

In presenting the dissertation as a partial fulfillment of the requirements for an advanced degree from the Georgia Institute of Technology, I shall agree that the Library of the Institute shall make it available for inspection and circulation in accordance with its regulations governing materials of this type.

I agree that permission to copy from, or to publish from this dissertation may be granted by the professor under whose direction it was written, or, in his absence, by the Dean of the Graduate Division when such copying or publication is solely for scholarly purposes and does not involve potential gain.

It is understood that any copying from, or publication of, this dissertation which involves potential financial gain will not be allowed without written permission.

[Handwritten signature]

ESTHETIC ZONING

A THESIS

Presented to
the Faculty of the Graduate Division
Georgia Institute of Technology

In Partial Fulfillment
of the Requirements for the Degree
Master of City Planning

By
Vernon Robert Stuebing, Jr.


June 1956

ESTHETIC ZONING


Approved:



Thesis Advisor



Thesis Reader



Thesis Reader

30 May 1956
Date

ACKNOWLEDGMENTS

The author expresses appreciation to Professor Thomas W. Christopher, Professor Malcolm G. Little, Jr., and Professor Howard K. Menhinick for their most generous and valuable criticism and guidance throughout the preparation of this thesis.

TABLE OF CONTENTS

	Page
ACKNOWLEDGMENTS	ii
CHAPTER	
I. INTRODUCTION	1
II. THE DEVELOPING NEED FOR ESTHETIC CONTROLS--COMMUNITY AND LEGAL RECOGNITION	2
Background for and Objectives of Esthetic Zoning Changing Attitude of the Courts Toward Esthetic Zoning	
III. ESTHETIC REGULATIONS AND THEIR ADMINISTRATION . . .	10
"Fringe" Esthetic Requirements "Unightly" Use Restrictions Architectural and Landscape Control Special Uses in Residential Areas Customary Uses in Residential, Commercial and Industrial Areas Areas of Historic or Scenic Significance Summary of Accomplishments With Existing Measures and Methods	
IV. CONCLUSIONS AND RECOMMENDATIONS	18
Conclusions Recommendations	
BIBLIOGRAPHY.	24
Glossary of Abbreviations Literature Cited Other References	

CHAPTER I

INTRODUCTION

Esthetic zoning may be defined as community regulation under the police power,¹ of public and private real property to protect and promote visual* beauty; or conversely to prevent and eliminate visual ugliness--for the general welfare of the community.

It is the purpose of this monograph to determine the present and probable future role of zoning for esthetic objectives. To this end, the conditions which prompt esthetic regulation and the underlying objectives of esthetic zoning will be reviewed briefly. The changing attitude of the courts toward esthetic zoning will be traced. Specific measures and methods of esthetic control under zoning which are now employed in various communities, and court decisions on these types of controls will be presented. Finally, conclusions and recommendations will be made, based on the foregoing review and analysis.

The material presented herein is based on a review of the literature and court decisions relating to the subject, and an analysis of approximately 500 zoning ordinances from various cities in the United States.

*Noise, odor and vibration which may offend other senses are controlled under nuisance regulations.

CHAPTER II

THE DEVELOPING NEED FOR ESTHETIC CONTROLS--
COMMUNITY AND LEGAL RECOGNITION

Background for and Objectives of Esthetic Zoning.--With the accelerated urban development which began near the turn of the century and increased after both world wars, land-use conditions developed which were deemed esthetically undesirable in many communities.

Before this accelerated urban development, a comparatively few unsightly roadside developments were viewed by a small number of occasional travelers. But, the population concentration and wide use of the automobile, in combination with a higher standard of living, meant that more people were riding to and from work, and more leisure time was available for travel. This created a situation in which signs, billboards, used car lots, auto wrecking yards, and similar roadside developments vied for public attention along the streets and highways. These uses had a growing audience of captive viewers, many of whom passed the uses repetitiously going to and from work. This repeated viewing by increasing numbers of people not only multiplied the annoyance factor, but created an incentive for even more intensified roadside development.

Another by-product of the urban concentration was the need for housing. Fortunately, this need could be filled by large-scale mass production methods of construction and development. Unfortunately, however, rather than integrating esthetic values with mass production,

structures of uniform size and position were built with similar facades and identical or inverted floor plans (usually on grid-iron street patterns) which resulted in monotonous rows of "look-alike" houses. In the other extreme, established residential areas were unprotected from invasion by structures which were so unreasonably nonconforming in appearance as to substantially reduce property values and tax receipts.

Finally, areas of historic or architectural significance could accommodate an occasional small shop or grocery store without material injury to the section's character, but the new concepts of merchandising, which fostered drive-ins and supermarkets, threatened to destroy the scenic value of the areas. This could not be permitted because these areas possessed not only cultural importance per se, but (because of increased leisure time and travel) they were of growing economic importance as tourist attractions.

As esthetic problems of urban development multiplied, increasing numbers of people were affected--both emotionally and financially. The need and demand for esthetic control in community development intensified.

Private deed restrictions and covenants were largely ineffective in controlling these and similar conditions, and communities would have been bankrupt by attempting their extensive control through eminent domain. Therefore, the police power was and is used (primarily through zoning).

