

DEVELOPMENT CONTROLS FOR
MANUFACTURED HOUSING

by

Thomas E. Nutt-Powell

Working Paper No. W83-5

Joint Center for Urban Studies of MIT and Harvard University, June 1983.

Copyright © 1983 by the Joint Center for Urban Studies of MIT and
Harvard University.

All rights reserved.
ISSN 0275-2964

ABSTRACT

This paper presents a framework for devising and implementing development controls for manufactured housing, and then assesses current legislative, administrative and judicial treatment of this type of housing. The paper has five sections.

The first section presents the theoretical underpinning for local development regulation. Development controls are exercised in three broad areas: type of land use; nature of improvements to land consistent with permitted uses; and the appearance of those improvements. There is a need for distinction among the three areas, and clarity of definition within each. Definitions of manufactured housing, both general and specific, are provided.

The second section addresses use definition. The intent is to provide compatibility of adjoining uses, clustering those with similar purposes. Where uses are clear, regulatory processes are routine. Where uses have special attributes, there are special regulatory procedures. A common failing in local regulatory control of manufactured housing is a confusion in use definition. Definition and procedural mechanisms to overcome these failings are suggested.

The third section deals with improvements consistent with approved uses. Where zoning serves the public welfare in use definition, construction codes serve it in the area of improvements. Improvements constructed to publicly determined codes would seem to have a presumptive acceptability, though this has not been the case for manufactured housing. A reason is the personal property classification of manufactured housing from the mobile home tradition. Mechanisms to address these issues are suggested, including means of handling siting to meet both legal and engineering objectives.

The fourth section considers appearance concerns. Many jurisdictions confuse aesthetic and use compatibility, limiting housing choice needlessly. Underlying anxiety about property values and tax base fuels this confusion. Ways of achieving aesthetic objectives are set forth.

The concluding section reviews current legislative, administrative and judicial approaches to manufactured housing, in light of the framework for development regulation presented in the preceding sections. Though performance in all three areas is spotty and reflects the more general uncertainties regarding regulation of these housing types, several examples of sound policy and practice exist as indications of appropriate future directions.

CONTENTS

	<u>Page</u>
INTRODUCTION	1
The Theory of Development Regulation	1
Background on Manufactured Housing	3
USE	7
MHs as Residential Uses	8
Special Use Categories for MHs	11
IMPROVEMENTS	13
Distinguishing Among MHs	13
Codes for Siting MHs	15
Tax Status	17
APPEARANCE	18
The Evolution of Style	18
Controlling MHs for Appearance Objectives	19
General Use Appearance Controls	21
Special Use Appearance Controls	22
JUDICIAL, LEGISLATIVE AND ADMINISTRATIVE APPROACHES	24
Judicial Approaches	24
Brookside	24
Knoll	26
Martz	27
Mt. Laurel II	28
Legislative Approaches	30
Administrative Approaches	32
NOTES	35
REFERENCES	37

INTRODUCTION

Among proposals almost guaranteed to spark controversy are those for use of "mobile homes." Mention of this form of housing connotes a wide variety of images regarding use and users, the residential structures and related improvements, and the appearance of the structures and improvements. In common with other types of development proposals which often evoke considerable emotion (public housing, for example), "mobile home" proposals are rarely well understood by proposers, regulators, or interested parties. The constituent elements are not readily identified, and thus not easily categorized. The result is an absence of routine, a presence of confusion, and an unhappy outcome.

This paper is an attempt to identify clearly and simply the issues pertinent to regulation of development proposals involving "mobile homes." The intent is to clarify, then simplify regulatory approaches to this form of housing in local jurisdictions. Good definitions and distinct categories will enable the creation of routine and allow individual jurisdictions a range of options when they need to judge development proposals using this form of housing.

The Theory of Development Regulation

The imposition of controls on local development is based on the premise that government must act affirmatively to protect the health, safety, and welfare of the public. The assumption is that unchecked private market forces will yield outcomes unacceptable by public interest standards. The balance of private market freedom and public sector controls is delicate because there are no facts on which to

base decisions regarding proposed developments. Every development proposal deals with something which (if approved) will exist in the future. Thus, in a literal sense, the impacts, be they positive or negative, are only conjecture. Consequently, decisions regarding the proper control of those impacts are exercises in careful judgment.

The development control process is made even more difficult because it occurs in a relatively highly articulated legal environment and applies to developments which involve for the proposers and other interested parties considerable investment--both economic and/or emotional. Indeed, given the potential for intensity which surrounds development proposals, it is a wonder that so much regulatory activity occurs with a high measure of placidity. This calmness in many respects is a testimony to the sensible regulatory systems which planners, code administrators, attorneys, and others have created over the course of many decades.

Proposals for development necessitate actions in the three primary areas of development regulation: land uses, the specific land improvements that provide for those uses, and the appearance of those improvements. Because the three are intertwined in specific development proposals, their independent aspects are often lost in the review of the overall proposal. But if there is anything to be learned by reviewing regulatory actions of the past several decades, it is that separating a proposal into its constituent elements, and analyzing these elements in relation to existing clear categories of definition and precedent, significantly enhances prospects for a more generally supportable outcome. Such simplification and categorization has the effect of distinguishing those elements adequately served by existing

definitions and standards from those elements which require interpretation; in other words, simplification and categorization establish what is routine and what requires judgment. For the public sector, such a process provides ease of administration, and, for private sector proposers, efficiency of review.

Background on Manufactured Homes

Up to this point, the term "mobile homes" has appeared in quotations. The term has been used because it evokes definite, though typically inaccurate, images of one type of manufactured housing. Given the inaccuracy of images typically held, it is important to establish a common understanding of this form of manufactured housing in terms of its contemporary reality.

Manufactured housing is a generic term covering a wide variety of housing built other than at the site. There are two broad types. The first type of manufactured housing is built to state- or locally-adopted building codes which are generally based on models developed by code organizations such as the Building Officials Conference of America (BOCA). This type of manufactured housing can be single-family (detached or attached) or multi-family; it is commonly referred to as "modular," "panelized," "pre-cut," and so on. The second type of manufactured housing is built to a single preemptive national code embodied in the Federal Manufactured Home Construction and Safety Standards administered by the U.S. Department of Housing and Urban Development (HUD). This preemptive standard is known as the HUD Code, and units built to this code are referred to by Congressional act as "manufactured homes." These homes are typically single-family

detached dwellings. The HUD Code, authorized in 1974, became effective June 15, 1976.

