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Zoning Growth Controls for the General Welfare: *Construction Industry Association v. Petaluma*, 522 F.2d 897 (9th Cir. 1975)

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I. INTRODUCTION

Throughout the nation, suburbs located near established metropolitan centers are seeking ways to provide necessary municipal services to rapidly expanding populations without substantial increases in local taxes. In doing so, they wish to preserve the character of their community and avoid any undesirable growth.\(^1\) This new attitude toward urban growth was displayed in the comprehensive plan developed for Petaluma, California. In *Construction Industry Association v. Petaluma*,\(^2\) the Ninth Circuit found that the Petaluma Plan ("the Plan") was a reasonable attempt by the city to deal with these growth pressures when it found itself unable to provide needed public services, such as sewage disposal plants, schools, water supplies, parks, fire protection and health services.\(^3\)

Communities, such as Petaluma, are expected to provide for the interests of present and future citizens and still take into account the impact which their actions will have on the larger metropolitan area. They must often act without effective regional or statewide standards to guide them in making the necessary decisions. However, they also need flexible controls to enable them to balance increased housing needs with diminished land resources and growing needs for public services with tight municipal budgets.\(^4\)

This note examines the judicial approach taken in *Petaluma* and contrasts it with state court decisions which have generally

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2. 522 F.2d 897 (9th Cir. 1975), cert. denied, 96 S. Ct. 1148 (1976).
considered judicial intervention to be an appropriate device to strike down local zoning regulations when they have not properly provided for regional problems.

II. THE FACTS

The City of Petaluma is located about 40 miles north of San Francisco, in southern Sonoma County. Highway 101, the main north-south route through the Petaluma Valley, was relocated and widened into a freeway in 1956, bringing with it a gradually accelerating population growth. The new freeway drew the city into the Bay Area metropolitan housing market as people working in San Francisco and San Rafael became willing to commute longer distances in return for the relatively inexpensive housing available in Petaluma. From a population of 10,000 people in 1950, the city grew to 14,000 by 1960 and 24,000 by 1970. Rapid growth continued, as the city added 5,000 people in less than two years in 1970 and 1971. Most of them moved into housing developments on land east of the new freeway, across from the city.\(^5\)

In 1971, alarmed by the accelerated rate of growth, the demand for more housing, and the sprawl of the city eastward, Petaluma adopted a temporary freeze on development and a zoning change moratorium which were intended to give the city council and planners an opportunity to study the housing and zoning situation and to develop short- and long-range plans.

The Petaluma growth control policy attempted to limit the number of dwelling units constructed in the city to 500 per year\(^6\) despite the fact that since the 1970-71 period, the market demand in the Petaluma area had been substantially in excess of this number.\(^7\) Among the other purposes to be achieved by the policy were to:

1. preserve the city's small-town character and surrounding open space by controlling the city's future rate and distribution of growth;
2. tie the rate of development to school and utility capacity;
3. encourage a balance of development between eastern

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5. FALK, supra note 1, at 16.
6. The Plan did not impose a flat limit of 500 development-units per year, but did exempt all projects of four units or less. There was no evidence presented as to the number of exempt units expected to be built, so it was unclear what impact the 500 development-unit limitation would have on the natural growth of housing in the area. The court's decision assumed that the 500 development-unit growth rate was in fact below the reasonably anticipated market demand for such units, and that faster growth would result in the absence of the Plan. 522 F.2d at 902.
7. Id.
and western sections of Petaluma, and (4) provide a permanent greenbelt for definition of urban form and utilize city powers of utility extension and annexation to support the greenbelt policy.  

The Plan also attempted to alleviate existing problems, such as rehabilitation of older homes and a deficiency in multifamily units. A citizen’s board was established to administer the 500-unit quota. It was to allocate eight to twelve per cent each year to low to moderate income housing and was to distribute these allocations within the allowable limit to various districts of the city.

III. THE COURT DECISIONS

Two landowners and the Construction Industry Association of Sonoma County filed suit against the city, its officers and council members, claiming that the Plan was unconstitutional. The district court ruled that certain aspects of the Plan unconstitutionally denied the “right to travel” guaranteed by the United States Constitution. Because the Plan sought to restrict growth, the court found that it was an effort to avoid the problems that accompany contemporary trends in population growth. Through the plan, the defendants propose to address themselves to such problems by limiting the number of people who will henceforth be permitted to move into the city. The express purpose and the intended and actual effects of the “Petaluma Plan” have been to exclude substantial numbers of people who would otherwise have elected to immigrate into the city.

