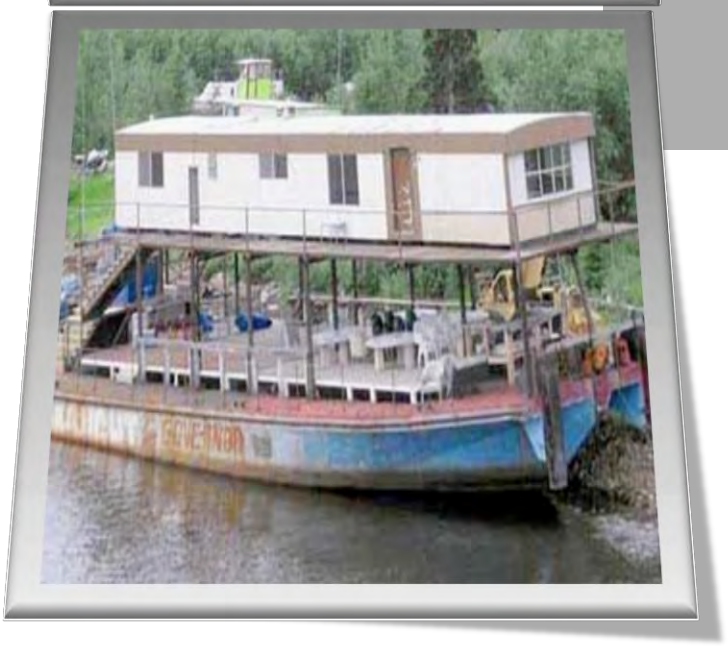

A PLANNING REPORT:

LAW AND POLICY REGARDING FLOATING HOMES

Final Report | September 2010

Coastal Technical Assistance Program

Middle Peninsula Planning District Commission

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Acknowledgement & Disclaimer

Acknowledgement: This planning project was made possible with funding from the Virginia Coastal Zone Management Program Grant (Task # NA08NOS4190466, Task 2.02).
For more information on the Virginia Coastal Zone Management Program please go to: http://www.deq.state.va.us/coastal /.

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Executive Summary

The Middle Peninsula of Virginia is a coastal region located on the Chesapeake Bay, bordered by the Rappahannock River to the North and the York River to the South. There is a new emerging coastal issue stemming from a noticeable increase in some coastal areas of people living on "boats" that are more like floating homes than traditional boats. Without adequate public participation and public education, floating homes or floating structures can generate serious public policy issues for local elected officials, adjacent landowners, other water users, and the provision of local government services. It is paramount that the Middle Peninsula have an active and vibrant waterfront that recognizes and acknowledges the economic, cultural, and social importance of water related industries and various water uses.

As the Middle Peninsula continues to transition from a less rural to a more suburban community, coastal public policies that currently serve as management tools for near-shore land, public water bodies, and water use rights and privileges must adapt to account for new emerging coastal issues such as floating structures. Emerging waterfront conflicts are becoming common place between waterfront property owners, watermen, boaters, recreational fishermen, sportsmen, aquaculture industries, and others seeking to use the Commonwealth's water resources.

In response to floating structures conflicts, the Middle Peninsula Planning District Commission (MPPDC) and its member localities, in partnership with the Virginia Coastal Zone Management Program and Virginia Sea Grants' Coastal Community Development Program, undertook a study to enable local governments to identify and determine the issues and conflicts that are associated with floating structures and coastal governance (#NA07NOS4190178 Task 93.01).There were three parts to this planning project:

1. Establish a Floating Home Study Committee to conduct a project to consider the policy implications of floating homes from a local government perspective;

2. Report from the National Sea Grant Law Center: Law and Policy Research Regarding Floating Homes (Appendix B); and

3. *Final Project Report:* Education and Outreach- Virginia Sea Grant/VIMS Advisory Report.

The Study Committee recommends local government develop a management approach based on three spatial classifications of floating structures, each relates to moorage characteristics and includes a

recommended starting point for a definition: 1)Floating structures and marina moorage; 2)floating structures and private pier moorage; and 3) floating structures and random moorage along waterfront.

By classifying floating structures within three spatial groups, the intention of the Study Committee was to develop multiple recommendations for management depending on how proactive or reactive of a position a locality may wish to take. The Study Committee further recognized that the economic development potential, use conflict and environmental impact is directly related to the spatial classification of floating structures (Figure 1).

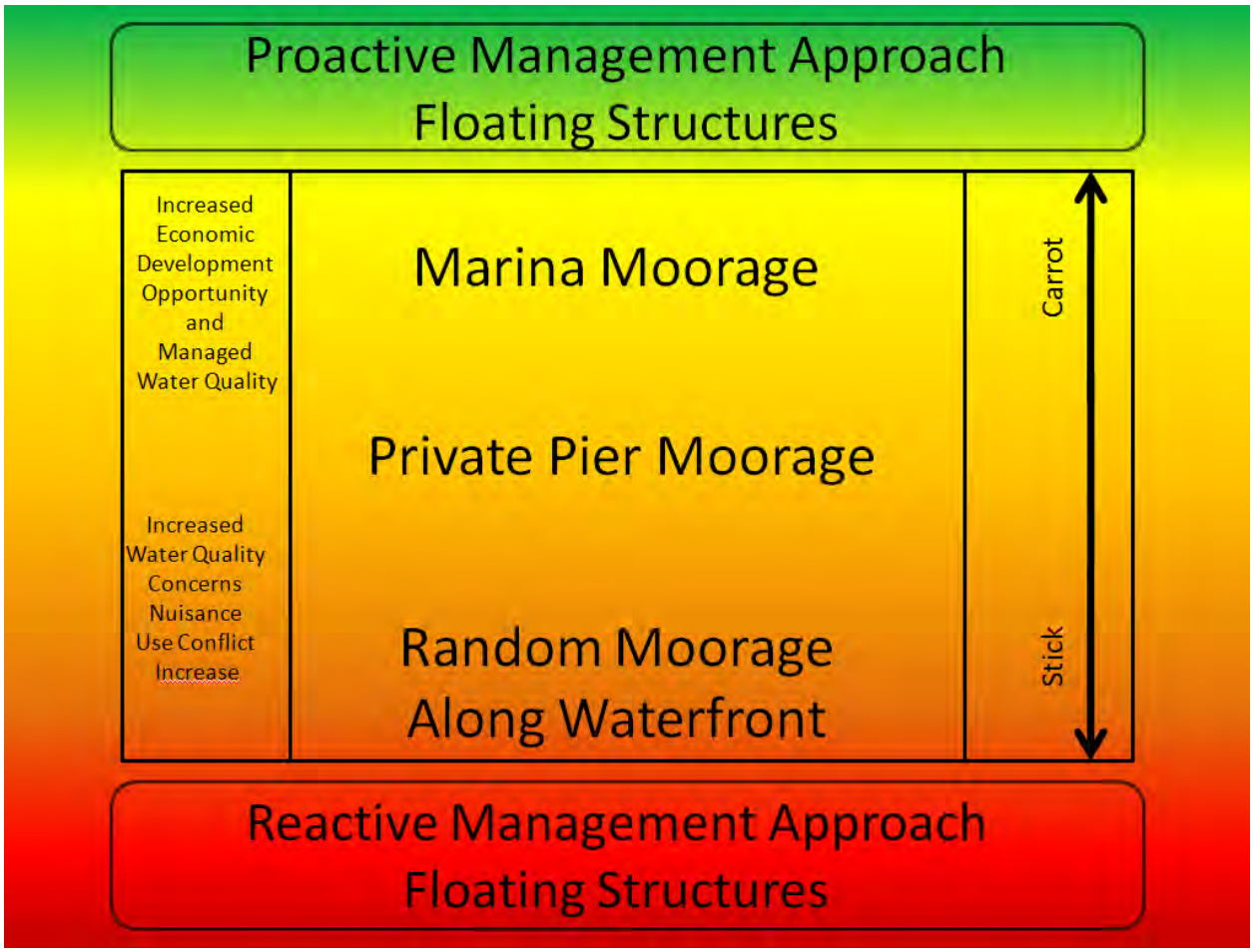

Figure 1- Gradient of Recommended Management Approaches: Management approaches for both proactive and reactive management of floating structures, relative to the spatial classification of floating structures and their economic and environmental impact as well as potential use conflict.

Process

A Floating Home (floating structure) Study Committee was established in the spring of 2010 to consider the policy implications of floating structures from a local government perspective, as well as from the perspective of stakeholders, industry and the citizens of the Middle Peninsula Region. The intentions of the Committee was not to address the issue of whether or not floating homes should be an allowable, but rather how to manage floating structures, of any kind, that are not intended to be used as a vessel.

The Middle Peninsula Planning District Commission (MPPDC) requested information from the National Sea Grant Law Center on how states, other than Virginia, and localities regulate and manage floating homes within their respective jurisdictions. This information was required as part of the project in order to evaluate how local governments in Virginia might regulate floating homes. This report may be found as Appendix B.

The report from the Sea Grant Law Center as well as research from local county codes and ordinances about floating homes and similar structures was compiled into a document for the Study Committee's use in determining how to define floating structures (Appendix A). The Study Committee decided on three classifications of floating structures based on the research, and went on to recommend tools that are available to manage them.

Floating Homes Study Committee

Middle Peninsula Planning District Commission staff convened the Study Committee, populated by representatives identified by Essex, Gloucester, King and Queen, Mathews and Middlesex Counties. The Committee included local stakeholder representatives, resource and technical managers. The purpose of the Committee was to generate a final report that contains recommendations that coastal communities may use to manage floating structures and use.

Committee Members

- John Caperton, *Mathews Yacht Club*
- Donna Sprouse, *Assistant Zoning Administrator and GIS Coordinator, King and Queen County*
- *Lewis Filling, Town Manager for the Town of Urbanna*
- Anne Ducey-Ortiz, *Director of Planning, Gloucester County*
- Skipper Garrett, *Garrett Marine, Essex*
- Anne Smith, *Marina Specialist, Virginia Sea Grant Program, Marine Advisory Services, Virginia Institute of Marine Science (VIMS)*
- Randy Owen, *Habitat Management, Virginia Marine Resources Commission (VMRC)*
- Beth Polak, *Coastal Planner, Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality*
- Barry Miller, *Miller Marine, Middlesex County*
- Joe Heyman, *Marina Gloucester County*
- Marian Clement, *Citizen, Gloucester County*
- Craig and Joe Ann Mulligan, *Davis Creek Marina in Mathews, Virginia*
- Jeff Hodges, *Building Official Essex County*
- Facilitator: Lewis Lawrence, *Director of Regional Planning, Middle Peninsula Planning District Commission*

* listing of membership, does not indicate participation or acceptance of the final report

The Committee met four times over the course of the project to discuss the following, and ultimately create this report addressing the issues, findings, and recommendations that Virginia local coastal governments might consider:

- What is a floating home?
- When should local government become concerned about management issues?
- What public services should or could be required?
- How might these homes be taxed?
- Definition of transience.
- Discussion of visual appealing versus visually appalling.
- Use of zoning as a tool to manage areas of moorage.
- Recommendations for a policy to restrict floating homes in Gloucester County.

