INTRODUCTION

This chapter addresses outdoor advertising and sign control within the visual corridor (Figure 7.1). The issue of “billboard” or sign control has and continues to be a problematic visual landscape issue at the national, state, and local levels of government — from both a regulatory and a visual impact perspective. This is probably why “Scenic America” (a national visual quality advocacy group) spends much of its efforts trying to address legislative and communication issues regarding outdoor advertising.

Unlike Chapters 5 and 6, which focused on aesthetic zoning affecting land use and architectural controls affecting structures and districts, respectively, this chapter focuses on signs and billboards — structures that deliver messages. Signs are not standing alone — but are along the visual corridor generally created by a highway or road. There is something about this relationship — Is it public or private visual occupancy? Negative or positive visual quality? It is definitely problematic.

According to a recent handbook, Visual Pollution and Sign Control (McNatt 1987, pp. 1–2), signs or billboards (see Figure 7.2):

1. Are a form of visual pollution, intruding and distracting from the surrounding environment.
2. Are the most intrusive form of advertising.
3. Provide few if any compensating benefits.
4. Devalue the public’s intensive investment in highway beautification.

What is it about this billion-dollar-a-year business that seems to have a political hold on major legislators through the well-funded billboard lobby? We look briefly to the turn of the century as billboards or outdoor advertising were involved in legal litigation.

EARLY HISTORY OF SIGN REGULATION

Originally, aesthetics was “masked” by other issues dealing with public morals, health, or safety. This tendency is exceedingly well illustrated in the Missouri Supreme Court case of St. Louis Gunning Advertising Company v. St. Louis1 where the court was looking for some handle to deal with billboard control. This case provided the doctrinal shift by taking the position that the police power might be exercised to protect community, health, safety, and morals. It found that billboards endanger the public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants. They are also inartistic and unsightly. In cases of fire they often cause their spread and constitute barriers against their extinction; and in cases of high wind, their temporary character, frail structure and broad surface, render them liable to be blown down and to fall upon and injure those who happen to be in the vicinity. The evidence shows and common observation teaches us that the ground in the rear thereof is being constantly used as privie and dumping ground for all kinds of waste and deleterious matters, and thereby creating public nuisances and jeopardizing public health; the evidence also shows that

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1253 Mo. 99, 137 S.W. 929 (1911), appeal dismissed, 231 U.S. 761 (1913).
behind these obstructions the lowest forms of prostitution and other acts of immorality are frequently carried on, almost under the public gaze; they offer shelter and concealment for the criminal while lying in wait for his victim; and last but not least, they obstruct light, sunshine, and air, which are so conducive to health and comfort.\(^2\)

Thus, the contemporary doctrine derived from *St. Louis Gunning* as phrased by Dukemin (1955, p. 220) was:

a.) the police power may not be used to attain objectives primarily aesthetic, but

b.) the police power may be used to attain objectives primarily related to health, safety or morals; based upon the following proposition of fact;

c.) billboards and signs are primarily deleterious to health, safety and morals.

Other cases of this period held that signs may fall on pedestrians in heavy winds and become fire hazards.\(^3\) It has only been fairly recently that control of signs for aesthetic purposes has been upheld in the courts.\(^4\)

In 1931 Proftit characterized existing billboard regulation as falling into several groups:

1. California forbade the placing or displaying of any advertisement on public property without consent, and declared that anyone violating the statute is guilty of a misdemeanor. Similar legislation was also adopted in Colorado, Connecticut, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, New Jersey, North Carolina, North Dakota, Pennsylvania, and Utah.

2. A North Carolina statute provided that anyone placing advertising matter on private property without first obtaining the written consent of the owner is guilty of a misdemeanor and subject to fine or imprisonment. Legislation of similar nature had been adopted in California, Colorado, Connecticut, Illinois, Indiana, Louisiana, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, and Utah.

3. New York permits anyone to remove from public highways advertising matter that had been placed there without permission from the proper government authority. New Jersey and Rhode Island adopted similar legislation.

4. In New Jersey, by statute, a presumption is raised that the person whose goods are advertised autho-
rized the unlawful placing of the advertisement. Similar provisions appeared in New York and Colorado laws.

5. Vermont exacts a license from anyone engaging in the business of outdoor advertising within the state. Statutes requiring licenses for anyone engaged in the business of outdoor advertising or statutes taxing billboards were also adopted in Connecticut, Florida, Michigan, Mississippi, and New Jersey.

