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## Land Use Regulation for Aesthetic Purposes

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LAND USE REGULATION  
FOR AESTHETIC PURPOSES

For many years the efforts of communities to eliminate or control visual pollution were hampered by the courts, which consistently refused to uphold any regulation of land based purely on aesthetic considerations. Although the courts generally sympathized with a locality's goal of creating beautiful neighborhoods, they noted that beauty is a subjective concept, and that the formulation of precise aesthetic standards is impossible because tastes vary from individual to individual. Courts were reluctant to validate legislation which limited property rights by the application of subjective aesthetic standards. See, e.g., West Brothers Brick Co. v. Alexandria, 169 Va. 271, 192 S.E. 881 (1937), appeal dismissed 302 U.S. 658 (1937).

In 1954, however, this view of aesthetic regulation was implicitly rejected by the United States Supreme Court. In Berman v. Parker, 348 U.S. 26 (1954), a case involving the exercise of eminent domain in a slum clearance project in the District of Columbia, Justice Douglas wrote for a unanimous Court that

The concept of the public welfare is broad and inclusive. The 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 capitol should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way. Id. at 33.

Although the Berman case did not deal specifically with aesthetic regulation, the Supreme Court's words provided the impetus for a new direction in state court decisions. The first state to uphold a regulation with a purely aesthetic purpose was New York, in the landmark decision of People v. Stover, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272 (1963), appeal dismissed 375 U.S. 42 (1963). In Stover, the City of Rye, N.Y. had enacted an ordinance prohibiting clotheslines in front yards of residential areas. The New York Court of Appeals upheld the ordinance, noting that aesthetics is a valid subject of legislative concern, and that reasonable legislation designed to promote that end is a valid and permissible exercise of the police power: "It is settled that conduct which is similarly offensive to the senses of hearing and smell may be a valid subject of regulation under the police power, and we perceive no basis for a different result merely because the sense of sight is involved." 191 N.E.2d at 276.

In the last two decades, the clear trend has been for courts to allow regulations enacted for purely aesthetic purposes. The Oregon Supreme Court, for example, has upheld a zoning ordinance which prohibited automobile junkyards in a municipality, stating plainly that "aesthetic considerations alone may warrant an exercise of the police power." Oregon City v. Hartke, 240 Or. 35, 49, 400 P.2d 255, 262 (1965). The court explained that "[t]his change in attitude is a reflection of the refinement of our tastes and the growing appreciation of cultured values in a maturing society." Id. at 46, 400 P.2d at 261. See also, Jasper v. Commonwealth, 375 S.W.2d 709 (Ky. Ct. App. 1964). New York has extended its Stover principle to zoning ordinances, upholding a ban on off-premise business signs. Cromwell v. Ferrier, 19 N.Y.2d 263, 279 N.Y.S.2d 22, 225 N.E.2d 749 (1967).

The greatest number of recent cases involving aesthetic regulation concern ordinances limiting the size or height of signs. For example, a series of cases in Florida follow the principle that aesthetic considerations are enough to justify the exercise of police power in this area. See, e.g., Stone v. City of Maitland, 446 F.2d 83 (5th Cir. 1971); Sunad, Inc. v. Sarasota, 122 So.2d 611 (Fla. 1960). The Michigan Supreme Court has upheld sign regulation, stating that "a community's aesthetic well-being can contribute to urban man's psychological and emotional stability." Sun Oil Co. v. Madison Heights, 41 Mich.App. 47, 53, 199 N.E.2d 525 (1972). Recent decisions in Massachusetts, New Jersey, Hawaii, and Mississippi have also recognized the validity of sign regulation based solely on aesthetics. John Donnelly & Son v. Outdoor Advertising Bd., 339 N.E.2d 709 (Mass. 1975); Westfield Motor Sales Co. v. Westfield, 129 N.J.Super. 528, 324 A.2d 113 (1974); State v. Diamond Motors, Inc., 50 Haw.33, 429 P.2d 825 (1967); Mississippi State Highway Comm'n v. Roberts Enterprises, Inc., 304 So.2d 637 (Miss. 1974).

A few courts have recently repudiated the concept of regulation for aesthetic purposes. The Maryland Court of Appeals struck down sign regulations as invalid exercises of the police power in 1973 and 1974. Baltimore v. Mano Swartz, Inc., 268 Md. 79, 299 A.2d 828 (1973); Montgomery County v. Citizens Building & Loan Association, Inc., 20 Md.App. 484, 316 A.2d 322 (1974). In 1976, the Ohio Court of Appeals acknowledged the modern trend, but stated that "it is still the Ohio rule that zoning restrictions for purely aesthetic reasons are unconstitutional." City of Euclid v. Fitzthum, 48 OhioApp.2d 297, 351 N.E.2d 402 (1976).

In 1975, in the case of Board of Supervisors of James City County v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975), the Virginia Supreme Court also declined to follow the modern trend. At issue in the case was a provision in the James City County zoning ordinance which required the owner of a parcel of land to obtain approval from an architectural design review board before proceeding with

construction on his land. The stated purposes of the ordinance were "to protect property values and to promote the general welfare by insuring buildings in good taste, proper proportion, in general and reasonable harmony with the existing buildings in the surrounding area and to encourage architecture which shall be distinct from the Colonial Williamsburg architecture." The court felt that despite this language the predominant purpose of the ordinance was to promote aesthetic values, and held that the "county cannot limit or restrict the use which a person may make of his property under the guise of its police power where the exercise of such power would be justified solely on aesthetic considerations." 216 S.E.2d at 213, citing Kenyon Peck, Inc. v. Kennedy, 210 Va. 60, 168 S.E.2d 117 (1969).

It should be noted that practically all jurisdictions are willing to uphold aesthetic regulations if the ordinance can be closely tied to some other accepted police power objective, such as promoting the general welfare by protecting public health or safety. Some courts are not hesitant to find such other suitable purposes, but others, such as Virginia, are reluctant to do so. An example of a favorable attitude toward aesthetic regulation in this context occurred when the Eighth Circuit, applying Minnesota law, upheld an ordinance restricting construction which would obstruct the view from a St. Paul park on the basis that preserving the view was essential to the proper legislative goal of renovating the core area of downtown St. Paul. City of St. Paul v. Chicago, St. Paul, Minn. & Omaha Ry., 413 F.2d 762 (8th Cir. 1969), cert. denied, 396 U.S. 985. Preservation of property values is a legitimate object of the police power in most states, and thus aesthetic regulation which achieves this goal is generally upheld. See, e.g., State ex rel. Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955), cert. denied, 350 U.S. 841; State ex rel. Stoyanoff v. Berkeley, 458 S.W.2d 305 (Mo. 1970). Similarly, many courts have validated ordinances which

are designed to protect historical or architecturally significant districts. There appears to be a broad consensus that such preservation is a legitimate object of aesthetic regulation. See, e.g., City of Santa Fe v. Gamble-Skogmo, 73 N.M. 410, 389 P.2d 13 (1964); City of New Orleans v. Impastato, 198 La. 206, 3 So.2d 559 (1941); City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953).

It appears likely that the modern trend toward permitting land use regulation based solely on aesthetic grounds will prevail as the majority rule. The United States Supreme Court appears to be favorably inclined towards the concept; moreover, the admittedly subjective standards required by aesthetic regulation seem no more difficult to create than others commonly contained in modern planning and zoning ordinances.