The “right to travel” of these excluded individuals, therefore, was violated.

On its part, the city had argued three compelling interests to support the exclusionary measures it had adopted. It first pointed out that while it was necessary for it to provide adequate sewage treatment facilities, present facilities were inadequate to serve an uncontrolled population. Second, the city alleged an inadequate water supply. The court rejected both of these arguments because there was no connection between the alleged inadequacies and the exclusionary measures taken. Lastly, the city contended that by virtue of its zoning power, it had an inherent right to control its rate of growth and to protect its “small town character.” The

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8. FALK, supra note 1, at 16.
9. 522 F.2d at 901.
11. Id. at 581.
12. Id.
13. Id. at 582-83.
court saw this as the primary issue\textsuperscript{14} and rejected it as a violation of the right to travel.

On appeal, the Ninth Circuit found that a decision on the right to travel argument was inappropriate because the landowners and the Association did not have standing to assert the rights of third parties allegedly excluded by the Plan.\textsuperscript{15} It ruled that the economic interests of the appellees which were affected were outside the zone of interest to be protected by the right to travel, and, therefore, they did not have the requisite standing to raise the issue.\textsuperscript{16}

Rather than cease its inquiry at this point, the court decided to dispose of the other challenges to the Plan which had not been decided in the district court. The justification for doing this was to promote judicial economy. In addition, because the lower court had made clear its conclusion that the avowed purposes of the Plan did not amount to legitimate governmental interests, the Ninth Circuit felt that it would be a wasteful exercise to remand the case so that the district could consider the other challenges.\textsuperscript{17}

The second argument on appeal questioned the reasonableness of the zoning ordinance because the express purpose and actual effect of the Plan, as found by the district court, was to exclude substantial numbers of people who would otherwise have elected to move to Petaluma.\textsuperscript{18} Conceding that the Plan had an exclusionary effect, Judge Choy framed the issue in the following manner: "We must determine further whether the exclusion bears any rational relationship to a legitimate state interest."\textsuperscript{19} It was concluded that the regulation was justified by some aspect of the community's police power which was being asserted for the public welfare. Relying on Belle Terre v. Boraas,\textsuperscript{20} the Court found that preserving the small town character of Petaluma was a legitimate state interest\textsuperscript{21} and, therefore, justified the exclusionary effect of the Plan.

The third argument proffered by the Association alleged that the Plan posed an unreasonable burden on interstate commerce. The district court had found that housing in Petaluma and sur-

\begin{itemize}
\item \textsuperscript{14} Id. at 583.
\item \textsuperscript{15} 522 F.2d at 904.
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. at 905 n.8 and 9.
\item \textsuperscript{18} Id. at 906.
\item \textsuperscript{19} Id. (emphasis in original).
\item \textsuperscript{20} 416 U.S. 1 (1974).
\item \textsuperscript{21} 522 F.2d at 909, where the court found that the Plan was a rational attempt to preserve Petaluma's open spaces and low population density and to allow it to grow at an orderly and deliberate pace.
\end{itemize}
rounding areas was produced substantially through goods and services in interstate commerce and that curtailment of residential growth in Petaluma would cause a serious dislocation to commerce.\textsuperscript{22} The Ninth Circuit did not find this argument persuasive because the regulation neither discriminated against interstate commerce nor operated to disrupt its uniformity.\textsuperscript{23} It held that the Plan could be justified by balancing reasonable social welfare legislation against its incidental burden on commerce.

IV. HISTORICAL PERSPECTIVE

The constitutional validity of municipal zoning was established in \textit{Euclid v. Ambler Realty Co.}\textsuperscript{24} Euclid, Ohio, a suburb of Cleveland, was faced with the prospect of uncontrolled growth as industry and housing increasingly sought to build within its city limits. In an effort to provide order to its growth, Euclid passed zoning regulations for the height, area, and density of new development. The regulations were challenged as being violative of the due process and equal protection clauses of the fourteenth amendment but were subsequently upheld as being a legitimate exercise of the state's police power, asserted for the public welfare.

