

Feb. 16, 1971

MR. CHARLES F. NEWMAN:

Thesis: - Interstate 40 Through Overton Park: A Case Study of Location
Decision-Making

by Richard Henry Ginn - University of Tennessee

Calling attention to -

Regarding error on page 43 -- letter of Mrs. Ralph C. Handy of January 1964 :

This would be either August or September 1964, I believe, for the Citizens to Preserve Overton Park was not organized until June 1964. Mrs. Handy served as chairman from that time until January - February 1965, at which time Arlo I. Smith became chairman. also re: Gore. I distinctly recall the letter and the reply from Shoulders/ We do not have this in our file judging from a quick search. Mrs. Handy kept the original letters of those first months. I am presuming that Richard Ginn used this letter from the Tennessee Highway's file.

Error (?) - on page 70 regarding public hearing of 1961 stating that the recorder did not work.

Wonder if he is not confusing the May 19, 1969, hearing and the meeting with the Memphis City Council at the airport on April 3, 1968?

Note: page 36, Regsdale's quotes - City Commission overruled T.A.C. recommendation. Changed due to Downtown association and the Downtown merchants.

page 41 - and Appendix B - Memphis A.I.A. endorsed the highway at 1961 hearing.

page 50 - "Nowhere did the Study indicate any consideration for intangibles, the primary reason being, that these were not readily quantifiable."

(and always that "cost user benefits" - for car users - never for park users.)

page 139 - Braman's letter to R.H. Ginn of 9-2-70.

P. S. - We are loaning this copy on a "reservation" basis. When finished, please let me know. (Dr. Smith wants it Feb. 22-23.)

Anora Stoner
Anora Stoner
Secretary
Citizens To Preserve Overton Park

*We have copy of similar thesis on the
I.C. National 9-70 case.*

see also p. 36!

public hearings until plans were so far along that a change was economically unfeasible was a usual practice by many state highway departments.²⁷

re public hearing of Oct. 15, 1958.

According to Mrs. Anona Stoner, Secretary of Citizens to Preserve Overton Park, Inc., many of the people who attended this public hearing did not really understand what an expressway was and consequently did not realize the detrimental effect it would have on Overton Park.²⁸

Although no transcript of the hearing was recorded, this airing of the Overton Park route would be used later to justify not holding a location design public hearing in May of 1969.²⁹

²⁷ Campaglia, p. 27.

²⁸ Mrs. Anona Stoner, Secretary, Citizens to Preserve Overton Park, Inc., telephone interview, September 8, 1970.

²⁹ Henry K. Buckner, Attorney, Tennessee State Highway Department, personal interview, September 8, 1970.

CHAPTER IV

THE DECISION MAKERS AND DEVELOPMENTS SINCE 1964

I. INTRODUCTION

This chapter is concerned with the major developments, issues, and decision theories and strategies utilized by the actors involved in the case study from 1964 through 1970. During this period, the location and design of I-40 through Overton Park was restudied by local, state, and Federal officials.¹ Throughout this period, the citizens' group continued their efforts to keep the interstate out of the park.

II. THE PUSH FOR ALTERNATIVE ROUTES

In January of 1964, Mrs. Ralph W. Handy, ^{*later to become first*} Chairman of the Citizens Committee to Preserve Overton Park, wrote Governor Clement asking for a report on the alternative route study. "Governor Clement refused to send it to her and had an assistant, Billy Shoulders, write and tell her it would not be released."²

Mrs. Handy then wrote to Senator Albert Gore, and he obtained the information from Rex Whitton, Federal Highway Administrator. In his letter, Whitton said, "construction plans are being held up and the

¹Based on correspondence between W. H. White, Director, Bureau of Public Roads, Highway Program Office, Atlanta, Ga., and John A. Swanson, Associate Director, Bureau of Public Roads, Right-of-Way and Location, Washington, D.C., January 15, 1970.

²News item in the Memphis Press-Scimitar (Memphis, Tennessee), January 4, 1964.

