result was a mobile home court section worded very vaguely and containing little concrete material. However one chooses to define the scope of a housing code for mobile homes, it should not try to cover mobile home parks. By definition, housing regulation focuses on the dwelling unit and its <u>immediate</u> environment; mobile home parks can cover

hundreds of acres!

Pending completion of model occupancy standards for mobile homes being prepared by the Public Health Service, the New York Code is the best model housing code for mobile homes available at this time. The code has many deficiencies,[98] such as vague formulation in many cases (probably a negative result of the performance approach). But it is an excellent example of limiting the material to controls which do have their proper place in a housing code. Only too often are housing codes redundant compilations of irrelevant material.

2.2.4 Conclusion

In the past provisions, which by their nature fall under the category of housing regulation, have been used indirectly to prohibit mobile homes. The mobile home in the meantime by sheer size has outgrown this threat, and become nearly immune to such practices.

Housing code regulation is an important tool for maintenance of minimum housing standards for rehabilitation or elimination of substandards units. This control should

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[98] A current revision is under work which hopefully will eliminate most deficiencies of the 1960 version.

equitably cover all forms of housing, including the mobile home. The mobile home is undergoing a metamorphosis. It will soon emerge as the "relocatable" home, which presumably could meet any reasonable housing standard. (The modern mobile home in a modern park does already meet most requirements.) Some special drafting will still be necessary for some time. Special provisions should be transitory. Great care should be exercised in developing performance-oriented general housing standards which logically and consistently can cover the whole spectrum of housing. The mobile home should not be considered an inconvenient bastardized variant requiring undesirable "exception," but should be considered a legitimate cause to re-evaluate obsolete traditional concepts. American City recognized this back in 1937:

"Though free to deal drastically with this new form of housing through direct application of existing health and housing standards, municipalities are urged to take advantage of the good points in the trailer movement...Encouragement of trailers as permanent dwellings by municipalities implies a willingness by officials and the public alike to face squarely the challenge to traditional housing standards. This means a revision of housing codes and their strict enforcement, especially with regard to overcrowding...A re-examination of the entire question of adequate

housing standards would be the most fortunate result of public desire, be it limited or general, to use trailers as permanent dwellings...The most unfortunate result would be the enactment of statutes and ordinances sanctioning life in trailers under housing conditions which would not be allowed in standard dwellings." (646)

2.3 Building Regulation

The National Association of Home Builders has repeatedly contended that mobile homes enjoy an economic advantage by their relative immunity to cost-boosting local building codes,[99] which gives them an unfair edge in the housing market. The association, for obvious reasons, has long maintained that mobile homes should be forced to comply with local building codes. (651) It is true that mobile homes rarely comply with traditional building codes; by their nature they can not conform to certain provisions! Yet, it certainly could not "enjoy" an unfair market edge, since this non-conformity often leads to its exclusion from the community.

2.3.1 Restrictive Building Regulation of Mobile Homes

Since the mobile homes does supply housing, many communities apply building codes to them. In many cases building departments may honestly consider this a necessary measure for the safety of the public; in other cases hostility has demanded compliance as an exclusionary device. In either case the practice is probably unconstitutional, since it effectuates total exclusion of a legitimate form of

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[99] The writer defines "building code" as to include "mechanical codes," which is mostly, but not always, the local practice.

housing from a community by application of obsolete and unrealistic codes. But in the few cases testing the validity of this de facto exclusion, the courts have not always been aware of the latent constitutional implications.

The majority of local building ordinances were enacted decades ago; they have hardly everybeen updated and do not of course relate in any way to the mobile home. But they do purport to regulate "all dwelling houses." And the mobile home has, by various courts, been held to constitute a "dwelling house," or a "dwelling," or a "home," or a "building," or a "structure." Naturally such decisions encourage subjection to building ordinances.

But the courts usually have hesitated to hold mobile homes subject to such restrictions, not primarily because of the obvious inappropriateness, but because they considered the intent of the legislative body. (476:29) And quite obviously, in the pre-trailer era, an intent to regulate trailers can not be assumed. Thus, in three out of five such cases known to this writer, the courts invalidated attempts to impose building codes by interpretation.[100]

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[100] Brodnick v. Munger, 111 N.E. 2d. 695 (Ohio App., 1952), affirming 102 N.E. 2d 48; City of Manchester v. Webster, 128 A. 2d. 924 (N.H. 1957); Johnson v. Village of Geneva on the Lake, 193 N.E. 2d 536 (Ohio App. 1962). The Webster decision was based primarily on the ground that the city council enacted the building code in 1911,

In the other two cases,[101] however, the courts relied on the fact that de facto mobile homes are used as permanent residences and held them subject to building restrictions.

However building codes expressly purporting to regulate mobile homes (usually by an amendment) are likely to succeed in courts. The writer is aware of two cases where the courts had to consider the validity of building codes with express applicability to mobile homes, but lacking any amendments taking their specialized characteristics into account. Both ordinances were sustained.[102]

The leading case is Lower Merian Township v. Gallup.[102] The ordinance involved contained a provision that any mobile home permanently occupied for more than thirty days in any ony year was subject to the local building code for single family dwellings. The court stated: "To say that these were not dwelling houses is an attempt to fictionalize a reality. They were used and intended to be used as homes, and were as much dwellings as any similarly sized structures could be...They differed from the ordinary house only

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when mobile homes were unknown. The court in Brodnick v. Munger considered the intent of the state legislature in authorizing counties to issue codes regulating buildings, not "vehicles." In the Johnson case, the court held the practice unreasonable.

[101] People v. Ledere, 206 Misc. 244, 132 N.Y.S. 2d 693 (1954 aff'd, 309 N.Y. 866, 131 N.E. 2d 284 (1955); Lescault v. Zoning Board of Review of Town of Cumberland, 162 A. 2d 807 (R.I. 1960).

in respect to the ease with which they could be moved." (emphasis original)

These examples indicate that in the future courts might be even more inclined to sustair the imposition of building codes upon mobile homes. The mobile home will resemble the traditional "dwelling house" even more in function and physical characteristics; consequently more and more municipalities will adopt amendments to their building codes referring to mobile homes (but not necessarily responding to their characteristics). Then even the criterion of intent would provide additional grounds to uphold such ordinances. The possible result is more effective exclusion with strong judicial backing. It should be mentioned that the court in the Gallup case typically did not consider the reasonableness of subjecting the mobile home to code restrictions which are obviated by its inherent characteristics. (For instance, a mobile home can not, and need not meet chimney or foundation requirements.) The question arises, but is not answered by the courts, "... whether such restrictions are so unreasonable that they are invalid on constitutional grounds or unauthorized by enabling legislation which limits such ordinances to

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[102] Lower Merian Township v. Gallup, 158 Pa. Super. 572, 46 A. 2d 35 (1946), appeal dismissed, 329 U.S. 669, 67 S. Ct. 92, 91 L. Ed. 591; Rezler v. Village of Riverside, 28 Ill. 2d 142, 190 N.E. 2d 706 (1963).

measures bearing some discernible realtionship to the public health, safety, morals, or welfare." (476:29)

In short, this trend analysis indicates that building code restrictions would have continued to constitute a significant problem for the mobile home industry, if the industry had not circumvented the menace by a drastic step.

2.3.2 The Mobile Home Industry Cuts the Gordian Knot

The mobile home industry was aware of its vulnerability to local building code imposition. During the fifties the Mobile Home Manufacturer's Association (MHMA) decided on a strategy of forward defense. It initiated a long term program of self-regulation. The objectives were the development of nation-wide uniform structural and mechanical standards for mobile home production. The basic tactic was to enlist the cooperation of impartial nationally known and respected institutions. The association worked closely over many years with the American Standards Association (ASA), and later with the U.S.A Standards Institute (USASI), with the National Fire Protection Association and many other institutions (including the Battelle Memorial Institute). This enabled the

association:

a) to enlist the best available experience and talent for developing adequate performance standards,

b) to demonstrate convincingly the industry's serious commitment to assure adequate quality of its product,

c) to safeguard that standards were geared to inherent characteristics of the production technology employed, and

d) to ensure that any redundancy in requirements was avoided.

In 1963 the ASA approved the "American Standard A-119.1-1963 for Installation in Mobile Homes of Electrical, Heating and Plumbing Systems." (240, 221) In 1967, the association adopted "Minimum Body and Frame Design and Construction Standards." (209) This standard has been submitted and approved by the USASI. The new construction standard has been combined with an updated version of the installation standard AS-A-119.1-1963 and with the NFPA "Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers " B 501 B-1964 into one single standard: In 1969, "USA Standard A-119.1-1969 for Mobile Homes--Body and Frame Design and Construction; Installation of Plumbing, Heating, and Electrical Systems" was published by USASI. (239).

Members of the MHMA must meet these standards as a requirement for membership. They affix a standards seal near the main door of each unit to certify this fact. The MHMA insures compliance by factory inspection on a continuing and unannounced basis.

This program is one of the most impressive and successful ones ever launched by any trade association. The Building Officials Conference of America (BOCA) and the Southern Building Code Congress have adopted (and included in their model codes) USA Standard A-119.1. The electrical section of A-119.1 is contained now in the National Electrical Code C-1. Ten states with mobile home laws have already incorporated code A-119.1 into their laws, and a number of states have such legislation pending. (188) The MHMA is seeking state regulation concerning the standard codes. It is most desirable, in the interest of nation wide mobile home code uniformity, that state legislatures incorporate these standards into their statutes.[103] In the

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[103] California also has a centralized state-enforced code for mobile homes which is closely patterned after the mobile home standards, and which was developed in cooperation with the Trailer Coach Association. (The T.C.A. respresents mostly California-based manufacturers, dealers, and suppliers. Apart from the MHMA, which is practically the association representing the industry, the T.C.A. is the only other industry association of significance. Both associations work together closely. Final absorption of the T.C.A. into the MHMA is most likely.)

meantime, it is encouraging that some local government units adopt the mobile home standards. In fact this is already a trend.

The major goal of this program was to prevent the restriction encountered by the industry with the myriads of different local building codes. It has an excellent chance for success.

Local attempts to restrict or exclude mobile homes by imposing obsolete specification-type local building codes are certain to continue for some time. But the writer believes that few courts would still sustain this practice in the future. The endorsement of the mobile home standards by many state legislatures, and the sponsorship by many respected national institutions should be convincing to the courts.

2.3.3 Building Regulation of Mobile Home Parks

Local building regulation of mobile home parks does not present any significant problem. Building codes implicitly cover permanent construction and installation of utilities. Some ordinances have special mobile home park provisions, like section 8-914 of the NIMLO Model Ordinance: "...All plumbing, electrical and building...work on...any camp...

shall be in accordance with the ordinances of the City of...regulating such work..." (292) The Federal Housing Administration's "Minimum Property Standards for Mobile Home Courts" (363) set forth (besides planning standards) standards for construction of mobile home parks which are offered to the FHA as security for insured mortgage loans. These minimum standards are in some cases more stringent than local regulations, particularly some of the FHA provisions for structural standards and utilities (sections 2600, 2700).

The only significant problem is local plumbing code requirements which differ from jurisdiction to jurisdiction. Where local requirements for water and sewage connections are at odds with standard mobile home equipment, complications arise. But a proposal to change the myriads of local plumbing codes, to make standard connections acceptable, will only prompt a resigned smile by anyone with some knowledge of the construction industry. The only tactically feasible proposal is coverage of the connection-device problem by state health regulation.

2.3.4 Conclusion

Building regulation of mobile homes illustrates the broad institutional implications of industrialization of building.

The principle of industrialization is identical with the principle of standardization of products and operations which exploit potential economies of scale by repetitive processes. Repetitive processing implies centralization of operations. Thus, quality controls of sub-assemblies of mass produced identical products must be centralized as well. This is particularly true in the case of complex assemblies (such as a mobile home) which conceal from inspection most of its components and sub-assemblies. The process of industrialization, de-localizing hitherto site-oriented operations, immediately makes established localized control systems obsolete. The courts, in holding local building ordinances applicable to centrally produced mobile homes, were apparently too occupied with legal reasoning to realize the irrelevancy of the question. The problem is not whether to subject the mobile home to a traditional local building code. Rather, it is how to insure acceptable structural and mechanical quality of a building module mass produced hundreds of miles outside the local jurisdiction, and brought in as a completely finished product, concealing almost any sub-assembly of relevance for local inspection. It is readily apparent that this problem has only one solution: precise definition of control objectives and respective performance requirements, and establishment of an impartial machinery approved by state or federal government, for periodic control of the centralized production process. The only function

left to the city council is to amend the building code so a mobile home can comply to the code by displaying the standards seal. And the building inspector merely has to look for the seal. (The "U. S. INSPECTED PASSED BY DEPT OF AGRICULTURE" seal adequately protects the housewife against any deficiency in central mass production of "all beef-frank-furters" without any need for a local meat inspector!)

The Mobile Home Manufacturers Association has grasped this principle and has cut the Gordian knot by circumventing local building code restrictions. Building code restriction will soon cease to constitute a barrier to further growth of the industry. Without this bold step, legislative, executive and judicial inertia would have guaranteed building code problems for some time to come.

Building regulation of inherently localized mobile home park development does not constitute a significant barrier.

2.4 Health and Sanitation Regulation

Trailer and trailer camp sanitation received much official attention during the thirties and forties. In 1941 the National Institute of Municipal Law Officers stated that trailers were "one of the outstanding municipal problems of the day." The dependent small trailer of those days naturally presented unprecedented sanitary problems.

In 1939 a joint committee representing the Conference of State Sanitary Engineers and the American Public Health Association submitted a final report (5:25) summarizing their work since 1937, respectively since 1926, when the Conference of State Sanitary Engineers began to study this problem. After examining construction and equipment of trailers, the report recommended specifications for the regulation of house trailer production. The joint committee stressed two points. There was no entire agreement among health authorities as to the adequacy of the sanitary equipment of trailers. And, "...there is the acknowledged difficulty of getting manufacturers to agree on and to accept any recommendation made to them or in fact, any uniform specification..." (5:26)

For some years the industry remained lax in responding.

But finally the concern of the committee proved unjustified. The industry itself initiated the development of, and enforced adherence to, high nation-wide standards of production and equipment. This move was so successful that since that time health and sanitation codes have no longer contained sections regulating the mobile home per se. This trend was, and is, supported by the increasing adoption of housing codes which are primarily concerned with health, sanitation and safety requirements of the dwelling unit proper.

2.4.1 Inception

The 1939 report of the joint committee was not, of course, confined to sanitary equipment problems of the trailer per se. The dependent units naturally did not contain much equipment of this type. The study was directed towards all health and sanitation problems involved in the use of trailers, and thus primarily to camp sanitation. Dr. Guy S. Millberry, Dean of the College of Dentistry of the University of California stated to the committee "...that he travelled 20,000 miles in 42 states and 3 provinces of Canada during 1937 and 1938 without observing any flagrant violation of sanitary precautions by trailerites.." (5:25) The report stated that most of the problems connected with house trailer camps were fundamentally "...all related

to known and tried procedures." The comittee concluded that "...experience in various states seems to indicate that trailer camps may best be supervised or regulated by existing laws and rules and regulations pertaining to tourist camps." (5:26)

These findings are representative of the results of other studies. Ever since, health and sanitation regulation of mobile homes and parks has followed this recommendation in principle. The situation has not changed. The following is a quote from a conclusion from a 1964 study: "The mobile home basically does not create extraordinary problems in regard to public health and safety...Sanitation and health regulations generally are sufficient to protect the health and safety of the mobile home resident and the community. Problems which exist should be corrected by the local director of health through enforcement of present regulations." (58)

In the early days of the trailer, many municipalities either limited the duration of stay or excluded trailers entirely from their jurisdiction. This led many camp operators to move over the community boundary lines. Thus able to dodge effective local regulation they began to operate camps which were often substandard, particularly in a sanitary respect. Naturally then at an early date, state health departments began to keep those facilities

under strict supervision, and worked consistently for the improvement of trailer camps. State health regulation was the only way to prevent substandard facilities from developing in areas without (or with defective) regulations. Over time, health regulation of trailer parks became the undisputed domain of State departments of health--directly if the camps were located in unincorporated areas,[104] and indirectly in the case of parks located in incorporated areas. (Local ordinances often adopted by reference State health and safety codes, or left this field completely to state control.)

This led automatically to state-wide uniformity of regulation and State health departments, in fact, were anxious to ensure such uniformity.

The reliance on State control also was beneficial to the quality of the codes. Naturally at the state level specialized talent, supported by adequate funds, can develop more consistent (and more impartial) regulations than would conceivably be possible at the local level.

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[104] Of course, counties also have promulgated rules and regulations governing trailer camps. But there was almost always a provision that State Department of Health regulations shall apply in cases of conflict with the State Health and Safety Code.

Furthermore, the inherently better intercommunication between state agencies inter se, and between state and federal agencies facilitated coordination in terms of approach and content of different state codes, and of state codes and model codes developed by federal agencies.

Health and sanitation regulation of mobile home parks is now embodied in various comprehensive standards developed, promulgated, and often recommended for local adoption by federal agencies; in state laws; and in local ordinances.

2.4.2 Federal and National Guidance

The U. S. Public Health Service

The Public Health Service has prepared an "Environmental Health Guide for Mobile Home Parks" (372) as an aid to Federal, State and local health agencies respectively authorities. It is intended to develop basic principles for mobile home park sanitation standards, in the broad sense of environmental sanitation. The agency aimed at preparing standards broad enough for nation-wide use, as recommended model legislation, yet easily amenable to local regulation. (372: 4,5) The following requirements were specified in detail (1966 edition):

1. Location and area (relation to public water

and sewerage systems, conditions of soil, ground water, topography, etc.).

2. Intra-park roads, parking areas, and walkways.
3. Recreational and service areas.
4. Mobile home stands and spacing in between.
5. Service buildings.
6. General layout (set backs, buffering, screening).
7. Water supply.
8. Sewage disposal.
9. Electrical system.
10. Fuel supply and storage.
11. Refuse disposal.
12. Insect and rodent control.
13. Fire protection.
14. Communicable disease control.

etc.

