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AESTHETIC ZONING: PROPERTY VALUES AND THE JUDICIAL DECISION PROCESS

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*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.***

"[W]hile 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."[1] Encompassed within the term "general welfare" is the concept of economic well-being and spiritual comfort and to some minds, "[t]he most important facet of spiritual comfort is aesthetic zoning."[2]

Exponents claim that the principle purpose of aesthetic zoning is to enhance or preserve the physical appearance of the community by eliminating or reducing dissimilarity, monotony, and incongruity in the physical appearance of structures within the neighborhood. Put more simply it is the goal of aesthetic zoning ". . . to promote, preserve or restore beauty, and to remove or hide eyesores."[3] The courts have played a major role in the development of aesthetic concepts in zoning but have also constituted one of the major roadblocks to the complete acceptance of aesthetics *per se* as a valid basis for zoning.

> Traditionally the opinions have refused to face up to the aesthetic questions posed by the cases. It is clear enough in the great majority of zoning decisions that one of the predominating purposes of zoning legislation is the maintenance and improvement of community appearance. But traditionally the courts have exercised remarkable powers of imagination to find legislative concern limited to matters of light, air, traffic control and sewage disposal even where the aesthetic impact of the decision is obvious.[4]

Thus, when an aesthetic consideration has been raised, it generally has been upheld if it could be fitted into one of the traditional molds that en-

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**This statement was made by the New York Court of Appeals in Perlmutter v. Greene, 259 N.Y. 327, 332, 182 N.E. 5, 6 (1932).

1. Norris v. Bradford, 204 Tenn. 319, 324, 321 S.W.2d 543, 545 (1958) (city zoning ordinance prohibiting front yard fences in residential districts).

2. Note, *Aesthetic Zoning: A Current Evaluation of the Law,* 18 U. FLA. L. REV. 430, 433 (1965).

3. *Id.*

4. Comment, *Aesthetic Control of Land Use: A House Built Upon the Sand,* 59 NW. U.L. REV. 372, 373 (1964).

compass public health, safety, morals, or general welfare. Once the concession has been made to allow city councils to consider aesthetics, one finds that the ordinance is upheld only if it can be sustained in its entirety upon a non-aesthetic ground.[5]

The reluctance of courts, as well as certain segments of the public, to accept aesthetics as the sole basis for zoning stems from a reverence for the historic rights of private property. Put in the least favorable light, aesthetic zoning may be considered as the exercise of the police power to restrain an individual in the use of his private property so that the community may have the luxury of gazing upon pleasant surroundings. Many feel that the property owner should not be compelled to bear the financial burden of making the community beautiful but instead that the community itself should pay for preserving the beauty of the community.[6] In addition, judges and laymen alike look with disfavor upon the uncertainty caused by the use of aesthetic standards in drafting legislation.[7] Certainly it is not an idle fear that the lack of precise standards may lead to discriminatory enforcement. For these reasons courts have moved slowly in the area of aesthetic zoning, trying to delicately balance the rights of private property against an ill-defined desire of the citizenry to have a more beautiful community to live in.

I. Aesthetic Basis for Regulation

A. *Development of the Concept*

Although the law reviews and journals have been filled with material on the topic of aesthetic zoning, only a few states have *fully* embraced aesthetics as a singular basis for land regulation. Most states have either recognized aesthetics by aligning it with an expansion of the traditional notion of public welfare, or they have rejected it outright.

The first major case to uphold a comprehensive zoning plan was *Euclid v. Ambler Realty Co.*[8] decided by the Supreme Court of the United States in 1926. Since that decision, there has been little doubt that the police power could constitutionally be utilized to restrain an individual's use of his property in the furtherance of the public welfare. However, the Supreme Court failed to define the concept of "general welfare."[9] The significance of *Euclid* was the introduction into zoning considerations of the concept of "utilitarianism" which balances individual interests against

5. *See* Jackson v. Bridges, 243 Miss. 646, 139 So. 2d 660 (1962). The word aesthetics has a bad aroma in some courts. Negative attitudes are discussed in Anderson, *Architectural Controls*, 12 Syracuse L. Rev. 26, 32-33 (1960).

