

ENVIRONMENTAL CONSIDERATIONS: NEW ARGUMENTS FOR LARGE-LOT ZONING

Zoning ordinances requiring large minimum lot sizes¹ for residential development have been subject to increased scrutiny in recent years. The trend is toward invalidation of such restrictions,² but the New Hampshire case of *Steel Hill Development, Inc. v. Town of Sanborn-ton*³ suggests that multi-acre zoning will be permitted where it is necessary to preserve the natural resources of the area and prevent ecological harm, and where there is no evidence that the ordinance was enacted for exclusionary purposes. *Steel Hill* involved a small rural New England town. A developer wanted to construct a large number of vacation homes on hills covered by virgin forest. In response, the town upgraded the minimum lot size requirements of the developer's land from three-quarters of an acre to three acres and six acres.

There are three basic requirements that a zoning ordinance must meet to withstand constitutional attack:⁴ (1) it must bear a rational relationship to the health, safety, morals or general welfare of the community, so as to comply with the due process requirements of

1. Large minimum lot sizes, as used here, refers to zoning requirements of one-half acre or more for a single family residential dwelling.

2. See, e.g., *Aronson v. Town of Sharon*, 346 Mass. 598, 195 N.E.2d 341 (1964) (two and one-half acres); *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 283 A.2d 353 (L. Div. 1971) (one and two acres); *Westwood Forest Estates, Inc. v. Village of South Nyack*, 23 N.Y.2d 424, 244 N.E.2d 700, 297 N.Y.S.2d 129 (1969); *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A.2d 765 (1970) (two and three acres); *Board of County Supervisors v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959) (upgrading from one-half to two acres). See generally Note, *Constitutionality of Minimum Sizes for Buildings and Lots*, 15 N.Y.U. INTRA. L. REV. 83 (1960); Comment, *One Acre Minimum Lot Size Requirement in Zoning Ordinance Held to be Unconstitutional*, 106 U. PA. L. REV. 292 (1957); Note, *Large Lot Zoning*, 78 YALE L.J. 1418 (1969). See also Comment, *A Survey of the Judicial Responses to Exclusionary Zoning*, 22 SYRACUSE L. REV. 537, 562 (1971).

3. 338 F. Supp. 301 (D.N.H.), *aff'd*, 469 F.2d 956 (1st Cir. 1972).

4. In addition to the four constitutional considerations, the ordinance must comply with statutory zoning enabling act requirements. All the states have constitutional provisions substantially similar to the fifth amendment to the United States Constitution. For a complete list of citations see INDEX DIGEST OF STATE CONSTITUTIONS 464 (2d ed. 1959).

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the fourteenth amendment;⁵ (2) it must not reduce the value of the land so as to constitute a taking without compensation, in violation of the fifth amendment;⁶ and (3) it must not be so arbitrary and discriminatory that its restrictions are a denial of the equal protection of the laws.⁷ The fundamental issue in *Steel Hill* was whether the first requirement was satisfied.

New Hampshire, like most jurisdictions, has given its cities and towns the authority to zone in order to promote public health, safety, morals and general welfare.⁸ A zoning ordinance enacted under such a statute may not be declared unconstitutional unless its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."⁹ Further, zoning ordinances will be presumed valid unless proven unreasonable or arbitrary.¹⁰ The burden of proof is on the challenging party to show that the ordinance bears no reasonable or substantial relation to the public health, safety or welfare.¹¹ The courts will not even interfere with the judgment of a legislative body where there is room for a legitimate difference of opinion concerning the reasonableness of a particular ordinance, or where the question of reasonableness is fairly debatable.¹²

5. The basic rule was laid down in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

6. See Becker, *The Police Power and Minimum Lot Size Zoning*, 1969 WASH. U.L.Q. 263, 273.

7. Traditional racial and economic exclusionary zoning is often invalidated on equal protection grounds. A candid view of exclusionary motives in zoning is provided in *Large Lot Zoning*, *supra* note 2, at 1420.

8. N.H. REV. STAT. ANN. §§ 31:60, 62 (1971). These zoning enabling provisions, like those of many states, are modeled on the Standard Act. See U.S. DEP'T OF COMMERCE, *A STANDARD STATE ZONING ENABLING ACT UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS* (1926), reprinted in C. RATHKOPF, *THE LAW OF ZONING AND PLANNING* 547 (2d ed. 1949).

9. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926). See also *Gorieb v. Fox*, 274 U.S. 603, 608 (1927).

10. See *Board of County Supervisors v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959).

11. See *McMahon v. City of Dubuque*, 255 F.2d 154, 159 (8th Cir. 1958); *Schadlick v. City of Concord*, 108 N.H. 319, 234 A.2d 523 (1967); *Bosse v. City of Portsmouth*, 107 N.H. 523, 226 A.2d 99 (1967).

12. *LaSalle Nat'l Bank v. City of Chicago*, 5 Ill. 2d 344, 350, 125 N.E.2d 609, 612 (1955). See *Gorieb v. Fox*, 274 U.S. 603, 608 (1927). See also Comment, *Zoning in Washington: The "Fairly Debatable" Rule*, 7 URBAN L. ANN. 267 (1974).

Zoning ordinances requiring large minimum lot sizes have become increasingly popular.¹³ Nevertheless, the reaction of courts to these provisions has not been consistent.¹⁴ In *Steel Hill*, the district court upheld a three acre minimum lot size on the ground that it was reasonably necessary to provide "adequate insurance for the problems of sewage disposal and drainage that are inevitable in this type of soil"¹⁵ Courts have shown a willingness to sanction large-lot zoning where the municipality has made at least a weak attempt to show that such provisions are designed to promote public health and safety.¹⁶ A number of recent cases,¹⁷ however, have followed the reasoning that: "[A]bsent some extraordinary justification, a zoning ordinance with [large] minimum lot sizes . . . is completely unrea-

13. For a discussion of the motivating factors behind large-lot zoning see *Large Lot Zoning*, *supra* note 2, at 1420, and Becker, *supra* note 6, at 264, with an analysis of similar factors which have caused suburbanites to discourage growth in their communities.

14. The trend in the area of large lot requirements seems to be towards invalidation of such restrictions. For a list of recent leading cases rejecting large-lot zoning see note 2 *supra*. A substantial number of courts have upheld zoning ordinances requiring lots larger than one-half acre on the grounds that they were reasonably designed to promote public health, safety or welfare. See *Confederacion de la Raza Unida v. City of Morgan Hill*, 324 F. Supp. 895 (N.D. Cal. 1971) (restrictions on low-cost housing in certain areas); *Simon v. Town of Needham*, 311 Mass. 560, 42 N.E.2d 516 (1942) (one acre); *Fischer v. Bedminster Township*, 11 N.J. 194, 93 A.2d 378 (1952) (five acres); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 141 A.2d 851 (1958) (one acre).

15. 338 F. Supp. at 305.

16. See *Chucta v. Planning & Zoning Comm'n*, 154 Conn. 393, 225 A.2d 822 (1967) (upheld an increase in lot size, in part to provide adequately for a safe water supply and proper disposition of sewage); *Zygmunt v. Planning & Zoning Comm'n*, 152 Conn. 550, 210 A.2d 172 (1965) (upheld commission's rejection of an application to have lot zoning changed from four acres to one-half acre, in part because of the developer's inability to provide on-site well and septic systems which would conform to health regulations if the zoning were changed); *Padover v. Township of Farmington*, 374 Mich. 622, 132 N.W.2d 687 (1965) (upheld an ordinance requiring a one-half acre minimum lot size for over 52% of the land in the township, in part to allow the area to pace its development to sewer and water-main construction). Several commentators have "seriously questioned the need for large lot requirements in order to preserve health and safety in the absence of a public water supply or sewerage system." Becker, *supra* note 6, at 306 n.85. For a discussion of the fiscal and technical data on the relationship between sewerage and water problems and large-lot zoning see C. NOREN, ARGUMENTS FOR SMALLER LOT ZONING 4-23 (1968).

17. *Westwood Forest Estates, Inc. v. Village of South Nyack*, 23 N.Y.2d 424, 244 N.E.2d 700, 297 N.Y.S.2d 129 (1969); *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A.2d 765 (1970) (two and three acre requirements held invalid

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onable . . ."¹⁸ even where public health and safety arguments were made.