The U. S. Federal Housing Administration

Virtually the same matters, inter alia, are covered in the U. S. Federal Housing Administration's "Minimum Property Standards for Mobile Home Courts" (1962) (363).[105]

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[105]The standards combine into a single document, together with health and sanitation related regulations, highly detailed requirements for: materials, products; structural and mechanical design; general planning; etc. The document is a close equivalent of the FHA "Minimum Property Standards" for traditional housing units.

Since the standards are intended to ensure the eligibility of proposed developments for FHA-insured mortgage loans, the standards do not cover aspects of park operation such as insect or disease control.

The standards set forth are sometimes more stringent, and in every respect much more specific than the P.H.S. standards; but they do not differ in principle. While the standards do not lend themselves to direct local adoption, they have aided greatly many local health authorities in drafting consistent ordinances.

Other Federal Agencies and National Institutions

Recommended health and sanitation regulations for mobile home parks have been developed by many other Federal agencies and national institutions, usually in the form of model ordinances expressly intended for, and often actually adopted by, local authorities. Examples are the standards prepared by the U. S. Housing and Home Finance Agency (367), by the American Municipal Association (5:41-48), by the National Institute of Municipal Law Officers (292), and by the Mobile Home Manufacturers Association (236).[106]

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[106] The association (in its policy of upgrading sub-standard parks) has cooperated with most of the agencies and institutions mentioned.

Unfortunately, similar to the FHA standards, all these model ordinances are loaded with material unrelated to health and sanitation. This is done purposely since most municipalities tend to enact separate mobile home ordinances covering all aspects from zoning down to police regulation. In Chapter IV.1 the disadvantages of this approach have been discussed.

The health and sanitation content of each model ordinance, however, closely corresponds to that of others, often by direct reference. Particularly, the P.H.S. standards have often been directly adopted, respectively adapted. Provided that only the more recent of these models, respectively updated ones, are compared, there are no contradictions.

2.4.3 State Health Regulation of Mobile Home Parks

Many states regulate the health and sanitation of mobile home parks. The provisions of State Health and Safety Codes for Mobile Home Parks, respectively the rules and regulations promulgated, in most cases are similar in content (and often in wording) to the provisions of the P.H.S. standard.

The mobile home park statutes are usually interpreted and

and enforced by the Department of Health, in California by the Division of Housing. (28) Usually, as under the California Mobile Home Park Code, "any city, or county, or city and county may assume the responsibility for the enforcement of..." the mobile home park statute. (28:sect. 18010).

A permit from the Department of Health does not offer relief from securing local building permits or from conforming with any other municipal ordinance not in conflict with the state health regulations.

In some states, Departments of Health have prepared model mobile home ordinances. Successful examples were the ones prepared in the thirties by the California Division of (Immigration and) Housing,[107] which had been adopted by many counties and cities."...to prevent trailer camps... from degenerating into shack towns..." (1009:68)

Some states, such as California, have periodically updated their mobile home park acts by amendments. The latest California Mobile Home Park Code edition contains several pages of amendments to the original act (28). Not only do these reflect changes in mobile home park development,

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[107] One model ordinance was designed for incorporated, the other for unincorporated areas. (1009:68)

but they usually result in higher standards. Unfortunately, only some states do make frequent changes.

2.4.4 Local Regulation of the Sanitation of Mobile Home Parks

Many municipalities have directly adopted one of these model ordinances, usually those prepared by state health departments. An even greater number have at least based their ordinances on such models. Thus, practically every mobile home park ordinance has specific provisions concerning health. Again, the health-related aspects covered by the vast majority of ordinances are practically identical to the P.H.S. standards.

Due to the unfortunate[108] practice of enacting separate "mobile home park ordinances" covering all regulatory aspects, the health and sanitation related material usually is intermingled with provisions belonging in general ordinances, codes or regulations, such as material related to taxation, building regulation or zoning. The content structure of the "Suggested Model Ordinance Regulating Mobile Home Parks" prepared for the Mobile Home Manufacturers Association (as listed in Chapter IV.1),

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[108] cf. Chapter 1 of this section.

provides an example. It should be remembered that many of the older trailer ordinances, which often are still in effect, also contained many restrictive provisions.

2.4.5 Litigation

Only one problem has resulted in frequent court activity.

Quite a few state legislatures have failed to revise their statutes adequately. Yet some principal changes have become necessary through the modernizing of house trailers. All the mobile homes which are now being manufactured are of the independent type (i.e., they are equipped with toilet and bathroom fixtures). This has brought a need for individual sewer and water hook-up connections, which were not necessary in the older trailer parks accomodating dependent units. On the other hand, the lack of in-unit toilets and bathrooms required the provision of extensive communal lavatory facilities by the trailer park operator. Unrevised statutes and ordinances still set forth these obsolete requirements for superfluous facilities (which may in addition call for laundries, drying yards, or sinks for emptying slop jars).

There are practically no more dependent trailers in

existence. Furthermore, most park operators refuse to admit such veterans. Naturally, such operators feel they would be damaged by ordinances still requiring an anachronistic fixed ratio of toilets per unit accommodated.

One court invalidated a provision requiring service buildings with toilets in a park which only admitted independent units. The court saw "...no good reason for the duplication of sanitary facilities already available..."[109] Another court also held a provision invalid requiring the provision of communal toilet and bathing facilities for independent units.[110] "A mobile home park which accommodates only independent mobile homes is not required to provide toilet, lavatory and shower facilities in a community service building, but is required to provide laundry facilities[111] under the Michigan statute."[112] (97:101)

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[109] re. Falls Township Trailer Ordinance (No. 2), 89 Pa. D. & C. 208 (1954).

[110] Mitchell v. Town of Ulster, 4 A.D. 2d 811, 164 N.Y.S. 2d 529 (1957).

[111] Laundry facilities are still required by many statutes, even though lavatory requirements may have been deleted. And the service building necessitated is usually required to provide one toilet for each sex, which would take care of emergency situations. Since many old mobile homes have toilets and bathrooms, but no laundry equipment, this seems reasonable. But such requirements should be the maximum ones.

[112] Opinion No. 3343, January 8, 1959, Paul L. Adams, Attorney General of Michigan.

If a state legislature is not prepared to make this revision, then an amendment should be added expressly providing for different treatment of parks which do and do not accommodate dependent units.[113]

2.4.6 Conclusions

The writer had many state mobile home park statutes and local mobile home parks ordinances available to him. A thorough examination of all detailed provisions did not yield any evidence that health and sanitation regulation of mobile homes constitutes a barrier to the growth of the industry; the analysis of this chapter does not indicate this either. To the contrary, the regulations are usually rigidly enforced and, thus, guarantee a continuous upgrading of mobile home parks, for many years a main policy objective of the industry.

The analysis supports the conclusion of other chapters that discriminatory local regulation and taxation practices can best, and perhaps only, be eliminated by legislative initiative at the state level. The main reason for the agreeable situation in health and sanitation regulation is that the regulatory concepts were developed

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[113]Or, alternatively, a ratio of "toilets per dependent unit served" should be substituted for the old formula, "...per unit accommodated."

at that level.

Nevertheless, there are many deficiencies. Some states still fail to distinguish between mobile home parks and travel trailer parks, with concomitant failure to distinguish between, and provide for, their differing requirements. (425:293) Other states have not yet revised their statutes in response to the de facto death of the dependent trailer. These neglects call for corrective legislative action.

The writer found that many mobile home park acts come close to performance codes. The rules and regulations promulgated, however, are often literally "making specific the provisions of the law," virtually creating specification-type codes. And at the next stage of the "filtering" process, at the local ordinance level, this tendency is (for apparent reasons) even more pronounced. This is unfortunate. But the results and the causes are difficult to abate. Legislative inertia does not respond to minor deficiencies; local health authorities are likely to think for some time to come in terms of "deemed to satisfy" categories. However, the implications for park design and development appear negligible.

The high degree of existent correlation between most statutes, rules, regulations and ordinances appear to

call for a consistent effort at the Federal or State level to eliminate unnecessary minor variations, and to promulgate a nationwide uniform law regulating health-related aspects of mobile home parks. Primarily a matter of coordination, such action appears relatively uncomplicated and politically feasible.

2.5 Fire Prevention Regulation

In many, but not all communities fire codes are incorporated in building codes. Fire codes sometimes are administered and enforced by the local building department, more usually however by the fire department. This latter fact alone justifies a separate chapter on the subject. The main justification, however, is that fire prevention regulation of mobile homes takes some usually unrecognized indirect forms with broad implications.

2.5.1 Direct Fire Prevention Regulation

At an early date (1940) the National Fire Protection Association established and published "standards for Trailer Coaches and Trailer Coach Camps." The standards soon became, and still are, a preferred source of reference for statutes, regulations and ordinances. With periodic updating, regulation of the mobile homes as such were deleted. The mobile home industry's standards were developed under the co-sponsorship of the National Fire Protection Association. Thus, the 1962 edition contains only "Standards for Fire Protection in Trailer Courts," (254) and covers the following matters:

Ch.1 Location and subdivision of Trailer Parking and Trailer Courts

Ch. 2 Instructions to Court Personnel and Tenants

Ch. 3 Electrical Equipment & Systems

Ch. 4 Storage and Handling of Liquified Petroleum Gases

Ch. 5 Piped Gas Service

Ch. 6 Storage & Handling of Flammable Liquids

Ch. 7 Fire Protection of Trailer Courts

Ch. 8 Rubbish, Brush & Weed Removal

The writer could not discern any unreasonable or restrictive provisions despite extensive scrutiny. The standards are logical, reasonable and agreeably tend towards performance specification.

It has been mentioned that model codes, statutes, and ordinances for mobile home and mobile home parks are usually packages loaded with all kinds of provisions of different regulatory categories. They generally include fire prevention standards. The Public Health Service's standards, (372) reviewed in the preceding chapter, contain a section on "Fire Protection." "The Standards for Fire Protection in Trailer Courts published by the National Fire Protection Association, may be used as a guide in providing adequate fire protection for the trailer court." The section specifies only some requirements for fire hydrants and

portable fire extinguishers and the intervals of their placement , and an added requirement prohibiting any open fires throughout the park.

As with general health and sanitation regulation, this section of the P.H.S. Standard became a model. Many model codes, statutes and ordinances contain fire prevention sections almost identical in content, wording and length to the P.H.S. section.[114] The only difference is that reference to the National Fire Protection Association Code might be indirect, "...so...as to satisfy applicable...regulations of the fire department." (236:sect. 12) Or even more indirect, so "...that adequate precautions be taken to protect against fire..." (363:sect. 2601g) Other, less congruent, fire sections of models, regulations, or ordinances are at least in principle molded after the P.H.S. provision.

Thus, the characterization of the standards of the National Fire Protection Association can be generalized. Direct fire prevention regulation of mobile home parks is logical, reasonable and non-restrictive. The writer hastens to emphasize this applies to direct regulation.

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[114] e.g.: (236:sect. 12) (367:19).

2.5.2 Indirect Fire Prevention Regulation

In the early days of the trailer, state and municipal officials were greatly concerned with the possibility of fire hazards. There were many precaustions in ordinances protecting trailerites from injuries due to fire. The concern was unfounded: (as of 1941) "...few fires causing any serious damage to property or loss of life have been attributed to trailers..."(5:7) But in 1936 there was a tragic fire in a trailer in Texas[115] which received wide publicity. There was also a disastrous event on a Michigan farm in which five children burned to death in a trailer fire in 1938. (5:8) Though it was established that nothing inherent in the trailer was responsible, another myth emerged--the trailer as a fire hazard.

The myth was nourished by certain characteristics of trailers. Often they were of plywood, the heating was done by kerosene; consequently the fire hazard appeared to be great, But even later, when they were being manufactured of more fire resistant materials with a metal shell; cooking was done by electricity or liquified petroleum gas, kerosene stoves were still used for heating purposes. Even though statistics proved the de facto absence of fires

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[115] Aetna Life Insurance Co. v. Aird et al., 27 Fed. Supp. 141, affd. 108 Fed. (2d.) 136.

in trailers (by 1941), the myth prompted stringent direct fire protection regulation.[116] But there were broader implications. Minimum spacing requirements between trailers in parks were increased. And the much discussed prohibition of removing the wheels from the trailer, was introduced.

The writer is concerned here only with the "wheel-removal" provision. This provision became, and still is, widely employed.[117] Its validity has been sustained in White v. City of Richmond:[118] "(T)he provision that it shall be unlawful, except for repair, to remove the wheels or to fix the trailer to the ground permanently is not unreasonable. This section was enacted, no doubt, to reduce the fire hazard and to obviate a situation where the vehicles could not be quickly and easily moved. Where a number of trailers are parked each on a unit of 600 square feet, a congested area is created dangerous to both life and property in the event of fire. The provision is a reasonable exercise of the police power." Furthermore, there are provisions prohibiting awnings, cabanas, or porches attached or closely adjacent to the unit, unless constructed in a workmanlike manner of fire-resistant material.[119] With the

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[116] Primarily, at that time, extensive requirements as to special fire fighting equipment and fire extinguishers (such as at least one fire extinguisher per trailer--Chicago ordinance).

[117] Calif. Health & Safety Code, sect. 18250(a)+(c).

[118] White v. City of Richmond, 293 Ky. 477,479, 169 S.W. 2d 315, 317 (1943).

[119] Calif. Health & Safety Code, sect. 18250(g).

line of reasoning of the White case, such provisions are almost certain to be sustained.

The implications for the mobile home owner have been discussed in various chapters. Prohibition of removal of wheels, of permanent affixation of his unit to the land and of expanding his unit by light attached structures makes it conceptually difficult to tax the mobile home as real property, makes it impossible for the mobile home owner to create a traditional house look (and feeling) or to escape stay-limit or exclusionary provisions which offer (as their only alternative) compliance with local building codes.

In short, this denial of permanency force upon him an identity as a mobile home dweller, an image he wants desperately to avoid.

The authorities who enforce this provision have long forgotten that it was originally enacted to reduce a hazard which no longer exists.

2.5.3 Conclusion

This prohibitory provision against the removal of wheels was analyzed as an example. In this case the myth of the

mobile home as a fire hazard, decades ago, prompted the adoption of a provision which has survived without further question. But there were many myths: the trailerite as a moral, as a health, as a safety or as a financial hazard. And all these myths are still active in the form of some usually unrecognizably unrelated provisions, which though hopelessly obsolete, may still be rigidly enforced.

The example was chosen to demonstrate the necessity of including the historical background to any analysis of presently observable mobile home phenomena. The example was not intended to reverse the initial conclusion.

Fire prevention regulation of mobile home parks is sound, reasonable and does not present an obstacle to the development of the mobile home industry.

2.6 Subdivision Control

One regulatory tool which has not yet been employed significantly to control mobile home park design is subdivision control. This form of regulation probably has been ignored because its applicability to mobile home parks is not immediately evident (except, of course, in the cases of mobile home subdivisions). Mobile home park developers are not subdividing land for sale; but they do subdivide land for the location of individual residential units. Thus, concepts and procedures employed in connection with traditional subdivision control are potentially applicable. Later, this approach will be discussed as part of a regulation system proposed by this writer.

2.7 Zoning

"Zoning" is a misleading heading in the context of mobile home regulation. A more realistic formulation, "zoning against the mobile home," would better describe the general negative attitude toward the zoning of mobile home parks.

The (mis-)use of zoning as an exclusionary device has been discussed. Exclusion, however, in many cases certainly was beneficial to the mobile home dweller. Since most zoning ordinances relegated mobile homes to the industrial or commercial areas of the community.[120]

A 1958 study on mobile home parks by the Metropolitan Area Planning Commission of Wichita-Sedgwick County, Kansas found 58 percent of all parks located in commercial and industrial zones, "...to the detriment of a healthful

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[120] Some examples of various zones to which trailers and trailer parks have been assigned are given below.
Azusa, California - M-1, Light Manufacturing District
Chesterfield County, Virginia - C-H, Highway Commercial District
Dallas, Texas - C-1, Commercial District
Detroit, Michigan - B-2
Fresno, California - C-2, Commercial Zone
Huntington Beach, California - the Shoreline District
Los Angeles, California - Commercial Districts, C-2, C-3, C-4
Lufkin, Texas, G, Local Business District
Mount Vernon, New York - Industrial District
Providence, Rhode Island - C-4, Heavy Commercial Zone
Salinas, California - C-3, Commercial District
San Gabriel, California - Light Manufacturing District
Tulare County, California - C-2, General Commercial Zone

and desirable residential environment." (383:4)

The control of the location of individual mobile homes mostly took the negative form of exclusion from certain districts, primarily residential ones.

Mobile homes and mobile home parks have generally been banned from residential areas. Often they have been forced into the undesirable, blighted or near blight locations: between railroads and highways. "Mobile home parks should not be zoned into city dump and cement plant areas," the director of the Mobile Homes Manufacturers Association complained only a few years ago. "...Mobile home parks are still classified with junkyards, asphalt plants, stockyards and used car lots...", as a 1964 state-wide survey by Minnesota Municipalities on mobile home park regulation concluded. (593:154)

Furthermore, discriminatory zoning often can not calm opposition by strong factions in a community. In many cases specific zoning requirements have been used by municipalities to obstruct or prevent mobile home park developments even when they were expressly permitted.

"The zoning power that is used today on the one hand to protect conventional residential property is used on the

other hand to shunt other residential property, the mobile home park, offinto the very commercial or industrial district whose encroachments on conventional residential property are so much deplored." (17:75)

These practices force a major segment of the mobile home population, probably some two or three million mobile home residents, to reside permanently in environments which (by the very rationale of zoning) are incompatible with residential use.

This obvious discrimination against a segment of the residential population has caused a substantial amount of litigation. It is necessary to examine the legal problems to determine whether the judiciary can be expected to remedy this deplorable state, or whether legislative action is necessary.

The validity of a particular zoning restriction depends primarily upon these legal criteria:

The municipality must have the power to enact the zoning ordinance in question.

The zoning ordinance must be comprehensive in nature and not an isolated restriction of a specific use.