6. Comment, *Aesthetics as a Zoning Consideration*, 13 Hast. L.J. 374, 378 (1962).

7. Comment, *Aesthetic Considerations and the Police Power*, 35 B.U.L. Rev. 615 (1955).

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

9. *Id.* at 387.

the general welfare of the community. The court pointed out that zoning ordinances benefited the entire community and could not possibly operate without some prohibition being placed on the utilization of property.[10]

The road of aesthetic zoning has been a hazardous one beset with obstructions and detours. The earliest decisions in the area of aesthetic zoning are typified by *Passaic v. Paterson Bill Posting, Advertising & Sign Painting Co.*[11] There the court held that aesthetic considerations were a matter of luxury and indulgence rather than necessity, and therefore it was necessity alone which justified the utilization of police power to regulate private property without compensation.[12]

Although progress had been made in some areas (*e.g.*, billboards and historic structures), the first real break-through for aesthetics came with the 1954 case of *Berman v. Parker*.[13] The Supreme Court of the United States included aesthetics as a permissible basis for the condemnation of private property under the District of Columbia Redevelopment Act of 1945. The court held that even though the appellant's property was neither slum nor blighted, the police power could be invoked to appropriate the land and develop a more attractive community. Mr. Justice Douglas, writing for a unanimous court stated:

> The concept of public welfare is broad and inclusive. . . . [t]he values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean . . . . If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.[14]

It should be pointed out that there are differences between *Berman* and cases arising at the state level. *Berman* arose under federal jurisdiction and dealt with the power of eminent domain, whereas most state courts deal with the right to zone under the police power. State courts test police power legislation more strictly under the fourteenth amendment than the Supreme Court tests the right of eminent domain under the fifth amendment even though all courts weigh these powers against due process considerations.[15] Finally, even though the decisions of the Supreme Court on federal questions are not controlling in state courts, they are

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10. *Id.* at 389.
11. 72 N.J.L. 285, 62 A. 267 (Ct. Err. & App. 1905).
12. *Id.* at 287, 62 A. at 268. However property rights as protected under the due process clause constitute an ever shifting, counting, and balancing of conflicting societal interests. Pound, *A Survey of Social Interests*, 57 HARV. L. REV. 1 (1943).
13. 348 U.S. 26 (1954).
14. *Id.* at 33.
15. Comment, *Zoning, Aesthetics, and the First Amendment*, 64 COLUM. L. REV. 81, 85 (1964).

highly persuasive when the latter are considering the interpretation of their own constitutions.[16]

The first major state court decision after *Berman* was the Wisconsin case of *State ex rel. Saveland Park Holding Corp. v. Wieland*[17] which was based upon both aesthetics and the protection of property values. The ordinance required that in order for a building permit to be issued, the city's zoning board had to find that the exterior architectural appeal and functional plan of the proposed building would not cause a substantial diminution of property values within the neighborhood.[18] The court felt that the preservation of property values was a legitimate ground for the exercise of the police power. The judgment was based on the conviction that anything that destroys property values ultimately affects the prosperity and general welfare of the community.

Another assault upon the barriers to aesthetic zoning culminated in victory in the New York case of *People v. Stover*[19] where, for the first time, a state court upheld a zoning ordinance based solely upon aesthetic grounds. The case concerned a violation of an ordinance prohibiting the maintenance of clotheslines in a front or side yard. The defendant had erected clotheslines and decorated them with dirty laundry in order to protest high municipal taxes. The court held that the ordinance

> may be sustained as an attempt to preserve the residential appearance of the city and its property values . . . . [T]he statute, though based on what may be termed aesthetic considerations, proscribes conduct which offends sensabilities and tends to debase the community and reduce real estate values.[20]

