

ZONING—RURAL AMERICA: A NEW LEASE ON LIFE?

Steel Hill Development, Inc. v. Town of Sanbornton
(1st Cir. 1972)

The population explosion in America, combined with the continued deterioration of its cities,¹ has led to a migration of Americans from the cities to the suburbs during the past decade. These migrants brought to suburbia the very discomforts they had hoped to escape by their exodus from the cities, namely: congestion, pollution, crime and noise. Partially due to this, but mainly due to the attractions our natural environment offers, a second migration is now taking place; this is the flight of Americans in suburbia to the small rural communities.²

Inhabitants of many of these small communities have met this prospect of increased population and its accompanying effects with determined resistance.³ Desiring to preserve the small rural atmosphere of their communities⁴ by maintaining a low density of population, the residents have attempted to utilize minimum lot size zoning as a shield against the advancing urban sprawl.⁵

The residents of these small communities have a justifiable right to maintain a safe and pleasant place to live. This right was recently acknowledged in *Steel Hill Development, Inc. v. Town of Sanbornton*⁶ where the United States District Court in New Hampshire in upholding a six-acre minimum lot size requirement stated:

1. REPORT OF THE COMMISSION ON THE CITIES IN THE '70's, *THE STATE OF THE CITIES* (1970).

2. See Note, *Protection of Environmental Quality in Non Metropolitan Regions by Limiting Development*, 57 *IOWA L. REV.* 126 (1971).

3. 2 R. ANDERSON, *AMERICAN LAW OF ZONING* § 8.47 (1968).

4. Other considerations prevail in addition to the desire to maintain the rustic value of the community. For example, insuring adequate water and air, preserving property values and to prevent burdening municipal facilities such as police and fire protection are additional objectives a community hopes to achieve by maintaining a low population density level. *Id.*

5. *Id.*

6. 338 F. Supp. 301 (D. N.H. 1972).

The people of Sanbornton have a right to try to protect themselves against the ugly suburban sprawl that has become part of the great megalopolis running from Washington, D.C. to Portland, Maine.⁷

Nevertheless, this right is not absolute. By preserving the pleasant atmosphere of their surroundings with restrictions on their population growth, these small communities infringe upon the rights of others to seek a more comfortable place to live. These conflicting rights have been a source of constant litigation in cases involving zoning regulations.

Ever since the Supreme Court of the United States decided *Euclid v. Ambler*,⁸ zoning regulations have been sustained if they were reasonable and had a substantial relation to the public health, safety, morals or general welfare.⁹ In *Steel Hill Development, Inc. v. Town of Sanbornton*, 469 F.2d 956 (1st Cir. 1972), the First Circuit Court of Appeals affirmed the District Court's findings that a six-acre minimum lot size requirement¹⁰ did relate substantially to the general welfare of the community and was therefore valid.

Steel Hill Development Company [hereinafter referred to as plaintiff] purchased 510 acres in and around the town of Sanbornton, New Hampshire in 1969. At the date of purchase, the land was zoned so as to require a minimum lot size of 35,000 square feet¹¹ per dwelling. In 1971, following submission of development plans by plaintiff to the town, seventy per cent of the plaintiff's property was rezoned so as to require a minimum lot size of six acres per dwelling. Plaintiff had contemplated utilizing the land for a cluster type development;¹² and had received tentative favorable consideration, but its plan was rendered impossible by the new zoning regulations. Plaintiff filed suit in the Federal District Court challenging the new regulations on the grounds that they did not substantially relate to the health, safety, morals or general welfare of the community, and that the rezoning thus constituted a taking of property without compensation. The District Court upheld the rezoning as did the First Circuit Court of Appeals,

7. *Id.* at 306.

8. 272 U.S. 365 (1926).

9. Note the court's use of the term "general welfare" in the disjunctive in relation to health and safety; thereby inferring that general welfare could exist apart from the other two as a valid zoning objective. *Id.* at 395.

10. To date this is the largest minimum lot size in a residential zone that has been sustained by a court.

11. 43,560 square feet constitute one acre.

