General Welfare and "No-Growth" Zoning Plans: Consideration of Regional Needs by Local Authorities

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Note

GENERAL WELFARE AND "NO-GROWTH" ZONING PLANS: CONSIDERATION OF REGIONAL NEEDS BY LOCAL AUTHORITIES

No-growth zoning schemes have been employed by municipalities desiring to exclude new residents. In Construction Industry Association v. City of Petaluma, the Ninth Circuit rejected the regional approach of the district court and adopted a municipal general welfare analysis like that in Golden v. Planning Board of Ramapo. The author analyzes the alternatives open to the Ninth Circuit and concludes that courts must employ a regional general welfare analysis to protect regional residents who are otherwise unrepresented.

I. INTRODUCTION

Judicial reactions to municipal efforts to avoid growth have been mixed; no consistent manner of examining the validity of "no-growth" plans has emerged. In Construction Industry Association v. City of Petaluma,¹ the United States Court of Appeals for the Ninth Circuit chose to permit a municipality to avoid population expansion by limiting the number of new housing units that may be built in the city in any one year. Substantial case law supports this result,² but more persuasive case law exists which would require that a municipality accept growth in light of regional demand for housing.³ The district court opinion in Construction Industry Association v. City of Petaluma⁴ and the New York Court of Appeals decision in Golden v. Planning Board of Ramapo⁵ represent the two con-

¹. 522 F.2d 897 (9th Cir. 1975).
². See notes 50-70 infra and accompanying text.
³. See notes 27-49 infra and accompanying text.
The tension between these two analyses stems from their underlying disagreement on the proper scope of the population unit whose general welfare is to be served by municipal zoning ordinances.

Both Petaluma, California, a suburb of San Francisco, and Ramapo, New York, a suburb of New York City, faced what they considered to be an undesirably rapid rate of population growth. Both wanted to control growth and adopted long-range zoning plans that served to place artificial restrictions on the natural population expansion of the communities. The details of the respective plans were different but the effect of each was to exclude potential residents seeking housing in the municipality. The plans reflected the municipalities' desire to avoid absorbing their proportionate share of regional growth.

The two plans initially met with different judicial reactions. The Court of Appeals of New York interpreted the general welfare element of the test in Village of Euclid v. Ambler Realty Co. to mean local general welfare and found that the State's zoning enabling legislation empowered the local authorities to zone for the sole benefit of the municipality. The United States District Court for the Northern District of California read general welfare to mean regional general welfare and held that a municipality cannot consider only its own welfare in promulgating zoning ordinances. The municipality was instead required to consider the needs and resources of the geographic region in which it was located. But this interpretation was rejected on appeal by the Ninth Circuit, which tested the validity of the Petaluma plan against the Ramapo model. Under that test, the plan was found to serve the general welfare and was upheld.

This Note suggests that a careful analysis of general welfare requires judicial encouragement of the consideration of regional problems in local zoning. It is further suggested that the Ninth Circuit's approach, which allows municipalities to zone for parochial and selfish interests, is not the best solution. A discussion of judicial

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efforts to define the community for whose general welfare local zoning ordinances are passed and an examination of the alternatives open to the court of appeals indicates that the approach urged by the district court is indeed more appropriate for dealing with contemporary land use problems.

II. No-Growth Plans

The broad parameters of the zoning power of local governments were established by the Supreme Court in *Village of Euclid v. Ambler Realty Co.* In *Euclid*, the Court employed a rather minimal test of constitutional validity, upholding a municipal zoning ordinance in the face of a general attack that it deprived a landowner of liberty and property without due process of law. The Village had the power to adopt the ordinance because it had a "substantial relation to the public health, safety, morals, or general welfare." The Court anticipated the approach of the district court in *Petaluma* when it added that "[i]t is not meant by this, however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." It has been difficult for courts to determine from the *Euclid* decision exactly what elements of the zoning and land use regulation process may be used to serve the general welfare, and after five decades, general welfare in the zoning context remains undefined. That these difficulties arose is not surprising, for the Court in *Euclid* deliberately avoided the establishment of a detailed test which might hamstring the exercise of zoning power in the future. The Court noted that new conditions, yet unforeseen, would require new applications of the zoning power.

With the increased urbanization following World War II, several courts recognized that those new conditions had arisen. In the concomitant reassessment of the power to zone, the judiciary defined the general welfare element of the *Euclid* test broadly. Opinions written in the period from 1945 to 1970 indicate that some jurisdictions favored requiring that local zoning authorities consider the impact of their land use decisions on the region in which the

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7. *Id.* at 395.
8. *Id.* at 390.
10. 272 U.S. at 387.
municipality was located. If the municipalities were to attempt to justify their zoning ordinances under the *Euclid* general welfare rationale, then they had to demonstrate consideration of general welfare in a broad sense when the ordinance was adopted. The municipality could not view itself as a self-contained community because it was part of the “economic and social whole” and would have to temper its actions in order to avoid harming neighboring communities.\(^1\)

During the 1970’s, in apparent response to an undesirably rapid rate of local population growth, a number of communities in the United States passed ordinances which put a ceiling on local population by restraining residential construction. These ordinances have been given the generic title of “no-growth” plans.\(^2\)

The use of “no-growth” plans did not raise issues involved in the consideration of such restraints as minimum lot size, minimum floor space, and permit rationing. Residential suburbs of major urban centers used these restraint techniques to prevent the influx of undesired racial and ethnic minorities by keeping the cost of suburban housing high. Housing, for example, was kept sufficiently expensive to exclude most individuals desiring to move from city to suburb. Inasmuch as these exclusionary plans focused on readily discernable groups the schemes were vulnerable to attack as a denial of equal protection.

No-growth plans did not pose the same constitutional objections. Although one effect of a no-growth plan might be to raise the price of existing housing and thereby prevent low income minorities from obtaining housing in the community, the no-growth plan was not discriminatory since all potential newcomers were excluded. The only new residents of a no-growth community would be replacements for those existing residents who had left the municipality. Because no identifiable suspect category is excluded under such a plan, an equal protection analysis is inapplicable. Yet a proliferation of no-growth plans within a housing region would decrease the availability of housing to all elements of the population. A general welfare analysis might proscribe such plans\(^3\) if the appropriate parties could raise their objections.\(^4\)

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14. Most commentary on exclusionary zoning has dealt with the problem in an equal protection context. These discussions have assumed, however, that the group excluded was finite, discrete, and easily identified and that the excluding municipality wanted to grow, albeit on its own terms. When the excluded group is not identifiable, an equal protection attack is not appropriate. A general welfare analysis might fill this gap, since zoning is required to serve the general welfare. It is arguable that the
III. THE COURT OF APPEALS OPINION

The Ninth Circuit's analysis of the general welfare elements\(^6\) of the Petaluma plan required a balancing of the exclusionary elements potential harm of no-growth plans, in terms of the size of the group affected, is greater than the harm of earlier exclusionary techniques, as not only minorities but all people seeking housing are likely to be injured. A general welfare analysis, which recognizes this distinction, could therefore be used to invalidate no-growth plans without recourse to a less reliable equal protection argument. See Sager, Tight Little Islands: Exclusionary Zoning, Equal Protection and the Indigent, 21 STAN. L. REV. 767 (1969); Note, Exclusionary Zoning and Equal Protection, 84 HARV. L. REV. 1645 (1971); Note, The Equal Protection Clause and Exclusionary Zoning After Valtierra and Dandridge, 81 YALE L.J. 61 (1971). See also articles cited at note 4 supra.

15. The Supreme Court's decision in Warth v. Seldin, 95 S. Ct. 2197 (1975), will have a significant impact on the ability of plaintiffs to bring suit against municipalities with exclusionary zoning schemes. In Warth, multiple plaintiffs sought to invalidate the zoning ordinance of Penfield, New York. The plaintiffs claimed that the enforcement of the ordinance excluded persons of low and moderate income from housing in Penfield, in violation of their constitutional rights and their rights under 42 U.S.C. §§ 1981, 1982, and 1983. The Rochester Home Builders Association was denied the right to intervene as a party plaintiff. The district court dismissed the action as to all plaintiffs for lack of standing, (opinion not reported), and the court of appeals affirmed. 495 F.2d 1187 (2d Cir. 1974). The Supreme Court affirmed the judgment of the court of appeals in a 5-4 decision.

For the Court, Justice Powell wrote that the Rochester Home Builders Association would be a proper party to assert the rights of all its members. The Association's claim was that the restrictive zoning ordinance had "deprived some of its members of 'substantial business opportunities and profits'." 95 S. Ct. at 2213. The Court concluded that the Association as a unit had alleged no injury, nor had any of its members assigned their claims to it. Also, the damages claimed were found to be "not common to the entire membership nor shared by all in equal degree." Id. at 2214. It was found that the Association failed to allege facts sufficient to make out a case or controversy had the individual members themselves brought suit. Therefore, the Association was denied standing as a representative of these parties. The other petitioners, all nonresidents of Penfield, were denied standing for failing to allege concrete, specific injuries and for presenting generalized grievances for judicial resolution.

Mr. Justice Brennan, in a dissenting opinion in which Mr. Justice White and Mr. Justice Marshall joined, criticized the Court's decision for its effect of denying the power to litigate zoning questions to the parties with sufficient economic incentive to pursue the case to resolution. He characterized the Court's opinion as restricting standing in zoning cases to residents of the zoned political unit. Since the Penfield zoning scheme had effectively excluded the petitioners, the scheme remained invulnerable:

[The] Court turns the very success of the allegedly unconstitutional scheme into a barrier to a lawsuit seeking its invalidation. In effect, the Court tells the low-income minority and building company plaintiffs that they will not be permitted to prove what they have alleged . . . because they have not succeeded in breaching, before the suit was filed, the very barriers which are the subject of the suit.