In various ways, esthetic zoning regulates the size, shape, design, location (both as to general area and specific placement on lot) or landscaping of real property. However, regardless of method or mechanics, the majority of esthetic zoning regulations have, in addition

to the general aim of protecting and promoting visual beauty, three underlying community objectives which may overlap or blend with one another but nevertheless are distinguishable. The first objective is the general aim, i.e., the preservation of beauty for its own sake with little or no economic benefit and possibly economic disadvantage anticipated as a result of the regulation. The prohibition of billboards from areas adjacent to downtown parks may have such an objective. The second objective is indirectly economic, i.e., substantial yet indirect economic benefit is anticipated as a result of the regulation. Controls which preserve the scenic, historic, or architectural character of resort cities, and thus ostensibly increase their attractiveness to tourists, are of this type. The third objective is directly economic, i.e., substantial direct economic benefit is anticipated as a result of the regulation by maintaining or increasing private real property values to thus insure future tax receipts.² Esthetic zoning may have any or all of these objectives.

Changing Attitude of the Courts Toward Esthetic Zoning.--The legality of obtaining these objectives through esthetic zoning is a confused question. This confusion stems from the court's predominant refusal to openly accept esthetic regulation as a proper function of the police power, because esthetics are "subjective", "a matter of taste", and "nonmeasurable".

Esthetics cannot be precisely measured and beauty cannot be proved, but neither should the courts demand that which is unattainable. As one author stated:³

The cry for precise criteria might well be abandoned because it does not make sense. Beauty cannot be any more precisely defined than wealth, property, malice, or a host of multiordinal words to

which courts are accustomed. Planners can give reasons for saying a particular arrangement of objects in the environment is beautiful based upon perspectives common in high degree among the people in a community, but they cannot prove it, and proof which is strictly unattainable should not be demanded.

In early zoning cases involving esthetics, the courts' primary interests were in protecting private property rights; and the general welfare was given narrow interpretation. The grant of power provision of a model zoning enabling act reads as follows:⁴

For the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare, the chief legislative body of any municipality is hereby empowered, in accordance with the conditions and procedures specified in this Act, to regulate the location, height, bulk, number of stories and size of buildings and other structures, and percentage of the lot which may be occupied, the sizes of yards, courts and other open spaces, the density and distribution of population and the uses of buildings, structures and land for trade, industry, residence, recreation, civic activities and other purposes.

There is no mention of preserving beauty for its own sake, to strengthen the economic base nor to maintain property values: and the courts were quick to hold such objectives unconstitutional. Not only did they strike down ordinances clearly designed to control esthetics, but presumed that other ordinances were aimed at accomplishing esthetic objectives, and on these presumptions held regulations invalid which seemingly could have been sustained for reasons of health or safety.⁵ For example, one court stated, ". . . we find that the one ground upon which the town council may be thought to have acted is that the appearance of billboards is or may be offensive to the sight of persons of refined taste."⁶ In a similar decision declaring invalid an ordinance prohibiting the construction of signs or billboards over eight feet in height and within ten feet of a street line, the court not only substituted its judgment for that of the local legislative body⁷ in determining

what was necessary to maintain public safety, but succinctly stated the prevailing attitude of the courts toward esthetic regulation, as follows:⁸

We think the control attempted to be exercised is in excess of that essential to effect the security of the public. It is probable that the enactment of section 1 of the ordinance was due rather to aesthetic considerations than to considerations of public safety. No case has been cited, nor are we aware of any case which holds that a man may be deprived of his property because his tastes are not those of his neighbors. Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation.

In the historic case of St. Louis Gunning Advertising Co. v. St. Louis⁹ in 1911, a new doctrine was established when the court refused to accept the reasoning of earlier decisions which held that regulation of billboards was primarily for esthetics and therefore invalid. In this instance, the court held that regulation of billboards was primarily for the preservation of health, safety and morals (on the grounds that billboards might be blown down by the wind and injure someone, that they caused trash to accumulate and afforded hiding places for criminals); therefore, the court reasoned, such regulations were a valid exercise of the police power. It should be noted, however, that the court did maintain the position that, ". . . the mere unsightliness of billboards and similar structures as well as their failure to conform to aesthetics, is no valid reason for their total or partial suppression."⁹ This, despite the fact that the court itself had just sustained the suppression of billboards and that any reasonable objection to billboards on the grounds of health, safety and morals could be eliminated by the manner in which they are constructed.

While refusing to openly recognize esthetic objectives as a valid basis for exercise of the police power, the St. Louis Gunning⁹ decision

did provide the precedent for establishment of esthetic controls which could be shielded from attack by surrounding them with jargon about protecting the public health, safety and morals. After this decision, other courts were less inclined to read esthetic intent into "health and safety" regulations; rather they began to read "health and safety" connotations into esthetic regulations.

A logical continuation of this evolutionary process was establishment of the doctrine that esthetic considerations could play a part in the adoption of an ordinance without affecting its validity,¹⁰ and further, that while esthetic considerations alone could not sustain zoning, they were acceptable supporting or secondary factors in sustaining regulations, provided that sufficient "health, safety and welfare" grounds could also be established.¹¹

The recognition of esthetic considerations as a valid supporting factor in sustaining zoning is the nominal position now reached by most courts¹² on the road toward recognition of esthetics per se as sufficient grounds for exercise of the police power; however, some lower courts have completed the pilgrimage, stating in dicta that they would not hesitate to uphold certain zoning regulations for esthetic considerations alone.¹³ A recent United States Supreme Court decision¹⁴, although involving eminent domain, may well establish the right to zone for purely esthetic considerations as the law of the land. In delivering the unanimous confirmation of a lower court decision, Mr. Justice Douglas spoke of the public welfare as "broad and inclusive" stating:¹⁴

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, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. 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.

