Mobile Homes?--Public and Private Controls

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"MOBILE" HOMES?—PUBLIC AND PRIVATE CONTROLS

The mobile home of today is a far different creature than that from which it was bred. Changes in size, appearance, safety, convenience, and desirability as a place to live have caused the modern mobile home to bear little resemblance to its ancestors. Functioning as a permanently emplaced dwelling, the mobile home has come to be recognized as undeserving of the label "mobile." Other than by place of manufacture, mobile homes have become increasingly indistinguishable from conventional single family dwellings, raising the question of whether mobile homes can reasonably be restricted from areas reserved for single family dwellings. Land controls, both public, in the form of zoning restrictions, and private, in the form of restrictive covenants, commonly operate to exclude mobile homes from single family residential districts. This note will examine whether mobile homes are distinguishable from site-built homes for the purpose of restrictions imposed by zoning ordinances and restrictive covenants and will explore the analysis required to make such a distinction. This note will conclude that only where a mobile home fails to compare favorably with the other dwellings that could be erected on the site can

1. See, e.g., S. ADLER, THE MOBILE HOME INDUSTRY 41-42 (1973); SHEPARD'S MOBILE HOMES AND MOBILE HOME PARKS § 1.1 (1975) [hereinafter cited as SHEPARD'S]. For a discussion of the origins and development of mobile homes, see infra notes 6-34 & accompanying text.


4. In Robinson Twp. v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981), discussed infra at notes 78-85 & accompanying text, the Supreme Court of Michigan used the lack of a clear distinction between mobile homes and site-built homes to invalidate an ordinance that required all mobile homes to be in authorized mobile home parks:

The mobile home today can compare favorably with site-built housing in size, safety and attractiveness. To be sure, mobile homes inferior in many respects to site-built homes continue to be manufactured. But the assumption that all mobile homes are different from all site-built homes with respect to criteria cognizable under the police power can no longer be accepted. Id. at 313, 302 N.W.2d at 151-52.

5. See infra notes 55-85, 95-117 & accompanying text.
it be reasonably restricted from a site in a single family residential neighborhood.

I. THE MOBILE HOME

Mobile homes are a creation of the twentieth century. Designed as temporary living units, the first trailers were without toilets or bathing facilities, consisting of approximately 175 square feet of living area. Trailers more closely resembled tin cans than they resembled site-built homes both in appearance and in comfort. Because of the housing shortages and economic conditions prevalent during the 1930's and 1940's, these trailers were crowded into unsightly trailer camps often unsuited for human habitation.

Public response to the early trailers was as could be expected; trailers were regarded as intolerable. Because of the overcrowded

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6. P. Rohan, Zoning and Land Use Controls § 3.03[1] (1981); Shepard's, supra note 1, §§ 1.1-.2; Burke, supra note 3, at 879.
7. Although sometimes not distinguished, trailers are those units small enough to be towed by a passenger car, distinct from mobile homes, which often require a special permit to be moved on the highways. See Note, supra note 3, at 159 n.1. See generally Shepard's, supra note 1, §§ 2.2, 2.14, & 5.1 (1975 & Supp. 1982-83). As explained by Justice Sam D. Johnson of the Supreme Court of Texas:

The mobile home and the trailer are distinct and quite different structures. In terms of size, cost, and utilization, the mobile home constitutes a vital form of permanent housing. The trailer, on the other hand, constitutes a popular travel or recreational vehicle. Both the United States Congress and the Texas Legislature have recognized the distinct status of the mobile homes.

11. See 2 A. Ratakoff, The Law of Zoning and Planning § 19.0 (4th ed. 1981); P. Rohan, supra note 6, § 3.03[1]; Shepard's, supra note 1, § 1.2, at 5; Moore, supra note 8, at 2-4.
and unsanitary conditions, it was felt that trailers and trailer camps were clearly unacceptable as a form of housing. Accordingly, the general reaction was to enact ordinances and draft restrictive covenants with the intent of prohibiting or severely restricting their placement. Restrictions ranged from limits on duration of stay to total bans. And only in the instance of an ordinance totally excluding trailers from the entire community would the threat of judicial invalidation arise.

In the post-war years, the mobile home industry grew, reaching unprecedented production levels in the 1950's and 1960's. Today, mobile homes are said to house over ten million Americans. And in most cases, the mobile homes in which they live are little like the trailers of fifty years ago. Current mobile homes average over 700...
square feet for a single mobile home and approximately 1,500 square feet for a double-wide model. Complete with all modern conveniences, current models exhibit many options that are not readily associated with trailers, including gabled roofs, utility rooms with washing machines and dryers, dishwashers, fireplaces, and attached two-car garages.

Modern mobile homes more closely resemble site-built homes than the early trailers. Structurally similar to prefabricated and modular housing, mobile homes are now an accepted form of permanent home. A "double-wide" mobile home consists of two single width units (generally 12 feet wide each) transported separately to the site and joined together, sometimes under a single roof. See, e.g., DeLaurentis v. Vainio, 169 Mont. 520, 549 P.2d 461 (1976); Timmerman v. Gabriel, 155 Mont. 294, 470 P.2d 528 (1970).


20. R. HEGEL, supra note 3, at 2; SHEPARD'S, supra note 1, § 1.2.
24. Note, supra note 3, at 159 n.3.
28. North Cherokee Village Membership v. Murphy, 71 Mich. App. 592, 599, 248 N.W.2d 629, 632 (1976); see SHEPARD'S, supra note 1, § 2.10; Bartke & Gage, supra note 3, at 495.
Notwithstanding their use as fixed residences, mobile homes are still distinguished from conventional dwellings for the purpose of in-

520, 549 P.2d 461 (1976) (same). See also SHEPARD'S, supra note 1, § 2.9; Bartke & Gage, supra note 3, at 495.

