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The Place of Aesthetics in Zoning

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THE PLACE OF AESTHETICS IN ZONING

The purpose of this article is to demonstrate how "aesthetics" fits into the law of zoning. This problem has been dealt with to a large extent in recent years by various legal journals[1] and, being still in controversy, deserves more attention at this time. Before going into any discussion of aesthetics, it will be necessary to analyze the legal basis of a municipality's right to zone, such legal basis being the police power. This analysis will illustrate the nature, the application, the influencing factors and the scope of the police power in the law of zoning. As this concept is developed, it will be noted that "aesthetics" does have a place in zoning but that all "aesthetic" situations do not properly fit into that place. The discussion of "aesthetics" itself will encompass its connection with the police power, its legal sufficiency, its legal meaning, its application to varying situations, and its role in the future.

A city, in the exercise of its police power, has the authority to enact a zoning ordinance only when such an ordinance is reasonably necessary for the preservation of public health, safety, morals, or general welfare. In 1926 the Supreme Court of the United States held that an ordinance creating a residential district excluding such establishments as apartment houses, business houses and retail stores was a valid exercise of the police power.[2] The exclusion of such places of business from residential districts, according to the court, " 'is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is part of the general plan by which the city's territory is allotted to different uses, in order to prevent, or at least reduce, the congestion, disorder, and dangers which often inhere in unregulated municipal development.' "[3] In other words, the purpose of the ordinance was for the public safety and the ordinance was therefore a valid exercise of the police power.[4] Notice, however, that once

[1] For discussions on aesthetics in the law of zoning see Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning*, 11 J. PUB. L. 260 (1962); see also Anderson, *Regulation of Land Use for Aesthetic Purposes—An Appraisal of People v. Stover*, 15 SYRACUSE L. REV. 33 (1963); see also Comment, *Aesthetic Control of Land Use: A House Built upon the Sand?*, 59 NW. U.L. REV. 372 (1964).

[2] Village of Euclid v. Amber Realty Co., 272 U.S. 365 (1926).

[3] *Id.* at 392.

[4] However, the use of such power must not be applied in a manner unreasonable, arbitrary, capricious or discriminatory; see Stevens v. Stillman, 18 Misc.2d 274, 186 N.Y.S.2d 327 (1959), in which an ordinance prohibiting the establishment of a trailer camp in an agricultural district was found to be arbitrary and therefore not justified under the police power; *but see* Fass v. City of Highland Park, 321 Mich. 156, 32 N.W.2d 375 (1948), where it was held valid to confine the activity of killing, dressing and selling live poultry to a certain zone within a city because such an ordinance has a distinct relationship to public health.

a zoning regulation is adopted, the legislative judgment is of validity treated as conclusive until it is adequately contested. This rule is exemplified by a case where the plaintiff's land was zoned for commercial use, as opposed to industrial use.[5] Even though industry was allowed nearby and the plaintiff's land had diminished in value due to that ordinance, the ordinance was upheld because to change his land to an industrial district would create a traffic hazard and congestion, thus depreciating the value of surrounding dwelling houses in a predominantly residential area.[6] In contesting the ordinance, the plaintiff failed to prove by clear and affirmative evidence that such legislation did not promote public health, safety, morals, or general welfare, thereby losing his case.[7] Thus zoning laws do deny property owners the freedom to use their property as they desire, unless such laws can be set aside on the ground that there is no proper foundation within the police power.

When deciding whether a particular zoning law is valid, the courts seem to have been influenced by such factors (where applicable) as: (1) existing uses and zoning of nearby property; (2) destruction of property values; (3) relative gain to the public as compared to hardship to the individual property owner; (4) suitability of the property for the purposes zoned;[8] and at times, (5) the motivation behind the restriction, that is whether the restriction is founded primarily on aesthetic considerations.[9] The factor of aesthetics will be dealt with at great lengths later in this article. A particular case may involve any number of factors, and at times new considerations are made. In an Illinois case, the plaintiff sought to have an ordinance which zoned his property as residential declared invalid. The court examined most of the factors stating that "the zoning ordinance ignored the intermixed character of the neighborhood, surrounding uses, the traffic situation, and the highest and best use of the property . . . ,"[10] and that there would be little to gain to the public by

[5] Rams-Head Company v. City of Des Plaines, 9 Ill. 2d 326, 137 N.E.2d 259 (1956); see also Bright v. City of Evanston, 10 Ill. 2d 178, 139 N.E.2d 270 (1957).

