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## THE IMMOBILE MOBILE HOME—*BROWNFIELD SUBDIVISION, INC. v. McKEE*

As prices increase on conventional, site-built homes, more families are considering the alternative of factory built housing: prefabricated, modular, sectional and mobile homes. Homes classified as "mobile" are often restricted to trailer parks by zoning ordinances. In other cases private covenants restrict the use of land by prohibiting mobile homes. An Illinois court first had occasion to interpret such a covenant in *Brownfield Subdivision, Inc. v. McKee*.<sup>1</sup> The decision is significant as it establishes that a structure advertised as a mobile home and sold by a mobile home dealer remains one regardless of the owner's intent to use it as a permanent residence. The decision has adverse implications for the future use of factory built housing. The purpose of this Note is to analyze the court's decision in light of existing case law and to examine its future impact.

Historically, mobile homes have been regulated either publicly by a zoning ordinance<sup>2</sup> or privately by a restrictive covenant<sup>3</sup> or condition. Often a county or municipal zoning ordinance will restrict the use of a mobile home as a residence in areas other than licensed trailer parks<sup>4</sup> or prohibit the use of a trailer for living accommodations in an area

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1. 61 Ill.2d 168, 334 N.E.2d 131 (1975).

2. A history of "zoning ordinance" decisions is beyond the scope and necessity of this Note, which will only delve into existing case law on zoning ordinances as it may relate to the court's interpretation of covenants restricting such use. For a discussion of mobile home zoning ordinance cases, see generally Bartke & Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970) [hereinafter cited as Bartke & Gage]; Comment, *Mobile Homes in Kansas: A Need for Proper Zoning*, 20 KAN. L. REV. 87 (1971) [hereinafter cited as *Mobile Homes in Kansas*]. It is clear that the owner's right to use property for his or her own purpose is subject to the exercise of the police power. Under the police power, municipalities have the right to adopt zoning ordinances imposing reasonable restraints on the use of private property. A zoning ordinance, not clearly arbitrary or unreasonable which bears a substantial relationship to public health, safety, morals or general welfare is valid. See *Village of LaGrange v. Leitch*, 377 Ill. 139, 35 N.E.2d 346 (1941).

3. "A covenant is an agreement between the parties to do or not to do a particular act." *Leverich v. Roy*, 402 Ill. 71, 73, 83 N.E.2d 335, 336 (1949). A covenant which restricts the use of land is commonly referred to as a restrictive covenant. See McCarthy, *Restrictive Covenants*, 1955 U. ILL. L. F. 709, 710 [hereinafter cited as McCarthy]. A restrictive covenant need only be reasonable and not contrary to public policy to be enforced. See, e.g., *Brandenburg v. Lager*, 272 Ill. 622, 112 N.E. 321 (1916); *Corbridge v. Westminster Presbyterian Church & Soc.*, 18 Ill.App.2d 245, 151 N.E.2d 822 (2d Dist. 1958).

4. See, e.g., *Village of Cahokia v. Wright*, 57 Ill.2d 166, 311 N.E. 2d 153 (1974); *City of Sparta v. Brenning*, 45 Ill.2d 359, 259 N.E.2d 30 (1970).

zoned residential.<sup>5</sup> In Illinois two cases which have dealt with zoning ordinances as applied to mobile homes, *County of Cook v. Hoytt*<sup>6</sup> and *County of Winnebago v. Hartman*,<sup>7</sup> found that the mobile home was not prohibited.

Most jurisdictions make no distinction between public zoning ordinances and private zoning in the form of covenants, and decisions interpreting restrictive covenants often cite zoning cases as authority.<sup>8</sup> There are, however, principles applicable to restrictive covenants that do not govern zoning ordinances.<sup>9</sup> The owner of real estate has the right to convey it subject to any condition or restriction he or she chooses to impose as long as the restriction doesn't violate public policy or materially impair its beneficial enjoyment.<sup>10</sup> Subsequent purchasers of the property are bound by the restriction if there is actual or constructive notice of the covenant.<sup>11</sup> In *Brownfield*, the purchasers were aware of the restriction against mobile homes at the time they purchased the lot.<sup>12</sup>

5. See, e.g., *Town of Greenland v. Hussey*, 110 N.H. 269, 266 A.2d 122 (1970).

6. 59 Ill.App.2d 368, 208 N.E.2d 410 (1st Dist. 1965). A house trailer used as a residence was located in an area zoned F (farming) under a 1940 Cook County zoning ordinance. A single family residence was permitted in such a district, and the appellate court found the trailer to be a residence in the commonly accepted meaning of the word since "residence" was not defined in the ordinance. The court also found the use of the trailer to be incidental to the use of the property as a dog kennel. *Id.* at 375, 208 N.E.2d at 413.

