MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON GOVERNMENT AFFAIRS

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 18, 1981

The Senate Committee on Government Affairs was called to order by Chairman James I. Gibson, at 2:06 p.m., Monday, May 18, 1981, in Room 243 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT

Senator James I. Gibson, Chairman
Senator Jean Ford, Vice Chairman
Senator Gene Echols
Senator Virgil Getto
Senator Keith Ashworth
Senator James Kosinski
Senator Sue Wagner

STAFF MEMBER PRESENT:

Anne Lage, Committee Secretary

SENATE BILL NO. 652

Facilitates mechanics of annexation of cities in largest counties.

Senator Keith Ashworth testified that he had requested this bill primarily to accomodate Nevada Revised Statute 268.577, section 5, which was the repeal of the prohibition of any city in the state from soliciting annexation. This prohibition was placed in the law in 1973. At that time they were in the process of trying to establish a consolidated form of government in Clark County. Prior to that time, there had been a considerable amount of bidding and encouragement from various cities, particularly in southern Nevada, to annex large portions of property into a particular city in anticipation that they might have annexation. To prevent wholesale solitations of annexations into cities in 1973, the legislature decided to place a moratorium on any annexation. Subsequent to that failure of consolidating governments in Clark County, the Legislature again attempted in 1977 to consolidate governments of southern Nevada into one form of government again. At that time, the consolidation was to be put to the vote of the people, and it was determined to leave this prohibition for annexation

in the law again. The vote went to the people and the people in the county voted not to consolidate the government. Thus, there has never been another attempt since that time to consolidate governments in Clark County. Therefore, it was Senator K. Ashworth's intention to eliminate that prohibition from anyone seeking or requesting help in the event they wanted to be annexed into the city. This would not put them in jeopardy. The law presently said that if it was determined that there was any solitation on the part of any of the entity, then the annexation would become null and void. As it did not appear that there would ever be any consolidation of governments in Clark Couny, he wanted that prohibition removed.

Mr. George Olgivie, City Attorney for the City of Las Vegas, testified that he felt this bill as it was presently written, any benefit that the cities would derive from it would be minimal at best. Mr. Olgivie distributed a copy of his testimony to the committee members. (See Exhibit C.) Also distributed were suggested amendments to this bill. (See Exhibit D.)

Mr. Russ Dorne, Administrator of the City of Las Vegas, testified that it was almost mandatory that the amendments presented by Mr. Olgivie be adopted. He stated that this bill with the amendments would permit the cities of the state to proceed in an orderly fashion to expand their boundaries to include urban territory which otherwise would not be included in the boundaries. He stated that one of the problems Las Vegas has experienced was "piecemeal annexation". He distributed a map which depicted the present boundaries of the northwest sector of Las Vegas. (See Exhibit E.)

He pointed out that the dot with a circle was a city fire station. He explained that about 55 percent of the calls at that location were for city residents. The other 45 percent were for county residents. The white line depicted the city boundary.

Mr. Manuel Cortez, Chairman of the Board of Commissioners of Clark County, introduced Mr. Patrick Pine, Assistant Comptroller, and Mr. Jim Bartley, District Attorney.

Mr. Cortez testified that they were present in opposition to this bill. He stated that the time was too short to bring up an issue of this magnitude that was so complicated and complex.

Mr. Cortez stated that as the bill was written, even with the amendments offered, would create more problems than it would solve. Normally, annexation takes place when a municipality can offer services to an unincorporated area. In Clark County, the rural towns already have those services; sewer services, fire and police protection.

He also stated that he did not think this bill was consistent with the new tax package. It was based on a distribution system that presumes that Nevada's local governments should receive approximately the same relative shares which they had received in the past.

Mr. Cortez cited Senate Bill No. 386 wherein Clark County had agreed to sign up for a larger portion of the share in paying for Metro, approximately 2½ percent. Also agreed was that they would assume the total responsibility for funding the new jail. They were allowed some relief from the caps under the mandatory language in Senate Bill No. 411. Also, no major governmental reorganization efforts would take effect. He did not think it was right to expect Clark County to take on extra expenses and yet be expected to give up some of their basic revenue sources.

Senator K. Ashworth asked Mr. Cortez if he would be opposed to just the repeal of the section which prohibited the city from asking areas to become annexed into the city. Mr. Cortez stated that he did not have a big problem with this, but he did not see the need for the remainder of the bill.

Mr. Patrick Pine testified that there was the problem of the distribution between cities of certain taxes such as the cigarette and liquor taxes. He did not believe that this bill gave consideration to these type of problems.

Mr. Pine stated that with the tax package, a number of non-property owners were paying for a larger percentage of the services and under this bill they would have no voice in annexation matters. He felt those people should have a right to vote or protest.

Mr. Jim Bartley, Clark County District Attorney, testified that if this bill would only handle the problem of "solicitation", it could be done by only including section 5.

Senator K. Ashworth asked if Clark County would support the repeal of Nevada Revised Statute 268.577 which was section 5. Mr. Bartley felt that this would be alright.

Senator Getto moved "Amend and Do Pass" on Senate Bill No. 652 leaving in only section 5.

Senator Kosinski seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 656

Prohibits certain discrimination against manufactured dwellings in local planning and zoning.

Mr. Virgil H. Wedge, Reno Attorney, testified in support of Senate Bill No. 656. He stated that this bill provided that a commission or governing body shall not enact a master plan or adopt zoning ordinances which would discriminate against mobile homes or manufactured homes as related to stick built homes. Mr. Wedge distributed a copy of the California Government Code which provided that no city, county or county shall pass an ordinance which shall prohibit the location of a mobile home on a lot zoned for a single family dwelling. (See Exhibit F.) A similar statute was adopted by the state of Vermont. (See Exhibit G.)

Mr. Wedge referred to a case law of Robinson Township vs. Knoll wherein the philosophy of this bill is the major reason for the lawsuit. In this case, the Supreme Court of Michigan held that exclusion of mobile homes from all areas not designated as mobile home parks had no reasonable basis under police power, and was therefore unconstitutional. (See Exhibit H.)

Mr. Wedge responded to Senator Wagner's question by stating that both mobile homes and manufactured dwellings were considered manufactured homes.

Mr. Wedge referred to another case which was Nickola vs. Township of Grand Blanc. (See Exhibit I.) The decision was in favor of allowing mobile homes within any single family residential area.

Mr. Wedge distributed copies of the Nevada Revised Statutes which related to manufactured buildings. (See Exhibit J.) He explained that all these dwellings had to conform to certain building codes which were cited in N.R.S. 461.170. If mobile homes were built to these codes, there should be no discrimination on the placement of the mobile home.

Mr. Wedge stated that the manufactured home must also comply with the code of federal regulations (HUD bill). He distributed a comparison of the uniform building code and the HUD standards. (See Exhibit K.)

He stated that manufactured housing has developed recently because it was a way and a manner of acquiring low cost housing for people who might not otherwise be able to purchase stick housing.

Mr. Wedge stated that in Washoe County it was almost impossible to acquire mobile home land that could be developed for mobile home purposes. The land available with a trailor overlay was so limited, that the result was that type of land was becoming considerably more costly than land which was available for stick built homes.

Mr. Dick Hoy, Nevada Manufactured Housing Association, testified that he was in support of this bill. He stated that there was a stigmatism on mobile homes and planning agencies tended to consider mobile homes as a second or third class type of structure. Also, counties still tell developers that manufactured houses do not carry their "share of the taxes". However, that situation has been changed by virtue of allowing a manufactured home to be addressed as real property when it was affixed to a permanent foundation.

He stated that property have C,C, and Rs (conditions, covenants and restrictions) and these very often contain provisions which would restrict manufactured housing from being developed on such property. This bill would respect those provisions.

Mr. Steve Hamilton, Nevada Manufactured Housing Association, testified in support of this bill. He pointed out that the HUD code's primary purpose was to insure the integrity of the structure at the time it arrived at the site.

Mr. Ray Luekenga, Light Mobile Homes from Reno, Nevada, testified in support of Senate Bill No. 656. He distributed a report on structural efficiency of the manufactured houses with a comparison of the local building codes in California. (See Exhibit L.) He also included a paper regarding legislation which had been passed in California which had an affect on manufactured housing. (See Exhibit M.) He also referred to Howard Gate's study on fires. (See Exhibit N.)

Mr. Bill Taylor, Taylor Mobile Home Sales, testified in support of this bill. He stated that local entities have driven up the price of mobile home lots by only zoning a small percentage of land for mobile homes. This has tended to eliminate low cost housing by increasing the price of land.

Senator Echols felt that this bill was enabling in that the language used was "may" rather than "shall". He did not believe that this bill would solve any problems.

Senator K. Ashworth moved "Amend and Do Pass" on Senate Bill No. 656. On line 23, page 1, "manufactured dwelling" would be defined as "factory built housing" which is defined in N.R.S. 461.080. Also, on line 10 "may" would be changed to "shall".

Senator Kosinski seconded the motion.

The motion carried unanimously.

Chairman Gibson assigned Senator Wagner to get the amendments to this bill.

NEGOTIATION BILLS

Mr. David Concepción, guest arbitrator, testified that basically an arbitator was a creature of the parties in that he did not create the impasse. He is called upon only when an impasse has occured. Mr. Concepción stated that he was the interest arbitrator in the Sparks and Incline firefighters negotiations. He also has arbitrated and mediated in Colorado, Texas, Arizona, New Mexico, Washington, Oregon, and California. His background was in Education and Management. He had been an arbitrator since 1972. He said that the majority of arbitrators in California have a law background, but this was not a necessity. Nationwide it was 60 percent non-lawyers, 40 percent lawyers.

Mr. Concepción stated that the last best offer was as good as any procedure, but one benefit was that it tended to keep the parties honest. When parties were faced with the fact that a third party was going to choose between one package or another, they tended to be rational in the presentation of those packages. Also, in this procedure the third party was not shaping what the final package would be. That package has been shaped by one of the concerned parties.

Mr. Concepción felt that the "item by item" method of last best offer was the better method.

He stated that regarding ability to pay, how the available resources were distributed within the budget are often predetermined. This represented a control on what could be considered and arbitrators respected these controls. One had to determine what items were essential in the budget. Also to be considered was the distribution across the bargaining units.

Regarding the use of tri-partite the disadvantages would be the time and cost elements. It is more difficult to schedule three people than to schedule one person. The advantage would be that there would be more people available to offer their expertise.

As far as reserves, Mr. Concepción stated that they were set by some policy and were predetermined and thus he did not believe that area should be touched.

Mr. Concepción stated that retroactivity was generally a condition that was expected by both parties. Generally, there were too many drawbacks to not using retroactivity.

Mr. Conceptión stated that the preceding step to binding arbitration should be mediation. When parties have compulsory binding arbitration, there is no incentive to negotiate when they know at the end of the process they will have to arbitrate. He thought it was best to have mediation and binding arbitration at the selection of either party. That works as an incentive to make the mediation process work. The idea is to let the parties settle themselves. Mediation is a feature which allows that. With mediation, the third party is not the one who shapes the decisions, all he does is help the parties shape their decisions.

Mr. Conceptión stated that the argument for arbitration was that it worked as an incentive for good faith bargaining.

The pay for arbitrators usually runs around $350 per day. An arbitrators' whole practice is based on his reputation and integrity.

Mr. Conceptión stated that in Santa Clara County they have a panel of seven arbitrators. They handle about 150 arbitrations a year. The arbitrators are rotated. He indicated that this was a common practice.

Mr. Concepcion said that any time before a decision was made the parties could settle. But, once a decision had been made it could not be altered.

In other states when last best offer was initially used, there was a high usage. By about the second or third year this drops off and levels out and only a small percentage of people use the process. They found that it was better to negotiate than to allow a third party to come in to make a decision.

Chairman Gibson distributed a copy of the issues in the bills on local government employee-management relations act which had been prepared by Mr. Fred Weldon, Research Analyst. (See Exhibit O.)

SENATE BILL NO. 672

Requires governor to declare two legal holidays in each year.

Mr. Bob Gagnier, Executive Director Nevada State Employees Association, testified that in 1971 the legislature gave the governor the power to declare two legal holidays and no more. Through the years the governors had declared the two about half the time and only one the rest of the time.

Two years ago, in an attempt to be able to exceed the overall allocation under the wage and price controls of the federal government, their organization agreed not to request the governor for a two year period to declare any legal holidays. They did not do so during those two years.

This bill would stipulate that the governor would declare two legal holidays. Also, it should be determined in January of each year so that local governments would have advance notice.

Mr. Mike Cool, City of Las Vegas, testified that one extra day off for state employees would cost them $46,000.

Mr. Glen Rock, Personnel Division, testified that they preferred their proposal which was Assembly Bill No. 618. That bill would add the day after Thanksgiving and also a give a "floater" day to state employees. Personnel was in total opposition to Senate Bill No. 672.

The committee decided to give this bill further consideration.

ASSEMBLY BILL NO. 553

Requires annual training of civil defense personnel by civil defense and disaster agency.

Mr. Don Dehne, Civil Defense Agency, testified that this bill was requested by the Ways and Means Committee during their budget hearings. Over the past six years their training program had been funded by a federal grant which covered 100 percent of their costs. Now, the federal government had requested a 25 percent state match if this program was to continue.

The Ways and Means committee was concerned over the fact that they would be using state general funds to support a local training program.

Mr. Dehne said that the bill had been amended by the Assembly to the point where it served no useful purpose in its present form.

Senator K. Ashworth moved "Indefinite Postponement" on Assembly Bill No. 553.

Senator Getto seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 639

Creates commission on minority affairs.

Senator K. Ashworth moved "Indefinite Postponement" on Senate Bill No. 639 with a recommendation that the committee have a interim subcommittee resolution drafted to study minority problems.

Senator Getto seconded the motion.

The motion carried unanimously.

Chairman Gibson assigned Senator Kosinski to obtain a resolution for this study.

As there was no further business, meeting was adjourned at 6:35 p.m.

SENATE COMMITTEE ON
GOVERNMENT AFFIARS
May 18, 1981

Respectfully submitted by:

Anne L. Lage

Anne L. Lage, Secretary

APPROVED BY:

James I. Gibson

Senator James I. Gibson, Chairman

DATE: June 17, 1981

Library

EXHIBIT A

REVISED: 5/14/81

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Government Affairs, Room 243.

Day Monday, Date May 18, 1981, Time 2:00 p.m.

S. B. No. 652—Facilitates mechanics of annexation of cities in largest counties.

S. B. No. 656--Prohibits certain discrimination against manufactured dwellings in local planning and zoning.

S. B. No. 57--Provides for observance of Columbus Day.

Senator Hernstadt, Prime Sponsor

S. B. No. 672--Requires governor to declare two legal holidays in each year.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON GOVERNMENT AFFAIRS

DATE: May 18, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
Steve Hamilton	Nevada Mfg Housing Assn.		883-7866
Manuel Cortez	Clark County		
Jim Bartley			883-5575
Patrick Pine			
Troy E. Churchfield	Nevada Mfg Housing Assn		826-7744
Ray F. Luskenga	Light Mobile Homes		825-4200
Sara M. Tica	Light Mobile Homes		825-4200
E. Chapel	Nevada Mobile Home Sales, Inc		825-0947
Glenn Gruenewald	Nevada Home Search & Title		852-7811
William Taylor	Taylor MH Center Carson City		883-2800
Dick Wilde	Woodburn Wilde Blakey & Jeppson		329 6131
Bob Merrick	" " " "		"
John Hawkins	Nev. School Boards Assoc.		

SB652:

My name is George Ogilvie, and I am the City Attorney of the City of Las Vegas. I am not here to testify in favor of SB652 as it is presently written since, in my opinion, any benefit which would inure to the benefit of the cities of the state from the bill, as presently written, would be minimal at best. However, I detect from the bill that its intent is to restore the annexation law to the status it enjoyed prior to 1973. The purpose of my testimony this afternoon is to suggest a means of emplementing that intent.

EXHIBIT C

Before exploring my suggestion, however, I would like to digress for the moment into the background of and reasons for the annexation law as it was originally enacted in 1967. I have passed among you copies of an affidavit which I prepared over 11 years ago in which I set forth my reminiscences concerning the annexation law as it made its way through the 1967 legislative session. Because of general dissatisfaction among all of the cities of the state over the then existing annexation law, particularly the veto power over any annexation vested in the annexation commission, one of the planks in the legislative program of the Nevada Municipal Association (now the Nevada League of Cities) was a complete revision of the annexation law. I was requested by the NMA to prepare that revision.

The vehicle which I chose to accomplish this assignment was a model uniform annexation act suggested by the Advisory Commission on Intergovernmental Relations, the theme of which is summarized in NRS 268.572.

(Read NRS 268.572)

One of the basic principles of the model act was that municipalities should be permitted to initiate annexation proceedings of their own motion, without the necessity of receiving any petition from the property owners in the territory

proposed to be annexed, which annexation proceedings were subject to being defeated only upon the filing of the requisite number of property owner protests. This premise was the basis upon which I prepared by bill, and this was the premise which I advocated before the Assembly Government Affairs Committee and before this Committee during the 1967 legislative session.

Sometime during the closing days of that session, the Nevada County Commissioners' Association proposed some amendments to the bill which would make it more pallatable to the counties. One of the counties' concerns was that, under the bill as written, a city presumably could pick and choose which areas it would annex, thereby being able to pick off the more affluent areas and leave the poorer areas dependent upon county services. The County Commissioners' Association therefore suggested a mechanism whereby either the board of county commissioners or the property owners in an area which might not be attractive to a city could compel the city to institute annexation proceedings with respect to that area. This suggestion was accepted by the Legislature and appears in the annexation law as NRS 268.582.

At no time, however, did the County Commissioners' Association attempt to propose its suggestion for petitions from the board of county commissioners or the property owners as a condition precedent to the institution by a city of annexation proceedings, and at no time did either of the legislative committees even discuss it as doing so. Clearly, it was intended by the County Commissioners' Association and accepted by the Legislature that the petitions mentioned in NRS 268.582 were for the sole purpose of providing a means to compel a municipality to instutute annexation proceedings if it chose not to do so on its own motion. A comparison of NRS 268.580 and NRS 268.582 supports this conclusion.

(Compare "may in NRS 268.580 with "shall" in NRS 268.582)

This is the posture in which the annexation law was enacted in 1967 and the

posture in which it remained until 1973, when two events occured which changed its whole concept. First, in January of that year, the Nevada Supreme Court ruled that NRS 268.582 did, in fact, require a petition by the board of county commissioners or by the property owners as a condition precedent to a municipality's instituting annexation proceedings. As you may surmise from the foregoing, I don't agree with this decision but, nevertheless, it remains the law of the state until either it has been overruled by the Supreme Court or the statute is amended by the Legislature.

The second event which occured in 1973 was that the Legislature, in that session, enacted NRS 268.577, which prohibits cities from soliciting the commencement of annexation proceedings. This, then, compounded the problem created by the Supreme Court since, not only are petitions now required, but also the cities are prohibited from circulating them.

The City of Las Vegas is therefore suggesting that NRS 268.582 be amended to restore the original concept which prompted its inclusion in the annexation law, to-wit, to provide an alternative method of instituting annexation proceedings. My suggestion is that NRS 268.562 be amended to read as follows:

(Read amendment)

The City is also endorsing the repeal of NRS 268.577, as provided for in section 5 of SB652, although, without the change in NRS 268.582 proposed above, I doubt that this repeal will be of much benefit to the cities.