The \textit{Euclid} decision was the only major pronouncement of the Supreme Court for over 35 years. Its impact resulted in judicial approval of legislative classifications for zoning purposes if the validity of the classification was fairly debatable.\textsuperscript{25} After \textit{Euclid}, municipalities began to develop a variety of zoning devices to cope with the demands of urban growth.\textsuperscript{26} Most

\textsuperscript{22} \textit{Id.}
\textsuperscript{23} \textit{Id.}
\textsuperscript{24} 272 U.S. 365 (1926).
\textsuperscript{25} This is in accord with the command in \textit{Euclid}: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." 272 U.S. at 388.
\textsuperscript{26} Through zoning regulations, municipalities have also enacted timing controls to provide for an orderly development of urban areas. The concept of tempo and sequence control seems to have been first introduced in Fagin, \textit{Regulating the Timing of Urban Development}, 20 Law \& Contemp. Prob. 298 (1955). He conceived of tempo controls as affecting the "rate of urban development" and sequence controls as "an attempt to encourage growth around existing settlements before opening additional lands to intensive use." \textit{Id.} at 299. He suggested five motivations for regulating the timing of urban development:

1. "The need to economize on the costs of municipal facilities and services." Well-considered plans can coordinate the timing for providing services with the anticipated rate of growth.

2. "The need to retain municipal control over the eventual character of development." If there is no control over the timing of building,
states have passed enabling statutes which permit a city to develop a comprehensive plan for structuring its growth in an orderly fashion and to implement this plan through a comprehensive zoning ordinance. Initially, when a city's comprehensive plan had as its principal concern the physical development of the land within and surrounding its boundaries, the variance\textsuperscript{27} was the primary device providing flexibility in zoning matters and enabling a city to overcome particular hardships imposed by zoning ordinances. Today, zoning devices providing greater flexibility have been designed;\textsuperscript{28} in addition, the scope of comprehensive plans and zoning ordinances has been expanded to encompass socio-economic goals, such as preserving the city's "small town character," the town's "rural environment,"\textsuperscript{29} or quiet family neighborhoods.\textsuperscript{30}

As these new zoning techniques were developed to meet the changing problems brought on by urban growth, the Supreme Court continued to refuse to hear challenges to them until its decision in \textit{Belle Terre}. In that case, Belle Terre, New York had a zoning ordinance which restricted land use to one-family dwellings and prohibited occupancy of a dwelling by more than two unrelated persons as a "family," while permitting occupancy by any number of persons related by blood, adoption, or marriage. The plaintiffs were three of six unrelated college students who had been served with an order to remedy violations of the ordinance. They contend that the ordinance violated their equal protection rights

\begin{enumerate}
\item early development of an area may later make it impossible to convert it into the character required by evolving municipal patterns.
\item "The need to maintain a desirable degree of balance among various uses of land." Balanced development between residential, commercial and industrial construction may be important to provide economic stability.
\item "The need to achieve greater detail and specificity in development regulation." This has been made relevant by the increased request for and use of special zoning amendments and special use permits.
\item "The need to maintain a high quality of community services and facilities." When there is rapid building, there must be time to assimilate residential, business or industrial additions to the community with adequate provision of services.
\end{enumerate}

\textit{Id.} at 300-02.

27. A variance is a method to vary or adapt the strict application of a zoning ordinance in a case where there are exceptional physical conditions and where strict application of the ordinance would deprive the owner of the reasonable use of the land or building involved.

28. For a discussion of the most extensively utilized zoning techniques, see D. \textsc{Hagman}, \textit{Urban Planning and Land Development Control Law} 101-62 (1971).

29. \textsc{Ybarra v. Los Altos Hills}, 503 F.2d 250 (9th Cir. 1974).

and rights of association, travel, and privacy. The Supreme Court upheld the ordinance, stating that: it was not aimed at transients and thus did not violate any right of interstate travel; it involved no procedural disparity inflicted on some but not on others; it pertained to no fundamental constitutional right, such as the right of association or privacy; and finally, it was reasonable and bore a rational relationship to a permissible state objective and thus did not violate the equal protection clause.\(^3\) Although the full impact of Belle Terre has not yet become apparent, it clearly indicates that the Court intends to continue its policy of nonintervention in local zoning matters.

