The Mobile Home and The Law

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I. INTRODUCTION

In the past decade house trailers have dramatically increased their share of the housing market in the United States.

Production of mobile home units nearly doubled between 1966 and 1969.1 Over 400,000 units were produced in the latter year, over 500,000 are being built in 1972,2 and today one out of every two single-family dwellings being constructed in this country is a house trailer.3 Mobile homes now account for over ninety percent of all new single-family homes in the under-$15,000 price category,4 and six and one-half million Americans now live in house trailers,5 most of which are located in the 23,000 trailer parks scattered across the United States.6

The manner in which mobile homes are dealt with under our zoning laws is therefore a matter of some importance. Surprisingly, comparatively little has been written regarding the zoning of mobile homes and trailer parks. The purpose of this article is to lessen this deficiency. The writer proposes to examine the subject by considering the following aspects of mobile home regulation: the need for mobile homes or a similar type of housing; the objectionable features of house trailers and trailer parks; the constitutional and legislative authority to regulate trailer homes and trailer courts; the specific zoning restrictions employed by American communities; the classification of mobile homes as nonconforming uses, and the regulation of house trailers by means of private covenants.

II. THE NEED FOR MOBILE HOMES OR COMPARABLE HOUSING

The present popularity of mobile homes is attributable much less to their mobility—a characteristic which the larger models possess only to a...
limited degree anyway—than to their comparative inexpensiveness. It is no secret that for several years there has been a serious undersupply of single family homes, especially in the low-to-middle price range. As a result of factors such as high labor costs, rising land prices, continued farm-to-suburb and inner city-to-suburb migration, and the large pool of young home seekers occasioned by the baby boom of the late 1940's and early 1950's, the $10,000 home has gone the way of the dinosaur, and the $15,000 home has become scarce in those areas where most Americans want to live. Efforts to manufacture homes in factories, with the components being shipped to the home site and assembled there, have achieved some success, but cost savings have so far proved disappointing. The result has been a rapid expansion of the mobile home industry and a great increase in the number of persons who live in house trailers.

III. OBJECTIONS TO MOBILE HOMES AND TRAILER PARKS

If the house trailer has helped to alleviate one problem, the housing shortage, it has served to create others; for while it has become apparent that a large number of persons are willing to live in house trailers, it has become equally obvious that many people are unwilling to live near mobile homes, especially when they are concentrated in trailer parks. To some extent the widespread hostility toward trailer parks is attributable to memories of past conditions, some of which have been largely corrected. Thirty years ago there was very little to be said in favor of the house trailer or of the typical trailer camp of which it was a part. In 1942 the average mobile home was only seven feet wide and seventeen

7 While mobile home prices vary considerably, with the cost being affected by such variables as length, width, furnishings, and brand name, the typical purchaser buys a $7,000-$9,000 sixty-foot model. Id. at 53-54.
8 According to the United States Department of Housing and Urban Development, to achieve Congress' goal of decent housing for every American family 2.6 million units must be built every year for the next ten years. Van Iden, Zoning Restrictions Applied to Mobile Homes, 20 CLEV. ST. L. REV. 196 (1971).
9 This success has fallen considerably short of what was once expected, because of labor union resistance, the difficulty of complying with local building codes, and the cost of transporting the modules, among other factors. Within recent years two large modular home manufacturing operations, Alsides Aluminum, Inc., and Stirling Homex, have failed. See Wall Street Journal, August 14, 1972, Part A, at 4.
10 According to Akron, Ohio, attorney Herbert Newman, Assistant Director of Akron Metropolitan Housing Authority for the years 1970-71, in Ohio the cost savings on a modular home, as compared to a conventional house, are "not substantial," "no more than ten percent, if that." Address delivered by Newman at The University of Akron School of Law on April 20, 1972.
11 Mobile home production was the second largest dynamics growth industry in the United States in 1971, with the average industry-wide increase on the New York and American stock exchanges running at 74.6 percent. Half of the leading stock gainers on the American exchange last year were mobile home producers. University of California Institute of Governmental Studies, 24 CALIFORNIA PUBLIC SURVEY 37 (1972).
Feet long, and was equipped with neither toilet nor shower. The twelve-foot-wide trailer was not introduced until 1962, and the so-called "double-wide" mobile home did not come into being until 1965. The attractive carpeting and elegant upholstering found in many mobile homes today were rarely seen in the house trailers of the 1930's and 1940's. Many of today's trailer parks have made comparable advances over their counterparts of thirty years ago. The typical trailer court—then called "trailer camp"—of the thirties and forties had the sordid appearance of a shanty-town. The lot sizes were usually small, with the result that the trailers were located extremely close to one another. The driveways into the camp and between the trailers were seldom paved, and landscaping was usually nonexistent. Efforts to keep the grounds neat and free of clutter were typically perfunctory. The occupants consisted mainly of migrant workers, drifters and gypsy types. By contract, many—though certainly not all—of today's trailer parks are attractively landscaped, well-maintained, paved in the driveway strips, and divided into reasonably roomy lots. It should be noted, however, that even today few trailer parks provide lots comparable in size with those found in the average residential subdivision. Aside from a few parks (found mostly in the South) which cater to retired persons, most modern-day trailer courts are occupied primarily by relatively young middle-class families having slightly fewer children per unit than the average American family and having a household head who has a steady job. In summary, the individual mobile home has come a long way since the 1930's and many of the trailer parks in which it is found have made comparable progress. It follows, therefore, that much of the stigma that still affects mobile homes and trailer parks is no longer justified.

There are other reasons, however, why people object to having trailer parks in their proximity, and it is difficult to dismiss these reasons as being without substance. The major objection is that while trailer courts generate tax revenue, in the form of property taxes and license fees, the amount of revenue generated is normally significantly less than the costs which the trailer parks impose on the community, in the form of such things as teacher salaries, school building additions, trunk sewer lines, water lines, police and fire protection, and road construction and maintenance. The result is that the rest of the community is compelled to

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12 Renker v. Village of Brooklyn, 139 Ohio St. 484, 488, 40 N.E.2d 925, 927 (1942).
14 R. Needham, Mobile Homes: Legal and Business Problems 29 (1971).
15 The new trailer parks average six to eight units per acre, as compared to twelve to sixteen units per acre in the older parks. Supra note 2, at col. 2.
16 Supra note 13, at 495.