The zoning restriction must be reasonable, having a direct and substantial relationship to

public health, safety, morals and general welfare.

2.7.1 The Zoning Power of Governmental Subdivisions of the State

It is well established that mobile homes and mobile home parks can be restricted to, respectively excluded from, certain zones through proper use of the zoning power. The zoning power of local government units is dependent upon proper delegation to them of the police power by the state. Enabling legislation enacted by the state legislature alone authorizes subdivisions of the state to adopt a comprehensive zoning ordinance. Since most states, however, have such general enabling statutes conferring this power upon counties, towns, or townships, in a very few cases only can lack of proper zoning power provide a rationale for invalidating restrictive zoning ordinances.

Where such enabling legislation exists zoning ordinances have been sustained if found reasonable and if passed in conformity with the powers conferred.[121]

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[121] e.g.: Carlton v. Riddell, 132 N.E. 2d 772 (Ohio Ct. of App., 1955); Smith v. Building Inspector, 346 Mich. 57, 77 N.W. 2d 332 (1956).

However, conformity to the statute must be strict. Obvious attempts at exclusion of mobile homes "in lieu of regulation" have been declared invalid.[122] In the language of one court: "That which the legislature permits, the township can not suppress without express legislative authority therefore."[123]

2.7.2 The Comprehensive Plan as a Criterion of Validity

Most state enabling statutes provide that zoning ordinances enacted by local government units must be based upon a comprehensive plan. The rationale of this requirement is, of course, to preclude arbitrary restrictions.

The courts have generally recognized this principle. "Zoning necessarily involves a consideration of the community as a whole and a comprehensive view of its needs. An arbitrary creation of districts, without regard to existing conditions or future growth and development, is not a proper exercise of the police power and is not sustainable..."[124] Compliance with a comprehensive plan may even justify restrictions imposed upon specific areas

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[122] e.g.: Gust v. Tp. of Canton, 342 Mich. 436, 70 N.W. 2d 772 (1955).

[123] Gust v. Canton Tp., 337 Mich. 137, 59 N.W. 2d 122 (1953).

[124] City of Aurora v. Burns, 319 Ill. 84, 149 N.E. 784 (1925).

which otherwise would be held unlawful.[125]

Unfortunately, however, the nature of a "comprehensive plan" is subject to individual definition, even among planners, despite a voluminous literature on this subject. Thus, the judiciary can hardly be expected to be more specific; and courts considering mobile home ordinances differ as to the definition of comprehensive planning.

One example of an unjustifiably narrow definition is Gust v. Township of Canton.[126] The ordinance in question prohibited trailer parks, a measure justified by the township board as necessary to benefit from the anticipated future industrial development in the area. The court refused to recognize the validity of a plan for the future development of the area and concluded: "...The test of validity is not whether the prohibition may at some time in the future bear a real and substantial relationship to the public health, safety, morals or general welfare, but whether it does so now." Of course, this line of reasoning runs against the very foundation of zoning. The other extreme is well illustrated by the following language of a court which also considered an attempt at complete

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[125] David v. City of Mobile, 245 Ala. 80, 16 S. 2d 1 (1943).

[126] 70 N.W. 2d 772 (1955) 342 Mich. 436.

exclusion of mobile homes: "...the ratio decidendi is whether the (ordinance)...bears a reasonable relationship to the purposes of zoning in light of the existing zoning pattern..., and the past, present and foreseeable future development of land use..."[127]

Notwithstanding conceptual difficulties, the courts have generally used the comprehensive plan criterion to identify and invalidate arbitrary mobile home ordinances.[128] Recognition by the courts of the principle per se, however vaguely defined, at least safeguards against local zoning decisions designed solely to exclude mobile homes.

In two cases, however, the failure to expressly allege that an ordinance is not based on a comprehensive plan tempted courts to presume conveniently that the ordinance was part of a comprehensive plan and thus valid.[129]

A more intricate legal problem is presented by comprehensive zoning ordinances which were adopted by municipalities prior to the presence of mobile homes or parks.

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[127] Vickers v. Township Comm., 68 N.J. Super. 263, 172 A. 2d 218 (Super. Ct. 1961), rev'd on other grounds, 37 N.J. 232, 181 A. 2d 129 (1962).

[128] e.g.: Commonwealth v. Amos, 44 Pa. D.&C. 125 (1941).

[129] Davis v. City of Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 702 (Fla. 1953).

To avoid interpretative conflicts, special ordinances pertaining to mobile homes have often been enacted (additional to, or different from the original comprehensive ordinance). The question is whether the latter new ordinances can possibly be related to the comprehensive plan embodied in the former. Relevant cases[130] suggest that such provisions should be inserted by express amendment in the original zoning ordinance, rather than be placed in a subsequent and physically separate mobile home park ordinance. Furthermore, under most state enabling statutes, specific procedural requirements must be met for amendments to zoning ordinances[131] which otherwise are invalid.[132] Many separate discriminatory mobile home zoning ordinances, if challenged, might not be held valid for lack of due process.

The practice of "spot zoning" is relevant in this context. In some cases intended mobile home park developments have been obstructed by hasty amendment to the city zoning ordinance, placing the prospective development in a district where mobile home park operation was not permitted. Or, spot zoning was used to allow mobile home parks in zones

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[130] Richards v. City of Pontiac, 305 Mich. 666, 9 N.W. 2d 885 (1943); Huff v. City of Des Moines, 244 Iowa 89, 56 N.W. 2d 54 (1952).

[131] e.g.: Iowa Code Ann., Vol. 22, Sect. 414.5.

[132] Keller v. City of Council Bluffs, 246 Iowa 202, 66 N.W. 2d 113 (1954).

where they were prohibited. Some courts have upheld such practices;[133] some have invalidated them.[134] The cases which have sustained the practice were characterized by courts divided over objections that this practice constituted illegal spot zoning, completely perverting the original classification. This indicates a serious judicial concern about compliance with the comprehensive planning requirement.

Notably, the courts have considered that certain restrictive regulations do not necessitate a comprehensive plan. So, a comprehensive plan was held unnecessary to justify a regulation which provided that, except in licensed parks, not more than one unoccupied mobile home may be located on any parcel of land.[135]

In conclusion, in the absence of proper and constitutional authority delegated from the state (apart from the conferred zoning power) to regulate the location of mobile homes or mobile home parks, any restriction upon the location of either is, and will be held invalid, if not part of a comprehensive plan, but aiming rather at restricting the

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[133] City of Omaha v. Glissmann, 151 Neb. 895, 39 N.W. 2d 828 (1949); Jackson & Perkins Co. v. Martin, 16 App. Div. 2d 1, 225 N.Y.S. 2d 112 (1962).

[134] James v. City of Greenville, 227 S.C. 565, 88 S.E. 2d 661 (1955).

[135] Town of Granby v. Landry, 170 N.E. 2d 364 (Mass. 1960).

specific use of the mobile home.

2.7.3 The Reasonableness of Mobile Home Zoning Regulations

In many cases the validity of restrictive zoning provisions was challenged on the grounds that the restraints were unreasonable, arbitrary, oppressive or discriminatory.

The degree to which the public interest outweighs private personal and property rights must be considered in determining the reasonableness of a mobile home zoning restriction.[136]

Three well-established principles have been employed by the courts in considering the reasonableness of zoning restrictions.

1. A zoning ordinance is presumed valid and reasonable unless the contrary is shown by competent evidence or appears from the face of the ordinance.[137]
2. Zoning is a legislative function with which

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[136] State v. Hayes Investment Corp., 13 Wash. 2d 306, 125 P. 2d 262 (1942); Corning v. Town of Ontario, 121 N.Y.S. 2d 288 (Supreme Ct., Wayne Co., 1953).

[137] Gust v. Township of Canton, 342 Mich. 436, 70 N.W. 2d 772 (1955); State ex rel. Howard v. Village of Roseville, 244 Minn. 343, 70 N.W. 2d 404 (1955); Town of Yorkville v. Fonk, 3 Wis. 2d 371, 88 N.W. 2d 319, appeal dismissed, 358 U.S. 58 (1958).

the courts will not interfere unless the challenged restriction is lacking in rational basis.[138]

3. A generally valid ordinance may be unreasonable when applied to a particular piece of property or to a particular constellation of circumstances.[139]

Unfortunately, the first two principles have been interpreted by the judiciary as a pretense for presuming (rather than questioning) validity, and to limit interference with the legislative function to an absolute minimum. The writer has come to this conclusion by examining more than one hundred relevant cases. Admittedly in most cases merely the applicability of a specific zoning provision to a particular situation has been challenged; the ordinance as such rarely has been attacked. Thus the courts have rarely considered the reasonableness of a whole zoning ordinance. This is unfortunate because for this reason the courts were never forced to consider the propriety of basic restrictive concepts (such as the propriety of restricting mobile home parks to non-residential zones). Instead, court activity focuses on symptoms instead of

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[138] County of Will v. Starfill, 7 Ill. App. 2d 52, 129 N.E. 2d 46 (1955); Colt v. Bernard, 279 S.W. 2d 527 (Mo. App. 1955); State ex rel. Berndt v. Iten, 259 Minn. 77, 106 N.W. 2d 366 (1960); Jackson & Perkins Co. v. Martin, 16 App. Div. 2d 1 225 N.Y.S. 2d 112 (1962).

[139] e.g.: Village of La Grange v. Leitch, 377 Ill. 99, 35 N.E. 2d 346 (1941); Pringle v. Shevnock, 309 Mich. 179, 14 N.W. 2d 827 (1944).

causes, on detail and procedure instead of concepts.

In determining the reasonableness of a zoning restriction asserted to be in the public interest courts have tried to consider factors relating to the character of the neighborhood, the adjacent land use structure, and the extent to which property values might be affected by a restrictive zoning regulation. The protection of real estate values has received much detailed attention.[140] In short, there are myriads of decisions demonstrating a judicial concern with legal detail.

But the only legal question of relevance in the context of this chapter--the reasonableness of restricting the mobile home population to zones incompatible with residential use--has not been considered by the courts.

The legal analysis, therefore, must be limited to a particular aspect which serves to illustrate the judicial confusion and bewilderment.

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[140]This language of one court is typical in this respect: "There is ample justification for confining trailers and mobile units to areas where they will not injure the investment...in conventional houses of other owners, hurt taxable values, and impede town development." (Napierski v. Gloucester Tp., 29 N.J. 481, 150 A. 2d 481 (1959).

One main category of litigation consists of cases where the courts had to consider the effects of zoning restrictions when applied to a particular piece of property or to a particular set of circumstances. A zoning ordinance may be valid in general, but arbitrary and unreasonable with respect to a particular property or a particular situation.

In many cases a prospective mobile home park developer found his particular piece of property zoned for residential use from which (typically) mobile home parks were excluded, while the latter usually were a permitted use in another non-residential district.

The right of a zoning authority to exclude a specific legal use from a particular zone is well-established. Thus, exclusion of mobile home parks from residential zones has been held valid.[141] Prospective park developers, therefore, tactically challenged the validity of classifying their particular property as residential. They alleged that the residential classification of their parcel was inconsistent with the characteristics of the neighborhood and thus

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[141] Midgarden v. City of Grand Forks, 79 N.D. 18, 54 N.W. 2d 659 (1952); Jensen's Inc. v. Town of Plainville, 146 Conn. 311, 150 A. 2d 297 (1959); June v. City of Lincoln Park, 361 Mich. 95, 104 N.W. 2d 792 (1960).

unreasonable. Since most of these cases involved property located on the fringe of a residential district, bordered by commercial, industrial or even mobile home park use, the plaintiffs could usually show that their properties had little or no value for residential developments. In many of these cases the courts have declared the zoning ordinances, as applied to the subject property, void--in effect a judicial rezoning in order to permit the mobile home park development.[142]

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[142] e.g.: State v. Hayes Inv. Corp., 13 Wash. 2d 306, 125 P. 2d 262 (1942); Pringle v. Shevnock, 309 Mich. 179, 14 N.W. 2d 827 (1944); Gust v. Tp. of Canton, 342 Mich. 436, 70 N.W. 2d 772 (1955); Clark v. Lyon Township Clerk, 348 Mich. 173, 82 N.W. 2d 433 (1957); Mack v. County of Cook, 11 Ill. 2d 310, 142 N.E. 2d 785 (1957); Dequindre Dev. Co. v. Charter Tp. of Warren, 359 Mich. 634, 103 N.W. 2d 600 (1960); Knibbe v. City of Warren, 363 Mich. 283, 109 N.W. 2d 766 (1961); Kuiken v. County of Cook, 23 Ill, 2d 388, 178 N.E. 2d 338 (1961); this tactic proved unsuccessful, in a few cases where the unsuitability of particular tracts for the imposed zoning restrictions has been demonstrated less convincingly: Midgarden v. City of Grand Ford, 79 N.D. 18, 54 N.W. 2d 659 (1952); City of Howell v. Kaal, 341 Mich. 585, 67 N.W. 2d 704 (1954); State v. Village of Roseville, 244 Minn. 343, 70 N.W. 2d 404 (1955); June v. City of Lincoln Park, 361 Mich 95, 104 N.W. 2d 792 (1960).

Notably diminuation in market value does not, in itself, render a zoning restriction unreasonable. Neither does the fact that a property might be more valuable for a non-permitted use.[143] In most cases an owner could sell his property for industrial development, or for mobile home park development at a higher price than for residential development.

These cases have been selected to demonstrate the degree to which discriminatory zoning of mobile home parks has perverted the very objectives of zoning. An area restricted to residential use can only be developed for a legitimate residential use by seeking rezoning of this area for a use incompatible with residential use! In Village of Justice v. Jamieson[144] this perversion takes a macabre dimension. A county zoning ordinance restricted mobile home parks to I-1 zones (light industry). A prospective mobile home park developer sought and procured a rezoning of his property from an F district (farming), where mobile home parks were not listed as permissable, to an I-1 zone (light industry), in order to be able to develop his property for mobile home park use.

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[143] e.g.: City of Howell v. Kaal, 341 Mich. 585, 67 N.W. 2d 704 (1954); Finn v. Tp. of Wayne, 53 N.J. Super 405, 147 A. 2d 563 (Super. Ct. 1959).

[144] 7 Ill. App. 2d 113, 129 N.E. 2d 269 (1955).

This tactic represents one basic approach in cases of conflict between mobile home park classification and classification of a particular property which an owner wishes to develop for mobile home park use. The tactic employed does not challenge the reasonableness of mobile home park classifications (which implies challenging the validity of a zoning provision in general), but merely challenges the reasonableness of applying the general provision to a particular piece of property. This approach is not radical and has been successful.

The alternative--accepting the land classification, but challenging the propriety of excluding mobile home parks generally from residential areas--is a comparatively iconoclastic approach, and has met with no success in the courts.

In fact, many courts have amply demonstrated that their line of reasoning is as anti-mobile home biased as the language of discriminatory ordinances which they are expected to consider. Thus, in the absence of express mobile home park classification in an ordinance, courts have enjoined the operation of mobile home parks on properties located in residential zones by declaring mobile home parks to constitute commercial businesses or

commercial ventures.[145] The following language of one court is representative: "...prior to the Zoning Ordinance... the...land...had been used for commercial or business purposes, that is, the defendant had maintained a trailer court..."[146]

The courts, typically, never question the propriety of express restriction of mobile home parks to commercial zones.[147] The underlying reasoning is that mobile home parks are businesses operated for financial gain. But the same line of reasoning would relegate vertical multiple dwelling developments, and leased single-family residences to commercial zones.

2.7.4 The Non-Conforming Use Doctrine

The law is set that a zoning ordinance can not be invoked retroactively to eliminate non-conforming uses. But it can be invoked against extensions of non-conforming uses. Three basic problems have arisen in respect to the mobile home respectively the mobile home park as a nonconforming use:

1. How far must a use, or a preparation therefor

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[145] City of New Orleans v. Louviere, 52 So. 2d 751 (La. 1951); City of New Orleans v. Lafon, 61 So. 2d 270 (La. 1953).

[146] Storm Brosl, Inc. v. Town of Balcones Heights, 239 S.W. 2d 842 (Tex. Civ. App., 1950).

[147] e.g.: Fishman v. Tupps, 127 Colo. 463, 257

have progressed to qualify the use as non-conforming?

2. Was the prior use a lawful use?
3. What constitutes an extension of such a use?

Such decisions have followed the general rules applicable to this type of situation. Naturally, this is a field where the judiciary feels competent. Running through the myriads of relevant mobile home cases, one notes the absence of judicial bewilderment and disdain towards the mobile home which characterize cases reviewed so far. Judicial application of this doctrine to situations involving mobile homes or parks is consistent and impartial. There is no evidence which justifies criticism. In many cases the non-conforming use principle has been adopted by the courts to prevent the forced removal of mobile homes or mobile home parks. Local zoning authorities have often allowed anti-mobile home sentiments to influence their actions in such situations; but no park owner is likely to accept forced termination of his operation without seeking judicial assistance. And the courts have been, and are, eager to assure that a municipality honors vested property interests acquired prior to the enactment of a zoning law.

P. wd 579 (1953); Kaeslin v. Adams, 97 So. 2d 461 (Fla., 1957); June v. City of Lincoln Park, 361 Mich. 95 (1960).

This area of regulation definitely does not constitute an obstacle for the mobile home park industry. Thus, a lengthy analysis is unnecessary.

2.7.5 Conclusion

One basic objective of zoning is that area classification and use designation must be based upon a long-range comprehensive plan deemed best suited to promote the public health, welfare, morals, comfort and safety. This purpose is flouted by practices of zoning against mobile homes and mobile home parks.

Ordinances forcing major segments of the mobile home population into industrial or commercial districts may well be unconstitutional. This is certainly so when mobile home parks are compelled to locate in industrial districts which are inherently incompatible with residential use. And the practice might be unconstitutional when mobile home parks are relegated to commercial zones. The criterion is not so much the restriction to commercial districts of a major portion of the mobile home population, but rather the differentiation between traditional and "mobile" home population in zoning treatment.