6. A statute was adopted in Colorado prohibiting the erection of billboards along any highway outside city limits within 300 feet of intersecting corners or sharp curves if such structure would interfere with the view of an approaching vehicle. Legislation of similar nature was enacted in Iowa, Kansas, Maine, Michigan, Nebraska, North Dakota, South Dakota, Vermont, Washington, and Wisconsin.

7. Arkansas enacted legislation prohibiting the erection of any billboard within 100 yards of a state highway and along any public road to any town, etc. in the state unless the person erecting such a billboard first obtains permission of the state highway commission.

Billboards were springing up at this time, and local jurisdictions were trying to deal with them. Vermont’s 1925 legislation was an early comprehensive program. It included size parameters for commercial outdoor advertising, licensing requirements, allowable proximity to dangerous curves and public parks, as well as provisions for the removal of billboards. Little legal problem was encountered with these statutes. Statutes that received the most attention from the billboard interests were those like Nevada’s, which prohibited billboards that “destroy the natural beauty of the scenery.” Such statutes were apparently quite frequently challenged as being too subjective.

England dealt with the billboard problem in the Advertisements Regulation Acts of 1907 and 1925 which, read together, authorize the prescribed local authorities to make bylaws for regulating, restricting, or preventing within their district the exhibition of advertisements in such places and in such a manner as to negatively affect:

a.) the amenities of a public park or pleasure promenade; or

b.) the natural beauties of a landscape; or
c.) the view of rural scenery from a highway or railroad or from any public place or water; or
d.) the amenities of any village within the district of a rural district council; or
e.) any amenities of any historic building or monument of any places frequented by the public solely or generally on account of its beauty or historic interest (Profit 1981; p. 175).

Legislation for the control and restriction of billboard advertising was also adopted in Bermuda in 1923; Newfoundland in 1916; Ontario in 1926 and 1927; New Zealand in 1903 and 1906; New South Wales in 1906, 1908, and 1920; Hong Kong in 1912, 1913, and 1924; Palestine in 1926; Queensland in 1902 and 1911; South Australia in 1916; Victoria in 1914; and Western Australia in 1906. Thus, regulation of outdoor advertising was underway in the first quarter of this century in the United States, England, Canada, and Australia, with obviously a clearer legal mandate in the British Commonwealth than in the United States.

In 1936 there was a critical case in the Massachusetts Supreme Court that started the doctrinal shift to substantiating regulation of billboards solely on aesthetics-based considerations (Gardner 1936) — a battle that continues state-by-state to this day (see Chapter 4; also see articles by Aronovsky 1981, Lucking 1977, and Peters 1978 for more on the history of billboards and sign control).

THE HIGHWAY BEAUTIFICATION ACT: THE FEDERAL EFFORT

Billboards, or outdoor advertising, are regulated by federal, state, and local laws, and this complex interrelationship needs to be understood before we move on to other legal issues and implementation. The structure and evolution of the Federal Highway Beautification Act and specific programs and related problems with the act as implemented are discussed here.

The federal highway system includes about 300,000 miles of federally financed roads — the 40,000-mile interstate system and 260,000 miles of primary roads (Figure 7.3). Signs and sign regulation started in the 1920s, as we have seen, but as the highway system grew in the 1950s and 1960s, and as more people owned cars, sign regulation started in the 1920s, as we have seen, but as the highway system grew in the 1950s and 1960s, and as more people owned cars, so, too, proliferated outdoor advertising. Congress began considering ways to control this.

The first effort at regulating billboards along federal highways was the Bonus Program of the Federal Aid Highway Act of 1958. Under this program, states that complied with federal outdoor advertising regulations received a bonus payment of 0.5 percent of the federal highway funds otherwise allocated to that state. The Bonus Program was not widely accepted; only half the states took advantage of it before eligibility to participate expired in 1965 (Gould 1986).

The failure of the Bonus Program to adequately and comprehensively address the billboard problem increased the pressure to develop alternate remedies. The federal government's next attempt at billboard control was the Highway Beautification Act of 1965, supported by President and Lady Bird Johnson. Unlike the Bonus Program, which used a "carrot" to induce states to control billboards along federal roads, the 1965 act imposed penalties for failure to meet federal standards. States that do not comply with federal regulations risk losing 10 percent of their federal highway funds.

According to many commentators and experts (Floyd 1982; Lam and Yasinow 1988; Cunningham 1973), the Highway Beautification Act has been a failure. It was supposed to result in the removal of existing billboards from rural roads and the prohibition of new signs; instead, it has subsidized the industry it was meant to regulate and has shielded billboard companies from state and local government attempts to control billboard blight (Floyd 1982).