12. A cluster development is one where the developer "clusters" houses together in order to have more open space for parks and other facilities. See 1 E. YOKLEY, *ZONING LAW AND PRACTICE* (3d ed. 1965).

reiterating the finding that the fact that the zoning promoted the general welfare made it sustainable even if it did not promote the public health and safety in a traditional sense:¹³

The district court stated that it could not find the six acre requirement reasonable if only health and safety were considered, but that such requirement was reasonably related to the promotion of the general welfare of the community.¹⁴

Smaller lot size restrictions can and have been upheld on the grounds that they promoted the public health and safety along with the general welfare "by insuring adequate light and air and by reducing the danger of the spread of fire."¹⁵ When the lot area requirements become so large that they no longer reasonably relate to the promotion of the health and safety of the community, another basis must be found to support their validity.

It would seem that lot minimums beyond one acre can only be justified on the ground that they contribute to the *general welfare*.

..¹⁶

As in *Steel Hill*, courts, recognizing general welfare as a separate objective of zoning, have begun to uphold minimum area requirements if they substantially promote the general welfare of a community in the absence of a showing that they are essential to the public health and safety.¹⁷ This trend of reliance upon general welfare alone,¹⁸ suggests the expansion of the police power within its constitutional limits¹⁹ so as to permit these rural communities to preserve their character by excluding would-be citizens through enactment of these large minimum lot size requirements. Since this large lot zoning is being upheld as promoting the general

13. Traditionally, the concept of health, safety and welfare was associated with providing fire and police protection, adequate light and air and prevention of congestion in the streets. *Gorieb v. Fox*, 274 U.S. 603 (1927).

14. 469 F.2d at 960.

15. R. ANDERSON, *supra* note 3.

16. Cunningham, *Land Use Control—The State and Local Problems*, 50 IOWA L. REV. 367, 389 (1965) (emphasis added).

17. See, e.g., *Bilbar Construction Company v. Board of Adjustment of Easttown Township*, 393 Pa. 62, 74, 141 A.2d 851, 857 (1958). In upholding a one-acre minimum lot size, the court admitted: "We ourselves have a number of times upheld the constitutionality of zoning ordinances which bore no reasonable relation to the health, safety, or morals of the community but whose constitutional validity rested alone upon their promotion of the general welfare."

18. 1 C. RATHKOFF, *THE LAW OF ZONING AND PLANNING* §§ 2-13 (1972).

19. See *supra* note 2, at 135.

welfare, even though not essential to the public health and safety, the general welfare of a community must be separate from the promotion of health and safety of its citizens.

As many zoning restrictions relate to the police power through their tendency to promote these arguably peripheral interests, the development of zoning as an efficient instrument depends upon judicial recognition of "general welfare" as an objective equal to and separate from "health, safety, and morals."²⁰

It is safe to conclude that any promotion of the health and safety of a community includes therein the promotion of the general welfare, while the promotion of the general welfare does not always advance the health and safety of the community's citizens. The term "general welfare," however, as it relates to zoning remains largely undefined.²¹

The scope of this paper will be twofold: to define "general welfare" as it relates to minimum lot size zoning and to determine the impact of *Steel Hill* in regard to the right of a rural community to preserve its rustic character.²²

MINIMUM LOT SIZES AND THE "GENERAL WELFARE"

The Supreme Court of the United States has termed the concept of general welfare as broad and inclusive, representing spiritual, physical, aesthetic and monetary considerations.²³ Only by analysis of the cases and thereby ascertaining what the courts determined promoted the general welfare, and how they dealt with the

20. 1 R. ANDERSON, *supra* note 3 § 7.12, at 495.

21. Cunningham, *supra* note 16. One commentator advances the idea that this very reason (vagueness of the term general welfare) is why courts have upheld large minimum lot sizes when to do so imposes hardships upon the individual property owners. His reasoning is that if the court is unsure of the objectives that the particular zoning is attempting to achieve, it cannot effectively evaluate these benefits to the community in order to balance these benefits against the financial hardships to the individual land owners. The presumption of reasonableness of zoning regulations affords the benefit of the doubt to the town. Kusler, *Open Space Zoning: Valid Regulation Or Invalid Taking*, 57 MINN. L. REV. 1, 60 (1972).

