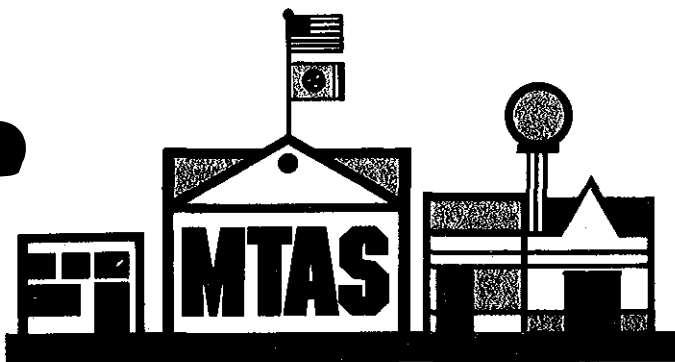




# TECHNICAL BULLETIN



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## When Is A Mobile Home Not A Mobile Home?

by Sidney D. Hemsley

Can a municipality prohibit the placement of a mobile home in areas designated on the zoning map as residential? Well, yes, if what you think is a mobile home is a manufactured home that comes in one chunk. Well, no, if what you think is a mobile home is a manufactured home that comes in two or more chunks and looks sort of like a house. Well, yes, if what you think is a mobile home is a manufactured home that comes in two or more chunks and doesn't look sort of like a house. And like that.

A false impression exists among some municipal officials that the Tennessee Court of Appeals decided in *Albert v. Orwige*, 731 S.W.2d 63 (Tenn. Ct. App. 1987) that manufactured homes, even big ones that come in two chunks and look like site-built homes, are mobile homes that can be zoned out of residential areas. However, that case involved the question of whether such a manufactured home violated a restrictive covenant against mobile homes in a residential area. The Court relied on the definition of a mobile home found in *Tennessee Code Annotated*, Section 55-1-105(d)<sup>1</sup> to determine that the structure was a mobile home which violated the restrictive covenant. But that determination did not resolve the question of what a mobile home is for zoning purposes. The Court declared that "a 'mobile home' under one set of circumstances may not be called a 'mobile home' under another..."

What a mobile home is for purposes of municipal zoning authority in residential areas is found in *Tennessee Code Annotated*, Section 13-24-201 (which the Court in *Albert v. Orwige* never even mentioned):

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<sup>1</sup>*Tennessee Code Annotated*, Section 55-1-101(d) defines the term "mobile home" for the purposes of Tennessee's motor vehicle title and registration law. For those purposes a mobile home (or a house trailer) is "any vehicle or conveyance, not self-propelled, designed for travel upon the public highways, and designed for use as a residence, office, apartment, storehouse, warehouse or any other similar purpose."

Notwithstanding any provision of the law to the contrary, no power or authority granted by this Code to regulate zoning or land use planning shall be used to exclude the placement of a residential dwelling on land designated for residential use solely because the dwelling is partially or completely constructed in a manufacturing facility; provided, however, that the term "residential dwelling" as used in this part shall not apply to factory-manufactured mobile homes<sup>2</sup> constructed as a single self-contained unit and mounted on a single chassis, and as further defined in section 68-36-202(2),(4), and (8),<sup>3</sup> nor shall this chapter have any effect whatsoever upon any zoning or other regulations whether state or local concerning such factory-manufactured mobile homes as herein defined.

That statute makes it clear that a municipality cannot exclude from areas zoned residential a "residential dwelling" simply on the grounds that it is a manufactured home. That is true even if, the whole planning commission, the board of zoning appeals, and the board of mayor and aldermen would take an oath that what Joe Bzwilitz wants to put in that R-1 zone looks to them like a mobile home. It doesn't matter what the municipal zoning ordinance says. When the state law speaks on zoning, local zoning ordinances which speak otherwise curl up and melt. *Nichols v. Tullahoma Open Door*, 640 S.W.2d 13 (Tenn. Ct. App. 1982) made that clear.

