



Town of
INDIAN TRAIL
north carolina

Indian Trail, North Carolina 28079

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PLANNING BOARD TRANSMITTAL

Planning Board Transmittal for the February 8th, 2011 Town Council Meeting

Reference Name	Case: ZT 2010-016 Modular and Manufactured Home Amendment		
PB Meeting Date	January 18, 2011		
Members Present	Chair Whitehurst <input checked="" type="checkbox"/>	Gary Vaughn <input checked="" type="checkbox"/>	Larry Miller <input checked="" type="checkbox"/>
	Vice-Chair Cowan <input checked="" type="checkbox"/>	Kathy Broom <input checked="" type="checkbox"/>	Robert Rollins <input type="checkbox"/>
	Sidney Sandy <input checked="" type="checkbox"/>	Cathi Higgins <input checked="" type="checkbox"/> Alternate	John Simulcik <input type="checkbox"/> Alternate
	Vacant Seat <input type="checkbox"/>		
Case Found Complete	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Motion	Recommend approval w/modifications as transmitted		
Member making the motion	Board member Cowan		
Second the motion	Board member Sandy		
Vote	7-0		

Background

A request to amend/add Sections 510.020(G) and 1610.060(K) of the Unified Development Ordinance (UDO) relating to modular and manufactured home uses in terms of definitions and usage in the Town. The Planning Board heard this request on January 18th, 2011 and transmits a recommendation to approve w/modifications.

Town Council Action: *Receive transmittal report and public testimony and:*

1. *Concur with the findings and transmittal of the Planning Board to approve; or*
2. *Concur with the findings and approve as modified by Council; or*
3. *Do not make the findings and disapprove the amendment.*

Planning Board Meeting (January 18, 2011)

The Planning Board heard this item at its January 18, 2011 regular meeting. In brief, this text amendment seeks to modify the use categories related to modular and manufactured homes in all of the single-family residential zoning districts throughout the Town, along with defining what modular homes are in terms of usage.

The Planning Board, along with making the required findings, did make the following three modifications to this text amendment before recommending approval to the Town Council:

1. **Residential Use Table (UDO Section 510.020(G))**: Modified Class A Manufactured Homes to be permitted by special use permit (SUP) in the SF-1 (single-family residential) zoning district.
2. **Age Restriction on New Manufactured Homes in the Town**: The Board recommended placing a 5-year age restriction on any new manufactured homes in the Town, and directed staff to discuss the legality of such a provision with the Town Attorney. After consulting with the Town Attorney, staff is of the opinion that such an age limit would not be legally allowed in NC. This is in part due to a 2009 NC Court of Appeals that invalidated age limits for manufactured homes across the state (**See Attachment 3**). Therefore, this modification is not included the draft ordinance.
3. **Noticing to Manufactured Home Owners Following Adoption**: Staff was also directed to provide notice to all manufactured home owners in the Town following adoption of this text amendment by the Council. Staff will post the new ordinance amendments on the Town website, along with mailing notices to all impacted property owners and/or placing a legal ad in the Enquirer Journal regarding the adopted ordinance.

Draft Findings:

1. The following findings were made consistent with the Comprehensive Plan:
 - 1.3.1 of the Comprehensive Plan – Quality of Life; the proposed UDO amendment will help to make the UDO consistent with state, federal and other regulatory standards for modular and manufactured homes and provide for the health, safety, and welfare of all Indian Trail citizens.
 - 1.3.2 of the Comprehensive Plan – Land Use; the proposed UDO amendment will help to promote a quality mix of different land uses while avoiding land use conflicts with neighboring properties and surrounding municipalities.
2. This UDO ordinance amendment is in the best interest of the public because it promotes a more efficient development system and review process, while providing a greater quality of life for all residents of the Town of Indian Trail.