Council Adopts Resolution Opposing Overton Park Route

Because of the persuasive presentation made by the citizens' group at the February 14 meeting with Bridwell, the new city council unanimously passed a resolution on March 5 opposing the route of I-40 through the park. In a personal interview with several council members, they also indicated they were concerned with the park policy established by the Lane Duck administration and that since they were new to city government, they wanted to take a fresh look at the previous studies conducted by the highway department.³⁵

The resolution passed by city council on March 5, 1968, stated the following:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEMPHIS that the Department of Highways of the State of Tennessee, the Bureau of Public Roads of the Federal Government, and all other proper authorities and agencies, be advised that the council of the City of Memphis prefers that the expressway through Overton Park be not routed in its present proposed location but that the said proper authorities select another feasible route, with the provision that if no better route can be obtained, the route using the north perimeter of Overton Park and the south part of North Park, Boulevard be chosen.

BE IT RESOLVED that copies of this resolution be sent to the said proper authorities informing them of this decision.

Pressure Mounts

Following passage of the resolution opposing the route through Overton Park, the pressure began to mount. A Memphis Press-Scimitar editorial on March 6 condemned the resolution in the following manner:

³⁵Lewis R. Donnelson, James L. Netters and Thomas A. Todd, Memphis City Council members, personal interview, September 9, 1970.

North Parkway

1. He receives from City Council a resolution saying there is NO route other than Overton Park which is "feasible" and "prudent"

OR

2. He receives from City Council a resolution from City Council saying another specific route is "feasible" and "prudent" with facts and figures to back it.

"Because of the law which Senator Jackson of Washington got approved as an amendment to the Transportation Act," said Bridwell, "I am not going to make another move until City Council acts positively. If I do not get a positive resolution, we will use funds available, now scarcer, for other projects."³⁸ (Emphasis added.)

The impact of this editorial was felt almost immediately. The Board of Directors of the Downtown Association unanimously passed a resolution requesting the city council to rescind its March 5 resolution. (See Appendix H.) This resolution along with a night telegram was sent to each council member urging immediate support of the approved route through Overton Park. Subsequently, the council members contacted the Federal Highway Administrator, and he agreed to meet with them again to discuss the matter.

Bridwell's Second Visit to Memphis

On April 3, 1968, Federal Highway Administrator Lowell Bridwell met with the Memphis City Council in a closed meeting. ^{Presumably} Only representatives from the highway department, city councilmen, and pressmen were allowed entrance at the meeting.³⁹

³⁸ Editorial in the Memphis Press-Scimitar (Memphis, Tennessee) March 26, 1968.

³⁹ Bridwell had promised the citizens' group that a recording of the meeting would be made and that he would send them a copy. However, this responsibility was left up to Memphis city officials and for

In this meeting Mr. Bridwell used maps and sketches to explain the effects of alignments north of the park, south of the park, along the north edge of the park, and the original location through the park proposed by the Tennessee Highway Department.⁴⁰

In testifying before a Congressional Committee about the April 3 meeting with the Memphis City Council, Federal Highway Administrator Lowell K. Bridwell said:

We went to the City Council of Memphis and we said, Yes, there are alternatives. We won't even give you any information on what the alternatives cost in dollars because we don't want that to be a factor in your recommendation of which line to choose. Rather, we would like you to focus upon the conflicting set of community values that are inherent in this kind of a situation.

We told them that a highway could be built through the area on almost any conceivable line that they could pick, that engineeringly it was feasible, that we refused to give them any information as to cost, the primary reason being that Memphis was not involved in the cost of it one way or the other, but rather to concentrate upon the conflicting set of community values that were inherent in each one of the alternatives.⁴¹

Following this meeting on April ^{4th} 5th the city council passed the following resolution concerning the Overton Park route:

Whereas, as a result of the Resolution the Council passed March 5, 1968, representatives of the Federal government and the Department of Highways of the State of Tennessee have furnished the Council with considerable information and data to

strange reason the recorder did not record. This marked the ^{first} second time in this controversy when a recording device had failed, the ^{second} first time being at the public hearing in ~~1961~~. 1969.

