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Zoning Restrictions Applied to Mobile Homes

Byron D. Van Iden*

RECENT POPULATION INCREASES, coupled with the apparent inability of the United States housing industry to overcome problems of tight money, galloping costs, and labor shortages, have resulted in a serious undersupply of new single family dwellings in the low to middle price ranges.¹ These conditions have caused rapid expansion of the mobile home industry.² Derived from this is a demand for more mobile home parks,³ whose expansion has been frustrated by public pressure, municipal policies, and zoning restrictions which attempt to keep mobile homes and mobile home parks out of a given area.

The owner of an existing mobile home park (frequently operating as a nonconforming use) faces the same obstacles to expansion as the developer of a new park. It is the thesis of this paper that a municipality may not prevent expansion of an existing mobile home park (in the absence of a clear showing that to do so is necessary to promote the public health, safety, or welfare) by excluding mobile home parks from the zoning resolution, and through statutory limitations on the expansion of nonconforming uses. After examining treatment by the courts of regulating and excluding mobile home parks, several possible approaches will be shown for the mobile home park developer to use in overcoming these zoning restrictions.

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¹ To achieve Congress' goal of a decent home and suitable living environment for every American family we must build 26 million new units every year for the next ten years. Operation Breakthrough, Questions and Answers, U.S. Department of Housing and Urban Development, p. 1, June 1970.

² U.S. Housing Cure: Buy Mobile Homes; Cleveland *Plain Dealer*, p. 1 (April 2, 1970). The Nixon Administration has gone on record in support of Mobile homes as a partial solution to the housing shortage, stating that mobile homes provide the easiest way for nearly half of all American families to meet their housing needs, and that mobile homes will be counted in the future when the government reports on progress toward solving the housing crisis.

According to the Mobile Homes Manufacturers Association, 6650 Northwest Highway, Chicago, Illinois, 60631, over 400,000 units were produced in 1969, nearly double the amount of 1966. It has been predicted that in 1970 one in every two single family homes sold in the United States will be a mobile home. They now account for over 90% of all new single-family homes under \$15,000. Mobile Home Sales Roll Toward \$3-Billion, *Business Week*, p. 74, January 24, 1970.

According to *Fortune Magazine*, the current rate of expansion for the mobile home industry is 30% per year; the average unit sells for about \$6,000 with furnishings. Mayer, *Mobile Homes Move into The Breach*, p. 126, March, 1970.

³ During 1969 only 118,000 new park sites were created, although over 400,000 new mobile homes were sold. *Fortune*, *op. cit. supra* n. 2.

Regulating Mobile Homes by Zoning

The mobile home industry of 1970 is derived from the house-trailer industry that supplied temporary living quarters in the 1930's and immediately following World War II. That industry was typified by cramped quarters and sordid trailer parks, occupied essentially by migrant workers. These conditions led to legislation which attempted to establish standards as a check to the seemingly inherent dangers to mobile homes, and are largely responsible for the poor public image of mobile home parks today.

A municipality may, under its police power,⁴ regulate and restrict mobile homes.⁵ The right to regulate depends upon the particular statute.⁶ Any regulation thereunder which reasonably promotes the health, morals, safety, or general welfare of the community will be sustained.⁷ Where a trailer park can not be prohibited because it enjoyed a nonconforming use it is still subject to reasonable regulation.⁸ Illinois has gone so far as to rule that its communities have virtually a free hand in dealing with mobile home parks.⁹

Regulation of trailer camps by zoning restrictions must be tempered by reasonableness, which becomes the test of its constitutionality.¹⁰ Various forms of licensing and permit restrictions have been reviewed

⁴ *Cliff v. Board of Health*, 342 Mass. 781, 175 N.E. 2d 489 (1961).

⁵ *Huff v. City of Des Moines*, 244 Iowa 89, 56 N.W. 2d 54 (1952); *Davis v. McPherson*, 164 Ohio St. 375, 130 N.E. 2d 794 (1955); *Inhabitants of York Harbor Village Corp. v. Libby*, 126 Me. 537, 140 A. 382 (1928); *Stevens v. Royal Oak Township*, 342 Mich. 105, 68 N.W. 2d 787 (1955); *Smith v. Building Inspector for Plymouth Township*, 346 Mich. 57, 77 N.W. 2d 332 (1956); *Gust v. Canton Township*, 342 Mich. 436, 70 N.W. 2d 772 (1955); *Clark v. Joslin*, 348 Mich. 173, 82 N.W. 2d 433 (1957); *City of Manchester v. Weber*, 100 N.H. 409, 128 A. 2d 924 (1957); *Town of Manchester v. Phillips*, 343 Mass. 592, 180 N.E. 2d 333 (1962); *Harriman v. Kabinoff*, 243 N.Y.S. 2d 210, 40 Misc. 2d 387 (1963); *State v. Hess*, 50 Ohio L. Abs. 129, 76 N.E. 2d 300 (1947).

