



# Think Quality - Think Future


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## Blount County Planning Department

Blount County Courthouse - 327 Court Street  
Maryville, Tennessee 37804-5906  
Tel. (423) 984-3620 Fax (423) 977-1276

### MEMORANDUM

**TO:** Members of the Blount County Planning Commission

**FROM:** John Lamb 

**DATE:** March 8, 1999

**SUBJECT:** Esthetic considerations in land use regulations.

At several meetings on long range planning, discussions included statements that esthetic considerations were not valid bases for land use regulations. Attached are two Tennessee Supreme Court Cases on this matter for your information.

First, *City of Norris v. Miles H. Bradford* in 1958 finds that esthetic considerations are not valid bases for regulations promulgated under the police power.

Second, *State of Tennessee v. Elmer Smith, Jr.* in 1981 finds that esthetic considerations may be valid bases for regulations promulgated under the police power.

The 1981 Court stated that the *Norris v. Bradford* case should not be applied to all esthetic concerns and does not represent the prevailing views of the Court on the subject of esthetics as a basis of regulation.

Based on the 1981 Court finding, staff advises that esthetic considerations may be a valid consideration in discussions of land use regulations, but at the same time, there should be a clear relationship between the esthetic consideration and the protection of public health, safety and welfare.

read the record no such precise order was given. It does not appear that the doctor with the full knowledge of the fact that Mr. Coker was continuing to work, ever warned him against working, and it does not appear that he ever in unequivocal terms brought home to this man the fact that in doing his usual work he was placing himself in imminent peril.

At any rate this man worked at different intervals over a period of 18 months prior to his death, after being advised of his condition and he had gotten along reasonably well during that time and there is nothing as far as the record shows that on the day in question he was doing anything different from what he had been doing off and on for the last 18 months. He of course might have forgotten that a year and one half before the doctor had warned him against such work. The fact that he had engaged in this during this time was certainly sufficient to take the fact away from his immediate consciousness that he was in immediate danger.

As we see it at the most this was not a willful act on the part of the deceased, it was certainly inadvertence and a mistake of judgment as it has turned out, but inadvertence or mistake of judgment or negligence, or even gross negligence, fall far short of being willful misconduct under the authorities above cited.

Thus it is that after giving this matter considerable thought and investigation and listening to the able arguments and reading and re-reading the briefs herein, and authorities, we are firmly convinced that there was no willful misconduct on the part of this deceased as would prohibit a recovery under the statute above referred to.

[4] This problem of willful misconduct as well as the question of whether or not there is any evidence to show that a previous disability was aggravated or exaggerated to the extent of bringing about the compensable action herein is a question

of fact, not of law, and a finding of fact on this point by the trial judge based on medical testimony, as it was, as we have shown above, will not be disturbed by us on appeal.

Thus it is that we are convinced that the trial judge reached the correct conclusion under the facts of this case and the law applicable thereto. His judgment will be affirmed with costs.



**CITY OF NORRIS**

v.

**Miles H. BRADFORD.**

Supreme Court of Tennessee.

Dec. 12, 1958.

Rehearing Denied Jan. 23, 1959.

Zoning case. The Chancery Court, Anderson County, Joe M. Carden, Chancellor, decreed the ordinance to be invalid, and an appeal was taken. The Supreme Court, Tomlinson, J., held that only result which would be accomplished by Norris ordinance, prohibiting front yard fences in residential areas, would be aesthetic, and that therefore such ordinance was not valid exercise of police power.

Affirmed.

**1. Municipal Corporations ↻589**

Police power can be exercised to deprive landowner of normal uses of his property, without compensation, only when safety, health, morals, comfort and welfare of community will be promoted thereby.

**2. Municipal Corporations ↻63(2)**

Judiciary may interfere with decision of Legislature to exercise police power only

if it finds that there is no reasonable connection or relation between limitation imposed and public safety, health, morals, comfort and welfare of people.

### 3. Municipal Corporations ⇨589

Aesthetic considerations will not justify exercise of police power.

### 4. Municipal Corporations ⇨622

Only result which would be accomplished by Norris ordinance, prohibiting front yard fences in residential areas, would be aesthetic, and, therefore, such ordinance was not valid exercise of police power. Const. art. 1, § 8; U.S.C.A. Const. Amend. 14.

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Frank W. Wilson, Wilson & Joyce, Oak Ridge, for appellant.

Jesse J. Guin, Jr., Guin & Cowan, Oak Ridge, James H. McConkey, Chattanooga, for appellee.

