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MOBILE AND MODULAR HOMES MANUSCRIPT
MID-WINTER MUNICIPAL ATTORNEY'S CONFERENCE
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An opinion issued by the Court of Appeals in August 2006 may have rendered obsolete a significant part of my understanding, and that of many other municipal attorneys, of the law applicable to mobile and modular homes in North Carolina. The case was *S. Wilson Taylor v. Town of River Bend*.¹ The case involved the ultimately successful prohibition of installation of a modular home in a residential subdivision.

After being a fairly low-key issue for municipalities for the last few years, this opinion brought zoning of manufactured and modular housing back into attention. This recent opinion creates, in my opinion, a realistic opportunity for a municipality to enact an ordinance banning certain modular homes which formerly evaded regulation. That was a somewhat surprising new development to many municipal attorneys who have thought that modular housing was protected by the Fourteenth Amendment and Article 1, Section 19 of the North Carolina Constitution, by virtue of being more comparable to stick-built homes than to manufactured housing. Many municipal attorneys, including this one, doubted that a modular home could be prohibited through a zoning ordinance prior to the *River Bend* opinion. This manuscript will examine the historical and current state of the law on “manufactured housing,” earlier known as “house

¹ No. COA05-841, 2006 N.C. App. LEXIS 1656.

trailers” and later as “mobile homes,” and “modular homes.” It will then examine the *River Bend* decision and explore a possible ordinance adoption opportunity. It will focus on the following questions:

1. WHAT IS A MOBILE OR MANUFACTURED HOME?
2. HOW ARE MOBILE AND MANUFACTURED HOMES ZONED?
3. WHAT IS A MODULAR HOME?
4. WHAT IS THE DIFFERENCE BETWEEN A MOBILE HOME AND A MODULAR HOME?
5. DOES THE DIFFERENCE REALLY MAKE ANY DIFFERENCE ANY MORE?
6. WHAT CAN YOUR MUNICIPALITY DO ABOUT IT?

To review these issues will require a look at some manufacturing processes, some installation techniques, a number of definitions created by case law, statutes and ordinances.

Along the way, we will look into some other issues as well, as follows:

- Can a mobile or manufactured home purchased with a vehicle title and license be transformed from personal property into real property?
- If one buys a lot with a mobile home on it, thinking of it as real estate, and somebody else shows up with a title to it as a vehicle, whose claim prevails?
- If a mortgage company takes a deed of trust on that lot and mobile home, and it is subsequently revealed that an acceptance corporation has a UCC filing on it, which lien prevails?
- If you buy a mobile home on the lot, do you have to re-register it with DMV as vehicle?
- Can a municipality demolish a mobile home in violation of minimum housing laws and/or as an unsafe dwelling?
- Does the 6-year improvement to real property statute of limitations govern a lawsuit over a mobile home, or a shorter statute of limitations (under the UCC, the contract can stipulate a much shorter S/L, as little as one year)?

- Is breaking into a mobile home a felony? Can it be burglary?
- Is burning a mobile home arson? Is it in the first degree?
- Is breaking the windows out of a mobile home damage to real property?

1. WHAT IS A MOBILE OR MANUFACTURED HOME?

First, some terminology: the terms “house trailer,” “mobile home” and “manufactured home” are essentially synonymous. They are a form of housing constructed on a metal frame (or if it is a double-wide, on two frames) in an assembly-line manufacturing process, to national standards promulgated by HUD.² “House trailer” and “mobile home” have been defined by case law; “manufactured home” is defined by statute. “Manufactured home” is not defined in Chapter 160A; rather, NCGS §160A-381.1(b) refers to NCGS §143-145(7) for the following definition:

(7) **Manufactured Home.** A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. “Manufactured home” includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act.

A manufactured home is inspected at the plant by a “third-party inspector” licensed by the N. C. Department of Insurance, following which an inspection label is affixed. It has a certificate of title, is licensed as a motor vehicle, is equipped with wheels, is towed to the sales lot, and then towed to the housing site. It is then typically set on piers which are constructed by simply “dry-stacking” (e.g. without mortar) cinder blocks. The piers are converted into something akin to stable structures by simply grouting around the exterior with a cement

product such as “Surewall.” A manufactured home is typically secured to the ground by means of straps attached to augurs screwed into the ground. The tongue and wheels are removed. Electrical and plumbing connections are made, and it is ready for the residents to move in. It typically continues to be transferred and taxed for *ad valorem* purposes as personal property. Circumstances in which it can be reclassified and reconveyed as real property are discussed hereinafter.

ZONING OF MANUFACTURED HOMES

The statutory substantive law relating to zoning of manufactured housing is contained in NCGS §160A-383.1, “Zoning Regulations for Manufactured Homes,” adopted in 1987 as a result of a lobbying effort by the manufactured home industry. Prior to 1987, there were zoning ordinances in effect in this State which at that time either prohibited mobile homes completely or restricted them to mobile home parks. The 1923 zoning enabling authority implicitly included the power to zone them.

Prior to the 1923 enabling statute granting municipalities the power to zone, and continuing thereafter, municipalities had used the “nuisance” concept to prohibit construction of various unpopular uses within their jurisdictions. Prohibited uses included such potentially harmful instrumentalities as a milldam³, a sewage disposal plant⁴ or a hospital to treat tuberculosis.⁵ Similarly, prior to zoning *per se*, municipalities used their general police power to

² National Manufactured Housing Corporation and Safety Standards Act of 1974, 42 USC S 5401, et seq., and federal regulations adopted pursuant to the Act.