A significant distinction between the two major types of manufactured housing is that a manufactured home is built on a steel frame which provides an initial capability for transportation. Each of the types of manufactured housing built to BOCA or similar codes are usually transported to the home site by independent means.¹ This transportation distinction also occasions a legal distinction. Though each type of manufactured housing leaves the factory as personal property (in the legal sense), a HUD Code home has formal public registration of that status in that the entire structure has temporary vehicular classification in order to obtain road permits from plant to home site. By comparison, only the mode of transportation (such as the trailer or transporter bed) of a BOCA or similar code home is so registered. Each BOCA-type manufactured house is designed for location on a permanent foundation. Therefore, such houses necessarily become improvements to real property. Though HUD Code houses can be placed on a permanent foundation, such placement is not necessary for safe occupancy. Indeed, placement on a permanent foundation has been the exception rather than the rule, though this situation is changing. Most HUD Code houses have remained in a personal property category. Consequently, various legal structures (notably tax treatment) have reinforced the distinction between the major types of manufactured housing.

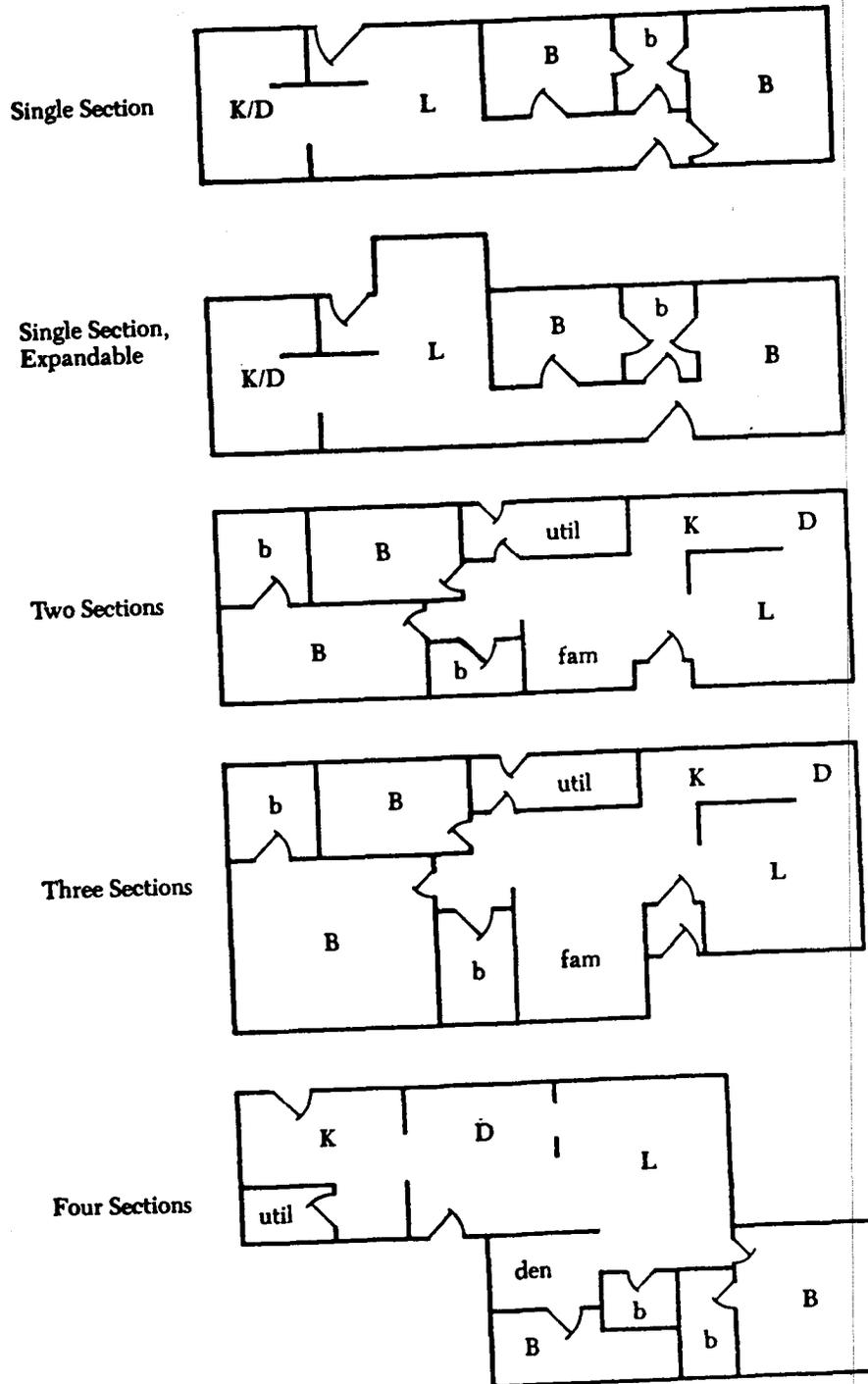
Construction of the HUD Code house on an integral steel frame has also resulted in certain engineering and design attributes. The steel frame provides for considerable structural durability in transit, as

well as at site, because of the box-beam engineering design. (For a more detailed discussion of the architectural and engineering aspects, see Bernhardt et al., 1980, pp. 95-134. For a discussion of house quality issues, see Nutt-Powell, 1982, pp. 9-39.)

Having a completed home on departure from the plant also limits site costs, allowing manufactured homes to be lower in cost in terms of structure completion. The steel frame also serves a foundation function, limiting site costs for this purpose. Most HUD Code homes (roughly 70-75 percent of those constructed annually for the past several years) are "single-section" homes, with all four walls, floor, and roof systems completed at the factory and with dimensions reflecting a high length to width ratio. (A typical house dimension for a 980 square foot house is 70' x 14', a 5:1 length/width ratio.) Manufactured homes with two or more sections are referred to as "multi-section" homes. A frequent dimension for an 1,152 square foot house is 24' x 48'. Figure 1 presents typical house designs for manufactured homes of one or more sections.

As used here, a manufactured home is a house built to the HUD Code; it will be abbreviated as MH. Its initial intrinsic transportability has resulted in unique use and treatment in a variety of areas--legal, tax, site, design, and so on. By comparison, manufactured housing built to BOCA or similar codes is typically real property, and therefore not treated as uniquely as HUD Code housing. The remainder of this paper will focus exclusively on manufactured housing built to the HUD Code. The discussion will cover the three main topics of development regulation: use, improvements, and appearance. A concluding section covers current judicial, legislative and administrative approaches to MH development regulation.