7. 104 Ill.App.2d 119, 242 N.E.2d 916 (2d Dist. 1968). A zoning ordinance prohibited parking a trailer outside an authorized trailer park. The appellate court found a mobile home placed on a foundation was not a trailer under the ordinance. The ordinance defined a trailer as "[a] vehicle or similar portable structure designed, constructed or intended for use for human habitation and having no foundation other than wheels, blocks, skids, jacks or skirtings." *Id.* at 122, 242 N.E.2d at 917. However, the court cautioned:

We are not to be understood as holding that trailers or mobile homes can be converted into structures simply by removing the wheels and the hitch and attaching them to permanent foundations. Our decision is specifically limited to the facts of this case as applied to the local zoning ordinance. . . .

*Id.* at 124, 242 N.E.2d at 918.

8. See, e.g., *Brownfield Subdivision, Inc. v. McKee*, 61 Ill.2d 168, 334 N.E.2d 131 (1975); *Manley v. Draper*, 44 Misc. 2d 613, 254 N.Y.S.2d 739 (Sup. Ct. 1963); *Crawford v. Boyd*, 453 S.W.2d 232 (Tex. Civ. App. 1970). See also *Bartke & Gage*, *supra* note 2. But see *Nailman v. Bilodeau*, 225 A.2d 758, 760 (Me. 1967), where the Supreme Judicial Court of Maine stated that the decision in *Wright v. Michaud*, 160 Me. 164, 200 A.2d 543 (1964), dealing with a zoning ordinance, was not helpful in resolving the meaning of the restrictive covenant. For support of this interpretation see also *Bartke & Gage*, *supra* note 2, at 516.

9. For a discussion of covenants, see generally *McCarthy*, *supra* note 3.

10. *Corbridge v. Westminster Presbyterian Church & Soc.*, 18 Ill. App.2d 245, 260, 151 N.E.2d 822, 830 (2d Dist. 1958).

11. See, e.g., *Pagel v. Gisi*, 132 Colo. 181, 184-85, 286 P.2d 636, 638 (1955); *Corbridge v. Westminster Presbyterian Church & Soc.*, 18 Ill. App. 2d 245, 260, 151 N.E.2d 822,

Robert and Mary Ann Collenberger purchased a sectional home, 52 feet long by 24 feet wide, from a mobile home dealer. The home was built and transported in two separate sections and placed on a concrete foundation on their lot in the Brownfield Subdivision. A garage was erected and a family room built between the home and the garage. Brownfield Subdivision, Inc., a not-for-profit corporation, filed a complaint against the Collenbergers and Rex E. McKee, the seller of the lot and president of the mobile home sales company, seeking an injunction to restrain the Collenbergers from occupying the home as a residence on grounds it was within a restrictive covenant which prohibited temporary structures or mobile homes from being used as a residence.<sup>13</sup> Affirming the decision of the appellate court, the Illinois Supreme Court held that the structure was within the prohibitory language of the covenant.<sup>14</sup> It based its decision on a finding that the structure was: (1) advertised as a mobile home and sold by a mobile home dealer; (2) in no way attached to the foundation; and (3) capable of being transported to another location.<sup>15</sup>

In reaching this decision, the supreme court was confronted with conflicting terminology. However, it failed to discuss important structural distinctions between a mobile home and other factory built housing.<sup>16</sup> The court did point out that the home was advertised as a double-wide mobile home,<sup>17</sup> yet the seller described it at trial as a sectional home.<sup>18</sup>

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830 (2d Dist. 1958). Equity will enforce a restrictive covenant by an injunction. *Id.*

12. Brief for Appellee at 5-6, *Brownfield Subdivision, Inc. v. McKee*, 61 Ill.2d 168, 334 N.E.2d 131 (1975).

13. The restrictive covenant provided:

No building shall be erected on any lot except a one family dwelling house, a garage and one service building and used exclusively as such. Buildings shall be permanent structures of an attractive design. . . . No structure of a temporary character, trailer, basement, tent, shack, mobile home or garage shall be used on any Lot, at any time, as a residence, either temporarily or permanently.

