ARCHITECTURAL CONTROL JUSTIFIED ON THE BASIS OF PROPERTY VALUE PROTECTION

State ex rel. Stoyanoff v. Berkeley, 458 S.W.2d 305 (Mo. 1970)

Respondent Stoyanoff applied to appellant Building Commissioner for a permit to build a pyramid-shaped residence in Ladue, Missouri, a wealthy suburb of St. Louis. The adjoining neighborhood consists almost exclusively of two-story houses of Colonial, French Provincial, and English design. The permit was refused on the grounds that the plans were not approved by the city's Architectural Board. The Board was charged with a task of denying permits to buildings and structures which it judged grotesque, unsightly, or detrimental to property values.[1]

The trial court issued a peremptory writ of mandamus to compel the issuance of the permit on the ground that the restrictions placed on the use of property by ordinances deprived the owners of their property without due process of law. On appeal, respondent contended that the ordinances in question, since they were based entirely on aesthetic considerations, exceeded the authority of the enabling legislation, sanctioned an unconstitutional exercise of the police power and failed to provide adequate standards for the delegation of legislative power. *Held*: The ordinances are a valid exercise of the police power because they protect property values as well as the beauty of the area.[2]

The Ladue architectural control ordinances are similar to those adopted in many municipalities.[3] Although in all but a few states such ordinances are based on substantially similar enabling legislation,[4] Missouri appears to be one of the few states to have declared such

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1. Ordinance 131, as amended by Ordinance 281 of that city, purports to set up an Architectural Board to approve plans and specifications for buildings and structures erected with the city and in a premble to "conform to certain minimum architectural standards of appearance and conformity with surrounding structures, and that unslightly, grotesque and unsuitable structures, detrimental to the stability of value and the welfare of surrounding property, structures and residents and to the general welfare and happiness of the community, be avoided, and that appropriate standards of beauty and conformity be fostered and encouraged.'

State *ex rel.* Stoyanoff v. Berkeley, 458 S.W.2d 305, 306-07 (Mo. 1970).

2. 458 S.W.2d 305 (Mo. 1970). For an excellent discussion of this case *see* Mandelker, *Stoyanoff: Back to the Barricades*, 22 ZONING DIGEST 288a (1970). In as much as the case was originally heard on a motion for summary judgment, the merits of Stoyanoff's design under the standards contained in the Ladue ordinance were never litigated.

3. 458 S.W.2d at 307-08. *See also* Anderson, *Architectural Controls*, 12 SYRACUSE L. REV. 26, 29 (1960).

4. R. ANDERSON, 1 AMERICAN LAWS OF ZONING § 7-16 at 510 (1968) [hereinafter cited as ANDERSON].

ordinances invalid for exceeding the enabling act.[5] In *State ex rel. Magidson v. Henze*,[6] an architectural control ordinance was declared void because Section 89.020 of the Missouri enabling act[7] obviously "does not grant to the city the right to impose upon the land owner aesthetic controls for the buildings he chooses to erect."[8] The *Berkeley* court finds *Henze* in error for not considering Section 89.040 in conjunction with 89.020.[9] The former section specifies that land use regulations should consider the character of the district involved and the effect on property values. The court holds, essentially, that any police power land use regulation is valid if it promotes the general welfare by advancing the interests articulated in Section 89.040. Thus, if architectural control ordinances promote the general welfare, they are authorized by the Missouri enabling act.[10]

The constitutional test for restrictions on the use of private property

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5. *But see* Piscitelli v. Township Comm. of the Township of Scotch Plains, 103 N.J. Super. 589, 248 A.2d 274 (1968); *see also* Henley, *Beautiful as Well as Sanitary—Architectural Controls by Municipalities*, 59 ILL. BAR. J. 36, 41 (1970).

6. 342 S.W.2d 261 (Mo. App. 1961).

7. MO. REV. STAT. § 89.020 (1969) provides:

> For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings, and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures, and land for trade, industry, residence or other purpose.

8. 342 S.W.2d at 265.

9. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate air and light; to prevent the overcrowding of land; to avoid undue concentration of population; to preserve features of historical significance; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to character of the district and its peculiar suitability for particular uses, and with a view of conserving the values of buildings and encouraging the most appropriate use of land throughout such municipality.

MO. REV. STAT. § 89.040 (1969).

10. This holding is significant because, although most states have similar enabling acts, the particular states which have decided the architectural control question have statutory language somewhat broader than the Missouri statute. Ohio expressly allows municipalities to control building design. OHIO REV. CODE § 713.04 (1954). Wisconsin provides, after language similar to that in note 7 *supra*, that the section "shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. It shall not be deemed limitation (sic) of any power elsewhere granted. WISC. STAT. ANN., § 62.23(7a) (1957). Illinois gives municipalities the right to "prohibit uses, buildings or structures incompatible with the character of such districts." ILL. REV. STAT., ch. 24 § 11.13-1 (1969).

is one of reasonableness.[11] The ordinance will be sustained unless its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, morals, or general welfare."[12] Traditionally, aesthetic considerations alone have not been considered sufficient to justify exercise of the police power,[13] however, the mere presence of aesthetic considerations in juxtaposition with more recognized objectives will not invalidate police power legislation.[14] Courts, in order to uphold primarily aesthetic regulation, have often strained their imagination to find grounds of health, safety, and morality on which to base their decisions.[15] The trend has been toward allowing aesthetic control, but the courts' dicta concerning aesthetics has usually been accompanied by holdings on economic grounds.[16] Today, two jurisdictions have recognized aesthetics alone as a valid justification for exercise of the police power.[17] More often, aesthetic control or zoning ordinances have been upheld because they protected such interests as historical buildings or areas,[18] tourism,[19] or, as in the instant case, property values.[20]

Many arguments have been advanced for the judicial reluctance to

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11. City of St. Paul v. Chicago, St. P., M. & O. Ry., 413 F.2d 762 (8th Cir. 1969).

12. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926).

13. West Palm Beach v. State *ex rel.* Duffy, 158 Fla. 863, 30 So.2d 491 (1947); Anderson v. Shackleford, 74 Fla. 36, 76 So. 343 (1917); *see also* Steiner, *The Law of Zoning in Missouri*, 24 WASH. U.L.Q. 193 (1939).

14. Welch v. Swasey, 214 U.S. 91 (1909).

15. Comment, *Aesthetic Control of Land Use: A House Built Upon the Sand?*, 59 NW. U.L. REV. 372 (1964). One of the most extreme cases is St. Louis Gunning Advertising Co. v. City of St. Louis, 235 Mo. 99, 137 S.W. 929 (1911). In *St. Louis Gunning Advertising Co.*, the Missouri Supreme Court upheld an ordinance that prohibited advertising billboards because "they endanger the public health, promote immorality, constitute hiding places for criminals and all classes miscreants." *Id.* at 145, 137 S.W. at 942.

16. Note, *Aesthetic Zoning: A Current Evaluation of the Law*, 18 U. FLA. L. REV. 430, 437 (1965).

17. People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734, *appeal dismissed*, 375 U.S. 42 (1963); Oregon City v. Hartke, 240 Ore. 35, 400 P.2d 255 (1965).

18. Neef v. Springfield, 380 Ill. 275, 43 N.E.2d 947 (1942); New Orelans v. Levy, 223 La. 14, 64 So. 2d 798 (1953); Opinion of the Justices, 333 Mass. 773, 128 N.E.2d 557 (1955); Town of Dearing *ex rel.* Bittenbender v. Tibbets, 105 N.H. 481, 202 A.2d 232 (1964); Santa Fe v. Gamble, Skogmo, Inc., 73 N.M.2d 410, 389 P.2d 13 (1964).

19. Sunad, Inc. v. City of Sarasota, 122 So.2d 611 (Fla. 1960); Miami Beach v. Ocean and Island Co., 147 Fla. 480, 35 So.2d 384 (1941); Opinion of Justices, 103 N.H. 268, 169 A.2d 762 (1961); Santa Fe v. Gamble, Skogmo, Inc., 73 N.M. 410, 38 P.2d 13 (1964).