Project Contact

Jonathon Edwards

Junior Planner

je@planning.indiantrail.org

Town Council Attachments:

TC Attachment 1 – Town Council Staff Report for February 8, 2011

TC Attachment 2 – Draft Ordinance

TC Attachment 3 – *Five C's, Inc. v. County of Pasquotank*, NC Court of Appeals (2009)

TC ATTACHMENT 1



Town of Indian Trail
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PLANNING & NEIGHBORHOOD SERVICES DEPARTMENT

Zoning Staff Report

Case: ZT 2010-016 Modular and Manufactured Homes Amendment		
Reference Name(s)	Amendment/Addition of UDO Sections 510.020(G) and 1610.060(K)	
Applicant	Town of Indian Trail	
Submittal Date	February 8, 2011	
Location	Town-Wide	
Tax Map Number	N/A	
Recommendations & Comments	Planning Staff	Approval of these proposed UDO amendments

Executive Summary

Staff is introducing this text amendment relating to modular and manufactured home uses. The proposed amendments/additions are as follows:

- *Amend UDO Section 510.020(G) Table of Permissible Uses; specifies as to how and where modular and manufactured homes will be permitted in the Town as uses.*
- *Add UDO Section 1610.060(K), which will provide a definition for modular homes in the Town.*

Analysis

I. Modular Homes in Brief

Modular homes are made of components that are substantially assembled in a manufacturing plant, and then are transported to the building site for final assembly on a permanent foundation. These types of homes often consist of two or more sections transported to a person’s property. Like that of manufactured homes, modular homes are transported to a person’s property. However, the key difference is that a modular home is constructed and assembled on the person’s property, while a manufactured home is already fully built and simply has to be placed on the property.

Modular homes are assembled on-site, despite having pre-manufactured sections brought to a person’s property. There are a wide variety of these structures, with nearly all of these homes looking like site-built, from the ground up, types of single-family homes. Modular homes are also required to meet or exceed NC State Building Code requirements, as well as federal HUD building requirements.

II. Manufactured Homes in Brief

In North Carolina, manufactured homes, also known as mobile homes, are those dwelling units that must meet the following minimum standards:

- A structure that is transportable in one or more sections;
- Is equal to or greater than 320 square feet in size (minimum size is 40’ by 8’);
- Meets or exceeds all of the U.S. Housing and Urban Development (HUD) certification requirements for these types of uses; and
- Is built on or after July 1, 1976.

In terms of manufactured homes, there are four classes of manufactured homes, as determined by HUD regulations as follows:

Class A Manufactured Homes	Class B Manufactured Homes	Class C or D Manufactured Homes
Meets/exceeds HUD requirements made after July 1, 1976	Meets/exceeds HUD requirements made after July 1, 1976	Does not meet/exceed HUD requirements; applies to manufactured homes built before June 15, 1976 (commonly known as mobile homes)
Length no greater than 4 times the width		
Roof pitch is no greater than 1:5		
Exterior siding comparable in composition, appearance and durability to exterior siding used in standard residential construction	Does not satisfy the Class A criteria for manufactured homes	Does not satisfy the Class A or B criteria for manufactured homes
Continuous permanent masonry foundation installed under the home		
All transportation-related equipment is removed from the home after lot placement (i.e., tongue, axles, etc.)		

It is important to note that any of these manufactured home classifications can be either a double-wide or a single-wide home in construction. The classifications described above are entirely a function of the federal Housing and Urban Development (HUD) regulations that are required in all municipalities in the United States for manufactured homes.

Amendments/Additions to the UDO

Based on research into modular and manufactured homes throughout North Carolina, staff recommends the following changes:

I. UDO Section 510.020(G) – Table of Permissible Uses

The first part of this text amendment deals with how and where modular and manufactured homes are to be permitted in the Town. Municipalities in North Carolina do have the ability to regulate modular and manufactured homes in their jurisdictions, so long as such regulation does not act to prohibit these uses outright. This can include regulating the use requirements for these types of homes (i.e., lot sizes, setbacks, etc.), specifying where such uses may or may not be permitted in a particular jurisdiction, and even providing for specific zoning overlays for these uses.