Another aspect of SB652 which the City endorses is found in section 2 of the bill. This section provides for the elimination of the language contained in NRS 268.584 which ostensibly requires that any annexation proposal include at least 60% of the urbanized area in any geographical quadrant. Since the term "geographical quadrant" is in no way limited, I submit that this provision is

completely unenforceable. For example, using the Las Vegas City Hall as the quadrant center, as required by the provision in question, Salt Lake City is in the Northeast quadrant, Phoenix is in the Southeast quadrant, Los Angeles is in the Southwest quadrant and San Francisco is in the Northwest quadrant. Surely, reason would dictate that this was not the result intended, but even if the quadrants stopped at the county lines, this provision, were it susceptible of enforcement, would completely thwart any annexation attempt.

The City also proposes a change in section 4 of SB652 to make it consistent with AB366, which has already been passed and approved. This change would amend line 26 on page 4 by deleting the phrase "described by legal description" and inserting in lieu thereof "accurately described." Section 1 and 3 of the bill should be deleted, since they merely repeat what has already become law with the passage and approval of AB366, except for the language which appears on page 3, line 49, and on page 4, lines 1 to 3. In order to preserve this language, the City is proposing to add it as an amendment to NRS 268.592, as follows:

(Read amendment)

The bottom line of these amendments, both those contained in SB 652 and those which the City has proposed today, is that, if the cities are to be permitted any realistic opportunity of expanding their boundaries and if the legislative purpose of the annexation law as stated in NRS 268.572 is to be satisfied, it is mandatory that they be adopted. These amendments, in and of themselves, do not effect the annexation of anything. They merely set wheels, which have been stymied so long, in motion again.

Amendments to SB652

EXHIBIT D

1. Section 1. Delete - AB366, already signed by governor, picks up most of the changes set out in this section.

2. Section 3. Delete - AB366 picks up these amendments except for the language at page 3, line 49 to page 4, line 3. This language has been placed in 268.592, see below.

3. Section 4. Page 4, lines 25-26 are amended to read:

tory being annexed [shall be described by metes and bounds] must be accurately described.

This language simplifies the description requirement and permits alternative methods of description, viz. metes and bounds, legal or any other accurate method. This change is consistent with the changes made in AB366, see Section 2 of AB366 as passed.

4. New Section:

NRS 268.582 is hereby amended to read as follows:

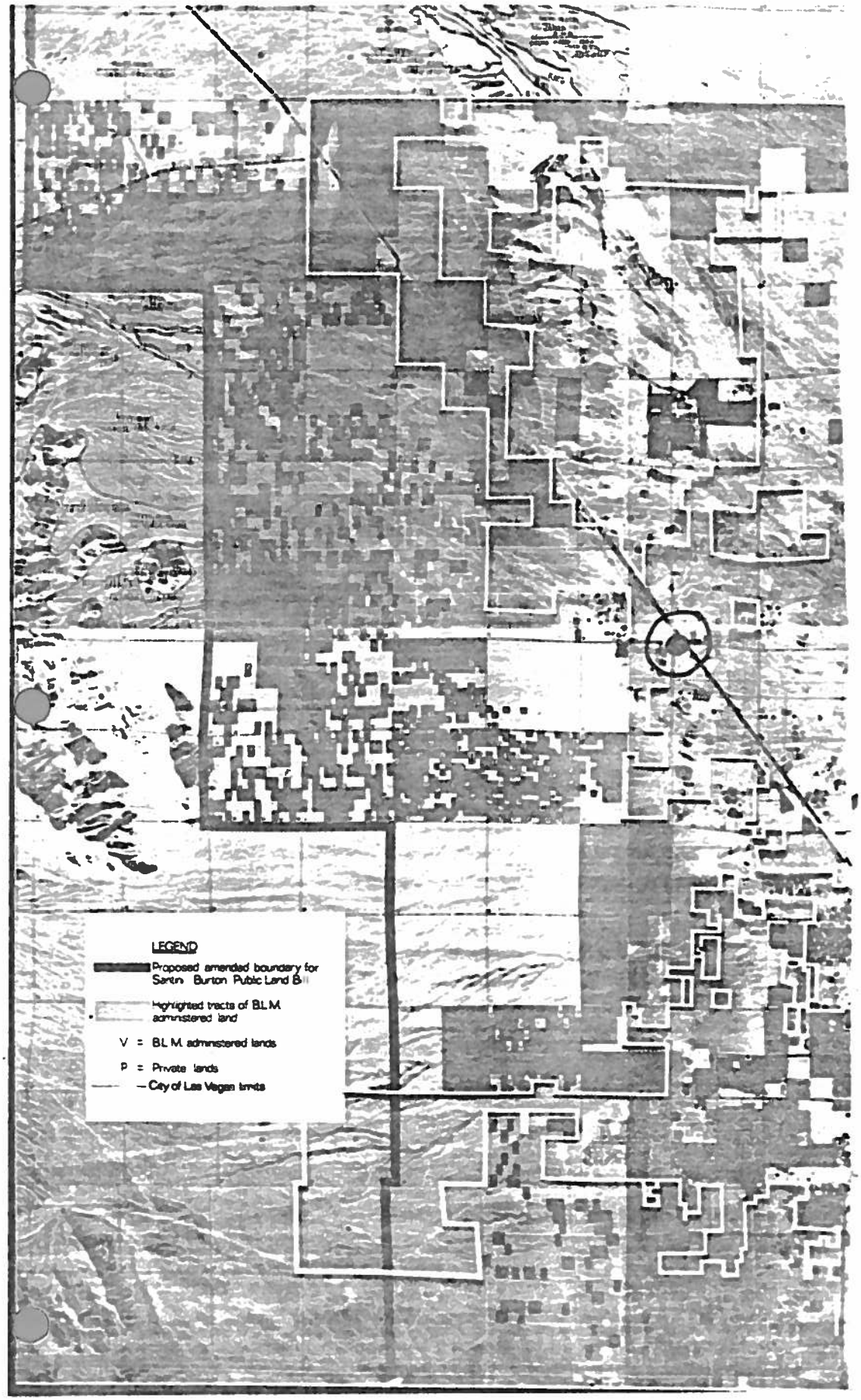
In adition to the method of direct initiation by resolution pursuant to NRS 268.584, [upon petition of the board of county commissioners, or upon petition of not less than 10 percent of the property owners in an unincorporated area developed for urban purposes which is approximately described in the petition,] the governing body of any city [shall] must commence action in accordance with the provisions of NRS 268.584 to 268.590, inclusive, upon the petition of the board of county commissioners, or upon the petition of not less than 10 percent of the property owners in an unincorporated area developed for urban purposes which is approximately described in the petition.

5. New Section:

NRS 268.592 is hereby amended to read as follows:

[Unless] If a majority of the property owners protest [such] an annexation, either verbally at the public hearing or in writing within 15 days after the conclusion of [such] the public hearing, the city shall not annex in that proceeding any part of the territory described in the notice. This does not preclude a subsequent proceeding with respect to all or part of that territory. Otherwise the governing body shall have authority, at any regular or special meeting thereof held not sooner than 16 days after the conclusion of the public hearing and not later than 90 days after the conclusion of such hearing, to adopt an ordinance extending the corporate limits of the annexing city to include all, or such part, of the territory described in the notice of public hearing, which meets the requirements of NRS 268.580, and which the governing body has concluded should be annexed; but the governing body shall have authority to amend the report provided for in NRS 268.578, to make changes in the plans for service to the area proposed to be annexed, so long as such changes meet the requirements of NRS 268.578.

EXHIBIT E


LEGEND
Proposed amended boundary for Santini Burton Public Land Bill
Highlighted tracts of BLM administered land
V = BLM administered lands
P = Private lands
— City of Las Vegas limits

CALIFORNIA GOVERNMENT CODE

EXHIBIT F

§65852.3 Mobilehomes; Installation on lots zoned for single-family dwellings.

A city, including a charter city, county, or city and county shall not prohibit the installation of mobilehomes certified under the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401, et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code on lots zoned for single-family dwellings. However, a city, including a charter city, county, or city and county may designate lots zoned for single-family dwellings for mobilehomes as described in this section, which lots are determined to be compatible for such mobilehome use. A city, including a charter city, county, or city and county may subject any such mobilehome and the lot on which it is placed to any or all of the same development standards to which a conventional single-family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking and architectural, aesthetic requirements, and minimum square footage requirements. However, any architectural requirements imposed on the mobilehome structure itself, exclusive of any requirement for any and all additional enclosures, shall be limited to its roof overhang, roofing material, and siding material. In no case may a city, including a charter city, county, or city and county apply any development standards which will have the effect of totally precluding mobilehomes from being installed as permanent residences.
(Added by Stats. 1980, c. 1142, p.___, § 1.5, operative July 1, 1981.)

Operative July 1, 1981.

VERMONT

EXHIBIT G

MUNICIPAL AND COUNTY GOVERNMENT

Title 24, §4406. Required regulations.

No municipality may adopt zoning regulations which do not provide for the following:

* * * * * * * * * * * * * * * * *

(4) Equal Treatment of Housing.

(A) Except as provided in section 4407(6) of this title, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

(B) No zoning regulation shall have the effect of excluding from the municipality housing to meet the needs of the population as determined in section 4382(c) of this title.

(C) No provision of this chapter shall be construed to prevent the establishment of mobile home parks pursuant to chapter 153 of Title 10.--Amended 1975, No. 236 (Adj. Sess.), §1.

Title 24, §4407.

(6) Design control districts. Zoning regulations may contain provisions for the establishment of design control districts. Prior to the establishment of such a district, the planning commission shall prepare a report describing the particular planning and design problems of the proposed district and setting forth a design plan for the areas which shall include recommended planning and design criteria to guide future development. The planning commission shall hold a public hearing, after public notice, on such report. After such hearing, the planning commission may recommend to the legislative body such design control district. A design control district can be created for any area containing structures of historical, architectural or cultural merit, and other areas in which there is a concentration of community interest and participation such as a central business district, civic center or a similar grouping or focus of activities. Within such a designated design control district no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plans therefor by the planning commission. A design review board

may be appointed by the legislative body of the municipality to advise the planning commission, which board shall have such term of office, and such procedural rules, as the legislative body determines.

EXHIBIT H

from parcel of land. The Ottawa County Circuit Court, James E. Townsend, J., entered judgment that township ordinance provision permitting mobile homes only in mobile home parks was valid, and appeal was taken. The Court of Appeals, Quinnell, J., 70 Mich.App. 258, 245 N.W.2d 709, reversed, holding ordinance unconstitutional, and appeal was again taken. The Supreme Court, Levin, J., held that: (1) per se exclusion of mobile homes from all areas not designated as mobile home parks had no reasonable basis under police power, and was therefore unconstitutional, and (2) municipality need not permit all mobile homes, regardless of size, appearance, quality and manufacture or manner of on-site installation, to be placed in all residential neighborhoods, and mobile home could be excluded if it failed to satisfy reasonable standards designed to assure favorable comparison with site-built housing which would be permitted on site, and not merely because it was a mobile home.

Determination of Court of Appeals affirmed; judgment vacated and remanded.

Coleman, C. J., filed dissenting opinion in which Ryan, J., joined.

Moody, J., filed dissenting opinion.

KEY NUMBER SYSTEM

1. Zoning and Planning ⇐83

Per se exclusion, under township zoning ordinance of mobile homes from all areas not designated as mobile home parks had no reasonable basis under police power, and was therefore unconstitutional; overruling *Wyoming Twp. v. Herweyer*, 321 Mich. 611, 33 N.W.2d 93 (1948). M.C.L.A. Const. Art. 1, § 17.

2. Zoning and Planning ⇐83

A municipality need not permit all mobile homes, regardless of size, appearance, quality of manufacture or matter of on-site installation, to be placed in all residential neighborhoods; a mobile home may be excluded if it fails to satisfy reasonable standards designed to assure more favorable comparison of mobile homes with site-built

ROBINSON TOWNSHIP, a Michigan Municipal Corporation,
Plaintiff-Appellant,
v.
Donald KNOLL and Merle Knoll, jointly and severally,
Defendants-Appellees.

Docket No. 58747.
Calendar No. 1.

Supreme Court of Michigan.

Argued Jan. 8, 1980.
Decided Feb. 23, 1981.

Township brought action against landowners, seeking removal of mobile home

EXHIBIT H

housing which would
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housing which would be permitted on site, and not merely because it is a mobile home. M.C.L.A.Const. Art. 1, § 17.

2. Zoning and Planning ⇐790

Where township's complaint alleged mobile home owners' violation of provision of zoning ordinance relating to building permits, but building permit could not have issued because of unconstitutional per se rule under separate ordinance confining mobile homes to mobile home parks, township was entitled to no relief based on mobile home owners' failure to apply for building permit prior to erecting mobile home on lot as well as digging well, obtaining septic permit, applying for power from power company, clearing trees for roadway, and erecting rail fence around site.

4. Constitutional Law ⇐278.2(1)

A "reasonable basis" for zoning ordinance, in order that it might satisfy substantive due process, must be grounded in police power, which includes protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public, or any substantial part of the public. U.S.C.A.Const. Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

5. Zoning and Planning ⇐83

Assumption that all mobile homes are different from all site-built homes with respect to criteria cognizable under police power can no longer be accepted. M.C.L.A. Const. Art. 1, § 17.

6. Zoning and Planning ⇐83

If mobile homes were to be excluded from all residential zones in township other than mobile home parks, it could not be because they were "movable or portable," as a "mobile home" was defined under township's zoning ordinance, where site-built homes were "movable or portable," in sense of relocation from outside township or from another location within township, although they were rarely moved, and thus it would be arbitrary to discriminate against mobile homes on such basis. M.C.L.A. Const. Art. 1, § 17.

7. Zoning and Planning ⇐83

The criteria "constructed to be towed on its own chassis" and "designed without a permanent foundation," included in township's definition of "mobile home" under zoning ordinance providing that mobile homes may be located only in mobile home parks, did not identify characteristics which justified exclusion and segregation of mobile homes where, although community might have legitimate interest in safeguarding residents against, for example, windstorm damage, justifying requirement that mobile home be firmly attached to solid foundation, and might reasonably include that dwelling the wheels and chassis of which are exposed is unsightly or is likely to lead to transience, thus justifying requirements that certain on-site modifications be made as condition to placement of mobile home in area not designated mobile home park, ordinance defining "mobile home" reflected no such concerns. M.C.L.A.Const. Art. 1, § 17.

8. Zoning and Planning ⇐83

Ordinance restricting placement of mobile homes must be directed to dwelling as it will exist on the land, and not to its characteristics when delivered to the site. M.C.L.A.Const. Art. 1, § 17.

9. Zoning and Planning ⇐83

Aesthetics was not sufficient ground upon which to justify per se rule of township ordinance excluding mobile homes from other than mobile home parks where it appeared that mobile homes could be designed or modified to compare favorably in appearance to many site-built homes; reasonable requirements to show a favorable comparison with community's aesthetic standards could be imposed by municipality. M.C.L.A.Const. Art. 1, § 17.

10. Zoning and Planning ⇐83

Community concerns based on health and safety were insufficient characteristics of mobile homes to justify per se rule of township ordinance excluding mobile homes from areas other than mobile home parks since municipality was free to deal with

concerns of such type in a reasonable code. M.C.L.A.Const. Art. 1, § 17.

11. Zoning and Planning ⇐83

Concern that mobile homes are given to transient use was insufficient characteristic of mobile homes to justify per se rule of ordinance excluding mobile homes from areas other than mobile home parks since practical necessities attending installation of a single mobile home in an area in which site-built housing was allowed, along with conditions that a township might reasonably attach to such mobile home use, vitiated such cause for concern and, in light of investment required to install mobile home as a single-family dwelling, it was unreasonable to assume mobile home dweller would stay only a short time. M.C.L.A. Const. Art. 1, § 17.

12. Zoning and Planning ⇐83

Where township's building code allowed for prefabricated housing which was assembled at site, there could be no reasonable basis for distinguishing between mobile homes, which were excluded by ordinance from areas other than mobile home parks, and other prefabricated dwellings since both were "movable or portable," and might be similar in appearance and constructed of similar materials; it was not valid basis for distinction under police power that one was not only prefabricated but also preassembled, and "constructed to be towed on its chassis." M.C.L.A.Const. Art. 1, § 17.

Scholten & Fant by R. Neal Stanton, Grand Haven, for plaintiff-appellant.

Hoffman & Watts by John A. Watts, Allegan, Mich., for defendants-appellees.

LEVIN, Justice.

In this case we revisit the holding of *Wyoming Twp. v. Herweyer*,[1] and consider whether a municipality constitutionally may provide that mobile homes are to be sited only in mobile home parks and exclude all mobile homes from other residential zones.

Robinson Township commenced this action against Donald and Merle Knoll, seeking removal of a mobile home from their 80-acre parcel of land.

Count I of the complaint alleged that the use of the mobile home was contrary to § 307.1 of the township's zoning ordinance[2], which provides that mobile homes may be located only in mobile home parks, and to § 1302.1 of the ordinance[3], which requires that a building permit be obtained before the erection of a building or structure on any property in the township. Count II alleged that because of violation of the same sections of the ordinance, the mobile home was a nuisance per se.

The answer raised affirmative defenses based on the unconstitutionality of the ordinance in that it arbitrarily and capriciously prohibits a proper land use, and is overbroad, failing to establish clear standards to be observed by property owners and citizens of the township.

1. *Wyoming Twp. v. Herweyer*, 321 Mich. 611, 33 N.W.2d 93 (1948).

2. "*Mobile Homes—Where Permitted*: Mobile homes are considered as dwelling units and are not permitted as an accessory use to a permitted principal use and are permitted only in approved mobile home parks." Robinson Township Zoning Ordinance, § 307.1.

3. "*Application.* Except as otherwise provided, it shall be unlawful to erect any new building or structure or to alter any existing building or structure at a cost of $200.00 or more until a permit therefor has been obtained from the building inspector by the owner or his duly authorized agent. Application for a permit shall be in writing and upon duplicate printed forms furnished by the building inspector. Such permits shall be non-transferable and must be obtained before any work, excavation, erection, alteration, or movement is begun. Satisfactory evidence of ownership of the premises may be required by the building inspector and shall be furnished upon request. If the application is approved, the building inspector shall so mark both copies over his signature, shall file one copy in the office of the township clerk of Robinson Township, and return the other copy to the applicant together with a construction card signed by the building inspector stating the extent of the work authorized, which card shall be attached to and remain on the premises during the progress of the work authorized." *Id.*, § 1302.1.

Trial was had on stipulated facts, including the home had been placed on the parcel; the parcel was not a mobile home park; no building permit had been obtained; and the Knolls had dug a well, obtained a septic permit, applied for power from Consumers Power Company, cleared trees for a roadway and erected a rail fence around the site. No claim was made that the dwelling was not a mobile home within the meaning of the ordinance.

The trial judge, citing *Wyoming Twp. v. Herweyer*, held that "unless and until such decision is reversed," the provision that mobile homes are permitted only in mobile home parks was valid, and accordingly ordered removal within 30 days.

The Court of Appeals reasoned that because 1) there was no existing mobile home park in the community, and—given the state of construction on a newly approved mobile home park—"the use of land for mobile homes is neither imminent nor a factual certainty" and 2) "[a]s a matter of law," "a single mobile home [is not] a nuisance per se or detrimental to public health, safety, morals or general welfare, either," the township had totally excluded a legitimate use from the entire township.[4] The Court found no justification for this total exclusion, and held the ordinance unconstitutional. The Court found its conclusion reinforced in that the Knolls' land was so zoned that it could be licensed as a mobile home park, commenting that "if the existence of such a park on that site poses no threat to 'public health, safety, morals or general welfare,' it is difficult to perceive how the existence of one mobile home could do so."