Despite this position, some state courts, notably those along the eastern seaboard, have adopted a policy of judicial intervention when it has been found that a municipality was attempting to avoid the problems of municipal growth. They have maintained that judicial intervention is justified if the local ordinance will have a negative impact on neighboring communities. These courts have applied their own state constitutional principles\(^3\) and have found them to impose more demanding standards\(^3\) than those found in the due process clause and relied on by the federal courts.

V. SUBSTANTIVE DUE PROCESS

In zoning cases, the judiciary has traditionally deferred to local legislation.\(^3\)\(^4\) This policy was established by the Supreme Court in Euclid, and the presumption of the zoning ordinance's validity is generally overcome only after showing a blatant constitutional violation that is not justified by a compelling state interest. Courts seldom look beyond the police power of the community to determine the reasonableness of the classification used by the local municipality. As stated in Petaluma, "the federal court is not a

\(^{31}\) 416 U.S. at 7-8.

\(^{32}\) See, e.g., N.J. Const. art. I, par. 1:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. . . .

which was applied in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151, 336 A.2d 713, cert. denied, 96 S. Ct. 18 (1975) to invalidate a zoning ordinance. Neb. Const. art. I, § 1 also recognizes the natural, personal rights of Nebraska citizens.

\(^{33}\) 67 N.J. at 175, 336 A.2d at 725.

\(^{34}\) This, of course, does not follow if the ordinance violates a fundamental constitutional principle. Segregating an area solely for one race would make the ordinance immediately suspect under the reasoning of Buchanan v. Warley, 245 U.S. 60 (1917). See Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).
super zoning board and should not be called to mark the point at which legitimate local interests in promoting the welfare of the community are outweighed by legitimate regional interests.35

By using the traditional due process analysis to determine whether the purported goals of the ordinance in question bear any rational relationship to a legitimate state interest, the court does not have to impose the more exacting standard of reasonableness, which might be too strict to justify the means employed by the municipality in furthering the stated goals of the ordinance.36 The rational basis test gives legislative bodies a reasonable margin within which to ensure effective enforcement. As the Court said in Euclid, "Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation."37 When the purposes of zoning classifications are fairly debatable, the courts have refrained from intervening38 thereby avoiding the necessity of developing standards for judicial review. Such standards would be difficult to apply to zoning ordinances because many consequences of the ordinances are subtle and not capable of determination until the plans have been implemented and the effects observed.39

The decision in Petaluma will be hailed as judicial approval of a community's attempt to deal with the impending problems and pressures of metropolitan growth. In this country, there is an absence of statewide or regional planning to coordinate the efforts of the individual communities which would be exposed to potential abuse by the development market without some local control.40 To

35. 522 F.2d at 908.
37. 272 U.S. at 389.
39. See Miscura, Petaluma v. The T.J. Hooper; Must the Suburbs be Seaworthy?, 2 MANAGEMENT & CONTROL OF GROWTH 187, 188 (1975). Malcolm A. Miscura was the attorney representing the Association in oral arguments before the Ninth Circuit and in the district court.
40. The California Government Code lists only the types of ordinances that a local government may use, with no references to permissible purposes for regulation. CAL. GOV'T CODE § 65850 (West Supp. 1975).
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protect against these developmental demands, many communities have passed zoning ordinances which limit growth or structure growth so that it coincides with providing public services, such as schools, sewer and water service, and police and fire protection. Some of these communities have made an honest effort to weigh the competing interests and to maximize the resulting benefits to citizens that flow from such planning. At least under federal constitutional principles, as evidenced by Petaluma, there is no indication that such a local plan will be invalidated merely because it did not confer substantially similar benefits on neighboring communities.\textsuperscript{41} Thus, there is no affirmative obligation to consider the regional impacts on the housing market which will be caused by the local ordinance.\textsuperscript{42}

Some state courts have reached this same conclusion, where a community has initiated a plan of phased growth. In Golden \textit{v. Planning Board of Ramapo},\textsuperscript{43} the court was reluctant to substitute its judgment as to the overall effectiveness of the city's plan for the considered deliberations of its progenitors.\textsuperscript{44} It found that the plan represented a bona fide effort to maximize population density and that it was consistent with orderly growth.\textsuperscript{45}

