HIGHWAY RESEARCH
CIRCULAR

Number 77 Subject Classification: Land Acquisition Legal Studies March 1968

COMMITTEE ACTIVITY

Committee on Condemnation and Land Use Control, LS-1
Department of Legal Studies, Highway Research Board

LAND ACQUISITION
MEMORANDUM #193

193-1 JUNKYARDS, GERANIUMS AND JURISPRUDENCE: AESTHETICS AND THE LAW

The proceedings of the National Institute entitled "Junkyards, Geraniums and Jurisprudence: Aesthetics and the Law," have been published and bound copies are now available. This National Institute was sponsored by the American Bar Association's Section of Local Government Law, in cooperation with the Highway Research Board, American Society of Planning Officials, and the Conservation Foundation. It was held in Chicago in June 1967.

The purpose of this National Institute was to focus upon the legal and related problems arising from the Nation's growing concern with the public's right to beauty as it may conflict with private rights and property. Unprecedented national interest has emerged in the field of aesthetics. This has involved all levels of government; a proliferation of public activities ranging from open space, highways, parks, downtown malls, and many others; an amazing interest among many private groups, individuals, industry and business; garden clubs, roadside councils, women's groups; and many others.

Local, State, and Federal government programs have been authorized and funded, to encourage, demonstrate, and effectuate the application of aesthetic and beautification concepts. Special conferences, beginning with the White House Conference on Natural Beauty, at all levels of government, and involving many groups have been held during the past several years. Few of these have emphasized the legal elements of aesthetics. Thus, the Local Government Law Section of the American Bar Association was motivated to formulate a National Institute addressed to the legal aspects, with some of the Nation's top legal specialists in this field as faculty. The papers, in full, have been reproduced in the proceedings, and are available from ABA Headquarters in Chicago. The following subjects are treated in the volume:

"Police Power vs. Eminent Domain," by Ross D. Netherton, Counsel for Legal Research, Highway Research Board. The author invites us to consider this subject in terms of what he calls the "semantics gap," and mentions that aside from the need to have a clear understanding of words and ideas in order to communicate with each other, it is obvious that the distinction between eminent domain and police power is important because differing issues and legal consequences are involved in each. Under the police power, private use of land is regulated for the advancement of some acknowledged public interest. On the other hand,

eminent domain involves the taking (or damaging) of privately owned land or property rights for public use -- and must satisfy two constitutional requirements: existence of a public purpose for the taking, and payment of just compensation.

One way to answer the question of when to use eminent domain instead of police power might be in terms of when one must use eminent domain. In any discussion of modern doctrine and technique relating to the use of police power and eminent domain for aesthetic purposes, there very quickly emerges an interplay between two approaches to the question of when to pay and when not to pay. One point of view seeks a definition of the ultimate limits of the State's constitutional power to regulate land uses on the premise that the State will seek to employ this power up to the very brink of constitutionality. The other viewpoint stresses the policy decisions which seek to do what seems fair and sensible for both the public and private interests of an affluent society. The author believes that in protecting and developing community aesthetic values, the law allows the State to go further through police power techniques than it has to date. At the same time, he is convinced that the interests of the public are served best by selective use of eminent domain along with land use regulation so that amenity and natural beauty in the environment can be developed along with other resources.

"Notes on the Lack of Aesthetic Principles as a Guide to Urban Beautification," by Professor Christopher Tunnard, Chairman, Department of City Planning, School of Art and Architecture, Yale University, New Haven, Connecticut. The author indicates that we learn much of American aesthetic attitudes through the rich heritage of the ancient law of nuisances, of covenants, and of zoning--perhaps more from the cases than from the laws and statutes themselves. To a planner, nothing is more frustrating than to read a supposedly ideal law and then find it is unworkable in practice, or that its intentions have been subverted, like the 1949 Housing Act where the emphasis has changed from remedying the housing shortage to business redevelopment, or the undoubted fact that the working of this act in its renewal phase has destroyed more homes than it produced. You can say that the planners have subverted the intent, if you like, but the author feels that this is more the result of mayoral and bureaucratic decision making on the local level.