FIGURE 1
Typical MH Floor Plans



SOURCE: Thomas E. Nutt-Powell, Manufactured Homes: Making Sense of a Housing Opportunity (Boston: Auburn House, 1982).

USE

Basic to zoning is the distinction among uses--residential, commercial, industrial and so on. Though there are differences in establishing standards, the essence of zoning is providing clear guidance on the compatibility deemed appropriate by the jurisdiction.

Ideally, use categories are mutually exclusive and collectively exhaustive. A residential use is not a commercial use is not an industrial use, at least not definitionally.² Thus the first task in use regulation is setting forth clear definitions of use. One would assume that MHs obviously fall into a residential category. In many zoning ordinances this is not clearly the case, a consequence of flawed definitions.

Within the broad category "residential," a typical first distinction is between attached and detached dwellings. Further distinctions may be made among types of attached dwellings, e.g., garden vs. elevator apartment buildings. Additionally, there are unique residential use types such as planned unit developments, cluster zones, historic districts and leased land developments. Such use types may be restricted to special zones established only for that purpose, or overlaid on zoning districts of the first sort.

A jurisdiction could thus have a simple three-zone hierarchy of residential categories (R1 through R3) where R1 is for detached dwellings with one unit per parcel, R2 for attached dwellings of two units per parcel and R3 for attached dwellings of three or more units per parcel. The jurisdiction could provide for special uses as follows:

Historic District (HD): a distinct zone, with an HD approval process;

Planned Unit Development (PUD): in R2 and R3 zones, with defined PUD approval process;

Cluster Development (CD): in R1 and R2 zone, with defined CD approval process.

In each case the rationale for a special approval process is that land development is to proceed in a way that diverges from the routine established by the basic R1-R3 zones. Because special uses may blur the clarity that the definitions and consequent routine establish, a formal special approval process is provided that allows an orderly means of applying judgment to each unique situation.

How then can manufactured homes be sensibly treated in terms of use categorization? First, it is important to place MHs clearly in a residential use category. Second, special treatment for MHs, if any, must be set forth.

MHs as Residential Uses

The first step in categorizing an MH as a dwelling is to provide a clear and internally consistent set of definitions. The logic here is that an MH is a subset of dwelling, and dwelling is a type of building. Vehicles are not buildings. Thus, MHs are clearly differentiated from recreational vehicles, including travel trailers, campers and motor homes. Figure 2 presents a set of definitions that achieve this objective.

It is important to note that the definitions are developed to establish use distinctions in a zoning context. Buildings are different from roads, vehicles, fields or lakes; dwellings are different

from factories, stores or offices; and MHs are different from recreational vehicles. The distinction in Figure 2 between a manufactured and a mobile home is one based on the applicable construction standards. All MHs built to the HUD Code (effective June 15, 1976) are defined as manufactured homes, while those built previously are mobile homes.³ The "description" definition of a mobile home offered in Figure 2 is essentially that used in federal statutes to define a manufactured home. In states or localities with construction standards for MHs that applied prior to the HUD Code, it is possible to categorize mobile homes further into those built or not built to the code. These definitional distinctions can be useful in predetermining types of MHs allowed in residential zones. Note again that the distinctions are based on the applicable construction standards, not the appearance of the dwelling.

The most common error in defining MHs in local zoning ordinances is a focus on the initial capability for mobility of the MH rather than on its intended use as a residence. The result is confusion in use categorization, as well as in the improvements and appearance aspects of local development regulations. Consider, for example, these two definitions of MHs:

A transportable single-family dwelling, which may be towed on its own running gear....

A trailer or mobile home shall mean any vehicle or object on wheels....

In each instance, the removal of the "running gear" or "wheels" renders the definition inapplicable, along with all controls applying to entities meeting the definition. This is an undesirable regulatory situation regardless of one's perspective on MHs.

FIGURE 2

Definitions Establishing MHS as Dwellings

Building: Any three-dimensional enclosure by any building materials of any space for use or occupancy, temporary or permanent. The words "building" and "structure" are interchangeable except where the context clearly indicates otherwise.

Dwelling: Any room or suite of rooms with its own cooking and food storage equipment, its own bathing and toilet facilities, and its own living, sleeping and eating areas wholly within such room or suite of rooms forming a inhabitable unit for one household entity.

Attached dwelling: A building designed and/or used for two or more dwellings.

Detached dwelling: A building designed and/or occupied as a dwelling, and separated from any other building.

Manufactured home: A structure defined by and constructed to the code authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (as amended).

Mobile home: A structure built prior to June 15, 1976, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a steel frame 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. (NOTE: An option or addition is to specify a state or local code definition for MHS built prior to the HUD Code.)

Recreational vehicle: A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) self-propelled or permanently towable by a light-duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special Use Categories for MHs

Considering use only, the definition of MHs as dwellings eliminates the need to devise special use categories. The initial presumption is that an MH can be used in each zone permitting dwellings of its structural type.⁴ Particular regulations resulting from the specific structural characteristics of an MH come under improvements or appearance criteria, and are discussed in the third and fourth sections of this paper.

There are two residential uses for which MHs have been the overwhelming structural choice: leased-land residential communities and temporary residences. Strictly speaking neither use necessitates this form of housing construction. However, the historic predominance of MHs for each means that the use and the housing type are viewed together, and thus require analysis at this point.

In its most basic form, a leased-land residential community is one in which the dwellings are located on leased land. MHs have been used frequently in leased-land communities because they need not be located on a permanent foundation. This provides an ease of siting and set-up at a cost typically lower than that for a site-built dwelling of comparable size.⁵ In such situations the leasing of the land is often an active business and may also involve providing other services and facilities at the site. Leased-land communities using MHs are conventionally known as MH parks. The land is usually under single ownership, with the homes owned by someone other than the landowner. (This is not a logical necessity: Indeed, an increasing number of such communities are cooperatives or condominiums, either at inception or by conversion.)

