

Municipal Regulation of Manufactured Homes

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

NEW YORK STATE

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Governor

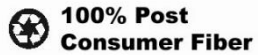
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The James A. Coon Local Government Technical Series is dedicated to the memory of the former Deputy Counsel of the Department of State.

Jim Coon devoted his career to assisting localities in their planning and zoning, and to helping shape the state municipal statutes. His outstanding dedication to public service was demonstrated by his work and his writings, including the work, *All You Ever Wanted to Know About Zoning*. Jim also taught land use law at Albany Law School. His contributions in the area of municipal law were invaluable, and immeasurably improved the quality of life of New Yorkers and their communities.

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INTRODUCTION

Manufactured homes have been a popular housing option in New York State for more than 70 years. Formerly called “mobile homes” or “house trailers,” manufactured homes have undergone significant changes in recent decades.

Since 1976, manufactured homes have been built to federal standards in the controlled environment of a factory. They are transported as complete homes or in sections on a permanent chassis that can be rapidly assembled. Moreover, while built on a chassis and (at least initially) transportable, many units never move from their original installation site. For these reasons, it has become misleading to refer to models constructed after 1976 as “mobile homes”. This publication instead uses the term “manufactured home” or “manufactured housing” when referring to a manufactured home built on a chassis. The term “mobile home” refers to pre-1976 models and is used only in historical contexts, such as used in older court decisions or statutes that continue to employ the term. They should also be distinguished from modular homes which, although assembled in a factory, do not have a permanent chassis and are constructed or installed at the building site in accordance with New York State law.

Manufactured homes continue to be an affordable housing option when compared to the price of site-built homes. Manufactured homes have changed in ways other than price competition. Technology has transformed the manufactured home from the pull-along trailer providing basic living space. The majority of manufactured homes now closely resemble or are indistinguishable from site-built homes. An added feature is that they may be installed easily and quickly, and they may require little or no interior finishing work prior to occupation. The quality and durability of manufactured homes has also greatly improved in recent decades to conform to federal and state construction requirements. This has made manufactured homes an affordable and attractive form of housing for many, on either individual lots or in parks. The purpose of this publication is to provide local governments with an overview of the issues surrounding this increasingly popular housing option. Before embarking upon an in-depth examination of manufactured home regulation by local governments as a land use, it is worthwhile to briefly discuss both Federal and New York State regulation of manufactured homes.

FEDERAL AND STATE REGULATION OF MANUFACTURED HOMES

Federal Manufactured Home Construction and Safety Standards Act

Congress adopted the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C.A. § 5403(d)) to regulate the construction and safety of manufactured housing. The next year, the Act was renamed and all references to “mobile homes” were changed to “manufactured homes”¹. The National Manufactured Housing Construction and Safety Standards Act defines a “manufactured home” as:

“...a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation² when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein...” [42 U.S.C. § 5402(6).]

Congress authorized the Department of Housing and Urban Development (HUD) to develop a nationwide construction code intended to reduce insurance costs and property damage, and to improve the quality and durability of manufactured housing. The “HUD Code” (24 CFR Part 3280) became effective July 15, 1976. Homes manufactured after that date must display a “HUD Seal” (data plate) to verify their proper construction. The federal Act and its implementing regulations do not prohibit local governments from regulating older manufactured homes that do not bear this data plate in a different manner than those required to display the plate.³

State Enforcement of Federal Construction and Installation Standards

The New York State Department of State has been designated as the state administrative agency (SAA) to work in cooperation with HUD in enforcing Federal manufactured housing rules. The Department of State works through its Division of Building Standards and Codes to perform two primary functions as the SAA. First, the Department “certifies” (licenses) installers, manufacturers, retailers, and mechanics of manufactured homes. Second, the Division receives and investigates consumer complaints alleging that a “substantial defect” exists in the delivered condition, installation, service or construction of manufactured homes and maintains a dispute resolution program with respect to such complaints.⁴ New York State Executive Law, Article 21-B, Title 1, § 601(7) definition of “manufactured home” mirrors the federal definition at 42 U.S.C. § 5402(6); the definition is set forth above.⁵

Manufactured Homes (mobile homes) vs. Factory Manufactured Homes (modular homes)

Not all housing constructed in a factory is considered “manufactured housing” subject to HUD regulations.⁶ A modular home, known in New York State as a “factory manufactured home”, is also constructed under controlled conditions in a manufacturing plant.



