Municipal Regulation of Mobile Homes

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

NEW YORK STATE
Andrew M. Cuomo
Governor

NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF LOCAL GOVERNMENT SERVICES
ONE COMMERCE PLAZA
99 WASHINGTON AVE
10th FLOOR, SUITE 1015
ALBANY, NEW YORK 12231-0001
(518) 473-3355
http://www.dos.state.ny.us

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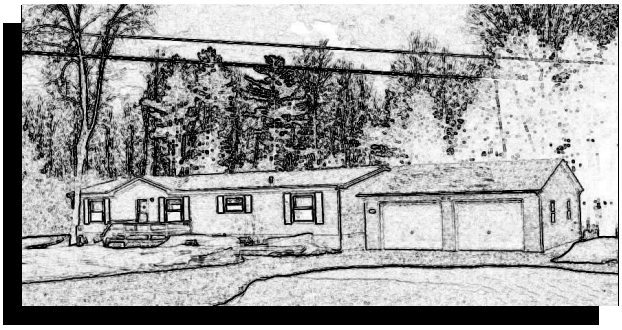
INTRODUCTION

Mobile homes have been a housing option in New York State for more than sixty years. Mobile homes first appeared in New York's case law in 1939, when the court held that a regulation requiring a permit for any occupied trailer on a private lot for more than 48 hours was invalid because it was an over extension of the municipality's police power.[1] The Great Depression had forced many people to find inexpensive living quarters, and the court was hesitant to allow strict regulation of affordable housing.

Mobile homes continue to be an affordable housing option. In the northeast in 1980, a new single family home cost an average of $69,500.00. By 1997, this had increased to $190,000.00. Between 1980 and 1997, the cost of an existing single family home rose from $60,800.00 to $145,100.00. In contrast, the average price for a mobile home was $18,500.00 in 1980, and $43,900.00 in 1997.[2]



Mobile homes have changed in ways other than price increases. For one thing, they are more and more frequently referred to as "manufactured housing". They also have moved away from rudimentary living space to more lavish structures providing all the comforts of a stick built home. At the same time as offering price competition, they may be installed easily and quickly, and require little or no interior finishing work prior to occupation. This makes mobile homes an affordable and attractive form of housing for many, on either individual lots or in parks. Regardless of any negative opinions concerning mobile homes, they are a reality of our landscape. How they fit into this landscape is primarily up to local governments as they define the term "mobile home" and exercise an array of regulatory powers granted to them. The purpose of this component of the Local Government Technical Series produced by the Department of State is to provide communities with an overview of the issues surrounding this increasingly popular housing option. Before embarking upon an in depth examination of mobile home regulation by local governments as a land use, it is worth while to briefly discuss federal and state regulation of mobile homes.

FEDERAL AND STATE REGULATION OF MOBILE HOMES

Federal Manufactured Housing Act of 1974

Whether referred to as mobile homes or manufactured housing, it was in response to the high number of personal injuries and deaths resulting from defects in dwellings of this type that the United States Congress adopted the Federal Manufactured Housing Act in 1974, which regulates the construction

and safety of manufactured housing. Congress gave the Department of Housing and Urban Development (HUD) the authority to develop a nationwide construction code intended to reduce insurance costs and property damage, and to improve the quality and durability of manufactured housing. Federal law defines "manufactured home" as:

> ...[A] structure, transportable in one or more sections, which, in traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein... 42 U.S.C. § 5402(6).

Implementing federal regulations became effective July 15, 1976. Mobile homes manufactured after that date must display a HUD Seal or data plate to verify their proper construction. Municipalities may regulate mobile homes without a data plate differently than those with the plate. However, if a pre-1976 home can pass the structural, electrical and other required inspections, it must be allowed wherever similarly-sized HUD certified homes are allowed.[3] Municipalities may not make a distinction based on the age of any homes which have a HUD seal, such as only allowing mobile homes less than five years old to be placed on individual lots.

State Enforcement of Federal Construction and Installation Standards

The Department of State has been designated as the state administrative agency (SAA) that works in cooperative agreement with the Federal Department of Housing and Urban Development (HUD). As an SAA, the Department of State's Division of Code Enforcement and Administration monitors the design and production of manufactured homes in the state for consistency with HUD construction standards. In addition, the SAA investigates consumer complaints regarding the performance of the home.

The New York State Uniform Fire Prevention and Building Code (9 N.Y.C.R.R. Part 1220) provides that manufactured homes and mobile homes are to be constructed and installed in accordance with regulations adopted by the Federal government. The SAA has found that the most prevalent code problem encountered by manufactured home owners is improper installation. To combat this problem, they recommend that the municipal code enforcement officer perform three inspections when a mobile home will be placed on a lot. First, the site should be inspected prior to installation to ensure that it was properly prepared. Second, during installation the code officer should check the manufacture's manual against the pier locations. Finally, after installation the code officer should check to make sure the electrical and plumbing connections were properly made.

State Agency Oversight of Mobile Homes in Structural Hazard Areas

Due to the categorization of mobile homes as "moveable structures" designed and constructed to be readily relocated with minimum disruption of their intended use, if they are placed in areas which have been determined to be "structural hazard areas" they are subject to state rules and regulations

such as those of the Department of Environmental Conservation regarding the placement of "moveable structures" within designated areas of coastal erosion (6 N.Y.C.R.R. §505.2(x)).