Modular homes are distinguished from mobile homes on the basis of exterior construction and appearance; modular homes are supposedly indistinguishable from conventional housing. See City of DeSoto v. Centurion Homes, Inc., 1 Kan. App. 2d 634, 573 P.2d 1081 (1977); SHEPARD'S, supra note 1, § 2.9.


terpreting and applying land use restrictions. In the field of public land control, the overwhelming majority of jurisdictions have consistently upheld ordinances that make a distinction between mobile homes and site-built homes in the face of constitutional challenges.

The majority position is that a zoning ordinance may restrict mobile homes from single family residential districts. This generally results in the limitation of mobile homes to mobile home parks. Ordinances restricting the placement of mobile homes have survived constitutional challenges because they "facilitate the community's exercise of its police power" and thus meet the test of constitutionality by bearing a substantial relationship to public health, safety, and general welfare. Where an ordinance fails to bear such a substantial relationship, it fails to bear a reasonable relation to the police power and is thus a violation of due process as an unreasonable restriction on the free use of one's property. Furthermore, a denial of equal protection results where no rational reason can be found for an ordinance distinguishing between mobile homes and

35. See infra notes 36-69, 77-89 & accompanying text.
36. See Robinson Twp. v. Knoll, 410 Mich. 293, 351 n.3, 302 N.W.2d 146, 159 n.3 (1981) (Coleman, C.J., dissenting) and authority cited therein. "It is now well settled that within the framework of the police power, the location or use of mobile homes . . . may be restricted to certain zones, districts or localities and excluded from other zones, districts or localities." Village of Cahokia v. Wright, 57 Ill. 2d 166, 169, 311 N.E.2d 153, 155 (1974) (quoting B. HODS & G. ROBERSON, THE LAW OF MOBILE HOMES 13 (2d ed. 1964)). See infra notes 38-59 & accompanying text.
38. See Carter, supra note 10, at 33-35; Moore, supra note 8, at 11-13. See also supra note 36.
40. State v. Larson, 292 Minn. 350, 195 N.W.2d 180 (1972); Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978); see SHEPARD'S, supra note 1, § 10.63; Carter, supra note 10, at 19.
conventionally constructed homes.\footnote{43} Thus, because a specific regulation must be an appropriate means for carrying out a proper police purpose in order to withstand a challenge on due process or equal protection grounds, regulation that merely attempts to exclude that which has been deemed "undesirable" is unconstitutional.\footnote{44}

As indicated above, ordinances distinguishing between mobile homes and site-built homes are upheld in the face of constitutional challenges as a proper exercise of the municipality's police power.\footnote{45} In \textit{Duckworth v. City of Bonney Lake},\footnote{46} the Washington Supreme Court was faced with a constitutional challenge to an ordinance that excluded mobile homes from those areas zoned for single family residential use. Before unanimously upholding the ordinance,\footnote{47} the \textit{Duckworth} court determined that the ordinance was substantially related to a proper police purpose.\footnote{48} In so doing, that court described many of the arguments commonly advanced for distinguishing mobile homes from site-built homes, including their lack of storage space and other space limitations,\footnote{49} their effect on property values,\footnote{50} their effect on property values, and their effect on

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\footnotetext[43]{See Begin v. Inhabitants of Sabattus, 409 A.2d 1269 (Me. 1979), in which the Supreme Judicial Court of Maine held that a slow-growth ordinance limiting mobile home parks to four new dwelling units per year while allowing other housing developments four new buildings (which could be apartment buildings consisting of many dwelling units) per year was unconstitutional as violative of equal protection. See Bartke & Gage, \textit{supra} note 3, at 500.}
\footnotetext[44]{See \textit{Flippen, supra} note 37, at 20.}
\footnotetext[45]{See \textit{supra} note 36.}
\footnotetext[46]{91 Wash. 2d 19, 586 P.2d 860 (1978).}
\footnotetext[47]{Id.}
\footnotetext[48]{As explained by the \textit{Duckworth} court: [A] municipality may exclude [mobile homes] from conventional residential districts because as a nonconventional use they tend to lower, adversely affect, or at least stunt the growth potential of the surrounding land. . . . This problem does not derive from aesthetics alone. Economic concerns as well as concerns for orderliness, adequate parking and the proper supply of municipal services are also legitimate bases for regulation. . . . If zoning regulations stabilize the value of property, promote the permanency of home surroundings, and add to the happiness and comfort of citizens, they most certainly promote the general welfare. \textit{Id.} at 31, 586 P.2d at 868.}
\footnotetext[49]{\textit{Id.} at 29-30, 586 P.2d at 867.}
\footnotetext[50]{\textit{Id.} at 29, 31, 586 P.2d at 867-68.}
\end{flushright}
municipal services,\textsuperscript{51} and their physical appearance.\textsuperscript{52} The problem is, however, that while these justifications asserted for distinguishing mobile homes from site-built homes may satisfy the police power test of constitutionality with regard to certain restrictions, it may be more through inherent dislike for mobile homes than clear reason that localities apply these justifications to a restriction such as the one in \textit{Duckworth} that excludes mobile homes from single family residential areas.

The concern with space limitation is better addressed by an ordinance that specifically excludes dwellings that fail to meet minimum spatial requirements\textsuperscript{53} than by an ordinance that excludes all mobile homes regardless of size.\textsuperscript{54} Similarly, while the placement of some models of mobile homes might adversely affect property values, other models have been found to compare favorably with site-built homes,\textsuperscript{55} invalidating any assumption that mobile homes have a per se negative effect on property values. Furthermore, the asserted purpose of preventing a drain on municipal services is an arbitrary and irrational reason for excluding mobile homes from single family residential districts. While it may be true that a drain on municipal services could result if mobile homes were restricted to mobile home parks, where smaller lot sizes lead to greater population densities, the placement of a single mobile home on a lot would be no more of a drain on municipal services than the construction of a site-built home on the same lot.\textsuperscript{56}

Various other arguments have been advanced for distinguishing mobile homes from conventional homes. While some do have a basis in fact,\textsuperscript{57} many are better directed towards the trailer of yesteryear.