The MH park tradition is one that frustrates the cataloguer of residential land uses who wishes to remain faithful to the mutually exclusive/collectively exhaustive standard. The separate ownership of land and dwellings does not seem necessary; it is possible for the MHs to be owned by the landowner, who rents them to the residents. Similarly, individual homeowners can own the land in common (and the units separately) under cooperative or condominium arrangements. It also does not seem necessary for the houses to be in a personal property status. A cooperative or condominium arrangement with the units in a real property classification is obviously possible. In fact, an MH park is nothing other than a Planned Unit Development (PUD). In the absence of any argument that claims a superiority for MHs over other forms of construction, there is no public sector justification for restricting development of leased land communities exhibiting characteristics traditionally attributed to MH parks to the use of dwellings built to the HUD Code.⁶

Use of MHs as temporary residences is the second area of traditional special use requiring attention. The most frequent use of MHs as temporary residences occurs following natural disasters. Other temporary uses occur during construction of a site-built house, for temporary farm labor and for family members requiring special living arrangements. Again, a residence built to any code could serve these temporary residence purposes since time is the essence of this use category. The initial intrinsic mobility and ease of siting of the MH, however, serves to attract attention to this housing type for this use.⁷

IMPROVEMENTS

The logical result of defining an MH as a dwelling is that MHs are permitted by right in any residential zone. The only limitation as a result of the use classification will result from the structural characteristics of particular units. For example, attached MHs would not be permitted in single-family detached dwelling unit zones. This definitional approach puts MHs on an equal footing with all other forms of residences and subject to the same kinds of improvement restrictions applied either in general or in particular zones. Further, there may be certain structure-specific types of improvement restrictions that a jurisdiction may wish to impose on MHs, similar, for example, to requiring that structures of four or more stories have elevators.

Distinguishing Among MHs

The ability to zone and to control the nature of improvements to land derives from the police power of jurisdictions, under the general rubric of protecting the public health, welfare and safety. The use definition of MHs as residences makes them presumptively allowable in residential zones. However, in addition to zoning, jurisdictions also exercise their police powers to ensure that the structures built to achieve the intended uses are also acceptable from a public health, welfare and safety perspective. These police powers are embodied in construction codes.

The imposition in June 1976 of a single, preemptive federal construction code for MHs greatly simplifies the code issue for locali-

ties. Not only do they not need to make a determination of which code to adopt for their purposes regarding MHs, but they also do not need to allocate resources to ensure compliance. The HUD Code establishes the standards to which an MH must be built, as well as provides enforcement mechanisms. A municipality can thus be assured that an MH built even hundreds of miles from its eventual site of occupancy, if constructed to the HUD Code, will meet publicly adopted standards that protect the public health, welfare and safety. Because of considerable concern over MH construction quality, HUD has conducted extensive research on the performance of houses built to its code. That research shows that MHs built to the HUD Code are at least of equal safety and durability as homes built to other codes, whether manufactured or site built.⁸

Thus, a first-level distinction is between MHs built to the HUD Code (i.e., all MHs built since June 15, 1976) and those not built to the HUD Code. Local officials meet their public health, welfare and safety obligations in the construction code dimensions by accepting the HUD Code. Indeed, as will be discussed in the last section of this paper, it would seem that it is not a valid exercise of the police power to exclude homes built to the HUD Code simply because they are built to that code.

A second level of distinction occurs among those MHs not built to the HUD Code. Many states had adopted construction codes for MHs prior to the HUD Code, and had companion enforcement systems. Jurisdictions in states that had such codes may usefully distinguish between MHs built to applicable publicly adopted construction codes, and all others. What is important in this distinction is the public

adoption of a code with universal application. This ensures that the homes are built to a set of standards which, in the manner of adoption and the form of application, had as a primary objective the protection of the public health, welfare and safety.⁹

Codes for Siting MHs

While the HUD Code covers the building of the MH structure, it does not provide standards for the siting of MHs. Manufacturers do provide siting recommendations that accommodate an MH's unique engineering and design attributes on either a personal or real property basis. However, these are only recommendations and not requirements, and in any event, are not publicly determined. For this reason, as well as because conditions vary within and across jurisdictions, it is appropriate to impose local siting regulations. Indeed, many jurisdictions and/or states have such regulations.

Again, it is important to understand the differences among types of siting for MHs. The nature of construction of MHs, with the steel frame an integral part of the structure, allows a variety of siting options, all of which can be functionally--though not necessarily legally--permanent.

Since MHs are basically a form of single-family detached dwelling, the jurisdiction's requirements for permanent foundations on other single-family detached dwellings could apply. Insofar as that code entails a perimeter load-bearing foundation, however, there is reason to attend to structural differences, notably the steel frame. If the steel frame is to be removed, the floor system will require additional strengthening, for example, from a 2x6 to a 2x8 or 2x10 system.

A solution that uses an existing code for foundation requirements, however, involves making the home fit the foundation system. A more appropriate solution is to establish performance standards that allow builders a range of foundation options growing out the structure type. Indiana's standard for permanent installation of MHs, adopted in late 1982, follows this approach. The code provides that permanent foundations be required to transfer loads from the MH to undisturbed ground below the established frost line without failure and without exceeding the safe bearing capacity of the supporting soil. The code also provides that the system may be designed by a professional engineer or architect (either for or independent of the home manufacturer), or that the foundation meet the requirements of the state's One and Two Family Dwelling Code. Interestingly, the code allows use of more traditional MH siting solutions, including stabilizing systems and perimeter enclosures. In doing so, it provides guidance as to appropriate use of this method, recognizing its ability to meet engineering performance standards.

Jurisdictions also need to be concerned with siting when the MH remains in the personal property category. Here it will not be possible to rely on the traditional codes for permanent foundations. A solution along the lines of the performance standard that Indiana adopted is appropriate. The three basic items for concern are the ground preparation, anchoring method and leveling method. Many of the same performance considerations as identified in the Indiana code for permanent installation also apply, i.e., load transfer, frost line, and soil capacity. Both the Council of American Building Officials

(CABO) and the American National Standards Institute (ANSI) currently are involved in devising model standards.