³ *Raleigh v. Hunter*, 16 N.C. 12, 1 Dev. Eq. 12 (1826).

⁴ *Vickers v. Durham*, 132 N.C. 880, 44 S.E. 685 (1903).

⁵ *Cherry v. Williams*, 147 N.C. 452, 61 S.E. 267 (1908).

limit locations of uses such as gas stations in terms of distances from other uses⁶ or prohibited them entirely in a described part of town.⁷

The power to declare and regulate nuisances springs, of course, from the “general police power”⁸ granted in NCGS §160A-174(a) as follows:

A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

In *State v. Martin*,⁹ the Court of Appeals reviewed the conviction of a man tried in a criminal prosecution for violating a mobile home zoning ordinance in Ahoskie, N.C. The defendant contended that the statute was unconstitutional, primarily on grounds related to the building inspector’s assertedly arbitrary power. That opinion contains no analysis of the broader issue of whether the municipality could lawfully zone mobile homes. The legality of the zoning ordinance appears to have been assumed in that opinion.

One municipal ordinance which generally prohibited “trailers” within the corporate limits was struck down by our Supreme Court in 1970, in the case of *Town of Conover v. Jolly*.¹⁰ This case is an example of a prohibition enacted under the general police power to prohibit or abate nuisances, and not specifically as zoning. The Court held that a “trailer” home was not a nuisance. In *Conover* (in an opinion by Justice Lake) the Court quoted a dissent from a New Jersey case which said that “Trailer living is a perfectly respectable, healthy and useful kind of housing, adopted by choice by several million people in this country today....” The opinion noted that the General Assembly had just adopted standards for their construction. It analyzed the nuisance statutes and concluded that a mobile home was not a nuisance. There was no

⁶ *Ahoskie v. Moyer*, 200 N.C. 11, 156 S.E. 130 (1930).

⁷ *Wake Forest v. Medlin*, 199 N.C. 83, 154 S.E. 29 (1930).

⁸ *Vance S. Harrington Co. v. Renner*, 236 N.C. 321, 72 S.E.2d 838 (1952).

⁹ *State v. Martin*, 7 N.C. App. 18, 171 S.E. 115 (1969).

discussion of whether the ordinance was valid under the municipal grant of zoning power, since the Conover ordinance had not been labeled a zoning ordinance. Regulating mobile home zoning is within the general zoning authority granted in NCGS §160A-381 relating to (“...the location and use of buildings, structures and land....”) Subsequent cases have so held. The *Conover* case appears to be applicable only if nuisance law is used to prohibit such homes.

In *City of Asheboro v. John R. Auman and Nora Auman*,¹¹ a zoning ordinance prohibited mobile homes in certain areas. The defendants installed a mobile home on their lot, subsequently removed the wheels and tongue, and erected a foundation. The City of Asheboro obtained an injunction. The Court of Appeals upheld the granting of the injunction. The Court of Appeals summarily rejected constitutional challenges to the ordinance, without discussion. It was argued on behalf of the owners by removing the tongue and wheels had so changed the nature of the structure that it was no longer a mobile home. The Court of Appeals stated simply: “We hold, as a matter of law, that the stipulated changes in the mobile home did not change the nature of the offending nuisance property.” (That would have been use of the word “nuisance” in less than the full legal sense of the term.)

A legal attack was made in 1980 on the validity of a Currituck County ordinance, which banned single-wides and homes smaller than 24 feet by 60 feet. In *Currituck County v. Wiley*,¹² the mobile home owner asserted protection under the Fourteenth Amendment and Article 1, §19 of the North Carolina Constitution.

The Fourteenth Amendment to the United States Constitution states in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

¹⁰ 277 N. C. 439, 177 S. E. 2d 879 (1970).

¹¹ 26 N.C. App. 87 (1975), 214 S. E. 2d 621 disc. rev. denied, 288 N.C. 239, 217 S.E.2d 663 (1975).

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

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 1 §19 of the North Carolina Constitution states the following:

No person shall be...deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws....

Both use the phrase “life, liberty, or property.” That phrase comes directly from the writings of John Locke.¹³ Locke defined governmental power as the right to make laws for the regulating and preserving of property and of employing the force of the community for the execution of such laws... “and all this only for the public good.” He set forth the rational basis for a modern view of government, and specifically the general police power to enact reasonable rules for the “common good.” The hallmark of freedom under such a government would be to be free of the arbitrary exercise of power:

The freedom of men under government is to have a standing rule to live by... a liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown arbitrary will of another man.¹⁴

Look again at other language from the two constitutional clauses cited above: “due process of law,” and “the law of the land.” They express the Lockean philosophy that if government behaves in accordance with the rules, it can preserve one person’s property rights, even at the cost of another’s, so long as the action is solely for the public good. The opinion of Justice Sharpe in the well-known *In Re Application of Ellis*¹⁵ expressed, in pure Lockean terms, the need to protect the enjoyment of one’s property from the unbridled will of the governing authorities, as follows:

It is equally clear that if an ordinance is passed by a municipal corporation which, upon its face, restricts the right of dominion which the individual might otherwise

¹³ In his *Two Treatises on Government*, published in 1690, after the “Glorious Revolution of 1688” in which England created a constitutional monarchy under William and Mary, Locke defined a basis for use of government power other than the whims of a hereditary monarch. He formulated a “social contract” theory of government as the justification for both use of government power and limitations on it. Locke was for 15 years the confidential secretary to Anthony Ashley Cooper, one of the eight Lords Proprietors to whom Charles II gave “the Carolinas,” and the person for whom the two rivers on either side of Charleston are named.