\begin{itemize}
\item\textsuperscript{51} \textit{Id.} at 30, 586 P.2d at 867; see P. Rohan, \textit{supra} note 6, at §§ 3.03[4][b][i]-[iii]; Shepard's, \textit{supra} note 1, § 10.66.
\item\textsuperscript{52} 91 Wash. 2d at 29-30, 586 P.2d at 867. It should be noted that in Washington a zoning ordinance may take aesthetics into consideration, but may not rely on aesthetic considerations alone. \textit{Id.} Zoning for aesthetics is discussed \textit{infra} at notes 61-67.
\item\textsuperscript{53} See Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52 (1980), in which an ordinance that excluded all mobile homes that failed to meet the minimum dimensional requirement of 24' x 60' was upheld as not violative of the equal protection clause of the fourteenth amendment.
\item\textsuperscript{54} In \textit{Duckworth}, the mobile home in question measured 24' x 64'. 91 Wash. 2d at 23, 586 P.2d at 864.
\item\textsuperscript{56} The concern with the prevention of a drain of municipal services, asserted in \textit{Duckworth} in the consideration of an ordinance excluding mobile homes from single family residential districts, see \textit{supra} note 49 & accompanying text, is much better directed towards the regulation of mobile home parks because of the increased population density. See, e.g., Moore, \textit{supra} note 8, at 3-4.
\item\textsuperscript{57} See \textit{infra} notes 60-61 & accompanying text.
\end{itemize}
than the mobile home of today. Mobile homes are regarded as more susceptible to fire and wind damage than site-built dwellings. Accordingly, regulation that is directed towards reducing fire or wind damage or protecting occupants from such damage bears a substantial relationship to public health, safety, and the general welfare. But the safety of mobile home occupants in the event of fire or strong winds, if affected at all by the placement of the dwelling, would probably be better served by the placement of mobile homes in single family residential districts rather than in mobile home parks because such damage, if it occurred, would be more easily confined to a single dwelling in a single family residential district than in a mobile home park where smaller lots and greater concentration of dwellings increase the likelihood of fire or flying debris spreading to adjacent residences.

As indicated by the court in *Duckworth*, in order to justify a regulation that prohibits the placement of mobile homes in single family residential districts some reliance must be placed on aesthetic considerations. Most jurisdictions recognize aesthetics as a proper police

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58. As recognized by the court in *Robinson Twp. v. Knoll*, 410 Mich. 293, 302 N.W.2d 146 (1981): “The disparate treatment of mobile homes seems to be based on attitudes which once had but no longer have a basis in fact.” Id. at 318, 302 N.W.2d at 153; see SHEPARD’S, supra note 1, § 1.2; Anderson, supra note 9; Bartke & Gage, supra note 3, at 494-97; Carter, supra note 10, at 17; Kuklin, supra note 18; Moore, supra note 8, at 2-3; Note, supra note 3, at 159-60; Note, supra note 10, at 702-03.

59. There is evidence that residents of conventional homes fare better in the event of fire than do mobile home dwellers:

According to a study recently released by the Department of Housing and Urban Development (HUD), the concern with fire protection for mobile homes is very real. The study reveals that there is a higher death rate for victims of mobile home fires compared to occupants of conventional residential dwellings. One reason for this is that because of the nature of the construction of mobile homes, mobile home dwellers are more likely to be trapped in the event of a fire than are inhabitants of conventional homes.

*Town of Stonewood v. Bell*, 270 S.E.2d 787, 792 n.5 (W. Va. 1980) (citing NATIONAL FIRE DATA CENTER, FIRE PERFORMANCE EVALUATION OF THE FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARD (Sept. 9, 1980)); see Anderson, supra note 10, at 156; see also *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982).

60. Wind damage to mobile homes has prompted Tiedown legislation requiring mobile homes to be securely fastened to the ground so they cannot be moved by strong winds. E.g., MO. ANN. STAT. §§ 700.060-.085 (Vernon 1979); Tennessee Manufactured Housing Anchoring Act, TENN. CODE ANN. §§ 53-6201-09 (Supp. 1981); cf. Koester v. Hunterdon County Bd. of Taxation, 79 N.J. 581, 386, 399 A.2d 656, 658 (1979) (hurricane straps). See generally SHEPARD’S, supra note 1, app. C.


62. See supra note 52 & accompanying text.
purpose for zoning. As explained by Justice Douglas of the United States Supreme Court in Berman v. Parker:

It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. . . . If those who govern . . . decide that the [community] should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Given the validity of aesthetic zoning, it is not exactly clear that all ordinances upheld on aesthetic grounds serve aesthetic goals. In Gravatt v. Borough of Latrobe, the court held that a mobile home could be excluded from a residential area on the grounds of aesthetic and property values notwithstanding that, aside from its original mobility, the mobile home conformed to all that was required of single family dwellings: "If it had been constructed on the site, from the same materials and with the same plans, and had been built on the same foundation, it would have complied with all zoning requirements." Gravatt demonstrates how inappropriate a flat prohibition of mobile homes is as a means of aesthetic regulation; the mobile

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65. Id. at 33; accord Duckworth v. City of Bonney Lake, 91 Wash. 2d 19, 586 P.2d 860 (1978); State ex rel Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217, cert. denied, 350 U.S. 841 (1955).
67. Id. at 476, 404 A.2d at 729-30. In Gravatt, the mobile home in question was held to be excluded based on a specific finding that property values would be affected in the neighborhood and that the mobile home would be "non-conforming as to style." Id. Thus, although a site-built home of the same physical appearance could be built on the site, the mobile home was excluded for aesthetic reasons. This apparent incongruity results from the court's imposition of an aesthetic standard to uphold the classification "mobile home," while the Borough of Latrobe did not impose a similar aesthetic standard on site-built homes.
68. One writer has taken the view that it may be an infringement of the first amendment right of freedom of expression to regulate architecture solely for aesthetic reasons. Kollis, Architectural Expression: Police Power and the First Amendment, 16 Urb. L. Ann. 273 (1979). See also Bartke & Gage, supra note 3, at 500.
home was excluded not because of the quality or manner of its construction but, rather, merely because it was built in a factory rather than on the site. An ordinance that classifies on the basis of this distinction clearly fails to focus on aesthetic considerations. The place of a dwelling's construction has no bearing on whether the dwelling meets aesthetic standards. Accordingly, classifications distinguishing between site-built homes and mobile homes that are justified on aesthetic grounds merit careful examination because an ordinance that so classifies may be no more than an unconstitutional attempt to exclude "undesirables." 69