This Supreme Court decision has already caused at least one lower court to reconsider its previous position that esthetics alone could not sustain zoning. The lower court stated:¹⁵

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 United States Supreme Court in Berman v. Parker, 1954, 348 U.S. 26, 75 S.Ct. 98, 99 L. Ed.--, this development of law has proceeded to the point that renders it extremely doubtful that such prior rule is any longer the law.

Preceding the development of the doctrine that esthetics alone could sustain zoning has been the development of the doctrine that the preservation of real property values is a valid objective of zoning;¹⁶ however, these two doctrines have now become so intertwined that it is difficult to separate them.¹⁷ It is reasoned that esthetic controls protect and enhance real property values; real property values are the basis for tax revenues; tax revenues support schools, playgrounds, hospitals, police and fire protection; and thus the general welfare is served.¹⁸

This reasoning is gaining acceptance,¹⁸ despite the valid criticism that some regulations purporting to accomplish such objectives may in reality promote economic segregation and individual or group welfare rather than the general welfare.¹⁹

Obviously, some factors which are thought to affect property values may legally be controlled under zoning and others may not be so controlled. Industries may be barred from locating in residential

districts, but racial zoning which bars minority groups is clearly illegal.²⁰ All esthetic regulations cannot be lumped into the legal nor into the illegal classification. They must be considered on the facts of the individual situation.²¹

With the preservation of real property values being used as a prop, the courts appear at last to have reached the brink of undisguised general acceptance of esthetic control as a primary objective of zoning, but whether this complete acceptance comes now or later, the facts remain that communities are controlling esthetics to varying degrees through zoning and that court rulings on specific measures and methods have established the present legal limits of such controls.

CHAPTER III

ESTHETIC REGULATIONS AND THEIR ADMINISTRATION

Esthetic controls in zoning ordinances range from such basic regulations as building bulk and land area requirements in residential areas, through restrictions on specific uses which are deemed unsightly, to outright architectural and landscape control applying in many ordinances to special uses in residential areas, in other ordinances to customary uses in residential, commercial and even industrial areas; and finally, in a few ordinances to areas of historic or scenic significance.

"Fringe" Esthetic Requirements

The most conventional of zoning ordinances contain provisions such as building bulk (floor area ratios, height, cubage, lot coverage) and land area (minimum lot size, setback, yard area) requirements. While reasonable controls of this type are obviously tied in with health and safety, these provisions also have esthetic overtones because they effect the way things look.

The reaction of the courts to such regulations has been varied. One court which cited no authority other than its own previous decisions for its conclusion; held that minimum space and floor area requirements are invalid, stating that size regulation of residences for the sole purpose of preserving property values of other houses in the neighborhood is an unreasonable exercise of the police power.²² Other jurisdictions have upheld similar requirements.²³

In a recent New Jersey case, the court frankly acknowledged the importance of esthetic considerations in upholding an ordinance which established minimum floor areas of 768 square feet for a one-story dwelling, 1,000 square feet for a two-story dwelling having an attached garage and not less than 1,200 square feet for a two-story dwelling not having an attached garage. In his concurring opinion Mr. Justice Jacobs stated:²⁴

The provisions with respect to two-story dwellings were influenced in considerable part by aesthetic considerations which I believe to be entirely proper. [And further] . . . that it is in the public interest that our communities, so far as feasible, should be made pleasant and inviting and that primary considerations of attractiveness and beauty might well be frankly acknowledged as appropriate, under certain circumstances, in the promotion of the general welfare of our people.

Minimum height requirements have not been widely accepted,²⁵ while maximum height regulations are sustained in most jurisdictions.²⁶ Minimum lot sizes of one, two and even three acres have also been sustained.²⁷

The general acceptance of these regulations reflects the courts' current tendency to give weight to esthetic considerations, to support the preservation of property values and to accept the local legislative bodies' judgment of what is reasonable.

"Unsightly" Use Restrictions

Many ordinances restrict outdoor advertising to "legitimate business signs relating to business upon the premises". Others regulate their construction, height, size, location and frequency of placement. These regulations are now established with good authority.²⁸ Two decisions upholding billboard restrictions based solely on esthetic considerations have been appealed to the Supreme Court of the United States, but in both instances, the appeals were dismissed before the court considered them.²⁹

Other uses singled out for special restrictions are junk yards, auto wrecking yards and used car lots.³⁰ These uses are restricted as to location and are frequently required to be conducted within enclosures. One court recently sustained such locational restrictions³¹ while other jurisdictions have held them invalid. In ruling void a regulation prohibiting junk yards or the sale or display of new or used motor cars in any open lot or portion thereof, the court stated:³²

The ordinance in question prohibited the display for sale of even one new car on the lot. It is not apparent how much such an act could affect property values or the health, safety, morals, or even the esthetic sensibilities of the people of Windsor. If the last statement is questioned, the answer is that in Connecticut esthetic considerations alone are insufficient to support the invocation of the police power.

In another recent decision declaring invalid a separate local ordinance requiring junk dealers to operate either in enclosed buildings, or in an open area surrounded by a board fence, the court reasoned as follows:³³

The question squarely presented here is whether the provisions . . . can be upheld as a regulation in the interest of public welfare based on aesthetic considerations.