But the same statute does permit a municipality to exclude from areas zoned residential a "factory-manufactured mobile home" as it is further defined in *Tennessee Code Annotated*, Sections 65-36-202(2), (4), and (8) [(4), (6), and (7)]. A "factory-manufactured mobile home" as further defined in *Tennessee Code Annotated*, Sections 68-36-202(4), (6), and (7) is as follows:

(4) "Manufactured home" means a structure transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width, or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and

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<sup>2</sup>The term "mobile home" is rapidly disappearing from both federal and state statutes. In both the Federal National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C., Section 5401 et seq.) [formerly the National Mobile Home Construction and Safety Act of 1974] and Tennessee's Uniform Standards Code for Manufactured Homes and Recreational Vehicles Act (*Tennessee Code Annotated*, Section 68-36-201 et seq.) the word "mobile home" has been replaced by the word "manufactured home." As the reader will undoubtedly note, grafting the definition of "factory-manufactured mobile home" found in *Tennessee Code Annotated*, Section 13-24-201 on the definition of "manufactured home" found in *Tennessee Code Annotated*, Section 68-36-202(4) creates confusion over those terms. For the purposes of both Acts, the terms "mobile home" and "manufactured home" are synonymous.

<sup>3</sup>Due to confusion in Public Acts 1980, Chapter 747 from which this provision is taken, an explanation of which is too complicated to set forth here, Section 68-36-202(2), (4) and (8) should read Section 68-36-202(4), (6) and (7).

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designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein...<sup>4</sup>

(6) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(7) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities classified as "recreational vehicles" are: travel trailers, camping trailers, truck campers and motor homes.

Under *Tennessee Code Annotated*, Sections 13-24-201 and 68-36-202(4), (6), and (7) there are three kinds of "factory-manufactured mobile homes": those which come in one chunk, are mounted on one chassis, and are not assembled on site (except for the usual hook-up); motor homes; and recreational vehicles. Those structures may be zoned out of residential areas by municipalities. On the other hand, manufactured homes which are dwellings constructed in two or more separate chunks, are mounted on two or more chassis (for example, "double wides") and are assembled on-site, and which otherwise meet the size requirements in *Tennessee Code Annotated*, Section 68-36-202(4), are not "factory-manufactured mobile homes." Those structures cannot be zoned out of residential areas by municipalities simply on the ground that they are manufactured homes.

But a factory-manufactured home which meet those standards need not automatically be admitted to an area zoned residential. Under *Tennessee Code Annotated*, Section 13-24-202, the dwelling may be required to pass an appearance test. That statute says that "Such manufactured residential dwelling shall have the same general appearance as required for site-built homes." [Emphasis mine]. What that provision means is, of course, subject to interpretation; the "eye of the beholder" comes into play. However, it does mean that the dwelling has to look, well, sort of like a house. Apparently it does not necessarily need to look like the site-built houses in the neighborhood where Joe Bzwilitz wants to put it, only like a site-built home someplace. Not a very precise standard, but that is what it is. The dwelling may also be required to meet any other zoning requirements that apply to residential areas.

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<sup>4</sup>The omitted part of this subsection, without specifically saying so, relates to a size exception for undersized "park model" type manufactured homes which the manufacturer certifies meets certain standards to qualify them for admission to mobile home parks in certain areas of the United States. However, such park model manufactured homes do not qualify as manufactured homes eligible for admission to residential areas under *Tennessee Code Annotated*, Section 13-24-201 because they are single wide and too small.

Generally, manufactured homes builders today are careful to insure that large modern manufactured homes designed for residential placement are consistent with the size and appearance of site-built homes. As far as can be determined, virtually all double and triple wides designed for such use come in chunks measuring no less than 12' by 40'. Many of them are carefully sculptured to look like traditional site-built houses right down to pitched roofs and siding. What gets there on wheels isn't necessarily a mobile home for zoning purposes in Tennessee.

#### Further Information

Further information on mobile homes statutes may be obtained by contacting Sidney D. Hemsley, MTAS Senior Legal Consultant, in Knoxville at (615) 974-5301; or your MTAS Legal Consultant.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

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