Id. at 2217.

Under the standards described in Warth, any landowner in the zoned municipality would have standing. The difficulty, of course, is in finding a landowner in an exclusionary community whose interests would be served by lowering the barrier created by existing zoning legislation and practices.

16. For a description of the plan see notes 96-99 infra and accompanying text.
of the land use plan against a legitimate state interest. If the plan bore a rational relationship to some such interest, the court would have to defer to the legislative determination.\(^7\) Writing for the court, Judge Choy suggested that practically all zoning legislation has some exclusionary effect, but the effect is not fatal if the municipality can show some legitimate interest.

Much of the court's critique of the Petaluma plan rested on its interpretations of \textit{Village of Belle Terre v. Boraas}\(^8\) and \textit{Ybarra v. City of Los Altos Hills}.\(^9\) Both cases dealt with zoning regulations which had the purpose and effect of permanently restricting growth. In each of the cases the regulations were upheld because they served a legitimate governmental interest within the concept of the general welfare.\(^20\) The court quoted a passage from Justice Marshall's dissenting opinion in \textit{Belle Terre} in which the Justice concluded that the restriction of uncontrolled growth was a proper exercise of the police power to protect the general welfare and that municipal zoning authorities should be allowed substantial latitude.\(^21\) In discussing \textit{Belle Terre} and \textit{Los Altos Hills}, the court emphasized the need to consider the reasonableness of the ordinance under scrutiny, but chose to evaluate the reasonableness of the ordinance only for the city of Petaluma.\(^22\) In so doing, the court refused to recognize that the effects of local zoning legislation do not stop at municipal boundaries, that the test of reasonableness should not be limited to the zoned political unit, and that the test of reasonableness can be limited to the municipality only at the cost of diminished regional general welfare.\(^23\) In holding that the Petaluma plan does not discriminate against any particular income or minority group,\(^24\) the court ignored the burden placed on all the residents of the surround-

\(^{17}\) 522 F.2d at 906. The court's decision to defer to the legislature is consistent with traditional judicial treatment of the question in zoning cases. See notes 57-58 \textit{infra} and accompanying text; note 104 \textit{infra}.

\(^{18}\) 416 U.S. 1 (1974). The Supreme Court found a prohibition against multifamily housing to be reasonable and within the public welfare. See notes 111-32 \textit{infra} and accompanying text.

\(^{19}\) 503 F.2d 250 (9th Cir. 1974). A large-lot zoning ordinance was challenged for its discriminatory effects on low-income minorities. The court held that the ordinance was rationally related to preserving the town's rural environment and did not offend equal protection guaranties.

\(^{20}\) 522 F.2d at 907. In \textit{Belle Terre} the interest was the preservation of quiet family neighborhoods, while in \textit{Los Altos Hills} the interest was the preservation of a rural environment. \textit{Id.}

\(^{21}\) \textit{Id.} See notes 117-18 \textit{infra} and accompanying text.

\(^{22}\) \textit{Id.} at 908.

\(^{23}\) See notes 117-28 \textit{infra} and accompanying text.

\(^{24}\) 522 F.2d at 908 n.16.
ing region because their communities would have to absorb the growth that Petaluma had avoided.  

The court concluded that "the concept of public welfare was broad enough to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace." In reaching this conclusion the Ninth Circuit rejected the concept of regional general welfare upon which the district court had invalidated Petaluma's insular zoning plans. This clearly was not the only possible resolution of the issues involved. Indeed, a careful consideration of the alternatives available to the Ninth Circuit will reveal that the district court's approach provides a more comprehensive vehicle for the weighing of all the competing interests involved.

IV. CASE LAW REQUIRING OR ALLOWING CONSIDERATION OF REGIONAL RESOURCES AND NEEDS

Substantial case law documents the development of the regional approach to local zoning. Rational use of land in light of regional resources and needs has been emphasized, while the significance of political boundaries has been minimized.

For the past 25 years courts have sporadically encouraged local zoning authorities to incorporate considerations of regional needs and resources in the local planning process. The judiciary has emphasized the need for a thorough examination of the region and the development of a plan of local land use which rationally complemented uses throughout the region. The courts advocating this type of analysis were primarily concerned with the rational development of the region; protection of municipal interests was secondary. The recognition that the political boundaries of a munici-

25. See notes 95-101 infra and accompanying text.
26. 522 F.2d at 908-09.
27. See Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949).
28. Traditionally, courts have held that a locality need consider only the welfare of the zoned unit in promulgating zoning ordinances. See Comment, Exclusionary Zoning: An Overview, 47 Tul. L. Rev. 1056 (1973).
palty did not limit the effect of a zoning decision led some courts to impose an "extraterritorial" responsibility on municipalities when adopting local zoning legislation. 29

However, this extraterritorial responsibility also operated to the advantage of the municipality. For example, in encouraging rational land use planning as an alternative to the traditional scheme, some courts concluded that if a region contained enough land zoned for a particular use, an individual municipality need not zone more land within its boundaries for the same use. 30 In fact, it is noteworthy that the early cases requiring or allowing municipalities to consider regional resources did so to reach a result supporting a municipality's exclusion of one use or another. 31 In the later cases, the same technique was turned about to force municipalities to make provisions for an unwanted use. 32

A series of Pennsylvania cases has been influential in the development of a broader definition of general welfare in zoning law. National Land & Investment Co. v. Kohn, 33 Appeal of Kit-Mar Builders, Inc., 34 and Appeal of Girsh 35 all invalidated zoning schemes adopted by municipalities to limit population growth and to preserve a certain "character" for the community.

In National Land the Supreme Court of Pennsylvania identified zoning laws as legitimate restrictions on an owner's constitutionally

29. See Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954). The party municipalities shared a border in a residential area. The defendant changed its zoning from residential to business use. In holding that municipal boundaries limited neither the effect nor the responsibility for the zoning legislation the court found a duty [to] hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes and to give as much consideration to their rights as they would to those of residents and taxpayers of Dumont. To do less would be to make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning. Id. at 247, 104 A.2d at 445-46. Two distinctions must be noted between the problem in Borough of Cresskill v. Borough of Dumont and that raised in cases like Petaluma and Ramapo. First, the land was already developed; the later cases involve problems of future development. See text at page 246 infra. Second, the effect of the zoning change on the nonresident was more pronounced because of the common boundary and the immediate presence of the nonresident. In the later cases, the region and the injured nonresidents are far less identifiable and immediate.


31. See Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949).

32. See text accompanying notes 42-49 infra.


guaranteed right to the enjoyment of his property. Further, the courts found that one of the legitimate exercises of the zoning power was the control of population density by the use of minimum lot zoning. However, the control of population density ceased to be legitimate when the intent of the ordinance was to limit the flow of new residents into the municipality.

The court noted that the exercise of zoning power to fulfill the desire of many municipal residents to preserve the character of an area did not adequately provide for the general welfare of the community. The court invalidated the zoning ordinance in question which had as its primary purpose the exclusion of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities. It concluded that the general welfare of any community is not fostered by a zoning ordinance designed to be both exclusive and exclusionary.

\textit{Girsh} and \textit{Kit-Mar} applied the traditional \textit{Euclid} test to exclusionary zoning techniques. The consideration of injury to nonresidents by the promulgation of municipal zoning ordinances was crucial to the holding in \textit{Girsh}. The \textit{Girsh} court refused to defer to local zoning authorities merely because the bare bones of the \textit{Euclid} test were met. Similarly, the \textit{Kit-Mar} court held that any zoning ordinance with an exclusionary purpose or result was unacceptable. The court ruled that a community must deal with the problems of growth and cannot refuse to confront future development by adopting zoning regulations that effectively restrict population to near-present levels.

The most difficult problems in this area arose as conflicts between a valid regional welfare argument and an equally valid local welfare position. The local welfare argument was usually framed in terms of overburdening the capacity of local public services; the regional position usually focused on demand for housing.

36. 419 Pa. at 522, 215 A.2d at 607.
37. Zoning is a means by which a governmental body can plan for the future—it may not be used as a means to deny the future... [nor] to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring. \textit{Id.} at 528, 215 A.2d 610.
38. \textit{Id.} at 533, 215 A.2d at 612. While the court uses the terms “local power” and “local welfare” the result and general tone of the opinion reflect a careful consideration of the broader problems with which zoning authorities must deal.
40. 439 Pa. at 470, 268 A.2d at 766.
41. \textit{Id.} at 474, 268 A.2d at 768.
42. Padover v. Township of Farmington, 374 Mich. 622, 132 N.W.2d 687 (1965). The defendant township was zoned for minimum residential lots of 20,000
Oakwood at Madison, Inc. v. Township of Madison\textsuperscript{43} emphasized regional welfare and drew together much of the previous thought on regional concerns. The court recognized the shortage of housing in the region and ruled that Madison could not artificially restrict availability of housing in the community.