TOMLINSON, Justice.

Section 32.1(e) of the zoning ordinance of the City of Norris prohibits the erection of fences in the front yards of residences in districts which the ordinance has designated as residential, unless its Board of Zoning Appeals, acting under the authority of Section 32.2(i) gives its permission. In that event, the height of such front yard fence is limited to three (3) feet. The Chancellor adjudged this prohibition to be a violation of the due process clauses of the Tennessee Constitution, Article 1, Section 8, and of the 14th Amendment to the Federal Constitution, respectively, in that it is an attempt, in the Chancellor's opinion, to exercise the police power of the sovereign "for purely esthetic considerations". He so interpreted the effect of the no fence provision of the ordinance. The City of Norris has appealed.

The only decisions which any one connected with this case, Court or Solicitors, has been able to find wherein is raised the

question as to the validity of a prohibition or regulation in a zoning ordinance of the erection of fences within a given zoned district are the two cases cited in the briefs of solicitors, to-wit, the North Carolina case of *In re Appeal of Parker*, 214 N.C. 51, 197 S.E. 706, and the Wisconsin case of *Williams v. City of Hudson*, 219 Wis. 119, 262 N.W. 607. The Wisconsin case considered a regulation as to the type of fence designated to be constitutionally invalid. In the North Carolina case there were considerations additional to that which might be considered esthetic only. Neither case is much in point here.

[1-4] In so far as the ordinance of the City of Norris prohibits the owner of a residence from erecting a fence across his front yard, to that extent this ordinance deprives such owner of one of the normal uses of his property, and without being paid for such deprivation. Such proposed prohibition can only be justified, therefore, by virtue of the police power of the sovereign.

The exercise of the police power can be invoked only when the deprivation of such use is deemed with reason by the Legislature "expedient to promote and protect the safety, health, morals, comfort and welfare of the people". The judiciary may interfere with such decision of the Legislature only if it finds that there is no reasonable connection or relation between the limitation imposed and the public safety, health, morals, comfort and welfare of the people. *Spencer-Sturla Company v. City of Memphis*, 155 Tenn. 70, 290 S.W. 608; *Meador v. City of Nashville*, 188 Tenn. 441, 220 S.W.2d 876.

As is apparent from that above stated, two questions which must be determined in the instant case are (1) what is the result to the people or community as a unit of the no-fence provision of the City of Norris zoning ordinance, and, (2) if such result be esthetic only, is such prohibition a legitimate exercise of the police power of the sovereign? If not, the provision must be adjudged invalid.

The ordinance permits "fences and walls not to exceed six feet in height" along the side yard and the rear yard. It defines the front yard as extending across the lot "between the principal building and the front lot line".

In so far as it affects the community as a unit, this Court is unable to imagine any good that may be bestowed, or any evil that may be prevented, by the absence of a fence in the front yard of a residence while allowing one in its side and back yard other than the thought that the absence of such front yard fence might be regarded as a physical situation which adds to the beauty of this residential section as one looks thereon in traveling through its streets.

In so far as this Court can conceive, no function of the City in the care of its streets will be interfered with by the existence of a fence on the front property line of the residence or the extension of such fence on either side to a point in line with the front of the residence. The traveling rights of the public cannot possibly be involved. The absence of such fence neither adds to nor lessens any traffic hazard. Nor does such absence increase or diminish any fire hazard. It can have no effect upon congestion. Nor will the presence or absence of such a fence, in so far as can be perceived, detract from, or add anything to, the safety, morals, health or well being of the people as a unit in any respect, in so far as can be reasonably anticipated.

It must, therefore, be concluded that the sole accomplishment of the prohibition in question is supposedly to increase the physical beauty of this residential section. That is, the result of the exercise of the police power in the enactment of this provision is purely esthetic, as found by the Chancellor. So we reach the question of whether the prohibition of such ordinary use by a property owner of his real estate is within the limitations of the police power of the sovereign when the result of such prohibition is solely esthetic.

321 S.W.2d—35

Tenn. Dec. 320-325 S.W.2d—3

The only direct declaration of a Tennessee Court which we find upon the question is *State v. Newton*, 3 Tenn. Civ. App. 93, 106-107, where the Court says:

"But if the purpose were purely aesthetic, the impairment of property rights, even upon payment of compensation, would not pass unchallenged." Freund on Police Power, Section 181.