Pertinent to our discussion also is the experience that the well-known Supreme Court decision involving aesthetics, Berman vs. Parker, makes it more difficult to prove that Federal and local officials have ignored Federal relocation requirements in renewal. To carry this argument into the zoning field is not difficult. Norman Williams has written a new book entitled "The Structure of Urban Zoning." Without disagreeing with his undoubtedly well-informed conclusions or his opinions on newer zoning devices, like floor-area ratio requirements, it is fair to say that with all their good intentions, many of these new devices may lack the aesthetic safeguards which earlier legislation perhaps crudely enforced.

For instance, there was a height limitation established in Boston in 1904 which has now been removed in areas such as the waterside of Beacon Street.

The result will be an unfortunate effect on the famous silhouette of the city as seen from the Cambridge side of the river, a silhouette already broken by the high-rise Prudential Tower. Certainly an aesthetic aim is embedded in the idea that we should be creating an environment every part of which could have a direct appeal to the senses, or, at least, cease to give offense to others. This concept is part of the American tradition of tolerance and sharing of community amenities with one's neighbors.

"Recent Legislative Approaches and Enabling Legislation to Accomplish Aesthetic Objectives," by Ruth R. Johnson, Attorney Advisor, Federal Highway Administration, Department of Transportation. The author calls attention to the fact that in recent years, there has been a decided increase in legislative attention to accomplish the goals of beautification and the concepts of amenities in community development. Some courts have suggested that this development reflects a refinement of our tastes and the growing appreciation of cultural values in a maturing society, but one writer has stated "it more probably results from the greater difficulty of ignoring ugliness as society becomes more crowded."

While many of the legislative programs are overlapping and complimentary, basically they fall into three main categories which may be called preservation of open spaces, protection of the highway, and land use controls based upon aesthetic considerations. State and Federal programs dealing with aesthetic objectives are meaningless without effective State legislation to carry them out. Thus, in the last analysis, it is State enabling legislation which makes these programs operational. Enabling legislation, simply put, grants authorization to a unit of Government to implement the objectives of the statute.

With aesthetics as an objective, this type of legislation is bound to open up new fields, or extend further than ever before the fields previously entered to only a limited degree. Thus, it will require the utmost effort at the State level to establish and maintain good precedent--for case law, legal concepts, evaluation principles and compensable items to name but a few areas. In this connection, we should first make use of the "knowns," the well established principles of law and practice, and apply them where possible to the expanded goals to be accomplished and as an aid to maintaining good precedent.

"Nuisance Doctrine," by James D. Billett, Assistant General Counsel, Federal Highway Administration, Department of Transportation. The author calls attention to the fact that as a regulatory measure affecting the use of private property, the nuisance doctrine has expanded considerably in concept from its role under the common law. The often quoted statement of the Supreme Court in Euclid vs. Ambler Realty Co. that a nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard, was neither a judgment of pigs nor parlors as such, but of the relationship between the two in combination.

The early uses and practices classified as nuisances and prohibited by the common law were plainly and palpably harmful or injurious to the public. Due to the growth of cities, the resulting congestion and ever increasing complexities of urban life, many other uses of land began to be considered equally as injurious to the community as the long established list of nuisances

under common law. Thus, a practice began to take root whereby the legislative bodies of cities and States gave their attention to those uses of which the newer conditions of life rendered objectionable and injurious. These laws were passed as an exercise of the State's police power, to protect the public health, safety, and morals or welfare. Naturally, legal problems developed because persons wishing to continue the forbidden uses stoutly contended that no legislative body had the right to declare a certain use a nuisance by merely labeling or declaring it to be such.

"The Law and the Environment," by Honorable Russell E. Train, President, The Conservation Foundation. The author defines conservation as meaning the rational use of the physical environment to promote the highest quality of living for mankind.

So-stated, conservation constitutes a set of goals to which responsible people in all walks of life can and should dedicate themselves. Conservation is concerned with the use of land and water and air. In our crowded world, these are usually competing uses--water for swimming or for waste disposal, open space for recreation or real estate development, land for high-rise apartments or for wildlife, for an open-pit mine or for wilderness, a highway or a city park. These are over-simplified choices but they illustrate the fact that conservation issues usually involve conflicts of interest. With an increasing population, growing affluence and rapidly advancing technology, these conflicts are fated to become sharper and more frequent.