61 Ill.2d at 169, 334 N.E.2d at 132.

14. *Id.*

15. 61 Ill.2d at 175-76, 334 N.E.2d at 135.

16. Because double-wide, sectional and modular homes are relatively recent innovations in the housing industry, few courts have had occasion to decide whether a double-wide or a sectional home belongs in the mobile home category. The *Brownfield* court could have looked to *Kyritsis v. Fenny*, 66 Misc. 2d 329, 320 N.Y.S.2d 702 (Sup. Ct. 1971), where the New York Supreme Court found that a zoning ordinance restricting mobile homes to trailer parks did not apply to a modular home. A mobile home was distinguished from a modular home on grounds that the former is a single entity, complete on arrival at the home site, and the latter is transported to the construction site in several pieces. This distinction seems equally applicable to the covenant in *Brownfield* where the two units were transported to the lot separately.

17. 61 Ill.2d at 171, 334 N.E.2d at 133. "A double wide mobile home is a mobile home

Defendants' attorney argued that the mobile home was converted into a modular home.<sup>19</sup> The mobile home industry itself uses the terms "double-wide" and "modular" interchangeably.<sup>20</sup> The court itself cited Hodes and Roberson, *The Law of Mobile Homes*, to support the proposition that modular and sectional homes are in the mobile home category.<sup>21</sup> Yet it failed to note that Hodes and Roberson also pointed out that modular housing is conceptually closer to prefabricated housing than to the mobile home.<sup>22</sup>

The *Brownfield* court relied primarily on two cases: *Timmerman v. Gabriel*<sup>23</sup> and *Town of Manchester v. Phillips*.<sup>24</sup> In *Timmerman* a double-wide mobile home, each section of which had a steel frame, was placed on a concrete foundation. The Montana Supreme Court held that this structure was within the prohibition of a restrictive covenant banning a "trailer." The essence of the decision was that the covenant prohibited temporary structures such as trailers because of the nature of the construction rather than the mobility. While pointing out that the *Timmerman* case strongly resembled *Brownfield*, the Illinois Supreme Court failed to note a primary distinction between the two types of structures involved. In *Brownfield* defendant McKee testified that the construction methods and materials used in that structure were those of a modular sectional home rather than of a double-wide mobile home.<sup>25</sup>

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consisting of two sections combined horizontally at the site while still retaining their individual chassis for possible future movements." B. HODES & G. ROBERSON, *THE LAW OF MOBILE HOMES* 4 (3d ed. 1974) [hereinafter cited as *THE LAW OF MOBILE HOMES*].

18. 61 Ill.2d at 171, 334 N.E.2d at 133. A sectional home is defined as "a dwelling made of two or more modular units factory fabricated and transported to the home site where they are put on a foundation and joined to make a single house." *THE LAW OF MOBILE HOMES*, *supra* note 17, at 4.

19. 61 Ill.2d at 172, 334 N.E.2d at 133. "A modular unit is a factory fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational or industrial purposes." *THE LAW OF MOBILE HOMES*, *supra* note 17, at 4.

20. The industry refers to a 24 foot wide, two section home as a "double-wide." It is double only during its life on the production line. When set on a homesite it may be referred to as a two module home to describe its origin and factory production system. *Mobile Home/Recreational Vehicle Dealer Magazine, Market Study of the Mobile & Modular Housing Industry* 9 (April 1971) [hereinafter cited as *Market Study*].

21. 61 Ill.2d at 175, 334 N.E.2d at 134-35.

22. *THE LAW OF MOBILE HOMES*, *supra* note 17, at 11.

23. 155 Mont. 294, 470 P.2d 528 (1970). *Accord*, *Bullock v. Kattner*, 502 S.W.2d 828 (Tex. Civ. App. 1973) (a trailer placed on blocks found to be prohibited by a covenant banning the use of a trailer as a residence).

24. 343 Mass. 591, 180 N.E.2d 333 (1962).

25. Section homes include primarily 2" x 4" on 16 inch centers with a shingled roof. Defendant's Petition for Appeal at 8, *Brownfield Subdivision, Inc. v. McKee*, 61 Ill.2d 168,

Applying the "nature of the construction" test used in *Timmerman*, the construction of the structure in *Brownfield* more closely resembled a site-built or prefabricated house than a mobile home.