We agree with the Court of Appeals that the ordinance is unconstitutional, but on other grounds.

[1-3] We hold:

(1) The per se exclusion of mobile homes from all areas not designated as mobile home parks has no reasonable basis under the police power, and is therefore unconstitutional.[5]

The reasoning on which the rule of *Wyoming Twp. v. Herweyer* was based no longer valid in light of improvements in the size, quality and appearance of mobile homes, and that decision and cases to the same effect are overruled as to housing that is not a "trailer."

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

The Robinson Township ordinance embodies a per se rule segregating mobile homes from residential zones that are not mobile home parks, and is therefore unconstitutional.

(2) The complaint also alleged violation of the provision of the zoning ordinance relating to building permits. A building permit could not have issued because of the per se rule confining mobile homes to mobile home parks. It necessarily would have been futile for the Knolls to apply for one. For this reason, the township is entitled to no relief based on the Knolls' failure to apply for a building permit.

(3) We intimate no opinion whether building code provisions may now be invoked against the Knolls, leaving that question for consideration by the circuit court should the township seek further relief on that basis.

We vacate the judgment of the Court of Appeals, and remand to the circuit court for further proceedings not inconsistent with this opinion.

Municipalities throughout the state have assumed the continuing validity of the rule of *Wyoming Twp. v. Herweyer* in drafting their ordinances. We reserve the question

4. *Robinson Twp. v. Knoll*, 70 Mich.App. 258, 264-266, 245 N.W.2d 709 (1976).

5. Const.1963, art. 1, § 17.

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whether our decision overruling that opinion as applied to housing other than "trailers" should be applied retroactively in other pending cases or to other ordinances and, if so, whether retroactivity should be conditioned upon compliance with reasonable standards designed to assure favorable comparison of the mobile home in question with site built housing which would be permitted on the site.[6]

I

In *Kropf v. Sterling Heights*,[7] this Court said that "[a] plaintiff-citizen may be denied substantive due process by the city or municipality by the enactment of legislation, in this case a zoning ordinance, which has, in the final analysis, no reasonable basis for its very existence."

[4] A "reasonable basis" must be grounded in the police power,[8] which this Court has defined as including "protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public, or any substantial part of the public."[9]

The township's argument based on the land planning principle that like uses should be grouped and incompatible uses kept separate begs the question raised by the appeal: do mobile homes differ from other single-family dwellings in any constitutionally cognizable manner which would justify their per se classification as a different use? If not, then the ordinance limiting mobile homes to mobile home parks has "no reasonable basis for its very existence."

In *Kropf*, we reaffirmed the principle that "'[w]hile an ordinance must stand the test of reasonableness, the presumption is in favor of its validity and courts may not invalidate ordinances unless the constitutional objections thereto are supported by competent evidence or appear on their face.'"[10]

The Knolls, having failed to produce any evidence in the circuit court, can succeed only if the rule that no mobile home may be located outside a mobile home park is invalid on its face.

We believe that it is.[11]

II

Wyoming Twp. v. Herweyer, holding that a municipality may constitutionally limit trailers to trailer parks, would seem to be dispositive of this case, and was so treated by the trial judge. We conclude, however, that it does not control.

[5] That case, decided over thirty years ago, dealt with trailers. Today, we consider the per se exclusion not of trailers, but of mobile homes—and more than the label has changed with time. The mobile home today can compare favorably with site-built housing in size, safety and attractiveness. To be sure, mobile homes inferior in many respects to site-built homes continue to be manufactured. But the assumption that all

6. This case was tried on a stipulation of facts. The record shows that the mobile home placed on the Knolls' land is 14' × 70', and that some improvements have been made. There is no indication that this mobile home is of a kind that the township could exclude. Our decision, however, is not based on a determination that this mobile home could not constitutionally be excluded.

7. *Kropf v. Sterling Heights*, 391 Mich. 139, 157, 215 N.W.2d 179 (1974).

8. "The power of the city to enact ordinances is not absolute. It has been given power by the State of Michigan to zone and regulate land use within its boundaries so that the inherent police powers of the state may be more effectively implemented at the local level. But the state cannot confer upon the local unit of government that which it does not have. For the state itself to legislate in a manner that affects the individual right of its citizens, the state must show that it has a sufficient interest in protecting or implementing the common good, via its police powers, that such private interests must give way to this higher interest." *Id.*

9. *Cady v. Detroit*, 289 Mich. 499, 504–505, 286 N.W. 805 (1939).

10. *Kropf v. Sterling Heights*, *supra*, 391 Mich. p. 156, 215 N.W.2d 179, quoting *Northwood Properties Co. v. Royal Oak City Inspector*, 325 Mich. 419, 423, 39 N.W.2d 25 (1949).

11. See fn. 6.

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A

Section 203 of the township's zoning ordinance defines "mobile home" as "[a] movable or portable dwelling constructed to be towed on its own chassis, connected to utilities and designed without a permanent foundation for year-round living as a single-family dwelling."

[6] If mobile homes are to be excluded from all residential zones in Robinson Township other than mobile home parks, it cannot be because they are "movable or portable." Site-built homes are "movable or portable," although they are rarely moved.

We note in this regard that § 500.2 of the township's building code [12] specifically provides for the issuance of moving permits to allow the relocation of one- or two-family dwellings from outside the township or from another location within the township. Any dwelling covered by § 500.2 is, by the township's definition, movable. It would be arbitrary to discriminate against mobile homes on that basis.

[7] Nor do the criteria "constructed to be towed on its own chassis" and "designed without a permanent foundation" identify characteristics which justify the exclusion and segregation of mobile homes.

One can agree that a community has a legitimate interest in safeguarding residents against, for example, windstorm damage, justifying a requirement that a mobile home be firmly attached to a solid foundation on the site. And a municipality may reasonably conclude that a dwelling the wheels and chassis of which are exposed is unsightly or is likely to lead to transience and should not be tolerated alongside site-built homes. These and similar considerations would justify requirements that certain on-site modifications be made as a condition to placement of a mobile home in an area not a designated mobile home park. The ordinance governing moving permits, discussed above, employs such a mechanism. [13]

12. The section provides in part:

"*Moving Permit*: Any person desiring to move any one- or two-family dwelling and/or accessory building from outside of the Township limits to any location within the township or from one location to another location within the township shall file a written application for a moving permit with the Township Board of Appeals. Said application shall set forth the present location of said building and/or buildings, the location of [*sic*] which said building or buildings are proposed to be moved within the township, the age of the building or buildings, a statement as to whether or not the building or buildings comply with the requirements of the building code and if not what improvements applicant proposes to make to bring said building or buildings in compliance with the building code. The application shall be accompanied by a site map as required by Sec. 501.1 of the Building Code and said map shall clearly indicate front, side and rear yards as required by Sec. 501.2 of the Building Code." Robinson Township Building Code, § 500.2.

13. "The Board of Appeals shall make or cause to be made an investigation in regard to such application, and if it be determined that the building and/or buildings complies with and is in conformity to the Robinson Township Building Code or will be brought into conformity with said code by the applicant and that such building and/or buildings at the proposed new location will not be injurious to the contiguous property and the surrounding neighborhood, the Board of Appeals may grant a moving permit, and if the applicant is required to make any improvements or changes to bring said building or buildings into conformity with the Building Code the permit shall specify such requirements. If any improvements or alterations in the amount of $200.00 or more are required the applicant shall apply for and secure a permit for such alterations pursuant to this ordinance before moving said building and/or buildings under the moving permit issued by the Board of Appeals.

"The foundations and all other new portions, improvements or alterations to said building or buildings shall be constructed in conformity with the Township Building Code and the use, location of said building or buildings and yard areas shall conform to the Robinson Township Zoning Ordinance and Building Code." *Id.*, § 500.2.

[3] Just as "the reasonableness of a zoning restriction must be tested according to existing facts and conditions and not some condition which might exist in the future,"[14] so must an ordinance restricting the placement of mobile homes be directed to the dwelling as it will exist on the land, and not, as here, to its characteristics when delivered to the site.

B

While the characteristics specified in the ordinance are not themselves a basis for the disparate treatment of mobile homes, they do serve to identify "the mobile home." If that label implies the existence of other (out unspecified) characteristics which provide a basis for restricting mobile homes to mobile home parks, there is a valid purpose for the ordinance.

[5] We are unable to identify any inherent characteristics of mobile homes that justify the per se rule of the ordinance.

Amicus curiae Michigan Townships Association argues that the segregation of mobile homes is justified on aesthetic grounds.

It appears that mobile homes can be designed or modified to compare favorably in appearance to many site-built homes. There is no longer reason to presume that mobile homes will fail to live up to a community's aesthetic standards. Reasonable requirements to assure favorable comparison with those standards, of course, can be imposed by a municipality.

[10] Concerns based in health and safety are also illusory. A municipality, again, is free to deal with concerns of this type in a reasonable code. Standards to assure that mobile homes compare favorably to other housing in, for example, insulation, adequacy of plumbing, and size of the living space exist[15] or can be imposed. And, as we have noted, a community may impose requirements to assure protection from windstorm damage.

[11] Another concern that has been voiced is that mobile homes are given to transient use. The practical necessities attending the installation of a single mobile home in an area in which site-built housing is allowed, along with conditions (such as those discussed above) that a township might reasonably attach to such mobile home use, vitiate this cause for concern. A parcel of land of sufficient size to meet community standards probably will have been purchased by the mobile home owner. Utility lines may be installed to the site; the municipality may require that a foundation to which the home will be firmly attached be laid, and other on-site modifications may be made to bring the mobile home and the parcel on which it is located into conformity with community aesthetic standards. In light of the investment required to so install a mobile home as a single family dwelling, it is unreasonable to assume the mobile home dweller will stay only a short time.[16]

14. *Christine Building Co. v. Troy*, 367 Mich. 508, 516, 116 N.W.2d 816 (1962).

15. See Department of Housing and Urban Development, Mobile Home Construction and Safety Standards, 24 CFR § 3280.

See A Comparison Between HUD's Mobile Home Construction and Safety Standards (1975) and Building Officials and Code Administrators (BOCA) Single Family Dwelling Code (1975), which is Appendix C in the brief of amicus curiae Manufactured Housing Institute, Inc.

16. "At their location [mobile homes] are removed from the axles and wheels and placed on concrete pads and piers each about 6 to 7 feet apart. In addition, with units constructed during the last 3 years, hurricane bands built into the walls of the units are anchored with bolts augered 3 to 4 feet into the ground.

"[O]nce put in place and made immobile, they are often skirted around their bases. According to plaintiffs' witness, between 75 and 80 percent of mobile homes once located are never moved. When they are moved, it takes approximately three days to dismantle the mobile home and set it up for moving, and several more days to replace it in its new location. At present prices moving expenses will range from $500 for a single-wide, to $1000 for a double-wide." *Gates v. Howell*, 204 Neb. 256, 262, 282 N.W.2d 22 (1979).

"It need hardly be pointed out that these double width homes are intended to remain on site permanently, and that their removal by cranes or other heavy machinery would undoubtedly entail considerable difficulty

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The disparate treatment of mobile homes seems to be based on attitudes which once had but no longer have a basis in fact.

"Community fear of blight can be traced to the low quality of both the early trailers and their parking facilities. Economic conditions of the thirties, followed by wartime housing shortages and rapid relocations of the labor force, pressed many thousands of unattractive trailers into permanent use. Often these units were without running water or sanitary facilities. There were no construction standards to insure even minimum protection against fire or collapse. They were parked in areas which were usually crowded, poorly equipped, and generally unsuited to residential use. As a result, conditions in these parks seldom exceeded minimum health and sanitation standards. The specter of such parks teeming with tiny trailers made community apprehension understandable. But substantial improvements in the quality of both mobile homes and park facilities may have undermined the bases for this antipathy today. The mobile home currently produced is an attractive, completely furnished, efficiently spacious dwelling for which national construction standards have been adopted and enforced by the manufacturers' associations." [17]

Decisions from other jurisdictions, while not directly on point, support the view that per se discrimination against mobile homes can no longer be legitimized.

In holding that mobile homes intended to be used as permanent dwellings are taxable as real property, the New Jersey Supreme Court explained that "[t]he early house trailers, which originated a half century ago, have been described as makeshift contraptions 'not really fit for permanent human habitation' * * *. That they were then viewed as personal property can have little relevance when dealing with modern mobile homes * * *. These modern homes not only have all of the facilities of conventional homes, including sewage, water, lighting, heating and air conditioning, but also are more and more being constructed to look like and be used as conventional homes." [18]

The Nebraska Supreme Court, holding that mobile homes cannot be taxed as motor vehicles, observed that "[t]he evidence in this case discloses that the mobile homes in question resemble in all respects a residence. * * * The evidence in this record further discloses that the interiors of these mobile homes resemble a residence in every respect, and one looking at the exhibits disclosing the interior of these mobile homes, if not advised that in fact they were mobile homes, would not be able to distinguish them from any other residence." [19]

The New Mexico Supreme Court recently held that the mobile home there in question was "substantially the same as a conven-

and oftentimes considerable damage to the landscape. Insofar as the single width homes are concerned their removal would also entail some difficulty since in their current models they may be as much as seventy feet long and fourteen feet wide. Here, as with the double width homes, the intent that they remain on site permanently is entirely evident." *Koester v. Hunterdon County Board of Taxation*, 79 N.J. 381, 386, 399 A.2d 656 (1979).

Transient use could be expected, if at all, only of mobile homes located in, rather than away from, mobile home parks. But even this expectation is not supportable in fact, for "[w]hile mobile homes were originally for transient purposes, today about 60% of all mobile homeowners never move their home. The MHMA [Mobile Home Manufacturers' Association] reports that the average stay in one location by mobile home owners is 58 months, which is approximately the same residency duration as in conventional housing. About 70% of the mobile homes used since World War II have been used as permanent dwellings." Neithercut, *The Mobile Home: Problems With Its Recognition as a Valid Housing Source*, Newsletter, Real Property Section, State Bar of Michigan (No. 10, Dec., 1975), p. 25.

17. Note, *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 Yale L.J. 702–703 (1962).

18. *Koester v. Hunterdon County Board of Taxation, supra*, p. 388, 399 A.2d 656.

19. *Gates v. Howell, supra*, 204 Neb. pp. 262–263, 282 N.W.2d 22.

tional one-family dwelling" and therefore "does not violate the letter or the spirit" of a subdivision's restrictive covenant prohibiting trailers.[20] The description of that mobile home demonstrates that mobile homes are not inherently incapable of achieving the aesthetic and comfort standards of conventional dwellings:

"Parker purchased two lots in the Deming Ranchettes subdivision in 1975 and 1977. He bought a double-wide mobile home and moved it on the lots. The wheels, axles, and running gear were removed and sold, and the home was placed on a concrete and slump stone foundation. The mobile home has three bedrooms, two full baths and contains 1,440 square feet of floor space. A patio, a 200 square foot porch, sidewalks, and a 672 square foot two-car garage were constructed. A water well was drilled and a septic tank was installed. Both were connected to the mobile home. A conventional style asbestos shingle roof and aluminum siding were added to the home. A garden was planted and 210 trees were obtained to be planted.

"Parker testified that he and his wife intended to reside in the home permanently. Photographs admitted into evidence showed that their home had the appearance of a conventional single-family dwelling. It compares favorably with other homes in the subdivision."[21]

The legislatures of various states have provided that mobile homes may be taxed as re... ...erty,[22] and one statute prohibits ordinances which, like Robinson Township's, discriminate against mobile homes.[23]

[12] Moreover, Robinson Township's building code allows for prefabricated housing which is assembled at the site.[24] There can be no reasonable basis for distinguishing between mobile homes and other prefabricated dwellings. Both are "movable or portable," and may be similar in appearance and constructed of similar materials. It is not a valid basis for distinction under the police power that one is not only prefabricated but also preassembled, and "constructed to be towed on its own chassis."

This is not to say that a municipality must permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of installation on the site, to be placed wherever site-built single family homes have been built or are permitted to be built. Nor do we hold that a municipality may no longer provide for mobile home parks. We hold only that a per se restriction is invalid; if a particular mobile home is excluded from areas other than mobile home parks, it must be because it fails to satisfy standards designed to assure that the home will compare favorably with other housing that would be allowed on that site, and not merely because it is a mobile home.

20. *Heath v. Parker*, 93 N.M. 680, 682, 604 P.2d 818 (1980). See, also, *Hussey v. Ray*, 462 S.W.2d 45 (Tex.Civ.App., 1970); *Manley v. Draper*, 44 Misc.2d 613, 254 N.Y.S.2d 739 (1963).

21. *Heath v. Parker*, *supra*, 93 N.M. pp. 680–681, 604 P.2d 818.

22. See Neb.Rev.Stat.1978 Cum.Supp., §. 77–202.12, and statutes cited in *Koester v. Hunterdon County Board of Taxation*, *supra*, 79 N.J. pp. 388–389, 399 A.2d 656.

23. In 1975, the Vermont Planning and Development Act was amended to provide that, subject to certain minor exceptions, "no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded." Vt.Stat.Ann., tit. 24, § 4406(4). Former Vt.Stat.Ann. tit. 24, § 4407(11), which permitted a municipality to confine mobile homes to mobile home parks, was repealed.

24. "*Approval of Alternate Types of Construction and Materials.*—The building inspector may approve the use of types of construction such as prefabricated houses or materials that vary from the specific requirements of this Code if, (1) such alternate types of construction or materials comply with the recommended standards of government agencies or other national organizations which publish recognized standards relative to building materials and workmanship, or, (2) reports of agencies or laboratories generally accepted as competent by engineering authorities indicate that alternate materials or construction equal or exceed the applicable Code requirements.". Robinson Township Building Code, § 102.

We affirm the findin... Appeals that the ordina... tional but vacate its juc... to the circuit court for ... not inconsistent with ... costs, a public question.

KAVANAGH, WILL... GERALD, JJ., concur.

COLEMAN, Chief Jus...

Leave to appeal was ... to include consideration ... validity of *Wyoming Tw...* Mich. 611, 33 N.W.2d ... this Court upheld the co... ordinance restricting th... bile homes to mobile-ho...

In addition to the issu... order granting leave to ... also raise other issues, ... the classifications in an... the zoning ordinances fa... ly upon defendants' p... this case could possibly ... upon one of the more l... and relied upon by the ... my colleagues have reac... these issues and the per... to strike down in gener... home zoning classifica... across this state and the...

A fundamental rule o... that a constitutional ... reached when another ... resolving the case, see ... *Board of Control For Vo...* 294 Mich. 45, 292 N.W. ... lary to this rule is that ... tional issues are raised ... not proceed to dispose ... broadest constitutional ... specific issues could disp... despite these well-found... dicial review, the major... to have completely b...pa... ed issues which may ha... for resolving this matte... holding the mobile ho... tion unconstitutional ...

1. See *Robinson Twp. v.* ... (1979).

We affirm the finding of the Court of Appeals that the ordinance is unconstitutional but vacate its judgment and remand to the circuit court for further proceedings not inconsistent with this opinion. No costs, a public question.

KAVANAGH, WILLIAMS and FITZGERALD, JJ., concur.

COLEMAN, Chief Justice (dissenting):

Leave to appeal was granted in this case to include consideration of the continuing validity of *Wyoming Twp. v. Herweyer*, 321 Mich. 611, 33 N.W.2d 93 (1948), in which this Court upheld the constitutionality of an ordinance restricting the occupancy of mobile homes to mobile-home parks.[1]

In addition to the issue mentioned in the order granting leave to appeal, the parties also raise other issues, including whether the classifications in and the application of the zoning ordinances fall unconstitutionally upon defendants' property. Although this case could possibly have been resolved upon one of the more limited issues raised and relied upon by the Court of Appeals, my colleagues have reached out far beyond these issues and the perimeters of this case to strike down in general terms the mobile home zoning classifications relied upon across this state and the nation.

