

(-) 以下是關於都市設計審議中對於建築美學管制的  
討論文字，請翻譯成中文。(60分)

Excerpts from an interview, May 1971, with Professor Jesse Dukeminier,  
Law School, University of California, Los Angeles.

"Design Review Boards raise certain constitutional issues. Lawyers speak of them in terms of 'due process,' and 'equal protection of the law.' Due process means a fair hearing, and equal protection means no arbitrary discrimination. There are two ways to achieve these:

1. By building standards into the legal system.
2. Where the problem is not amenable to quantifying the standard, by building fairness into procedures, by requiring accountability in the exercise of discretion.

"There are certain standards that have long controlled the design of buildings. In zoning, for example, we have set-back lines, bulk controls, and height limitations. These are standards that an architect can work within because they really don't involve very much discretion, and every person who has ability is subjected to them. If these standards are laid down in advance by the City, one architect cannot say that he is particularly discriminated against, though he might disagree with the standard itself.

"Where we can't lay down standards, where the problem is not amenable to standards, we appoint a board and give it discretion. The Board must be accountable in the exercise of its discretion. We have in the American system of government various ways of making persons in power accountable for their actions. Judges, for example, have great discretion, but they have to write opinions. They can't rule for one party without saying why. They can be criticized when they have opened their minds for criticism by writing an opinion or giving an opinion. This is a great protection.

"From a legal point of view the heart of the problem with Design Review Boards is that:

1. There are no standards laid down to guide them.
2. They have broad discretion, and we have not built into the system any way of making them accountable for their actions."

The courts have ruled that beauty is an urban amenity to be sought through the police powers, review boards, and other regulatory measures; but they have omitted to set the standards by which beauty may be defined or the processes through which it may be equitably judged to be present. Local authorities have reacted by appointing "experts" (usually local architects) who use their own discretion in assigning beauty or lack of it to the works of others. The limits set on capricious-

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ness, authoritarianism, or venality in such a system are those internal to the individual review board members. This is rule by man rather than rule by law.

In proceedings based solely on taste, the supplicant architect is left perplexed, and often thousands of dollars are lost in frustrating attempts, by scheming rather than designing, to anticipate or to follow the dicta of "experts" whose tastes and philosophies differ from the architect's own or are so capricious as to be incomprehensible.

Aesthetically, too, the aim is not achieved. Any artist could have told the lawmakers that you cannot legislate beauty and that attempts to do so by the use of experts will result not only in gross injustice but in an ugly deadness in the environment.

Beauty escapes in the pursuit of safety, which promotes a simplistic sameness over a varied vitality. It withers under the edicts of today's aging architectural revolutionaries who man the review boards and who have achieved aesthetic certainty.

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(二) 請對上述的討論內容，表達你個人的看法與意見。  
(40分)