The court held that the esthetic considerations in this case were not sufficient because:³³

No matter where a junk yard may be located in the town, even if in some isolated locality away from the view of the public, the premises would have to be enclosed on all sides by a solid board fence six feet high. In such a case aesthetic considerations would lose their force and the requirements of the ordinance would be unreasonable from any sound viewpoint.

With this line of reasoning, the court inferred that if junk yards which were removed from the public view had been exempted from the requirement, the ordinance may have been upheld as a reasonable aesthetic control.

Architectural and Landscape Control

Special Uses in Residential Areas.--Architectural and landscape conformity regulations frequently are applied to special uses in residential districts. Professional offices, telephone exchanges, electric substations, municipal buildings or similar uses are allowed provided that: "the residential character of the neighborhood will be protected,"³⁴ "the exterior appearance of the building shall be in appropriate harmony with the residential character of the area,"³⁵ "any such building shall include no features or design not customary in buildings for residential use,"³⁶ "the design of the building is approved in writing by the planning board,"³⁷ "such building shall conform to and harmonize with surrounding buildings as to type of architecture, set-back and landscaping,"³⁸ and "the exterior design of such building shall be in harmony with the exterior design of the dwellings generally in the district in which the proposed structure is to be located, and the ground about such building shall be landscaped and planted to shrubbery and so maintained."³⁹

The conformity regulations for special uses in residential areas do not specify exact standards which must be met; rather, the requirements are stated in general terms and it is left to either the planning board,³⁷ the board of appeals,³⁴ the building inspector,³⁹ or the local legislative body³⁵ to judge whether or not these terms are met.

This type regulation is seldom challenged because the community clearly is empowered to prohibit other than residential uses in residential districts. Therefore, the regulations can be defended as the conditions under which a special use privilege will be granted.

Customary Uses in Residential, Commercial and Industrial Areas.--Architectural and landscape control measures applying to customary uses in residential, commercial and industrial areas may simply prohibit unsightly or obnoxious appearance;⁴⁰ or require that design, material and size of new structures not cause depreciation to the surrounding property or neighborhood.⁴¹ Some ordinances prohibit dwellings if they are like or substantially like any neighboring dwelling,⁴² and others prohibit not only those which are similar, but those which are too dissimilar.⁴³ In one city which has a distinctive architectural flavor, the theme of "dissimilar but not too dissimilar" is maintained in most residential areas by prohibiting duplication of floor plan, elevation or architectural design while requiring Spanish, Venetian, Italian or similar styles of architecture; and in commercial areas it is required that architecture be harmonious with the immediate neighborhood.⁴⁴

In some instances the standards for compliance are stated in generalities;⁴⁴ however, other ordinances specify exact requirements⁴³ and even the construction details, colors, textures and architectural style which must be followed.⁴⁵

Plans, elevations and specifications for new construction and landscaping must be approved by the planning commission,⁴⁰ or some special board of architectural review, usually appointed by the planning commission, which may consist of a subgroup of the planning commission,⁴⁵ the planning commission and the building inspector,⁴⁶ employees from various city departments,⁴⁷ citizens who are not required to have any special training and experience,⁴¹ or a group of registered architects.⁴⁴ In most instances, appeals from decisions of such special review boards must

be taken first to the planning commission and, if relief is not granted by this group, thence to the local legislative body, and if relief is still not obtained, finally to the courts. It should be noted that the advantages of cooperation and persuasion in avoiding litigation are recognized in some of the California ordinances. The body reviewing plans and specifications under requirements of these ordinances is instructed to "suggest any changes"⁴⁰ and to "confer with the applicant in an endeavor to have plans changed."⁴⁸

The legality of architectural controls of this nature has been challenged on at least two occasions. The Supreme Court of Florida held void that portion of a zoning ordinance which read:⁴⁹

Further, the character and appearance of existing buildings or structures in said subdivisions shall be considered, but in every new instance the completed appearance of every new building or structure must substantially equal that of the adjacent buildings or structures in said subdivision in appearance, square foot area and height.

The court reasoned that the provision was too uncertain and left too many determinations to the whim or caprice of an administrative agency.

In a more recent case involving a similar regulation, the Supreme Court of Wisconsin held a provision valid which prohibited the issuance of a building permit if the "architectural appeal and functional plan" of the proposed new structure were at such variance with existing structures in the immediate neighborhood so as to cause substantial depreciation of their property values. In reversing the lower court decision, the Supreme Court held that ". . . its provisions are not so indefinite or ambiguous as to subject applicants for building permits to uncontrolled arbitrary discretion or caprice of the Building Board."¹⁷

Areas of Historic or Scenic Significance.--Cities such as Charleston, Winston-Salem, Boston and New Orleans, which contain areas of historic and architectural significance, have attempted to preserve and restore the distinctiveness of these areas by defining their boundaries and requiring any new construction or alteration within these bounds to conform to existing styles. Similarly, cities such as Niagara Falls which contain areas of natural beauty have established scenic protective regulations which require new structures to enhance rather than impair the attractiveness of appearance of scenic areas.

Requirements of the New Orleans zoning ordinance aimed at preserving the historic Vieux Carre or French Quarter are typical of such regulations. They read in part as follows:⁵⁰

The historic character of the Vieux Carre shall not be injuriously affected.