In pursuing the valid zoning purpose of a balanced community, a municipality must not ignore housing needs, that is, its fair proportion of the obligation to meet the housing needs of its own population and of the region. Housing needs are encompassed within the general welfare. The general welfare does not stop at each municipal boundary.\textsuperscript{44}

One of the plaintiff's arguments suggested that traditional purposes of zoning, developed in a period of generally stable population levels, were not controlling in a period of rapid population growth.\textsuperscript{45} Historically, a municipality could zone itself to maintain a given population level, but current inadequate regional supplies of housing might make such zoning unacceptable. The court emphasized the importance of favoring regional welfare when in conflict with local welfare: "The general welfare must not be circumvented or flouted in municipal zoning."\textsuperscript{46} The Madison decision interpreted the zoning enabling statute to require municipalities to consider regional housing needs to the extent that the general welfare includes such needs.\textsuperscript{47} The court found that Madison's plan of low-density square feet. When challenged, the township argued that the goal of the zoning ordinance was to maintain optimal elementary education facilities. The township argued that if smaller lots were allowed, increased population density would result, and existing schools would be overcrowded. While conceding that desirable housing could be built on lots smaller than 20,000 square feet, the defendant argued that the general welfare was served by the ordinance because the ordinance maintained quality schools for residents. Plaintiff argued that regional housing needs were such that the minimum lot scheme was exclusionary. The court found for the plaintiff. See also Daraban v. Township of Redford, 383 Mich. 497, 501, 176 N.W.2d 598, 600 (1970) (dissenting opinion).

\textsuperscript{43} 117 N.J. Super. II, 283 A.2d 353 (Super. Ct., L. Div. 1971). The ordinance under scrutiny established minimum lot sizes and minimum floorspace requirements for single family dwellings. The court found these zoning restrictions to be unconstitutional. It based its findings on a theory of zoning as a tool to attain a "balanced community." Madison Township had actively attracted industry to locate in the municipality, but had retained a zoning plan that made it difficult for the employees of new local industry to purchase homes in the community.

\textsuperscript{44} Id. at 20, 283 A.2d at 358.

\textsuperscript{45} Id. at 15, 283 A.2d at 355.

\textsuperscript{46} Id. at 15-16, 283 A.2d at 355.

\textsuperscript{47} Planning is comprehended in this inherent right of sovereignty so to order the affairs of the people as to serve the common essential need; and zoning is an implementation of planning, concerned as it is with common social and economic interests and needs encompassed by the basic power
zoning did not contribute to the development of a reasonably balanced community.\(^4\)

The line of cases which culminated in the *Madison* opinion reflected a judicial recognition that the traditional treatment of zoning and land use problems, particularly in the area of housing, was ineffective in a period of rapid population growth. The judicial response to this new situation has recognized that the municipality was an insufficiently comprehensive unit for effective zoning regulation. The impact of municipal zoning was simply too widespread to allow local zoning authorities to legislate without considering the effect of legislation on people and towns outside the local unit. This interpretation of the general welfare element of the *Euclid* validity test indicated the willingness of some courts to discard old solutions that did not fit new problems.\(^4\)

V. CASE LAW CONSTRUING GENERAL WELFARE IN STRICTLY LOCAL TERMS

The municipal power to zone for local benefits has been upheld in a large number of cases through a literal reading of the police powers of local governments and through judicial deference to legislative discretion.

The cases which construed the general welfare provision of the *Euclid* standard narrowly, i.e., as merely local general welfare, rested on an analysis of zoning power as an element of the police power. This analysis originated in *Nectow v. City of Cambridge*.\(^5\)

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48. *Madison* has been criticized because of its reliance on the "well balanced community" standard. The standard is vague and, since it is useless for future planning, tends to degenerate into a test of reasonableness. Comment, *Zoning—Municipal Corporations—General Welfare as a Zoning Purpose Held to Encompass Local and Regional Housing Needs*, 26 Rutgers L. Rev. 401 (1973). The significance of the decision is the requirement that municipalities that encourage the growth of industry and jobs allow the development of housing for workers. The application of the decision may be limited: "The decision leaves open the possibility that a municipality which does not attract business or offer employment to a large number of people may retain a more restricted residential zoning pattern." *Id.* at 415. See also 25 Vand. L. Rev. 466 (1972).

49. Many judges support the idea of regional planning authorities. The creation of such a regional body, however, is a legislative task. The solutions discussed here are those available to the judiciary.

50. 277 U.S. 183 (1928). Speaking for the Court, Justice Sutherland stated that any restriction on use which resulted in serious injury violated the landowner's rights under the fourteenth amendment if the health, safety, convenience or general welfare of the city were not promoted.
In that case, the Court focused exclusively on the effect of zoning legislation on the general welfare of the zoned community and implied that the *Euclid* test was met by legislation which fostered the welfare of that community.  

The case law which adopted this expansive reading of local police powers to zone resulted in a pattern of local zoning designed to serve only local needs. When combined with the presumption of validity which attached to a municipal ordinance, this reading presented a difficult burden for a challenging party. This common judicial view of the relationship between local police powers and local zoning powers under state zoning enabling legislation resulted in a liberal construction of zoning in favor of municipalities; a general welfare issue would be resolved in terms of the welfare of the political unit promulgating the ordinance. The application

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52. *See* Arverne Bay Constr. Co. v. Thatcher, 278 N.Y. 222, 15 N.E.2d 587 (1938). The police power should not be defined "so narrowly that it would exclude reasonable restrictions placed upon the use of property in order to aid the development of new districts in accordance with plans calculated to advance the public welfare of the city in the future." *Id.* at 229, 15 N.E.2d at 590. Long range planning is a valid exercise of the police power, but limited in its scope to fostering the general welfare of the municipality where it fails to include regional interests.

53. Many cases which construed the *Euclid* test in this narrow fashion were decided by the same courts which interpreted the general welfare test broadly. *See*, e.g., Lumond v. Board of Adjustment, 6 N.J. Super. 474, 69 A.2d 361 (Super. Ct., L. Div. 1949), *aff'd* 4 N.J. 577, 73 A.2d 545 (1950), Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 437 (1949).

54. Zoning regulations are presumed to be for the general welfare of the community. To this presumption is often added the common presumption that the regulation, as a municipal ordinance, is valid. This compounding of presumptions grants a substantial degree of immunity to local zoning boards. The lower court in Lumond v. Board of Adjustment, 6 N.J. Super. 474, 69 A.2d 361 (Super. Ct., L. Div. 1949), *aff'd* 4 N.J. 577, 73 A.2d 545 (1950), noted that zoning ordinances [A]re permitted for the purpose of promoting the general welfare . . . and it is presumed that the restrictions in a zoning ordinance limiting the use of land to a specified purpose is in the public interest . . . they are usually designed to guide the future growth and development of a municipality for the common good. *Id.* at 478, 69 A.2d at 363. Affirming the decision, the Supreme Court of New Jersey clearly subordinated regional planning to the maintenance of local property values. 4 N.J. at 585, 73 A.2d at 549. The court viewed zoning as an "overall scheme which is set up for the general welfare of the several districts and the entire [local] community." *Id.*

55. *See* Lionshead Lake, Inc. v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952), where the New Jersey Supreme Court approved minimum lot sizes and suggested that the responsibilities of the township to the region would be met by main-
of the general welfare test often degenerated into an inquiry of whether the zoning ordinance in question was a proper exercise of the police power. If the municipality had the power to promulgate the ordinance, then the ordinance served the general welfare. Often, courts would refuse to deal at all with questions of general welfare raised in zoning cases. These courts preferred to leave the determination of the general welfare to legislative bodies. This inaction affirmed existing zoning policy, since the bodies to which the courts deferred were the same bodies whose decisions had been challenged.

In Vickers v. Township Committee the New Jersey Supreme Court deferred to the judgment of local zoning officials since, in its view, a municipality's decision that the zoning plan would advance municipal welfare was determinative. According to the court, a municipality which was largely undeveloped was not obligated to include every kind of use somewhere in the developed township. The appellate division had suggested that there was probably an acceptable location elsewhere in the region for a trailer park and that because of alternative location, the defendant was not required 


57. Bilbar Constr. Co. v. Board of Adjustment, 393 Pa. 62, 141 A.2d 851 (1958). The court stated that the zoning of a neighboring town cannot control a municipal zoning ordinance. While the general welfare is an important element in resolving whether a zoning ordinance is within the police powers, the task of ascertaining whether it serves the public interest is best left to the legislature and courts should not substitute their views for those of the legislature. *Id.* at 72, 141 A.2d at 856.

58. See Bonaldo v. Board of Zoning Appeals, 146 Conn. 595, 153 A.2d 429 (1959). The parties shared a border which had been zoned by both municipalities for residential use. When North Haven rezoned its portion for industrial use, the court held that the revision did not change the comprehensive plan of zoning in New Haven. *Id.* at 598, 153 A.2d at 430. See also Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954) (discussed at note 29 supra). There is no indication in the opinion that the court in Bonaldo considered the implications of judicial approval of insular attitudes in zoning for the welfare of the larger regional community.

59. 37 N.J. 232, 181 A.2d 129 (1962). Trailer camps and trailer parks were excluded from a district zoned for industrial use by the ordinance in question.

60. The court cited Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949), and Lionshead Lake, Inc. v. Township of Wayne, 10 N.J. 165, 89 A.2d 693 (1952), in support of this proposition.
to make any provision for such a use. The supreme court reversed, but reaffirmed the power of municipalities to exclude undesirable uses from the community.61

This decision points out the tension between Ramapo and the district court opinion in Petaluma. Like the majority in Vickers, the Ramapo court permitted an exclusionary and insular zoning plan which forced potential residents to go somewhere else to live without considering the effect on that "somewhere." The Ramapo court was in accord with the Vickers majority in its approval of judicial deference to the wisdom of local zoning authorities. In contrast, the Petaluma court recognized that municipal authorities, if unrestrained, would act to the detriment of other communities to achieve municipal benefit. That court required local authorities to consider the effect of local zoning on all the "somewheres" that might be affected by a local decision to limit one type of land use or another.62

The common statutory requirement of a comprehensive plan of zoning63 has helped to perpetuate the narrow reading of the Euclid

61. 181 A.2d at 133. Justice Hall's dissent in Vickers has been cited with approval far more frequently than the majority opinion. He condemned the barring of the mobile homes by zoning as a symbol of municipal power to exclude "according to local whim or selfish desire, and to use the zoning power for aims beyond its legitimate purposes." He advocated zoning with the needs of the region in mind:

Their political boundaries are artificial and hence of relatively little significance beyond defining one unit of local government. . . . They would be well advised to plan with adjoining communities, especially for joint public services and facilities. Intercommunity planning is also best able to accommodate those categories of uses that ought not be excluded everywhere, but which may be more desirably located in one municipality rather than another.