⁶ *Clark v. Joslin*, *supra* n. 5. Municipal powers are derived from the state, either from the legislature or state constitutional authority to enact a zoning ordinance. 1 *Yokley, Zoning Law and Practice*, 35 (3d Ed., 1967). Once given an enabling act by the state, the municipal zoning ordinance must not exceed the bounds of necessity for the public welfare, or it will be stricken as an unconstitutional invasion of property rights. *Burritt v. Harris*, 172 S. 2d 820 (Fla. 1965).

⁷ *Commonwealth v. Amos*, 44 Pa. D. & C. 125 (1941).

⁸ *Rutland v. Keiffer*, 124 Vt. 357, 205 A. 400 (1964).

⁹ *Rezler v. Village of Riverside*, 28 Ill. 2d 142, 190 N.E. 2d 706 (1963).

¹⁰ A property owner's right to make legitimate use of his land may not be reduced by unreasonable restrictions under the guise of police power. *Burrit v. Harris*, *supra* n. 6. The extent to which property rights must yield to the police power is determined by a weighing of the private loss against the public benefit. *Fiore v. Highland Park*, 76 Ill. App. 2d 62, 221 N.E. 2d 323 (1966). Where zoning classification rendered property valueless for many years, without valid relationship to issues of public welfare, health, or safety, it resulted in a complete taking or condemnation of the property without compensation, and was unlawful. *Pearce v. Village of Edina*, 263 Minn. 553, 118 N.W. 2d 659 (1962).

by the courts; they are generally upheld,¹¹ except when shown to be arbitrary and unreasonable.¹²

Municipalities frequently exclude mobile homes from their definition of detached one-family dwellings.¹³ Courts have upheld this, even when the mobile home is rendered immovable because of its purchase without wheels and is attached to a permanent foundation,¹⁴ though there are some decisions holding otherwise.¹⁵ Having thus classified them separately, they are usually confined to certain zones while being kept from others.¹⁶ Provisions restricting occupied mobile homes to established mobile home parks are generally upheld, unless in the absence of a comprehensive zoning plan.¹⁷ This has been held true even in a case where the statute restricted mobile homes to established mobile home parks, and there were none. The court held that a municipality was under no duty to provide a mobile home park.¹⁸ Mobile

¹¹ Operator of a mobile home park was required to file a plan of the park before a permit to operate it could be issued. This was held reasonable to safeguard the public health for proper sanitary conditions. *Cloverleaf Trailer Sales Co. v. Pleasant Hills*, 366 Pa. 116, 76 A. 2d 872 (1950).

Ordinance held unconstitutional which barred construction or operation of mobile home park without first securing written permission from town and complying with regulations. *People v. Stewart*, 204 Misc. 490, 122 N.Y.S. 2d 843 (1953). Held valid an ordinance which required park operator to pay annual and weekly license fees, required park to be located on well-drained site, required park sewage system and treatment plant, did not permit mobile homes to remain in park more than 70 days. *Karen v. East Haddam*, 146 Conn. 720, 155 A. 2d 921 (1959). License ordinance upheld in the absence of evidence concerning expense involved in regulating mobile home park business. License fee was \$500.00. *Chicago v. Scholl*, 2 Ill. 2d 90, 116 N.E. 2d 872 (1954). Upheld license fee of \$200.00 per year, plus \$1 per week per trailer parked for 3 days or less, and \$2 per week per trailer parked for a longer period. These fees held not prohibitory or confiscatory. *Bellington v. East Windsor Township*, 17 N.J. 558, 112 A. 2d 268 (1955).

¹² Held unconstitutional statute requiring permit for operation of mobile home park in county of specified population density, where only one county had such density. *County Board of Supervisors v. American Trailer Co.*, 193 Va. 72, 68 S.E. 2d 115 (1951). Plaintiff's property was located in primarily commercial area, the city nevertheless zoned it as residential. Held arbitrary and discriminatory and invalid, since licenses were granted to others similarly situated. *Eau Gallie v. Holland*, 98 S. 2d 786 (Fla. 1957). Area zoned commercial to the exclusion of luxury mobile home park. Was arbitrary and unreasonable, where such zoning bore no substantial relation to public health, safety, morals, or general welfare. *Hillsborough County v. Twin Lakes Mobile Homes Village, Inc.*, 154 S. 2d 64 (Fla. App. 1963). Licensing provision of zoning ordinance was held invalid, where no state enabling statute was provided for it. *Tomlinson v. Marion County Plan Comm.*, 234 Ind. 88, 122 N.E. 2d 852 (1954). See also, 22 A.L.R. 2d 775.

¹³ *Zullo v. Board of Health*, 9 N.J. 431, 88 A. 2d 625 (1952).

¹⁴ *Manchester v. Phillips*, *supra* n. 5.

¹⁵ *Morin v. Zoning Board of Review of Lincoln*, 102 R.I. 762, 232 A. 2d 393 (1967); *Douglas v. Badman*, 206 Pa. Super. 725, 213 A. 2d 88 (1965); *State v. Work*, 449 P. 2d 806 (Wash. 1969).

¹⁶ *Wilson v. Kunstmann*, 7 Wis. 2d 387, 96 N.W. 2d 709 (1959); *Wright v. Michaud*, 160 Me. 164, 200 A. 2d 543 (1964). *Davis v. McPherson*, *supra* n. 5. For other cases see, *Yokley*, *op. cit. supra* n. 6, §§ 28-71, pp. 381-382.