\* \* \*

"It is too well settled to require further citation of authorities, that mere aesthetic considerations form no ground upon which to pass an ordinance."

Text writers and decisions of Courts of last resort of other jurisdictions support,—overwhelmingly, it seems,—the foregoing statement of our Court of Civil Appeals, in so far as it applies to a zoning ordinance.

The text of 16 C.J.S. Constitutional Law § 195, pages 939-940, after observing that esthetic considerations, if other valid reasons exist, may be considered, then continues, with citation of numerous authorities in support, as follows:

"Nevertheless, it is held that esthetic conditions alone are insufficient to support the invocation of the police power, \* \* \*."

58 American Jurisprudence, page 959, Zoning, Section 30, reads thus, citing cases:

"The rule generally supported is that the zoning power may not be exercised for purely esthetic considerations. \* \* A reason submitted for the general principle that the zoning power may not be exercised for purely esthetic considerations is that while public health, safety, and morals, which make for the public welfare, submit to reasonable definition and delimitations, the realm of the esthetic varies with the wide variation of tastes and culture."

This text observes that the question "cannot be said to be conclusively settled".

The cases holding esthetic considerations alone will not justify the exercise of the police power in zoning cases are numerous. References to only a few thereof will suffice, and prevent an unduly lengthening of this opinion.

In the Massachusetts case of *In General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799, 814, 815, the Court said:

"It has been decided quite generally, if not universally, by courts in which the question has been raised, that aesthetic considerations alone or as the main end do not afford sufficient foundation for imposing limitations upon the use of property under the police power."

See also *Spann v. Dallas*, 111 Tex. 350, 235 S.W. 513, 19 A.L.R. 1387; *Appeal of White*, 287 Pa. 259, 134 A. 409, 53 A.L.R. 1215, 1220; *State Bank & Trust Company v. Village of Wilmette*, 358 Ill. 311, 193 N.E. 131, 96 A.L.R. 1327, 1333-1334.

Courts very properly have placed a liberal construction in favor of the extent of the legal authority of the Legislature or municipality to which such authority is delegated in exercising the police power of the sovereign. This is because the Court recognizes that such police power "is of vast and undefined extent, expanding and enlarging in the multiplicity of its activities as exigencies demanding its service arise in the development of our complex civilization." *Spencer-Sturla Co. v. City of Memphis*, 155 Tenn. 70, 84, 290 S.W. 608, 613. But "there must in the very nature of things be some limit to it, for otherwise the guaranties of written Constitutions would be little more than mere precatory and directory suggestions without force or life, affording to the citizen only a false and illusory protection against the invasion of his rights by the state, and his security would depend, not upon constitutional guaranties, but upon the will of the state in exercising an unlimited police

power." *Goldman v. Crowther*, 147 Md. 282, 128 A. 50, 54, 38 A.L.R. 1455, 1460.

The police power inherent in the sovereign is born of necessity for the protection and advancement of the public safety, health, morals and natural well being of its people. If a given exercise of such power in forbidding a natural use of one's realty fails to accomplish that result, then the proposed exercise thereof is of no validity. Under practically all the authorities there falls within this invalid class those provisions of a zoning ordinance which accomplishes a result which is solely esthetic.

Since Section 32.1(e) of the zoning ordinance of the City of Norris accomplishes a result that is solely esthetic in forbidding the erection of a fence across the front yard of a residence premises, it follows that this section of the ordinance is a violation of the constitutional provisions mentioned; hence, invalid.

The decree of the Chancellor so holding will be affirmed with costs adjudged against the City of Norris.



**Allandro PIERACCINI and Umberto Pieraccini, Individually and d/b/a Rainbow Rollerdrome,**

v.

**Frances CRENSHAW and Gordon Crenshaw.**

Supreme Court of Tennessee.

Jan. 23, 1959.

Rehearing Denied March 12, 1959.

Action against skating rink operators to recover for injuries sustained by patron in fall. The Circuit Court, Shelby County, Andrew O. Holmes, J., rendered judgment

STATE of Tennessee, Plaintiff-Appellee,

v.

Elmer SMITH, Jr., Defendant-Appellant.

Supreme Court of Tennessee.

July 6, 1981.