State Oversight of Mobile Home Parks

Under Manufactured Home Tenants "Bill of Rights", the Division of Housing and Community Renewal (DHCR) is authorized to enforce the major provisions of Section 233 of the Real Property Law. This law was passed partially because of disparity in the position between lot owners and tenants when disputes or unfairness occurred. While the mobile home owner who is evicted would be forced to endure the cost and the trouble of moving his mobile home, the land owner suffered little in the way of loss. The law seeks to ease and even out the relationship between park owners and home owners, and to protect the home owners or tenants who are also renting the mobile home from unfair practices by the park owner. In order to efficiently respond to manufactured home residents, DHCR has a 24-hour telephone hotline - (800)432-4210.

Local governments may not regulate within the areas encompassed by the Mobile Home Owners Bill of Rights because the State of New York has pre-empted this limited range of subject matter.[4] However, the New York State Attorney General, in Informal Opinion 96-30, has taken the position that the Mobile Home Owners Bill of Rights does not operate to pre-empt local government from requiring mobile home parks to undergo site plan review. The same would also be true for the other land use regulations discussed in this publication, provided they do not concern park owner/tenant relations and are not otherwise pre-empted.

MUNICIPAL REGULATION OF MOBILE HOMES

Although the power to regulate the construction and safety standards of mobile homes lies in the federal government as discussed previously, authority to regulate the use and location of mobile homes as a use of land within a municipality remains the province of local government.

Defining "Mobile Home"

The first step after a community has decided to regulate mobile homes is to draft a definition which encompasses exactly what is to be subject to the local regulations. Technology has transformed mobile homes from the pull along trailer providing basic living space, to prefabricated houses manufactured at a plant and shipped to a site for set up. Both of these and everything in between may or may not be included under the broad term "mobile home", depending upon how the term is defined.

Since regulation of this type of land use is at a local level, the scope of the definitions is an important consideration and will differ from municipality to municipality based on the intent of the local legislative body reflecting the needs of the community. The definition established by a local government may be bare bones. For example one community uses the definition:

> Mobile Home: A portable dwelling unit, with or without motor power, designed to be mounted on wheels and used for long-term residential occupancy; a trailer. (Village of Cayuga, Local Law No.1 of 1988).

Other localities may specify a definition which is longer and more detailed. Another example provides:

> Mobile Home: The term "mobile home" includes "house trailer" but not "travel trailer" nor "modular or prefabricated house". A mobile home is any portable vehicle or structure designed to be used, or capable of being used as a detached single family residence which is intended to be occupied as living quarters for more than ninety (90) days and contains sleeping accommodations, a flush toilet, a tub or shower, kitchen facilities and plumbing and electrical connections for attachment to outside systems; which is capable of being transported after fabrication on streets and highways, arriving at the site ready for occupancy except for minor and incidental unpacking and assembly operations; and not requiring permanent foundation. A similar vehicle or structure fitted with accommodations for the conduct of any business, profession, occupation of trade and which may not contain sleeping accommodations or kitchen facilities shall also be considered a mobile home. (Town of Kinderhook, Local Law No. 1 of 1987)

These represent merely two examples of the many definitions in use in New York State. There is simply no single definition of the term "mobile home".

In the 1990's, government and industry have moved toward the terms “factory manufactured home” and “manufactured home” to encompass mobile homes. One definition of factory manufactured home enacted in New York defines the term as:

> ...[A] structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site (Executive Law, section 372(8)).

Within the definitions above, mobile homes may include house trailers, single-wides, double-wides, and other similar structures moved to a site for residential use. Recreational vehicles are not included since they are more likely to be regulated as motor vehicles and are generally not intended to be used as residences.

Modular homes, which generally are constructed to New York State Building Code standards, do not carry a HUD seal and are the pinnacle of what can be achieved in manufactured housing production. They have been defined as: "a minimum of two sections, each of which were transported to building site separately, with installation of heating system and application of siding coming after erection of the home, and which was indistinguishable in appearance from conventionally built homes".[5] Because of this close similarity to conventional homes, many municipalities exclude modular homes from their mobile home definition. However, each municipality may include or exclude from regulation different types of manufactured housing, and these local definitions will govern.

MUNICIPAL OPTIONS FOR REGULATION OF MOBILE HOMES

In the absence of any governmental controls, an owner is governed in the use of real property solely by the restrictions found in the deed, and by the common law of nuisance which requires that he not put his land to any use which would cause injury to others. Historically, some landowners have taken advantage of a lack of lot size, home area and density requirements and have crammed as many mobile homes onto their lots as possible in an effort to extract the maximum amount of rental income from the property for the lowest investment. Basic amenities such as fresh water, adequate sewage and garbage disposal, privacy and fresh air suffered as a result.

In recognition of these realities, the courts decided that mobile home regulation bore a substantial relation to the "health, safety, morals and general welfare of the community"[6], thus paving the way for municipalities to adopt mobile home local laws and ordinances under their police power to accomplish legitimate ends. These ends include, but are not limited to, the health, safety and general welfare of the people; conservation of municipal resources[7]; leaving room for expansion of conventional housing, especially in high density residential areas[8]; and fulfillment of a community's comprehensive zoning plan.[9]

Regulation of mobile homes has been justified by a municipality's responsibilities to assure adequacy of water and waste disposal , environmental protection, and adequacy of police and fire protection, and other municipal functions which further the health, safety and general welfare. This requires a balancing of an individual's interest in using his property, the public's interest in affordable housing and the municipality's interest in conserving resources and planning for future community development. Mobile home regulation can provide a viable way to achieve this balance.