It does not violate the fundamental zoning concept of setting

aside adequate places where people may settle, uninhibited by commercial or industrial activities, if more than two million mobile home residents are denied this right. "It is one thing to allow residences in industrial or commercial zones, but quite another to say you may not live anywhere else." (724:208)

"Zoning exists because of the recognized need for affording people an opportunity to live in sections apart from those devoted to commerce, trade, and industry...It is undesirable for sociological as well as health and safety reasons to compel people to live and raise families in industrial or commercial districts...(This) can only result in inferior mobile home parks...(as) evidenced by the rapidity with which even conventional residences depreciate when located in industrial or commercial zones. Such zoning tends to frustrate rather than promote the public welfare." (97:161) Discriminatory zoning of mobile home parks is not a wise policy, but it <u>is</u> the policy followed by many communities.

Admittedly, there are signs of definite progress.

A state-wide 1958 study was conducted by William F. Cornett, City Manager of La Verne, California. Questionnaires on regulation of trailer parks wer sent to 160 cities in California with a population of 5,000 or more. Sixty-five

responded that they had trailer parks within their jurisdiction. This study indicated that trailer park zoning "...appears to be in a transitional stage. Once relegated to commercial and manufacturing zones, the trailer park now can be located in its own unique zone in eight cities and is permitted in residential zones in eight others. Twenty cities reported that they required location in a commercial zone. Six others permitted location in either a commercial or manufacturing zone and eight in the manufacturing zone only." (499) Cornett summarized: "The general response to the questionnarie indicates that there is great interest and awareness of the impact of the mobile home."(499)

The general attitude towards the zoning of mobile home parks is changing--slowly, but discernibly.

"When a rough count of 1,600 newspaper articles referring to mobile home zoning was made by Dick Beitler of the Mobile Homes Manufacturers Association in 1966, it indicated that 60 percent of the articles showed acceptance of residential zoning for mobile homes, 30 percent showed negativism and 10 percent showed no preference." (64:130)

And in 1968, the Mobile Homes Manufacturers Association stated in their Annual Report; "The planning and zoning

necessary for mobile home living communities have for years been obstacles to the growth of the industry. The obstacle is slowly being overcome. Today, nearly 2/3 of the zoning petitions which we know about are granted; the reverse was true less than five years ago. Even those petitions not granted are lost by narrower margins: many are subsequently won in second attempts." (176)

This progress is slow. It will take many years before zoning discrimination will be eliminated. This slow progess ought to be stimulated.

As is evident from the foregoing fragmentary legal analysis, the judiciary can not be expected to provide the stimulus. Judicial inertia can be excused. Itseisthelve relative newness of this mode of habitation that has caused courts to grapple with such elementary questions as "whether a trailer is a structure, whether it is erected, whether is is a building, and if so, whether it is a residential building or dwelling." (306 :245) There is no hope for adequately quick remedies at the judicial level.

Legislative initiative at the state level is apparently the only answer.

3 Methods of Enforcement

Considering the general American allergy against any form of government interference, it is a paradox that there is a tendency to respond to arising mobile home problems by the quick enactment of a new law. This reaction certainly adds to the number of laws, yet it rarely helps to solve the basic problems. There is little purpose to passing regulations without the administrative machinery to enforce them. Despite the numbers of mobile home statutes, ordinances and regulations, only a small range of enforcement devices have been developed.

One already obsolete tool, is the requirement of registration as a motor vehicle. This has only been activated in a very few states for local enforcement, because of the lack of feed-back from the state level. And various measures in connection with police regulation[148] are only useful in a supplementary way.

This leaves an unimpressive arsenal of three established enforcement devices for more detailed analysis: licensing

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[148] For instance, most statutes and ordinances require park operators to maintain a register of all park occupants, showing name, prior address, and make and license number of automobile and mobile home. Or, occasionally speed limits are imposed within the limits of mobile home parks.

of mobile home parks, confinement of mobile homes to licensed parks and requirement of an occupancy permit for mobile homes. All three devices are more than sole enforcement measures; they have all been misused for restrictive or exclusionary purposes.

3.1 Licensing of Mobile Home Parks

Development, construction, expansion, alteration or operation of mobile home parks are generally prohibited under mobile home statutes or ordinances, unless a state or municipal permit is issued first. Pursuant to the police power, a municipality may, if the necessary enpowering act has been granted, require that mobile home parks be licensed and may impose licensing regulations or building permit requirements.[149] It has been sustained as a valid exercise of the police power for municipalities to require mobile home park developers to procure a license the issuance of which is conditioned upon compliance with reasonable standards of location health, safety, and morals.[150] Since mobile home parks are a proper subject for regulation under the police power, licensing has only been found invalid, if ultra vires on the part of the municipality or in conflict with state law. (97:94)

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[149] e.g., N.Y. Town Law 136, N.Y. Village Law 89 (52).

[150] Fishman v. Tupps, 127 Col. 463,257 P.2d 579 (1953); Michaels v. Township of Pemberton, 3 N.J. Super. 523, 67 A 2d 324 (1949); Cloverleaf Trailer Sales Co. v. Pleasant Hills, 366 Pa. 116, 76 A 2d 872 (1950); Napierkowski v. Tp. of Gloucester,29 N.J. 481,150 A.2d 481 (1959).

This device has frequently been misused for restrictive or exclusionary purposes, but the courts were remarkably consistent in striking down such attempts. The most obvious "trick," of course, is to leave vaguely specified standards to the discretionary interpretation of the issuing authority. In Wood v. Peckham[151] a provision that failed to provide sufficiently definite standards for guidance was invalidated. Or, the courts had to invalidate provisions where standards were specified, which could not be complied with, such as requiring "proper water connections... to an existent public water system..." where the town had no such system.[152] Also, attempts to simply deny a permit without statement of reasons for denial were almost invariably invalidated.[153]

Thus, due to consistent judicial control, the measure does not constitute an obstacle to the mobile home industry. The Mobile Homes Manufacturers Association actually had advocated this control strongly, because of its potential in the upgrading of parks. Though this is somewhat ironical, because the device has been misused quite blatantly, generally the measure has indeed effected a higher quality of park developments.

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[151] 80 R.I. 479,98 A.2d 669 (1953).

[152] Carpenter v. Clark, 231 N.Y.S. 2d 103;35 Misc. 2d 733 (1962).

[153] e.g., State ex.rel. Green Acres Development Col v. Sabo, 149 N.E. 2d 38 (Ohio App., 1958); Harding v. Town Board of Islip, 4 A.D. 2d 750, 164 N.Y.S. 2d 523 (1957).

3.2 Confinement of Mobile Homes to Licensed Parks

A common method of enforcement is to restrict the residential use of mobile homes to licensed parks and to prohibit the location of permanently occupied units on private lots.

Local authorities find it more effective to enforce their mobile home regulations if the units are centralized in one or several locations rather than scattered over the entire area of the jurisdiction. The primary objective, however, is certainly to prevent mobile homes from penetrating residential neighborhoods. They may adversely affect property valuesand offend residents. The tenor of ordinances with this provision is clearly negative. The underlying motivations are obviously to force the mobile homes into a "ghetto"--an area as hidden and invisible as possible. The aim is not (or at best secondarily) to guarantee, for the benefit of the mobile home dweller, the provision of minimum amenities and the maintenance of minimum health and safety standards. The latter alleged objective could be accomplished by location on a privately owned parcel at least as effectively. And, as for the gain in enforcement efficiency, the same line of reasoning calls for concentration of all "scattered" single residences into one monstrous medium-density single residential ghetto.

The nature of this restriction is incompatible with obvious development trends. The "relocatable" home will be used interchangeably with traditional structures in any residential zone. This measure prevents the industry from developing alternative forms of their product which would be suited for location on individual lots. Clearly this provision is obsolete, retards industry development, and thus must be eliminated. It has no potential as an adequate enforcement device.

But, it is commonly used, and such provisions have generally been upheld.

Then, the question is how can this restriction be eliminated?

An analysis of relevant court decisions does not indicate any judicial trend along this line. In fact, the validity of such ordinances has frequently been upheld on grounds of maintenance of health and safety standards.[154] In a recent case,[155] even a practically permanently ground-attached unit, with extensive integral landscaping, was not permitted to remain on an individual lot.

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[154] e.g. Davis v. City of Mobile, 245 Ala. 80, 16 So. 2d 1 (1943); Cooper v. Sinclair, 66 So. 2d 207 (Fla., 1953); cert. denied, 346 U.S.867, 74 S Ct. 107, 98 L.Ed. 377; Napierkowdki v. Tp. of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959).

[155] Wright v. Michaud et.al., 200 A.2d 543(Maine,1964).

There have been some cases where the provision was not held invalid, but inapplicable to a particular situation.[156] In the Anstine case, the court relied on the fact, that the mobile home in question was practically equipped and as immobile as a traditional residence,"...the structure could be moved...only with the same...difficulty...as...a conventional...house." Another limitation upon the validity of such restrictions is that they have not been given retroactive application by the courts.[157] Prior lawful uses have been allowed to continue.[158] While such exceptions might solve particular local problems, they have little relevance for an analysis focusing on trends.[159]

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[156] e.g. City of Milford v. Schmidt,175 Neb. 12,120 N.W. 2d 262 (1963); Anstine v. Zoning Board of Adjustment of York Tp.,411 Pa. 33, 190 A.2d 712 (1963); Wyoming Tp. v. Herweyer, 321 Mich. 611, 33 N.W. 2d 93 (1948).

[157] e.g. Bane v. Township of Pontiac, 343 Mich. 481, 72 N.W. 2d 134 (1955); Manchester v. Webster, 100 N.H. 409, 128 A.2d 924 (1957); Des Jardin v. Town of Greenfield, 262 Wis. 43, 53 N.W. 2d 784 (1952); Hobbs v. City of Sioux City, Equity No. 83455, Dist. Ct. Woodbury County, Iowa, Sept. 23, 1961.

[158] In Des Jardin v. Town of Greenfield, the court stated: "We view the ordinance...as being very similar in character to zoning ordinances...If the ordinance in the instant case were to be construed as being retrospective in operation, it would be unconstitutional and invalid with respect to plaintiff's vested interest in his trailer and the right to continue to use the same on his own land for dwelling-house purposes."

[159] It is discouraging that the 1954 model ordinance prepared by the National Institute of Municipal Law Officers permitted "emergency or temporary stopping or parking (outside of licensed parks)...for not longer than one hour."(258) This puts the prejudice into blunt language.

The only decision which generally invalidated this restrictive provision rested on a possible conflict with a state statute.[160] Clearly the general judicial attitude does not justify the hope for quick reappraisal. Adequate action by state legislatures is the only possibility for eliminating this oppressive device.[161]

3.3 Requirement of Permits for Mobile Home Occupancy

A frequently employed enforcement measure is the requirement of a certificate of occupancy for mobile homes. This is typically in conjunction with restrictive regulatory provisions, such as limitations on the duration of stay[162] or on the number of mobile homes. The permit may be a means of confining mobile homes to licensed parks,[163] or of enforcing compliance with building code requirements.[164]

When courts had to decide the legality of occupancy permits, the validity or invalidity of the related provisions was used as criterion. But it should be remembered from foregoing

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[160] City of Astoria v. Northwang, 351 Pac. 2d 688 (Oregon, 1960).

[161] The objective can be achieved, as an example, by merely enacting an amendment or a deletion: the authority to enact such an ordinance has been found not to exist under a statute granting power to "regulate and license trailer camps," Morris v. Tp. of Elk, 40 N.J. Super. 341, 122 A.2d 15 (1956).

[162] E.g., Boxer v. Town of Harrison, 175 Misc. 249, 22 N.Y.S. 2d 50 1 (1940).

[163] E.g., Bane v. Tp. of Pontiac, 343 Mich. 481, 72 N.W. 2d 134 (1955).

[164] E.g., People v. Lederle, 206 Misc. 244, 132 N.Y.S. 2d 693 (1954), aff'd., 309 N.Y. 8gg, 131 N.E. 2d 284 (1955).

chapters on the various forms of regulation that the courts have frequently sustained provisions which were unconstitutional or legally questionable. Thus, while some courts have invalidated ordinances with occupancy permit requirements because of the possible invalidity of related provisions,[165] other courts have upheld permit requirements by holding related provisions valid which in fact were not.[166]

The judiciary can not be generally expected to prohibit permits required in conjunction with objectionable provisions. While this is unfortunate, it is not critical. It is essential that objectionable provisions themselves be eliminated; the prohibition of accompanying enforcement measures would not solve the problem.

The questionableness of permits is due largely to the fact that issuance is frequently left to unguided discretion.[167] This obviously feeds exclusionary motives.

Ordinances which left the issuance of permits to unguided

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[165] E.g., Boxer v. Town of Harrison, 175 Misc. 249, 22 N.Y.S. 2d 501 (1940).

[166] People v. Lederle, 206 Misc. 244, 132 N.Y.S. 2d 693 (1954); aff'd, 309 N.Y. 866, 131 N.E. 2d 284 (1955).

[167] E.g., City of Rochester v. Olcott, 173 Misc. 87, 16 N.Y.S. 2d 256 (1939); Boxer v. Town of Harrison, 175 Misc. 249, 22 N.Y.S. 2d 501 (1940); People v. Peck, 112 N.Y.S. 2d 379 (1952).

discretion, have usually been struck down,[168] with the exception of cases where the courts saw no evidence for possible misuse of discretionary power: "It can not be assumed that the permission authorized would be arbitrarily withheld."[169] This argument is dangerous because in many cases permits have been revoked at will or have been refused arbitrarily, sometimes with admitted prohibitory intentions.[170]

Still, generally the judiciary can be expected to invalidate requirements for permits if they are issued by discretion.

The cases just cited indicate that discretionary decision oriented permit requirements will be invalidated if challenged. Where such requirements constitute a local problem, the courts should be consulted.

The court decisions indicate that a permit requirement will be upheld if it is merely a means of enforcing "reasonable" regulatory objectives specified as minimum standards, and if the permit issuance is mandatory upon

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[168] E.g., City of Rochester v. Olcott, 173 Misc. 87, 16 N.Y.S. 2d 256 (1939).

[169] E.g., People v. Peck, 112 N.Y.S. 2d 379, 381 (1952).

[170] E.g., People v. Lederle, 206 Misc. 244, 132, N.Y.S. 2d 693 (1954).

compliance with such standards.

The permit requirement is thus legally unobjectionable as an enforcement measure; and, according to the focus of this study, need not be labeled as an obstacle.

4 A Proposed System of Mobile Home Regulation

Mobile home regulation is an agglomeration of contradictory and inconsistent measures. Common denominators are obsolescence and anti-mobile home prejudice. The foregoing analysis of mobile home regulation indicates that mere correction of particular provisions will not remedy the problems. Conceptualization and perspective must be substituted for confusion and panic. A logical system must replace the chaos; constructive regulation must supersede repressive regimentation.

4.1 Basic Criteria for a Constructive and Consistent System of Mobile Home Regulation

The deficiencies of present methods of mobile home regulation can be transformed into basic development criteria for a consistent system of regulation:

1. The system must be equitable. It must be based on the conception that the mobile home population is a legitimate, integral component of the total residential population.

2. The system must be constructive. It must be designed to stimulate the social integration of this population segment, and to further the development of the industry as a major producer of low-cost housing.

3. The system must be flexible, permitting an immediate and consistent response to future developments in the mobile home industry. Since in a few years the mobile home industry will be producing the same product as some other industries--spatial dwelling modules--the system will be imposed upon, and must therefore be applicable to modules in general, regardless of which industry is producing them.

4. The system must be designed to increase the accessibility of the low-cost housing offered by the industry. With few exceptions, this low-cost advantage is at present available only upon acceptance of the highly particular sociological characteristics of mobile home park living.

5. The system must be designed to activate the unique potential of the mobile home industry--the gradual adoption of industrial mass production technology as a prerequisite for continued growth,

product improvement and drastic cost reduction.

6. The system must be workable.

7. The system must be politically feasible; there must be a reasonable chance of implementability.

8. The system must be legally feasible. While it may call for the development of new legal doctrines, there are definite limits on judicial tolerance.

4.2 Policies

Equitable regulation of one segment of the residential population can only be achieved by treating this segment in the same manner as the rest of the population. Thus, the mobile home as one element of the total housing supply can only be regulated by the established regulatory system for traditional housing.

Any deviation from the conventional system which is not cogently necessitated by the inherent characteristics of the mobile home (or the mobile home park) constitutes discrimination and, thus, is invalid. Particular characteristics, however, must be taken into account by adaptation if the unmodified system would result in a non-equitable effect. For example, traditional foundation

requirements are inherently impossible for mobile homes, though aesthetic requirements (such as color range limitations or certain appearance standards)[171] are not.

Undoubtedly adjustments will be necessary. Particular forms of housing, such as mobile home parks, residence or multiple dwelling developments, naturally call for adaptations. But mobile home parks should not present any more difficulties here than apartment developments. The responses should not be different either.

The above rules follow from the first basic criterion of equitable regulation. They constitute the framework of the proposed regulatory system. The general policy is thus defined. Specific policy components can be developed in response to the other criteria.

Mobile home parks do not convey an atmosphere of permanence to the same degree as residential subdivisions. The criterion of constructive regulation requires furthering the social integration of the mobile home population. For this purpose, a feeling of permanence must be achieved. Apart from the "tax parasite" bias, hostility towards the mobile home population stems from their image as immoral, rootless transients. Ghetto-ization in parks perpetuates

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[171] Mobile home manufacturers can respond to such requirements, especially if it were a state- or nationwide standard.

this prejudice; it precludes social interaction with the community and creates a foreign element in the community structure. By encouraging extra-park location of units, the mobile home population will be dispersed over, and automatically absorbed by the community. This should overcome much of the animosity. And if the community begins to think positively about the mobile home population, non-discriminatory regulatory legislation will be a natural result. A system of mobile home regulation must permit (and encourage) mobile or relocatable units as bona fide components of any form of housing, not only of the particular form of the mobile home park.[172] The mobile home park should not be considered as a ghetto, but only as an economical alternative.[173]

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[172] One important (though not obvious) conclusion follows. The term "mobile home" no longer defines a specific form of housing. "Traditional" mobile homes can be located in mobile home parks. Two sections can be joined to form a typical one family residence; modules can be stacked to form town houses or multi-story apartment developments. While cogent and comprehensive planning considerations may justify complete exclusion of a particular form of housing from a community (cf. Chapter IV.2.1.3) such as apartment developments or mobile home parks, an express exclusion of "mobile homes" is unconstitutional under any circumstances, because it prohibits a legitimate component, and not a particular form of housing.