Defendant was convicted in the Law Court, Sevier County, William R. Holt, Jr., J., of violating statutes regulating operation of automobile graveyards or junkyards. Defendant appealed. The Supreme Court, Harbison, C. J., held that: (1) legislative declaration of need for regulation is not conclusive upon courts, but where property owner had ample opportunity to offer evidence that, as applied to his property, nothing but aesthetic purposes was served by statutes regulating operation of automobile graveyards or junkyards in areas adjacent to interstate and primary systems and prohibiting vehicle junkyards within 1,000 feet of state roadway without permit, court could not say that legislation served nothing but aesthetic purposes, and (2) in modern society, aesthetic considerations may well constitute legitimate basis for exercise of police power, depending on facts and circumstances.

Affirmed.

### 1. Highways ⇌153.5

Legislative declaration of need for regulation is not conclusive upon courts, but where property owner had ample opportunity to offer evidence that, as applied to his property, nothing but aesthetic purposes was served by statutes regulating operation of automobile graveyards or junkyards in areas adjacent to interstate and primary systems and prohibiting vehicle junkyards within 1,000 feet of state roadway without permit, courts could not say that legislation served nothing but aesthetic purposes. T.C.A. §§ 54-5-901 to 54-5-905, 54-5-902, 54-17-108 to 54-17-112, 54-20-101 to 54-20-121, 54-21-101 to 54-21-118.

### 2. Constitutional Law ⇌81

In modern society, aesthetic considerations may well constitute legitimate basis for exercise of police power, depending on facts and circumstances. T.C.A. §§ 54-5-901 to 54-5-905, 54-5-902, 54-17-108 to 54-17-112, 54-20-101 to 54-20-121, 54-21-101 to 54-21-118.

Gary R. Wade, Sevierville, for defendant-appellant.

Al Schmutzer, Jr., Dist. Atty. Gen., Richard Vance, Asst. Dist. Atty. Gen., Sevierville, Claudius C. Smith, Asst. Atty. Gen., Nashville, for plaintiff-appellee; William M. Leech, Jr., Atty. Gen., of counsel.

### OPINION

HARBISON, Chief Justice.

Appellant was convicted for violation of statutes regulating the operation of automobile graveyards or junkyards. T.C.A. §§ 54-5-901 to 905 and T.C.A. §§ 54-20-101 to 121. His conduct consisted of establishing an automobile junkyard after 1965 within a prohibited distance from a state highway and operating the same without a proper permit or license. We affirm the convictions.

Appellant concedes that both sets of statutes apply to his property and his business site if they are valid. The earlier statutes, T.C.A. §§ 54-5-901 to 905, were enacted in 1965. They prohibit the establishment of "automobile graveyards" within one thousand feet of certain "through routes" after their effective date. T.C.A. § 54-5-902. The later statutes, T.C.A. §§ 54-20-101 to 121, regulate junkyards in general, including "automobile graveyards" and "vehicle junkyards," as well as other types of waste or junk storage such as garbage dumps and sanitary fills. Apparently there is no insistence that the later statutes repealed or modified the earlier ones insofar as they affect appellant.

Appellant insists that both sets of statutes are unconstitutional and represent an improper exercise of the state's police pow-

er upon the single ground that both rest entirely upon aesthetic considerations.<sup>1</sup>

These proceedings were instituted by the issuance of criminal warrants in the General Sessions Court of Sevier County. A separate warrant was issued under each set of statutes. Appeal was taken from a conviction and fine imposed under each warrant. Almost no evidentiary record was developed in the circuit court. The case was disposed of there upon a short stipulation of facts and very brief testimony from appellant.

The stipulation established that appellant commenced his business in February 1980 upon a five-acre leased tract. The property fronts upon State Highway 66, and the business is located within one thousand feet of this highway. Appellant did not have a permit as required by T.C.A. § 54-20-113. The junkyard is situated within view of the highway. The property is not zoned or otherwise designated by any local governing body for use as a vehicle junkyard. The "area in question" where the tract is situated is sparsely populated, unincorporated, rural and consists primarily of farm land. The size of the "area" and its proximity to a city or town are not specified in the stipulation. There are statements of counsel that the highway is rather well-traveled and leads to a reservoir and recreational part which "is heavily used in the summer time." It was stipulated that the topography is such that a fence would not substantially hide the junkyard from public view, although one portion near a barn could be concealed by a fence. There is an unsworn statement in the record by patrolman that the barn is upon a hillside, situated two hundred fifty to three hundred yards from the highway. A used car lot and a "tire place" exist within three-tenths of a mile from the site.