Regulation of mobile homes under New York law is accomplished by the adoption of local laws or ordinances. Cities and towns may adopt either, whereas villages may only regulate by local law. Sometimes the form a local enactment may take is specified in the state enabling law, so statutes should be referenced to determine if the local law form alone must be utilized in a given instance.

Local government authority to regulate mobile homes derives from several sources. Most familiar are the zoning enabling statutes in the General City Law, Town Law and Village Law. There are also specific statutes granting authority to regulate mobile homes in a distinct local enactment; or through site plan review and subdivision review, special use permits and other permitting systems, area and use variances, City Charters, and the Municipal Home Rule Law; all of which may be used in a variety of combinations to regulate mobile homes for the welfare of residents and the community. These are considered below.

Free Standing Authority

Even without adopting zoning or any other of the devices listed in the preceding paragraph, free standing authority exists for the regulation of mobile homes. Subdivision [21] of §130 of the Town Law provides Town Boards with authority to regulate:

> House trailer camps, tourist camps and house trailers. Regulating house trailer camps, tourist camps or similar establishments; requiring approval of suitable plans for house trailer camps

and tourist camps and prescribing regulations therefor including provision for sewer connection, water supply, toilets, bathing facilities, garbage removal, registration of occupants, inspection of camps. The town board may either adopt the provisions of the sanitary code established by the public health council or may formulate other rules and regulations relating to house trailer camps, tourist camps or similar establishments not inconsistent with the provisions of such state sanitary code. Regulating the parking, storage or otherwise locating of house trailers when used or occupied as living or sleeping quarters in any part of the town outside an established house trailer camp, tourist camp or similar establishment; providing time limits on duration of the stay of such house trailers and requiring registration of such house trailers when so used.

Although not as specific as the Town Law, the broad grant of authority to Villages to regulate for the public well being in §4-412[1] of the Village Law has been determined to include separate authority to regulate mobile homes.[10]

In the case of cities, separate authority for the regulation of mobile homes may sometimes be found in the City Charter, which is a special act of the State Legislature conferring upon the chartered city the powers specified.

Another free standing source of local government power to enact laws regulating mobile homes is Municipal Home Rule Law section 10, which is titled "General powers of local governments to adopt and amend local laws". In part, it provides:

> (1)In addition to powers granted in the constitution, the statute of local governments or in any other law,... (ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such a local government:
>
> (a) A county, city, town or village:...
>
> (11) The protection and enhancement of its physical and visual environment.
> (12) The government, protection, order, conduct, safety, health and well-being of persons or property therein...

The authority conferred by these provisions may alternatively be utilized by local governments to adopt regulations affecting mobile homes not specifically identified in the zoning enabling laws,

such as appearance standards. For example, some communities require that the exterior finish of a mobile home must consist of materials customarily used in site built housing, or that the skirting be made of a masonry material such as brick or block. Other communities have adopted regulations applicable to site-built as well as manufactured housing, such as minimum width requirements or requirements that storage sheds are provided for homes without basements or garages.

Zoning Authority

Perhaps the most well known and most commonly used method of regulating mobile homes as a land use is through a municipality's zoning authority. General City Law §20[24] and [25], Town Law §261, and Village Law §7-700, each confer this authority, providing for the creation of districts and the regulation of uses within these districts. While the separate authority discussed above may be independently exercised without any planning process, it is crucial to remember the maxim that zoning must be in accordance with a well considered or comprehensive plan. While such a plan may be a written document which is formally adopted, it need not be:

> A well-considered plan need not be contained in a single document; indeed it need not be written at all. The court may satisfy itself that the municipality has a well-considered plan and that authorities are acting in the public interest to further it by examining all available and relevant evidence of the municipalities land use policies...(Asian Americans for Equality v. Koch, 72 N.Y.2d 121, 531 N.Y.S.2d 782 (1988)).

In the absence of a well considered or comprehensive plan, the risk always exists that the zoning upon which it is supposedly based will be invalidated if challenged in court.

It is through zoning that most municipalities exercise the greatest extent of control over mobile homes. The zoning may specify that these uses are allowed only in certain districts, on individual lots or in parks, or in both. In addition, minimum lot sizes, minimum distances between mobile homes, square footage of living space, density in parks, height restrictions, set backs, provision of parking and the like may all be specified.

If local zoning prohibits a landowner from locating mobile homes within a zone, the owner may seek a use variance from the zoning board of appeals. Variances are a mechanism for a municipality to grant relief from the strict application of the zoning where relief is warranted and provided certain stringent statutory requirements are met by the applicant. A use variance will grant a landowner a use which is otherwise prohibited in the zone; while an area variance is one required where the use is already allowed, but the property does not satisfy other requirements such as set backs, minimum lot size and so forth.[11] Both types of variances run with the land and pass from one owner to the next when ownership of the property is transferred.

Special Use Permits

In addition to regulating mobile homes through separate authority and/or zoning, a municipality may allow mobile homes subject to a special use permit as part of a zoning law or ordinance. Special use permitting authority is found in General City Law § 27-b, Town Law § 274-b, and Village Law § 7-725-b. This device allows mobile homes as a land use, but only if a permit is obtained. If granted,

the applicant may place a mobile home or a mobile home park on land subject to reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. These requirements may be in addition to those already applicable in the zoning district in which the use is located, such as minimum lot size, yard setbacks, and so forth. They usually include factors such as adequacy of waste disposal, drainage, parking, placement of the home on a permanent foundation, and other requirements reasonably related to the health, safety and general welfare.