While ordinances restricting mobile homes from single family dwelling districts have been upheld in most jurisdictions, 70 not all jurisdictions have adopted ordinances affording such favorable treatment. In Morin v. Zoning Board of Review, 71 the Supreme Court of Rhode Island addressed an ordinance restricting the placement of mobile homes to mobile home parks 72 and held that a mobile home, once permanently sited, 73 has not only all the appurtenances of a single family home but, with running gear removed, is no longer portable nor a vehicle, and thus no longer a "mobile home." 74

Adopting the

69. See supra note 44 & accompanying text.
70. See supra notes 36-38, 45 & accompanying text.
72. The zoning ordinance under consideration defined "mobile home" as follows:

   Trailer (or 'mobile home')—any vehicle or similar portable structure designed and constructed so as to permit the occupancy thereof as a dwelling by one or more persons and so designed and constructed that it is or may be mounted on wheels and used as a conveyance on a street or highway, propelled or drawn by its own or other motive power.

Id. at 460, 232 A.2d at 394-95 (quoting LINCOLN, R.I., ZONING ORDINANCE, art. XIII, § 21 (emphasis added by court)). The ordinance required all dwellings coming within this definition to be located in an authorized trailer camp. 102 R.I. at 458, 232 A.2d at 394.
73. The Morin court found that the mobile home in question was "attached to the real estate." Id. at 459-60, 232 A.2d at 394. The mobile home had been set upon a foundation of cement blocks, the wheels had been removed, and the mobile home had been connected to water, electricity, telephone, and sewage. Id.


It is clear that where the municipality has not enacted an ordinance restricting mobile homes to mobile home parks, mobile homes may be considered single family dwellings for the purpose of a single family dwelling restriction. Your Home, Inc. v. City of Portland, 432 A.2d 1250 (Me. 1981); Lescault v. Zoning Bd. of Review, 91 R.I.
same rule that has led many states to tax mobile homes as real property rather than personal property, \textsuperscript{78} the \textit{Morin} court found that the provision directed toward mobile homes no longer applied once the mobile home had lost its mobility because the dwelling was no longer "mobile." \textsuperscript{76} Thus, while mobile homes are generally distinguished from conventional homes, the distinction may disappear once the mobile home has been affixed to the realty. \textsuperscript{77}

The Supreme Court of Michigan in \textit{Robinson Township v. Knoll} \textsuperscript{78} invalidated a similar ordinance upon a finding that the ordinance at issue\textsuperscript{79} unconstitutionally distinguished mobile homes from conventionally constructed homes on the basis of characteristics present upon manufacture and delivery rather than on the basis of characteristics present as the residence exists on the site bearing the restriction. \textsuperscript{80} Exhibiting one of the most progressive attitudes taken towards the regu-

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\item \textsuperscript{75} E.g., Koester v. Hunterdon County Bd. of Taxation, 79 N.J. 381, 399 A.2d 656 (1979); accord Md. Ann. Code art. 81, § 19(c) (1980); N.Y. REAL PROP. TAX LAW § 102(12)(g) (McKinney 1979); see Bartke & Gage, \textit{supra} note 3, at 519-24; Note, \textit{supra} note 10. \textit{See generally SHEPARD'S, supra} note 1, §§ 7.1-18 & Table 4.
\item \textsuperscript{76} 102 R.I. at 460, 232 A.2d at 395. This approach has been criticized as a semantic game. \textit{See} Bartke & Gage, \textit{supra} note 3, at 499-507.
\item \textsuperscript{77} \textit{Cf.} Billings v. Shrewsbury, 294 S.E.2d 267 (W. Va. 1982) (dwelling not a mobile home within meaning of covenant if not movable after set-up).
\item \textsuperscript{78} 410 Mich. 293, 302 N.W.2d 146 (1981).
\item \textsuperscript{79} The ordinance described mobile homes in the following manner:
\begin{quote}
A movable or portable dwelling constructed to be towed on its own chassis, connected to utilities and designed without a permanent foundation for year-round living as a single family dwelling. A mobile home may contain parts that may be separated, folded, collapsed, or telescoped when being towed and combined or expanded later to provide additional cubic capacity.
\end{quote}
\item \textsuperscript{80} As explained by the court:
\begin{quote}
Just as "the reasonableness of a zoning restriction must be tested according to existing facts and conditions and not some condition which might exist in the future", so must an ordinance restricting the placement of mobile homes be directed to the dwelling as it will exist on the land, and not, as here, to its characteristics when delivered to the site.
\end{quote}
\end{itemize}

410 Mich. at 315-16, 302 N.W.2d at 152 (citation omitted).
lation of mobile homes, the Michigan court was careful to limit its holding so as to preserve some distinction between mobile homes and site-built homes. That court stated that regulations aimed at assuring that a mobile home placed in a single family residential district "compares favorably" with the conventional homes permitted within the district would not exceed the police power and would thus be constitutional.

In retaining a distinction between mobile homes and site-built homes, the Robinson court explained that case-by-case analysis is required to determine whether the regulation under consideration meets the above standard; otherwise, the dwelling would be excluded "merely because it is a mobile home." Although the opinion fails to define the favorable comparison standard, this standard, along with the requisite case-by-case analysis, represents the only rational manner by which mobile homes can be excluded from single family residential districts. An ordinance that can operate to exclude a mobile home that compares favorably with the other housing that would be permitted on the site can be no more than an effort to exclude the mobile home because it, or its occupants, have been perceived as undesirable.