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subsidize the occupants of the trailer court.\textsuperscript{17} Of the aforementioned expenses the single biggest item is educational costs. Even though the average mobile home family unit contains fewer children than does the average American family unit,\textsuperscript{18} trailer parks nevertheless usually produce a substantially larger number of children for the local school system to accommodate than would the same amount of land devoted to some other residential use, such as single family residences, duplexes, or garden apartments. The reason is, a given parcel of land devoted to trailer park use will contain a larger number of family units than would the same amount of land allocated to a conventional residential use. Another commonly voiced objection to trailer courts is that they have a detrimental effect on the aesthetics of the community. A trailer park, even when well planned, landscaped, and carefully maintained, rarely constitutes a visually appealing addition to a locality. Finally, it is generally conceded that the intrusion of a mobile home court normally has a depressing effect on property values in a middle- or upperclass residential area.\textsuperscript{19}

\section*{IV. CONSTITUTIONAL AND LEGISLATIVE AUTHORITY TO REGULATE MOBILE HOMES}

The authority of a political subdivision to zone rests either on an express provision in the state constitution or on enabling legislation enacted by the state legislature.\textsuperscript{20} The power to regulate house trailers is, of course, grounded on these same sources. In practice a majority of the states have enacted enabling acts authorizing municipalities and townships to regulate mobile homes.\textsuperscript{21} Since these enabling statutes and the local ordinances enacted pursuant to same, rest constitutionally on the state's police power, all such legislation must be designed to promote the public health, safety, morals, or general welfare.\textsuperscript{22}

That the regulation of mobile homes is related to the health, safety, morals and general welfare of the community is obvious. For example, a trailer park being served by inadequate sanitation facilities may adversely affect the health of the community, and the nomadic

\textsuperscript{17} A method must be devised to require these homes to be appraised as real property and taxed as such, or a separate taxing technique must be evolved which will achieve an equitable tax burden among those residents who enjoy the services purchased with tax dollars. Failure to accomplish this results in an unfair tax burden on the owners of conventional homes, and it arouses additional antagonism against mobile home owners.

\textsuperscript{2 R. ANDERSON, AMERICAN LAW OF ZONING 362-63 (1968).}

\textsuperscript{18} One writer estimates that mobile home families average 0.5 children per dwelling unit. \textit{Supra} note 14, at 20.

\textsuperscript{19} \textit{Supra} note 17, at 361.

\textsuperscript{20} C. SMITH \& R. BOYER, SURVEY OF THE LAW OF PROPERTY 427 (1971).


\textsuperscript{22} \textit{Supra} note 13, at 496.
habits of some mobile home dwellers may give rise to morals or other law enforcement problems.  

Heretofore, in deciding whether a trailer park or a mobile home could constitutionally be regulated as attempted, the courts have been concerned mainly with whether the due process clause of the Fourteenth Amendment was violated. This is explained by the fact that when there is an abuse of the police power the result is a taking of private property without due process of law. An illustrative case is *Duse v. Wilhelm*, where the township zoned plaintiff's land for single family residential use even though the property was located in an area where no one could ever reasonably be expected to build a conventional single-family residence. The Mahoning County Common Pleas Court held that the ordinance was unconstitutional as applied to plaintiff's land, being violative of the due process clause. The court said that if a parcel of land cannot feasibly and economically be used for the restricted purposes for which it is zoned, then it is confiscatory and transgressive of the Fourteenth Amendment.

Occasionally the courts have ruled that a mobile home ordinance violated the due process clause simply because there did not appear to be any substantial relation between the regulation in question and the furtherance of any recognized police power goal. The court so held in the New York case of *Koston v. Newburgh*, for example, where an ordinance which entirely excluded trailer courts from the municipality was invalidated.

In the near future, as mobile homes serve an increasingly large segment of the housing market and provide dwellings for increasing numbers of the less affluent, it is quite possible that the courts will be asked to invalidate strongly restrictive anti-trailer legislation on the ground that it constitutes a violation of the Fourteenth Amendment's equal protection clause, by discriminating against the poor. This argument has already been advanced, with limited success, in cases dealing with zoning ordinances imposing large minimum lot sizes. For example, in *National Land and Investment Co. v. Easttown Township Board of Adjustment*, the court declared unconstitutional an ordinance requiring lot sizes of at least four acres, saying:

> It is not difficult to envision the tremendous hardship, as well as the

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23 The congestion of living conditions inherent in a trailer park, together with the uncertainty as to sanitary conditions, including water, sewage, cooking, bathing and washing facilities, and the fact that the occupants of a trailer park may be to a large extent transitory, are all very patent reasons why such a business is so affected with a public interest as to make it a proper subject for legislative regulation under the broad police powers of the state. 


25 The land was located next to an existing trailer park and across the street from a coal tipple.


chaotic conditions which would result if all the townships in this area decided to deny to a growing population sites for residential development within the means of at least a significant segment of the people.... The question posed is whether a township can stand in the way of the natural forces which send our growing population into hitherto under-developed areas in search of a comfortable place to live. We have concluded not.28

And in Appeal of Kit-Mar Builders29 the same court ruled invalid a zoning ordinance which required a minimum lot size of two acres along existing roads and of three acres in the interior, stating:

A scheme of zoning that has an exclusionary purpose or result is not acceptable in Pennsylvania.... It is not for any given township to say who may or who may not live within its confines, while disregarding the interests of the entire area.... A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid. ... [T]his problem ... cannot realistically be detached from the rights of other people desirous of moving into the area in search of a comfortable place to live.30

However, the undeniable fact that many persons cannot afford to live in a conventional house does not change the equally indisputable fact that the establishment of a trailer park (or even an individual mobile home) in the midst of a development of conventional homes can have some very harmful effects on the area. It would therefore seem more realistic and reasonable to merely demand that a given mobile home ordinance promote a legitimate police power goal and otherwise comply with the due process clause of the Fourteenth Amendment.