Where communities by their plans have attempted to stop growth and thereby avoid the problems facing the metropolitan area, other state courts have looked critically at such planning which furthers only local interests and ignores regional growth problems. Their decisions have been justified by state constitutional requirements that are more demanding than those of the Federal Constitution. For instance, in \textit{Southern Burlington County NAACP v. Mount Laurel}\textsuperscript{46} the court found that the universal and constant need for housing was so important and of such broad public interest that the general welfare which developing communities must consider extends beyond their boundaries. It held, broadly speaking, that each such municipality has a presumptive

\textsuperscript{41} Falk, \textit{supra} note \textit{1}, at \textit{12}.
\textsuperscript{42} \textit{See} Walsh, \textit{Are Local Zoning Bodies Required by the Constitution to Consider Regional Needs?}, 3 \textit{Conn. L. Rev.} 244 (1971).
\textsuperscript{44} Id. at \textit{376}, 285 N.E.2d at \textit{301}, 334 N.Y.S.2d at \textit{150}.
\textsuperscript{45} Id. at \textit{378}, 285 N.E.2d at \textit{302}, 334 N.Y.S.2d at \textit{152}.
\textsuperscript{46} 67 N.J. \textit{151}, 336 A.2d \textit{713} (1975).
obligation to plan and provide for regional housing needs. When local zoning ordinances become too restrictive, they cease to serve the public welfare, and instead serve private interests. Such a result is not justified by the police power of enabling statutes. However, the view expressed in Mount Laurel and similar cases fails to give proper consideration to the community's need to take adequate steps to preserve its own resources and provide necessary facilities for future residents. From these cases, it appears that when there is a desperate need for housing on a regional level, a community that is part of the region will apparently not be allowed to avoid its share of the growth by imposing a limit on housing which was not substantially equivalent to its proportionate share of the market demand. A Petaluma-type numerical limit on new residential units would apparently not be upheld by these courts.

Despite this position adopted by some state courts, municipal zoning is usually upheld absent a clear constitutional violation, such as blatant racial discrimination; courts are reluctant to interfere too actively since zoning is an exercise of police power reserved to the states. In Petaluma, while the Plan was primarily challenged as being arbitrary and unreasonable, and, thus, violative of the due process clause of the fourteenth amendment, it was also claimed that it was exclusionary and did not further any legitimate governmental interests. In disposing of this latter argument, the court noted that any zoning restriction will have to exclude some activity, structure, or inhabitants. It then went on to examine the major issue which involved the constitutional parameters of the due process argument.

Zoning regulations must be justified by some aspect of the state's police power asserted for the public welfare. This principle, first announced in Euclid, has been the traditional source of judicial deference to the local ordinance and forms the basis for decisions where the courts have refused to intervene.

The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine

48. Note, supra note 4, at 613.
50. 522 F.2d at 905.
51. 272 U.S. at 387.
52. See p. — supra.
53. See note 38 supra.
that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.\textsuperscript{54}

Although courts have been concerned by the exclusionary effect of low density zoning\textsuperscript{55} because restricting the supply of residential units is permanent and the demand for homes may someday be unmet, phased zoning is temporary\textsuperscript{56} and thereby evidences an ultimate commitment to regional housing needs.\textsuperscript{57} The Petaluma Plan involved such phased growth to the extent that it allowed 500 residential development units to be built per year. This system of specifying the number of development units presents a situation in which a court, if it decides to intervene, must use its own judgment as to the housing needs of the community and region, as well as other local decisions involving the provision of municipal services. However, if the court does not allow the community to set a numerical limit to the number of residential development units which can be built, it may be stripping a community of a necessary technique to cope with the problems of unrestrained growth. The community, in turn, is likely to substitute another type of zoning ordinance which achieves the same result,\textsuperscript{58} but which has gained judicial approval in other contexts. Therefore, it seems that the wisest approach for the court is to allow the community to impose rational and reasonable zoning ordinances if there are no serious constitutional violations, and no contrary federal, state, or regional controls, rather than have the court embark on the rocky road of defining constitutional due process limits for local zoning.