[6] *Id.*

[7] In another case, a property owner successfully contested a zoning ordinance which classified his property for office building uses only, rendering such property practically useless. So long as this ordinance would have remained in effect, the plaintiff could not have built a shopping center like those in adjacent areas, even though the plaintiff's property was completely surrounded by land zoned for commercial purposes. The court held the ordinance invalid because the plaintiff clearly showed such a restriction to be discriminatory. Pearce v. Village of Edina, 263 Minn. 553, 118 N.W.2d 659 (1962).

[8] National Brick Company v. County of Lake, 9 Ill. 2d 191, 137 N.E.2d 494 (1956); see also Bauske v. City of Des Plaines, 13 Ill. 2d 169, 148 N.E.2d 584 (1958).

[9] Strine, *The Use of Conditions in Land-Use Control*, 67 DICK. L. REV. 109 (1963).

[10] La Salle National Bank v. County of Cook, 12 Ill. 2d 40, 45, 145 N.E.2d 65, 68 (1957).

limiting such property to residential purposes at a great loss to the plaintiff. The plaintiff won the case on the ground among others that, as similarly situated property was otherwise classified, the ordinance was discriminatory.[11] Such cases bring out the point that in determining the validity of a zoning ordinance under the police power, the courts have weighed all the factors involved before coming to final conclusions.

Recent authorities have argued that zoning needs an enlarged scope of police power. As Professor Yokley wrote, "In the complexity of our modern life, there are so many factors closely connected with the health, safety, and convenience of the community that police power regulations of great scope are increasingly upheld. . . ."[12] Early in the growth of municipal zoning a 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."[13] In a more recent case, a party brought action to restrain a village from enforcing an ordinance against signs projecting from the face of buildings over any sidewalk or street. The plaintiff was not successful because aesthetic reasons are at times valid reasons to sustain such legislation.[14] The court reasoned that "our cities and villages should be beautiful and that the creation of such beauty tends to the happiness, contentment, comfort, prosperity and general welfare of our citizens."[15] This type of ruling, however, was rarely made in early cases and, as will be noted in the forthcoming paragraphs, either has not been accepted by certain courts or has not been applied by others to varying factual situations.

Should the police power be employed to achieve an aesthetic end? In order to answer that question, it is essential to determine if "aesthetics" is reasonably necessary for the preservation of public health, safety, morals or general welfare. In 1931, a court inferred that a plaintiff's property was included in a residential district for the primary purpose of providing a beautiful and dignified village frontage on the public thoroughfare.[16] The court ruled in favor of the plaintiff, but stated that perhaps aesthetics "need not be disregarded in the formulation of regulation to promote the

[11] *Id.*; see also Langgath v. Village of Mt. Prospect, 5 Ill. 2d 49, 124 N.E.2d 879 (1955), in which the court held that since the plaintiff's lots were not very desirable for residential purposes and that since the use proposed by the plaintiff would do minimal damage to other property in the neighborhood, the ordinance prohibiting business use was invalid.

[12] 1 YOKLEY, ZONING LAW AND PRACTICE 21 (1953).

[13] *Id.*

[14] Preferred Tires, Inc. v. Village of Hempstead, 173 Misc. 1017, 19 N.Y.S.2d 374 (1940).

[15] *Id.* at 1019, 19 N.Y.S.2d at 377.

