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Aesthetics Under the Zoning Power

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AESTHETICS UNDER THE ZONING POWER

Municipal zoning is a rapidly expanding and changing field of law. Its effective development in the United States has only occured within the last two decades.[1] The sole question dealt with herein is to what extent zoning laws can be based upon aesthetic values.

To examine the scope of zoning power it is essential to examine the source of such power, which is the police power. Generally, the police power of the state is the power to safeguard the safety, health, morals and general welfare of the public.[2] The problem arises, however, as to the extent of these objectives. In other words, are restrictive zoning laws which are based solely or partially upon the grounds of aesthetic appeal encompassed within these objectives?

The general rule is that aesthetics in themselves cannot justify an exercise of the police or zoning power that restricts or impairs property rights.[3] However, aesthetic values may be taken into consideration so long as some phase of public safety, health or morals is involved.[4] The problem then arises, can aesthetic values be considered along with some phase of the "general welfare" of the public and thereby form a proper basis for zoning laws? Since promotion of the general welfare falls under the police power, there is no apparent reason why beauty could not be considered together with the general welfare of the community in establishing zoning laws. But the further question still remains as to what comprises the area of the "general welfare."

Despite the rule that any infringement upon individual property rights is to be considered most favorably in favor of the property owner, the definition of "general welfare" has been expanding, and notably so, in the area of zoning. Although courts are hesitant to establish aesthetics as a sole ground for zoning laws, they have generally begun to accept protection of the market value of property as a proper objective of the police power.[5] Our Wisconsin court has recently held valid an

[1] 1 Yokley, *Zoning Law and Practice,* 2nd ed., chap. 1, esp. at p. 6 where it is stated: "As the needs of a congested society have increased, so has the pressure upon lawmakers increased; and, as an inevitable result, much legislation —some wise, some unwise—has resulted, having to do with the public health, safety and morals over a long period of years. Not until recently, however, and by "recently" we mean within the last quarter of a century, has the law even begun to keep pace with the concentration of population in the field of municipal zoning; and only within the last decade has the field of zoning with reference to municipal esthetics been dignified by the partial sanction of some courts of last resort."

[2] *Ibid.,* at chap. II, esp. at pp. 19 & 20.

[3] 8 McQuillin, *Municipal Corporations,* 3rd ed., §25.29.

[4] *Ibid.,* at §25.30.

[5] In State v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955), the court stated: "Cases from other jurisdictions holding that preservation of property values are the legitimate objective of zoning ordinances are: Wulfsohn v. Burden, *supra;* State ex rel. Berry v. Houghton, 1925, 164 Minn. 146, 204 N.W. 569, 54 A.L.R. 1012, affirmed 273 U.S. 671, 47 S.Ct. 474, 71 L.Ed. 832; Rice v. Van Vranken, 1928, 132 Misc. 82, 229 N.Y.S. 32, affirmed 225 App. Div. 179, 232

ordinance which requires a finding that the "exterior architectural appeal and functional plan of the proposed structure will not be so at variance with those of other structures in the immediate neighborhood as to cause substantial depreciation in property values thereof."[6] In so holding the Wisconsin court made definite a new inroad into the individual's property rights. Even though courts have begun to recognize protection of property values as a proper objective of the police power, generally they still refuse to validate a zoning law when the basis thereof is solely aesthetics.[7] In the case of *Wulfsohn v. Burden* the court stated:

> With few exceptions courts have not been ready to say that they (zoning laws) might be sustained merely because they preserved the aesthetic appearance of a private residential district and prevented it from being blotched by the erection of some incongruous structure whereby the value of all neighboring property was impaired.[8]

Generally, some more direct relation than aesthetic to the public safety, health, morals or welfare was required.[9]

In the Wisconsin case cited above, the trial court (which was overruled) had followed the strict and accepted interpretation of the police power as set down in American Jurisprudence and approved in prior Wisconsin decisions:

> Zoning restrictions on the general rights of a land owner are imposed in the exercise of the police power, and to justify the exercise of such governmental power, the zoning restrictions imposed must bear a substantial relation to, or be reasonably necessary for, the public health, safety, morals, or general welfare.[10]

N.Y.S. 506; Lionshead Lake, Inc. v. Wayne Township, 1952, 10 N.J. 165, 89 A.2d 693, 698, appeal dismissed January 19, 1953 for want of substantial federal question 344 U.S. 919, 73 S.Ct. 386, 97 L.Ed. 708."
In Griggs v. City of Patterson, 132 N.J.L. 145, 39 A.2d 231, 232 (1944), it was stated: "The proper purpose of zoning is 'Conserving the value of property and encouraging the most appropriate use of the land.' Gabrielson v. Glen Ridge, 176 Atl. 676, 679, 13 N.J. Misc. 142."
8 McQuillin, *Municipal Corporations,* 3rd ed., §25.25, states: "The stabilization, conservation and protection of uses and values of land and buildings, including residential, commercial, trade, industrial and all uses and values relating thereto, constitute fundamental purposes of zoning, reasonably related to the public welfare."