[173] This concept does not question the need for mobile home parks. Neither should it detract attention from mobile home park regulation. Good parks require sensible standards and regulations. Mobile home park regulation has caused a substantial upgrading of park quality. A N.A.R.E.B. survey (61) found that areas with good parks also had restrictions which were "...fairly severe as to space, density, and recreational facilities." Another reply stated "...controls are becoming tighter and...will bring about attractive trailer villages in the future."

The policy of encouraging extra-park location is at the same time, the only possible way to meet the other basic criteria.

The future products of the industry, the "relocatable" home and the module, will find proper use outside of parks. A flexible system which already encourages location on individual sites, is ideally geared to the future.

Different and usually more severe regulatory treatment of mobile homes located outside of, or direct confinement to mobile home parks makes the low-cost product inaccessible to groups with no interest in, or abhorrence of the social climate of mobile home park living. A regulatory system which encourages the use of relocatable units outside of parks effectively removes this barrier. This will activate a dormant, yet potentially tremendous market.[174]

The mobile home as a product is almost entirely defined by public regulation. This is especially true of motor vehicle regulation which alone determines dimensions and other characteristics, and of local practices to prohibit (or penalize) removal of wheels or location outside of parks. Equitable regulatory treatment of all dwelling units, regardless of location or origin,[175] remove most of these restrictions and stimulate R. & D. activity within,

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[174] Cf. Chapters II.1.1, II.2.

[175] i.e. whether produced by the mobile home industry, by the homebuilding industry, or by any other industry.

and thus growth and development of the mobile home industry. Adoption of industrial mass production technology and automation require a more mature industry structure.

The non-ghetto concept may also overcome another form of local resistance. Municipalities often argue against the admission of mobile home dwellers by claiming the impossibility of overloading existing facilities and services, (schools, municipal buildings, sewers, water lines, highways, fire and police protection, garbage disposal and so forth) ... of it. There is, of course, no objection to residential growth which does these things if it takes the form of single family development. And sectionalized or double-wide units on individual parcels are indistinguishable from traditional residences.

4.3 Strategy

Repressive mobile home regulation is a local phenomenon. Anti-mobile home sentiment grows from local friction, thus leading to punitive ordinances. Hostility at the state level is insignificant. As a legitimate exercise of the police power, the state may decide to regulate directly all aspects of mobile home living. One might argue then that the states should take over the entire field of mobile home regulation and enact comprehensive statutes.

The writer would argue this is certainly not the best solution.

Many aspects of the regulatory problem are of a local nature. An effective system of regulation must rely upon political subdivisions of the state to regulate in response to particular local conditions. Abuse of delegated authority can not be prevented entirely, though built-in measures of a regulatory system can safeguard against it. Yet, the mere possibility of such abuse does not outweigh the advantages of local regulation.

The extent of state regulation should be confined to two objectives. Many local government units do not regulate mobile home living, and can not be expected to be active in this respect. In other cases enforcement is lax. State regulation is necessary to fill this vacuum, and to guarantee a minimum degree of state-wide control. Further, state regulation must safeguard against local abuse; the judiciary, as stated, can not be expected to assure this.

How can these principles be transformed into a specific strategy?

Local governmental units can only exercise regulatory power over mobile homes if this authority has been properly

delegated; and they can only exercise this power subject to the limitations of such delegation. The present judicial attitude interprets such grants of power in a very broad sense. Thus, authorization "to enact ordinances for the general well-being or good government of the community" has been construed to authorize specific municipal regulatory ordinances.[176] General grants of authority to adopt health and sanitation, fire and building regulations or zoning ordinances have been held to authorize the enactment of regulatory mobile home ordinances.[177] There is need then for very specific language in mobile home state statutes. Statutes can only safeguard against local abuse of power, if they clearly specify what constitutes abuse. The foregoing chapters on the various forms of mobile home regulation have identified the deficiencies and questionable practices. These factors must determine the minimum content of state statutes. In cases of conflict between state and local ordinances, the state

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[176] E.g., Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A.2d 177 (1944); Turner v. Kansas City, 354 Mo. 857, 191 S.W. 2d 612 (1945).

[177] E.g., Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950); White v. City of Richmond, 293 Ky. 477, 169 S.W. 2d 315 (1943); Lower Merian Tp. v. Gallup, 158 Pa. Super. 572, 46 A.2d 35, appeal dism'd. 329 U.S. 669 (1946); Napierkowski v. Tp. of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959).

statutes prevail.[177]

The content structure of state statutes also should guarantee comprehensive state regulation where local regulation is absent or lax.

The administrative advantage of local regulation can be maintained. For example, under the Illinois statute[178] local government units can license and regulate mobile home parks if the minimum provisions of the state act are met. In practice, municipalities insure non-application of the state act by incorporating in their ordinances the regulatory provisions of the statute.[179] This practice eliminates duplications and possible conflicts, insures state-control in areas with lax enforcement and, most important, maintains the principle of local regulation. It is, of course, necessary to specify whether, and to what extent local units of government may adopt more stringent controls. Some statutes have done this,[180] though apparently without consideration of the danger of repressive or exclusionary abuse.

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[177] E.g., Laman v. Moore, 193 Ark. 446, 100 S.W. 2d 971 (1937); State v. Gronna, 79 N.D. 673, 59 N.W. 2d 574 (1953).

[178] Ill. Rev. Stat. 1961, Ch. 111 - ½, Sect. 185.

[179] E.g., Chicago Municipal Code, Sec. 179--9.9.1, 14.

[180] Cal. Health & Safety Code § 18010; Ill. Rev. Stat. 1961, Ch. 111 - ½, Sect. 185; Ind. Ann. Stat. § 35 - 2881 (Supp. 1961); Iowa Code 135 D 7 (1962).

Because of the apparent need to prescribe expressly the particular manner of local regulation, the regulatory authority would be granted to local governmental units by specific state enabling legislation.[181]

Summarizing, the writer proposes a strategy of limited state pre-emption of the field of mobile home regulation. It has been demonstrated that, in the absence of precise statutory definition of local authority, the judiciary may be paralyzed by confusion. Many decisions have required express and detailed statements of legislative intent to preclude conflicting local regulation.[182] The proposed strategy of limited pre-emption constitutes the minimum necessary degree of state intervention. Local regulation, safeguarded against abuse by state control is the optimal form of constructive mobile home regulation.[183]

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[181] E.g., Mich. Comp. Laws § 125.271 (1948); Mass. Gen. Laws Ann., Ch. 140, § 32 (1957); Wisc. Stat. § 66.058 (1959)

[182] E.g., "The statutes contain no provision in the nature of a time limitation...As to that subject the statute is silent. Any provision limiting the time of occupancy..therefore, can not be said to be in conflict with the statute." Stary v. City of Brooklyn, 162 Ohio St. at 130-131, 121 N.E. 2d at 17.

[183] The general tendency of this proposed strategy is in line with a recommendation in the final "Report of the President's Committee on Urban Housing--A Decent Home." "State governments should review the reasonableness of both state and local restrictions on mobile homes." (371.1·145)

4.4 Tactics

4.4.1 General Tactics

A necessary prerequisite of mobile home regulation is the strict separation of mobile home and travel trailer regulation. A system which fails to eliminate travel trailer oriented material, in a physical and conceptual sense, is worthless.

The treatment of mobile homes like all other forms of housing is the basic criterion for equitable regulation. Every effort must be made to solve problems of regulation and enforcement by methods and machinery already developed for housing in general.[184]

Though there is some need for enactment of new regulations, the problem is largely to update, unify and streamline

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[184] Through this perspective specifically mobile home oriented procedures must be rejected. For instance, an Indiana statute establishes a "mobile home advisory board," to consist of a city or county planning commission member, a public health physician, a state board of health engineer, a mobile home park operator, a mobile home manufacturer and a mobile home dealer. Regulations of the board of health can not be promulgated before the advisory board has considered them." (97:108) (Burn's 1961 Cum. Supp., Sec. 35-2845 to 2850) However desirable a function this board may perform, establishing specific mobile home-oriented organs is not a solution. Any administrative procedure must be developed with the total residential population in view; necessary adaptions must then fit the procedure to a particular form of housing.

the existing structure, integrating it to the structure applicable to housing in general.

4.4.2 Restructuring the Regulatory Framework

The passing of separate mobile home ordinances has contributed to much of the present chaos. The administrative structure of local government is vulnerable to any disturbance of established routine.[185]

A mobile home park has no more unique characteristics than an apartment development. There is no need to pass special ordinances for either form of housing. The separate mobile home ordinance is an obsolete concept.

In the interest of good administration appropriate language should be added to general ordinances and codes, dealing with temporarily necessary special regulatory adaptions for mobile homes or mobile home parks. Thus, building code regulations belong in the general building code, and zoning

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[185] For instance, a building inspector is not accustomed to leave his familiar handbook to search in a separate ordinance, until in the midst of zoning and legal material he finally locates a section on standards for structures in mobile home parks. The net effect is poor administrative quality.

information belongs in the general zoning ordinance.[186] In some cases the general provisions may need no amendments; and in any event the added portions can be confined to mere adaptations. The concept of separate mobile home park ordinances is especially inefficient considering that other general ordinances would still need mobile home regulations. For instance, zoning requires certain formulation and adoption procedures which do not apply to other ordinances. A "zoning" provision in a separate mobile home park ordinance is not a legal zoning provision, because the ordinance was not adopted by the necessary procedures. So the provision also needs to be placed in the zoning ordinance.

Apart from its streamlining effect, the placement of mobile home related material within the general ordinance structure is an ideal educational device to develop a natural attitude of considering mobile homes for what they are--housing.[187]

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[186]This technique will also facilitate the final integration of "mobile" and "traditional" housing. In the same jurisdiction one hypothetical townhouse development may use modules fabricated by a "prefabber," while another may use identical modules produced by a mobile home manufacturer. With a separate mobile home park ordinance, the building inspection department will be hopelessly confused.

[187]A building inspector who finds mobile home sections in his hand book rather than in a separate ordinance is likely to develop this attitude..

And finally, only this technique can meet the important criterion that the system must be workable. Its operation must be economically feasible for local authorities with only an insignificant number of mobile homes. Thus, it must be designed to be administrable with existing machinery. Fifteen mobile homes in a community would hardly justify the development of a separate mobile home ordinance, and the necessary education of an enforcement offical.

4.4.3 Restructuring of Controls

To what extent can traditional devices of mobile home regulation be maintained; to what extent do they require adaptation; and how can these controls be integrated into a consistent regulatory structure? To what extent is new legislation necessary?

Housing Regulation

Housing regulation is an indispensable device for eliminating substandard mobile homes and parks. There are still many substandard parks and units. Physical rehabilitation is identical with, and as desperately needed as image rehabilitation. Any slum-type home or park is a valuable weapon for mobile home opponents. Only too frequently has a substandard park prompted the banning of further park developments.

Far too many municipalities have ignored the potential of rigorously enforced housing regulation for the purpose of upgrading or eliminating.[188]

Housing regulation is relatively new and still in the development and "testing" stages. This provides a unique chance to develop consistent housing codes applicable to all forms of housing. The climate for such action is favorable; local governments approve of a state department undertaking the unfamiliar problem by developing model codes.

One point of departure is the New York State "Model Housing Code" with an integral part on mobile homes.[189] The Public Health Service is preparing model occupancy standards specifically for mobile homes. Both should prove helpful as guides to state departments. While nationwide coordination of these efforts would be desirable, this is probably an unrealistic hope. But consistency on a statewide basis should be a minimum goal.

Since local adaptation of model housing codes can lead a

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[188] This is because many local government units have no housing codes; yet most authorities which do still lack experience in enforcing the codes.

[189] cf. Chapter IV.2.2.

through lack of expertise or hostility towards the mobile home to repressive or exclusionary abuse, model codes should be enacted by state legislatures. This secures uniformity and insures against abuse, while not undermining the role of local units in this field of regulation.

Building Regulation

Stringent building regulation of mobile homes and mobile home parks is obviously important. Building codes developed for localized individual construction can not be applied to centralized mass-production. The new U.S.A. Standard A119.1 covers all aspects of mobile home production. It is necessary to amend state statutes so that compliance with this standard will be considered compliance with local building code requirements. In this respect, state legislatures must provide definite guidance to local government units and to the judiciary. The Mobile Homes Manufacturers Association is pushing for adoption of the standard by state legislatures. It is a matter of survival for the industry. Some additional support from the federal level would probably make the industry successful in most states.[190]

As for mobile home parks, local building code regulation does not constitute a problem.

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[190] For present extent of standard adoption by state legislatures, cf. Chapter IV.2.3.

An important policy of this proposed regulatory system is to encourage the location of mobile homes on individual lots. State statutes probably should specify certain adaptations of local building code requirements necessary for mobile homes located on isolated lots. Even though a relocatable home on a private parcel can look exactly as a traditional house, it does pose different foundation and utility connection problems. Application of traditional codes would cause exclusion. A possible solution is to make accepted foundation and utility connection provisions for mobile home parks applicable to the situation under discussion.

Health and Sanitation Regulation

The present state of health and sanitation regulation is not a major obstacle. The primary problems are uniformity, updating, and elimination of subdivision control material.[191] Since this field is dominated by state department initiative and control, this level should also tackle these problems.

It has been mentioned that in this field nationwide unification appears politically feasible. Synchronization of state statutes, FHA and P.H.S. standards[192] is definitely necessary.

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[191] Customarily subdivision control material has been cramped into health codes, because subdivision control has so far been ignored as a regulatory device for parks.

[192] cf. Chapter IV.2.4.

State health regulation of mobile home parks has major advantages: substandard facilities can not develop in local areas with no or with defective regulations. But local authorities should have the option of taking over this field and to produce more stringent regulations to meet special circumstances, though abuse of this privilege by anti-mobile home sentiment must be precluded.

State health codes usually leave aspects of aesthetics and general environmental quality to the taste of municipalities; and the latter leave it to the park operator, with the effect of gross neglect of these aspects.[193] Most codes "say nothing about trees, grass, curb and gutter, sidewalks, patios, underground electrical installation, aesthetically pleasing lot arrangements, surfaced streets, recreation areas, boundary fences or shrubbery... entrances, exits, and the location of sales lots."(594)

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[193] A survey of municipal regulation of mobile home parks in Minnesota focused upon major indicators. Respondents were asked to indicate whether or not their municipality imposed regulations requiring the planting of trees, the installation of curb and gutter, underground electrical system, paved or surfaced streets and set-back requirements or whether regulation of these aspects was based upon the state minimum requirements. (The latter said nothing about any of these aspects). The table shows the results.

Area	Trees	Gutter	Surfaced Streets	Under-ground Elec.	Min. Set-Backs	Ad Hoc Council Determ.	State Req. Only
Metro.	5	9	7	6	10	6	9
Non-Metro.	1	2	3	2	8	3	53
TOTAL	6	11	10	8	18	9	62

This tabulation includes as single instances those municipalities which have several or a combination of requirements.

Source (594)

Yet, aesthetic standards, park and lot specifications are important forms of regulation of mobile home parks which, if properly considered, will guarantee beauty--in light of the destructive effects of anti-mobile home prejudice a rather important objective. State health codes ought to be amended in this sense. Proper care should be exercised to distinguish from now on between health and subdivision regulation.

Fire Protection Regulation

No problems arise in connection with mobile home parks; the present methods of fire prevention regulation for parks are adequate and do not indicate major deficiencies.

The only critical aspect in this field are fire prevention standards for mobile homes. The National Fire Protection Association has developed specific mobile home standards which are incorporated in the new U.S.A. Standard A119.1. Thus, the comments on building regulation of mobile homes apply to fire prevention as well.

Subdivision Control

Mobile home park regulation necessitates specified standards and principles for street design, street improvements, lot design, recreational facilities and

so forth.[194]

Most of such design requirements are typical subdivision regulations, yet are usually added to health and sanitation codes. Such inconsistency exists simply because subdivision control has not yet been used to any significant extent for mobile home park regulation. The device has been ignored, because developers usually do not subdivide land for sale. Another reason is that subdivision control is customarily limited to one and two family house developments. But there is no reason that this device should not be applied to mobile home parks. The decisive criterion is that mobile home park development does subdivide land for use of individual residential units; it is less significant whether the land is subdivided for sale.

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[194] In 1960 a nationwide survey conducted by the National Association of Real Estate Boards found that local regulation of trailer parks generally specify minimum land space, water, sewer, and electrical connection for each site. Less frequently do the regulations require streets and paving or recreational facilities.

Facilities Required By Local Regulation ------
(Percentage Distribution)

	Yes	No
Minimum land space	80	20
Streets and paving	40	60
Water connections for each site	80	20
Sewer connections for each site	82	18
Electric connections for each site	83	17
Recreational facilities	29	71

The question was: "Do local regulations of trailer parks require:" (Listed as above)

Source (61)

Then the approaches and procedures of residential subdivision control could be applied advantageously for control of design and facilities in mobile home parks.

A specific section on mobile home parks in the several sets of subdivision regulations could be easily drafted and adopted. The FHA "Minimum Property Requirements for Mobile Home Courts," (363), discussed in Chapter IV.2.4.2, can be adapted by mere changes of language and systematics to those commonly employed in subdivision regulations. The result is a more logical integration of mobile home park regulation into the general regulatory framework. If the incidence of park developments does not justify the preparation of a separate section, then this material should be placed in the standards section of the zoning ordinance rather than into health codes.

The mobile home subdivision presents no such problems. Lots are not rented, but sold. The purchaser is not a tenant, but a land owner. Though density is somewhat higher than for most single-family areas, the use is clearly a single-family use. Although there are mobile home subdivisions with club-type operations where ownership in the subdivision entitles the occupants to the use of communal facilities, at this time most subdivisions for mobile homes are, and should be regulated, like conventional subdivisions.