Signs which are garish or otherwise out of keeping with the character of the Vieux Carre shall not be permitted.

Building designs shall be in harmony with the traditional architectural character of the Vieux Carre.

The value of the Vieux Carre as a place of unique interest and character shall not be impaired.

Special review boards or commissions similar to those previously discussed are established to review plans and specifications for new construction and alteration in these areas.

A middle ground measure lying between eminent domain and the police power has been established in San Juan, Puerto Rico, where owners of certain property of historic significance are required to preserve and restore its original Spanish architecture, but are compensated by property tax exemptions.¹⁸

The courts have sustained special zoning requirements for historic areas, recognizing that preservation of these areas is in the public

interest and a valid exercise of the police power.⁵¹

Summary of Accomplishments with Existing Measures and Methods

In many communities, the character and monetary value of residential and even commercial and industrial areas have been safeguarded by protecting them from the invasion of structures which were so unreasonably nonconforming in appearance as to substantially reduce property values and tax receipts. Uses which were deemed so unsightly as to adversely affect the general welfare have been suppressed; and communities with areas of historic or scenic significance have preserved and restored them under esthetic zoning regulations.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

Conclusions.--The attitude of the courts toward zoning for esthetic objectives has passed through two phases and entered a third. Initially, the courts established the rule that esthetic considerations could not be sustained under zoning. Ordinances were declared invalid on the courts' presumptions of esthetic intent. When public demand intensified for control of unsightly uses, the courts relaxed their position, and went to fantastic lengths to justify the suppression of these uses on the grounds of protecting public health and safety, rather than scrap the rule against zoning for esthetic objectives. Gradually, however, this rule has been broken down and today zoning for esthetic objectives is frankly employed and sustained in many instances, especially when property values are protected by such zoning.

To date, esthetic zoning measures have been piecemeal and narrow in scope, concentrating in most communities on preserving the architectural character of residential areas and the suppression of specific uses, rather than a comprehensive program of protecting and improving the appearance of the entire community.

Certain measures may promote economic segregation and group welfare rather than the general welfare. For example, regulations which require that new structures conform in size and appearance to existing structures and then limit the new structure use to single-family occupancy would effectively bar those persons of an economic status lower

than the present inhabitants of the area.

The requirements of some present measures impede rather than promote pleasing appearance. For example, minimum lot size, set-back and yard area requirements (which turn out to be maximums in low-cost developments) together with height and lot coverage requirements have created such a rigid set of rules that lots, structures and the location of structures on lots are monotonously similar.

Esthetic zoning regulations which are precise enough to insure protection of adjoining property from unreasonable nonconformance while at the same time flexible enough to permit variety in design are not common.

The difficulty in writing esthetic zoning regulations which are not ambiguous is reflected in the administrative procedures which are set up to accompany these regulations. The boards of review, revision and appeal are geared to persuasion and compromise with the aim of getting the best solution possible in a given situation and to forestall and prevent litigation if possible.

Recommendations.--The recommendations presented in this section indicate a general method of approach, from the community point of view, to zoning for esthetic objectives. The methods outlined are not intended as exact solutions to specific problems. They would need further study and modification before they would be applicable to local conditions.

Esthetic zoning can be one of a community's strongest weapons in protecting and improving its appearance; however, to use this weapon intelligently and justly for the general welfare of the entire community, a future esthetic land-use plan should be established.

To ascertain the present esthetic character of the community by areas and individual parcels, a typical land-use survey should be utilized which shows:⁵²

(1) the existing use of every building and parcel of land; (2) the height of existing buildings and width of streets; (3) the number of square feet of lot per family wherever there are residences; (4) the width of lots; (5) the depth or width of front, rear, and side yards; (6) the assessed values of properties; and (7) new buildings erected within the past five years.

In addition to this survey, an esthetic reconnaissance should be made to determine the topography of the entire community, the areas of esthetic significance both positive and negative (parks and dumping grounds), with descriptions and photographs. The major variations in location, size and architectural styles of structures plus the condition of maintenance and landscaping should be noted and photographed. These features should be used in establishing various esthetic classifications of existing land-use. With these indices established, an esthetic land-use survey should be conducted which would place every parcel of land in an esthetic classification by comparison with example photographs and key specifications.

These classifications might first be broken down as to general use, such as residential, commercial or industrial; and then as to esthetic class within the general use, ranging for example, in "residential" from "estate class" to "apartment class." Designations which are too generalized will not reveal significant aspects of the present esthetic land-use, while too detailed a breakdown will result in an unwieldy multitude of meaningless classifications.

This survey and classification system would eliminate or narrow down many of the unknowns by revealing the existing esthetic conditions

in various areas throughout the community, and would indicate existing problems peculiar to specific areas.

With the information obtained in the esthetic land-use survey, the local planning commission and its staff should develop a tentative future esthetic land-use plan as a supplement to the Master Plan. This plan should consist of a map showing the various classifications of future esthetic land-use; and a text defining the overall esthetic policy or objectives, and a discussion of each area as to its esthetic classification.

The tentative plan should be given wide publicity to gain citizen interest and support. The commission should hold public hearings on the plan and it should be presented to civic groups, lawyers, architects, builders and other persons of influence, training and experience for review and recommendations. After publicity, review and revision, the final esthetic land-use plan should be adopted by the planning commission.