In *Town of Manchester v. Phillips*<sup>26</sup> a mobile home was prohibited under a zoning bylaw permitting only single-family homes on the property.<sup>27</sup> According to the Massachusetts Supreme Court, the words "mobile home" in the bylaw referred to a species of self-contained unit in contrast to a conventional house. However, the *Brownfield* court failed to distinguish the two cases and point out that the structure in *Brownfield* was not self-contained. It was purchased in two sections, each transported to the site separately on wheels and supports belonging to the manufacturer; neither unit was separately capable of providing living accommodations.<sup>28</sup>

The potential mobility of the structure was also discussed by the *Brownfield* court.<sup>29</sup> The court points out it could be transported to another location, but so could a conventional frame house.<sup>30</sup> A prefabricated house could also be disassembled and moved, but no one would contend it is mobile.<sup>31</sup> Other decisions have focused on the current use and immobility of a mobile home rather than the past or potential use and mobility. In *Crawford v. Boyd*,<sup>32</sup> trailer homes were not permitted on the lot in question. A mobile home, with axles and wheels removed and returned to the manufacturer, placed on a foundation was held not

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334 N.E.2d 131 (1975). The walls of the Collenbergers' home had studding of the usual dimensions and spacing; asphalt shingles covered the pitched roof of the completed structure. 19 Ill.App.3d at 380, 311 N.E.2d at 199.

26. 343 Mass. 591, 180 N.E.2d 333 (1972).

27. *Accord*, *Town of Marblehead v. Gilbert*, 334 Mass. 602, 137 N.E.2d 921 (1956), where a trailer did not constitute a one family house. See also *Bartke & Gage*, *supra* note 2, at 501, where the authors point out that Massachusetts has taken the most extreme position in excluding mobile homes from single family districts, *i.e.*, "once a trailer, always a trailer." *Contra*, *Lower Merion Twp. v. Gallup*, 158 Pa. Super. 572, 46 A.2d 35 (1946) (a house trailer on blocks held to be a dwelling); *Lescault v. Zoning Bd. of Cumberland*, 91 R.I. 277, 162 A.2d 807 (1960) (a trailer held to be a dwelling); *Sioux Falls v. Cleveland*, 75 S.D. 548, 70 N.W.2d 62 (1955) (a trailer house held to be a dwelling house); *State v. Work*, 75 Wash. 2d 204, 449 P.2d 806 (1969) (a mobile home held to be a single family dwelling).

28. 19 Ill.App.3d at 380, 133 N.E.2d at 199.

29. 61 Ill.2d at 176, 334 N.E.2d at 135.

30. *Manley v. Draper*, 44 Misc. 2d 613, 254 N.Y.S.2d 739 (Sup. Ct. 1963); *Hussey v. Ray*, 462 S.W.2d 45 (Tex. Civ. App. 1970).

31. See *In re Willey*, 120 Vt. 359, 364, 140 A.2d 11, 14 (1958). See also Comment, *Mobile Homes in North Carolina: Residence or Vehicle*, 50 N.C. L. Rev. 612, 619 (1972).

32. 453 S.W.2d 232 (Tex. Civ. App. 1970).

a trailer home within the meaning of a restriction.<sup>33</sup> The Texas Civil Appeals Court stressed that the question was not future use but the use of the structure at the time in question. The New York Supreme Court found that an expandable mobile home<sup>34</sup> was converted to a permanent residence when it was placed on a foundation of concrete piers with the undercarriage, wheels and springs removed in *Manley v. Draper*.<sup>35</sup> The Supreme Court of Pennsylvania, in *Anstine v. Zoning Board of Adjustment*,<sup>36</sup> decided that a mobile home was rendered immobile and permanently affixed to the land when it was placed on a concrete foundation. Although it could be moved, it would involve the same degree of difficulty and harm to the structure that would accompany the moving of a conventional home.

