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KEY NEGOTIATING ISSUES

As a manufacturer negotiating with a builder/developer on a project, certain issues must be carefully considered. You should understand the needs of the builder/developer, which of those needs are negotiable, and how to create a project that is mutually beneficial. Design and construction issues, financing, and dealer involvement are all negotiating points.

DESIGN AND CONSTRUCTION ISSUES

Unit Design

In most cases, builder/developers want manufactured home designs that are aesthetically and spatially similar to site-built homes. While some residential development manufactured home projects are quite elaborate and clearly high-end, the focus of this guidebook is to foster the use of manufactured housing to fill the needs of most home buyers. The market niche most developers are looking to fill with manufactured units is buyers looking for a home under \$100,000 that meets the aesthetic, durability, and spatial criteria expected by home buyers familiar with site-built homes. The MHP has not historically dealt with this client base, but instead with one that is familiar with traditionally-designed manufactured housing.

Adapting the Product to the Market

In most cases builder/developers will want to make changes to your standard product to satisfy the wants of the first-time home buyer in the site-built market. Typically, manufactured homes may require some redesign. Extensive surveys of site-built home buyers are conducted by trade associations and trade journals. Their findings are carefully considered by many site builder/developers and (along with the builder/developer's own market research) dictate everything from whether there is a pantry in the kitchen to whether steel studs are preferred to wood. Much of this information is relevant to the MHP interested in working with a site builder/developer. MHPs who can provide units that address the perceived needs of the site-built home buyer can expand their market for affordable housing under \$100,000.

An important tool to keep the base price of homes low while addressing consumer wish-lists

is the option package. Moving some of the features expected by site-built customers into an option package allows more of the standard HUD-Code details to be part of a base-case home, lowering its price. An option package has the additional advantage of covering the cost to the MHP of stocking and tooling up for features such as all-wood trim, rabbeted door hinges, etc.

Design Development

Responsibility for the re-design of manufactured homes for this new market often lies with the builder/developer. The more familiar they are with the manufacturing process, the smoother the design will proceed. The manufacturer should familiarize the builder/developer with the capabilities and limitations of the plant before designs are developed. The builder/developer may use a manufacturer's existing design as a point of departure, working within design and manufacturing constraints inherent to HUD-Code homes. Coordination between the builder/developer's designer and the manufacturer is crucial. Educating the builder/developer's architect about HUD-Code construction may be necessary. An architect already familiar with HUD-Code construction will move the project forward faster than a novice.

In projects that will use site-built components, the manufacturer should ask about any structural loads on, and construction junctions with, the manufactured unit. The manufacturer can also indicate which components of the home are efficiently produced in the plant and which should be built on site.

A good strategy for a manufacturer entering the site-built market is to become familiar with cost-saving measures widely used by large site builder/developers. Educating a potential builder/developer partner to proven cost-saving measures used by his or her competitors can help establish rapport during a negotiation.

Floor Plan Flexibility

Because site-built homes have fewer structural and dimensional constraints than manufactured homes, a wider range of plans is commonly available. A builder/developer is likely to have particular floor plans in mind. It is crucial to address the consequences of floor plan decisions

early in the negotiations, since many plan arrangements can be difficult for MHPs to accommodate. HUD-Code plans may differ from typical site-built plans in several ways:

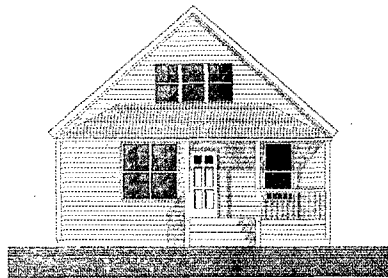
- *A basement stair cuts across the chassis beam.* Only perimeter-supported floor structures, such as the proprietary Lindsay floor system, allow a transverse stair opening. The vast majority of MHPs use longitudinal interior chassis beams, which require that stair openings run parallel with the beams. If the plan cannot be changed and you do not have (or cannot readily develop) a perimeter chassis design, you may lose a potential project.

- *The master bath is located at the end of the floor, at the far end of the master bedroom.* This is an unfamiliar pattern in site-built homes, but is a space-saver commonly used in HUD-Code homes. This concept may be a good sales tool in the manufactured home market, but it might be a "turn-off" for the builder/developer's customers, who expect the master bedroom to have windows on two walls.

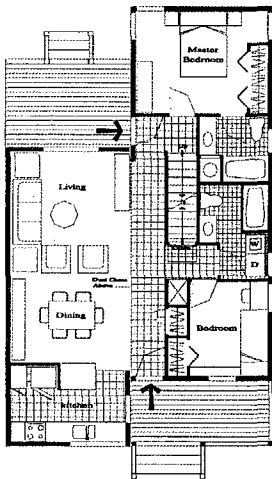
- *Gable end entry.* Many infill projects on narrow lots require an entry on the short side of the home. This can be seen in the Urban Design Project case studies. More manufacturers are adding gable-end entry plans to their lines. If you do not have such a design, it may be worthwhile developing one. Combining a gable-end entry with a steep roof pitch creates the archetypal image of a "home" often desired. This configuration also allows you to provide a front porch as part of a section, or as a site-built add-on.

