

1976

## Construction Industry Association v. City of Petaluma: Ninth Circuit Says Yes to Petaluma's Controlled Growth Plan

Timothy E. McCormick

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Timothy E. McCormick, *Construction Industry Association v. City of Petaluma: Ninth Circuit Says Yes to Petaluma's Controlled Growth Plan*, 12 Tulsa L. J. 129 (1976).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol12/iss1/4>

This Casenote/Comment is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact [megan-donald@utulsa.edu](mailto:megan-donald@utulsa.edu).

**CONSTRUCTION INDUSTRY ASSOCIATION v. CITY  
OF PETALUMA: NINTH CIRCUIT SAYS "YES" TO  
PETALUMA'S CONTROLLED  
GROWTH PLAN**

In a decision with potentially far-reaching implications for future land use planning and zoning law developments, the United States Court of Appeals for the Ninth Circuit, in *Construction Industry Association v. City of Petaluma*,<sup>1</sup> held that a city has the right to limit and control the numerical extent, aesthetic quality, and geographical direction of its own growth. Reversing the much commented upon<sup>2</sup> district court holding<sup>3</sup> denying the application of such expansive zoning powers, the Ninth Circuit concluded the "Petaluma Plan"<sup>4</sup> of controlled growth, which limited new housing units to a number designed to effect an eventual optimum population level, fell within the broad parameters of legitimate governmental interests, permitting exercise of the city's public welfare zoning powers. This note will examine the bases for the appellate court decision and offer an analysis of the potential impact and significance of its holding. To facilitate these goals, it is necessary to review the origins of the *Petaluma* controversy.

---

1. 522 F.2d 897 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976).

2. A number of articles have dealt with the district court decision and the right to travel issue. See generally Note, *Municipal Self-Determination: Must Local Control of Growth Yield to Travel Rights?*, 17 ARIZ. L. REV. 145 (1975); Note, *Zoning—Population Control in Metropolitan Areas—Municipal Ordinances Limiting the Number of Building Permits for the Purpose of Restricting Population Growth Held Unconstitutional Infringement on the Right to Travel, Where There is No Shortage of Municipal Facilities to Serve the New Residents*, 3 FORDHAM URB. L.J. 137 (1974); 23 KAN. L. REV. 324 (1975); Note, *Constitutional Law—The Right to Travel as a Limitation Upon the Exercise of the Zoning Power*, 36 OHIO ST. L.J. 128 (1975); 28 VAND. L. REV. 430 (1975); Note, *Freedom of Travel and Exclusionary Land Use Regulations*, 84 YALE L.J. 1564 (1975).

3. 375 F. Supp. 574 (N.D. Cal. 1974).

4. The controversial Petaluma Plan is actually comprised of a series of resolutions adopted by Petaluma's City Council in 1972. 522 F.2d at 901. For a reproduction of the important Residential Development System portion of the Plan, see Landman, *No, Mr. Bosselman, The Town of Ramapo Cannot Pass a Law to Bind the Rights of the Whole World: A Reply (Part I)*, 10 TULSA L.J. 169, 193-99 (1974) [hereinafter cited as Landman]. Although the Plan, on its face, was restricted to a five year period (1972-1977), *id.* at 901, the district court concluded that official attempts had been made to perpetuate the Plan through 1990. 375 F. Supp. at 577.

## BACKGROUND

Petaluma's growth control plan and the subsequent judicial test of its validity resulted from the city's apprehension over the physical changes rapidly occurring in the city and its environs, due to the essentially uncontrolled growth which first afflicted the city in the late 1960's and continued into the 1970's.<sup>5</sup> Due to the geographical expansion of the San Francisco metropolitan area,<sup>6</sup> Petaluma was being transformed from an agricultural community into a Bay Area commuter suburb; the city feared the total loss of its rural character.<sup>7</sup> It was from such concerns that the comprehensive Petaluma Plan was developed.

The Petaluma Plan had three general purposes: (1) to moderate the soaring growth rate the city was experiencing; (2) to geographically balance the growth which would be allowed; and (3) to retain and protect what was left of the small town character of the city.<sup>8</sup> The projected effect of the Plan was to reduce the future population level to a figure substantially below that which would be experienced if the

---

5. From 1950 to 1970, Petaluma experienced steady growth, with a population increase from 10,315 to 24,870. Based on unofficial figures, however, Petaluma's population had reached 30,500 by November of 1972, an increase of almost 25% in just over two years. 522 F.2d at 900. On the basis of a comprehensive analysis of growth patterns in Petaluma, city officials concluded that if the growth trend continued unabated, the city would have a population of 77,000 by 1985. 375 F. Supp. at 574.

6. Petaluma is located in Sonoma County, about 40 miles north of San Francisco. Due to its proximity to the metropolitan area and the relatively inexpensive housing available in Petaluma, the city has become increasingly popular with commuters working in the metropolitan Bay Area. 522 F.2d at 900.

7. While during the early 1960's Petaluma's leaders generally assumed growth was desirable, the dramatic population increase experienced in the early 1970's resulted in heightened concern over unrestrained growth. 375 F. Supp. at 575. As a reflection of its change in perception, the city established a temporary freeze on housing development in early 1971 as an interim control device. 522 F.2d at 900. Responses to questionnaires sent to approximately 10,000 city residents in 1971 indicated an overwhelming desire to limit growth. The city council's official statement on Petaluma's development policy further reflected these sentiments: "*In order to protect its small town character and surrounding open spaces, it shall be the policy of the City to control its future rate and distribution of growth. . . .*" 375 F. Supp. at 576 (emphasis added).

8. Statements in the Plan itself suggest its general purpose was to ensure that "development in the next five years, will take place in a reasonable, orderly, attractive manner rather than in a completely haphazard and unattractive manner." 522 F.2d at 901. The specific purposes of the Plan were: (1) to correct the imbalance in housing which existed between single-family and multi-family dwellings as a result of the overwhelming emphasis placed on the construction of single-family homes in Petaluma during the 1960's; (2) to encourage an east-west balance in development to curb the sprawl of the City to the east; (3) to provide for a variety in densities of housing units per acre, building types and the ranges of prices and rental costs; (4) to ensure the planned infilling of close in vacant areas; and, of course, (5) to retard the growth rate. *Id.* at 900-02.

growth level was allowed to continue its rapid rise unabated.<sup>9</sup> The methods by which the city's goals were to be accomplished consisted primarily of: (1) limiting new housing units to five hundred a year;<sup>10</sup> (2) creating an urban extension line around the city to serve as a boundary for future expansion;<sup>11</sup> and (3) severely restricting the extension of city facilities and services beyond the urban extension line.<sup>12</sup>