The essential role of law in our society is the resolution of just such conflicts. Thus, the law is necessarily a primary tool of society in the management of natural resources. Our goal must be a creative harmony between man and nature. We must develop a rational, ordered, productive, working relationship between human society and the environment. We must design and manage a physical environment that sustains and enriches human life.

"Preservation of Open Space by Private Arrangements," by Allison Dunham, Professor, School of Law, University of Chicago. The law involved is basically the law of private property or the law concerning easements, restrictive covenants running with the land, or rights of entry for condition broken. These can be created by agreement or grant in such a way that it takes the consent of the owner of the benefit of this right of private property before a diversion can be obtained. There is nothing unusual about this law in its application to the creation of open space easements; it is used every day by the lawyers of developers making new subdivisions.

For purposes of preserving the long-term public interest in open space, the use of an additional set of concepts is necessary in order to prevent the private right from dying with the natural owner or the interest of individuals of a particular generation. Hence, the law of charitable, not-for-profit organizations becomes important. The key aspect of this law is the ability to create a self-perpetuating board to govern the organization so that each generation of managers maintains the same general purpose as its creators.

"Environmental Awareness," by Philip H. Lewis, Jr., Professor, Landscape Architecture Department, University of Wisconsin. An overwhelming portion of

the history of mankind is a record of man's efforts to discover and establish his relationships to the natural environment. Up to the present century, most of man's time, energy, and intelligence has been dedicated to the sustenance and protection of human life, either in a struggle with the forces of nature itself, or with other men over the allocation of the environmental resources.

Today these same basic struggles certainly continue, but we have in this country reached a stage of scientific and social development in which decision need no longer be based only upon the immediate needs of survival. We have sufficient knowledge, abundance, and leisure so that a variety of choices is both possible and necessary for the intelligent allocation and utilization of the resources found in the natural environment. It used to be a simple matter to determine the uses of environmental resources. Fish and game provided food, forests provided lumber for shelter, fertile soil, when planted, yielded crops, and rivers and streams were for transportation and the disposal of human and industrial wastes. Now that we are aware of a wider choice of uses, the time has come for a second look at our basic landscape resources.

"Valuation Problems Involving Aesthetic Programs" by E. B. Atherton, Regional Appraiser, U.S. Bureau of Public Roads. There are a number of basic rules of valuation that govern the acquisition of property for aesthetic purposes. Before an appraiser is in a position to begin to resolve an aesthetic appraisal problem, he must first have considered and obtained data relating to three significant prerequisites--understanding of State and Federal law and obtaining necessary legal counsel, obtaining necessary easement or cost-to-cure particulars, determining highest and best use. Appraisal and valuation in aesthetic programs are not basically different from that of any ordinary appraisal problem. Fair market value and cost-to-cure elements are the objectives in compensation, whichever is more economical. Differences are created in laws which tend to be in conflict and in personal property considerations which have historically not been a part of real property valuation.

"Brakes for the Beauty Bus" by David M. Gooder, Chicago. In the enthusiastic pursuit of beautification, many persons overlook or minimize the importance of our system of private land ownership and real estate values. Also often forgetten, by the confirmed advocate of environmental amelioration, are the problems inherent in governmental intrusion into the aesthetic sphere. Who will decide what may or may not be done--the layman, the expert, the politician, the mass? What protection is there against the ignorant, the Philistine, the pseudo-expert, the devotee of a particular school or point of view, the fanatic? To whom will appeal lie, from arbitrariness, favoritism, discrimination or worse? Is not governmental force or compulsion incompatible with a matter so subjective, so intangible, so fragile? Is not democracy--rule by majority vote--basically in conflict with the creative personality, with originality, with the innovator?