Tax Status

Among the factors influencing a jurisdiction's attitude toward a preferred foundation system is the tax liability for of a real or personal property installation. A real property installation will render the home subject to real estate taxation. Since this is the situation of real property in general, MHs with this legal status present few complications, unless the land is owned by someone other than the homeowner. A personal property installation puts the home in a different tax category. Depending on the criteria for establishing personal property value and the nature of the taxes assessed, this may result in MHs yielding different, typically lower, revenues. Jurisdictions have traditionally operated on an assumption that personal property (including MHs) depreciates in value. Following this assumption, MHs would yield revenues on an annually decreasing tax assessment. Although evidence exists that MHs appreciate, rather than depreciate, in value, few assessing systems have caught up with this circumstance. Thus MHs in the personal property category may be viewed as not bearing their fair share of the tax burden, especially if the rate on personal property is lower than that on real property. An emerging practice is to categorize MHs as real property for taxation purposes, regardless of their legal status. California was among the first to do so, with its statute effective in July 1981. This not only removes the differences in tax liability, but also simplifies the valuation procedure.

APPEARANCE

The section on use argued that MHs are properly classified as dwellings and therefore should be permitted uses in residential districts. The section covering improvements contended that the code to which an MH is built is a reasonable basis for determining that a particular unit meets public health, welfare and safety objectives from a structural perspective. It also provided guidance on safely siting MHs. This section discusses the most difficult and persistent of problems regarding MHs, namely their compatibility on grounds of appearance.

The Evolution of Style

From the early stages of manufactured housing through the mid-1970s, the term "mobile home" was used (and accurately so) to describe a dwelling unit built in a plant, having its own capability for "towed" mobility, and, in appearance, having a flat roof, vertical metal siding, and a high length-to-width ratio. Although this term still accurately describes some MHs, it is no longer possible to use it as a generalization.

It is most accurate to refer to MHs as a type of sectional manufactured housing. Most MHs built to the HUD Code are single-section homes. They leave the plant essentially complete, with all four walls, floor and roof in place. Multi-section homes, usually comprising two or three sections, leave the plant with three walls, floor and roof in place for each section. Between 1970 and 1980, nearly 3.9 million MHs were built. During this same period, the proportion of

multi-section MHs built in a given year increased from 10 percent in the early 1970s to nearly 30 percent late in the decade. The proportion of multi-section MHs varies state to state, with many states having more multi- than single-section MHs sited annually (see Nutt-Powell, 1982).

Sectional manufactured housing is built to satisfy consumer preferences for particular house styles. The three most common types of sectional manufactured housing are all single-family detached dwellings, and are:

- Ranch, a single-story house with horizontal lap siding and pitched roof meeting in the middle.
- Contemporary, a single-story house with vertical wood siding and pitched roof with broken profile.
- Mobile home, a single-story house with vertical metal siding and flat (or slightly rounded) metal roof.

All of these common types can be, and are, built to the HUD Code as well as other manufactured housing codes. Each can also be site-built. Having a house built to the HUD Code is therefore not necessarily a guide to its appearance. This of course makes the process of appearance control much more difficult.

Controlling MHs for Appearance Objectives

There are a variety of zoning and development regulations aimed at "neighborhood fit" that apply as easily to MHs as to dwellings built to other codes. Among these are setbacks, density, lot coverage and size, building height and so on. But the most central objective is

the appearance of the dwelling itself, its aesthetic compatibility with other residences in an area.

The concern with MH "aesthetic fit" derives from the unique appearance of "mobile homes," here using the term in its consumer context. These MHs, especially if they are single-section, have very pronounced visual and aesthetic characteristics. Many feel, though without solid evidence to confirm or deny, that MHs of this type have a negative effect on neighborhood quality and, consequently, property values. The various appearance controls that have been placed on MHs (including total exclusion from use in a jurisdiction) are grounded in this "negative effects" assumption, an assumption that is somewhat difficult to defend in the context of the police power requirements of controls to serve the public health, welfare and safety. (Recent judicial decisions in this regard are discussed in the concluding section of this paper.)

Based on the preceding section, it would seem clear that a constitutionally supportable argument is possible for unique development controls (including exclusion) on MHs not built to a publicly determined construction code. If an MH is indeed a residence and if that MH is built to the HUD Code and is therefore clearly meeting publicly determined health, welfare and safety objectives, however, it would seem a difficult task to argue for unique development controls on MHs, especially if those controls entail total exclusion. Indeed, as will be discussed in the last section of this paper, we seem to be in a period of both legislative and judicial transition, with statutes and court decisions prohibiting arbitrary controls but allowing those that have some grounding in observable market and residential conditions.

General Use Appearance Controls

An MH built to the HUD Code could be a use permitted by right and still be the pink-and-white "mobile home" that prompts such visceral reactions. What appearance controls are possible, especially in situations involving single-lot siting?

Probably the most effective will be economic zoning, a form of control exercised by the market, not the jurisdiction. Here the assumption is that the home purchaser is unlikely to mismatch home and location, i.e., he or she will not place a \$15,000 "mobile home" on a \$40,000 lot in an area where home sales prices are in the \$125,000 range. Further, if the home purchaser is inclined in this direction, the formal or informal powers of other market actors, notably realtors and lenders, will work to exclude that possibility.

A second approach to appearance control is the use of broad unit attribute standards. Several jurisdictions, both local and state, require that MHs located in general use residential zones have "house-type" siding and/or pitched roofs. Others specify minimum widths or minimum square footage. This approach will tend to ensure that new dwelling units look like existing units, but constrain the ability of new homebuyers to make use of the best, most current MH building approaches and materials. Changes in home design and manufacture may also mean that units that jurisdictions might find acceptable might be excluded, while those they are aiming to eliminate are able to be located. For example, a minimum width requirement could serve to exclude attractive and acceptable "L" or "T" home layouts, while a minimum square footage requirement of 1,000 would not necessarily exclude the "offensive" metal sided and roofed mobile home, if it were

a very long single-section home (say 14' x 76'), or a multi-section home 24' x 42' in dimension. Also, it is not clear whether the courts will sustain, in the future, unit attribute standards aimed only at MHs.

A third approach to general use appearance controls is to devise a design review process for all new residences. The universality of the process would eliminate constitutional challenge, and would also provide that any new structure be deemed acceptable by the jurisdiction's appearance objectives. This option does have the drawback of being time and resource consuming.

Special Use Appearance Controls

Whether through formal or informal procedures, appearance controls are more typically applied to special uses (cluster zones, PUDs, subdivisions and so on), whatever the form of housing used. Given the scale of most special use permit applications, it is possible to control not only individual unit appearance but also the overall site design and the mix of units and uses. The appearance review aspects may involve an advisory committee that performs this function for all such projects. This and other more formal approaches will have established requirements in terms of information, materials to be reviewed, public hearings and so on. It is also possible to obtain equivalent levels of review and control through the informal project review process, with agreements entered into planning board minutes or through an exchange of letters as conditions of approval. Judicial support for these practices will vary from state to state, however.