[6] State v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955).

[7] See *supra,* note 3.

[8] Wulfsohn v. Burden, 241 N.Y. 288, 150 N.E. 120, 43 A.L.R. 651 (1925).

[9] See *supra,* note 3.

[10] 58 Am. Jur. 955; See also: Senefsky v. Huntington Woods, 307 Mich. 728, 12 N.W.2d 387, 149 A.L.R. 1443 (1943), where the court stated: "It is requisite to the validity of a zoning ordinance that the restrictions to be imposed tend, in some degree at least, to promote public health, morals, safety or welfare." This rule was approved in Geisenfeld v. Shorewood, 232 Wis. 410, 417, 287 N.W. 683 (1939).
See also: Euclid v. Ambler, 272 U.S. 365, 54 A.L.R. 1016 (1926), in which it was stated: "In interpreting police regulations they must be interpreted in the

In applying this rule to the preservation of property values on the grounds of architectural appeal, the trial court stated:

> By no reasonable view of the matter could it be considered that the ordinance and its enforcement tend to promote public health, safety, morals or general welfare.[11]

This narrow interpretation of the "general welfare" was set aside by the Wisconsin supreme court when it said:

> . . . is the objective of an ordinance in the nature of a zoning regulation, which seeks to protect or preserve property values, embraced within the term "general welfare?" It is the contention of counsel for relator that it is not, because such an ordinance does not tend to promote public health, safety, or morals. We consider this as entirely too restrictive an interpretation of the term "general welfare." As pointed out by the New York court of appeals in *Wulfsohn* v. *Burden*, 1925, 241 N.Y. 288, 150 N.E. 120, 122, 43 A.L.R. 651:
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> > The [police] power is not limited to regulations designed to promote public health, public morals, or public safety, or to the suppression of what is offensive, disorderly, or unsanitary, but extends to so dealing with conditions which exists as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity.[12]

Under this broad interpretation, the question simply becomes whether protection of property values by restrictions on architectural designing will promote the "greatest welfare of the people."

It can readily be seen that a variance of architecture and exterior appearance of one building can lower the value of the surrounding property. A building with a flat roof and creosote block in an old residential area would be objectionable. A house the design of which is in the shape of a ship would adversly affect values in a respectible residential area. A one-story, flat-roof modern house would not conform to homes which are two or three-story colonial or English type. A house that is built in a circle is generally not accepted and causes a question mark in the minds of prospective purchasers. Any building that could be considered an eyesore would lower the value of the surrounding property. This means that a person with a $30,000 investment in his home could have his property value lowered to $15,000 through no fault of his own. It is this right which the more recent decisions are endeavoring to uphold.

It should be noted that this is an indirect use of aesthetic appeal as

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light of the conditions and circumstances and the particular needs and situation of the particular community, and if in the light of these conditions, the legislation cannot be said to have no relationship to health, safety and the general welfare, then the legislation must be sustained and held valid."

[11] State v. Wieland, A. Ap. 111; R. 44, 1955.

[12] See *supra*, note 6.

a basis for zoning restrictions. The architectural design, itself, does not justify the restriction. It is because the architectural design will lower the value of the surrounding property that the laws are justified. The state cannot force a community to build all colonial style or all English style homes, but it can and must protect the property interests of the community. Thus, under the Wisconsin rule, aesthetics in architectural appeal indirectly are a basis for zoning laws today.[13]

There has, however, been no blank acceptance of the rule that preservation of property values will justify *all* zoning laws in relation to aesthetics.[14] We have discussed the problem of architectural appeal. There is also the question of size. That is, can the state maintain the appearance of a prosperous neighborhood by requiring a minimum cubic footage in its zoning laws? Of course, health and safety demand some minimum of cubic footage in every residence. But doesn't the cubic footage depend on the type of building, the number of persons living therein, and a number of other factors which forbid any blanket minimum from being established?