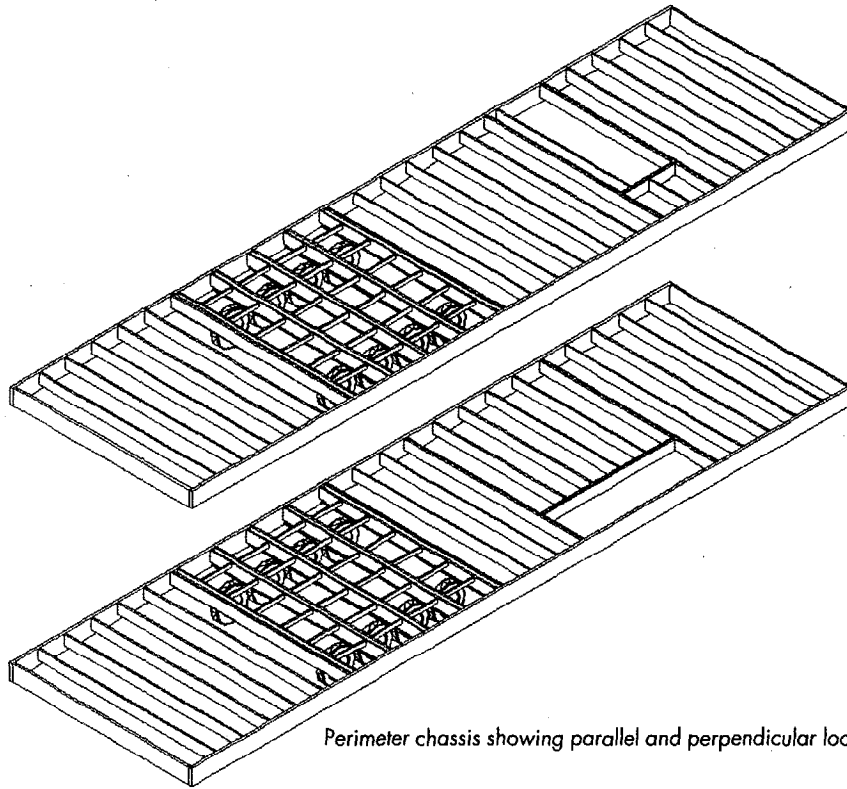
- *Unit size and standard doors may be inadequate.* Compared to the model codes, the HUD Code allows narrower doors and corridors, smaller rooms, and lower ceilings. These are likely to be undesirable for customers used to site-built homes. But widening corridors and doors can cause many plans to "blow up," because crucial dimension strings no longer work. For example, it may be possible to squeeze two baths and a narrow corridor side-by-side into a nominal 14' floor with 6" exterior walls; widening the corridor may make the configuration impossible.

- *The garage may need to be closely integrated with the plan.* Most site-built houses have an attached two- or three-car garage, typically placed at the front, (but increasingly moved to the side or back for aesthetic reasons). Unfortunately, few HUD-Code plans make provisions for an attached garage. In some very tight infill situations, or in low-cost housing, it may be



Gable-end entry design.





Perimeter chassis showing parallel and perpendicular location of stair opening.

acceptable to omit the garage.

Although a number of changes to your product may be required to meet the needs of a builder/developer, the payoff can be significant. Along with increased market share, there may be fewer zoning limitations and more seamless integration within existing neighborhoods. In addition, differentiating your product gives you a competitive edge.

Basic Construction

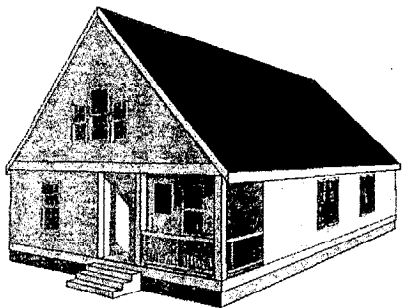
Some of the standard construction HUD-Code practices and materials that may require modification include:

- *Particle-board floor deck.* Most site builder/developers would not consider using anything

but OSB or plywood, and may not accept particle-board out of concern for potential damage under leaky fixtures.

- *2x3 walls.* This is probably negotiable if acoustics are acceptable, and might be a cost-saving measure of interest.

- *No sheathing on exterior walls.* Builder/developers who use plywood or OSB may accept 1/8" wood fiber sheathing, since it is widely used by larger builder/developers. Omission of the sheathing altogether may be more of a challenge.

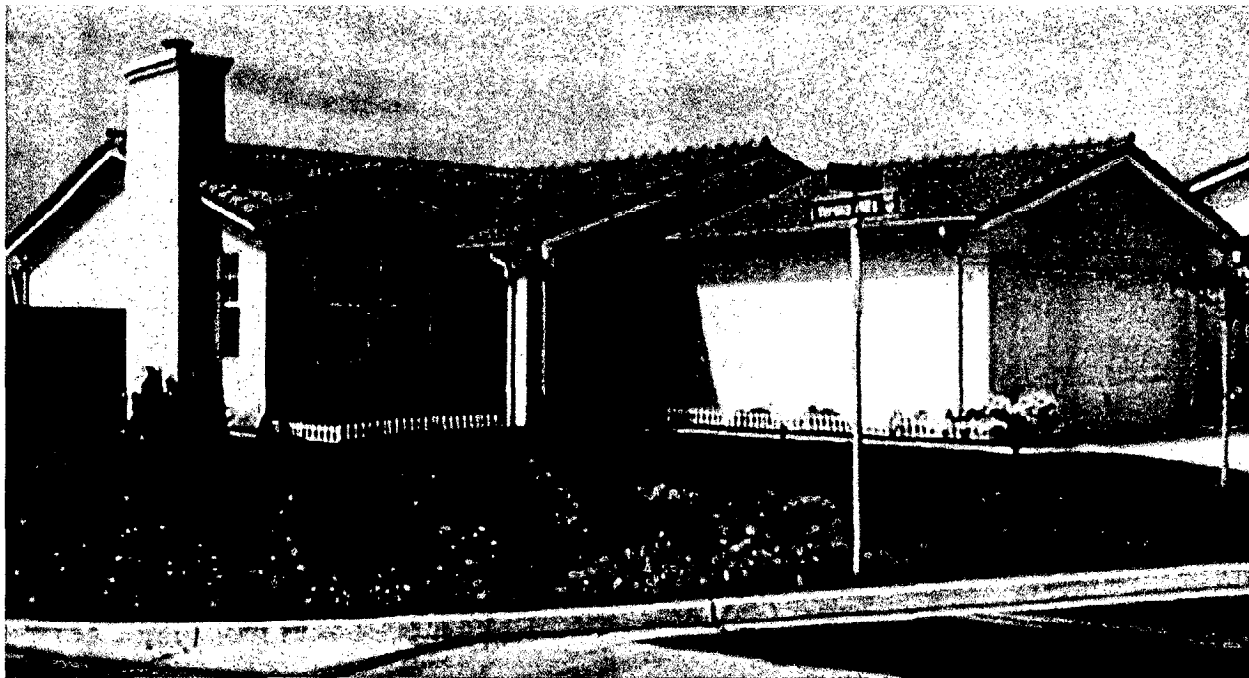


NextGen House, Danbury, CT
Steven Winter Associates, Inc.

