# The Evolving Meaning of Aesthetics in Land-Use Regulation

James P. Karp*

"Why, who makes much of a miracle?
As to me I know nothing else but miracles,
Whether I walk the streets of Manhattan,
Or dart my sight over the roofs of houses toward the sky,
Or wade with naked feet along the beach just in the edge of the water,
Or stand under trees in the woods. . . ."

Miracles - Walt Whitman[1]

Walt Whitman called it miracles. A less poetic word for it is "aesthetics." The attempt to preserve and protect it is what lies behind legislation and administrative regulations whose stated purpose is to keep Manhattan attractive, to preserve the views of city and suburb, to protect beaches and woods, and maintain certain qualities of other natural or human-made environments.

The concept of aesthetics is pehaps more amenable to poetic contemplation than to legal analysis. Nevertheless, it is a concept that must be analyzed in a legal framework because of the prominent role it plays in land use regulation.[2] Aesthetics, standing alone, has gained acceptance as a valid purpose of regulation.

This article argues that as aesthetics-based regulation has gained acceptance, its meaning in the law has evolved. Aesthetics in land use regulation can no longer be equated with visual beauty or the prevention of community harm. Nor is it synonymous, as Professor Costonis contends in his classic article "Law and Aesthetics,"[3] with the concept of the shared human values of a community. Rather, the aesthetic basis for contemporary land use regulation must be explained as incorporating humankind's

* James P. Karp is a professor at the School of Management at Syracuse University.

1. WALT WHITMAN: COMPLETE POETRY & SELECTED PROSE AND LETTERS 354 (1971) (Emory Holloway, ed.).

2. Costonis, *Law and Aesthetics: A Critique and a Reformation of the Dilemmas*, 80 MICH. L. REV. 355, 361 (1982).

3. *See* Costonis *supra* note 2.

growing desire to achieve harmony between the natural and human environments, to balance human needs with the role of humankind as a part of the natural ecosystem.

Part II discusses the varying meaning given to the word "aesthetics" by other legal and non-legal writers. I describe the uncertain character of aesthetics and its various meanings in law. Part III provides a brief explanation of the judicial history of aesthetics-based regulations. In Part IV, I show that aesthetics has gained wide acceptance as a valid basis for regulation. Part V sets forth my thesis that the meaning of aesthetics has changed to incorporate a desire for environmental harmony.

## II. THE MEANING OF AESTHETICS

A dictionary definition of aesthetics is that it pertains to the branch of philosophy relating to the nature and forms of beauty as found in the fine arts.[4] Alexander Baumgarter, credited with coining the word aesthetics, called it "that branch of science which deals with beauty."[5] The leading case on aesthetics from the United States Supreme Court, *Berman v. Parker*,[6] also speaks of aesthetics as being related to beauty, but does not narrowly confine it to beauty in the fine arts.[7]

A second meaning courts have frequently attached to the concept of aesthetics is the prevention of nuisance-type harms.[8] This rationale for regulation of aesthetics under the police power undoubtedly continues to be favored because it seems more objec-

4. FUNK AND WAGNALLS STANDARD COLLEGE DICTIONARY, 454, 1977.

5. OFFICE OF RESEARCH AND DEVELOPMENT, U.S. ENVTL. PROTECTION AGENCY, AESTHETICS IN ENVIRONMENTAL PLANNING 9 (1973) (quoting A. BAUMGARTEN, AESTHETICS (1750)).

6. 348 U.S. 26 (1954).

7. An extensive article on aesthetics equates the concept with beauty in the landscape. *See* Brooks & Lavigne, *Aesthetic Theory and Landscape Protection: The Many Meanings of Beauty and Their Implications for the Design, Control and Protection of Vermont's Landscape*, 4 J. OF ENVTL. L. 129 (1985). The chief value of the article is its attempt to locate aesthetics' philosophical home. Brooks and Lavigne ponder whether aesthetics is simply a matter of individual taste (extreme subjectivity), or a concept the parameters of which can be derived by experts applying the scientific method (objective cognitive), or a reflection of community consensus regarding the beauty of the landscape (moderate relativism), or a product of our broader common experience through culture, history, social life and ethical interaction (moral objectivism).

8. *See, e.g.*, People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 276, *appeal dismissed*, 375 U.S. 42 (1963); Oregon City v. Hartke, 240 Or. 35, 400 P.2d 255, 261 (1965).

tive than the visual beauty rationale.[9] It is also more securely rooted in the history of land use regulation.[10]

In "Law and Aesthetics,"[11] Professor Costonis proposes that aesthetics-based regulation is the result of the desire of communities for associational harmony. The notion of associational harmony goes beyond visual beauty or prevention of nuisance-type harms. It focuses on shared human values and the community's need for cultural stability. Professor Costonis argues that aesthetics-based regulations are the way the community retains its cultural stability while allowing new entrants. Modern statutes and ordinances preserving landmarks and historic districts are a good illustration of the associational harmony thesis.[12]

These different views of the meaning of aesthetics in land use regulation can be made compatible by viewing aesthetics as an evolving concept. While none of the three definitions can be confined entirely to a particular historical period, each has predominated at different times and helps explain different types of aesthetics-based regulation. The evolution of the concept has accompanied and been made possible by the increased acceptance of aesthetics-based regulation by courts. As courts became more comfortable with the concept of aesthetics, its meaning expanded and branched away from notions of visual beauty and prevention of harm.

The most recent wave of aesthetics-based regulation, regulation of environmental amenities,[13] cannot be fully explained by any of the three meanings of aesthetics explored above. Rather, the concept of aesthetics is now in a fourth stage of evolution in legislation and in the courts. This fourth stage may represent the beginning of a conceptualization of a land ethic such as that articulated by Aldo Leopold in 1949 in *A Sand County Almanac*.[14] He argued against the common view that land use decisions should

9. *See, e.g.*, Buhler v. Stone, 533 P.2d 292, 294 (Utah 1975).

10. *See* Hunter, *An Ecological Perspective on Property: A Call for Judicial Protection of the Public's Interest in Environmentally Critical Resources*, 12 HARV. L. REV. 311, 323-26 (1988).

11. *See* Costonis, *supra* note 2.

12. *Id.* at 159-60, 386-91.

13. *See, e.g.*, County of Pine v. Department of Natural Resources, 280 N.W.2d 625 (Minn. 1979); Franchise Developers, Inc. v. City of Cincinnati, 30 Ohio St. 3d 28, 505 N.E.2d 966 (Ohio 1987).