Recommendations

In order to assist the Study Committee with the questions and issues listed and for the creation of a final report, MPPDC staff performed research of local policy language relative to floating homes and similar structures from the Middle Peninsula, as well as other localities in Virginia and throughout United States. This is included as a part of this report as Appendix A.

Although the Study Committee initially struggled with the concept of "floating homes", the Committee was able to recognize that local government has the responsibility (ie. enabling authority) to manage "use" within its territorial boundaries. Working from this position, the Committee settled on the designation of a "floating structure" and the "uses" customarily associated. Once this concept was agreed upon, the Committee then discussed various community benefits (ie. economic, social, political and fiscal) associated with floating structures and agreed that in many aspects, floating structures may be an asset to a coastal community if managed and articulated correctly within public policy.

Based on the research provided by the National Sea Grant Law Center as well as local perspectives and research, the Committee grouped floating structure into three spatial classifications related to moorage characteristics and use definitions: (1) marina moorage, (2) private pier moorage and (3) random moorage along waterfront.

The intention of the Committee was to develop different recommendations for the management of floating structures depending on how proactive or reactive an approach a locality may wish to take based on local community needs and vision. **The Committee felt strongly, that at a minimum, the locality's position(s) on floating structures should be clearly articulated in the County's Comprehensive Plan and appropriate local policies that coincide with the community's desired management approach**.

The Committee recommended that before deciding how to manage and/or regulate floating structures, the "use" must be defined or classified. The following are the three classifications the Study Committee recommends:

<u>Marina Moorage</u>

- Floating structure which are dependant for utilities upon a utility linkage to a source originating on shore (i.e. water, electric and sewage) and in which the tenant, owner or guest sleep overnight, and its **<u>use is primarily a domicile</u>** and not a vessel.

A floating structure can include any structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, or normally capable of all weather, all conditions self propulsion, and used as a means of transportation is considered a floating structure and not a vessel. A vessel is intended and designed for transportation as its primary use.

Private Pier Moorage

- Floating structure which is moored to a dock, tree, or pilling and is utilized as a human or animal abode, and its use is primarily a domicile and not a vessel. Floating structures include, but are not limited to mono hulls, multi hulls, house boats, floating homes, and other floating structures which are used for human or animal habitation

Random Moorage Along Waterfront

- Floating structure which is moored or anchored in the estuarine waters of "LOCALITY X" and is intended primarily as a permanent or seasonal dwelling, not for use as a commercial and or recreational vessel and which remains stationary for more than 10 days

The Committee was quick to recognize that encouraging floating structures to be moored at a marina is a positive economic development and tourism tool. Marinas are equipped to address water and sewage services, provide maintenance services, and are better equipped to handle higher density seasonal living. The Committee also recognized that as floating structures move away from a marina setting, the likelihood for water quality concerns, nuisance, and use conflict increases, thus making marine spatial planning, management, and enforcement more challenging for a locality (Figure 2).

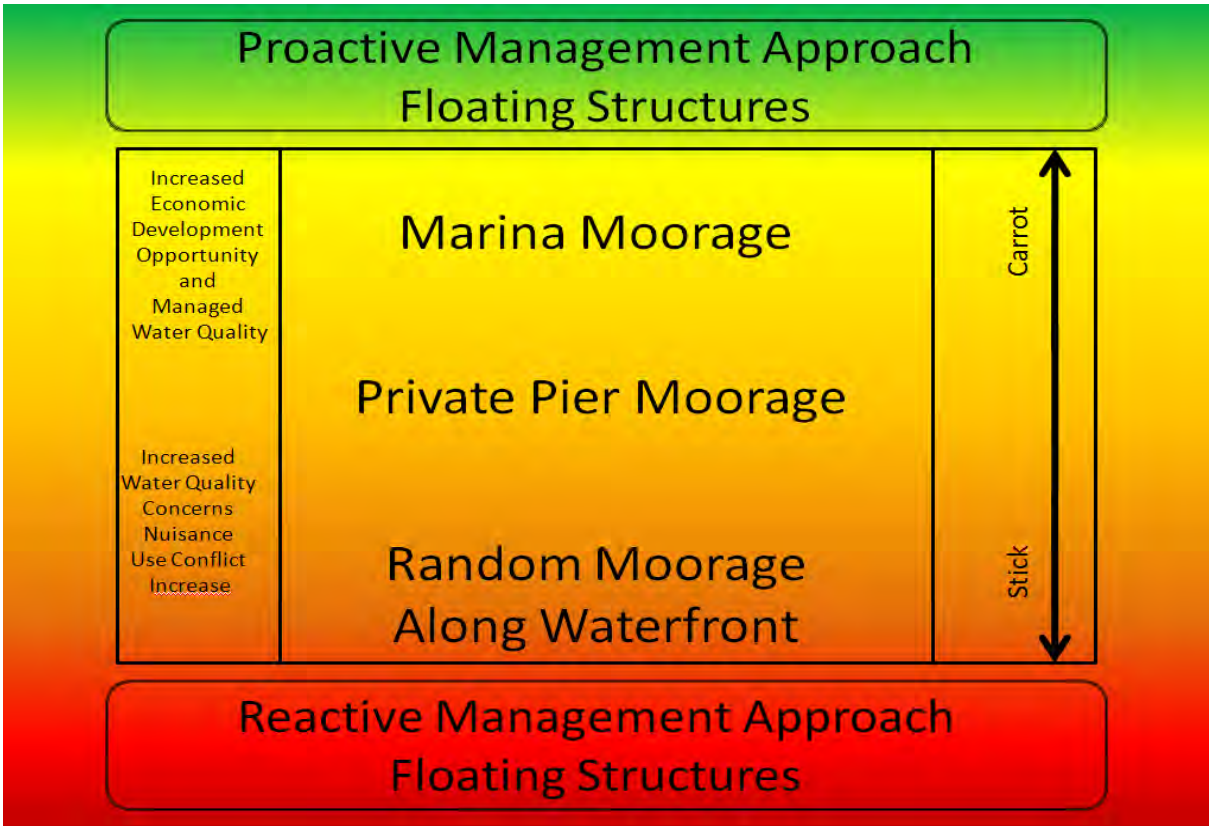

Figure 2- Gradient of Recommended Management Approaches: Management approaches for both proactive and reactive management of floating structures, relative to the spatial classification of floating structures and their economic and environmental impact as well as potential use conflict.

The Committee recommends that a locality first decide where floating structures should be moored - moored in a marina setting or near a marina (ie. in a floating home subdivision park). Once decided the development of comprehensive public policy should expand from points of moorage. If the locality desires to regulate the moorage of floating structures, there are enabling tools available to assist the locality with marine spatial planning.

Assuming the locality desires policy to encourage marine economic development in areas appropriate, the Committee recommends using the following policy tools to manage floating structures from #1 being a tool for the proactive approach (carrot), to #4 being a tool for the reactive approach (stick):

1. **Establish Pass-Through Zones and Mooring Zones**: A (Virginia) locality is able to restrict where watercraft are unable to cease movement.
   - (By default, any area not designated as a pass-through zone would exist as an area of moorage for floating structures)

   Virginia Code § 29.1-744.4. "Pass-through" zones; local ordinances; penalties. *After providing notice to the Department, any locality may, by ordinance, establish "pass-through" zones in any portion of a waterway within its territorial limits where congestion of watercraft traffic routinely poses a significant safety risk to persons in such designated area. The ordinance shall provide that while in a pass-through zone, operators of watercraft shall maintain a reasonable and safe speed and shall be prohibited from stopping, anchoring, loitering, or otherwise engaging in recreational activity. The locality shall clearly identify pass-through zones by buoys or other markers that conform to the general requirements as established by the Board for similar buoys or markers. The locality may provide for enforcement and penalties, not to exceed a Class 4 misdemeanor, for the violation of the ordinance.*

2. **Public Mooring Areas**: A locality could apply to Virginia Marine Resources Commission (VMRC) under Title 28.2 - FISHERIES AND HABITAT OF THE TIDAL WATERS, Chapter 12 and establish a public mooring field(s) at locations in waterways where a locality wishes to allow floating structures to moor. Establishing designated areas where a floating structure can anchor away from the middle of a river or creek keeps a waterway open to other users and out of an area that may conflict with an adjacent landowner's private property enjoyment.

   A recent case study of Florida localities regulating anchorage has proven to be an explosive issue. However, new Florida legislation has further clarified and established how a locality may manage moorage. To illustrate how Florida has addressed moorage see below.

   > *"Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of non-live-aboard vessels in navigation."*

   It may become necessary to seek further clarification from the Virginia General Assembly as the issue of vessel moorage becomes more complicated.

3. **No Discharge Zones (NDZ)**: Establish zones where the discharge of sewage and other waste is not allowed based on public health and water quality. Prohibiting where waste can be discharged allows a coastal locality to control what pollutants enter their waterways. This is an especially prevalent issue in localities that border the Chesapeake Bay and whose waters drain into the Bay.

   Under the Kaine Administration, House Bill 1774 was signed into law and directs that all the tidal creeks within Virginia should become NDZs as soon as practical. The bill goes on the say that the tidal creeks of the Commonwealth are hereby established as no discharge zones. A literal reading of the legislation has led to some understandable alarm and confusion in the boating community. Yet this state law does not do anything to actually create a NDZ. The Federal Clean Water Act provides that a state may petition the USEPA for a body of water to be designated as a no-discharge area, if adequate boat sewage holding tank pump-out facilities are provided. It's a mandate to the Virginia Department of Environmental Quality (DEQ), which is the state agency responsible for designation, that the agency peruse that goal.

   Examples of established NDZ in the Middle Peninsula:

   9VAC25-71-70 lists designated no discharge zones in the Commonwealth of Virginia. Several Middle Peninsula creeks and watersheds are listed: Broad Creek, Jackson Creek, and Fishing Bay Watersheds in lower Middlesex County, Virginia

4. **Floating structure Pump-out Plan:** The Committee recommends that a locality consider developing a program that requires every floating structure moored in an area not serviced by vessel pump-out or a marina with vessel pump-out services, submit a pump-out plan upon mooring in any waterway of the locality. The plan shall describe how the floating structure will pump-out their sewage: how often and where. This tool keeps the issue in the water quality and public health, safety and welfare arena. The Committee identified 15.2-1200 as the enabling authority allowing a locality to **"……**adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county..."

   § 15.2-1200. General powers of counties. Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

Fiscal Impacts

The Committee recognizes that Middle Peninsula Commissioners of Revenue currently tax vessels, as vessels and therefore personal property. Should a locality develop new policy to manage floating structures, which act as a domicile, the locality would be well served to conduct a cost benefit analysis of taxing floating structures as real property compared to personal property. Many of the coastal states use a combination of taxing tools to ensure public services are financed correctly. The Committee expressed interest in the notion of a fair and equitable taxing policy. The attached study in **Appendix B** provides several examples of how other localities used taxing structures similar to those used for manufactured homes and manufactured home parks.

The Committee also recognized that the issue of personal property being "attached" to real-estate and taxed as such will be complicated. The Committee recommends that the Virginia Department of Tax be consulted to determine how to fairly and equitably tax a floating structure with a primary use as a domicile.