22. Beyond the scope of this comment is the discussion of the constitutional aspects of minimum lot size zoning. For a discussion of exclusionary zoning and the right to vote, see: Note, *The Constitutionality of Local Zoning*, 79 YALE L.J. 896 (1970); for a discussion concerning civil rights and minimum lot zoning, see: Woodroof, *Land Use Control and Population Distribution in America*, 23 HAST. L.J. 1427 (1972); and see Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection and the Indigent*, 21 STAN. L. REV. 767 (1969), for a discussion concerning the equal protection aspect of minimum lot size restrictions.

23. *Berman v. Parker*, 348 U.S. 26, 33 (1954). This case did concern the power of eminent domain rather than power to zone; however, the idea is the same.

term in relation to health and safety, can we arrive at a definition of general welfare as it relates to minimum lot size zoning.

In the first case upholding a minimum lot size requirement, *Simon v. Town of Needham*,²⁴ the court upheld an ordinance requiring one acre lots and enumerated certain advantages that would result from living upon a large lot. Among these advantages were better facilities for children to play on and the freedom from traffic and noise. Safer play areas for children are embraced within the objective of safety while the absence of noise and traffic would promote health (cleaner air) and safety (fewer automobile accidents). Of course, the attainment of these goals would also promote the general welfare of the community along with the health and safety. However, the court also mentioned inducement to beautify the surroundings as another advantage of living on a large lot.²⁵ This would clearly be classified as one of the intangible objectives of general welfare, but the *Simon* court did not have to utilize general welfare as a separate objective since the lot requirement was sustainable on health and safety grounds.

Considering the benefits listed in *Simon*, a later Massachusetts case, *Aronson v. Town of Sharon*,²⁶ still ruled that a 100,000 square foot restriction was unreasonable. The town of Sharon argued that preservation of the town as a rural and recreational area was fundamental to the mental and physical health of its inhabitants. The court agreed that preservation of the community's rural atmosphere might contribute to the welfare of the inhabitants, but said that this factor was outweighed by the hardships placed on the individual property owner.²⁷ Obviously, this court could evaluate the objectives of the lot requirement and balance them against the financial hardships to the individual land owners.²⁸

Ten years after the holding in *Simon*, a five-acre minimum lot size requirement was sustained in the New Jersey case of *Fischer v. Bedminster*,²⁹ where the Supreme Court of New Jersey applied

24. 311 Mass. 560, 42 N.E.2d 516 (1942).

25. *Id.* at 563, 42 N.E.2d at 518.

26. 346 Mass. 598, 195 N.E.2d 341 (1964).

27. "As applied to petitioner's property, the attainment of such advantages does not reasonably require lots of 100,000 square feet." *Id.* at 604, 195 N.E.2d at 345.

28. See note 21, *supra*.

29. 11 N.J. 194, 93 A.2d 378 (1952).

the following test of validity:

[S]o long as the zoning ordinance was reasonably designed, by whatever means, to further the advancement of a community as a social, economic, and political unit, it is in the general welfare and therefore a proper exercise of the police power.³⁰

The *Fischer* court decided that preservation of the rural character of a community was a valid objective of zoning, and thus implied that this promoted the general welfare.³¹ In view of the *Fischer* court's test of validity, preservation of the rural character must then advance the community as a social, economic and political unit.

A recent New Jersey case, *Oakwood at Madison, Inc. v. Township of Madison*,³² invalidated one and two acre lot restrictions, distinguishing *Fischer* with the rationale that, since the restrictions in the *Oakwood* case applied mainly to vacant land, there was no residential character to preserve.³³ Even while invalidating the lot size requirements, the court impliedly approved preservation of the rural or residential character of a community as a valid objective of zoning embraced within the concept of promotion of the general welfare.³⁴

Adding a slight variation to minimum lot size cases was *Gignoux v. Village of Kings Point*,³⁵ which continued to hold that preservation of the rural character of a community tends to promote the general welfare. The court decided that the comfort and happiness of the people of the community was promoted by the town's rural character, and the occupants' well-being was an objective that was contained within the term "general welfare."³⁶

This proposition has, however, not received judicial unanimity. In *Kavanewsky v. Zoning Board of Appeals of Town of Warren*,³⁷ where a two-acre minimum lot size was voided, the Connecticut Supreme Court ruled that the desire to maintain a community's rural character was not a valid zoning objective since it does not promote the general welfare.