14. A. LEOPOLD, A SAND COUNTY ALMANAC (1949). *See also* H. READ, ART AND ALIENATION 9 (1969) (stating that "never before in the history of our Western world has the divorce between man and nature. . .been so complete").

be based on whatever is economically expedient. His premise was not antidevelopment, but sought to bar development from certain fragile or unique natural areas. He believed that development should be in harmony with the environment rather than destructive to it.

## III. JUDICIAL HISTORY OF AESTHETICS-BASED REGULATION

The history of aesthetics-based regulation involves a movement in the courts from general skepticism to a search for theories to uphold expansions of this type of regulation into new areas. State legislatures have in some cases made courts' task easier by enacting constitutional provisions expressly authorizing aesthetics-based regulation, but only a small minority of states have such provisions as yet. However, while courts have struggled with this type of regulation, its forms have proliferated both on the state and local levels.

### A. *The Birth and Infancy of Aesthetics in Land Use Regulation*

Until approximately the mid-1920's, aesthetics was considered an inappropriate basis for regulating land use under the police power.[15] Despite the breadth of the concept of public health, safety and welfare, courts held that there was no room for protecting aesthetics. Courts gave several reasons for invalidating regulation for aesthetic purposes. One reason was judicial concern for protecting private property rights from public invasion.[16] An early case noted that, "aesthetic considerations are a matter of luxury, an indulgence rather than necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation."[17] The only recognized "necessity" was preventing a harm to members of society. Protection of aesthetic values was viewed not as preventing public harm but as a legislative attempt to confer a benefit on the public at the expense of a private landowner without paying for it.[18]

An even more important reason for judicial hostility to regulation for aesthetic purposes was the subjective nature of aesthetics.

15. *See* Zeigler, Jr., *Aesthetic Controls and Derivative Human Values: The Emerging Rational Bases for Regulation in* 1986 ZONING AND PLANNING LAW HANDBOOK 239, 241.

16. *See* Costonis, *supra* note 2, at 373.

17. *See, e.g.*, City of Passaic v. Patterson Bill Posting, Advertising & Sign Painting Co., 72 N.J.L. 285, 287, 62 A. 267, 268 (1905).

18. *See* E. Zeigler, Jr., *supra* note 15, at 241.

It was argued that if aesthetics was kith and kin to beauty - an accepted premise prior to about 1925 - then regulation of it was too arbitrary.[19] The importance and content of beauty is considered a highly controversial matter, and the courts, demanding the comfort of objective criteria, found themselves without satisfactory standards when dealing with aesthetics-based regulations.[20] Courts were not concerned about whether aesthetics was a more inclusive concept than simply visual beauty. They held that given its subjective nature, aesthetics was an invalid basis for regulation.[21]

After about 1925, and until the mid-1960's, aethetics was given infant status by the courts. It could be used as a basis for regulation, but could not stand alone as the sole purpose for it.[22] Aesthetic purposes could only be upheld where the parental support of a traditionally accepted police power purpose was present. Coupled with traffic safety, maintaining property values, or protecting public health, aesthetics was viewed by the courts as a valid basis for exercising the police power.[23] The aesthetic purposes of a regulation were placed on the public interest side of the scale in the many cases challenging land use regulations that involved balancing the public interest in regulating against the detrimental impact on private landowners.

One can argue that during this period in the evolution of legal attitudes toward aesthetic regulation, aesthetics was a meaningless make-weight. Almost invariably, the regulation undergoing judicial scrutiny would have been upheld on the traditional basis given for it, such as traffic safety, to pick a common example, even if aesthetics had never been mentioned.[24] At the same time, however, it was during this period that aesthetics gained legitimacy. Courts became increasingly comfortable with aesthetics as a basis for regulation, as long as it was coupled with a more traditional regulatory purpose.[25] As Chief Judge Pound stated, "[B]eauty

19. *See* E. Zeigler, Jr., *supra* note 15, at 245 (citing cases).

20. *See, e.g.*, City of Youngstown v. Kahn Bros. Building Co., 112 Ohio St. 654, 148 N.E. 842, 844 (Ohio 1925).

21. *See* E. Zeigler, Jr., *supra* note 15, at 241.

22. *Id.* at 242. *See also* N. Williams, AMERICAN LAND PLANNING LAW Sections 11.07-09 (1974 & Supp. 1988).

23. *See* Costonis, *supra* note 2.

24. *See, e.g.*, St. Louis Gunning Advertising Co. v. City of St. Louis, 235 Mo. 99, 137, 145 S.W. 929, 942 (Mo. 1911).

25. *See, e.g.*, Perlmutter v. Greene, 259 N.Y. 327, 182 N.E. 5 (N.Y. 1932).

may not be queen, but she is not an outcast beyond the pale of protection or respect."[26]

Beginning slowly in the 1960's, state courts began to develop a new approach to aesthetics regulations. Aesthetics came to be viewed as capable of standing alone as a basis for the exercise of the police power.[27] This stage in the development of judicial views on regulation for aesthetic purposes, which continues today, started in 1954 with the Supreme Court's decision in *Berman v. Parker*.[28]

### B. *The Supreme Court Decisions*

*Berman* articulated a new interpretation of what could constitute regulation of the public welfare under the police power. The *Berman* court stated that "the concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary."[29] After *Berman*, regulations no longer had to be based solely on public health and safety. They could be based on a broader notion of public welfare encompassing the public's desires for comfort, happiness and an enhanced cultural life.[30]

Two other landmark Supreme Court decisions further emphasized the broad scope of the public welfare basis for regulation of land use under the police power. In *Village of Belle Terre v. Boraas*,[31] the Court asserted that protection of "family values," the "blessings of quiet seclusion" and "clean air" are properly considered in regulation aimed at creating "a sanctuary for people."[32] In *Penn Central Transportation Co. v. New York City*,[33] the Court stated that a substantial body of precedent had "recognized, in a number of settings, that states and cities may enact land use restrictions or controls to enhance the quality of life by

26. Perlmutter v. Greene 259 N.Y. 327, 182 N.E. 5, 6 (1932).

27. *See, e.g.*, State v. Diamond Motors, Inc., 50 Haw. 33, 429 P.2d 825 (Haw. 1967); Cromwell v. Ferrier, 19 N.Y.2d 263, 255 N.E.2d 749, 279 N.Y.S.2d 22 (N.Y. 1967); People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (N.Y. 1963).

