



A Place to Call Home: Siting Manufactured Housing in Arkansas

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The typical Arkansan probably considers the ownership of a home one of his or her most important goals or accomplishments. Likewise, most Arkansas communities try to support home ownership by increasing the availability of quality housing. Of course, housing is only “available” if it is affordable. A community trying to expand home ownership will therefore work to increase the inventory of affordable housing accessible to its population.

The cost to construct or purchase a site-built house can obviously be significant. As a result, some portion of the average community’s population may not be able to afford even moderately priced structures. Communities will therefore have an interest in including in their housing mix relatively inexpensive structures. This has led to significant efforts to minimize the cost of the available residential structures.

Manufactured homes are, in some instances, a viable method of addressing affordable housing objectives. For various reasons, manufactured structures will usually cost less per square foot than a site-built house. However, the ability of manufactured housing to address residential housing needs has faced governmental obstacles.

Some communities in Arkansas and other states have or had ordinances that restrict, or make more costly, the siting of manufactured housing. For example, a municipality may have an ordinance prohibiting the placement of manufactured homes in areas zoned for single family residences. These, and related zoning classifications, have sometimes forced manufactured housing into areas set aside for groups of structures known as “trailer parks” or small lot subdivisions. Consequently, the potential affordability benefits of a manufactured house would only be available if one chose to live in these developments which are sometimes on the periphery of a town.

The federal government along with several states and communities began considering some years ago whether home ownership might be increased by better integrating manufactured housing into housing inventories. Congress and a number of states enacted legislation that provides a process for minimizing certain governmental impediments to siting manufactured housing. The result has been the identification and elimination of some state or local governmental requirements that make it more difficult for manufactured homes to play a substantive role in providing an affordable housing choice. Of particular relevance, the Arkansas General Assembly enacted legislation in 2001 that requires each Arkansas community to provide a residentially zoned area for manufactured housing.²

Arkansas lawyers are frequently asked to advise both government-

tal and private entities on legal issues associated with the development of residential housing. These issues sometimes include the use and/or siting of manufactured housing. Municipalities, developers, financial institutions, non-profit housing providers and/or real estate investors may have varied perspectives on manufactured housing issues. By way of example, a municipality may need to determine the extent to which manufactured housing can be regulated in view of the preemptive provisions found in certain Arkansas and federal statutes. Similarly, an attorney working on the development or financing of a project proposing to utilize manufactured housing must be cognizant of the tools available to address local ordinances or codes that restrict the siting of these structures. This article addresses these issues and the related legal authorities.

I. Manufactured Housing

A. The Development of Manufactured Housing

The commercial production of manufactured housing began in the 1920s.³ The public has tended, in the past, to refer to manufactured structures as ‘mobile homes or trailers.’ However, over the last several decades, manufactured homes have increased in both square-footage and the range of construction materials. As will be discussed, federal regulations have probably reduced, to some extent, the historical distinctions between manufactured housing and site-built homes. Congress coined the term “manufactured housing” in 1980, generally referring to factory-built housing that has been constructed in conformance with certain United States Department of Housing and Urban Development regulations.

B. Production and Distribution of Manufactured Housing

The construction of manufactured houses in enclosed production facilities provides significant efficiencies. For example, production of a manufactured structure is not subject to weather delays. Further, economies of scale are provided by the ability to make aggregate or volume purchases of labor and materials. As a result, the cost to construct a site-built home usually exceeds a similarly sized manufactured house. Once constructed, the manufactured house is either transported to a retailer for sale or to the location at which it will be installed.