A second component of general welfare stressed by the court in *Fischer* was the economic status of a community's residents.³⁸

30. *Id.* at 203, 93 A.2d at 382.

31. *Id.* at 205, 93 A.2d at 384.

32. 117 N.J. Super. 11, 283 A.2d 353 (1971).

33. *Id.* at 15, 283 A.2d at 357.

34. *Id.*

35. 199 Misc. 485, 99 N.Y.S.2d 280 (1950).

36. *Id.* at 491, 99 N.Y.S.2d at 286.

37. 160 Conn. 397, 279 A.2d 567 (1971).

38. 11 N.J. at 205, 93 A.2d at 384.

The question then becomes one of determining whether maintaining the rural character with large lot size requirements advances the citizens economically. One answer is that by maintaining a low density of population, fewer people require fewer public facilities such as schools, parks and police. It follows that minimal public facilities will result in a smaller tax bill to the community's residents.³⁹ Another economic aspect that minimum lot size zoning relates to is the conservation of property values in a community.

Of tremendous concern to all property owners is the preservation of their land's value. It is one of the primary reasons why these small communities place these barriers (minimum lot size zoning) up against intensive residential development.⁴⁰ The feared evil is that intrusion of small lots into an area of larger ones would tend to lower existing values.⁴¹ It is also thought that the overall appearance of a community tends to enhance the value of the individual land owner's property.⁴² This objective bears no relation to the health or safety of a community's citizens; the courts have, however, determined that preservation of the property values does promote the general welfare.

In a 1972 case, *City of Jackson v. Ridgway*,⁴³ the court would not allow lots smaller than 16,000 square feet, for to do so would allow purchasers of unsubdivided land to affect adversely the values of existing homes at their own discretion.⁴⁴ In *Flora Realty & Invest. Co. v. City of Ladue*,⁴⁵ the Supreme Court of Missouri, upholding a three-acre minimum lot size requirement, stressed the community's interest in the preservation of the local property values.⁴⁶ Thus, it can be seen that minimum lot size zoning furthers the general "economic" welfare of a community by increasing the

39. Becker, *The Police Power and Minimum Lot Size Zoning*, 1969 WASH. U. L.Q. 263.

40. *Id.* at 308.

41. For an interesting discussion concerning the credibility of this theory see Note, *Large Lot Zoning*, 78 YALE L.J. 1418 (1969).

42. 1 R. ANDERSON, *supra* note 3, at § 7.19.

43. — Miss. —, 258 So. 2d 439 (1972).

44. *Id.* at 443.

45. 362 Mo. 1025, 246 S.W.2d 771 (1952), *appeal dismissed*, 344 U.S. 802 (1952).

46. *Id.* at 1036, 246 S.W.2d at 776.

total wealth of a community through either increasing or maintaining property values.

The majority of the cases thus far examined point out that a rural atmosphere is beneficial to a community's residents, and anything beneficial can be said to promote the general welfare. It has also been shown that preservation of the locality's property values is also encompassed within the term general welfare. Of course, the preservation of a community's rural character, assuming it is not a deteriorated area, would preserve its property values.⁴⁷ However, the latter is not always a requirement of the former's validity as the *Gignoux* case points out. The comfort and happiness of a community's citizens is a general welfare goal in itself and a rural atmosphere does serve to accomplish this. These cases seem to suggest that rural character and protection of property values are at least two components of general welfare where minimum lot size zoning is concerned.

This paper now turns to *Steel Hill* and three other recent cases to determine if a new definitional concept of general welfare as it relates to minimum lot size zoning is emerging and to determine the impact of *Steel Hill* in relation to the use of minimum lot size zoning in protecting a rural community's inherent character.

Steel Hill, THREE OTHER RECENT MINIMUM LOT SIZE
CASES AND "GENERAL WELFARE"

National Land & Invest. Co. v. Kohn,⁴⁸ *Appeal of Kit-Mar Builders*,⁴⁹ and *County Commissioners of Queen Anne's County v. Miles*⁵⁰ are three recent leading cases in the area of minimum lot size zoning dealing with rather large lot requirements. In *National Land*, a four-acre requirement was held unreasonable, a three-acre restriction was held invalid in *Kit-Mar*, and a five-acre lot size requirement was upheld in the case of *Queen Anne's County*.