A fundamental rule of judicial review is that a constitutional issue need not be reached when another ground exists for resolving the case, see *MacLean v. State Board of Control For Vocational Education*, 294 Mich. 45, 292 N.W. 662 (1940). A corollary to this rule is that if several constitutional issues are raised, the Court should not proceed to dispose of the case on the broadest constitutional issues, if other more specific issues could dispose of it. However, despite these well-founded principles of judicial review, the majority opinion appears to have completely bypassed the more limited issues which may have provided a vehicle for resolving this matter. In the process of holding the mobile home zoning classification unconstitutional *on its face* and concluding that mobile homes can be located anywhere in any type of residential neighborhood, subject to some as yet unresolved criteria, the majority's opinion has passed by the other questions raised. Also, while stating the facts of the case, the majority ignores them—and by some broad generalizations, with no clear direction to bench, bar and parties to any suit, simply states that there is no reasonable governmental interest being advanced by classifying mobile homes as a use separate from other residential uses.

Although I would prefer to resolve the other issues raised by defendant before addressing the constitutionality of mobile home zoning classification per se, the majority's opinion addresses the broadest issue first. Accordingly, I must also address the most sweeping issue first.

That issue is whether the classification of mobile homes as a separate use for zoning purposes is constitutional. Accordingly, the defendants have the burden of showing that no governmental interest is being advanced by the present classification. They have not sustained that burden.

I

Article III, § 307.1 of the Robinson Township Zoning Ordinance provides:

"Mobile Homes—Where Permitted: Mobile homes are considered as dwelling units and are not permitted as an accessory use to a permitted principal use and are permitted only in approved mobile home parks."

The ordinance does not restrict mobile-home parks (including mobile-home subdivisions) to any particular zone, but it does require approval of the location and plan by the Board of Appeals. It also places with the board the power to hear and decide applications for "special exceptions, special or conditional uses" and other special questions. Defendants did not apply for a variance or a special exception. They did not apply for a mobile home park permit or a building permit. The property was not

1. See *Robinson Twp. v. Knoll*, 406 Mich. 1007 (1979).

shown to be subject to a nonconforming use. The mobile home was not placed prior to the effective date of the ordinance.

Article II, § 203 of the pertinent zoning ordinance describes a mobile home as:

"A movable or portable dwelling *constructed to be towed on its own chassis*, connected to utilities and *designed without a permanent foundation* for year-round living as a single-family dwelling." (Emphasis added.)

At the outset, one should note that this case involves mobile homes, not modular or prefabricated homes.

Comparisons between mobile homes and modular homes or prefabricated homes are inapposite, if for no other reason, because of the definition of a mobile home.

Moreover, modular homes and prefabricated homes are designed to become parts of site-built residences for which building permits are required and which are subject to approval by the building inspector. No such permit was sought or granted in this case. There is no dispute that the home in question is a mobile home by definition.

Likewise, the argument that other homes can be moved is inapposite. A site-built home is not constructed to be "towed on its own chassis" down a road. Some homes of appropriate size can be removed from their foundations and moved to another site. However, they are not built to be towed or to blend with the flow of traffic. On-site construction is not directed to that purpose. It serves no good purpose to belabor this point further.

II

In *Kirk v. Tyrone Twp.*, 398 Mich. 429, 439–440, 247 N.W.2d 848 (1976), this Court summarized the appropriate standard for determining the constitutional validity of a zoning determination as follows:

"The principles and tests to use to determine whether the present zoning of plaintiffs' property is valid [were] detailed in *Kropf [v. Sterling Heights*, 391 Mich. 139, 215 N.W.2d 179 (1974)].

"The important principles require that for an ordinance to be successfully challenged plaintiffs prove:

"'[F]irst, that there is no reasonable governmental interest being advanced by the present zoning classification itself * * * or

"'[S]econdly, that an ordinance may be unreasonable because of the purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use from the area in question.' 391 Mich. 139, 158 [215 N.W.2d 179].

"The four rules for applying these principles were also outlined in *Kropf*. They are:

"1. '"[T]he ordinance comes to us clothed with every presumption of validity." ' 391 Mich. 139, 162 [215 N.W.2d 179], quoting from *Brae Burn, Inc. v. Bloomfield Hills*, 350 Mich. 425, 86 N.W.2d 166 (1957).

"2. '"[I]t is the burden of the party attacking to prove affirmatively that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property * * *. It must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness." ' 391 Mich. 139, 162 [215 N.W.2d 179], quoting *Brae Burn, Inc.*

"3. 'Michigan has adopted the view that to sustain an attack on a zoning ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purposes to which it is reasonably adapted.' 391 Mich. 139, 162–163 [215 N.W.2d 179].

"4. '"This Court, however, is inclined to give considerable weight to the findings of the trial judge in equity cases." ' 391 Mich. 139, 163 [215 N.W.2d 179]; quoting *Christine Building Co. v. City of Troy*, 367 Mich. 508, 518, 116 N.W.2d 816 (1962)."

See, also, *Ed Zaagman, Inc. v. Kentwood*, 406 Mich. 137, 277 N.W.2d 475 (1979).

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Although my colleagues pay some attention to how the ordinance falls upon these defendants, the leap ultimately is made to the argument that because some mobile homes are improved in appearance and construction (defendant's is not described as within this context), all must be considered for placement in areas zoned for other residential uses despite not only *Wyoming*, but also *Kirk*, *Kropf*, *Zaagman* and all other Michigan precedent, old and new.

III

For the purposes of constitutional analysis, the ordinance comes to us with every presumption of constitutionality, which can be overcome only by finding that no governmental interest is served thereby.

Zoning restrictions are enacted pursuant to the police power. This power encompasses regulations designed to advance the public's health, safety and welfare. M.C.L. § 125.273; M.S.A. § 5.2963(3) provides that a zoning ordinance designed to promote the public health, safety and welfare shall be made "with reasonable consideration, among other things, to [*sic*] the character of each district", the "conservation of property values" and the "general and appropriate trend and character of land, building and population development".

Although the construction of some modern mobile homes has improved and the area of some has been enlarged, basic differences between mobile homes and site-built homes remain. By definition, a mobile home is built without a permanent foundation and must be of a weight and dimensions that can be towed on a highway. They are more susceptible to windstorm and fire damage, which increases the possibility of injury to persons and property in the surrounding area. The police power extends to imposing reasonable regulations to safeguard residents and others against the dangers of such damage.

Plaintiff notes additional problems caused by a general lack of storage space in mobile homes. This lack of storage space may result in personal property being stored outside or the addition of lean-tos. Plaintiff notes that various practical problems result from these conditions.

Also, because a mobile home is designed to be towed on its chassis, they may lead to transience. Increased transience may also result in unsightly and possibly dangerous conditions in the land when the mobile home is removed. Even if the mobile home remains in one spot, it is generally subject to more rapid deterioration than a site-built home. Further, it would be unreasonable to assume or take judicial notice of the conclusion that all mobile homes compare favorably with site-built homes.

As provided in the statute, classifications may take into consideration the preservation of property values.[2] Accordingly, one widely acknowledged, reasonable governmental interest is the preservation of property values. The value of a piece of property or of property in a zone is dependent not only on the intrinsic nature of the property but also upon the nature and uses of neighboring property. For the most part, even the best of mobile homes (*e. g.*, double-width homes towed in two parts, mobile homes with bay windows on the ends, a porch attached or decorator steps, etc.) are significantly different from site-built homes or are so perceived by many. This perception can have a significant effect on property values if mobile homes are scattered throughout any residential district. Regardless of whether the perception is valid, restricting mobile homes to designated areas furthers governmental interests by furthering the safety, sanitary and recreational needs of the occupants and others, and by grouping like uses together.

With only these surface considerations, it becomes apparent that the defendants have not overcome the burden of proving that

2. Although the preservation of surrounding property values and characteristics may not be sufficient by itself to justify these zoning restrictions, see *Senefsky v. Huntington Woods*, 307 Mich. 728, 12 N.W.2d 387 (1943), these factors may be taken into consideration along with the other factors mentioned above, see M.C.L. § 125.273; M.S.A. § 5.2963(3).

there is no room for a legitimate difference of opinion concerning the reasonableness of is classification. The defendants have not overcome the presumption of constitutionality.

IV

While the zoning authorities might have been able to advance similar objectives by less restrictive means, they were not constitutionally required to do so if there exists some reasonable basis for the classifications chosen. In *O'Donnell v. State Farm Mutual Automobile Ins. Co.*, 404 Mich. 524, 542, 273 N.W.2d 829 (1979), this Court stated:

"'If the classification has some "reasonable basis", it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality". . . . "The problems of government are practical ones and may justify, if they do not require, rough accommodations . . . ."

"'If it be said, the law is unnecessarily severe, and may sometimes do injustice, without fault in the sufferer under it, our reply is: these are considerations that may very properly be addressed to the legislature, but not to the judiciary—they go to the expediency of the law, and not to its constitutionality.'"

In *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388–389, 47 S.Ct. 114, 118, 71 L.Ed. 303 (1926), the Supreme Court stated:

"Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this Court has upheld although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. *Hebe Co. v. Shaw*, 248 U.S. 297, 303, 39 S.Ct. 125 [126], 63 L.Ed. 255 (1919); *Pierce Oil Corp. v. City of Hope*, 248 U.S. 498, 500, 39 S.Ct. 172, 63 L.Ed. 381 (1919). The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In the light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance, although some industries of an innocent character might fall within the proscribed class. It cannot be said that the ordinance in this respect 'passes the bounds of reason and assumes the character of a merely arbitrary fiat.' *Purity Extract & Tonic Co. v. Lynch*, 226 U.S. 192, 204, 33 S.Ct. 44 [47], 57 L.Ed. 184 (1912)." See, also, *Cady v. Detroit*, 289 Mich. 499, 286 N.W. 805 (1939).

Zoning classifications designed to group like uses together while at the same time separating incompatible uses necessarily involve generalizations and rough accommodations. If all zoning classifications are now subject to constitutional attacks on the basis that the per se exclusion of certain uses from a zone is unreasonable when the municipality could have adopted more detailed, less restrictive, requirements which would have adequately served the public interest, then it is unlikely that most zoning classifications would survive constitutional scrutiny. For example, a multiple dwelling apartment developer might argue that single family residence zones are unconstitutional because a zoning ordinance could be drafted imposing more detailed, less restrictive, requirements which would adequately serve the same public interest. Minimum floor space and set-back restrictions based on a family unit could be drafted to assure that the multiple-family apartment building is in a comparable situation with other single-family buildings.

The number of similar hypotheticals that could arise is almost infinite. The Constitution does not impose such restrictions on the

zoning authorities. Rather, s
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V

For these reasons, we cont
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(1974); *People of Village of C*
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Colby v. Hurtt, 212 Kan. 113
(1973); *Wright v. Michaud*, 1
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N.E.2d 364 (1960); *State v. L*
350, 185 N.W.2d 180 (1972);
471 S.W.2d 460 (Mo., 1971);
derry v. Faucher, 112 N.H. 4
(1972); *Vickers v. Twp. Comm*
ter Twp., 37 N.J. 232, 181

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zoning authorities. Rather, so long as there is a reasonable basis for the classification chosen, the landowner's remedy lies with the local zoning authorities either through seeking a variance or attempting to change the classification itself.

V

For these reasons, we continue to adhere to the holding in *Wyoming* [illegible] bile homes may constitutionally be treated differently from site-built homes for zoning purposes. Although many developments have taken place since *Wyoming Twp.* was decided, this same issue has recently been considered in other jurisdictions, and these cases have consistently upheld the constitutional validity of the classifications being considered.[3] None of the cases cited in the majority's opinion or the parties' briefs hold that a zoning regulation may not constitutionally treat mobile homes differently from site-built homes. While this absence of authority is not dispositive, it does lend support to the conclusion that this ordinance is not unconstitutional.

VI

We also conclude that defendants cannot prevail on their de facto exclusion argument on the record presented in this case. The ordinance in issue speaks of mobile-home parks as including not only traditional parks in which lots are occupied on a rental basis but also mobile-home subdivisions in which lots are subdivided and sold.[4] The zoning ordinance generously provides for mobile-home parks and the zoning authorities have approved an area in the township for a mobile-home park. The mere fact that the park has not been developed (and that others have not applied) is insufficient to prevail on a de facto exclusion claim.

Defendants have not introduced any evidence that the land zoned for a mobile home park is unsuitable for this use, or that the zoning authorities have consistently denied permits to develop such a park or have acted in any arbitrary or capricious manner. Defendants did not introduce any evidence that they ever sought variance or requested any kind of a permit.

Defendants have failed to show that there is no governmental interest in a mobile home zoning classification as a separate use.

Therefore, on the record presented, we would hold that defendants have failed to overcome the presumption of constitutionality and would uphold the constitutionality of the ordinance.

Finally, the majority's opinion does not settle the question of retroactivity. Because the state (and nation) has to this date relied upon the constitutionality of mobile-home classifications, I would, at a mini-

3. *Davis v. Mobile*, 245 Ala. 80, 16 So.2d 1 (1943); *McKie v. Ventura County*, 38 Cal.App.3d 555, 113 Cal.Rptr. 143 (1974); *Board of County Comm'rs of Jefferson County v. Mountain Air Ranch*, 192 Colo. 364, 563 P.2d 341 (1977); *Town of Hartland v. Jensen's, Inc.*, 146 Conn. 697, 155 A.2d 754 (1959); *Cooper v. Sinclair*, 66 So.2d 702 (Fla., 1953); *Matthews v. Fayette County*, 233 Ga. 220, 210 S.E.2d 758 (1974); *People of Village of Cahokia v. Wright*, 57 Ill.2d 166, 311 N.E.2d 153 (1974); *City of Colby v. Hurtt*, 212 Kan. 113, 509 P.2d 1142 (1973); *Wright v. Michaud*, 160 Me. 164, 200 A.2d 543 (1964); *Town of Manchester v. Phillips*, 343 Mass. 591, 180 N.E.2d 333 (1962); *Town of Granby v. Landry*, 341 Mass. 443, 170 N.E.2d 384 (1960); *State v. Larson*, 292 Minn. 350, 195 N.W.2d 180 (1972); *State v. Murray*, 471 S.W.2d 460 (Mo., 1971); *Town of Londonderry v. Faucher*, 112 N.H. 454, 299 A.2d 581 (1972); *Vickers v. Twp. Committee of Gloucester Twp.*, 37 N.J. 232, 181 A.2d 129 (1962); *Mobile Home Owners Protective Ass'n v. Town of Chatham*, 33 App.Div.2d 78, 305 N.Y.S.2d 334 (1969); *Currituck County v. Willey*, 46 N.C.App. 835, 266 S.E.2d 52 (1980); *Davis v. McPherson*, 58 Ohio Op. 253, 132 N.E.2d 626 (1955); *Fayette County v. Holman*, 11 Pa. Cmwlth. 357, 315 A.2d 335 (1973); *Mobile Home City of Chattanooga v. Hamilton County*, 552 S.W.2d 86 (Tenn.App., 1976); *Duckworth v. Bonney Lake*, 91 Wash.2d 19, 586 P.2d 860 (1978); *Edelbeck v. Town of Theresa*, 57 Wis.2d 172, 203 N.W.2d 694 (1973).

4. Robinson Township Zoning Ordinance, art. II, § 203.4, provides:

"Mobile Home Subdivision: A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Act 288 of the Public Acts of 1967, as amended."

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mum, provide that the opinion take effect prospectively.

RYAN, J., concurs.

MOODY, Justice (dissenting).

FACTS

This case, tried upon a stipulation of facts, involves the question of whether defendants should be enjoined from using their property in violation of a local zoning ordinance. Subsequent to the effective date of zoning ordinance amendments,[1] defendants placed a 14–foot by 70–foot mobile home[2] on their property located within the township. The amended ordinance provides that mobile homes are a permitted use only in approved mobile home parks or mobile home subdivisions.[3] Defendants stipulated that their land had not been approved for use as a mobile home park or subdivision. Defendants also admitted that the mobile home was placed upon their property without first having obtained a building permit.[4]

The ordinance defines mobile home parks and subdivisions[5] and sets forth standards relating to approval of such developments. Mobile home parks and subdivisions are a permitted use in all zoning d the township with the excep tional use districts.[6]

The stipulation of facts plans for a proposed mobile h been approved by the towns posed park would cover 28 a facilities for approximately homes. However, at the da work had commenced on t though it is unclear from th defendants' land is presently nothing to indicate that defen ty could not be used to dev home park or subdivision.

Robinson Township brough to enjoin defendants' use of as violative of township zoni The trial court granted the tive relief. The Court of App 70 Mich.App. 258, 245 N.W.

DISCUSSION

Defendants present a broad to the constitutionality of The issue, squarely presente any and all local zoning ordina not totally exclude mobile h community but which restric of mobile homes to mobile ho subdivisions within the comm valid. In view of the procedu this case, the facial validity nance, and the insufficient fa

1. Amendments to pertinent sections of the township's zoning ordinance became effective May 14, 1974. Prior to that date, defendants cleared brush and trees from the site, commenced digging a well and obtained a septic permit. However, the mobile home was not placed on defendants' property until after the present zoning ordinance provisions became effective.

2. Art. II, § 203 of the ordinance in effect on the date the Knolls placed the mobile home on their property defines a mobile home as follows:

> "A movable or portable dwelling constructed to be towed on its own chassis, connected to utilities and designed without a permanent foundation for year-round living as a single-family dwelling. A mobile home may contain parts that may be separated, folded, collapsed, or telescoped when being towed and combined or expanded later to provide additional cubic capacity."

Art. II, § 203.6 of the ordinance defines a travel trailer somewhat differently:

> "A transportable unit intended for occasional or short-term occupancy as a dwelling unit during travel, recreational, or vacation use."

Art. II, § 203 of the ordinance, in effect prior to the 1974 ordinance amendments, described a mobile home as follows:

> "Any house car, house trailer, trailer home, trailer coach or similar vehicle used or so constructed as to permit its being used as a conveyance upon the public streets or highways and duly licensable as such, and shall include self-propelled vehicles so designed, constructed, or added to by means of accessories in such manner as will permit the occupancy thereof as a dwelling or sleeping place of one (1) or more persons, and having no foundation other than wheels, jacks or skirtings."

3. Presently, art. III, § 307.1 of the ordinance provides:

> "Mobile homes are considered as dwelling units and are not permitted as an accessory use to a permitted principal use and are permitted only in approved mobile home parks."

Art. III, § 307.4 of the ordinance which had been in effect prior to the 1974 amendments, provided in part:

> "No person shall * * * use or occupy or permit the use or occupancy of any trailer coach on any lot or parcel of land in any zoning district not licensed as a trailer coach park, except only as provided in this Ordinance."

4. Art. XIII, § 1302.1 of the township zoning ordinance requires that a building permit be obtained in certain circumstances prior to building or altering structures within the township:

> "Except as otherwise provided, it shall be unlawful to erect any new building or structure or to alter any existing building or structure at a cost of $200.00 or more until a permit therefor has been obtained from the building inspector by the owner or his duly authorized agent. Application for a permit shall be in writing and upon duplicate printed forms furnished by the building inspector. Such permits shall be nontransferable and must be obtained before any work, excavation, erection, alteration, or movement is begun."

5. A mobile home park is defined in art. II, § 203.3 of the ordinance as follows:

> "A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for nontransient use."