C. Financing the Purchase of a Manufactured Home

The purchase of a manufactured house might be financed through either governmental or private sources. The manufactured housing

industry has worked to achieve similar treatment for manufactured homes and site-built structures in terms of underwriting criteria. However, the evolution of manufactured housing from the travel industry has sometimes caused confusion as to whether these structures should be treated as personal property or permanent housing.⁴

In most states, when a manufactured home is placed on a permanent foundation, it changes from personal property to real property. Arkansas has adopted a three-part test primarily focusing on whether the home is intended to be permanent.⁵ This issue can affect a traditional lender's view of these structures as potential collateral for loans. Some may be reluctant to provide financing primarily due to a lack of familiarity with manufactured homes which may be a significant factor for those planning to develop a project involving manufactured housing. Lending programs and requirements for manufactured housing may differ depending upon the type of support system used (e.g., perimeter wall block, "piers and blocks" or wooden pilings). Unfortunately, loan underwriting often still results in disparities between loan terms for site built homes and manufactured homes generally being more favorable for site built homes. Regardless, many traditional financial institutions will finance the purchase of manufactured homes and there are a number of specialized lenders who have developed loan products specifically for manufactured homes.

Another source of private financing is the manufactured home retailers. Their retail sale contracts will often be sold to financial institutions. In addition, manufactured houses are also eligible for mortgage insurance programs of the Federal Housing Administration and Veterans Administration.

D. Role in Housing Markets

Over twenty-two million Americans reside in approximately ten million manufactured homes.⁶ Twenty percent of every new home started is a manufactured house.⁷ The demand is probably driven, to some extent, by improvements in the structures and their relative affordability.

Manufactured houses are found in greater numbers in the south than other areas of the United States.⁸ They are also more common in smaller communities and rural areas. This may be due to a combination of lower land costs and an absence of zoning restrictions in unincorporated areas. Likewise, the reduced costs associated with the production of a manufactured house, along with the lower maintenance expense have made these structures particularly attractive to moderate or lower income households. The affordability benefits provided by manufacturing may become especially important in view of tightening credit standards.

E. The Perception of Manufactured Housing

Manufactured homes have sometimes been perceived as inferior or less aesthetically pleasing than site-built housing. Accordingly, local governments have, on occasion, on their own initiative or due to pressure from individuals or groups, used their zoning authority to isolate or exile manufactured housing. The proponents of these measures argue that such zoning restrictions ensure compatibility of land



uses, maintenance of a balanced housing stock, and promotion of a sense of homogeneity of housing and community.

Manufactured housing proponents respond that there is no evidence these structures are incompatible with site-built homes. They argue studies support the argument that the placement of manufactured homes has little or no effect on the value of surrounding properties. Proponents also point to improved production, design and appearance arguing that the appearance of manufactured houses has evolved to the point that many structures are similar in appearance and are as well built as site-built homes. Manufacturers presumably recognize that greater acceptability by consumers and the community in general is more likely if the structures are as "house-like" as possible.

II. Relevant Federal Law on Manufactured Housing Production

A. National Manufactured Home Construction and Safety Standards Act of 1974

1. Background

In the 1970s, Congress concluded that the federal regulation of the production of manufactured houses would improve the quality and durability of these structures. This determination led to the 1974 enactment of the National Manufactured Housing Construction and Safety Standards Act ("NMHCSSA").⁹ The NMHCSSA required



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the federal Department of Housing and Urban Development (“HUD”) to promulgate and periodically revise regulations addressing various aspects of the production of manufactured houses. The statute defines a manufactured house as “one that has a permanent chassis and is designed to be used with or without a permanent foundation.”¹⁰

2. The HUD Code

The federal regulation promulgated pursuant to the NMHCSSA is known as the HUD Code.¹¹ The HUD Code has a unique status as the only federal residential building code. This federal code applies uniform construction and safety standards to both single or multi-section “manufactured houses.” A “manufactured home” is defined as “a structure, transportable in one or more sections . . . which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation . . .”¹²

Building standards for manufactured housing have been subjected to federal regulation, in part to establish practical, uniform, and, to the extent possible, performance based federal construction standards for these structures.¹³ An advantage of this approach has been that technological improvements in safety and construction standards are transferred to the industry on a national basis much faster and more efficiently than if numerous local codes had to be revised. This better enables the consumer to benefit more quickly from national research and quality control.¹⁴

Unlike most state or local standards, the HUD Code is not prescriptive. In other words, it does not mandate the use of specific materials or measurements. Instead, the HUD Code contains engineering design and material performance standards. This system is supposed to better ensure that a unit is constructed according to the federally approved design. These federal performance standards do not include the activities required to install a manufactured home.