In relation to the issue of mobility the *Brownfield* court stressed that the home was in no way attached to its concrete foundation. Three steel I-beams were placed on concrete blocks which were on top of a concrete foundation. The home's two sections, fastened together by angle irons and 16-penny nails, rested on the I-beams, but were not cemented, welded or attached to them.<sup>37</sup> However, other cases have found similar structures to be affixed to the realty when placed on a foundation and attached to utilities, without focusing on the actual method of attachment.<sup>38</sup>

The court also may have decided differently had it considered the standard tests for determining whether a chattel has been annexed to the realty: (1) actual annexation to the realty or something appurtenant to it; (2) the purpose for which the property was attached; and (3) the intention of the person making the annexation to make a permanent

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33. See also *In re Willey*, 120 Vt. 359, 140 A.2d 11 (1958) (a trailer, mobile when brought to the lot, used as a dwelling and permitted in a residential zone). *Contra*, *Jones v. Beiber*, 251 Iowa 969, 103 N.W.2d 364 (1960) (the court held an 8 foot by 51 foot mobile home retained its basic characteristic of being "designed to be hauled"). *Id.* at 973, 103 N.W.2d at 366.

34. An expandable mobile home consists of one or more rooms that fold or telescope while the unit is being transported; it is expanded at the site to provide additional living space. *Market Study*, *supra* note 20, at 9.

35. 44 Misc. 2d 613, 254 N.Y.S.2d 739 (Sup. Ct. 1963).

36. 411 Pa. 33, 39, 190 A.2d 712, 715 (1963).

37. 61 Ill.2d at 170, 334 N.E.2d at 132.

38. See, e.g., *In re Willey*, 120 Vt. 359, 140 A.2d 11 (1958) (a trailer, not on a foundation but on cinder blocks, held to be affixed to the realty); *State ex rel. Herzog v. Miller*, 170 Misc. 1063, 11 N.Y.S.2d 572 (Sup. Ct. 1939) (a lunch wagon placed on a brick foundation and connected to sewer, water, gas and electric lines found to be affixed to the realty); *Coming v. Town of Ontario*, 204 Misc. 38, 121 N.Y.S.2d 288 (Sup. Ct. 1953) (a trailer held to be affixed to the realty because of sanitary and electrical connections).

accession to the freehold.<sup>39</sup> Lack of intent readily results in a finding that a mobile home is not a permanent part of the realty.<sup>40</sup> The Collenbergers' intent was to establish a permanent residence; the fact that the unit was transported to their lot and not built there should not be controlling. Presumably, had the home been sold as a prefabricated house or labelled a modular house and transported to the lot on trucks rather than detachable running gears and wheels, no question as to its future mobility would have arisen.<sup>41</sup>

A factor of paramount importance in construing a covenant, which the *Brownfield* court failed to discuss, is the intention of the parties at the time the covenant was imposed and the circumstances surrounding its imposition.<sup>41.1</sup> In 1965 when the covenant was imposed<sup>42</sup> mobile homes were vastly different from the modular-mobile homes of the 1970's.<sup>43</sup> The type of structure at issue in *Brownfield* was neither in existence nor contemplated by the covenantor at the time the restriction was imposed.<sup>44</sup> Similar covenants have been interpreted as intending to ban an influx of travel trailers occupied by transients but not permanently affixed mobile homes.<sup>45</sup> When there is doubt about the intent of a restrictive covenant, all doubt is resolved in favor of the free use of the land.<sup>46</sup> Emphasizing the inapplicability of many restrictive covenants, the Ohio Court of Common Pleas in *Yeager v. Cassidy*<sup>47</sup> pointed out that

. . . in most situations the restrictive covenants were imposed before

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39. *Ward v. Earl*, 86 Ill. App. 635, 639 (1st Dist. 1899) citing *Sword v. Low*, 122 Ill. 487, 496 (1887).

40. See *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972) where a trailer temporarily placed on a lot was barred by a covenant restricting the use of the property for residential purposes. The trailer owner intended to live in it only until he could build a house on the land.

41. See generally *Mobile Homes in Kansas*, *supra* note 2, at 90.

41.1. *Kessler v. Palmer*, 3 Ill.App.3d 901, 904, 278 N.E.2d 813, 816 (3d Dist. 1972).

42. Defendant's Petition for Rehearing at 3, *Brownfield Subdivision, Inc. v. McKee*, 61 Ill.2d 168, 334 N.E.2d 131 (1975).

43. Mobile homes as wide as fourteen feet were introduced in a few states in 1968, and sixteen foot, eighteen foot, and double-wide versions followed. *Market Study*, *supra* note 20, at 3,5.