¹⁷ *People v. Clute*, 47 Misc. 2d 1005, 263 N.Y.S. 2d 826 (1965).

¹⁸ *Napierkowski v. Gloucester Township*, 28 N.J. 481, 150 A. 2d 481 (1959).

home parks frequently have been excluded from residential areas.¹⁹ Other local ordinances confining them to, or keeping them out of, commercial, industrial, or agricultural areas, similarly have been upheld.²⁰

Municipal regulation of mobile home parks must not conflict with state regulation.²¹ The mere existence of a state statute providing for state regulation does not supersede authority of municipalities, when municipal power is expressly authorized and there is no justification for supposing that state regulation should preclude municipal regulation.²² However, where the legislature expressly permitted operation of a trailer park, a township could not, without express legislative authorization, suppress them.²³ Mobile home parks have been held to so affect the public interest as to be a proper subject for police power regulation in the areas of: access to public streets,²⁴ minimum floor area requirements,²⁵ sanitation and registration of mobile home parks and guests,²⁶ proximity of mobile homes to lot lines, street lines, and buildings; maximum number of mobile homes on a lot; maximum number of occupants, etc.²⁷ Decisions in this area vary extensively among jurisdictions.²⁸ One Kentucky case held that impact of a busy highway on abutting lands without regard for other considerations was insufficient to justify rezoning from residential to commercial use;²⁹ another Kentucky case held that inadequacy of streets leading to property, overcrowding of city schools by reason of number of persons occupying it, was insufficient to authorize a holding that a mobile home park

¹⁹ *Stevens v. Royal Oak Township*, *supra* n. 5. Townships have a right to exclude mobile home parks from residential districts by reasonable provisions in zoning ordinances. Exclusion from residential areas is associated with the health, safety, morals, and general welfare of the community. *Corning v. Ontario*, *supra* n. 11.

²⁰ Prohibited in agricultural or residence districts. *Stevens v. Smolka*, 202 N.Y.S. 2d 783 (1960); Excluded from industrial area, *June v. Lincoln Park*, 361 Mich. 95, 104 N.W. 2d 792 (1960); Permitted in commercial zone. *Huff v. Des Moines*, *supra* n. 5; Permitted in agricultural district. *Colt v. Bernard*, 279 S.W. 2d 527 (Mo. App. 1955); Held unconstitutional forbidding them in agricultural districts while permitting them in commercial or industrial districts. *Stevens v. Stillman*, 186 N.Y.S. 2d 327 (1959).

²¹ *Stacy v. Brooklyn*, 162 Ohio St. 120, 121 N.E. 2d 11 (1954); *Kremers v. Alpine Township*, 355 Mich. 563, 94 N.W. 2d 840 (1959), where township zoning ordinance conflicted with State Trailer Coach Park Act; *Howell v. Kaal*, 341 Mich. 585, 67 N.W. 2d 704 (1954). Ordinance prohibiting mobile homes from residential-agricultural area did not conflict with state statute regulating mobile homes, since the ordinance did not attempt to license, regulate, or prohibit mobile home parks.

²² *Supra* n. 9.

²³ *Gust v. Canton Township*, 337 Mich. 137, 59 N.W. 2d 122 (1953).

²⁴ *Windsor v. Lone Development Co.*, 109 Ohio App. 131, 158 N.E. 2d 391 (1958).

²⁵ *Corning v. Ontario*, 204 Misc. 38, 121 N.Y.S. 2d 288 (1953); *Huntington v. Transon*, 43 Misc. 2d 912, 252 N.Y.S. 2d 576 (1964); *Kimsey v. Rome*, 84 Ga. App. 671, 67 S.E. 2d 206 (1951).

²⁶ *Manchester v. Webster*, *supra* n. 5.

²⁷ *Southport v. Ross*, 202 Misc. 766, 109 N.Y.S. 2d 196 (1960).

²⁸ For other jurisdictional differences see, 22 A.L.R. 2d 774-802.

²⁹ *Barone v. Township of Bridgewater*, 45 N.J. 224, 212 A. 2d 129 (1965).

would be a public nuisance.³⁰ A California decision prevented an existing mobile home park operator from constructing additional sanitary facilities, because an ordinance prohibited any increase in the size of buildings on property being used for a trailer court.³¹ A Georgia court cited the congestion inherent in mobile home parks, together with uncertainty regarding essential utility facilities and the transitory nature of occupants, as sufficient reason to sustain a county ordinance requiring mobile home parks to be more than 1,200 feet from any school ground or college campus.³² Extra-territorial zoning has been sustained in application to mobile home parks, in the absence of a showing of a valid nonconforming use or accrued vested rights.³³

Municipalities may be authorized by the state legislature to regulate the number and population of mobile home parks to the point where the municipality can tolerate problems presented by these parks. This is particularly true as applied to limiting the number of mobile home spaces in a mobile home park in a school district.³⁴ In Michigan, a residential zoning ordinance preventing expansion of a mobile home park to an adjoining lot was held invalid because the lot could not foreseeably be developed for residential use;³⁵ and the same conclusion was reached by an Illinois court where the subject property was landlocked by an existing mobile home park and was situated in a non-residential area.³⁶

