



Manufactured Housing Association for Regulatory Reform

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April 24, 2019

VIA FEDERAL EXPRESS

Hon. Ben Carson
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 7th Street, S.W.
Washington, D.C. 20410

Re: Discriminatory and Exclusionary Zoning of HUD-Regulated Manufactured Homes

Dear Secretary Carson:

As you know, the Manufactured Housing Association for Regulatory Reform (MHARR) represents the nation's smaller, independent producers of federally-regulated manufactured housing in Washington, D.C.

One of the principal challenges faced by the manufactured housing industry and particularly its smaller businesses in providing inherently affordable, non-subsidized housing and homeownership for lower and moderate-income Americans, is the discriminatory exclusion of HUD Code manufactured housing from large areas of the United States under the guise of local zoning regulation. Such exclusionary and, in fact, discriminatory zoning mandates, affect not only single-home manufactured housing placements, but also the development and/or expansion of manufactured housing communities which provide much-needed land-lease (i.e., rental) space for manufactured homes.

In a 2018 speech to the Policy Advisory Board of the Harvard University Joint Center for Housing Studies, you specifically identified and recognized the harmful impact of exclusionary zoning on the availability of affordable housing and homeownership for all Americans, stating that HUD would act "to identify and incentivize the tearing-down of local regulations that serve as impediments to the developing [of] affordable housing stock. Out-of-date building codes, time consuming approval processes, restrictive or exclusionary zoning ordinances, unnecessary fees or taxes, and excessive land development standards can all contribute to higher housing costs and production delays." (Emphasis added).

And, indeed, in the case of HUD-regulated manufactured housing, the law provides HUD with powerful tools and authority to override local zoning actions that discriminatorily exclude or

severely limit the placement and utilization of HUD Code homes. Specifically, in the Manufactured Housing Improvement Act of 2000, Congress gave HUD the express authority to federally preempt state and local “requirements” *of any kind* that impair “federal superintendence of the manufactured housing industry” and the accomplishment of the Act’s congressionally-mandated federal purposes, including “facilitat[ing] the availability of affordable manufactured homes.” Indeed, in a November 13, 2003 letter to then-HUD Secretary Mel Martinez (copy attached), key congressional proponents of the 2000 reform law stated that enhancements to the scope of federal preemption set forth in that law “have given HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured homes (compared to other single family housing) simply because they are HUD-code homes.”

Despite this enhanced preemption authority, however, HUD has failed to take action to stop the baseless – and expanding – exclusion of safe, decent and affordable HUD-regulated manufactured homes from numerous jurisdictions around the United States. Consequently, while your above-quoted comments regarding the toxic impact of exclusionary local zoning mandates on the availability of affordable housing and homeownership opportunities were – and are – exactly on target, and while HUD has specific legal authority to correct this matter with respect to federally-regulated manufactured housing, nothing has been done to date in this area. And, with reports circulating of your possible departure from HUD at the conclusion of President Trump’s first term, smaller manufactured housing industry businesses are becoming increasingly concerned.

In an effort, therefore, to assist HUD in this matter and jump-start a process leading to the enforcement of Congress’ enhanced preemption regime to remove such baseless, discriminatory barriers to the availability and utilization of inherently affordable HUD Code manufactured housing, MHARR met with officials of HUD’s Office of Policy Development and Research (PD&R) on April 4, 2019 and requested that HUD, as a first step, utilize its resources to research, study and analyze such discriminatory and exclusionary zoning and its local and national impact(s) on the availability of affordable housing and homeownership in light of relevant national housing policies. Such research and analysis could then serve as a roadmap for further HUD action going forward. Accordingly, we ask that you authorize and advance such a study within the Department.

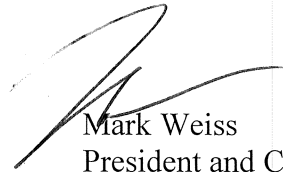
Quite simply, in order for manufactured housing to reach its full potential as an inherently affordable, non-subsidized housing resource for millions of lower and moderate-income Americans, it cannot, should not, and must not be unfairly and illegitimately excluded from significant areas of the country. In order to stop and reverse this phenomenon, leadership from HUD and by you, personally, as HUD Secretary, is essential and, indeed, indispensable.

The MHARR Board of Directors, in order to cooperate and ensure proper assistance to you in this matter, directed the Association, at its recent Membership Meeting, to pursue appropriate legal action, as necessary, to address one or more particularly egregious instances of the discriminatory exclusion of HUD Code manufactured homes via local ordinance. Given the destructive impact of such discriminatory and exclusionary local mandates on the availability of affordable, non-subsidized housing and homeownership, in direct conflict with Trump Administration policies designed to increase homeownership among Americans at every rung of the economic ladder, we ask that HUD join with MHARR in this effort to end such baseless

discrimination and the virtual exclusion of safe, decent and affordable HUD-regulated manufactured homes from entire areas of the United States, including many of its most heavily-populated local jurisdictions.