The Pennsylvania Supreme Court, in *National Land*, dealt with the town's general welfare arguments in a restrictive manner. The township urged that preserving the rural area of the community would promote the general welfare. The court rejected this contention on the basis that requiring four-acre lots would not preserve the rural area; ". . . it would simply be dotted with larger homes on larger lots."⁵¹ It should be noted here that the *National*

47. 1 R. ANDERSON, *supra* note 3, at § 7.25.

48. 419 Pa. 504, 215 A.2d 597 (1965).

49. 439 Pa. 466, 268 A.2d 765 (1970).

50. 246 Md. 355, 228 A.2d 450 (1967).

51. 419 Pa. at 531, 215 A.2d at 612.

Land court was not dealing with a true rural community such as Sanbornton, but with a four-acre lot requirement in a Philadelphia suburb.

The township also argued that preservation of the town's historic old homes in open spaces would present them in the proper setting, a goal within the ambit of promoting the "general welfare." The *National Land* court, rejecting this argument on the grounds that this would serve private rather than public interests, emphasized that general welfare meant *public* welfare.

There is no doubt that many of the residents of this area are highly desirous of keeping it the way it is, preferring, quite naturally, to look out upon land in its natural state rather than on other homes. These desires, however, do not rise to the level of public welfare. This is purely a matter of private desire which zoning regulations may not be employed to effectuate.⁵²

The *National Land* court also remarked that "the general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary."⁵³ If the general welfare is promoted by preservation of the rural character of a community, then maintaining a low density of population through exclusionary zoning is the only way to preserve this rural character. In considering *National Land*, and the other cases, the court in *Steel Hill* stated:

All these cases refer to an unnatural limiting of suburban expansion into towns in the path of population growth where a *too restrictive view of the general welfare* was taken.⁵⁴

In explaining this statement the *Steel Hill* court noted that in *National Land* and *Kit-Mar* the towns were in the path of population explosions while in *Steel Hill* the developer was seeking to "create a demand" to live in the rural community of Sanbornton.⁵⁵ The language of the court in *Queen Anne's County*, where a five-acre restriction was held reasonable, is relevant in this respect:

The population of Queen Anne's County is small and is not expected to increase more than 25 percent in the next ten years.⁵⁶

52. *Id.* at 530, 215 A.2d at 611.

53. *Id.* at 533, 215 A.2d at 612.

54. 469 F.2d at 961 (emphasis added).

55. *Id.*

56. 246 Md. at 371, 228 A.2d at 458. This case can and should be distinguished from *Steel Hill* in that only 6.7 percent of the county was zoned to require five-acre minimum lot sizes while in *Steel Hill* over fifty percent of the town required lots of six or more acres.

Therefore, the distinction must be made as to whether the area involved is pressed with an influx of population, or an influx which is only a possibility in the future.⁵⁷ A rural community will naturally attract persons to it, but this is not the influx of population with which this distinction is meant to deal. It concerns non-metropolitan areas such as in *Steel Hill* where there is no existing demand for suburban expansion, and other areas where this demand already exists. Nevertheless, if the general welfare of a community is advanced by preservation of its rural character and the enhancement of existing property values, why should the above distinction be important? As to the general welfare of the particular community it would not be, but as to the general welfare of the region in regard to a regional need for space it would be very important. Thus, by excluding outsiders and thereby promoting the community's general welfare, the town would be, in effect, impairing the general welfare of the region.⁵⁸ The court in *Steel Hill* recognized this when it held the six-acre requirement to be only a "legitimate stop-gap measure,"⁵⁹ implying that when development pressures become too great, smaller lots must be permitted. This future conflict between the surging population and the small communities was posed in question form by the court in *National Land* as follows:

[W]hether the township can stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live.⁶⁰

Perhaps an answer to this question was phrased in 1942 by the court in *Simon v. Needham*⁶¹ when the warning was given that "[a] zoning by-law cannot be adopted for the purpose of setting up a barrier against the influx of thrifty and respectable citizens who desire to live there. . . ."⁶² It is ironic that the more the growing population seeks these "hitherto undeveloped areas," the less com-

57. See also *Board of County Supervisors of Fairfax County v. Carper*, 200 Va. 653, 655, 107 S.E.2d 390, 392 (1959) where a two-acre lot size requirement was invalidated; at that time Fairfax County was considered to be the fastest growing county in the United States.

