Volume 90 | Issue 2 Article 14

January 1988

Aesthetic Regulation: A New General Rule

Michael Pace
West Virginia University College of Law

AESTHETIC REGULATION: A NEW GENERAL RULE

I. INTRODUCTION

Municipal authorities are frequently confronted with aesthetic considerations in their efforts to improve the appearance and quality of life in their cities. City councils, in furtherance of that goal, often enact ordinances aimed at eradicating blight or unsightly structures. Less frequently and with much less success, cities attempt aesthetic regulation through abatement of certain conditions deemed "public nuisances." The general rule usually stated is that aesthetics can constitute an auxiliary factor but cannot be the sole basis to support regulation of private property.[1] However, a review of judicial opinions over the past two decades reveals a pattern of increasing acceptance of aesthetics alone as a valid basis of regulation. In light of these findings, a more accurate restatement of the general rule is that in certain situations, aesthetic considerations alone can justify regulation of private property.

II. BACKGROUND

Deeply ingrained in American tradition, the prerogative of owners to do as they please with their private property has created an inherent tension between such rights and government regulation. In prohibiting the taking of private property without compensation, the Constitution reflects the sanctity of private property while at the same time recognizing the sometimes greater public interest. A rare exception to the fifth amendment "taking clause" is the valid exercise of police power. All government regulation of private property represents to some degree a taking of property. Such regulation is based on police power, indisputably mandated for public rather than

1. 62 C.J.S. *Municipal Corporations* § 147 (1949).

private benefit and exercised only in the promotion of public health, safety, morals, or welfare.[2]

Early decisions struck down laws based solely or primarily on aesthetics, although as a practical matter many courts upheld such regulation so long as the laws were clothed in the more traditionally accepted garments of public health or safety.[3] Such subterfuge by the courts has often been quite transparent. For example, despite obviously aesthetic motives, a billboard regulation was upheld on the grounds that it provided a hiding place for criminals,[4] and a prohibition against erecting fences in front yards was upheld as promoting public safety by allowing greater access for firefighters.[5]

This practice by the courts of upholding aesthetic based legislation under the due process clause or on some other more traditional nonaesthetic grounds has been criticized by commentators.[6] In a 1955 seminal article on the subject, Professor Dukeminier commented that "[t]hose courts which postulate that the police power may not be exercised for aesthetic objectives obscure the goals toward which community policy is directed and hinder a determination of what types of aesthetic regulation are required by rational community planning."[7]

Opposition to aesthetic regulation is based primarily on the notion that agreements pertaining to standards of taste and beauty are impossible to attain as they are subjective and vary greatly among individuals.[8] Merely defining aesthetics presents practical difficulties. A major problem faced by the courts is the search for objective criteria upon which to determine the elusive concept of aesthetics.

---

2. *Id.*

3. 3 P. ROHAN, *Zoning and Land Use Controls* § 16.03 (1979).

4. *See id.* citing Dowds, *Private Signs and Public Interests*, 1974 INST. ON PLANNING, ZONING, AND EMINENT DOMAIN 221, 228.

5. Annotation, *Zoning Regulations Prohibiting or Limiting: Fences, Hedges, or Walls*, 1 A.L.R.4th 373 (1987).

6. *See* 3 P. ROHAN, *supra* note 3, at 16-17 n.16 for an extensive list of commentaries on aesthetic zoning.

7. Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROBS. 218, 237 (1955).

8. *See* Comment, *Aesthetic Zoning*, 11 URB. L. REV. 295 (1976) which contains arguments for and against aesthetic zoning.

Dukeminier has suggested the "blind man test" which suggests that if a use is offensive to a person with sight but not to a blind man in the same situation, then the use is primarily offensive aesthetically.[9] According to Dukeminier, attempts by the courts to define beauty are not only fruitless but unnecessary:

> This demand for precise criteria . . . is at the bottom of the judicial refusal to recognize openly aesthetics as a proper police power purpose . . . . But by asking 'what is beauty?' courts have got themselves into the semantic bog . . . . This same bog lies in the field of jurisprudence, except that judges rarely decide cases by inquiring first, 'what is justice?'[10]

Arguments articulated by Professor Dukeminier have been quoted extensively by the courts and remain vital in the growing acceptance of the doctrine of aesthetic regulation.