The Legal Requirements of the Act

The Highway Beautification Act calls for each state to require "effective control" over billboards along its federal-aid highways or risk losing 10 percent of its appropriation. The statute defines "effective control" as the prohibition of the following types of new signs visible from the highway:

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1. Directional and official signs
2. On-site “for sale” and lease signs
3. Signs identifying and advertising on-site businesses
4. Landmark signs of historical or artistic significance
5. “Free coffee” signs for travelers

A significant exception to the act, however, is the provision that permits the construction of billboards in zoned and unzoned commercial and industrial areas. An agreement between the states and the secretary of transportation determines the definition of an unzoned commercial and industrial area, and the definition may vary from state to state. This provision also calls for the agreement between the federal government and the states to establish size, spacing, and lighting consistent with "customary use."

The law also provides for the removal of all nonconforming signs after a five-year period and for payment of cash compensation to the owners for such removal. Other sections of the act provide for travel information signs at interchanges (logo system) and rest area information centers. Regulations enacted by the Federal Highway Administration (FHWA) further define the terms of the act.

There are several problems with the act, some of which affect local communities and sign control. These issues are cash compensation to sign owners for removal of signs, impacts on local laws, use and misuse of commercial and industrial zones, sign size and spacing standards, and tree cutting to keep signs visible.

Cash Compensation to Sign Owners

The most counterproductive provision of the Highway Beautification Act is the requirement that sign owners be paid “just compensation” for nonconforming signs that are removed, even when the removal occurs after the five-year grace period provided by the act. Failure to pay cash compensation for sign removal also subjects the state to the risk of losing 10 percent of its federal highway funds. This provision was included through the efforts of the outdoor advertising lobby. Payment of just compensation is not constitutionally mandated if a reasonable amortization period is included in the local or state zoning statute.

Paying the industry to take down billboards has not necessarily meant a reduction in the number of signs. When a billboard is still in good physical condition, a company may simply move it to a new location and thereby retain its use at the same time it collects compensation. If the government later wants to remove the billboard from its new site, it will have to compensate the owner a second time. Alternately, sign companies can use their compensation money to put up new signs. According to a 1985 report by the U.S. General Accounting Office (1985), 13,875 signs were removed under the Highway Beautification Act in 1983, but 13,522 new ones were erected in commercial and industrial areas.

The compensation provision originally applied only to signs that were removed because of the requirements of the federal act. A 1978 amendment, however, extended the requirement to sign removals accomplished under any law, including state and local land use control and zoning laws. States and communities are deprived of their traditional right to remove nonconforming signs from federal highways under the police power. Ordinances that required the removal of such signs, after an amortization period and without paying compensation, become invalid. Some state laws, influenced by representatives of the billboard industry, even extended the cash compensation requirement to all state roads.

In summary, because states may not want to risk losing 10 percent of their highway funding, it is probable that no signs will be removed from federal interstate and primary aid (federally funded) highways unless cash compensation is paid. However, since no federal money is available, no removal is taking place.

Methods to Force Compliance with Local Laws

To prevent the proliferation of new signs a locality can pass a comprehensive ordinance forbidding new construction even on a federal highway. In addition, communities may also require existing billboards on federal roads to meet stricter size and height restrictions. According to a 1987 FHWA memorandum, signs that are not brought into compliance with such local restrictions may be removed without compensation. Such a question arose in connection with a Denver ordinance and was upheld by the local FHWA office. This administrative opinion gives local communities and state gov-

\[23 \text{ U.S.C. 131 (c) (1988).}\]
\[23 \text{ U.S.C. 131 (d) (1988).}\]
\[23 \text{ U.S.C. 131 (e)(g) (1988).}\]
\[23 \text{ U.S.C. 131 (g) (1988).}\]

ernments a tool for affecting signs on federal highways utilizing their own police powers.

Commercial and Industrial Zones

Although the Highway Beautification Act generally prohibited new billboards, it exempted all zoned and unzoned industrial and commercial areas. This exemption has allowed hundreds of thousands of new billboards to be erected under the act. Some rural communities have used this exemption to circumvent the law by zoning strips of land along rural highways as commercial and industrial areas simply to allow billboards to be erected. This practice of “phony zoning” is not legal under the act and its regulations. However, documented cases have occurred in many states, including Nevada, South Dakota, New Mexico, South Carolina, and North Carolina (Floyd 1982).