Id. at 254, 181 A.2d at 141. Justice Hall found the majority's approval of Gloucester's ordinance unacceptable inasmuch as it encouraged the formulation of zoning plans with no regard for impact on nonresidents. "[N]o matter how broadly the concept is viewed, it cannot authorize a municipality to erect a completely isolationist wall on its boundaries. . . . [C]ourts must not be hesitant to strike down purely selfish and undemocratic enactments." Id. at 262-65, 181 A.2d at 145-47.

62. Barone v. Bridgewater Township, 45 N.J. 224, 212 A.2d 129 (1965). In that decision the court noted that the use of the doctrine allowing or requiring the consideration of regional land use had been used to justify exclusion of undesirable uses, not to force inclusion of such uses.

It would certainly be a perversion to twist this salutary concept to require a municipality to zone its highway frontage so that all of the detrimental effects its neighbors have brought about will be duplicated within its borders in spite of its long continued effort to prevent that very consequence.

Id. at 235, 212 A.2d at 135.

63. Zoning enabling statutes usually require that all local ordinances be in accordance with a comprehensive plan of zoning. This requirement is intended to prevent the arbitrary or capricious use of the zoning power by the municipality. See, e.g., CAL. GOV'T CODE § 65000 (West 1966); Mich. Comp. Laws Ann. §
general welfare test. In *Udell v. Haas* the court explained that a zoning board, in exercising its powers under the enabling legislation, must act for the benefit of the community as a whole following a careful examination of alternative actions and must not act to satisfy "the whims of either an articulate minority or even majority of the [municipal] community." Evidence that forethought had been given to the community's land use problems was a factor in determining whether the statutory requirement that the zoning be in accordance with the master plan was satisfied. What the court created, however, was a circular test for determining whether the general welfare had been served by zoning legislation:

Where a community, after a careful and deliberate review of "the present and reasonably foreseeable needs of the community," adopts a general developmental policy for the community as a whole and amends its zoning law in accordance with that plan, courts can have some confidence that the public interest is being served . . . .

As long as the zoning board acted in accordance with a comprehensive plan, the court assumed that the substantive requirements of health, safety, morals, and general welfare were satisfied. Since the comprehensive plan was not examined for substance, however, the court's assumption was not well founded. *Ramapo* followed *Udell v. Haas*; the *Petaluma* trial court required that courts look beyond a finding that an ordinance complied with a comprehensive plan and determine the real-world effect of that plan.

In *Steel Hill Development, Inc. v. Town of Sanbornton*, the Court of Appeals for the First Circuit protected the threatened environment instead of requiring a zoning plan which was responsive to regional needs. Since many individuals in the region surrounding Sanbornton desired housing in the community, the general regional welfare logically would have been served by invalidating the defendant's rezoning plan. The court held, however, that the decision to disallow development which would change both ecology and scenery, as well as the character and financial burdens of a town,


65. *Id.* at 469, 235 N.E.2d at 900, 288 N.Y.S. 2d at 893.
66. *Id.* at 470, 235 N.E.2d at 901, 288 N.Y.S. 2d at 894.
67. 469 F.2d 956 (1st Cir. 1972). The plaintiff developer attacked the defendant resort community's rezoning law that increased minimum lot sizes from 35,000 square feet to 3 acres and 6 acres. The township argued that rezoning to 3-acre and 6-acre minimum lots was necessary because of drainage conditions and projected pollution and traffic increases.
was within the concept of general welfare. The local zoning board was empowered to make that decision. The Steel Hill court approved the normally suspect minimum lot size ordinance because the measure was considered a stopgap technique pending more precise planning. The thrust of the opinion, however, was that the threat of local ecological damage would override the general regional demand for housing.

The Steel Hill decision may be significant for another reason. In the past courts had not relied solely on the general welfare element of the Euclid test to sustain a zoning ordinance. Instead, such decisions had been buttressed by findings that the public health, safety, or morals were also served by the ordinance in question. In Steel Hill there was no evidence that the public health, safety, or morals were protected by a requirement that all building lots in Sanbornton be at least three acres. Consequently, under the Steel Hill rationale zoning based only on an undefined general welfare may well be valid, and that general welfare need only be that of the municipality.

VI. THE RAMAPO PLAN

Golden v. Planning Board of Ramapo may represent a position which will be adopted by many courts. The zoning plan adopted by Ramapo was a scenario for development over a period of 18 years. This technique, known as phased zoning or development timing, was defended as a tool to control growth without unreasonably curtailing development or the free enjoyment of property. Under the plan, building permits were to be granted upon application by qualifying developers if certain public facilities were shown to be available to the proposed building site. An involved point system based primarily on the proximity of these facilities to the site was to be used to determine developer eligibility for a permit. If facilities were not available, the builder could either wait until the master plan called for extension of facilities to the part of town in which the site was located or install the required facilities at his own

68. Id. at 963.
69. It is not clear whether the court's subordination of housing to environmental concerns was related to the fact that the housing in question was recreational vacation housing rather than primary housing.
72. (1) sewers, (2) drainage, (3) recreational facilities, (4) public roads, (5) firehouses. Id. at 368, 285 N.E.2d at 295, 334 N.Y.S.2d at 143.
"NO-GROWTH" ZONING

expense. Since the plan called for these facilities to be developed throughout the town within 18 years, the plan did not forbid growth outright. It did, however, effectively delay natural development.

Developers and landowners brought suit to challenge the validity of the plan. These plaintiffs claimed that the municipality was not empowered by the enabling legislation to control the tempo of development. They also argued that the plan was unconstitutional both as an unreasonable restraint on the marketability of the land and, by the exclusion of new residents, as a violation of equal protection.

The plan was upheld against both constitutional objections. The court stated that "[t]he power to restrict and regulate conferred under [the enabling statute] includes within its grant, by way of necessary implication, the authority to direct the growth of population for the purposes indicated, within the confines of the township." The court conceded that a zoning ordinance which sought to restrict permanently the use of property for any reasonable purpose was a taking, but stated that the problem did not arise in Ramapo because of the town's expected good faith and apparent intention to adhere to its self-imposed schedule of development. Since the required facilities would all be provided by the municipal authorities within 18 years, the plan was not a taking. A critical part of the Ramapo opinion was, then, that 18 years was not a sufficiently long period of restriction to qualify as an unconstitutional taking of property without compensation.

Under the Ramapo reasoning, a plan of phased growth was held to be within the ambit of zoning enabling legislation authorizing comprehensive plans to promote health and general welfare and to encourage the most appropriate use of the land. Since the power

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74. An earlier case, Rubin v. McAlevey, 54 Misc. 2d 338, 282 N.Y.S.2d 564 (Sup. Ct. 1967), aff'd, 29 App. Div. 2d 874, 288 N.Y.S.2d 519 (1968), approved a plan freezing all development in Ramapo for 90 days while the master plan was being completed.

75. 30 N.Y.2d at 371, 285 N.E.2d at 297, 334 N.Y.S.2d at 146.

76. Id. at 380, 285 N.E.2d at 303, 334 N.Y.S.2d at 154.

77. Id. at 379-80, 285 N.E.2d at 302-03, 334 N.Y.S.2d at 153.

78. Id. at 376, 285 N.E.2d at 300, 334 N.Y.S.2d at 150. The court exhibited a sensitivity to the problems of exclusionary zoning, but failed to recognize the exclusionary nature of the Ramapo plan.
of the municipality to zone land within its borders was grounded in a legislative enactment, the court deferred to that body's judgment. Ramapo's proposed system of phased growth was deemed acceptable as the comprehensive plan of zoning required by the enabling legislation.  

To analyze Ramapo in a general welfare context, the crucial points to consider are the approval of an 18-year plan and the acceptance of the scheme as a comprehensive plan without examining its impact on the surrounding community. Under Ramapo, even if the restrictions on residential development remained outstanding for the life of the program, those restrictions were found to be short of confiscation within the meaning of the Constitution.  

The court held that 18 years of restriction was not a taking of property from a landowner but did not consider whether such restriction might be a taking of welfare from the region. Eighteen years of more-than-proportional growth for neighboring communities in a period of rapid population expansion could result in serious general welfare problems for those municipalities.  

The reaction of the district court in Petaluma to a similar plan was more appropriate. The Petaluma court recognized the potential injury to a region in a plan designed to benefit only the municipality. Implied in this analysis is the further recognition of two separate but coexisting units whose welfare must be served by local zoning—the municipality and the region. The New York court found that a plan benefiting the municipality could stand without consideration of the effect on regional welfare; the district court in Petaluma required that the plan injure neither unit if it were to be found valid.  

In approving the Ramapo plan on the basis of its conformance with a comprehensive plan, the court approved technical compli-

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79. Finding the plan in procedural conformance with the enabling statute, the court declined to examine the plan's effect on the general welfare. "[O]urs remains the function of defining the metes and bounds beyond which local regulations may not venture, regardless of their professedly beneficent purposes." Id. at 377, 285 N.E.2d at 301, 334 N.Y.S.2d at 151.