Subdivision Review

Municipalities may, by resolution, stipulate that whenever land is to be divided into a specified minimum number of lots, blocks or sites, this action may be required to undergo subdivision review, usually by the local planning board. This authority may be found in General City Law § 32, Town Law § 276, and Village Law § 7-728. The process may be utilized in the review of mobile home developments, either as part of or as an adjunct to the local zoning. Subdivision review requirements may be adopted by the municipality even if no zoning exists.

The considerations behind subdivision review statutes are stated in the enabling statutes. For example, it is provided in § 276[1] of the Town Law:

> For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the town board may, by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways...

Section 277 of the Town Law provides great specificity regarding the requirements the planning board may impose during the subdivision review process. The list is quite lengthy, and includes considerations such as streets of sufficient width and grade; paving of streets and sidewalks; street signs; street lighting standards; curbs; gutters; street trees; water mains; sanitary sewers; storm drains; and, under proper circumstances, land for park, playground or other recreational purposes.

In Marx v. Zoning Board of Appeals of the Village of Mill Neck[12], the court stated:

> Subdivision control is aimed at protecting the community from an uneconomical development of land, and assuring persons living in an area where the subdivision is sought that there will be adequate streets, sewers, water supply, and other essential services.

Although the subdivision enabling statutes are quite specific and could alone form the basis for conducting subdivision review, additional subdivision review regulations may exist in a municipality to provide greater detail of the standards developers must meet to have their proposals approved.

Site Plan Review

Localities may require that the placement of mobile homes on individual lots, whether or not within specified zoning districts, undergo a site plan approval process. This authority is provided in General City Law § 27-a, Town Law § 274-a, and Village Law § 7-725-a. Through this process the community places certain standards upon the establishment of a mobile home, such as its location

on a lot, connection to utilities, location of driveways and accessory structures, and other elements which are related to the development of the property for the proposed use. Through site plan review, the locality may exercise greater control over the impacts of a mobile home park on the community, while providing future tenants with much better living conditions.

Regulation is Optional

Having said all of this, it should be remembered that the grant of regulatory power does not require a municipality to enact legislation concerning mobile homes. It is permissive, giving a town, village or city the option to regulate.[13] However, it should also be recalled that where there are no zoning regulations or other local enactments governing mobile homes, land owners are virtually free to set them up anywhere and in any manner they desire, without regard to number of mobile homes on the parcel, lot size, floor space, set backs, and so forth.

SOME DOS AND DON'TS OF MOBILE HOME REGULATION

In this section permissible and impermissible regulation of mobile homes, as determined by the New York State courts' rulings upon municipal enactments, will be considered. It would be impossible to address every case and every conceivable issue. Instead, efforts have been made to highlight some of the most important or recurrent issues in this controversial area.

A Municipality May Not Purposely Prohibit Mobile Homes

First and foremost, it is important to always keep in mind that although there are several different methods of regulating mobile homes, a municipality may not purposely prohibit mobile homes. In the case of Town of Pompey v. Parker[14], the court stated quite clearly:

> A zoning ordinance which absolutely excludes the establishment of a mobile home within its boundaries would be unconstitutional because of the unreasonableness of the restrictions imposed. (385 N.Y.S.2d 959, at 962)

One court has held that a community may not purposely prohibit the establishment of mobile home parks, even if other provisions are made which allow for single mobile homes.[15] Any ordinance which expressly prohibits mobile homes as a use is invalid, since it was enacted for an illegitimate end. If an ordinance or law has an exclusionary effect, it will also be invalidated unless it was created in consideration of a regional need which complies with a comprehensive plan.[16] The concept of "regulation" implies the administration of reasonable rules, not outright prohibition. An attempt to completely prohibit mobile homes would be unreasonable, and thus unconstitutional and invalid.[17]

No Consent of Adjoining Property Owners

Another type of mobile home regulation that has been invalidated concerns a requirement for the consent of adjoining property owners as a condition to the approval of the proposed location of a mobile home or a mobile home park. Since neither a mobile home nor a mobile home park is a nuisance, but are legitimate land uses, it is impermissible for local governments to require the approval of adjoining landowners for their establishment.[18]

Minimum Square Footage Requirements

Within the powers discussed above, it is a proper exercise of the municipal police power to require that residences, including mobile homes, have a minimum amount of habitable floor space. For example, a regulation which called for at least 900 square feet for all residential buildings of less than two stories in a given zone was upheld, even though it effectively eliminated all mobile homes, because "the amount of space occupied by a family is closely associated with the health, safety, morals and general welfare of the community". [19] It is important to note that in this case (Corning v. Ontario[20]), the town had made provisions for mobile homes to be located in parks in other districts, so they were not entirely excluded.