Steeply Pitched Roofs

Nothing says "house" more than a pitched roof. The low roof pitch typical of HUD-Code homes is probably their single most objectional feature, as reflected by the many jurisdictions that require minimum roof pitches. Assuming the potential builder/developer customer insists on roof pitches steeper than you normally provide, there are still many avenues open for negotiation.

Many site-built homes have a 5-in-12 roof pitch, although steeper roofs are characteristic of many older urban neighborhoods (and will likely be required for infill housing in such areas).

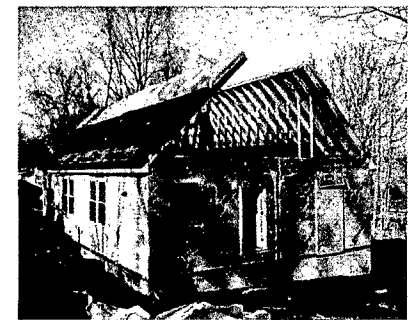


Here the garage is incorporated with the home plan and provides a sheltering wall for the building entry.
Steve Hullibarger, The Home Team

A 5-in-12 pitch can often be accommodated with a tilt-up or folded roof. The builder/developer may be sensitive to apparent breaks in the roof at fold joints, and may expect continuous underlayment at these joints. This might require a change in hinge details and on-site construction to avoid waviness. Hip roofs are very popular with consumers. Development of a hip roof may improve an MHP's hold in the builder/developer market, although potential complexities of installation and finishing should be carefully considered. A hip roof must be shipped with sheathing and a temporary weatherproof membrane. The entire hip area would be shingled on site. Further, the match of sheathing from side to side should be flawless, to avoid a telltale ridge or bump at the roof marriage line.

Truss construction is widely acceptable, and usable attic space is not a high priority for most builder/developers except in markets where expansion space is desired enough to justify the extra cost. However, as the roof becomes steeper, up to 12-in-12, a large, potentially valuable, space results. If unused, there will be large, windowless gables. A blind window can be installed (blind dormers are commonplace in contemporary townhouses in the Mid-Atlantic region) as long as some effort is made to obscure the view of roof trusses through the window. In most cases creating an occupied second floor totally changes the structure of a HUD-Code home to that typical of modular construction. MHPs who build convertible modular/HUD-Code designs will be able to accommodate a usable second floor, but at a price.

You may want to compare the cost of building expansion space in the basement, along with a steeply-pitched trussed roof, versus building over a conventional basement, crawl space, or slab, and creating expansion space under the roof. Note that an enclosed stair to the basement can be inconspicuously included almost anywhere in a plan, whereas a stair to a second floor creates a substantial element that occupies space and blocks views. Light wells can provide light and required egress to a basement. If a project with a basement is built within the jurisdiction of the Uniform Building Code, it is required to have window wells, windows, ventilation, and egress for habitable space (although this provision is absent from the International Code that will soon replace all the model codes).



Tilt-up roof on NextGen House
in Danbury, CT.
Steven Winter Associates, Inc.



Two story design in New Colony Village, Elkridge, MD.

Two-Story Homes

The most radical departure from conventional HUD-Code construction is a full two-story home, built by stacking crane-set units. Few MHPs are set up to build such designs, and they are likely not to be cost-competitive with site-built or modular homes of the same design. However, if one or more of the other advantages of HUD-Code construction are driving the project, a full two-story design may be a market asset. For very narrow infill lots, a two-story single-wide design may be required. Two-story designs have been used in higher-end projects (such as New Colony Village) and on urban infill lots (such as the MHI Louisville Urban Design Project).

Foundations

For the most part builder/developers require that homes be set on perimeter foundations. According to the Bureau of the Census, Manufacturing and Construction Division, 21% of double-section units were placed on permanent masonry foundations in 1997. This is typically done by reinforcing the outriggers and fastenings so the floor will span the width, and holding the outriggers back from the outside to allow a perimeter foundation. This may not be cost-effective for a crawlspace, where piers can be poured or stacked at low cost, but may make sense for homes set on basements, as an alternative to a heavier floor with a perimeter frame. In a basement set, few if any builder/developers want a forest of supports under the interior chassis beams, or will assume the extra cost of carrying the chassis beams on transverse structural members. The more efficient solution is to provide a perimeter load-bearing chassis.

Conventional concrete block piers and strap tie-downs mounted on a full concrete slab provide an excellent and economical foundation. If properly drained and reinforced, the slab can float, avoiding costly frost walls and accommodating expansive clay soils. For shallow frost depths, the edges of the slab can be turned down below the frost line. Anchors can easily be cast into the slab to receive strap tie-downs. The anchors need to be properly embedded and reinforced, and the slab must be heavy enough to resist uplift loads applied through the tie-down straps. The slab can be made in transverse strips to cut costs. More economical longitudinal strip slabs do not work well, as they seldom provide the necessary anchorage for the tie-downs that are required for HUD-Code homes. It is not possible to set the home directly on the

slab, as this does not allow access under the home for maintenance and utility connections.

With a conventional pier and tie-down set (whether on a slab or not), the traditional vinyl or metal skirting enclosing the crawl space can be replaced by brick, masonry, or precast concrete skirting, at a substantial cost. However, for only a small additional amount, a permanent perimeter foundation can be built, using a frost wall with footings below the frost line.

