

OPINION NO. 91-020**Syllabus:**

1. A tract of land, for purposes of defining a manufactured home park under R.C. 3733.01(A), may include multiple parcels or lots under different ownership or multiple parcels or lots under common ownership which have been separately surveyed, whether recorded or not.
2. Multiple parcels or lots containing manufactured home sites can be considered together as constituting a tract, for purposes of defining a manufactured home park under R.C. 3733.01(A), when they occur in a contiguous area of land which was under common ownership or control at the time a third manufactured home site was created in that contiguous area, except when such parcels or lots have been separated from the original area under common control by a sale not restricting their use to the placement of manufactured homes, or, if the sale is for the purpose of installing manufactured homes, the parcels or lots for sale or sold are served by roadways dedicated to the local government authority.
3. A lot or parcel being sold on land contract for the purpose of installation of manufactured homes remains part of a tract which constitutes a manufactured home park, as defined in R.C. 3733.01(A), if it is served by roadways which are not dedicated to the local government.

To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio
By: Lee Fisher, Attorney General, April 16, 1991

I have before me your request for my opinion regarding the conditions under which land becomes subject to regulation as a manufactured home park pursuant to the provisions of R.C. Chapter 3733. As rephrased, pursuant to a discussion between members of our respective staffs, your specific questions are:

1. May a "tract" of land, for purposes of defining a manufactured home park under R.C. 3733.01, include multiple parcels or lots which are under different ownership or include more than one separately surveyed lot or parcel whether recorded or not when under common ownership?
2. If the answer to the first question is yes, when may such multiple parcels or lots be considered together as constituting a "tract" for purposes of defining a manufactured home park under R.C. 3733.01?
3. Can a lot or parcel being sold on land contract be part of a manufactured home park as defined in R.C. 3733.01?

The regulatory scheme governing manufactured home parks is set forth in R.C. Chapter 3733. R.C. 3733.01(A) defines a manufactured home park as follows:

"Manufactured home park" means any tract of land upon which three or more manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of such park. *A tract of land which is*

subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots is not a manufactured home park even though three or more manufactured homes are parked thereon if the roadways are dedicated to the local government authority.

"Manufactured home park" does not include any tract of land used solely for the storage or display for sale of manufactured homes. (Emphasis added.)

Pursuant to R.C. 3733.02(A), the public health council is granted "exclusive power to make rules of general application throughout the state governing the issuance of licenses, location, layout, construction, drainage, sanitation, safety, lie-downs, and operation of manufactured home parks."¹ R.C. 3733.03(A) provides that "every person or governmental entity that intends to operate a manufactured home park...shall procure a license" on an annual basis. Issuance of the initial and subsequent licenses is conditioned on compliance with the requirements of R.C. Chapter 3733 and the rules adopted thereunder. R.C. 3733.03(B); *see also* 4 Ohio Admin. Code 3701-27-05(A) ("[n]o person, firm, governmental entity or corporation shall provide or install a [manufactured home]² park or make a change or addition...until the proposed [manufactured] home park site has been inspected and approved...and the plans therefore have been submitted to and approved by the director"). The rules promulgated pursuant to R.C. 3733.02(A) set forth requirements, *inter alia*, for minimum lot sizes, placement of manufactured homes on the lots, establishment of internal streets and parking, and provision of a water supply system, sewage and sanitation system, and electrical systems to service the entire park. *See generally* 4 Ohio Admin. Code 3701-27-06 to 3701-27-26.

I note that all three of your questions revolve around the meaning of the word "tract," which is used in R.C. 3733.01(A) to describe the area of land which constitutes a manufactured home park. "Tract" is not defined therein, however. The issues raised by your questions arise because, as a descriptor of a particular expanse of land, "tract" is commonly used in several different ways. This is also true of the words "parcel" and "lot," which appear in your questions. Before proceeding to your questions, therefore, I will first review some of the pertinent variations in the use of these terms.

The word "lot" has been defined as "a parcel of land occupied or to be occupied by one building...[The parcel] may be land so recorded on a plat of record or considered as a unit of property and described by metes and bounds." *State ex rel. Union Limestone, Inc. v. Bumgarner*, 110 Ohio App. 173, 175, 168 N.E.2d 901, 903 (Union County 1894). "Lot" is frequently used, however, to refer specifically to units of property in a municipality or platted subdivision, which are identified by the number assigned on a recorded plat or survey rather than by a metes and bounds description. *See, e.g.*, R.C. 711.001-.02; R.C. 711.28.