From a regulatory perspective, it is important to recognize the design differences. Manufactured homes (mobile homes) have minimum size specifications which are set forth in the HUD definition above and have a permanent chassis to which wheels are attached to tow the home to its site. The definition is intended to include single- and double-wide units.

By contrast, a “factory manufactured home” (i.e., a modular home) has no dimensional restrictions and is not built on a chassis. A factory manufactured home is considered a “building” under the New York State Uniform Fire Prevention and Building Code (Uniform Code) in the same manner as site-built housing.⁷ Factory manufactured homes (modular homes) are defined in Executive Law § 372(8) as:

“...a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.”

Factory manufactured homes are certified at the factory as meeting the construction requirements of the Uniform Code. Finished sections are transported to the building site on truck beds, then assembled by contractors at the site.



Local governments, through zoning, can regulate factory manufactured homes (modular homes) and manufactured homes (mobile homes). However, such zoning authority is not unlimited.⁸ Local governments cannot impose construction-related requirements on factory manufactured homes (modular homes) or manufactured homes (mobile homes), even if they call such construction-related requirements “zoning” provisions.

Manufactured homes must be installed in accordance with the applicable provisions of the Uniform Code. The Uniform Code requires, among other things, compliance with the manufacturer's installation instructions.⁹

The Division of Building Standards and Codes has found that the most prevalent Uniform Code problem encountered by manufactured home owners is improper installation. Local governments that are responsible for administration and enforcement of the Uniform Code are responsible for enforcement of the Uniform Code provisions relating to the proper installation of manufactured homes. This means that any local government that is responsible for administration and enforcement of the Uniform Code should require a person who wishes to install a manufactured home to apply for and obtain a building permit for such installation. The local government should review the plans and specifications submitted for the building permit and determine that the plans and specifications comply with the applicable provisions of the Uniform Code. The local government should inspect the site, and should perform inspections during the construction of the pad, piers, or other foundation on which the manufactured home will be installed to assure that the actual construction of such pad, piers, or other foundation complies with all applicable Uniform Code requirements. The local government must also perform all other inspections during and after installation as required to assure that the home has been properly installed, that all assembly (structural) connections of multi-sectional homes have been properly made, and that all utility connections have been properly made. In addition, the local government should require that the person or business entity installing the home is a duly certified by the Department of State as an installer of manufactured homes, and that both the manufacturer's warranty seal and installer's warranty seal have been attached to the home. Please note, however, that while a local government should check to make sure that the warranty seals have been attached, a local government cannot rely on the installer's warranty seal as proof that the home has been properly installed; the local government must perform its own inspections.

New York State Executive Law, Article 21-B, Title 2 (Chapter 425 of the Laws of 2015)

Title 2 of Article 21-B of New York State Executive Law became effective November 20, 2015 by Chapter 425 of the Laws of 2015 (hereinafter "Title 2"), and it places limits on local government regulation of manufactured homes.¹⁰ Section 616 of Title 2 expressly provides that a "manufactured home that is affixed to a permanent foundation and conforms with the identical development specification and standards, including general aesthetic and architectural standards, applicable to conventional, site-built single-family dwellings in the residential district in which the manufactured home is to be sited, shall be deemed to be a conforming single family dwelling for purposes of the applicable local zoning law or ordinance." Similar protections are extended to manufactured home parks pursuant to Section 617 of Title 2.

Title 2 uses the phrase "identical development specifications and standards", and the phrase has been defined to include "access, building setback distance, enclosures and vehicle parking space" (N.Y. Executive Law § 615(2).) Title 2 defines a "single-family dwelling" to mean "a building designed as a one-family residence and used or occupied, or intended to be used or occupied as the home or residence of one or more persons maintaining a household." (N.Y. Executive Law § 615(3).) Title 2 uses but does not define the phrase "permanent foundation."¹¹

As of August 2019, the Department of State is not aware of any reported court case that has interpreted Title 2.

State Agency Oversight of Manufactured Homes in Structural Hazard Areas

The New York State Department of Environmental Conservation (DEC) categorizes manufactured homes as “moveable structures” designed and constructed to be readily relocated with minimum disruption of their intended use. As such, whenever manufactured homes are placed in areas DEC has determined to be “structural hazard areas” (e.g., within designated areas of coastal erosion) they are subject to special State rules. [6 NYCRR § 505.2(x).¹²]

State Oversight of Manufactured Home Parks

The New York State Homes and Community Renewal (HCR) is authorized to enforce the provisions of Section 233 of the New York Real Property Law--the Manufactured Home Tenants’ “Bill of Rights”. This law protects manufactured home owners or tenants, located within manufactured home parks, from unfair practices by the park’s owner. HCR maintains a 24-hour telephone toll-free hotline for complaints relating to this law. The toll-free telephone number is (800) 432-4210. Additional information about filing a complaint may be obtained at: <https://hcr.ny.gov/mobile-manufactured-homes>.