Permanent foundations provide major advantages:

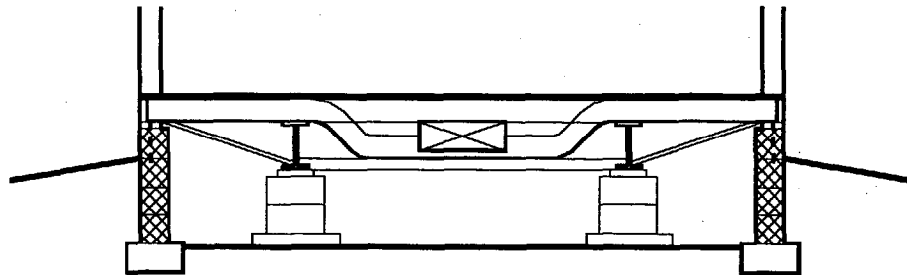
- Wind and earthquake bracing are possible without the use of strap ties.
- The home can qualify for a conventional mortgage and FEMA flood insurance.
- The appearance of the foundation is more like that of a site-built home.
- All loads from the roof and outside walls pass directly into the foundation, instead of resting on cantilevered floor joists and outriggers.
- No additional perimeter piers are necessary to carry loads across large door openings.

Interior piers can either be eliminated or can be set directly on footings at grade level, as in conventional construction.

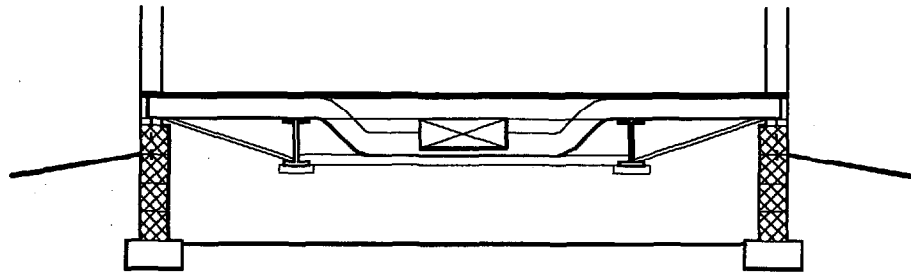
- The cost to warrant homes on permanent foundations may actually be less, as compared to units set on stacked blocks.

For further assistance in the design of permanent foundations for manufactured homes, HUD's *Permanent Foundation Guide for Manufactured Housing* software is available on line at <http://www.huduser.org/publications/destech/permfound.html>.

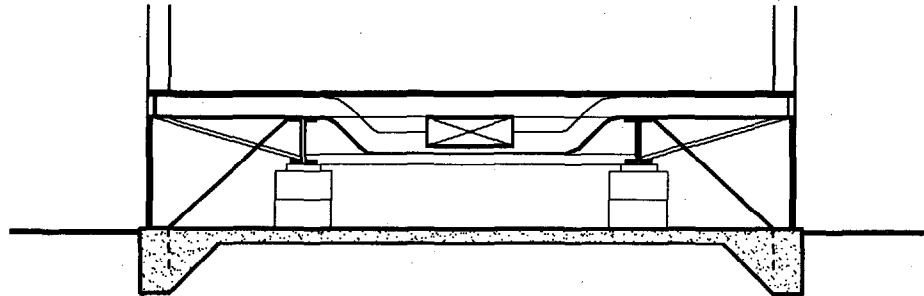
It is very important to explain to the builder/developer that the foundation for a manufactured unit must be precise. When stick-building a house, it is relatively easy for carpenters to adjust for errors in the foundation. You would not want to run the risk of having a HUD-Code unit



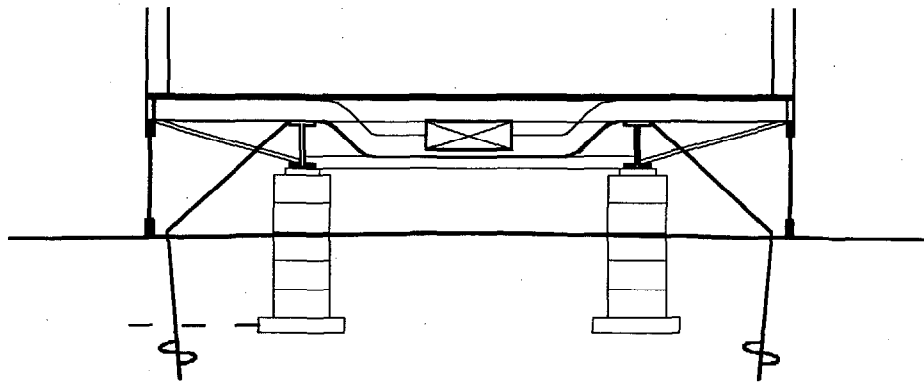
Permanent perimeter foundation with interior piers.



Permanent perimeter foundation without interior posts.



Pier and tie-down foundation on full concrete slab or transverse strip slabs.



Conventional pier and tie-down foundation.

perform poorly because it is set on an inaccurate foundation. To achieve an accurate foundation, you should suggest the following to the builder/developer:

- Stake out and measure the foundation precisely.
- Use a laser or a water level to make sure that the top of the concrete forms or blocks rep-

resents a flat, level surface around the perimeter.

- Build the foundation exactly to the outside dimensions of the manufacturer's floor joists, disregarding the thickness of the exterior siding.
- Brace the forms adequately to prevent movement.

Eaves and Gable-End Overhangs

Extended eaves are desired by most builder/developers. Some styles require substantial gable-end overhangs, which are not commonly provided in HUD-Code homes. Eaves attached on site or that fold down provide the depth associated with site-built homes. However, confirm that the standards of straightness for a fold-down eave are acceptable to the developer. It may be easier to site-build the eaves once the home is in place to insure the required level of true-ness. See the section in Chapter 3 on site-installed eaves for more on this subject.

Ceiling and Sidewall Height

Builder/developers are accustomed to 8'-0" sidewalls and many markets require 9'-0" walls. An increase from the standard 7'-6" for HUD-Code homes to 8'-0" is highly desirable to meet growing market demands for higher walls and to capture the builder/developer market.