28 Id. at 528, 532, 215 A.2d at 610, 612.
30 Id. at 470, 472, 268 A.2d at 766, 768, 769. Dissenting Justice Oliphant advanced a similar argument in Lionshead Lake, Inc., v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952), where the issue was the validity of a township ordinance prescribing a minimum floor space:

[Als I conceive the effect of the majority opinion, it precludes individuals in those income brackets who could not pay between $8,500 and $12,000 for the erection of a house on a lot from ever establishing a residence in this community as long as the 768 square feet of living space is the minimum requirement in the zoning ordinance.... Certain well behaved families will be barred from these communities, not because of any acts they do or conditions they create, but simply because the income of the family will not permit them to build a house at the cost testified to in this case. They will be relegated to living in the large cities or in multiple-family dwellings even though it be against what they consider the welfare of their immediate families.

Id. at 181-182, 89 A.2d at 701.
V. COMPLETE EXCLUSION OF MOBILE HOMES

The most obvious, and drastic, approach for a community to adopt, if it desires to avoid the evils, real and imagined, associated with house trailers, is to entirely ban mobile homes from the community's political boundaries. In many instances municipalities and townships have availed themselves of this option. In a majority of the states in which this approach has been challenged the courts have ruled that the total exclusion of house trailers from a political unit is invalid.

The rationale usually adopted by the courts is that since trailers and trailer courts are not inherently detrimental to the public health, morals, or general welfare, a complete prohibition of mobile homes from the municipality is an abuse of the police power. Illustrative cases are Smith v. Building Inspector and In re Falls Township Trailer Ordinance.

In Smith, the Supreme Court of Michigan affirmed a judgment granting a writ of mandamus compelling the Plymouth Township building inspector to issue a permit for the construction of trailer park facilities notwithstanding the existence of an ordinance disallowing trailer courts in Plymouth Township. Said the court:

...[S]ince the trailer camps are not, as a matter of law, nuisances per se or detrimental to public health, safety, morals, or general welfare, it could not be said that their complete prohibition in Plymouth Township bears a real and substantial relationship to the promotion of public health, safety, morals, or general welfare.

In the Falls Township controversy the Bucks County District Court held invalid an ordinance forbidding mobile homes throughout the township, declaring:

While it may be that the manner of use and occupation of a house trailer might, under particular circumstances, constitute a nuisance in fact, such possibility provides no warrant for outlawing them entirely.... In our opinion... although the... Supervisors undoubtedly have power to adopt... zoning ordinances... which might regulate house trailers as part of the general scheme thereof, nevertheless they have not authority to single out trailers and flatly to prohibit them within the township.

31 In New York, for example, a recent study disclosed that forty-two of the forty-four municipalities comprising Westchester County entirely prohibit mobile homes within their borders. Supra note 14, at 33.
35 346 Mich. at 60, 77 N.W.2d at 335.
Another reason advanced by some courts against the validity of an ordinance entirely excluding house trailers from a municipality is that the legislature of that state has provided for the regulation of mobile homes and that the regulation of a thing presupposes its existence somewhere in the political subdivision. This line of reasoning was adopted in *Gust v. Township of Canton.* 37 In the *Gust* case, the Supreme Court of Michigan affirmed a decree enjoining the Township of Canton from enforcing an ordinance forbidding the establishment or operation of a trailer camp anywhere in the township, stating:

Trailer camps may be lawfully operated in Michigan under . . . [cited statutes] which provide for the licensing and regulation thereof . . . [T]he nature and extent of the development of the township, or lack of it, are such that it cannot be said that . . . prohibiting trailer camps therefrom bears a real and substantial relationship to the present public health, safety, morals, or general welfare. . . . To so hold would be tantamount to declaring trailer camps . . . subject to exclusion from every area in the state by local governing bodies. That would hardly square with the legislative intent expressed in the above act authorizing their operation in Michigan. 38

A few states have sustained the total prohibition of mobile homes from the community. Among these jurisdictions are New Hampshire, New Jersey, North Carolina, North Dakota, and Ohio. 39 In *City of Raleigh v. Morand* 40 the Supreme Court of North Carolina sustained and enforced by injunction an ordinance which banned house trailers not only from the city itself but also from a one-mile belt around the city. The court merely relied on the canon under which an ordinance is presumed to be valid until the contrary is shown. Quoting from the opinion:

. . . [T]here is a presumption that the zoning ordinance of the City of Raleigh constitutes a proper exercise of the police power. The burden was upon the appellants . . . to show otherwise. . . . The defendants have failed to carry the burden in this respect . . . We hold that the ordinance under consideration . . . is a valid exercise of the police power and may be enforced by injunctive relief. 41

In *Vickers v. Township Committee of Gloucester Township* 42 the Supreme Court of New Jersey sustained a zoning ordinance amendment

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38 342 Mich. at 438-39, 70 N.W.2d at 773.
40 247 N.C. 363, 100 S.E.2d 870 (1957).
41 247 N.C. at 368, 100 S.E.2d at 874.
prohibiting trailer parks in an industrial zone, the only district in the Township in which they had been allowed. Said the court:

[I]f the amendment presented a debatable issue, we cannot nullify the township's decision that its welfare would be advanced by the action it took. It cannot be said that every municipality must provide for every use somewhere within its borders. . . . Trailer camps, because of their particular nature and relation to the public health, safety, morals and general welfare, present a municipality with a host of problems, and these problems persist wherever such camps are located.43

Taking advantage of New Jersey's law on this matter, two-thirds of New Jersey's six hundred municipalities have disallowed trailer parks altogether.44 Jurisdictions which permit the complete exclusion of mobile homes from their political subdivisions leave themselves open to the accusation that they are sanctioning a form of discrimination against the poor, who cannot afford the purchase price of a conventional suburban home. Although a municipality with an exclusionary ordinance may in fact be actuated by perfectly legitimate motives, its failure to make provision for house trailers somewhere within its political limits leaves it vulnerable to the charge that it is violating the spirit, if not the letter, of the equal protection clause of the Fourteenth Amendment.45