Art. II, § 203.4 defines a mobile home subdivision:

> "A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Act 288 of the Public Acts of 1967, as amended."

6. The record does not indicate of land within the township recreation use districts.

7. In *Napierkowski, supra*, the variance was excused since th indicated that township offici denied a variance had one be record in the instant case does inference that the seeking of a have amounted to a fruitless e

8. Individual siting of mobile lowed in the following cases t tion of ordinances defining "d dence" or similar terms. *C Hoytt*, 59 Ill.App.2d 368, 208 N *Rundell v. May*, 258 So.2d 90 *cert. den.* 261 La. 468, 259 S *Sioux Falls v. Cleveland*, 7 N.W.2d 62 (1955).

permitted use in all zoning districts within the township with the exception of recreational use districts.[6]

The stipulation of facts indicates that plans for a proposed mobile home park have been approved by the township. The proposed park would cover 28 acres and offer facilities for approximately 100 mobile homes. However, at the date of trial no work had commenced on the park. Although it is unclear from the record how defendants' land is presently zoned, there is nothing to indicate that defendants' property could not be used to develop a mobile home park or subdivision.

Robinson Township brought suit seeking to enjoin defendants' use of their property as violative of township zoning ordinances. The trial court granted the desired injunctive relief. The Court of Appeals reversed. 70 Mich.App. 258, 245 N.W.2d 709 (1976).

DISCUSSION

Defendants present a broadside challenge to the constitutionality of the ordinance. The issue, squarely presented, is whether any and all local zoning ordinances which do not totally exclude mobile homes from a community but which restrict the location of mobile homes to mobile home parks and subdivisions within the community are invalid. In view of the procedural posture of this case, the facial validity of the ordinance, and the insufficient factual development of this record, the ordinance survives defendants' constitutional challenge.

I

Prior to placing a mobile home on their property, defendants not only neglected to obtain the requisite building permit but also failed to seek a variance from existing zoning provisions pertaining to their land. Under these circumstances it is questionable whether the Knolls should be permitted to raise constitutional challenges to the ordinance at issue. See *State v. Larson*, 292 Minn. 350, 356, 195 N.W.2d 180, 183 (1972); *Napierkowski v. Gloucester Twp.*, 29 N.J. 481, 489, 150 A.2d 481, 485 (1959).[7] Further, in rejecting constitutional challenges to similar ordinances, courts have noted the landowner's failure to make use of their land in a manner permitted by zoning ordinances regulating the use and location of mobile homes. *McKie v. Ventura County*, [illegible] 555, 557, 113 Cal.Rptr. 143, 144 (1974); *Town of Greenland v. Hussey*, 110 N.H. 269, 272, 266 A.2d 122, 124 (1970).

Additionally, defendants have failed to seek relief on other narrower grounds. The siting of individual mobile homes outside mobile home parks or subdivisions has been permitted in certain cases where the courts were persuaded to either narrowly construe the term "mobile home" or broadly construe the terms "residence" or "dwelling" as defined in local zoning ordinances.[8]

6. The record does not indicate what percentage of land within the township is classified as recreation use districts.

7. In *Napierkowski, supra*, the failure to seek a variance was excused since the record clearly indicated that township officials would have denied a variance had one been sought. The record in the instant case does not support the inference that the seeking of a variance would have amounted to a fruitless effort.

8. Individual siting of mobile homes was allowed in the following cases through construction of ordinances defining "dwelling", "residence" or similar terms. *Cook County v. Hoytt*, 59 Ill.App.2d 368, 208 N.E.2d 410 (1965); *Rundell v. May*, 258 So.2d 90 (La.App., 1972), *cert. den.* 261 La. 468, 259 So.2d 916 (1972); *Sioux Falls v. Cleveland*, 75 S.D. 548, 70 N.W.2d 62 (1955).

Mobile home owners have also been permitted to individually site their homes where the courts narrowly construed the meaning of "mobile home" contained in ordinances restricting mobile homes to mobile home parks. *Douglass Twp. v. Badman*, 206 Pa.Super. 390, 213 A.2d 88 (1965); *State v. Work*, 75 Wash.2d 204, 449 P.2d 806 (1969). But see: *Duckworth v. Bonney Lake*, 91 Wash.2d 19, 586 P.2d 860 (1978).

Of course, theories advanced by mobile home owners concerning statutory construction have not always been accepted. See *e. g., Oakdale v. Benoit*, 342 So.2d 691 (La.App., 1977), *cert. den.* 344 So.2d 670 (La., 1977); *Town of Marblehead v. Gilbert*, 334 Mass. 602, 137 N.E.2d 921 (1956); *Asheboro v. Auman*, 26 N.C.App. 87, 214 S.E.2d 621 (1975), *cert. den.* 288 N.C. 239, 217 S.E.2d 663 (1975).

It is to be noted that the facts in the instant case are insufficiently developed to raise an issue with respect to these considerations.

Defendants have instead broadly based their claim for relief on constitutional grounds. In so doing, defendants have pursued the path of greatest resistance.

II.

A successful challenge to the constitutionality of a zoning ordinance requires the establishment of one of the following propositions:

"'[T]here is no reasonable governmental interest being advanced by the present zoning classification * * * or

"* * * '[The] ordinance * * * [is] unreasonable because of the purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use from the area in question.'" *Kirk v. Tyrone Twp.*, 398 Mich. 429, 439, 247 N.W.2d 848 (1976); *Kropf v. Sterling Heights*, 391 Mich. 139, 158, 215 N.W.2d 179 (1974).

In the instant case, the burden of proof lies squarely with the defendants. It is axiomatic that in most instances, the burden of proof is placed upon the person attacking the validity of a zoning ordinance. *Kirk*, 398 Mich. 439, 247 N.W.2d 848. Defendants have presented no facts which would indicate that the ordinance results in total or de facto exclusion of mobile homes from the township. *Kirk*, 442–444, 247 N.W.2d 848.[9] Rather, the ordinance regulates the location of such land use within the township. In this instance, the burden of proof does not shift to the township to justify exclusion of the use; but remains with defendants.[10]

The Knolls do not contend that the ordinance has been applied in a discriminatory manner so as to prevent the proposed used of their property.[11] Nor have defendants advanced any facts indicating that the ordinance *as applied* is unreasonable or confiscatory.

The sole basis for affording relief is thus premised on the conclusion that constitutional infirmity appears on the face of the ordinance.

III

The standard of review applicable to zoning ordinances has been a limited one. This developed at least in part from a recognition by a majority of this Court that the functions of local zoning authorities are legislative in nature.

An integral part of this limited standard of review is the principle that zoning ordinances are accorded a presumption of validity. *Kropf*, 391 Mich. 162, 215 N.W.2d 179; *Brae Burn, Inc. v. Bloomfield Hills*, 350 Mich. 425, 86 N.W.2d 166 (1957). If this presumption is to have any viability, the reviewing court has a duty to conceive of possible rational bases to support the ordinance. If a state of facts which would warrant the ordinance can be reasonably perceive, those facts will be presumed to exist. In the absence of evidence tending to rebut the presumption, the ordinance's validity should be upheld. Where any evidence is presented which tends to rebut the presumption or validity, the court must determine whether room for *fair* and *legitimate* differences of opinion exists concerning whether it is reasonable to draw classification or exclude a use. If such a debatable question exists, the court must exercise

9. The trial judge correctly found:

"Defendants did not specifically allege nor have they proven that plaintiff has carried out a systematic de facto exclusion of mobile home parks from plaintiff township."

10. See *Clark v. Lyon Twp. Clerk*, 348 Mich. 173, 82 N.W.2d 433 (1957), and *Gust v. Canton Twp.*, 342 Mich. 436, 70 N.W.2d 772 (1955), for instances where total exclusion of mobile homes from townships required the township to bear the burden of justifying the exclusion.

11. Mobile home owners have obtained relief from ordinances restricting mobile homes to mobile home parks where it was concluded that the ordinance was enforced in a discriminatory manner. See, *e. g. Blackman Twp. v. Koller*, 357 Mich. 186, 98 N.W.2d 538 (1959); *People v. Husler*, 34 Ill.App.3d 977, 342 N.E.2d

judicial restraint and u
nance.[12]

No constitutional infirm
face of the ordinance in
since the means employed
may have a reasonable rel
legislative zoning goals r
health, safety and general
dence was presented ten
that permissible legislati
would not be served by a
nance and thus restricting
posed use of their land.
lenge, therefore, must be

IV.

Zoning ordinances regul
of mobile homes within a
nicipality by restricting
home parks have been up
this Court and other c
Michigan law. *Wyoming*
er, 321 Mich. 611, 33
Connor v. West Bloomfie

401 (1975); *State v. Vadna*
N.W.2d 657 (1972).

12. Conclusory opinions w
upon factual predicates v
means to rebut the presu
to respond to evidence t
presumption.

13. See, *e. g.*, *Board of C*
County v. Mountain Air I
563 P.2d 341 (1977); *C*
So.2d 702 (Fla., 1953), ce
74 S.Ct. 107, 98 L.Ed. 3
Cahokia v. Wright, supr
Hurtt, 212 Kan. 113; 5
Wright v. Michaud, sup
Manchester v. Philips,
N.E.2d 333 (1962); *State*
nesota); *State ex rel. Wil*
S.W.2d 460 (Mo., 1971);
cester Twp., *supra* (Ne
Clute, 47 Misc.2d 10
(1965), *aff'd* 18 N.Y.2d 9
224 N.E.2d 734 (1966);
Lake, *supra* (Washingto
wood v. Bell, 270 S.E.2

See also M.C.L.
§ 5.2963(3) which e
promulgate zoning ordi
legislatively prescribe
through such ordinances

judicial restraint and uphold the ordinance.[12]

No constitutional infirmity exists on the face of the ordinance in the instant case since the means employed by the ordinance may have a reasonable relationship to valid legislative zoning goals relating to public health, safety and general welfare. No evidence was presented tending to indicate that permissible legislative zoning goals would not be served by applying the ordinance and thus restricting defendants' proposed use of their land. Defendants' challenge, therefore, must be rejected.

IV

Zoning ordinances regulating the location of mobile homes within a township or municipality by restricting them to mobile home parks have been upheld generally by this Court and other courts interpreting Michigan law. *Wyoming Twp. v. Herweyer*, 321 Mich. 611, 33 N.W.2d 93 (1948); *Connor v. West Bloomfield Twp.*, 207 F.2d 482 (CA 6, 1953); *Courtland Twp. v. Cole*, 66 Mich.App. 474, 239 N.W.2d 630 (1976); *Lanphear v. Antwerp Twp.*, 50 Mich.App. 641, 214 N.W.2d 66 (1973). See also *Stevens v. Royal Oak Twp.*, 342 Mich. 105, 109, 68 N.W.2d 787 (1955).

Challenges to zoning ordinances, similar to the ordinance in the instant case, based upon claims that the ordinance was invalid on its face have been rejected by courts of other states. See, *e. g., Village of Cahokia v. Wright*, 57 Ill.2d 166, 311 N.E.2d 153 (1974); *Wright v. Michaud*, 160 Me. 164, 200 A.2d 543 (1964).

Courts considering the validity of zoning ordinances regulating the location of mobile homes within a community have, nearly universally, concluded that the zoning codes tend to promote the health, safety and welfare of the community's residents and that rational bases may exist for distinguishing between mobile homes and site-built homes.[13] The siting of mobile homes in a given residential district may have a tendency to depress property values of conven-

401 (1975); *State v. Vadnais*, 295 Minn. 17, 202 N.W.2d 657 (1972).

12. Conclusory opinions which are not based upon factual predicates would be insufficient means to rebut the presumption of validity or to respond to evidence tending to rebut this presumption.

13. See, *e. g., Board of Comm'rs of Jefferson County v. Mountain Air Ranch*, 192 Colo. 364, 563 P.2d 341 (1977); *Cooper v. Sinclair*, 66 So.2d 702 (Fla., 1953), *cert. den.* 346 U.S. 867, 74 S.Ct. 107, 98 L.Ed. 377 (1953); *Village of Cahokia v. Wright*, *supra* (Illinois); *Colby v. Hurtt*, 212 Kan. 113, 509 P.2d 1142 (1973); *Wright v. Michaud*, *supra* (Maine); *Town of Manchester v. Philips*, 343 Mass. 591, 180 N.E.2d 333 (1962); *State v. Larson*, *supra* (Minnesota); *State ex rel. Wilkerson v. Murray*, 471 S.W.2d 460 (Mo., 1971); *Napierkowski v. Gloucester Twp.*, *supra* (New Jersey); *People v. Clute*, 47 Misc.2d 1005, 263 N.Y.S.2d 826 (1965), *aff'd* 18 N.Y.2d 999, 278 N.Y.S.2d 231, 224 N.E.2d 734 (1966); *Duckworth v. Bonney Lake*, *supra* (Washington); *Town of Stonewood v. Bell*, 270 S.E.2d 787 (W.Va., 1980).

See also M.C.L. § 125.273; M.S.A. § 5.2963(3) which enables townships to promulgate zoning ordinances and sets forth legislatively prescribe goals to be achieved through such ordinances:

> "The zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare; to encourage the use of lands in accordance with their character and adaptability, and to limit the improper use of land; to conserve natural resources and energy; to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land; to insure that uses of the land shall be situated in appropriate locations and relationships; to avoid the overcrowding of population; to provide adequate light and air; to lessen congestion on the public roads and streets; to reduce hazards to life and property; to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements; and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties. The zoning ordinance shall be made with reasonable consideration, among other things, to [*sic*] the character of each district; its peculiar suitability for particular uses; the conservation of property values and natural resources; and the general and appropriate trend and character of land, building, and population development."

tional dwellings.[14] The development or growth potential of an area for residential purposes may be stunted.[15] Some deference should be given to a community's plan for development.[16]

It may be reasoned that a sufficient number of mobile homes tend to deteriorate more quickly than conventional dwellings. From a public safety standpoint, some may not be as secure, requiring concentrated protection efforts. Mobile homes can be sited more rapidly than conventional dwellings and may thus cause a sudden and severe load on municipal facilities. There may be differences in degree in the supplying of municipal services for and regulation of mobile homes.[17] Accordingly, there are reasonable bases grounded in the police power for the existence of the ordinance. Furthermore, the record in this case presents no evidence to counter the presumption of the ordinance's validity.

For the foregoing reasons I respectfully dissent. Accordingly, I would reverse the decision of the Court of Appeals.

14. See, e. g., *Cooper v. Sinclair, supra; Colby v. Hurtt, supra; Town of Manchester v. Philips, supra; State v. Larson, supra; Wilkerson v. Murray, supra; Napierkowski v. Gloucester Twp., supra; Duckworth v. Bonney Lake, supra.*

15. See, e. g. *Colby v. Hurtt, supra; Town of Manchester v. Philips, supra; Wilkerson v. Murray, supra; Duckworth v. Bonney Lake, supra;* 2 Anderson, American Law of Zoning (2d ed.), § 14.01, p. 550, § 14.05, p. 563.

C. A. F. INVESTMENT COMPANY, a Michigan Partnership,
Petitioner-Appellee,
v.
TOWNSHIP OF SAGINAW,
Respondent-Appellant.

Docket Nos. 60744, 60745.
Calendar No. 3.

Supreme Court of Michigan.

Argued Jan. 11, 1979.

Decided Feb. 24, 1981.

Taxpayer appealed property tax assessment for years 1971 through 1975 from Michigan Tax Tribunal following earlier remand from Supreme Court, 392 Mich. 442, 221 N.W.2d 588. The Court of Appeals reversed and remanded, 79 Mich.App. 559, 262 N.W.2d 863. Township's request for leave to appeal was granted by the Supreme Court, 403 Mich. 801. The Supreme Court, Ryan, J., held that: (1) Tribunal's failure to use actual income as basis of its capitalization of income in valuing taxpayer's property disregarded mandate of Supreme Court, which was law of the case, and thus was error, and (2) predicating value of taxpayer's property upon taxpayer's rate of return under economically unfavorable lease, while valuating unencumbered property at current market level, did not violate constitutional requirements of uniformity of assessment and due process.

Affirmed and final order directed.

Levin, J., filed concurring opinion.

Moody, Jr., J., dissented and filed opinion.

16. See, e. g., *Padover v. Farmington Twp.*, 374 Mich. 622, 132 N.W.2d 687 (1965); *Napierkowski v. Gloucester Twp., supra; Duckworth v. Bonney Lake, supra.*

17. *McKie v. Ventura County, supra; State v. Larson, supra; Duckworth v. Bonney Lake, supra.*

C

Williams, J., filed op
part and dissenting in pa

Fitzgerald, J., dissen
ion.

1. Taxation ⇐348(3)

Basis for uniform g
taxation of real property
ue," the usual selling pric
on open market taking in
other factors, including
income of structures. Y
9, § 3; M.C.L.A. § 211.2

See publication Wor
for other judicial co
definitions.

2. Appeal and Error ⇐

Under law of the c
appellate court has passe
and remanded case for fu
legal questions thus det
late court will not be
mined on subsequent ap
where facts remain mate

3. Taxation ⇐348(3)

Basing valuation of
unfavorable long-term
rate of return substa
present market rate upo
comparable property doe
constitutional and statu
"true cash value." M.C
§ 3; M.C.L.A. § 211.27.

4. Taxation ⇐348(2)

Assessment decision
limitations or restriction
ing on selling price of pr

5. Taxation ⇐348(5)

Basing value of ta
upon rate of return unde
favorable lease, while
bered property at current
not violate constitutiona
uniformity of assessmen
M.C.L.A.Const. Art. 9, §
Amend. 14.

1. During the course of th
ture enacted the tax trib
ferred jurisdiction over p

EXHIBIT I

47 Mich.App. 684

David NICKOLA, Jr. and Evelyn Nickola, Plaintiffs-Appellants,

v.

TOWNSHIP OF GRAND BLANC, a municipal corporation, et al., Defendants-Appellees.

Docket No. 12959.

Court of Appeals of Michigan, Div. 2.

June 25, 1973.

Released for Publication Aug. 24, 1973.

In a zoning case, the Circuit Court, Genesee County, Donald R. Freeman, J., found the zoning ordinance to be valid, and the owners of the subject property appealed. The Court of Appeals, O'Hara, J., held that absent any showing that the use of the subject tract for a trailer park could affect the township's morals, health or safety, an ordinance zoning the tract for single-family residences other than mobile homes was constitutionally infirm as applied to the property.

Reversed.

1. Zoning ⇐762

Township supervisor could not bind municipality by his representation that rezoning tract for trailer park would be no problem.

2. Constitutional Law ⇐87

People are constitutionally guaranteed any lawful use of their real property.

3. Zoning ⇐27

Limitations on use of real property may not impinge on right of owner to any lawful use, except by exercise of police power, which must be reasonably related to public health, safety, welfare and morals.

4. Zoning ⇐83

Absent any showing that use of tract for trailer park could affect township's

morals, health or safety, ordinance zoning tract for single-family residences other than mobile homes was constitutionally infirm as applied to the property.

Richard A. Hamilton, McTaggart, Hermann, Folen & Hamilton, Flint, John D. Nickola, Flint (of counsel), for plaintiffs-appellants.

Lyndon J. Lattie, Flint, for defendants-appellees.

Before QUINN, P. J., and BRONSON and O'HARA,* JJ.

O'HARA, Judge.

The real question presented by this appeal is whether zoning in Michigan is a popularity contest to be won by the most organized and vocal of proponents or opponents[1] or whether it is a set of legal principles embodied in some recognizable and dependable case precedent.