Zoning

The general strategy of limited pre-emption is particularly necessary in the field of zoning. Zoning is the obstacle to the industry. Many of the necessary measures and principles discussed below can not be left to local initiative. But pre-emption should be the last resort. Every community should have a right to determine what it does or does not want to locate within its jurisdiction. Legislation which forces a community to accept mobile home parks or, for that matter, any other use is not the answer.

The Comprehensive Plan Stage. Since it is necessary to treat mobile homes as integral components of the local housing supply, it is imperative to determine their role in a given community already in the comprehensive plan stage. This would assure that long range development objectives and the interrelationship of numerous complex factors are taken into account. The mobile home park, the mobile home subdivision and the single unit on an isolated lot deserve consideration at this stage.

Also the mobile home park may be a very useful device for the comprehensive plan. Parks can provide buffer functions between commercial and residential districts, thus making constructive use of land which often lies idle or develops slowly between the two districts. The mobile home park

may also perform a transitional function in terms of time, an intelligent interim use of land awaiting development or re-development.

Zoning for Mobile Home Parks and Mobile Home Subdivisions. The mobile home park must be considered as a high-, or preferably medium density residential use. It can be conceived of as a horizontal apartment development.[195] Mobile home parks generally seem to fit best the multiple family residential category. They should be allowed, under special circumstances, in single family residential districts; but then preferably as a transition to commercial or to conventional multiple family districts.[196] Mobile home parks should under no circumstances be relegated to industrial or commercial districts,[197] (see footnotes 196 and 197 on next page) but they should not border a fifty thousand dollar residential district either.

Zoning regulation of the location of mobile home parks and mobile home subdivisions should be handled in two ways. Such uses should be permitted outright in specific residential districts or should be permissible as special exceptions in specific residential districts after specified requirements have been met.

The technique of outright permitted use seems to be the

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[195] Chapter II.2.9.

[196] Planning commissions, upon serious study of the problem of mobile home park zoning in their jurisdictions, have arrived at similar conclusions.

"...Existing zoning...should be amended to permit trailer parks in more suitable zoning districts...alternatives are;... permitting trailer parks in multi-family, suburban and rural residential districts..." (Metropolitan Area Planning Commission, Wichita, Sedgwick County, Kansas, 1958) (383:6)

"Trailer parks belong in a community or metropolitan area as a large scale, high density...residential use...Residential Trailer Parks...should be treated as a multiple family residential use...(and) may be a transitional use between... single family residential...and commercial or industrial land use..."(Planning Commission, Fresno County, California, 1960) (80:15)

"...trailer courts are now being considered as a high density residential land use...selecting the proper areas in which to allow or encourage trailer court development is a gigantic problem...where is an area..needed for high density residential development? The areas which meet these... requirements are...restricted...further if adjacent land use and public opinion are given due consideration. Should we then restrict trailer courts? From the experience of the growing cities which have taken this way out, the answer is no...suitable locations are usually available in suburban areas. The establishment of trailer court zones between residential and commercial districts is generally considered to be in the best interests of the community." (Regional Planning Commission, Reno, Sparks, and Washoe County, Nevada, 1959) (289).

[197] Complications arise when mobile home sales activity is concurrently run with a mobile home park operation. The merchandizing operation may front the street with the residential activity in the rear. (In the presence of the unfortunate practice of strip zoning, both uses may be compatible.) Or, frequently, some light business activity is carried on in the park for the benefit of the park residents. Sale of groceries and sundries are quite common. Often this has been construed to characterize the entire park as commercial, and consequently places the park in commercial or business zones. It is useless to argue here that light business activity is customarily tolerated in apartment developments or other residential sections; logic is not a useful weapon in the mobile home controversy. Practically, the problem can only be solved by eliminating or deactivating it. Thus, the municipality should require that the mobile home park operator establish the sales part of his operation in a commercial district. Similarly, if the mobile home park operator wants to cater to the vacationing trade, he should not be allowed in strictly residential areas. Travel trailer parks are properly located in recreational or commercial districts. In-park light business activity is necessary for the benefit of the residents, especially in larger parks. Such operations should be confined to a central area of the park, and their use restricted to park residents. Some model ordinances specify a maximum percentage of total park acreage, perhaps 10% for such activity. (235)

best solution. An analysis of relevant court decisions suggests that thorough care must be taken to authorize specifically mobile home parks as a permitted use for any particular district in question. Since most zoning ordinances are the "inclusive-type," failure to mention this fact will be interpreted as prohibition. But with this qualification, it is a legally safe and unequivocal device. Its workability depends primarily upon clear specification of requirements in the schedule of district regulations. Assuming that housing, building, health and sanitation requirements are covered by the relevant general ordinances, the schedule need only list minimum (average) mobile home lot size, minimum park size and buffering requirements.[198] Thus the applicant knows what he

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[198] As has been mentioned in Chapter IV.2.1.2, the factor of management economics is a determinant of minimum park area (not mobile home subdivision area), as are considerations of discouraging undercapitalized prospective developers in favor or large scale developers of top-grade parks. The writer has studied the economics of mobile home park operation and concludes that 10 to 12 acres should be required as a definite minimum for park size. Specification of minimum lot size requirements, a density control measure, is a proper zoning function. But it also defines the character and income-category of the park clientele and, retroactively, the investments economically feasible for landscaping and recreational facilities. There local conditions must rule, but current mobile home dimensions alone suggest a definite minimum of 3,500 to 4,000 sq.ft. A more practical form of specification is to impose a maximum limit of 5 - 10 units per gross acre, with the lower figure applying to mobile home subdivisions. Specification of greenbelting and buffering requirements, while almost imperative, can not be the subject of generalizing rules. Local conditions, especially considerations of "reasonableness," are decisive.

The determination of the minimum total area of mobile home subdivisions is a critical question. The writer assumes that a mobile home subdivision can include typical "tangerine-look" mobile homes, whereas the traditional residential subdivision should be limited to double-wides with more traditional (cont.)

can and can not do without need of negotiations with the planning commission or/and the board of adjustment or/and the governing body. If it is possible to state that"mobile home parks or subdivisions meeting the following requirements will be permitted in district X," this is by far the best way to handle the matter.

The special exception technique (not to be confused with the variance machinery) is only theoretically a valuable tool of zoning. It involves an excessive amount of red tape and encourages regulation by discretion rather than by fixed laws. Especially with mobile home parks the technique is decidedly dangerous. The widespread antagonistic attitude of local authorities to mobile homes has often resulted in setting arbitrary de facto-prohibitory conditions. Also, corruption in local government is unfortunately common. In some areas normal procedure for smoothing the path for general construction projects is bribery. Anti-mobile home sentiment makes mobile home park developers especially vulnerable to such practices. If this technique is to be employed, the specifications to be used in determining whether a special exception should be granted,must be stated with precision,

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housing appearance. This leads to problems of segregation and also to the question: what constitutes enough lots to make a mobile home subdivision a small neighborhood. These questions can only be decided locally.

clarity and completeness. This technique should be used only where the situation is so complex that inclusive rules can not be stated. The writer can not see, however, anything unique in mobile home parks that they should have to pass through the special exception process.

Some attempts have aimed at establishing special "mobile home park districts." This practice is frequently advocated by some segments of the mobile home industry. But this constitutes spot zoning; and, furthermore, owners of land in the district are then limited in the use of their land to mobile home parks or subdivisions, an absolutely unrealistic and legally indefensible constraint. If the zone is the only one in which mobile home parks may be developed, a monopoly is granted. The technique does not justify further discussion.

Zoning and Mobile Homes. Generally in incorporated areas mobile homes are confined to licensed parks. They are permitted on individual lots usually only in agricultural districts (and of course in rural or sub-rural areas). This practice is considered desirable by most writers.

Considering the relative newness of the mobile home, its characteristically bonbon-colored appearance, and the resulting feeling that those shoddy "things" should not

be mixed in among conventional dwellings, it seems discreet, if not entirely logical, to segregate mobile homes in either parks or subdivisions, and to also state that mobile homes will not be permitted in any districts except in mobile home parks and subdivisions.

How then can the policy objective of this proposal, the penetration of single family residential districts by individual mobile homes, be achieved? The solution is relatively simple.

Zoning ordinances should be amended by definitions as to what a single family dwelling constitutes. The definition should include only relocatable units which are sufficiently similar in appearance to conventional single family residences. Problems of vagueness in definition can be overcome.[199]

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[199] An example is Bair's proposal which would allow most double-wides into single family residential districts: "Mobile homes will be permitted in the R-1B district only if the end portions, as provided with the delivered unit or added, are at least 20 feet in width, the main body of the unit is at least 50 feet in length, the main roof shall be pitched at an angle of not less than 30 degrees and the ridge shall be not less than 10 feet from the front wall, the unit shall be oriented with its long axis parallel to the street, exterior finish shall be of a flat variety, not creating excessive reflection, and colors used shall be the same as those generally in use in the neighborhood." (425:299)

The industry can produce such unobtrusive units with the same ease and cost as it produces "tangerine-colored landscape-litter." Most manufacturers offer a great variety of different "styles." Many have already(some still are) produced units with a traditional house look. Though there is a trend to return to the "typical" mobile home look, because the demand for house-like look did not justify the expectations, the demand will certainly increase if such units would be allowed into single family residential districts. A large percentage of double-wide and sectionalized units are already being manufactured and styled along these lines. The industry will respond to this challenge, since an immediate market expansion of at least 15 to 20 percent is certain. And the shortage of park space is beginning to freeze the demand growth for the "typical" product (which can usually only be located in a park).

The critical question then is how to "persuade" local government units to adopt such definitions. The probable answer is the inclusion of such a definition in state statutes. This would assure the cooperation of the courts. However vaguely such "indistinguishable in appearance" definitions might (and can only) be worded, the exclusion of relocatable units built to accepted standards and indistinguishable in appearance can hardly be sustained on

grounds of furthering the general welfare of the community.

Another local objection against mobile homes on individual lots is alleged transiency. But the definition under discussion can, and should be drafted to allow only more expensive, double-wide or sectionalized units. The expense of the land (with lower density than in mobile home parks) added to improvements (no different than for traditional developments) creates a fairly safe guarantee of permanence.

This pressure on the industry would be legitimate since it is only an indirect regulatory measure. It is the consumer who will impose this regulation directly. And if a simple change of definition can increase the annual output of acceptable low-cost housing by at least 50,000 to 80,000 units, then the pressure on local authorities is defensible as in the public interest.

Nonconforming Uses. Deteriorating mobile homes on individual lots and poorly managed parks are the focus of objections of most communities to mobile homes. The solution does not lie in total exclusion, but rather in a combination of future regulations and the utilization of normal non-conforming use doctrines, amortization, and urban renewal.

Naturally, there are other conventional means of dealing with non-conforming uses; such as removal through eminent domain, removal by the owner and replacement by a conforming use or the transformation of the use to a higher non-conforming or to a conforming use.

As stated in Chapter IV.2.7.4, the problems arising can be properly met through correct utilization of conventional principles that have been developed for non-conforming uses.

4.4.4 Restructuring of the Enforcement System

As much as possible, enforcement should come by the regular methods and through the regular channels set up in the general ordinance.

In the special chapter on methods of enforcement[200] one of the specific tools, confinement of mobile homes to licensed parks, has been proved obsolete. Two other established methods, however, licensing of parks and occupancy permit requirements, have been found basically sound in concept. These two measures can be maintained advantageously, if some major adaptations are made.

Licensing of Mobile Home Parks. If the conditions for

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[200] cf. Chapter IV.3.

the issuance of the license are in line with the policy objectives underlying this proposal, this measure is an adequate tool for enforcing compliance with building, fire and health and sanitation codes.

The measure, though conceptually sound, is not well molded, especially since it is a separate device applicable only to mobile home parks. If licensing is desired, then a general ordinance which would require that a license be secured before a proposed use is established should be applied to all uses in existence at the time of enactment. Such a licensing program would provide a means of passing in advance upon the legality of a proposed business or activity, a permanent registry of the regulated business or activity, and a method of facilitating inspection and regulation.[201]

Requirements of Permits for Mobile Home Occupancy. The permit requirement seems especially promising as a general enforcement device, because it can be used for controlling the total mobile home inventory; it corresponds conceptually to the trend towards location dispersal.

However, some qualifications are necessary. The present practice of issuing distinctly different permits for the

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[201] 101. 9 McQuillin, Municipal Corporations 2601 (3d Ed. 1950).

occupancy of "normal" dwellings and mobile homes, is not a wise policy. The forthcoming advent of, and the probable penetration of traditional subdivisions by the "relocatable" home make procedural unification imperative. If a certificate of occupancy is required by the housing or building department for traditional homes, then the same should be required for mobile homes. If in the absence of such a requirement for traditional housing, it seems desirable to subject the mobile home owner to such a requirement, then the only relevant and legitimate question is whether and how this can be imposed upon the total local residential population. Special characteristics of the mobile home must, as a transitory measure, be considered by adaptations. They should not, and need not be construed as a justification for a distinctly specific permit. This principle will certainly be approved by the judiciary. In City of Rochester v. Olcott[202] the court stated, though not directly related to the question involved: "...The owner of a trailer, having complied with all...requirements applicable to dwellings for single families, may no more be subjected to the requirement of...a permit...than...the owner of a...single dwelling..."

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[202] 173 Misc. 87, 16 N.Y.S. 2d 256 (1939).

SECTION V

THE MOBILE HOME INDUSTRY--
A POTENTIAL CATALYST FOR THE
INDUSTRIALIZATION OF BUILDING.
A CONCLUSION.

Though it seems simple, the policy of taxing and regulating mobile homes like traditional housing is a bold proposal. This policy has not been suggested before; it goes against and far beyond any proposal advanced thus far, and its implementation involves political difficulties. State pre-emption, even in a limited sense, is a touchy issue,[203] especially for local authorities. And the mobile home industry, though it would benefit greatly, is unlikely to endorse all components of this policy immediately,[204] if only due to stubborn reluctance to yield to government control of any sort.

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[203] The Kaiser Committee has gone even further and has recommended Federal pre-emption of local zoning ordinances excluding the development of subsidized housing, and limited Federal pre-emption of local building codes for subsidized housing. (371.1:5)

[204] The writer discussed his proposed taxation policy with John M. Martin, Managing Director of the Mobile Homes Manufacturers Association (cf. List of Interviews). It seems certain that the Association would endorse this policy. The writer also discussed with him and other directors of the Association components of the proposed regulation policy. Here the criterion for industry support is apparently immediate benefit to the industry. Most of the individual measures proposed meet this criterion. Some do not, such as encouragement of extra-park location of units, especially because of the prerequisite requirements of design upgrading. But the Association can be expected to support the policy in general, though not immediately. The industry is still narrowly oriented toward the mobile home; the emphasis on housing-orientation originated primarily at the Association level. Conservative forces in the industry have recently enforced a drastic restructuring of the Association and its policy. Though the new managing director is at least as progressive as his fired predecessor, he is unlikely to be able to return immediately to a broader long-term Association policy.

But major controversies over the proposed policy can be avoided. Implicitly, it is a long range policy; it is not designed as a program for immediate and complete implementation.[205] It is designed to guide in day-to-day decision-making in the sense of consistent disjointed incrementalism. If over a span of several years routine decisions with policy implications and enactment of mobile home-related legislation[206] are made to relate to the proposed longer term goal, implementation will be achieved almost automatically.[207]

With the introduction of double-wides and modules, the problems of taxation and regulation will have to be solved; there is a backlog of problems and a showdown is imminent.

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[205] Immediate implementation would be a disadvantage. One year from now the future place of the mobile home industry in relation to the building industry could be predicted with much more accuracy. And this relative position will define many regulatory details.

[206] One of the commitments made by the new Secretary of Housing and Urban Development in connection with the new program BREAKTHROUGH is to "support the continuing efforts of national, state and local authorities in reviewing and improving standards, codes and regulations affecting the development and production of housing." (May 1969) (265.1:3).

[207] It is consistent with this approach that the proposed taxation and regulation system avoids specifying details. It was necessary to define the principles; the proposed system is largely a "performance specification." Detailed provisions can respond to particular problems or situations, provided they "perform" according to the basic principles.

Basic decisions which will have a decisive long term impact will be made. Therefore, guidance by a consistent long range policy is necessary. And since these decisions will be precipitated by unpredictable events and circumstances, a strategy of disjointed incrementalism is an adequate approach.

The alternatives are clearly defined.

Failure to take into account future development trends will result in inconsistent stop-gap decision making. While this will not slow the industry's growth, it will not stimulate and direct its development either. Furthermore, it will cement the mobile home-orientation of the industry, because only a consistent development policy can activate the potential as a resource for low-cost housing. The mobile home and the mobile home park are not optimal housing forms developed in response to user needs, but are accidental compromises dictated largely by regulations lacking housing orientation. If five million Americans are, and ten million soon will be living in mobile homes, then conventional mobile home living should not be encouraged thoughtlessly.

The other alternative is to guide and stimulate the development of the industry. The proposed policy will create sufficient high-quality park space supply, which

in turn will increase the annual industry output by at least thirty to forty percent.[208] The proposed encouragement of extra-park location of mobile homes will yield a further increase in output of at least twenty percent. per year.[208] This possible expanded output (by 150,000 to 250,000 units per year) can be tactically used to guarantee the industry year-round, full capacity operation. Shielded from seasonal fluctuation, the industry would be able, and should be encouraged to invest into R. & D.[209] activities. Sensitively supported by tactical "lollypop" control, gradual improvement of the product especially in terms of design would be insured, and the industry could be expected to produce annually 150,000 to 250,000 architecturally acceptable modules with potential for urban housing.

Mobile home parks and low-cost "bonbon-colored" mobile homes are not solutions to the problem of low-income housing. But the proposed policy would help solve this problem. At least 200,000 acceptable low-cost dwelling units per year, more than 500,000 "relocatable homes" per year and the creation of a growth industry capable of continuously producing acceptable low-cost housing are the advantages which should remove any objection to the policy proposed by this study.