¹⁴ *Two Treatises of Government*, quoted in *Encyclopedia Britannica*, 1959 Ed., Vol. 14, p. 276.

¹⁵ 277 N.C. 419, 178 S.E.2d 77 (1970).

exercise without question, not according to any general or uniform rule, but so as to make the absolute enjoyment of his own depend upon the arbitrary will of the governing authorities of the town or city, it is unconstitutional and void, because it fails to furnish a uniform rule of action and leaves the right of property subject to the despotic will of aldermen who may exercise it.

In the *Currituck County*¹⁶ case, the Court set the constitutional bar high for the owner, saying that “...the defendant...must carry the burden of showing that [the ordinance] does not rest on any reasonable basis, but is essentially arbitrary.” The Court held that “...mobile homes are apparently different from other types of housing so that there is a rational basis for placing different requirements on them...” The Court did not explain the difference in detail, and particularly did not articulate the rational basis for excluding those under a certain size. The opinion distinguished *Conover* and relied on *Auman*.

The next North Carolina appellate case relating to zoning manufactured homes was *Duggins v. Walnut Cove*.¹⁷ The Town prohibited “mobile homes,” on R20 residential lots, while permitting site-built homes and modular homes. The question of how to define a “mobile home” became of paramount importance to that lawsuit. The plaintiffs also contended that the enforcement of the ordinance was not within the proper scope of the police power of that municipality. Constitutional issues were again raised based on the Fourteenth Amendment to the United States Constitution, and Article I, Section 19 of the Constitution of North Carolina.

The Court of Appeals noted that mobile homes and modular homes are constructed in accordance with different building codes, but stated without further elaboration: “It is obvious from the definitions in the ordinance that the different applicable building codes is not the only factor differentiating mobile homes from modular homes.” Those differences were not spelled

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

¹⁷ 63 N.C. App. 684, 306 S.E.2d 186, (1983).

out by the Court. The Walnut Cove ordinance defined a mobile home as “...a dwelling unit complete with necessary service connections and ready for occupancy, except for minor and incidental unpacking and assembly operations, including, but not limited to, location on jacks or other temporary or permanent foundation....” The differences the Court was referring to presumably included the different foundation construction methods, as at least one of the other factors differentiating the two types of housing. As to the validity of the ordinance, the Court held as follows:

The protection of property values in the zoned area is a legitimate governmental objective. The method of construction of homes may be determined by a city governing board as affecting the price of homes. The prohibition of such buildings is rationally related to the protection of the value of other homes in the area, and a court cannot interfere with that legislative decision.

The Manufactured Homes Trade Association participated in the *Walnut Cove* case as *amicus curia*. After the industry lost that round in the courts, it went to the General Assembly. The statutory law specifically relating to zoning manufactured housing, contained in NCGS §160A-383.1, “Zoning Regulations for Manufactured Homes,” was adopted in 1987 as a result of a concerted lobbying effort by the manufactured home industry. Good lobbying work resulted in a powerhouse preamble to new legislation in which the General Assembly found “...that manufactured housing offers affordable housing opportunities for low and moderate income residents of this State, who cannot otherwise afford to own their own home,” and that “...some local governments have adopted zoning regulations which severely restrict the placement of manufactured homes.”¹⁸ The General Assembly suggested that “...cities re-examine their land use practices...and consider allocating more residential land area for manufactured homes....” However, from the industry’s viewpoint, the preamble was probably the high water mark of the

¹⁸ NCGS §160A-383.1(a).

legislation. The only prohibition against regulation which the industry received from this statute was as follows:

A city may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes from the entire zoning jurisdiction.

Also see NCGS §143-143.8 through 143-151.5 for creation of the North Carolina Manufactured Housing Board, delegation of certain duties to the Commissioner of Insurance, standards for sellers of manufactured homes, including criminal checks, required warranties, procedures for presenting claims for breach of warranties, cancellation of purchase, licensing of sellers, regulation of escrow accounts, and establishing uniform construction standards for manufactured homes. The construction standards largely defer to the HUD standards.

Local governments may have obtained more out of the passage of the bill 1987 than the manufactured housing industry, as subsection (d) states that “A city may adopt and enforce appearance and dimensional criteria for manufactured homes.” Note that subsection (d) of the statute restates the constitutional limits of the general police power, as follows:

Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety and welfare of area residents.¹⁹

The principal reported case on the impact of the 1987 manufactured homes statute on local governments arose out of two re-zoning requests of manufactured home parks denied by the City of Burlington in 1997. The developers contended that NCGS §160A-383.1 “...reveals a legislative intent that there be ‘a substantial presence of manufactured homes’ within each

¹⁹ NCGS §160A-383.2(e).

municipality.” The Court of Appeals disagreed, noting that the legislature’s only mandate was that municipalities “*consider* allocating more residential land area for manufactured homes.”²⁰

The only effect of the 1987 statute on local governments was that they could not exclude manufactured homes from their jurisdictions completely. The effect on the industry, however, was the specific legislative grant of power to local governments in section (d) to establish a whole new level of regulation of the appearance and dimensions of manufactured homes.

A Catawba County ordinance adopted pursuant to section (d) of the 1987 statute requiring siding and shingles similar to standard residential construction was challenged in the U.S. District Court for the Middle District in 1998.²¹ A challenge was based on a preemption argument, e.g. that manufactured homes are built pursuant to standards promulgated by HUD, thus preempting the creating of additional standards. The Middle District Court held that the Catawba County Ordinance “...was enacted to remove from the range of safe and satisfactorily performing materials only ones based on undesirable appearance,” did not therefore preempt the regulation of safety and performance of roofing and siding materials, and thus did not interfere with the Federal regulation of safety and performance of roofing and siding materials.