44. See *Kyritsis v. Fenny*, 66 Misc. 2d 329, 330, 320 N.Y.S.2d 702, 704 (Sup. Ct. 1971) (the court pointed out that the drafters of the 1962 zoning ordinance could not have intended to include all modular homes, since modular homes had been available in the area for only two years).

45. See, e.g., *Manley v. Draper*, 44 Misc. 2d 613, 615, 254 N.Y.S.2d 739, 741 (Sup. Ct. 1963); *Crawford v. Boyd*, 453 S.W.2d 232, 233 (Tex. Civ. App. 1970).

46. See, e.g., *Newton v. Village of Glen Ellyn*, 374 Ill. 50, 56, 27 N.E.2d 821, 824 (1940); *Kessler v. Palmeri*, 3 Ill.App.3d 901, 908, 278 N.E.2d 813, 818 (3d Dist. 1972); *Naiman v. Bilodeau*, 225 A.2d 758, 759 (Me. 1967).

47. 20 Ohio Misc. 251, 253 N.E.2d 320 (1969).



the advent of the modern mobile home, and therefore, were not within the contemplation of the imposer of the restrictions. . . . Unless such dwellings are expressly and explicitly excluded by the terms of a protective covenant, their use should not be enjoined, provided that in each case, the dwelling otherwise conforms to the spirit of the restriction.<sup>48</sup>

Considering that the most essential element in construing a restrictive covenant is the intent of the covenantor, it is difficult to see how the intent of a person imposing a covenant in 1965 could have been to exclude a type of structure that did not come into existence until after 1968.

Since it is not clear the intent behind the covenant was to ban all unconventional forms of housing, the decision in *Brownfield* extends the scope of the covenant by implication. Such a construction encourages vagueness and generality in both private and public zoning restrictions. Other jurisdictions have refused to restrict the use of land where the restriction was not sufficiently particularized to reveal an intent to exclude that type of dwelling.<sup>49</sup>

Another factor the court could have considered in interpreting the language of the covenant is existing applicable legislation.<sup>50</sup> Illinois, by statute, specifically excludes a mobile home placed on a permanent foundation from the definition of a mobile home.<sup>51</sup> The supreme court opinion in *Brownfield* made no mention of the legislative definition.<sup>52</sup>

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48. *Id.* at 256, 253 N.E.2d at 323-24.

49. *See Manley v. Draper*, 44 Misc. 2d 613, 254 N.Y.S.2d 739 (Sup. Ct. 1963), which dealt with a covenant prohibiting trailers. The court found if it were the covenantor's intention to exclude all construction except homes of a particular type, size, and cost, the restriction should be specifically phrased to eliminate the ambiguity. *Accord, Hussey v. Ray*, 462 S.W.2d 45 (Tex. Civ. App. 1970) (a restrictive covenant prohibiting trailers did not bar a mobile home).

50. Legislation can be considered in interpreting a restrictive covenant. *Swigart v. Richards*, 87 Ohio L. Abs. 37, 40, 178 N.E.2d 109, 111 (Ohio C.P. 1961).

51. 'Mobile home' means a structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, at which it is intended to be a permanent habitation and designed to permit the occupancy thereof as a dwelling place for 1 or more persons, provided that any such structure served by individual utilities and resting on a permanent foundation, with wheels, tongue and hitch permanently removed, shall not be construed as a 'mobile home.'

ILL. REV. STAT. ch. 111 ½, § 712.1 (1973), as amended (Supp. 1974). *But cf.* ILL. REV. STAT. ch. 95 ½, § 1-128 (1973), for a definition of "house trailer."

52. At the appellate level, Justice Trapp, in a dissenting opinion, refers to the statutory definition and concludes: "It constrains credibility to conclude that upon completion the building was either structurally or legally a mobile home." *Brownfield Subdivision, Inc. v. McKee*, 19 Ill.App.3d 374, 380-81, 311 N.E.2d 194, 199 (4th Dist. 1974) (dissenting opinion).