58. A complete discussion of this future controversy is beyond the scope of this comment since its purpose is limited to defining "general welfare" as it relates to the particular community, not the general public. For material dealing with this area see Comment, *The General Public Interest v. The Presumption of Zoning Ordinance Validity: A Debatable Question*, 50 J. URBAN L. 129 (1972); Comment, *Zoning—Municipal Corporations—General Welfare as a Zoning Purpose Held to Encompass Local and Regional Housing Needs*, 26 RUTGERS L. REV. 401 (1973).

59. 469 F.2d at 962.

60. 419 Pa. at 532, 215 A.2d at 612.

61. 311 Mass. 560, 42 N.E.2d 516.

62. *Id.* at 565, 42 N.E.2d at 519.

fortable a place to live they will become - assuming comfort is based on density of population - and they will consequently be destroying the utopia they were attempting to find. Sustaining these large lot requirements, as did the court in *Steel Hill*, permits a few citizens to derive the benefits that flow from the peaceful, quiet life of a rural community. By invalidating the provisions and thus permitting the rural area to be swallowed up by urban expansion the courts are, in effect, precluding anyone from obtaining the benefits of rural living.

In *Queen Anne's County* the court, recognizing general welfare as a separate objective, made it clear that as long as the zoning regulation related substantially to the general welfare of the community it was valid, notwithstanding that some persons may be benefitted while others are injured.⁶³ Even though *Queen Anne's County* gave the term "general welfare" a broad interpretation, it left the term undefined.⁶⁴ In the judgment of the *National Land* court, the general welfare concept was an ambiguous one and hence a difficult standard to apply.⁶⁵ The court in *Steel Hill* attempted to draw a clearer picture of the term when it recognized the following concerns to be general welfare oriented: the construction of new homes which would affect the ecology of the area, increase the burdens upon fire and police protection, destroy the scenic beauty and "[s]ignificantly change the rural character of this small town. . . ."⁶⁶ The promotion of safety would include fire and police protection, while preservation of scenic beauty and the rural character would be objectives encompassed within the promotion of the general welfare. *Steel Hill* thus confirms the earlier finding that preservation of the rural character promotes the general welfare. It is interesting to note that Sanbornton, like so many of these small communities that have been involved in minimum lot size litigation, is considered to be a scenic area.⁶⁷ In light of this, a proper question is: would the preservation of a non-scenic community's character that is rural in size promote the

63. 246 Md. at 368, 228 A.2d at 457.

64. *Id.* at 371, 228 A.2d at 459.

65. 419 Pa. at 530, 215 A.2d at 611.

66. 469 F.2d at 961 (emphasis added).

67. *See, e.g., Senior v. Zoning Commission of Town of New Canaan*, 146 Conn. 531, 153 A.2d 415 (1959), *appeal dismissed*, 363 U.S. 143 (1960), where the court sustained a four-acre restriction, recognizing that the area involved was a rural one of natural beauty.

general welfare of its citizens? In view of the recent trend of cases holding that aesthetic value is a valid zoning objective,⁶⁸ conceivably a rural community would have to be not only rural but also pleasing to the eye for its preservation to be a benefit to its inhabitants. Nonetheless, the question should be answered in the negative for the following reason. It is conceded that preserving a run-down area would not benefit anyone, but scenic beauty is only one of the advantages of living in a rural area. Freedom from crime, noise, pollution and other annoyances of a high population density area are all benefits that rural living offers. Therefore, scenic beauty is only one (albeit an important one) of the elements associated with the idea of a rural atmosphere promoting the general welfare. Obviously a scenic rural community will have an easier time persuading a court that preservation of its rural character promotes the general welfare than an area not so situated.

Related to this idea of scenic beauty and general welfare is the fact that Sanbornton, as a resort area, derives revenue from tourism. Its tourist industry is enhanced by the rural beauty of the area; therefore, this is an example of economic well-being being promoted by maintaining this rural beauty and in turn promoting the general welfare.