We hope it is the latter and we will try to apply those principles as we understand them to the facts in the case at bar.

Plaintiffs are the owners of a 60-acre tract of land in defendant township. The defendants other than the township are its board of officers.

Plaintiffs bought the property in 1962 with the admitted purpose of building and maintaining a mobile home park. At the time of purchase the property was zoned as it presently is, single family residences other than mobile homes. Plaintiffs contend they purchased it upon the representation to them by the township supervisor that rezoning it for a trailer park would be no problem. This fact is undeterminative of any decisional issue.

[1] However well intentioned and sincere the supervisor may have been, he (assuming he did make the representation) obviously cannot bind the municipality.

In 1963, plaintiffs filed a petition with the township accompanied by a consent thereto by eleven adjacent property owners.[2] No action was taken thereon for two years. Various reasons were advanced for the delay. Among them was the concern that part of the involved land was presumptively to be condemned for highway purposes and the concern of the officials that if it were developed the condemnation damages would be measurably increased. Another reason was the lack of sanitary sewers in the parcel. Again plaintiffs represent that they were led to believe that when these two factors no longer existed rezoning would be granted. We mention this so that prospective purchasers and their counsel be aware of the general unenforceability of such claimed representations. It would be well for purchasers to heed the ancient adage *caveat emptor* in this area of law, and get their rezoning problems adjudicated before purchase and not after.

The briefs of the parties discuss, seek to differentiate and urge reliance upon a host of cases all in apparent conflict. No possible service to trial bench or bar could come from this panel adding its bit of confusion to the litany of conflicting holdings. There simply is no way of reconciling them. Whatever we might say would in no wise affect prior decisions by other panels of this Court. We can follow them,

* MICHAEL D. O'HARA, former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Const.1963, art. 6, § 23 as amended in 1968.

1. See number 6 of the trial judge's findings of fact. We note also the pleadings indicate that when the zoning board recommended approval of plaintiff's petition to the township board petitions for recall of the members of the township board of officers were circulated.

2. The consents have no more legal significance (absent some requirement in the ordinance) than do the recall petitions or other expressions of the residents' disapproval.

disregard them or distinguish them all to no practical avail. We decide lawsuits. The Supreme Court alone can author opinions binding upon all our panels.

So we go to what we think are the relevant facts in this case. In this we are fortunate because the trial judge favored us with enumerated specific findings of fact. Unless we set them forth verbatim no purpose would be served by discussing our application of law to them. We list them:

"1. An earlier Township Supervisor had suggested this property would be a good site for a mobile home park.

"2. The present value of the park would be quadrupled, if zoned to permit a modern mobile home park, subject to sizable investment being made for improvements for this purpose.

"3. Although there is no large present demand for single family housing in the site at issue, it is located within reasonable proximity of other single family developments and has easy access to the superhighway I-475.

"4. Adjacent property owners include one who has no present plans for developing the piece as a single family development. In the event that the land in question were used as a trailer site, the adjoining property owner would seek the use of its property for high-density purposes.

"5. The property contains municipal sewer and water services which are available to the site as well as access to a main county road.

"6. There has been large expression by citizens of Grand Blanc Township in opposition to rezoning that would permit the plaintiffs to create a trailer park in this site.

"7. There are twenty-three acres of land occupied by mobile home parks in Grand Blanc Township, rezoning has been granted existing parks to permit their enlargement; the existing zoning ordinance of the Township provides for mobile home parks and the proposed land use plan of the Township contains three-hundred acres of land where mobile home parks will be allowed and this plan has been adopted by the Township Board.

"8. The plaintiff[s] paid approximately $350.00 an acre for their land and at the present time it has a price on the market, under present zoning, of approximately $1,500.00 an acre."

In coming to his legal conclusion based on the foregoing found facts the trial court relied on the test set forth in Brae Burn, Inc. v. Bloomfield Hills, 350 Mich. 425, 86 N.W.2d 166 (1957). He quoted *Brae Burn* as follows:

"[T]he ordinance comes to us clothed with every presumption of validity * * * and it is the burden of the party attacking to prove affirmatively that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property. * * * This is not to say, of course, that a local body may with impunity abrogate constitutional restraints. The point is that we require more than a debatable question. We require more than a fair difference of opinion. It must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness.

* * * * * *

"We have stressed, heretofore, in these zoning cases, the principle that each case must be judged on its own facts. * * * *The question always remains: As to this property, in this city, under this particular plan (wise or unwise though it may be) can it fairly be said there is not even a debatable question?*" (Emphasis supplied.) pp. 432, 433, 86 N.W.2d p. 170.

His decisional holding was that plaintiffs failed to overcome the *Brae Burn* presumption.[3]

[2,3] We opt this simple formula which we think is permissible under *Brae Burn*.

1. In this country people are constitutionally guaranteed any lawful use of their real property.

2. Limitations on use may not impinge on this principle except by exercise of the police power. This exercise must be reasonably related to the public health, safety, welfare and morals.

[4] According full acceptance to the trial judge's findings of fact we cannot possibly see how a mobile home park vis-a-vis single family residences can possibly affect Grand Blanc Township's morals, health or safety on the land in question. Standards of sanitation, fire protection and other general health and safety requirements are imposed upon mobile home parks by statute. There is nothing of record to suggest that trailer parks create any greater "moral" problem (whatever that means) than any other type structure.

Thus we must equate the extremely difficult to define word "welfare" with the purpose of the Grand Blanc Township ordinance. The only "welfare" we can possibly see here is that Grand Blanc Township residents like single family residences better than they do trailer parks. Access roads and traffic problems would not ensue under the trial judge's findings. Whatever "master-plan" problems exist as between the permitted use and the nonpermitted use do not appear of record.

We do not relish intruding judicial supervision into local governmental affairs. But the constitution of the republic and of this state require us to when our jurisdiction is invoked. We do not see how we can refrain in the case at bar. We reverse and hold the ordinance in question to be constitutionally infirm as applied to plaintiff's property. No costs.

3. In my personal view it cannot be gainsaid that *Brae Burn* has, like a cheese, suffered a good deal from nibbling. "Yes, but" opinions of this Court, of which we must assume the Supreme Court is aware, have introduced a "favored use" doctrine, a "shift of the burden of proceeding with proof" doctrine, "unconstitutional exclusions" exceptions, "master-plan" concepts, "larger community rights" theories to name only a few. We could not even reduce chaos to disorder if we undertook to discuss them all decisionally.

47 Mich.App. 626

Ward WRIGHT and Viola Wright, Plaintiffs-Appellees,

v.

ESTATE of Arthur TREICHEL, Deceased, Defendant-Appellant.

Docket No. 8910.

Court of Appeals of Michigan, Div. 1.

June 25, 1973.*

Released for Publication Aug. 24, 1973.

Plaintiffs brought action against estate for personal injury sustained in automobile accident. Motion for accelerated judgment was denied and appeal was taken. The Court of Appeals reversed, 36 Mich.App. 33, 193 N.W.2d 394. Evidentiary hearing was conducted and the Circuit Court, Wayne County, John B. Swainson, J., granted motion for an accelerated judgment on the ground that the statute of limitations barred plaintiffs' claim. On rehearing, the Court of Appeals, T. M. Burns, P. J., held that an estate is not a proper party to a lawsuit and the administrator or executor is the proper party plaintiff or defendant. The Court further

* Original opinion released Sept. 27, 1971.

EXHIBIT J

461.020 Applicability of chapter. The provisions of this chapter shall be applicable to all factory-built housing manufactured after July 1, 1971 and to all other manufactured buildings and modular components manufactured after July 1, 1973.
(Added to NRS by 1971, 1311; A 1973, 454)

461.030 Declaration of legislative intent.
1. The legislature hereby finds and declares that in an effort to meet the housing needs within the State of Nevada, the private housing and construction industry has developed mass production techniques which can substantially reduce housing construction costs, and that the mass production of housing, consisting primarily of factory manufacture of dwelling units or habitable rooms thereof, presents unique problems with respect to the establishment of uniform health and safety standards and inspection procedures.
2. The legislature further finds and declares that by minimizing the problems of standards and inspection procedures, it is demonstrating its intention to encourage the reduction of housing construction costs and to make housing and home ownership more feasible for all residents of the state.
3. The legislature further finds that industrialized types of construction have expanded to include office buildings, schools, nursing homes, motels and buildings other than dwellings. Modular buildings or modular components, or both, arrive at the construction site in a closed panel condition, making inspections by the local enforcement agency difficult. This chapter is intended to provide means for determining whether these manufactured buildings or components, or both, meet with state and local adopted code standards and specifications and also to encourage the advantages of new building construction technology.
(Added to NRS by 1971, 1311; A 1973, 455)

461.040 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 461.050 to 461.160, inclusive, have the meanings ascribed to them in such sections.
(Added to NRS by 1971, 1311; A 1973, 455; 1979, 1219)

461.050 "Approval" defined. "Approval" means conforming to the requirements, and obtaining the approval, of the division.
(Added to NRS by 1971, 1311; A 1979, 1219)

461.065 "Division" defined. "Division" means the manufactured housing division of the department of commerce.
(Added to NRS by 1979, 1219)

461.070 "Dwelling unit" defined. "Dwelling unit" means one or more habitable rooms which are occupied or which are intended or

designed to be occupied by one family with facilities for living, sleeping, cooking and eating.
(Added to NRS by 1971, 1311)

461.080 "Factory-built housing" defined. "Factory-built housing" means a residential building, dwelling unit or habitable room thereof which is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled on site in accordance with regulations adopted by the division pursuant to NRS 461.170 but does not include a mobile home.
(Added to NRS by 1971, 1311; A 1979, 1219)

461.090 "First user" defined. "First user" means the person, firm or corporation that initially installs factory-built housing or manufactured buildings within this state. A person who subsequently purchases a building which wholly or partially consists of factory-built housing or manufactured buildings is not a first user within the meaning of this definition.
(Added to NRS by 1971, 1312; A 1973, 455)

461.100 "Habitable room" defined. "Habitable room" means any room meeting the requirements of this chapter designed for sleeping, living, cooking or dining purposes, excluding such enclosed places as closets, pantries, connecting corridors, unfinished attics, laundries, foyers, storage spaces, cellars, utility rooms and similar spaces.
(Added to NRS by 1971, 1312)

461.110 "Installation" defined. "Installation" means the assembly of any factory-built housing or any manufactured building on site and the process of affixing such factory-built housing or manufactured building to land, a foundation, footings or an existing building.
(Added to NRS by 1971, 1312; A 1973, 455)

461.120 "Local enforcement agency" defined. "Local enforcement agency" means any county or incorporated city or town, including Carson City, in which factory-built housing or any manufactured building is installed.
(Added to NRS by 1971, 1312; A 1973, 455)

461.130 "Manufacture," "fabricate" defined. "Manufacture" or "fabricate" is the process of making, fabricating, constructing, forming or assembling a product from raw, unfinished or semifinished materials.
(Added to NRS by 1971, 1312; A 1973, 455)

461.132 "Manufactured building" defined. "Manufactured building" includes any modular building or any building constructed using one or more modular components.
(Added to NRS by 1973, 454)

461.140 "Mobile home" defined. "Mobile home" means a vehicular structure which is built on a chassis or frame, is designed to be used with or without a permanent foundation, is capable of being drawn by a motor vehicle and is used as a dwelling when connected to utilities.
(Added to NRS by 1971, 1312)

461.143 "Modular building" defined. "Modular building" means an office, apartment, school, motel or other building, whether it is a total building or a room, which is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled on site in accordance with regulations adopted by the division pursuant to NRS 461.170, but does not include a mobile home.
(Added to NRS by 1973, 454; A 1979, 1219)

461.145 "Modular component" defined. "Modular component" means any closed unit of construction which bears or requires any electrical, plumbing, heating, air-conditioning or any other mechanical connection.
(Added to NRS by 1973, 454)

461.150 "Residential building" defined. "Residential building" means any structure designed solely for dwelling occupancy, containing one or more dwelling units and structures accessory thereto.
(Added to NRS by 1971, 1312)

461.160 "Site" defined. "Site" is the entire tract, subdivision or parcel of land on which factory-built housing or any manufactured building is installed.
(Added to NRS by 1971, 1312; A 1973, 455)

461.170 Adoption of building, construction codes; division regulations; local standards.
1. The following codes, as revised from time to time, are hereby adopted for the purposes of this chapter:
(a) The Uniform Housing Code;
(b) The Uniform Building Code, as adopted by the International Conference of Building Officials;
(c) The Uniform Plumbing Code, as adopted by the International Association of Plumbing and Mechanical Officials;
(d) The Uniform Mechanical Code, as adopted by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials;
(e) The National Electrical Code, as adopted by the National Fire Protection Association;
(f) The Uniform Building Code, Dangerous Building, as adopted by the International Conference of Building Officials; and
(g) The Uniform Building Code Standards, as adopted by the International Conference of Building Officials.

2. The division may adopt regulations necessary to carry out the provisions of this chapter and the uniform codes adopted by this section. The regulations may be revised when necessary to conform substantially to amendments to the uniform codes.

3. The codes and regulations adopted under this section do not prevent a local enforcement agency from imposing more stringent standards.

(Added to NRS by 1971, 1312; A 1979, 1220)

461.180 Fee schedule. The division shall establish a schedule of fees to cover the costs incurred by the division in the administration and enforcement of the provisions of this chapter and the regulations established by the division.

(Added to NRS by 1971, 1313; A 1979, 1220)

461.190 Approval insignia.

1. Factory-built housing manufactured after the effective date of the regulations for that housing adopted pursuant to this chapter which is sold or offered for sale to first users within this state must bear insignia of approval issued by the division.

2. A manufactured building, fabricated after the effective date of the regulations for those buildings adopted pursuant to this chapter, which is sold or offered for sale to a first user within this state must bear an insignia of approval issued by the division.

3. The division may issue insignia, medallions, symbols or tags issued by the appropriate certifying authority designated by the uniform codes adopted pursuant to NRS 461.170, signifying compliance with all of the provisions of NRS 461.170.

4. The division may provide by regulation for the approval of any factory-built housing or manufactured building which has been inspected and approved by the appropriate certifying authorities of another jurisdiction which has adopted all of the codes specified in NRS 461.170 without additional inspection or issuance of additional insignia, medallions, symbols or tags by the division.

(Added to NRS by 1971, 1313; A 1973, 456; 1979, 1220)

461.200 Buildings bearing approval insignia deemed in compliance with local ordinances, regulations. All factory-built housing and manufactured buildings bearing an insignia of approval pursuant to NRS 461.190 shall be deemed to comply with the requirements of all ordinances or regulations enacted by any city or county which may be applicable to the manufacture of such buildings.

(Added to NRS by 1971, 1313; A 1973, 456)

461.210 Approved building not to be modified without further approval. No factory-built housing or manufactured building bearing a division insignia of approval pursuant to NRS 461.190 may be in any

way modified before or during installation unless approval is first obtained from the division.

(Added to NRS by 1971, 1313; A 1973, 456; 1979, 1221)

461.220 Power of division to require tests, proof of compliance. Whenever there is definite evidence that any material, appliance, device, arrangement, system or method of construction does not conform to the standards set by the regulations of the division, it may require tests or proof of compliance to be made at the expense of the manufacturer or his agent, subject to a right of appeal.

(Added to NRS by 1971, 1313; A 1973, 75; 1979, 1221)

461.230 Appeals to local agency and division; hearing regulations.

1. The division shall hear appeals brought by any person regarding the application to that person of any regulation of the division adopted pursuant to this chapter. Any appeal must first be submitted to the local enforcement agency, if any, delegated by the division to enforce the provisions of this chapter. The division may not hear any appeal regarding any local ordinance, rule or regulation related to the installation of factory-built housing or manufactured buildings.

2. The division may adopt regulations pertaining to the hearing of appeals under the provisions of this section.

(Added to NRS by 1971, 1313; A 1973, 456; 1979, 1221)

461.240 Enforcement by division.

1. The division shall enforce every provision of this chapter and the regulations adopted pursuant thereto, except as provided in NRS 461.260.

2. Nothing in this chapter prevents the division from delegating by written contract its enforcement authority to local government agencies.

(Added to NRS by 1971, 1313; A 1979, 1221)

461.250 Enforcement powers of division.

1. The administrator of the division or any person authorized by him may institute any appropriate action to enforce this chapter, or to prevent, restrain, correct or abate any violation of this chapter.

2. In order properly to carry out the provisions of this chapter, the administrator of the division or any person authorized by him may:

(a) Conduct hearings;

(b) Issue subpenas; and

(c) Administer oaths.

(Added to NRS by 1971, 1314; A 1979, 1221)

461.260 Enforcement, inspection, approvals by local authorities; local zoning, other restrictive powers preserved.

1. Local enforcement agencies shall enforce and inspect the installation of factory-built housing and manufactured buildings.

2. Local use zone requirements, local fire zones, building setback,

side and rear yard requirements, site development and property line requirements, as well as the review and regulation of architectural and aesthetic requirements are hereby specifically and entirely reserved to local jurisdictions notwithstanding any other requirement of this chapter.

3. Nothing in this chapter prohibits any appropriate local government authority from examining and approving all plans, applications or building sites.

4. A local government authority may inspect Nevada manufacturers of factory-built housing or manufactured buildings to insure compliance with all provisions of NRS 461.170. Before conducting an initial inspection of any such manufacturer, a local government authority shall give 10 days' written notice to the administrator of the division. The local government authority need not give notice to the administrator before conducting subsequent inspections of the manufacturer.

(Added to NRS by 1971, 1314; A 1973, 456; 1975, 977; 1979, 1221)

461.270 Penalties. Any person who violates any of the provisions of this chapter or any rules or regulations adopted pursuant to this chapter is guilty of a misdemeanor, punishable by a fine not exceeding $500 or by imprisonment not exceeding 30 days, or by both such fine and imprisonment.

(Added to NRS by 1971, 1314)

The next page is 17973

EXHIBIT K

COMPARISON OF THE UNIFORM BUILDING CODE AND THE HUD SAFETY AND CONSTRUCTION STANDARDS

	HUD STANDARD	UBC
CONSTRUCTION:		
Horizontal and Vertical Loads, Live and Dead	Same	Same
Testing Procedures	Less Stringent	More Stringent
Required Construction Materials	Less Stringent	More Stringent
ELECTRICAL:	Same	Same
PLUMBING:		
Water Lines	Plastic, Galvanized,or Copper	Galvanized or Copper
Venting	Wet Venting Allowed	Individual Venting Required
HEATING:	More Stringent	Less Stringent
FIRE SAFETY:	More Stringent	Less Stringent
DYNAMIC LOADING:	Required	Not Required
ENERGY CONSERVATION:	More Stringent	Less Stringent

NOTE: In basic terms, the HUD Standard is a performance standard while the UBC is more of a specification standard. Both standards provide safe, durable, long-lasting homes.

EXHIBIT L

group of workers, under supervision of knowledgeable individuals, build a car from the ground up in your driveway? Quite plainly, most of us could not afford it. The same is becoming the case in housing. In addition to production efficiencies, purchasing and economy of scale, mobile home builders are able to exercise extensive quality control during the construction of their products. In the end, the consumer receives a high quality home at an affordable price.

STRUCTURAL EFFICIENCY

What type of structural efficiencies are we talking about? Take interior paneling, for instance. Mobile home manufacturers use what is called stress skin paneling It serves two very important functions. First, it creates the interior decor. Secondly, it adds significant structural strength to the wall framing. To further strengthen the structure, manufacturers use adhesives in addition to mechanical fasteners such as nails and staples. Conventional home builders are not generally permitted to utilize adhesives because of construction conditions which they cannot control.