III. Foundations of Aesthetic Regulation

Early concern with aesthetic regulation can be traced to public reaction against unsightly billboards and other forms of outdoor advertising that began to appear around the turn of the century.[11] The earliest decisions either struck down laws based on aesthetics or ignored the aesthetic factor and upheld the ordinance on more traditional health and safety grounds. But beginning with the Supreme Court decision in *Village of Euclid v. Amber Realty Co.*,[12] which upheld comprehensive zoning as a valid exercise of the police power, judicial attitudes on regulation became more liberal, and acceptance of aesthetics as a valid auxiliary factor to support regulation became the general rule.[13]

Regulation actually designed to promote aesthetic goals has been justified by the courts on a multitude of somewhat transparent grounds: traffic safety arguments are often advanced to support billboard regulation;[14] health factors are cited to support minimum floor

9. Dukeminier, *supra* note 7, at 223.
10. *Id.* at 225.
11. *See supra* note 3.
12. Village of Euclid v. Amber Realty Co., 272 U.S. 365 (1926).
13. 3 P. Rohan, *supra* note 3, § 16.04 (3)(b), at 106-07.
14. 3 P. Rohan, *supra* note 3, § 16.04 (2)(2), at 59.

space regulations;[15] devaluation in property values justifies prohibition of apartment buildings and mobile homes from single family neighborhoods;[16] and economic benefits of tourism are used to support regulation of historic districts, billboards, and signs.[17] But despite these legitimate aesthetic motives for regulation, the courts based their decisions on traditional grounds rather than accepting aesthetics alone as a valid basis for the exercise of police power.

The landmark 1954 Supreme Court decision in *Berman v. Parker*[18] expanded the concept of public welfare to embrace aesthetics as a valid basis for regulation. Although *Berman* was primarily concerned with eminent domain as related to slum clearance, the language of the Court strongly endorsed acceptance of aesthetics as a basis for government action. *Berman* became a catalyst for the acceptance of aesthetic regulation. The words of Justice Douglas have been cited in virtually every jurisdiction that has adopted the modern view that aesthetics alone can justify government regulation:

> 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, well-balanced as well as carefully patrolled. If those who govern . . . 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.[19]

IV. Acceptance of Aesthetic Regulation

A. *Early Decisions*

During the 1960's, several courts began to apply the language and logic of *Berman* to uphold municipal regulation based on aesthetic reasons alone. The foremost case was decided by the New York Court of Appeals in *People v. Stover*[20] where a property owner

15. Lionshead Lake, Inc. v. Wayne Twp., 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed*, 344 U.S. 919 (1953).

16. 3 P. Rohan, *supra* note 3, § 16.04 (3)(a), at 91.

17. *Id.* § 16.04(3)(b), at 108.

18. Berman v. Parker, 348 U.S. 26 (1954).

19. *Id.* at 33.

20. People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (1963), *appeal dismissed*, 375 U.S. 42 (1963).

placed a clothesline filled with old rags in his front yard as a protest against municipal taxes, adding an additional clothesline each year for five years. When the city finally enacted an ordinance prohibiting clotheslines in front or side yards abutting a street, the resident objected that the ordinance violated his right to free speech. In a major break with precedent, the court declared that aesthetics alone could justify the exercise of the police power.[21] The *Stover* decision broke new ground and made a tremendous impact. It borrowed extensively from the reasoning and writing of Dukeminier and has been cited in most jurisdictions that adopted a similar position:

> Once it be conceded that aesthetics is a valid subject of legislative concern, the conclusion seems inescapable that reasonable legislation designed to promote that end is a valid and permissible exercise of the police power. If zoning restrictions which implement a policy of neighborhood amenity are to be stricken as invalid, it should be, one commentator has said, not because they seek to promote 'aesthetic objectives' but solely because the restrictions constitute 'unreasonable devices of implementing community policy.' (Dukeminier, Zoning for Aesthetic Objectives: A Reappraisal, 20 Law and Contemp. Prob. 218, 231.) Consequently, whether such a statute or ordinance should be voided should depend upon whether the restriction was 'an arbitrary and irrational method of achieving an attractive, efficiently functioning, prosperous community — and *not* upon whether the objectives were primarily aesthetic.' (Dukeminier, loc. cit.)[22]

Subsequent New York decisions firmly established the aesthetic regulation rule adopted in *Stover* by upholding on aesthetic grounds regulation of billboards,[23] open storage of inoperable vehicles,[24] display of offensive sexual material,[25] and prohibition of boathouses on a section of a resort lake.[26]

Gradually, the *Stover* rule spread to other jurisdictions. It has been most often adopted to support the regulation of junkyards, signs, and billboards. In the 1960's, Kentucky,[27] Ohio,[28] and Oregon[29]

---

21. *Id.*

22. *Id.* at 467, 191 N.E.2d at 275, 240 N.Y.S.2d at 738.