Because of the FHWA’s interpretation of this section of the act, rural areas that are zoned commercial and industrial, but that are currently undeveloped, may become sites for numerous billboards. The most straightforward solution to this problem is passage of a strong local ordinance prohibiting new billboards. This will stop sign proliferation on local sections of the federal highway regardless of a community’s land use decisions.

The other problem is unzoned areas actually used for commercial and industrial purposes. Sign companies exploit this loophole by using small, obscure businesses, which may not even be visible from the highway, to qualify a rural site for the erection of several billboards.

Size and Spacing Standards

The Highway Beautification Act does not include any specific limitations on the size, lighting, or spacing of billboards (Figure 7.4). Rather, it requires federal and state highway officials to agree on restrictions based on customary use. At the time the act was passed billboards were generally limited to 300 square feet (Miller 1985). Under a model agreement developed by the Federal Highway Administration (FHWA) in conjunction with Outdoor Advertising Association of America, the maximum sign size suggested was 1,200 square feet—four times the old limit—without any regulation in height. Such “size restrictions” plus improved sign technology have led to the erection of monopoles, large signs supported by a single metal pole. Such billboards can be up to fifteen stories high, are visible over long distances, and frequently break the natural skyline or horizon.

Spacing requirements recommended by the FHWA are similarly lax. Billboard sites must be 500 feet apart on interstate highways and 100 feet apart on primary roads. If both sides of the road are used, there can be twenty-one signs per mile on interstates and many more on primary roads. The most effective way to regulate sign size on federal highways may be to pass local

![FIGURE 7.4 Size and spacing standards. Graphic credit: Scott Shannon](image-url)
ordinances that prohibit new signs, or that limit size and height and prohibit double-decking of signs.

Tree Cutting

Major public outcry has resulted from the destruction of trees and vegetation on public rights-of-way to make signs more visible. Thousands of permits are issued each year for such work. Ironically, many of the trees cut were planted under federally funded landscape programs.

The FHWA grants the states the discretion to remove trees from federal roadsides. Some states, like Tennessee, allow tree cutting by statute, while others, like North Carolina, have promulgated regulations permitting “vegetation control.” According to the Coalition for Scenic Beauty, twenty-nine states, including Iowa, New York, and Massachusetts, prohibit the practice of cutting vegetation to make signs more visible.

STATE EFFORTS AND BILLBOARD CONTROL

In response to the Highway Beautification Act and its amendments, each state eventually passed legislation establishing “effective control of billboards.” For review of such efforts before 1973 the reader is referred to Cunningham’s (1973) comprehensive review of state programs. For the most part, these laws were enacted simply to avoid the 10 percent reduction in federal highway funding. Although the Highway Beautification Act permits states to pass stricter legislation, most state laws go no further than the federal act requires, and control is generally limited to interstate and primary roads. Some state laws, however, also include specified state roads such as turnpikes, secondary roads, and designated scenic highways. All the state laws require that compensation be paid for any legal, nonconforming billboard removed from areas adjacent to interstate and primary roads as mandated by the federal act.

As a result of lobbying pressure from the billboard companies, some states also require payments for the removal of signs from nonfederal roads. Georgia, for example, requires that compensation be paid for the removal of all lawfully erected signs that fail to conform to “any lawful ordinance, regulation or resolution.” Other states, such as Florida, specifically allow cities and counties to enact legislation that is stricter than state law, as long as compensation is paid for sign removal along federal roads. Although billboard control is usually a local rather than a state issue, several states have tackled the problem at the state level. Vermont, Maine, Alaska, and Hawaii have banned billboards entirely and have removed any existing billboards. Oregon and Washington also have strong sign control laws.

RECENT TRENDS IN LOCAL SIGN REGULATION

In the wake of favorable federal and state court decisions, there has been a flurry of new sign ordinances enacted at the local level. A number of cities and towns are going beyond traditional sign regulation to ensure that billboards and other outdoor advertising media are compatible with their surroundings. The following cities have enacted some of the more interesting and innovative ordinances. (See Zeigler 1985 and Duerksen 1986 for a more detailed review.)

Lake Charles, Louisiana, has enacted a sign control ordinance representing a judicious attempt to balance sign control with the needs of merchants and the public. Its notable features include:

1. A flexible size provision based on location, height, and setback.
2. A bonus arrangement based on the amount of landscaping, materials, color, and compatibility.
3. Spacing of off-premise signs.
4. Minimum landscaping and architectural treatment for off-premise signs.

In Chula Vista, California, the local zoning code authorizes planned sign districts for commercial and industrial projects larger than two acres. These provisions, which may be chosen by the developer as an alternative to regular sign regulations, allow more latitude regarding number and size of signs if the project proponents advance a coordinated program for style, materials, and placement.