Local governments may not restrict any right guaranteed under the Manufactured Home Tenants’ Bill of Rights.¹³ Similarly, local governments maintain jurisdiction to regulate the location, density, and dimensions of manufactured home sites and park sites through zoning, provided those regulations do not conflict with park owner/tenant relations under the Bill of Rights and are not otherwise preempted (see, e.g., Title 2 of Article 21-B of New York State Executive Law).

MUNICIPAL REGULATION OF MANUFACTURED HOMES

Although the power to regulate the construction and safety of manufactured homes lies with the Federal government, the authority to regulate them *as a use of land* remains the province of local governments. The location and siting of manufactured housing within the community is often addressed by local land use regulations. The question of whether and how to regulate manufactured housing is one that each community must decide based on the community’s comprehensive plan, which may be required to address existing housing resources and future housing needs including affordable housing.¹⁴

The regulation of manufactured housing has been held by the courts to bear a substantial relation to the “health, safety, morals and general welfare of the community.”¹⁵ Distinct regulation of manufactured homes has been justified as one way to ensure adequacy of potable water and waste disposal, environmental protection, police and fire protection, and other municipal functions that further the public’s health, safety, and general welfare. This requires a balancing of an individual’s interest in using his/her property, with the public’s interest both in providing affordable housing as well as in conserving resources and planning for future community development.

Local government authority to regulate the location, use and siting of manufactured housing derives from several sources. Most familiar are the zoning enabling statutes in New York State General City Law, Town Law, and Village Law, which may subject certain land uses to the special use permit review and approval process. There are also specific, free-standing statutes granting authority to regulate “mobile homes.” Manufactured housing developments, such as courts and parks, are commonly

regulated under subdivision review or site plan review regulations.

Zoning Authority

The decision to zone for manufactured housing parks must first be reflected in the community's comprehensive plan. The comprehensive plan must provide for balanced and well-ordered development in the community and must give proper regard to local and regional housing needs.¹⁶ Local zoning regulations (adopted by ordinance or local law) must afford an opportunity for the establishment of affordable housing consistent with the comprehensive plan. Manufactured homes can be an affordable housing option.

Although a local government is not required to maintain a “quantitative proportion” of affordable housing, the locality must consider the needs of the entire region in its comprehensive plan to ensure that all housing needs are and will continue to be met.¹⁷ Manufactured housing is often more affordable than site-built homes; accordingly, such housing may be identified as one way a community seeks to meet its comprehensive planning obligation to provide for affordable housing in the region.

Zoning is one land use tool of a city, town, or village seeking to implement its comprehensive plan that will substantially impact all surrounding communities. It is through zoning that a city, town, or village has the most influence over the location of housing, including modular and manufactured housing. Minimum lot sizes, minimum distances between units, square footage of living space, density in manufactured housing parks, height restrictions, setbacks, provision for parking, and other aspects, may all be specified. In establishing such zoning or other land use standards for access, building setback distance, enclosures, and vehicle parking space – otherwise known as the “identical specification and standards” in Title 2 of Article 21-B of New York State Executive Law – a local governing board must regulate subject to this statutory mandate: a “manufactured home that is affixed to a permanent foundation and conforms with the identical development specification and standards, including general aesthetic and architectural standards, applicable to conventional, site-built single-family dwellings in the residential district in which the manufactured home is to be sited, shall be deemed to be a conforming single family dwelling for purposes of the applicable local zoning law or ordinance.” (N.Y. Executive Law § 616.)

Some local governments have prohibited manufactured housing in certain residential zones, even where other forms of housing are allowed, in order to leave space for the expansion of conventional housing or site-built homes. But given the 2015 changes in statutory law, local regulations regulating manufactured homes differently from site-built homes and restricting them from zones in which other single-family dwellings can be constructed must do so subject to the provisions in Title 2 of Article 21-B of New York State Executive Law.

In addition to statutory law, case law explains that a local government may not entirely prohibit manufactured homes from the community. In the case of *Town of Pompey v. Parker*¹⁸, the court stated:

“A zoning ordinance which absolutely excludes the establishment of a mobile home within its boundaries would be unconstitutional because of the unreasonableness of the restrictions imposed.”

