

## Aesthetic Zoning

### Packet Synopsis

**Aesthetic zoning** or **form-based zoning codes** is evolving as another approach to land use planning and zoning that looks at the essential characteristics of the community and its environment and its perceived image of itself, what it presently is and what it wants to be.

**Aesthetic zoning** is not meant to be a replacement of or for Euclidian zoning (named after the Supreme Court decision in the case *Ambler Realty v. the Village of Euclid, Ohio*), i.e. separating by use, density, etc., but is rather a supplement to more conventional zoning practices.

The frequent and often general assumption by citizen planners and its policy makers, its elected local government officials, is that the private property right trumps that of the state regarding how a person uses and develops his/her/their property. But the Supreme Court in the case *Ambler Realty v. the Village of Euclid, Ohio* and subsequent rulings has determined that the law of the land was otherwise. Side yard setbacks, front and rear yard setbacks, building heights and bulk restrictions on how much of a footprint a structure can occupy on a given lot and what can or can not be built and where are all examples of **aesthetic zoning** within the legal definition of the same.

So yes, a community can control the impact of the “Golden Arches”, the building of an ultra-modern structure in your town’s historic district, or the “monster house” in a neighborhood of traditional 1920 bungalows. Yes, you can implement “traditional neighborhood design” and establish site line or visual standards, landscaping criteria, building materials and such.

Minnesota is one of the majority of state jurisdictions that follows the rule that **aesthetics** alone is sufficient basis for a zoning control. But like all zoning ordinances, care must be taken to insure that they are well written to assure that such factors as uniformity in application, understandability and support of a clear public wish are met; that is any of the tests that an ordinance must address and pass.

The following have been selected from the literature and included in this packet based upon their germaneness to the subject **aesthetic zoning**.

“Design Guidelines: The Law of Aesthetic Control”, Elizabeth A. Garvin, AICP, and Glenn S. LeRoy, AICP, *Land Use Law & Zoning Digest*, American Planning Association, Chicago, April 2003 – This paper reviews and cites the principle legal cases adjudicating the application of aesthetics in land use law. It includes a historical review, legal challenges to design guidelines and advice on drafting defensible guidelines and incorporating them into ordinances.

“Design-based Codes”, Craig S. Lewis, AICP, CNU, The Lawrence Group, Davidson, N.C., March 2003 – This paper also reviews the history of design-based codes from ancient Rome to the present. It identifies the key elements for the successful implementation of design-based

codes and proceeds to make specific pertinent suggestions/recommendations as to code content.

“Design Matters”, Edward T. McMahon, *Planning Commissioners Journal*, No. 21, Burlington, VT, 1996 – This is an opinion piece, but it succinctly states why design equals community image equals social and economic wellbeing.

“An Introduction to Design Guidelines”, Irene Wilson, *Planning Commissioners Journal*, No. 41, Burlington, VT, 2001 – This article briefly attempts to answer such questions as: What are design guidelines; What can design guidelines do for a community; How do design guidelines fit into the local framework; and What are some of the key features of design guidelines. These are all questions that should be asked when a community considers implementing **aesthetic zoning** into its land use regulations.

“Zoning Code – Overview and Summary”, Department of Development and environmental services, King County, WA, November 2003 – This is an excellent example of communicating with your citizen/customer via well-designed Frequently Asked Questions piece. Of note is that King County has design requirements as well as landscaping requirements and mixed use development standards and refers the reader to the specific ordinance sections where these are addressed.

“Zoning: Ready to be Reformed?”, Neal Pierce, *Washington Post Writers Group*, Washington, DC, 2003 – This piece identifies the impetus and focus of **aesthetic zoning** or form-based zoning codes, namely their goal is to focus on what is desired rather than what is forbidden, the latter being the rationale behind Euclidian zoning.

“Zoning Reform Has Begun: Form-based Codes”, National Association of Realtors – This paper expresses the view that form-based codes can better meet the changing needs of the real estate market by permitting more flexibility to the property owner, developer or building owner to build while conforming to the community’s vision.

## **INTERLIBRARY LOAN MATERIALS**

The following on **aesthetic zoning** can be borrowed via MnLINK.

“City Beautiful” [Video recording]: zoning for aesthetics, Christopher Duerksen, AICP’s Planning Training Service, [1999] Chicago, IL 1990.

“The Accomplishment of Aesthetic Purpose under the Police Power”, [microform], Clinton Rodda, Description 76 leaves, Hein’s Legal Theses and Dissertations; 015-00013, 1953.

## **LEGAL NOTES**

**Aesthetic zoning** ordinances can be adopted by counties, cities and townships under Minnesota Statutes which convey to them the power to plan and zone. These are:

**For Townships** - Minnesota Statutes § 366.10 through § 366.18 convey to townships the authority to enact zoning regulations, zoning districts and establish zoning commissions and prescribes the manner in which this is to be done. Minnesota Statutes § 394.33 also conveys to townships the authority to plan and zone with the stipulation that any official controls, after adoption, must not be inconsistent nor less restrictive than any adopted official controls of the county within which it belongs. Minnesota Statutes § 462.352 Definitions, subd. 2. Municipality defines "municipality" to mean any city, including a city operating under a home rule charter, and any town, thereby extending all of the authority granted to municipalities to plan per Minnesota Statutes Chapter 462 - Housing, Redevelopment, Planning, Zoning - to townships as well.

**For Counties** - Minnesota Statutes § 394.21 specifically grants to all counties, except those in the defined seven-county metropolitan Area, the authority to “carry on county planning and zoning.” Minnesota Statutes § 394.23 gives county boards the power and authority to prepare and adopt by ordinance, a comprehensive plan, “a comprehensive plan or plans when adopted by ordinance must be the basis for official controls adopted under the provisions of sections 394.21 to 394.37.”

**For Municipalities** - Minnesota Statutes § 462.353 grants municipalities their authority to plan. Subdivision 1. states, “A municipality may carry on comprehensive municipal planning activities for guiding the future development and improvement of the municipality and may prepare, adopt and amend a comprehensive municipal plan and implement such plan by ordinance and other official actions in accordance with the provisions of sections 462.351 to 462.364.”

The seven metro counties are governed by Minnesota Statutes Chapter 473, the Metropolitan Planning Act.

For cities in the seven-county metropolitan area, Minnesota Statutes § 473.858 - Comprehensive Plans – governs.