1. It is somewhat difficult for us to ascertain whether appellant contends that such statutes, under all circumstances, are invalid and that they could never be the subject of proper exercise of the police power, or whether he confines his attack to their application to him and his particular situation. We have concluded that his attack is limited to the application of the statutes to his case. We would certainly not be

Upon this record appellant apparently insists that he is entitled to a finding of fact that, as applied to his business, the only purpose served by the regulatory statutes is an aesthetic one, to enhance the beauty of the landscape. The evidence does not justify such a finding.

In enacting the most recent of the statutes, the General Assembly included the following statement:

"For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state. The general assembly hereby finds and declares that junkyards which do not conform to the requirements of this chapter are public nuisances." T.C.A. § 54-20-102.

This statute was enacted in 1967. By supplementary provisions effective July 1, 1974, vehicle junkyards were prohibited within one thousand feet of a state roadway without a current vehicle junkyard concealment control permit, issued by the Commissioner of Safety, except those located in areas zoned for industrial use. T.C.A. § 54-20-113.

Only if we could say that these statutes have no reasonable relation whatever to safety, health, welfare, public investment in highways or convenience of public travel, as applied to the site in question, would we reach the broad proposition asserted by appellant that the statutes promote aesthetic goals only. There is no such factual showing in this record.

prepared to hold that the General Assembly lacks power ever to regulate junkyards, advertising and other enterprises along and adjacent to national and state roadways. See *e. g.*, T.C.A. §§ 54-17-108 to 112, regulating junkyards, advertising and trash disposal upon "scenic highways," and T.C.A. §§ 54-21-101 to 118, "The Billboard Regulation and Control Act of 1972."

From such brief evidence as is in it, we are not prepared to find that the regulatory statutes are totally and completely unrelated to highway safety, maintenance and other purposes referred to by the legislature which are not necessarily wholly aesthetic in nature.

Appellant relies principally upon the case of *City of Norris v. Bradford*, 204 Tenn. 319, 321 S.W.2d 543 (1958), in which this Court held invalid a local zoning ordinance prohibiting fences on residential lawns fronting on streets. In the course of that opinion the Court did state that exercise of the police power based solely upon aesthetic considerations could not be sustained. Appellant also relies upon language contained in *Hagaman v. Slaughter*, 49 Tenn.App. 338, 354 S.W.2d 818 (1961), in which the Court sustained an injunction against the operation of a junkyard as a public nuisance, but modified the relief granted by the chancellor so as to allow further operations if they could be conducted without certain offensive aspects.

Appellant seems to concede that if other factors than aesthetics, such as traffic safety and the protection of the public investment in highways, did justify the statutory regulations involved here, then aesthetic considerations, in addition, might be taken into account by a legislative body. As stated, appellant has not eliminated such other factors in this case, nor has he contradicted the legislative declaration that those factors prompted the General Assembly to enact the statutes.

It is true that there are limits upon the exercise of the police power of state and local governments. See *Livesay v. Tennessee Board of Examiners in Watchmaking*, 204 Tenn. 500, 322 S.W.2d 209 (1959). However, in the case of *Ford Motor Co. v. Pace*, 206 Tenn. 559, 564, 335 S.W.2d 360, 362 (1960), upholding a statute regulating the licensing of automobile dealers and salesmen, this Court said:

"In considering the question, whether or not the Legislature has the right to enact such a statute under the police power, we must take into consideration

and look at things in the light of the social and economic conditions existing at the present time rather than at the time our Constitution was adopted. Legislative power is not static and helpless but arises to adjust and face new conditions as they appear to affect the people of the State. Of course, the Legislature of the State cannot prohibit an ordinary business but it may, however, regulate the business to promote the health, safety, morals or general welfare of the public. The guarantees of the Constitution imply the absence of arbitrary restraint, but not immunity from reasonable regulations and prohibitions imposed in the interest of the people of the State."

[1] Certainly a legislative declaration of the need for regulation is not conclusive upon the courts. Nevertheless, as stated in the *Pace* case, *supra* :

"It makes no difference what our personal views may be as to the necessity of such legislation as that herein, the fact remains that the Legislature of the State concluded that a reasonable basis existed for its enactment, and, there being some foundation in fact to justify this legislative action, the Court is powerless and it wouldn't be right on our part for us to substitute our judgment for that of the Legislature even if we cared to do so." 206 Tenn. at 567-68, 335 S.W.2d at 363.