Before implementation of the plan is attempted, the planning commission and the city attorney should examine the statutes and State court decisions, if any, relating to esthetic zoning. These court decisions should guide the commission in determining both the objectives of the plan to be obtained by ordinance requirements and the language of such requirements. The remainder of the objectives should be left to education and voluntary means.

All existing regulations such as building codes and subdivision regulations should be reviewed and analyzed in the light of their affect on the appearance of the community and revised to implement the future esthetic land-use plan.

Various esthetic regulations could be formulated to eliminate existing problems peculiar to specific areas. The older predominantly built-up residential areas might have regulations tailored to preserving and improving the best esthetic features of the area on an individual lot basis. New residential areas, yet to mature, might be controlled on a group development basis with regulations tailored to encourage variety in set-back, bulk (by interspersing duplexes and row houses with single-family units) and land areas. Performance standard zoning which would regulate unsightly uses: require planting, clean-up, paint-up, and repair: eliminate antiquated yard, court and height controls: and allow satisfying variation in area and mass, could aid in development of a more pleasant appearing community.

All the ramifications of proposed esthetic regulations should be studied and their substantial beneficial affects to the general welfare of the community should be clearly evident before adoption. There should be public hearings on and thorough discussion of all proposed regulations.

In administering (as in establishing) esthetic zoning regulations, someone must make value judgments. These value judgments should be removed from whim and ignorance as far as possible. An esthetic review board, staffed with the best trained personnel available and working with clear-cut ordinance provisions based on comprehensive studies of present and future needs, seems to offer the best chance for good value judgments. In some communities, such as those with distinctive architecture, all requests for building permits might come before the esthetic review board: while in other communities only requests for building permits in areas with certain esthetic classifications might be reviewed by such a board.

The final determinations will be with the courts and it is the duty of the courts to protect the individual against any arbitrary or unreasonable requirement which may be attempted.

In the future, esthetic control will be of increasing importance in zoning regulations. The philosophy behind this increasing importance was summarized in a prophetic statement by a Wisconsin court in 1923. The court said:⁵³

It seems to us that aesthetic considerations are relative to their nature. With the passing of time, social standards conform to new ideas. 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.

B I B L I O G R A P H Y

GLOSSARY OF ABBREVIATIONS

A. & E.	Adolphus & Ellis Reports
Am. Cas.	American Annotated Cases
Am. Jur.	American Jurisprudence
Am. St. Rep.	American State Reports
App. Div.	Appellate Division
A.L.R.	American Law Reports
Atl.	Atlantic Reporter
A.2d	Atlantic Reporter, Second Series
Cal.	California; California Reports
Conn.	Connecticut; Connecticut Reports
Ky.	Kentucky; Kentucky Reports
La.	Louisiana; Louisiana Reports
L.ed.	Lawyers' Edition Supreme Court Reports
L.R.A.	Lawyers' Reports Annotated
L.R.A.(N.S.)	Lawyers' Reports Annotated, New Series
Mich.	Michigan; Michigan Reports
Mo.	Missouri; Missouri Reports
N.E.	Northeastern Reporter
N.E.2d	Northeastern Reporter, Second Series
N.J.	New Jersey; New Jersey Reports
N.J.L.	New Jersey Law
N.W.	Northwestern Reporter
N.W.2d	Northwestern Reporter, Second Series

N.Y.	New York; New York Court of Appeals Reporter
N.Y.Supp.	New York Supplement Reporter
N.Y.S.2d	New York Supplement Reporter, Second Series
Pac.	Pacific Reporter
P.I.Rep.	Phillipine Island Reports
So.	Southern Reporter
So.2d	Southern Reporter, Second Series
S.W.	Southwestern Reporter
S.W.2d	Southwestern Reporter, Second Series
Tex. Civ. App.	Texas Civil Appeals
U.S.	United States; United States Reports
Wis.	Wisconsin: Wisconsin Reporter

LITERATURE CITED

1. McQuillen, Eugene, The Law of Municipal Corporations, 3rd ed. Chicago: Callaghan & Company, 1949, 6, 438-514.
2. Sayre, Paul, 'Aesthetics and Property Values: Does Zoning Promote the Public Welfare?,' American Bar Association Journal, 35 (June 1949) 471-472, 529.
3. Dukeminier, J. J., Jr., "Zoning For Aesthetic Objectives: A Re-appraisal," Law and Contemporary Problems, 20 (Spring 1955) 226-237.
4. Local Planning Administration, 2nd ed. Chicago International City Managers' Association, 1948, 297-298.
5. Rodda, Clinton, "The Accomplishments of Aesthetic Purposes Under the Police Power," Southern California Law Review, 27 (1954) 226-227.
6. Varney & Green v. Williams, 155 Cal. 318, 100 Pac. 867, 21 L.R.A.(N.S.) 741, 132 Am.St.Rep. 88 (1909).
7. McQuillen, 8, 535.
8. City of Passaic v. Patterson Bill, Advertising, & Sign Co., 72 N.J.L. 285, 62 Atl. 257, 111 Am.St.Rep. 676, 5 A. & E. Ann.Cas. 995 (1905).
9. 235 Mo. 99, 137 S.W. 929 (1911).
10. Murphy, Inc., v. Town of Westport, 121 Conn. 292, 40 A.2d 177, 156 A.L.R. 568 (1944); Annotation, 156 A.L.R. 581.
11. Baddour v. Long Beach, 279 N.Y. 167, 794, 18, 19 N.E.2d 90, 124 A.L.R. 1003 (N.Y. 1944); Annotation, 156 A.L.R. 581.
12. 11 Am. Jur. 10:8, Section 280.
13. Preferred Tire v. Village of Hemstead, 19 N.Y.S.2d 734 (1940); Commonwealth v. Trimmer, 53 Dauph.Co.Rep. 91, 105 (Pa. 1942); Merrett v. Peters, 65 So.2d 861 (Fla. 1953).
14. Berman v. Parker, 348 U.S. 26, 33 (1954).
15. State v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955).
16. McQuillen, 8, 52-54.