Mobile home roof rafters are another area where efficiency and economy play a big role while still maintaining structural integrity. Instead of the expensive framing seen on many site-built homes, mobile home manufacturers use manufactured truss-type rafters that are based on the same principle as an airplane wing. The ingenuity of geometry takes the place of solid mass. Although some feel that truss-type rafters are inferior, we know they perform efficiently. They are proven strong to

(more)

fulfill the design need, and they do not tend to warp like solid rafters.

Components that go into building a mobile home are tested, tested, and retested to ensure they will perform as the engineer's design expects. The codes by which site-built homes are constructed (the model building codes) are the result of years of field experience, but not of controlled design with a specific purpose in mind. The question mobile home manufacturers ask is: Will component "A" perform task "B" efficiently, effectively, esthetically, and economically? If so, let's use it. If not, back to the drawing boards. Combine this philosophy and nearly three decades of experience, along with the fact mobile homes must be transportable, and you have the basis for modern mobile home construction.

FIRE AND WIND

How safe are mobile homes in a fire? Before answering, we feel obligated to point out that no structure is safe in a fire. Given that, mobile homes today are as safe as any other comparable home. The Federal Mobile Home Construction and Safety Standard sets extremely stringent regulations on fire safety. All materials--excluding drapes and other furnishings--must have a fire spread rating of no more than 200. (Asbestos is 0 and solid 3/4-inch red oak is 100.) This compares to the model building codes requirements. Materials adjacent to stoves must be rated 50 or less, and around furnace and water heaters, 25 or less. All mobile homes built today must have at least one smoke detector installed. There must be at least two exterior doors for escape which must be within 35 feet of each bedroom door, but cannot be in the same room or general area. Bedroom windows must open easily for emergency exiting, and their sill cannot be more than 36 inches above the floor.

While fire protection provisions can be controlled by manufacturers, wind damage is another matter. Most wind damage to mobile homes is a direct result of inadequate installation and anchoring.

Today's manufactured homes are made to withstand all the same elements of nature that a site-built home can survive. By federal law, mobile home roofs in moderate climate states like California must support up to 20 pounds per square foot. In some northern states, the design standard is 30 to 40 pounds per square foot. Normal wind design requires that exterior walls and windows withstand 15 pounds per square foot, and in hurricane-designated areas, such as Florida and Texas, a 25-pound per square foot design is required. In addition, the standard stipulates that exterior coverings "shall be of moisture and weather resistive materials attached with corrosion resistant fasteners to resist wind, snow and rain."

INSPECTIONS, INSPECTIONS AND MORE INSPECTIONS

In-plant inspection is another important aspect of mobile home construction. Fleetwood Enterprises, for instance, has a quality control administrator at each of its 29 plants who reports directly to the plant general manager. Each unit is closely scrutinized at each phase of construction before shipment to dealers. Consumers are furnished a one-year warranty guaranteeing that workmanship and materials are free from defect.

Several independent or government agencies are also involved in the inspection process. The U.S. Department of Housing and Urban Development (HUD) is responsible for national enforcement of the Mobile Home Construction and Safety Standard, and has contracted with the National Conference of State Building Codes and Standards (NCSBCS) to be its eyes and ears.

States provide inspectors to NCSBCS, and all mobile home manufacturing plants in the U.S. are monitored by them at least quarterly. Further, all mobile home building plans must be approved by an independent, approved agency.

Inspection agencies have inspectors who visit plants in their area as often as every day, depending on production. Although each agency may have different inspection guidelines, they cannot be less rigorous than required by the Federal Standards.

CHANGE IN THINKING

The fallacies and misconceptions associated with mobile home construction are without basis. People, many in decision-making capacities affecting the manufactured housing industry, still conjure up images of rickety, tin trailers when mobile home related subjects are brought up. This is totally inaccurate and unfair, and the end result of this type of thinking is counterproductive for all concerned. We can only hope that through information and education, manufactured homes will be judged for what they are: Sturdily built, efficient, economic, and attractive homes that are equal in performance to comparable site-built housing.

-#-

COMPARISON OF CRITERIA FOR

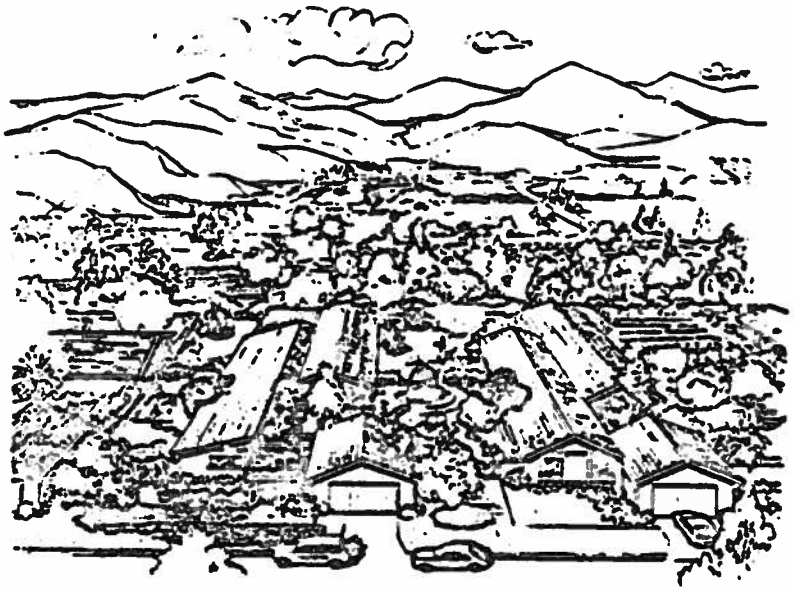
FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

WITH THE UNIFORM BUILDING CODE (SINGLE FAMILY DWELLING)

DESIGN ELEMENT	FEDERAL MH STANDARD	UNIFORM BUILDING CODE (1976)
Structural Design Loads:		
Roof live load	20 PSF (min.)	20 PSF (min.)
Wind load (horizontal)	15 PSF	15 PSF
Floor live load	40 PSF	40 PSF
Horiz. load on interior walls	5 PSF	5 PSF
Architectural Design-Building Planning:		
Minimum room size:		
One room	150 sq. ft.	150 sq. ft.
Bedroom	70 sq. ft.	70 sq. ft.
Closet depth (each bedroom)	22 in.	None specified
Hall width	28 in.	None specified
Ext. wall covering	Weather resistant; corrosion resistant fasteners	Prescribes min. materials and fasteners
Fire Safety:		
Exit doors	2	1
Specify exit door location relationship	Yes	No
Furnace compartment lining	Gyp. bd. + 25 FS max.	Not specified

DESIGN ELEMENT	FEDERAL MH STANDARD	UNIFORM BUILDING CODE (1976)
Fire Safety (continued)		
Water heater compartment lining	Gyp. bd. + 25 FS max.	Not specified
Kitchen range back wall	Gyp. bd. + 50 FS max.	Not specified
Flamespread in living area:		
Walls	200 or less (Class III)	Class III
Ceiling	200 or less (Class III)	Class III
Protect cabinets above range	Yes	Yes
Smoke detector	Yes	Yes
Thermal Energy Conservation		
Condensation control:		
Walls	Vapor barrier	Vapor barrier
Ceiling	Vapor barrier	Vapor barrier
Air infiltration control	Specified	Not specified
Maximum heat loss	Specified	Not specified
Double glazing or storm windows	Mandatory	Not mandatory
Interior heated to $70^{o}F$ (design basis)	Required	Required
Electrical		
Require listed materials and devices	Yes	No
Aluminum wire in branch circuits	Not permitted	Permitted
Receptacle locations	Comparable	Comparable
Load calculations	Comparable	Comparable
Separate neutral and ground circuits on branch circuit wiring and service panel	Yes	No

MOBILEHOMES GO MAINSTREAM



The addition of pitched roofs and two-car garages has made many mobilehome models virtually indistinguishable from conventionally-built tract houses. But until this session of the Legislature, they were still more vehicle than home in the eyes of the law and lenders, especially public lenders.

In the first year of the session, however, the Legislature took a number of steps that signaled their recognition of the importance of mobilehomes in tne housing market. Of both symbolic and practical importance is the transfer of mobilehome registration funtions from the Department of Motor Vehicles to HCD.

More importantly, financing options were extended in several directions. AB 333 and SB 229 included as part of the State's new housing finance programs, construction incentives for mobilehome developments and homeownership assistance for individuals.

In a rental project, full development costs will be paid by the State for 30% or more of the units to be kept available and affordable to low and very low income families, as well as the elderly and nandicapped for at least 30 years. Eligibility extends to new mobilehome parks, including cooperative parks, of five or more spaces.

The homeownership assistance component of this legislation provides for state co-investment of up to 49% of the cost of a dwelling purchased by a lower income household. Eligibility extends to those living in a mobilehome park being converted to a condominium or cooperative park, and parties who purchase a mobilehome on a permanent foundation outside a park. This program will also provide interim financing assistance to nonprofit corporations or stock cooperatives which are developing mobilehome parks for low and moderate income tenants.

Other legislative changes authored by Assemblyman Dennis Mangers (Dem., Huntington Beach) in AB 2740 had the effect of increasing financing options for manufactured housing:

- Loans can now be authorized by the California Housing Finance Agency for cooperative or nonprofit mobilehome parks, or mobilehome subdivisions for low and moderate income tenants, and for installation on foundation systems outside of parks.

- Financing can now be provided by HCD for mobilehomes-- individual units, parks, and subdivisions-- through the Housing Predevelopment Loan Fund, Urban Housing Development Loan Fund, and the Farmworkers Housing Grant Program.

- Loan ceilings for the Cal Vet Program have been increased from $22,500 to $35,000 for a mobilehome in a park and from $30,000 to $55,000 for a mobilehome on a foundation system on a private lot.

EXHIBIT M

Another noteworthy feature of recently enacted legislation is contained in AB 2915, by Assemblyman Mike Gage (Dem., Napa). For the first time, as a result of this bill, a mobilehome owner will be able to take advantage of the cash value of a residence, a prerogative previously available only to homeowners of traditional dwellings. In the future, a mobilehome owner will have the opportunity to take out a secured second loan on the unit, or derive cash from equity in the unit. AB 2915 also transfers State mobilehome regulatory responsibilities from the Department of Motor Vehicles to HCD.

PLANNING AND ZONING ACCEPTANCE

This session also yielded legislation which assures manufactured housing a place as part of each California community. Currently, many localities exclude mobilehomes entirely, or restrict their location to parks. SB 1960 by Senator Omer Rains, (Dem., Ventura) which will take effect July 1, 1981, precludes prohibition by a locality of installation of newer mobilehomes (built since 1976) which are installed on permanent foundations on single-family lots. The local jurisdiction may apply setback, sideyard, parking and other development standards which would apply to a conventional house on the same lot, and may also designate certain single-family lots for mobilehome use. Local architectural standards may be applied to the mobilehome which deal specifically with roof overhang and roofing and siding materials.

Another measure, AB 1564 authored by Assemblyman Chester Wray (Dem., Westminster) requires cities and counties to include manufactured housing within tne housing development options dealt with in their housing element of the local general plans.

MOBILEHOMES TO GENERATE PROPERTY TAXES

Traditionally, mobilehomes have been taxed as vehicles, through an

(Continued on page 8)

(Continued from page 7)

annual license fee based on a depreciation schedule, and a 6% sales and use tax collected upon sale or resale. Local jurisdictions have long been dissatisfied with these taxing mechanisms, contending that their share of revenues did not cover the cost of services utilized by mobilehome residents.

Senator Robert Presley (Dem., Riverside) dealt with this problem in two measures--SB 1004 of 1979, and a refinement, SB 1422 of 1980. As a result of their passage, all new mobilehomes sold on or after July 1, 1980 are subject to local property taxes at the same rates as conventional dwellings. (Annual vehicle-type licensing will continue for units first sold before that date.) Sales tax on post-July 1980 units will be charged only upon initial sale, and will be based only on 75% of the sales price to the retailer, an arrangement similar to conventional housing sales taxes which apply to materials but not value of the completed house. The new legislation also qualifies owners and renters for State tax benefits available to residents of conventional dwellings.

NEW WIDTH REQUIREMENT

Assemblyman Jim Ellis (Rep., San Diego) and Mike Roos (Dem., L.A.) addressed yet another issue influencing practical usage of mobilehomes in AB 677 and AB 2698, respectively. Through their efforts, the width requirement for movement of mobilehomes on California highways has been increased to 14 feet maximum. Previously, units exceeding 12 feet in width could not be moved on the highway in California although all other states permit movement of those up to 14 feet. This issue has been important to prospective mobilehome owners and the industry. A 14 foot-wide unit provides more livable space in a stand-alone or "single-wide" mobilehome, including a 3-bedroom floor plan.

NEW AGENCY SECRETARY

The Department of Housing and Community Development will report to a new cabinet secretary. Lynn A. Schenk, appointed by Governor Brown, succeeds Alan Stein, who recently resigned as Secretary of the Business and Transportation Agency.

The Agency, soon to be renamed Business, Transportation, and Housing embraces the housing activities of HCD, the California Housing Finance Agency (CHFA), and the Department of Real Estate.

Ms. Schenk, 35, was deputy secretary for the Agency, and has worked on numerous housing issues with HCD. Prior to this, she was an attorney for the San Diego Gas & Electric Company and a White House Fellow serving as a special assistant to Vice Presidents Nelson Rockefeller and Walter Mondale.

Ms. Schenk was a founder and on the board of directors of the Women's Bank of San Diego (California Coastal Bank). She was also a founder and president of the Lawyers Club of San Diego and California Women Lawyers.

She received her B.A. from the University of California, Los Angeles and her law degree from the University of San Diego.

A Democrat, Ms. Schenk will receive $60,026. The position requires Senate confirmation.

With the appointment of Ms. Schenk Governor Brown's agency secretaries are now 50 percent female.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CALIFORNIA COMMUNITIES OCTOBER 1980

921 Tenth Street
Sacramento, CA 95814

EDMUND G. BROWN JR., GOVERNOR

L. Donald Terner, Director

Bob Lalierte', Depty. Director
Management Services

Monica L. Roberts, Editorial Assistant

Sherri Scott, Word Processing

MOBILE HOMES AS SAFE FROM FIRE AS SITE-BUILT HOMES; NEW MOBILE HOMES SAFER

EXHIBIT N

The risk of fire is greater in a site-built home than in a mobile home, according to Howard Gate's study, "Comparison of Fire Risk in Mobile Homes and Site-Built Homes." His analysis of data contained in the U.S. Fire Administration's 1978 National Fire Incident Reporting System reveals that the incidence of fire in site-built homes is 534.50 per 100,000 homes, as compared to the slightly lower rate of 534.04 fires per 100,000 mobile homes. More significant, however, is the fact that the fire incidence rate for mobile homes built after 1976 is only 378.9 per 100,000 mobile homes, or 155.6 fewer fires than site-constructed homes experience.

The lower rate of fire incidence for mobile homes is due, in large part to stringent fire safety features required by the Department of Housing and Urban Development's Mobile Homes Construction and Safety Standards, a mandatory, national building code for mobile homes which has been in effect since 1976.

Among the many fire safety provision are: 1) that each mobile home have a minimum of two, easily accessible exits; 2) restrictive interior flame-spread requirements for walls and ceilings; 3) flame-spread ratings for the interior finish of furnace and water compartments, kitchen cabinets and counter tops, interior surfaces adjacent to cooking ranges, furniture materials, and plastic bathtubs, shower units and shower doors; and 4) smoke alarms and emergency egress windows in all sleeping areas. In some states and cities, building codes governing site-constructed housing do not require such stringent fire safety features.

The mobile home industry's careful attention to fire safety features--and stringent quality control--has also led to a lower fire fatality rate than that for site-constructed homes. The fatality rate for site-built homes is 4.20 per 100,000 homes, while the rate in mobile homes built since the implementation of the HUD code is 3.44 fatalities per 100,000 homes, according to the National Fire Protection Association's 1978 fire fatality records.

Mobile home fire data for California, a state which has one of the largest mobile home populations, further indicates that the fire incidence rate of mobile homes is significantly less than that of site-built homes. In a 1977 memorandum from the Acting Chief of the Division of Codes and Standards to the California Commission of Housing and Community Development, it was noted that, based on the second annual report of the California State Fire Marshal, one out of every 122 site -built homes had a fire occurrence, while only one out of 409 mobile homes experienced fire.

Prepared by: The Indiana Manufactured Housing Association
3210 Rand Road, Indianapolis, Indiana 46241
6/26/80

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

LEGISLATIVE COMMISSION (702) 885-5627
KEITH ASHWORTH, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

May 18, 1981

EXHIBIT O

M E M O R A N D U M

TO: Senator James I. Gibson, Chairman, Senate Committee on Government Affairs

FROM: Fred W. Welden, Senior Research Analyst FW

SUBJECT: Issues in Bills on Local Government Employee-Management Relations Act

You asked that I correlate the major issues and the appropriate sections of bills which address the Local Government Employee-Management Relations Act. This information is as follows:

ISSUE NO. I - SUPERVISORY AND CONFIDENTIAL EMPLOYEES
(NRS 288.035, 288.050, 288.075, 288.170)

See Table A - Supervisory and Confidential Employees.

S.B. 350 - Nothing.

S.B. 367 - Section 3 (page 2, lines 16-39).

S.B. 536 - Section 5 (page 2, lines 11-23);
Section 7 (page 2, lines 28-38);
Section 20 (page 8, lines 6-32).

S.B. 537 - Same language as proposed in S.B. 536.
Section 9 (page 3, lines 32-44);
Section 11 (page 3, line 49-page 4, line 10);
Section 24 (page 9, line 27-page 10, line 3).

A.B. 55 - Section 1 (page 1, lines 1-7);
Section 3 (page 3, lines 22-45).

A.B. 225 - Nothing.

A.B. 400 - Nothing.

A.B. 452 - Nothing.

ISSUE NO. II - THE LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD AND ADVISORY COMMITTEE (NRS 288.030, 288.080-288.137, 288.280)

S.B. 350 - Nothing.

S.B. 367 - Nothing.

S.B. 536 - The size of the board is expanded in association with the proposal to extend collective bargaining to state employees.

The employee-management relations advisory committee is abolished. Section 37 (page 17, line 15).

The only other substantive change which is not associated with extension of collective bargaining to state employees is in section 14 on page 4, lines 25-30. It sets time limits within which the board must act and calls for biennial reports to the legislature.

S.B. 537 - Same language as proposed in S.B. 536. Section 18 (page 5, line 47-page 6, line 2); Section 42 (page 19, line 17).

A.B. 55 - Nothing.

A.B. 225 - Nothing.

A.B. 400 - The only proposed changes are associated with establishing a procedure for mandatory binding arbitration.

A.B. 452 - Nothing.

ISSUE NO. III - RECOGNITION OF EMPLOYEE ORGANIZATIONS
(NRS 288.027, 288.028, 288.040, 288.067, 288.140, 288.160-288.170)

S.B. 350 - Nothing.

S.B. 367 - Nothing which was not included in Issue No. I.

S.B. 536 - Nothing which is not associated with extension of collective bargaining to state employees, or which was not included in Issue No. I.

S.B. 537 - Same as S.B. 536.

A.B. 55 - Nothing which was not included in Issue No. I.

A.B. 225 - Section 1 (page 1, line 1-page 2, line 31).

A.B. 400 - Section 5 (page 4, line 35-page 5, line 37);
Section 6 (page 5, line 38-page 6, line 16);
Section 7 (page 6, line 17-page 7, line 8).

A.B. 452 - Nothing.

