

courts, but, nevertheless, we would be requiring damages to be defined by the courts. We would have to build up a body of judicial decisions before there would be any certainty in the Maryland law.

Now, without accepting all of the horrendous forecasts of the attorney general's decision, I think we can accept this paragraph as being reasonably accurate. It is our fear that the phrase "or damaged" as proposed would be an invitation to litigation on a wholesale basis by those seeking compensation for such items as (1) loss of business caused by the construction of a bypass around a city or town for the construction of a freeway adjacent to an existing highway. (2) the construction of median dividers to promote traffic safety which would have the effect of making business properties readily accessible to one-way traffic only. (3) loss of air, light, and view. and (4) damage caused by increased noise and vibration. With the exercise of a little imagination one could conjure up a number of situations in which there would be no actual taking, but there would be some intangible effect on property which might be considered damages. This opens up litigation which is only limited by the imagination of lawyers and their imagination in litigation is rather extensive.

Now, the only thing sought by the proposed amendment is that the General Assembly be permitted the opportunity to in some manner make a reasonable definition of compensible damages in eminent domain cases. This could be done after a degree of study which would tie the damages into property rather closely and make it reasonable. Certainly, we do not want to have to pay damages if we build a super highway which drains traffic from smaller roads. We do not want to have to pay damages if we remove a stoplight which causes business to be lost by a roadside restaurant. Whatever could affect the damage of property is something that is very, very difficult to ascertain.

The only plea in this amendment is to give the General Assembly the right and the duty to make a reasonable definition of compensible damages where there is no take.

Thank you very much.

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: Mr. President and ladies and gentlemen of the Convention, I rise to oppose this amendment for these reasons: first, the General Assembly, if it tried to define and work out what is a

damage and what is not a damage in all of the myriad and hundreds of thousands of kinds of situations, would simply not get anywhere and I would have to say to you ladies and gentlemen that in none of the states has the legislature ever attempted to define what damages are. The courts can, of course, define a measure of how damages are to be based, for instance, on valuation, and they can determine how valuation of property is to be computed, but to try to spell out what damages are has never, never been done by any legislature anywhere.

Now, I would like to read to you very briefly about the only state, Massachusetts, which has done anything at all by statute. I will just read a very short part. "In determining the damages to a parcel of land injured when no part of it has been taken regard shall be had only to such injury as is special and peculiar to such parcel."

Now, that is exactly what the courts have said in their decisions and if you will look at our memorandum, we quote the specific rule of law that has been developed by the courts of Illinois and been followed almost unanimously in almost all the other states that have this.

If you left it to the legislature to try to define damage, or what is damage, you get into a hopeless kind of thing. You get into a situation where you may have more confusion and more mix-up, and I think the situation would be unparalleled. We would not have the basis of all the judicial interpretations that we now do have to rely upon.

I think the proper place to determine what damage is is in the courts as is done in all the other fifty states, and in the twenty-seven states that have this particular question of damages other than for a taking.

I therefore respectfully urge that you reject this amendment also.

THE PRESIDENT: Any other delegate desire to speak in favor of the amendment?

Delegate Adkins.

DELEGATE ADKINS: Mr. President and ladies and gentlemen of the Convention, I should like to make perfectly clear that unlike the prior amendment offered by Delegate Della, this amendment continues the constitutional recognition of the concept of damage which, despite the fact that it has been recognized in some twenty-seven other states, is a new concept to Maryland jurisprudence in terms of eminent domain.