VI. INDIRECT EXCLUSION OF MOBILE HOMES

Some communities, deeming it imprudent to attempt a direct, total exclusion of mobile homes from their political boundaries, have instead adopted a more discreet approach and have employed indirect and subtle means of keeping out mobile homes. When challenged and identified as a contrivance, this kind of approach has usually been deemed invalid for the same reasons that a direct, complete exclusion is generally considered

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45 In the Vickers case the dissenting opinion of Justice Hall addressed itself to this point as follows:

In my opinion legitimate use of the zoning power by such municipalities does not encompass the right to erect barricades on their boundaries through exclusion or too rigid restriction of uses where the real purpose is to prevent feared disruptions with a so-called chosen way of life. Nor does it encompass provisions designed to let in as new residents only certain kinds of people or those who can afford to live in favored kinds of housing, or to keep down the bills of the present property owners. When one of the above is the true situation deeper considerations intrinsic in a free society gain the ascendancy and courts must not be hesitant to strike down purely selfish and undemocratic enactments. I am not suggesting that every such municipality must endure a plague of locusts or suffer transition to a metropolis overnight. I suggest only that regulation rather than prohibition is the appropriate technique for attaining a balanced and attractive community. . . .

37 N.J. at 264-265, 181 A.2d at 147.
invalid. Illustrative cases so holding are *Zoning Board of Adjustment v. Dragon Run Terrace*\(^{46}\) and *Anderson v. Township of Highland*.\(^{47}\)

In the former case the approach adopted by the county was to provide in the ordinance that trailer parks are permitted as special exceptions in Residential 2 and Residential 4 districts, provided that they comply with designated conditions; however, whenever a landowner applied for such a special exception his application would be denied. The Supreme Court of Delaware affirmed a judgment ordering the Board of Adjustment to grant the petitioner's application for a special exception, subject to the petitioner's complying with the conditions specified in the ordinance. Said the court:

> [T]he Board is empowered to refuse the subject permit if its issuance would result in substantial injury to the neighborhood and county. In the absence of any substantial evidence in the record of such substantial injury, the refusal of the Board to issue the permit must fall.\(^{48}\)

In *Anderson* an amendment to a 1960 ordinance, which had completely excluded mobile homes from the township, created a Trailer-1 zone, in which house trailers were expressly permissible. However, the amendment set aside no land for the T-1 zone. The court held that since the amendment did not designate any T-1 zone land, the ordinance was, with respect to mobile homes, arbitrary and invalid, and therefore ineffectual to prevent the intrusion of trailer parks into the township:

Defendants contend that the township zoning ordinance, as amended, does not prohibit trailer parks in the township... While the amendment does, as indicated, make reference to a Trailer Coach Park District, the record shows, as the trial court found, that, in fact, the township has set aside no land for trailer coach parks... The original ordinance prohibited trailer coach parks. The amending ordinance in effect still prohibits trailer coach parks, by reason of the failure to create a TR-1 district.\(^{49}\)

In a few instances, however, an indirect virtual exclusion of mobile homes has been sustained in a jurisdiction which does not sanction the direct, total exclusion of house trailers. This occurred in *Wright v. Michaud*\(^{50}\) and *Township of Honey Brook v. Alenovitz*.\(^{51}\) In the *Wright* case the zoning ordinance of the Town of Orono, Maine, excluded individual mobile homes from the entire town but permitted a trailer court

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\(^{48}\) 222 A.2d at 319-320.

\(^{49}\) 21 Mich. App. at 73-74, 174 N.W.2d at 913-914.

\(^{50}\) 160 Me. 164, 200 A.2d 543 (1964).

in one of the five zoning districts, as a special exception, upon the approval of the Board of Zoning Appeals. The Supreme Court of Maine affirmed a judgment sustaining the ordinance and denying a mobile home owner's application for a permit to park his house trailer on a privately owned lot in town, even though there was in fact no trailer park anywhere in town. The court noted that the ordinance made provision for a trailer park in a Residence and Farming Zone, whether or not an application to establish such a park had ever been granted, and the court observed:

It will not be declared unconstitutional without clear and irrefutable evidence that it infringes the paramount law.

If it [zoning law] does not appear unreasonable on its face, the objecting party must produce evidence to show that it is, in fact, unreasonable in its operation. . . .

In the Alenovitz case house trailers and trailer parks were, by ordinance, excluded from the entire township except for four small tracts called “Neighborhood Commercial,” and no mobile homes were in fact located in any of these four districts. The Supreme Court of Pennsylvania nevertheless affirmed a judgment granting the township an injunction ordering defendants to refrain from establishing a trailer park in another district of the township, saying:

[A] zoning ordinance which totally excludes a particular business from an entire municipality must bear a more substantial relationship to the public health, safety, morals and general welfare than an ordinance which merely confines that business to a certain area in the municipality. . . . In the instant case there [is] no total exclusion. . . . The assertion that these [allowable] areas are small hardly overcomes the presumption of constitutionality.

In summary, it would seem that a community desirous of absolutely excluding mobile homes from its boundaries but lacking a compelling justification clearly related to the public health or safety has a somewhat better chance of accomplishing its goal if it employs indirect means of exclusion; but if the court perceives that the ostensibly innocent zoning scheme is merely a façade, then the ordinance will usually be deemed invalid.

VII. CONFINEMENT OF MOBILE HOMES TO TRAILER PARKS

The most common form of mobile home regulation, one that a majority of communities has adopted, is confinement of house trailers to trailer parks. Such confinement, generally accomplished by a local ordinance enacted under the authority of a state enabling act, usually is justified on one of the following two grounds: That the health and

52 160 Me. at 177, 200 A.2d at 550.
53 430 Pa. at 620, 243 A.2d at 333.
54 Supra note 32, at 240.
sanitation problems inherent in mobile homes require periodic inspection, and that control can be maintained more conveniently if such dwellings are restricted to small areas;\textsuperscript{55} or that the grouping of mobile homes in trailer courts reduces the architectural disharmony which frequently results when a house trailer is placed on a lot in a neighborhood composed of conventional homes.\textsuperscript{56} Since mobile homes—even the most expensive ones—do not look like conventional houses, it is obvious that the presence of a house trailer in a residential neighborhood will impair the aesthetics of the area.\textsuperscript{57}

Ordinances restricting house trailers to trailer parks are usually upheld, especially when the ordinance is consistent with a comprehensive plan for the community.\textsuperscript{58} Among the cases sustaining such ordinances are \textit{Bane v. Pontiac}\textsuperscript{59} and \textit{People v. Clute}.\textsuperscript{60}

In the \textit{Bane} case the Supreme Court of Michigan affirmed a declaratory judgment that a township zoning ordinance restricting mobile homes to trailer parks was related to the public health and was valid, although having no effect on prior nonconforming uses. The court said:

"...\textit{[A]n ordinance limiting the occupancy of trailers to licensed areas is not an unreasonable exercise of the police power and is therefore valid. ...We find nothing objectionable in this provision.}..."