The court conceded that aesthetics is a valid subject of legislative concern and that reasonable legislation designed to implement this end is a permissible exercise of the police power. However, the court did intimate that situations may arise where "the legislative body goes too far in the name of aesthetics . . . but the present, quite clearly, is not one of them."[21]

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16. Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning,* 11 J. PUB. L. 260, 278 (1962). Some courts that recognize the differences between jurisdiction based on the power of eminent domain and the police power to zone have little difficulty reaching a reconciliation. *See* Oregon City v. Hartke, 240 Ore. 35, 44, 400 P.2d 255, 261-62 (1965) and Phoenix v. Fehlner, 90 Ariz. 13, 17, 363 P.2d 607, 609-10 (1961).

17. 269 Wis. 262, 69 N.W.2d 217 (1955), *cert. denied,* 350 U.S. 841 (1955). *See generally* Sayre, *Aesthetics and Property Values: Does Zoning Promote the Public Welfare,* 35 A.B.A.J. 471 (1949).

18. State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 265, 69 N.W.2d 217, 219; *See also* Deering *ex rel.* Bittenbender v. Tibletts, 105 N.H. 481, 202 A.2d 232 (1964). In State *ex rel.* American Oil Co. v. Bessent, 27 Wis. 2d 537, 135 N.W.2d 317 (1956), the court relying on *Saveland* and *Berman* held that a comprehensive village zoning ordinance was valid. In so holding, the court accepted the proposition that the concept of public welfare includes within comprehensive zoning the borderlines of community growth, land value, and aesthetic objectives.

19. 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (1963).

20. *Id.* at 466, 191 N.E.2d at 274, 240 N.Y.S.2d at 737.

21. *Id.* at 468, 191 N.E.2d at 275, 240 N.Y.S.2d at 739.

The trend continued in 1965 when an Oregon court stated that it concurred with the New York view "that aesthetic considerations alone may warrant an exercise of the police power."[22] The case involved an ordinance that totally excluded wrecking yards from the city limits and was upheld though exclusively based on aesthetic considerations. The court stated that

> there is a growing judicial recognition of the power of a city to impose zoning restrictions which can be justified solely upon the ground that they will tend to prevent or minimize discordant and unsightly surroundings. This change in attitude is a reflection of the refinement of our tastes and the growing appreciation of cultural values in a maturing society. The change may be ascribed more directly to the judicial expansion of the police power to include within the concept of "general welfare" the enhancement of the citizen's cultural life.[23]

In *Cromwell v. Ferrier*,[24] an individual's business, consisting of a service station and diner, was bisected by a highway so that his advertising sign was situated on the side of the highway opposite his business, thereby making his sign nonaccessory. The comprehensive zoning ordinance prohibited nonaccessory signs anywhere in the township. The court sustained the ordinance and stated that a zoning ordinance "is not necessarily invalid because its primary, if not its exclusive objective, is the aesthetic enhancement of the particular area involved, so long as it is related if only generally to the economic and cultural setting of the regulating community."[25]

B. *Specialized Areas of Regulation*

1. Billboards

One of the areas in which aesthetic desiderata of a specialized nature have made great progress is that of billboard regulation.[26] In 1936, the Massachusetts Supreme Court, speaking in a case involving billboard regulation, stated:

> [g]randeur and beauty of scenery contribute highly important factors to the public welfare of a state. To preserve such landscape from defacement promotes the public welfare and is a public purpose. . . . Even if the rules and regulations of billboards . . . did not rest upon the safety of public travel and the promotion of the comfort of travelers by exclusion of undesired intrusion,

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22. Oregon City v. Hartke, 240 Ore. 35, 49, 400 P.2d 255, 262 (1965).
23. *Id.* at 46, 400 P.2d at 261.
24. 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (1967).
25. *Id.* at 269, 225 N.E.2d at 753, 279 N.Y.S.2d at 26.
26. In the federal interstate highway program Congress has made provision for control of outdoor advertising through the 1965 Federal Highway Beautification Act, 23 U.S.C. § 131 (1965).

