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of the  
MOBILE HOME TAXATION COMMISSION

Report to the Governor and the Legislature  
(pursuant to P.L. 1982, c.204)

JUNE 1983



MEMBERS OF THE MOBILE HOME TAXATION COMMISSION

Assemblyman Dennis L. Riley, Chairman  
District 4 (Parts of Atlantic, Camden,  
and Gloucester Counties)

Assemblyman Warren H. Wolf, Vice-Chairman  
District 10 (Part of Ocean County)

Senator Daniel J. Dalton  
District 4 (Parts of Atlantic, Camden,  
and Gloucester Counties)

Senator James P. Vreeland  
District 26 (Parts of Morris and Passaic  
Counties)

Peter D. Pizzuto,  
Assistant State Treasurer, Department of Treasury

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Stephen L. Kuepper  
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Secretaries



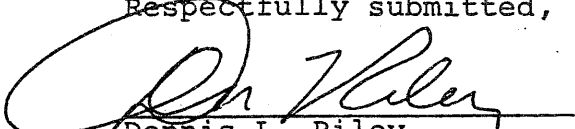
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JUNE 1983

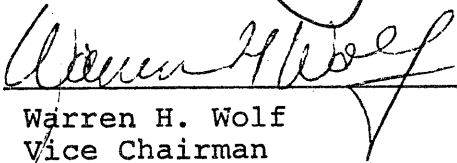
Governor Thomas H. Kean  
President of the Senate  
Speaker of the General Assembly  
Members of the Legislature  
Ladies and Gentlemen

The Mobile Home Taxation Commission created pursuant to  
P.L. 1982, c.204 respectfully submits its final report.

Respectfully submitted,

  
Dennis L. Riley  
Chairman

  
Peter D. Pizzuto

  
Warren H. Wolf  
Vice Chairman

  
Daniel J. Dalton

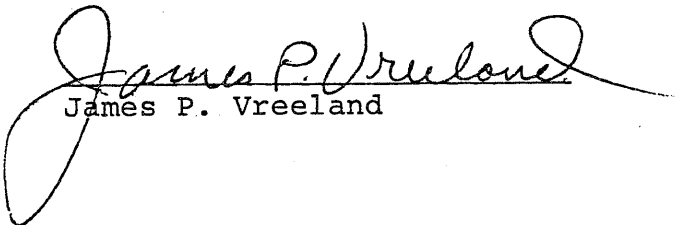
  
James P. Vreeland



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## PREFACE

Availing myself of what is purported to be a chairman's prerogative, I would like to acknowledge the aid given the Mobile Home Taxation Commission by those so instrumental in the completion of our statutorily mandated work. Initially, I must take note of the tremendous amount of work done by Senator William Hamilton and the other members of the original commission. The work done by them became the cornerstone upon which we were able to build.

The following report, as well as the bills based upon same (A-3355, A-3600, A-3601, A-3602, A-3603), could not have been drafted without the cooperation we received from so many diverse groups. Hoping to not slight anyone, I would like to thank the following for the help they gave to both me, as Chairman, and the entire commission: The Office of Governor Kean, the Office of Speaker Karcher, the numerous legislators who assisted us at the hearings and in preparing the legislation, the Division of Taxation, the Department of Community Affairs, the Office of the Public Advocate, the Division of Motor Vehicles, the Mobile Home Owners Association, the New Jersey Manufactured Housing Association, the League of Municipalities, the Tax Assessors Association, the Tax Collectors Association, the New Jersey Planners Association, the New Jersey Builders League, and most of all, the residents who took the time to either testify before us or send their letters to us.

On a personal basis, I would like to thank Peter Pizzuto and Assemblyman Warren Wolf. Both of these men unselfishly gave

of their time, and even more noteworthy, did not allow their own personal feelings to interfere with what they saw to be the right goals for the people of the State of New Jersey. I am proud to have worked with such outstanding men.

Finally, two staff members who were assigned to the commission by Legislative Services, Steven Kuepper and Peggy McNutt, showed me that public employees are not necessarily bureaucratic drones. Rarely, either in business or government, do you hear of employees giving up their time during the evenings and weekends to complete an assigned task. Steve and Peggy are examples of that rare breed.

The problem regarding the taxation of manufactured homes came to the forefront in 1979 with the Supreme Court's decision known as Koester vs. Hunterdon County Board of Taxation. In reality, this decision raised many more questions than it answered. However, when the court then decided the famous case known as Mt. Laurel II, the problems confronting the residents of these homes became open and obvious for all to see.