The strongest incentive in favor of staying with lower sidewalls is to provide vaulted ceilings, which are attractive to most customers. This option is obviously not available with an occupied second floor, which typically has sidewalls and ceilings close to 8'-0".

Doors

Whether or not conventional HUD-Code doors will be acceptable to the buyers should be decided by the builder/developer. Providing documented evidence that HUD-Code doors with surface hinges are not a major source of consumer complaints might convince a builder/developer to try this cost-saving measure. Although many of the higher-end manufactured homes now have standard plate hinges, many are mortised into the jamb or the door, but not both. The MHP may need to add conventional doors to compete in the builder/developer market. Many other details concerning doors should be discussed with the builder/developer, includ-

ing undercutting versus transfer grilles for return air, finishes, and hardware.

Except on extremely stiff floors, doors and door frames tend to be out of plumb after the sections are set. It makes sense to consider shipping the doors and frames loose and installing them on site. This is discussed further in Chapter 3.

Exterior doors built-up in the factory are not likely to be accepted by the site-built market. Instead, be prepared to use one of the stock prefabricated door and frame packages, with integral flashing and weatherstripping. The builder/developer is likely to have strong opinions about the exterior door material.

Some affordable housing and regional styles (such as the Cape Cod) use 78"-high doors, but the majority of site-built homes use 80" doors. So, builder/developers are likely to be highly resistant to shorter doors.

If a manufacturer is using 76" doors to reduce costs, eventually the supplier may stop carrying standard 80" doors. There is often an unreasonable upcharge if a small quantity of 80" doors is needed for a special project. In this case, if a manufacturer is looking to compete with the site-built market, it may be worth using 80" doors throughout the line.



Detail of wider corner board on Washington, DC Urban Design Project home.

Exterior Finish

Vinyl, hardboard, and fiber-cement siding are the standards for most first-time buyer site-built homes. Wider corner boards than are typical for manufactured homes results in a more substantial looking home. This strategy was used effectively in MHI's Washington, D.C. Urban Design Project. This change has little impact on the manufacturing process and a modest increase in material cost.

Probably the key issue regarding exterior finishes is to establish an acceptable level of quality. An acceptable level of straightness and trueness for trim and eaves has to be agreed upon with the builder/developer.

Manufactured homes do not always have exterior wall sheathing, and this may be an issue for site builder/developers accustomed to using plywood or OSB. However, many of the large site builder/developers do not use OSB sheathing, relying instead on wood fiber products or rigid insulation with let-in bracing at the corners. As noted earlier, it may help nego-

tiations with a small builder/developer to inform him or her about cost savings used in the HUD-Code industry that are also widely used by large site builder/developers.

Windows

Window sizes and proportions differ between HUD-Code and most site-built housing. This can be an important cost issue, and is likely to be open for negotiation. To a builder/developer, windows are very important to the image and saleability of a home. Site builder/developers vary the appearance of home models with the type and composition of windows. Some of the most well-publicized neotraditional-design manufactured home projects have a strong street presence thanks to carefully sized and placed windows. Site-built homes typically have more windows than double-section manufactured homes, while the windows in homes of three or more sections are comparable to site-built.

One technique is to offer custom-designed window snap-ins to modify standard window proportions. Many window manufacturers provide special snap-in designs. Window trim surrounds are another crucial issue to make a home fit into traditional surroundings. It is unlikely that surface-applied aluminum windows will be considered. The negotiation should focus on how to provide the window composition a builder is looking for economically. The window specs will probably be similar between HUD-Code and site-built homes.

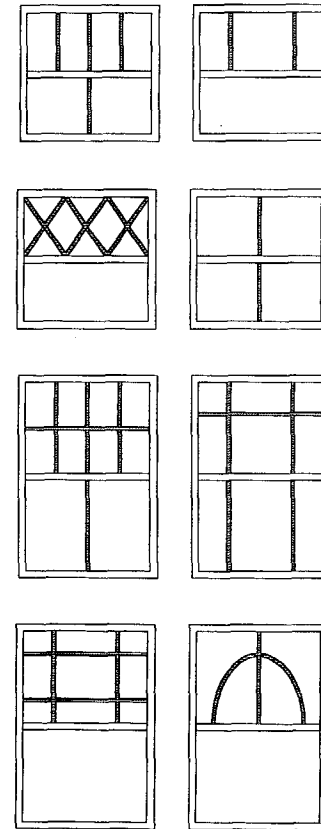
Interior Finishes and Trim

Most MHPs are responding to increased consumer demand for continuous wall surfaces by providing taped and textured gypsum board, with or without paint. The challenge of insuring that such finishes end up on site crack-free has been variously dealt with, either by stiffening the frame/shell of the home, absorbing the corrective costs, more careful delivery, or finishing the gypsum board on site.

The builder/developer will probably want taped, spackled, and painted wallboard. This should be a point of negotiation, as many consumers are willing to accept textured walls, just as textured ceilings have become common. However, if smooth surfaces are desired, it probably makes sense to include wallboard finishing as part of the site work, since this avoids some



A varied window pattern enhances the elevation of this New Colony Village home.



Various snap-in window mullion designs.

of the cracking problems during transport.

Because door and window trim could be out of plumb after setting the section, it might be better to install it on site in order to meet typical site-built standards. Trim material is another point of negotiation. Vinyl-coated wood-grain trim is used by site builder/developers, and might be the base-case spec, with other materials as an upgrade option.

Floor coverings should be negotiable, based in part on documented customer complaint records, if available. Most site builder/developers are likely to have strong opinions on this matter, as floor coverings are a prominent source of consumer complaints for the entire industry.

Fixtures and Fittings

In most cases, site builder/developers do not use all-plastic plumbing fixtures, low-cost tub and shower enclosures, or minimum-cost lavatories and kitchen sinks. Other than that, there is little to distinguish HUD-Code from site-built practice, except possibly the desire for name-brand plumbing fixtures available in conventional housing. If the builder/developer is willing to consider lower cost options in order to reach a price point, the issue can be revisited.