80. The court did not appear to consider the effect on surrounding communities of Ramapo's artificial shackling of natural population growth. The housing needs of a region must be met; if Ramapo refused to accept its proportionate share (and a court condoned the refusal), then nearby communities would be forced to absorb not only their respective shares but also a portion of the share diverted by Ramapo. The court's approval of the Ramapo plan encouraged communities to zone for their own welfare at the expense of the welfare of neighboring communities. See R. Babcock, The Zoning Game: Municipal Practices and Policies 110 (1966); Comment, Regional Impact of Zoning: A Suggested Approach, 114 U. Pa. L. Rev. 1251 (1966).
ance. The Petaluma court, in comparison, took some pains to go past the test of conformity to determine the substantive effect of the plan. Phased zoning may contribute both to the shortage and the high cost of housing in a metropolitan area, thereby facilitating the exclusion of all lower income urban residents desiring housing in the municipality. Furthermore, Ramapo's refusal to accept growth resulted in a shift in growth to land farther from the urban center, reducing open space and contributing to the problem of urban sprawl. While the Ramapo plan halted urban sprawl within the borders of the municipality, the plan was equally effective in guaranteeing its spread throughout the metropolitan region. The court's opinion thus was a substantial retreat from judicial encouragement of regionally oriented zoning.

In general, commentator reaction to Ramapo and to phased zoning has been favorable. It has been noted that the judiciary has abandoned in some cases the assumption that the "general welfare of the community" included only the welfare of the municipality that adopted the ordinance and has instead assessed the reasonableness of the ordinances in a regional context. However, the emphasis by some courts on regional needs has been considered inappropriate by these commentators, and phased zoning similar to the Ramapo model has been suggested as the better alternative. Judicial intervention in regional land use problems has been termed

82. In this context "urban sprawl" is simply the extension of the ring of suburbs surrounding an urban center in a haphazard and unplanned manner of development.
83. Bosselman, supra note 81, at 248.
84. See notes 43-48 supra and accompanying text.
86. Note, Phased Zoning: Regulation of the Tempo and Sequence of Land Development, supra note 85, at 608. Oakwood v. Madison is cited as an example. The references to general welfare are made in the context of an equal protection analysis of phased zoning.
costly because courts cannot deal comprehensively with all of the problems of land use planning. Consequently, it has been urged that any remedies devised by the judiciary are piece-meal and fragmented. While courts may identify regional needs, they cannot impose an integrated regional plan, only a legislature can impose regional planning. Some fear that judicial intervention may paralyze legislative efforts to bring reason to land use planning. These opponents of judicial intervention believe, as did the Ramapo court, that the 18-year plan is a proper way to deal with the problem of uncontrolled growth:

Highly restrictive zoning ordinances [like Ramapo's] are not irreversible commitments; if nothing else, they keep land available for later uses. Judicial invalidation of such ordinances, on the other hand, would presumably be followed by an irreversible commitment of some of the land to high density uses.

While Ramapo's 18-year plan may not represent an irreversible commitment as far as Ramapo itself is concerned (Ramapo may at any time decide to allow development of local lands), neighboring communities, constrained to accept the growth Ramapo had diverted to them, may have to change their positions irreversibly in the interim. The tendency of municipalities to zone to protect a desired way of life was not subjected to a similar inquiry by the commentators. If courts do not strike down ordinances like Ramapo's, there is substantial danger that the tendency will never be curtailed. If legislative bodies also remain reluctant to approve regional or national land use legislation, then regional welfare will never be represented at all.

VII. THE PETALUMA PLAN

The zoning plan adopted by Petaluma and brought before the district court in Construction Industry Association v. City of Petaluma was enacted in response to a rapid rate of population growth in the San Francisco suburb which began after World War II and accelerated in the 1960's. The municipality had traditionally been an agricultural community and desired to maintain its character rather than become yet another commuter suburb. The number of housing units completed annually in the municipality had increased
from 270 in 1964 to 891 in 1971. The ordinance was designed to limit growth to a rate acceptable to the municipality. The plan had two important features: (1) the city was divided into two areas, an urban core circled by a perimeter area; and (2) the perimeter area would have no city facilities extended to it for 15 years, while no more than 500 new building permits would be issued each year for the urban core. Permits granted were to be awarded on the basis of a rating system which created a competitive situation among applicants.

The findings of fact indicated a willingness to assume the task which the Ramapo court had rejected—evaluation of the zoning plan in terms of its long-range implications for the region. The defendant's 30-year water contract was scrutinized; the court found that Petaluma had intentionally contracted for water sufficient to support no more than the desired level of population. The city's claim that the plan was necessary to prevent the overburdening of a water and sewage system inadequate to support natural growth was rejected. It was found that when the plan was first adopted, all public facil-

90. Id. at 575.
91. Prior to its enactment, the proposed plan was approved by the citizens of the city in a questionnaire survey. Id. at 576.
92. The court expressed doubts about the sincerity of Petaluma's rating system:
   The rating system employed is an intricate one. . . . Although we do not understand plaintiffs to attack the rating concept itself, they do contend that the application of this particular system's terms resembles a "Catch-22" type of operation; apparently nobody really knows what regulations will be applied, or how, or by whom. Plaintiffs argue that the merit rating system, as employed by these defendants, is actually a hazing system intended to discourage unwanted builders from acquiring permission to build. Id. at 577.
93. The court devoted a large part of its opinion to findings of fact. This section of the opinion is a careful analysis of the implications of the plan for the housing region surrounding San Francisco. In a separate section entitled "Conclusions of Law," the court considered the constitutional questions raised by the plan—particularly the right to travel, equal protection of the law, and general welfare.

There seems to be a somewhat tenuous connection, if not an outright disparity, between the court's findings of fact and its conclusions of law. It may well be that the court found that Petaluma, by artificially limiting the natural growth of the housing supply, did in fact violate the right of potential residents to travel to and obtain housing in the Bay Area. See note 102 infra. However, the lavish attention given to the portion of the opinion dealing with the findings of fact, compared with the somewhat cursory treatment given the right to travel issue in the conclusions of law section, suggests otherwise. The structure of the opinion and the reliance on nontraditional inputs (market demand for housing, statistical projection of housing shortages, growth center theory, threshold housing, etc.) indicate that the court may have been more concerned with the result of the litigation than with the strict integrity of the legal reasoning. While the right to travel is clearly implicated in this case, the court uses the right to bootstrap a factual result. See Note, The Right to Travel and Community Growth Controls, 12 Harv. J. Legis. 244 (1975).
cities were capable of absorbing a level of population growth equal to the free market demand for housing in Petaluma.\textsuperscript{94}

In examining the plan's impact on the regional housing market, the district court noted that the ordinance limited construction of new residential housing to a range of one-third to one-half of the market demand.\textsuperscript{95} The San Francisco regional housing market was described as a self-contained, unitary housing market.

Persons excluded from one suburb do not leave the region but seek housing elsewhere in the area. Where suburbs not practicing growth limitations are forced to absorb not only their own "share" of the population's growth, but also the excluding suburb's as well, they tend to retaliate by adopting exclusionary measures of their own. It is appropriate to measure the potential effects that the exclusion practiced by Petaluma would have if it proliferated throughout the region itself.\textsuperscript{96}

The limitation of growth when demand is static or rising is responsible for higher costs for new housing, higher rentals and longer life for substandard tenant housing, as well as the exclusion of center city residents who desire suburban housing. "The overall nature of the region's housing stock will decline."\textsuperscript{97} It should be noted that the Ramapo court failed to make any similar analysis of the effect of that municipality's 18-year plan on the quality of housing in the New York metropolitan housing region.

In the findings of fact, Petaluma was designated as a "growth center" in the San Francisco region with the capacity to absorb new residents.

Residential growth in such centers, though larger than in some other cities in the region, is not disproportionately larger in the sense that market, economic, demographic and other forces within the region dictate that growth shall occur in substantial part in growth centers.

If such growth centers curtail residential growth to less than demographic and market rates, as has been attempted in the present case, serious and damaging dislocation will occur in the housing market, the commerce it represents, and in the travel and settlement of people in need and in search of housing. Even in the cities in the region that do not qualify as "growth centers," the same exclusion of resi-

\textsuperscript{94} 375 F. Supp. at 577.

\textsuperscript{95} The court also designated the housing industry in Petaluma as interstate commerce. \textit{Id.}

\textsuperscript{96} \textit{Id.} at 579.

\textsuperscript{97} \textit{Id.}
dential growth would lead to substantially the same ad-
verse consequences if the exclusion were region-wide.\textsuperscript{98}

The court determined that growth must occur, if at all, in the growth centers, since housing expansion could not economically be forced out of the growth centers into new towns, rural areas or the center city.

The court anticipated a housing shortage of approximately 105,000 units in the San Francisco region in the decade 1970-1980 if the Petaluma plan were allowed to stand. This shortage would lead to high housing costs which, in turn, would inhibit interstate, intrastate, and foreign travel.\textsuperscript{99} The most serious impact would be on "threshold housing"—the least expensive housing available without government subsidy. The court found that the lack of sufficient threshold housing would injure the class of regional residents with incomes between $8,000 and $14,000.\textsuperscript{100} The court then summarized its findings of fact:

The aggregate effect of a proliferation of the "Petaluma Plan" throughout the San Francisco region would be a decline in regional housing stock quality, a loss of the mobility of current and prospective residents and a deterioration in the quality and choice of housing available to income earners with real incomes of $14,000 per year or less.\textsuperscript{101}

Even more significant than the district court's finding that the general welfare of the region would be seriously injured by the Petaluma zoning ordinance is the process the court employed in reaching its conclusion. The court made an examination of the practical results of the plan rather than simply reviewing the plan's conformity with the enabling legislation. There can be no doubt that the results of the plan served the general welfare of Petaluma and its residents. The key to the court's findings of fact was that the plan did not serve the general welfare of the region. This flaw was fatal. Had the Ramapo court engaged in a similar analysis, it is arguable that it too would have struck down the plan in question.