Therefore, based on staff research, the following changes are made to the Residential Use Table:

- **Modular Homes** – Remains as is in the current use table; no changes are to be made.
- **Manufactured Homes** – Updates the current terminology in the UDO from “mobile” to “manufactured” homes; also includes the following:
 - **Class A Manufactured Homes** – Permitted as follows:
 - **By-Right**: Only in the **RSF** (rural single-family) zoning district.
 - **By Special Use Permit (SUP)**: Only in the **SF-1** (single-family residential) district.
 - **All Other Residentially-Zoned Districts (except Multi-Family Residential, or MFR)**: Only permitted by-right in areas designated as Manufactured Home Park Overlay (**O-MHP**) zoning districts, subject to UDO Chapter 610.
 - **Class B Manufactured Homes** – Permitted as follows:
 - **By-Right**: Only in the **RSF** (rural single-family) zoning district.
 - **By Special Use Permit (SUP)**: Only in the **SF-1** (single-family residential) district.
 - **Definition and Design Cross-Reference** – References Section 1310.050 (architectural standards) and Section 1610.060(H) (manufactured homes definition) as use standards.

Based on the above, below is the amended use table:

510.020(G) Table of Permissible Uses

Use Group	Zoning District							Use Standard
	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
Use Category								
Specific Use Type								
Household/Family Living								
Single-Family Detached (Site Built or Modular)	P	P	P	P	P	P	-	
Single-Family (Class A Mobile <u>Manufactured Home(s)</u>)	P	P <u>S</u>	P <u>* (O-MHP overlay only)</u>	P <u>(-)</u>	See 610.040 MH Standards <u>See Sections 1310.050 Standards</u>			
Single-Family (Class B Mobile <u>Manufactured Home</u>)	P	S	S <u>(-)</u>	-	-	-	-	See 610.040 MH Standards <u>See Section 1310.050 Standards</u>

Single-Family (Class C Mobile <i>Manufactured</i> Home)	-	-	-	-	-	-	-	
Single-Family (Class D Mobile <i>Manufactured</i> Home)	-	-	-	-	-	-	-	

II. UDO Section 1610.060(K) – Modular Home Definition

The last part of this text amendment officially defines modular homes. Based on staff research into how NC municipalities define these uses, the following definition is offered:

1610.060 Household Living Category

K. Modular Home

A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and is made of components substantially assembled in a manufacturing plant and transported to a lot location site for final assembly on a permanent foundation. This is to be done in addition with also meeting or exceeding federal HUD requirements for these types of homes.

Required Consistency Findings

The Town Council is required to make two findings, one for consistency with Town adopted plans and another regarding the benefit of the public. Staff is of the opinion the following findings can be made:

3. The proposed UDO amendment is consistent with the following goals:
 - 3.3.1 of the Comprehensive Plan – Quality of Life; the proposed UDO amendment will help to make the UDO consistent with state, federal and other regulatory standards for manufactured and modular homes, and provide for the health, safety, and welfare of all Indian Trail citizens.
 - 3.3.2 of the Comprehensive Plan – Land Use; the proposed UDO amendment will help to promote a quality mix of different land uses while avoiding land use conflicts with neighboring properties and surrounding municipalities.
4. This UDO ordinance amendment is in the best interest of the public because it promotes a more efficient development system and review process, while providing a greater quality of life for all residents of the Town of Indian Trail.

Staff Recommendation

Staff recommends that the Town Council make the required consistency findings and adopt this UDO text amendment as transmitted by the Planning Board.