In the \textit{Clute} case the Washington County Court affirmed a judgment convicting defendant of violating a town ordinance restricting mobile homes to trailer parks, commenting as follows:

\textit{In view of sewage, water supply, waste disposal and other problems connected with the maintenance of trailers, permitting them in trailer parks where these public services can be strictly supervised}

\textsuperscript{55} \textit{Supra note 21, at 128.}
\textsuperscript{56} \textit{Supra note 17, at 375-376.}
\textsuperscript{57} This difference in appearance is sufficient to persuade many municipalities that a mobile home in a conventional neighborhood will depress property values. Many mobile dwellings are spacious, attractive and more completely equipped for modern living than is true of many conventional homes. But they are different, and the fact of difference renders them unwanted in conventional residential neighborhoods. \textit{Id. at 361.}
\textsuperscript{58} \textit{Supra note 8, at 198.}
\textsuperscript{59} 343 Mich. 481, 72 N.W.2d 134 (1955).
\textsuperscript{60} 47 Misc.2d 1005, 263 N.Y.S.2d 826 (Sup. Ct. 1965). \textit{Accord,} Cooper v. Sinclair, 66 So.2d 702 (Fla. 1953), and Davis v. Mobile, 245 Ala. 80, 16 So.2d 1 (1943). In the latter case the court declared that the City of Mobile could very properly provide regulations for trailer parking (exclusively in trailer parks) "...as living quarters...reasonably adapted to promote traffic convenience, safety, morals and health..." 16 So.2d at 3.
\textsuperscript{61} 343 Mich. at 492-93, 72 N.W.2d at 139, 140.
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indeed bears a relationship to the public health and welfare. In a residential district a trailer tends to lower land values.62

However, in some states the enabling statute requires a comprehensive land use plan as a pre-condition to the passage of a zoning ordinance, and in such jurisdictions the municipality's failure to develop a comprehensive plan before enacting an ordinance confining mobile homes to trailer parks has been deemed to invalidate the ordinance.63

Although there is general agreement that ordinances restricting mobile homes to trailer parks are legally justifiable, some observers have been critical of the fact that trailer parks are often confined to industrial or commercial districts.64 While mobile home use undeniably constitutes a distinctive form of residential use, it is nevertheless a form of residential use and would seem to be out of place in an industrial or commercial area.65 The more logical and defensible approach would appear to be that of restricting trailer parks to specified sections of a residential zone.66

VIII. EXCLUSION OF MOBILE HOMES THROUGH THE APPLICATION OF RESTRICTIONS DESIGNED FOR CONVENTIONAL HOMES

Even if a particular zoning ordinance does not expressly disallow mobile homes in the municipality, or specifically restrict them to a designated district, or confine them to trailer parks, a person seeking to

62 47 Misc.2d at 1007-08, 263 N.Y.S.2d at 830.
64 A recent survey disclosed that of 300 reporting municipal jurisdictions, industrial locations were permitted in thirty-eight cases and they were the only areas allowable in thirteen. Commercial locations were allowed in seventy-eight instances and were the only permissible areas in fourteen. Supra note 14, at 17.
65 In Stevens v. Stillman, 186 N.Y.S.2d 327 (1959), an ordinance excluding trailer parks from agricultural and residential districts but permitting them in commercial or industrial districts was held unconstitutional. Said the court:

The Town of Clarence permits an establishment of trailer parks in a commercial or industrial district but forbids the establishment and conduct of a trailer park or camp in any part of an agricultural district. ...Zoning laws ... must be justified by the fact that they have some tendency to promote public health and public safety or public welfare or, as otherwise expressed, must be of a direct, substantial, or reasonable relation to the police power. ...I fail to see where it is necessary to prohibit trailer camps in an agricultural district as far as public health and public safety or public welfare are concerned.

186 N.Y.S.2d at 328, 329, and 330. And in City of Aurora v. Burns, 319 Ill. 84, 149 N.E. 784 (1925) an ordinance confining trailer parks to industrial districts was held unconstitutional primarily because of the incompatibility of uses.
66 It is, of course, true that the operation of a mobile home park is a commercial venture, just as the operation of most apartment houses is a commercial venture, but the land use involved in a trailer park is, like the property use involved in an apartment house, a residential use. "...[L]iving in a mobile home is not a business. It does not differ in kind or degree from living in any other kind of dwelling." Supra note 13, at 498.
place a house trailer on a lot located in the political subdivision may find himself barred by zoning law provisions which may not, at first glance, appear to apply to mobile homes. For example, a provision requiring a minimum amount of square footage for all dwellings in the district may have the practical effect of excluding house trailers. This result was reached in *Ossetek v. Barone*, where the ordinance required a minimum floor area of at least 900 square feet. The court listened to testimony that only about six percent of mobile homes have 900 or more square feet but nevertheless upheld the ordinance and deemed it applicable to house trailers, observing that the ordinance could not be said to be discriminatory or arbitrary, since it had equal application to mobile homes and conventional homes.

A similar problem arose in *County of Will v. Stanfill*, where the defendants, who were in an area zoned “Residential-2,” placed their house trailers on lots much smaller than the 7,260 square feet required by the zoning ordinance. When charged with violation of the ordinance, defendants answered that they believed that the ordinance did not apply to mobile homes. The court ruled that defendants’ belief notwithstanding, the minimum lot size requirement had the same application to mobile homes that it did to conventional homes.