Lastly, the Committee was sensitive to the staffing and enforcement needs and costs associated with many of the recommendations. However, the old model of "complaint driven" responses may be a thing of the past as Middle Peninsula localities continue to become less rural and more suburban.

Resources

Bowling, Terra. "Law and Policy Regarding Floating Homes." University, Mississippi: The University of Mississippi National Sea Grant Law Center Research Council, 2009. (Attached to Report as Appendix B.)

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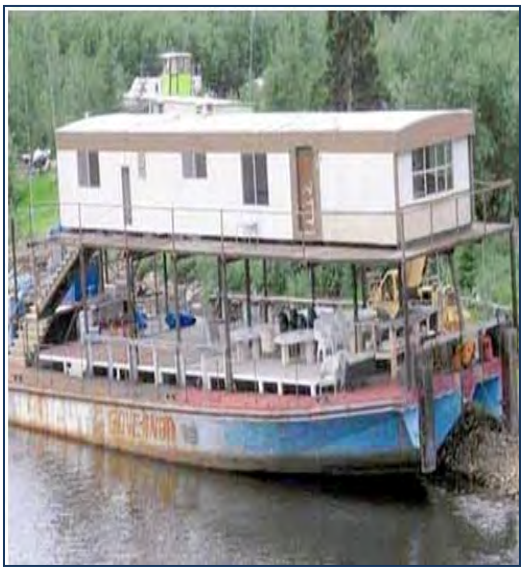
Town of Urbanna, Virginia. Urbanna Town Code Chapter 17: Zoning. Urbanna, Virginia: Town of Urbanna, 1991.

Town of West Point, Virginia. CODE OF ORDINANCES Town of WEST POINT, VIRGINIA. Codified through Ord. No. 05-09, enacted March 30, 2009 (Supplement No. 1). <http://library1.municode.com/default-now/home.htm?infobase=14396&doc_action=whatsnew>

Photo examples of Floating Structures



Appendix A

Floating Homes Research

Research relating to floating homes and similar policies.

Middle Peninsula Planning District Commission

Floating Homes Study Committee

Middle Peninsula Planning District Commission Staff

Clara Meier, Regional Projects Planner

June 17, 2010

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Purpose of Document

There has been a noticeable increase in some coastal areas of people living on "boats" that are more like floating homes than traditional boats. The floating homes can cause serious problems for adjacent landowners, other water users, and the provision of local government services. As the Middle Peninsula continues to transition from a less rural to a more suburban community, public policies that currently serve as management tools for near-shore land, public water bodies, and water use rights and privileges must adapt. Conflicts are becoming increasingly common between waterfront property owners, watermen, boaters, recreational fishermen, sportsmen, aquaculture industries, and others seeking to use the Commonwealth's water resources. In response to this transition, the Middle Peninsula Planning District Commission (MPPDC) and its member localities, in partnership with Virginia Sea Grants' Coastal Community Development Program and Virginia Department of Environmental Quality's Coastal Zone Management Program, undertook a study to enable local governments to identify and determine the issues and conflicts that are affecting the waterfront #NA07NOS4190178 Task 93.01. This project proposes to address one outstanding issue from task 93.01.

To conduct a project to consider the policy implications of floating homes from a local government perspective, a Floating Homes Study Committee has been established.

The study committee will address:

- What is a floating home?
- When should local government become concerned about management issues?
- What public services should or could be required?
- How might these homes be taxed?
- Definition of transience.
- Discussion of visual appealing versus visually appalling.
- Use of zoning as a tool to manage areas of moorage.
- Recommendations for a policy to restrict floating homes in Gloucester County.

In order to assist the study committee with the questions and issues listed above; MPPDC staff performed research of local policy language from the Middle Peninsula region and language from other places in Virginia and the United States and compiled it into this document. The purpose of this document is to assist local governments when they begin to consider the policy implications of floating homes from a local government taxing, public service and land use perspective.

Please note: This is document is in draft form and not yet complete. Definitions are not in alphabetical order.

Local Research: Middle Peninsula

A "floating home" has not been defined or addressed by localities in the Middle Peninsula according to the research performed for this document. Found here are examples of other definitions and language found in county and town codes, policies and comprehensive plans that may be considered when structuring new policies for floating homes.

Local Definitions

Local Mobile Home and Related Definitions

Building: Any structure used or intended for supporting or sheltering use or occupancy. (Gloucester County Zoning Ordinance)

Dwelling unit: A room or group of rooms within a building and constituting a separate and independent housekeeping unit occupied or intended for occupancy by one family and containing kitchen, sleeping and sanitary facilities. A dwelling unit shall not include a mobile home, recreational vehicle or room or group of rooms within a hotel, motel, tourist home or lodging house. (Town of West Point Zoning Ordinance)

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground; this includes, among other things, dwellings, buildings, signs, etc. (Middlesex County Zoning Ordinance)

Vessel: Watercraft of every description used or capable of being used as a means of transportation on the water, including but not limited to motorboats, but excepting sea planes. (Mathews County Code)

MANUFACTURED HOME: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. (Mathews County Code)

MANUFACTURED HOME PARK OR SUBDIVISION: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. (Mathews County Code)

Manufactured of Mobile Home Park: An area designed to accommodate manufactured homes or mobile homes or mobile recreational vehicles on individual lots which provide full utility service and may not be offered for sale under the terms of this chapter and the Subdivision chapter. (Town of Urbanna Zoning Ordinance)

Structure: A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. (Mathews County Code)

Manufactured home park: A manufactured home park shall mean any parcel of land upon which two (2) or more occupied manufactured homes are located, or which is held out for the location of any such manufactured home. Manufactured homes in manufactured home parks shall not be required to have permanent foundations. (Gloucester County Zoning Ordinance)

Travel trailer: A travel trailer shall mean a self-propelled vehicle or a transportable structure which can be pulled behind a motor vehicle which is constructed on a permanent chassis, designed without a permanent foundation. Travel trailers are further designed for temporary living quarters or shelter during periods of recreation, vacation, leisure time or travel. (Gloucester County Zoning Ordinance)

Dwelling unit: A single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, but not including a tent, cabin, travel trailer, manufactured home, or room in a hotel or motel. (Gloucester County Zoning Ordinance)

MOBILE HOME: A factory assembled structure or structures equipped with the necessary service connection and, made to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit without a permanent foundation. The phrase without a permanent foundation indicates that the support system in constructed with the intent that the mobile home placed thereon may be moved at the convenience of the owner. (NOTE: mobile homes were built prior to June 15, 1976 and are not subject to federal regulation.) (Middlesex County Zoning Ordinance)

Mobile home: A movable home on a permanent chassis built to individual state industrialized building codes prior to the enactment in 1976 of the U.S. Housing and Urban Development regulations implementing the National Manufacturing Housing Construction and Safety Standards Act, adopted by Congress in 1974. (King and Queen County Code)

Mobile home: A structure of vehicular, portable design, used for dwelling purposes by one family on a year-round basis, built on a chassis and designed to be moved from one site to another, subject to the industrial building and manufactured home safety regulations, and designed to be used without a permanent foundation. (Town of West Point Zoning Ordinance)

RESIDENTIAL MOBILE HOME: Mobile home parks that are managed and operated by an owner or business organizations (Middlesex County Comprehensive Plan)

Mobile Home: An industrialized building unit which is eight (8) feet or more in width and thirty-two (32) feet or more in length, which is constructed on a chassis for towing to the point of use and designed to be used with or without a foundation for occupancy as a dwelling unit when connected to required utilities; or two or more units separately towable, but designed to be joined together at the point of use to form a single dwelling, and which is designated for removal to, and installation or erection on other sites. The term “mobile home” shall also include the term “self-propelled motor home”, the term “camper”, and the terms “trailer” or “house trailer” which is hereby defined as any vehicle designed or used or maintained for use as a conveyance upon highways, so designed and so constructed as to permit occupancy thereof as a temporary dwelling or sleeping place for one or more persons, and which is used

for temporary or year-round occupancy as a dwelling or sleeping place. The term “mobile home” shall not apply to modular or manufactured homes, regardless of size of facility. (Town of Urbanna)

Mobile home park: A lot or parcel on which are located, or which is arranged or equipped for the accommodation of, ten or more mobile homes with spaces for such available for rent or lease for periods of not less than six months, and including such open spaces and other facilities as may be provided for the use of or service to residents of mobile homes located on such lot or parcel. (Town of West Point Zoning Ordinance)

Mobile home space: An area within a mobile home park devoted to the site of an individual mobile home and set aside for the private use of residents of such mobile home, shown on a plat or site plan of the mobile home park, and which includes such yards, open spaces and other contiguous areas necessary to support such individual mobile home, as distinguished from common areas, peripheral buffers, roadways and other facilities of the mobile home park. (Town of West Point Zoning Ordinance)

MOTOR HOME: Every private motor vehicle with a normal seating capacity of not more than ten (10) persons, including the driver, designed primarily for use as living quarters for human beings. (Middlesex County Zoning Ordinance)

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground; this includes, among other things, dwellings, buildings, signs, etc. (Middlesex County Zoning Ordinance)

TRAILER: Any vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle. (Middlesex County Zoning Ordinance)

TRAILER CAMP: Any area or land, including the improvements thereon, and the waters and land adjacent thereto, private or commercial, used for parking or maintaining of motor homes or trailers for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel. (Middlesex County Zoning Ordinance)

Camping unit: A tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, recreational vehicle, or any other device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel. (King and Queen County Code)

Dwelling unit: A room or group of rooms within a building and constituting a separate and independent housekeeping unit occupied or intended to be occupied by one family, and containing kitchen, living, sleeping and sanitary facilities. (King and Queen County Code)

Recreational vehicle: A vehicle intended to be towed or self-propelled on its own chassis or attached to the chassis of another vehicle, and designed or used for temporary dwelling, recreational or sporting purposes. The term "recreational vehicle" shall include, but shall not be limited to; travel tractors, pick-up campers, camping trailers, motor coach homes, converted trucks and buses, boats and boat trailers. (Town of West Point Zoning Ordinance)

Overwater accessory structure: Any construction of a structure supported by or built upon a pier or piling which extends beyond the mean low water shoreline. This includes boathouses, gazebos, or any structure with walls, sides and/or roofs. (Town of West Point Zoning Ordinance)

Marina and Related Definitions

Marina/boatyard: A boating establishment located on a navigable waterway, which may provide covered or uncovered boat slips or dock space, dry boat storage, boat repairs and/or construction, marine fuel and lubricants, marine supplies, restaurants or refreshment facilities, boat and boat motor sales or rental. (Gloucester County Zoning Ordinance)

Marina/Boat Yard: A boating establishment located on a navigable waterway, which may provide covered or uncovered boat slips or dock space, dry boat storage, boat repairs and/or construction, marine fuel and lubricants, marine supplies, restaurants, or refreshment facilitates, boat and boat motor sales or rental. (Town of Urbanna)