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[208] cf. Chapter II.1.

[209] The industry does not yet engage in R. & D. to any identifiable extent.

At this point it is necessary to return to the broader implications discussed in the introductory section. The following is also intended to outline those problem areas upon which subsequent research should focus.[210]

Once more the suggested policy for mobile home taxation and regulation can activate the potential of the mobile home industry as a resource for low-cost housing. However, this policy is by definition limited to removing constraints in the immediate social, economic and political environment. "Low-cost" can thus only mean the maximum possible cost reduction achievable by a policy with this limited scope. This reduction is significant in absolute terms, yet, it is minor compared to the potential of comprehensive industrialization of the entire industry conglomerate which is producing shelter.

Significant economies of scale are only possible by synchronization of supporting and prime functions.[211] As long

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[210] Less ambitious research objectives are defined by the general absence of the most basic data structures for the mobile home industry. No adequate studies have been done on structure, operation and performance of the industry. A serious application of classical industrial organization analysis is badly needed.

[211] For example, the advantages gained by industrial mass production of dwelling modules for multi-story developments are largely lost if outdated land development practices, local unionized labor and in-situ poured concrete must provide the mega-structure.

as the entire building materials and products sector and the entire broader institutional system remain geared to an inefficient, fragmented construction industry, policies focusing on the mobile home industry alone can only have limited success in furthering the industrialization of this industry. The mobile home industry can only achieve a dramatic cost breakthrough by synchronization with the supply and institutional sectors. Yet structure and operation of both sectors are primarily defined by the giant archaic construction industry. Policies focusing solely on developing the mobile home industry, however successful, can not increase the economic and political force of the industry to the degree necessary to compete with the construction industry in controlling the important supporting sectors. It is a vicious circle, ruling out "innovation by invasion" by the mobile home industry. This hope ironically originated in Washington, where the political power of the construction industry should be evident enough to reveal this hope as a pipe-dream.

Thus, if maximum possible cost reduction and a drastic increase in housing output are national goals, it must be recognized that comprehensive industrialization of the entire industry conglomerate, inclusive of the supporting sectors, is the necessary prerequisite.

This point is not a new one. During the forties,

government and industry were aware already of these interdependencies. Yet all attempts at comprehensive industrialization have failed. One reason was that the programs (for political reasons) were less comprehensive in nature than necessary. The other reason was the inertia of an established organism with dominance in the national economy, and its failure to respond to comparatively small scale and short term innovative assaults. Yet, in the latter respect the situation is different today. An outside industry, which massproduces housing by at least semi-industrial methods, has become firmly established as an important producer of housing.

The mobile home industry should be treated tactically as part of the entire industry conglomerate. Once this industry is considered an integral component, its innovative characteristics can influence any program or policy relating to the entire conglomerate. This tactic uses the mobile home industry as a nucleus of innovation. The mobile home industry as an outside competitor would force the traditional sector to utilize its superior political and ecnonomic power to prevent the supplying and institutional sectors from supporting the rival industry. Yet, as an accepted integral component, the "atypical" mobile home industry would be valuable in pointing to deficiencies in the existing structure, thus forcing critical re-examination of traditional concepts and the

traditional framework.

The following example illustrates this principle.

The new structural and mechanical standards[212] adopted by the industry cover only the production of mobile homes. Once the industry turns to the production of modules for permanent multiple dwelling developments, it fears to be subjected to traditional building codes. This has been the case in the prototype developments thus far; yet the code-enforced structural redundancy has caused the cost structure to approach that of traditional housing. The industry is therefore determined to stick to their standards, even for module production, and to push for official acceptance of this step.[213] If the industry employs adequate tactics, the writer believes they will succeed. The mobile home industry would be able to mass-produce dwelling modules, in accordance with a nationwide uniform, performance-type standard (which allows much more efficient construction than under traditional codes). As a next step, the manufactured homes industry (and other industries engaged in module production) will push for the same privilege. Finally, the National Association of Homebuilders may lobby to secure the extension of this privilege even for on-site operations--though such a move has less chance of success. In any

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[212] cf. Chapter IV.2.3.2.

[213] Interview with John M. Martin, Managing Director, Mobile Homes Manufacturers Association. (cf. List of Interviews).

event this move by the mobile home industry will force a serious review of the chaotic situation of building regulation, perhaps even leading to the long-overdue restructuring of the building regulation system. Politically, the climate is favorable, as various government commissions recently have strongly emphasized this necessity.

Another example is the problem of taxation. The writer has proposed subjecting mobile homes to real estate taxation as the only politically feasible possibility to attain horizontal taxation equity. Yet, the need to develop a new system of mobile home taxation could be used to review prevailing tax policies in general. And then a drastic revision of the obsolete present real property tax assessment techniques would have to be proposed. Such a step would result in substantial land cost reductions.

Thus, the mobile home industry with its atypical characteristics can be tactically used to push for steps aiming at gradually restructuring the entire industry conglomerate and the institutional framework.

Naturally, such objectives call for government intervention and a long range policy for the comprehensive industrialization of the building industry. The first is obviously taboo; and the latter appears somewhat unlikely

in the absence of even vague attempts at developing a building policy.

Still, the urban crisis is largely a low-cost housing problem. Authorities in the field already predict that the ten year target of 26 million units can not be achieved. The Kaiser Committee which originated this plan-target also suggested how the target could be achieved, should the recommended traditional approach fail. "If it fails, we would then foresee the necessity for massive Federal intervention with the Federal Government becoming the nation's houser of last resort." (371.1:145)

While failure is indeed probable, "massive" Federal intervention may not be necessary. The need is for a consistent long range building policy. Subtle "lollypop" type intervention guided by a consistent long term policy will achieve far more than massive, panic-motivated intervention.

APPENDICES

APPENDIX II.4

(cf. CHAPTER II.4)

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DEPARTMENT OF ARCHITECTURE E 21 - 2nd floor

The design of this questionnaire is based on the assumption that printed or mimeographed material available to you might automatically answer many of the questions - ideally with some more detail than we were able to ask for in the questionnaire. We ask you to supply prepared material (surveys, statistics, reports, studies, sales literature,etc.), technical drawings x),and photographic material x)to the maximum extent possible.For other questions, you might be able to refer to publications, trade journals, etc. We hope that this proposed procedure will reduce the number of questions to a manageable portion.

For most of the questions below, precise data may not be available. In such cases we ask you for approximate figures, or for your educated guess.

Please, indicate precisely the coverage of the data you are supplying : Do the data cover the total mobile home / recreational vehicle industry, including all sectors: Manufacturers (mobile homes, travel trailers, recreational vehicles, special units, etc.), carriers, dealers ? Or do the data cover one or several sectors only ? Please, define precisely the industry sectors covered. State in either case, whether the data supplied cover the entire industry sector(s) specified,(i.e. all firms etc., re - gardless of membership in your association), or only your membership segment(s).

Please, state to which extent the information or the material provided is to be treated confidentially !

x) such material would be most helpful for the preparation of the publication

QUESTIONNAIRE

MOBILE HOME / RECREATIONAL VEHICLE INDUSTRY : MANUFACTURING SECTOR

(1) Total number of firms. Breakdowns: By sales volume classes, by output volume classes (units), by employment-size classes, by extent of branch plant operations.

(2) Total number of plants. Breakdowns: By output volume classes (units), by employment-size classes, by geographic location, by production program (i.e., plants producing: mobile homes only,mo-

(continued)

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bile homes and travel trailers, mobile homes and special units, etc., etc.)

(3) Total employment, present, and future (projected).Breakdown by: Labor (skilled-unskilled ratio), clerical, technical, professional ,and administrative.

(4) Labor unionization. Extent. Problems.

(5) Approx. percentage of labor force with building industry background.

(6) Average, and maximum number of shifts worked per day.

(7) Total actual annual output (growth record, and projected future output), and present total maximum annual capacity (units).Break - downs: By types: Mobile homes (8-,10-,12-, double-wides, expandable units), sectionalized houses etc., travel trailers, truck mount campers, folding or tent campers, special units (for educational , commercial, medical, or other uses). By retail price ranges. By regions, states, etc.

(8) Concentration ratios (percentage of total industry shipments accounted for by the 4, 8, 20,etc. largest companies).

(9) Industry: Highly competitive, competitive, concentrated, oligopo - listic, or monopolistic ?

(10) Barriers to entry of new firms: Easy entry ? Blockaded entry (scale -economy barriers, or absolute-cost barriers, or product-differen- tiation barriers ?)?

(11) Tendency toward mergers ? Extent. Reasons.

(12) Trends towards vertical integration ? Extent. Parent, subsidiary , or affiliated organizations most often for: Producing or purchas - ing raw materials etc.? Manufacturing ? Selling ? Financing ?

(13) Characteristics and background of newly formed or entering compa - nies etc., of companies being shut down (reasons ?). Frequencies of entries, of failures, etc.

(14) To which degree is the whole industry, or parts of, subject to de- mand fluctuations (e.g. seasonality) ? Implications.

(15) Major reasons for development of multi-plant operations: To increase market penetration? To reduce freight costs? Original plant had

(continued)

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reached minimum optimal output scale ? Other ?

(16) Economies of scale: Assume, a guarantee of a large market continu - ously over many years (e.g. by Federal Government) would enable one of your member manufacturers to invest in R&D for a standardized mobile or sectionalized home unit designed for automated massproduction, and to invest in the necessary facilities for automated mass-production: Can you make an educated guess about his probable marginal unit costs for guaranteed annual outputs of 10,000 , 50,000 , 100,000 units ?

(17) Assuming maximum possible utilization of automated mass-production, what is your educated guess about minimum optimal plant size (single-line) in terms of annual output in mobile home units ?

(18) Manufacturer's costs and profit. Cost breakdown per mobile home unit (dollars, per cent): Direct factory labor cost,(direct field labor cost), material cost, plant overhead, selling expense, gene - ral and administrative expense, profit before taxes, transportation expenses, service etc. after sale.

(19) R&D expenditures (dollars, percentage of total industry retail sales). Approx. breakdown: Routine product development and improve-ment (short-term objectives), and more basic R&D with long-term objectives (e.g. sectionalized house production).

(20) Present R&D activities: Nature of projects, common denominators,etc.

(21) Trends and progress in terms of centralizing certain R&D activities (e.g. under auspices of trade associations)? Extent of support by, and cooperation with Federal Government in R&D ?

MOBILE HOME / RECREATIONAL VEHICLE INDUSTRY : INDUSTRY SUPPLIERS

(22) Structure, operations, and performance of supplying sector. See: questions (1) - (14), (19) !

(23) Range of supplier products.

(24) Industries serviced by suppliers: e.g. mobile home industry only, mobile home and housebuilding industry, mobile home and other industries, etc.

(25) Are materials/parts/components purchased largely standard for house-building industry ?

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MOBILE HOME INDUSTRY : CARRIERS

(26) Total number of carriers. Breakdowns: By Transportation volume classes (e.g. unit miles p.a.), by employment-size classes, by geographical location.

(27) Total employment by carriers.Breakdown by: Labor, clerical, ...etc.

MOBILE HOME / RECREATIONAL VEHICLE INDUSTRY : DEALERS

(28) Total number of dealers. Breakdowns: By sales volume classes (dollars units), by employment-size classes, by geographical location.

(29) Percentages of total (28),with multiple lines? with single lines?

(30) Percentage of total (28) with own park facilities ?

(31) Total employment by dealers. Breakdown by: Labor, clerical, ...etc.

(32) Total annual sales (growth record, and projected future sales)(dollars, units). Breakdowns: cf. (7) !

(33) Percentage of total units sold, involving trade-ins .

(34) Percentage of total units bought: Through local dealers? Directly from manufacturer ?

(35) Nature and extent of services offered by mfrs. to dealers.

(36) Nature and extent of services offered by dealer to consumer.Charges.

(37) Extent of after-sale servicing of units, by mfr., by local dealer.

(38) Mfr.-warranties. Nature, extent, and period of validity.

(39) Financing.

(40) Estimated loss of potential sales due to lack of park space.

(41) Does switch towards sectionalized house concepts etc. necessitate substantial rearrangements of dealership set-ups ? In which respect?

(42) Dealer's costs and profit. Breakdown for a typical mobile home unit (dollars, per cent): Payroll costs, operating expenses, general business expenses, earned on sales. Dealers profits primarily by sales, or by finance-charges, insurance sales, etc. ?

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MOBILE HOME INDUSTRY : TRANSPORTATION

(43) Transportation. Total mobile home units shipped, percentage breakdowns by: Mode (Highway,railroad,air). Moved by (Mfr., dealer, carrier). Moved where (From mfr. to dealers lot, or from mfr. directly to mobile home park site). Transportation costs per unitmile.

(44) Transportation of mobile home units from mfr. to either dealer or park : average, and maximal radius in miles.

(45) Educated guess: Percentage breakdown (43) for year 1980, year 2000?

MOBILE HOMES : OCCUPANCY COSTS

(46) Retail price ranges for different basic mobile home (section) types.

(47) Transportation, hook-up, utility connections, etc., included in (46)?

(48) Retail prices/sq.ft. or /unit without furnishings.

(49) Financing (e.g.: over how many years, minimum and usual downpayments, finance charges for buyer, such as interest payments,fees,etc.)

(50) Park site rent ranges, per month.

(51) Taxes, per unit and month. Ranges.

(52) Occupancy costs. Breakdown (dollar/month, per cent): Debt retirement, utilities, site rent, taxes, maintenance and repair.

MOBILE HOMES : OCCUPANTS

(53) Total number of persons living in mobile homes. Breakdowns: By family status, by age, income, and occupation groups, by mobility, by owner-renter ratio.

MOBILE HOMES AND RECREATIONAL VEHICLES : INVENTORY

(54) Total number of units in use (total inventory).Breakdown by types (mobile homes, travel trailers, truck mount campers, etc.).Frequencies of: occupant-change, location-change.

(55) Total replacements to date, annually at present, and in future (projected).Record. Breakdown by types.

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MOBILE HOME PARKS

(56) Total number of mobile home parks etc. Breakdowns: By type (Housing park, service park, resort p., recreational vehicle p., subdivision p.,etc.). By size classes. By geographical location. By:inside or outside SMSA's.

(57) Financing. Real estate operations:development, brokerage , etc.

(58) Development and construction costs of mobile home parks, per site, dollar or percentage breakdown: Land, financing,site clearance,etc.

(59) Operating costs of mobile home parks, per site, dollar or percentage breakdown: payroll costs, repair and maintenance, lease payments, real estate taxes, depreciation, profit.

(60) Parks vs. high-rise plug-in parking structures: Development, construction, and operating cost comparisons.

(61) Mobile home park developer/owner profile, especially background.

MOBILE HOME / RECREATIONAL VEHICLE INDUSTRY : REGULATIONS, CODES

(62) Regulations (e.g. Federal/state highway, health, construction regulations), codes (e.g. local building codes), zoning practices, standards (e.g. USASI, FHA): Wordings, texts, tenors;regional or state variations. Implications for, influences on: Design, production ,transportation, and sales of mobile homes etc.;design, development, and operation of parks etc. Needsof, and proposals by industry for change. Tactics employed by industry to eliminate unfavorable, and to achieve more favorable regulations, etc. Success so far?Trends?

MOBILE HOMES, RECREATIONAL VEHICLES : TAXATION

(63) Taxation practices. Geographical variations. Trends. Industry needs and proposals in terms of change of present principles.Actions, success?

MOBILE HOME / RECREATIONAL VEHICLE INDUSTRY : CONSTRAINTS

(64) List factors constituting constraints on design, production, output volume of mobile homes, on design , development, and operation of parks (e.g. (62), (63), seasonality, labor unionization, park scarcity,etc.).

Please, indicate extent to which information or material provided is to be treated confidentially :

It would be extremely helpful for the questionnaire analysis, and also for the later publication of the study, if you could provide:

a) technical drawings, photographs, etc. of the models you produce, especially of details
b) photographs of major production process phases
c) sales literature, etc.

QUESTIONNAIRE

1 Name of company: _____

2 Company, years in business : _____

3 Total output in units (all types) to date : _____

4

plant locations	actual annual output per plant in units			no.of basically different models produced p.p.	no.of shifts per day pp.
	mobile homes	recreational vehicles	special units		

(In case of more than 6 plants: Please, use separate sheet !)

5 Total employment : labor, skilled _____
" , unskilled _____
clerical _____
technical _____
professional _____
administrative _____

6 Extent of labor unionization : _____

7 Approx. percentage of your labor force with building industry background : _____

8 Financing : Public stock issue _____
Private capital _____
Other (Specify) _____

9 Receipts and use of funds :

stock	fixed assets
loans	operating exp.
sales	inventory
totals	

(continued)

10 Any parent, subsidiary, or affiliated organizations for :
producing or purchasing raw materials ? _____
licensing (indicate relationship) ? _____
manufacturing ? _____
selling ? _____
financing ? _____
other (specify) ? _____

PRODUCT

11 Product mix :

	actual present annual output (units)	maximum present annual capacity (units)	average retail price x) per unit	average length (ft.)	average floor area (sq.ft.)
mobile homes					
eight-wides					
[illegible]-wides					
[illegible]ve-wides					
double-wides					
expandable units					
sectionalized houses etc.					
travel trailers					
truck mount campers					
folding or tent campers					
special units					
for educational use					
for commercial use					
for medical use					
for other uses					

x) Included in retail prices : transportation ? hook-up ? utility connections ? leveling, joining ?