While most legislative and regulatory bodies distinguish between mobile homes and conventional single family homes with regard to zoning restrictions, there is one marked exception. In 1975, the Vermont
legislature repealed a provision that had permitted municipalities to restrict mobile homes to mobile home parks. In its stead, the Vermont legislature adopted the most egalitarian approach toward mobile homes in enacting a statute that provides that “no zoning regulation shall have the effect of excluding mobile homes . . . from the municipality, except upon the same terms and conditions as conventional housing is excluded.” Thus, only where the mobile home does not meet the standards imposed on all other single family dwellings can it be excluded from a single family residential zone.

In abolishing all distinction between mobile homes and site-built homes for the purpose of zoning, the Vermont legislature has mandated that only a single set of standards may be imposed on dwellings—whether the dwelling be site-built or factory-built. While ostensibly the position most favorable to mobile homes, it may be less favorable than the position of the *Robinson* court. A mechanical application of site-built dwelling standards to mobile homes has been used as an effective means of excluding mobile homes. Without a provision that compliance with state and/or national construction standards shall be deemed compliance with local construction codes and zoning restrictions, mobile homes may be excluded by provisions intended for site-

poses of zoning. The Michigan Legislature is currently considering legislation containing the following provisions:

The installation of manufactured housing which is or is designed to be a single family residential dwelling shall be permitted in any zoning district in which conventionally constructed single family dwellings are permitted and shall be treated by local governments in the same manner as conventionally constructed single family dwellings for all purposes of zoning . . . .

A local government shall not entirely exclude, restrict, or limit manufactured housing to a zoning district or districts segregated from those districts in which conventionally constructed residential housing of a similar nature is permitted.


89. *Id.* Single family dwelling requirements have been enforced against mobile homes sited outside of licensed mobile home parks in other jurisdictions. Bennett v. Guthridge, 225 N.W.2d 137 (Iowa 1975); Corning v. Town of Ontario, 204 Misc. 38, 121 N.Y.S.2d 288 (1953); *accord* Lower Merion Twp. v. Gallup, 158 Pa. Super. 572, 46 A.2d 35, *appeal dismissed*, 329 U.S. 669 (1946); see Moore, *supra* note 8, at 13-16.

90. *See infra* text accompanying notes 93-94.


92. *While 42 U.S.C. § 5403(d) (Supp. IV 1980) provides that the federal con-


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built homes but inappropriate as applied to mobile homes. Thus, between the position taken by the Vermont Legislature—no distinction between mobile homes and conventional homes—and that taken by the Michigan court in Robinson—the retention of the distinction tempered with careful examination into a particular ordinance to see whether it serves the purpose of assuring that mobile homes compare favorably with site-built homes—only the Michigan position ensures that where a mobile home is excluded from a single family district, there is a rational basis for that exclusion.

III. PRIVATE LAND USE CONTROLS

In the field of private land controls, courts have similarly recognized a distinction between mobile homes and site-built homes. As a general rule, a carefully drafted restrictive covenant expressly prohibiting mobile homes will be enforced. Because a covenant is an agreement between private parties, it is governed by the intent of the parties. Accordingly, where the intent of the parties is clear, the

struction and safety standards preempt state and local standards as to those aspects of performance addressed by the federal statute, 42 U.S.C. § 5422(a) allows states and localities to assert jurisdiction over any other construction or safety standard, which also allows exclusion by zoning ordance.

In Snohomish County v. Thompson, 19 Wash. App. 768, 577 P.2d 627 (1978), it was held that the state had preempted the county's building, electrical, and plumbing codes by the following provision: "Any mobile home . . . that meets the requirements prescribed under [WASH. REV. CODE ANN. § 43.22.340 [(1970)] shall not be required to comply with any ordinances of a city or county prescribing requirements for body and frame design, construction or plumbing, heating and electrical equipment installed in mobile homes . . . ." Id. at 770, 577 P.2d at 629.

93. See supra notes 79-85 & accompanying text.
94. See supra text accompanying notes 83-85.

96. See Mitchell v. Killins, 408 So. 2d 969 (La. App. 1981) in which a mobile home was held to be excluded by a covenant which provided that "[c]onstruction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a lot and remodeling or converting same into a dwelling unit in this subdivision." Id. at 971.

covenant will be enforced unless it is illegal, unreasonable, or contrary to public policy. Because an agreement between two parties not to place a mobile home on a specified piece of property is neither illegal nor clearly against public policy and is generally found to be reasonable, such a covenant is enforceable.

While the general rule holds true where the covenant is explicit, jurisdictions differ where the covenant fails to use the express words "mobile home." As a general rule in the construction of all covenants, covenants are to be construed strictly against the party seeking to enforce the restriction; all doubts are to be resolved in favor of the free use and enjoyment of one's property.


100. See, e.g., Wisneiwski v. Starr, 393 So. 2d 488 (Ala. 1980); see also Vickery v. Powell, 267 S.C. 23, 225 S.E.2d 856 (1976) (restrictions did not give rise to negative equitable easements). Although not clearly unreasonable (at least between the original covenants) because of the consensual nature of the arrangement, it may be argued that a restriction prohibiting mobile homes from a lot upon which a conventional single family home may be constructed is unreasonable for the reasons that an ordinance bearing such a restriction is unreasonable. See supra notes 48-94 & accompanying text; infra text accompanying notes 104-27.


Many courts have been asked to apply these rules of construction to exclude mobile homes from areas bound by covenants prohibiting a "structure of a temporary character" or a "trailer." Given the rules of construction, the permanent nature of most mobile homes, and the distinction between most mobile homes and trailers, it would seem that such covenants would be ineffective as applied to mobile homes. Mobile homes have, however, been held to be excluded by covenants containing such language.