⁴⁰ Statement made in correspondence between W. H. White, Director, Bureau of Public Roads, Highway Program, Atlanta, Georgia, and John A. Swanson, Associate Director, Bureau of Public Roads, Right-of-Way and Location, Washington, D. C., January 15, 1970.

⁴¹ Lowell K. Bridwell, Testimony before Senate Committee on Public Works, 90th Congress, 1st and 2nd Session, Part 2 (Washington: Government Printing Office, 1969), p. 478.

(City was under curfew April 5.)

decision-making process, because agreement by city officials is often critical to the intercity freeway location.³

The impact of local political decisions relevant to the location of interstate highway in urban areas are generally minimal in relation to the highway department's decision. The untenable position in which local officials find themselves results from their position in the overall decision process.

Generally, political decisions are based on small changes at the margin because politicians cannot gauge the effects of long-range revolutionary decision-making. This case study points out that the approval of the I-40 location in 1955 by the Board of Commissioners was an incremental political decision. The politicians could not envision that some 15 years later the construction of this freeway would be tied up in Federal court as a result of their initial low level of understanding. The most critical decision made by the politicians (city council) occurred after the April 3, 1968, meeting with Federal Highway Administrator Bridwell, when they passed the resolution approving the location of I-40 through Overton Park.

City council's approval was indeed an incremental political decision because it was characterized by a very low level of understanding. Council members based their decision only on the facts presented

³The agreement to an intercity freeway location is not legally required but is generally considered to be politically expedient. The state, through its power of eminent domain, may construct highway facilities without the approval of city officials. See Tennessee Code Annotated Section 54-2002. *But streets may not be closed (for construction) without permission of the local governing body.*

Error.

proceeding further on the proposed segment of the highway through Overton Park.²

The District Court granted defendants' motion for summary judgment. 309 F. Supp. 1189 (W. D. Tenn. 1970). The plaintiffs appealed. We affirm.

Overton Park is a 342 acre, municipally owned park in midtown Memphis used for a zoo, 9-hole golf course and other recreational purposes. The proposed section of the interstate highway extends in an east and west direction through the Park over the presently existing paved, non-access highway used by diesel buses which is approximately 4,800 feet in length. The existing highway is 40 to 50 feet wide. The proposed interstate will consist of six lanes--three running in each direction, separated by a median strip approximately 40 feet wide. The interstate right-of-way will vary from approximately 250 feet in width to approximately 450 feet in width, and will require the use of approximately 26 acres of the Park. The proposed design requires that a large portion of the highway be depressed sufficiently to remove traffic from the sight of users of the Park, however, five or six feet of fill will be required where a creek runs across the right-of-way. A 1200 foot access ramp will be located within the eastern end of the park.

Because this case is on appeal from a summary judgment, the only question is whether there remains a genuine issue over any material fact in dispute. Appellants argue that there are several material facts which are genuinely disputed. They contend that it is disputed whether the Secretary made the determinations required by law before authorizing the release of federal funds.³ Appellants also argue that administrative procedures were not followed because of failure to include in the notice of a public hearing any provision for the submission of written statements.

When considering a motion for summary judgment a court is required to "construe the evidence in its most favorable light in favor of the party opposing the motion and against the movant. Further, the papers supporting the movant are closely scrutinized, whereas the opponent's are indulgently treated." *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425, 427 (6th Cir. 1962). If, after having done that, the court is able to say there is no genuine issue as to any material fact, summary judgment is appropriate.