17. "Ordinance Prohibiting Construction of Building Which Would Cause Depreciation of Land Values In Neighborhood Held Constitutional," Harvard Law Review, 69 (January 1956) 578-580.
18. Bergs, Robert A., "Aesthetics as a Justification for the Exercise of the Police Power or Eminent Domain," George Washington Law Review, 24 (June 1955) 731-750; Sayre, 471.
19. Haar, Charles M., "Zoning for Minimum Standards: The Wayne Township Case," Harvard Law Review, 66 (April 1953) 1051-1063.
20. Williams, Norman, Jr., "Planning Law And Democratic Living," Law and Contemporary Problems, 20 (Spring 1955) 334.
21. McQuillen, 8, 237-247.
22. Elizabeth Lake Estates v. Township of Waterford, 317 Mich. 359, 26 N.W.2d 788 (1947).
23. City of Bismark v. Hughes, 53 N.D. 838, 208 N.W. 711 (1926); Tompson v. City of Carrollton, (Tex.Civ.App.) 211 S.W.2d 970 (1948).
24. Lionshead Lake Inc., v. Township of Wayne, 10 N.J. 165, 89 A.2d 693 (1952), appeal dismissed, 344 U.S. 919 (1953).
25. 122 Main St. Corp. v. City of Brockton, 323 Mass. 646, 84 N.E.2d 13 (1949); Baker v. Somerville, 138 Neb. 466, 471, 293 N.W. 326, 328 (1940); Brookdale Homes, Inc., v. Johnson, 123 N.J.L. 602, 10 A.2d 477 (1940).
26. McQuillen, 8, 249-251.
27. Simon v. Town of Needham, 311 Mass. 560, 42 N.E.2d 516 (1942); Dillard v. Village of North Hills, 276 App.Div. 969, 94 N.Y.S.2d 715 (2nd Dept 1950); Flora Realty & Inv. Co. v. City of Ladue, 246 S.W.2d 771 (Mo. 1952), appeal dismissed, 344 U.S. 802 (1952).
28. Kelbro, Inc., v. Myrick, 113 Vt. 64, 30 A.2d 527 (1943). McQuillen, 7, 308-321.
29. Rhyne, Charles S. and Brice W. Rhyne, Municipal Regulations of Signs, Billboards, Marquees, Canopies, Awnings and Street Clocks--Model Ordinance Annotated, Report No. 137 of the National Institute of Municipal Law Officers. Washington: The Institute, 1952, 13; Churchill v. Rafferty, 32 P.I.Rep. 580 (1915), appeal dismissed 248 U.S. 591, 63 L.ed. 436 (1918); General Outdoor Advertising Co. v. Dept. of Public Works, 289 Mass. 149, 193 N.E. 799 (1935), appeals dismissed on motion of the appellants, 297 U.S. 725, 80 L.ed. 1008 (1936).
30. Annotation 88 A.L.R. 970.

31. City of St. Louis v. Friedman, 358 Mo. 681, 216 S.W.2d 475 (1948).
32. Gionfriddo v. Town of Windsor, 137 Conn. 701, 81 A.2d 266 (1951).
33. Town of Vestal v. Bennett, 104 N.Y.S.2d 830 (1950).
34. Lawrence, Massachusetts, Zoning Ordinance, 1943, Section 35.
35. Durham, North Carolina, Zoning Ordinance, 1951, Section R-10.
36. Ames, Iowa, Zoning Ordinance, 1949, Section 6.
37. Gloucester, Massachusetts, Zoning Ordinance, 1950, Section 3.
38. Everett, Washington, Ordinance No. 2954, 1942, Section 4.
39. Sioux City, Iowa, Zoning Ordinance, 1947, Section 4A-4.
40. Palo Alto, California, Zoning Ordinance, 1953, Section 20.01.
41. Wauwatosa, Wisconsin, Zoning Code, 1951, Section 14.22.
42. Village of Scarsdale, New York, Zoning Ordinance, 1950.
43. Village of Garden City, New York, Zoning Ordinance, 1952.
44. Coral Gables, Florida, Zoning Ordinance, 1952, Section 12.
45. Monterey, California, Zoning Ordinance, 1940, Section 22.
46. Menlo Park, California, Land Use And Zoning Ordinance, 1953, Section 7.
47. Madison, Wisconsin, Zoning Ordinance, 1956, Section 17.051.
48. Bakersfield, California, Zoning Regulation Ordinance, 1954, Section 15.02.
49. City of West Palm Beach v. State, 158 Fla. 863, 30 So.2d 491 (1947).
50. New Orleans, Louisiana, Comprehensive Zoning Ordinance, 1953, Article XVII, Section 1.
51. Opinion of the Justices to the Senate, Supreme Judicial Court of Massachusetts, 128 N.E.2d 557 and 563 (1955); City of New Orleans v. Pergament, 198 La. 852, 5 So.2d 129, 130 (1941); City of New Orleans v. Leavitt, 223 La. 14, 64 So.2d 798 (1953).
52. Local Planning Administration, 236.
53. State ex rel. Carter v. Harper, 182 Wis. 148, 196 N.W. 451, 33 A.L.R. 269 (1923).