Staff Contact

Jonathon Edwards
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TC ATTACHMENT 2

510.020(G) Table of Permissible Uses

Use Group	Zoning District							Use Standard
	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
Use Category								
Specific Use Type								
Household/Family Living								
Single-Family Detached (Site Built or Modular)	P	P	P	P	P	P	-	
Single-Family (Class A Mobile <u>Manufactured Home</u> s)	P	P (S)	P* (O-MHP overlay only)	P (-)	See 610.040 MH Standards <u>See Section 1310.050 standards</u>			
Single-Family (Class B Mobile <u>Manufactured Home</u>)	P	S	S (-)	-	-	-	-	See 610.040 MH Standards <u>See Section 1310.050 standards</u>
Single-Family (Class C Mobile <u>Manufactured Home</u>)	-	-	-	-	-	-	-	
Single-Family (Class D Mobile <u>Manufactured Home</u>)	-	-	-	-	-	-	-	

Section 2 – Division 1600, Section 1610.060(K) – is hereby added to include modular homes as part of the Integrity and Design standards for manufactured homes.

1610.060 Household Living Category

K. Modular Home

A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and is made of components substantially assembled in a manufacturing plant and transported to a lot location site for final assembly on a permanent foundation. This is to be done in addition with also meeting or exceeding federal HUD requirements for these types of homes.

Section 3 - This ordinance shall be effective immediately upon adoption.

SO ORDAINED THIS 8TH DAY OF FEBRUARY, 2011.

THE TOWN COUNCIL OF INDIAN TRAIL

By _____
Honorable John J. Quinn, Mayor

Attest:

Peggy Piontek, Town Clerk

TC ATTACHMENT 3

NO. COA08-771
NORTH CAROLINA COURT OF APPEALS
Filed: 17 February 2009

FIVE C'S, INC.,
Plaintiff,

v.

Pasquotank County
No. 01 CVS 639

COUNTY OF PASQUOTANK,
Defendant.

Appeal by plaintiff from judgment entered 10 April 2008 by Judge J. Richard Parker in Pasquotank County Superior Court. Heard in the Court of Appeals 28 January 2009.

Hornthal, Riley, Ellis & Maland, L.L.P., by Benjamin M. Gallop and John D. Leidy, for plaintiff-appellant.

The Twiford Law Firm, P.C., by John S. Morrison and T. Taylor Manning, for defendant-appellee.

HUNTER, JR., Robert N., Judge.

Five C's, Inc. ("plaintiff") appeals from judgment entered, which granted the County of Pasquotank's ("the County") motion for summary judgment. We reverse.

I. Background

On 17 August 1992, the County adopted an Ordinance To Provide for Allowable Manufactured/Mobile Home Units ("the Ordinance") "under the authority of Chapter 153A-121 of the General Statutes of North Carolina." The Ordinance's purpose was "to regulate allowable manufactured homes or mobile homes within the jurisdiction of [the County] in order to promote the public health, safety and general welfare of the citizens of [the County]." Article II of the Ordinance contained the following definitions:

1. Mobile Home: Mobile home shall mean a transportable structure designed to be used as a year-round residential dwelling and built prior to the enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974 which became effective June 15, 1976
2. Manufactured Home: Manufactured home shall mean a single family dwelling fabricated in an offsite manufacturing facility for installing or assembling on the building site bearing a seal certifying that it was built in compliance with the National Manufactured Housing and Construction and Safety Standards Act of 1974 which became effective June 15, 1976. Article III of the ordinance stated "[m]anufactured homes must have an attached HUD label to be brought into [the County] for the purpose of permanent set-up."

On 21 May 2001, the County's Board of Commissioners considered “proposed changes to the Ordinance to Limit Manufactured Homes that Are Brought into [the County] to Not More than Ten Years Old.” The meeting's minutes state: County Attorney Brenda White provided her opinion regarding the proposed amendments. She explained that a county is allowed under its police power to protect the health, safety, welfare, and environment within the county. She summarized case law that placed within the authority of the governing board to regulate those things under its police power. She said the county's proposal to limit the age of mobile homes that are brought into the county was based upon the evaluation of the county's tax base and the services that the county is required to provide for all residents of the county in contrast to the revenues generated to pay for those services. She noted that according to manufactured home values provided by the Tax Administrator there is a substantial decrease in the value of a manufactured home during the first 10 years, and that a 10-year old manufactured home has about the same value as a used vehicle. Ms. White stated that she believes it is within the county's authority to enact the proposed regulations.