There is a line of cases which have justified such zoning laws.[15] In a North Dakota case[16] a zoning ordinance restricting the size of buildings was held to be authorized and not unreasonable or arbitrary. In the case of *Thompson* v. *City of Carrollton*[17] the court sustained an ordinance prescribing a minimum of 900 square feet of floor space. In *Dundee Realty Co.* v. *City of Omaha*[18] the court sustained an ordinance providing for 1000 square feet of minimum floor area for one-story dwellings and 1200 square feet for more than one-story dwellings. In *Flower Hill Building Corp.* v. *Village of Flower Hill*[19] the court declined to declare invalid on its face a requirement in an ordinance of an 1800 square foot minimum. All of these cases rely primarily upon health in justifying such zoning laws under the police power. Yet the variance of the minimum required in these cases leads one to believe that something besides health was taken into consideration.

A sounder position on this question of health as it relates to minimum floor area requirements is taken by the Michigan courts. In one case the law demanded a minimum of 1300 square feet while the plain-

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[13] *Ibid.*

[14] 8 McQuillin, *Municipal Corporations,* 3rd ed., §25.25, where it is stated: "On the other hand, it has been said that the conservation of property values is not by itself a proper sole objective for the exercise of the police power by the enactment of a zoning ordinance."

[15] 1 Yokley, *Zoning Law and Practice,* 2nd ed., §169, where it is stated: "The more recent tendency of the courts, however, has been to recognize and approve the validity of such provisions (of minimum cubic footage) where based upon a factual premise in support of adequate standards."

[16] City of Bismark v. Hughes, 53 N.D. 838, 208 N.W. 711 (1926).

[17] (Tex. Civ. App.), 211 S.W.2d 970 (1948).

[18] 144 Neb. 448, 13 N.W.2d 634 (1944).

[19] 199 Misc. 344, 100 N.Y.S.2d 903 (1950).

tiff land owner wished to build a home consisting of 980 square feet. After demonstrating the allocation of the space in plaintiff's proposed building, the court stated:

> The above allocation of floor area would leave in plaintiff's proposed 980 square feet a balance of 188 square feet of floor area for miscellaneous use in closets, toilets or enlargement of any of the rooms above suggested. A multiplicity of like designs might be suggested; but from the above it is obvious that a home can be constructed which is adequate in every sense in so far as requirements can be made under the guise of exercising the police power. The restrictions in this ordinance as applied to the situation as presented by this record in no way promotes or protects in this subdivision public health, safety, morals or welfare. Its application to plaintiff's property is not only unreasonable but is also an unjust limitation of a reasonable and lawful use of his property.[20]

In *Frischkorn Construction Co.* v. *Lambert*[21] a provision of a township zoning ordinance requiring that single dwellings constructed in a certain zone contain at least 14,000 cubic feet could not be enforced against an owner desiring to construct houses containing only 12,556 cubic feet but which complied with the state housing law, where the purpose of the provision was to maintain property values in that zone and not to promote the public health, safety or welfare.

The leading case taking this view is *Elizabeth Lake Estates* v. *Waterford Township* decided in 1947. The zoning law required a minimum of 15,000 cubic feet whereas plaintiff's building plan only called for 11,832 cubic feet. The court held:

> . . . the ordinance requirement as to cubical content may not be enforced against plaintiff, insofar as the construction here involved is concerned, for the purpose of establishing or maintaining property values within the zone affected. Rather, the test is whether the "public health, safety or welfare" would be promoted thereby.[22]

The court pointed out that each case must be decided upon its own facts, and that plaintiff's home fulfilled all the requirements of health and safety. Thus, the court went on to say, the ordinance had the effect of prohibiting houses being erected below a certain sum. Such law is, in effect, discrimination against persons of a lower income bracket. Here we reach the basic conflict in reasoning. On the one hand a man should not be forced to build a home larger than that required by the minimum restrictions as to health and safety. On the other hand the surrounding property owners, who have a right to their just property

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[20] Senefsky v. Lawler, 307 Mich. 728, 12 N.W.2d 387 (1943). See also: 149 A.L.R. 1433.

[21] 315 Mich. 556, 24 N.W.2d 209 (1946).

[22] Elizabeth Lake Estates v. Waterford Township, 317 Mich. 359, 26 N.W.2d 788 (1947).

interests, will suffer loss of property value if unreasonable non-conformity as to size of structure is practiced.

