

Senator CHURCH. Let me say in that connection that I think that is a strange interpretation that your lawyers have placed on that section. The reason we put it in the bill is simply to take care of the landowner who wants out. And if we hadn't put it in the bill, then we might have been faced with the problem that is envisioned here where a man had no way to get full value for the land if he didn't want to live within the pattern of zoning that had been established. The purpose here, I would think, is to protect the man that doesn't want out and make sure that he gets the full value, if that is the course he wants to choose.

And I think for the man who wants to stay, and is willing to negotiate a scenic easement, or who wants to go to court to have the values determined, he has that other alternative. And I think we should make it clear that these alternatives are available.

I simply want to emphasize that section (d) was put in really as a result of testimony at the Sun Valley hearing for the man who wanted out, to make certain that he gets the full value of his land as it now exists, and that is that value computed on the basis of unencumbered land other than on the basis of the value of the land after the zoning regulations have been established.

Mr. BRECKENRIDGE. I think your statement to Mr. Nelson certainly tended to clarify this section, Senator. I appreciate it.

Senator BIBLE. You may proceed.

Mr. BRECKENRIDGE. This section also raises the question of how a landowner can force the Secretary to purchase these fee interests, so that full compensation can be realized. And you have touched on this subject. The Secretary may not have sufficient funds authorized to purchase all of these lands within 10 years, and a landowner cannot bring suit for compensation for land which the Secretary has not taken. I am not aware of any remedy available to force the Secretary to acquire land which he does not want.

And may I say parenthetically here, Senator Church, that the funding moneys for this bill may place a little bit different light on subsection (d). If the Secretary doesn't have the money, how are you going to get out if you want to get out?

The best solution to this dilemma, of course, is to make it clear that the regulations do no more than any reasonable zoning ordinance, and do not restrict the highest and best use of the land. Such regulations should not have any serious effect on property owners to sell out in order to obtain compensation.

Based on these assumptions, I would suggest that section 5 might be redrafted along the following lines. Rather than take up the committee's time by reading the entire section, I will merely refer you to the printed copy of my statement.

(The draft of section 5 follows:)

As used in this Act, the term "scenic easement" means the right to control the use of land (including the air space above such land) beyond the right of control normally present in proper zoning regulations, in order to protect the esthetic values for the purposes of this Act, but shall not preclude any customary or traditional use exercised by the owner prior to the acquisition of the easement.

(d) Where an owner of private property within the exterior boundaries of the recreation area as of the date of this Act, or his heirs and devisees, desires to dispose of such property to the Federal Government, the Secretary shall purchase said property at a price that shall include compensation for any decrease in the value thereof that may have resulted from the promulgation of regulations or zoning as a consequence of the establishment of the recreation area. In the