

# **MODULAR**

**BUILDING SYSTEMS ASSOCIATION**

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## **BUILDING FOR TOMORROW**

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May 5, 2003

Mr. William Matchneer  
U.S. Department of Housing & Urban Development  
Robert C. Weaver Building-451 Seventh Street, SW  
Washington, DC 20410

Dear Mr. Matchneer,

I am writing on behalf of the Modular Building Systems Association, representing the modular housing industry regarding a proposal recommended by the Manufactured Housing Consensus Committee, requiring state and local governments to prohibit private land owners from restricting homes built to the Federal Manufactured Home Construction and Safety Standard. Our Association has serious concerns regarding this recommendation.

First and foremost, we would suggest that the proposal is unconstitutional. Unless a state or local government is willing to reimburse a landowner for a reduction in the value of his land which would result from a requirement that manufactured housing may be sited in subdivisions with other larger homes, the result of such a provision would be an unconstitutional taking of private property without compensation. The proposal flies in the face of even the most fundamental of private property rights.

There appears to be some confusion as to the meaning and scope of the federal preemption of regulation by state and local governments of manufactured housing. The National Manufactured Housing Construction and Safety Standards Act (NMHCSSA) prohibits states and local governments from regulating the code to which the home is built. However, the Act does not preempt a municipality's power to adopt zoning that provides for different types of housing in various areas within a municipality. According to *Lauderbaugh v. Hopewell Township*, 319 F.3d 568, C.A.3 (Pa. 2003), "the [NMHCSSA] prevents localities from using safety standards to exclude manufactured homes from a zoning district, it does not stop them from excluding certain types of manufactured housing from a zoning district using some other, permissible, criteria, even

if, by using that permissible criteria, the locality bans most, or even every, manufactured home.”

The court went on to say that, “If a township has decided that certain types of manufactured homes, which it has defined as "mobile homes," are aesthetically unpleasing, or harmful to local property values, but that other types of manufactured homes, which it has interpreted to be "modular homes," are not, the township may bar "mobile homes" from a zoning district and allow "modular homes" and may do so even if a "mobile home" is built in compliance with the standards of the National Manufactured Housing Construction and Safety Standards Act.”

Local developers as well as zoning officials need to have the ability to zone in order to insure the availability of infrastructure and services and to maintain the integrity of aesthetics within certain subdivisions and zones. Federal case law is unambiguous in ruling that municipalities have the authority to regulate the location of different types of housing in order to maintain the aesthetic integrity of various zones, as long as they do not completely exclude affordable housing from a geographic region. While our association recognizes the vital need manufactured housing serves for affordable housing, there will certainly be areas in a municipality where this type of housing is not homogeneous with existing homes and will have a substantial negative effect on neighboring property values.

To that end, we offer our strong opposition to this proposal and would appreciate knowing the department’s position on this proposal and its status. Thank you in advance for your attention to this matter.

Sincerely,



Steve Snyder  
Executive Director

cc. Robert E. Solomon, P.E.  
Assistant Vice President, NFPA

MBSA Manufacturers

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