The court based its conclusions of law on the right to travel as a fundamental right under the fourteenth amendment.\textsuperscript{102} The

\textsuperscript{98} Id.
\textsuperscript{99} Id. at 580-81.
\textsuperscript{100} Id. at 581.
\textsuperscript{101} Id.
\textsuperscript{102} The court cited as authority, \textit{inter alia}, Memorial Hosp. v. Maricopa County, 415 U.S. 250 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969); Edwards v. California, 314 U.S. 760 (1941). The court's decision to base its findings of law on the right to travel rather than on violation of the
strict holding of the lower court in *Petaluma* was that the city's zoning plan infringed the constitutionally protected right to travel and was therefore invalid. The significance of the opinion and the court's reasoning process, however, go far beyond the strict holding; *Petaluma* is more than another right to travel case. Even though by its terms *Petaluma* is not a general welfare case, in precedential significance and impact it is very much a general welfare case. As a right to travel case, it functions as an application of the right to travel doctrine\(^{103}\) to a particular set of facts. In the general welfare and zoning context, *Petaluma* is unique; the court broke both with traditional deference to local zoning power and with minimal examination of a plan's conformity with the comprehensive plan. The court subordinated the luxuries of a municipality to the pressing needs of a region by examining the substance and long-range effects of the comprehensive plan. The major import of the opinion is its potential effect on the consideration of no-growth ordinances by other courts. Petaluma's problem was not unique, and other municipalities may attempt to solve the problem with the same type of zoning plan. If the lower court decision in *Petaluma* has any pervasive influence on judicial treatment of these plans, then that influence will be reflected in the decision of other courts to engage in the detailed analysis of the effects of the zoning plans before them.\(^{104}\) Once the decision and the analysis are made, ample grounds

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\(^{103}\) See note 93 supra. See also Note, *The Right to Travel and Community Growth Controls*, 12 HARV. J. LEGIS. 244 (1975).

\(^{104}\) Judicial review of municipal zoning for its conformity with the welfare standard gives some guarantee that an abuse of municipal discretion will not occur without a remedy while permitting cities to retain primary power and discretion. Some argue that the formulation of standards for land use decisionmaking is exclusively a legislative function, but municipal planning bodies have shown themselves to be unresponsive to public needs beyond municipal boundaries. State and national legislative bodies have been reluctant to become involved at all. This abdication of legislative responsibility leaves the protection of the interests of extra-municipal residents to the judiciary.

While controversy has often raged about judicial action in other areas, it has always been recognized that it is an essential part of the judicial function to watch over the parochial and exclusionist attitudes and policies of local governments, and to see to it that these do not run counter to national policy and the general welfare.
such as equal protection, unconstitutional confiscation of property, abuse of powers under state enabling legislation or failure to exercise general welfare powers in a manner consistent with the general welfare are available to support the decision.

The district court in *Petaluma* stated that the ordinance under question was an exclusionary zoning law. The plan was found to violate the constitutionally protected right to travel because of its exclusionary effect. The individual has a right to decide where he will live and Petaluma, by assuming the power to decide for the individual, had violated that right.

Since the right to travel has been considered fundamental, the court noted that a compelling state interest would have to be furthered by the ordinance if Petaluma's plan were to withstand constitutional scrutiny. Petaluma offered for consideration three areas of concern which it claimed would be improved or furthered by the ordinance—an insufficient water supply, an inadequate sewage disposal system, and a municipal interest in limiting the growth of population within its borders. The court rejected the first two in the findings of fact:

> Where a municipality purposefully limits the quantity of any particular commodity available, then seeks to justify a population limitation based upon an alleged inadequacy of that commodity, it has not stated a compelling interest which supports the limitation. Petaluma has so proceeded in the present case, and accordingly, it has failed to offer a compelling state interest in this regard.

> Additionally, "alternative means," including the current ability to request more water supplies from its source, are available to the defendants. For both reasons, therefore, the purported justification set out above must fail.

The municipal interest in the control of its own rate of growth and the citizens' desires to protect small town character were also

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This may be unacceptable as a permanent solution because of the need for some sort of legislative determination of the issues. But until significant legislative action is achieved, this model allows municipalities to continue rational land use planning programs subject only to a court-imposed rule of reason protecting the interests of those who are otherwise unrepresented. It is not suggested that municipalities be barred or even discouraged from engaging in land use planning. The planning process is essential to the orderly development of housing and public services. Without planning, urban sprawl is inevitable. The emphasis must be on making the planning process more rational by involving a larger portion of the concerned parties. The desired goal is an active planning process serving the needs not only of the zoned community but also the needs of affected outsiders.

105. 375 F. Supp. at 583.
found to be insufficient justification for exclusionary ordinances. The court restated the issue: "[M]ay a municipality capable of supporting a natural population expansion limit growth simply because it does not prefer to grow at the rate which would be dictated by prevailing market demand[?][106] In its consideration of the issue, the court adopted the same position toward exclusionary zoning as the Pennsylvania judiciary. Bilbar Construction, National Land, Kit-Mar and Girsh were cited with approval.[107] The district court's holding reflected this posture:

Since the population limitation policies complained of are not supported by any compelling governmental interest the exclusionary aspects of the "Petaluma Plan" must be, and are hereby declared in violation of the right to travel and, hence, are unconstitutional . . . . Such holding is intended to encompass, not only the outright numerical limitations upon the issuance of building permits, but also any and all features of the plan which, directly or indirectly, seek to control population growth by any means other than market demands.[108] The Petaluma court's reliance on market demand as the crucial measuring device for determining the effect of a zoning plan on the general welfare was the single most important difference between it and the Ramapo court. Market demand was a manifestation of interests almost completely external to the municipality.[109] The municipality could not effectively manipulate the demand, and its residents were not numerous enough to have a controlling effect on the demand. The thrust of Ramapo and its predecessors was that internal influences were essential elements in shaping local zoning legislation. If the district court's analytic model should achieve widespread acceptance, then the traditional reservation of power to the local community to shape its style of living without regard to the impact on nonresidents would be ended. This power would be replaced by a new power, still local, but limited in scope by the

106. Id.
107. See notes 33-41 supra and accompanying text.
108. 375 F. Supp. at 586.
109. See Note, Large Lot Zoning, 78 Yale L.J. 1418, 1432-33 (1969). Market dynamics is perhaps the single external factor most responsible for the development of exclusionary zoning. Sale of land on the free market would result in lower prices and increased density. Unrestricted transfer would also preclude effective municipal planning for future growth. Id. But municipal zoning decisions which disregard market demand for housing and land result in accommodation of the internal interests of the municipality only, often at the expense of all parties with no input into the decisionmaking process who are affected by the decision. 375 F. Supp. at 583. See also Roberts, The Demise of Property Law, 57 Cornell L. Rev. 1 (1971).
housing market. In effect, all interested parties and not just municipal residents would be represented in the decisionmaking process leading to zoning legislation.\textsuperscript{110} Those communities tempted to follow Petaluma's example would not be able to exercise exclusive control over the decisionmaking process.

\section*{VIII. Petaluma and Ramapo in Light of Belle Terre}

The different approaches of the courts reviewing the Ramapo and Petaluma zoning plans indicate the uncertainty that attaches to the judicial scrutiny of any zoning scheme. Forecasting the judicial reaction to plans limiting the rate and level of municipal population growth is an exercise in speculation. Often a court must choose between a valid municipal concern and a valid regional argument. A recent Supreme Court decision suggested that the municipal argument may prevail.

In \textit{Village of Belle Terre v. Boraas}\textsuperscript{111} the Supreme Court upheld the constitutionality of a local zoning ordinance that prohibited the occupancy by more than two unrelated persons of a single-family dwelling although the ordinance permitted occupancy by any number of blood-related individuals. The plaintiffs challenged the constitutionality of the ordinance on the grounds that it violated both the right to travel and the right to privacy, and that the government did not have a proper interest in preserving social homogeneity.\textsuperscript{112}

The Court's analysis built upon its perceptions of the municipal power to zone elucidated in \textit{Euclid} and \textit{Berman v. Parker}, where

\begin{enumerate}
\item 110. \textit{See Note, Large Lot Zoning, supra} note 109, at 1432-33.
\item 111. 416 U.S. 1 (1974). The action was brought by the owners of a building and by three of the six unrelated college students to whom the premises had been leased.
\item The Supreme Court has decided few zoning cases since the landmark \textit{Euclid} decision. While on the surface \textit{Belle Terre} did not deal with precisely the problems present in \textit{Petaluma} and \textit{Ramapo}, the decision indicated certain judicial preferences which might influence the Court in an analysis of a no-growth ordinance which had been challenged on general welfare grounds. This, of course, is not to say that \textit{Belle Terre} dealt exclusively or primarily with general welfare, but the Court's reaffirmance of the municipal power to make zoning decisions may influence the future judicial response to no-growth plans.
\item 112. \textit{Id.} at 7. Other grounds were that the ordinance interfered with the right to migrate to and settle within a state, that it barred people found unacceptable by local residents, that it "expresses the social preferences of the residents for groups that will be congenial to them," \textit{id.}, that the villagers have no rightful concern with the marital status of cohabiting residents, and "that the ordinance is antithetical to the Nation's experience, ideology, and self-perception as an open, egalitarian, and integrated society." \textit{Id.}
extensive discretion was granted to local authorities. Initially, the Court focused on its decision in *Euclid* to allow zoning to prevent noise, increased traffic, and dangerous living conditions. The village of Belle Terre had argued that unrelated people living together would create more traffic and parking problems. The discussion in *Belle Terre* of *Berman* centered around the goal of the ordinance sustained in that case, *i.e.*, the development of an attractive, balanced community. The court in *Berman* had given substantial latitude to municipal authorities in dealing with social and economic problems through zoning. Referring to this, the Court stated in *Belle Terre*: "We refused to limit the concept of public welfare that may be enhanced by zoning regulations."