The concept of “regulation” implies the administration of reasonable rules, not outright prohibition. Courts have, therefore, held that any ordinance or local law that prohibits manufactured homes as a use from the entire community is unconstitutional and invalid.¹⁹ Going further, one court has held that a community may not prohibit the establishment of manufactured home parks, even if other provisions are made and allow for manufactured homes on individual lots.²⁰

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

Special Use Permits

A special use permit is a land use tool that may be used in the regulation of many uses, including manufactured and other types of housing. A special use permit authorizes a particular land use – a manufactured home park for instance – which zoning regulations permit in a zoning district, subject to requirements imposed by the zoning regulations to ensure that the proposed use is in harmony with the zoning and will not adversely affect the neighborhood if such requirements are met. Commonly, a local government empowers a local board, such as the planning board or zoning board of appeals, to decide on a case-by-case basis whether a particular parcel is appropriate for the siting of either an individual manufactured home or a manufactured home park. If the special use permit is granted, the applicant may place the unit, or the development, on the parcel, subject to reasonable conditions and restrictions designed to further the use’s compatibility with the neighborhood. Such conditions may include factors such as adequacy of waste disposal, drainage, parking, placement of the units on a permanent foundation, and other requirements reasonably related to health, safety and general welfare. Special use permit authority is found in all the municipal zoning enabling statutes in New York State Town Law, Village Law, and General City Law.²³

Free-Standing Authority²⁴

Town Law § 130 sets forth specific language authorizing the regulation of “[h]ouse trailer camps, tourist camps and house trailers”.²⁵ While the language of this statute is arcane, it may still be used as separate authority to regulate manufactured housing even if a town has not adopted zoning.²⁶

Another free-standing source of local government power to enact local laws regulating the siting of manufactured homes is Municipal Home Rule Law § 10, titled “General powers of local governments to adopt and amend local laws,” in the interest of advancing “[t]he government, protection, order, conduct, safety, health and well-being of persons or property therein.”²⁷

MANUFACTURED HOME PARKS

Section 617 of Title 2 of Article 21-B of New York State Executive Law (Chapter 425 of 2015) now provides that “[m]anufactured home parks may be established or existing parks expanded consistent with the provisions of this title and consistent with the identical development specification and standards, including general aesthetic and architectural standards, applicable to other single-family

dwelling developments in the local government in which the park is, or is to be, located”. The phrase “identical development specifications and standards” means and “includes access, building setback distance, enclosures and vehicle parking space.” (N.Y. Exec. Law § 615; see “identical development specification and standards” definition in § 615(2) and “single-family dwelling” definition in § 615(3).)

Since Title 2 of Article 21-B of New York State Executive Law (hereinafter “Title 2”) became effective and as of August 2019, the Department of State is not aware of any reported court case that has interpreted Title 2 and construed its impact on existing cases and opinions that have addressed the permissible bounds of local government regulation of manufactured housing located within designated developments often called parks. Previously, courts found it permissible for local governments to limit manufactured home uses strictly to manufactured home parks, owing to considerations such as: ease in the proper use of waste disposal systems, water supplies and electricity, placing less hardship on the local police and fire forces, and contributing to the conservation of municipal resources.²⁸ Courts recognized that manufactured home parks could be commercial businesses despite each of their residential nature.²⁹ Local governments could also, through zoning, limit manufactured homes and manufactured home parks to certain zones, consistent with a comprehensive plan.³⁰

In the past, these parks often suffered from poor design, overcrowding, and unhealthful conditions. If well designed, manufactured home parks can be healthful, attractive developments, providing an excellent quality of life for the residents. While the owners of such parks should be applauded for their efforts, the difference may also be the product of good planning at the municipal level.

Nationwide, in 2018, roughly 66% of all manufactured home owners lived on their own individually-owned lot, while about 34% rented a lot in a manufactured home park. Of the 93,000 homes produced in 2017, 34% were placed in subdivisions specifically laid out for manufactured homes.³¹ A parcel may be subdivided, with individual lots sold to manufactured home owners for placement of their homes. On the other hand, a parcel may remain in the ownership of one individual who rents out sites for manufactured home placement.

The two regulatory mechanisms of subdivision review and site plan review, which are available to local governments even where zoning does not exist, have been and should continue to be effective methods to address the challenges presented by manufactured home parks in local governments without zoning.