As part of its recently adopted downtown plan, San Francisco has created several special sign districts for historic areas, redevelopment zones, and pedestrian-oriented commercial areas. Regulations vary from dis-
CONSTITUTIONAL AND OTHER LEGAL ISSUES INVOLVED WITH SIGN CONTROL

Billboard companies and sometimes local businesses have challenged sign control ordinances in court on the constitutional grounds that they violate the First Amendment right of free speech and the Fifth Amendment prohibition against government’s taking of private property without compensation. (See Aronovsky 1981; Lucking 1977; and Peters 1978 for a more detailed discussion.)

The First Amendment: Freedom of Speech

The U.S. Supreme Court, in recent decisions involving sign ordinances attacked as unconstitutional infringements on free speech (Figure 7.5), has held that an aesthetic interest is a valid basis for a sign regulation. In the case Taxpayers for Vincent, the Court ruled that political, or noncommercial, speech is entitled to a higher degree of protection than commercial speech. If a sign ordinance has a significant impact on a form or method of political expression, in order to be valid it must:

1. Be content neutral.
2. Promote a substantial government interest, unrelated to the suppression of speech.
3. Restrict the speech only to the extent necessary to accomplish the substantial government interest.

In this case, the Court upheld a total ban on all posted signs, political or otherwise, because aesthetics and traffic safety were substantial government interests and adequate alternative channels for political communication existed in the community. It would appear, conversely, that if adequate alternative channels to transmit the political message were lacking, the sign law would fail constitutionally.

Several other conclusions may be inferred from Taxpayers for Vincent and other recent cases. It appears that if a regulation gives more favorable treatment to commercial signs than to political signs, it would be held unconstitutional. This seems consistent with the Court’s expressed intent of giving political speech a higher degree of protection than commercial speech. The Court has not otherwise made clear the precise nature of favored position of political speech. In addition, a “time, place, and manner” restriction on signs, for example, regarding height, setback, and size limits, is likely to pass constitutional muster.

In 1981, in the Metromedia case the U.S. Supreme Court held that a content neutral regulation on commercial signs would be upheld, if it

1. Seeks to promote a substantial government interest.
2. Directly advances that interest.
3. Is no broader than necessary to accomplish the government interest.

The Court made clear that regulators may differentiate between on-site and off-site signs. A ban on off-site signs only will be valid because businesses and the public have a greater interest in the service provided by on-site signs of identifying the business and its wares.

In 1986 the Fourth Circuit Court of Appeals applied the Metromedia decision to a Raleigh, North Carolina, sign ordinance in Major Media of the Southeast, Inc. v. City of Raleigh. The ordinance sharply restricted the size and location of the off-site signs. Applying the Metromedia opinion to the ordinance, the court concluded “that a City may justifiably prohibit all off-premise signs or billboards.”

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**Figure 7.5** Using signs for Freedom of Speech. Photo credit: R. C. Smardon

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24Id. at 1272.
guage to permit noncommercial messages whenever signs are permitted, thus avoiding the constitutional problem identified in Taxpayers for Vincent and Metromedia.

First Amendment Guidelines

The U.S. Supreme Court has developed several tests that it uses to judge whether regulations impermissibly infringe on First Amendment rights. The Metromedia and the Taxpayers for Vincent opinions applied several different constitutional tests, but each focused on the same basic issues.

1. An ordinance must be content neutral and impartially administered. It cannot:
   (a) Be aimed at the suppression of free expression.
   (b) Be biased to any particular point of view.
   (c) Attempt to choose permissible subjects for public debate.

   One of the reasons why the Supreme Court found San Diego’s ordinance unconstitutional in Metromedia was that it distinguished between types of noncommercial speech. Even if an ordinance does not distinguish among topics, it could be found invalid if it gives officials the discretion to grant or refuse permits. Such arbitrary discretion, which could become a means of suppressing a particular point of view, has been deemed unconstitutional.\(^{25}\) To avoid possible arbitrariness, it is important to define commercial and noncommercial speech in the ordinance.

2. An ordinance must directly advance a substantial government interest. Both aesthetics and traffic safety are generally accepted as substantial government interest.

3. An ordinance must be narrowly tailored so that it reaches no further than is necessary to achieve the substantial government interest.

4. An ordinance may be unconstitutional if it does not leave open ample alternative means of communication.

To prevent First Amendment problems in local sign ordinances, communities should not exempt certain types of political signs from their on-site sign regulations but instead should incorporate a section that exempts all noncommercial speech.