For many years, manufactured home owners had been speaking to a deaf audience when they told all of us that they were captives. They had been saying to those in power, please look at our homes; as they are homes, not "trailers." They asked that we get rid of our prejudices in regard to these homes and to look at those residing in these homes to see if they were really transient "gypsies," as many of us believed. They told us that the days of the "silver bullets" were gone. It took two decisions by our Supreme Court

before we seriously started to listen.

My own involvement in this situation started when I was asked by the Mobile Home Owners Association (mobile home tenants) to argue their case before the Supreme Court in Koester. As someone who actually crawled under the Koester's home, I found my preconceptions of manufactured homes, and those that lived within them, to be incorrect both factually and perceptually.

I have learned that the residents of manufactured homes are almost always diligent, industrious people. They, overwhelmingly, are senior citizens in age and middle class in socio-economic background. The lots upon which they place their homes are rented, not owned. Yet, I have seen that the planting of shrubs and flowers would be the rule, not the exception. If you can find a manufactured home site that has not been beautified with a well kept lawn, you have seen a rarity among the 35,000 sites presently located in New Jersey.

In short, residents of manufactured homes in our State have shown a pride in ownership, even though they have been deprived of same. They have shown themselves to be worthy neighbors, where they have been allowed to live. Now, we, as lawmakers, have a chance to let them have their own homes on their own land, while providing New Jersey with a long sought goal -- affordable housing.

Assemblyman Dennis L. Riley  
Chairman



## INTRODUCTION

The Mobile Home Taxation Commission was established pursuant to P.L. 1982, c.204 in order to study and develop an equitable system of taxation for manufactured homes. The need for such a system was made clear by a 1979 State Supreme Court decision that certain manufactured homes must be taxed as real property. That decision, based on the intended use of certain manufactured homes as permanent residential property, left open certain questions about the specific classification of manufactured homes for tax purposes. The Legislature has declared a moratorium on the taxation of manufactured homes as real property, which expires December 31, 1983, in order that the questions raised could be addressed.

In addition to the tax issue, the commission considered the use of manufactured homes as affordable housing for the citizens of New Jersey. The commission recognized the need to consider this issue because of the current housing shortage in New Jersey.

Clearly, it is necessary to resolve these issues. Currently, manufactured home owners are unsure of their homes' taxing status and are restricted in their ability to locate and relocate their homes. Potential manufactured home owners may be deterred from buying because of the tax uncertainty and the possible inability to site their homes. The confused status of manufactured homes in New Jersey should not be allowed to continue. It is the Commission's hope that the information presented in this report will assist the Legislature in developing the needed solutions.

The term "manufactured home," rather than the term "mobile home," was selected for use in this report for two reasons. First, "manufactured home" is the term presently used in the industry. Second, "manufactured home" currently has none of the negative connotations still attached to the term "mobile home." Many people still have the impression that a mobile home is a small trailer, which conflicts with the reality of the modern mobile home. Thus, in order to discourage the continuance of the traditional impression of a mobile home, "manufactured home" will be used instead.

The report has been divided into three sections. The first section discusses the testimony received by the commission at its two public hearings. The second and third sections provide information and report the findings of the commission regarding taxation and land use policies for manufactured homes.

## PUBLIC HEARINGS

In order to gather information from people interested in the manufactured home taxation and land use problems, the Commission held two public hearings in May. Among the people and organizations that testified at the hearings, held on May 19 in Williamstown, Gloucester County, and on May 24 in Toms River, Ocean County, were mobile home owners, mobile home park owners, tax assessors, tax collectors, elected officials, the New Jersey Mobile Home Owners Association, the New Jersey Manufactured Housing Association, the New Jersey Planning Association, and the New Jersey League of Municipalities. The testimony presented and the discussions that followed provided the Commission with valuable information about the existing situation regarding manufactured homes.

Discussion at the hearings focused on the problem of taxation, and the concepts and provisions of Assembly Bill 3355, sponsored by Assemblyman Riley and cosponsored by Assemblyman Wolf. All but one of the speakers supported the view that manufactured homes in mobile home parks should not be taxed as real property. Several reasons were presented in support of that view. First, manufactured home owners renting sites in parks pay the property taxes on land and improvements indirectly through their rent. It is generally known that park owners recover the amount paid in property taxes through the rent collected from the home owners. Thus, manufactured home owners residing in mobile home parks do contribute to the revenues of the municipality.