23. Cromwell v. Ferrier, 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (1967).

24. People v. Scott, 26 N.Y.2d 286, 258 N.E.2d 206, 309 N.Y.S.2d 919 (1970).

25. People v. Lou Bern Broadway, Inc., 325 N.Y.S.2d 806, (N.Y. Crim. Ct. 1971), *aff'd*, 342 N.Y.S.2d 78 (1972), *rev'd*, 345 N.Y.S.2d 1012 (1973).

26. McCormick v. Lawrence, 83 Misc. 2d 64, 372 N.Y.S.2d 156 (N.Y. Sup. Ct. 1975), *aff'd*, 387 N.Y.S.2d 919 (1976).

27. Jasper v. Commonwealth, 375 S.W.2d 709 (Ky. 1964).

28. Ohio v. Buckley, 16 Ohio St. 2d 128, 243 N.E.2d 66 (1968), *cert. denied*, 395 U.S. 163 (1969).

29. Oregon City v. Hartke, 240 Or. 35, 400 P.2d 255 (1965).

became the earliest jurisdictions to accept aesthetics alone as a valid basis for exercise of the police power in the regulation of junkyards.

Generally, regulation or prohibition of billboards has been upheld on the more traditional health and safety grounds, specifically for the promotion of traffic safety. The modern trend, however, is toward recognizing aesthetic reasons alone as justification for regulation of advertising. Two of the most notable decisions in this area were *John Donnelly and Sons, Inc. v. Outdoor Advertising Bd.*[30] and *Westfield Motor Sales Co. v. Town of Westfield.*[31] In *Outdoor Advertising*, the Massachusetts Supreme Court upheld on aesthetic grounds a Brookline ordinance prohibiting non-accessory or off-premise signs. In *Westfield Motors*, the New Jersey Supreme Court provided an extensive analysis of the aesthetics issue in support of its decision upholding sign regulation. The court concluded that: "it is now appropriate to permit a municipality, under proper safeguards, to legally deal with the problem without subterfuge. Zoning solely for aesthetic purposes is an idea whose time has come; it is not outside the scope of the police power."[32]

Illinois has also upheld sign regulations on similar grounds: "[i]t has been repeatedly held by the courts of Illinois that aesthetic factors do have a significant bearing upon zoning to such an extent that they may, in some instances, be used as the sole basis to validate a zoning classification."[33]

The state of Washington in 1977 acknowledged protection of aesthetic values as an expressed and legitimate public policy in *State Dept. of Ecology v. Pacesetter Constr.*[34] In *Pacesetter*, the dispute arose over a statutory building height restriction prohibiting construction of any structure over thirty-five feet high that would obstruct the view of adjoining landowners.[35] The construction company was in the process of building two houses in violation of the thirty-

30. John Donnelly and Sons, Inc. v. Outdoor Advertising Bd., 369 Mass. 206, 339 N.E.2d 709 (1975).

31. Westfield Motor Sales Co. v. Town of Westfield, 129 N.J. Super. 528, 324 A.2d 113 (1974).

32. *Id.* at 539, 324 A.2d at 119.