Marina: A boating establishment located on a navigable waterway and which provides, for compensation, covered or uncovered boat slips or dock space and which may include in connection therewith dry boat storage, boat and motor repairs, the sale of marine fuel and lubricants, marine supplies and accessories, boat and motor sales or rental, and accessory restaurant or refreshment facilities and sanitary facilities. (King and Queen County Code)

WATERFRONT RECREATIONAL/MARINAS: Campgrounds, marinas, yacht clubs or other waterfront dependent entities and their accessory uses. These uses depend on their waterfront location and recreational nature as a major asset of their business. (Middlesex County Comprehensive Plan)

BOAT RAMPS: Any structure, public landing or natural decline, used for the ingress and egress of any boat, ship, or other nautical vessel. (Middlesex County Zoning Ordinance)

DOCKS: Any waterfront structure, commercial or private, used for the purpose of mooring, or storing any boat, ship, or nautical pleasure craft or vessel. (Middlesex County Zoning Ordinance)

QUALIFIED WATERFRONT USE STRUCTURE: Shall mean marine use structures such as seawalls, bulkheads, piers, groins, wharves, docks, boat ramps, boat hoists, jetties, boathouses and the like which require approval of the Army Corps of Engineers and/or the Virginia Marine Resources Commission and which have obtained such approvals, and any natural or required landward extension, portion or adjunct of such structures. (Middlesex County Zoning Ordinance)

FISHING PIERS: Any natural or man-made protrusion which is situated over any form of water whether it be a stream, lake, river, sea, ocean or any other waterway, whose purpose is to provide the public with access for commercial or recreational fishing. (Middlesex County Zoning Ordinance)

LOT, WATERFRONT: A lot any part of which is within 100 feet of (i) tidal waters as measured from the highest of the following: mean high water, an existing bulkhead, an established bulkhead line, or the

upland boundary of a wetland as defined by the Middlesex County Wetlands Ordinance or (ii) impounded waters as measured from the higher of the normal pool elevation or the upland limits of any flowage easement. (Middlesex County Zoning Ordinance)

MARINA/BOATYARD: A boating establishment located on a navigable waterway, which may provide covered or uncovered boat slips or dock space, dry boat storage, boat repairs and/or construction, marine fuel and lubricants, marine supplies, restaurants or refreshment facilities, boat and boat motor sales or rental. (Middlesex County Zoning Ordinance)

WATER-DEPENDENT FACILITY: A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities. (Middlesex County Zoning Ordinance)

Water-dependent facility: A development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities. (King and Queen County Code)

Water-dependent facility: A development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to:

(1) Ports;
(2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, industrial and manufacturing facilities and storm sewers;
(3) Marinas and other boat docking structures;
(4) Beaches and other public water-oriented recreation areas;
(5) Fisheries or other marine resources facilities; and
(6) Docks for the loading and off-loading of marine vessels.

(Town of West Point)

Permitted uses and structures in the Waterfront Mixed-Use District:

(1) Marinas.
(2) Public access/open space/recreational uses.
(3) Lodging and residential establishments including, but not limited to:
    a. Hotels.
    b. Multiple family dwellings.
    c. Inns/bed and breakfast.

(4) Restaurants, defined as business establishments where meals or refreshments may be purchased, and including, but not limited to:

a. Bars/taverns/lounges.

b. Coffee shops.

c. Ice cream parlors.

d. Dine-in/take-out establishments, but not including establishments where food or beverages are intended to be consumed in vehicles on the premises or establishments where food or beverages are available by drive-up window service.

(5) Retail stores and shops.

(6) Office uses.

(Town of West Point Code, Sec. 70-423, Ord. No. 01-07, 4-30-07)

Yacht club: A private, noncommercial facility for operation by a non-profit association or corporation for the exclusive use of its members and guests primarily for the purposes of boating and recreational activities, and which may include boat docks, landings and incidental service and storage facilities, and facilities for swimming, tennis, other recreational activities, dining and refreshments, club activities and meetings, and other incidental purposes. A facility which involves commercial activities or provides services to the general public shall not be deemed a yacht club. (King and Queen County Code)

YACHT CLUB: A non-profit association or corporation organized and operated to provide private facilities for boating, swimming or other recreational activities associated therein to its private, self-perpetuating membership, on a contiguous tract of land containing not less than two (2) acres adjacent to navigable water. Any facility which conducts commercial activities such as boat repairs and/or construction, sales of marine fuel or lubricants, marine supplies, boats or motor sales, or which operates commercial restaurant or refreshment facilities shall not be deemed a yacht club. (Middlesex County Zoning Ordinance)

Wharves:

(a) Public wharves in Gloucester County are for the use of the general public and shall be open to all vessels both recreational and commercial.

(b) The board of supervisors may, from time to time, designate certain portions of any wharf or pier owned or controlled by the County of Gloucester for commercial use only, for recreational use only, for loading or unloading, for overnight mooring, or for any other purpose deemed appropriate by the board.

(c) Any cargo, vessel, or equipment, of whatsoever kind, placed upon or moored to the wharf or pier shall remain there solely at the risk of the owner, and the wharf shall be available for the use of the general public on equal terms with the owner of such property while such property remains on the wharf.

(Gloucester County Code Section 21-8; Ord. of 6-7-83; Ord. of 12-19-89)

Campground: Any lot or land used, maintained, or held out to be public as a place for use for camping or lodging purposes, either equipped with tents, tent houses, huts, cabins, cottages, campers, or trailers or not so equipped, and by whatever name same may be called whether any fee is charged for the use thereof or not. (Gloucester County Zoning Ordinance)

Transiency and Related Definitions

"Transient" means any person, as defined, who, for a period of less than thirty (30) consecutive days, obtains lodging, as defined, at a hotel, as defined, whether at his own or another's expense. No lodging tax shall be collected from any transient or person responsible therefore, who obtains lodging at any hotel for a period in excess of thirty (30) consecutive days. (Town of Urbanna)

Personal Property and Related Definitions

TANGIBLE PERSONAL PROPERTY: All personal property not otherwise classified by § 58.1-1100 as intangible personal property or by § 58.1-3510 as merchants' capital. (Mathews County Code)

Local Language

Use of recreational vehicles for permanent living quarters: No recreational vehicles shall be used for permanent living, sleeping, or other occupancy when parked or stored on a residential lot, or other location not approved for such use. (King and Queen County Code Section 3-34, Ord. of 2-9-2004; Ord. of 2-14-2005; Amend. of 5-11-2009)

Special Waterfront Setback Requirements: Special Waterfront Setback Requirements shall conform to the Chesapeake Bay Preservation District. No structure, building or accessory use shall be located within a Resource Protection Area or Resource Management Area except in accordance with and as authorized by Article 4A - Chesapeake Bay Preservation District:

a. Qualified waterfront use structures within a Resource Protection Area shall be piers, wharves, docks, boat ramps, boathouses and water dependent facilities as allowed by Article 4A of this Ordinance.

b. Qualified waterfront use structures within forty (40) feet of the mean low water line and within ten (10) feet of any side lot line:

1. Structures which are defined as marine use structures such as seawalls, bulkheads, groins, jetties, and the like which require approval of the Army Corps of Engineers and/or the Virginia Marine Resources Commission and which have obtained such approvals, and any natural or required landward extension, portion or adjunct of such structures;
2. Fences, and natural vegetation located on the waterfront lot. (Middlesex County)

Prohibited Uses: No waterfront lot or pier, boat slip, dock or wharf attached to a waterfront lot or boat tied up or attached thereto, shall be used as a residence or for dwelling purposes except for temporary use associated with a permitted use of a waterfront lot which contains sewage disposal facilities and water facilities approved by, as appropriate, the Middlesex County Health Department or the Virginia Department of Health. (Middlesex County)

Permitted Uses in the Conservation District: The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters, and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide in tidal areas and to preserve the natural contour of marshes, swamps, and watercourse. (The purpose of the Conservation District is to protect and conserve fragile natural resource areas which perform valuable functions in their natural state and which are unsuitable for development and intense use. Areas to be designated as Conservation District primarily include wetlands and swamps, but may include other areas deemed to be important for flood control, aquifer recharge, water storage, critical wildlife habitat, or similar functions.) (Middlesex County Zoning Ordinance)

Section 4-2. Mobile homes and house trailers. [2]

It shall be unlawful within the town for any person to park or place or allow to be parked or placed any trailer, mobile home or similar type vehicle or dwelling on any street or other place in town. Nothing in this section shall be construed so as to prevent or prohibit the parking or placement of trailers, mobile homes or similar type vehicles or dwellings if permitted by the provisions of this Code and other ordinances of the town, except, that no living quarters shall be maintained or any business practiced while such vehicle is so parked or stored unless specifically permitted by the provisions of this Code and other ordinances of the town.

(Town of Urbanna)

Use of Certain Facilities for Dwelling Not Permitted: Travel trailers, campers, motor homes, other recreation vehicles, tents, camp cabins and the like shall not be used for permanent or full time dwellings in any district, whether or not connected to utilities, wells or septic systems, except as permitted by the terms of this chapter. (Town of Urbanna Zoning Ordinance, Section 17-38)

Uses permitted by special use permit: Manufactured or mobile home parks are subject to special regulations of this article. (Town of Urbanna Zoning Ordinance)

Section 17-4.4.12. Special Regulations for Manufactured or Mobile Home Parks.

Manufactured home or mobile home parks are allowed by Special Use Permit in the R-2 zoning district. A site plan and a subdivision plan must be submitted along with such other descriptive material, special conditions or proffers as described in Article 9. Procedures and general standards for approval of an application under this section shall be the same as those as described in Article 9 of this chapter. The proposed project shall comply with the following regulations:

(1) The park shall contain not less than two contiguous acres and shall be under single ownership or control, except that the minimum area may be one acre where the proposed park is to be located adjacent to an existing manufactured or mobile home park containing an area of one acre or more.

(2) The minimum width and minimum depth for a manufactured or mobile home park shall be at least 200 feet.

(3) If a portion of a manufactured or mobile home park shall be used for temporary parking of travel trailers, campers, or other recreational vehicles, an area within the park shall be permanently designated for this use.

(4) The overall density of the manufactured or mobile home park shall not exceed nine units per gross acre and the net density of any particular acre within such park, whether used for manufactured homes or travel trailers, shall not exceed twelve (12) units per acre. Land inside the F-1 Flood Plan District or otherwise unsuitable for residential use shall be excluded from density computations.

July 1, 1998

(Town of Urbanna Code)

(5) The minimum width for each site shall be two and a half (2.5) times the width of the home, or twenty-five (25) feet, whichever is greater. Minimum site widths shall be measured at right angles to the long axis of the site at the setback line or rear of the lot, whichever is less. No more than one home shall be placed on any one site and no home sites shall be offered for sale or sold. Minimum site area for travel trailer or camper sites shall be 1,000 square feet.

(6) Corners for each home site shall be clearly defined by permanent ground markers corresponding to the approved site plan.

(7) Each home site shall be provided with a concrete foundation pad a minimum of fifteen (15) feet long and at least five (5) feet wider than the manufactured or mobile home to be located there. Each manufactured or mobile home shall be securely anchored to the site.

(8) The manufactured or mobile home park shall comply with all sanitary and other requirements prescribed by law or regulations. Unless otherwise provided for by the Town Council, each home site (permanent and temporary) shall be provided with individually metered water and sewer connections to central sewer and water systems designed to serve the entire park.