Kitchen cabinets, closet fittings, bathroom accessories, and other detailed items are likely to be subject to straightforward negotiation, as the two industries provide comparable products.

HVAC, Electrical, Plumbing

A standard high-pressure HUD-Code furnace may be perceived as having a higher noise level, making it a hard sell if the builder/developer is used to conventional site-built equipment. In addition, the builder/developer may prefer certain equipment because it can be serviced locally or has not received customer complaints. It may be necessary to consider conventional non-HUD-Code equipment along with the larger ducts necessary, providing the equipment can be used in a HUD-Code design. If the larger ducts do not fit within the confines of the floor, it may be necessary to finish the system on site, despite requirements for code approvals. It is good practice to incorporate the projected time needed for such Design Approval Primary Inspection Agency (DAPIA) approvals into your cost and schedule from the outset. The piping,

wiring, and lighting used by the MHP is likely to be similar to that used by the builder/developer: CPVC or copper water piping; PVC or ABS drainage piping; conventional wiring; and low-cost, incandescent light fixtures. Self-contained wiring devices are unfamiliar to site builder/developers and most code officials, but can be recommended as an advanced cost-saving measure, as can manifold water piping and flexible gas piping.

Utility Adaptability

Connecting the manufactured home to utilities on site should provide for convenient hookups. Most manufactured homes have their utility termination points at or near the rear third of the "A" half of the home. This is appropriate for standard manufactured home park utility pedestals. But if a home is placed on a permanent foundation, has a garage, and utilities come in underground, good utility planning is crucial. An example of how to plan for this and other configurations can be seen in the appendix: Utility Planning for Residential Development Projects.

Some general assumptions can be made about utilities that are applicable in most situations. Electric utility companies increasingly restrict meters from being installed behind fences or gates. The center of the electric meter glass must be between 60" and 72" above grade. The gas meter must be not closer than 30" to any operable window (slider portion), measured from any angle, or not closer than 36" to any foundation crawl-space vent. It is permissible to run gas, electric, and water in a common trench, but sewer is usually separate (or 24" deeper in the same trench). Typically, each utility lateral will be run in its own trench to avoid damaging one or more of the lines if they are excavated for servicing.

FINANCING

The two worlds of manufactured housing and traditional homebuilding come together at the point of paying for the home. Conflict arises between differing practices, customs, and terms of sale. As more manufactured homes are transformed into real property, standardized methods of payment and transfer of ownership become necessary.

"Traditional" Homebuilding Construction Financing

A traditional builder/developer can finance his or her building operations through standard lending programs. Construction financing has been provided primarily by commercial banks, with savings and loans playing a smaller role.

The lender approves a construction budget and a schedule of "draws" or periodic payments for completed items in the course of construction. Draws may be paid upon the completion of just about any agreed upon series of events, such as payment of permits, pouring the foundation, completion of rough framing, drywall finishing, installation of windows and doors, cabinets, etc. When each item is completed, the lender verifies that the materials and labor are complete and then either pays a draw to the general contractor (who then pays vendors and subs). Payments can be made directly to vendors and subs by the lender. The lender's loan is paid when the home is sold.

The amount of the loan is established by appraising both the building lot and the proposed completed structure(s); by the builder/developer's credit; by the lender's faith in the ability of the retail market to absorb the finished buildings; and by national, regional, and local money market conditions.

At the time the construction loan is approved, the builder/developer executes a note and deed of trust for the loan. The trust deed secures the note with the real property being improved. Lenders generally ask for personal guarantees from the builder/developer as well.

Important Differences Between Site-Built Financing and Manufactured Housing Financing (Flooring)

Manufactured housing financing is designed to finance *personal* property. It does not contemplate securing the loan with real property. Deeds of trust (or mortgages) are not used.

Site-built construction financing is secured by *real* property. Modular housing construction financing is no different from that of site-built construction. Security agreements are not used, nor are they effective in securing the financing of real property.

The Transition from Personal to Real Property

In most states, when a manufactured home is placed on a permanent foundation it changes from personal property (personalty) to real property (realty). The home then has all the attributes of any other fixture or improvement on the land, and ownership of the home vests in the owner of the land. Separate sets of laws govern the ownership, encumbrance, and transfer of personal property and real property.

At the point when the form of property changes, one type of security (personal property security agreement) is extinguished, and the other (mortgage) becomes a more appropriate vehicle. If an unpaid financing interest still exists on the home when it transforms, the lender is exposed to risk. While there are other ways for the lender to collect, they are awkward and likely to push the lender out of this market.

Absent any satisfactory documentation that carries the manufacturer's security through the transformation into real property, most manufacturers want to be paid before the home becomes realty. Conversely, the lender is unprotected if it pays for goods that are unsecured because they are still personal property and unattached to the land that secures its loan.

Alternatives for Payment Terms

From the manufacturer's perspective, the payment terms below are listed in descending order of desirability. All of the following terms have been used in various agreements between manufacturers and developers. Bear in mind, the goal is to develop a trusting long-term relationship with the developer, so while some terms seem very desirable for the manufacturer in the short term, an arrangement that will benefit both organizations over time should be sought. This may involve more work for the manufacturer as compared to traditional wholesale inventory financing, but the opportunity to grow and diversify your client base can make these measures well worth the effort.

- *20% or greater deposit; balance due before shipment*

This arrangement is often used when a retailer has exceeded its flooring line limit. This option offers cash flow for the manufacturer; eliminates collection problems and has no repurchase liability. If the developer does not pick up the home, the price can be reduced by 20% with-

out a loss to the manufacturer. Although this is a clear winner for the manufacturer, this practice will not encourage the growth of business with developers.

In other instances, after the receipt of a 20% or greater deposit, the manufacturer ships the home to the site where a representative of the manufacturer and a representative of the lender are waiting. At the instant the home is placed upon the foundation, the lender gives the manufacturer the check for the balance of the home price.