The State of Arkansas’s efforts to regulate manufactured housing are channeled through the Arkansas Manufactured Housing Commission (“AMHC”). The Arkansas Manufactured Homes Standards Act¹⁵ requires that the AMHC do what is necessary to comply with the NMHCSSA, including providing for the enforcement of the federal HUD Code. The Arkansas definition of “manufactured home” is identical to the federal statute.¹⁶

3. Local Government Preemption

The Congressional desire to standardize manufactured housing production as expressed in the NMHCSSA has sometimes collided with the traditional interest of local government in the regulation of the erection of structures. Local government’s oversight activities have usually included the construction and/or siting of both site-built and manufactured housing through building standards or zoning codes. Congress both anticipated and addressed this potential conflict by placing in the NMHCSSA language preempting inconsistent state and local requirements.

(a) Preemption Language

The NMHCSSA provides that:

Whenever a federal manufactured home construction and safety standard established under this (chapter) is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured homes which is not identical to the Federal manufactured home construction and safety standard.¹⁷

In other words, the federal statute expressly prohibits state or local governments from enacting construction or safety standards that differ from the HUD Code.¹⁸ The statute’s purpose is to promote the uniformity and comprehensiveness of the HUD Code. The preemption provision enables manufacturers to use standardized building materials and components regardless of where the structure is sold, constructed, or erected. State and local governments do retain the right to establish standards for both the stabilizing and support systems of manufactured homes and the foundations on which those manufactured homes are installed.

(b) Conflicts with Local Government Standards

Some local standards or codes were in conflict with the NMHCSSA’s preemption provision at the time of the statute’s enactment in 1974. Subsequently enacted local requirements have also, on occasion, run afoul of the NMHCSSA. The courts have therefore periodically adjudicated whether some aspect of a local ordinance or code has

been preempted by the federal program. Examples include:

i. The Third Circuit Court of Appeals held that the NMHCSSA preempted a local municipality’s ban of manufactured homes from a zoning district based on safety standards, but did not affect the zoning of manufactured homes in general.¹⁹

ii. The Fifth Circuit Court of Appeals held that the NMHCSSA did not preempt a local zoning ordinance prohibiting the placement of “trailer coaches” on any lot within city limits except in a “duly authorized trailer park” because the provisions of the ordinance were not linked to local safety and construction standards.²⁰

iii. The Eleventh Circuit Court of Appeals held that a local ordinance was preempted because it attempted to impose greater safety requirements for manufactured homes than those mandated by the NMHCSSA.²¹

(c) Permissible Local Requirements

Not all local requirements affecting manufactured housing are preempted by the NMHCSSA. The most common examples of unaffected local ordinances are zoning codes. The federal courts have held that NMHCSSA preempts only construction and safety standards and does not apply to local zoning ordinances that regulate the placement of dwellings in the community.²²

Zoning involves the division of land into zones and within these zones, regulation of both the nature of land usage and the physical dimensions of uses including height, setbacks and minimum area. These programs are used by communities to protect the rights of property owners while promoting the general welfare of the community. The key objective of a zoning classification is to place particular activities where they are most appropriate considering the compatibility of the uses and the established development pattern.

The process of establishing and periodically revising ordinances or codes is usually undertaken by a municipal planning staff and commission which make recommendations to ultimate decision makers such as the community’s board or council. Opportunities for public input on these recommendations or decisions are provided at certain steps in the process. The question of what zoning classifications are, or should be, applicable to manufactured homes has often been the subject of debate and/or litigation.

The NMHCSSA does not limit the authority of local government to establish zon-

Homes continued on page 44

source of manufactured housing restrictions. Deed restrictions and bills of assurance³⁶ are sometimes used by private parties to prohibit or restrict the ability of a property owner to erect manufactured houses on one or more properties.³⁷ The Accessibility Act specifically excludes real property covenants and bills of assurance from the previously described prohibitions.³⁸ Historic districts are also exempt from the Accessibility Act.