Finally, aesthetic grounds might have been used to justify the decision in *Brownfield*, yet the only reference to the character of the neighborhood was in the appellate court opinion which pointed out that the existing homes in the subdivision were of the conventional type, ranging from single-story ranch homes to two-story homes.<sup>53</sup> After viewing the premises, the trial court found the Collenbergers' home "neat and attractive."<sup>54</sup> However, the supreme court found that the dwelling was prohibited by the covenant because it had the appearance of a mobile home.<sup>55</sup> Other cases which have excluded mobile homes because of their appearance have made a definite finding of a unfavorable aesthetic impact and a potential decrease in the value of surrounding property.<sup>56</sup> Without such a finding, the exclusion of a structure because it has the appearance of a mobile home appears arbitrary.<sup>57</sup>

Under the *Brownfield* decision a once mobile home is fated to remain one, regardless of the owner's intent to make it a permanent residence. Illinois courts confronting the issue of whether a mobile home affixed to the realty is prohibited by an ordinance restricting mobile homes to trailer parks will be constrained to ban the mobile home from a residential area. The *Brownfield* decision has already resulted in one reversal by an Illinois circuit court judge in *Moore v. McDaniel*.<sup>58</sup> Three units, described at various times as a "trailer," "mobile home" and "modular house" were moved onto a lot. The court initially held a restrictive covenant prohibiting "trailer houses" did not bar the structure in question. After the Illinois Supreme Court decision in *Brownfield*, the trial judge reversed his earlier ruling.

From the 8 foot by 35 foot trailer of the 1930's has evolved the mobile or sectional home of the 1970's, often indistinguishable from a conventional home and closely akin to the prefabricated dwelling. It is an attractive alternative to the increasingly expensive<sup>59</sup> conventional home.

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53. 19 Ill.App.3d at 375, 311 N.E.2d at 195.

54. *Id.* at 375, 311 N.E.2d at 196.

55. 61 Ill.2d at 176, 334 N.E.2d at 135.

56. *See, e.g.,* Wright v. Michaud, 160 Me. 164, 200 A.2d 543 (1964) (the court found that no matter how elaborately built, a mobile home is often detrimental to surrounding property); County of Fayette v. Holman, 11 Pa. Cmwlth. 357, 315 A.2d 335 (1973) (the court specifically found a trailer would adversely affect property values). *But see* Anstine v. Zoning Bd. of Adjustment, 411 Pa. 33, 190 A.2d 712 (1973) (there was evidence the mobile home would enhance the value of surrounding property).

57. For a discussion of the exclusion of mobile homes on aesthetic grounds, *see also* Bair, *Mobile Homes—A New Challenge*, 32 LAW & CONTEMP. PROB. 286, 299 (1967).

58. No. 74CH2515 (20th Cir. Ct. Ill., filed July 28, 1975).

59. In 1973 the average retail price of a mobile home was \$7,770, while the median sales price of a site-built home was \$32,000. Mobile & Modular Housing Dealer Magazine, *A Market Study of 1972-1973 Mobile Home Manufactured Housing & Special Unit Production Shipments* 12 (No Date).

According to the 1970 census, 7.8 million persons resided year round in some 3.4 million mobile homes; only forty per cent of them were located in mobile home parks.<sup>60</sup> The *Brownfield* decision will force many more mobile home dwellers to locate in mobile home parks which are frequently less than desirable. Most mobile home parks are in areas zoned for business or industrial purposes on the theory the operation of a mobile home park is a business.<sup>61</sup>

The *Brownfield* opinion effectively discriminates against an essential form of housing construction. That it is unrealistic to bar innovative methods of construction was pointed out by the New York Supreme Court in *Kyritsis v. Fenny*:<sup>62</sup>

Today with the urban housing crisis, it would be unrealistic to exclude from residential zones all modular construction, since people are seeking dwelling space which is readily available at lower cost.<sup>63</sup>

The Illinois Supreme Court has ultimately sanctioned a form of wealth discrimination. With the mounting cost of site-built housing, the American dream of home ownership will soon be available only to a small percentage of the population. The majority, who might otherwise turn to modular, sectional and mobile homes as an alternative, will be prevented from doing so by restrictive covenants and zoning ordinances.

*Julie Badel*

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60. THE LAW OF MOBILE HOMES, *supra* note 17, at 6.

61. The operation of an apartment building is also a business, yet such dwellings are commonly located in areas zoned residential. See Bartke & Gage, *supra* note 2, at 498.

62. 66 Misc. 2d 329, 320 N.Y.S.2d 702 (Sup. Ct. 1971).

63. *Id.* at 330-31, 320 N.Y.S.2d at 704.