● *Wholesale inventory financing*

This method is used for most dealer transactions, for homes being delivered into land-lease communities, where the homes will remain personal property. These arrangements are very flexible, and offer an advantage for the dealer or land-lease community developer. A key advantage of this strategy is that floored homes do not require a cash deposit.

Many dealers put homes on foundations while they are still on their flooring line as personal property. This may or may not be done with the knowledge of the lender. If the lender discovers the home has, without authorization, been converted to real property, it may be inclined to take steps to prevent it from happening again, or sever its relationship with the dealer. While this has not been a serious problem in the past, there is the potential for problems, including unknown implications for the manufacturer under its repurchase agreement with the lender.

● *C.O.D. – Driver picks up check*

This arrangement is not commonly used today, but could be helpful when combined with a cash deposit paid to the manufacturer before production. In this case the house is shipped to the developer or dealer with instructions for the driver to pick up a check for the balance of the home before it is left on site. If the payment is not made, the driver returns the house to the plant. The plant will always require that payment be in the form of a bank cashier's check. This is obviously a cumbersome arrangement, but it has worked successfully in the past, especially when the manufacturer is sure of the recipient and the recipient wants to see the house on the property before paying.

● *Irrevocable letter of credit*

Another financing technique is for the manufacturer to obtain an irrevocable letter of credit (ILC) from the developer's bank before producing the home. The amount is equal to or greater

than the invoice amount. The terms stated in the ILC permit the manufacturer to draw the full amount upon the delivery of a letter to the bank, signed by an officer of the manufacturer's corporation, stating that (a) the home has been delivered to the site, (b) 15 days have elapsed since delivery, and (c) the manufacturer has not been paid for the home. This protects the manufacturer and if the ILC is tendered prior to the start of production, no deposit is needed for the unit. While this arrangement is beneficial for the factory, it is very one-sided, and ILCs can be expensive for the developer.

● *Binding three-way contract*

In this scenario, the bank commits to pay within an agreed-upon number of days if all named conditions have been met. Binding three-way contracts are treated like any other contract and a manufacturer's only recourse is to sue for specific non-performance. In this situation, the manufacturer must monitor the status of the developer's finances and conditions at the job site to avoid loss due to the developer's failure.

● *Escrow demand*

Shortly after 1980, when the installation of homes on foundations began to substantially increase in California, the escrow demand procedure was tried. The manufacturer submitted its invoice and a payoff demand into the escrow, which covered the home sale. This was only attempted with pre-sold orders. When the illiquid nature of the escrow demand became obvious, and the unknown consequences if a sale collapsed became more real, this technique disappeared.

Some manufacturers have invoiced the builder/developer and filed materialman's liens to protect their interests. If the lien is perfected and properly done, it gives the manufacturer protection, but the situation is still uncontrollably illiquid. In order to collect money due for the home, the manufacturer must go through the process of foreclosing on the lien and selling the property in the case of non-payment.

● *Possible arrangements for transition from personal to real property*

A technique that may offer protection to a construction lender is the use of fixture filings. The lender can pay the manufacturer immediately upon delivery of the home, while the home is still personal property. This would satisfy the manufacturer's need to stay secure and be

promptly paid. The lender would have an interest in the fixtures (manufactured homes that were converted to real property), secured by the fixture filing. Not clear at this time is whether the lender who paid the invoice covered by a fixture filing would have a superior or inferior position in the property compared to the holder of a first (or any) deed of trust on the property. It is an area worthy of exploration.

Instead of trying to use unusual and non-conforming techniques, however, manufacturers should work with lenders to develop a uniform, mutually acceptable financing instrument and accompanying documents that meet the needs of the manufacturer, the lender, and the builder/developer. This instrument and all the accompanying documentation, procedures, and agreements may come about only after some compromise on the part of all three participants. The manufacturer may have to accept some delay in payment over what it has been accustomed to. It may have to spend legal time and effort to forge contract terminology that gives it protection. The lender may have to settle for a time limit under which the home is to be completed for securitization as realty. The builder/developer may find his or her construction costs a shade higher while the lenders adjust to new situations.

The advantages to all three parties are worth the effort. The factory will find it easier to serve large new markets without having to make quick decisions on terms based on the desirability of a client or project.

Generally, the manufacturer will be free of the contingent liabilities of repurchase agreements. The lenders, who know that the factory-produced house will inevitably increase its market share in the future, will enjoy new business. Lenders benefit because the short turnaround time on manufactured housing construction loans increases their yield on points charged. They also benefit because a large firm is warranting the home, instead of a variety of subcontractors. The builder/developer can do business with the factories without re-negotiating workable payment terms every time.

DEALER INVOLVEMENT

As a manufacturer, your traditional market is the dealer. If you attempt to sell directly to a builder/developer, you may be alienating your dealers or even violating franchise agreements.

In the past, some manufacturers have ameliorated the dealer's objections to what they may perceive as a territorial franchise violation by offering financial incentives for the dealer to "let" the deal proceed. These have included merchandise, flooring cost reimbursements, freight subsidies, trip points, and rebates. Once a developer becomes aware of such an arrangement, however, the risk of losing the developer increases. In other cases, the builder/developer has become the dealer.

Another option to avoid possible conflicts with dealers is to create definitions of market segments that you intend to serve. Once credible market partitions have been made, you can establish marketing policies and procedures for each. Major subjects might include:

- What are the segments?
- Who are the segments' customers?
- How do business practices differ between them?
- How can a manufacturer serve all and minimize the potential for competition between the dealer and developer?

What are the Segments?

- *Retail Sales*

This is the traditional distribution system for the manufactured housing industry. The fact that the industry is consolidating retailers and that manufacturers are establishing their own retail systems changes nothing as it pertains to this analysis.

- *Manufactured Home Communities*

Manufactured homes are sold in a turn-key community environment. These can be land-lease, planned unit development, or standard subdivision.