It should be noted that Michigan represents the extreme view on this question of aesthetics in zoning. In the above case the court concluded:

> The conservation of property values is not by itself made a proper sole objective for the exercise of police power under the statute.[23]

The court did not decide whether it would sustain a zoning law based on architectural appeal, but from the above language it is extremtly doubtful whether any zoning law to preserve property values, whether it be based upon architectural appeal or minimum cubic footage, would be upheld.

The foremost contrary authority to the above "Michigan viewpoint" is the celebrated *Lionshead* case[24] which overruled at least one previous case[25] in New Jersey. The ordinance fixed a minimum living floor space of 768 square feet for a one-story dwelling, 1000 square feet for a two-story dwelling having an attached garage and not less than 1200 square feet for a two-story dwelling not having an attached garage. After much preliminary maneuvering in the lower courts, the case finally reached the Supreme Court where the provisions were upheld in a decision in which the issues were squarely raised and decided. Chief Justice Vanderbilt, speaking for the majority in this case, sustained the minimum floor area provision as reasonably related to the recognized statutory purposes of zoning, i.e., the preservation of health and the stabilization of property values. In the course of his opinion Chief Justice Vanderbilt made the following statement:

> Has a municipality the right to impose minimum floor area requirements in the exercise of its zoning power? Much of the proof adduced by the defendant Township was devoted to showing that the mental and emotional health of its inhabitants depended upon the proper size of their homes. We may take notice without formal proof that there are minimums in housing below which one may not go without risk of impairing the health of those who dwell therein. . . . But quite apart from these considerations of public health, which cannot be overlooked, mimimum floor area standards are justified on the ground that they promote the general welfare of the community. . . . The size of the dwelling in any community inevitably affects the character of the community and does much to determine whether or not it is a desirable place in which to live.

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[23] *Ibid.*

[24] Lionshead Lake, Inc. v. Township of Wayne, 10 N.J. 165, 89 A.2d 693, appeal to U.S. Sup. Ct. dismissed for want of a substantial federal question, 73 S.Ct. 386 (1953).

[25] The case overruled is: Brookdale Homes, Inc. v. Johnson, 123 N.J.L. 602, 10 A.2d 477, affirmed 126 N.J.L. 516, 19 A.2d 868 (1941);

And he goes on to state:

> Without some restrictions there is always the danger that after some houses have been erected giving a character to the neighborhood, others might follow which would fail to live up to the standards thus voluntarily set.[26]

Not only does Chief Justice Vanderbilt justify minimum cubic footage on the ground of health, but he recognizes a further justification for setting such minimum cubic footage above that required by health. Size, he states, affects the character of the community and does much to make it a desirable place in which to live. In other words, the aesthetic values of the community, such as conformity in size, justify zoning regulations which call for minimum cubic footage.

The question of the validity of a zoning law requiring minimum cubic footage has not been decided as yet in Wisconsin. However, our court does use the following language in comparing the "Michigan" and the "New Jersey" views as stated above:

> The *Elizabeth Lake Estates Case* decision is directly contrary to the *well reasoned* opinion of Mr. Chief Justice Vanderbilt of the New Jersey supreme court rendered in *Lionshead Lake, Inc.*, v. *Wayne Township, supra,* upholding a township zoning ordinance requiring homes to have a minimum square footage of floor space.[27]

Thus, it would seem that Wisconsin would hold zoning laws requiring minimum cubic footage valid, and base its decision on aesthetics and preservation of property values.

A final area which has been carved out of the general welfare in establishing zoning laws based on aesthetics is public prosperity. Perhaps the most notable development in this area has centered around public parks and resorts. In *General Outdoor Advertising Co.* v. *Indianapolis*[28] the court held that no commercial signs could be placed within 500 feet of a park area. Although the decision was based primarily on the consideration of health under the police power, the court spent considerable time demonstrating the benefit to the prosperity of the community a more beautiful city creates. Undoubtedly this factor was taken into consideration in sustaining the ordinance the natural result of which was to beautify the city.

In *City of Miami Beach* v. *Ocean & Island Co.* the Florida court sustained a zoning law which permitted only hotel apartment sites on an approach to Miami Beach. The court held:

> In view of the nature of Miami Beach it is not important to consider here the indispensibility of the restrictions to the health,

[26] See *supra,* note 24.
[27] See *supra,* note 6.
[28] 202 Ind. 85, 172 N.E. 309 (1930), citing McQuillin text. See also: 8 McQuillin, *Municipal Corporations,* 3rd ed., §25.31, esp. note 88.