There was a series of appellate cases over the approximately 20-year period through 2006 dealing with whether a specific structure fit the definitions of trailer, mobile home or manufactured home. Whether a particular structure in the lawsuit was a “trailer,” or “mobile home,” or “manufactured home” was often critical to determining whether it violated a restrictive covenant.

²⁰ *Northfield Dev. Co. v. City of Burlington*, 136 N.C. App. 272, 136 S.E. 743 (2000).

²¹ *CMHMF Co., Inc. v. Catawba County*, 994 F.Supp. 697 (W.D.N.C. 1998).

In *Starr v. Thompson*,²² a structure was found to be a mobile home because it consisted of two sections, each with a permanent built-in chassis equipped to accommodate four removable axles, and the structure was delivered to its location on wheels attached to the axles. The structure remained a mobile home “even though the axles, wheels and tongues are removed after the structure was placed on the lot.”

In *City of Asheboro v. Auman*, a change in the home to create a lack of mobility of the structure after it is installed was held not to change the fact that it is still a mobile home.²³ In *Young v. Lomax*,²⁴ the Court held “as a matter of law” that:

the structure is a mobile home when...the structure was delivered to the site in two sections; each section had its own permanent steel chassis consisting of two “I” beams affixed to the flooring system of the unit; each unit was attached to four axles with two wheels per axle; and a truck towed the structure to its present site with the structure riding on its own axles and wheels.

In *Angel v. Truitt*,²⁵ the Court held simply that a “mobile home” is a structure that is designed to be moved for transport.

In *Briggs v. Rankin*,²⁶ the Court of Appeals made it clear that the existence of a chassis or frame in and of itself (e.g., the ability to be transported) was not determinative. The Court announced five tests for determining whether a particular transportable home was a manufactured home, as follows:

- (1) whether the structure must comply with the N.C. Regulations for Manufactured/Mobile Homes, which are consistent with HUD national regulations, or with the N.C. State Building Code;
- (2) whether the structure is attached to a permanent foundation;
- (3) whether, after constructed, the structure can easily be moved or has to be

²² 96 N.C. App. 369, 385 S.E.2d 434 (1989).

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

²⁴ 122 N.C. App. 385, 470 S.E.2d 80 (1996).

²⁵ 108 N.C. App. 679, 424 S. E. 2d 660 (1993).

²⁶ 127 N.C. App. 477, 491 S.E. 2d 234 (1997), *aff'd* 348 N.C. 686, 500 S.E. 2d 663 (1998).

moved like a site-built home;

- (4) whether title to the home is registered with the N.C. Department of Motor Vehicles or must be conveyed by a real property deed; and
- (5) how the structure is delivered to the homesite.

In an unpublished opinion issued in early 1999, in *Wilson v. Abbott*,²⁷ the Court of Appeals reversed summary judgment in favor of the homeowners. (This unpublished case is not readily available for consideration. Lexis had not yet begun archiving unpublished cases then. Presumably, a copy can be obtained from the Court.) The effect of the case was to follow *Briggs* in requiring that a factual determination be fully carried out each time the issue is presented. A 1999 article in *Lawyers Weekly* stated that the *Wilson v. Abbott* opinion was a subject of some intense discussion at the 1999 North Carolina Real Property Lawyers Conference, as real property attorneys were concerned that their title examination duties were thereby made much more complex.

For most of the past decade through August 2006, the difference between a manufactured home and a modular home seemed to be self-evident: one has a HUD sticker, the other has a “N.C. On-Frame” sticker; one is installed by the dealer; the other is built on a foundation by a licensed general contractor; the construction of one is not inspected by building inspectors; the other is; one is typically set on dry-stacked blocks; the other is built on a perimeter foundation.

MANUFACTURED HOME MISCELLANEOUS ISSUES

- Can a mobile or manufactured home purchased with a vehicle title and license be transformed from personal property into real property?
- If one buys a lot with a mobile home, thinking of it as real estate, and somebody else shows up with a title to it as a vehicle, whose claim prevails?

- If a mortgage company takes a deed of trust on a lot and mobile home, and it is revealed that an acceptance corporation has a UCC filing on it, which lien prevails?
- If you buy a mobile home on the lot, do you have to re-register it with DMV as vehicle?
- Can a municipality demolish a mobile home as a minimum housing violation or as an unsafe dwelling?
- Does the 6-year improvement to real property statute of limitations govern a lawsuit over a mobile home, or a shorter statute of limitations (under the UCC, the contract can stipulate a much shorter S/L, as little as one year)?
- Is breaking into a mobile home a felony? Can it be burglary?
- Is burning a mobile home arson? Is it in the first degree?
- Is breaking the windows out of a mobile home damage to real property?

In *People's Savings and Loan Association v. Citicorp Acceptance Co.*,²⁸ the Court held that the fact that the owner no longer intended to operate it on a highway, placed it on a brick and block foundation, attached a porch, deck, and septic system, and granted a deed of trust in real estate on which the mobile home sat, and with which it was intended to be conveyed, did not affect the prior UCC filing. The Court suggested a reluctance to conclude that a mobile home can change its legal nature, citing with approval an Oregon case which stated "a building that is a mobile home as it leaves the manufacturer probably is forever a mobile home."

In *Hughes v. Young*,²⁹ the Court, however, ruled that a mobile home's nature can be changed. A general warranty deed describing only land was held sufficient to convey title to a

²⁷ Unpublished, See *North Carolina Lawyers Weekly No.* 9-16-0983.