There is danger in giving such subjective decisions the force of law. It is difficult to reconcile them with our system of justice. Indeed, how can we avoid serious inroads on our system of private ownership of property? To pay or not to pay is not the whole question. However, most often the major policy debate has been formulated as the choice between using the power of

eminent domain or the police power. It is clear that the question in connection with governmental programs, whether for beautification or otherwise, is not fully resolved by answering the question to compensate or not to compensate. A serious question remains as to the items of damage for which compensation will be paid. Substantial elements of damage are not subject to compensation in eminent domain proceedings in most States.

In particular, there is no requirement that payment be made for incidental or consequential damages flowing from the taking of real property unless they are reflected in the market value of the property taken. Included in these largely uncompensated items are loss due to business interruption, loss of going concern value, or goodwill, and loss of the opportunity to continue in business. Substantial damage may thus go uncompensated.

"The Preservation of Scenic Beauty - One Way to Get There" by R. C. Leverich, District Chief of Right of Way, State Highway Commission of Wisconsin. Motivating capable people to solve the problems of scenic preservation work becomes less difficult as the supply of beauty diminishes. Too many people do not recognize that beauty has disappeared from many areas of our country. We have junked automobiles along our highways, old school buildings stand on our byways, abandoned bridges clutter our streams, old farm buildings rot on our fruited plains, and old tenements harbor rats in our cities.

One solution for the basic problem is pride. Our citizens do not object to waste disposal along our streams, beer cans along our highways, and to waste, destruction, and disorder wherever they travel. There is an increasing public demand that action be taken to preserve, protect, and restore scenic beauty. One way of meeting this challenge in Wisconsin is with our scenic easement program. Simply stated, our program involves selecting scenic areas, carefully evaluating the beauty potential, and obtaining those land use rights which will enable preservation, restoration or enhancement of this potential.

First, an easement program provides for continued useful land use by owners; it allows for the blending of man's works with nature. Second, the true objective of this program is not to deprive owners of usable, marketable property merely for the convenience of agencies unwilling to assume a cooperative relationship with owners. Third, there is no merit to a preservation program which does not provide for the fullest possible utilization of beauty. You do not measure success in this work by the presence of things such as bridges and buildings. You measure it by the absence of things: signs, junkyards, trash, lime quarries, and garbage dumps. It's hard for engineers to measure by absence, for they are by nature builders, and for years roads have meant development, not lack of development. Buy back a little beauty, and people will appreciate it when it is there again. Obtain rights to clear out a junkyard or an obnoxious trash dump, or a nest of advertising signs that obstruct a view--or open a view to a stream.

"Federal, State and Local Programs for Beautification" by Ross D. Netherton, Counsel for Legal Research, Highway Research Board. The first task one faces when beginning to think and talk about aesthetics and the law is

that of establishing some framework for organizing the subject. The ways and means of beautification are many and varied. Our major current efforts to enhance natural beauty and restore amenities in community life will necessarily have to be carried out through governmental powers and processes. There remains next the task of surveying the field of public programs in which amenity and aesthetic objectives can be promoted.

Programs for the enhancement of natural beauty could be classified as follows: (1) neighborhood beautification--dealing with improvement of the appearance of individual properties, shopping centers, and neighborhood streets, and open spaces; (2) community beautification--dealing with the larger relationship between the man-made and the natural features of the community; (3) the overriding need for parks and open space not only in metropolitan areas where they are needed to refute the impression of endless blocks of buildings, but in areas where land has been allowed to slip toward a state of nondescript unattractiveness and ultimate economic stagnation; and (4) the problem of developing "fragile" properties, including landmarks of history or architecture, gardens and botanical collections, fish and wildlife sanctuaries, archeological sites, and others which typically require special care for their preservation and enjoyment.

There are many instances where the private citizen, acting alone or with his neighbors, can and should take the initiative in promoting amenity and the aesthetic values of his environment. This work will assuredly require substantial efforts by government acting in its role as trustee of the natural and cultural heritage of the whole American people, but it is also work in which the whole American public can share and should be proud to share.