Fifth Amendment Issues

The Fifth Amendment of the United States Constitution prohibits the taking of private property without just compensation. Ordinances requiring the removal of billboards over time do not result in such takings. Although sign companies may argue that they are entitled to compensation under the Fifth Amendment, their claim is contrary to judicial rulings. Unlike eminent domain takings, billboard control does not result in government confiscation of private property. It is an exercise of the police power rather than the use of eminent domain; it only restricts the manner in which property can be used. (For the general legal background see the previous chapters.)

Because the burden of sign controls amortized over a reasonable time is limited and the public benefits are significant and widespread, courts have generally concluded that a regulation requiring the removal of billboards is a legitimate use of the police power that does not require compensation.\(^{26}\)

Since billboard regulation is not a taking of private property, there is no constitutional requirement to pay compensation for sign removal. The Highway Beautification Act requires the payment of just compensation but does not define or specify a method of calculation. Regulations under the act require the states to develop appraisals or formulas to simplify valuation, but explicitly state that these formulas do not purport to calculate just compensation in terms of eminent domain.\(^{27}\) Most state governments have worked out elaborate compensation formulas in conjunction with the FHWA.

Localities unable to use amortization programs may wish to take down billboards by using their power of eminent domain and paying compensation. Several different methods (Pollard 1987; Floyd 1983) are commonly used to establish fair-market value of condemned property in eminent domain proceedings, but only one of these is suitable for billboards. This is the “cost approach,” which calculates the cost of repairing the billboards minus any depreciation for physical condition.\(^{28}\)

The following set of guidelines is offered by Duerrksen (1986, p. 33) for guidance to local communities that are drafting sign ordinances that need to pass muster on the previously mentioned legal issues.

a. First Amendment restrictions must be observed.

Restrictions on speech are valid only if the regulation


\(^{26}\)See Art Neon Co. v. City and County of Denver 488 F.2d 118 (10th Cir. 1973).

\(^{27}\)23 C.F.R. 750.304 (c) (i) (1991).

\(^{28}\)See 73 A.L.R.3d 1129 (1976) for appropriate cases.
seeks to implement a substantial government interest, directly advances that interest, and reaches no further than necessary to accomplish the given objective;

b. Size, design, and placement restrictions are generally valid;

c. While promotion of aesthetic objectives alone is sufficient to regulate signs, the ordinance should clearly state the purposes for which it is being adopted.

To the extent that sign control is part of a broader program of preservation districting, designating scenic roadways, or street tree planting, so much the better;

d. A distinction can be made between on-premise and off-premise signs, and the latter may be banned entirely, but care should be taken in carving out exceptions within those two categories. Unexplained differences in treatment of different kinds of noncommercial signs have been particularly troublesome;

e. All signs can be prohibited in special areas in a community such as historic districts, but great care should be taken in doing so, particularly in commercial zones and with respect to ideological signs;

f. A total community-wide ban on political and ideological signs is unconstitutional;

g. Post-campaign and post-event removal requirements are permissible, as are inspection and removal fees, if reasonable and related to administrative cost;

h. “Problem” signs, such as portable signs, can be regulated strictly, but those restrictions must bear a direct relationship to the public welfare grounds involved by the ordinance.

Regulation of an Easement of View

An interesting legal argument first developed by Wilson (1942) and endorsed by other legal scholars (Williams 1968; Martin et al. 1958) is that sign regulation is not so much an aesthetic restriction on private property as it is a regulation of an easement of view, imposed upon the public highway as a servient tenement. According to Wilson (1942, pp. 738–739):

An easement appurtenant (such as visibility from the highway) exists only for the benefit of the dominant estate, and the extent of its rightful use cannot exceed the needs of that estate. The owner of the dominant estate cannot sever the easement from the land to which it is appurtenant — cannot sell it or reserve it apart from the land.

What is more important, he cannot use it, or authorize others to use it, for the benefit of other property, or for merely personal profit in ways that do not benefit the land to which the easement belongs and of which it is legally part.

The right of visibility is one of the rights that the law gives in order to promote the development and improvement of land bordering on public ways. It is a right appurtenant to such land, apart from which it cannot be owned and for the benefit of which it alone can be lawfully exercised. According to Wilson (1942), this means that while the owner whose property abuts the highway has the right to the advantage of visibility so far as it can further the beneficial use and occupation of the land, the owner cannot (as against the public authority owning and controlling the highway) sell or lease his right to be seen from the highway without selling or leasing the land. Also he cannot use, or authorize others to use, this privilege for the benefit of business conducted elsewhere. Legislation restricting roadside advertising encounters no legal problem except as it affects the advertising incident to the use and enjoyment of the land bordering the roads. To hold otherwise, according to Wilson, would be to ignore the appurtenant character of the easement of visibility as well as the public policy in which this right has its origin. The practice of making the visibility of the land a source of profit while the land is unused is in direct conflict with these principles.