The *Kit-Mar* case is generally cited as an affirmation of the *National Land* precedent;⁶⁹ however, *Kit-Mar* was a four to three decision. In a dissenting opinion, Justice Jones reasoned that a burden would be placed on small communities if they were required to meet a population that is growing faster than expected.⁷⁰ This burden would be a result of the requirement of providing more public facilities to meet the increasing population. In view of the limited tax resources of small communities, the burden would soon become an unbearable one.⁷¹ Instead of being promoted, the general welfare of the community is being impaired by not providing the community time to expand the public facilities in an orderly manner.⁷² Large lot zoning would buy time for the community

68. See Masotti & Selfon, *Aesthetic Zoning and the Police Power*, 46 J. URBAN L. 773 (1969); Comment, *Aesthetic Zoning: The Creation of a New Standard*, 48 J. URBAN L. 740 (1971).

69. "The implication of our decision in *National Land* is that communities must deal with the problems of population growth. They may not refuse to confront the future by adopting zoning regulations that effectively restrict population to near present levels." 439 Pa. at 474, 268 A.2d at 768.

70. *Id.* at 493, 268 A.2d at 778.

71. *Id.*

72. Cunningham, *supra* note 16, at 389.

so it could effectively meet the population growth.⁷³

CONCLUSION

The judicial uncertainty as to what "general welfare" means will probably never be resolved. However, as it relates to minimum lot size zoning, there is ample judicial agreement that rural atmosphere (perhaps "scenic" rural atmosphere) is synonymous with general welfare.

The *Steel Hill* court confirmed this as well as setting a precedent that small, *truly* rural communities that are not located in an area faced with a regional need for space have a right to pre-

73. There has been very little litigation in California dealing with minimum lot size zoning. *Robinson v. City of Los Angeles*, 146 Cal. App. 2d 810, 304 P.2d 814 (1956), which was not a minimum lot size case, established the principle that zoning for the general welfare alone was a valid objective. The court in *Robinson* defined general welfare as the promotion of the economic welfare, public convenience and general prosperity of the community. 146 Cal. App. 2d at 814, 304 P.2d at 816.

In 1950, the California Supreme Court upheld 5,000 square feet as a reasonable minimum lot size requirement in the case of *Clemons v. City of Los Angeles*, 36 Cal. 2d 95, 222 P.2d 439 (1950). The court ruled that the ordinance in question reasonably related to the public interests—the general welfare of the community—to be a proper exercise of the police power.

Three years later, the District Court of Appeal, Second District, invalidated a 5,000 square foot restriction in *Morris v. City of Los Angeles*, 116 Cal. App. 2d 856, 254 P.2d 935 (1953). The *Morris* court refused to apply the *Clemons* precedent because other lots in the area already violated the minimum lot size requirement.

A one-acre lot size requirement was voided in *Hamer v. Town of Ross*, 59 Cal. 2d 776, 382 P.2d 375, 31 Cal. Rptr. 335 (1963). The court based its decision on the ground that the one-acre limitation did not reasonably relate to the public welfare. It should be noted that the property in question was located in a virtual sea of smaller lots. The court designated this ". . . an 'island' of one-acre minimum lot size zoning in a residential ocean of substantially less restrictive zoning." 59 Cal. 2d at 782, 382 P.2d at 379, 31 Cal. Rptr. at 339. Obviously this weighed heavily in the court's determination that the minimum lot size restriction did not relate to the public welfare.

The largest minimum lot size requirement sustained in California to date was five acres in *Morse v. County of San Luis Obispo*, 247 Cal. App. 2d 600, 55 Cal. Rptr. 710 (1967). In *Morse* the county wanted to preserve the agricultural nature of the area as well as keep the density level of population down in areas near the airport. The court held that the prevention of urban sprawl and the curb on development in an area of excessive noise and hazards were reasonable objectives of zoning. 247 Cal. App. 2d at 603, 55 Cal. Rptr. at 712.

serve their rural atmosphere. The rural character of a community is a valuable asset in today's environmental revolution. As such, it should be a protectible asset, and the residents of these communities have a right to preserve it, even when the means used to achieve this end is through exclusionary zoning.

DWIGHT PRESTON