

§ 2.23 Zoning for Aesthetics

The very first zoning case decided by the New Hampshire Supreme Court, *Sundeen v. Rogers*, discussed the legitimacy of zoning for aesthetic values.²⁹⁰ The court held that the fact that the ordinance promoted aesthetic values was not a valid objection in light of the fact that it otherwise promoted the health, welfare, and safety of the community.²⁹¹ It further pointed out that even if the aesthetic quality was the inducement for making an ordinance prohibiting accessory buildings in the front yard, it would still invalidate the regulation.²⁹² The fact that aesthetic considerations which foster civic beauty and preserve places of historic and architectural value are also motivating factors in the enactment of a land use regulation is not fatal.

The beauty of a residential neighborhood is for the comfort and happiness of the residents and tends to sustain the value of property in the neighborhood. It is a matter of general welfare, like other conditions, that adds to the attractiveness of a community and the value of the residences located there.²⁹³

Related to the question of zoning for aesthetics is the entire topic of historic district zoning which will be discussed elsewhere in this book.²⁹⁴ Suffice it to say here that historic district preservation may be incorporated into an overall plan to promote the community's general welfare.²⁹⁵ Planning boards may regulate land use and even prohibit lot line readjustments based on the historical character and significance of a property that is located in a historic district. Land use boards, under certain circumstances, may legitimately be concerned about the effect that a particular proposal may have on the visual appearance of a part of the community.²⁹⁶ "The protection of historic landmarks and areas is a legitimate and recognized exercise of a town's police powers for the purpose of promoting that town's general welfare."²⁹⁷

The New Hampshire Supreme Court eliminated any doubt about the ability of a municipality to use its zoning powers to promote aesthetics in *Asselin v. Town of Conway*,²⁹⁸ where the Court stated:

We now conclude that municipalities may validly exercise zoning power solely to advance aesthetic values, because the preservation or enhancement of the visual environment may promote the general welfare. *See* RSA 674:16, I; Opinion of the Justices, 103 N.H. 268, 270, 169 A.2d 762, 764 (1961).²⁹⁹

²⁹⁰ *Sundeen v. Rogers*, 83 N.H. 253, 141 A. 142 (1928).

²⁹¹ *Sundeen*, 83 N. H. at 259, 141 A. at 145.

²⁹² *Sundeen*, 83 N. H. at 259, 141 A. at 145.

²⁹³ *Deering v. Tibbetts*, 105 N.H. 481, 202 A.2d 232 (1964) (upheld police power ordinance that prohibited erection of trailers and certain other structures within one quarter mile of town common).

²⁹⁴ Other Controls Affecting Land Use, *see* pt. IV, *infra*.

²⁹⁵ *Victorian Realty Group v. Nashua*, 130 N.H. 60, 534 A.2d 381 (1987).

²⁹⁶ *Victorian Realty Group v. Nashua*, 130 N.H. 60, 534 A.2d 381 (1987).

²⁹⁷ *Portsmouth Advocates, Inc. v. City of Portsmouth*, 133 N.H. 876, 880, 587 A.2d 600, 602 (1991)

²⁹⁸ 137 N.H. 368, 628 A.2d 247 (1993) (Conway's prohibition on internally illuminated signs not invalid even though adopted solely for the purpose of promoting aesthetics).

²⁹⁹ *Asselin*, 137 N.H. at 371-72, 628 A.2d at 248.

From: 15 New Hampshire Practice: Land Use Planning and Zoning, Ch. 2, Purposes and Limits, § 2.23 (LexisNexis Matthew Bender)

While municipalities can enact zoning regulations to protect the aesthetics of the community, like any zoning ordinance, such provisions must be rationally related to the town's legitimate goals and must not be arbitrary or unreasonable as applied to a particular parcel of property.³⁰⁰

Library References

6A E. McQuillin, *Municipal Corporations*, §§ 24.15, 24.16 (3d Ed. 2007)

1 P Salkin, *American Law of Zoning*, §§ 7.13:7.25 (5th ed.)

2 E. Ziegler, *Rathkopf's The Law of Zoning and Planning*, §§ 16:1-16:20

³⁰⁰ *Dow v. Town of Effingham*, 148 N.H. 121, 803 A.2d 1059 (2002) (ordinance regulating race tracks upheld); *Taylor v. Town of Plaistow*, 152 N.H. 142, 872 A.2d 769 (2005) (regulation which required a minimum of 1000' between motor vehicle dealerships in the commercial district found to be constitutional).