Minimum Lot Size Requirements

Municipalities may also set minimum lot size requirements per residence, to ensure that areas, particularly mobile home parks, do not become overcrowded; and to ensure there is no strain on municipal resources. The proposed lot must be able to support the number of mobile homes to be placed there.[21] For example, an ordinance which called for a minimum of 900 square feet of floor space and a minimum lot size of 10,000 square feet for all dwellings, including mobile homes, was held to be a valid exercise of the police power.[22]

Restrictions on the Location of Mobile Homes

It is also permissible for municipalities to limit mobile home use strictly to mobile home parks.[23] Justifications behind this include ease in overseeing the proper use of waste disposal systems, water supplies and electricity, placing less hardship on the local police and fire forces, and contributing to the conservation of municipal resources.[24]

Furthermore, municipalities may limit mobile homes and mobile home parks to certain zones within the boundary of the municipality.[25] As discussed above, this is achieved through local zoning, and therefore must be in accordance with a comprehensive zoning plan.[26]

Although a municipality is not required to maintain a "quantitative proportion" of different types of development, specifically housing, it must consider the needs of the entire region to ensure that all needs are and will continue to be met, since the zoning of a community will substantially impact all surrounding communities.[27] Also applicable is the principle of uniformity, which requires that any use allowed in one zone must also be allowed in all other zones of that same classification.

Some localities have permissibly limited mobile homes to agricultural zones, allowing farmers to set up one or two such homes for themselves or their full time employees.[28] Others have simply forbidden them in residential zones, in order to leave space for the expansion of conventional housing, and in recognition of the concept that a mobile home park is a business despite its residential nature.[29] Other municipalities have excluded mobile home parks from residential and agricultural zones for similar reasons.[30] However, the wisdom of restricting mobile homes, residential in nature, to commercial or industrial zones has been criticized as "not supported by knowledgeable planners, but it is within the range of the legislative discretion, and will be approved

by the courts".[31] Therefore, mobile homes can be limited to or excluded from any type of zone (but not everywhere in the municipality), as long as reasonable grounds can be found for this action.

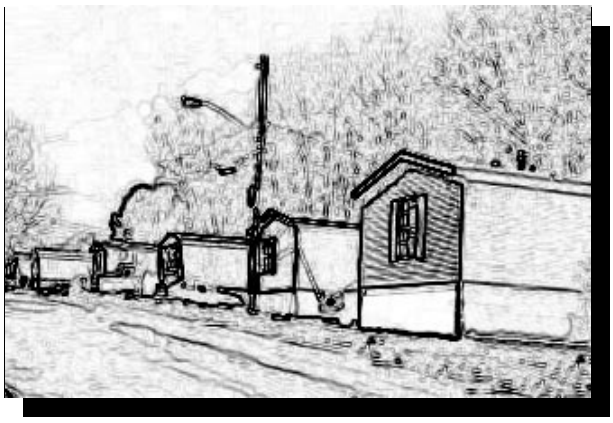
Mobile Homes as Farm Worker Housing

The Department of Agriculture and Markets has issued informal opinions that local regulation of mobile homes in agricultural districts may sometimes violate § 305-a of the Agriculture and Markets Law. The Department has shown concern that restrictions on mobile homes may adversely impact agricultural operations in the state because mobile homes are often the only housing available for farm workers. (See the Department of State and Department of Agriculture and Markets' publication, Local Laws and Agricultural Districts: How Do They Relate?)

Mobile Home Permit System

Some municipalities have implemented a permit system for the ongoing occupation of mobile homes. Requiring the land owner to periodically obtain a permit from the municipal governing body, or the board to which such authority has been delegated, is a valid exercise of the police power because of the relationship between mobile homes and the health, safety, morals and general welfare of the public.[32] This system allows a municipal board to exercise its discretion when determining whether or not a mobile home constitutes an appropriate use of the land without having to enact other local laws or ordinances in an attempt to encompass the field of mobile home regulation. The system has been upheld even when it has led to the practical exclusion of mobile homes. For example, it was permissible for a town to exclude all mobile homes, with the single exception of those allowed for one year by a special permit from the town board. Since it did not amount to the total prohibition of mobile homes, it was a valid exercise of the police power.[33]

MOBILE HOME PARKS



Mobile home parks present unique challenges to regulation. They and their residents are frequently the victims of poor design, over crowding and unsightly conditions. We have all seen lots between two buildings where a series of mobile homes have been lined up, one after the other, jammed into too little space, with no areas for parking or for children to play. Repetition of these mistakes does not have to be allowed in the future. We have also driven past many unseen mobile home parks, unaware that behind a line of trees there was a well planned and attractive development providing an excellent quality of life for residents. Although voluntary action on the part of the park owner may be the cause, the difference is usually the product of good planning at the municipal level.

Most mobile home owners in New York are in a unique position: while they may own their homes, they rent the land upon which the home is placed. In fact, in 1991, sixty percent of the mobile homes in New York were situated upon rental lots in mobile home parks.[34] Therefore, it is possible for situations to arise in which a parcel may be subdivided, with individual lots being sold to mobile home owners for placement of their homes; or, a parcel may remain in the ownership of one individual who rents out sites for mobile home placement.

Regulatory Mechanisms

In this context, the two regulatory mechanisms of subdivision review and site plan review which are available to municipalities, even where zoning does not exist, are very effective methods to address the challenges presented by mobile home parks, whether they are to contain five or ten or even several hundred homes.

As discussed previously, where the property is to be divided into lots, blocks or sites, the local governing body may delegate to the municipal planning board the authority to review and approve subdivision plats. As part of the review process, the planning board has the authority to require the developer of a mobile home park to install suitable roads, signs, street lighting, curbs, gutters, parks, sidewalks, paving, street trees, water mains and other amenities necessary to a quality development and way of life (see for example Town Law §277). Obviously not all of these will be necessary or appropriate in a given situation.