Mobile Home Park Operating as a Nonconforming Use

A mobile home park which enjoys a nonconforming use is subject to a particular type of regulation.³⁷ In addition to the stringent restrictions placed on mobile home parks through the general zoning resolution, a municipality may further restrict them by giving them status as a nonconforming use, and then severely restrict the expansion of nonconforming uses. These provisions are generally upheld, since it is the policy of the law to be against extension or enlargement of nonconforming uses.³⁸

³⁰ *Schneider v. Wink*, 350 S.W. 2d 504 (Ky. 1961).

³¹ *Edmonds v. Los Angeles County*, 40 Cal. Rptr. 2d 642, 255 P. 2d 772 (1953).

³² *Hornstein v. Lovett*, 221 Ga. 279, 144 S.E. 2d 378 (1965).

³³ *Farner v. Weston*, 263 N.C. 487, 139 S.E. 2d 642 (1965).

³⁴ *Yorkville v. Fonk*, 3 Wis. 2d 371, 88 N.W. 2d 319 (1958), *appeal dismissed* 358 U.S. 58 (1958).

³⁵ *Dequindre Development Co. v. Charter Township of Warren*, 359 Mich. 634, 103 N.W. 2d 600 (1960).

³⁶ *Kuiken v. County of Cook*, 23 Ill. 2d 378, 178 N.E. 2d 338 (1961).

³⁷ *Grant v. Baltimore*, 212 Md. 301, 129 A. 2d 363 (1957) reviews the problem of the nonconforming use as it has developed since the inception of zoning.

³⁸ *Crane v. Board of County Commissioners*, 175 Nev. 568, 122 N.W. 2d 520 (1963); *State v. Szymanski*, 24 Conn. Supp. 221, 189 A. 2d 514 (1962). See also, 87 A.L.R. 2d

(Continued on next page)

In determining the validity of zoning ordinances applied to exclude trailer parks, the courts consider whether the mobile home park exists as a vested property right. When the owner of a mobile home park has established a park prior to the enactment of a zoning regulation prohibiting such use, he has been held to have a vested right therein, which cannot be terminated by the zoning ordinance.³⁹ This does not, however, prevent the municipality from zoning unused portions of ground for other than mobile home park uses, even where the parcels are both owned by the same person.⁴⁰ A question frequently arises in determining to what extent a mobile home park must have existed prior to the enactment of a zoning resolution to qualify as a vested right. A mere contemplated use, as opposed to actual use, will not qualify as a vested right.⁴¹ It is necessary to incur substantial liabilities, or undertake substantial construction on the site.⁴² Merely grading and clearing land in preparation for a mobile home park has been held insufficient in Nebraska,⁴² but sufficient in Ohio.⁴³

The general policy of the law is to abolish nonconforming uses as speedily as justice permits.⁴⁴ Mobile homes and mobile home parks have thus been held not to enjoy a nonconforming use when that use has been abandoned.⁴⁵ In California the operators of a mobile home park as a nonconforming use had accepted the benefits of an exception which permitted them to add thirty additional trailers for three years upon the condition that the entire nonconforming use would be abandoned at the end of that time. The court held the operators bound thereby under the theory of promissory estoppel.⁴⁶

In attempting to enlarge a mobile home park which operates a nonconforming use, the operator is frequently confronted with zoning

(Continued from preceding page)

16 for other cases holding that the policy of the law is against extension or enlargement of nonconforming uses. Babcock, *The Zoning Game*, p. 4 (U. of Wis. Press, 1966), the primary purpose of all zoning is the insulation of the single-family detached dwelling, to protect the homogeneous, single-family suburb from the city.

³⁹ *Jensen's Inc. v. Killingworth*, 152 Conn. Supp. 237, 206 A. 2d 114 (1964); *Village of Skokie v. Almendinger*, 5 Ill. App. 2d 522, 126 N.E. 2d 421 (1955); *James v. Greenville*, 227 S.C. 565, 88 S.E. 2d 661 (1955); *Bane v. Pontiac Township*, 343 Mich. 481, 72 N.W. 2d 134 (1955). *Howell v. Kall*, *supra* n. 21; *Richards v. Pontiac*, 305 Mich. 666, 9 N.W. 2d 885 (1943); *Board of Commissioners of County of Sarpy v. Petsch*, 172 Neb. 263, 109 N.W. 2d 388 (1961).

⁴⁰ *Storm Bros. Inc. v. Balcones Heights*, 239 S.W. 2d 842 (Tex. Civ. App. 1950).

⁴¹ *Ohio State Students Trailer Park Co-op, Inc. v. Franklin County*, 68 Ohio L. Abs. 569, 123 N.E. 2d 542 (1953); *David A. Ulrich, Inc. v. Saukville*, 7 Wis. 2d 173, 96 N.W. 2d 612 (1959).