> we think that the preservation of scenic beauty and places of historic interest would be sufficient support for them.[27]

This statement reflects the attitude of those courts which have deemed aesthetics to be an independent basis for legislation in the area of billboard regulation. The general feeling of these courts has been that the legislatures in enacting billboard legislation may not only give consideration to promoting public safety but can legally consider the comfort, convenience, and peace of mind of those using the highways.[28]

Illustrative of this feeling is the Hawaii Supreme Court's most recent decision in *State v. Diamond Motors*,[29] where defendants were convicted of violating an ordinance which limited the size and height of outdoor signs in an industrial area. The court held that the application of the ordinance to signs in industrial areas constituted a regulation for public welfare, and even if its primary purpose was an aesthetic one, it was a valid exercise of the police power and did not constitute a taking of property without compensation. The court even chided the city for not supporting the proposition that aesthetics alone is a proper objective for the exercise of police power.[30]

2. Preservation of Historic Structures

The preservation of historic buildings has also evoked much interest in recent years both for aesthetic and economic reasons.[31] For example, an

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27. General Outdoor Advertising Co. v. Dep't of Public Works, 289 Mass. 149, 183, 193 N.E. 799, 816 (1935). For a compendium of cases involving the power of municipalities as to billboards and other outdoor advertising see Annot., 72 A.L.R. 465 (1931) and Annot., 58 A.L.R.2d 1314 (1958).

28. *E.g.*, Markham Adv. Co. v. State, 439 P.2d 248, 260 (1968), summarizing the full impact of aesthetics on billboard regulation; State v. Diamond Motors, 429 P.2d 825 (Hawaii 1967); Cromwell v. Ferrier, 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (1967); Ghaster Properties, Inc. v. Preston, 176 Ohio St. 425, 200 N.E.2d 328 (1964); Dessert Outdoor Adv. v. San Bernadino, 255 Cal. App. 469, 63 Cal. Rptr. 543 (1967), including a comprehensive combination of all aspects of aesthetics. *See also* New York State Thruway Authority v. Ashley Motor Court, Inc., 10 N.Y.2d 151, 176 N.E.2d 566, 218 N.Y.S.2d 640 (1961).

In *Cromwell*, a divided court found that the unique nature of billboard advertising has long made it a separate category for governmental regulation. The court found it unnecessary to discuss the blight caused by the massive erection of billboards but noted that their harmful effects upon driver safety have substantially increased and that an increasing number of states are regulating billboard advertising. In summarizing the law in this area the court concluded that the "eye is entitled to as much recognition as the other senses . . ." and that when misplaced, billboards were "egregious examples of ugliness, distraction and deterioration." Cromwell v. Ferrier, *supra* at 272, 225 N.E.2d at 755, 279 N.Y.S.2d at 30. The dissent felt that the ruling constituted a serious interference with a man's right to use his own property.

29. 429 P.2d 825 (Hawaii 1967).

30. *Id.* at 827, citing Dukeminer, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218, 237 (1955).

31. *See, e.g.*, Neef v. Springfield, 380 Ill. 275, 43 N.E.2d (1942), where a city zoning ordinance prohibiting the use of property for gasoline service stations in cer-

Historic Districts Commission has been established in Massachusetts "to pass upon the appropriateness of exterior architectural features of buildings and structures wherever such exterior features are subject to public view from a public street or way."[32] The resultant legislation was directed towards the preservation of the Beacon Hill section of Boston, Lexington, Falmouth, Salem, and Concord. The legislation was held constitutional in an advisory opinion by the Supreme Judicial Court. The opinion stated that failure to regulate the erection of buildings would result in destruction of one of the town's principal assets.[33] Similar legislation was also enacted by the city of New Orleans in 1937 to protect its picturesque Vieux Carre section. The ordinance specifically stated that its purpose was to protect the "quaint and distinctive character" of the area.[34]