²⁸ 103 N.C. App. 762, 407 S.E.2d 251 (1991).

²⁹ 115 N.C. App. 325, 444S.E.2d 248 (1994).

mobile home affixed to the land when the parties intended that result. The Court held that where the relation of the parties is that of grantor and grantee of land, it is presumed that the attached item becomes part of the realty. On the other hand, where the relationship of the parties involved is a seller and a purchaser who gives the seller a security interest back, the item remains personalty as between those parties.

In *RSN Properties, Inc. v. Ian Earl Jones, Jr. and River Run Investments*,³⁰ the Court assumed that the mobile homes could be attached to and sold as real property, but only if the original purchaser had the statutorily required certificates of origin.

In *In re Meade*,³¹ where the purchaser of real property obtained a mobile home along with it, and had no intention of operating the mobile home along the highways, the Court held that the purchaser was not required to re-register the mobile home or to attempt to obtain a new certificate of title, since it was “permanently affixed to the land.”

In *Hensley v. Ray’s Motor Company of Forest City*³², the Court grappled with the statute of limitations issue, as between a 6-year statute of limitations and a one year contractual statute of limitations. The Court followed the previous authorities such as *Hughes* in noting that the character of the mobile home can vary under the circumstances. In this particular case, the plaintiff alleged merely that the mobile home is affixed to land by virtue of water and electricity having been provided. The Court ruled that those facts standing alone are insufficient to show that the mobile home has been “permanently affixed to the land.” (This concept of “permanently affixed” goes back to the early discussion about a mobile home typically being simply set upon

³⁰ No. COA04-100, 609 S.E.2d 498 (2005).

³¹ 174 Bankr. 49, Middle District North Carolina (1994).

³² 158 N.C. App. 261, 580 S.E.2d 721 (2003).

dry stacked piers and held to the ground by a combination of gravity and belts attached to augers.)

Minimum housing and unsafe building enforcement statutes give municipalities various powers to order that certain buildings be repaired, removed or demolished. The Minimum Housing Statute refers to “repairs, closing or demolition” of “dwellings” and “certain abandoned structures.”³³ It then defines “dwelling” as including “manufactured home or mobile home,”³⁴ and in turn defines those with reference to the manufactured home statutes.³⁵ Minimum housing enforcement thus explicitly includes manufactured or mobile homes.

Unsafe building enforcement is less explicit, referring to a “building or structure.”³⁶ (*Query:* Does that include a manufactured home? The question may be significant, as a given municipality may have adopted unsafe building authority in the ETJ, but minimum housing enforcement authority only in the Town limits.) If unsafe building enforcement includes manufactured homes, then what is the effect of NCGS §160A-432 which requires that the city shall sell the usable materials of the building “...and any personal property,” e.g., is the entire manufactured home still “personal property”? The author has found no reported case specifically approving unsafe buildings enforcement as including manufactured homes. Other case law holding them to be “buildings” or “dwellings” such as from criminal law would support a conclusion in favor of authority.

³³ NCGS §160A-441.

³⁴ NCGS §160A-442(2).

³⁵ NCGS §143-145(7).

³⁶ NCGS 160A-425.1, 426, 428..

In *Town of Hertford v. Harris*,³⁷ the Town demolished two mobile homes after following minimum housing enforcement procedures. The court held that whether there were any salvageable materials which must be accounted for, and the value credited against the lien, was a jury question.

In *State v. Paul Emanuel Douglas*,³⁸ the Court held that Douglas did commit the crime of felony breaking and entering a building,³⁹ and not the misdemeanor⁴⁰ when he broke into an unoccupied mobile home sitting on a sales lot.⁴¹

In *State v. Paul Emanuel Douglas*, 54 N.C. App. 85, 282 S.E.2d 832 (1981), the same Mr. Douglas appealed a second conviction for breaking into an unoccupied mobile home sold to a buyer but still sitting on the sales lot before being delivered. He stole the washing machine, curtains and pillows. Same result.

In *State v. Sandra Mae Jones*,⁴² the defendant burned what the headnote calls “the mobile home of her lover,”⁴³ and was convicted of arson in the first degree. The Court noted the common law definition of arson, and the statute making the “....malicious and willful burning of the unoccupied dwelling home of another...” a felony in the first degree. (There is another statute making the malicious and willful burning of an occupied “...mobile home or manufactured-type house, recreational trailer home...” second degree arson.) The Court assumed without quoting authority that this mobile home was a “dwelling house.”

³⁷ 169 N.C. App. 838, 611 S.E.2d 194 (2005).

³⁸ 51 N.C. App. 595, 277 S.E.2d 467 (1981).

³⁹ NCGS §14-54(a), “...any person who wrongfully breaks or enters any building” defined in NCGS §14-54(c) as “...any dwelling, dwelling house, uninhabited house building under construction, building within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property.”

⁴⁰ NCGS §54-14(b), “....motor vehicle, trailer, aircraft, boat...”

⁴¹ 54 N.C. App. 85, 282 S.E.2d 832 (1981).

⁴² 110 N.C. App. 289, 429 S.E.2d 410 (1993).

⁴³ The defendant told police she did not intend to burn the mobile home; she only intended to burn the occupant’s bed “...so no other woman could share it with him.” at p. 290.