28. 348 U.S. 26 (1954).

29. *Id.* at 33.

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

31. 416 U.S. 1 (1974).

32. *Id.* at 9.

33. 438 U.S. 104 (1978).

preserving the character and desireable aesthetic features of a city."[34]

## C. *State Court Decisions*

Most, but not all, state courts have followed the Supreme Court's lead in treating aesthetics as a valid basis for regulation. A law review article in 1980 reported that the rule that aesthetics can stand alone as a basis for exercising the police power had become the majority rule.[35] Yet beyond the fact that the state court decisions in this area confront similar questions about the validity

34. *Id.* at 129.

35. Bufford, *Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulations*, 48 U.M.K.C. L. REV. 125 (1980).

In the ten years since that article was written even more states have adopted the majority rule. Based on a recent survey of state appeals court decision, thirty-one states have either held or indicated strongly in dicta that aesthetics can stand alone. *See* Barber v. Municipality of Anchorage, 776 P.2d 1035 (Alaska 1989); Donrey Communications Co. v. City of Fayetteville, 280 Ark. 408, 660 S.W.2d 900 (1983); City of Fayetteville v. McIllroy Bank and Trust Co., 278 Ark. 500, 647 S.W.2d 439 (1983); Metromedia, Inc. v. City of San Diego, 26 Cal. 3d 848, 610 P.2d 407, 164 Cal. Rptr. 510 (1980); Landmark Land Co. v. City and County of Denver, 728 P.2d 1281 (Colo. 1986); Mayor and Council of New Castle v. Rollins Outdoor Advertising, Inc., 475 A.2d 355 (Del. 1984); Franklin Builders, Inc. v. Alan Construction Co., 58 Del. 173, 207 A.2d 12 (1964); City of Lake Wales v. Lamar Advertising Ass'n of Lakeland, Fla., 414 So. 2d 1030 (Fla. 1982); Merritt v. Peters, 65 So. 2d 861 (Fla. 1952); Gouge v. City of Snellville, 249 Ga. 91, 287 S.E. 2d 239 (1982); State v. Diamond Motors, Inc., 50 Haw. 43, 429 P.2d 825 (1967); Dawson Enter., Inc. v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977); Jasper v. Commonwealth, 375 S.W. 2d 709 (Ky. Ct. App. 1964); Finks v. Maine State Hwy. Comm'n, 328 A.2d 791 (Me. 1974); Mayor and City Council of Baltimore v. Mano Swartz, Inc., 268 Md. 79, 299 A.2d 828 (1973); John Donnelly & Sons, Inc. v. Outdoor Advertising Bd., 369 Mass. 206, 339 N.E.2d 709 (1975); Gannett Outdoor Co. v. City of Troy, 156 Mich. App. 126, 409 N.W.2d 719 (1986); National Used Cars, Inc. v. City of Kalamazoo, 61 Mich. App. 520, 233 N.W.2d 64 (1975); Mississippi State Hwy. Comm'n v. Roberts Enter., Inc., 304 So. 2d 637 (Miss. 1974); Diemeke v. State Hwy. Comm'n, 444 S.W.2d 480 (Mo. 1969); State v. Bernhard, 173 Mont. 464, 568 P.2d 136 (1977); Board of County Comm'rs v. CMC of Nevada, Inc., 99 Nev. 739, 670 P.2d 102 (1983); State v. Miller, 83 N.J. 402, 416 A.2d 821 (1980); Westfield Motor Sales Co. v. Town of Westfield, 129 N.J. Super. 528, 324 A.2d 113 (1974); Temple Baptist Church v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982); People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272 (1963); State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982); Village of Hudson v. Albrecht, Inc., 9 Ohio St. 3d 69, 458 N.E.2d 852 (1984); State v. Buckley, 16 Ohio St. 2d 128, 243 N.E.2d 66 (1968); Oregon City v. Hartke, 240 Or. 35, 400 P.2d 255 (1965); Sanderson v. City of Mobridge, 317 N.W.2d 828 (S.D. 1982); State v. Smith, 618 S.W.2d 474 (Tenn. 1981); Buhler v. Stone, 533 P.2d 292 (Utah 1975); Vermont Elec. Power Co. v. Bandel, 135 Vt. 141, 375 A.2d 975 (1977); Farley v. Graney, 146 W. Va. 22, 119 S.E.2d 833 (1960); Racine County v. Plourde, 38 Wis. 2d 403, 157 N.W.2d 591 (1968).

In addition, three states' appellate courts reviewed state constitutional provisions or state statutes based on aesthetics without criticizing those purposes. *See* Metropolitan Dev. Comm'n v. Douglas, 180 Ind. App. 567, 390 N.E.2d 663 (1979); Lynch v. Urban Redev.

of aesthetics-based regulation, they appear, at least on first examination, to have little in common. Their reasons for acceptance or rejection of aesthetics-based regulation are diverse. One clear grouping of cases separates states that have constitutional provisions that authorize aesthetics-based legislation from those that do not. A second grouping is according to the type of statute or ordinance involved in the case.

### 1. State Constitutions

One of the earliest cases allowing aesthetics to stand alone was based on a state constitutional provision. In the 1967 decision *State v. Diamond Motors, Inc.*,[36] the Hawaii Supreme Court reviewed a conviction for violation of size and height standards on outdoor signs in an industrial zone. The court upheld the aesthetic purpose of the ordinance based on the police power in spite of the fact that many courts at that time were reaching the opposite result. The Hawaii court felt comfortable in doing so because Hawaii has a constitutional provision stating that the "State shall have the power to conserve and develop its natural beauty, objects and places of historic and cultural interest, sightli-

Auth. of Pittsburgh, 91 Pa. Commw. 260, 496 A.2d 1331 (1985); Young v. South Carolina Dep't of Highways and Public Transp., 287 S.C. 108, 336 S.E.2d 879 (1985).