33. Ward v. Cook County, 68 Ill. App. 3d 563, 386 N.E.2d 309 (1979).

34. State Dep't of Ecology v. Pacesetter Constr., 89 Wash. 2d 203, 571 P.2d 196 (1977).

35. *Id.* at 204, 571 P.2d at 197-98.

five feet restriction when the action was filed by adjoining landowners.[36] The court ordered removal of the houses under construction and awarded the adjoining landowners damages for loss of view until abatement.[37]

Often a court will also take notice of the economic relationship between aesthetics and tourism in adopting aesthetics as a valid basis of regulation, on the theory that promotion of tourism promotes the public welfare.[38] This is especially true in traditional tourist meccas like Florida and Hawaii. Florida was one of the earliest jurisdictions to recognize the validity of aesthetics as a basis for regulation, because of the economic impact of aesthetic considerations on tourism.[39] In Hawaii, aesthetic concerns have been recognized as being so important as to justify express provisions for aesthetic regulation in the state constitution: "[t]he State shall have the power to conserve and develop its natural beauty, objects, and places of historic or cultural interest, sightliness and physical good order, and for that purpose private property shall be subject to reasonable regulation."[40] Furthermore, in the often cited opinion of *State v. Diamond Motors*,[41] the Hawaii Supreme Court stated unequivocally: "[w]e accept beauty as a proper community objective, attainable through the use of police power. We are mindful of. . .the need felt by [other courts] to find some basis in economics, health, safety, or even morality."[42]

Courts have also been amenable to upholding common residential zoning regulations related to house setbacks, floor space requirements, fences, topsoil removal, mobile home locations, and building height restrictions.[43] In *Village of Belle Terre v. Boraas*,[44] the Supreme Court upheld an ordinance restricting land use to one-family

---

36. *Id.*

37. *Id.* at 212, 571 P.2d at 196.

38. *See supra* note 17.

39. City of Miami Beach v. Ocean & Island Co., 147 Fla. 480, 3 So. 2d 364 (1941); Stone v. City of Maitland, 446 F.2d 83 (5th Cir. 1971).

40. HAW. CONST. art. VIII, § 5.

41. State v. Diamond Motors, Inc., 50 Haw. 33, 429 P.2d 825 (1967).

42. *Id.* at 35, 429 P.2d at 827.

43. 3 P.ROHAN, *supra* note 3, at 2.

44. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

dwellings. The opinion of the Court contained very expansive language relating to regulation in residential areas:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs . . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. . . .[45]

Residential neighborhoods aside, aesthetics receive more liberal acceptance in areas dependent on tourism, where a close link exists between economics and aesthetics.

B. Recent Decisions Upholding Aesthetic Regulation

Popular interest and concern with aesthetic regulation reached a peak during the late 1960's and early 1970's. Since that time, acceptance of aesthetics has plodded quietly but steadily along. During the past decade, the list of jurisdictions adopting aesthetics as a legitimate basis of regulation continued to expand.

One of the most significant decisions of the 1980's on aesthetics has been *Metromedia, Inc. v. City of San Diego*.[46] The California court upheld a San Diego ordinance banning all off-site billboard advertising. The United States Supreme Court reversed the decision on the grounds that it violated the billboard owners' right of free speech.[47] Although the major issue in the case, especially in the Supreme Court, revolved around the notion of free speech, both courts gave considerable attention to the aesthetic regulation question.

Among other reasons, the plaintiffs in *Metromedia* challenged the ordinance because its principal purpose was to promote the appearance of the community, a ground held insufficient by the California court in *Varney & Green v. Williams*.[48] The court responded

---

45. *Id.* at 9.

46. Metromedia, Inc. v. City of San Diego, 26 Cal. 3d 848, 610 P.2d 407, 164 Cal. Rptr. 510 (1980), *rev'd*, 453 U.S. 490 (1981).

47. Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981), *cert. denied*, 453 U.S. 922 (1981).

48. *Id.*

by repudiating *Varney* as being "unworkable" and "discordant with modern thought."[49] The opinion of the court was influenced by the strong nexus existing between economics and aesthetics which "together constitute the warp and woof of the fabric upon which the modern city must design its future."[50]

In support of its adoption of aesthetic regulation, the California court quoted extensively from both the *Berman* and *Stover* decisions, as well as citing several jurisdictions that had adopted a similar doctrine, concluding that:

> Present day city planning would be virtually impossible under a doctrine which denied a city authority to legislate for aesthetic purposes under the police power. Virtually every city in this state has enacted zoning ordinances for the purpose of improving the appearance of the urban environment and quality of metropolitan life.[51]

The Supreme Court, while reversing on other grounds, reaffirmed its approval of aesthetic regulation established years earlier in the *Berman* decision.