This so-called “Vermont doctrine” has been upheld in court cases in Vermont, New York, and New Hampshire. Although it has a somewhat awkward legal structure, it does go straight to the issue. What are the visibility rights of the landholder? The public regulatory agency? The viewer? This principle states that the landholder has the right of visibility, but it is tied to the bundle of property rights, and there are certain legal principles that restrict use and selling of those rights, especially uses that have nothing to do with the property.

We have already seen the regulatory structure and legal roles of federal, state, and local agencies with regard to sign control and outdoor advertising. Chapter 8 will address legal principles of visibility along major corridors in regard to the viewing public.

ALTERNATIVES TO TRADITIONAL SIGNAGE

There are alternative ways of communicating information other than billboards and traditional signage. Environmental and information design may offer compromise solutions. Some recent developments are described below.

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Logos: "Specific Information Signs"

The Highway Beautification Act of 1965 called for the development of "specific information signs" along federal-aid highways to provide directional information to the traveling public. These signs came to be known as "logo signs" since their blue backgrounds feature the business logos of gas, food, lodging, and camping facilities. In 1972 Virginia became one of the first states to use logos throughout its interstate network. Several other states have used logo systems as an incentive to get needed billboard and sign control—for instance, Georgia and Florida.

State-Designated Directional Signs

Rather than adopting the federal logo system, some states have designed their own motorist information signs. Vermont's directional sign system (see Figure 7.6), for example, is one of the major reasons for the state's success in banning billboards. It provides tourists with information they require but does so in a uniform and unobtrusive way.

Sign Plazas

On approaches to cities and in other congested areas, it is sometimes impossible to include all available services on logo boards or individual directional signs. One solution to this problem is to create "sign plazas" at roadside rest areas. These plazas are collections of small advertisements, usually arranged on a bulletin board that is erected and maintained by the state transportation agency (see Figure 7.7).
Tourist Information Centers

A number of states have established tourist information centers at major entrances to the state and in areas off particular historical or scenic interest. Such centers are staffed by state employees or private concessionaires who provide information, answer questions, and distribute maps, guidebooks, brochures, and other advertising materials. The FHWA, in conjunction with state highway departments, is promoting research and development of such facilities.

LOCAL SIGN CONTROL ALTERNATIVES

Resources for sign control (see Glasford, undated; McNett 1987) include guides and model ordinances for local communities. Also available are the book and movie Street Graphics (Ewald and Mandelker 1987), which provide a performance-oriented sign ordinance system. This system is based on the bits of information a person can process when looking at a sign from a moving car. Thus the size, number of letters and images, orientation, and height of signage are determined by the rate of motion and the motorist’s ability to distinguish and comprehend information. Although complicated initially to administer, such a system may be the model for future signage and regulation.

Case Study: Visual Analysis and Application: North Syracuse Signage Study

One of the keys to effective sign control (see the guidelines earlier in this chapter) is to carefully determine sign control needs based on local community characteristics. Such an approach was developed as part of a study of the village of North Syracuse’s (New York) Main Street (Smardon 1983; Smardon and Goukas 1984). This study is exemplary in terms of the approach used, although several other studies addressing urban strip development could easily have been reviewed as well (Williams et al. 1982; Wickens and Nelhebel 1986).

North Syracuse’s Main Street is a mix of village center, transitional land use, and full commercial strip. The basic issues were how to preserve what was left of the village center, and how to distinguish between the village center and the strip, or ribbon, development that was taking over the rest of Main Street. Signage was only one element, but it was a dominant one in terms of visual quality.

The approach used in the North Syracuse study was to assess village merchants’ perceptions of the Main Street corridor image; to independently collect physical data such as existing parking, land use, and views from vehicular and pedestrian traffic; to analyze the existing village sign ordinance and conduct a review of other municipal sign ordinances and implementation processes. A detailed step-by-step methodology flow chart is shown in Figure 7.8. Unusual aspects of the approach included a door-to-door merchants’ survey to enable their concerns about such matters as available parking and visibility for their signage to surface; and videotaping Main Street from both directions to capture landscape character or problems plus visibility of existing signage. The inventory was used to generate character zones for proposed sign control (Figure 7.9). A scale model of Main Street was created to simulate landscaping and sign control alternatives. A photo-questionnaire was printed in the local paper to gauge public response to proposed landscape treatment, removal of overhead utilities, and sign control (Figure 7.10a,b).