> the safety, the morals of the community but only their necessity to the general welfare. We do not comprehend how it can be succesfully urged that the maintenance of safety, health or morals are involved but only whether in the circumstances in this particular case the restrictions are so unnecessary to the general welfare of the inhabitants that the curtailment of the rights of the plaintiff are unreasonable and arbitrary.[29]

And the court goes on to state:

> The limitation of the use by the plaintiff of his property seems a fair, just and reasonable contribution to the economic good, the prosperity, the welfare of the whole community and not so burdensome that it contravenes the organic inhibition against deprivation without due process.

Thus, the court sustained a zoning law based primarily upon aesthetics because it promoted the general prosperity of the community.

Our Wisconsin court has not definitely decided this question as yet, but its statements in *State ex rel. Carter* v. *Harper* indicate that the general prosperity of the community is a proper objective of the police power. It states:

> In this day none will dispute that government in the exercise of its police power may impose restrictions upon the use of property in the interest of public health, morals and safety. That the same restrictions may be imposed upon the use of property in promotion of the public welfare, convenience, and general prosperity is perhaps not so well understood, but, nevertheless, is firmly established by the decisions of this court and the federal supreme court.[30]

Thus far it appears that courts by devious, indirect means are rapidly recognizing the validity of zoning laws established for aesthetic reasons. Although, as stated above, the general rule does not allow aesthetics, alone, to justify zoning laws, there is a rapidly growing trend to the contrary. McQuillin points out:

> There is a definite tendency in support of the position that esthetic considerations alone may justify the exercise of the police power, at least under certain circumstances. . . . Undoubtedly in this respect the law has undergone a decided change in recent years.[31]

And the author goes on to state:

> Esthetic considerations and a desire to maintain the quietude and rural character of the community form a proper basis for the enactment of a zoning ordinance.

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[29] City of Miami Beach v. Ocean & Island Co., 147 Fla. 480, 3 So.2d 364 (1941).
[30] State ex rel. Carter v. Harper, 182 Wis. 148, 196 N.W. 451, 33 A.L.R. 269 (1923).
[31] 8 McQuillin, *Municipal Corporations*, 3rd ed., §25.31.

The changed attitude on this question was clearly shown in a New York case where the court stated:

> This court is not restricted to aesthetic reasons in deciding to sustain the validity of the ordinance in question, but if it were so restricted, it would not hesitate to sustain the legislation upon that ground alone.[32]

It is true that much that is said in decisions recognizing aesthetics as a basis for zoning laws is dicta. Nevertheless, it does show the attitude of the courts.

The Florida court has recently held aesthetic considerations alone a proper basis for a restriction on the size of signs in a commercial district. It stated:

> We have no hesitancy in agreeing with him (appellant property owner) that the factors of health, safety and morals are not involved in restricting the proportions of a signboard, but we disagree with him in his position that the restriction cannot be sustained upon aesthetic grounds alone.[33]

Our Wisconsin court has not authoritatively ruled on the question of whether aesthetics alone are a proper basis for zoning laws. An early reference to aesthetics was made in the case of *State ex rel. Carter* v. *Harper* when the court stated:

> It is not necessary for us to consider how far aesthetic considerations furnish a justification for the exercise of the police power. But one case has been called to our attention which holds that aesthetic considerations alone justify the exertion of that power. *Ware* v. *Wichita,* 113 Kan. 153, 214 Pac. 99. Perhaps the case of *State ex rel. Twin City B. & I. Co.* v. *Houghton,* 144 Minn. 1, 13, 174 N.W. 885, 176 N.W. 159, goes nearly if not quite as far.[34]

The reasoning found in the Minnesota case referred to and approved in the Kansas case is illustrative of the growing tendency today. It states:

> Another reason (for zoning) is that giving the people a means to secure for that portion of the city, wherein they establish their homes, fit and harmonious surroundings promotes contentment, induces further efforts to enhance the appearance and value of the home, fosters civic pride and thus tends to produce a better type of citizen. It is time that courts recognized the aesthetic as a factor in life. Beauty and fitness enhance values

[32] Preferred Tire v. Village of Hempstead, 19 N.Y.S. 2d 374 (1940). See also: State v. New Orleans, 154 La. 271, 97 So. 440 (1923), where the court states: "If by the term 'esthetic considerations' is meant a regard merely for outward appearance, for good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for saying that such consideration is not a matter of general welfare."