[16] Dowsey v. Village of Kensington, 257 N.Y. 221, 177 N.E. 427 (1931).

public welfare [however] no judicial definition has been formulated which is wide enough to include purely aesthetic considerations."[17] Other fact situations, however, have allowed the aesthetic consideration to be made in a different manner. In one such situation, the plaintiff brought a suit to have certain laws, adopted by the town of Concord, Massachusetts, restricting outdoor advertising upon private property within public view, declared void. The court observed that the preservation of scenic beauty "from defacement promotes the public welfare and is a public purpose,"[18] and then said: "Even if the rules and regulations of billboards and other advertising devices did not rest upon the safety of public travel . . . , we think that the preservation of scenic beauty and places of historical interest would be a sufficient support for them. . . ."[19] A similar situation was handled in a slightly different manner in 1953 when the defendant was convicted of displaying signs in a certain section of New Orleans in violation of an ordinance limiting the area and illuminating character of signs. The Supreme Court affirmed the conviction by stating that perhaps aesthetic considerations alone would not be valid, but here this legislation is in the interest and benefit of the inhabitants of New Orleans generally. The court reasoned that the preserving of the section was not only for its "sentimental value but also for its commercial value, and hence it constitutes a valid exercise of the police power. . . ."[20]

This later case leads to a discussion of property values in the problem of applying aesthetics. As early as 1923, a case was heard which considered this matter. The ordinance in controversy prohibited the construction of a business building in a residential area. The court stated that beauty and fitness enhance values in public and private structures, and thus do promote the general welfare, but that there should be reasonable limitation to such application of the law.[21] Again in 1945, values of neighboring property were considered in applying aesthetics. The court would not permit a property owner to remove top soil from a vacant lot in a residential area to the point that the land was left valueless because the effect of such waste would be to depress values of other lands in the neighborhood; thus aesthetic considerations "are in themselves entitled to some weight along

[17] *Id.* at 230, 177 N.E. at 430; *see also* Barney & Casey Co. v. Town of Milton, 324 Mass. 440, 87 N.E.2d 9 (1949).

[18] General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 184, 193 N.E. 799, 816 (1935); *appeal denied*, 296 U.S. 543 (1935).

[19] *Id.* at 187, 193 N.E. at 816; see also 1 YOKLEY, ZONING LAW AND PRACTICE 20 (Cum. Supp. 1964); *but see*, General Outdoor Advertising Co. v. Department of Public Parks, 202 Ind. 85, 172 N.E. 309 (1930).

[20] New Orleans v. Levy, 223 La. 14, 29, 64 So. 2d 798, 803 (1953).

[21] Ware v. City of Wichita, 113 Kan. 153, 214 Pac. 99 (1923).

with other considerations"[22] in determining the reasonableness of town zoning ordinances. An even later case which followed the decision in the famous *Berman v. Parker*[23] case was *State ex rel. Saveland Park Holding Corp. v. Wieland.*[24] Here the plaintiff brought an action to command a village building inspector to issue him a permit to erect a residence building in a desirable residential community consisting principally of single-family dwellings. The inspector acted according to an ordinance which allowed the issuance of a permit only when the village board was satisfied that "the exterior architectural appeal and functional plan of the proposed structure will, when erected, not be so at variance with . . . the structures already constructed or in the course of construction in the immediate neighborhood . . . as to cause a substantial depreciation in the property values. . . ."[25] The ordinance was upheld on the grounds that "the protection of property values is an objective which is within the exercise of the police power to promote the 'general welfare,' "[26] and it is immaterial whether the ordinance is based on such aesthetic values with or without any of several other possible legitimate objectives. So, it can be said generally that aesthetic considerations can stand alone, but only where such factors as fit the situation in a particular case can be construed as being within the realm of the general welfare of the community.

In reality then, it is difficult to say that an aesthetic consideration alone would be upheld as a valid exercise of police power, because, as shown in the previous paragraphs, there has been some other factor, such as property value, present in the relevant decisions of the past. A much-quoted statement appeared in *Perlmutter v. Greene* where the court said: "Beauty may not be queen, but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality or decency."[27] In this case, a public officer in charge of highways in New York erected a large screen to block the view of a billboard by passing motorists. The plaintiff's action to remove the screen was dismissed on the grounds that dangers to travel on the highways arise from diverting the attention of motorists from the road by billboards, and the fact that considerations of an aesthetic value also exist does not negate this factor of

[22] Town of Burlington v. Dunn, 318 Mass. 216, 222, 61 N.E.2d 243, 246 (1945); *cert. denied,* 326 U.S. 739 (1945).