(9) Each home site shall be provided with electrical service buried underground and installed in accordance with applicable Codes and chapters.

(10) Where community refuse containers are provided as accessory uses to manufactured home park developments, such containers shall be conveniently located for pick-up vehicle access and completely screened from view by means of a fence or wall with an appropriately designed gate which can be latched open and closed.

(11) No home shall be placed closer than eighty (80) feet from a public street or road, or twenty (20) feet from an interior access drive, or twenty-five (25) feet from any other home or service building, and no part of a home shall extend closer than ten (10) feet to the boundaries of the individual home site.

(12) Access to the manufactured or mobile home park shall not be from a minor residential street. Number and location of access drives shall be controlled for traffic safety and protection of surrounding properties, and no home space shall be designed for direct access to a street outside the boundaries of the park. Interior access drives shall be properly lighted and right-of-ways shall be at least fifty (50) feet in width; streets shall be hard surfaced and maintained at least twenty-four (24) feet in width in accordance with applicable Town specifications and chapters. Turning radius at the end of a cul-de-sac shall have a radius of at least fifty (50) feet.

(13) At least two off-street parking spaces shall be provided on each home site, and in addition one off-street parking space shall be provided per home site in other locations convenience to groups of homes. Additional parking area shall be designated for accessory storage of boats and boat trailers, camping equipment and other recreational vehicles. No parking shall be permitted on the street.

(14) The topography of the site shall be such as to facilitate drainage and adequate drainage facilities shall be provided.

(15) The overall site design of the manufactured mobile or home park shall demonstrate a reasonable effort to preserve the natural amenities of the site, particularly mature trees and existing vegetation. Other areas of the subdivision shall be planted with appropriate ground cover, trees, shrubs, and grass lawns, all of which shall be properly maintained. Where no trees exist, at least two shade trees shall be planted and properly maintained on each home site.

(16) Each manufactured or mobile home park shall provide not less than one multiple purpose developed recreational area of at least 10,000 square feet in area for the use of occupants of the park.

(17) The park owner shall require and the unit owner shall insure that open space beneath each home shall be skirted with approved material in accordance with the requirements of the Zoning Administrator.

(18) No manufactured or mobile home park existing at the effective date of these regulations shall be enlarged or extended unless the enlargement area is in compliance with all requirements for a new manufactured or mobile home park. Homes may be added within the established boundaries of an existing park so long as the overall density within said boundaries does not exceed nine (9) units per gross acre.

Section 17-4.5. [Reserved.]

Section 17-4.7. Special Waterfront Mixed Use (B-2)

Section 17-4.7.1. Purpose of the District.

(A) The purpose of this district is to encourage a higher density use of land areas adjacent to and/or overlooking water, and encourage a range of compatible and complimentary mixed-uses, in such a manner that is public and pedestrian oriented, and a strong generator of public and semi-public activities.

Section 17-4.7.2. Permitted Uses and Structures.

A building or land shall be used only for the following purposes:

(1) Marinas, docks, and small-scale associated buildings and uses related to water activities, including but not limited to fuel sales, emergency assistance, short term repair of small boats, and receiving and shipping of seafood and small grains.

(2) Stores for the sale of retail and wholesale seafood.

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(Urbanna Town Code)

Addressing

Local Examples

Building and structure numbers. Primary structures shall be assigned based on the location of the property access to a public right-of-way. Consideration may be given by the E-911 addressing coordinator to the assignment of addresses based on where the structure fronts the road when there is a demonstrated need for assigning the address in such a manner and a building permit has not been issued. (King and Queen County Code Article II, Sec. 28-31) (Primary structure includes, but is not limited to, residential building, manufactured home, commercial building, industrial building, office building, public building, church/place of worship, pay telephone, pump station, communication tower, utility tower, substation, or other structure that may require address identification to facilitate the timely response to an emergency situation.)

Assignment of numbers: A house or building number shall be assigned to each dwelling or other building in the county. The combination of such numbers and the road or street name shall be the official address of such dwelling or building. Such location shall serve as the official mailing address for postal patrons receiving home or rural delivery. (King William County Code, Sec. 62-40)

Numbering of apartments and similar complexes: Apartments and similar complexes assigned a single building number shall display address numbers on each assigned structure using numbers having a minimum height of eight inches. Trailer parks and similar complexes assigned a single building number shall display the assigned number at the main entranceway using numbers having a minimum height of eight inches. Numbers or letters for individual apartments, trailers, or units within these complexes shall be displayed on, above, or to the side of the main doorway of each apartment, trailer, or unit, and shall be at least three inches in height. (King William County Code, Sec. 62-43, Ord. of 4-28-1997, § 14)

Common Access: Where two residences or other structures are served by a common driveway or private right-of-way which is not an official road, numbers shall be assigned to the structures; the number assigned shall be that which is closest in keeping with the numbering sequence. (King and Queen County Code, Article II, Sec. 28-36)

Assignment of new numbers:

- Structure numbers shall be assigned to each resident upon submission of a building permit application.
- No certificate of occupancy shall be issued for any principal building until the E-911 addressing coordinator has supplied the official structure numbers to the building inspections department.
- Temporary structure numbers, including street name, shall be displayed by the building permit applicant on the site during the construction phases to facilitate inspections and delivery of emergency services prior to occupancy.

Display of structure number: Each resident shall be required to display and maintain a structure number that identifies the primary structure located on the property. Address marker placards shall be initially supplied and installed by the county during the E-911 addressing process. Residents and business owners who construct structures after the initial addressing process shall be responsible for obtaining, installing and maintaining an address marker placard that is consistent with the guidelines found within this article. (King and Queen County Code, Article II, Sec. 28-37)

Taxation

Mobile Homes taxed as personal vs. real property. No examples found yet in Middle Peninsula localities.

Generally, real property is "land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land." (Black's Law Dictionary, 2nd pocket edition, 564.) While personal property is "any movable or intangible thing that is subject to ownership and not classified as real property." (*Id*.) Some state statutes specifically classify floating homes as real property, while other states categorize them as personal property.

When floating homes are treated as real property, floating home owners are required to pay real estate taxes, which may be used to support municipal services, and may be required to pay taxes upon transfer

of the property. In contrast, when floating homes are treated as personal property, owners would not be required to pay annual real estate taxes, but may have to pay personal property taxes.

Virginia includes “manufactured homes” as tangible personal property (VA. CODE ANN. § 58.1- 3503). However, the state’s “Manufactured Housing Construction and Safety Standards Law” specifically provides, “[l]ocal zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect.” VA. CODE ANN. § 36-85.11. And, a statute regarding the zoning powers of local government provides:

> *[a]ny locality may designate by ordinance the areas within its jurisdiction in which manufactured homes may be located or manufactured home parks may be established, notwithstanding the absence of a zoning ordinance in such locality. Such ordinance may also apply to any of the provisions of §§ 15.2-2241 through 15.2-2245 in the regulation and governing of the location, establishment, and operation of manufactured homes or manufactured home parks… In the event of irreconcilable conflict between the ordinance and state law, the state law shall supersede the ordinance.* (VA. CODE ANN. § 15.2-2247).

It seems clear that regardless of how state and a local government may classify mobile homes for tax purposes, the local government retains zoning authority.
(Sea Grant Law Center Research)

Examples from Other Places

Other Places in Virginia

Definitions

DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for residential occupancy. The term 'dwelling' shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for more or less transient occupancy. (Fairfax County Zoning Ordinance Definitions)

DWELLING UNIT: One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502. (Fairfax County Zoning Ordinance Definitions)

DWELLING, MANUFACTURED HOME: A structure subject to federal regulation, which is transportable in one or more sections; is 8 body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. For the purpose of this Ordinance, MANUFACTURED HOMES shall be deemed to include a MOBILE HOME. (Fairfax County Zoning Ordinance Definitions)

DWELLING, MOBILE HOME: A single family residential unit with all of the following characteristics: (a) designed for long-term occupancy, and containing sleeping accommodations, a flush toilet, a tub or

shower bath and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems; (b) designed to be transported after fabrication on its own wheels or on a flat bed or other trailer or detachable wheels; (c) arriving at the site where it is to be occupied as a dwelling complete, conventionally designed to include major appliances, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities, and the like; (d) designed for removal to and installation or erection on other sites.
A mobile home may include one (1) or more units, separately towable, which when joined together shall have the characteristics as described above. For the purpose of this Ordinance, a mobile home shall not be deemed a SINGLE FAMILY DETACHED DWELLING. (Fairfax County Zoning Ordinance Definitions)

DWELLING, MODULAR UNIT: A factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure that will be a finished building in a fixed location on a permanent foundation. The term is intended to apply to major assemblies, and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub elements incorporated into a structure at the site. For the purpose of this Ordinance, a modular unit shall be deemed a SINGLE FAMILY DWELLING and shall not be deemed a MOBILE HOME. (Fairfax County Zoning Ordinance Definitions)

Public boating facility or *facility:* any public boat ramp and/or dock open and used by the public for the loading and/or off-loading and/or docking of boats or other waterborne vessels, and the public areas adjacent to such facility used for parking or storage and/or used incident to the use of the ramps and/or docks owned and/or maintained by the county. (Accomack County Code, Chapter 102)

MARINA:

- COMMERCIAL OR CLUB-TYPE: A marina designed and operated for profit, or operated by any club or organized group where hull and engine repairs, boat and accessory sales, packaged food sales, eating establishments, personal services, fueling facilities, storage and overnight guest facilities or any combination of these are provided.

- PRIVATE NONCOMMERCIAL: A marina designed and intended to be used for mooring of boats by residents of the general neighborhood with no commercial facilities other than those necessary for minor servicing or repair.

(Fairfax County Zoning Ordinance Definitions)

MOBILE HOME PARK: Any area of fifteen (15) acres or more, however designated, that is occupied or designed for occupancy by one (1) or more mobile homes. The term 'mobile home park' shall not include sales lots on which unoccupied mobile homes, whether new or used, are parked for the purposes of inspection and sale. (Fairfax County Zoning Ordinance Definitions)

Manufactured home means a structure subject to federal regulations, which is transportable in one or more sections; is eight feet or more in width and 40 feet or more in length in the traveling mode, or 320 or more square feet when erected on-site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. (Accomack County Zoning Ordinance)

Manufactured home, category II means manufactured homes in any district which comply with Virginia Manufactured Homes Safety Regulations and which are 55 feet or more in length and 14 feet or more in width and designed for transportation on a chassis or trailer, and placed on an approved permanent foundation shall be considered as single-family dwelling, and shall be permitted identically to such other dwellings, subject to the following:

(1) *Length-width ratio* means the main portion of the home shall have a building length not exceeding six times the buildings width.

(2) *Roof pitch* means the roof pitch shall be no less than 1:4.

(3) *Roofing material* means the roofing material shall be either wood, asphalt, asbestos or fiberglass shingles.

(4) *Exterior finish* means the exterior material shall be of the following types: Wood, aluminum or vinyl siding in six inch, eight inch, or ten-inch widths. Tempered and stone waterproof board, brick or stone fiberglass or stucco may be used. Siding and trim design shall be compatible and comparable with single-family dwellings.

