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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.*,¹ 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*,² 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 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*,³ 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*,⁴ 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.”

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

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

³ No. COA04-100, 609 S.E.2d 498 (2005).

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

In *Hensley v. Ray's Motor Company of Forest City*⁵, 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 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.”⁶ It then defines “dwelling” as including “manufactured home or mobile home,”⁷ and in turn defines those with reference to the manufactured home statutes.⁸ Minimum housing enforcement thus explicitly includes manufactured or mobile homes.

Unsafe building enforcement is less explicit, referring to a “building or structure.”⁹ (*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

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

⁶ NCGS §160A-441.

⁷ NCGS §160A-442(2).

⁸ NCGS §143-145(7).

⁹ NCGS 160A-425.1, 426, 428..

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.

In *Town of Hertford v. Harris*,¹⁰ 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*,¹¹ the Court held that Douglas did commit the crime of felony breaking and entering a building,¹² and not the misdemeanor¹³ when he broke into an unoccupied mobile home sitting on a sales lot.¹⁴

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*,¹⁵ the defendant burned what the headnote calls “the mobile home of her lover,”¹⁶ and was convicted of arson in the first degree. The Court noted the

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

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

¹² 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.”

¹³ NCGS §54-14(b), “...motor vehicle, trailer, aircraft, boat...”

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

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

¹⁶ The defendant told police she did not intend to burn the mobile home; she only intended to burn the occupant’s

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.”

In the matter of: T.P.,¹⁷ 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

bed “...so no other woman could share it with him.” at p. 290.

¹⁷ No. COA03-973, 609 S.E.2d 728 (2004).

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*,¹⁸ 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 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,

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

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 *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.¹⁹ 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

¹⁹ *Angel, supra; Walnut Cove, supra.*

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.”²⁰

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.

²⁰ January 22, 1999 letter from C. Patrick Walker, P.E., Deputy Commissioner, Manufactured Building Division, N.C. Department of Insurance.

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."²¹ 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*²² 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.

²¹*Times-News*, Burlington, NC, November 4, 1997.

²² 305 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.²³

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

²³ 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.²⁴ 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 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

²⁴ NCGS §143-139.1(b).

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*.²⁵ 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.”²⁶ 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 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?

²⁵ No. COA5-841, 2006 N.C. App. LEXIS 1656.

²⁶ (Such joint or alternate identity is a concept which to the author’s knowledge did not exist until that moment.)

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:me@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?