[33] Merritt v. Peters, 65 So.2d 861 (1953).

[34] See *supra,* note 30.

> in public and private structures. But it is not sufficient that the building is fit and proper, standing alone; it should also fit in with surrounding structures to some degree. People are beginning to realize this more than before and are calling for city planning, by which the individual homes may be segregated from not only industrial and mercantile districts, but also from the districts devoted to hotels and apartments.[35]

In 1952 our Wisconsin court took the position that aesthetics alone would not be sufficient.[36] However, in 1955 the court by dicta indicated that it was not entirely satisfied that its former position was correct when it stated:

> This court pointed out in *Jefferson County* v. *Timmel,* 1952, 261 Wis. 39, 61, 51 N.W.2d 518, that while the general rule is that the zoning power may not be exercised for purely aesthetic considerations, such rule was undergoing development. In view of the latest word spoken on the subject by the U.S. supreme court in *Berman* v. *Parker,* 1954, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. , this development of the law has proceeded to the point that renders it extremely doubtful that such prior rule is any longer the law.[37]

The United States Supreme Court decision referred to involved slum clearance, so that the court's position regarding aesthetics was primarily dicta in the field of zoning. However, the court did state:

> 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.[38]

Conclusion

We have here a conflict between two fundamental rights—the individual's property right of free use and the right of the public to promotion and protection of aesthetics in pursuit of the general welfare of the community. The basic question is whether aesthetic considerations are of such importance as to warrant preservation by law. That is, does the general welfare of the community demand the protection of the beauty of the community to the extent of limiting the right of free use of property?

Zoning laws governing unreasonable architectural design and minimum cubic footage for aesthetic purposes should be sustained. It is true that every property owner has a right of free use. But with our expanding communities there is another right which is gradually being recognized with equal importance—a property right against illegitimate and unfair non-conformity in use of the adjoining or neighboring land.

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[35] State ex rel. Twin City B. & I. Co. v. Houghton, 144 Minn. 1, 174 N.W. 885, 176 N.W. 159 (1920).
[36] Jefferson County v. Timmel, 261 Wis. 39, 51 N.W.2d 518 (1952).
[37] See *supra,* note 6.
[38] Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, (1954).

Perhaps before the development of large metropolitan areas aesthetic considerations alone could not justify the use of the zoning power because the beauty of the community was not threatened as seriously as it is today. However, if we are to preserve pleasant residential areas today, aesthetic considerations in zoning laws are essential.

Fear has been expressed that such laws will lead to discrimination; that is, only persons of a certain income bracket will be able to live in a certain residential area because they alone will be able to comply with the possible zoning standards. This situation could only arise with an unreasonable administration of the law. For example, a valid zoning law in a Wisconsin case stated that the "exterior architectural appeal and functional plan of the proposed structure will not be so at variance with those of other structures in the immediate neighborhood as to cause substantial depreciation in property values thereof."[39] Any unreasonable interpretation of this standard by the board could be appealed and set aside by the courts.

States have recognized the need to preserve the beauty of their cities, but only a few have established aesthetics as a proper objective of the police powers. However, the law is definitely changing. The right of the individual to freedom of property use is gradually giving way to the growing need of the general welfare of the community to establish and preserve aesthetic aspects of the land.

Our Wisconsin court, which is quoted in McQuillin, summarized the changing attitude toward aesthetics in zoning as follows:

> It seems to us that aesthetic considerations are relative in their nature. With the passing of time, social standards conform to new ideals. As a race, our sensibilities are becoming more refined, and that which formerly did not offend cannot now be endured. That which the common law did not condemn as nuisance is now frequently outlawed as such by the written law. This is not because the subject outlawed is of a different nature, but because our sensibilities have become more refined and our ideals more exacting. Nauseous smells have always come under the ban of the law, but ugly sights and discordant surroundings may be just as distressing to keener sensibilities. The rights of property should not be sacrificed to the pleasure of an ultra-aesthetic taste. But whether they should be permitted to plague the average or dominant human sensibilities, well may be pondered.[40]

Today aesthetics ought to be considered as encompassed within the scope of the general welfare of the community, within the police power; and, thus, within the zoning power.

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[39] See *supra*, note 6.
[40] See *supra*, note 30.