12 Figures available on retail prices/sq.ft. or /unit without furnishings ? _____

13 Product standardization :

Do you offer standard model variations	present policy		possible future policy	
through options on finishes, etc. ?	yes	no	yes	no
through options on subassemblies, etc. ?	yes	no	yes	no

14 Do you offer custom-designed units ? Yes__ No__

15 Minimum number of identical units required per custom order : _____

16 How often standard model change, in terms of styling ? _____
, in terms of construction ? _____

ECONOMIES OF SCALE

17 In case of multi-plant operation, reasons for development of branch-plant operations : To increase market penetration ? _____
To reduce freight costs ? _____
Original plant had reached minimum optimal output scale (for presently employed technology) ? _____

(continued)

18 Economies of scale : Assume, a guarantee of a large market continuously over many years (e.g. by Federal Government) would enable you to invest in R&D for a standardized mobile home unit designed for automated massproduction, and to invest in the necessary facilities for automated massproduction : Can you make an educated guess about marginal unit costs for guaranteed annual outputs of

10,000 units ? Marginal unit cost : _____
50,000 units ? Marginal unit cost : _____
100,000 units ? marginal unit cost : _____

19 Assuming maximum possible utilization of automated massproduction technology, what is your educated guess about minimum optimal plant size (single-line) in terms of annual output in mobile home units ?

DISTRIBUTION

20 Transportation :

		at present		future (trend)	
		average radius	maximal radius	percentage of total units shipped	
Mode :	Highway				
	Railroad				
	Air (Helicopter)				
				100 %	100 %
Moved by :	Manufacturer				
	Dealer				
	Carrier etc.				
				100 %	100 %
Moved from mfr. to dealers lot					
Moved from mfr. directly to mobile park site					
				100 %	100 %

21 Site requirements :

		man-hours / unit	
		mobile homes etc.	sectionalized units etc.
Foundations :	By central mfr. labor		
	By dealer labor		
	By local contractor		
Leveling, joining of doubles, erection of sect. units:	By central mfr. labor		
	By dealer labor		
	By local contractor		
Connections to utilities :			

Machinery requested on site for erection, joining, pulling into place, stacking, etc. etc. : _____

---

22 Services offered by you to dealers: None ? __
Merchandising programs ? __
Marketing research ? __
Sales training courses ? __
Other (specify) ? _____

23 Extent of after-sale servicing of units,
centrally by mfr. : _____
by local dealer : _____

(continued)

24 Any mfr.-warranties ? __ Extent, and period of validity : _____

COSTS

25 Production plant(s): Rented ? __ Leased ? __
(Or : Capital investment for plant(s): _____)
Capital investment for production equipment (all plants) : _____

26 Mfr.'s costs and profit. Cost breakdown per unit:

	dollars	per cent
Direct factory labor cost		
(" field " ")		
Material cost		
Plant overhead		
Selling expense		
General and administrative expense		
Profit before taxes		
Transportation expenses		
Service etc. after sale		
		100 %

27 Man-hours per unit : factory (production) : _____
(total:mfr.+dealer+contractor) field (installation) : _____

SUPPLY

28 Do you manufacture parts from basic raw materials ? Yes __ No __

29 Purchase contracts, with how many suppliers : _____
, over how long periods : _____

30 Are materials/parts/components purchased largely standard for house-building industry ? _____

31 Would better modular and dimensional coordination, standardization, and interchangeability of parts/components purchased enable you to design and manufacture more efficiently ? _____

RESEARCH & DEVELOPMENT

32 Present expenditure on R&D in per cent of total (retail) sales: _____

33 R&D activities (Pls. supply descriptive material to max. extent possible!):

	prototype stage	engaged in R&D	intention of future R&D effort
Sectionalized or modular housing units			
Combining, clustering, or stacking such units in variety of configurations, etc.			
Medium or highrise plug-in, etc. etc.			
Other (Specify)			

CONSTRAINTS

Which of the following factors constitute constraints on design, production, output volume: Labor unionization? Seasonality? Park scarcity? Standards, e.g. USASI? Highway regulations? Health, construction regulations? Building codes? Differing taxation policies?

APPENDIX III .2.5.3

(cf. CHAPTER III .2.5.3)

Table 4 : Comparative Analysis: Community Revenues from Mobile Home Parks and Single-family Residences with Varying Degrees of Densities per Acre

No.	Mobile Home Parks			Single Family Residence		
	Assumption I	Assumption II	Assumption III	Assumption I	Assumption II	Assumption III
No. of Homes Per Acre	10	15	18	5	7	9
Location of Park	Recreational or Retirement Area	Suburban	Central	Recreational or Retirement Area	Suburban	Central
Property Tax Per Acre	$ 600	$ 650	$ 700	$ 1,200	$ 1,500	$ 1,800
License Fee Per Home	$ 115	$ 90	$ 80			
Total License Fee Per Acre	$ 1,150	$ 1,350	$ 1,440			
Family Income	$8,000	$ 6,000	$ 5,500	$ 8,000	$ 6,500	$ 5,500
Total Income Per Acre	$80,000	$90,000	$108,000	$40,000	$45,000	$49,500
Percent of Income Spent on Taxable Sales	52%	50%	48%	52%	50%	48%
Total Taxable Sales	$41,600	$45,000	$ 51,840	$20,800	$22,750	$23,760
Sales Tax Revenue 1% (Local Only)	$ 416	$ 450	$ 518	$ 208	$ 228	$ 238
TOTAL (Cols. 3 & 10)	$ 1,016	$ 1,100	$ 1,218	$1,408	$ 1,728	$ 2,038
License Fee Return to Community 60%	$ 690	$ 810	$ 864	$		
GRAND TOTAL (Columns 11 & 12)	$ 1,706	$ 1,910	$ 2,082			

Table 4 cont.: Comparative Analysis: Selected Community Costs Associated with Mobile Home Parks and Single Family Residences with Varying Degrees of Densities Per Acre

	Mobile Home Parks			Single Family Residence		
	Assumption I	Assumption II	Assumption III	Assumption I	Assumption II	Assumption III
No. of Homes Per Acre	10	15	18	5	7	9
No. of School-Age Children Per Acre	0	3	6	0	3	6
Educational Cost Per Acre Per Annum (Operating Only)	0	$ 825	$ 1,300	0	$ 825	$ 1,300
Protection Cost: Costs Per Unit	$ 30	$ 35	$ 40	$ 25	$ 28	$ 30
Total Protection Costs	$ 300	$ 525	$ 720	$ 125	$ 196	$ 270
Annual Operating Costs Per Acre for Streets	$ 350	$ 540	$ 666	$ 250	$ 385	$ 540
Annual Operating Costs Per Sewer	$ 90	$ 125	$ 140	$ 60	$ 91	$ 135
Miscellaneous Operating Costs	$ 100	$ 165	$ 200	$ 50	$ 77	$ 130
TOTAL	$ 840	$2,180	$ 3,026	$ 485	$1,574	$2,375
Revenue	$1,706	$1,910	$ 2,082	$1,408	$1,728	$2,038
Cost-Revenue Balance	+$ 866	-$ 270	-$ 944	+$ 923	-$ 154	$ 337

Source: (83.1:7-9)

APPENDIX III .2.5.4

(cf. CHAPTER III .2.5.4)

Case Study: Michigan

Duke, in his 1955 study (66), broke down local government expenditures into major categories: education, health and welfare, police and fire, roads, general government. He analyzed the relative contributions to each category by the mobile home population and by the other segments of the residential population.

As for the most controversial issue, the share of public education costs borne by the mobile home resident, Duke found that only per capita comparisons would yield meaningful data, i.e., the amount of tax paid per pupil attending the school system. More than 40% of all the revenues collected by state and local governments in Michigan are allocated to education, and are administered by the local school districts. 48% of the school district revenues comes from the property tax, 42% is received from sales tax receipts, and some 10% is disbursed from the primary fund which consists of special taxes for educational purposes.

The property taxes received by the school district from the average traditional home were $43.55. 61.5% of the total sales tax receipts were distributed to the school districts. 61.5% of the total sales taxes paid for construction, maintenance and furnishings of the average

Table 5

An Analysis of State and Local Taxes in Michigan, 1953

(Showing percentage of total tax revenue derived from each tax)

Type of Tax	Municipalities School	State	Town-ships	County	Polit. Units
Property Tax	48%	--	68%	60%	42%
Sales Tax	42	27%	18	--	27
Motor Vehicle	--	24	10	40	14
Corporate Franchise	22	26	--	--	7
Primary Fund	10	--	--	--	4
Cigarette	--	11	--	--	3
Others	--	8	--	--	2
Intangibles	--	3	4	--	1
Horse Racing	--	1	--	--	--
Total Taxes	100%	100%	100%	100%	100%

An Analysis of the Disposition of Tax Funds of the Various Governmental Units in Michigan, 1953

Governmental Unit	Educa.	Admin. & Misc.	Roads	Health & Welfare	Police, Fire, Correc.	Percent. Total
State	29%	23%	--	35%	13%	100%
Counties	1	40	1	50	8	100
Municipalities* & Townships	1	50	4	11	34	100
School Districts	100	--	--	--	--	100
Tax Funds of all Units	43	18	15	13	11	100

conventional home amounted to $6.50. The 1950 census gave the number of school-age children per family as 0.88. The tax paid for local education per traditional home child of school age was thus found to be $56.90.

The property tax received by the school district from mobile home parks amounted to $1.10 per mobile home. An annual school fee of $9.00, required from each park-located mobile home, was reduced to $8.10 to allow for collection failures. The 61.5% of total sales tax receipts from mobile homes was determined to amount to $10.80 per unit. The school census showed that per mobile home 0.3 children attended school in the area under study. The average tax paid per mobile home child to the school district was thus $66.70.

The data used were determined by tax roll inspections and by extensive research by the Michigan Department of Revenue. Duke documents in detail how each category of data was obtained. Given the paucity of primary data, it appears impossible to determine with any greater accuracy the revenues returned obtained from specific groups. Since the study could focus only on certain areas within Michigan, the findings are thus influenced by location and, of course, time.

With those qualifications, the study shows that there were no significant differences in the amount of school taxes paid per pupil in mobile and traditional homes. The revenues received from the mobile home child were slightly higher.

Some 13% of all state and local revenues in Michigan were spent on health and welfare services. Those 13% included 50% of the total county receipts from taxes and 35% of the revenue from the state general fund. Since taxation by the state is not based upon property, the mobile home resident is likely to contribute his share to the 35% from the state general fund. The counties, however, derive some 60% of their revenue from property taxation. Duke found that the average property tax return of the traditional home to the county was $12.80 per year, while from the park-located mobile home only $6.00 a year from the state collected fee go to the county. Duke concluded that, "(S)ince there is no evidence to indicate that the two types of families receive substantially different benefits, inequalities in payment may exist." (66:16)

As for police and fire protection, Duke found that mobile homes impose no significantly different burden. He offers, however, no data on the relative contributions to the police and fire protection funds by the two population segments studied. Since 34% of the total local government tax funds

and 8% of the county tax revenues are allocated to this category again, inequalities in contribution are likely.

Eighteen percent of all locally collected taxes in Michigan were expended for general administration, including legislative and judicial functions. Since counties allocate 40% of their tax revenues to this category, in view of their heavy dependence on property tax returns inequities are certain to exist. (Again, as mentioned, in terms of taxation by the state, the dwelling type is of little influence. But the state expended only 23% of its tax funds for this category.)

Finally, 15% of all state and local tax revenue is allocated to the expense category "roads." The motor vehicle tax returns from passenger cars were $11.22 per car, from mobile homes $9.68 per unit. Since practically all road construction was financed from motor vehicle taxes and federal grants and since intra-mobile home park roads are privately provided, the mobile home owner certainly pays his fair share of road construction and maintenance, and because of the actual minimum traveling of his unit, probably much more than his share.

Duke concludes, that "...(i)n the school districts, and in the townships, mobile home owners are paying amounts

approximately equal to those paid by owners of conventional homes, in light of the services received...On the county level a significant difference appears. The $13.00 annual return from conventional home owners is twice the amount received from trailer families. Wherever the property tax is a major source of revenue, as in all counties, most cities, and a few townships, it is impossible for a state-wide fee to be equitable. This fee neither recognizes ability to pay, nor allows for variation in revenue collections, in response with changing costs." (66:19)

APPENDIX III .4.1.3

(cf. CHAPTER III .4.1.3)

Table 6

City of Oceanside, Calif., (Calendar year 1961)

SUMMARY OF COMPARISONS OF AVERAGE TRAILER PARK RECEIPTS:

1. Per space or unit receipts, all sources
   - 33.3% of average subdivision home
   - 33.3% of home in Block 41
   - 72.1% of average apartment

2. Per space or unit receipts, ad valorem tax
   - 10.9% of average subdivision home
   - 11.1% of home in Block 41
   - 22.5% of average apartment

3. Per space or unit receipts, services
   - 40.6% of average subdivision home
   - 40.7% of home in Block 41
   - 96.4% of average apartment

****

4. Per capita receipts, all sources
   - 47% of resident in average subdivision
   - 36% of resident in Block 41
   - 69% of resident in apartment

5. Per capita receipts, ad valorem tax
   - 15.7% of resident in average subdivision
   - 12.2% of resident in Block 41
   - 22.2% of resident in apartment

6. Per capita receipts, services
   - 57.5% of resident in average subdivision
   - 43.9% of resident in Block 41
   - 92.5% of resident in apartment

Aource (269:15)

Table 7 : City of Oceanside, Calif. (calendar year 1961): Analysis of the Revenues Received from Mobile Home Taxation in Comparison with Revenues Received from Taxation of Other Residential Population Segments.

CASH RECEIPTS	Average Trailer pk in City	Average subd.home**	Block 41***	Trailer parks built since 1959(2)	Random selection of Apartments****
Per space, lot or unit	$ 44.04	$ 132.64	$ 131.45	$ 46.55	$ 61.43
Per acre	800.42	530.56	800.19	552.04	1609.91
Per capita	18.42	39.00	50.71	22.10	26.53
ANNUAL SERVICE FEES(base rate) PER CAPITA					
Water (meter) PER CAPITA	$ 4.15	$ 13.23	$ 17.31	$ 4.16	$ 4.93
Sewer	5.43	5.29	6.93	5.54	5.55
Waste Disposal	3.85	4.77	6.23	3.14	4.06
Totals	$ 13.43	$ 23.29	$ 30.47	$ 12.84	$ 14.54
AD VALOREM TAXES					
Average assessed val. per acre	$6436.87	$12800.00	$19237.75	$3208.00	$40831.91
Per acre ad valorem to City (1.67 rate)	107.50	213.76	309.15	53.57	681.89
Per unit	5.86	53.44	52.63	4.59	26.03
Per capita	2.47	15.72	20.24	2.12	11.12
DENSITIES:					
Avg. # units per acre	18.3	4	6.2	11.6	26.2
People per acre	43.5	13.6	16.1	29.0	61.3
People per unit	2.4	3.4	2.6	2.1	2.3

Table 7 cont.

	in City	subd.home**	41***	1959(2)	Apartments****
RECAP OF PER CAPITA RECEIPTS:					
Ad valorem	$ 2.47	$ 15.72	$ 20.24	$ 2.12	$ 11.12
Services	13.43	23.29	30.47	12.84	14.54
Licenses	.83			.95	.87
In-lieu trailer license	1.69*			6.19**	
Totals	$ 18.42	$ 39.01	$ 50.71	$ 22.10	$ 26.53
RECAP OF PER ACRE RECEIPTS:					
Ad valorem	$ 107.50	$ 213.76	$ 309.15	$ 53.57	$ 681.89
Services	584.00	316.80	491.04	324.47	857.62
Licenses	36.60			23.20	52.40
In-lieu trailer license	72.44			150.80*	
Totals	$ 800.52	$ 530.56	$ 800.19	$ 552.04	$ 1609.91
RECAP OF PER UNIT RECEIPTS:					
Ad valorem	$ 5.86	$ 53.44	$ 52.63	$ 4.59	$ 26.03
Services	32.23	79.20	78.82	26.96	33.40
Licenses	2.00			2.00	
In-lieu trailer license	3.95*			13.00**	
Totals	$ 44.04	$132.64	$ 131.45	$ 46.55	$ 61.43

*Ad valorem, in lieu trailer fees, city license, water, sewer and trash.
**In subdivisions built since 1959.
***(Wisconsin Avenue and Nevada Street) Development since 1940.
****(123 units) Total 4.7 acres of land.

Source: (269:16,17)

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According to the scope of this study the bibliography covers the following subject matters:

mobile homes
mobile home industry
mobile home parks
mobile home park industry
mobile home population.

With regard to all aspects of the above subject matters the bibliography is complete for the period from January 1951 to January 1969 and selective for the period 1936 to 1951. Almost completely covered for the period of January 1963-69 and selectively covered since 1936 is the subject of:

industrially produced dwelling modules
sectionalized units, etc.

The material was located primarily by the searching of thirteen specialized publications and periodical indexes and by work in seventeen specialized libraries. The following is intended to facilitate subsequent research, especially a subsequent updating.

Publications and articles of relevance in the context of this study are classified in indexes under the following key words:

automobile, trailers
buildings, portable
buildings, prefabricated
houses, portable
houses, prefabricated
mobile homes
mobile home parks
trailers
trailer parks

The indexes listed below were searched. The bibliography lists all items of relevance found under the above mentioned headings in the following indexes. (The time span indicates the volumes which the writer has searched)

American Economic Association - Index of Economic Journals
Jan. 1960 - Dec. 1965
Applied Science & Technology Index
Jan. 1963 - Dec. 1968
Bibliographic Index
Jan. 1963 - June 1968
Books in Print
Jan. 1962 - Dec. 1968
Business Periodical Index
July 1965 - Oct. 1968
Business Week Index
Jan. 1965 - Dec. 1967
Funk and Scott Index
Jan. 1965 - Nov. 1968

New York Times Index
Jan. 1966 - Oct. 1968
Public Affairs Information Service
Oct. 1963 - Nov. 1968
Publishers Weekly
Jan. 1964 - Dec. 1968
Readers Guide
March 1965 - Nov. 1968
Social Sciences & Humanities Index
April 1965 - Sept. 1968
Wall St. Journal Index
Jan. 1965 - Oct. 1968

An exhaustive library search was conducted in the following seventeen libraries:

Columbia University, New York City, N.Y. (3 libraries)
Harvard University, Cambridge, Mass. (6 libraries)
Mobile Homes Manufacturers Association, Chicago, Ill.
Massachusetts Institute of Technology, Cambridge, Mass. (4 libraries)
United Nations Headquarters, New York City, N.Y. (3 libraries)

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