Final recommendations included a local sign ordinance
keyed to the five different districts depicted in Figure 7.9. Rather than force one set of standards on all areas, which varied from village center to transitional land use to “full neon strip,” it made sense to develop standards for each zone. The key is the process of looking at the local situation, then doing sufficient analysis to generate sign ordinances and control mechanisms sensitive to both the local context and the general legal requirements as reviewed earlier in this chapter.

Following the conclusion of the formal study, a North Syracuse Study Committee was established. This committee, under the leadership of one of the co-authors of the study, looked at a number of sign ordinances, then drafted a revised sign ordinance based on the original North Syracuse Study and Ewald and Mandelker (1987). The ordinance has since been adopted by the village of North Syracuse.
How does Main Street look to you?

The Star-News*

Second section
Nov. 30, 1983

How would you rate the visual appearance of Main St., North Syracuse? Are the new building facades on the buildings in the village center enough? What about the commercial signage you read while traveling this route day after day? And the landscaping: should there be more or less?

The Village of North Syracuse consulted with Dr. Richard Smardon, from the School of Landscape Architecture, College of Environmental Science and Forestry, to try to get answers to the questions above. Two students from the masters program in the School of Landscape Architecture conducted a study to analyze the visual quality (how well does it really look) of Main St., from Bone Rd. to Tall Rd. The study inventoried and assessed what Main St. had visually become and then suggested alternative solutions for changing the street's present image.

The study began in February, 1983, with a survey of thirty merchants located on Main St. as to their image of their environment. They were asked to rate such things as landscaping, commercial signage, parking, sidewalks, storefronts, utility poles and lines, etc.

Next, a videotape was taken of the route from the driver’s view. A video camera was mounted on a tripod and placed between the two front seats of a van. The videotape was used by the researchers to inventory and analyze Main St. block by block as to: what kind and how much vegetation is present; whether a roadside edge exists or not; what type of open space is present; whether the signage is readable or cluttered; how noticeable the utilities are; and the building structures - their height, alignment and type. Once this information was compiled and the merchants survey was analyzed, areas exhibiting a similar character were chosen. The map to the right shows the imposed boundaries of these character areas.

Overall designs were worked out on paper by a team of landscape architects for each character area. The above-mentioned information was used as a basis for the designs. (As shown on pages two and three.) Photographs were taken of a representative section of each character area, except for character areas four and five. The character of four is very similar to area one and the character of four is similar to area two. Therefore the designs would be duplicated. The design alternatives are explained next to each photograph which visually expresses the changes.

Before the study is finished, we would like your input. Please choose the alternative you prefer.

* - Photograph points

See pages two and three

Village of North Syracuse

Visual character areas

FIGURE 7.10a Photoquestionnaire for streetscape survey. Photo credit: Mary Burgoon
Main Street... From Page 1

Taft Rd. intersection
Area 1

Proposed Alternative One
• No change

Proposed Alternative Two
1. Small, cluttered, signs would be removed, consolidated or put on building fronts. Large, easy to read signs would remain.
2. Gravel parking area in front of buildings would be paved.
3. Roadside edge would be added.
4. Shrubs would be planted around buildings.

Proposed Alternative Three
1. Small, cluttered, signs would be removed, consolidated or put on building fronts. Large, easy to read signs would remain.
2. Gravel parking area in front of buildings would be paved.
3. Curb would be added.
4. Shrubs would be planted around buildings.
5. Entrances to buildings would be better defined.
6. Trees and planters would be planted along roadside edge.

Parochial
Area 2

Proposed Alternative One
• No change

Proposed Alternative Two
1. Signage would be simplified and put on the building fronts.
2. The road's edge would be grass-seeded and a curb added.
3. Some vegetation would be planted.
4. Business entrances better defined.

Proposed Alternative Three
1. Signage would be simplified and put on the building fronts.
2. Sidewalks would be added throughout area.
3. Roadside edge cleaned up.
4. Area treed heavily.
5. Utility poles and lines eliminated.

FIGURE 7.10 b Photoquestionnaire for streetscape survey.
References
Comptroller General, Report to the Chairman, Committee on Environment and Public Works, U.S. Senate, 1985. The outdoor advertising control program needs to be assessed. GAO. Accounting Office, Wash., D.C.