"Problems in Condemnation of Property Rights Involving Aesthetic Controls," by Joseph M. Montano, Assistant Attorney General-Chief Highway Counsel, Colorado Department of Highways. The program to keep America beautiful or to restore its beauty is being concentrated along the routes of the Interstate and primary highway systems. The program is being implemented by concentrating on three things: control of outdoor advertising, control of junkyards, and preservation of areas by the acquisition of scenic easements.

Arguments have been raised concerning whether this program can be carried out by the use of the police power or the exercise of the power of eminent domain or a combination of the two. Where the program can be implemented by the lawful exercise of the police power, the owners whose lands are affected would not be entitled to compensation even though their properties may be diminished in value. On the other hand, if the power of eminent domain is used, the limitations imposed by the constitution will be controlling. These limitations, of course, are that private property cannot be taken or damaged except for public use and then only upon the payment of just compensation. The procedure to be followed in the exercise of the power can also be an additional limitation.

Only a few condemnation cases have reached the appellate courts dealing with condemnation of property interests for aesthetics. These comments are to be limited to situations where there is no controversy as to whether the power of eminent domain can be exercised. Attention will be directed to problems

that can or should be anticipated when it has become necessary to file a condemnation case to acquire a property right in order to implement the beautification program. It can be expected that different States will adopt different rules covering issues generally raised and resolved during the actual trial.

After the condemnation suit is filed but before the case reaches the point where the issue of compensation is tried, other issues may have to be resolved. These issues generally fall into three categories: (1) Is the purpose for the taking or limitation of the use of property for a public use; (2) Is there a necessity for the taking or limiting the use of this property; and (3) Have bona fide negotiations, where required by law, been conducted and concluded by a failure to agree upon the compensation to be paid for the taking or damaging of a property right.

A few decisions already have established that the acquisition of a property interest for beautification is for a public purpose. Simply stated, the rule is that in the absence of fraud or bad faith the determination of the public agency for the necessity for the taking or damaging of property will not be reviewed by the courts. In some States, the courts do not have jurisdiction to hear eminent domain cases unless there has been a bona fide attempt to purchase the property or property interest by negotiation.

The problems that may arise fall into two general categories: (1) What constitutes an attempt to purchase; and (2) With whom must negotiations be conducted? A failure to agree with one of the parties should excuse negotiations with any of the others. Where a junkyard is involved and the owner of the junk is not the owner of the land a decision must be made to determine with whom the negotiations will be made; also, whether a sum for the entire interest will be offered or whether a separate offer is to be made for each interest. Where all of the interests cannot be acquired by outright negotiations, decision must be made regarding condemnation of all interests. The Supreme Court of Nebraska has determined that the proper measure of compensation for a preventative easement prohibiting the erection of outdoor advertising signs is the difference in the fair and reasonable market value of the land before and after the taking and not the separate value of the easement taken.

The problem becomes more acute when billboards are in existence and condemnation of them becomes necessary. I am not aware of any cases decided by an appellate court dealing with the measure of compensation in condemnation of signs. In a Washington case the billboard industry was permitted to present estimates of value. The valuation witness testified that the damages to the landowner should be computed by capitalizing the annual lease payment by the going interest rates for real estate mortgages. The witness further testified that the loss to the industry should be measured by considering the cost of the signs, the cost to remove them, and by considering revenue losses as well. It would seem that with respect to loss of revenues that the element of business profits is being interjected improperly to determine just compensation.

"Scenic Easements: Techniques of Conveyancing," by B. J. Mullen, Director, Right-of-Way Division, State Highway Commission of Wisconsin. Within the past year, Wisconsin's concept of conveyancing has been examined,

discussed, and overhauled. Through experience, it became obvious that there were two ways to approach the problem of defining the desired scenic objective: (1) Take all rights in the land and then list those activities that the owner was permitted to pursue; or (2) Set forth in clear, concise English only those rights the acquiring agency wanted.

It was decided that it would be much more in order to state the property restrictions desired and, if the passage of time demonstrated that sufficient rights had not been acquired, we would then either live with what we had acquired, or, correct the situation by acquiring additional rights as needed. In developing a conveyance for a specific parcel, it was deemed necessary to work from a list of all potential rights sought to be acquired and in matching the scenic parcel objectives against such list, select only those rights necessary to accomplish the desired end. After such selection process is completed, the rights to be acquired are typed directly onto the one-sheet scenic conveyance.