⁴² *Application of Hasting*, 252 N.C. 327, 113 S.E. 2d 433 (1960); *County of Saunders v. Moore*, 182 Neb. 377, 155 N.W. 2d 317 (1967).

⁴³ *Omaha v. Glissmann*, 151 Neb. 895, 39 N.W. 2d 828 (1949).

⁴⁴ *Meuser v. Smith*, 74 Ohio L. Abs. 417, 141 N.E. 2d 209 (1956); *Crane v. Board of County Commissioners*, *supra* n. 38.

⁴⁵ *Fishman v. Tupps*, 127 Colo. App. 463, 257 P. 2d 579 (1953).

⁴⁶ *Supra* n. 31.

restrictions severely limiting the expansion of all nonconforming uses. In this area of the law there is a wide divergence of decisions, and each case must be considered on its own facts.⁴⁷ Any change or increase must not operate to the detriment of the public welfare, health, or safety.⁴⁸ Violation of any additional conditions imposed by municipal authorities in connection with an extension may justify revocation of all nonconforming rights.⁴⁹ To be able to extend a mobile home park to an entire plot frequently depends on whether the character and adaptability of the mobile park manifestly implies an appropriation of the entirety to such use.⁵⁰ This is to determine whether the use has become vested or is merely contemplated.

Extension of mobile home parks as nonconforming uses generally have been approved in jurisdictions where there were no statutory restrictions on extension of nonconforming uses. This has held true where the extension was within the contemplated use, and where the court found that the nature of the use had not changed, only its volume.⁵¹ Where there were no statutory prohibitions against increasing intensity, or amount, the owner of a single nonconforming mobile home was permitted to operate a mobile home park consisting of two or more mobile homes.⁵² Enlargement of nonconforming uses has been held permissible where necessary for their natural growth and expansion.⁵³ Regarding contemplated uses, when the ordinance limits expansion of nonconforming uses, and the area in question was not in actual use when the ordinance was adopted, extension is usually denied. Merely contemplating the use may be sufficient where there are no statutory restrictions on expansion of nonconforming uses, and the intention is indicated by the nature of the use or other circumstances. Nonconforming mobile home parks have been permitted to expand by reasonable accessory uses,⁵⁴ provided such accessory use is not detrimental to the public health, safety, or welfare. For example, the relocation of a disposal area was held to be mere maintenance of sewage facilities and

⁴⁷ *Santoro v. Zoning Board of Review*, 93 R.I. 68, 171 A. 2d 75 (1961); *Pieretti v. Johnson*, 132 N.J.L. 576, 41 A. 2d 896 (1945); *State v. Wagner*, 81 N.J. Super. 206, 195 A. 2d 224 (1963).

⁴⁸ *Dampman v. Baltimore*, 231 Md. 280, 189 A. 2d 631 (1963).

⁴⁹ *Supra* n. 31.

⁵⁰ *Gross v. Allan*, 37 N.J. Super. 262, 117 A. 2d 175 (1955); *Fairmeadows Mobile Village, Inc. v. Shaw*, 226 N.Y.S. 2d 565 (1962).

⁵¹ *Id.* Generally it is not essential that a nonconforming use exercised at the time a zoning ordinance is enacted should have embraced an entire tract in order to entitle the owner to subsequently employ it for all such use. *Gulf, C. & S.F.R. Co. v. White*, 281 S.W. 2d 441 (Tex. Civ. App. 1955).

⁵² *Watts v. Helena*, 439 P. 2d 767 (Mont. 1968).

⁵³ *State v. Szymanski*, *supra* n. 38.

⁵⁴ *Jackson v. Pottstown Zoning Board of Adjustment*, 233 A. 2d 252 (Pa. 1967).

not an enlargement of the nonconforming use of a prohibited character and thus permitted.⁵⁵

Some jurisdictions have upheld zoning ordinances barring expansion of mobile home parks as nonconforming uses,⁵⁶ notwithstanding the intention of the owner at the time of the enactment of the ordinance.⁵⁷ To justify the granting of an extension it must appear that there is urgent necessity, not that it would merely serve the convenience of the applicants.⁵⁸ However, decisions here usually permit increases in intensity or volume, as opposed to increases in area.⁵⁹ Extension has been denied where the change was from seasonal use to year round use,⁶⁰ and where the applicable zoning ordinance completely excludes mobile home parks from the town.⁶¹

Because of the doubtful constitutionality of zoning provisions for the amortization (gradual elimination without compensation) of nonconforming uses, the operator of a mobile home park can generally expect to be able to at least continue use of his present area.⁶² There have been a few cases where amortization provisions have been upheld on the state level,⁶³ when required by the public welfare, and when the termination provisions are reasonable in light of all considerations.⁶⁴

Zoning to Prohibit Mobile Home Parks

As with most regulatory provisions relating to mobile home parks, there is a wide divergence of decisions between jurisdictions as to whether it is constitutional as a reasonable exercise of the police power to totally prohibit mobile home parks within a municipality. Such prohibition must be based on grounds of health, morals, safety, or general

⁵⁵ *Madison Heights v. Manto*, 359 Mich. 244, 102 N.W. 2d 182 (1960).