20. State *ex rel.* Civillo v. City of New Orleans, 154 La. 271, 97 So.2d 440 (1923); United Advertising Corp. v. Borough of Metuchen, 42 N.J. 1, 198 A.2d 447 (1964); State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217, *cert. denied*, 350 U.S. 841 (1955). For the status of aesthetic zoning in the different states, *see* Note, *Aesthetic Zoning: A Current*

sanction purely aesthetic control.[21] The most important reason is probably the difficulty of formulating adequate standards for determining aesthetic values,[22] especially when historical or touristic considerations are absent. It is obvious, for example, that the preservation of New Orelans Vieux Carre or Santa Fe Spanish architecture advances the general welfare of those communities. In contrast, it is more difficult to determine whether a particular house will affect the beauty or architectural integrity of a residential area. As a consequence, courts in the latter situation, have generally avoided the problem by relying on property values.[23]

Except for the tourism and historical district cases, there has been little litigation on the constitutionality of architectural control ordinances.[24] Except for *Henze*, the cases which invalidate such ordinances do so because of arbitrary or insufficient standards; they do not reach the question of purely aesthetic standards.[25] The two

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Evaluation of the Law, 18 U. FLA. L. REV. 430, 437-38 (1965); Marotti & Selfon, *Aesthetic Zoning and the Police Power*, 46 J. OF URBAN L. 774, 778 (1969).

21. Other reasons which may explain the reluctance of courts to sanction aesthetic controls are: (1) the possibility of descriminating enforcement; (2) the difficulty of drafting precise legislation; and, (3) the possibility that such legislation will stifle creativity if and innovation in the area regulated. Comment, *Zoning, Aesthetics and the First Amendment*, 64 COLUM. L. REV. 81, '84 (1964).

22. People v. Stover, 12 N.Y.2d 465, 470-71, 191 N.E.2d 272, 277, 240 N.Y.S.2d 734, 740-741 (1963) (Van Voorhis dissenting); Presnell v. Leslie, 3 N.Y.2d 384, 394, 144 N.E.2d 381, 387, 165 N.Y.S.2d 488, 497 (1957) (Van Voorhis, J., dissenting); Dukeminer, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218, 225 (1955).

23. ANDERSON § 7.23, 538; State *ex rel.* Saveland Holding Corp. v. Wieland, 269 Wisc. 262, 69 N.W.2d 217, *cert. denied*, 350 U.S. 841 (1955); Reid v. Architectural Board of Review, 119 Ohio App. 67, 192 N.E.2d 74 (1963); General Outdoor Advertising Co. v. Dept. of Pub. Works, 289 Mass. 149, 193 N.E. 799, *appeal dismissed sub nom.* General Outdoor Advertising Co. v. Callahan, 296 U.S. 534 (1935).

"The Board shall disapprove the application it determines the proposed structures will constitute an unsightly, grotesque or unsuitable in appearance, detrimental to the welfare of surrounding property or residents." 458 S.W.2d at 309-10.

24. A possible explanation for the lack of litigation may be that many of the ordinance were enacted with persuasion rather than enforcement in mind. Anderson, *Architectural Controls*, 12 SYRACUSE L. REV. 26, 43 (1960).

25. West Palm Beach v. State *ex rel.* Duffy, 158 Fla. 863, 30 So.2d 491 (1947), held that a requirement that all new buildings "substantially equal" existing construction in "appearance, square foot area and height" did not provide sufficient standards. In Hawkins v. Borough of Rockleigh, 55 N.J. Super, 132, 150 A.2d 63 (1959), an ordinance requiring all new houses to be of "early American" design was struck down as clearly unreasonable and arbitrary in light of the actual physical development of the municipality in question. More recently, Pacesetter Homes, Inc., v. Village of Olympia Fields, 104 Ill. App.2d 218, 244 N.E.2d 369 (1968), voided an ordinance which gave the Building Commissioner and the Architectural Advisory Committee authority to disapprove any applications which they believed might cause any of several "bad effects" in the community. Also, *Berkeley*, apart from the enabling act question, distinguishes *Henze* on the

jurisdictions which, before *Berkeley*, expressly upheld architectural controls incorporated, at least to some extent, the property standard.