Fifteen states leave the question of the validity of aesthetics-based regulation open. *See* Sigler v. City of Mobile, 387 So. 2d 813 (Ala. 1980); Corrigan v. City of Scottsdale, 149 Ariz. 538, 720 P.2d 513 (1986); City of Scottsdale v. Arizona Sign Ass'n, Inc., 115 Ariz. 233, 564 P.2d 922 (1977); Capalbo v. Planning and Zoning Bd., 208 Conn. 480, 547 A.2d 528 (1988); Murphy v. Town of Westport, 131 Conn. 292, 40 A.2d 177 (1944); County of Lake v. First Nat'l Bank of Lake Forest, 79 Ill. 2d 221, 402 N.E.2d 591 (1980); Village of Skokie v. Walton on Dempter, Inc., 119 Ill. App. 3d 299, 456 N.E.2d 293 (1983); Iowa Dep't of Transp. v. Nebraska-Iowa Supply Co., 272 N.W.2d 6 (Iowa 1978); Stoner McCray Sys. v. City of Des Moines, 247 Iowa 1313, 78 N.W.2d 843 (1956); Robert L. Reike Building Co. v. City of Overland Park, 232 Kan. 634, 657 P.2d 1121 (1983); Sears, Roebuck & Co. v. City of New Orleans, 238 La. 936, 117 So. 2d 64 (1960); Trustees under the Will of Pomeroy v. Town of Westlake, 357 So. 2d 1299 (La. Ct. App. 1978); Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982); County of Pine v. Dep't of Natural Resources, 280 N.W.2d 625 (Minn. 1979); Schaffer v. City of Omaha, 197 Neb. 328, 248 N.W.2d 764 (1977); Burrows v. City of Keene, 121 N.H. 590, 432 A.2d 15 (1981); Sibson v. State, 115 N.H. 137, 336 A.2d 239 (1975); Newman Signs, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978); State Dep't of Transp. v. Pile, 603 P.2d 337 (Okla. 1979); City of Houston v. Harris County Outdoor Advertising Ass'n, 732 S.W.2d 42 (Tex. Ct. App. 1987); City of Houston v. Johnny Frank's Auto Parts Co., 480 S.W.2d 774 (Tex. Ct. App. 1972); Polygon Corp. v. City of Seattle, 90 Wash. 2d 59, 578 P.2d 1309 (1978); State Dep't of Ecology v. Pacesetter Construction Co., 89 Wash. 2d 203, 571 P.2d 196 (1977); Cheyenne Airport Bd. v. Rogers, 707 P.2d 717 (Wyo. 1985).

36. 50 Haw. 33, 429 P.2d 825 (1967).

ness and physical good order . . . ."[37] The court found that protection of aesthetics was not confined to the mountain and beach areas, but could include less naturally beautiful areas like the industrial zone involved in the case,[38] even though the constitutional provision was primarily aimed at protection of the mountains and beaches which are central to Hawaii's tradition and economy.

There are similar constitutional provisions in several other states whose heritage and economy are less closely tied to their natural beauty. For example, Montana's Constitution declares that its citizens have an inalienable right to a "clean and healthful environment."[39] In *State v. Bernhard*[40] the Montana Supreme Court held that this constitutional provision authorized legislation for the purpose of preserving and enhancing the aesthetic values of its citizens. Likewise, the Pennsylvania Constitution states that the "people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."[41] Although state constitutional provisions framed in such general language need legislative enactments to provide adequate standards,[42] they clearly authorize aesthetics-based legislation.

Only a few states have the luxury of constitutional provisions clearly encompassing aesthetics. When such a consitutional provision exists the state's legislature can pass aesthetics-based legislation directly on the basis of the provision. This makes it easier for a court to uphold aesthetics-based regulations. In states that do not have a constitutional provision, the state legislature must act on the basis of the general police power and courts must inquire into whether or not the legislation is for a legitimate police power purpose, whether or not it is reasonable given its purpose, and whether or not it satisfies substantive due process.[43]

37. *Id.* at 193, 429 P.2d at 827.

38. *Id.* at 194, 429 P.2d at 828.

39. MONTANA CONST. art. II, § 3 (1972).

40. 173 Mont. 464, 568 P.2d 136 (1977).

41. PA. CONST. art I, § 27 (1971).

42. Commonwealth v. National Gettysburg Battlefield Tower, Inc., 454 Pa. 193, 205, 311 A.2d 588, 595 (1972).

43. *See, e.g.*, Boundary Drive Associates v. Shrewsbury Township Bd. of Supervisors, 491 A.2d 86, 90 (Pa. 1985).

### 2. State Statutes

State aesthetics-based statutes have taken many forms, most prominently, environmental impact requirements, state land use planning controls, and highway beautification regulations.[44] For example, Washington, like many other states, requires that environmental impact analysis be done prior to approving major development projects.[45] Such statutes are sometimes treated simply as minimal disclosure and consideration laws, mandating that an environmental impact statement be prepared and circulated and that the decisionmakers have and consider this environmental information. However, statutes requiring environmental impact analysis also uniformly contain language requiring attention to the aesthetic impact of the project.[46]

In *Polygon Corp. v. City of Seattle*[47] the Washington Supreme Court reviewed the application of the law in a case denying a building permit. While the Court waffled on the issue of whether or not aesthetics can stand alone as a police power purpose, it acknowledged that the most significant impacts of the project were aesthetic.[48] It held that in addition to the procedural provisions of the law which required disclosure and consideration, the law had substantive purposes as well, in that aesthetics, coupled with other factors, could be a basis for rejecting the proposed development. The court stated that reading the statute otherwise "would thwart the policies it establishes and would render the provision that 'environmental amenities and values will be given appropriate consideration in decision making' a nullity."[49] In states in which courts have ruled that aesthetics can stand alone and that also have environmental impact analysis statutes, aesthetics is a relevant concern in development proposals since it may by itself afford a basis for rejecting the proposal.

44. *See, e.g.*, State Dept. of Transp. v. Pile, 603 P.2d 337 (Okla. 1979); Polygon Corp. v. City of Seattle, 90 Wash. 2d 59, 578 P.2d 1309 (Wash. 1978); Vt. Stat. Ann. tit. 10, §§ 6001-6092 (1984).

45. WASH. REV. CODE §§ 43.21C.030-43.21C.031 (1989).

46. *See* OFFICE OF RESEARCH AND DEVELOPMENT U.S. ENVTL. PROTECTION AGENCY, AESTHETICS IN ENVIRONMENTAL PLANNING 28-38 (1973).

47. 90 Wash. 2d 59, 578 P.2d 1309 (1978).

48. *Id.* at 66, 578 P.2d at 1315.

49. *Id.* at 63, 578 P.2d at 1312. This opinion may be more enlightened than its federal counterpart, Robertson v. Methow Valley Citizens Council, 109 S.Ct. 1835 (1989), in which the opposite conclusion was reached.