Second, many of the services provided by the municipality to the municipal property owners are not also provided to the manufactured home owners. Garbage collection, ground water drainage, streets and lighting are usually provided by the park owner and paid for through the rent. Thus, manufactured home owners do not place the same burden on the expenditures of the municipality as real property owners do.

Finally, manufactured home owners in many municipalities do pay a "service" fee, "pad" fee, or "site" fee, usually on a weekly or monthly basis, as a further contribution towards any costs incurred by the municipality for the manufactured home owners. Thus, the preponderance of the testimony presented supported the view that manufactured home owners in parks should not be taxed in the same manner as real property owners because manufactured home owners are not afforded the same services as real property owners and do compensate the municipality for those services received.

Provisions of Assembly Bill 3355 addressed some of these issues, and various other amendments and suggestions were proposed by the speakers. One major concern with A-3355 was that, in setting guidelines for establishing a municipal service fee, procedures were not also being established to allow the municipality to increase arbitrarily the fee presently charged. This point was raised because, again, many manufactured home owners feel they receive few, if any, services from the municipality.



There were several other issues presented at the hearings. First, many people felt that a misconception still exists concerning the term "manufactured home" or "mobile home." They believe that people not familiar with modern manufactured housing still consider these homes to be "trailers" and an eyesore for any community. One solution mentioned was the education of the public regarding today's manufactured home versus yesterday's "silver bullet" to help remove the "stigma" still attached to manufactured homes.

Second, many manufactured home owners stated that they are held "captive" in the parks due to land use policies of most municipalities. The owners testified that they have little freedom of movement since the number of parks is extremely limited, and municipalities permitting the use of manufactured homes outside of parks are few. Despite improvements in appearance and design, and strict construction requirements, the use of manufactured housing is still greatly restricted in many municipalities in New Jersey. Given the opportunity, many of the manufactured home owners stated they would opt to own their own property in order to receive the benefits attributed thereto.

A related, but separate, issue presented by manufactured home owners was the possible need for "truth-in-renting" and rent control laws for mobile home park tenants. Currently, some restrictions have been established for park owners regarding their requirements of park tenants, but park tenants and landlords are not subject to truth-in-renting or rent control laws. The commission

determined that these issues were not within the scope of the commission's assigned responsibilities.

Similarly, some home owners saw a need for a law requiring park owners to maintain the services provided. They expressed concern that their streets were not maintained, and they could not do anything about it. The commission stated that this issue, as well, could not be a primary concern of the commission currently, but that it was important for the the issue to be be discussed at a later date.

#### COMMISSION TOUR OF MOBILE HOME PARKS

After the first public hearing ended, the commission members and other interested individuals took a bus tour of three different types of mobile home parks in the Williamstown area. The first park visited was Friendly Village, which contained a mixture of single and double wide manufactured homes. The density of the homes in Friendly Village was approximately 8 manufactured homes per acre. The second park was Mayfield Manor, an older mobile home park containing single wide homes and having a density of approximately 12 homes per acre. The last park, Shenandoah Village, was still being developed and will average approximately 4-6 homes per acre upon completion. Shendanoah Village contains both single and double wide homes but, currently, double wide homes are more predominant.

The commission members were able to examine several different types of homes and accompanying options, attachments, and locational arrangements on the tour. Prices of the homes examined ranged from a low of \$20,000 to a high of \$55,000. Often,

the price of the home included furniture and, if the home was bought from the park owner, the price might also include the concrete pad, skirting, steps, initial landscaping, etc. The tour provided the commission members with a view of the mobile home park environment and the realities of manufactured home living.

## TAXATION

### BACKGROUND

In the 1979 case of Koester v. Hunterdon County Board of Taxation, 79 N.J. 381, the State Supreme Court held that certain manufactured homes are taxable as real property. The decision was based on the Court's finding that that homes were intended to be used as permanent residential property, in the same manner as "conventional" homes. Shortly before Koester, the Appellate Division of the Superior Court handed down a similar decision, also based on the "intended use" of the homes in question. Bell v. Corbin City, 164 N.J. Super. (App. Div., 1978).