⁵⁶ *Patchak v. Lansing Township*, 361 Mich. 489, 105 N.W. 2d 406 (1960); *State ex rel. Howard v. Roseville*, 244 Min. 343, 70 N.W. 2d 404 (1955); *Yorkville v. Fonk*, 3 Wis. 2d 371, 88 N.W. 2d 319 (1958); *Davis v. Miller*, 163 Ohio St. 91, 123 N.E. 2d 49 (1955).

⁵⁷ *Application of Hasting*, *supra* n. 42.

⁵⁸ *Cleland v. Baltimore*, 198 Md. 440, 84 A. 2d 49 (1951).

⁵⁹ *People v. Ferris*, 18 Ill. App. 2d 346, 152 N.E. 2d 183 (1958).

⁶⁰ *Beerwort v. Zoning Board of Appeals*, 144 Conn. 731, 137 A. 2d 756 (1958).

⁶¹ *Washington Township v. Gould*, 39 N.H. 527, 189 A. 2d 697 (1963); *Contra, Crowley v. Prejean*, 173 S. 2d 832 (La. App., 1965).

⁶² 22 A.L.R. 3d 1134 discusses the validity of provisions for amortization of nonconforming uses. *Hoffman v. Kinealy*, 389 S.W. 2d 745 (Mo. 1965) gives extensive discussion, pro and con, of the various decisions throughout the United States dealing with the amortization technique of phasing out nonconforming uses. Ohio considers amortization an obvious confiscation of property. *Akron v. Chapman*, 160 Ohio St. 382, 116 N.E. 2d 697 (1953); *James v. Greenville*, *supra* n. 39.

⁶³ *Harbison v. City of Buffalo*, 4 N.Y. 2d 553, 152 N.E. 2d 42 (1958).

⁶⁴ It is not to be contemplated that pre-existing nonconforming uses are to be perpetual in Nebraska. *Wolf v. Omaha*, 177 Neb. 545, 129 N.W. 2d 501 (1964).

welfare of the community.⁶⁵ But in defining these relationships, there is vast disagreement.

A Florida decision held that a mobile home park could not be prohibited, because it would completely deprive the owner of beneficial use of his property, since a mobile home park was the only use to which it was reasonably adapted.⁶⁶ Under similar circumstances in Pennsylvania, a township ordinance sought to prohibit quarrying throughout the entire township. An existing quarry was placed in an industrial zone, the effect of the ordinance therefore being to exclude the quarry in question from the township. In holding this unconstitutional, the Pennsylvania Supreme Court stated that a zoning ordinance which totally excludes a particular use from an entire municipality must bear more substantial relationship to the public health, safety, morals and general welfare than an ordinance which merely confines a business to a certain area within a municipality.⁶⁷ That decision was cited later by the same court in reviewing a similar case concerning a township which sought to zone apartment buildings out of the entire township.⁶⁸ Although multi-unit apartment buildings were not expressly prohibited, the effect of the ordinance was totally prohibitory since they were not provided for anywhere in the ordinance. Citing an earlier case, the court held that the land-use restriction was unreasonable, that “. . . zoning provisions may not be used . . . to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring.”⁶⁹

Other decisions have held unconstitutional: a retroactive ordinance barring operation of existing mobile home parks where such bore no substantial relationship to public health or welfare;⁷⁰ an ordinance making mobile home parks lawful but not zoning any property for them;⁷¹ flatly prohibiting them from the township.⁷² A prohibition in the form of a time limit on occupancy or parking of mobile homes has been upheld, where a flat prohibition was held unreasonable and discriminatory.⁷³

Many jurisdictions have excluded mobile homes from certain districts, which has the effect of barring them from the entire munic-

⁶⁵ *Smith v. Building Inspector for Plymouth Township, supra* n. 5.

⁶⁶ *Id.*

⁶⁷ *Exton Quarries, Inc. v. Zoning Board of Adjustment of West Whiteland Township*, 425 Pa. 43, 228 A. 2d 169 (1967).

⁶⁸ *Girsh v. Board of Adjustment of Nether Providence Township*, 189 A. 2d 852 (Pa. 1963).

⁶⁹ *National Land and Investment Co. v. Easton Township Board of Adjustment*, 419 Pa. 504, 215 A. 2d 597 (1965).

⁷⁰ *Kessler v. Smith*, 4 Ohio Abs. 57, 146 N.E. 2d 308 (1957).

⁷¹ *Knibbe v. Warren*, 363 Mich. 283, 109 N.W. 2d 766 (1957).

⁷² *Re Falls Township Trailer Ordinance*, 84 Pa. D & C 199, 44 Munic. L.R. 33 (1952).