In the matter of: T.P.,⁴⁴ a juvenile respondent was charged with breaking and entering and damage to real property. He had broken windows in a mobile home. The Court concluded that “the evidence, although circumstantial, was sufficient to support a finding that the respondent was guilty of willful and wanton injury to real property, being the breaking of a window of the mobile home...” The Court did not actually discuss whether the mobile home was real property, or cite *Douglas* as authority for the proposition. Again, we can observe that the term “real property” was not being used in its technical sense.

3. WHAT IS A MODULAR HOME?

Whether a structure is defined as a “modular home” rather than as a “manufactured home” can be critical for zoning purposes. Ordinances which prohibit the construction of a manufactured home in a typical residential zone typically do not prohibit the construction of a modular home.

Modular construction includes a broad range of products. At one end of the spectrum, a small modular unit which comes to mind is a yard storage building which may be delivered on a roll-back trailer. There are modular units (typically motel room units or small offices) which are trucked in on flat-bed trailers; they are lifted off by a crane. There are modular units which are towed in on wheels and look much like homes. There are also modular units that look more like a stick-built structure. These are the houses which one sees on some sales lots with a lot of millwork, gables, palladian windows and porches.

In *Angel v. Truitt*,⁴⁵ the structure was found not to be a mobile home where it was in fact a “modular home.” The Court there concluded that it was neither a “manufactured home” as defined by NCGS §160A-383.1(f) nor a “mobile home” within the meaning of the restrictive

⁴⁴ No. COA03-973, 609 S.E.2d 728 (2004).

covenant. The Court affirmed summary judgment and denial of an injunction. The structure consisted of three units; the three units had no axles; they did not have the capacity to travel on the public roads on their own attached wheels; they were lifted by crane onto a dolly, lifted off the dolly by crane and placed on a permanent foundation. The Court found the structure to have been constructed in compliance with North Carolina Uniform Residential Building Code, constructed on a brick load-bearing foundation, that mechanical, electrical, plumbing, trim, finishing and painting were required and if the structure were to be moved, the exact procedures would be required as are required to move a site-built house.

About twenty years ago, the manufactured homes industry created a type of housing called “on-frame modular homes” (or “N.C. modular homes”) which is constructed on an assembly line with a design and materials much like a manufactured home. This product is often virtually indistinguishable in exterior appearance from a mobile home. Although often visually incompatible with a standard stick-built home, there has been some doubt as to whether they can be prohibited from being placed on a residential lot in a stick-built subdivision, and an apparent reluctance to attempt to exclude them on aesthetic grounds alone.

If your planning official calls and says that a truck tractor has just left a “house trailer” to be set up on an in-fill lot in an established neighborhood, what do you do? You look at your ordinance, and probably find that your municipality limits mobile homes to mobile home parks, but the set-up guy told your inspector that it’s “not a mobile home.” Your next thought is probably to see whether there are restrictive covenants in effect. (While your municipality cannot enforce covenants, your complaining citizen can.) Then you find out that it is an older subdivision and the covenants have expired. You may do a little research and find the *Angel* and

⁴⁵ 108 N.C. App. 679, 424 S.E.2d 660 (1993).

Briggs cases and some of the other cases, which hold that if it is a modular home, it is not a manufactured home, and inferentially cannot be excluded by an ordinance which excludes manufactured homes. Then you try to figure out whether it is a manufactured home or a modular home. You read your municipality's ordinance again, and find little or nothing about modular homes, and probably no prohibition against them.

An on-frame modular home is, like a manufactured home, constructed on a metal frame (or if it is a double-wide, on two frames) in an assembly line manufacturing process, but to standards promulgated by the N. C. Building Code Council.⁴⁶ It is inspected by a "third-party inspector" licensed by the Department of Insurance, following which an inspection label is affixed. It is equipped with wheels, is temporarily licensed as a motor vehicle, is towed to the sales lot and subsequently to the housing site. The tongue and wheels are removed. It is then set on a foundation constructed in accordance with the N. C. Building Code, e.g., with a continuous permanent perimeter load-bearing foundation, usually CMUs (concrete blocks) faced with a brick or stone veneer. The home is secured to the foundation. Electrical and plumbing connections are made, and it is ready for the residents to move in. It ceases to be personal property and is taxed as real estate.

The on-frame modular home concept was approved in 1985 under Code "Section 108, Alternate Materials and Systems," by the Director of the Modular Construction Section of the N.C. Department of Insurance with the approval as well of the Chief Building Code Consultant. The on-frame modular system was described as a building system "equivalent to that prescribed by the Code."⁴⁷

⁴⁶ *Angel, supra; Walnut Cove, supra.*

⁴⁷ January 22, 1999 letter from C. Patrick Walker, P.E., Deputy Commissioner, Manufactured Building Division, N.C. Department of Insurance.

Other than for the foundation, an untrained eye can not readily tell the difference between some manufactured homes and modular homes. Even a reading of the two sets of design standards reveals that there are only minor differences in the construction of the two. Those differences involve such things as the weight-bearing characteristics of the floors in the bedrooms, and the types of electrical wiring which must be used. The primary way to tell the difference between a modular home which looks like a manufactured home and a manufactured home is to look inside the kitchen cabinets and find the label. If the structure is a “manufactured home,” the sticker will say that it has been constructed pursuant to HUD standards, and inspected by a named third party inspector in accordance with the HUD procedures. If it is a “modular home,” the sticker will indicate that it has been constructed pursuant to standards promulgated by the North Carolina Department of Insurance and inspected by a named third party inspector in accordance with those standards. These are called “on-frame modular homes” or “N.C. Modular Homes” (the latter because all those sold within this state are constructed in accordance with the N.C. approved plans).