One particular type of special use involving MHs is the leased-land community, popularly known as an MH park. Historically, an MH park is characterized by a higher density than that typically provided for other forms of single-family dwelling development. It also often has very specialized target occupants such as the elderly, young families or lower income individuals. The provision of various services by the landowner (whether it be a separate corporation, or a homeowner corporation--condo, coop or resident association) makes this form of development potentially attractive to jurisdictions whose own resources for infrastructure or recreation service expansion are strained. An MH park may be a special type of PUD, if the jurisdiction has that type of zone. It can also be targeted for certain areas of the jurisdiction, either as a PUD or as a separate Leased Land Development (LLD) zone. Designating special areas may also open the possibility of using the more traditional "mobile home" type of MH without fear of disrupting the aesthetic attributes of existing neighborhoods. One benefit of doing this is a substantial lowering of home price. The "mobile home" form of MH is the least expensive available. Those with more traditional "house" attributes (pitched roof, lap siding, wooden windows, and so on) also carry higher price tags. The leased-land community also eliminates the need for land purchase by the homeowner, further lowering the initial capital requirements of homeownership, thus expanding the range of persons able to purchase.

JUDICIAL, LEGISLATIVE AND ADMINISTRATIVE APPROACHES

Across the country all three branches of government have been grappling with the problem of zoning for MHs. A 1980 Joint Center paper reviewing judicial decisions and legislative actions regarding MHs noted the relative paucity of both cases and laws (Furlong and Nutt-Powell, 1980). Activity since that time has increased substantially. As was the situation in 1980, however, no trends can be said to be dominant, though a number of themes appear and reappear. This section identifies and briefly reviews those themes, using characteristic cases, laws and programs from around the country.

Judicial Approaches

Three cases--Brookside, Knoll and Martz--reflect the range of approaches to and decisions regarding MHs being made by courts around the country. A fourth, Mt. Laurel II, is important primarily as a case focusing on affordable housing.

In Brookside (May 1982), the Texas Supreme Court reached a decision that reflects generally prevailing views of MHs as lacking in durability, being inherently unsafe and possessing qualities detrimental to neighborhood stability and property values. In Brookside, the owners of an MH sought to place it on a lot they owned. The City of Brookside Village refused permission, contending that its zoning ordinance permitted such homes only in areas zoned for MH parks. The MH owners challenged on the basis that the zoning ordinance imposed an arbitrary restriction on property use not related to the preservation of the general health, safety, morals, or welfare of the community and

hence represented an unconstitutional exercise of police power. The Texas court found this not to be the case. It found that the party attacking the ordinance bears "an extraordinary burden" in proving the abuse of municipal authority, and that a finding of differences among "reasonable minds" is not sufficient. The court found that regulation of MHs, as represented in the Brookside ordinance, represents a valid exercise of a municipality's police power. Language in the opinion in support of this finding aptly illustrates one tradition of legal thought regarding MHs.

The courts of other jurisdictions have recognized that mobile home parks pose special health problems and are amenable to regulations designed to eliminate such hazards. Regulation of mobile home parks finds additional support in the business nature of the use. The Supreme Court of Georgia, upholding an ordinance which regulated trailer camps and trailer sites in a township, summarized its rationale as follows: 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. (Nichols v. Pirkle, 202 Ga. 271, 43 S.E. 2d 305, 309 (1947).)

The Court reached certain rather traditional conclusions about the nature and quality of MHs.

While we recognize the substantial improvements made in modern mobile homes, we do not perceive the similarities between mobile homes and conventional housing as sufficient to overcome the presumption of the ordinance's constitutionality. We find that adequate governmental interests are served by regulation of the location of mobile homes. Mobile homes, by definition, are manufactured to permit movement; the inherent structural differences in such manufactured housing can make them vulnerable to windstorm and fire damage; and their mobile nature may lead to transience and detrimentally impact property values if scattered throughout a municipality.

The Court also made a rather strict interpretation of its role in changing the status of MHs in municipal regulation.

It is possible that the general improvements in appearance and quality of manufactured or mobile homes will persuade municipalities to alter ordinances similar to the one before us. Such changes, however, should be made through the legislative, not the judicial, process. This principal has its inception in judicial acknowledgment of zoning power.

In Knoll (February 1981), the Michigan Supreme Court reached a decision that balances old and new notions about MHs, acknowledging improvements but allowing selective differences in treatment. As in Brookside, the Knoll case was prompted by the owners of an MH who wished to place it on a parcel that they owned. Their jurisdiction, Robinson Township, found this inconsistent with their ordinances, and sought removal of the unit.

The court held that "the per se exclusion of mobile homes from all areas not designated as mobile home parks has no reasonable basis under the police power, and is therefore unconstitutional." One basis for this conclusion was the improvement in size, quality and appearance of mobile homes. The court went on to say, however, that

...a municipality need not permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of on-site installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home.

The court did note a number of areas in which a municipality had legitimate concern, and therefore could impose certain regulations. Among these areas are adequacy of plumbing, size of living space, protection from windstorm damage and nature of foundation.

In Martz (January 1983), the Montana Second District Court, on remand from the Montana Supreme Court, found no valid public health, welfare and safety distinction between houses built to the HUD and UBC codes. The Butte-Silver Bow government was therefore required to permit HUD Code homes in all its residential zones. This decision reflects the most aggressively positive of judicial determinations about MHs.

As with the two preceding cases, Martz involves an MH owner wishing to place a unit on a parcel of land from which he is excluded under the zoning ordinance. In Martz, the court reached a number of conclusions of law:

The evidence shows that mobile homes are not a substantial threat to the public health, welfare, and safety. As a matter of law, the HUD standard is designed to meet the needs of the public including the need for quality, durability and safety. There is no evidence to show that conventional homes built to UBC standards are better than mobile homes built to HUD standards in terms of public health, welfare and safety....

[The zoning ordinance] is unconstitutional as an invalid exercise of the police power in that it is unreasonable, arbitrary, and capricious as it applies to mobile homes built to HUD standards with regard to where such mobile homes may be located in the community of Butte-Silver Bow.