[23] 348 U.S. 26 (1954); see later discussion regarding aesthetics and urban redevelopment, at note 65.

[24] 269 Wis. 262, 69 N.W.2d 217 (1955); *cert. denied,* 350 U.S. 841 (1955).

[25] As set out in the opinion, *id.* at 265, 69 N.W.2d at 219.

[26] *Id.* at 270, 69 N.W.2d at 222.

[27] Perlmutter v. Greene, 259 N.Y. 327, 332, 182 N.E. 5, 6 (1932); see generally, Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning,* 11 J. PUB. L. 260 (1962).

public safety. With each decision more weight has been given to aesthetics; however, a zoning ordinance has not been supported purely for aesthetic reasons.[28] It follows then in relation to the validity of a zoning law, aesthetic considerations are not wholly without weight and may be taken into account where other elements are present to justify regulation under the police power.[29]

Usually, aesthetics will only play an auxiliary role in testing the validity of zoning laws. Typical of this is the reluctance of courts to use it when other considerations are available. For instance, back in 1928 so-called "setback ordinances" existed which required that auxiliary buildings such as garages and stables be placed upon the rear half of a lot. With regard to these ordinances one court stated that "such an arrangement may make for better conditions of light and air, and [tend] to reduce fire risks [and] promote the safety of public travel over what it would be if a garage opened directly onto the street."[30] The court went on to say that such an ordinance is not rendered void because it "also has an aesthetic value [or] that such aesthetic quality was a part of the inducement for making the regulation."[31] Another example of the courts' reluctance to use aesthetics as a basis appeared when an ordinance excluded advertising signs from a retail-store district, and was upheld because it is the "right of a city to classify its territory into use zones, under a complete [and comprehensive] zoning ordinance [so as to promote] the public convenience, comfort, prosperity and general welfare."[32] In giving consideration to these questions, the court recognized that such laws "may be motivated in part at least"[33] by aesthetic considerations. One court placed aesthetics in an auxiliary position because, among others, aesthetic considerations are "a matter of luxury and indulgence rather than of necessity, and it is neces-

[28] This is exemplified by the case of the property owner who was denied the right to construct a 44 foot radio tower in an exclusive residential area. Aesthetically such a tower would be an eyesore to such a community and would not conform to the character of the neighborhood, but as the court mentioned such considerations alone would not justify the exercise of police power. The ordinance was upheld however because in addition to the aesthetic consideration two other factors existed, that of the danger of children climbing on the tower and the effects of the proposed tower on property values, and thus the ordinance was within both the public safety and the general welfare. Presnell v. Leslie, 3 N.Y.2d 384, 165 N.Y.S.2d 488, 144 N.E.2d 381 (1957); *appeal denied*, 4 N.Y.2d 1046, 152 N.E.2d 420 (1957).

[29] See Jefferson County v. Timmel, 261 Wis. 39, 51 N.W.2d 518 (1952).

[30] Sundeen v. Rogers, 83 N.H. 253, 259, 141 Atl. 142, 145 (1928).

[31] *Ibid.*

[32] Criterion Service, Inc. v. City of East Cleveland, 88 N.E.2d 300, 303 (Ct. App. Cuyahoga County, 1949); *aff'd mem.*, 152 Ohio St. 416, 89 N.E.2d 475 (1949).

[33] *Ibid.*

sity alone which justifies the exercise of police power."[34] A reason suggested for this reluctance is that " 'while public health, safety, and morals, which make for the public welfare, submit to reasonable definition and delimitations, the realm of the [aesthetic] varies with the wide variation of tastes and culture.' "[35] Restrictions, as some courts would say, should not be based on "the aesthetic sensitivities of the Village authorities"[36] as in "adherence to [aesthetic] concepts of some municipal planning commission."[37]