MHARR thanks you in advance for your assistance in this matter and will contact your office soon to schedule a meeting to address this and related issues affecting federally-regulated manufactured housing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Weiss', with a long horizontal flourish extending to the right.

Mark Weiss
President and CEO

cc: Hon. Mike Crapo
Hon. Maxine Waters
Hon. Mick Mulvaney
HUD Code Industry Manufacturers, Retailers and Communities

Congress of the United States
Washington, DC 20515

November 13, 2003

Honorable Mel Martinez
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Secretary Martinez:

We are writing to express our deep disappointment in HUD's July 17 rejection of the Manufactured Housing Consensus Committee recommendation, which addresses the problem of discrimination in the siting of manufactured homes. We ask HUD to use its expanded authority under the "Manufactured Housing Improvement Act of 2000" to address this growing problem, which is undermining homeownership opportunities for low-income and minority Americans.

The Millennial Housing Commission concluded that "During the 1990s, manufactured housing placements accounted for one quarter of all housing starts and, from 1997 to 1999, 72 percent of new units affordable to low income homebuyers." Unfortunately, discrimination against the siting of manufactured homes continues to undermine its full potential to meet the needs of low-income homebuyers. A September 2002 Ford Foundation study on manufactured housing notes that "zoning and code rules continue to be a major barrier," and that "the vast majority of local governments continue to discriminate against manufactured housing, thereby limiting its potential to meet the need for affordable housing."

You have made homeownership a top Administration priority, emphasizing opportunities for low-income Americans. You have also made reducing local barriers to affordable homeownership a top priority, announcing on June 10th a Department-wide effort to break down such barriers, in order to create "an environment to increase minority homeownership."

The very first recommendation of the the Manufactured Housing Consensus Committee addressed the problem of discrimination against the siting of manufactured homes, through a prohibition against localities enforcing discriminatory covenants made by private landowners. We believe HUD's summary rejection of this proposal is inconsistent with HUD's stated priority of removing barriers to affordable low-income homeownership opportunities.

We understand that HUD may have concerns about its legal authority to implement this particular proposal. But, we believe HUD should have taken this opportunity to use its expanded legal preemption authority under the 2000 Act to develop a Policy Statement or regulation to make it clear that localities may not engage in discriminatory practices that unfairly inhibit or prohibit development and placement of manufactured housing. We understand that some in the industry have asked HUD to take such action and we urge HUD to be responsive to this request.

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We are also troubled by the legal analysis HUD used in its July 17th rejection of the Consensus Committee recommendation. HUD's analysis relies on rulings in court cases that predated the 2000 Act amendments, which render such rulings obsolete. Moreover, HUD's legal analysis states that the 2000 Act amendments "did not modify the basic substance of the statutory preemption provision." Such a statement ignores the plain language of the 2000 Act changes.

Prior to the 2000 Act changes, the statute merely prohibited states and localities from establishing any standard regarding construction or safety "applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard." The 2000 Act broadened this provision to add that: "*Federal preemption* under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the *Federal superintendence* of the manufactured housing industry as established by this title." [italics added].

The 2000 Act amendments also expanded the findings and purposes of the Act. Prior to 2000, the statutory findings declared it necessary to establish construction and safety standards merely "to reduce injuries, deaths, insurance costs and property damage," and "to improve the quality and durability of manufactured homes." The 2000 Act amendments introduce the new findings that "manufactured housing plays a vital role in meeting the housing needs of the nation," and that "manufactured homes provide a significant resource for affordable homeownership." New purposes were also introduced by the 2000 Act, which include protecting the "affordability of manufactured homes," and "facilitating the availability of affordable manufactured homes and to increase homeownership for all Americans."

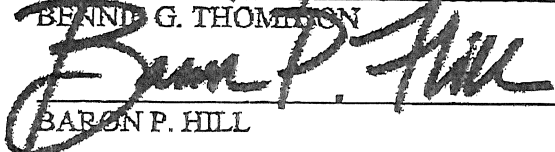
Thus, the 2000 Act expressly provides, for the first time, for "Federal preemption," and states that this should be "broadly and liberally construed" to ensure that local "requirements" do not affect "Federal superintendence of the manufactured housing industry." Combined with the expansion of the findings and purposes of the Act to include for the first time the "availability of affordable manufactured homes," the 2000 Act changes have transformed the Act from solely being a consumer protection law to also being an affordable housing law.

More specifically, these combined changes have given HUD the legal authority to preempt local requirements or restrictions which discriminate against the siting of manufactured homes (compared to other single family housing) simply because they are HUD-code homes. We ask that HUD use this authority to develop a Policy Statement or regulation to address this issue, and we offer to work with you to ensure that it comports with Congressional intent.

Sincerely,

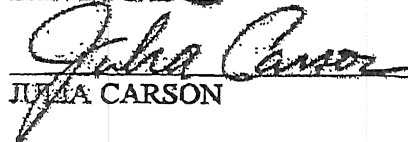

BARNEY FRANK


BEN G. THOMPSON


BARON P. HILL


MAXINE WATERS


KEN LUCAS


JULIA CARSON