⁷³ *Hunter v. Richter*, 9 Pa. D & C 2d 58 (1956).

ipality.⁷⁴ The same result was reached where mobile homes were not expressly forbidden, but were confined to mobile home parks, of which there were none.⁷⁵ Other jurisdictions have held that municipalities may flatly prohibit mobile home parks,⁷⁶ and New Jersey has gone so far as to say that its municipalities may, through the zoning power, constitutionally prevent its residents from living in mobile homes.⁷⁷

How to Overcome Zoning Restrictions and Prohibitions

From a thorough analysis of cases regarding mobile homes and mobile home parks it is apparent that there is a wide divergence of decisions. Given a particular regulatory or prohibitory situation, it is not difficult to find several similar cases deciding the matter either way, depending primarily on jurisdiction. For example, Pennsylvania and Michigan both are states where it seems difficult for municipalities to severely restrict or prohibit mobile home parks. The opposite is true of New Jersey and New York. Yet the same basic zoning principles apply across jurisdictions.

Several techniques are available to overcome zoning restrictions and prohibitions on mobile home parks. The choice of which to use depends on the circumstances. Almost always the weight of public opinion is against mobile homes and their expansion. Success in overcoming zoning obstacles therefore depends to a large extent on providing sufficient factual data and logical arguments to prove that it is not in fact necessary for the public welfare to curb mobile home expansion. This usually involves changing a lot of minds concerning the typical myths that mobile homes are occupied mainly by "low class" people, by transients, create a burden on the school system, require more in public services than they pay in taxes, depreciate surrounding property values, and cause health and sanitation problems.⁷⁸

⁷⁴ In residential district, *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E. 2d 870 (1957); *Pringle v. Scheunock*, 309 Mich. 179, 14 N.W. 2d 827 (1944); *Cook v. Bandeen*, 356 Mich. 328, 96 N.W. 2d 743 (1959); *Pierro v. Baxendale*, 20 N.J. 17, 118 A. 2d 401 (1955); In industrial district, where such park would obstruct development of township as envisioned by planners and manifested by zoning ordinance. *Vickers v. Township Committee of Gloucester*, 37 N.J. 232, 181 A. 2d 129 (1962); *Prohibited in high-way business zone, where reasonableness of prohibition was held at least debatable. Hohl v. Township of Readington*, 37 N.J. 271, 181 A. 2d 150 (1962); Held permissible to bar mobile home parks in certain districts except with consent of adjoining property owners. *Huff v. Des Moines*, 244 Iowa 89, 56 N.W. 2d 54 (1952); *Barred mobile home parks by not permitting more than one mobile home on any parcel of land. Granby v. Landry*, 341 Mass. 443, 170 N.E. 2d 364 (1960).

⁷⁵ *Napierkowski v. Gloucester Township*, *supra* n. 18.

⁷⁶ *People v. Stewart*, *supra* n. 11; *Plainfield v. Hood*, 108 N.H. 502, 240 A. 2d 60 (1968). *Raleigh v. Morand*, *supra* n. 73. *Hartland v. Jensen's Inc.*, 146 Conn. 697, 155 A. 2d 754 (1959).

⁷⁷ *Vickers v. Township Committee*, *supra* n. 74.

⁷⁸ Data for this can be obtained from the Mobile Homes Manufacturers Association, *supra* n. 2.

The first approach in overturning a municipal ruling against mobile home parks is to attack the municipal authority to so act. Since municipal powers are derived from the state, there must be a state constitutional or legislative enabling statute, and the municipal ordinance must not conflict with those of the state or federal government.⁷⁹ Once the constitutionality of the municipal ordinance has been established, try to show that the municipal authorities abused their discretion in applying it, and that the statute does not prescribe sufficiently definite standards for them to constitutionally act (here again, what the court will consider sufficient depends on the jurisdiction).⁸⁰

After determining that the ordinance itself is constitutional, examine its application to make sure it meets the requirements of zoning *viz.* that it (1) promotes the public welfare (is within the police power) and (2) is expressive of a comprehensive plan.⁸¹ In attacking the ordinance from the standpoint of public welfare, it must be shown that the questioned restrictions are not within the limits of necessity for the promotion of health or general welfare, and that it is therefore an unlawful taking of private property without due process of law.⁸² For the ordinance to stand there must be substantial need for the restrictions in the interest of the public health, morals, safety, and welfare, and the restrictions must be reasonable in light of these terms.⁸³ This of course, is a matter of proof of what is or is not reasonable. Another way of attacking the application is to allege that it is not representative of a comprehensive zoning ordinance. If it can be established that the zoning authority is not following a comprehensive plan to promote the general welfare of the entire area, but is instead zoning particular parcels differently as situations arise, zoning resolution must be invalidated as spot zoning.⁸⁴

It may be possible to expand a mobile home park by extending a lawful nonconforming use.⁸⁵ If the zoning resolution does not restrict

⁷⁹ Yokley, *op. cit. supra* n. 6.

⁸⁰ *Harriman v. Kabinoff*, *supra* n. 5; *Schneider v. Wink*, *supra* n. 29; *Broad-Miami Co. v. Board of Zoning Adjustment*, 89 Ohio L. Abs. 140, 185 N.E. 2d 76 (1959).

⁸¹ Yokley, *op. cit. supra* n. 6 at 19.

⁸² *Averne Bay Construction Co. v. Thatcher*, 278 N.Y. 222, 15 N.E. 2d 587 (1938).