Certain courts, however, have not expressed any reluctance, and mainly have been concerned with maintaining beautiful communities so as to attract tourists. In these "Miami Beach" cases, aesthetics play a major role in establishing the validity of zoning laws. One court said that 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."[38] Another Florida court some twelve years later came to basically the same conclusion by saying that the attractiveness of communities like Miami Beach and the one across the bay where the plaintiff's property was situated is "of prime concern to the whole people and therefore [affect] the welfare of all."[39] Aside from the motivation of tourist attractions, the "concentration of population in urban areas has forced a readjustment in our thinking respecting some of our former concepts in zoning [and with] ever-increasing frequency, the courts lean more favorably toward a consideration of [aesthetics] as a major factor in the enactment of zoning ordinances under the police power."[40]

There are many instances where aesthetics do play a major role, but before going into that matter, understanding what is meant by aesthetics is

[34] Stoner McCray System v. City of Des Moines, 247 Iowa 1313, 1319, 78 N.W.2d 843, 848 (1956); see also City of Passaic v. Paterson Bill Posting, Advertising & Sign Painting Co., 72 N.J.L. 285, 287, 62 Atl. 267, 268 (1905), from where this quotation was originally taken; see generally, 1 YOKLEY, ZONING LAW AND PRACTICE 18 (cum. supp. 1964).

[35] City of Norris v. Bradford, 204 Tenn. 319, 324, 321 S.W.2d 543, 545 (1959); see also 58 AM. JUR. ZONING § 30 (1948); *cf.*, Spann v. City of Dallas, 111 Tex. 350, 235 S.W. 513 (1921).

[36] People v. N.Y. Central Railroad Co., 5 Misc. 2d 232, 236, 165 N.Y.S.2d 877, 881 (1956).

[37] Pearce v. Village of Edina, *supra* note 7, at 569, 118 N.W.2d at 670.

[38] City of Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 487, 3 So. 2d 364, 367 (1941).

[39] Merritt v. Peters, 65 So. 2d 861, 862 (Fla. 1953).

[40] 1 YOKLEY, ZONING LAW AND PRACTICE 14 (cum. supp. 1964); see also Annot., 58 A.L.R.2d 1327 (1958); see generally, 1 RATHKOPF, THE LAW OF ZONING AND PLANNING, 11-31 (1964).

important. Aesthetics has been defined as the "doctrine or philosophy of taste [which is] the science of the beautiful, as distinguished from the moral, or useful,"[41] or, in legal terminology, the consideration of beauty as a motivating factor to justify the exercise of the police power in enacting zoning regulations.[42] An aesthetic person might condemn a store building within a residential district as an alien thing or as marring its architectural symmetry, or on the other hand might regard such a store as a convenience.[43] An important case in the development of aesthetics in zoning is *State ex rel. Civello v. City of New Orleans.*[44] Here an ordinance excluded a retail grocery store from a residential neighborhood. In upholding the ordinance, the court defined aesthetics by stating that if "by the term 'aesthetic considerations' is meant a regard merely for outward appearances [and] good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for saying that such a consideration is not a matter of general welfare."[45] The court's reasoning for applying aesthetics was that the beauty of the neighborhood is for the comfort and happiness of the residents, and it sustains the value of the property in the neighborhood, and is thereby within the realm of the general welfare and police power. This application helps to understand the reason why aesthetics in law is not only one's taste regarding beauty, but also such tastes as it relates to the general welfare.[46]

Aesthetics has played a major role for zoning in such areas as:

(1) *restricting the use and the construction of buildings,*
(2) *preserving the historic character of a neighborhood,*
(3) *regulating the placement of billboards,*
(4) *controlling the use of land abutting the highway,*
(5) *curtailing business operations, and*
(6) *supporting urban redevelopment projects.*

Buildings have been restricted as to single family dwellings,[47] minimum

[41] *Id.* at 16.

[42] See Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning,* 11 J. PUB. L. 260 (1962).

[43] Spann v. City of Dallas, 111 Tex. 350, 235 S.W. 513 (1921).

[44] 154 La. 271, 95 So. 440 (1923).

[45] *Id.* at 284, 97 So. at 444. [46] Agnor, *supra* note 42.