Municipalities have an affirmative obligation to provide adequate housing for persons of low and moderate incomes. A municipality may not prescribe requirements or restrictions which have the effect of precluding or hindering the kinds of housing available within it. A municipality must insure that a 'fair share' of housing is within the reach of persons of low and moderate incomes....Defendants' requirement of restriction that mobile homes must be built to UBC standards in order to be located in all residential zones has the effect of precluding or hindering the kinds of housing available within the community....

In determining if a municipality has met its 'fair share' burden, the nature of the land made available must also receive consideration....The evidence herein...shows that the land presently made available for mobile home use is such that the use of mobile homes is hindered thereby.

It is interesting that in Martz the court made no reference whatsoever to aesthetic factors or to impacts on neighborhood stability or property values. The decision was based solely on the public health, welfare and safety issues of the structures themselves relative to those presently permitted by the municipality, and on the affirmative responsibility of jurisdictions to provide adequate housing for the full range of residents by income status.

The Martz case fits with the types of decisions being made about housing and zoning more generally. As such, it perhaps indicates a disposition on the part of courts to perceive of MHs as housing rather than some species of "product." It is in this context that Mt. Laurel II (January 1983) is worthy of mention.

While Brookside, Knoll, and Martz are probably unknown to most planners, zoners and others, Mt. Laurel II (as well as its predecessor, Mt. Laurel I) is well known, even notorious! In Mt. Laurel II, the New Jersey Supreme Court returned, some eight years after the first decision, to reaffirm its doctrine requiring that municipalities' land use regulations provide realistic opportunities for low and moderate income housing. The court established the State Development Guide Plan as the basis for determining if a community is subject to the Mt. Laurel doctrine. It endorsed various affirmative devices to meet the fair share requirement, including lower income density bonuses and mandatory set-asides. The court provided that municipalities may have as development regulations only those essential for safety and health. The court declared its intent to take an active role in achieving the objectives of Mt. Laurel II, including management of litigation and ordinary use of a builder's remedy.

In Mt. Laurel II, the court did speak specifically on MHs. In doing so, it recognized differences among them and allowed differences in local regulatory treatment based both on the characteristics of the homes and local market conditions. The court ruled that "municipalities that cannot otherwise meet their fair share obligations must provide zoning for low-cost mobile homes as an affirmative device in their zoning ordinances." In using the term "low-cost mobile homes," the court recognized the price differences among MHs and made its ruling contingent on a cost as well as housing type consideration.

Mt. Laurel II also served as a vehicle for the court to overturn the Vickers decision (1962), which had allowed absolute exclusion of MHs on the basis of structural deficiencies and limitations in attractiveness. The court was firm, however, in establishing that MHs are not absolutely required.

Lest we be misunderstood, we do not hold that every municipality must allow the use of mobile homes as an affirmative device to meet its Mount Laurel obligation, or that any ordinance that totally excludes mobile homes is per se invalid. Insofar as the Mount Laurel doctrine is concerned, whether mobile homes must be permitted as an affirmative device will depend upon the overall effectiveness of the municipality's attempts to comply: if the compliance can be just as effectively assured without allowing mobile homes, Mount Laurel does not command them; if not, then assuming a suitable site is available, they must be allowed....But just as Vickers is hereby overruled to the extent that it held that any developing municipality may totally exclude mobile homes, we hold that such attempts at a total exclusion will have to be justified by the same doctrines that would justify a total exclusion of apartment houses, townhouses or even single family residences.

The court also spoke forcefully on the exclusion of MHs on aesthetic grounds.

We recognize the propriety of aesthetic considerations in zoning, but the subjective sensibilities of present residents are not a sufficient basis for the exclusion.

Legislative Approaches

The discussion of judicial approaches presented a range of public sector responses to MHs. The legislative approaches tend to fall into the three broad categories represented by Brookside, Knoll, and Martz, with some of the notions of Mt. Laurel also appearing.

Most states and jurisdictions tend to view MHs in a manner consistent with the expression of the Texas court in Brookside. As reported elsewhere (Nutt-Powell, 1982), this tends to mean that they remain silent on MHs in formally adopted housing policies and/or resist various legislative initiatives aimed at establishing a role and status for MHs more in keeping with Knoll, Martz, or Mt. Laurel. A number of states, however, have adopted or are considering zoning legislation consistent with the principles of Knoll. California's 1980 statute is the most frequently mentioned. It provided that MHs on permanent foundations be permitted in residential zones on the same basis as other single-family dwellings. The status does not limit the authority of jurisdictions to do any of the following:

(a) Establish local use zone requirements, local snow load requirements, local wind pressure requirements, local fire zones, building setback standards, side and rear yard requirements, site development and property line requirements, architectural and aesthetic requirements, landscaping requirements, or standards for walls, enclosures, access, and vehicle parking with respect to such mobile homes in instances where such requirements or standards do not exceed those imposed on conventionally constructed single-family dwelling units.

(b) Establish certain zones for mobile homes installed on a foundations system pursuant to Section 18551 as long as the effect of establishing such zones is not to prohibit such mobile homes within such city or county.

The types of appearance standards typically mentioned include roof overhangs as well as roofing and siding materials. Indiana's 1981 non-discriminatory statute has similar conditions, with the addition of a minimum of 950 square feet of occupiable space. A 1980 Tennessee act prohibited exclusionary provisions on multi-section MHs, though such provisions are allowed for single-section units. The 1981 legislation adopted in New Hampshire provided that

a municipality shall not exclude manufactured housing completely from the municipality, by regulation, zoning ordinance or by any other police power. A municipality which adopts land use control measures shall allow in its sole discretion, manufactured housing to be located on individual lots in some, but not necessarily all, residential areas within the municipality, or in mobile home parks and subdivisions created for the placement of mobile homes on individually owned lots, or in all three types of locations. Manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitation and other reasonable controls that conventional single family housing in the same areas must meet.

A statute pending before the Wisconsin legislature has similar design control provisions, using language drawn from Knoll. Other states have adopted or are considering legislation more in keeping with Martz. In 1976, Vermont's legislature passed the following:

Except as provided [elsewhere], no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

A similar proposition was considered but rejected by the 1983 Massachusetts legislature, with the following language:

No zoning ordinance or by-law shall prescribe any regulations or restrictions relative to the location and use of a manufactured home in a residential zone which differs in any material manner from the regulations or restrictions applicable to other structures used for residential purposes in that same zone.