The district court in *Steel Hill* found a six acre minimum *not* necessary for health and safety considerations, and therefore sustainable, if at all, only on general welfare grounds.¹⁹ On the basis of arguments and evidence presented by the town, the court found that a six acre requirement had a substantial relationship to the general welfare of the community.²⁰ Some of the factors considered by the court included the protection of the ecological balance of the area, prevention of the despoiling of natural resources, and preservation of the rural scenic beauty of the landscape.²¹

The reasoning adopted by both the district court and the First Circuit in upholding the three and six acre minimums was substantially the same. These courts took into account the following factors: (1) the town properly exercised power granted to it under the State zoning enabling statute²² to "regulate and restrict . . . lot sizes . . . [for the] purpose of promoting health, safety, morals or the general welfare of the community;"²³ (2) the town demonstrated that the requirement of large minimum lot sizes was reasonably related to the objectives of the police power;²⁴ (3) there was "no evidence that the new zoning law was prompted by discrimination of any sort;"²⁵ (4)

despite arguments that, because of on-site sewerage problems, houses could be built on three acre lots, but not on one acre lots); Delaware County Community College Appeal, 435 Pa. 264, 254 A.2d 641 (1969); National Land & Inv. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965); Board of County Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959) (court rejected county's argument that the purpose of the amendment to the zoning ordinance, requiring a two acre minimum lot size, was, in part to protect ground water supplies, and prevent a public health problem by use of private on-site septic systems). See also *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 283 A.2d 353 (L. Div. 1971).

18. Appeal of Kit-Mar Builders, Inc., 439 Pa. 466, 471, 268 A.2d 765, 767 (1970).

19. 338 F. Supp. at 305-07.

20. *Id.*

21. *Id.* See also 469 F.2d at 960-61.

22. N.H. REV. STAT. ANN. §§ 31:60, 62 (1971).

23. 469 F.2d at 960.

24. 338 F. Supp. at 306-07.

25. *Id.* at 306. See generally Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1969); Note, *Exclusionary Zoning and Equal Protection*, 84 HARV. L. REV. 1645 (1971).

"[n]or was there any showing of population pressures directly or indirectly impinging on the town;"²⁶ (5) there was "no evidence that the amendments constitute either snob zoning or exclusionary zoning;"²⁷ (6) the zoning ordinance was a stop-gap attempt to control and pace development—not a permanent barrier;²⁸ and, (7) if these zoning laws do become permanent barriers to development, then resort to the courts is always possible.²⁹ Both courts summarily dismissed the developer's arguments that the rezoning greatly reduced the value of his land so as to constitute a taking without compensation,³⁰ and that the classification of his land was violative of the fourteenth amendment's equal protection clause because it was arbitrary and discriminatory in restrictions imposed on development.³¹

The First Circuit in *Steel Hill* gave extensive discussion to the issue of whether the zoning ordinance amounted to exclusionary zoning.³² There was no evidence of any attempt by the town to exclude any group on racial or economic grounds.³³ There was definitive evidence, however, of an intent by Sanbornton to exclude the massive recreational development project which would effectively double the population of the town.³⁴ The real question here was whether such develop-

26. 469 F.2d at 961; 338 F. Supp. at 306.

27. 338 F. Supp. at 306. For a discussion of exclusionary zoning see note 7 *supra*. See also Bergin, *Price-Exclusionary Zoning: A Social Analysis*, 47 ST. JOHN'S L. REV. 1 (1972); *A Survey of the Judicial Responses to Exclusionary Zoning*, *supra* note 2; Note, *Snob Zoning—A Look at the Economic and Social Impact of Low Density Zoning*, 15 SYRACUSE L. REV. 507 (1964).

28. 469 F.2d at 962; 338 F. Supp. at 307.

29. 469 F.2d at 962; 338 F. Supp. at 307.

30. The district court stated:

[T]he proper test is not just the size of the lot, but a balancing of the public objectives promoted by the zoning restriction and the economic burden imposed on the owner of the restricted land. The land of the plaintiff has not been destroyed. . . . It is true that the change in zoning depresses the immediate sale value of the property for the purpose the plaintiff intended. But that is not the test. An application of zoning which even substantially reduces the value of land, but does not cause a total loss of profitable use is normally upheld as not confiscatory.

338 F. Supp. at 307. The court then cited *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), where the zoning ordinance was upheld despite a 75% loss alleged by the developer, and *Hadacheck v. Sebastian*, 239 U.S. 394 (1915), where a 93% alleged loss was not found unconstitutional.

31. 469 F.2d at 959, 963.

32. *Id.* at 960-61.

33. 338 F. Supp. at 306.