In adopting this approach, the major area of disagreement for federal and state courts concerns whose general welfare the local ordinance must further. The federal courts, relying on the police power of the community as delegated by the state, have found that a community need only provide for its own general welfare and not that of the entire region which might be affected by local actions. The Petaluma court recognized this potential impact on legitimate regional housing needs,\textsuperscript{59} but left solution of this problem to the

\textsuperscript{55} Note, Large Lot Zoning, 78 YALE L. J. 1418 (1969).
\textsuperscript{56} For a discussion of growth management techniques, see \textsc{Urban Growth Management Systems}, Planning Advisory Service, Report Nos. 309, 310 (Aug. 1975), which suggests that growth avoidance rather than growth control is the important issue.
\textsuperscript{58} For example, consider the comprehensive plan upheld in Golden.
\textsuperscript{59} 522 F.2d at 908.
state legislature and not the federal court. This action is not entirely consistent with Euclid wherein the Court recognized the potential serious abuse of zoning powers by local authorities and the impact it would have on neighboring communities.

It 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. 60

Insularity of communities results in distortions of metropolitan growth patterns and crippling of regional and statewide efforts to solve the problems of pollution, decent housing, and public transportation. Communities find themselves no longer adhering to the “growth is good” concept. 61 Phased growth does represent a concession to growth pressures as well as a determination to slow growth to a desired rate. Up to now, federal courts have not found that the general public interest so far outweighs the local interest that the latter should not be allowed to stand, except where to do so results in constitutional violations. Whether the scope of general welfare will be extended to deal with a plan such as that in Petaluma which imposed growth restrictions in a metropolitan region remains to be seen. At this time, the Belle Terre decision makes it seem unlikely.

When local plans have failed to give proper consideration to their impact on regional needs, some state courts have intervened. Such was the situation in National Land & Inv. Co. v. Kohn 62 where the zoning ordinance required a minimum area of four acres per building lot in certain residential districts in the township. The court found that judicial review of such an ordinance demanded

60. 272 U.S. at 390.
61. Bosselman, Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?, 1 FLA. ST. L. REV. 234 (1973). In his article, Bosselman warns that any sophisticated use of development timing requires enforceable regional planning policies and that extensive use will result in a major increase in housing costs. This will effectively preclude all but upper income groups from areas that adopt development timing because the amount of land available for housing will be restricted and its cost increased. He criticizes the Ramapo decision because its ordinance may prevent urban sprawl within its borders, but it contributes to the far more serious problem of megalopolitan sprawl. Id. at 248.
more than a determination that the objectives were rationally fur- 
thered by the means chosen. It said that

the time must never come when, because of frustration with con-
cepts foreign to their legal training, courts abdicate their judicial
responsibility to protect the constitutional rights of individual citi-
zens. Thus, the burden of proof imposed upon one who challenges
the validity of a zoning regulation must never be made so onerous
as to foreclose, for all practical purposes, a landowner's avenue
of redress against the infringement of constitutionally protected
rights.63

Courts have used a variety of reasons to strike down local ordi-
nances which have furthered local interests at the expense of
regional interests,64 thus indicating a willingness to intervene when
legislatures have failed to provide workable solutions for communi-
ties.

The Petaluma court utilized the traditional rational relationship
test whereby the exclusionary effect of the Plan had to bear a
rational relationship to a legitimate state interest.65 It compared
the purposes and effect of the Plan to those which had been
validated in Belle Terre and Ybarra, saying that the plans in each

63. 419 Pa. at 522, 215 A.2d at 607.
64. For example, in Southern Burlington County NAACP v. Township of
Mount Laurel, 67 N.J. 151, 336 A.2d 713 (1975), the court invalidated
general ordinance requirements which realistically permitted construc-
tion of homes only within the financial reach of persons of at least
middle income. Shepard v. Woodland Township Comm. & Planning
Bd., 128 N.J. Super. 379, 320 A.2d 191 (Ch. Div. 1974), found that a
qualification in an amendment to a zoning ordinance relating to senior
citizen communities, which provided that residency was limited to per-
sons of at least 52 years of age was unconstitutional. Taxpayers Ass’n
of Weymouth Township v. Weymouth Township, 125 N.J. Super. 376,
311 A.2d 187 (App. Div. 1973), invalidated an ordinance limiting occup-
ancy in mobile home parks to those 52 years of age or over and those
under that age, but over 18, who were members of a family the head
of which was 52 years of age or over. Board of Supervisors of Fairfax
County v. DeGroff Enter., Inc., 214 Va. 235, 198 S.E.2d 600 (1973),
declared that an enabling statute permitted localities to enact only tra-
ditional zoning ordinances directed to physical characteristics and
struck down an ordinance directed at socio-economic objectives.
Bridge Park Co. v. Highland Park, 113 N.J. Super. 219, 273 A.2d 397
(App. Div. 1971), invalidated an ordinance because the municipality
sought to regulate the ownership of buildings and types of tenancies
permitted, purposes not justified by the enabling statute.