In a concurring opinion in *Metromedia,* Justice Brennan qualified the right of a city to regulate private property for aesthetic purposes.[52] Brennan believed that a city must demonstrate a substantial commitment to promotion of aesthetics before infringing upon private property by government regulation and that "a court must be convinced that the city is seriously and comprehensively addressing aesthetic concerns with respect to its environment."[53] Thus, while Brennan would approve strict regulation in historic communities like Williamsburg, Virginia or in national parks, he would not be likely to do the same in business or industrial sections of a large city absent a genuine and substantial demonstration of comprehensive commitment to aesthetic improvement.

In 1982, two additional states joined the ranks of those embracing the aesthetic regulation doctrine. North Carolina expressly

---

49. Metromedia, 26 Cal. 3d at 861, 610 P.2d at 413, 164 Cal. Reptr. at 516.
50. *Id.*
51. *Id.* at *862*, 610 P.2d at 414, 164 Cal. Rptr. at 518.
52. *Metromedia*, 453 U.S. at 531.
53. *Id.*

overruled its former "aesthetics as auxiliary" position in favor of aesthetics alone as a valid basis of regulation, "depending on the facts and circumstances of each case."[54] New Mexico took a similar stand in *Temple Baptist Church v. City of Albuquerque*,[55] where the court discussed arguments supporting both sides of the issue before deciding that "[w]e are of the opinion that the better rule is that aesthetic considerations alone do justify exercise of police power."[56]

A recent Colorado decision appears to expand the concept of aesthetic regulation beyond the typical application. In *Landmark Land v. City and County of Denver*,[57] the court upheld Denver's Mountain View Ordinance, which placed height restrictions on buildings within a stated radius of certain city parks in order to protect the mountain view.[58] Property owners who wanted to construct buildings in excess of the height restrictions had challenged the ordinance.[59] But the Colorado Supreme Court, taking notice that the trial judge had visited the parks and found a "panoramic mountain view," sustained the ordinance.[60] Citing a significant association between the identity of Denver and its dramatic mountain view, the court held that it was "rationally related to the legitimate public purpose of protection of aesthetics."[61] Accordingly, while the Mountain View Regulation might not necessarily be upheld everywhere, a similar regulation would be valid where aesthetic considerations can be closely identified with some substantial public interest.

In another recent decision relating to scenic protection, a federal district court in Nevada sustained aesthetic-based regulation in *Tahoe-Sierra Preservation v. Tahoe Regional Planning*.[62] Landowners in the scenic Lake Tahoe area challenged regulations promulgated by

54. State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982).
55. Temple Baptist Church v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).
56. *Id.* at 651, 646 P.2d at 571.
57. Landmark Land v. City of Denver, 728 P.2d 1281 (Colo. 1986), *appeal dismissed*, 107 S. Ct. 3222 (1987).
58. *Id.* at 1287.
59. *Id.* at 1282-83.
60. *Id.* at 1284.
61. *Id.* at 1281,1284.
62. Tahoe-Sierra Preservation v. Tahoe Regional Planning, 638 F. Supp. 126 (D. Nev. 1986).

the regional planning board on the grounds that the board could not regulate their activity unless it was found to be a nuisance.[63] The court stated that it was "not limited to a determination of whether the regulations apply only to noxious activities or dangerous structures," citing the *Berman* decision in upholding the regulation.[64]

V. Limitations on Aesthetic Regulation

Apparently, there are certain clear limitations to regulation based on aesthetics. Regulation cannot interfere with free speech, particularly where the content of the message is affected.[65] Similarly, total suppression of erotic materials that have some arguable artistic value is not tolerated.[66]

Additionally, it is significant to note that aesthetics have not expanded into areas of traditional nuisance law. For example, a building cannot be condemned because of its dilapidated appearance or because it diminishes the value of surrounding property.[67] Likewise, a city cannot require the owner of an overgrown or unsightly lot to clean his property. It has been held that the "deposit of debris, rubbish, and other unsightly material" on a person's property does not constitute a nuisance, and "mere unsightliness or other condition of a purely aesthetic nature are alone insufficient to justify a court's interference."[68]

The constitutional "taking" clause of the fifth amendment also imposes limitations upon all regulation based on police power. The line between the police power and eminient domain is not clearly drawn but rather is a matter of degree, and there has been extensive litigation in this unsettled area of law.[69]