The full array of other regulatory authorities—zoning, special use permits, site plan review and free-standing authority, when utilized to address the development of manufactured home parks (or manufactured homes) in local governments with zoning, must now be exercised in accordance with applicable provisions of Title 2.

Subdivision Review

Where property is to be divided into lots, blocks, or sites, the local governing body in a town, village, or city may delegate to the local planning board the authority to review and approve subdivision plats. Town Law § 277, Village Law § 7-730, and General City Law § 33 each provides the requirements the local planning board may impose during the subdivision review process in a town, village, city,

respectively.³² The subdivision review process may be utilized in the review of manufactured home parks or developments, either with or without local zoning regulation. As part of the review process, the planning board has the authority to require the developer of a manufactured home park to install suitable roads, signs, street lighting, curbs, gutters, parks, sidewalks, paving, street trees, water mains and other amenities necessary to a quality development and way of life--although not all of these will be necessary or appropriate in a given situation.

One court has stated:

“Subdivision control is aimed at protecting the community from an uneconomical development of land, and assuring persons living in an area where the subdivision is sought that there will be adequate streets, sewers, water supply, and other essential services...”³³

Although the subdivision enabling statutes are quite specific and could alone form the basis for conducting subdivision review, the local government may adopt its own additional subdivision review regulations that are consistent with (though perhaps more detailed than) State law.

Manufactured Home Parks

When drafting regulations for site plan review of manufactured home parks, the local governing board should specify all relevant factors for the reviewing board to consider, including:

Regional and local environs

Relationship to comprehensive plan
Compatibility with surroundings
Accessibility
- pedestrian
- biking
- automobile
- trucking
- public transportation
Environmental impact
- air, water, noise
Facilities and services availability
Visual compatibility
Historic and archaeologic considerations

Natural features

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

Site Plan Review

Where a tract of land is to remain in single ownership, but sites are to be rented out for individual home placement, a local government may wish to review the entire development under its site plan review authority. Site plans depict the intended arrangement, layout and design of development on a single parcel of land. It is a land use tool that is specifically authorized in state law in Town Law § 274-a, Village Law § 7-725-a, and General City Law § 27-a.

Site plan review can be made a part of the zoning regulation or can be adopted as a separate law. Importantly, local site plan regulations must list the elements to be included in site plans submitted for review. The governing board may delegate the actual review and approval function to an appointed body such as the planning board or zoning board of appeals, or it may retain the review and approval function itself.³⁴

The site plan statutes allow the reviewing body to impose reasonable conditions and restrictions related to the proposed site plan. Many of the problems (such as contaminated water sources and overburdened septic systems) that have plagued manufactured home parks, and for which they were criticized in the past, can be addressed through this review process.

The site plan approval process allows the local board to review the siting of a manufactured home on a parcel of land based on certain standards, such as its location on the lot, connection to utilities, location of driveways and accessory structures, and other elements related to the development of the property for the proposed use. Through site plan review, the locality may exercise greater control over the impacts of a manufactured home park on the community, while providing future tenants with desirable living conditions.

OTHER CONSIDERATIONS ABOUT MANUFACTURED HOME REGULATION

Local Governments May Not Entirely Prohibit Based on Lack of Consent of Neighbors

A type of municipal regulation that has been invalidated is the requirement for the consent of neighbors or adjoining property owners as a condition of approval of the proposed location of a manufactured home or manufactured home park. Since neither use is a general nuisance, it is impermissible for local governments to require the approval of neighboring landowners for their establishment.³⁵

Manufactured Homes as Farm Worker Housing

The New York Department of Agriculture and Markets has expressed concern that restrictions on manufactured homes may adversely impact agricultural operations in the State because manufactured homes are often the only housing available for farm workers. (See the Department of State/Department of Agriculture and Markets publication, *Local Laws and Agricultural Districts: How Do They Relate?* at:

<https://www.dos.ny.gov/lg/publications/Local%20Laws%20and%20Agricultural%20Districts.pdf>.)