9. While the city had forecast a potential population of 77,000 by 1985 without growth controls, city officials concluded that under the Plan the projected maximum population of Petaluma in 1990 would be 55,000. *Id.* at 901, n.1. However, subsequent to the Ninth Circuit decision, Petaluma City Manager Robert Meyer suggested that the upper growth level might result in an ultimate population of between 70,000 and 90,000, despite the implementation of the Plan. *THE AMERICAN CITY & COUNTY*, Oct. 1975, at 40. Meyer did not specify when this figure might be reached and did not indicate disappointment in the higher figures mentioned. Instead, he voiced satisfaction that such growth would be planned growth. *Id.*

10. The Plan limited housing development to 500 dwelling units per year, for a total of 2,500 units throughout the operative five-year period of the Plan. However, the units covered by this provision included only those projects involving five units or more. Single-family homes and four-unit apartment buildings were not included within the purview of the Plan; rather, it was principally directed at the large number of tract homes which had proliferated in Petaluma. 522 F.2d at 901. Prior to the Plan's implementation, the following number of housing units were completed in Petaluma:

1964.....	270	1968.....	379
1965.....	440	1969.....	358
1966.....	321	1970.....	591
1967.....	234	1971.....	891

*Id.* at 900. The court of appeals noted the trend was toward increased demand for housing permits and that, without some governmental control on growth, consumer demand would continue to rise. The Plan effectively limited housing starts to approximately 6% of the existing housing stock per year. *Id.* at 902.

One of the most important and innovative aspects of the 500-unit limitation concerned the Residential Development Control System, which provides a method whereby building permits are allocated on a point system. Points are awarded to builders whose projects conform with the City's general plan and environmental and architectural design plans, and that provide low and moderate income dwelling units and various recreational facilities. The greater the conformity to these requirements, the more points the builder is awarded. This provides an obviously strong method of governmental control over the type of housing constructed in Petaluma. *Id.* at 901. During the initial period of the Plan's application, it appears that the city realized a substantial measure of success in its efforts to exert this control. *See THE NEW REPUBLIC*, September 21, 1974, at 11.

11. The urban extension line consisted of a 200' wide "greenbelt" around the city which served as a boundary for future urban expansion. Development was not permitted within or beyond this line, so that proper infilling would occur within the area inside of the greenbelt. As a further effort to control the imbalance in growth which plagued Petaluma, the extension line in certain parts of the city was closer to existing housing developments than in other areas, thus effectively limiting the geographical space within which rapidly expanding areas could continue to grow. Additionally, in these same areas, the boundary to expansion was imposed for ten to fifteen years, whereas in other sections, where growth was encouraged, the line was to be utilized only for the five-year life of the Plan itself. 522 F.2d at 901.

12. Instead of routinely supplying water and sewage facilities as in the past, the

## THE DISTRICT COURT DECISION

Two Petaluma landowners and the Construction Industry Association of Sonoma County brought suit challenging the constitutionality of the Plan, contending it violated the right to travel of those unnamed third persons who might desire to live in Petaluma, but who would be precluded from doing so because of the unavailability of housing resulting from the Plan's implementation.<sup>13</sup> As to themselves directly, the plaintiffs alleged the city's action was arbitrary and unreasonable, violating their due process rights as guaranteed under the fourteenth amendment.<sup>14</sup> Additionally, the plaintiffs claimed the effect of the Plan was exclusionary in nature and consequently beyond the scope of legitimate governmental zoning interests.<sup>15</sup> Finally, the plaintiffs argued that the Plan constituted an unreasonable burden on interstate commerce.<sup>16</sup>

In considering the plaintiffs' allegations, the district court focused primarily on the right to travel issue and the conflicting interests presented therein.<sup>17</sup> In analyzing the potential consequences of the Plan, the court concluded that due to the imposed housing limitations, which would restrict development to a level below that of demographic projections,<sup>18</sup> some individuals would be prevented from moving to Petaluma—thereby placing additional pressure on other communities in the area to supply housing to satisfy this unfulfilled demand.<sup>19</sup> Ultimately, the court theorized, other cities around Petaluma would be tempted to adopt similar growth policies which could result in a disruptive effect upon the availability of housing in the entire area, further

---

city decided not to provide such facilities beyond the extension line in an effort to complement the other aspects of the growth plan, thereby retaining further direct control over development. 375 F. Supp. at 576; THE NEW REPUBLIC, September 21, 1974, at 10.

13. 522 F.2d at 902. For articles providing a comprehensive treatment of the right to travel issue, see sources cited at note 2 *supra*, and the discussion in the district court decision, 375 F. Supp. at 583-86.

14. 522 F.2d at 905.

15. *Id.* at 906.

16. *Id.* at 905.

17. 375 F. Supp. at 581.

18. The district court found that the 2,000 housing units approved by the city in 1970-71 represented the fair measure of the market and demographic demands for housing in Petaluma at the time of the Plan's development. *Id.* at 575. Since the Plan limited new housing units to 500 per year, the court concluded this restricted development to a number below the natural housing market requirements, and interfered with the existing demographic demand. *Id.* at 575.

19. *Id.* at 577, 579.

frustrating the desire and right of individuals to freedom of travel.<sup>20</sup> After concluding that freedom of travel was a fundamental right subject to constitutional protection,<sup>21</sup> the court found the Petaluma Plan resulted in an unconstitutional violation of this right, unsupported by any compelling governmental interest which could not be furthered by alternative measures.<sup>22</sup>

#### THE COURT OF APPEALS RULING

In rejecting the holding of the district court, the Ninth Circuit Court of Appeals arrived at conclusions directly at variance with those of the district court. The major points of dispute between the two courts focused on the right to travel issue, the alleged arbitrariness of the Plan, and the asserted burdensome impact of the Plan on interstate commerce.

#### *The Right to Travel*

A principal area of disagreement between the district court and the Ninth Circuit concerned the threshold issue of the plaintiffs' stand-

---

20. In this regard, the court noted:

The San Francisco metropolitan region is generally self-contained and has a unitary housing market. Persons excluded from one suburb do not leave the region but seek housing elsewhere in the area. Where suburbs not practicing exclusionary growth limitation are forced to absorb not only their own 'share' of the population growth, but also the excluding suburb's as well, they tend to retaliate by adopting exclusionary measures of their own.

*Id.* at 578-79. Should this occur, the district court concluded it would result in deterioration of the housing stock in the entire area, and that "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." *Id.* at 579. In support of this conclusion, the court found that if the Petaluma Plan limitations were to be adopted throughout the entire San Francisco region, a "shortfall" in needed housing of approximately 105,000 units for the decade 1970-1980 would result. *Id.* at 580.