65. A zoning ordinance must conform to a comprehensive plan in order
to escape claims of arbitrariness. When a community adopts an or-
dinance in accordance with a comprehensive plan, it is virtually as-
sured of judicial acceptance under traditional doctrines because courts
attach great weight to evidence that a local government is being
thoughtful about its land-use regulations. Note, supra note 4, at 599-
of those cases had been "more restrictive" than the Petaluma Plan. 66

Relying on Belle Terre to justify the 500-unit limit on residential development-units seems questionable since Belle Terre did not raise the issue of whether a municipality could control its growth in the face of metropolitan development pressure. Although Petaluma noted that as a result of its zoning ordinance Belle Terre would probably not exceed its present population of 700, 67 it is more likely that the village would not grow in population because its total land area is less than one-square mile. The problems faced by Belle Terre are unlike those confronting Petaluma, where there are broad undeveloped areas in a metropolitan environment which is feeling intensive development pressure. A narrower view of Belle Terre indicates that in that case the Supreme Court was concerned with the Village's definition of "family," and whether the zoning ordinance interfered with any constitutionally protected rights in that context. 68 Although arguably the Belle Terre ordinance was not a reasonable attempt to achieve its stated purpose and sought instead to forbid college students from living within the Village's boundaries rather than to preserve quiet family neighborhoods, 69 it at least bore a rational relationship to what the Court decided was a legitimate state objective. In broad dictum the Court gave guidance for federal courts in determining the rationale basis of such an ordinance:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a landuse 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 values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people. 70

This language gives municipalities a broad range of zoning techniques to use to cope with development pressures. The purpose of the Petaluma Plan, i.e., to preserve the city's small town character, seems to be a legitimate state objective under Belle Terre standards. However, the 500-unit limit on residential development-units is more likely to ensure that Petaluma remains a small

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66. 522 F.2d at 906.
67. The Belle Terre plan restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, and multiple-dwelling houses. 416 U.S. at 2.
68. For analysis of the Belle Terre decision, see 60 CORNELL L. REV. 299 (1975); 50 WASH. L. REV. 421 (1975); and 19 VILL. L. REV. 819 (1974).
70. 416 U.S. at 9.
town rather than to preserve its character since the character of a
community is not determined by its size, but rather by affirmative
steps it takes to protect those values which it considers to be worthy
of preservation.\(^1\)

In *Ybarra*, the other case relied on by the *Petaluma* court, the
City of Los Altos Hills passed a zoning ordinance providing that a
house lot should contain not less than one acre and that no lot
should be occupied by more than one primary dwelling unit. It
was contended that the ordinance discriminated against Mexican-
Americans and the poor. Although some state courts have struck
down minimum lot size zoning requirements,\(^2\) the Ninth Circuit
found the ordinance discriminated only against the poor and not
against any ethnic group and upheld it as rationally related to
preserving the town’s rural environment.\(^3\) By refusing to allow
any greater population density, the effect of the ordinance was to
stop growth permanently and keep out the poor, who could not
afford to purchase or build on the large lots; however, growth
control was not the basis of the challenge. Therefore, since no
racial discrimination was found, the validity of the ordinance was
sustained under traditional equal protection analysis.\(^4\)

While these ordinances are being upheld in federal courts, they
are being criticized in state courts as an attempt to preserve purely
parochial interests, while ignoring an obligation to assume the
community’s share of regional housing needs and other problems.

Almost everyone acts solely in its own selfish and parochial in-
terest and in effect builds a wall around itself to keep out those
people or entities not adding favorably to the tax base, despite
the location of the municipality or the demand for varied kinds
of housing.\(^5\)

Because federal courts seem intent on following a course of nonin-
tervention in the absence of blatant constitutional violations, it
seems likely that more state courts will be asked to respond to

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\(^{71}\) For a decision that found such an ordinance preserving “small town
character” to be a constitutionally impermissible goal under state con-
titutional standards, see *Appeal of Girsh*, 437 Pa. 237, 236 A.2d 395
(1970). There the court found that a zoning ordinance which pro-
tected the character or aesthetic nature of the municipality was not
sufficient justification for an exclusionary zoning technique.