ASSESSMENT AND TAXATION OF MANUFACTURED HOMES

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

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

MANUFACTURED HOMES AS NONCONFORMING USES

In many instances, manufactured homes and manufactured home parks were located on a site before zoning or other applicable regulations or local laws were enacted, and the homes and parks may well have become lawful nonconforming uses at their location. Generally, this means they are allowed to remain, provided they are not abandoned or destroyed. It has, however, been held lawful for a city, town, or village to phase out lawful nonconforming uses, provided a reasonable amortization period is allowed.³⁷

In order to be nonconforming, a use must actually be established before the enactment of any legislation that would otherwise regulate or prevent it. Moreover, mere *contemplation* of a use will not confer nonconforming status. For example, where a parcel of land was purchased for placement of a manufactured home, but the town enacted a minimum lot size requirement before the home was installed, it was held that a nonconforming use was not established.³⁸

Elimination of Nonconforming Manufactured Home

Two common methods to address and achieve the elimination of nonconforming uses appear frequently in local zoning laws. The first provides that if any nonconforming use is not active for a specified period (most commonly one year), it is deemed abandoned and may be resumed only with permission from the local government. The second method provides that destruction beyond a certain percentage of the building itself, or of its monetary value (commonly 50% or more) will require any further use of the land to conform with permitted zoning uses and regulations. Both of these approaches have been upheld by courts.

A town’s law providing for the loss of a manufactured home park’s nonconforming status upon abandonment of the use for over three years was upheld as valid.³⁹ The common law right to maintain a nonconforming use applies only to that portion of the land actually occupied by the use as originally configured.

A third approach is that of amortization, followed by termination of the use. While the mandated phase-out of an ongoing use of land is almost always a controversial matter, amortization has been upheld by the courts where it is shown to comport with a validly-adopted comprehensive plan. It allows a local government to place a present limit on the length of time a landowner is entitled to continue a nonconforming manufactured home use. At the end of the given time the use must end or the owner will be in violation of the governing local law.

Amortization is constitutionally valid because it provides for a time period to allow owners to recuperate the value of their investment, while at the same time promoting community development in furtherance of the comprehensive plan. In addition, once the nonconforming use itself terminates, the owner still has the right to use the land for any use allowed under the applicable zoning. While the period of time must be reasonable and will depend on original investment as well as ongoing manufactured home values in a given community, one court has decided that three years was too short an amortization period for the phasing out of a nonconforming manufactured home park.⁴⁰

Owners of nonconforming manufactured home parks may at times want to expand the use. Some municipal zoning regulations contain provisions that allow for the enlargement of these nonconforming uses. For example, the owner of a nine-unit nonconforming manufactured home park wanted to enlarge the park to 23 units, but the proposal was held to constitute an illegal extension of a nonconforming use under the local government's regulations.⁴¹ While expansion of nonconforming uses is prohibited in many local enactments, the replacement of individual manufactured home units is commonly permitted.

The provisions in zoning local laws and other regulations that regulate nonconforming manufactured homes or parks must comply with applicable provisions in federal and state laws like Title 2 of Article 21-B of New York State Executive Law. Additional discussion on Title 2 is available in earlier sections of this publication.

CONCLUSION

Manufactured homes are an important form of affordable housing that may be desired by many members of a community. Manufactured homes are fairly regulated in federal law like 42 U.S.C. § 5401 *et. seq.* and in state law like Title 2 of Article 21-B of New York State Executive Law, and local governments may impose reasonable zoning and other regulations for the benefit of residents and others if the regulations are not prohibited by federal or state laws. Such reasonable local regulations can, and should, further the community's planning goals and policies, protect community character, and improve quality of life.

Endnotes

1. In 1975, Congress passed the Housing and Community Development Act of 1980 (Public Law 96-399) which substituted the terms “manufactured housing” for the terms “mobile home” in all relevant sections of the law. This federal law is not called the “National Manufactured Housing Construction and Safety Standards Act”.
2. Requirements for “permanent foundations” are located in 24 CFR § 3282.12.
3. Local governments are now required to comply with New York State Executive Law, Article 21-B, Title 2, when regulating the location of structure meeting the definition of a “manufactured home”. Prior to passage of Title 2 in 2015 (by Chapter 425), the case of *Rivers v. Corron*, 160 Misc. 2d 968 (Sup. Ct., Clinton Co., 1993), held that if a “pre-seal” home could pass required state and local structural, electrical, and other inspection, the home must be allowed on any site where similarly-sized HUD certified homes are allowed.
4. A “substantial defect” is defined as “a defect or a number of defects or other conditions which collectively can reasonably be expected to cost five hundred dollars or more to cure.” See Executive Law § 605(1).
5. New York State Executive Law, Article 21-B, Title 2, § 601 (7) states as follows: “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term shall include any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States code; and except that such term shall not include any self-propelled recreational vehicle.