21. *Id.* at 581. In making this finding, the district court relied upon *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974); *Dunn v. Blumenstein*, 405 U.S. 330 (1972); *Oregon v. Mitchell*, 400 U.S. 112 (1969); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *United States v. Guest*, 383 U.S. 745 (1966); *Kent v. Dulles*, 357 U.S. 116 (1958); *Edwards v. California*, 314 U.S. 160 (1941).

22. The city advanced three "compelling interests" to justify the exclusionary measures within the Plan: (1) inadequate sewage facilities to serve an uncontrolled population; (2) inadequacy of the city's water supply; and (3) the city's inherent right, by virtue of its zoning power, to control its growth. The district court concluded the city had sufficient sewage capacity and water resources to serve the anticipated natural growth. In the event the city encountered difficulties in supplying the growing needs of the community, the court found that alternative means, including simply expanding the sewage treatment plant and contracting for additional amounts of water, were available which were less restrictive of the right to travel than the Petaluma Plan. *Id.* at 583.

ing to litigate the constitutional question of the right to travel. Because standing to litigate the right to travel question was central to the district court's decision, the appellate court carefully scrutinized this issue.

The district court dealt with the issue of standing in an almost cursory manner,<sup>23</sup> relying principally upon language in *Memorial Hospital v. Maricopa County*<sup>24</sup> to justify its conclusion that the plaintiffs had standing. On the other hand, the Ninth Circuit comprehensively analyzed the plaintiffs' interests with those of the unknown third parties whose rights they sought to protect, noting that two criteria must generally be met before standing will be granted. The first requirement is that the complaining party suffer an injury in fact resulting from the defendant's actions.<sup>25</sup> The second indispensable element concerns the zone of interest concept, wherein the plaintiff must assert his own rights, rather than resting his claim to relief on the legal rights of third parties.<sup>26</sup>

In reference to the first fundamental requisite, the court determined the "injury in fact" requirement was satisfied by the plaintiff Builders Association:

Appellees easily satisfy the "injury in fact" standing requirement. The Association alleges it has suffered in its own right monetary damages due to lost revenues. Sonoma County builders contribute dues to the Association in a sum proportionate to the amount of business the builders do in the area. Thus, in a very real sense a restriction on building in Petaluma causes economic injury to the Association.<sup>27</sup>

A similar conclusion was reached concerning the landowners' alleged injuries:

The two Landowners also have already suffered or are threatened with a direct injury. It is their position that the Petaluma Plan operated, of itself, to adversely affect the value and marketability of their land for residential uses, and such an allegation is sufficient to show that they have a personal stake in the outcome of the controversy.<sup>28</sup>

---

23. The district court dispensed with the standing issue in only one paragraph. The court, taking a decidedly liberal view of the standing requirements, noted that it was not necessary, for standing purposes, that the plaintiffs introduce evidence relating to an individual excluded by the Plan. *Id.* at 581.

24. 415 U.S. 250 (1974). The specific language quoted by the district court is found in this opinion. *See* 375 F. Supp. at 582.

25. 522 F.2d at 903, quoting *S. v. D.*, 410 U.S. 614, 617 (1973).

26. *Id.*, citing *Warth v. Seldin*, 422 U.S. 490 (1975), another case involving alleged exclusionary zoning practices by a municipality.

27. 522 F.2d at 903 (footnote omitted).

28. *Id.* at 903-04.

The Ninth Circuit concluded, however, that the "zone of injury" requirement presented a fatal impediment to the plaintiffs' standing to present the right to travel issue.<sup>29</sup> The court noted that the right to travel, the primary federal claim upon which the suit was based, was not a claim asserted on behalf of the plaintiffs, but rather on behalf of a group of unknown third persons allegedly excluded from living in Petaluma.<sup>30</sup> While the plaintiffs arguably suffered economic injury through application of the Petaluma Plan, these economic interests were outside the zone of interests protected by any constitutional guarantees of a right to travel.<sup>31</sup> Moreover, the Ninth Circuit found that none of the several exceptions to the general rule of standing applied in *Petaluma*.<sup>32</sup> Therefore, since no exceptions existed which would permit liberalization of the standing requirement for the plaintiffs, they were precluded from presenting the right to travel claim. The Ninth Circuit ultimately concluded its discussion of standing by stating that if this issue was to be litigated, suit would have to be initiated by those individuals whose mobility was allegedly impaired by the Petaluma ordinance.<sup>33</sup>

---

29. *Id.* at 904.

30. *Id.*

31. *Id.*

32. *Id.* The court distinguished the plaintiffs' position from that of the plaintiffs in the landmark cases of *Doe v. Bolton*, 410 U.S. 179 (1973), and *Griswold v. Connecticut*, 381 U.S. 479 (1965), noting that in those cases criminal statutes were involved and that enforcement of such statutes would have infringed directly upon the rights of third parties not litigants to the suit contesting the statute. While this justified the expansion of standing in those cases, the court concluded an analogous situation did not exist in *Petaluma*. Nor did the court find that type of special, on-going relationship between the plaintiffs and third persons who might be excluded from living in Petaluma which would warrant the granting of an exception to the standing requirements generally imposed. The only connection between the plaintiffs and the unknown third persons was the possibility that, but for the existence of the Plan, they would have been parties to a purchase-sale agreement. However, the plaintiffs did not allege that such contracts actually existed or that any contractual disruptions had occurred through operation of the zoning plan. In support of this analysis, the court relied *inter alia* upon *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969); *NAACP v. Alabama*, 357 U.S. 449 (1958); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

33. 522 F.2d at 904-05. The court noted:

Assuming *arguendo* that the constitutional right to travel applies to this case, those individuals whose mobility is impaired may bring suit on their own behalf and on behalf of those similarly situated. Although *Warth v. Seldin* denied standing to a group of low-income and minority group plaintiffs challenging exclusionary zoning practices, the case is no bar to a suit against the City brought by a proper group of plaintiffs.

By this language, it appears that the Ninth Circuit has clearly not foreclosed the possibility of a future challenge to the Plan by plaintiffs who may show direct interference with their constitutional right to travel. However, it is equally apparent that the court has not conceded that the Plan does unconstitutionally interfere with the right to travel. Such issues await future resolution.



Notwithstanding this finding that the plaintiffs lacked standing to contest the right to travel issue, the Ninth Circuit found the plaintiffs did have standing to present their other challenges to the Plan, based on its alleged arbitrariness, exclusionary nature and burdensome interference with interstate commerce.<sup>34</sup> On these grounds the court of appeals dealt directly with the validity of Petaluma's ordinance. The Ninth Circuit's examination in these areas provides the substantive importance of the *Petaluma* holding.