In dismissing the arguments advanced by the students who resided in Belle Terre, the Court stated that since no fundamental rights were implicated, the statute's validity depended upon its reasonable relation to a proper objective rather than to a compelling state interest. The Court then held that the ordinance was reasonably related to a permissible state interest.

In writing for the Court, Justice Douglas approved a broad power for a municipality to zone for the local welfare:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family

113. 348 U.S. 26 (1954). Congress had passed legislation to redevelop a blighted area of the District of Columbia. The owner of a department store argued that the purpose of the legislation was not to rid the area of slums but to develop, under the management of a private agency, a better balanced, more attractive community. Therefore, his property could not be taken under the statute even with just compensation.

114. 416 U.S. at 5. This concise restatement of the *Berman* position is of little help in illuminating the Court's position on regional general welfare or local general welfare.

115. *Id.* at 7. The Court's equal protection analysis has been criticized. While the Court used a two-tiered equal protection analysis perhaps the facts of *Belle Terre* justified a use of a middle level scrutiny which has been used in cases involving classifications of illegitimacy, indigency, and sex, among others. *The Supreme Court, 1973 Term*, 88 HARV. L. REV. 41, 124 (1974). If the scrutiny had been more intensive, the Court might have found the ordinance unconstitutional:

> One could infer that a locality in the exercise of its zoning authority bears a lesser burden of demonstrating the rationality of its classifications than it would in other contexts... In this type of case there appears to be little justification for particularly restrained review. The Court's implication that as a general rule it will be deferential in reviewing zoning cases seems unfortunate.

*Id.* at 128.
values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.\footnote{116}{416 U.S. at 9.}

The Court's decision suggested that "a sanctuary for present residents" would be more appropriate language. Justice Marshall's dissenting opinion\footnote{117}{Justice Marshall dissented on the grounds that the fundamental rights of free association and privacy had been violated by the ordinance. Id. at 12.} echoed the majority view: "[A]s a general proposition, I see no constitutional infirmity in a town limiting the density of use in residential areas by zoning regulations which do not discriminate on the basis of constitutionally suspect criteria."\footnote{118}{Id. at 17.}

As the most recent Supreme Court pronouncement on local zoning powers, \textit{Belle Terre} may provide the general welfare debate with two types of analysis—an equal protection analysis and a region/municipality welfare analysis.\footnote{119}{The effect of the \textit{Belle Terre} equal protection analysis in the exclusionary zoning context is unclear. For instance, the Supreme Court found that no fundamental right was violated by the ordinance in question, while the district court in \textit{Petaluma} rested its holding on a violation of the right to travel. In the \textit{Belle Terre} opinion the Court gives no indication of how it would handle a zoning case in which the right to travel was violated. In particular, there are no clues which suggest whether the Court would find that Petaluma's arguments in the district court disclosed compelling state interests in light of \textit{Belle Terre}.}

It is possible to view the position taken by the Supreme Court as a rejection of the expansive definition of the general welfare test developing in some jurisdictions. A finding that one of the proper uses of the zoning power is to "make the area a sanctuary for people"\footnote{120}{416 U.S. at 9.} suggests that Petaluma's citizens would be allowed to protect the character and ambiance of their community by cutting off the flow of new residents at an arbitrarily low level. The language of \textit{Belle Terre} included nothing to indicate that the creation of a sanctuary may not be accomplished at the expense of communities and individuals in the housing region.\footnote{121}{Perhaps the most persuasive argument for affording recognition of regional interests is a negative one. The alternative of doing so would be socially unrealistic and undesirable, and in the end self-defeating. That rejection of regional interests as valid matters of judicial concern would be self-defeating is demonstrated by the impact such treatment would have upon market conditions. A stabilization of supply of subdivided land in the face of a rising regional demand for such land would markedly increase its price, creating an increasing differential between the price of the land zoned at the low density and the price at a higher density. Comment, \textit{Regional Impact of Zoning: A Suggested Approach}, 114 U. PA. L. REV. 1251, 1254 (1966).} The Court appeared to accept without question the traditional view of zoning as a purely local prerogative. While the lower court's reasoning in \textit{Petaluma}...
luma promised a de-emphasis of local power through a balancing of internal and external determinants of zoning, Belle Terre approved the Ramapo approach of local zoning for local residents. The Supreme Court appeared to prefer the Ramapo notion of local general welfare to the Petaluma conception of a more broadly based regional general welfare.

The Supreme Court has not considered the role of the comprehensive zoning plan in determining the validity of a local zoning ordinance. Although the Belle Terre ordinance was part of a larger plan, the Court failed to analyze the implications of the ordinance or the plan for the region. The focus of the opinion was exclusively on local power. Perhaps a comprehensive plan was enough, as long as no fundamental rights were abridged by the plan. Such a position discouraged any effort to change the emphasis in zoning laws from their effect on municipal governments to their impact on individuals. The Petaluma district court opinion subordinated the power interests of the city to the housing needs of people. There

122. This emphasis on local power puts zoning back where it was immediately after the Euclid decision and ignores the developments in the 40-plus years since the Balkanization of metropolitan areas and the traditional view that the municipality is the proper unit of government to exercise the zoning power have combined to enable municipalities either to permit or exclude particular land uses without much regard for the needs of the area as a whole or the adverse impact of particular land uses upon their municipal neighbors. Cunningham, Land-Use Control—The State and Local Programs, 50 IOWA L. REV. 367, 407 (1965).

123. At least one very influential commentator has stated that a judicial requirement of conformity with a comprehensive plan is not enough; the standard degenerates into a test of the reasonableness of the plan. He suggests that all zoning enabling legislation should include a requirement that all comprehensive plans be submitted to a regional body for approval before any regulations are passed under the plan. Haar, In Accordance With a Comprehensive Plan, 68 HARY. L. REV. 1154 (1955). See also Woodroof, Land Use Control Policies and Population Distribution in America, 23 HASTINGS L.J. 1427 (1972).

124. The treatment of zoning law as a branch of local real estate law rather than as a branch of constitutional law, and the resulting differences between the states, is largely due to the unwillingness of the United States Supreme Court to see zoning as regulations affecting people and not just as regulations affecting land. The justices . . . do not recognize the importance of the more subtle forms of discrimination found in the zoning area. Consequently, the United States Supreme Court has let each state go its own way in creating its own rules. R. Babcock, The Zoning Game: Municipal Practices and Policies 15 (1966). In the context of economic and social interdependency within which our municipalities find themselves, it makes no sense to view zoning as no more than a form of private and local real estate law, or, worse, as the exclusive franchise of each municipal duchy. Zoning must be treated as a matter of public policy which has metropolitan implications. Id. at 110.
were alternative courses of action open to the city while housing alternatives in the region were shrinking because of growing population and a fixed supply of land. In balancing the interests of the municipality and its citizens against the needs of a larger geographical and population unit, the Petaluma court found that the few could not determine the fate of the many.

One of the common elements of the Ramapo, Petaluma, and Belle Terre ordinances was the tendency of the zoning plans to act as exclusionary measures, closing the residential doors of the community to prospective homeowners and renters. Most of the commentators have condemned the use of exclusionary zoning, but in Belle Terre the Supreme Court gave hope to those who would use sophisticated exclusionary techniques like those employed by Petaluma and Ramapo to escape the changes that natural growth and time inevitably produce. While the exclusion of newcomers has served the needs and desires of local residents, any judicial tolerance of such a plan was reactionary in its response to the recent development of zoning law. Because of such tolerance, "local zoning remains essentially what it was from the beginning—simply a process by which the residents of a local community examine what people propose to do with their land and decide whether or not they will let them." The Petaluma court reoriented local zoning to solve rather than avoid problems of growth. Ramapo perpetuated the old thinking which Belle Terre would support. Local authorities attempting to protect municipal interests in zoning may expect judicial approval, while outsiders challenging such municipal action should not hope for judicial protection.


126. This assumes that such exclusion is not based on suspect categories which would render the plan vulnerable as a denial of equal protection.


128. The effect of the Supreme Court's position is at least to retard the "quiet revolution":

The ancien regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of individual local governments, each seeking to maximize its tax base and minimize its social problems, and caring less what happens to all the others. Id. at 1.

The innovations in most cases have resulted from a growing awareness on the part of both local communities and statewide interests that states, not
Other interpretations of the *Belle Terre* opinion might limit its role in the zoning/general welfare debate. If *Belle Terre* is read narrowly, the Court considered only the power of a municipality to exclude particular living arrangements and did not go on to examine land use and growth decisions. The Court reaffirmed the municipality's exclusive power to zone for existing housing, but the opinion was silent on the power to zone for future development. In addition, *Petaluma* is nominally a right to travel case, and the Supreme Court found no abuse of the right to travel in *Belle Terre*. *Belle Terre* may also be restricted as a case which evaluated a municipal definition of "family." The Supreme Court decision might be viewed as an equal protection case of limited application which created guidelines for identifying questions of fundamental rights in zoning conflicts. If no fundamental rights are violated, then the opinion may be used to test the reasonableness of state action in zoning.

While these alternative readings are plausible, the inescapable thrust of *Belle Terre* is an affirmation of the exclusive right of municipalities to make land use and housing decisions—of which zoning is a crucial part—in whatever manner the local authorities determine best serves the needs of the community. One cannot ignore the emphasis which the Supreme Court has placed on judicial deference to local legislative decisions on land use. Forcing municipal planners to evaluate regional concerns reduces their power to make independent zoning decisions.