Mobile Home Parks

Where development of a mobile home park is under review, site plan regulations could take many factors into consideration, including:

Regional and local environs

Relationship to comprehensive plan
Compatibility with surroundings
Accessibility
- pedestrian
- automobile
- trucking
- public transportation

Environmental impact
- air, water, noise

Facilities and services availability
Visual compatibility
Historic and archaeologic considerations

Natural features

Geology
Topography
Soil characteristics
Vegetation
Wildlife
Open space
Surface drainage
Erosion
Ground waters
Wetlands
Flood hazard areas

Circulation

Vehicular
- ingress and egress
- road layout
- parking areas
- loading areas
- traffic control

Pedestrian
- walkways
- safety

Design and aesthetics

Site Usage
- geometrics

Structures
- relationship to site
- plans
- elevations
-functional adequacy

Architectural features
Signs
Landscaping
Recreation areas
Incidentals
- fencing
- buffer strips

Miscellaneous

Construction specifications
Utilities
Maintenance
Staging of development

As also considered above, where the land is to remain in single ownership but sites rented out for individual home placement, a community may wish to utilize its statutory authority to review site plans. This is accomplished once again by the local governing body delegating the necessary authority to the planning board, or another administrative body such as the zoning board of appeals. The statutes allow the board to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed site plan. Many of the problems which have plagued mobile home parks and for which they were criticized in the past can be alleviated by this review process.

The full array of other regulatory authorities: zoning, special use permits, and Municipal Home Rule Law, may also be utilized to address mobile home parks. Zoning, for example, could be the mechanism which stipulates that mobile homes may be placed only in parks.

ASSESSMENT AND TAXATION OF MOBILE HOMES

The taxation of mobile homes is important to ensure adequate funds for municipal resources. The residents of mobile homes and mobile home parks enjoy fire and police protection, public schools, the public highway system, and electric, gas, water and waste disposal systems, all of which are at least partially funded by local taxes.[35]

Mobile homes have generally been classified as real property for the purposes of taxation and assessment, since when they are being used as living quarters and are immobile, they become "attached to the freehold". In addition, Real Property Tax Law, section 102(12)(g) states that "...the value of any trailer or mobile home shall be included in the assessment of the land on which it is located...". Thus, the property taxes of an individual lot owner will reflect the combined values of the land and the mobile home. In the case of a mobile home park, property taxes are assessed against the park owner, who in turn will be able to adjust rental fees to compensate for them, thus shifting the burden back to the occupant.[36]

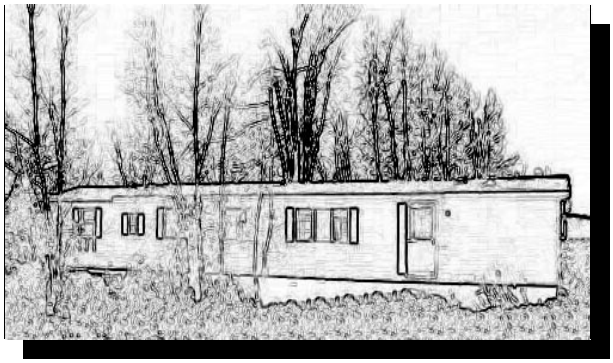
MOBILE HOMES AS NONCONFORMING USES

In many instances, mobile homes and mobile home parks were located on a site before zoning, local laws, or trailer ordinances were enacted to regulate them. Provided they were clearly established, upon the adoption of a law prohibiting them in that area, they became nonconforming uses with respect to compliance with the new laws. This means they are allowed to remain in existence, provided certain subsequent events specified in the local laws or ordinances did not occur. These events include abandonment, destruction or provision for amortization.

In order to be nonconforming, a use must be actually established before the enactment of any legislation which would regulate or prevent such a use. One court decided that, where land owners tried to claim a nonconforming use for a mobile home where a previous owner had maintained one, but it had been removed before the transfer of the land and never replaced, there was no nonconforming use.[37] Additionally, mere contemplation of a use will not give it nonconforming status. For example, where a parcel of land was purchased for placement of a mobile home, but the town enacted a minimum lot size requirement before the home was installed, a nonconforming use was not established.[38]

Elimination of Nonconforming Mobile Homes

Two very common methods to address and achieve the elimination of nonconforming uses, so that the municipality may carry out its development plans, appear frequently in local zoning laws. The first provides that if any nonconforming use is not occupied for a specified period, most commonly a year, it is deemed abandoned and may be resumed only upon obtaining permission from the municipality. Permission should be difficult to obtain as it usually takes the form of a use variance. The second provides that destruction beyond a certain percentage of the building itself or of its monetary value, commonly fifty percent or more, will require any resumed use of the land to conform to permitted zoning uses.