Several state court decisions have recognized the importance of preserving historic structures.[35] Preservation of a historic style of architecture was the issue in *Sante Fe v. Gamble Skogmo, Inc.*[36] where the defendant corporation was found guilty of violating the city's building code. The New Mexico Supreme Court held that regulation of the size of building windows within an historic area of Santa Fe as a means of preserving the "Old Sante Fe Style" of architecture was a valid exercise of the police power since the "general welfare" of the community was enhanced through any income derived from tourist trade attracted by this area of the city.[37]

3. Tourism

In some states, where tourism is a major source of revenue (as in the *Gamble Skogmo* case noted above), courts have tied together tourism, aesthetics, and the preservation of property values in developing a rationale for upholding zoning laws. The cases indicate that where certain portions of the state have high tourist traffic, there is an assumption that the tourist industry is enhanced by the aesthetic appeal of the area.[38] However, this

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tain kinds of residential districts was held to be a valid exercise of police power even though it was assumed that a major factor in the enactment of the regulation was the interest of city officials in the preservation of the beauty of the area near Abraham Lincoln's tomb.

32. MASS. GEN. LAWS ch. 601, §§ 4, 5, 8 (1955).

33. Opinion of the Justices, 333 Mass. 773, 780, 128 N.E.2d 557, 562 (1955).

34. NEW ORLEANS, LA. VIEUX CARRE ORD. No: 14 538 C.C.S. § 3 (1937). *See also* New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953), where an ordinance providing for the preservation of the quaint and distinctive character of the area was upheld.

35. *E.g.* Derring *ex rel.* Bittenlender v. Tibbetts, 105 N.H. 481, 202 A.2d 232 (1964), where the court held that the aesthetic considerations of fostering civic beauty and preserving places of historic and architectural merit were enough to support the valid exercise of the municipality's police power.

36. 73 N.M. 410, 389 P.2d 13 (1964).

37. *Id.* at 418, 289 P.2d at 18 (emphasis added).

38. *See* Opinion of the Justices, 103 N.H. 268, 169 A.2d 762 (1961): "We hold that the maintenance of the natural beauty of areas along interstate highways is to be taken into account in determining whether the police power is properly exer-

concept has not yet gained wide recognition. Since most states do have some tourist trade, there is always a possibility that the courts can be persuaded to permit aesthetic zoning for the combined purposes of beauty and economics.

C. *Present Trends*

As the above discussion indicates, while aesthetics has been a factor in governmental regulation, its outright acceptance by the courts as the sole basis for zoning has been limited.[39] However, there are forces at work within our society that have tended to elevate the American taste. Among these influential elements are: rising real income; increasing education, both formal and informal; the success of the so-called "tastemakers" in spreading their ideas; and the American ethic of striving for self betterment.[40]

The present trend appears to be toward the close association of aesthetics and property values. For example, in a 1964 New Jersey case, the court stated:

> [T]here are some areas in which aesthetics and economics coalesce, areas in which a discordant sight is as hard an economic fact as an annoying odor or sound. We refer not to some sensitive or exquisite preference but to concepts of congruity held so widely that they are inseparable from the enjoyment and hence the value of property.[41]

The health and safety of the community has been the predominant justification behind the imposition of set-back controls[42] and the sanctioning of minimum lot size requirements.[43] Courts have found the traditional label of health easier to apply than the newer concept of aesthetics. However, in recent years courts have acknowledged a dual basis for their

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cised." *See also,* Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 3 So. 2d 384 (1941), where the court stated, "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 winter travelers."

39. A 1965 note in the FLORIDA LAW REVIEW indicated that only New York, Oregon and the District of Columbia have accepted aesthetics as a basis for zoning and that the following eighteen states have rejected aesthetics as a *sole* basis for zoning: Cal., Del., Ill., Iowa, La., Md., Mich., Minn., Miss., Mo., Neb., Nev., New Mexico, N.C., Ohio, Tenn., Tex., Wash., and W.Va. Note, *Aesthetic Zoning: A Current Evaluation of the Law,* U. FLA. L. REV. 430, 437-38 (1965).