The proposed change to the Ordinance passed by a four-to-two vote. Article III was amended to state “[m]anufactured homes must have an attached HUD label and shall not be more than ten (10) years old on the date of application for a building permit for the purpose of permanent set-up.”

Plaintiff acquires mobile and manufactured homes for sale, transportation, and set up within the County. Plaintiff filed a complaint on 7 September 2001 seeking a declaratory judgment that the amendment exceeded the County's statutory authority and violated plaintiff's substantive due process, procedural due process, and equal protection rights. Plaintiff also sought both a preliminary and permanent injunction restraining the County from enforcing the Ordinance as amended.

Plaintiff alleged: (1) it had an inventory of ten manufactured homes more than ten years old on 21 May 2001; (2) it entered into a contract sometime between 21 May 2001 and 5 June 2001 to sell and set up a twenty-three-year-old manufactured home; (3) it applied for a building permit for the permanent setup of this manufactured home on 5 June 2001; (4) the County “denied [its] application for a building permit because the manufactured home was more than ten years in age on the date of [its] application and because the manufactured home was not listed in the Pasquotank County Tax Assessor's office as of the date the ordinance was ratified[;]” (4) it applied for a building permit for the permanent setup of a mobile home on 17 August 2001; and (5) the County denied its application for the same reasons the County denied its 5 June 2001 application.

On 26 November 2001, the County answered plaintiff's complaint and moved to dismiss. Plaintiff filed a motion for summary judgment on 5 January 2006 and the case was scheduled for a non-jury trial. Plaintiff and the County subsequently advised the trial court that the case “was in the proper posture for summary judgment[.]” The trial court entered summary judgment in favor of the County on 10 April 2008. Plaintiff appeals.

II. Issues

Plaintiff argues the trial court erred when it entered summary judgment in favor of the County

because the County: (1) exceeded its statutory authority; (2) violated plaintiff's due process rights; and (3) violated plaintiff's equal protection rights.

III. Standard of Review

This Court reviews a trial court's order for summary judgment *de novo* to determine “whether, on the basis of materials supplied to the trial court, there was a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.” *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003); *Robins v. Town of Hillsborough*, 361 N.C. 193, 196, 639 S.E.2d 421, 423 (2007).

IV. Statutory Authority

Plaintiff argues the County “exceeded its statutory authority by restricting the location of manufactured homes within [the County] based solely on age.” We agree.

“Counties are creatures of the General Assembly and have no inherent legislative powers. They are instrumentalities of state government and possess only those powers the General Assembly has conferred upon them.” *Craig v. County of Chatham*, 356 N.C. 40, 44, 565 S.E.2d 172, 175 (2002) (citations omitted).

In 1874, our Supreme Court adopted what has become known as Dillon's Rule: a municipal corporation possesses and can exercise the following powers and no others: First, those granted in *express words*; second, those *necessarily or fairly implied in or incident to* the powers expressly granted; third, those *essential* to the declared objects and purposes of the corporation. *Smith v. Newbern*, 70 N.C. 14, 18 (1874), *modified*, 73 N.C. 303 (1875) (citations omitted). Recently, however, Dillon's Rule has come under attack.

In 1973, the General Assembly enacted Section 153A-4 of the North Carolina General Statutes. N.C. Gen. Stat. § 153A-4 (2001) states: It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power. In *Homebuilders Assn. of Charlotte v. City of Charlotte*, our Supreme Court analyzed the interplay of Dillon's Rule with N.C. Gen. Stat. § 160A-4 (1987), a statute similar to that of N.C. Gen. Stat. § 153A-4. 336 N.C. 37, 43-44, 442 S.E.2d 45, 49-50 (1994); *see also* N.C. Gen. Stat. § 160A-4 (2001). Our Supreme Court held “that the proper rule of construction is the one set forth in [N.C. Gen. Stat. § 160A-4].” *Homebuilders Assn. of Charlotte*, 336 N.C. at 44, 442 S.E.2d at 50.