### *Exclusionary and Arbitrary*

One of the plaintiffs' primary arguments against Petaluma's zoning plan concerned the alleged exclusionary character of the ordinance.<sup>35</sup> In considering the contention that the Plan excluded certain classes of people from living in Petaluma, the Ninth Circuit reflected upon the general purpose of zoning regulations, observing that the existence of an exclusionary element in a zoning ordinance was alone insufficient to invalidate the regulation.<sup>36</sup>

Practically all zoning restrictions have as a purpose and effect the *exclusion* of some activity or type of structure or a certain density of inhabitants. And in reviewing the reasonableness of a zoning ordinance, our inquiry does not terminate with a finding that it is for an exclusionary purpose. We must determine further whether the *exclusion* bears any rational relationship to a *legitimate state interest*. If it does not, then the zoning regulation is invalid. If, on the other hand, a legitimate state interest is furthered by the zoning regulation, we must defer to the legislative act. . . . The reasonableness, not the wisdom, of the Petaluma Plan is at issue in this suit.<sup>37</sup>

The Ninth Circuit thus characterized the crucial determination as whether the exclusion bears a rational relationship to a legitimate state interest. While the court did not concede that Petaluma's Plan was exclusionary in fact, it nonetheless examined it to resolve the question

---

34. *Id.* at 905.

35. *Id.* The plaintiffs contended the effect of the Plan was to exclude large numbers of persons from moving to Petaluma. Exclusionary zoning has traditionally been used to describe municipal zoning regulations whose practical effect, because of minimum lot size and other requirements tending to raise the cost of suburban housing, is to prevent the migration of low and middle income persons. This, in turn, has the tendency to limit the movement of racial minorities, since they are frequently within the lower income categories. See *id.*, n.10.

36. *Id.* at 906.

37. *Id.* (emphasis in original) (footnote omitted).

of whether the Plan advanced a legitimate state interest. In making this determination, the Ninth Circuit relied extensively on three important zoning cases: *Berman v. Parker*,<sup>38</sup> *Village of Belle Terre v. Boraas*,<sup>39</sup> and *Ybarra v. City of Town of Los Altos Hills*.<sup>40</sup> The court observed that *Berman* clearly provided support for a broad interpretation of the concept of the public welfare to include the power to legislate over matters concerning both the social and physical environment.<sup>41</sup> *Belle Terre* and *Los Altos Hills* proved useful to the court in determining whether Petaluma's controlled growth plan could be included within the broad concept of public welfare outlined in *Berman*.

In relying upon the language of the Supreme Court in *Belle Terre*,<sup>42</sup> and its earlier decision in *Los Altos Hills*,<sup>43</sup> the Ninth Circuit characterized the ordinances upheld in those two cases as even more restrictive than the Petaluma ordinance:

Both the Belle Terre ordinance and the Los Altos Hills regulation had the purpose and effect of permanently restrict-

38. 348 U.S. 26 (1954).

39. 416 U.S. 1 (1974).

40. 503 F.2d 250 (9th Cir. 1974).

41. *Id.* In *Berman*, Justice Douglas, speaking for the Supreme Court, provided an expansive interpretation of public welfare:

The concept of the 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 that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

348 U.S. at 33 (citation omitted).

42. In *Belle Terre*, the Supreme Court upheld the validity of a city ordinance restricting land use to single-family dwellings, thereby excluding multi-family residences, fraternity houses, and boarding houses. In sustaining the ordinance, the Court stated that such prohibition was within the public welfare because the restricted dwellings presented distinct urban problems, due to the increased noise and traffic resulting from the more intensive habitation of these dwellings. The Court also noted that

[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. This goal is a permissible one . . . . 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.

416 U.S. at 9 (emphasis added).

43. In focusing upon *Los Altos Hills*, the Ninth Circuit noted the nature of the ordinance it upheld in that case. Los Altos Hills passed a zoning ordinance requiring a minimum one-acre housing lot size, with the additional limitation that only one dwelling unit could be located on the lot. Although, as the court candidly noted, this regulation prevented lower income individuals from living in Los Altos Hills, it nonetheless was found to be valid because it was rationally related to legitimate governmental interests (restrictions on the population density and preservation of the town's rural environment). 522 F.2d at 907.

ing growth; nonetheless, the court in each case upheld the particular law before it on the ground that the regulation served a legitimate governmental interest falling within the concept of the public welfare: the preservation of quiet family neighborhoods (Belle Terre) and the preservation of a rural environment (Los Altos Hills). Even less restrictive or exclusionary than the above zoning ordinances is the Petaluma Plan which, unlike those ordinances, does not freeze the population at present or near-present levels. Further, unlike the Los Altos Hills ordinance and the various zoning regulations struck down by state courts in recent years, the Petaluma Plan does not have the undesirable effect of walling out any particular income class nor any racial minority group.<sup>44</sup>

By contrasting Petaluma's Plan as less growth restrictive and exclusionary<sup>45</sup> than the *Belle Terre* or *Los Altos Hills* regulations, or exclusionary zoning ordinances enacted by other cities which were struck down,<sup>46</sup> the court clearly found it easier to uphold the Petaluma ordinance. Although the Ninth Circuit agreed with the district court that the zoning plan would exclude some persons from living in

44. *Id.* at 907-08 (footnotes omitted).

45. The court additionally noted that, to a limited extent, the Plan was "inclusionary," because it offered some previously unavailable housing opportunities to low and moderate income persons. Before the Plan's implementation, single family, middle-income residences dominated the housing market in Petaluma. See note 8 *supra* and accompanying text; 522 F.2d at 900. This effectively precluded low and moderate income groups from purchasing homes within the city. Because the Plan contained a mandatory number of dwelling units for low and moderate income individuals, the court took the position this could be characterized as an *inclusionary* element in the Plan. *Id.* at 908, n.16. For a comprehensive discussion of inclusionary ordinances, see Klevin, *Inclusionary Ordinances—Policy and Legal Issues in Requiring Private Developers to Build Low Cost Housing*, 21 U.C.L.A. L. Rev. 1432 (1974).

46. 522 F.2d at 908, n.16. A number of municipal ordinances involving minimum lot sizes or similar restrictions have been invalidated where their practical effect constitutes exclusionary zoning regulations. In contrasting Petaluma's ordinance with these ordinances, the Ninth Circuit provided an analysis of prior decisions, and the offending aspects of the zoning regulations in controversy:

[E]ach of the exclusionary zoning regulations invalidated by state courts in recent years impeded the ability of low and moderate income persons to purchase or rent housing in the locality. See, e.g., *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, 336 A.2d 713 (1975) (zoned exclusively for single-family detached dwellings and multi-family dwellings designed for middle and upper income persons); *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 283 A.2d 353 (1971) (minimum one or two acre requirement and severe limitation on multi-family units); *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A.2d 765 (1970) (two to three acre minimum lot size); *Appeal of Girsh*, 437 Pa. 237, 263 A.2d 395 (1970) (prohibition of apartment buildings); *National Land & Investment Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1965) (four acre minimum lot); *Board of County Supervisors of Fairfax County v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959) (rezoning to minimum two acre lots with the effect of keeping poor in another section of municipality).