Before the Bell and Koester decisions, manufactured homes -- regardless of their intended use -- were "taxable " in a variety of ways:

- a. Manufactured homes owned by residents and situated on leased lots in commercial parks -- the majority of such homes in the State -- were considered personalty and subject to municipal fees in lieu of property taxation. According to the Division of Taxation in the Department of the Treasury, manufactured homes situated in commercial parks and owned by the park owner were also "taxed" in this manner.
- b. Before the 1968 repeal of the State tax on tangible personal property, manufactured homes on independent sites, where both the home and land were owned by the

resident, were subject to that tax. According to the Division of Taxation, these homes have been taxed as real property during most of the years since 1968.

c. At all times, all manufactured homes have been subject to taxation under the "Sales Tax and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.).

Rather than face the numerous serious questions raised by the Koester decision, the Legislature imposed a moratorium on the taxation of manufactured homes (P.L. 1979, c.366; C.54:4C-1 et seq.). The moratorium has been extended several times. The current extension provided for under P.L. 1982, c.204 will expire on December 31, 1983.

For the purposes of clarity, we will divide the tax issues before this commission into: (1) the classification of manufactured homes for tax purposes; and (2) sales taxes for manufactured homes.

#### CLASSIFICATION OF MANUFACTURED HOMES FOR TAX PURPOSES

In Bell and Koester, the courts considered the following factors in declaring that certain manufactured homes be taxed as real property:

a. The homes were anchored to the land on which they rested in such a manner as to require heavy-duty moving equipment and at least a full working day for the moving crew to remove them from their sites. The

courts contrasted these homes with those which could be wheeled on and off their sites in a short time. In Koester, the Court ignored the reality that, if the homes were still on wheels, they would have rolled into a lake at the bottom of the mountain on which they were sited.

b. The homes were permanently connected with utility systems, not tied into these systems through a "hook-up" or "plug-in" arrangement.

c. In Koester, at least, the mobile home park was "a permanent community" of long-term residents, differentiated by its long-term tenancies, design, engineering and landscaping from the "transient" variety of "trailer park," filled with the old "silver bullets," where sites are rented on a daily, weekly or monthly basis to units wheeled in and out.

To the courts, these factors indicated that the homes involved were intended for use as permanent residences. In the eyes of the courts, the fact that the homes were installed on foundations which were questionable as to permanency, and thus were technically "removeable," was immaterial. In focusing on "intent" and "use" rather than the manner of affixation, both the Koester and Bell decisions are consistent with certain previous case law concerning the tax status of a variety of property. See, for example, National Lead Co. v. Bor. of Sayreville, 132 N.J. Super. 30 (App. Div., 1975); Westinghouse Broadcasting Co. v. Division of Taxation, 141 N.J. Super. 301 (App. Div., 1976); and Hudson Tank Storage Co. v. Tp. of Weehawken, unreported App. Div. (1976), cert. den. 71 N.J. 528 (1976).

Interestingly, on the same day Koester was decided, the Supreme Court held that the question of whether certain business property is realty turns strictly on the manner in which such property is affixed to the underlying land, thus, in effect, overruling the Appellate Division in the cases cited above. City of Bayonne v. Port Jersey Corp., 79 N.J. 367 (1979). The decision was based primarily on a strict reading of the "Business Personal Property Tax Act" (P.L. 1966, c.136;  $\text{C. 54: 11A-1 et seq.}$ ), and an analysis of the legislative intent of that act.

In Koester, however, the Court specifically noted that the homes in question were not business property, and relied heavily on the intended use of the homes as a determinant of their status under the statutes which provide generally for the taxation of real property.

In Koester, the Court emphasized several other points. First, the Court noted (or, possibly assumed) that the owners of the manufactured homes involved in the case received "municipal services identical with those received by their tax-paying neighbors who own conventional homes." (at 392) Second, the Court noted that, in certain other states, manufactured homes have been taxed as real property. Finally, the Court observed that the statutory law of this State does not specifically exempt manufactured homes from real property taxation.

In both Koester and Bell, the courts acknowledged that premanufactured dwelling units intended for travel, recreational or other transient purposes should not necessarily be subject to taxation as real property. Indeed, the courts acknowledged previous case law denying municipalities the right to assess and levy real property taxes against such dwelling units. Koester, 79 N.J. at 387-8; Bell, 164 N.J. Super. at 24, 26. The leading case is Manhattan Trailer Ct. v. North Bergen Tp., 104 N.J. Super. 405 (App. Div., 1969), cited with approval in Nelson Cooney and Son v. Tp. of So. Harrison, 57 N.J. 384 (1971).