The National Manufactured Home Construction and Safety Standards Act in 42 U.S.C.A. § 5402(6) states: “manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle;

6. Modular homes are not required to have HUD Certification Labels (24 CFR § 3280.11), data plates (24 CFR § 3280.5), or to otherwise comply with standards established by the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. § 5401 et seq.). In

New York State, modular homes (or “factory manufactured homes”) must have a certification issued through New York Department of State Division of Building Standards and Codes, which is the state licensing agency that documents compliance with New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Construction Code.

7. A “mobile home” (as defined in Executive Law, Article 18, §372) is also considered to be a “building” for the purposes of the Uniform Code.

Executive Law §372(3) defines “building” as “a combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word ‘building’ shall be construed when used herein as though followed by the words ‘or part or parts thereof’ unless the context clearly requires a different meaning. The term ‘building’ shall also mean ‘factory manufactured home’ and ‘mobile home.’ The term ‘building’ shall not include a ‘temporary greenhouse.’

Executive Law §372(13) defines “mobile home” as “a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. ‘Mobile home’ shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.”

8. Courts have opined that a manufactured home (mobile home) cannot be converted into a single-family home simply by “removing the vehicle’s mobile transportation apparatus and affixing it to the land”, see, for example, the case of *Village Bd. of Trustees of Village of Malone v. Zoning Bd. of Appeals of Village of Malone*, *supra*, 164 A.D.2d at 27.
9. Any local government that wishes to impose higher installation standards must comply with the requirements of Executive Law § 379, which requires adoption of a local law or ordinance imposing such higher standards; giving the New York State Fire Prevention and Building Code Council (the Code Council) due and timely notification of the adoption of such local law or ordinance; petitioning the Code Council for “adoption” (approval) of such higher standards; and establishing to the satisfaction of the Code Council that such higher standards are reasonably required because of special conditions that exist within the local government and that such higher standards conform with accepted engineering and fire prevention practices and the purposes of Article 18 of the Executive Law. Such higher standards cannot be enforced until and unless they are “adopted” (approved) by the Code Council.
10. *But see, In People v. Clute*, 18 N.Y.2d 999 (1966), where the Court of Appeals upheld the constitutionality of a zoning regulation that distinguished “mobile homes” from site-built housing. See also *Town of Pompey v. Parker*, 53 A.D.2d 125 (4th Dept. 1976) *aff’d* 44 N.Y.2d 805 (1978); *Village Bd. of Trustees of Village of Malone v. Zoning Bd. of Appeals of Village of Malone*, 164 A.D.2d 24 (3rd Dept. 1990) (“Although a mobile home is certainly capable of use as a dwelling, it is not a single-family dwelling as that term is used in the Village Code and is not a permitted use in a residential district.”)

11. Requirements for “permanent foundations” are located in 24 CFR § 3282.12.
12. New York State Coastal Erosion Hazard Areas Act regulations, in 6 NYCRR § 505.2(x), actually uses the term “mobile homes” rather than “manufactured homes” or “manufactured housing” as follows:

Moveable structure means a structure designed and constructed to be readily relocated with minimum disruption of intended use. Mobile homes and structures build on skids or piles and not having a permanent foundation are examples of movable structures.

13. *Ba Mar Inc., v. County of Rockland*, 164 A.D.2d 605 (2nd Dept., 1991).

The New York State Attorney General, in Informal Opinion 96-30, held that the Bill of Rights does not preclude local governments from requiring manufactured home parks to undergo site plan review. It should be noted that Opinion 96-30 was rendered prior to enactment of N.Y. Executive Law, Article 21-B, Title 2 in 2015.

14. *Town of Huntington v. Transon*, 43 Misc.2d 912 (Sup. Ct., Suffolk Co., 1964). See also, General City Law § 28-a; Town Law § 272-a; Village Law § 7-722.
15. *Corning v. Town of Ontario*, 204 Misc. 38 (Sup. Ct., Wayne Co., 1953).
16. *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121 (1988)
17. *Berenson v. Town of New Castle*, *supra*.
18. 53 A.D.2d 125, 127 (4th Dept., 1976), *aff’d* 44 N.Y.2d 805 (1978).
19. *Town of Pompey v. Parker*, *Id.*, 44 N.Y.2d 805, citing *Dowsey v. Village of Kensington*, 257 N.Y. 221, 230 (1931) and Town Law § 130(21), *supra*.

20. *Koston v. Town of Newburgh*, 45 Misc.2d 382 (Sup. Ct., Orange Co., 1965).