In Lassiter v. Bliss, the Supreme Court of Texas was faced with just such a covenant being invoked against a mobile home. Citing a lower appeals court case, the Lassiter court approved the rule that "as a matter of law . . . a mobile home with the wheels removed, placed on blocks and hooked to lights and water is still a trailer," and held that the mobile home was excluded by the covenant.

Lassiter was decided over a vigorous dissent which berated the majority for failing to apply the basic rules of covenant construction. The dissent insisted that it could not have been within the contemplation of the parties to exclude a mobile home by the use of the word "trailer," and that the rules of strict construction do not allow for

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105. See supra note 7.


107. 559 S.W.2d 353 (Tex. 1977).

108. The covenant being construed read: "No trailer, basement, tent, garage or temporary quarters shall at any time be used as a residence . . . ." Id. at 355.


110. 559 S.W.2d at 355.

111. Id. "[W]e hold that the mobile home in this case was a 'trailer' and was prohibited by the restrictive covenant. The term 'trailer' is to be understood in its usual meaning regardless of whether it is referred to or described as a house trailer or mobile home." Id. at 356 (citations omitted).

112. Justice Sam D. Johnson dissented in an opinion joined by Justices Steakley and Pope. Id. at 359-63.

113. Id. at 359.

114. Id. at 359-63. Pointing out that the covenant had been created in 1948,
extension by implication. Arguing that only by implication could "trailer" be read to include a mobile home, the dissent found that "neither the intention of the parties nor a strict reading of the covenant supports a finding that mobile homes are encompassed by the restriction . . . ." The mobile home was excluded by the majority, however, based on a finding that it was within the intentions of the parties.

Not all courts faced with such a situation have held a mobile home to be excluded by a covenant prohibiting trailers. In *North Cherokee Village Membership v. Murphy*, the Michigan Court of Appeals held that defendants' double-wide mobile home was not a "house trailer" within the meaning of the covenant being construed. Noting that the particular dwelling in question was no less permanent than pre-fabricated housing that would be permitted by the covenant, and that it complied with the other restrictions in the deed, the court of appeals based its holding on the finding that

the dissent explained that "[t]he mobile home is a structure physically, functionally, and socially distinct from the trailer of the 1940's as well as from the trailer of the 1970's." *Id.* at 359-60. The dissent continued on to examine the histories of both mobile homes and trailers. See *id.* at 360-62.

115. "Construction of a restrictive covenant, as with any other contract, is governed by the intent of the parties at the time the covenant is made and will not be extended by implication." *Id.* at 359 (citations omitted); accord *Naiman v. Bilodeau*, 225 A.2d 758 (Me. 1967); *North Cherokee Village Membership v. Murphy*, 71 Mich. App. 592, 248 N.W.2d 629 (1976).

116. 559 S.W.2d at 363.

117. *Id.* at 356.


119. "[T]his court is asked to engage in semantic slight [sic] of hand by declaring a two piece mobile home, bereft of its chassis and securely joined together, to be a house trailer. We decline the invitation." *Id.* at 598-99, 248 N.W.2d at 632.

120. *Id.* at 599, 248 N.W.2d at 632.

121. The restrictive covenants prohibited dwellings of less than 900 square feet of living area or those with flat roofs; defendants' mobile home had 1,056 square feet of living area and a gabled roof. *Id.* at 594, 248 N.W.2d at 630. Explaining its decision, the *North Cherokee* court concurred with the following statement:

"The courts must acknowledge that pre-built homes, mobile or otherwise, which in a given case may be more attractive in appearance and design than many conventional homes built completely on the site, are a part of our changing society, and give recognition to the fact that the law must be responsive to the best interests of those whom it is designed to serve. Unless such dwellings are expressly and explicitly excluded by the terms of a protective covenant, their use should not be enjoined, provided that in each case, the dwelling otherwise conforms to the spirit of the restriction."

defendants' home compared favorably with the conventional homes in the neighborhood. In *Heath v. Parker*, the Supreme Court of New Mexico similarly refused to enforce against a mobile home owner a covenant prohibiting "trailers." Holding the mobile home under consideration to be "substantially the same" as a conventional home, the *Heath* court determined that case-by-case examination into the particular facts and circumstances is required in such instances. Examining the Parkers' mobile home, the *Heath* court found that it had the appearance of a conventional single family home and that it compared favorably with the other homes in the neighborhood. Because the facts of the particular case indicated that the covenant was not intended to exclude a home such as the Parkers', the restriction was held inapplicable.

Both the *Heath* court and the *North Cherokee* court ruled that the mobile home under consideration fell outside of the scope of the restriction based upon a finding that the mobile home compared favorably with site-built homes. These courts looked beyond the name by

122. In coming to the decision that the mobile home compared favorably with site-built homes, the *North Cherokee* court made the following observation:

If given the opportunity to resume improvements on the property which were halted by this litigation, appellants should be able to blend their dwelling into the surrounding landscape in a manner akin to other houses in the subdivision. Once appellants' planned landscaping of the property and erection of a carport are completed, their modular unit should closely resemble a conventionally built home which we note . . . already stands in one of the *North Cherokee* subdivisions.

71 Mich. App. at 600, 248 N.W.2d at 653.


It is interesting to note that in coming to its decision, the *Heath* court found Hussey v. Ray, 462 S.W.2d 45 (Tex. Civ. App. 1970), persuasive after it had been expressly disapproved in *Lassiter*. 93 N.M. at 681, 604 P.2d at 819; see *Lassiter v. Bliss*, 559 S.W.2d 353, 357 (Tex. 1978). See *supra* notes 107-17 & accompanying text for a discussion of *Lassiter*. But cf. Currey v. Roark, 635 S.W.2d 641 (Tex. Civ. App. 1982) (mobile home excluded by covenant based on finding that it was a permanent structure under a test promulgated by the *Hussey* court).