In its 1980 "Report to the Governor and the Legislature," the New Jersey Mobile Home Study Commission relied heavily on the logic of Koester and Bell. The commission recommended that all "mobile" (i.e. "manufactured") homes be taxed as real property. This commission derived considerable value from the 1980 report, and recognizes the validity of the conclusions drawn by the previous commission from the research conducted thereby. However, this commission has reached somewhat different conclusions, based on its own analysis of certain practical considerations.



## COMMISSION FINDINGS

A. The commission finds that it is necessary to ensure equity, where taxation is concerned, between "conventional" single family dwelling units and manufactured homes situated other than in mobile home parks. The commission recognizes, with the courts, that there is no substantive difference -- in terms of intent and use -- between manufactured homes sited on "permanent" foundations (those installed below ground) and those sited on "nonpermanent" foundations (runners, concrete slabs, etc.).

B. The commission also finds, however, that there is adequate reason to distinguish between manufactured homes located in mobile home parks, and other single family dwelling units, particularly for tax purposes. This finding is based on the following factors:

1. While the homes involved in Koester may have received the same services as "conventional" homes, this is not necessarily the norm. In most instances, the owners of mobile home parks provide services to the homeowners in those parks, which the municipality typically provides to other municipal residents. Generally, these services include garbage collection, ground water drainage, snow removal, the construction, maintenance and lighting of streets, and lighting of other common areas. Thus, homeowners in the parks occasion a lower level of public expenditures than comparable homeowners otherwise situated.

2. Owners of mobile home parks pay real property taxes on the land and improvements which constitute the parks. These taxes are "passed through" to the homeowners within the parks as part of their rent. Indeed, certain of the otherwise public services which parkowners provide (e.g. streets and street lighting) are improvements to the land which are taxed as real property.

3. Municipalities typically impose service fees on manufactured homes located in mobile home parks. Such fees allow municipalities to receive reasonable payment for those services rendered the owners of such homes, the costs of which are not defrayed by the taxes levied and assessed against the park. The fee system also ensures that the homeowners will pay only for services for which they have not already paid through the property tax "pass through."

Further, while fees are generally imposed to defray the costs of regulating certain enterprises or other activities, the courts of this State have upheld -- on various grounds -- the imposition of revenue-raising fees on manufactured homes in mobile home parks, provided that such fees are reasonably related to the public services provided such homes. Edwards v. Mayor and Council, Bor. of Moonachie, 3 N.J. 17 (1949); Bellington v. E. Windsor Tp., 17 N.J. 558 (1955); Nelson Cooney and Son v. South Harrison Tp., 57 N.J. 384 (1971); Jackson Tp. v. Allied Ordnance, 157 N.J. Super. 1(1978).\*

In fact, the courts have recognized a municipality's right to vary the service fee according to the size of the lot. Monmouth Jctn. Mobile Home Park v. So. Brunswick Tp., 107 N.J. Super. 22 (App. Div., 1969).

\* See note at end of section

4. The imposition of a municipal service fee in place of real property taxation is analogous to the treatment accorded certain property owned by public utilities companies. Under P.L. 1940, c.5 (C.54:30A-49 et seq.), certain machinery, equipment and other apparatus which is used in the provision of public utilities services, and which would normally constitute taxable improvements to real property, are specifically excluded from the classification of "real estate" for tax purposes. The Legislature has provided, through the "Gross Receipts Tax," an alternate means of ensuring that the owner of any such property is responsible for reasonable payment for public services which that owner receives.

The property is not exempt from all obligations. Rather, the Legislature has provided for the substitution of one revenue raising mechanism for another, because of the circumstances surrounding the use of the property. See McKenney v. Byrne, 147 N.J. Super. 158 (Law Div., 1976), aff'd. 160 N.J. Super. 303 (App. Div., 1978), aff'd. 82 N.J. 304 (1980).

5. Because of the separation of land ownership and home ownership in a mobile home park, it would be difficult to enforce real property taxes levied against a manufactured home located in such a park. This difficulty arises from the manner in which delinquent property taxes are recovered.

A municipality may recover delinquent real property taxes only through action against the property itself pursuant to the "Tax Sale Law" (R.S. 54:5-1 et seq.) and the supplementary "In Rem Tax Foreclosure Act" (P.L. 1948, c.46; (C.54:5-104.29 et

seq.). Property taxes are not debts; thus, they may not be enforced through civil action against property owners.

A manufactured home, however, may be removed from its foundation (typically a nonpermanent foundation in a mobile home park, though any home may also be removed from a permanent foundation) and moved from a taxing district in which the owner is delinquent. Thus, the municipality would lose the property against which it is required to proceed for enforcement. This issue is especially important in light of the fact that, by statute, there is a considerable "lag" between the time at which taxes become delinquent and the time at which proceedings may be instituted.