ISSUE NO. IV - SCOPE OF BARGAINING
(NRS 288.150)

See Table B - Scope of Bargaining.

S.B. 350 - Nothing.

S.B. 367 - Section 1 (page 1, line 1-page 3, line 15).

S.B. 536 - Section 16 (page 4, line 49-page 6, line 35).

S.B. 537 - Same language as proposed in S.B. 536.
Section 20 (page 6, line 21-page 8, line 7).

A.B. 55 - Section 2 (page 1, line 8-page 3, line 21).

A.B. 225 - Nothing.

A.B. 400 - Section 4 (page 2, line 49-page 4, line 34).

A.B. 452 - Section 1 (page 1, line 1-page 3, line 20).

ISSUE NO. V - DETERMINATION OF LOCAL GOVERNMENTS' ABILITY TO PAY
(NRS 288.200, §§ 7 and 8)

See Table C - Determination of Local Governments' Ability to Pay.

S.B. 350 - Nothing of substance.

S.B. 367 - Nothing.

S.B. 536 - Section 24 (page 9, line 22-page 11, line 5).

S.B. 537 - Substantially the same language as proposed in S.B. 536. Section 28 (page 10, line 45-page 12, line 41).

A.B. 55 - Section 4 (page 3, line 46-page 5, line 17).

A.B. 225 - Nothing.

A.B. 400 - The only proposed changes are associated with establishing a procedure for mandatory binding arbitration.

A.B. 452 - Nothing.

ISSUE NO. VI - MODIFICATIONS IN THE PROCESS OF COLLECTIVE BARGAINING
(NRS 288.045, 288.063, 288.180-288.220)

S.B. 350 - This bill extends the "last-best offer" procedures to all local government employees, rather than only firemen. Thus, it eliminates the governor's power to

S.B. 350 (continued) - submit a dispute to binding factfinding, and establishes a procedure whereby disputes which are not resolved during mediation or factfinding are submitted to mandatory "last-best offer" arbitration.

S.B. 367 - Nothing.

S.B. 536 - This bill makes various changes in the existing procedures for mediation and factfinding, and it removes the governor's power to submit a dispute to binding factfinding (thus eliminating altogether the possibility for mandatory binding factfinding).

S.B. 537 - The same provisions as are proposed in S.B. 536.

A.B. 55 - Nothing.

A.B. 225 - Nothing.

A.B. 400 - This bill makes various changes in the existing procedures for mediation, and it replaces the existing procedures for factfinding with procedures for mandatory binding arbitration.

A.B. 452 - Nothing.

ISSUE NO. VII - TIME SCHEDULES AND RETROACTIVITY (NRS 288.180-288.215)

See chart entitled "Dates Associated With Local Government-Employee Relations Act."

S.B. 350 - Dates in existing procedures for "last-best offer" factfinding are retained. No final date is specified for completion of the collective bargaining process.

S.B. 367 - Nothing.

S.B. 536 - Dates for mediation and factfinding are changed to be earlier in the year. No final date is specified for completion of the collective bargaining process.

A.B. 55 - Nothing.

A.B. 225 - Nothing.

A.B. 400 - A schedule of dates for mediation and mandatory binding arbitration is established. No final date is specified for completion of the collective bargaining process.

A.B. 452 - Nothing.

FWW/jld 5.1 Employee

TABLE A - SUPERVISORY AND CONFIDENTIAL EMPLOYEES

S.B. 367

Sec. 2. NRS 288.170 is hereby amended to read as follows:

288.170 1. Each local government employer which has recognized one or more employee organization shall determine, after consultation with [such] *three* recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such determination [shall be] *is* community of interest among the employees concerned. [A principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent shall not be a member of the same bargaining unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate bargaining unit.] A local government [department head, administrative employee or] supervisory employee shall not be a member of the same bargaining unit as the employees under his direction. Any dispute between the parties as to whether an employee is a supervisor [shall] *must* be submitted to the board. In all cases, *administrative employees and* confidential employees of the local government employer [shall] *must* be excluded from any bargaining unit.

2. If any employee organization is aggrieved by determination of a bargaining unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and employee organizations involved. The board shall apply the same criterion as specified in subsection 1.

S.B. 536

Sec. 5. NRS 288.035 is hereby amended to read as follows:

288.035 "Confidential employee" means an employee who, [is privy to decisions of management affecting employee relations, including all employers]

1. Has access to confidential information about the relationship between a government employer and its employees;

2. Serves a government employer in a confidential capacity;

3. Serves a government employer in a managerial capacity; or

4. Performs duties which would make his membership or participation in the affairs of an employees' organization incompatible or inconsistent with his official duties or employment.

The term includes every employee of the personnel department or its equivalent.

Sec. 7. NRS 288.050 is hereby amended to read as follows:

288.050 ["Local government] *"Government employer"* means any person employed by a [local] government employer [.] except:

1. An elected officer, a person appointed to fill a vacancy in an elective position, a member of a board or commission, or a judicial officer;

2. A supervisory employee;

3. A confidential employee;

4. A patient, inmate or ward of the state or any of its political subdivisions; and

5. A person employed on an irregular, casual, seasoned or temporary basis.

Sec. 20. NRS 288.170 is hereby amended to read as follows:

288.170 1. Each [local] government employer which has recognized one or more [employee] *employees'* organizations shall determine, after consultation with [such] *the* recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such a determination [shall be] *is* community of interest among the employees concerned. [A] *No* principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent [shall not] *may* be a member of [the same bargaining unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate bargaining unit. A local] *a* negotiating unit. *No* government department head, administrative employee, *confidential employee* or supervisory employee [shall not] *may* be a member of [the same bargaining unit as the employees under his direction. Any dispute between the parties as to whether an employee is a supervisor shall be submitted to the board. In all cases, confidential employees of the local government employer shall be excluded from any bargaining unit.] *any employees' organization for the purpose of collective bargaining.*

2. If any [employee] *employees'* organization is aggrieved by determination of a bargaining unit, it may appeal to the board. Subject to judicial review, the decisions of the board is binding upon the [local] government employer and [employee] *the employees'* organizations involved. The board shall apply the same criterion as is specified in subsection 1.

A.B. 55

SECTION 1. NRS 288.050 is hereby amended to read as follows:

288.050 "Local government employee" means any person employed by a local government employer [.] except:

1. Supervisory employees;

2. Persons employed on an irregular, casual or seasonal basis;

3. Administrative employees; and

4. Confidential employees.

Sec. 3. NRS 288.170 is hereby amended to read as follows:

288.170 1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with such recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such determination [shall be] *is* community of interest among the employees concerned. [A principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent shall not be a member of the same bargaining unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate bargaining unit. A local government department head, administrative employee or supervisory employee shall not be a member of the same bargaining unit as the employees under his direction.] Any dispute between the parties as to whether an employee is a supervisor [shall] *must* be submitted to the board. [In all cases, confidential employees of the local government employer shall be excluded from any bargaining unit.]

2. If any employee organization is aggrieved by determinations of a bargaining unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and employee organizations involved. The board shall apply the same criterion as specified in subsection 1.

TABLE B - SCOPE OF BARGAINING
(NRS 288.150 §§ 2 and 5)

S.B. 561

2. The scope of mandatory bargaining is limited to:

(a) Salary or wage rates or other forms of direct monetary compensation.

(b) Sick leave.

(c) Vacation leave.

(d) Holidays.

(e) Other paid or unpaid leaves of absence [ ] *, except as provided in subparagraph (5) of paragraph (c) of subsection 3*.

(f) Insurance benefits.

(g) Total hours of work required of an employee on each work day or work week.

(h) Total number of days' work required of an employee in a work year.

(i) Discharge and disciplinary procedures.

(j) Recognition clause.

(k) The method used to classify employees in the bargaining unit.

(l) Deduction of dues for the recognized employee organization.

(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.

(n) No strike provisions consistent with the provisions of this chapter.

(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements [ ], *except disputes relating to policies and regulations adopted by the local government employer*.

(p) General savings clauses.

(q) Duration of collective bargaining agreements.

(r) Safety.

(s) [Teacher preparation time.

(t)] Procedures for reduction in work force.

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:

(a) The right to hire, direct, assign or transfer an employee, but excluding the rights to assign or transfer an employee as a form of discipline.

(b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph [(1)] *(1)* of subsection 2.

(c) The right to determine:

(1) Appropriate staffing levels and work performance standards, except for safety considerations;

(2) The content of the workday, including without limitation workload factors, except for safety considerations;

(3) The quality and quantity of services to be offered to the public; [and]

(4) The means and methods of offering those services [ ]; *and*

(5) The maximum number of days an employee may serve in one year, with or without loss of pay, on state boards or commissions to which he has been appointed.

S.B. 536

2. The scope of mandatory bargaining is limited to:

(a) Salary or wage rates or other forms of direct monetary compensation.

(b) Sick leave.

(c) Vacation leave.

(d) Holidays.

(e) Other paid or unpaid leaves of absence.

(f) Insurance benefits.

(g) Total hours of work required of an employee on each work day or work week.

(h) Total number of days' work required of an employee in a work year.

(i) Discharge and disciplinary procedures.

(j) [Recognition clause.

(k) The method used to classify employees in the bargaining unit.

(l)] Deduction of dues for the recognized [employee] *employees'* organization.

[(m)] *(k)* Protection of employees in the bargaining unit from discrimination because of participation in recognized [employee] *employees'* organizations consistent with the provisions of this chapter.

[(n)] *(l)* No strike provisions consistent with the provisions of this chapter.

[(o)] *(m)* Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.

[(p)] *(n)* General savings clauses.

[(q)] *(o)* Duration of collective bargaining agreements.

[(r)] Safety.

(s)]

(p) Safety of employees.

(q) Teacher preparation time.

[(t)] *(r)* Procedures for reduction in work force.

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the [local] government employer without negotiation include:

(a) The right to hire, *classify*, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.

(b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph [(1)] *(1)* of subsection 2.

(c) The right to determine:

(1) Appropriate staffing levels and work performance standards, [, except for safety considerations;]

(2) The content of the workday, including without limitation workload factors, except for safety considerations;

(3) The quality and quantity of services to be offered to the public; and

(4) The means and methods of offering those services.

A.B. 55

2. The scope of mandatory bargaining is limited to:

(a) Salary or wage rates or other forms of direct monetary compensation [ ].

(b) Sick leave [ ].

(c) Vacation leave [ ].

(d) Holidays [ ].

(e) Other paid or unpaid leaves of absence [ ].

(f) Insurance benefits [ ].

(g) Total hours of work required of an employee on each work day or work week [ ].

(h) Total number of days' work required of an employee in a work year [ ].

(i) Discharge and disciplinary procedures [ ].

(j) Recognition clause [ ].

(k) The method used to classify employees in the bargaining unit [ ].

(l) Deduction of dues for the recognized employee organization [ ].

(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter [ ].

(n) No strike provisions consistent with the provisions of this chapter [ ].

(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements [ ].

(p) General savings clauses [ ].

(q) Duration of collective bargaining agreements [ ].

(r) Safety [ ] *of the individual employee*;

(s) Teacher preparation time [ ]; *and*

(t) Procedures for reduction in work force.

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:

(a) The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.

(b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (1) of subsection 2.

(c) The right to determine:

(1) Appropriate staffing levels and *standards of* work performance, [standards, except for safety considerations;]

(2) The content of the workday, including without limitation workload factors, [, except for safety considerations;]

(3) The quality and quantity of services to be offered to the public; and

(4) The means and methods of offering those services.

(d) The safety of the public.

TABLE B - Scope of Bargaining
(continued)

A.B. 400

2. The scope of mandatory bargaining is limited to:
(a) Salary or wage rates or other forms of direct monetary compensation.
(b) Sick leave.
(c) Vacation leave.
(d) Holidays.
(e) Other paid or nonpaid leaves of absence.
(f) Insurance benefits.
(g) Total hours of work required of an employee on each work day or work week.
(h) Total number of days' work required of an employee in a work year.
(i) Discharge and disciplinary procedures [.] *, including the assignment or transfer of an employee as a form of discipline.*
(j) Recognition clause.
(k) The method used to classify employees in the bargaining unit.
(l) Deduction of dues for the recognized employee organization.
(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.
(n) No-strike provisions consistent with the provisions of this chapter.
(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.
(p) General savings clauses.
(q) Duration of collective bargaining agreements.
(r) Salary.
(s) Teacher preparation time.
(t) Procedures for reduction in work force.
3. *Every collective bargaining agreement must contain grievance and arbitration procedures unless the inclusion of those procedures is expressly waived, in writing, by the local government employer and the employee organization.*
4. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
(a) The right to hire, direct, assign or transfer an employee, [, but excluding the right to assign or transfer an employee as a form of discipline.]
(b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2.
(c) The right to determine:
(1) Appropriate staffing levels and work performance standards, except for safety considerations;
(2) The content of the workday, including without limitation workload factors, except for safety considerations;
(3) The quality and quantity of services to be offered to the public; and
(4) The means and methods of offering those services.

A.B. 452

2. The scope of mandatory bargaining is limited to:
(a) Salary or wage rates or other forms of direct monetary compensation.
(b) Sick leave.
(c) Vacation leave.
(d) Holidays.
(e) Other paid or nonpaid leaves of absence.
(f) Insurance benefits.
(g) Total hours of work required of an employee on each work day or work week.
(h) Total number of days' work required of an employee in a work year.
(i) [Discharge and disciplinary procedures.
(j)] Recognition clause.
[(k)] *(j)* The method used to classify employees in the bargaining unit.
[(l)] *(k)* Deduction of dues for the recognized employee organization.
[(m)] *(l)* Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.
[(n)] *(m)* No-strike provisions consistent with the provisions of this chapter.
[(o)] *(n)* Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements [.
(p)] *, except disputes relating to policies and regulations adopted by the local government employer.*
(o) General savings clauses.
[(q)] *(p)* Duration of collective bargaining agreements.
[(r)] [*(q)* Salary.
(s) Teacher preparation time.
(t) Procedures for reduction in work force.]
3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:
(a) The right to hire, direct, assign or transfer an employee. [, but excluding the right to assign or transfer an employee as a form of discipline.]
(b) The right to reduce in force or lay off any employee because of lack of work or lack of funds. [, subject to paragraph (t) of subsection 2.]
(c) The right to determine:
(1) Appropriate staffing levels and work performance standards, except for safety considerations;
(2) The content of the workday, including without limitation workload factors, except for safety considerations;
(3) The quality and quantity of services to be offered to the public; and
(4) The means and methods of offering those services.
(d) All other matters not enumerated in subsection 2 which may be addressed by policies and administrative regulations of the local government employer.

A.B. 452 (continued)

4. Notwithstanding the provisions of any collective bargaining agreement negotiated pursuant to this chapter, a local government employer is entitled to take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder. Such actions may include the suspension of any collective bargaining agreement for the duration of the emergency. Any action taken under the provisions of this subsection [shall] must not be construed as a failure to negotiate in good faith.
5. The provisions of this chapter, including without limitation the provisions of this section, recognize and declare the ultimate right and responsibility of the local government employer to manage its operations in the most efficient manner consistent with the best interests of all its citizens, its taxpayers and its employees.
6. This section does not preclude, but this chapter does not require the local government employer to negotiate subject matters enumerated in subsection 3 which are outside the scope of mandatory bargaining. The local government employer shall discuss *the subject matters* [outside the scope of mandatory bargaining] *enumerated in paragraphs (a), (b) and (c) of subsection 3 and may discuss those described in paragraph (d),* but it is not required to negotiate [such] *any of the matters* [] *so enumerated or described.*
[7. Contract provisions presently existing in signed and ratified agreements as of May 15, 1975, at 12 p.m. shall remain negotiable.]

DATES ASSOCIATED WITH LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS ACT

Function	Date Within Existing Law	A.B.350	S.B. 536 and S.B. 537
1. Notice of desire to negotiate	On or before February 1	No change	On or before January 15
2. Discretionary authority to select mediator if parties do not agree by this date	By March 1	No change	By February 1
3. Discretionary authority to submit to factfinder if parties do not agree by this date	By April 25 (By April 10 for firemen)	April 10	By April 1 (S.B. 536); By April 15 (S.B. 537)
4. Date by which party may submit dispute to factfinder	Up to May 25 (At any time for firemen)	At any time	Up to May 1
5. A schedule of dates and times for hearing must be established	Before June 15	Date is eliminated	Before June 5
6. Governor may order that fact-finding be binding	Before June 1	Authority is eliminated	Authority is eliminated
7. Factfinder's report due	Within 30 days after the conclusion of factfinding hearing	No change	No change
8. (Firemen only) Must submit issues remaining in dispute to arbitrator	Within 10 days after factfinder's report is submitted	Date not changed (provision made applicable to all)	Provision allowed to expire
9. (Firemen only) Arbitrator must hold hearing	With 10 days after he is selected, and after 7 days' written notice	Dates not changed (provision made applicable to all)	Provision allowed to expire
10. (Firemen only) Arbitrator may adjourn hearings for this period if parties have not submitted final offers and they enter negotiations	Three weeks (parties have 30 days after entering negotiations within which to reach agreement)	Dates not changed (provision made applicable to all)	Provision allowed to expire
11. (Firemen only) Arbitrator must accept one of the final offers	Within 10 days after final offers are submitted	Date not changed (provision made applicable to all)	Provision allowed to expire

FWW/jld: Charts: Act
5-16-81

TABLE C - DETERMINATION OF LOCAL GOVERNMENTS' ABILITY TO PAY

SB 536

NRS 288.200

7. Except as provided in subsection 8, any factfinder, whether his recommendations are to be binding or not, shall base his recommendations or award on the following criteria.

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer, and with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision.

(b) Once the factfinder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, he shall use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute.

The factfinder's report must contain the facts upon which he based his recommendations or award.] *The factfinder, whether or not his recommendations are to be binding, shall determine the financial capability of the government employer to pay monetary benefits. He shall:*

(a) Base this determination on:

(1) The revenues available to the government employer for the current fiscal year, as established by the government employer; and

(2) The priorities set by the elected public officers of the jurisdiction for use of the money of the government employer; and

(b) Consider in making this determination:

(1) The obligation of the government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision; and

(2) The effect of his recommendation on projects which have been planned by the public officers of the jurisdiction.

7. If the factfinder determines that the government employer is able to pay monetary benefits to the government employees, he shall use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute.

8. The factfinder shall not consider any transfer of money from one fund or account to another when determining the current financial capability of a government employer to pay monetary benefits to government employees.

[8.] 9. Any reasonable and adequate sum of money necessary to insure against the risk undertaken which is maintained in a self-insurance reserve or fund must not be counted in determining the financial [ability of a local] *capability of a* government employer and must not be used to pay any monetary benefits recommended or awarded by the factfinder.

AB 55

NRS 288.200

7. Except as provided in subsection 8, any factfinder, whether his recommendations are to be binding or not, shall base his recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer, and with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision.

(b) Once the factfinder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, he shall use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute.

The factfinder's report must contain the facts upon which he based his recommendations or award.

8. [Any reasonable and adequate sum of money necessary to insure against the risk undertaken which is maintained in a self insurance reserve or fund must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommended or awarded by the factfinder.] *In determining the financial ability of a local government employer, the following sums must not be counted:*

(a) Any sum of money obtained from the Federal Government;

(b) Any sum of money set aside for capital improvements in a capital reserve or fund;

(c) Any sum of money in any fund of the employer which is unencumbered at the end of a fiscal year; and

(d) Any reasonable and adequate sum of money necessary to insure against the risk undertaken which is maintained in a self insurance reserve or fund.