Vermont is one of a small group of states that have reclaimed land use powers from the localities.[50] State boards review development proposals under ten criteria.[51] One criterion, number eight, asks whether the project would "have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas."[52] The state legislature recognized that any development activity interferes with scenic preservation, but required the decisionmakers to perform a substantive due process analysis examining whether the interference was undue.[53]

There are several other examples of a new breed of state environmental statutes which uniformly include aesthetic criteria. For example, Washington's Shoreline Management Act[54] has been interpreted as an expression of the state's public policy supporting protection of aesthetic values.[55] Minnesota's Wild and Scenic Rivers Act [56] asserts that its intent of preserving the "unique natural and scenic resources of the state does have an aesthetic purpose . . . ."[57] Minnesota has a highway beautification law that declares a legislative policy to "conserve the natural beauty of areas adjacent to certain highways" making it necessary to regulate advertising devices.[58] These types of statutes raise aesthetics, whatever its precise meaning, to the level of state-wide importance in development issues involving certain natural resources.

*A) Local Ordinances* Ordinances on signs and billboards are the most numerous form of regulation openly based on aesthetics. Outdoor advertising companies have not had a great deal of success recently in challenging this type of ordinance. In *John Donnelly & Sons, Inc. v. Outdoor Advertising Board*[59] the Massachusetts Supreme Judicial Court acknowledged that in the past sign re-

50. VT. STAT. ANN. Title 10, §§ 6001-6092 (1984). *See also* F. BOSSELMAN & D. COLLINS, THE QUIET REVOLUTION IN LAND USE CONTROL (1971); J. De Grove & N. Stroud, 1989 ZONING AND PLANNING LAW HANDBOOK 55-58.

51. VT. STAT. ANN. tit. 10, § 6086(a)(1-10) (1984).

52. VT. STAT. ANN. tit. 10, § 6086(a)(8) (1984).

53. Vermont Elec. Power Co. v. Bandel, 135 Vt. 141, 148, 375 A.2d 975, 981 (1977).

54. WASH. REV. CODE ANN. § 43.21C.010 (1983).

55. State Dep't of Ecology v. Pacesetter Construction Co., 89 Wash. 2d 203, 212, 571 P.2d 196, 201 (1977).

56. MINN. STAT. §§ 104.31 - 104.40 (1982).

57. County of Pine v. State Dep't of Natural Resources, 280 N.W.2d 625, 629 (Minn. 1979).

58. MINN. STAT. § 173.01 (1982).

59. 369 Mass. 206, 339 N.E.2d 709 (1975).

strictions were justified legislatively and judicially on the grounds of protecting property values and promoting highway safety. It stated that these grounds were a legal fiction designed to avoid recognizing aesthetics as the real purpose behind the law.[60] The Court noted that due to changing community values, society demanded aesthetically pleasing cities and a visually satisfying environment.[61]

Other courts have arrived at similar conclusions. The New Mexico Supreme Court upheld a city sign ordinance because it aided in creating or preserving a desirable ambience in the community.[62] The New Jersey Supreme Court, approving a limitation on signs in a residential area, sanctioned the "development and preservation of natural resources and clean, salubrious neighborhoods [that] contribute to psychological and emotional stability and well-being as well as stimulate a sense of civic pride."[63]

Cases involving the review of junkyard regulations are the second largest category of cases in which aesthetic purposes are at issue. Even more than signs and billboards, junkyards arouse community ire. They are highly visible and often give visual notoriety to a municipality. As in the case of sign ordinances, owners of junkyards have seldom tasted victory when confronting their regulators.

The Oregon Supreme Court, in an early case examining aesthetic purposes, *Oregon City v. Hartke*,[64] reviewed the regulation of a junkyard. The Court found that such regulations were the product of a "change in attitude, a reflection of the refinement of our tastes and the growing appreciation of cultural values in a maturing society."[65] It stated that it is "not irrational for those who live in a community . . . to plan their physical surroundings in such a way that unsightliness is minimized."[66] Similarly the North Carolina Supreme Court, in reviewing a decision involving a junkyard ordinance, referred, inter alia, to the benefits provided to the general community by such a law stemming from the "preservation of the character and integrity of the community, and pro-

60. *Id.* at 217, 339 N.E.2d at 716.

61. *Id.* at 218, 339 N.E.2d at 717.

62. Temple Baptist Church v. City of Albuquerque, 98 N.M. 138, 144, 646 P.2d 565, 571 (1982).

63. State v. Miller, 83 N.J. 402, 409, 416 A.2d 821, 824 (1980).

64. 240 Or. 35, 400 P.2d 255 (1965).

65. *Id.* at 47, 400 P.2d at 261.

66. *Id.* at 50, 400 P.2d at 263.

motion of comfort, happiness, and emotional stability of area residents."[67] These benefits were placed in the due process calculus and weighed against the interests of the individual property owner to decide if the ordinance was reasonable.[68]

The language abstracted here from the sign and junkyard cases has implications for areas of regulation far beyond these obvious targets. One area in which the issue of aesthetic purposes has arisen is zoning. The zoning cases have differed from the sign and junkyard cases, however, in that challenges to zoning regulations have been somewhat more successful.[69] Yet aesthetic purposes have been upheld in many of these cases as well. For example, an Arizona Court of Appeals upheld zoning regulations that required development proposals to be approved by a city architectural review board. The court noted that both parties were in agreement that the great weight of precedent upheld regulations based on aesthetics and design.[70]

The Colorado Supreme Court upheld a regulation limiting the height of buildings in order to preserve the mountain view from a city park. The Court found that Denver's "civic identity" was connected to the mountains and that preservation of the view was within the city's police power.[71] Similarly, the Idaho Supreme Court approved a zoning provision whose purpose was to maintain the rural character of the County and the Wood River Valley.[72]

An interesting duo of cases arose in the New Hampshire Supreme Court. In 1975, in *Sibson v. State*,[73] the court reviewed the denial of a permit to fill a wetland. In 1981, in *Burrows v. City of Keene*,[74] the Court scrutinized a dispute involving the denial of subdivision approval on land the City wanted to preserve as open space. Both cases were found to involve regulatory takings, but in

67. State v. Jones, 305 N.C. 520, 530, 290 S.E.2d 675, 681 (1982).

68. *Id.*

69. *See, e.g.*, City of Scottsdale v. Arizona Sign Assoc., 115 Ariz. 233, 564 P.2d 922 (Ariz. 1987).