Technically, a municipality may enforce a lessee's tax delinquency against the lessor's land. Becker v. Mayor and Council of Little Ferry, 125 N.J.L. 141 (Sup. Ct., 1941), aff.d. 126 N.J.L. 338 (E. & A., 1941). However, the commission does not wish to encourage this type of action. Thus, we find it necessary to establish an alternate means of requiring owners of manufactured homes in mobile home parks to defray the costs of services they receive.

A manufactured home sited on a private lot, owned by the homeowner, presents fewer problems. If the owner moves the home, the municipality may proceed against the land. The same is true of a manufactured home owned under a condominium arrangement, or as part of a horizontal property regime. A manufactured home owned by a cooperative association

presents no enforcement problem, since property taxes are levied against the association's total property holdings.

6. Also because of the separation of land ownership and home ownership, manufactured homes in mobile home parks are not accorded the same treatment in financial markets as other homes -- including manufactured homes on private lots. Typically, the former homes are not financed through mortgage arrangements, but are financed through installment credit. Thus, the owners of these homes do not receive the full benefits of the ownership of real property, while paying a much higher interest rate over a much shorter period of time.

7. Nationally, the tax status of manufactured homes is considerably more complicated than the Supreme Court assumed in the Koester decision. In discussing other states, the Court relied heavily on New York and Pennsylvania statutes, under which manufactured homes are taxed as real property regardless of the manner of affixation to, or the ownership of, the underlying land. However, very few of the states which provide for the taxation of manufactured homes as real property follow this pattern. In fact, most of these states tax only certain manufactured homes as real property. Depending on the state, manufactured homes are taxed as real property if: (1) they are affixed to the land on which they are sited by a permanent foundation; (2) they are sited on land owned by the homeowner; or (3) both.

In these states, manufactured homes which are not taxed as real property are subject to a personal property tax or a specific tax devised solely for such homes. Similar patterns are followed for all manufactured homes in states which do not tax certain classes of these homes as real property (for a summary, see Shepard's Mobile Homes and Mobile Home Parks

(N.Y., 1975 with 1983 cumulative supplement)).

As stated, above, we find that the distinction between a "permanent" and a "nonpermanent" foundation is irrelevant to the question of whether or not a manufactured home is a permanent dwelling unit. However, we have found ample justification for classifying manufactured homes -- in part -- according to the ownership of the underlying land. In doing so, we recognize that the principle of classifying manufactured homes for the purpose of taxation is hardly unprecedented.

Viewing the issue of land ownership in conjunction with the realities presented by differing public service levels, as discussed above, this commission finds that manufactured homes in mobile home parks must be accorded a different tax status than other manufactured homes, a status resembling the statutory exemption which the Court mentioned in the Koester decision.

#### RECOMMENDATIONS

The commission recommends:

a. That manufactured homes, except when located in a mobile home park, be subject to taxation as real property, and that the term "mobile home park" be defined in such manner as to exclude cooperatives, condominiums, and horizontal property regimes, so that manufactured homes owned under these arrangements will be taxed as real property in the manner currently provided by law.

b. That manufactured homes located in mobile home parks not be subject to taxation as real property, but be subject to a mandatory municipal service fee in place of such taxation.

The commission recommends that -- in light of the real property taxes paid on the parks -- the fee be related to services actually rendered homeowners in those parks and not paid for through taxation.

c. That the Commissioner of Community Affairs be empowered to promulgate rules and regulations concerning the items which may be included in the fee, and concerning the manner in which individual fees are to be imposed in relation to the services received by specific homeowners.

d. That travel trailers, campers, recreational vehicles and similar temporary dwelling units continue to be regarded as personal property.

#### SALES TAXES FOR MANUFACTURED HOMES

Currently, a manufactured home is subject to the State sales tax each time it is sold. In the case of "conventional" housing, however, sales taxes are levied only against the construction materials. Typically, these taxes are paid by the builder and "passed on" as part of the price of the home.

#### COMMISSION RECOMMENDATIONS

A. To ensure parity between "conventional housing" and manufactured homes, the commission recommends that a manufactured home be subject to the sales tax only when first sold. For the purposes of equity, the tax should be levied not against the sale price, but against the manufacturer's invoice price.