The manufactured and modular homes statutes, NCGS §143-139.1(a), allow the Building Code Council to adopt rules governing the installation of manufactured and modular buildings by a person who is not a licensed general contractor, with the proviso that for a modular building, the manufacturer’s instructions and applicable provisions of the State Building Code apply.

The 1987 zoning statute, NCGS §160A-383.1, applied to manufactured homes, and not to modular homes. There is no specific provision of that zoning statute relating to modular homes; there is still no specific legislation related to the zoning of modular homes since then to date.

Similarly, unlike for manufactured homes, there is no specific statutory grant of police power to municipalities to establish appearance and dimensional criteria for modular homes.

In 1996, the Town of Gibsonville imposed a moratorium on construction of modular homes. A civil action was filed in 1997. The Town lifted the moratorium. The conventional wisdom was that modular homes could not be discriminated against because they “...are built to the same state building codes as conventional, on site-built homes, and both types of housing have permanent foundations.”⁴⁸ The reasons why there is no prohibition go back to “due process” and “equal protection of the laws,” as the owner of that modular home could argue with credibility (and the backing of the Department of Insurance, which advises Building Inspectors on such matters) that a modular home is essentially the same as a stick-built home. Although *State v. Jones*⁴⁹ had approved “aesthetics” as a basis for regulation of a junkyard, apparently most municipalities (and/or their attorneys) shared some reluctance regarding attempting to extend “aesthetics” regulations to modular homes.

In a 2001 case, an “N.C. modular home,” which was visually essentially a plain-looking single-wide mobile home, was placed on an infill lot which had never been developed in an existing attractive subdivision. A representative of the sales lot, as the agent for the purchaser (called in it the “owner”), had applied for a building permit to install a “modular home.” The Town Planning Department reviewed and approved the building permit for zoning compliance.

⁴⁸*Times-News*, Burlington, NC, November 4, 1997.

⁴⁹ 305 N.C. 520, 290 S.E.2d 675(1982)

The Town Inspections Department approved the building permit. The irate neighbors appealed the issuance of the permit to the Board of Adjustment. After a lengthy hearing, the Board of Adjustment reversed the staff action of granting the permit.⁵⁰

The opponents of modular homes who made the bulk of the presentation before the Board of Adjustment contended, but failed to prove, that the manufactured home industry simply keeps two rolls of inspection stickers at each sales lot, and applies a “manufactured home” inspection sticker if it destined to a mobile home park, or a “modular home” inspection sticker if it is

⁵⁰ Query: Whether a Board of adjustment can do so, as opposed, for example, to reversing a zoning decision. The author of this manuscript has found no authority either way.

destined to be installed in a residential subdivision. (There was no credible basis for so concluding.)

The Board of Adjustment found that the person identified as the owner on the permit application was not the owner of the lot, that the application was not signed by the building permit applicant or her agent, that certain information called for on the building permit application was left blank: “the lot, the block, the contractor’s N.C. state license number, the contact information for the contractor, and the type of heat,” that the cost data supplied on the application was self-contradictory, that the building permit form for modular homes, which was used for the issuance of the Building Permit, called for information with respect to the “modular” home proposed to be installed as follows: manufacturer, model, serial number, year, width, length, and color, but none of the information called for on the building permit form by which the modular home would be identified was provided, each of these items having been left blank, that the Building Permit was missing information related to lot # and flood zone, that the North Carolina modular building setup contractor license bond submitted as part of the application was not signed by the principal on the bond, that the required plot plan submitted with the application had inaccurate dimensions, that the plot plan submitted with the application failed to show a 50’ Neuse River buffer. The Board of Adjustment also found the following: “The information provided on Building Permit #201420, and the application for it, is insufficient to enable a building inspector attempting to determine compliance with Building Permit #201420 to be able to determine whether the home delivered... complied with the permit because there is not sufficient information on the permit itself or the application that identifies the unit to be delivered to the site.”

The Board of Adjustment thus concluded and ordered that the building permit was defective and invalid and overruled the administrative action granting the permit.

The Town Board desired an ordinance designed to prevent a recurrence of the event, and discussed a moratorium on modular homes. In its letter to the Mayor, in response to newspaper accounts of a possible local moratorium, the North Carolina Manufacturing Housing Institute recited the standard view of the similarities between a modular home and a stick-built home, as follows:

Factory-built homes fall into two categories. The first is commonly referred to as a “manufactured home” which is built to meet or exceed the standards set forth in the federal Manufactured Housing Safety Standards Code administered by the Department of Housing and Urban Development (commonly referred to as the “HUD Code). The second type is a factory-built home that meets or exceeds the requirements of the North Carolina State Building Code, commonly referred to as a “modular home.”

A modular home bears a seal or stamp certifying that all of its systems – building, plumbing, mechanical and electrical, have been inspected and certified as complying with Code requirements. Modular homes can be built with a floor system framed entirely of wood, or with a floor system using structural steel. The first is commonly referred to as “off frame,” while the latter is known as an “on frame” modular.

NCMHI is interested and concerned, because we believe there is no legal distinction between “on frame” and “off frame” modular homes. A modular home is a modular home, regardless of the floor system. Both are built to the same code. Therefore, any attempt to distinguish between the two in residential zoning would violate zoning principles, because there is no connection to public health, safety or welfare.