Wisconsin law provides the State Highway Commission with specific authority to exercise the right of eminent domain if negotiations for a scenic acquisition fail. Wisconsin has a "quick take" eminent domain law. Thus, it is not necessary to start formal litigation proceedings in order to acquire by condemnation. Under present procedure, if we decide to relinquish some previously acquired right, such right must be considered as "excess" and to dispose of "excess property" it is necessary to secure the advance approval of the Governor.

"Aesthetics and the Marketability of Title," by Robert Kratovil, Vice President, Chicago Title and Trust Company. In Cromwell vs. Ferrier, 225 N.E.2d 749 (1967), the court sustained the validity of a New York zoning ordinance that prohibited nonaccessory billboards. Accessory billboards are those advertising the business located on the same land as the billboard. All others are nonaccessory and were prohibited by the ordinance. Thus, under this ordinance, the familiar billboard advertising Coca Cola or some other national product would be an illegal structure. Thus, the court brings aesthetics within the ambit of public interests that are accorded legal protection under the police power.

In an affluent society that can afford the luxury of aesthetics, it seems reasonable to assume that the Ferrier case probably represents an existing trend. Where the billboard ordinance is retrospective, rather than prospective, where it seeks to terminate by an amortization provision, a use that was lawful when the use began, the ordinance may have more difficult sledding in some States. Thus, in State Highway Department vs. Brand, 152 S.E.2d 372 (1966), the court sustained an injunction restraining State officials from removing billboards on an Interstate highway under a police power statute. Or let us suppose that a law or ordinance requires that all junkyards in residential districts be discontinued within a stated period of time and in the jurisdiction such enactments are lawful. Suppose, further, that the stated period of time elapses and the owner of the junkyard enters into a contract for the sale thereof. A question will arise as to the marketability of title.

All that one can do in venturing predictions as to the outcome of marketability of title litigation is to assume the validity in the particular jurisdiction of the legislation or ordinance in question and go on from there. While the new legislation relating to aesthetics will present some novel

aspects, it seems quite likely that in resolving marketable title litigation such legislation evokes the courts will find and apply analogies afforded by the existing law.

"Using Research Experimentation to Improve the Urban Environment - A Study of Human Response to Visual Environment in Urban Areas," by Cyril Herrmann, Vice President, Arthur D. Little, Inc. This is a report on an experiment which develops a new research method for studying human reaction to the urban freeway, with particular emphasis given to the roadside environment. Typically, the laboratory for urban research is the street, however, progress is being made in capturing certain aspects of the street and taking them into the laboratory for analysis.

Our findings have reached a point which indicates that an important new research tool has been developed. The first task was to obtain an accurate measure of the eye movements of each observer. This was done in a laboratory with a Mackworth eye movement camera. The second task was to measure the response of the observer to what he was seeing. A bi-polar adjective scale was used, similar to Osgood's semantic differential, to measure the direction and intensity of reaction to what was seen.

It was found that response to billboards was not as significantly related to considerations of environmental quality as were other aspects of the roadside environment. Subjects sometimes confused other signs with billboards. The removal of utility poles tended to increase eye fixations on billboards and other signs. The removal of utility poles, billboards, and other signs resulted in an evaluation of the transformed route which was more similar to the evaluations of the route in its original State. To the extent to which the observers looked at utility poles the effect was more complicated.

Two observations should be made at this point: First, it has been possible to effectively work on a complex problem of urban visual environment under controlled laboratory conditions; second, the synthesis of several research methods on the problem of human response to the urban roadside has produced some interesting, new insights at both the theoretical and practical level.

"Aesthetics in the Law," by Sidney Z. Searles, Chairman, Special Committee on Condemnation, Association of the Bar of the City of New York. The law of aesthetics is becoming more important today than it has been in the past. The courts have come to the realization that the aesthetic factors previously considered outside the context of public use are equally as important as other factors not only in connection with value but also with the public health and welfare. Open spaces which previously were so prevalent and which acted as a safety valve to urban areas are becoming scarcer. Needs that were narrow or parochial a century ago may today be interwoven into the very well-being of the Nation. Our courts today are taking a critical look at devices which can be utilized by governments for the increased health and welfare of the American people. One of these is the use of the weapon of eminent domain for aesthetic purposes.