#### NOTE

The decisions cited on p.14 generally turn on the reasonable relation of fees to specific services directly provided. In Cooney, the Supreme Court held that revenue raising fees, which the Court described as payments "in lieu of" property taxes, could apply to the general level of all governmental services for which property taxes would otherwise be assessed and levied. While questioning the specificity doctrine, however, the Court did not overturn previous decisions based on that doctrine. Indeed, the Court implicitly acknowledged that the imposition of a general fee would not necessarily defray all costs of government services. That the issue of general versus specific fees was raised again in the Jackson case highlights the need for legislative clarification.

In addition, the Edwards and Bellington case include school expenses among the specific items justifying the revenue-raising fees. Yet in neither case did the Court directly address the issue of real property taxes paid by the park owner. Also, the Court did not rule that the services provided by any specific taxing district be included in the fee. Indeed, there is no constitutional requirement that all municipal revenue sources be treated in precisely the same manner in tax apportionment. Cf. City of Trenton v. Mercer Co. Bd. of Taxation, 155 N.J. Super. (App. Div., 1976), 181, 183. Therefore, it is not necessary to require that school districts or counties be included in the service fee imposed in place of property taxes on homeowners in mobile homes parks.



## LAND USE

The housing shortage in New Jersey was recognized as early as 1969, when Governor Cahill gave a message entitled "A Crisis in Housing." A housing shortage still exists today, and without prompt action, it will only worsen.

A related problem concerns the inability of many of our citizens to afford the housing that is constructed. The increases in costs of construction, mortgages, land, utilities, etc. make it difficult for the elderly, families with young children, young couples, and unmarried individuals to afford suitable housing. These New Jersey citizens are often forced to buy or rent housing facilities that are inadequate, too expensive, or outside the area in which they want or need to live.

History shows us that inaction regarding these problems has been the rule, not the exception. Admittedly, there is no ready answer to these problems. Many complex and interrelated actions of public and private entities would be necessary to develop a comprehensive solution, and comprehensive solutions take time. At the commission hearings, however, speakers suggested that less restrictive zoning and land use policies may assist in removing some of the existing barriers to providing affordable housing in this State.

Historically, land use policies have restricted the use of manufactured housing (previously known as mobile homes) more than any other type of housing. Over the last decade, manufactured homes have improved dramatically in design, durability,

and appearance. The safety of manufactured homes has improved as well with the adoption by the federal government of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Pub. L. 93-383; 42 U.S.C. §5401 et seq.). This code provides for the regulation and inspection of the construction of manufactured homes in order to assure that certain standards of construction are maintained. With these significant improvements, some types of manufactured homes are difficult, if not impossible, to distinguish from conventional "stick-built" homes. And yet, the misconception still exists that these manufactured homes are "trailers" and therefore should not be located in certain communities. As a commission, we have been fortunate to view part of the future in housing development and not dwell on the past.

One reason why manufactured homes remain affordable for the general population is that the cost of these homes has not increased rapidly. At the same time, a greater number of options have become available in terms of size and price. During the tour of the mobile home parks, we saw homes ranging from \$20,000 to \$50,000. The price and size variations of these homes provide opportunities for interested individuals who may not otherwise be able to afford conventional housing, or who may not find suitable the housing which they can afford. The current approach of providing financing agreements, not mortgages, for manufactured homes decreases the affordability of manufactured homes somewhat and adds to the problem of restricted use of manufactured homes. However, as these

financial arrangements improve, manufactured homes will increasingly become an attractive answer to the needs of New Jersey residents for affordable, suitable housing.

However, many people who are able to afford a manufactured home are still unable to site the home due to restrictive land use policies. Only approximately 20% of the municipalities in New Jersey permit mobile home parks or manufactured homes of any type within their corporate boundaries. In the past, the courts often upheld these exclusionary or restrictive policies based on a broad interpretation of the zoning powers of the municipality. Basically, the courts ruled that as long as the municipality was maintaining and promoting the general welfare of the municipality, the municipality did not have to provide for every type of structure or use within its borders. More specifically, in Vickers v. Township Committee of Gloucester Township, 37 N.J. 233, the courts stated that trailer parks and camps (terms still used to refer to mobile home parks) "...because of their particular nature and relation to the public health, safety, morals and general welfare, present a municipality with a host of problems, and these problems persist wherever such camps are located" 37 N.J. 246, (1962), and so, "[i]f the zoning ordinance is reasonably calculated to advance the community as a social, economic and political unit, it furthers the general welfare and therefore is a proper exercise of the zoning power," 37 N.J. 247. Furthermore, the early court decisions seldom distinguished between trailers and mobile homes.