Representatives of the municipality conferred with local manufactured and modular home sales lot representatives and adopted a set of design and construction standards. However, the standards were not directed to modular homes alone, out of concern that the general association of modular homes with stick-built homes would open a targeted ordinance to a constitutional argument. Rather, the new ordinance was opened to comment by the local

building industry in general, and applied to all single-family and modular homes. The ordinance required all residential construction in the Town and its ETJ to have a continuous masonry foundation, a minimum roof pitch of 5 in 12, a minimum eave overhang of 10 inches, a minimum entrance landing area of 4 X 4, foundation planting, and a minimum 2.7 to 1 length to width ratio.

That ordinance is believed to have brought about 2003 legislation substantially affecting the appearance of modular homes, statewide, substantially enhancing the appearance of modular homes.⁵¹ The industry's preemptive strike through the Legislature essentially incorporated the standards adopted in that ordinance. The industry presumably preferred one set of design guidelines, although fairly strict, to a multiplicity of guidelines which could have been adopted in 100 counties and 450 municipalities.

This 2003 act, codified as NCGS §143-139.1(b), provides that "...a single-family modular home must meet or exceed the following construction and design standards..." relating to roof pitch (5 in 12) , eave projection (10 inches), minimum height of exterior wall (7 feet) , roofing and siding materials compatible with "materials commonly used in standard residential construction," and requiring perimeter foundations. That statute, brought upon itself by the industry, essentially ended the manufacture of low-end "N.C. modular homes" which visually resemble the low-end single-wide manufactured homes.

Followers of the law in this area during the last decade, including building inspectors, the N.C. Department of Insurance personnel who advise them, and municipal attorneys, relied on the substantial differences between manufactured homes and modular homes, on HUD standards vs. Dept. of Finance standards, and on the five tests set forth in *Briggs v. Rankin, supra*. During

⁵¹ NCGS §143-139.1(b).

those years, the difference between a manufactured home and a modular home seemed to be self-evident: One has a HUD sticker, the other has a “N.C. modular home” sticker; one is installed by the dealer, usually on dry-stacked blocks; without a perimeter foundation; the other is built on a code-approved foundation and is inspected by building inspectors using the Residential Building Code.

Then came the August 2006 opinion of the Court of Appeals in the case of *S. Wilson Taylor v. Town of River Bend, supra*.⁵² In that case, the owners of a lot bought a modular home, had it towed onto the lot and set up began. Although a building permit had been issued, the irate neighbors called the zoning administrator out for another look. He saw that it had a “chassis,” and “declared it to be a manufactured home” despite the presence of a modular home inspection sticker, issued a stop work order, and revoked the zoning permit.

The stipulated facts before the Board of Adjustment of River Bend included that “the structure contains the Department of Insurance seal reflecting a modular home.” Nonetheless, the zoning administrator testified that it was a manufactured home because it had a “fixed chassis.” The Board of Adjustment upheld the zoning administrator. The trial court upheld the Board of Adjustment.

5. DOES THE DIFFERENCE REALLY MAKE A DIFFERENCE ANY MORE?

The Court of Appeals affirmed, in an opinion which essentially said that the structure was both a “manufactured” and “modular home.”⁵³ As such, the Court held that the Town could regulate it as either a manufactured home or as a modular home. Therefore, the Town could conclude that it was a manufactured home and could prohibit its being set up on the lot in

⁵² No. COA5-841, 2006 N.C. App. LEXIS 1656.

⁵³ (Such joint or alternate identity is a concept which to the author’s knowledge did not exist until that moment.)

question. The manufactured home industry did not petition for review of this decision by the North Carolina Supreme Court.

6. WHAT CAN YOUR MUNICIPALITY DO ABOUT IT?

This question has at least two answers:

(a) With the appropriate zoning ordinance, presumably now there will be no difference in a municipality's ability to zone the two housing product, manufactured and modular, on the same basis. A municipal zoning ordinance can now presumably define "manufactured home" in such a way as to include an "on-frame modular home" and prevent its being installed on a residential lot outside of a mobile home park. Such an ordinance might be drafted along the lines of the ordinance examined by the Court in *River Bend*, with an add-on sentence at the end clearly encompassing modulars, as follows:

Manufactured Home. A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act. For purposes of this ordinance, "manufactured home" includes a "modular home" as defined in NCGS §143-145(7).

(b) However, after the adoption of the 2003 design criteria statute, the only modular homes which look like the low-end single wides are old, probably used ones, so the threat of a vendor selling such homes for infill in older subdivisions is substantially less likely, and so there is less need for such an ordinance.

ADDENDUM: SOME ACADEMIC MUSINGS

Here are some miscellaneous thoughts on which the author has not reached conclusions.

If the reader has opinions, or even just ideas, send me or [list.gov](mailto:alist@list.gov) an e-mail.

The *River Bend* opinion appears to announce the proposition that an object can be defined in a zoning ordinance differently from its definition in the world at large outside that zoning ordinance. Query: Is this a new concept? If not, what precedents are there? Is it a well-recognized concept that this author has heretofore missed? How can one research the question of the prior existence of such a concept? If this concept of defining objects of regulation without regard to their established definitions in the world at large, is new, it could be important in empowering municipalities.

If the *River Bend* opinion is taken at face value, then a municipal ordinance presumably can define “cat” in a way which includes not only a “cat,” but also a “dog.” Presumably, however, such a power is not unlimited. The and 14th Amendments to the Constitution of the United States, Article I, Section 19, of the Constitution of North Carolina, refer to the “law of the land,” and to “equal protection,” and a large body of land use case law indicate that zoning may not be “arbitrary and capricious.” Does the “law of the land” mean that the similar ordinance under scrutiny should harmonize with other preexisting law? So long as the ordinance re-defining dogs as cats was designed to encompass a group of small to medium-sized furry animals with paws or claws, would such a definition pass the test?