34. *Id.* at 304. The district court suggests a desire on the part of the town to discourage all development, when it suggests that there is "no doubt that

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ment could be excluded on the basis of aesthetic, ecological, and "character" considerations, and whether large-lot zoning is a permissible means to accomplish this objective.

A number of recent cases³⁵ have invalidated large-lot zoning where it resulted in "an unnatural limiting of suburban expansion into towns in the path of population growth . . ."³⁶ In *Appeal of Kit-Mar Builders, Inc.*,³⁷ the Supreme Court of Pennsylvania invalidated an ordinance requiring two and three acre lot sizes for a Philadelphia suburb undergoing rapid growth. The court rejected the township's arguments that large lot sizes were needed to prevent on-site sewage problems, preserve the rural and historical surroundings of the neighborhood, and lessen the burden on the township to provide municipal services.³⁸

In the earlier Pennsylvania case of *National Land & Investment Co. v. Kohn*,³⁹ the court rejected a four acre minimum lot size requirement in a rapidly expanding suburban area. The municipality argued that the minimum lot size was necessary to prevent the overburdening of existing municipal facilities and services.⁴⁰ To this the court responded:

some members of the Planning Board, and a good number of the townspeople, were interested in discouraging population density in this area and were generally determined to try to keep the town as rural as possible." *Id.* Commenting on the lack of hard scientific evidence to justify six acre lot sizes, the court of appeals stated, "[W]e have serious worries whether the basic motivation of the town meeting was not simply to keep outsiders, provided they wished to come in quantity, out of the town." 469 F.2d at 962.

35. *See, e.g.*, *Kavanewsky v. Zoning Bd. of Appeals*, 160 Conn. 397, 279 A.2d 567 (1971); *Aronson v. Town of Sharon*, 346 Mass. 598, 195 N.E.2d 341 (1964); *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 283 A.2d 353 (L. Div. 1971); *National Land & Inv. Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1965); *Board of County Supervisors v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959).

36. 469 F.2d at 961.

37. 439 Pa. 466, 268 A.2d 765 (1970).

38. *Id.* at 474-78, 268 A.2d at 768-70. At one point the court stated:

Minimum lot sizes of the magnitude required by this ordinance are a great deal larger than what should be considered as a *necessary* size for the building of a house, and are therefore not the proper subjects of public regulation. . . . Absent some extraordinary justification, a zoning ordinance with minimum lot sizes such as those in this case is completely unreasonable.

Id. at 471, 268 A.2d at 767.

39. 419 Pa. 504, 215 A.2d 597 (1965).

40. *Id.* at 525, 215 A.2d at 608.

The question posed is whether 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. We have concluded not. A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities can not be held valid.⁴¹

The court also rejected the township's argument that the lot minimum was essential for maintenance of the "character" of the area, preservation of open space, and creation of a "greenbelt."⁴² The court found that the four acre minimum was not a reasonable method to achieve these ends, and that purely aesthetic desires and considerations do not rise to the level of public welfare.⁴³

In the Virginia case of *Board of County Supervisors v. Carper*,⁴⁴ a zoning ordinance requiring a two acre lot minimum was struck down. This large-lot requirement applied to two-thirds of Fairfax County, a suburb of Washington, D.C., and at that time the fastest growing county in the United States. The court rejected the county's argument that the purpose of the zoning ordinance was to protect ground water supplies, prevent a public health problem by use of private on-site septic systems, maintain the character of the area, and preserve available agricultural land.⁴⁵

A number of factors present in *Kit-Mar*, *Kohn*, and *Carper* that were not at issue in the *Steel Hill* case may account for the divergent results. In the three exclusionary cases there was direct or indirect pressure for development, such as an already existing demand for homes.⁴⁶ In *Steel Hill*, however, there was no evidence of any real pressure for development, but rather an attempt by the developer to

41. *Id.* at 532, 215 A.2d at 612.

42. *Id.* at 528-30, 215 A.2d at 610-11.

43. *Id.* at 531, 215 A.2d at 611. The court suggested as a possible alternative method either the use of cluster zoning, or acquisition of the land with compensation paid. *Id.* It is interesting to note that the town in *Steel Hill* expressly rejected the developer's plan for cluster zoning, despite the favorable environmental and aesthetic attributes of such a technique. See generally Krasnowiecki, *Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control*, 114 U. PA. L. REV. 47 (1965).