¹ Enforcement authority is vested in the boards of local health districts approved for this purpose by the director of the department of health. *See* R.C. 3733.01(I); 3733.031.

² I note that prior to 1984, manufactured home parks were referred to as house trailer parks. *See* 1983-1984 Ohio Laws, Part I, 790 (Am. S.B. 231, eff. Sept. 20, 1984) ("[a]n Act...to replace throughout the Revised Code the definitions of 'house trailer' and 'house trailer park' with new definitions of 'manufactured home' and 'manufactured home park'"). The Ohio Administrative Code uses the term "mobile home," which is defined as "a house trailer as defined in section 4501.01 of the Revised Code." 4 Ohio Admin. Code 3701-27-01(G). R.C. 4501.01, which pursuant to Am. S.B. 231 now uses the term "manufactured home," also provides the definitional base used in R.C. Chapter 3733. *See* R.C. 3733.01(D). The technical distinctions between the actual housing units referred to by these terms is not relevant to this opinion. For consistency, therefore, I have used the term "manufactured home" throughout.

The word "parcel" may be used generally to describe "a piece, as of land, usually a specific part of a larger acreage or estate." *Webster's New World Dictionary*, 1032 (2nd college ed. 1984). "Parcel" is also used in a more specific sense to identify a single, individually taxed unit of land as it appears on the tax list. *See generally* R.C. 319.28 (permanent parcel numbering system). The words "tract" and "lot" sometimes appear with or instead of "parcel" in the tax listing statutes. *See, e.g.*, R.C. 319.20; R.C. 319.28; 319.30; 319.52. In this context, both "tract" and "lot" also mean a single taxed unit of land (or "parcel"), with "tract" referring to parcels described by metes and bounds and "lot" referring to parcels identified by lot numbers on recorded plats.

When used standing alone in other statutory schemes, the meaning of the word "tract" may also sometimes be limited to a single, individually taxed unit of property, either by express definition, *see, e.g.*, R.C. 1509.01(J) (definition for purposes of regulation of oil and gas wells), or by implication from its use in the context of taxation, *see, e.g.*, *Magennis v. Myers*, 93 Ohio App. 489, 114 N.E.2d 172 (Summit County 1952), *aff'd*, 158 Ohio St. 405, 109 N.E.2d 849 (1952) (interpreting G.C. 5752 (now R.C. 5723.06) governing sale of lands forfeited for nonpayment of taxes). "Tract" also has a broader meaning, however, which is often encountered in reference to land development and subdivision schemes. In this context, "tract" refers to an expanse of land comprised of smaller, contiguous lots or parcels within its boundaries. *See, e.g.*, *Emrick v. Multicon Builders, Inc.*, 57 Ohio St. 3d 107, 109, 566 N.E.2d 1189, 1193 (1991) ("[k]nowledge that a restriction applies to some lots in a tract does not constitute actual knowledge that those same restrictions apply to other lots within the same tract" (emphasis added)); *Columbia Oldsmobile, Inc. v. City of Montgomery*, 56 Ohio St. 3d 60, 564 N.E.2d 455 (1990) (considering the effect of zoning on a land owner's plans for development of a "combined 16.6-acre tract" composed of two separately acquired "parcels"); *In re Estate of Clark*, 74 Ohio Law Abs. 460, 464, 141 N.E.2d 259, 262 (P. Ct. Ross County 1955) ("farm" defined as "a considerable tract of land" used for farming, which "may include less than one lot or comprise several lots or parts of lots"), *aff'd*, 102 Ohio App. 200, 141 N.E.2d 890 (Ross County 1956). The boundaries of a "tract," in this broader sense, are generally determined by common ownership or control over the entire land expanse at the time of development, even though that area may have been in the past or may currently be composed of identifiably separate parts. It is also possible, however, for the boundaries of a "tract" to be defined by some common usage or feature totally unrelated to the ownership of the parts therein. *See, e.g.*, *Ketchel v. Bainbridge Township*, 52 Ohio St. 3d 239, 557 N.E.2d 779 (1990) (using the word "tract" to refer to a 256 acre area owned by numerous appellants but unified by a single zoning classification), *reh. denied*, 53 Ohio St. 3d 718, 560 N.E.2d 779, *cert. denied*, 59 U.S.L.W. 3581 (U.S. Feb. 25, 1991); R.C. 5709.61(A)(1)(f) (referring to "census tracts").