This Court has since interpreted *Homebuilders Assn. of Charlotte* to state that Dillon's Rule was overruled by N.C. Gen. Stat. § 160A-4. *See BellSouth Telecomms., Inc. v. City of Laurinburg*, 168 N.C. App. 75, 81, 606 S.E.2d 721, 725 (“In its reading of N.C. Gen. Stat. § 160A-4, the [Supreme] Court found that the narrow rule of construction established over some 100 years prior by common law, known as 'Dillon's Rule,' had been replaced by the legislature's 1971 enactment.” (citing *Homebuilders Assn. of Charlotte*, 336 N.C. at 43-44, 442 S.E.2d at 49-50 and *Smith*, 70 N.C. at 14)), *disc. review denied*, 615 S.E.2d 660 (2005). This Court has also stated since *Homebuilders Assn. of Charlotte* that: [N.C. Gen. Stat. §] 153A-4 does state that any

legislative act affecting counties should be “broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power.” And the clear legislative policy and purpose in the broad construction is so “that the counties of this State . . . [can] have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law.” But, in conjunction with our general rules of statutory construction, only if there is an ambiguity in a statute found in chapter 153A should section 153A-4 be part of the courts' interpretative process. If, however, the statute is clear on its face, the plain language of the statute controls and section 153A-4 remains idle. *Durham Land Owners Ass'n v. County of Durham*, 177 N.C. App. 629, 633_34, 630 S.E.2d 200, 203 (citations omitted), *disc. review denied*, 360 N.C. 532, 633 S.E.2d 678 (2006).

Plaintiff argues the County's general power to enact ordinances under Section 153A-121 of the North Carolina General Statutes was preempted with regard to the zoning of manufactured housing when the General Assembly adopted N.C. Gen. Stat. §§ 153A-341.1 and 160A-383.1 in 1987. *See* N.C. Gen. Stat. § 153A-121(a) (2001) (“A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.”). To determine whether the General Assembly intended to preempt its broad grant of authority under N.C. Gen. Stat. § 153A-121, with its subsequent adoption of N.C. Gen. Stat. §§ 153A-341.1 and 160A-383.1, we must decide if it has shown an intent to limit a county's power with regard to zoning regulations for manufactured homes. “In so doing, the context of the Act and the spirit and reason of the law must be considered, for it is the intention of the Legislature, as expressed in the statute, which controls.” *Mullen v. Louisburg*, 225 N.C. 53, 58, 33 S.E.2d 484, 487 (1945); *see also Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 518, 597 S.E.2d 717, 722 (2004) (“The foremost task in statutory interpretation is “to determine legislative intent while giving the language of the statute its natural and ordinary meaning unless the context requires otherwise.”” (citations omitted)).

N.C. Gen. Stat. § 153A-341.1 (2001) states “[t]he provisions of [N.C. Gen. Stat. §] 160A-383.1 shall apply to counties.” N.C. Gen. Stat. § 160A-383.1 (2001) states:

(a) The General Assembly finds and declares that manufactured housing offers affordable housing opportunities for low and moderate income residents of this State who could not otherwise afford to own their own home. The General Assembly further finds that some local governments have adopted zoning regulations which severely restrict the placement of manufactured homes. It is the intent of the General Assembly in enacting this section that cities reexamine their land use practices to assure compliance with applicable statutes and case law, and consider allocating more residential land area for manufactured homes based upon local housing needs.

. . . (d) A city may adopt and enforce appearance and dimensional criteria for manufactured homes. Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety and welfare of area residents. The criteria shall be adopted by ordinance.