C. Implementation of the Arkansas Affordable Accessibility Act

1. Community Zoning Analysis

The enactment of the Accessibility Act required Arkansas communities to assess whether their zoning schemes complied with the statute. Neither these assessments nor the changes required to attain Accessibility Act compliance have likely been simple, either legally or politically.

2. Interpretation of the Accessibility Act

The scope of the Accessibility Act preemption provision has not been addressed by the Arkansas appellate courts. However, the Arkansas Attorney General was asked to opine on an Accessibility Act issue in 2007.³⁹ The opinion was in response to a request by Senator Shane Broadway to Arkansas Attorney General Dustin McDaniel in regard to City of Benton Ordinance No. 22 of 1992.⁴⁰

The Attorney General stated that the Benton Ordinance had a provision for “Special Districts” that could possibly authorize the establishment of residential districts that would include “manufactured homes” as required by the Accessibility Act. However, he noted there was no information indicating that Benton had established such districts. Consequently, the Attorney General stated: “Moreover, in my opinion, the requirements of the Affordable Housing Accessibility Act are not satisfied by the possibility that the City might, at some point, authorize the placement of manufactured homes in a residential district.”

IV. Conclusion

Both the State of Arkansas and its various communities face challenges in the pursuit of an increase in home ownership. These challenges are likely to be exacerbated, at least in the short term, by the problems facing the United States economy. Therefore, the availability of the means or methods to reduce housing costs will continue to be critical. An important question is whether manufactured housing can play a substantive role in providing affordable hous-

ing. Traditionally, many communities opposed any role for manufactured housing other than placement within a trailer park or similar development. The evolution of these structures within the last few decades into a viable alternative or substitute for site-built structures has raised questions as to wisdom of some of the governmental hurdles. The combination of these federal and Arkansas authorities delineate the extent to which state and local government can regulate the use of manufactured housing. Consequently, attorneys advising clients regarding these and related issues must be cognizant of both the federal HUD Code and the Arkansas Accessibility Act.

Endnotes:

1. The views in this article are solely those of the authors and do not necessarily represent those of any organization with which they are or have been associated.

2. Arkansas Affordable Housing Accessibility Act, ARK. CODE ANN. §§ 14-54-1601-1606.

3. For example, Sears, Roebuck and Co. sold complete “house-kits.” Jerry Weitz, *Manufactured Housing: Trends and Issues in the ‘Wheel Estate’ Industry*, AMERICAN PLANNING ASSOCIATION, Winter 2004.

4. ROBERT W. WILDEN, COMMISSION ON AFFORDABLE HOUSING AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY, MANUFACTURED HOUSING AND ITS IMPACT ON SENIORS (Feb. 2002), http://govinfo.library.unt.edu/seniorscommission/pages/final_report/manufHouse.html (manufactured housing was historically financed with personal property loans because of its perceived mobile nature; however, they also received mortgage financing if the manufactured home was affixed to a permanent foundation); *Shelter Ins. Co. v. Richmond*, No. CA 87-45, 1987 WL 12074 (Ark. App. June 10, 1987) (affirmed trial court’s holding that mobile homes were by definition more than stationary homes).

5. In *Pledger v. Halvorson*, 324 Ark. 302, 921 S.W.2d 576 (1996), the Arkansas Supreme Court set out the three part test to determine whether a manufactured home is real or personal property. The determination is based on: (i) whether the item is annexed to the real property; (ii) whether the item is appropriate and adapted to the use or purpose of the real property to which it is connected; and (iii) whether the annexation is intended to be permanent.

6. Jerry Weitz, *Manufactured Housing: Trends and Issues in the ‘Wheel Estate’ Industry*, AMERICAN PLANNING ASSOCIATION, Winter 2004.

7. J. Beamish, R. Goss, J. Atiles, & Y. Kim, *Not a Trailer Anymore: Perceptions of Manufactured Housing: Housing Policy Debate*, FANNIE MAE FORMULATION, 2001.