OTHER REFERENCES

- Abercrombie, Patrick, Town and Country Planning, 2nd ed., London: Thornton Butterworth, Ltd., 1945. Discussion of town and country planning methods used in various nations throughout the world.
- Adams, Thomas, The Design of Residential Areas: Basic Considerations, Principles and Methods, Cambridge: Harvard University Press, 1934. Two main considerations are discussed, the elements necessary for good living conditions and their least cost in thought, effort and relinquishment of conflicting objectives.
- Agle, Charles K., "A New Kind of Zoning," Architectural Forum, 95 (July 1951), 176-177, 234, 236, 238, 240, 244, 248, 252, 256. Sets forth conditions which low density zoning should implement and discusses new approaches to their implementation.
- Baker, Newman F., "Aesthetic Zoning Regulations," Michigan Law Review, 25 (December 1926), 124-142. Discussion of the liberalizing attitude of the courts toward aesthetic controls under the police power.
- Baker, Newman F., The Legal Aspects Of Zoning, Chicago: The University of Chicago Press, 1927. Discussion of municipal esthetics, zoning legislation, boards of appeals, the legality of zoning and the problems of the metropolitan area or region.
- Basset, Edward M., Zoning, New York: Russell Sage Foundation, 1936. Zoning; the laws, administration and court decisions during the first twenty years.
- Chandler, Henry P. "The Attitude of the Law Toward Beauty," American Bar Association Journal, 8 (1922), 470-474. Discussion of the need for legal controls which set moderate standards necessary to prevent abusive appearance in private property.
- Ford, George B., Building Height, Bulk and Form, Cambridge: Harvard University Press, 1931. A discussion of zoning used as a protective device against uneconomic types of high buildings and a comparison between building height, bulk and form in Paris, London and New York.
- Gallion, Arthur B. The Urban Pattern, New York: D. Van Nostrand Company, Inc., 1950. An examination of the processes by which cities are planned and built; and an appraisal of accomplishments and deficiencies of these processes.
- Gardner, George K. "The Massachusetts Billboard Decision," Harvard Law Review, 49 (1936) 869-902. Discussion of the legal history of the billboard question in Massachusetts, the practical significance of the decision and the relation of the decision to the theory of the police power.

Green, Philip P., Jr., Zoning in North Carolina, Chapel Hill: Institute of Government, The University of North Carolina, 1952. Discussion of zoning laws, regulations and court decisions on zoning in North Carolina.

Haar, Charles M., Land Planning Law in a Free Society, Cambridge: Harvard University Press, 1951. A discussion of town and country planning under the Town and Country Planning Act of 1947.

Holden, Arthur C., "Zoning. . . An Impediment to Good Design?," Progressive Architecture, 27 (November 1946) 94-97. Discussion of the handicap to good design which unimaginative zoning regulations impose.

Ingalls, Vance G., "The Law of Aesthetics," American Bar Association Journal, 23 (1937) 191-193. A discussion of the extent to which courts have gone to uphold esthetic regulations by finding authority for them under police power and the author asks the question if it is not time to give beauty protection in her own right without compelling her to resort to the ambiguous shelter of other governmental powers.

Larremore, Wilbur, "Public Aesthetics," Harvard Law Review, 20 (1906) 35-45. Discussion of the growing appreciation of civic and municipal esthetics in America.

Lorensen, W. D., "Municipal Corporations--Aesthetic Zoning Under The Police Power," Nebraska Law Review, 35 (November 1955) 143-146. Discussion of a recent court decision upholding an ordinance which placed restrictions on the appearance of private property.

Metzenbaum, James, The Law Of Zoning, New York: Baker, Voorhis & Co., Inc., 1955. A presentation of judicial decisions and opinions in various cases involving zoning law.

Rathkopf, Charles A., and Arden H. Rathkopf, The Law of Zoning and Planning, 3rd ed. Albany, New York: Banks & Company, 1956, 1, 188-190. Discussion of cases which indicate an acceptance of esthetics as the sole ground for sustaining an ordinance.

Swietlik, Joseph, "Aesthetics Under The Zoning Power," Marquette Law Review, 39 (1955) 135-145. Discussion of important court cases dealing with esthetic zoning.

Tomson, Bernard, "It's The Law," Progressive Architecture, 31 (May 1950) 138-140; 31 (November 1950) 136, 138, 140, 142; 31 (December 1950) 120, 122; 33 (June 1952) 162, 164, 168, 170; 33 (July 1952) 152, 154, 156, 158, 160. A series of articles discussing zoning ordinance provisions aimed at accomplishing esthetic objectives.

Willms, Dennis H., 'Municipal Corporations--Regulations Of Billboards And Advertising Structures For Esthetic Purposes,' Marquette Law Review, 35 (1952) 365-369. A discussion of municipal regulation of billboards with several significant court decisions cited.

Yokley, E. C., Zoning Law And Practice, 2nd ed., Charlottesville, Virginia: The Michie Company Law Publishers, 1953, 1. A presentation of court decisions on the various important questions of zoning law.