[47] Even though the property owner could only use her twenty-two room, seven bath house as a single-family residence, the court upheld such a restriction by stating that the preservation of the attractive characteristics of a community is a proper element of the general welfare and that the preservation of property values is a legitimate consideration. *Best v. Zoning Board of Adjustment,* 393 Pa. 106, 141 A.2d 606 (1958).

amount of floor space,[48] maximum amount of height,[49] and uses to which it is put,[50] but such restrictions all have some relation to the public health, safety, or welfare as opposed to relying "exclusively for the purpose of gratifying and cultivating aesthetic tastes."[51] The public interests involved could consist of the conservation of property values, lessening of congestion in the streets, prevention of overcrowding of population, and the preservation of attractive homes and home surroundings.[52] The preservation of attractive homes is related to the general welfare because the "beauty of a residential neighborhood is for the comfort and happiness of the residents and it tends to sustain the value of property in the neighborhood."[53]

Preserving the historic character of a neighborhood has been defended by the courts on the grounds that preventing "eyesores" in the locality was within the general welfare,[54] that "educational, cultural and economic advantages" would be gained by the public,[55] and that "scenic beauty" attracts tourist trade which is vital to the economy of the area.[56]

Aesthetic considerations in connection with *regulating the placement of signboards* "cannot be divorced from material and economic factors [in that] the presence of signboards near property may definitely affect its value and the comfort of those who may be living upon it,"[57] and therefore such regulation is within the police power.

[48] Such a restriction has been upheld on the grounds that in addition to maintaining public health and safety, it was designed to conserve the value of the buildings in the community. *Thompson v. City of Carrollton*, 211 S.W.2d 970 (Tex. 1948).

[49] Welch v. Swasey, 214 U.S. 91 (1909).

[50] See Town of Lexington v. Governar, 295 Mass. 31, 3 N.E.2d 19 (1936), where a suit was brought in equity by a town to enjoin an attorney from the use of his residence as a professional office and from the maintenance of a sign so indicating the practice of law. The town won its suit on the grounds that the flow of professional clients to homes would change the essential character of the neighborhood which would tend to take away from the attractiveness of a community and thereby reduce the value of the residences; see also Connor v. City of University Park, 142 S.W.2d 706 (Tex. 1940).

[51] Federal Electric Co. v. Zoning Board of Appeals, 398 Ill. 142, 147, 75 N.E.2d 359, 362 (1947); see also Frischkorn Construction Co. v. Lambert, 315 Mich. 556, 24 N.W.2d 209 (1946).

[52] Connor v. City of University Park, 142 S.W.2d 706 (Tex. 1940).

[53] Town of Lexington v. Governar, *supra* note 50, at 36, 3 N.E.2d at 22.

[54] City of New Orleans v. Pergament, 198 La. 852, 5 So. 2d 129 (1941).

[55] Opinion of the Justices to the Senate, 333 Mass. 773, 128 N.E.2d 557 (1955).

[56] Opinion of the Justices, 103 N.H. 268, 169 A.2d 762 (1961) (advisory opinion); see also City of Miami Beach v. Ocean & Inland Co., *supra* note 38, and Merritt v. Peters, *supra* note 39.

[57] Murphy, Inc. v. Westport, 131 Conn. 292, 297, 40 A.2d 177, 179 (1944).

Controlling the use of land abutting a highway is usually authorized in connection with the public safety in that such regulations are "intended to provide clear visibility at street corners and . . . driveways . . . ; to reduce distractions to motorists and pedestrians; and to provide greater opportunity for access in the event of fires."[58] However, even if such regulations have no relation to safety, they can sometimes be sustained as an attempt to preserve the appearance of a community and the value of its property.[59]

Curtailing business operations has been related to junk yard operations,[60] amusement concessions,[61] and garbage dumping.[62] Ordinances restricting such operations are valid when the primary consideration for the enactment is the substantial promotion of public health, safety, comfort, or general welfare, and "considerations of taste and beauty may also enter in, and be not out of place."[63] An example of this application is an ordinance requiring automobile junk yards to be fenced, upheld on the grounds that its purposes were "to protect passersby from the dangers inherent in the dismantling and/or storage of wrecked and junked automobiles . . . , and also to protect children who are naturally attracted to such 'nuisances,' "[64] and was therefore for the public safety.