70. City of Scottsdale v. Arizona Sign Ass'n, 115 Ariz. 233, 234, 564 P.2d 922, 923 (Ct. App. 1977).

71. Landmark Land Co. v. City & County of Denver, 728 P.2d 1281, 1285 (Colo. 1986), *app. dismissed sub. nom.* Harsh Investment Corp. v. City & County of Denver, 483 U.S. 1001 (1987).

72. Dawson Enterprises v. Blaine County, 98 Idaho 506, 518, 567 P.2d 1257, 1269 (1977).

73. 115 N.H. 124, 336 A.2d 239 (1975).

74. 121 N.H. 590, 432 A.2d 15 (1981).

*Sibson* the Court affirmed the denial of the permit to fill a wetland and in *Burrows* it rejected the denial of the subdivision approval. In *Sibson* the Court singled out wetlands as unique areas entitled to protection even if substantial private property rights are enjoined.[75] In *Burrows*, the Court found that the *Sibson* decision was based on the need to prevent harm to a unique type of land, and refused to extend the decision to land lacking that characteristic of uniqueness.[76]

Beyond signs and junkyards, aesthetics is the underlying rationale for protecting certain valuable features of the landscape, like spectacular mountain views, the rural character of an area, and wetlands.[77] These features do not necessarily have to be endowed with any particular natural beauty. The wetlands involved in *Sibson*, for example, were considered valuable and worth preserving not for any visual attractiveness they may have had, but as areas of great natural productivity.[78]

## IV. THE EVOLUTION IN THE MEANING OF AESTHETICS

The question that remains open in cases involving aesthetics-based regulation is what courts mean today when they use the term "aesthetics." Is the concept still generally confined to visual beauty, or to the prevention of nuisance-type harms? Is aesthetics a manifestation of shared human values, as posited by Professor Costonis, which envelop resources whether they are beautiful or not, harmful or not? Or, is aesthetics a concept indicating man's movement beyond concern solely for human values to a broader definition of values; a definition that pertains to non-human values as well as human ones? There is case law supporting all four of the proposed meanings of aesthetics.

### 1. Visual Beauty

Early cases involving regulation for aesthetic purposes generally equated aesthetics with visual beauty.[79] Many modern cases

75. Sibson v. State, 115 N.H. 124, 126, 129, 336 A.2d 239, 240, 242-243 (1975).

76. Burrows v. City of Keene, 121 N.H. 590, 601, 432 A.2d 15, 21 (1981).

77. *See, e.g.*, Landmark Land Co., Inc. v. City and County of Denver, 728 P.2d 1281 (Colo. 1986); Dawson Enterprises, Inc. v. Blain County, 99 Idaho 506, 567 P.2d 1257 (Idaho 1977); County of Pine v. Dept. of Natural Resources, 280 N.W.2d 625 (Minn. 1979).

78. Sibson v. State, 115 N.H. 124, 126, 336 A.2d 239, 240 (1975).

79. *See* E. Zeigler, *supra* note 15, at 241.

do as well.[80] This definition of aesthetics has created much of the legal quicksand through which the concept has struggled.[81] Critics of aesthetics-based regulation argue that beliefs about what is visually beautiful are matters of individual taste, and that regulation based on such beliefs lacks standards necessary to guide administrators in implementation or to allow meaningful judicial review.[82]

The United States Supreme Court rejected this line of criticism in *Metromedia, Inc. v. City of San Diego*.[83] The Court acknowledged that San Diego's sign ordinance's purpose was for aesthetic purposes.[84] The Court then equated aesthetics with visual beauty.[85] It agreed that "esthetic judgments are necessarily subjective, defying objective evaluation," but found that this did not mean that aesthetics-based regulations must be invalidated, but rather that they "must be carefully scrutinized to determine if they are only a public rationalization of an impermissible purpose."[86] Thus, the Court resolved the problem of subjectivity by requiring careful scrutiny of aesthetics-based laws and regulations.

Some state courts have adopted similar reasoning. In upholding regulations concerning highway beautification, the Maine Supreme Court in *Finks v. Maine State Hwy Comm'n*[87] stated that an adequate response to the impossibility of detailed, specific standards in aesthetic regulations is "the presence of adequate procedural safeguards to protect against an abuse of discretion by administrators."[88] The Court also found that while natural scenic beauty can be an overly general, subjective concept, it connotes "a sufficiently definite concrete image" when considered in the context of highway beautification.[89] Thus, the Court suggested two ways of controlling the subjectivity of the concept of beauty: surrounding it with procedural safeguards to avoid abuse, and confining it to a specific environmental setting.

80. *See, e.g.*, Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981); City of Fayetteville v. McIlroy Bank and Trust Co., 278 Ark. 500, 647 S.W.2d 439 (Ark. 1983).

81. *See* E. Zeigler, *supra* note 15, at 245.

82. *See* Costonis, *supra* note 2, at 377-79.

83. 453 U.S. 490 (1981).

84. *Id.* at 508-12.

85. *Id.*

86. *Id.* at 510.

87. 328 A.2d 791 (Me. 1974).

88. *Id.* at 796.

89. *Id.*

The New Jersey Supreme Court elaborated on the latter method of controlling subjectivity in *West Outdoor Advertising Co. v. Goldberg*.[90] The court found that the statute being reviewed contemplated "a certain basic beauty in natural terrain and vegetation unspoiled by the hands of man, which it proposes to recapture or retain. Although the extent to which each individual finds a specific landscape beautiful must be determined by a subjective test, this does not denote that there is no catholic criterion for the ascertainment of whether *any scenic beauty* exists in a given panorama."[91] The Court recognized that there may be variations in taste as to the outside dimensions of visual beauty, but that there is a core of universal acceptance of what is beautiful in a given setting.

Some courts have been less concerned about the subjective nature of regulations intended to preserve scenic beauty. The Arkansas Supreme Court, in *City of Fayetteville v. McIllroy Bank and Trust Co.*,[92] contended that "If the inhabitants of a city or town want to make the surroundings in which they live and work more beautiful or more attractive or more charming, there is nothing in the constitution forbidding the adoption of reasonable measures to attain that goal."[93] The court saw no need for any special constraints on legislative or administrative action in the area of aesthetics-based regulation.