Amortization followed by termination of the use is a third and more controversial method which has been upheld by the courts as available to municipalities to eliminate nonconforming uses and achieve their development goals. This allows a municipality to place a limit on the length of time that a land owner is entitled to continue a nonconforming use. At the end of the given time, the use must end, or the owner will be in violation of the governing local law. It may appear that termination amounts to a taking, of either the property itself, or of the right to the nonconforming use, but courts have held otherwise, stating:

> What is for the general good must prevail even though it may cause individual hardship... Zoning laws, enacted as they are to promote the health, safety and welfare of the community as a whole (see Village law, section 175), necessarily entail hardships and difficulties for some individual owners. No zoning plan can possibly provide for the general good and at the same time so accommodate the private interest that everyone is satisfied.[39]

It is because the governing local law provides for an amortization period to allow the owner to recoup the value of their investment and is designed to promote community development, in furtherance of the comprehensive plan, that amortization does not constitute a taking. In addition, once the nonconforming use terminates, the owner still has the right to use the land for any use allowed under the applicable zoning. However, one court has decided that three years is too short an amortization period for the phasing out of a nonconforming mobile home park.[40]

It has also been decided that the right to maintain a nonconforming use may be subject to termination upon the "passage of time, destruction of the use, abandonment or... transfer of ownership."[41]

In the absence of regulations addressing abandonment, destruction, amortization and termination, or a ban on transfer, the right to the nonconforming use will run with the land, meaning subsequent owners will be entitled to maintain mobile homes on the property. If the owner of a mobile home which has become a nonconforming use wishes to replace it with a new or different mobile home, he may do so provided the new mobile home occupies no greater part of the building envelope than the old one. In the event that the mobile home would occupy a larger building envelope, the owner

could apply for a use variance. The courts have found that an owner should be able to replace an old mobile home with a new one if preventing the owner from doing so would cause serious financial harm.[42] The municipality may continue to require that the owner register the nonconforming mobile home, and comply with water, sewer and other reasonable specifications.[43]

Holders of nonconforming uses may at times want to expand their use. For example, the owner of a nine unit nonconforming mobile home park wanted to enlarge the park to twenty-three units. However, doing so was held to constitute an illegal extension of a nonconforming use.[44] While expansion of nonconforming uses is prohibited in most local enactments, the replacement of individual units may be permitted.

CONCLUSION

Mobile homes are a form of affordable housing, desired by many members of the community, but which can cause an array of problems. Although mobile homes may not be completely excluded from a community; through the reasonable exercise of municipal powers in furtherance of the health, safety and general welfare; they may be fairly regulated for the benefit of both mobile home residents and other citizens of the municipality by furthering planning goals, protecting community character and improving the quality of life.

ENDNOTES

1. Rochester v. Olcott, 173 Misc. 87, 16 N.Y.S.2d 256 (1939).

2. Statistical Abstract of the United States, U.S. Department of Commerce, Government Printing Office [1998] at 1202, 1203 and 1204.

3. Rivers v. Carron, 160 Misc. 2d 968, 608 N.Y.S.2d 977.

4. BA Mar Inc., v. County of Rockland, 164 A.D. 2d 605, 566 N.Y.S.2d 298

5. Kyritsis v. Fenny, 66 Misc.2d 329, 320 N.Y.S.2d 702 (1971).

6. Corning v. Ontario, 204 Misc. 38, 121 N.Y.S.2d 288.

7. People v. Clute, 18 N.Y.2d 999, 278 N.Y.S.2d 231, 224 N.E.2d 734 (1966).

8. Hansen v. Ponticello, 37 A.D.2d 892, 325 N.Y.S.2d 795 (3rd Dept. 1971).

9. Stevens v. Smolka, 11 A.D.2d 896, 202 N.Y.S.2d 783, 186 N.Y.S.2d 327(4th Dept. 1968); Gardner v. Phillips, 59 Misc.2d 934, 301 N.Y.S.2d 332 (1969).

10. Village Board of Trustees of Malone v. ZBA of Malone, 164 A.D.2d 24, 562 N.Y.S.2d 973 (3rd Dept. 1990).

11. Anderson, New York Zoning Law and Practice, Second Edition, sections 23.02, 23.05 and 23,06.

12. Marx v. Zoning Board of Appeals of the Village of Mill Neck, 137 A.D.2d 333, 336; 529 N.Y.S.2d 330, 332 (2nd Dept. 1988).

13. Huntington v. Transon, 43 Misc.2d 912, 252 N.Y.S.2d 576 (1964).

14. Town of Pompey v. Parker, 53 A.D.2d 125, 129, 385 N.Y.S.2d 959 (4th Dept. 1976), aff'd 44 N.Y.2d 805, 406 N.Y.S.2d 287 (1978).

15. Koston v. Newburgh, 45 Misc.2d 382, 256 N.Y.S.2d 837 (1965).

16. Kurzius v. Incorporated Village of Upper Brookville, 51 N.Y.2d 338,434 N.Y.S.2d 180, 414 NE2d 680, cert. denied 450 US 1042 (1980).

17. Town of Pompey v. Parker, 44 N.Y.2d 805, 406 N.Y.S.2d 287, 377 NE2d 741 (1978), citing Dowsey v. Village of Kensington, 257 NY 221, 230, 177 NE 427, 430.

18. Bashant v. Walter, 78 Misc.2d 64, 355 N.Y.S.2d 39 (1974), citing Concordia v. Miller, 301 N.Y. 189, Janas v. ZBA of Fleming, 51 A.D.2d 473, 382 N.Y.S.2d 394.

19. Corning v. Ontario, 204 Misc 38, 121 N.Y.S.2d 288, (citing Town Law section 261).

20. Ibid.

21. Blachly v. Harris, 125 A.D.2d 467, 509 N.Y.S.2d 570 (3rd Dept. 1976), motion for leave to appeal denied 72 N.Y.2d 803, 532 N.Y.S.2d 368, 528 NE2d 520.