*Id.*

Petaluma, it concluded this was not fatal, since the Plan was neither arbitrary nor unreasonable.<sup>47</sup> Additionally, the court of appeals accepted the plaintiffs' general proposition that unilateral land use decisions, such as the Petaluma ordinance, would have an effect upon the needs and resources of the entire region. The court noted, however, that it did not necessarily follow that the plaintiffs' due process rights were violated in such instance, since the city was exercising power lawfully delegated to it by the state. If this delegation of zoning power is ineffectively allocated, and neither serves the state's interest nor furthers the general welfare of the region, the court suggested it was the province of the state legislature, rather than the federal courts, to intervene and adjust the system.<sup>48</sup>

### *Burden on Interstate Commerce*

In rejecting the plaintiffs' final argument that the zoning plan unreasonably burdened interstate commerce, the Ninth Circuit grounded its finding on a series of Supreme Court decisions<sup>49</sup> holding that a state regulation, premised on a valid application of the police power, does not impermissibly burden interstate commerce where the regulation neither discriminates against interstate commerce nor operates to disrupt its required uniformity.<sup>50</sup> Thus, after concluding that none of the plaintiffs' objections to the Plan merited affirmation of the lower court ruling, the Ninth Circuit upheld Petaluma's right to preserve its small town character, open spaces, low density of population, and desire to grow at a planned, orderly pace.<sup>51</sup>

### ANALYSIS

Petaluma's controlled growth plan has clearly generated much controversy, at least in part due to the fact that it has been erroneously perceived as a no-growth plan.<sup>52</sup> However, Petaluma is not unique in

---

47. *Id.* at 908.

48. *Id.*

49. *Brotherhood of Locomotive Firemen & Enginemen v. Chicago, Rock Island & Pacific R.R.*, 393 U.S. 129 (1968); *Huron Cement Co. v. Detroit*, 362 U.S. 440 (1960); *Breard v. Alexandria*, 341 U.S. 622 (1951).

50. 522 F.2d at 909.

51. *Id.* Subsequent to the Ninth Circuit's decision, the plaintiffs appealed to the Supreme Court, which denied certiorari. 424 U.S. 934 (1976). Whether the Court reaches a different conclusion regarding the validity of Petaluma-type plans when it decides to take a case involving such plans is open to conjecture; for the present, however, the Court has impliedly given its imprimatur to the Petaluma Plan by denying certiorari.

52. In many quarters, the Petaluma Plan has been interpreted as a no-growth plan.

its desire to preserve its character through a system of planned and controlled growth. A number of other local governments around the country have contemplated, or attempted to implement, similar plans to protect their social and physical environments from what they perceive to be undesirable trends in community development.<sup>53</sup> One of

---

Articles characterizing the Plan as non-growth oriented include Kellner, *Judicial Responses to Comprehensively Planned No-Growth Provisions: Ramapo, Petaluma, and Beyond*, 4 ENVTL AFF. 759 (1975) [hereinafter cited as Kellner]; Siegan, *Land Use Planning in America, Controlling Other People's Property Through Covenants, Zoning, State and Federal Regulation*, 5 ENVTL L. 385 (1975) [hereinafter cited as Siegan]; Note, *General Welfare and "No-Growth" Zoning Plans: Consideration of Regional Needs by Local Authorities*, 26 CASE W. RES. L. REV. 215 (1975). The label "no-growth," which has been attached to the Petaluma Plan, appears to be incorrect since a substantial amount of *planned growth* is permitted under the Plan. The Plan is not intended to absolutely halt population growth in Petaluma, but to control and select desired types of growth. As suggested in note 9 *supra*, it is apparent that there is more flexibility in the Plan, relative to the contemplated limit on population growth, than was originally indicated in the Plan. To state the Plan is no-growth appears somewhat presumptuous and arguably erroneous.

53. A number of communities have been confronted with the same types of growth pressures as confronted Petaluma. In a number of instances, the reaction of these municipalities' legislative bodies has been similar to that of Petaluma's City Council. For example, in Boca Raton, Florida voters approved a referendum establishing a limit on the number of permitted dwelling units, effectively restricting the city's ultimate population growth to around 100,000 inhabitants. Unfortunately, unlike Petaluma and Ramapo, the city did not develop a comprehensive plan to accomplish the goals approved in the referendum. In little more than a year after approval of the referendum, the city had experienced a 40% increase in population, reflective of the failure in the growth control mechanisms the city had implemented. See Smith, *Does Petaluma Lie at the End of the Road from Ramapo*, 19 VILL. L. REV. 739, 744 (1974); Deutsch, *Land Use Growth Controls: A Case Study of San Jose and Livermore, California*, 15 SANTA CLARA LAW. 1, 7 (1974) [hereinafter cited as Deutsch]. Evidence of similar citizen concern over uncontrolled growth is found in a number of widely diverse cities which have enacted growth control and population limitation plans. Cities that continue to question the desirability of unrestrained growth include Boulder, Colorado; Boise, Idaho; and Scottsdale, Arizona. F. BOSSELMAN, D. CALLIES & J. BANTA, *THE TAKING ISSUE* 38-39 (1973) [hereinafter cited as BOSSELMAN, CALLIES & BANTA].

St. George, Vermont has initiated an imaginative plan, whereby the city has purchased all developable land within its borders, and permits its development only when the city deems it beneficial. *THE NEW REPUBLIC*, September 21, 1974, at 11. Other areas where there has been movement toward adoption of either comprehensive or limited types of growth control plans include Colorado Springs, Colorado; Denver, Colorado; Dade County, Florida; Hamptons, L.I., New York; Southampton, Long Island; Minneapolis-St. Paul, Minnesota; and Sanbornton, New Hampshire. Landman, *supra* note 4, at 205-21. For a comprehensive treatment of the Minneapolis-St. Paul Plan, see Freilich & Ragsdale, *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land-Use Controls in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009 (1974).