40. Burch, *How American Taste is Changing,* FORTUNE, July, 1959, at 115.

41. United Adv. Corp. v. Metuchen, 43 N.J. 1, 5, 198 A.2d 447, 449 (1964). This presents a perfect example of the confusion existing in most courts when the issues of pure aesthetic concepts and economic depreciation are both raised.

42. Gorieb v. Fox, 274 U.S. 603 (1927). For a complete discussion of the validity of front setback provisions within zoning ordinances see Annot., 93 A.L.R.2d 1223 (1964).

43. Simon v. Needham, 311 Mass. 560, 42 N.E.2d 516 (1942). *See also* Annot., 96 A.L.R.2d 1367 (1964).

decisions. A 1952 New Jersey case focused considerable attention on aesthetic principles while simultaneously looking at the relationship between health and adequate living space.[44]

While the reluctance to adopt aesthetics as the exclusive basis for zoning (regardless of the affect on property values) will be with us for a long time, the use of the concept of "police power" to uphold zoning laws is gaining momentum and might aid in decreasing the time necessary for full acceptance of aesthetic zoning. "Police power" has been recognized as an expanding legal device that is as comprehensive as the demands of society dictate, and evolves with the changing concepts of what constitutes the "public welfare."[45] The concept of aesthetics in zoning may well be accepted under a broadened definition of "general welfare" without being recognized officially as being the implementation of aesthetics.

II. Future Problems and Alternatives

Future considerations in the area of aesthetics and zoning necessitate a review of the associated problems and alternative solutions involved. Initially, it seems necessary to educate the public on the need for a citywide zoning plan and the concurrent requirement that aesthetics make up part of that plan. One should not necessarily allow the planners to implement their own concepts of what constitutes the public interest, but should, perhaps by survey and voting, determine what the community itself desires and how much it is willing to pay for it. What is needed is an open and thorough discussion of different concepts of aesthetics and their relative merits, not the imposition of the tastes of one class on another. Once a desire for aesthetics is expressed, reasonable standards for determining what is aesthetically valuable must be established. The community requires clear and flexible zoning regulations reflective of the wishes of the people that are neither so rigid as to produce monotony nor so loosely drawn as to be subject to arbitrary enforcement.[46]

The determination of standards and desires for a community is admittedly a lengthy and expensive process. But without the support of the community the implementation of aesthetic goals might be either fragmented or dictatorial. Within the scheme of aesthetic zoning, cognizance should be taken of minority rights and individual diversity. If only for the above reason, the community interest must be determined in a democratic manner. In the United States, with its divergent racial and ethnic backgrounds, different communities will demonstrate a variety of ideas as to what constitutes beauty.

The difficulty in encouraging diversity within an aesthetic framework

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44. Lionshead Lake v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952). *See also* Annot., 95 A.L.R.2d 716 (1964) and Annot., 96 A.L.R.2d 1409 (1964).
45. Jasper v. Ky., 375 S.W.2d 709 (Ky. 1964).
46. Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926).

is illustrated by *Reid v. Architectural Board of Review*,[47] where an ordinance provided that building plans be submitted to an architectural board of review for approval before a building permit would be issued. The board found that a one story home of a design substantially different than the surrounding two story residences did "not maintain the high character of community development in that it did not conform to the character of the houses in the area." The dissenting opinion focused on the true issues:

> Should appellant be required to sacrifice her choice of architectural plan for her property under the official municipal juggernaut of conformity in this case? Should her aesthetic sensibilities in connection with her selection of design for her proposed home be stifled because of the apparent belief in this community of the group as a source of creativity? Is she to sublimate herself in this group and suffer the frustration of individual creative aspirations? Is her artistic spirit to be imprisoned by the apparent beneficence of community life in Cleveland Heights?[48]