22. Osetek v. Barone, 60 Misc.2d 980, 304 N.Y.S.2d 350 (1968), aff'd 35 A.D.2d 910, 317 N.Y.S.2d 276.

23. Stevens v. Smolka, 11 A.D.2d 896, 202 N.Y.S.2d 783 (4th Dept. 1960).

24. People v. Clute, 47 Misc.2d 1005, 263 N.Y.S.2d 826, aff'd 18 N.Y.2d 999, 278 N.Y.S.2d 231, 224 NE2d 734 (1966).

25. Ibid.

26. Stevens v. Smolka, 11 A.D.2d 896, 202 N.Y.S.2d 783 (4th Dept. 1960)).

27. Berenson v. Town of New Castle, 38 N.Y.2d 102, 378 N.Y.S.2d 672, 341 NE2d 236 (1975).

28. Kinderhill v. Walker, 54 A.D.2d 811, 388 N.Y.S.2d 43 (3rd Dept. 1976), aff'd 42 N.Y.2d 919, 397 N.Y.S.2d 1006, 366 NE2d 1360, Gardner v. Phillips, 59 Misc.2d 934, 301 N.Y.S.2d 332 (1969).

29. Hansen v. Ponticello, 37 A.D.2d 892, 325 N.Y.S.2d 795 (3rd Dept. 1971), Jewel Equities Corp. v. Town of Amenia, 114 A.D.2d 353, 493 N.Y.S.2d 874 (2nd Dept. 1985), Jackson & Perkins v. Martin, 12 N.Y.2d 1082, 240 N.Y.S.2d 29, 190 NE2d 422 (1963).

30. Benderson v. Swiatek, 162 A.D.2d 1023, 557 N.Y.S.2d 807, Stevens v. Smolka, 11 A.D.2d 896, 202 N.Y.S.2d 783 (4th Dept. 1960).

31. Anderson, N.Y. Zoning Law and Practice, Second Edition (1977), section 15.08.

32. Rigby v. Crate, 15 A.D. 2d 605, 222 N.Y.S.2d 406 (3rd Dept. 1961), Perinton v. Muzeka, 141 N.Y.S.2d 607 (1955).

33. Town of Pompey v. Parker, 44 N.Y.2d 805, 406 N.Y.S.2d 287, 377 NE2d 741 (1978).

34. BA Mar Inc., v. County of Rockland, 164 A.D. 2d 605, 566 N.Y.S.2d 298.

35. New York Mobile Homes Association v. Steckel, 9 N.Y.2d 533, 215 N.Y.S.2d 487, 175 NE2d 151, 86 ALR2d 270 (1961), 10 N.Y.2d 814, 221 N.Y.S.2d 517, 178 NE2d 231, Erwin v. Farrington, 285 A.D. 1212, 140 N.Y.S.2d 379, see also Beagell v. Douglas, 2 Misc.2d 361, 157 N.Y.S.2d 461 (1955), Feld v. Hanna, 4 Misc.2d 3, 158 N.Y.S.2d 94 (1956).

36. New York Mobile Homes Assn. v. Steckel, 9 N.Y.2d 533, 215 N.Y.S.2d 487, 175 NE2d 151, 86 ALR2d 270 (1961), 10 N.Y.2d 814, 221 N.Y.S.2d 517, 178 NE2d 231.

37. Perinton v. Muzeka, 141 N.Y.S.2d 607.

38. Berchielli v. ZBA of the town of Westerlo, 202 A.D.2d 733, 608 N.Y.S.2d 570 (3rd Dept. 1994), motion for leave to appeal denied 83 N.Y.2d 757, 615 N.Y.S.2d 874, 639 NE2d 415.

39. Corning v. Ontario 204 Misc 38, 121 N.Y.S.2d 288 (1953), at 294-5, citing Shepard v. Village of Skaneateles, 300 N.Y. 115, at 118, 89 NE2d 619 at 620.

40. Ouimet v. Frasier, 240 A.D.2d 906; 658 N.Y.S.2d 734 (1997).

41. Village of Valatie v. Smith, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 NE2d 1264 (1994)(emphasis added).

42. Barron v. Getnick, 107 A.D.2d 1017, 486 N.Y.S.2d 528 (4th Dept. 1985)

43. Worley v. Kosnick, 121 A.D.2d 826, 504 N.Y.S.2d 258 (3rd Dept, 1986)

44. Cave v. ZBA, 49 A.D.2d 228, 373 N.Y.S.2d 932 (1975), motion for leave to appeal denied 38 N.Y.2d 710, 382 N.Y.S.2d 1030, 346 NE2d 829, Fairmeadows Mobile Village, Inc. v. Shaw, 16 A.D.2d 137, 226 N.Y.S.2d 565 (4th Dept. 1962).

James A. Coon

The James A. Coon Local Government Technical Series is dedicated to the memory of the deputy counsel at the NYS Department of State. Jim Coon devoted his career to assisting localities in their planning and zoning, and helping shape state municipal law statutes.

His outstanding dedication to public service was demonstrated by his work and his writings, including a book entitled *All You Ever Wanted to Know About Zoning*. He also taught land use law at Albany Law School. His contributions in the area of municipal law were invaluable and as a result improved the quality of life of New Yorkers and their communities.

For further information, contact the DOS Division of Local Government at (518) 473-3355.