"Posies, Politics and the Courts," by Fred S. Farr, Highway Beautification Coordinator, Federal Highway Administration, Bureau of Public Roads. Let us look at conservation--an appreciation of the amenities and protection of aesthetic values. Some of the great political legislative, administrative, and legal battles of our country have been fought on these issues. Be it an attempt by Teddy Roosevelt to set aside great timber stands for national forests, be it a State legislature or the Congress of the United States attempting to prevent stream pollution, a small city to zone against billboard proliferation, the enforcement by the air pollution district of measures to make our air a little safer to breathe, the rejection by a planning commission of a use permit to establish an oil refinery in a small seacoast farming community with high recreation potential, or attempts to preserve the skyline from misplaced, ugly utility lines, the cry is the same--the scenic despoilers claim in the name of progress that it is "those impractical, pie-in-the-sky, posie-picking, tree-loving extremists who ride the beauty bus--it is they who stop us from moving forward with the times." Why the fight over the years to accomplish conservation goals--to preserve the posies? The reason is that wise use of our Nation's resources makes good sense. Few would deny this now, but such was not always the thinking in this country.

"Planning, Zoning and Aesthetic Control," by Dennis O'Harrow, Executive Director, American Society of Planning Officials. Aesthetic control needs to be analyzed, to determine what our objective is and how we can achieve it. Our objective is to make our Nation and its cities beautiful. There are three types of action we can use to achieve our objective. Eliminate the ugliness of the past that is still with us, preserve and hold safe the beauty that we now have, create in and for the future a still more beautiful environment. A simple prescription, but extremely difficult to administer.

"Review of Current Literature," by David R. Levin, Deputy Director of Right-of-Way and Location, Federal Highway Administration, Bureau of Public Roads. Those interested in the legal elements of aesthetics--or in any aspect of it, for that matter--should take the time to review a selected group of available documents that concern this subject matter. Some of these will supply the data needed to support assertions of various kinds involving the aesthetics subject matter. These are listed in the Proceedings in full.

"The Jurisprudence of Aesthetics," by Ruth R. Johnson, Attorney Advisor, Federal Highway Administration, Department of Transportation. In the early development of our legal system, simple rules emerged from the common law which placed restraints upon the inherent sovereign police power. Such a rule was the one against aesthetics, which provided that aesthetic considerations alone are not sufficient to sustain a restriction upon the use of private property. This simple formula was a check against arbitrary government power. The rapid evolution of this field of law has produced a solid minority position in the abandonment of the rule against aesthetics. Statutes are now being passed which openly purport to preserve and protect natural scenery, open spaces, the highway corridor, and the attractiveness of the community. It will be exceedingly difficult for the courts to find safety, health, or morals factors to sustain these statutes.

COMMITTEE ON CONDEMNATION AND LAND USE CONTROL

LS-1

David R. Levin, Chairman
Deputy Director, Office of Right of Way
and Location, Bureau of Public Roads

Joseph D. Buscher, Special Assistant Attorney General, Maryland State Roads Commission

Saul C. Corwin, General Counsel, New York State Department of Public Works

Roger A. Cunningham, Professor of Law, University of Michigan Law School

Harry S. Fenton, Chief, Division of Contracts and Rights of Way, Highway Transportation Agency, California Department of Public Works

Delbert W. Johnson, Assistant Attorney General, Washington Department of Highways

Philip K. Jones, General Counsel, Louisiana Department of Highways

Lloyd H. Kirby, Assistant to Deputy Director, Office of Right of Way and Location, Bureau of Public Roads

Daniel R. Mandelker, Professor of Law, Washington University School of Law

Herman J. Morton, Assistant General Counsel, Bureau of Public Roads

George H. Samuels, Director, Legal Division, West Virginia State Road Commission

Robert R. Wright, Professor of Law, University of Arkansas Law School