- *Infill*

Small entrepreneurs who purchase scattered lots, obtain homes from the industry, then combine the lot, the home, on-site visual enhancements, and list them for sale as real property.

- *Builder/Developers*

Those traditionally working with site-built homes that may use a mix of site-built and manufactured or exclusively manufactured homes for their development.

- *Government Markets*

Direct or indirect sales to redevelopment agencies, public housing authorities, or military housing providers for the creation of housing stock. This category may include Indian Housing Authorities.

Who Are the Segments' Customers?

- *Retail Sales*

The traditional dealer has concentrated on the lower end of the marketplace. Buyers are frequently unable to purchase any form of housing other than a manufactured home. Price, and monthly payments, are the determining purchase factor in a high percentage of the dealer's business.

- *Manufactured home community developers*

Community developers may also cater to the very low end of the market, but this distribution channel gives the buyer a complete home package, including the site. Developments that are all-inclusive can successfully serve clientele at almost all price levels. Because the land, whether leased or owned, is the unique value determinant, the market's acceptance of the homes may be less directly related to the factory invoice of the house.

- *Infill*

Generally infill developers are highly aware of block-by-block conditions in the cities in which they operate. Their customers may run the range of very low-end to quite wealthy.

- *Builder/Developers*

Their buyers are typically seeking affordable housing and are accustomed to the products of the site-built market.

- *Government Markets*

One should consider both the government agencies *and* the ultimate occupant/owners as their customers, because they are so intertwined. Owners/occupants may be recipients of rent or purchase subsidies, or, in the case of military housing, they may just be temporary residents with little or no stake in the dwelling.

How Do Business Practices Differ Between Them?

● *Retail Sales (Street dealers)*

The manufactured home is the sole object of the retailer's business and his or her primary objective is selling the home.

Since there is little difference between most manufactured homes offered by various manufacturers in a local market, consumers have many choices regarding the source of the home. Thus, the dealer who offers the lowest price usually makes the sale.

Very few dealers consider land as an inventory item, to combine with the home in an effort to create a more unique offering. Most dealers do not find it worth their while to bother with the capital requirements, illiquidity, and time frames inherent in purchasing land for resale.

Prices normally only include the home, delivery within a certain radius, installation, and sometimes air conditioning. Rarely are site preparation, foundation, garage, concrete flatwork, fencing, landscaping, or architectural modifications included.

● *Manufactured Home Community Developers*

To community developers, the final product is a home, on a lot, ready for occupancy. As opposed to retailers, community developers do not consider the manufactured homes as the end, but rather as one of several means.

Buyers are treated with less pressure, as community developers depend on the attractiveness of the location, and the appeal of the finished, decorated models to influence the buying decision. These developers rely on a lower percentage of a higher number of shoppers in order to create sales.

Prices include the complete turn-key package, and the separate components are almost never individually priced.

In most developments, lots are only sold with homes and homes are only sold affixed to the lots. Some developments will sell a home to be delivered to a buyer's own lot outside the project, but that is infrequent.

● *Infill*

Almost all infill efforts are speculative. Sometimes, the developer will list a property with a real estate broker and try to sell it as they do the installation and finishing. The greatest profit mar-

gins have occurred, however, when the home is offered for sale only after it is completely finished. Some infill profit margins have been large. Some resale price appreciation has been equally considerable.

● *Builder/Developer*

Potential buyers tour finished models usually within the development they are considering. These buyers are often unaware that the homes they are looking at are manufactured and would not typically be in the market for a conventionally sold manufactured home.

● *Government Markets*

The municipal housing provider is not generally in competition with the street dealer because its market is unique. Projects are typically developed completely, then occupancy begins. Subsidized buyers represent a pool that is exclusive from the street dealer's target market.

How Can a Manufacturer Serve All and Minimize the Potential for Competition Between the Dealer and Developer?

While some dealers feel that they serve all levels of the local marketplace, buyers who look for homes in a community environment (which is the bulk of the site-builder/developer's market) usually do not go to retailers.

Thus, the manufacturer should make written distinctions between these categories of home buyers, and define the way they will do business simultaneously with dealers and with developers. A fair policy would assure the street dealer that the developer is not going to siphon the dealer's customers away. A manufacturer would probably have no difficulty in executing a written statement of understanding with a developer which would give protection to the street dealer.

In summary, the manufacturer should address the emergence of these parallel markets and create firm company policies that will guide all personnel. The tendency to deal with new markets on a case-by-case basis has not worked in the past.

The following key stipulations may be part of an agreement between a builder/developer and a manufacturer. Each item should be viewed as a suggested way to strike a balance between the dealer's concerns and the developer's needs and plans. It may be appropriate to

add some items to the following list, or to delete some others.

- Stipulate whether it is required that your builder/developer obtain a dealer's license from the appropriate state authority
- Address whether the builder/developer is to construct each foundation and garage to your drawings and specifications, and whether the home will be installed on the foundation according to your instructions.
- Establish the length of the warranty the builder/developer will provide to the home purchaser for areas that you are responsible for.
- Address the importance of the builder/developer protecting the manufactured home(s) from inclement weather and other sources of damage while site work is in progress.
- Confirm that the builder/developer will inspect each home upon arrival from the factory to ascertain completeness and freedom from damage.
- Establish whether the builder/developer will administer local warranty service and how items the manufacturer is financially responsible for will be dealt with.
- Agree with the builder/developer on the Terms of Sale and state that any other Terms of Sale are to be mutually agreed upon in writing prior to placing any order.
- Establish what is included in the price per unit, and who is responsible for transportation and state sales tax charges.
- Address whether the homes sold to the builder/developer by your company will be placed upon permanent foundations on lots that are part of the project at hand.
- You may not want to have any brand identification other than the manufacturer's name as required by law on the homes sold to the builder/developer. Also, if the builder/developer elects to publicly display a manufactured home you have provided, it should be placed upon a permanent or quasi-permanent foundation, complete with garage and appropriate entry work. The purpose here is to avoid the look of a retail sales lot.