A 1982 Minnesota statute provided that "no regulation may prohibit... manufactured homes...that comply with all other zoning ordinances pursuant to this section." An Attorney General's Opinion, rendered in November 1982, found that

this provision expressly prohibits the exclusion of...manufactured homes from residential districts and makes no mention of selective placement of those types of housing among the residential districts of a given community. Without providing any exceptions, it is only reasonable to assume that the legislature intended to prohibit discrimination against that type of housing solely because of being manufactured housing.

Administrative Approaches

There are a variety of administrative approaches regarding MHs evidenced across the country. Some have broad policy attributes, others provide programmatic guidance and assistance, and others are specific zoning initiatives.

The treatment of MHs within the context of Oregon's Statewide Comprehensive Land Use Planning Goals and Guidelines is one example of a policy-based approach. In Oregon, each jurisdiction is required to inventory buildable lands. This inventory is cross-referenced to ensure that land is available for all residential categories. An interpretive memorandum issued by the Department of Land Conservation

and Development regarding the comprehensive plan for the City of St. Helens limits the application of discretionary criteria by jurisdictions, especially as applied to MHs. A comparable policy-based approach, now under consideration in Massachusetts, would establish exclusionary treatment of MHs as "clear and persuasive evidence that the community has routinely excluded housing growth," and is therefore subject to having development assistance funds withheld under provisions of Executive Order 215.

A second approach is the convening of a special task force to study issues pertaining to MHs. The Connecticut Mobile Home Task Force, formed in July 1982 at legislative behest, issued its report in January 1983. Among the issues it identified was exclusionary zoning. The report provides documentation on the nature of zoning treatment of MHs throughout the state, recommends various local approaches, and provides a model ordinance for the guidance of jurisdictions in revising existing regulations. An effort similar to that of Connecticut occurred in Washington, where the legislature directed the Planning and Community Affairs Agency to prepare a report on MH siting. That report, issued in December 1981, provides information on MH use and zoning treatment in the state, and a model ordinance. The model provided is interesting in the range of options offered and the manner in which they are connected to possible local objectives.

Finally, a number of jurisdictions are adopting modifications of existing zoning ordinances to accommodate MHs. Some, such as Montgomery County, Maryland, are doing so in response to housing policy objectives. Between 1974 and 1980, the County's Planning Board conducted a number of studies on the role of MHs in meeting housing

needs. In that period, the county adopted amendments to its zoning ordinances to (1) provide an R-MH, Planned Mobile Home Development Zone and (2) provide that multi-section MHs on permanent foundations be permitted by right in all single-family residential zones.

Other jurisdictions are also making similar changes, though more frequently in response to proposed developments. In Elkhart County, Indiana, for example, the County Department of Community Development, a local developer, and a group of housing manufacturers worked together--on a demonstration site as part of HUD's Joint Venture for Affordable Housing--to develop a group of MHs on individual sites, with the county making the necessary regulatory changes to make the developments both possible and affordable.

NOTES

1. Some non-HUD code manufactured housing is built on a steel frame and transported to the site using its own wheels and axles. These houses are frequently built by manufacturers who also build HUD code houses.
2. It is possible, however, for uses to be combined, e.g., home offices.
3. The term "mobile home" is retained here primarily to recognize its common use in the 1960s and 1970s. In a generic sense, both are manufactured housing, i.e., built off-site. It is possible to clarify further among pre-HUD Code MHs by distinguishing those built to (1) the accepted voluntary standard (ANSI Standard A 119.1 for Mobile Homes--Body and Frame Design and Construction: Installation of Plumbing, Heating and Electrical Systems); (2) a state or local code governing MH construction, or (3) no code at all. Note also that in incorporating codes by reference in development regulations, it is important periodically to review that code to ensure its definitional adequacy.
4. Nearly every MH is a single-family detached dwelling. However, it is possible for MHs as currently constructed to meet definitions of attached dwellings while remaining single-story. It is also technically possible for MHs to be stacked, and therefore be multi-story dwellings.
5. This structural ability to site without need of a permanent foundation causes additional confusions, primarily around the meaning of "permanent." Most people fail to differentiate among legal code and engineering definitions of permanence. An MH that is "permanently affixed" to the land via a code-defined "permanent" foundation becomes legally real estate, i.e., an improvement to real property. An MH that is sited using a typical MH set-up procedure (concrete slab or footings, anchors, blocking for leveling and a non-load bearing perimeter foundation enclosure) is equally permanent from an engineering standpoint (i.e., equally resistant to wind and water forces as a home on a permanent foundation), but, because that system is not a code-defined permanent foundation, the home remains legally defined as personal property.
6. Market forces and tradition will probably combine to maintain use of MHs in these settings, given cost considerations. There are some improvement and appearance issues that a jurisdiction may wish to address in a PUD proposal using MHs.
7. Again, market forces and tradition will combine to maintain the predominance of MHs in many of these uses. One exception is the conversion of space in existing houses to temporary accessory apartments, especially for family member use.

8. Indeed, MHs are probably the most thoroughly studied housing type in the U.S. For a summary of HUD's research, see Nutt-Powell (1982).

9. It is important to recognize that the distinction made here is for public regulatory purposes. When there is a publicly adopted construction code (for MHs or other types of residences), local regulatory actions can presume that structures built to the code meet public health, welfare and safety objectives. The presumption permits the development of regulatory routine, eliminating the need to scrutinize the engineering attributes of each structure. This does not mean that MHs not built to a publicly adopted code are necessarily less acceptable structurally. Indeed, many equal or even surpass MHs built to the HUD or other publicly adopted codes. The presumption of acceptability means only that the existence of a publicly adopted code for MHs allows procedural simplification in local development regulation.

REFERENCES

- Bernhardt, Arthur D., with the assistance of Susan A. Comando and Herbert B. Zien. 1980. BUILDING TOMORROW: THE MOBILE MANUFACTURED HOUSING INDUSTRY. Cambridge: MIT Press.
- Furlong, Michael, and Thomas E. Nutt-Powell. 1980. DEVELOPMENT CONTROLS FOR MOBILE-COMPONENT HOUSING: A TEN-YEAR REVIEW OF THE LAW. Cambridge: Joint Center for Urban Studies.
- Nutt-Powell, Thomas E. 1982. MANUFACTURED HOMES: MAKING SENSE OF A HOUSING OPPORTUNITY. Boston: Auburn House.