Closely associated with the issue of individual rights, is the enormous problem of who should assume the financial responsibility of beautifying the community. In looking at the decisions one can see that in some cases a substantial financial loss to the property owner resulting from a zoning ordinance was more than the judges could accept.[49] The issue of who will incur the cost of preserving beauty is also raised by the growing number of historical districts utilized in an effort to control land use where the municipality lacks the funds to acquire historic sites in eminent domain proceedings. Perhaps the individual whose absolute right of property ownership is infringed upon in order to make the community more beautiful should be compensated by that community.[50] Since the community would benefit from the attractive and pleasant surroundings it should be called upon to make good the loss of market value caused by the implementation of aesthetic zoning regulations.

A stinging indictment of aesthetic zoning concepts is found in Judge Van Voorhis' dissenting opinion in *People v. Stover*.

> Zoning, important as it is within limits, is too rapidly becoming a legalized device to prevent property owners from doing whatever their neighbors dislike. Protection of minority rights is as essential to democracy as majority vote. . . . Even where the use of property

47. 119 Ohio App. 67, 192 N.E.2d 74 (1963).
48. 119 Ohio App. 67, 76, 192 N.E.2d 74, 81 (1963).
49. *See* Pearce v. Edina, 263 Minn. 553, 118 N.W.2d 659 (1962). Here the zoning ordinance reclassifying plaintiff's property reduced its market value by approximately $200,000. The court held that the ordinance rendered the property valueless for many years and was "unreasonable, confiscatory, capricious and arbitrary" and had no valid relationship to issues of public health safety or welfare.
50. Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

> is bizarre, unsuitable or obstreporous it is not to be curtailed in the absence of overriding reasons of public policy. The security and repose which come from protection of the right to be different in matter (sic) of aesthetics, taste, thought, expression and within limits in conduct are not to be cast aside without violating constitutional privileges and immunities.[51]

Certainly beauty can be established without cheese box uniformity for an entire community. Yet, aesthetic concepts incorporated in construction and zoning ordinances impinge on individual freedom to utilize property in a manner contrary to the will of the community. Perhaps today's non-conformity, which may be termed architectural heresy, may be tomorrow's orthodoxy. As such, it should have its place within today's plan for the implementation of aesthetic considerations in zoning.

From a legal standpoint, if zoning ordinances which implement a policy of neighborhood amenity are to be stricken as invalid, it should not be because they seek to promote "aesthetic objectives" but rather because the restrictions constitute unreasonable devices of implementing community policy.[52] Consequently, if one is to follow the above reasoning, an ordinance should be declared invalid only when it constitutes an arbitrary or capricious method of attaining an attractive and efficiently operating community, and not upon the ground that the goal was primarily aesthetic. Thus, an ordinance emphasizing aesthetics should be judged on its reasonableness in achieving the goal of public welfare, and should not be automatically and narrowly categorized and judged unlawful on the basis of a superficial and unquestioned characterization.

III. Conclusion

It is time the courts recognize that the beauty of our communities is a legitimate end in itself. If it is a reasonable desire to have future generations grow up in more beautiful surroundings we must be willing to allocate funds and sacrifice some of our individual freedom for the good of the community. What is done today in land use planning will determine the landscape of the future. Should we fail to act in a unified, well directed manner in our demand for aesthetic concepts in zoning ordinances the eyesores of today will exist and multiply in the years to come.

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51. 12 N.Y.2d 462, 472, 191 N.E.2d 272, 278, 240 N.Y.S.2d 734, 742 (1963). *Also see* Van Voorhis' dissent in Presnell v. Leslie, 3 N.Y.2d 384, 394, 144 N.E.2d 281, 287, 165 N.Y.S.2d 488, 497 (1957) where he stated, "The urge toward conformity in modern society tends to compress people into uniform moulds and pressures of this nature beat hard upon zoning boards and municipal legislation bodies."

52. Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 Law & Contemp. Prob. 218, 231 (1955).