44. 200 Va. 653, 107 S.E.2d 390 (1959).

45. *Id.* at 658-60, 107 S.E.2d at 394-95.

46. 469 F.2d at 961.

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create a demand for homes.⁴⁷ *Kit-Mar*, *Kohn*, and *Carper* involved areas where decent housing was in short supply; therefore, the need was for "first" homes. *Steel Hill*, on the other hand, dealt with recreational, or "second" homes.⁴⁸ Finally, all three of the exclusionary cases dealt with attempts by municipalities to discourage development requiring increased municipal services and facilities.⁴⁹ In *Steel Hill* these fiscal elements were of secondary importance when compared with the environmental considerations.

The emerging rule of these cases is that large-lot zoning may be invalidated where the effect is to artificially frustrate or eliminate development of areas located in the path of population growth.⁵⁰ Where under these circumstances an exclusionary effect results, the courts seem willing to reject the public health, safety, and welfare justifications offered in defense of large-lot zoning.

A different principle is evident from cases where the exclusionary effect was absent. These cases can be analyzed on the basis of permissible and non-permissible objectives of large minimum lot size requirements. Both the First Circuit and the district court in *Steel Hill* found the protection of aesthetic, character, and ecological elements to be proper objectives of large-lot zoning.⁵¹ The position of the court of appeals on the community's power to zone in order to protect the environment was clear:

We recognize, as within the general welfare, concerns relating to the construction and integration of hundreds of new homes which would have an irreversible effect on the area's ecological balance, destroy scenic values, decrease open space, [and] significantly change the rural character of this small town⁵²

47. *Id.*

48. *Id.*

49. See Appeal of *Kit-Mar Builders, Inc.*, 439 Pa. 466, 474-78, 268 A.2d 765, 768-70 (1970); *National Land & Inv. Co. v. Kohn*, 419 Pa. 504, 525, 215 A.2d 597, 608 (1965); *Board of County Supervisors v. Carper*, 200 Va. 653, 658-59, 107 S.E.2d 390, 394 (1959).

50. In *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 283 A.2d 353 (L. Div. 1971), the court suggested that large-lot zoning will be invalidated where there is a failure to promote a reasonably balanced community. Here the township had about 30% of its land area vacant and developable. The zoning ordinance restricted multi-family buildings to about 600 additional one and two bedroom units, and divided most of the remaining land between zones requiring one and two acre minimums, with large minimum floor space requirements. The court stated that the township failed to prove that low population density would safeguard against flood and surface drainage problems.

51. 469 F.2d at 960-61; 338 F. Supp. at 305-07.

52. 469 F.2d at 961.

The district court in *Steel Hill* upheld the six acre requirement, in part, on the basis of aesthetic considerations—possible destruction of scenic values, reduction of open spaces, and overcrowding.⁵³ Generally, courts have been unwilling to uphold zoning ordinances based purely on aesthetic grounds.⁵⁴ But, in the words of one commentator, as the “concept and definition of ‘public welfare’ has expanded, so too, regard for aesthetic considerations has been more hospitably accepted as having a growing consideration in the philosophy of zoning.”⁵⁵

In one of the earliest “aesthetic” cases, *Simon v. Town of Needham*,⁵⁶ the Supreme Judicial Court of Massachusetts upheld a one acre restriction, in part because low density neighborhoods “would tend to improve and beautify the town and would harmonize with the natural characteristics of the locality”⁵⁷ In *Gignoux v. Village of Kings Point*,⁵⁸ a New York court permitted one-half acre and one acre requirements, partly because such a requirement would secure the town from noise and traffic, would promote “rest and relaxation,” and would enhance the beauty of the village.⁵⁹ A one acre minimum was upheld in *Bilbar Construction Co. v. Easttown Township Board of Adjustment*⁶⁰ on general welfare grounds. The court stated that aesthetic considerations were an important aspect of the general welfare to be considered by the courts.⁶¹ In the recent case of *Confederacion de la Raza Unida v. City of Morgan Hill*,⁶² a federal district

53. *Id.*; 338 F. Supp. at 305-07.