From the above, it can be seen that the word "tract" might refer to a single, individually taxed unit of property, to a continuous expanse of land under single ownership but composed of multiple units of land, or to a contiguous expanse of land composed of multiple units of land owned by more than one entity. Thus, use of the word "tract" does not in and of itself either include or exclude units of land identified by use of the words "parcel" or "lot." *See generally Lakewood Homes, Inc. v. Board of Adjustment*, 25 Ohio App. 2d 125, 135, 267 N.E.2d 595, 601 (Allen County 1971) ("unless precisely, internally described, a tract is an indefinite area either large or small"). In the absence of definition, therefore, the meaning of the word "tract" must be derived from the context of the statutory scheme in which it appears.

I turn now to your first question, which asks:

May a "tract" of land, for purposes of defining a manufactured home park under R.C. 3733.01, include multiple parcels or lots which are under different ownership, or include more than one separately surveyed lot or parcel whether recorded or not when under common ownership?

The language of R.C. 3733.01(A) taken as a whole utilizes the word "tract" in the context of the development or subdivision of an area of land for use by three or

more inhabited manufactured homes. The definition of manufactured home park clearly contemplates that a "tract" might be composed of smaller units of land and still constitute a manufactured home park. This is particularly apparent from the nature of the single exception to the definition of manufactured home park, which provides that "if the roadways are dedicated to the local government authority," a tract "which is subdivided and the individual lots...are for sale or sold...is not a manufactured home park." R.C. 3733.01(A). It is axiomatic that exceptions not made cannot be read into a statute and that "what is not clearly excluded from the operation of a law is clearly included therein." *Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711, 712 (1946). See generally *Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969, 972 (1910); *Lima v. Cemetery Ass'n*, 42 Ohio St. 128 (1884). Accordingly, when the requirement of three or more manufactured homes is met, a "tract" is a manufactured home park either when it is subdivided and the individual lots are for rent or rented or when it is subdivided and the individual lots are for sale or sold and the roadways are not dedicated to the local government authority.

Since lots in a "tract" may be sold, obviously R.C. 3733.01(A) does not require the entire tract to be held by one owner or to be a single, individually taxed unit of land. The fact that lots in a tract may be rented indicates further that the tract may be composed of multiple units of land under common ownership. I note additionally that when an owner makes portions of a larger area of land available for rental, there is no requirement that the boundaries of the rental area be established in a particular way. The boundaries will be as described in the rental agreement. The owner may describe the rental area by physical characteristics, by metes and bounds, by reference to an unrecorded survey conducted by the owner, or by reference to previously recorded conveyances, surveys, or plats.³ Under R.C. 3733.01(A), a manufactured home park can include a "tract" which is subdivided and the individual lots are for rent or rented, without exception for any particular type of lot. Accordingly, the method by which an owner establishes the boundaries of such lots is not relevant to whether the lots remain part of the "tract." I conclude, therefore, in answer to your first question, that a tract of land, for purposes of defining a manufactured home park under R.C. 3733.01 may include multiple parcels or lots under different ownership or multiple parcels or lots under common ownership which have been separately surveyed, whether recorded or not.

This conclusion is consistent with the result reached in 1977 Op. Att'y Gen. No. 77-038 at 2-134, where one of my predecessors stated, "[t]he definition [of manufactured home park] applies to any site, lot, field or tract of land and does not include the express limitation that the site, lot, field or tract of land be owned by a single entity." At that time, the pertinent provision of R.C. 3733.01 defined a manufactured home park as "any site, lot, field or tract." See 1963 Ohio Laws 857, 1746 (Am. H.B. 479, eff. Sept. 16, 1963). You express concern that the reduction of this phrase to the word "tract" standing alone, see 1977-1978 Ohio Laws, Part II, 3483 (Am.H.B. 820, eff. Sept. 25, 1977), implies that land identified as a "lot" can no longer be considered part of a "tract" for purposes of R.C. 3733.01. The reasoning of Op. No. 77-038, however, was not dependent on the phrase "site, lot, field." The conclusion that a "tract" might be composed of "lots" under multiple ownership, was based, *inter alia*, on the following language of R.C. 3733.01, which provided that "[a] tract of land which is subdivided and the individual lots are leased or otherwise contracted for shall constitute a house trailer park if three or more house trailers are parked thereon." See Am. H.B. 479. As stated by my predecessor, this language "expressly provides that the tract of land may be subdivided and that the occupants of a house trailer park may be in possession by

³ The Revised Code provides for acknowledgment and recording of leases of interests in real property. See R.C. 317.08(E); R.C. 5301.01. A recorded lease must contain a reference to the record of the deed or instrument by which the lessor claims title to the leased area. See R.C. 5301.011. This does not alter the fact that the boundaries and use of the leased area are controlled by the lessor. The recording of a lease does not effect an amendment of the tax list or any recorded plat with respect to "parcels" or "lots" delineated therein.