(5) *Foundation* means a continuous permanent masonry foundation, unpierced except for required ventilation and access shall be installed under all elements of the building. Footings for walls shall be below the frost line. The ground surface below the home shall be protected with a poly-vapor barrier. Installation shall include a positive surface water drainage away from the home.

(6) *Chassis removal* means the dwelling shall have all wheels, axles, transporting light sand any other transporting devices completely removed from the structure.

(Accomack County Zoning Ordinance)

Modular home means a home constructed at the manufacturer's facility and towed on a highway in sections for assembly at a site, not a mobile home. (Accomack County Zoning Ordinance)

Mobile home means a transportable, factory built home, designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. This definition shall not include self-propelled motor vehicles. (Accomack County Zoning Ordinance)

Mobile home park means any site, lot, tract of land upon which is located or on which anyone proposed to locate four or more mobile homes, regardless of whether the lots are rented or sold. This definition shall not apply to an area specifically used for display of mobile homes by a mobile home sales agency. (Accomack County Zoning Ordinance)

Marina, commercial or *club type* means a marina designed and operated for profit or operated by any club or organized group where hull and engine repairs, boat and accessory sales, packaged food sales, restaurants, personal fueling facilities, storage and overnight guest facilities or any combination of these are provided. (Accomack County Zoning Ordinance)

Marina, private non-commercial means a marina designed and intended to be used for mooring of boats by residents of the general neighborhood with no commercial facilities other than necessary for minor servicing and repairs. (Accomack County Zoning Ordinance)

Personal property shall mean any money, goods, movable chattels, things in action, evidence of debt, all objects and rights which are capable of ownership, and every other species of property except real property. (Fairfax County Code, Chapter 1)

Real property shall mean land, together with all things attached to the land so as to become a part thereof. (Fairfax County Code, Chapter 1)

Residential building or structure shall mean any building or structure classified as a residential use group under the USBC, including but not limited to use groups R-3, R-4, and R-5. (Fairfax County Code, Chapter 61)

Residential property shall mean any property containing a single-family attached or detached one- or two-family-dwelling or accessory structure. (Fairfax County Code, Chapter 61)

Transient means any person who, for any period of not more than thirty consecutive days either at his own expense or at the expense of another, obtains lodging or the use of any space in any hotel as hereinabove defined, for which lodging or use of space a charge is made. (2-28-72; 1961 Code, § 25-90; 19-99-4; 16-04-4.) (Fairfax County Code, Section 4-13-1)

Transient means the same individual or same group of individuals who, for a period of not more than 29 consecutive days, either at his own expense or at the expense of another, obtains lodging or use of space in any hotel, or travel campground for which lodging or use of space a charge is made. (Accomack County Code, Chapter 82)

Travel campground means any area, site, lot, field or tract of land offering spaces for recreational vehicles or campsites for transient dwelling purposes, or temporary dwelling during travel, recreational or vacation uses. (Accomack County Code, Chapter 82)

TRAVEL TRAILER: A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification 'Travel Trailer' thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed 4500 pounds, or being of any weight provided its overall length does not exceed twenty-nine (29) feet. For the purpose of this Ordinance, a travel trailer shall not be deemed a MOBILE HOME. (Fairfax County Zoning Ordinance Definitions)

Vessel means every description of watercraft other than a seaplane on the water, used or capable of being used as a means of transportation on water. (Fairfax County Code, Chapter 83)

Taxation

Property shall be defined as real property and manufactured homes. (Accomack County Code, Chapter 82)

There is levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, on each and every transient a tax equivalent to two percent of the total amount paid for room rental by or for any such transient to any hotel or travel campground. (Accomack County Code, Chapter 82)

Boats, Trailers, and Mobile Homes (Fairfax County, Virginia):

- Boats, boat motors, trailers, mobile homes, and airplanes that are parked, docked or normally kept in the County as of January 1 each year must be declared on County tax forms. The filing deadline is May 1.

- With the exception of mobile homes, taxes on these properties are not prorated. This means that the property is taxed for the full year if it has situs in the County on January 1 of the tax year. Situs is the normal location where the property is parked or from which the property is operated. Merely moving the property to another location on January 1 with the intent to return to the County does not change the property's taxable situs.

- Mobile homes are prorated on a quarterly basis if they are moved into the County after January 1. A property tax return on mobile homes must be filed within 60 days of the date the mobile home attains situs. The tax on mobile homes is not prorated when the owner sells or moves the home out of the County.

- Valuation is as of January 1 of the tax year. For property other than mobile homes, valuation is based on a depreciating percentage of original cost from 60% to 20%. Mobile homes are valued at market value based on sales data and may be supplemented by valuation from a recognized pricing guide.

- The tax rate for personal property in Fairfax County is $4.57 for each $100 of assessed value. However, mobile homes are taxed at the real property tax rate of $1.04 for each $100 of assessed value. Airplanes and boats are taxed at $0.01 for each $100 of assessed value.

- Tax bills are mailed during the late summer and are due on Oct. 5 of each year. Only properties that generate a tax bill over $5 are due and payable. Below that amount, tax bills are not generated.

Campbell County, Virginia includes taxes the following Items as *Personal Property*:

- motor vehicles
- boats
- boat trailers
- utility trailers
- campers
- aircraft
- *mobile homes*

Campbell County does not prorate personal property taxes.

Places Outside of Virginia

Definitions

Habitable dwelling – An existing dwelling that:

(a) Has intact exterior walls and roof structure;
(b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
(c) Has interior wiring for interior lights;
(d) Has a heating system; and
(e) Was lawfully established.

(Multnomah County (Oregon))

Lawfully established dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a *dwelling unit* were obtained and all qualifying permitted work completed. (Multnomah County (Oregon))

Mobile Home – A structure transportable in one or more sections, which is designed to be used for permanent occupancy as a dwelling and which is not constructed to the standards of the uniform building code (the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations). Mobile homes include residential trailers and manufactured homes subject to the siting provisions as specified within the district:

(a) Residential Trailer – A mobile home which was not constructed in accordance with federal manufactured housing construction and safety standards (HUD), in effect after June 15, 1976. This definition includes the State definitions of Residential Trailers and Mobile Homes stated in the Oregon Revised Statutes (ORS) 446;

(b) Manufactured Home – A mobile home constructed in accordance with federal manufactured housing construction and safety standards (HUD code) in effect after June 15, 1976;

(c) For flood plain management purposes (Chapter 29) only, the term Manufactured Home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. (Multnomah County (Oregon))

Mobile Home: any re-locatable structure or unit, either single or multi-sectional, which is built on a permanent chassis, ordinarily designed for human living quarters, owned or used as a residence by the owner or occupant, which is either attached to utility services (services purchased by the occupant from a utility company or rural electric co-op) or is twenty-seven feet or more in length. (North Dakota-NDCC 57.55.01)

Manufactured Home: similar in structure to a mobile home but is also sold as real property and can qualify for Federal Home Loan Mortgage Corporation (FHLMC) financing and is usually placed on a

permanent foundation. A “mobile home” does not qualify for this financing and is usually (but not always) placed in a mobile home park community. (North Dakota)

"Manufactured home" or “mobile home” means a single-family dwelling unit built in accordance with the department of housing and urban development manufactured home construction safety standards act, inspected and approved by the Washington State Department of Labor and Industries. (Ord. 2756 Att. A (part), 2006: Ord. 2316 (part), 1994) (Anacortes County (Washington) Code, Definitions Section)

PERSONAL PROPERTY. Every type of property, except real property as defined in this section (see next definition). (Multnomah County Code (Oregon))

REAL PROPERTY: Land, tenements, and hereditaments. (Multnomah County Code (Oregon))

California defines “floating home” as a structure which is all of the following:

> *(1) It is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling.*
> *(2) It has no mode of power of its own.*
> *(3) It is dependent for utilities upon a continuous utility linkage to a source originating on shore.*
> *(4) It has a permanent continuous hookup to a shore side sewage system.* (CAL. HEALTH & SAFETY CODE § 18075.55.)

In Georgia, “live-aboard” means a floating vessel or other water craft which is moored to a dock, tree, or piling or anchored in the estuarine waters of the state and is utilized as a human or animal abode. Live-aboards include but are not limited to monohulls, multihulls, houseboats, floating homes, and other floating structures which are used for human or animal habitation. (GA. CODE ANN. § 12-5-282)

In Idaho, “floating home” is defined as

> *[A] floating structure which is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode or power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.* (IDAHO CODE ANN. § 55-2704; *see also* IDAHO ADMIN. CODE r. 20.03.04.010)

Maryland defines “floating home” as

> *[A]ny vessel, whether self-propelled or not, that: (i) Is used, designated, or occupied as a dwelling unit or place of business or for any private or social club; and (ii) Has a volume coefficient that is greater than 3,000 square feet, which is based on the ratio of the habitable space of the vessel measured in cubic feet and the draft of the vessel measured in feet of depth” and includes “ a structure that: (i) [i]s constructed on a barge that is primarily immobile and out of navigation; or (ii) [f]unctions substantially as a land structure while the vessel is moored or docked in the State.* (MD. ANN. CODE art. 25, § 234A)

The New Jersey Department of Environmental Protection defines floating home as “any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.” (N.J. ADMIN. CODE 7:7-1.3)

Oregon defines “floating home” as “a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat.” (OR. REV. STAT. § 830.700; *See also* OR. ADMIN. R. 250-010-300). In a section describing permitting rules for structures on state-owned submerged land, “floating home means a moored floating structure that is secured and stationary and is used primarily as a dwelling and not as a boat or floating recreational cabin.” (OR. ADMIN. R. 141-082-0020)

"Mobile home" means, for purposes of Sections 22.904.030 through 22.904.390, a vehicle equipped as a dwelling place. "Mobile home" or "manufactured home," for purposes of Sections 22.904.400 through 22.904.470, means a factory-assembled structure that requires a separate highway movement permit for highway travel, is built on a permanent chassis, and is designed for use as a dwelling unit, with or without a permanent foundation, when connected to the required utilities. "Mobile home" or "manufactured home," for purposes of Sections 22.904.400 through 22.904.470, includes recreational vehicles that, before December 22, 1988, have been used as permanent residences in the same location (one hundred eighty (180) days or longer), have been structurally modified so they are no longer mobile, and have been connected to the required utilities in a mobile home park. (Seattle Municipal Code, Chapter 22.904.010)

"Mobile home, dependent" means a mobile home dependent upon toilet facilities provided in a service building. (Seattle Municipal Code, Chapter 22.904.010)

"Mobile home, independent" means a mobile home independent of toilet facilities provided in a service building. (Seattle Municipal Code, Chapter 22.904.010)

"Mobile home lot" means a plot of ground within a mobile home park designated to accommodate one (1) mobile home. (Seattle Municipal Code, Chapter 22.904.010)

"Mobile home park" means, for purposes of Sections 22.904.030 through 22.904.390, a tract of land upon which two (2) or more mobile homes occupied as dwellings may be located. "Mobile home park" or "manufactured home park" means, for purposes of Sections 22.904.400 through 22.904.470, a residential use in which a tract of land is rented or held out for rent to others for the use of two (2) or more mobile homes occupied as a dwelling unit, except where such land is rented or held out for rent for seasonal recreational purposes only and is not intended for year-round occupancy. (Seattle Municipal Code, Chapter 22.904.010)

The Department of Natural Resources in Washington has defined “floating house” as: *any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. ‘Floating houses’ include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.* (WASH. ADMIN. CODE § 332-30-106).