A number of cities in California are engaged in development and implementation of growth control ordinances. Primarily, these cities have been within the San Francisco Metropolitan Area and members of the Association of Bay Area Governments. In 1973, the Association adopted a position supporting a long-range regional growth policy for the Bay Area. Among cities which have taken steps to enact growth control plans are San Jose, Livermore, Pleasanton, and Palo Alto. The type and extent of

the first and most significant of such plans was that enacted in Ramapo, New York and unsuccessfully challenged in *Golden v. Planning Board*.<sup>54</sup>

In *Golden*, the town of Ramapo passed a zoning ordinance designed to restrict premature subdivision and urban sprawl by tying community development to the planned expansion of municipal facilities, under an eighteen-year capital improvements, sequential growth program.<sup>55</sup> This plan was upheld as a valid exercise of municipal zoning power. Although Ramapo's plan involved controlled growth policies resembling those in *Petaluma*, some substantial distinctions may be noted between the two plans. One crucial difference concerned the court's finding that Ramapo, unlike *Petaluma*, was pressed to its limits in providing adequate municipal services; its growth policies were, therefore, necessary and reflective of a valid application of zoning powers.<sup>56</sup> Additionally, in *Golden* there was never a stated intention to specifically limit the future population level to an absolute number.<sup>57</sup>

*Petaluma* has clearly broadened the powers of municipalities in effecting growth plans beyond that suggested in *Golden*. Whereas the *Golden* court was strongly influenced in upholding the Ramapo plan by its finding that the plan was necessary, not permanently restrictive, and not exclusionary,<sup>58</sup> the Ninth Circuit in *Petaluma* was able to reach an

---

growth control devices suggested in the zoning enactments of these cities vary from those of *Petaluma* and Ramapo, but the essential purpose of limiting the extent of growth appears to be the same. The fact that other cities in the Bay Area, besides *Petaluma*, have felt the need to commence some type of growth control is further evidence of the intense population pressures experienced in the area. For a comprehensive analysis of these developments, see generally Clarke & Grable, *Growth Control in California: Prospects for Local Government Implementation of Timing and Sequential Control of Residential Development*, 5 PAC. L.J. 570, 594 (1974); BOSSELMAN, CALLIES & BANTA, *supra* at 44-45; Deutsch, *supra* at 1-10. *Petaluma's* success in having its plan upheld will, no doubt, provide greater impetus for further proliferation of such growth control plans.

54. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), *appeal dismissed*, 409 U.S. 1003 (1972).

55. *Id.* at —, 285 N.E.2d at 294-96, 334 N.Y.S.2d at 142-45.

56. In this regard, the New York Court of Appeals concluded that:

In sum, where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for 'phased growth' and hence, the challenged ordinance is not violative of the Federal and State Constitutions.

*Id.* at —, 285 N.E.2d at 304-05, 334 N.Y.S.2d at 156.

57. The Ramapo Plan did not purport to establish an expressed ultimate population level. The appellate court found that the Plan's purpose was not to "freeze" the population level, but rather to maximize growth by the efficient use of land. *Id.* at —, 285 N.E.2d at 302, 334 N.Y.S.2d at 152.

58. *Id.* at —, 285 N.E.2d at 302-04, 334 N.Y.S.2d at 152-55.

analogous result without such a finding of dire necessity, and despite its recognition of the exclusionary effects of the plan.

It is apparent that some fundamental questions are presented with the implementation of Petaluma-type plans. Specifically, the Petaluma Plan and the Ninth Circuit decision validating its implementation suggest important points of inquiry concerning the significance of the Plan as it relates to the traditional notions of planning and zoning, and the possible impact of the *Petaluma* decision on future land use planning developments. The implications and desirability of such growth plans present additional issues for resolution.

### *Petaluma's Impact and Significance*

To determine the impact and significance of the Petaluma Plan, it is essential to initially establish the degree to which the Plan adheres to, or deviates from, traditional zoning and land use planning procedures. In a conventional<sup>59</sup> residential land use control system, a general plan is developed which delineates the goals to be accomplished. Zoning regulations are then promulgated and a zoning map created to outline the types of permitted uses (industrial, commercial or residential) within the various geographical areas of the city. Finally, subdivision regulations and building permit requirements are utilized to retain direct control over residential developments and assure adherence to the city's plan. In practical effect, the zoning laws, subdivision regulations and, to a lesser extent, building permit requirements are used to accomplish the goals established in the comprehensive plan.<sup>60</sup>

While the Petaluma Plan's express goal of a direct limitation on population growth indicates a substantial departure from any land use scheme preceding it, Petaluma is, in many respects, essentially utilizing the same conventional controls outlined above to accomplish its goal; it is using them in an unconventional manner, however, by extending the limits of these controls beyond their normal bounds. While this

---

59. The term "conventional" is loosely defined to imply land use planning directed at the traditional goals of segregated-use development, and planning premised upon continued growth, rather than the type of controlled growth ordinances exemplified by Petaluma-type ordinances.

60. See, e.g., J. BEUSCHER, R. WRIGHT & M. GITELMAN, *CASES AND MATERIALS ON LAND USE* 353, 538 (2nd ed. 1976) [hereinafter cited as BEUSCHER, WRIGHT & GITELMAN]; J. BOLLENS & H. SCHMANDT, *THE METROPOLIS: ITS PEOPLE, POLITICS, AND ECONOMIC LIFE* 229-32 (2nd ed. 1970); J. DELAFONS, *LAND-USE CONTROLS IN THE UNITED STATES* 41-89 (2nd ed. 1969).

may not be immediately apparent, a close examination of the Plan itself suggests the validity of this conclusion.

It is clear that, to some degree, the city of Petaluma directly applied its zoning powers<sup>61</sup> to assist in effectuating the Plan. Specifically, it appears that the establishment of the "greenbelt"<sup>62</sup> was at least partially premised upon the city's zoning power, in that the city prohibited development in and beyond this area.<sup>63</sup> However, it is equally evident that the more controversial aspects of the Plan—the 500 housing unit limitation and the point system of allocating the development-unit permits<sup>64</sup>—demanded the application of control devices beyond mere zoning restrictions alone.

Just as the problem of rapid, uncontrolled growth in Petaluma did not result from a failure in the city's zoning controls, the growth problem could not be solved merely through application of zoning regulations, since such regulations are geared toward regulating the types of permitted uses within various geographical areas of the city, rather than controlling growth.<sup>65</sup> Petaluma was not primarily concerned with defining and enforcing particular types of land uses; rather it was interested in controlling and directing the expansion of housing developments in residential zones.<sup>66</sup>

Arguably, Petaluma could have attempted to control the ultimate number and density of housing units through more traditional land use

---

61. "Zoning power" is generally interpreted as the overall source of authority for a city to establish land use control devices. However, as the Ninth Circuit concluded in *Petaluma*, the source of zoning power is premised upon the police powers delegated to the city by the state. 522 F.2d at 897-98. For the purposes of this article, zoning power is narrowly defined as the exercise of power to predesignate the purposes for which land can be used, via zoning regulations, and as only one of a number of parallel control devices. BEUSCHER, WRIGHT & GITELMAN, *supra* note 60, at 504.