The General Assembly made “the context of [N.C. Gen. Stat. §§ 153A-341.1 and 160A-383.1] and the spirit and reason of the law” clear in subsection (a) of N.C. Gen. Stat. § 160A-383.1. *Mullen*, 225 N.C. at 58, 33 S.E.2d at 487. The plain language of N.C. Gen. Stat. §§ 153A-

341.1 and 160A-383.1 therefore controls and N.C. Gen. Stat. § 153A-4 remains idle. *Durham Land Owners Ass'n*, 177 N.C.App. at 634, 630 S.E.2d at 203. N.C. Gen. Stat. § 160A-383.1, as made applicable to counties by N.C. Gen. Stat. § 153A-341.1, limits a county's power to enact zoning regulations for manufactured homes. If this Court interprets N.C. Gen. Stat. §§ 153A-341.1 and 160A-383.1 any other way, N.C. Gen. Stat. § 160A-383.1(d) becomes meaningless. A county may not therefore use its broad police powers as a guise to enact zoning regulations for manufactured homes inconsistent with N.C. Gen. Stat. § 160A-383.1.

In *White v. Union County*, this Court, interpreting N.C. Gen. Stat. §§ 153A-340, -341.1, and 160A-383.1, held that the trial court erred when it allowed Union County's motion to dismiss for failure to state a claim pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). 93 N.C. App. 148, 152, 377 S.E.2d 93, 95 (1989). In *White*, the plaintiffs contended that Union County's land use ordinance requiring a resident prove his/her mobile home to be worth at least \$5,000.00 in order for that resident to reside in such a mobile home within Union County, is not a legal regulation of land use, and is therefore an *ultra vires* ordinance, in violation of N.C.G.S. § 153A-340. *Id.* at 150, 377 S.E.2d at 94.

This Court stated: The nub of [the] plaintiffs' argument [was] that the legislature ha[d] granted the county authority to draft ordinances limiting structures, and mobile homes specifically, only in qualitative terms and not by way of an arbitrary money value. Given the requirements of Dillon's Rule, [the] plaintiffs . . . stated a direct attack on the ordinance so long as they [could] show that the attack [was] timely under N.C.G.S. § 153A-348. *Id.* at 152, 377 S.E.2d at 95. Here, the Ordinance, as amended, states “[m]anufactured homes must have an attached HUD label and shall not be more than ten (10) years old on the date of application for a building permit for the purpose of permanent set-up.” At the time of the adoption of the amendment to the Ordinance, the rational basis proffered by the proponents of the Ordinance was to increase the tax base. At oral argument, counsel for the County contended that increasing the tax base by requiring manufactured homes to have a certain value was a legitimate governmental interest. This contention was advanced by the record evidence of Chairman Wood who stated: [T]here is a significant tax problem in this situation because rental mobile homes are taxed as personal property and the values decrease substantially over a ten year period. [Chairman Wood] said the county provides services for these property owners, but has no vehicle for collecting sufficient revenues to pay for these services.

The intent of the Ordinance is to increase the tax base by elimination of housing which rapidly depreciates in value. This wealth based criterion is neither an appearance nor dimensional criteria. The nexus between the County's intention and its statutory authority “to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety and welfare of area residents[.]” is too tenuous. N.C. Gen. Stat. § 160A-383.1(d). The County cannot accomplish by indirect legislation what it cannot achieve by direct legislation. The County therefore exceeded the power the General Assembly has conferred upon it with regard to zoning regulations for manufactured homes. The trial court erred when it denied plaintiff's motion for summary judgment and entered summary judgment in favor of the County.

In light of our holding, it is unnecessary to review plaintiff's remaining assignments of error.

V. Conclusion

The Ordinance, as amended, does not employ appearance and dimensional criteria as intended by the General Assembly in N.C. Gen. Stat. §§ 153A-341.1 and 160A-383.1. The County exceeded its statutory authority. The trial court erred when it denied plaintiff's motion for summary judgment and entered summary judgment in favor of the County. The trial court's judgment is reversed.

Reversed.

Judges McGEE and JACKSON concur.