21. *Blachly v. Harris*, 125 A.D.2d 467 (2nd Dept. 1986), *mot. for lv. to app. den.*, 72 N.Y.2d 803 (1988).

22. *Osetek v. Barone*, 60 Misc.2d 980 (Sup. Ct., Orange Co., 1968), *aff’d.*, 35 A.D.2d 910 (2nd Dept., 1970).

But see, New York State Executive Law, Article 21-B, Title 2 (or Chapter 425 of the Laws of 2015), may impose limits on local government regulation of “manufactured home” through zoning.

23. General City Law § 27-b; Town Law § 274-b; Village Law § 7-725-b.

24. Local governments regulating manufactured homes or parks under any of these freestanding authorities together with the authority granted in New York State Planning and Zoning Enabling Statutes must consider whether the newly-enacted Title 2 of Article 21-B of the Executive Law

prohibits the regulation of manufactured housing that the local government seeks to adopt.

25. Town Law § 130(21) confers authority to a town to regulate as follows: “House trailer camps, tourist camps and house trailers. Regulating house trailer camps, tourist camps or similar establishments; requiring approval of suitable plans for house trailer camps and tourist camps and prescribing regulations therefor including provision for sewer connection, water supply, toilets, bathing facilities, garbage removal, registration of occupants, inspection of camps.

The town board may either adopt the provisions of the sanitary code established by the public health council or may formulate other rules and regulations relating to house trailer camps, tourist camps or similar establishments not inconsistent with the provisions of such state sanitary code. Regulating the parking, storage or otherwise locating of house trailers when used or occupied as living or sleeping quarters in any part of the town outside an established house trailer camp, tourist camp or similar establishment; providing time limits on duration of the stay of such house trailers and requiring registration of such house trailers when so used.”

26. *Hill v. Town of Elbridge Zoning Bd. of Appeals*, 112 A.D.2d 45 (4th Dept. 1985)

27. Section 10 of New York State Municipal Home Rule Law provides, in part:

“1. In addition to powers granted in the constitution, the statute of local governments or in any other law,...(ii) every local government, as provided in this chapter shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:...

(11) The protection and enhancement of its physical and visual environment.

(12) The government, protection, order, conduct, safety, health and well-being of persons or property therein.”

28. *People v. Clute*, 47 Misc.2d 1005 (County Ct., Washington Co., 1965).

29. *Hansen v. Ponticello*, 37 A.D.2d 892 (3rd Dept., 1971); *Jewel Equities Corp. v. Town of Amenia*, 114 A.D.2d 353 (2nd Dept., 1985).

30. Id.

31. Source: *2018 Manufactured Housing Facts: Industry Overview*, Manufactured Housing Institute, pub.

32. General City Law § 32; Town Law § 276; Village Law § 7-728.

33. *Marx v. Zoning Board of Appeals of the Village of Mill Neck*, 137 A.D.2d 333, 336 (2nd Dept., 1988).

34. For site plan review authority in general, see General City Law § 27-a; Town Law § 274-a; Village Law § 7-725-a.
35. *Town of Gardiner v. Stanley Orchards, Inc.*, 105 Misc.2d 460 (Sup. Ct. Ulster Co. 1980) *Bashant v. Walter*, 78 Misc.2d 64 (Sup. Ct., Oneida Co., 1974), citing *Concordia Collegiate Inst. v. Miller*, 301 N.Y. 189 (1950).
36. See *N.Y. Mobile Homes Association v. Steckel*, Id.
37. See *Harbison v. City of Buffalo*, 4 N.Y.2d 553 (1958); *People v. Miller*, 304 N.Y. 105 (1952).
38. *Berchielli v. Zoning Board of Appeals of the Town of Westerlo*, 202 A.D.2d 733 (3rd Dept., 1994), mot. for lv. to app. den., 83 N.Y.2d 757 (1994).
39. *Town Board of the Town of Southampton v. Credidio*, 21 A.D.3d 547 (2nd Dept., 2005). See also *Matter of Pelham Esplanade, Inc. v. Board of Trustees of the Village of Pelham Manor*, 77 N.Y.2d 66 (1990) (destruction beyond a given percentage of value).
40. *Ouimet v. Frasier*, 240 A.D.2d 906 (3rd Dept., 1997).
41. *Cave v. Zoning Board of Appeals of the Village of Fredonia*, 49 A.D.2d 228 (4th Dept., 1975), mot. for lv. to app. den., 38 N.Y.2d 710 (1976).