However, in recent court decisions, including Mount Laurel I and Mount Laurel II, that judicial policy has changed, as a result of the court's holdings that land use regulation is within the police power of the State and the municipality is only a delegate of that power, and that zoning policies that restrict certain uses, and therefore certain classes of people from the municipality, are not promoting the general welfare of the municipality or the State.

With regard to manufactured homes, the courts now recognize manufactured homes as affordable housing that is "...structurally sound, and attractive in appearance and put in place under health and safety standards..." Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 161 N.J. Super. 357 (1978), and therefore, is an appropriate form of housing in developing municipalities. The Supreme Court decision in Mount Laurel II requires that "...municipalities that cannot otherwise meet their fair share obligations must provide zoning for low-cost homes...." 92 N.J. 158 (1983). Thus, the courts, instead of permitting the exclusion of manufactured homes now view manufactured homes as reasonable, affordable housing for moderate to low-income people, which must be permitted under certain circumstances.

We concur with the courts' findings regarding the affordability, safeness, and attractiveness of manufactured homes. And yet, despite these attributes, the use of manufactured homes is still greatly restricted in New Jersey. Only 400 manufactured homes were sold in the entire State in 1982. If the use was not so restricted, the costs of manufactured homes might well decrease as the dynamics of a free market begin to apply in this area of housing. Obviously, a lowering of the cost of housing has not been the usual experience in our time.

#### FINDINGS

Having seen at first hand, both the improvements in structure and the affordability of manufactured homes, previously called mobile homes, we find manufactured homes to be suitable and affordable housing for New Jersey citizens.

SEPARATE STATEMENT

Peter D. Pizzuto  
Assistant State Treasurer

In 1977, the Legislature created a Mobile Home Study Commission to consider, among other issues, the question of mobile home taxation. Prior to the issuance of that Commission's report in 1980, the Supreme Court decided Koester v. Hunterdon Cty. Bd. of Taxation, 79 N.J. 381 (1979). Since that decision, there have been four successive statutory moratoria on the implementation of the Koester rule and a second commission has been formed to address the taxation question. In all, nearly six years have passed without a clear resolution of the question.

The recommendation of the previous commission was that "all mobile homes used for dwelling purposes should be assessed and taxed as real property in the same manner as other dwelling units." Under such a practice, mobile homes (whether located on leased sites in mobile home parks or otherwise) would be integrated into the

property tax base and their owners would share fully in the burdens and benefits so entailed. This approach has the apparent virtues of simplicity and equity among the residents of each taxing district.

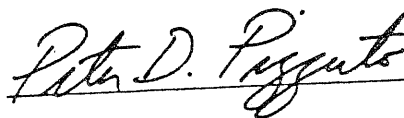
The present commission, as the former one, finds no justification for taxing mobile homes located on property owned by the resident differently from conventional housing. It is with respect to mobile home parks, where residents pay rent to the landowner for occupancy and maintenance, that the two commissions differ. The first commission recognized that the Koester decision allowed legislative latitude in the definition and exemption of real property subject to taxation. (79 N.J. at 391). It doubted, however, that classification of mobile homes for tax purposes based upon the ownership of the underlying land would comply with constitutional standards. (Commission Report, pp. 156-157).

The present commission's report concludes that taxation of mobile homes located in parks as realty presents practical difficulties and works hardship on long-time residents. In other words, it disputes the apparent virtues of simplicity and equity. The reasons given for these conclusions are not insubstantial. Moreover, the recommendations of the report enjoyed broad support at the Commission's hearings. Only one witness, a homeowner in a municipality with a

substantial concentration of mobile home parks, spoke in favor of taxing mobile homes in parks as realty.

After six years of uncertainty, the Legislature should speak definitively, particularly since the Supreme Court's decision in Mt. Laurel II, which presages increased mobile home utilization in New Jersey. The recommendations of both this commission and those of its predecessor have merit. Insofar as they differ in the case of mobile homes located in parks, the question is whether an exemption from real property taxation should be recognized and can be constitutionally sustained for the reasons developed in the body of the report. A third alternative, representing a compromise between the other two, is to exempt only mobile homes actually located in parks as of a legislatively determined date.

As the representative of the Treasury Department on the Commission, I do not feel compelled to recommend one alternative exclusively. All embody sensible policies and provide the Legislature with a range of responsible choices.

  
Peter D. Pappalardo