\(^{72}\) See note 62 *supra*.

\(^{73}\) 503 F.2d at 254.

\(^{74}\) For an analysis and criticism of zoning as a method of exclusion and
discrimination, and for an excellent collection of cases dealing with
exclusionary zoning, see *National Comm. Against Discrimination &
Urban Land Institute, Fair Housing & Exclusionary Land Use*
(1974).

\(^{75}\) 67 N.J. at 171, 336 A.2d at 723. “Local limitation on growth is a foolish
response to a serious problem . . . .” *Bosselman, supra* note 61, at
248.
exclusionary tactics of communities attempting to avoid the problems of urban development and growth.

The federal courts' policy of nonintervention is justified. If they were to intercede they would be responding to judicially perceived regional needs, without benefit of any comprehensive regional planning. The limitations of the adversary process make it doubtful whether the courts could even ascertain the actual needs of the region. Furthermore, in the absence of a regionally developed plan, any judicial response would be totally arbitrary and not in accordance with sound land use planning principles. Also, judicial intervention might paralyze legitimate legislative attempts to rationalize development. The situation in Petaluma exemplifies this latter situation. The city had undertaken an extensive collection of data and evaluation of the needs and goals of the present inhabitants of the community and then had developed a plan which it thought was a rational means to attain these goals, while allowing the necessary flexibility to adapt to changing circumstances. If the court finds that the community is pursuing permissible goals, it should refrain from second-guessing or interfering as long as the city has chosen rational methods. If the court is unwilling or unable to set out clear standards for the community to follow, or to outline the regional problems each community must help solve, then it should refrain from intervening if the state legislature has not provided a workable solution.

Although judicial nonintervention leaves the municipality relatively unrestricted in developing its land use policies, arguably this stance may result in more pressure on legislatures to pass legislation to cope with these problems. Because of the specialization of the courts and the limitations of the adversary process, it seems that the problems encountered in land use planning are ones that courts are singularly incapable of handling. However, in the situation of a well-documented case, the courts could determine that regional needs were not sufficiently considered and could require appropriate amendment of an ordinance.

Petaluma leaves several issues unanswered. It is not certain whether the constitutional guarantee of a right to travel is the appropriate standard by which to judge land use and zoning cases. Because the Plan provided affirmatively for some growth

76. Note, supra note 4, at 608-11.
77. See Walsh, supra note 43, at 267.
78. The district court decision and the right to travel issue are discussed in 5 Golden Gate L. Rev. 485 (1975); 36 Ohio St. L.J. 128 (1975); 28 Vand. L. Rev. 430 (1975); 1975 Wash. L.Q. 234.
79. For recommendations offered to deal with regional housing and growth problems, see Bosselman, supra note 61, at 250; Fagin, supra
and regional needs, it is unclear how far a community must go to meet these needs or whether they can be totally ignored. It is also questionable as to whether the Federal Constitution allows cities to regulate growth so as to control market demands, which will have a direct influence on the price of new housing.

It was not the purpose of this article to suggest that state courts are more appropriate forums in which to litigate these issues, than is the federal judiciary. Both are faced with the same limitations of having to develop the contours for judicial review outside the context of legislative standards. The ultimate solution for dealing with the complex problems facing local communities in the shadow of metropolitan growth should come from the legislatures. Although the states have surrendered their regulatory power to local communities, when this power is exercised in a manner detrimental to neighboring communities, they should utilize their police power in favor of regional planning.

VI. CONCLUSION

The Petaluma court was willing to validate a particular community's effort to cope with metropolitan growth pressures. It, therefore, continues the policy followed by other federal courts of deferring to local zoning ordinances so long as they seem to further a legitimate state objective and so long as the means employed through the ordinance is rationally related to its purpose. Although the local plan may frustrate some regional housing and development plans, the federal courts will not intervene. Thus, the Federal Constitution may be considered as less demanding than state constitutions in the obligations it imposes on communities in regard to the burden of regional problems.

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80. Note, supra note 4, at 609.
81. Weinberg, supra note 79, at 788-89.
82. [I]t 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.

67 N.J. at 177, 336 A.2d at 726.