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GEORGE R. CLARK, ESQ.

March 3, 2010

**VICE-CHAIR**

NANCY MACWOOD

The Honorable Jim Graham  
The Honorable Tommy Wells  
DC City Council  
1350 Pennsylvania Ave., NW  
Washington, DC 20004

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**TREASURER**

FRANCIS M. CLARKE, III

Dear Chairman Graham and Councilmember Wells,

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**Please include this correspondence as a part of the full hearing record.**

The Committee of 100 appreciated the opportunity to present testimony on streetcars and overhead wires at the Council oversight hearing on the DC Department of Transportation on Friday, February 26, 2010. We want to work with the Council to understand the planned streetcar system in greater detail so that we can help to achieve its maximum benefit for the District.

Councilmember Wells raised questions about legal recognition of aesthetics, questioning what the U.S. Supreme Court's stand has been on aesthetic regulation.

The Supreme Court has addressed aesthetics on a number of occasions. I refer you to *Berman v. Parker*, 348 U.S. 26 (1954) in which the court gave strong support for government action based solely on aesthetic considerations:

The concept of the public welfare is broad and inclusive... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. (*Berman v. Parker*, at 33)

Relying on this language, courts began upholding billboard controls, preservation regulations, and height restrictions on aesthetic grounds alone. By 1978, in the *Penn Central Transportation Co. v. New York City*, the court wrote:

**CHAIR EMERITUS**

LAURA M. RICHARDS, ESQ.

We emphasize what is not in dispute... This court has recognized, in a number of settings, that states and cities may enact land-use regulations or controls to enhance the quality of life by preserving the character and the desirable aesthetic features of a city... (*Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) at 129)

Further, the National Environmental Policy Act explicitly references aesthetics in its purpose:

**(b)** In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

**(1)** Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

**(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings.**

Enclosed is the Preface from an excellent book, *Aesthetics, Community Character and the Law* that I produced and edited with the American Planning Association during my time as President of Scenic America from 1996-2004. The authors, noted land use planners and attorneys Christopher Duerksen and Matt Goebel, show how aesthetics are considered *in conjunction with other values*. This is what I meant when I said that Council members and DOT staff must consider aesthetic values simultaneously with other concerns such as mobility, accessibility and connectivity of our city.

Aesthetics, along with many other values, are important to a great many of your constituents who want only the best for this city. We hope that this letter serves to clarify the standing of aesthetics as a valid public purpose that should not be trivialized or disregarded in knowledgeable discussion about our public realm, particularly as it affects both the nation's capitol and the residential and commercial streets of our great city.

Thank you for your interest in this matter.

Sincerely yours,

Meg Maguire  
Member, Board of Trustees, Committee of 100 on the Federal City

Please send all correspondence for Meg Maguire to:  
631 Maryland Ave., NE  
Washington, DC 20002

# ***AESTHETICS, COMMUNITY CHARACTER AND THE LAW***

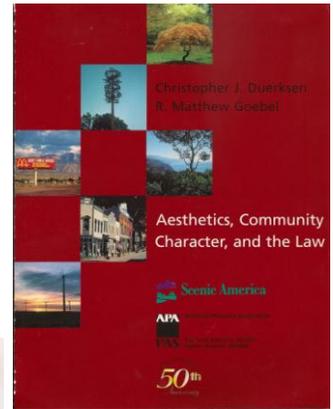
Christopher Duerksen and Matt Goebel, Authors

Scenic America and American Planning Association

PAS Report Number 489/490 December 1999 (154 pages)

Available from APA Bookstore, \$19.95

Preface by *Meg Maguire, President, Scenic America (1996-2004)*



## P r e f a c e

As Americans, we treasure natural beauty and the distinctive character of our communities. We know this from ordinary conversation, from polling data, and from our nation's long and distinguished tradition of protecting beautiful places as public forests, parks, private gardens, and estates.

Yet, the American landscape is suffering "death by a thousand cuts." The billboard industry constructs 5,000 to 15,000 new billboards each year on federal highways and many more on state roads and city streets. Developers clear-cut thousands of acres of trees to make way for new development. Cellular communications operators erect huge towers without regard to the visual impact on local neighborhoods or even our national parks. Franchise operators and "big box" retail developers threaten to locate elsewhere unless communities permit their cookie-cutter buildings. State highway departments too often build and rebuild roads without regard to their impact on the land. Day by day, by a thousand cuts, we are losing our cherished scenic heritage.

But something more powerful is also at work: a thousand efforts in a thousand communities building a national movement for scenic conservation. In city halls and county seats, citizens are demanding new, smarter approaches to community growth. But all too often, neither they nor their elected officials are aware of successful models elsewhere to protect scenic character by banning the construction of new billboards, enacting tree and landscaping ordinances, protecting viewsheds, writing tough legislation governing cellular towers, requiring franchise operators to work within local design guidelines, saving historic buildings, and adopting new statewide standards for road design.

*Aesthetics, Community Character and the Law* shows how to write laws that protect a special sense of place. Scenic America is proud to have helped make this publication possible. Every day we work with citizens who need the information on aesthetics and community character that they will find here.

We wish to extend special thanks to Julian Price of Asheville, North Carolina, for generously underwriting the publication, and to the Turner Foundation for additional support of this project. Tony Wood of the Ittle-son Foundation and Dale McKeel of Scenic North Carolina reviewed the drafts and provided valuable comments based on their own experience. Scenic America vice presidents Ray Foote and Frank Vespe contributed much valuable knowledge and material from our files; our citizen members contributed their wisdom and experience from the front lines of civic action.

We are especially grateful to authors Chris Duerksen, a member of Scenic America's Board, and Matt Goebel, both of Clarion Associates, for sharing their knowledge and insights from the outstanding work they do nationwide advising communities about how to create better places to live and work. *Aesthetics, Community Character and the Law* makes one thing clear: Change is inevitable; ugliness is not.