⁸³ *First National Bank & Trust Co. v. Evanston*, 30 Ill. 2d 479, 197 N.E. 2d 705 (1964); *Sanderson v. Willmar*, 282 Minn. 1, 162 N.W. 2d 494 (1968); *City of Muskegon v. Miller*, 249 Mich. 52, 227 N.W. 743 (1929); *Zampieri v. River Vale Township*, 29 N.J. 599, 152 A. 2d 28 (1959); *Burritt v. Harris*, *supra* n. 10; *Kugel v. Miami Beach*, 206 S. 2d 282 (Fla. App. 1968).

⁸⁴ As to what constitutes spot zoning see, 1 Yokley, *op. cit. supra* n. 6, ch. 8.

⁸⁵ As to nonconforming uses see: 42 A.L.R. 2d 1140, 87 A.L.R. 2d 4, 87 A.L.R. 2d 33, 22 A.L.R. 3d 1134, 18 A.L.R. 2d 725; as to challenging the validity of a nonconforming use ordinance: *Mary Chess, Inc. v. City of Glen Cove*, 273 N.Y.S. 2d 46, 219 N.E. 2d 406 (1966); *State v. Szymanski*, *supra* n. 38; *Franklin Planning and Zoning Commission v. Simpson City Lumber Co.*, 394 S.W. 2d 593 (Ky. 1965); *In re Yocum*, 393 Pa. 148, 141 A. 2d 601 (1958).

expansion of nonconforming uses extending the use may be possible, if it is reasonable to the normal growth and expansion of the existing use. Ordinances which restrict or prohibit expansion of nonconforming uses will probably be upheld, since one of the recognized principles of zoning is to eliminate nonconforming uses as speedily as justice permits. In jurisdictions which uphold provisions for the amortization of nonconforming uses it must be shown that amortization schedules are unreasonable as to time, and are not directed toward some reasonable aspect of land use regulation under properly delegated police power. These factors are usually decided by a weighing of public benefit against private loss.

Many zoning resolutions authorize the granting of exceptions.⁸⁶ To qualify the applicant must reasonably prove that application of the ordinance to his particular property amounts to a confiscation thereof, that the proposed use is reasonably necessary for the convenience and welfare of the public, that granting the exception will not conflict with the public interest, and that the applicant would sustain an unnecessary hardship if it were not granted.

If mobile home parks are flatly prohibited by the zoning resolution or are not included anywhere in it a variance might be obtained.⁸⁷ The burden is more difficult than with exceptions (which the ordinance authorizes the use but not in the particular district desired), there must be a showing of unnecessary hardship unless the variance is permitted. Owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

Conclusion

When faced with the problem of trying to overcome zoning restrictions on mobile home parks, regardless of which of the above techniques are used, success will depend to a large extent on the degree to which the developer is successful in convincing the municipality or court that his mobile home park is not in fact a nuisance to be shunned at every opportunity, but that it can and does have a proper place in the total community planning, to make a worthwhile contribution to

⁸⁶ Zoning Board of Adjustment of New Castle County v. Dragon Run Terrace, Inc., 216 A. 2d 146 (Del. 1966); Crowther, Inc. v. Johnson, 255 Md. 379, 170 A. 2d 768 (1961); Gravin v. Zoning Board of Review of No. Kingstown, 109 R.I. 138 (1966); Gerozak v. Todd, 233 Md. 25, 194 A. 2d 799 (1963); Jackson v. Guilford County Board of Adjustment, 2 No. Car. 408, 163 S.E. 2d 265 (1968); Overholtzer v. Zoning Board of Adjustment, 31 D & C 2d 793, 82 Mont. A. 119 (1963); Coronet Homes, Inc. v. McKenzie, 439 P. 2d 219 (1968); see also, 2 Yokley, *op. cit. supra* n. 6, Ch. 9.

⁸⁷ Mentor Lagoons, Inc. v. Zoning Board of Appeals of Mentor Township, 168 Ohio St. 113, 152 N.E. 2d 372 (1958); Ohio State Students Trailer Park Co-op, Inc. v. Franklin County, *supra* n. 41; Anstine v. Zoning Board of Adjustment, 411 Pa. 33, 190 A. 2d 712 (1963); Papanek v. Rayniak, 23 Ill. App. 2d 183, 161 N.E. 2d 694 (1959). Allen v. Humboldt County Board of Supervisors, 50 Cal. Rptr. 444 (Cal. App. 1966); see also, 2 Yokley, *op. cit. supra* n. 6, Ch. 9; 22 A.L.R. 2d 775 and 89 A.L.R. 2d 663.

the community. These are questions of fact and problems of evidence. Regardless of how severe the zoning obstacles, one or more of the above techniques may prove successful. However, even if the developer overcomes the most stringent restriction of all, *viz.*: total prohibition, he should realize that his next task is in complying with the many restrictions that probably will be applied. It is apparent that the courts sometimes will go to great lengths to find these restrictions within the definition of a proper application of the zoning power. Therefore, the developer should be ready to provide a well-planned mobile home community that will comply with considerations of *reason*, rather than merely to try to get by with overcrowding, etc., that will almost certainly be struck down as harmful to the public welfare.