Washington D.C.’s Code of Municipal Regulations defines floating home as:

> *[a] sailboat, motorboat, or other floating structure that is designed and built to be used, or is modified to be used, as a waterborne residential dwelling, is dependent for utilities upon a utility*

linkage to a source originating on shore, and in which the tenant or owner sleeps overnight and average of fifteen (15) days per month. (D.C. CODE MUN. REGS. 199.1)

It is also noteworthy that under §10 of the Rivers and Harbors Act, any work or construction on floating homes in navigable waters of the U.S. requires a permit from the U.S. Army Corps of Engineers. In an advisory notice from the Sacramento Division of the Corps, floating home is defined as "any barge, boat, or building containing living quarters or recreation rooms, designed to float but not reasonably capable of navigating under its own power …"

Other Language

North Dakota:

- The Motor Vehicle Department issues certificates of title for mobile homes for a fee.
- Transferring ownership of a mobile home: The certificate of title must be completed by both the seller and the buyer. The seller will sign in Part 1 (Seller's Assignment and Warranty of Title) as the seller. The buyer will complete the buyer's information with their legal name(s) and mailing address. The buyer must also complete Part 3 (Purchaser's Certification and Application) on the back of the title, signing as the buyer and listing the lien holder information if applicable. The buyer must complete SFN 3004 North Dakota State Board of Equalization Statement of Mobile Home Full Consideration. The title and equalization form must be submitted along with a $5 title fee. The new title will be mailed to the registered owner or lien holder of record.
- Any person who has purchased a mobile home and is applying for a title must present, with the application, a certified statement of the full consideration paid for the mobile home. The State Equalization Board uses the statement to generate a report used by the State Tax Commissioner to determine the proper assessment of mobile homes for tax purposes.
- Mobile Home Park Owner, obtaining title of an abandoned mobile home: For a title to be obtained by the park owner the park owner shall post a signed and dated notice of landlord lien on the primary entrance to the mobile home. The notice of lien must contain the name and last-known address of the owner of the mobile home, the name and post-office address of the landlord lien claimant, the amount of the lien, a description of the location and type of mobile home, and a recitation of the penalty provisions of NDCC 35.20.17. A lien holder may sell a mobile home thirty (30) days after the lien holder mails notice of the lien to the owner of the home and secured parties of record. Landlord liens do not have priority over a prior perfected security interest in the property. After the sale, the lien holder shall forward to the former

owner any money resulting from the sale of the home in excess of the amount owed for accrued rents, storage, and removal relating to the mobile home. If the location of the former mobile home owner is not known, any money from a sale in excess of the amount owed is presumed abandoned under NDCC 47.30.1. The park owner may also obtain a title through an order of the court.

Example from Multnomah County, Oregon:

§ 34.6750- HOUSEBOATS AND HOUSEBOAT MOORAGE

The location of a houseboat or the location or alteration of an existing houseboat moorage shall be subject to approval of the approval authority:

(A) Houseboats shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.
(B) Houseboat moorage shall mean the provision of facilities for two or more houseboats.
(C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.
(D) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:

(1) The proposed development is in keeping with the overall land use pattern in the surrounding area;
(2) The development will not adversely impact, or be adversely affected by normal fluvial processes;
(3) All other applicable governmental regulations have, or can be satisfied; and
(4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.

(Ord. 997, Repealed and Replaced, 10/31/2002; 953 §2, Reorg & Renum, 11/30/2000)

§ 34.6755 DENSITY

The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. The Hearings Officer in approving a houseboat moorage may reduce the density below the maxi-mum allowed upon finding that:

(A) Development at the maximum density would place an undue burden on school, fire protection, water, police, road, basic utility or any other applicable service.
(B) Development at the maximum density would endanger an ecologically fragile natural resource or scenic area.

(Ord. 997, Repealed and Replaced, 10/31/2002; 953 §2, Reorg & Renum, 11/30/2000)

§ 34.6760 PARKING

(A) Two automobile spaces shall be provided for each houseboat.
(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provisions of MCC 34.4100 through 34.4220.

(Ord. 997, Repealed and Replaced, 10/31/2002; 953 §2, Reorg & Renum, 11/30/2000)

§ 34.6765 OTHER REQUIREMENTS
(A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.
(B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.
(C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.
(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg & Renum, 11/30/2000)

Taxation

In jurisdictions that do not specifically define whether a floating home is real or personal property for tax purposes, a state may look at whether the personal property has become a fixture to the land and, therefore, real property. (35A Am Jur 2d Fixtures § 70 (2008)). In looking at whether mobile homes are fixtures, courts have considered several factors, including the home's attachment to a foundation and connection to utility services. (*Id*.) Courts looking at whether a floating home is real property may consider similar factors.

The following are examples of state statues specifically addressing the taxation of floating homes:

In California, floating homes are treated as real property for tax purposes. (CAL. REV. & TAX. CODE § 229).

For tax purposes, Idaho defines floating home as "a floating structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling." (IDAHO CODE ANN. § 63-201). However, the state does not specifically state whether the floating home is real or personal property. In an example of a court looking at whether a mobile home was real or personal property, the court noted "[u]pon manufacture, a mobile home is a movable chattel and characterized as personal property. Once a mobile home is affixed to land it is converted to real property. Accordingly, a mobile home may be considered either real property or personal property under Idaho law." (*Spencer v. Jameson*, 211 P.3d 106, 110 (Idaho 2009)).

In Oregon, floating homes are subject to personal property taxation. (OR. REV. STAT. § 307.190(2)(c)). However, floating homes are levied and sold in the same manner as real property if the real property upon which the home is located is sold. (OR. REV. STAT. § 18.986).

Washington treats floating homes as personal property. (WASH. ADMIN. CODE § 458-20-178) For purposes of real estate sales, Washington treats floating homes as real property: "Real estate or real property means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land." (WASH. REV. CODE § 82.45.032) Floating homes are subject to real estate excise tax when transferred if the structure meets the definition for floating home and is listed on the real

property tax rolls of the county in which it is located. (WASH. REV. CODE § 82.32.300, 82.01.060(2) and 82.45.150; WASH. ADMIN. CODE 458-61A-105).

Whether floating homes are treated as personal or real property for tax purposes, it does not appear to affect local authority to regulate floating homes. For example, Oregon classifies floating homes as personal property for tax purposes, yet the city of Portland has ordinances regarding the construction, location, and maintenance of floating homes. (PORTLAND, OR., CITY CODE ch. 28.01, *available at* https://www.portlandonline.com/auditor/index.cfm?c=28192).

Resources

Bowling, Terra. Law and Policy Regarding Floating Homes. The University of Mississippi Sea Grant Law Center: University, Mississippi, 2009.

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Acknowledgement and Disclaimer

Disclaimer:

Language in this draft document is taken directly from local codes, county and state codes and is intended to be used for educational purposes only by the Middle Peninsula Planning District Commission, the Floating Homes Committee, and as an appendix to the final project report.

Acknowledgement:

The National Sea Grant Law Center at the University of Mississippi provided research used in this document.

Appendix B

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October 21, 2009

Lewis L. Lawrence
Director of Regional Planning
Middle Peninsula Planning District Commission
P.O. Box 286
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Re: Law and Policy Regarding Floating Homes (MASGP 09-008-12)

This product was prepared by the National Sea Grant Law Center under award number NA06OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Lewis,

Please find attached our analysis of the regulation of floating homes. The attached information is intended as advisory research only and does not constitute legal representation of the Middle Peninsula Planning District Commission or its constituents. It represents our interpretations of the relevant laws and regulations. As we understand it, the Commission would like information on how other states and localities regulate and manage floating homes within their respective jurisdictions in order to evaluate how local governments in Virginia might regulate floating homes.

State Definitions

First, I performed a search of other state laws and regulations regarding floating homes. Several states have "floating home" definitions. Some states use the term "floating home," while others use "floating house."

California defines "floating home" as a structure which is all of the following:

> *(1) It is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling.*
> *(2) It has no mode of power of its own.*
> *(3) It is dependent for utilities upon a continuous utility linkage to a source originating on shore.*
> *(4) It has a permanent continuous hookup to a shoreside sewage system.* (CAL. HEALTH & SAFETY CODE § 18075.55.)

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> *any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. 'Floating houses' include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.* (WASH. ADMIN. CODE § 332-30-106).

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Residency Laws

To address landlord-tenant issues that might arise between the owner of the floating home and floating home marina owners, some states have enacted residency laws. California has the "Floating Home Residency Law," which, among other issues, governs rental agreements, tenancy terminations, and the sale or transfer of a floating home. (CAL. CIV CODE §§ 800-800.306). Idaho also has the "Floating Homes Residency Act." (IDAHO CODE ANN. § 55-2712). And, in its regulations governing landlord and tenants, Oregon includes regulations specifically for manufactured dwelling and floating home spaces. (OR. REV. STAT. § 90.510)

Taxation

Generally, real property is "land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land." (Black's Law Dictionary, 2nd pocket edition, 564.) While personal property is "any movable or intangible thing that is subject to ownership and not classified as real property." (*Id.*) Some state statutes specifically classify floating homes as real property, while other states categorize them as personal property.

When floating homes are treated as real property, floating home owners are required to pay real estate taxes, which may be used to support municipal services, and may be required to pay taxes upon transfer of the property. In contrast, when floating homes are treated as personal property, owners would not be required to pay annual real estate taxes, but may have to pay personal property taxes.

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[1] Advisory Notice, U.S. Army Corps of Engineers, Sacramento District, Construction of Floating Homes in Navigable Waters of the United States (Apr. 2004) (on file with author).

In jurisdictions that do not specifically define whether a floating home is real or personal property for tax purposes, a state may look at whether the personal property has become a fixture to the land and, therefore, real property. (35A Am Jur 2d Fixtures § 70 (2008)). In looking at whether mobile homes are fixtures, courts have considered several factors, including the home's attachment to a foundation and connection to utility services. (*Id.*) Courts looking at whether a floating home is real property may consider similar factors.

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>
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>
> Washington treats floating homes as personal property. (WASH. ADMIN. CODE § 458-20-178) For purposes of real estate sales, Washington treats floating homes as real property: "Real estate or real property means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land." (WASH. REV. CODE § 82.45.032) Floating homes are subject to real estate excise tax when transferred if the structure meets the definition for floating home and is listed on the real property tax rolls of the county in which it is located. (WASH. REV. CODE § 82.32.300, 82.01.060(2) and 82.45.150; WASH. ADMIN. CODE 458-61A-105).