On the other hand, the equation of aesthetics with visual beauty and the resulting apparent subjectivity of aesthetics has led a number of state courts to reject aesthetics-based regulation altogether.[94] For example, the Oklahoma Supreme Court, in *State Dept. of Transp. v. Pile*,[95] equated aesthetics with beauty and concluded that aesthetic standards are "indeterminate, incapable of concrete definition, fluid and everchanging . . . ."[96] Likewise, in *Mayor & City Council of Baltimore v. Mano Swartz, Inc.*[97] the Maryland Court of Appeals found the standards provided by the City

90. 55 N.J. 347, 262 A.2d 199 (1970).

91. *Id.* at 351, 262 A.2d at 202.

92. 278 Ark. 500, 647 S.W.2d 439 (1983).

93. *Id.* at 503, 647 S.W.2d at 440.

94. *See* State v. Diamond Motors, Inc., 50 Haw. 33, 429 P.2d 825 (Haw. 1967); Cromwell v. Ferrier, 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (N.Y. 1967); People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (N.Y. 1963).

95. 603 P.2d 337 (Okla. 1979), *cert. denied* 453 U.S. 922 (1981).

96. *Id.* at 342.

97. 268 Md. 79, 299 A.2d 828 (1973).

of Baltimore in its regulations regarding the prevention of gaudiness and drabness to be invalid as an expression of individual taste and lacking in objectivity.[98]

### 2. Prevention of Harm

Some cases reviewing aesthetics-based regulations describe them as attempts to prevent or eliminate nuisances. The bulk of these cases were decided in the 1960s, when exclusively aesthetics-based regulation was first being accepted as legitimate. They do not follow the lead of *Berman v. Parker*[99] in replacing the traditional nuisance analysis for reviewing state land use regulations with a public welfare analysis.

In 1963, in the seminal New York case, *People v. Stover*,[100] an ordinance against clotheslines in the frontyard was upheld, on the ground that the law did not seek to establish an arbitrary standard of beauty, but "to proscribe conduct which is unnecessarily offensive to the visual sensibilities of the average person," just as regulations in the past legislated against offenses to the senses of hearing and smell.[101] In 1965, the Oregon Supreme Court spoke in terms of preventing or minimizing "discordant and unsightly surroundings."[102] In 1967, the Ohio Supreme Court, in approving a junkyard ordinance, indicated that the fencing requirement was based on aesthetics and was intended to prevent the "patent and gross."[103]

Not all the rationales based on harm prevention, however, are older cases. The Utah Supreme Court in *Buhler v. Stone*[104] reviewed an ordinance that prohibited keeping property in an unclean and unsightly manner. The Court held the ordinance valid, indicating that taking reasonable measures to minimize discordant, unsightly and offensive surroundings was legitimate within the scope of public welfare. The Court went on to state that the ordinance had a positive side, equally legitimate, of preserving

98. *Id.* at 83, 299 A.2d at 833.

99. 348 U.S. 26 (1954).

100. 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272 (1963), *app. dismissed*, 375 U.S. 42 (1973).

101. *Id.* at 468, 240 N.Y.S.2d at 739, 191 N.E.2d at 276.

102. Oregon City v. Hartke, 240 Or. 35, 41, 400 P.2d 255, 261 (1965).

103. State v. Buckley, 16 Ohio St. 2d 128, 132, 243 N.E.2d 66, 70 (1967), *cert. denied & app. dismissed*, 395 U.S. 163 (1969).

104. 533 P.2d 292 (Utah 1975).

beauty and the usefulness of the environment.[105] The Supreme Court of Florida, in *City of Lake Wales v. Lamar Advertising Ass'n of Lakeland*, stated that "Cities have the authority to take steps to minimize sight pollution . . . ."[106]

### 3. Shared Human Values

The modern aesthetic cases give strong credence to Professor Costonis' position that shared human values are what actually underlie many courts' perception of aesthetic regulations. In *Sun Oil Co. v. City of Madison Heights*,[107] the Michigan Court of Appeals noted that "a community's aesthetic well-being can contribute to urban man's psychological and emotional stability," and that "a visually satisfying city can stimulate an identity and pride which is the foundation for social responsibility and citizenship."[108] Though the case involves a sign ordinance and the Court focuses its attention on the visual landscape, it speaks of what is "visually satisfying" rather than what is visually beautiful, and emphasizes the need for preserving the city's "identity and pride." These themes are consistent with the shared human values premise.

In *Metromedia, Inc. v. City of San Diego*,[109] the California Supreme Court validated the purpose of protecting the community's appearance in its review of a sign ordinance. The Court discussed the interwoven nature of the concepts of economics, aesthetics and quality of life. It stated that "economic and aesthetic considerations together constitute the nearly inseparable warp and woof of the fabric upon which the modern city must design its future"[110] and asserted that city planning would be virtually impossible without the power to regulate for "aesthetic purposes." Then it declared that virtually every city in the state has regulated to improve the "appearance of the urban environment and the quality of metropolitan life."[111] The Court's language does not focus narrowly on visual beauty, but more broadly on the inseparable fabric of the city and the quality of urban life.

105. *Id.* at 294.
106. 414 So. 2d 1030, 1032 (Fla. 1982).
107. 41 Mich. App. 47, 199 N.W.2d 525 (1972).
108. *Id.* at 50, 199 N.W.2d at 529.
109. 23 Cal. 3d 762, 154 Cal. Rptr. 212, 592 P.2d 728 (1979).
110. *Id.* at 769, 154 Cal. Rptr. at 220, 592 P.2d at 735.
111. *Id.* at 769, 154 Cal. Rptr. at 220, 592 P.2d at 736.