In supporting *urban redevelopment projects,* aesthetic considerations have made their greatest advance. The court, in the famous *Berman v. Parker*[65] case which concerned a slum clearance project, said that the "concept of the public welfare is broad and inclusive [and can] determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled,"[66] and consequently

[58] People v. Stover, 12 N.Y.2d 462, 466, 240 N.Y.S.2d 734, 736 (1963); see also Perlmutter v. Greene, *supra* note 27.

[59] *Id.*; The decision in People v. Stover upheld an ordinance, which prohibited the use of clotheslines or other devices for hanging clothes in yards abutting the street, on the grounds that such a restriction preserved the residential appearance of the city and its property values by proscribing conduct which "offends sensibilities" and "tends to debase" the community and thereby reduce real estate values; see generally, Anderson, *Regulation of Land Use for Aesthetic Purposes—An Appraisal of People v. Stover*, 15 SYRACUSE L. REV. 33 (1963).

[60] See Delmar v. Planning and Zoning Board, 19 Conn. Supp. 21, 109 A.2d 604 (1954); see also City of Shreveport v. Brock, 230 La. 651, 89 So. 2d 156 (1956).

[61] See Point Pleasant Beach v. Point Pleasant Pavilion, 3 N.J. Super. 222, 66 A.2d 40 (1949).

[62] See Lutz v. Armour, 395 Pa. 576, 151 A.2d 108 (1959).

[63] City of Shreveport v. Brock, 230 La. 651, 654, 89 So. 2d 156, 157 (1956).

[64] *Id.* at 656, 89 So. 2d at 158.

[65] *Supra* note 23; see also Bowker v. City of Worcester, 334 Mass. 422, 136 N.E.2d 208 (1956).

[66] Berman v. Parker, *supra* note 23, at 33.

held that aesthetic considerations could be used in fixing a public purpose to support the power of eminent domain. This treatment of aesthetics did not come as a surprise because the courts "had given a limited recognition to aesthetic considerations many times before [and this decision] was a logical development in the expansion of the concept of the general welfare in the exercise of the police power."[67] The reasoning in this case "was to become a guidepost in short order for courts anxious to break away from old ideas that had rejected the concept of [aesthetics]."[68]

The trend in applying aesthetics to the law of zoning has been recognized as follows:

> As the concept and definition of "public welfare" has expanded, so, too, regard for aesthetic considerations has been more hospitably accepted as having ing a growing consideration in the philosophy of zoning.
>
> Earlier, frowned upon, then somewhat more willingly taken into consideration, now accorded a place—not alone or by itself sufficient, but a recognized factor in the equation—aesthetic phases have won a more friendly acceptance in the determination of the reasonableness and in the upholding of challenged zoning regulations.[69]

So far, however, the courts have not reached the point where aesthetic considerations alone may justify the use of the zoning power. Even in the most recent decisions, it was demonstrated that the aesthetic consideration must tend to promote the public welfare in some manner such as maintaining the property values of the community,[70] sustaining the economy of a state,[71] or providing safety measures for a neighborhood.[72] It is difficult to foresee the courts going any further by declaring that aesthetics alone can sustain a zoning ordinance. If such a declaration were made, controversies would have to be resolved in an arbitrary manner because not every zoning commission or expert in the field will agree as to what constitutes aesthetic ideals.[73] Since the police power cannot operate in an arbitrary manner, there would then be no legal basis for restrictions founded purely on aesthetics. All that can be said at this time is that aesthetics, as the law now stands, will uphold a zoning law only when such considerations involve other factors that will reasonably promote the preservation of public health, safety, morals or general welfare as applied by

[67] Agnor, *supra* note 42, at 278.

[68] 2 YOKLEY, ZONING LAW AND PRACTICE 40 (cum. supp. 1964).

[69] 2 METZENBAUM, THE LAW OF ZONING 1577 (1955).

[70] See Best v. Zoning Board of Adjustment, *supra* note 47.

[71] See Opinion of the Justices, *supra* note 56.

[72] See People v. Stover, *supra* note 58.

[73] POOLEY, PLANNING AND ZONING IN THE U.S., 89 (1961); see generallv. 2 Yokley, *op. cit. supra* note 68.