124. 93 N.M. at 682, 604 P.2d at 820; see also Naiman v. Bilodeau, 225 A.2d 758 (Me. 1967).

125. 93 N.M. at 682, 604 P.2d at 820.

126. *Id.* at 681, 604 P.2d at 819. The *Heath* court found that "[i]t strains one's credulity to state that Parker's home is a temporary structure, or a 'trailer.'" *Id.* at 682, 604 P.2d at 820.

127. After examining photographs of the dwelling, the *Heath* court found that "the placing of the Parker home on his lots does not violate the letter or the spirit of the restrictive covenants." *Id.* at 682, 604 P.2d at 820.

128. See *supra* notes 122, 126 & accompanying text.
which the dwelling is called to examine the particular facts and circumstances in determining whether it was within the intention of the covenantors to exclude a dwelling such as the one under consideration. Rather than pronouncing a general rule that all mobile homes are or are not excluded by a covenant with such wording, as did the court in *Lassiter*; these courts recognized that the purpose of the restrictions would best be served by case-by-case analysis to determine whether the enforcement of the restriction against the dwelling in question would result in the exclusion of a dwelling that compares favorably with the other housing in the area.

IV. THE FAVORABLE COMPARISON STANDARD

The favorable comparison standard adopted in *Heath* and *North Cherokee* in the consideration of private land controls is essentially the same as that adopted in *Robinson Township v. Knoll* in the consideration of public land controls. These decisions stand for the proposition that in the consideration of a prohibition on the free use of one's property, all of the surrounding facts and circumstances regarding both the reason for and the object of the restriction must be examined. Consideration must go beyond the name by which a dwelling is called to a determination of whether the dwelling in question compares favorably with housing permissible on the site or whether it falls within the scope of the restriction.

In reviewing a restriction on the use of property, whether imposed publicly or agreed upon privately, a court should not limit its consideration to whether the dwelling was built in a factory or on the site. Each instance in which a restriction is sought to be enforced

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129. See *supra* note 111.


133. *But see Jones v. Beiber*, 251 Iowa 969, 103 N.W.2d 364 (1969), where the “trailer” in question was excluded because it was “designed to be hauled” notwithstanding the concession that it was classifiable as a building and “as much of a dwelling as any house that is built on a permanent foundation.” Id. at 972, 103 N.W.2d at 366.
merits a close examination of the purposes for which the restriction was imposed and whether that purpose would be served by enforcing the restriction against the particular dwelling in question. As explained by the courts in Robinson, Heath, and North Cherokee, this is best accomplished by determining whether the dwelling compares favorably with other housing that would be permitted on the site as well as the housing existing in the surrounding area.

While it is clear that a decision to exclude a dwelling should not be based on its place of manufacture or its name, the question of which factors may be taken into consideration in determining whether a particular dwelling compares favorably with its proposed environment and the other homes that could be erected on the site remains to be explored.

Restrictions imposed by legislative or regulatory authority must bear a substantial relationship to the police power. As explained by the court in Robinson, the constitutionality of an ordinance can be assured only by examining each restriction that distinguishes between mobile homes and conventional single family homes and determining that a reasonable basis for that distinction exists. Where an ordinance distinguishes between the two types of dwellings solely on the basis of place of construction, it clearly fails to serve a legitimate police purpose; only where an ordinance excludes a dwelling on the basis of its existing characteristics on the site bearing the restriction and not on the basis of its characteristics when first brought to the site can it serve a legitimate police purpose. Housing can be regulated only on


136. See supra notes 131-32 & accompanying text.

137. See supra notes 39-44 & accompanying text.

138. 410 Mich. at 315-16, 321, 302 N.W.2d at 154, 156. See supra notes 80 & 82.


the basis of manner of construction, not place of construction. Accordingly, a case-by-case analysis is required to determine the basis upon which an ordinance seeks to exclude a mobile home.

The community that wishes to preserve the exclusive nature of certain areas need not fear that the inability to rely on a per se exclusion of mobile homes will leave it unable to restrict mobile homes from such areas effectively. A minimum dimensional requirement can exclude any mobile home that is not of a comparable size with the other homes in the district. A $30,000 mobile home could be restricted from an area where all the homes are worth over $200,000 as being grossly disproportionate in value. Minimum height restrictions and flat roof prohibitions could similarly exclude many mobile homes. On the other hand, if the mobile home in question met the above requirements, there would not be any reasonable basis for the exclusion. Other than to exclude something that has been deemed undesirable, there would be no reason to exclude a mobile home that is commensurate in size and improved property value and is comparable in construction with the other dwellings in the area.

A similar analysis is required in the enforcement of regulations directed toward conventional homes against mobile homes. After a determination that the restriction is one that serves a proper police purpose, it must be determined whether that purpose would be served by enforcing the restriction against the particular dwelling in question. It may be found that the purpose of certain structural requirements is satisfied even though the mobile home does not strictly

141. See supra note 82 & accompanying text.
143. It is generally accepted that preservation of property values is a legitimate purpose under the police power. E.g., Joseph Skillken & Co. v. City of Toledo, 528 F.2d 867 (6th Cir. 1975), vacated, 429 U.S. 1068 (1976), aff'd on rehearing, 558 F.2d 350 (6th Cir. 1977); see R. ANDERSON, AMERICAN LAW OF ZONING §§ 7.12, 8.25 (2d ed. 1976 & Supp. 1979). See supra note 55 & accompanying text. By the use of the figures $30,000 and $200,000 this writer intimates no opinion of how great of a disparity must be found for the mobile home to be considered grossly disproportionate in value.
145. This list of grounds for exclusion in the text is not meant to be exhaustive. Other restrictions may also serve as grounds for excluding a mobile home if they satisfy the goal of ensuring that a dwelling erected on the site compares favorably with the other dwellings that would be permitted on the site. Additionally, other restrictions must be examined to determine whether they exclude mobile homes in the manner discussed in the text infra accompanying notes 146-69.
146. See Bartke & Gage, supra note 3, at 500, 512. But see Moore, supra note 8, at 15 n.75, 21.
comply with the ordinance. An example of this would be an ordinance compelling all dwellings to have attached garages with a wall in common for the purpose of complying with a single structure per lot requirement. Because of the peculiarities of mobile home construction, this may be impractical as applied to mobile homes. For this reason an adjoining garage, connected to the mobile home by either a porch or breezeway, should be deemed substantial compliance with the restriction. If the garage and mobile home were properly connected by the porch or breezeway, for all intents and purposes it would be as if there was only a single structure on the lot. Accordingly, only where both the purpose for the restriction is legitimate and where the purpose has not been adequately addressed by other means can the restriction be enforced. To do otherwise may be a failure to afford owners of mobile homes equal protection of the laws and to deny them due process under the law.