54. See 2 J. METZENBAUM, LAW OF ZONING 1577 (1955).

55. *Id.* For a discussion of an early zoning case where the court stated that the “quiet and the presence of natural surroundings and even vegetation, on account of its production of oxygen, may be important elements in preserving health,” see 1 E. YOKLEY, ZONING LAW AND PRACTICE 21 (1953). See generally Masotti & Selfon, *Aesthetic Zoning and the Police Power*, 46 J. URBAN L. 773 (1969); Comment, *The Place of Aesthetics in Zoning*, 14 DEPAUL L. REV. 104 (1964); Comment, *Regulation of Land for Aesthetic Purposes*, 15 SYRACUSE L. REV. 33 (1963); Note, *Aesthetic Zoning; A Current Evaluation of the Law*, 18 U. FLA. L. REV. 430 (1965). See also *A Survey of the Judicial Responses to Exclusionary Zoning*, *supra* note 2, at 541-42.

56. 311 Mass. 560, 42 N.E.2d 516 (1942).

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

58. 199 Misc. 485, 99 N.Y.S.2d 280 (Sup. Ct. 1950).

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

60. 393 Pa. 62, 141 A.2d 851 (1958).

61. *Id.* at 72-73, 141 A.2d at 856-57.

62. 324 F. Supp. 895 (N.D. Cal. 1971).

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court upheld a zoning ordinance which regulated housing density in the hilly and mountainous areas of the city. The express purpose of the ordinance was to facilitate the orderly and creative development of the area and preserve and enhance the natural amenities.⁶³ These "aesthetic" zoning cases demonstrate that preservation of solitude and maintenance of scenic beauty and open spaces are proper public welfare concerns.⁶⁴

Preservation of the "character" of an area is analogous to aesthetic considerations. In upholding the six acre requirement in *Steel Hill*, the First Circuit considered the possible damage to the rural character and charm of the town.⁶⁵ A substantial number of cases have upheld large-lot zoning where used primarily to maintain the character of an area.⁶⁶ Many of these cases, like *Steel Hill*, were concerned with large-lot zoning ordinances designed to maintain the hilly and rural nature of the locality.⁶⁷

There has been little discussion in large-lot zoning cases of whether protection of *ecological* elements is a proper zoning objective. The district court in *Steel Hill* upheld the large-lot zoning in part, on the basis of ecological considerations: possible destruction of natural resources, pollution of the air and water, and damage to the ecological balance of the area.⁶⁸ Certain ecological arguments for large-lot zoning, especially those concerning air and water pollution, could be based on health and safety considerations.⁶⁹ General welfare arguments could be used to justify large-lot zoning designed to protect the natural resources and maintain the ecological balance of the area. This would be most effective in a recreation area, such as Sanborn-

63. *Id.*

64. *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 141 A.2d 851 (1958).

65. 469 F.2d at 959, 961.

66. *See Senior v. Zoning Comm'n*, 146 Conn. 531, 153 A.2d 415 (1959), *appeal dismissed*, 363 U.S. 143 (1960) (upheld zoning amendments that upgraded a residential area from two to four acres in part to protect the semi-rural, heavily wooded area); *County Comm'rs v. Miles*, 246 Md. 355, 228 A.2d 450 (1967) (upheld a five acre requirement, in part because of the rural and secluded nature of the area, and the historic character of some of the neighborhoods).

67. 469 F.2d at 962.

68. 338 F. Supp. at 305.

69. *Id.* at 305-07.

ton, where the natural resources are the principal tourist attraction.⁷⁰

Steel Hill suggests that environmental considerations may be important arguments for sustaining large-lot zoning. The result of *Steel Hill* could, however, be limited to its facts.⁷¹ The First Circuit strongly suggested that it would have invalidated the large-lot requirements if the ordinance had been a permanent barrier to development, rather than a stop-gap measure to prevent unplanned growth.⁷² The court implied that the town should take steps to formulate a sound plan for future development, and that large-lot zoning is only permissible as a *temporary* measure to allow time for development of such a plan.

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70. *Id.* at 307. A number of courts have permitted zoning restrictions designed to protect the beauty of tourist areas. In *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So. 2d 364 (1941), the court said: "It is difficult to see how the success of Miami Beach could continue if its aesthetic appeal were ignored because the beauty of the community is a distinct lure to the winter traveler." *Id.* at 487, 3 So. 2d at 367. In *Merritt v. Peters*, 65 So. 2d 861 (Fla. 1953), the court found that the attractiveness of resort areas is "of prime concern to the whole people and therefore affects the welfare of all." *Id.* at 862.

71. 469 F.2d at 962.

72. *Id.*