Whether floating homes are treated as personal or real property for tax purposes, it does not appear to affect local authority to regulate floating homes. For example, Oregon classifies floating homes as personal property for tax purposes, yet the city of Portland has ordinances regarding the construction, location, and maintenance of floating homes. (PORTLAND, OR., CITY CODE ch. 28.01, *available at*

https://www.portlandonline.com/auditor/index.cfm?c=28192).

Registration/Permit requirements:
Some states have registration and titling laws specifically for floating homes. For example, California has registration and titling laws for mobile homes, which includes floating homes. (CAL. CODE REGS. tit.25, § 5510; CAL. HEALTH & SAFETY CODE § 18080.2) And, New Jersey requires a permit for the mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of the state prior to June 1, 1984 do not require a permit. (N.J. ADMIN. CODE 7:7-2.3).

Local government authority:
Some states have specifically provided state agencies with authority to regulate floating homes. For example, in Florida the Board of Trustees of the Internal Improvement Trust Fund is authorized to adopt rules governing all uses of sovereignty submerged lands by vessels, floating homes, or any other watercraft, which shall be limited to regulations for anchoring, mooring, or otherwise attaching to the bottom; the establishment of anchorages; and the discharge of sewage, pumpout requirements, and facilities associated with anchorages. (FLA. STAT. § 253.03). And, in Idaho the State Board of Land Commissioners has authority to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams. Washington, D.C. has specific zoning regulations for floating homes in marinas and yacht clubs. Floating homes are allowed within a permitted marina provided that the maximum density of floating home berths does not exceed fifty percent (50%) of the total number of berths in the marina or yacht club, but may be increased by special exception. (D.C. CODE §§ 11-922, 11-923).

However, state constitutions or statutes may grant local governments authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents. This authority is often referred to as the locality's "police power." The police power provides cities with the right to adopt and enforce regulations, as long as they do not conflict with state laws. For example, the California constitution and its state statues authorize its local governments to enact regulations. (CAL. CONST. ART. XI, § 7; CAL. GOV. CODE § 65850(a)).

Virginia is a "Dillon's Rule" state. Dillon's rule "dictat[es] strict construction of municipal powers, by requiring that all local powers must be clearly traceable to some unequivocal and specific delegation from the state."[2] Virginia courts have held that local governments "have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable. Where the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable. Any doubt in the reasonableness of the method selected is resolved in favor of the locality."[3] (Only 10 states have explicitly rejected Dillon's rule: Alaska,

[2] Louis V. Csoka, *The Dream of Greater Municipal Autonomy: Should the Legislature or the Courts Modify Dillon's Rule, a Common Law Restraint on Municipal Power*, 29 N.C. CENT. L.J. 194, 195 (2007).
[3] City of Virginia Beach v. Hay, 518 S.E.2d 314, 316 (Va. 1999).

Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, and Utah.)

The following are examples of express authority for local governments to regulate and restrict the mooring and docking of floating homes:

> In Maryland, "[t]he County Commissioners of Calvert County, Charles County, and St. Mary's County are authorized to adopt and to amend from time to time a code to regulate and restrict the mooring, docking, anchoring, and installing in the waters of the respective county of any floating home, to provide for the enforcement of that code, and to provide for penalties for violations of that code." (MD. ANN. CODE art. 25, § 234A).
>
> North Carolina specifically includes floating homes in its authorization for counties to adopt zoning ordinances. (N.C. GEN. STAT. § 153A-340).

Washington's Shoreline Management Act authorizes local governments to adopt Shoreline Master Programs (SMPs). Floating homes must comply with local SMPs. For example, Seattle has rules governing the construction and use of floating homes in its SMP. (Seattle Municipal Code Chapter 23.60). The Washington Department of Natural Resources (WDNR) developed SMP guidelines to assist local governments in drafting their master programs for shoreline uses. The guidelines note, "[n]ew over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property." (WASH. ADMIN. CODE § 173-26-241). The WDNR has also developed rules on the residential use of state-owned aquatic lands. The rules limit the number of slips in the marina dedicated for residential use, unless specified otherwise by a local government. If floating homes are not grandfathered, local SMPs must reflect this. The rules also establish ways in which local governments can establish and manage open water anchorage and moorage areas for residential use. (WASH. ADMIN. CODE 332-30-171). Floating houses are not permitted in harbor areas. (*Id.* § 332-30-109). In addition to its SMP, has used its authority to establish rates for water and utility regulation (*See* Seattle Municipal Code §§ 21.33, 21.04).

The Virginia Constitution grants counties and incorporated cities general powers. VA. CONST. ART. VII, § 1. State statutes authorize cities and counties to adopt comprehensive plans. (VA. CODE ANN. §§ 15.2-2210, 15.2-2219, 15.2-2223). Cities are also authorized to enact zoning ordinances for incorporated areas and counties may enact zoning ordinances for unincorporated areas. (VA. CODE ANN. §§ 15.2-2280, 15.2-2281, 15.2-2286). It seems clear that Virginia would have authority to adopt and enforce regulations regarding floating homes through their zoning regulations, as long as they do not conflict with state laws.

State/Local Conflict

The Middle Peninsula Planning District Commission specifically asked whether the state or locality's treatment of a "floating home" as a vessel for tax purposes would conflict with a

locality's treatment of a floating home as a residence for zoning purposes. There does not appear to be a conflict between a state or locality's treatment of the floating home as a "vessel" for tax purposes and local zoning of "floating homes."

The local zoning of mobile homes provides an analogous example. Although states may classify mobile homes as personal property for tax purposes (see "Taxation" section above), and even vehicles in some instances, local governments retain the authority to regulate mobile homes. Courts generally have upheld local government regulation of the placement of mobile homes. (42 A.L.R.3d 598, 2a (2008)). In one New Jersey case regarding local regulation of a mobile home park, a court noted that "[t]he power to license and regulate under the police power, and the power to raise revenue under the general power to tax, may be 'unitedly exercised.'" (*Monmouth Junction Mobile Home Park, Inc. v. South Brunswick Township*, 107 N.J. Super. 18, 26-27 (App.Div. 1969)).

Virginia includes "manufactured homes" as tangible personal property (VA. CODE ANN. § 58.1-3503). However, the state's "Manufactured Housing Construction and Safety Standards Law" specifically provides, "[l]ocal zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect." VA. CODE ANN. § 36-85.11. And, a statute regarding the zoning powers of local government provides:

> *[a]ny locality may designate by ordinance the areas within its jurisdiction in which manufactured homes may be located or manufactured home parks may be established, notwithstanding the absence of a zoning ordinance in such locality. Such ordinance may also apply to any of the provisions of §§ 15.2-2241 through 15.2-2245 in the regulation and governing of the location, establishment, and operation of manufactured homes or manufactured home parks… In the event of irreconcilable conflict between the ordinance and state law, the state law shall supersede the ordinance.* (VA. CODE ANN. § 15.2-2247).

It seems clear that regardless of how state and a local government may classify mobile homes for tax purposes, the local government retains zoning authority.

Conclusion

Local governments in Virginia do have zoning authority, which they may exercise as long as they do not conflict with state laws. As long as vessels met a state or local definition of "floating home," the vessel would be subject to all rules and regulations that would apply to floating houses. I hope you find this information useful. Please contact me at anytime if you have additional questions.

Sincerely,

Terra Bowling
Research Counsel
National Sea Grant Law Center

Appendix C

Floating Homes

Matrix of Law and Policies from Different States

State	Definition	Policies
California	stationary waterbourne residential dwelling	Floating Homes Residency Law:
	no power itself	transfer
	continual utility & permanent sewage connection (shore)	$ real property* for tax purposes
		included as a mobile home for registration and titling
Georgia	floating vessel/watgercraft moored to dock/tree/piling or anchored estuarine waters	
	human or animal abode	
	monohulls, multihulls, houseboats, floating homes/structures	
Idaho	California Definition (almost exact)	Floating Homes Residency Act (Chapter 27):
	designed/built/modified for use as a stationary waterbourne residential dwelling	regulate and determine legal rights, remedies and obligations arising from any rental agreement between a landlord and tenant regarding a floating home moorage, except in those instances in which the landlord is renting both the moorage site and the floating home to the tenant
		state gives local specific authority thru state agencies
		$ can be personal or real property depending on mobile vs. affixed
Maryland	vessel self-propelled or not	specific counties are authorized to adopt and amend a code to regulate and restrict the moring, docking, anchoring and installing floating homes
	used/designated/occupied as dwelling unit/business/private or social club	
	AND volume coefficienct > 3000 ft^2 (ratio of habitable space in ft^3 & draft in depth (ft)	
	AND includes structure constructed on primarily immoble barge & out of	

Appendix C

Floating Homes

Matrix of Law and Policies from Different States

	OR functions substantially as land structure when moored/docked	
New Jersey	waterbourne structure designed and intended primarily permanent or seasonal dwelling	permit req'd to moor 10+ days
	not recreational vessel	grandfathered date before which permits not req'd
	remain stationary for 10+ days	
Oregon	moored structure secured to pier/pilings	regualtions for mobile and floating homes in landlord/tenant act
	AND primarily a domicile NOT a boat or floating recreation cabin	$ personal property
		levied or sold like real property IF property where located sold
Washington	designed/substantially and structurally remodeled/redesigned serves primarily as residence	$ personal property
	AND does not qualify as a vessel	real property for real estate sales purposes
	used as a residence	$ real estate excise tax when transferred if floating home AND on real property tax rolls of county where located
		local gov'ts authorized to adopt Shoreline Master Programs (SMPs) and floating homes must comply with local SMPs
		new floating homes should be prohibited but existing communities should be reasonably accomodated (Washington Department of Natural Resources)
Washington D.C.	sailboat/motorboat/floating structure designed/built/modified as waterbourne residential dwelling	
	dependent on the shore for utilities	
	tenant/owner sleeps overnight approx. 15 days/month	
North Carolina		authorizes counties to adopt zoning ordinances specific to floating homes
U.S.		must have a permit from the Army Corp of Engineers to construct/work on floating homes in navigable waters of the United States

Sacramento Branch of the Army Corp of Engineers	barge/boat/building with living quarters or recreation rooms designed to float but not power navigate as it's primary purpose

$ Tax Purposes

Common Terms: floating home, live-aboard, house boat, floating house, floating structure

Mobile Home: house trailer that can be connected to utilities and can be parked in one place and used as permanent housing or be mobile often under it's own power

Floating Home: a floating structure that is designed and built to be used, or is modified to be used, as a staionary waterborne residential dwelling (Idaho definition)

Real Property: owners required to pay real estate taxes that may be used to support municipal services and may be required to pay taxes upon transfer of the property

Personal Property: owners not required to pay annual real estate taxes but may have to pay personal property taxes

*Virginia authorizes cities and counties to enact zoning ordinances and Virginia localities would have authority to adopt and enforce regulations regarding floating homes through their zoning regulations as long as they do not conflict with state laws.

Floating Homes Residency Act (Idaho): chapter shall regulate and determine legal rights, remedies and obligations arising from any rental agreement between a landlord and tenant regarding a floating home moorage, except in those instances in which the landlord is renting both the moorage site and the floating home to the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. This chapter does not abrogate any rights the landlord or tenant has under the laws and constitution of the United States and the state of Idaho.