---

63. *Id.* at 134.
64. *Id.*
65. *Metromedia*, 453 U.S. 502.
66. Young v. American Mini-Theatres, Inc., 427 U.S. 50, 70 (1976).
67. Bristol Door and Lumber Co. v. City of Bristol, 97 Va. 304, 33 S.E. 588 (1899); 13 Am. Jur. 2d *Buildings* § 41 (1987).
68. State Rd. Comm'n v. Oakes, 150 W. Va. 709, 720, 149 S.E.2d 293, 300 (1966).
69. *See* Just v. Marinette County, 56 Wis. 2d 7, 16, 201 N.W.2d 761, 767 (1972).

VI. Recent Decisions Moving Toward Aesthetic Regulation

In addition to those states that have expressly adopted the aesthetic regulation doctrine, a number of jurisdictions have indicated approval of the idea in dicta. States that have demonstrated a receptive attitude toward aesthetics include Connecticut,[70] Delaware,[71] Georgia,[72] Idaho,[73] Indiana,[74] Kansas,[75] Maryland,[76] Michigan,[77] Missouri,[78] New Hampshire,[79] North Dakota,[80] Wisconsin,[81] and West Virginia.[82]

VII. Conclusion

That the police power can only be exercised to promote the public health, safety, morals, and welfare is indisputable. Historically, courts were reluctant to equate aesthetic considerations for the general welfare with health and safety. Gradually, the general rule developed that aesthetics could constitute an auxiliary factor to justify regulation but could not be the sole or primary reason. Following the *Berman* and *Stover* decisions, aesthetics began to gain increasing acceptance. That trend continued throughout the 1970's and 1980's and today it appears to represent the majority position.

---

70. Figarsky v. Historic Dist. Comm'n of Norwich, 171 Conn. 198, 368 A.2d 163 (1976) (aesthetic considerations may have a definite relation to public welfare).

71. Petition of Franklin Builders, Inc., 58 Del. 173, 207 A.2d 12 (1964) (upholding billboard regulation).

72. Dills v. Marietta, 674 F.2d 1377 (11th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983) (would have upheld on aesthetic grounds, rather than on overbroad general statement of purpose).

73. Dawson Enter., Inc. v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977).

74. General Outdoor Advertising Co. v. City of Indianapolis, 202 Ind. 85, 172 N.E. 309 (1930).

75. Houston v. Board of Comm'rs of Wichita, 218 Kan. 323, 543 P.2d 1010 (1975) (there is an aesthetic side of municipal development which may be fostered . . . such legislation is merely liberalized application of general welfare purposes).

76. Mayor of Baltimore v. Mano Swartz Inc., 268 Md. 79, 299 A.2d 828 (1973).

77. Sun Oil Co. v. City of Madison Heights, 41 Mich. App. 47, 199 N.W.2d 525 (1972).

78. State *ex rel.* Wilkerson v. Murray, 471 S.W.2d 460 (Mo. 1971), *cert. denied*, 404 U.S. 851 (1971).

79. Piper v. Meredith, 110 N.H. 291, 266 A.2d 103 (1970).

80. Newman Signs, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978).

81. State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955), *cert. denied*, 350 U.S. 841 (1955).

82. Farley v. Graney, 146 W. Va. 22, 119 S.E.2d 833 (1960) (the police power is as broad and comprehensive as the demands of society make necessary).

Concern with aesthetics began with the proliferation of billboards and outdoor advertising around the turn of the century and expanded with increased urbanization into concern over zoning regulations in *Euclid*, *Boraas*, and *Metromedia*. The close nexus between aesthetics and economics in an urban society has provided an impetus for acceptance by many states. While a majority of jurisdictions now seem to approve of aesthetic regulation, the specific instances where it might support such regulation appear to vary significantly. The Supreme Court has been liberal in upholding regulation on aesthetic grounds, leaving it up to the legislative bodies so long as regulation does not infringe upon a constitutional right.

In 1955, Professor Dukeminier proposed that if regulations are to be held invalid, it should not be because they are based on aesthetic considerations but because "they are unreasonable devises [sic] of implementing community policy."[83] The logic and soundness of this argument has finally been accepted by most states in upholding aesthetics regulation as a valid public policy.

Michael Pace

83. Dukeminier, *supra* note 7, at 231.