In *New Orleans v. Louviere*, a zoning law provided for and regulated “single family dwellings.” The question arose whether a house trailer placed on blocks was a “dwelling” so as to qualify under the ordinance. The Louisiana Court of Civil Appeals decided in the negative, saying:

> A casual reflection upon the foregoing facts is convincing proof that trailers, although containing living quarters and placed on blocks or temporary foundations, merely for balance and to preserve the tires which they ordinarily rest upon, which may again operate on the highways at the caprice of the owners, are not single family dwellings...

Finally, in *Lower Merion Township v. Gallup* the principal issue was whether house trailers resting on jacks and boxes and which had the

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70 *Accion*, Corning v. Ontario, 204 Misc. 38, 121 N.Y.S.2d 288 (Sup. Ct. 1953). Here the court rejected the trailer owner’s contention that the ground area regulations did not apply to him because his structure was not a “building,” saying: “Mobility ceased when it was removed from the highway, attached to the soil, and occupied as living quarters. A metamorphosis has occurred; the mobile vehicle has become a fixed residence.” 121 N.Y.S.2d at 291-292.
71 52 So.2d 751 (La. App. 1951).
72 *Id.* at 752.
space between the floor and the ground enclosed with a shingle material were “dwelling houses” within the meaning of a township ordinance designating minimum requirements respecting light, air, sanitation, and safety. The court ruled that the house trailers did classify as “dwelling houses” and were required to comply with the designated standards. The court noted that the house trailers were used and were intended to be used as dwellings, and it declared: “To say that these [house trailers] were not dwellings is an attempt to fictionalize a reality.”

The writer does not suggest that mobile homes should be exempt from ordinances prescribing minimum floor space requirements, lot sizes, or light and air standards for dwelling houses. The courts have generally accepted the proposition that such regulations can be justified as having a bearing on the health and safety of the occupants of conventional houses, and this rationale would seem to have equal application to the occupants of mobile homes. The writer does suggest, however, that both ordinance drafters and mobile home owners can profit from cases such as the above four. Drafters can forestall litigation by merely inserting a couple of sentences expressly indicating whether, and where, house trailers are permitted and whether physical regulations pertaining to conventional houses apply to mobile homes. Mobile home owners can avoid needless expense and inconvenience by consulting and carefully reading the local ordinances.

75. The writer does not share the view, expressed by a recent article in the Cornell Law Review, that mobile homes should be exempt from minimum lot size and floor space requirements and related regulations for the reason that mobile home living constitutes a different kind of life style, and that attempts to impose such requirements on mobile homes interfere with the expression of personal aesthetic tastes and constitute an unconstitutional abuse of the police power.

What is involved is a question of the freedom of an owner to use his property in any way he sees fit as long as the use is not illegal or violative of the rights of others. . . . As a matter of policy the question is simply. . . . Will the individual homeowner be permitted to live in a manner that satisfies his desires, or must he conform to the aesthetic tastes of his neighbors? The question is. . . . a fundamental one of the limit of the municipal power to make unreasonable distinctions between various modes of construction and living.

Supra note 13, at 500 and 504.

All zoning restricts the freedom of the individual property owner and limits his right to adopt alternative life styles. The basic question is not whether a property owner’s freedom is being curtailed, for it undeniably is, but whether such regulation can be justified for reasons reasonably related to the public health, safety, or general welfare. If one accepts the proposition that it is unhealthy or unsafe for a conventional homeowner to live on a lot that is too small or in a house that is too little or too dark or stuffy, then the same reasoning would, logically, apply to the owner of a mobile home.

76. See County Comm’rs of Queen Anne’s County v. Miles, 246 Md. 355, 228 A.2d 450 (1967) (sustaining a five-acre minimum lot size and noting that minimum lot requirements have more often than not been upheld as a valid means of promoting a legitimate police power goal) and Ironshead Lake Inc. v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952) (sustaining a minimum floor space requirement).
zoning ordinance before buying or renting a lot on which to park their
house trailer. If the local ordinance is ambiguous concerning its applica-
tion to house trailers, the mobile home owner would be well advised to
consult the local zoning inspector, or an attorney, before attempting
to establish his house trailer on a site in the political subdivision.

IX. LIMITS ON DURATION OF STAY

A method of regulation that has the practical effect of excluding
many mobile homes from the community is to impose a time limit—such
as ninety days—on the parking of house trailers in the municipality. After
the designated time limit has passed the mobile home in question must be
removed from its site for a minimum specified time. This form of
regulation, which is still commonly used, originated back in the period
when mobile homes were truly mobile and were similar to the kinds of
vehicles that would now be classified as camping trailers.77 During that
era trailer owners rarely parked their vehicle at any one place for an
extended time period, thus, a regulation was appropriate for the house
trailers of that period.78 Today the vast majority of mobile home owners
live, rather than merely travel, in their house trailers and establish them
at fixed locations for long periods, frequently years. Thus a local
ordinance requiring removal of mobile homes at weekly, monthly or
quarterly intervals now has the effect of discouraging the great majority
of house trailer owners from coming into the community at all, an effect
that most municipalities still having such ordinances doubtlessly desire.
Somewhat surprisingly, recent, as well as older, decisions, have tended to
sustain such ordinances notwithstanding their anachronistic qualities.79
Among cases upholding such ordinances are Gillam v. Board of Health of
Sangers80 and Hartland v. Jensen's, Inc.81 In the former case the court
justified its upholding of an ordinance limiting occupancy to ninety days
in a six-month period by stating that the ordinance was a reasonable
restriction designed to maintain the transient character of local trailer
parks, which failed to meet the requirements of the local building
code. Quoting from the opinion: "The rule in question cannot be
pronounced lacking in rational purpose. In other states similar rules have