Private restrictions, while normally not invoking constitutional analysis, similarly require the same case-by-case analysis as described above. Although a restrictive covenant expressly prohibiting mobile homes will generally be enforced as being within the intent of the covenanting parties, where the covenant prohibits trailers or temporary structures, the need for case-by-case analysis arises. As explained by the court in Heath, a careful examination into the facts and circumstances may reveal that the mobile home in question is much more justifiably deemed a single family dwelling than a trailer or temporary structure.

148. See Bartke & Gage, supra note 8, at 500. See supra note 43 & accompanying text.
150. As explained by the Supreme Court in Shelley v. Kraemer, 334 U.S. 1 (1947), the fifth and fourteenth amendments to the Constitution (due process and equal protection) apply only to governmental action, not private agreements. Id. at 9. Accordingly, the Court found that the covenant in question, which would have been unconstitutional had it been an ordinance or regulation, did not violate the Constitution. Id. at 13. However, the Court refused to enforce the covenant, holding that judicial enforcement of the covenant amounts to governmental action, and was thus prohibited by the Constitution. Id. at 20.
151. See supra notes 95, 101 & accompanying text. But see infra notes 154-56 & accompanying text.
153. See supra notes 123-32 & accompanying text.
Furthermore, even where mobile homes are expressly prohibited by covenant, there is reason to invoke case-by-case analysis. Because of the fine distinction between mobile homes and site-built homes, it might be found that, notwithstanding the use of the words "mobile home," a dwelling such as the one in question was not intended to be excluded by the covenantors.\textsuperscript{154} Especially where there is a comprehensive body of restrictions governing the characteristics of dwellings that are permissible on the site and the dwelling meets all other restrictions, it should be permitted on the site,\textsuperscript{155} irrespective of whether it may be referred to by the name "mobile home."\textsuperscript{156} Without examination into the particular facts and circumstances, the covenant may be enforced in such a fashion as to contravene the intentions of the covenantors.

Public and private land controls both serve a similar purpose: to preserve the character and integrity of a community. But to hold that preservation of character and integrity requires the absence of all change is to ignore the obvious—some change will and, in fact, \textit{must} occur.\textsuperscript{157} It is only by careful evaluation so as to ensure that the changes are reasonable can the integrity of a community be best preserved, not by resistance to every and all change. To hold that a permanently sited mobile home is anything but a single family dwelling is to discriminate on the basis of origin and not on the basis of attributes necessarily apparent when in use as a residence.\textsuperscript{158} A restriction on the use of property, whether public or private, must be read as being concerned only with those attributes characteristic of the dwelling in use. A mobile home should be excluded only by means of a restriction that examines the dwelling as it exists on the site and prescribes only those dwellings that do not compare favorably with other permissible housing. Then, and only then, can the restriction be found to be reasonable.

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\textsuperscript{154} Billings v. Shrewsbury, 294 S.E.2d 267 (W. Va. 1982); see supra note 114. It could also be argued that the dwelling, though a mobile home by origin, is one no longer. See supra notes 33-34 \& accompanying text. Contra Moore, supra note 8, at 21.

\textsuperscript{155} Naiman v. Bilodeau, 225 A.2d 758 (Me. 1967); North Cherokee Village Membership v. Murphy, 71 Mich. App. 592, 248 N.W.2d 629 (1976); see supra note 121 \& accompanying text.

\textsuperscript{156} But see DeLaurentis v. Vainio, 169 Mont. 520, 549 P.2d 461 (1976).

\textsuperscript{157} See supra note 121.

\textsuperscript{158} See supra notes 139-51 \& accompanying text.
A LEGISLATIVE SOLUTION

The preceding note is directed toward litigation concerning the placement of mobile homes under existing laws. The following legislation is suggested for those far-sighted jurisdictions that wish to address such a situation before litigation arises:

Sec. 1: No mobile home, modular home, or other factory-built home shall be excluded from any lot upon which a single family dwelling is permitted, except where the exclusion is for failure to comply with standards designed to ensure that the dwelling would compare favorably with the other dwellings permitted on that site.

Sec. 2: Only the following standards may be considered in determining whether a mobile home, modular home, or other factory-built home compares favorably with other permissible dwellings:

(a) minimum lot size,
(b) distance from adjacent or nearby uses,
(c) minimum off-street parking facilities,
(d) landscaping and fencing,
(e) total usable living area,
(f) height,
(g) roof lines,
(h) improved property value, and
(i) architectural or historical significance.

The above legislation, if enacted, would allow each mobile home proposed to be erected on a lot zoned for single family residential use to be reviewed administratively. Planning commissions and zoning boards of appeal can apply the favorable comparison standard on a case-by-case basis using the factors enumerated in section 2. To conform with this legislation, municipalities should enact ordinances providing for administrative review, if desired, by allowing the residential occupancy of mobile homes as a conditional use in single family residential districts to be granted as of right where a mobile home is shown to comply with the favorable comparison standard.

While the above legislation directly addresses public regulation on the use of mobile homes, it is the drafter's intent that this legislation similarly apply to the exclusion of mobile homes by private restriction.