See also *Chapdelaine v. Tenn. State Bd. of Examiners*, 541 S.W.2d 786 (Tenn.1976); *Mobile Home City of Chattanooga v. Hamilton County*, 552 S.W.2d 86, 88 (Tenn.App.1977), *cert. denied*, 431 U.S. 956, 97 S.Ct. 2678, 53 L.Ed.2d 273 (1977) (if reasonableness of legislative classification be "fairly debatable" it must be upheld).

Appellant had ample opportunity in this case to offer evidence that, as applied to his property, the legislation served nothing but aesthetic purposes. He wholly failed to do so. There are no photographs, testimony describing the highway, its intersection with the road leading to appellant's business, the nature and scope of that business, the area covered by the junkyard or traffic into and out of the premises. We simply

cannot conclude from the record that aesthetics alone constitute the only conceivable basis for application of the statutes to appellant.

[2] Wholly apart from this, however, as pointed out by appellee, in recent years most courts which have considered junkyard regulations similar to those involved here have had no difficulty in sustaining them as a proper exercise of the police power of a state or local government, even if scenic or aesthetic considerations have been found to be the only basis for their enactment. See *Rotenberg v. City of Ft. Pierce*, 202 So.2d 782 (Fla.App.1967); *Jasper v. Commonwealth*, 375 S.W.2d 709 (Ky. 1964); *Deimeke v. State Highway Commission*, 444 S.W.2d 480 (Mo.1969); *National Used Cars, Inc. v. City of Kalamazoo*, 61 Mich.App. 520, 233 N.W.2d 64 (1975); *State v. Buckley*, 16 Ohio St.2d 128, 243 N.E.2d 66 (1968); *Farley v. Graney*, 146 W.Va. 22, 119 S.E.2d 833 (1960).

Although some authorities to the contrary may be found, we find these cases to be better reasoned and more in accord with modern concerns for environmental protection, control of pollution and prevention of unsightliness. We believe that the views expressed in *City of Norris v. Bradford*, *supra*, must be considered in the light of the facts of that case and that they cannot be literally applied to all of the myriad concerns and problems facing state and local governments at this time.

As appellee further points out, there has been a strong trend toward upholding state and local regulation of land use in other areas than junkyard control, even though aesthetic considerations constitute the sole or primary reason for the legislation. The rule stated in *City of Norris v. Bradford*, *supra*, in our opinion, no longer represents the prevailing view on that subject. In addition to the authorities previously cited, see *Penn. Central Transport Co. v. New York City*, 438 U.S. 104, 129, 98 S.Ct. 2646, 2661, 57 L.Ed.2d 631 (1978) (land use restrictions may be enacted "to enhance the quality of life by preserving the character and desirable aesthetic features of a city");

*Berman v. Parker*, 348 U.S. 26, 33, 75 S.Ct. 98, 102, 99 L.Ed. 27 (1954) (legislature may determine that "the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"); *Stone v. City of Maitland*, 446 F.2d 83, 89 (5th Cir. 1971) (zoning ordinances restricting size and location of service station sites upheld—"enhancement of the aesthetic appeal of a community is a proper exercise of police power"); *Sunad, Inc. v. City of Sarasota*, 122 So.2d 611 (Fla. 1960) (aesthetic considerations sufficiently justified regulating advertising signs, but regulation in question held unreasonable and discriminatory on particular facts); *John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.*, 369 Mass. 206, 339 N.E.2d 709 (1975) (off-premises advertising signs prohibited for purely aesthetic reasons; ordinance held valid exercise of police power); *Mississippi State Highway Commission v. Roberts Enterprises*, 304 So.2d 637 (Miss. 1974) (Outdoor Advertising Act upheld); *Westfield Motor Sales Co. v. Town of Westfield*, 129 N.J.Super. 528, 324 A.2d 113 (1974) (limitation upon size of signs in residential areas held valid); *People v. Stover*, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272 (1963) (prohibition of clotheslines in front yards of residential neighborhoods sustained); see also 8 McQuillin, *Municipal Corporations* § 25.31 (3d ed. 1976).

We therefore are of the opinion that in modern society aesthetic considerations may well constitute a legitimate basis for the exercise of police power, depending upon the facts and circumstances. Since that factor is by no means the only one shown to have controlled the enactment and enforcement of the statutes now under consideration, however, we have no hesitancy in upholding the validity of the statutes in general and their application to appellant in this case.

The judgment of the circuit court is affirmed. Costs incident to the appeal are taxed to appellant; the cause will be remanded to the trial court for collection of costs accrued there.

FONES, COOPER, BROCK and DROWOTA, JJ., concur.