The "local" nature of these shared human values is indicated by the New Hampshire Supreme Court's reference to protection "of the atmosphere of the town,"[112] the Idaho Supreme Court's sanctioning of zoning aimed at protecting the rural character of the county,[113] the New York Court of Appeals' holding that courts may look to the "setting" of the regulated community in deciding on the reasonableness of an aesthetic regulation,[114] and the Ohio Supreme Court's approval of special regulations attempting to "promote the overall quality" of urban life.[115]

The changeable character of these shared human values seems evident. In *Cromwell v. Ferrier*, the Court stated that "[c]ircumstances, surrounding conditions, changed social attitudes, newly-acquired knowledge . . . alter our view of what is reasonable" in reviewing an aesthetic regulation.[116] The Michigan Supreme Court discussed how times had changed in the case *Robinson Township v. Knoll*.[117] It stated that mobile homes can no longer be automatically confined to mobile home parks, but rather municipal decisionmakers must decide on an ad hoc basis whether mobile homes meet normal community aesthetic standards.[118]

If a community can adequately document that it is regulating to protect its historical heritage, courts generally have little trouble in upholding historic preservation statutes and ordinances. The North Carolina Supreme Court in *A-S-P Associates v. City of Raleigh*[119] reviewed an historic district overlay to a zoning code. The court comfortably affirmed the ordinance because the attempt to control the exterior appearance of structures had as its purpose "the preservation of the State's legacy of historically significant structures."[120] The court found that this type of preservation provides a visual medium "for understanding our historic and

112. Piper v. Meredith, 110 N.H. 291, 296, 266 A.2d 103, 108 (1970).

113. Dawson Enterprises v. Blaine County, 98 Idaho 506, 518, 567 P.2d 1257, 1269 (1977).

114. People v. Goodman, 31 N.Y.2d 262, 266, 338 N.Y.S.2d 97, 101, 290 N.E.2d 139, 142 (1972).

115. Franchise Developers v. City of Cincinnati, 30 Ohio St. 3d 28, 33, 505 N.E.2d 966, 971 (1977).

116. 19 N.Y.2d 263, 268-269, 279 N.Y.S.2d 22, 26, 225 N.E.2d 749, 752 (1967), quoting Mid-State Adv. Corp. v. Bond, 274 N.Y. 82, 87, 8 N.E.2d 286, 288 (1937) (dissent).

117. 410 Mich. 293, 302 N.W.2d 146 (1981).

118. *Id.* at 298, 302 N.W.2d at 152.

119. 298 N.C. 207, 258 S.E.2d 444 (1979).

120. *Id.* at 450.

cultural heritage." That understanding gives a "valuable perspective on the social, cultural, and economic mores of past generations of Americans."[121]

4. Environmental Harmony

Recent decisions support the proposition that "aesthetics" is a term expressing the desire of decisionmakers to blend development with its natural surroundings; that is, to seek environmental harmony. The Ohio Supreme Court[122] upheld an ordinance creating environmental quality districts and imposing on those districts additional restrictions, i.e., overlay zoning. It stated that the law was to assist "the development of land and structures to be compatible with the environment, and to protect the quality of the urban environment in those locations . . . ."[123] The court stated that the basis for the law was aesthetics.

The New York Court of Appeals, in reviewing a sign ordinance based on aesthetics, stated that in order to be found valid, regulation of signage must bear substantially on the economic, social and cultural patterns of the community. The ordinance was upheld on the ground that it was intended to protect the cultural and natural resources values that derived from the village's unique setting on a narrow spit of land between a bay and an ocean. The court spoke of adapting "use to fit" the cultural and natural features of the area.[124]

The Minnesota Supreme Court upheld an ordinance, adopted pursuant to state enabling legislation, designating the Kettle River as a wild and scenic river. The Court stated that "preserving the unique natural and scenic resources of this state does have an aesthetic purpose . . . ."[125] The Court asserted that the ordinance presents "no radical departure from traditional zoning. It merely reflects the increasing complexity of society and the realization that property must be viewed more interdependently."[126]

The Ohio Supreme Court approved an aesthetics-based regulation because there was a right to prevent interference "with the

121. *Id.*

122. Franchise Developers, Inc. v. City of Cincinnati, 30 Ohio St. 3d 28, 505 N.E.2d 966 (1987).

123. *Id.* at 968.

124. People v. Goodman, 31 N.Y.2d 262, 266 290 N.E.2d 139, 142 (1972).

125. County of Pine v. Dept. of Natural Resources, 280 N.W.2d 625, 629 (Minn. 1979).

126. *Id.* at 630.

natural aesthetics of the surrounding countryside caused by an unfenced or inadequately fenced junk yard. . . ."[127] Similarly, the Massachusetts Supreme Judicial Court has indicated that cities can adopt regulations designed to preserve and improve their physical environment.[128]

Some key phrases in these cases supporting the premise that aesthetics is akin to environmental harmony are "compatible," "use to fit," "viewed more interdependently," "natural aesthetics of the surrounding countryside," and "preserve and improve the physical environment." These phrases are excerpts of language used by courts to connote a concern for developing land in harmony with existing natural systems, shared human values, and visual beauty. These concerns travel through law today under the rubric of aesthetics.

Modern land use decisionmaking incorporates a weighing of values that come close to resembling Aldo Leopold's land ethic. For example, the Pennsylvania Constitution proclaims a right to "the preservation of the natural, scenic, historic and esthetic values of the environment." What does the word "esthetic" add to this list of values? Evidently the framers did not consider aesthetic values to be properly represented by natural, scenic or historic values, but to reflect some other essence. "Natural," "scenic," and "historic" would appear to be sufficient for the protection of the shared human values in Professor Costonis' framework. The values represented by the word "esthetic" could be something broader than shared human values: an overarching convergence of ecological, human and visual concerns.

127. State v. Buckley, 16 Ohio St. 2d 128, 243 N.E.2d 66, 70 (1968).

128. John Donnelly and Sons, Inc. v. Outdoor Advertising Board, 339 N.E.2d 709, 717 (1975).

## CONCLUSION

I died for beauty, but was scarce
Adjusted in the tomb,
When one who died for truth was lain
In an adjoining room.

He questioned softly why I failed?
"For beauty," I replied.
"And I for truth,—the two are one;
We brethren are," he said.

E. Dickinson— I Died for Beauty[129]

The merger of beauty and truth in land use law today may be known as aesthetics. Beauty represents those things enjoyed by the human senses, coupled with human necessity. Truth, in an environmental sense, is human action that is as compatible as possible with the biosphere, that sustains its living web rather than inexorably destroying it. Aesthetics brings these human and environmental values together in land use regulation. This type of sweeping generality is not very comforting to a legal analyst. Yet the analyst may derive comfort from the realization that the progressive divorce of humans from their environment may be ending. Forty years ago Aldo Leopold said that "conservation is a state of harmony between men and land."[130] The acceptance in law of a broadened meaning for aesthetics is a tentative attempt to grasp for that harmony.

129. The Complete Poems of Emily Dickinson 216 (1960) (Thomas H. Johnson, ed.).
130. A. LEOPOLD, *supra* note 14, at 188-89.