virtue of a gratuitous license, a lease or other contract." Op. No. 77-038 at 2-134. The statutory language relied on in Op. No. 77-038 has since been replaced by the current exception for a "tract...which is subdivided and the individual lots...are for sale or sold...if the roadways are dedicated to the local government authority." See Am. H.B. 820. As shown by the preceding discussion, however, the exclusion of this particular type of tract from the definition of manufactured home park also implies the inclusion of other types of tracts which have been subdivided into lots. Thus, the deletion of the phrase "site, lot, field" cannot be interpreted as excluding land identified as being a "lot" or "lots" from the meaning of the word "tract" as used in R.C. 3733.01.

I turn now to your second question, which asks, "when may such multiple parcels or lots be considered together as constituting a 'tract' for purposes of defining a manufactured home park under R.C. 3733.01?" Having ascertained that a "tract" may be composed of multiple parcels or lots created by recorded or unrecorded surveys and under common or separate ownership, it cannot be further said that such factors are totally irrelevant when defining the boundaries of a tract. R.C. Chapter 3733.01(A) provides that the placement of one or two manufactured homes on a "tract" does not create a manufactured home park. Thus, R.C. Chapter 3733 does not contemplate that an individual property owner who places one or two manufactured homes on his property should be subjected to regulation as a manufactured home park merely because adjacent property owners have also placed manufactured homes on their property. Inherent in your question is recognition of the fact that the local health authority cannot simply group identifiably separate units of land until an area containing three or more manufactured home parks is achieved and arbitrarily designate that area as a "tract" which is a manufactured home park. There are numerous patterns of conveyances and rental arrangements which can result in individual manufactured home sites springing up next to each other, particularly in areas where no local subdivision or zoning regulations intervene to control the development and use of land.⁴ As reflected in discussions between members of our staffs, sometimes such development occurs over a period of time, with no apparent pattern or intent, and at other times there appears to have been an effort by a landowner or developer to circumvent the application of R.C. Chapter 3733 by conveying contiguous lots to new owners, who then rent these smaller areas to the occupants of manufactured homes. The result is that if the larger combined area can be considered a "tract," it has sufficient manufactured home sites to constitute a manufactured home park, but if the smaller units of land are considered as "tracts" in their own right, none of the smaller units qualify.

The question of when multiple lots or parcels can be considered together as a tract can be answered by examination of the regulatory scheme established under R.C. Chapter 3733. The effect of these regulations, considered in light of the definition of manufactured home park, is to impose a requirement that, when three or more manufactured homes are located on a "tract", that the entire "tract" be developed as a unit. This is accomplished by requiring licensure and by conditioning the issuance of a license on establishment of an infrastructure adequate to support the number of manufactured home sites created on the "tract." See generally R.C. 3733.03; 4 Ohio Admin. Code 3701-27-06 to 3701-27-26. Once the "tract" becomes subject to regulation as a manufactured home park, this regulation is ongoing, see 4 Ohio Admin. Code 3701-27-05(A) (requiring approval of changes and additions), unless the tract is divided as described in the exception provision of R.C. 3733.01(A).

From the above it can be seen that the boundaries of the "tract" must be set at the time division for use by three or more manufactured home occurs, either by actual use or the creation of sites specifically for that purpose. The regulatory

⁴ Local subdivision and zoning regulations will control if and how manufactured homes may be placed outside of manufactured home parks. The interaction between local regulation and R.C. Chapter 3733, with respect to the placement of manufactured homes in manufactured home parks, is discussed in 1981 Op. Att'y Gen. No. 81-097 and 1972 Op. Att'y Gen. No. 72-020.

scheme contemplates the licensure of an "operator" at that time to insure proper development of the "tract." See R.C. 3733.01(M). "Operator" is defined at 4 Ohio Admin. Code 5701-27-01(L) as "the person, firm, governmental entity or corporation who is in responsible charge of the operation of a [manufactured] home park or who, if there is no one in responsible charge, allows the property to be used for placement of [manufactured] homes." It follows therefore that, for purposes of R.C. 3733.01(A), a "tract" is a contiguous area of land under the developmental control of a single entity and that the "tract" becomes a manufactured home park when that entity allows the actual placement of three or more manufactured homes, or division of the area for purposes of installing three or more such homes.