77 Supra note 17, at 376.
78 Those who still call these dwellings trailers do so out of an old habit that also
causes them to think of the places where they are gathered as "camps." This
habit is a vestige of a day when the main kind of trailer you saw was one that
people with cars hauled around to sleep and cook in when they stopped briefly
here or there to work or maybe just sight-see. It was the kind of rolling dwelling
evoked by the old popular song that said, among other things, Let's take a trip
in a trailer....
Supra note 6, at 51-52.
79 Supra note 21, at 133.
80 327 Mass. 621, 100 N.E.2d 687 (1951).
81 146 Conn. 697, 155 A.2d 754 (1959).
been held valid, as tending to prevent permanent occupation of dwelling places which do not conform to the requirements of building codes." 82

In the Hartland controversy, the court sustained a municipal ordinance limiting the occupancy of land by any automobile trailer or other vehicle designed or used for human occupancy to a total of sixty days. The court's rationale was that the ordinance was a reasonable exercise of the police power, since the town properly could have determined that its resources were such that temporary occupancy of land within its borders by trailers and mobile homes was feasible but that permanent occupancy would overtax the abilities of the town to cope with the health and safety problems which would arise. 83

In a jurisdiction such as New Jersey or Ohio, which openly sanctions the complete exclusion of mobile homes from an entire political subdivision, ordinances merely restricting the duration of stay, even severely, obviously cannot be challenged. However, in the remaining jurisdictions the retention of such ordinances would seem to constitute an attempt to accomplish by indirection that which cannot be directly and openly done. That such ordinances, designed for the camper-style house trailer of yesterday, have no relevance to the situation created by the development of the modern mobile home is apparent, and it is difficult to understand why the courts generally have not yet recognized this fact.

X. MOBILE HOMES CONSIDERED AS NONCONFORMING USES

Generally speaking, zoning laws can only operate prospectively, and an inconsistent land use antedating a new zoning ordinance can continue operation provided that it does not constitute a nuisance and does not expand. 84 This principle has usually been applied to mobile homes. Thus, it has been held that a mobile home 85 or a trailer court 86 which existed prior to the enactment of an ordinance banning such a land use may continue as a nonconforming use. Acting consistently with the general

82 327 Mass. at 623, 100 N.E.2d at 688.
83 Accord, Loose v. Battle Creek, 309 Mich. 1, 14 N.W.2d 554 (1944) (sustaining an ordinance restricting the parking of mobile homes to six weeks during a twelve-month period) and Southport v. Ross, 284 App. Div. 598, 132 N.Y.S.2d 390 (1954) (upholding a municipal ordinance limiting the parking of mobile homes to four weeks in a twelve-month period).
84 D. Hagman, Urban Planning and Land Development Control Law, 146-147 (1971). Admittedly, a number of jurisdictions have accepted the principle of the amortization of nonconforming uses. In these jurisdictions the owner of the nonconforming use is permitted to continue his operation only for a period of time long enough to enable him to recover his original investment. See Moore, The Termination of Nonconforming Uses, 6 William & Mary L. Rev. 1 (1965).
85 Des Jardin v. Greenfield, 262 Wis. 43, 53 N.W.2d 784 (1952).
86 Nicholson v. Wyatt, 77 So.2d 632 (Fla. 1955).
principle that actual use is essential to the establishment of a non-conforming use, the courts have held that no right to a nonconforming use has been acquired where the property owner has simply cleared the land for the purpose of creating a trailer park there,^{87} or has merely formulated plans to construct a mobile home park.^{88}

However, conduct which might be deemed to be mere preparation for use and therefore insufficient to establish most nonconforming uses has been held adequate to confer the right to operate a mobile home park. Thus, in *Meuser v. Smith*^{89} the excavation of a foundation and the pouring of footings for a utility building to serve a trailer park was ruled adequate to create a nonconforming use, and in *City of Belleville v. Leonard*^{90} the mere acquisition of land and the installation of water and sewer lines was ruled sufficient to establish the right to operate a nonconforming trailer park.^{91}

Furthermore, the courts appear to be more lenient about the expansion of nonconforming mobile homes and trailer parks than they are about the expansion of nonconforming uses in general.^{92} Illustrative cases are *Ohio v. Mink*,^{93} *Watts v. City of Helena*,^{94} and *Board of County Commissioners v. Petsch*. In the first case the owner of a nonconforming mobile home was permitted to replace his original house trailer with a new one of no greater length, even though this would obviously have the effect of prolonging the nonconforming use. In the *Watts* case the defendant owned a group of contiguous lots. At the time of the enactment of the ordinance banning house trailers the defendant already had trailers on some of the lots, but not on the others. The ordinance provided that a person who had a nonconforming use on his property could continue the


^{92} Supra note 14, at 39 and 41.

^{93} 26 Ohio St. 2d 142, 269 N.E.2d 921 (1971).

^{94} 151 Mont. 138, 439 P.2d 767 (1968).

^{95} 172 Neb. 263, 109 N.W.2d 388 (1961).

^{96} Contra, Town of Windham v. Sprague, 219 A.2d 548 (Me. 1966).

If it is proper to substitute a new trailer for an old one, it would follow that this same process could be repeated again and again. Thus the life of the nonconforming use would be prolonged indefinitely. This is contrary to the principle that nonconforming uses should be eliminated as early as possible.
same and, in addition, could extend it "throughout his premises," apparently meaning throughout the remainder of the individual lot. The court allowed the defendant to establish mobile homes on his remaining lots, saying that since defendant clearly had acquired a nonconforming use on some of his lots, he should be permitted to extend his nonconforming use throughout the remaining lots constituting his total premises. Finally, in thePetsch controversy the landowner had placed thirteen trailers on his property and had partially prepared the sites for fifty-nine additional trailers. The court permitted him to establish mobile homes on the fifty-nine prepared but vacant sites, saying:

Open areas in connection with an improvement existing at the time of the adoption of zoning regulations are exempt from such regulations as a nonconforming use, if such open areas were in use or partially used in connection with the use existing when the regulations were adopted. . . . In other words, where a trailer court project is partially completed when zoning regulations become effective, and the evidence is clear as to the extent of the project, the completed project will ordinarily determine the scope of the nonconforming use.97

In summary, the courts have treated nonconforming house trailers and trailer parks essentially the same way as they normally treat nonconforming uses. However, they have exhibited a marked tendency toward leniency in deciding when the landowner has done enough to acquire a nonconforming house trailer and in determining when the landowner's proposed changes constitute an expansion of his nonconforming mobile home use.