If the concept of regional general welfare expressed by the district court in *Petaluma* is ever to gain favor over the *Ramapo* view of local general welfare, the judiciary must perceive the changing role of land in society. Traditionally courts have treated land as a commercial commodity. In a period when growing population threatens to saturate large geographical areas, land must be treated as both a commodity and a natural resource. Viewing land as a commodity, traditional zoning recognizes property value theory as a means to insure the dollar value of land. This value may be maximized through the proper use of land, but may also be diminished by planning since the dynamic forces of a free market are

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129. *Id.* at 315.
Planning theory requires a community to analyze and articulate its land use goals before enacting any controls over private land. If land is a natural resource, i.e., a resource in which the public is entitled to share, then judicial review of zoning should emphasize the process by which the community develops a plan to satisfy the needs and desires of all interested parties. The analysis made by the district court in Petaluma is the kind of general welfare analysis every municipality should be required to make in promulgating zoning plans. The absence of this type of judicial analysis will result in more insular zoning decisions.

IX. Remedies

The deference to local legislatures traditionally observed by courts and state legislative bodies complicates the task of resolving the conflict between local and regional welfare. The best solution would be new state enabling legislation which reduces the need for judicial review and minimizes the opportunity for municipal abuse. Another solution and one which is more germane to the above discussion of the judicial treatment of no-growth plans is the imposition of judicially administered remedies.

A court may invalidate a zoning ordinance for failure to comply with the state enabling statute. Since most statutes include language requiring the municipality to zone for the general welfare, a court might be justified in invalidating a no-growth ordinance similar to that in Ramapo or simple statutory noncompliance. But if this judicial disapproval is to have an effect beyond each individual case, courts must consciously adopt and consistently enforce standards of review which provide municipalities with some degree of certainty. The district court in Petaluma formulated standards which meet the needs of affording certainty and municipal discretion in planning. Courts should look beyond mere procedural compliance

131. Id. at 117.

132. The arguments for a regional orientation in zoning and even for the creation of regional zoning boards to replace local authorities are persuasive. In Babcock, Id. it is argued that since municipalities rely on regional, state, and federal resources for their sustenance those municipalities should zone with the welfare of the larger units in mind:

If the local communities are willing to pass on to larger units the responsibility for policy-making in matters such as transportation, open space, sanitation, clean air, and water resources, that not only directly affect the value of private land but are themselves directly harmed or benefited by the use of private land, the municipalities should not be surprised if decision-making gravitates also to the larger community or, at the least, that the validity of their local decisions is measured by something other than the municipality's parochial goals.

Id. at 147-48.
with enabling legislation and begin to examine the true effects of a zoning plan on the region.\textsuperscript{133} In such an evaluation of regional welfare a court may draw on the expertise of the economist, the planner, and the environmentalist to determine whether a given zoning plan properly serves the population unit affected by it. In response to a clear and consistent method of judicial review, municipalities would seek to avoid invalidation by integrating regional needs into their land use planning decisions.

In establishing such a procedure for review the court does not employ any substantive requirements. The court determines whether the plan does advance the general welfare by looking at the substantive effects of such a plan.\textsuperscript{134} The absence of substantive guidelines maximizes the discretion of the municipality to employ its land in whatever manner it sees fit. The only significant restriction on the municipal prerogative is that local authorities must not manipulate land use decisions to prevent natural growth. This maximization of local discretion is consistent with the traditional approach to zoning. It also permits the municipality, which is

\textsuperscript{133} The Supreme Court of New Jersey made exactly this type of examination in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713 (1975), cert. denied, 44 U.S.L.W. 3198 (Oct. 6, 1975). The court held that a municipality could not use its powers of land use regulation to make the building of low and medium income housing physically and economically impossible. Large lot zoning which restricted building to single family housing was held to violate the general welfare. The court identified two obligations that municipalities must fulfill—maximization of the availability of a variety of housing types and satisfaction of a percentage of the regional housing demand.

The court's analysis of the general welfare issue focused on the municipal zoning power as a mere delegation of a state power:

\textsuperscript{[1]} It is fundamental and not to be forgotten that the zoning power is a police power of the state and the local authority is acting only as a delegate of that power and is restricted in the same manner as is the state. So, when regulation does have a substantial external impact, the welfare of the state's citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served.

\textit{Id.} at —, 336 A.2d at 726. This judicial attitude reflects the perception of the municipality's relationship to the region that is expressed, albeit in a different context, by the district court in \textit{Petaluma}.

The general welfare examination made by Justice Hall, for the court, went further than did the test he advocated in his dissent in \textit{Vickers v. Township Comm.}, 37 N.J. 232, 252, 181 A.2d 129, 140 (1962). He noted that the proper provision of adequate housing for all categories of people is an absolute essential in the promotion of the general welfare which is required by zoning enabling legislation. Southern Burlington County N.A.A.C.P., \textit{supra}, 67 N.J. at —, 336 A.2d at 727. While the language of the opinion is not precise, this statement may well mean that municipalities may not only be barred from restricting the availability of housing but may also be obligated to take affirmative steps to provide a wide range of housing choices within their boundaries. In this way the case may take a significant step beyond the district court's holding in \textit{Petaluma}.

\textsuperscript{134} See note 104, \textit{supra}.
often the only unit with sufficient knowledge and interest, to make the best land use decision for all parties involved.

The need for much of this judicial review would be obviated if state enabling legislation were rewritten to establish either guidelines or substantive standards for local zoning authorities. Existing enabling legislation only vests municipalities with those police powers necessary for the promulgation of local zoning ordinances. An implication of wide-ranging local discretion arises from the absence of any substantial requirements or restraints. Because the enabling statute contains no enforceable guidelines, it is possible for an ordinance which will have detrimental effects on a neighboring community to comply fully with the statute.

In drafting new enabling legislation, it is important to recognize that there is substantial merit in reserving most land use decisions to the municipality. Extensive and substantive legislative requirements would not be appropriate; local officials alone have sufficient familiarity with local land use problems to make most substantive decisions. But a statute must establish parameters for the local exercise of discretion.

Legislation that would maintain municipal discretion while preventing abuses harming the region would require that a municipality consider the regional impact of a proposed zoning ordinance in its decisionmaking process. The proposed statute might be modeled on the National Environmental Policy Act of 1969 (NEPA) which requires that federal agencies include significant environmental considerations in determining whether and how to implement any project. An acceptable environmental impact statement is proof of this consideration. Zoning officials could submit a zoning impact statement to the state for the public record. Such a plan would guarantee some consideration of regional implications by local authorities and would alert concerned parties, both public and private, to the proposed ordinance. This legislation would require only that the

135. Placing the decision-making power in a regional body would have some advantages—more uniformity, less parochialism, less duplication of services and expenditures—but these gains would come at the high cost of local expertise. Neither extreme—complete local control or complete external control—appears to be a suitable solution.


137. California has already adopted this approach. Under the California Environmental Quality Act of 1970, CAL. PUB. RES. CODE, §§ 21000-21151 (West 1970), a municipality is required to consider the environmental impact of a zoning decision in making that decision. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 500 P.2d 1360, 104 Cal. Rptr. 761 (1972). The Supreme Court of California held that the EQA, modeled on NEPA, required the filing of an environmental impact report for the issuance of a conditional use or building permit. The court avoided
The Ninth Circuit has chosen to allow municipalities to regulate land use patterns without requiring that regional needs and resources be considered in the decision process. By applying a test similar to the Ramapo test and emphasizing judicial deference to local legislative authorities, the court of appeals has rejected the more innovative analysis used by the district court and has encouraged local decisionmakers to zone in an insular and parochial manner. It is unwise, however, for courts to rely on local officials to integrate regional considerations into the zoning process because in the absence of legislative action, only a court enforced standard of regional consciousness can prevent the abuse of local zoning discretion.

In allowing the Petaluma plan to stand, the Ninth Circuit has ignored or rejected a number of alternative solutions which would have maximized housing opportunities while maintaining a high degree of local control over land development. The court's failure to employ any of these alternatives returns the state of zoning case law to where it stood immediately after Village of Euclid v. Ambler Realty Co. Under this model zoning ordinances may be used not to solve problems common to the communities in a region but to create new problems.

The court of appeals declined to analyze the long term impact of the Petaluma plan on the San Francisco metropolitan area. Instead, it limited its analysis to determining whether the city had the power, under the enabling legislation, to promulgate the plan. Courts must look beyond procedural conformity with enabling legislation and determine the effects of a challenged zoning plan to decide whether the plan serves the general welfare. The combined effect of deference to local zoning bodies in which all interested and affected parties are not represented, exclusive focus on procedural conformity, and presumption of validity of municipal zoning laws is to make a sham of any efforts to challenge zoning legislation.

In choosing the Ramapo approach over the analysis of the district court in Petaluma, the Ninth Circuit abdicated its responsibility and adapted old solutions to new problems. It is no answer to say,
as the Ninth Circuit did, that a federal court is not a "super legislature nor a zoning board of appeal."\textsuperscript{138} Federal courts have long protected the rights of individuals from local action when legislative bodies have abdicated their responsibilities. "National respect for the courts is more enhanced through the forthright enforcement of those rights rather than by rendering them nugatory through the interposition of subterfuges."\textsuperscript{139} It remains for other courts to adopt a broader, more enlightened perception of the nature of land use problems and to solve the problems in a manner which will serve the interests of a maximum number of the interested parties.

\textit{Howard Allen Weiner}

\textsuperscript{138} 522 F.2d at 906.