62. The greenbelt served as the border of development beyond which urban expansion would not be allowed for a period of five to fifteen years. *See* note 11 *supra*. The concept of greenbelts serving as geographical boundaries to urban expansion is not a new concept; it has existed for at least forty years. BEUSCHER, WRIGHT & GITELMAN, *supra* note 60, at 254; *see* D. MANDELKER, *THE ZONING DILEMMA*, 41-45 (1971) [hereinafter cited as MANDELKER] for an excellent discussion of the effects of greenbelt boundaries on urban development.

63. Petaluma applied traditional zoning powers in prohibiting the development of the greenbelt area. There is, however, a further aspect to Petaluma's greenbelt concept; developers are required to make mandatory dedications, providing land in increments to the city for the development of the greenbelt. *See* plaintiffs' complaint, reproduced in E. RABIN, *FUNDAMENTALS OF MODERN REAL PROPERTY LAW* 739 (1974). Additionally, the city utilized phased development concepts by refusing to extend city facilities beyond the greenbelt. *See* note 12 *supra*.

64. *See* note 10 *supra*.

65. MANDELKER, *supra* note 62, at 2-3.

66. *See* notes 7-8 *supra* and accompanying text.



control devices, such as by the use of extremely large minimum lot sizes. However, this approach has several fundamental limitations and problems implicit in its use. First, it would have defeated the city's desire for development of multi-family and other types of diversified housing units, since minimum lot size restrictions are directed at encouraging single-family dwellings.<sup>67</sup> Secondly, many ordinances requiring large minimum lot sizes have not survived judicial scrutiny but have been struck down as so blatantly exclusionary in purpose and effect as to constitute an invalid exercise of the zoning power.<sup>68</sup> Third, one purpose of the Plan was to encourage "infilling" in the central part of the city to achieve a desired density level in that area; neither minimum lot sizes nor other standard zoning restrictions would have accomplished this goal.<sup>69</sup> Finally, minimum lot size restrictions are generally not useful in controlling the *direction* of growth; it is doubtful whether such restrictions alone, or in conjunction with standard zoning regulations, could accomplish this goal without the use of some forceful additional "incentives" to encourage development in certain areas of the city.<sup>70</sup> Thus, it can readily be seen that traditional zoning regulations

---

67. See note 46 *supra*; E. SMITH & D. RIGGS, LAND USE, OPEN SPACE, AND THE GOVERNMENT PROCESS 44-45 (1974) [hereinafter cited as SMITH & RIGGS].

68. See note 46 *supra*.

69. Minimum lot size restrictions are generally useful only when applied to undeveloped areas in an effort to preserve open space. SMITH & RIGGS, *supra* note 67. The "infilling" contemplated under the Petaluma Plan involved an effort to encourage development near the center of the city to achieve a higher density level in that area. 522 F.2d at 901. This goal obviously would not be served by minimum lot size restrictions. Zoning ordinances may control density generally, but, without some additional means of control, developers would not be encouraged to "fill-in" the central areas of Petaluma.

70. To effectively control the direction of growth, it is essential to have some controls besides basic zoning and minimum lot size restrictions. While the latter two methods can delineate the *type of growth* permitted in specific areas, they cannot effectively be used to *direct* growth. In *Petaluma*, the city desired both faster growth rates in some areas, and a slowdown in the growth rate in previously over-developed areas. 522 F.2d at 901.

Prohibiting all growth, through zoning regulations, in the area where development was not encouraged may have provided a partial solution, since it can logically be supposed that developers, foreclosed from development in this area, would turn to areas which the city specifically zoned for growth. Since the city did not desire an absolute termination of all growth in areas where it desired a slower growth rate, however, broad application of traditional zoning restrictions would have proven insufficient. Specific incentives were required, which could be used to encourage or discourage development on a more selective basis. Language within the Petaluma ordinance dealing with the Residential Development Control System indicates that additional "incentive," required to direct growth, is accomplished by basing criteria in the Development Allocation Evaluation on how well a proposed subdivision development conforms with the stated goals of the Plan, including the goal of balanced growth. Landman, *supra* note 4, at 193-98. Thus, to some degree, the award of permits is tied to where development is to be located, which is certainly a strong incentive to encourage development in specific areas of the city.

provide an insufficient basis for the degree of growth control contemplated by the Petaluma Plan.

The primary mechanisms utilized by the Petaluma Plan include subdivision restrictions, the power to issue building permits and the application of Planned Unit Development (PUD) concepts.<sup>71</sup> These three methods provide the essential means for implementing the Plan's limitations on permitted housing units, density, location of new housing units, and expansion beyond the urban extension line. In administering the Residential Development Control System, which provided the procedures and criteria for the award of the 500 annual construction permits, Petaluma merged subdivision controls and building permit requirements into a single method of regulating the awarding of permits. In effect, the city has elevated the importance of these methods, expanding the role such controls ordinarily play in the land use planning process.

Through the procedure of allocating permits on the basis of the applicant builder's conformity with the city's general plan,<sup>72</sup> Petaluma retains a high degree of control not only over the number of new housing units constructed, but also over its collateral goals of balanced growth, adherence to specified architectural designs, low and moderate income housing unit requirements, dedication of recreational facilities by the builder in new developments, and mandatory dedication of portions of the "greenbelt" by developers in areas near the urban extension line.<sup>73</sup> Development unit permits are issued only after the applicant has adhered to all of these development features.

The extent of the Petaluma requirements clearly reflects an expansion of the usual subdivision "exactions" demanded by municipalities as conditions precedent to a city's approval of a housing development.<sup>74</sup> In the Plan, Petaluma has increased the extent of exactions

---

71. Planned Unit Development (PUD) is a land use method designed to permit an integrated mixture of uses—commercial, single-family, and multi-family dwellings—in the same geographical area. This is in contrast to the traditional concept of segregated uses contemplated in Euclidian Zoning. SMITH & RIGGS, *supra* note 67, at 47. Petaluma specifically applied the PUD concept in its Plan; one of the specific purposes of the Plan is to encourage a variety of housing units—multi-family and single-family dwellings—within the geographical area encompassed by the Plan. See note 8 *supra*.