State ex rel. Saveland Holding Corp. v. Wieland,[26] the first case to uphold an architectural control ordinance on other than historical or touristic grounds, is based totally on the effect of aesthetic regulation on property values. The Wisconsin ordinance provided that the Building Board determine whether proposed structures would substantially depreciate property values.[27] The court held that the Board's discretion in deciding whether a proposed building would injure property values was a sufficient standard.

Reid v. Architectural Board of Review[28] combined the protection of property values with other objectives. Mrs. Reid, the plaintiff, wished to construct a house of radical design in a district of two-story conventional dwellings, but was denied a building permit. The Board was limited in its discretion to accomplishment of three purposes: first, to protect the property on which the building was to be constructed; second, to maintain a high standard of community development; and, third, to protect real estate from impairment or destruction of value.[29] The court held these standards to be sufficient, but did not distinguish among them. Thus, it is difficult in *Reid* to assess the role of the property value standard. It might be significant, though, that without the provisions for property value protection, the only remaining standard would be the rather vague "high standard of community development."

Judge Corrigan, dissenting in *Reid*,[30] disagrees with the factual finding that property values would be impaired by the proposed residence, and therefore disapproves of the result on the grounds that the municipality's regulatory power cannot be exercised for aesthetic reasons alone. He implies that if the Board's decision actually based on a threat to property values, he would uphold the result.[31]

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grounds that the Ladue ordinances, unlike the ordinance reviewed in *Henze*, contain adequate standards.

26. 269 Wis. 262, 69 N.W.2d 217, *cert. denied*, 350 U.S. 841 (1955).

27. *Id.* at 265, 69 N.W.2d at 219.

28. 119 Ohio App. 67, 192 N.E.2d 74 (1963).

29. *Id.* at 68, 192 N.E.2d at 76.

30. *Id.* at 71, 192 N.E.2d at 78.

31. "Therefore, the question presented . . . is: does the Board have the right to prohibit a citizen from building a house that does not conform to the other houses in the neighborhood . . . on aesthetic considerations alone, where the design and plans of such house meet the zoning and building requirements and will not threaten, endanger, or impair the public health, safety, or welfare, and will not impair property values in the neighborhood." *Id.* at 745, 192 N.E.2d at 80. Judge Corrigan also considers the basic social question: "Should her (appellant's) aesthetic

Berkeley, instead of upholding the constitutionality of purely aesthetic regulation,[32] follows *Wieland* and *Reid* by making the validity of architectural control legislation contingent on the protection of property values. This approach does indeed provide an operable test for limiting aesthetic restrictions on the use of property.[33] It is questionable, however, whether the protection of property values is a desireable, or even an effective, standard for architectural control. The real purpose of architectural control ordinances is to beautify the community, not to enrich property owners.[34] Moreover, the protection of property values does not necessarily insure the enhancement of community appearance.[35] The property value standard is undoubtedly convenient, but there is no reason to suppose that manageable standards based directly on the aesthetic principle in question cannot be developed,[36] especially since liberation of aesthetics from property values would provide a sound basis for comprehensive community aesthetic planning which in turn would serve as a foundation for judicial review.[37]

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sensibilities in connection with her selection of design for her proposed home be stifled because of the apparent belief in this community of the group as a source of creativity." Id. at 76, 192 N.E.2d at 81. *See also* cases cited note 22 *supra.*

32. New York and Oregon have so held, *see* cases cited note 17 *supra.*

33. *See* Comment, *Zoning, Aesthetics, and the First Amendment*, 64 COLUM. L. REV. 81, 92-93 (1964).

34. *See* Note, *Aesthetic Zoning: A Current Evaluation of the Law*, 18 U. FLA. L. REV. 430, 439 (1965).

35. Comment, *Aesthetic Control of Land Use: A House Built Upon the Sand?*, 59 NW. U.L. REV. 372, 389 (1964).

36. *See* Anderson, *Architectural Controls*, 12 SYRACUSE L. REV. 26, 45 (1960).

37. *See id.* 48.