Rental agreements which divide a commonly held area of land do not alter the fact that the lessor is ultimately responsible for whether three or more manufactured home sites occur within the commonly held area. The lessor may compel such development by leasing a small area specifically for the development of one or more manufactured home sites or may simply allow such development by not prohibiting lessees from placing manufactured homes in the leased areas. In either event, R.C. 3733.01(A) does not provide any exception from the application of the manufactured home park regulations for tracts which are subdivided by rental agreements.

Actual conveyance of portions of a commonly held "tract," however, destroys unity of control in a way that rental does not. Nonetheless, the owner of a tract may still effectively control the development of the entire tract by conveying smaller portions thereof subject to the restriction that these smaller areas be developed as manufactured home sites. Accordingly, R.C. 3733.01(A) provides that the subdivision of land into manufactured home sites for purposes of sale does not exempt the owner or developer from the manufactured home park regulations, except in the limited instance where the roadways serving the sites are dedicated to the local government authority.

This analysis is consistent with the result reached in Op. No. 77-038 which held that sale of lots from a tract developed as a manufactured home park does not remove the lots from the original tract when the sale restricts such lots to use as manufactured home sites. That opinion focused on land use as the distinguishing characteristic of a manufactured home park, further explaining that "there is an ongoing relationship between the park and the individual lot owners....Thus, although the tract has been subdivided for purposes of transferring ownership, the individually owned lots can still function for many practical purposes only as a total development." Op. No. 77-038 at 2-134. As the preceding discussion demonstrates, the ongoing relationship between the individual sites and the larger area is imposed by the regulatory scheme itself on any contiguous area of land under unitary control. Accordingly, the boundaries of a "tract" for purposes of defining a manufactured home park, cannot be determined by examining the current ownership and rental divisions of an area of land where manufactured home sites occur next to each other. Rather one must determine the boundaries of the "tract" from the extent of the area under unitary control at the time the third manufactured home was parked thereon or at the time it was divided into three or more manufactured home sites. This area remains a tract which is a manufactured home park despite subsequent division for purposes of rental or conveyance unless its boundaries are altered by unrestricted conveyance or by the conveyance of lots restricted to use by manufactured homes when the roadways serving such lots are dedicated to the local government. Stated alternatively, multiple parcels or lots containing manufactured home sites can be considered together as constituting a "tract," for purposes of defining a manufactured home park under R.C. 3733.01(A), when they occur in a contiguous area of land which was under common ownership or developmental control at the time a third manufactured home site was created in that contiguous area, except when such parcels or lots have been separated from the original area under common control by a sale not restricting their use to the placement of manufactured homes, or, if the sale is for the purpose of installing manufactured homes, the parcels or lots for sale or sold are served by roadways dedicated to the local government authority.

I turn now to your third question, which asks "can a lot or parcel being sold on land contract be part of a manufactured home park as defined in R.C. 3733.01?"

Pursuant to R.C. 5313.01(A), a land installment contract is "an executory agreement...under which the vendor agrees to convey title in real property located in this state to the vendee and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation." The purpose of a land contract is clearly the sale, rather than rental, of the property in question, even though the property is not "sold" until the buyer has fulfilled the obligations of the contract and the title is transferred. See 1973 Op. Att'y Gen. No. 73-042 at 2-165 (examining the effect of land contract conveyances on a manufactured home park under the then existing language of R.C. 3733.01(A)). I conclude that property under land contract is "for sale" within the meaning of R.C. 3733.01(A), which excepts sales only when the roadways are dedicated to the local government authority. Accordingly, a lot or parcel being sold on land contract remains part of the tract which constitutes a manufactured home park if it is served by roadways not dedicated to the local government authority.

It is, therefore, my opinion and you are hereby advised that:

1. A tract of land, for purposes of defining a manufactured home park under R.C. 3733.01(A), may include multiple parcels or lots under different ownership or multiple parcels or lots under common ownership which have been separately surveyed, whether recorded or not.
2. Multiple parcels or lots containing manufactured home sites can be considered together as constituting a tract, for purposes of defining a manufactured home park under R.C. 3733.01(A), when they occur in a contiguous area of land which was under common ownership or control at the time a third manufactured home site was created in that contiguous area, except when such parcels or lots have been separated from the original area under common control by a sale not restricting their use to the placement of manufactured homes, or, if the sale is for the purpose of installing manufactured homes, the parcels or lots for sale or sold are served by roadways dedicated to the local government authority.
3. A lot or parcel being sold on land contract for the purpose of installation of manufactured homes remains part of a tract which constitutes a manufactured home park, as defined in R.C. 3733.01(A), if it is served by roadways which are not dedicated to the local government.