72. See notes 10 and 70 *supra*.

73. See notes 12 and 63 *supra*.

74. As a legitimate exercise of the police power, municipalities, prior to approving a developer's subdivision, may require "exactions" of land, or fees in lieu thereof, from the subdivider to meet the need for public improvements generated by the addition of the subdivision to the city. Such exactions are upheld if they are reasonable. Traditionally, such exactions have included installation of public improvements such as streets,

to accomplish its goal of balanced and controlled growth.<sup>75</sup> Petaluma uses the power to issue development permits as the primary method for encouraging the granting of exactions. Therefore, looking at the Petaluma Plan in its proper perspective, it is clear that the methods of achieving compliance are largely those that have been traditionally used; in Petaluma, however, they are utilized in a different manner. Thus, in this respect, the Plan is not as radical as it has frequently been perceived to be.

The significance of the Petaluma Plan and the Ninth Circuit's opinion, however, cannot be understated. The court of appeals, by approving the controversial growth control provision of the Plan, has given judicial endorsement to a significant expansion of municipal zoning power. Prior to *Petaluma*, no court had expressly indicated a city could directly control its ultimate growth level. Petaluma's apparent success in this endeavor may well prompt a renewed trend in this direction by other cities. The Plan itself suggests possible future directions in the utilization of a city's general zoning powers. The problems confronted by Petaluma resisted solution through traditional techniques. Cities presented with similar land use problems will be tempted to adopt the more flexible techniques of the Petaluma Plan, including increased emphasis on subdivision restrictions and the issuance of building permits, rather than relying upon the more basic zoning regulations. Such regulations are of limited utility in achieving the more sophisticated land use purposes outlined in *Petaluma*, such as residential infilling, directing the geographical direction of growth, density control, and increased emphasis on aesthetic and environmental considerations in the style and location of dwelling units. *Petaluma* may well promote a heightened awareness of alternative controls to zoning, focusing future direction of municipal land use planning development toward greater reliance upon these controls.

---

sidewalks and sewer systems; dedication of land for parks, playgrounds, police or fire station sites; and payment of fees, or dedication of land, for schools. See generally BEUSCHER, WRIGHT & GITELMAN, *supra* note 60, at 372; SMITH & RIGGS, *supra* note 67, at 48; Annot., 43 A.L.R.3d 862 (1972).

75. Under the Plan, Petaluma not only requires many of the traditional exactions outlined in note 74 *supra*, but also requires developers to donate land for the extension line greenbelt. Moreover, there is great emphasis in the Plan on requiring somewhat unusual exactions from the subdivider; these include a specified number of low and moderate income houses in the subdivision to be developed, and adherence to constructing specified types of environmentally and architecturally-pleasing structures. See notes 8-10 *supra*.

*Implications and Desirability of Growth Control*

The issues raised in *Petaluma* reveal current competing and conflicting policies involved in the growth control controversy. As the contrasting opinions of the district court and court of appeals in *Petaluma* indicate, there are forceful arguments supporting the positions of both proponents and opponents of growth restraint plans.

The opponents of *Petaluma*-type plans voice numerous criticisms of such ordinances. At the heart of most criticism is the contention that such plans have the effect of: (1) discouraging the construction of needed housing units, (2) increasing the development of rural, undeveloped land and encouraging greater suburbanization, because the general emphasis on less density per acre of land available in one city encourages the development of the open land areas surrounding other suburban communities, and (3) establishing a de facto method of locking poor people into large urban areas, due to their inability to compete with more affluent home-buyers in purchasing the smaller number of available residential units.<sup>76</sup> In substance, opponents question the desirability of implementing a system of controlled growth if the effect is to prevent some people from enjoying the opportunity to improve their personal housing situations.

Equally compelling is the position of advocates of growth control plans who desire to preserve the character and aesthetic beauty of their communities from the negative effects of uncontrolled expansion. With the continuing migration to the suburbs and beyond, it is evident that pressures for expansion will increase, while the movement toward greater restraints by areas absorbing this migration will likely gain greater acceptance. It seems inevitable that this trend will intensify growth conflicts.

In view of these conflicts, it is fortunate that the Ninth Circuit has directly confronted the growth control issue in *Petaluma*, instead of judicially sidestepping it. In balancing the interests involved, the court rendered a decision with a profound impact upon traditional concepts of zoning law and land use planning. Although other circuits will undoubtedly be presented with future cases questioning the merits of growth plans, it is apparent that the piecemeal development of judicial standards to test the legitimacy of such plans is inadequate, since courts are unequipped to effectively deal with the complex problems of

---

76. See Siegan, *supra* note 52, at 423-28; See generally Kellner, *supra* note 52.

growth control. Moreover, it is futile for cities to attempt to solve growth problems by pushing them off onto neighboring communities.

Despite the localism implicit in the Petaluma Plan, the problems presented suggest the need for a regional approach to the dilemma of uncontrolled growth. Long-range solutions to the problems inherent in the growth-control controversy must come through development of planning agencies that are authorized to engage in a regional determination of desirable growth patterns. Such planning should consider the overall need for a planned growth control policy to better conserve and protect each community from undesirable population increases, while introducing a balanced growth plan for the entire region.<sup>77</sup>

Regional planning obviously needs support from the individual municipalities involved, and must be carefully developed to avoid imposition of unreasonable growth rates on any single municipality in the area. To accomplish such goals a regional planning body has to utilize a variety of complex planning tools, requiring substantial agency power to facilitate the implementation of regional growth plans. This necessitates the surrender of substantial local autonomy in the planning area; a thought certain to provoke additional controversy, but ultimately the only effective solution to the conflicting problems outlined in *Petaluma*.

The possibility suggested by the district court in *Petaluma* of reactionary development of Petaluma-type ordinances by several municipalities in one region, creating a regional housing "crisis,"<sup>78</sup> is not as remote a possibility as it at first may appear to be. If *Petaluma* has the impact on planning it potentially could have, it is not inconceivable that numerous other municipalities in a metropolitan area may desire to implement similar growth restraint plans to the ultimate detriment of the entire region.

#### CONCLUSION

Although *Petaluma* has clearly given individual municipalities

---

77. The concept of a regional "fair share" plan, involving a "sharing" of both total numerical growth, as well as growth in terms of low and moderate income population, may be a productive consideration in establishing a balanced regional growth plan. In Kushner, *Land Use Litigation and Low Income Housing: Mandating Regional Fair Share Plans*, 9 CLEARINGHOUSE REV. 10 (1975), the author discusses a fair share plan in terms of mandating that a community make available housing for low and moderate income persons, based upon its "fair share" of the regional needs. This idea appears to be adaptable, in terms of sharing all types of growth, among cities in a specific geographical area.

78. See note 20 *supra*.

control over their own growth, no judicial solution seems adequate to alleviate the problems implicit in extensive community development of such plans. The most positive impact that can be hoped for from *Petaluma* is that the decision will prompt the type of thorough legislative examination needed to meet, and hopefully resolve, what are certain to be even more complex and difficult growth control problems developing in the future.

*Timothy E. McCormick*