XI. PRIVATE COVENANTS BANNING MOBILE HOMES

Although the number of reported cases involving private covenants concerning house trailers is small,98 most of such cases have honored an attempt to exclude mobile homes from a subdivision of conventional homes. At least four cases have arisen involving the proposed use of single-family residentially restricted land for trailer park purposes.99 As one might suppose, in all four instances the court ruled that the contemplated use would transgress the private restrictions. Since a trailer court more closely approximates an apartment house than it does a single-family dwelling, this result seems entirely reasonable. In one of

97 172 Neb. at 268, 109 N.W.2d, at 391-392.
98 The authors of a 1970 article in the Cornell Law Review stated that they were able to find only nine such cases reported subsequent to 1940. Supra note 13, at 515.
the cases, however, the court indicated that use of the land for a trailer court would violate a covenant against a "noxious or offensive trade or business." Although a trailer park is indisputably operated for purposes of profit, such use of land would not seem to properly classify as a business use any more than an apartment house does. It would appear to be more realistic to treat trailer parks as a form of multiple-dwelling residential use.

The cases involving the application of private covenants to attempts to place a mobile home on an individually owned lot have turned mainly on the clarity of the covenant relied on to bar the invading mobile home, and to a lesser extent, on the general suitability of the area for house trailers. In the following cases the courts have held that mobile homes were barred by a private covenant: Pagel v. Gisi, where the restriction provided that the land "will be used for dwelling houses only"; Jones v. Berber, where the covenant stated that no "garage, trailer, shack or hut shall be used for living purposes"; Swigart v. Richards, where the covenant declared that "no building shall be erected or maintained upon any lot except one residence designed and used for occupation by a single family," and McBride v. Behrman, where the covenant disallowed "temporary dwellings" and "unsightly structures."

By contrast, in the following three instances the courts have ruled that an allegedly exclusionary covenant was not sufficiently explicit to bar mobile homes: Schaefler v. Gatling, where the covenant merely stated that "no residences shall be erected... which shall cost less than $6,000"; Naiman v. Bilodeau, where the covenant limited use of the land to residential purposes and stated that an acceptable dwelling "must have an asphalt roof and clapboard siding or better," and Yeager v.

102 251 Iowa 969, 103 N.W.2d 364 (1960).
103 87 Ohio L. Abs. 37, 178 N.E.2d 109 (C.P. 1961).
105 In the McBride case the court noted that the neighborhood was an attractive and relatively affluent residential area.
106 243 Miss. 155, 137 So.2d 819 (1962).
107 Here the defendants purchased a mobile home which cost more than $6,000, brought it to their lot, and placed it on a foundation of concrete piers.
108 225 A.2d 758 (Me. 1967).
109 The court decided that the aluminum siding and roof of defendants' mobile home exceeded the minimum quality requirements of the covenant.
Cassidy,110 where the covenant prohibited everything except "one private dwelling costing at least $5,000 and resting on a solid foundation."111

It is clear that mobile homes can validly be excluded from a residential subdivision by use of a private covenant that is sufficiently explicit and clear.112 In the writer's judgment, this is as it should be. Conceding that the most expensive house trailers are in some respects more attractive and functional than are many conventional homes, and conceding that the distinction between mobile homes and conventional homes may become blurred as home-building techniques evolve away from on-site methods toward factory-production systems, nevertheless, the differences between the typical house trailer of today and the average conventional home appear substantial enough to justify the honoring of attempts to keep the former away from the immediate vicinity of the latter.

XII. CONCLUSION

Although it may continue to change somewhat in size and appearance, the mobile home is with us to stay and appears destined to serve a greater percentage of our society's housing needs in the future than it does today. In the long run, therefore, municipalities and townships have no choice but to reach an accommodation with the house trailer. In the writer's view such an accommodation should, except in special and unusual circumstances, entail the elimination of local ordinances which: exclude house trailers from the entire municipality; restrict trailer parks to industrial and/or commercial zones, or limit the duration of stay of mobile homes to a few days, weeks, or months. On the other hand, local authorities appear quite justified in retaining, or adding, such restrictions as the following: confining house trailers to trailer parks; demanding that mobile home owners and trailer court operators abide by the minimum lot size requirements for the district in which the trailer court is located,113 and limiting trailer parks to a

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111 Here the defendant placed his $5,500 mobile home on a concrete foundation. The court invoked the canon that covenants should be narrowly construed so as to maximize freedom of land use.
112 Supra note 32, at 263.
113 Since mobile home court operators still commonly attempt to establish as many house trailer sites on an acre of land as is feasibly possible, a restriction of this kind may be expected to encounter stiff resistance from prospective trailer park operators, as well as from existing operators who plan to expand. An alternative arrangement that assures the same amount of open space and sometimes encounters less resistance from subdividers (including trailer court operators) is to impose a "cluster zoning" restriction. Under this kind of ordinance the subdivider (or trailer park operator) is permitted to reduce his individual lot sizes by a given percentage if he dedicates an equivalent amount of land elsewhere in the development (or trailer park) for open space use. See Chrinke v. Planning Board, 77 N.J. 594, 187 A.2d 221 (Super Ct. 1963), a leading case upholding and explaining cluster zoning.
specified section of the municipality. Finally, trailer park operators would be well advised to recognize that communities would almost certainly be less hostile to trailer courts if mobile home owners would bear a fairer share of the community's tax burden and if the less socially conscious park operators would provide their courts with landscaping, paved inner roads, and open spaces. ¹¹⁴

¹¹⁴ Under the doctrine of contract rezoning, which has been accepted by such jurisdictions as Massachusetts and New York, a municipality can condition its granting of an application for a zoning change to permit a trailer park (or other land use) on the applicant's agreement to provide such amenities. See Church v. Town of Islip, 8 N.Y.2d 254, 168 N.E.2d 680, 203 N.Y.S.2d 866 (1960) and Sylvania Elec. Prods., Inc., v. City of Newton, 344 Mass. 428, 183 N.E.2d 118 (1962).