8. William Apgar, Allegra Calder, Michael Collins & Mark Duda, *An Examination of Manufactured Housing as a Community-and Asset-Building Strategy*, report to the Ford Foundation by Neighborhood Reinvestment corporation with the Joint Center for Housing Studies of Harvard University, Sept. 2002.

9. 42 U.S.C. §§ 5401-5426.

10. 42 U.S.C. § 5402(6).

11. 24 C.F.R. §§ 3280.1 – 3280.904. The HUD Code is applicable to manufactured housing therefore distinguishing these structures from other types of housing such as mobile homes or trailers.

12. 24 C.F.R. § 3280.2.

13. 42 U.S.C. § 5401(b)(3).

14. The Arkansas governmental body implementing the HUD Code is the Manufactured Housing Commission (“AMHC”). The agency adopts uniform standards for the building of manufactured homes and enforces these standards. *Cummings v. Big Mac Mobile Homes, Inc.*, 335 Ark. 216, 980 S.W.2d 550 (1998).

15. ARK. CODE ANN. §§ 20-25-101 – 113.

16. ARK. CODE ANN. § 20-25-102(10).

17. 42 U.S.C. § 5403(d).

18. 42 U.S.C. § 5403(d).

19. *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (3d Cir. 2002).

20. *Texas Manufactured Hous. Ass’n, Inc. v. City of Nederland*, 101 F.3d 1095, 1100 (5th Cir. 1996).

21. *Scurlock v. City of Lynn Haven*, 858 F.2d 1521, 1525 (11th Cir. 1988).

22. *See Ohio Manufactured Hous. Ass’n v. Canton*, No. 5:97 CV 1190 (N.D. Ohio, Dec. 4, 1998).

23. ARK. CODE ANN. § 14-55-102.

24. ARK. CODE ANN. § 14-56-201 states that municipal corporations shall have the power to: (1) regulate the erection, construction, reconstruction, alteration, and repair of buildings; (2) make regulations for the purpose of guarding against accidents by fire; (3) require the use of fireproof or fire-resistant materials in the erection, construction, reconstruction, alteration, or repairs of buildings; and (4) provide for the removal of any buildings, or additions thereto, erected contrary to this prohibition.

25. 297 Ark. 51, 759 S.W.2d 212 (1988).

26. 73 Ark. App. 97, 40 S.W.3d 828 (2001).

27. No. CA 08-200, 2008 WL 4876230 (Ark. App. Nov. 12, 2008).

28. October 1994 is the effective date of the federal HUD Code.

29. For example, the State of Virginia requires approval of manufactured housing as a right in zoning classifications such as agricultural districts.

30. S.B. 407, 84th Leg., Reg. Sess. (Ark. 2003).

31. ARK. CODE ANN. § 14-54-1603.

32. ARK. CODE ANN. § 14-54-1604.

33. *Id.*

34. *Id.*

35. The Accessibility Act references the HUD Code in defining this term as:

“Federal standards” means that the Federal Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, promulgated by the United States Department of Housing and Urban Development under the authority of 42 U.S.C. § 5401 *et seq.* as it existed on January 1, 1976 . . . means a dwelling unit constructed in a factory in accordance with the federal standards and meeting the definitions set forth in the federal standards and under § 20-25-102.

36. In *White v. McGowen*, 364 Ark. 520, 222 S.W.3d 187 (2006) the court addressed whether a structure violated a covenant prohibiting “trailers.” The difference between a mobile home and a manufactured home was discussed in *Welch v. Norman*, 311 Ark. 52, 841 S.W.2d 614 (1992).

37. Such restrictions are not favored by law and will be strictly construed against limitations on the free use of land. *Forrest Construction v. Milam*, 341 Ark. 1, 43 S.W.3d 140 (2001). If the language of the covenant is clear and unambiguous, application of such restrictions will be governed by the intent of the parties.

38. ARK. CODE ANN. § 14-54-1606.

39. Op. Ark. Att’y Gen. 2007-252 (2007).

40. Op. Ark. Att’y Gen. 2007-252 (2007). ■

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