Although a court must be hesitant to grant summary judgment, cases challenging administrative action are ripe for summary judgment. See, e.g., *Todaro v. Pederson*, 250 F. Supp. 612, 613 (N.D. Ohio 1961), affm'd 305 F.2d 377 (6th Cir.), cert. denied 371 U. S. 891 (1962). Unlike civil actions originating in the District Court, litigants challenging administrative action are not entitled to a de novo hearing. See, e.g., *Dredge Corp. v. Penny*, 388 F.2d 456, 462 (9th Cir. 1964). Rather, in such cases the court must determine whether the administrator's decision was arbitrary and capricious. 5 U.S.C. § 706(2)(A).⁴

In addition to the narrow scope of review of administrative action, plaintiffs are faced with the additional burden of overcoming a presumption of regularity afforded the acts of an administrator. See *Goldberg v. Truck Drivers Local Union No. 299*, 293 F.2d 807, 812 (6th Cir.), cert. denied 368 U. S. 938 (1961); *Nolan v. Rhodes*, 251 F. Supp. 584, 587 (S. D. Ohio 1965), affm'd 383 U. S. 104 (1966). The presumption of

25 ft. →

we would like you to focus upon the conflicting set of community values that are inherent in this kind of a situation.

Appellants contend that the Secretary merely delegated his duty to the Memphis City Council by allowing it to choose the route.

In our opinion, the testimony of Mr. Bridwell is further evidence that the Secretary complied with the statute. The legislative history of the statute makes it clear that local preferences are to be considered:

This amendment of both relevant sections of law is intended to make it unmistakably clear that neither section constitutes a mandatory prohibition against the use of the enumerated lands, but rather, is a discretionary authority which must be used with both wisdom and reason. The Congress does not believe, for example, that substantial numbers of people should be required to move in order to preserve these lands, or that clearly enunciated local preferences should be overruled on the basis of this authority. 1968 U. S. Code Cong. & Adm. News at 3538.

Appellants content that the Secretary did not determine that the approved plan included "all possible planning to minimize harm" to the Park. Appellants argue that there are at least three designs which are possible and which would minimize harm to the park: a bored tunnel, a cut and cover tunnel or a highway depressed below the ground level.

The affidavit of Mr. Swick mentions all of these possibilities and the reasons for rejecting them. It is unnecessary to go into elaborate detail. However, it is basically undisputed that instead of the estimated \$3.5 million cost of the present design, a cut and cover tunnel would cost approximately \$41.5 million and a bored tunnel over \$100 million. While not controlling on whether these designs are possible, cost is certainly a legitimate consideration. Mr. Swick's affidavit also attests that not only would there be a huge price differential, but the benefits to be gained would be minimal. The Park's vegetation would not be preserved; there would be air pollution problems at the tunnel vents; there would be additional traffic hazards; and there would be serious drainage problems caused by depressing the road beneath the level of a creek that runs across the proposed right-of-way.

The affidavit makes it clear that the Secretary was fully aware of the alternative designs and chose the one now in effect. Other than appellants' bald assertion that the Secretary did not make such a finding, the evidence points to the fact that the Secretary did determine that the proposed design included "all possible planning to minimize harm" to the Park. By introducing affidavits tending to show alternative designs, appellants really raise the issue of whether there is a genuine dispute that the Secretary's determination was arbitrary and capricious. Whether the Secretary's determination that the proposed plan included "all possible planning to minimize harm" to the Park depends on an interpretation of the word "possible." It would be unrealistic to say the Secretary must approve any possible plan no matter what the cost and engineering problems compared to whatever minimal gains. "Possible" must be interpreted within the bounds of wisdom and reasonableness.

Cottingham, Phoebe. Measurement of Non-User Benefits in Freeway Planning. U. S. Department of Commerce Economic Report No. 442-252. Berkeley: University of California, October 1966.

Crumlish, Joseph D. Notes on the State-of-the Art of Benefit-Cost Analysis as Related to Transportation Systems. NBS Technical Note No. 294. Washington: Government Printing Office, November 1, 1966.

Public Law 84-627. 84th Congress, 1956, Section 116(C).

Public Law 89-574. 89th Congress, September 13, 1966, Section 3155.

Public Law 90-495. 90th Congress, 1968, Section 1653(F).

Public Law 90-495. 90th Congress, August 23, 1968, Section 3418.

U. S. Department of Commerce, Bureau of Public Roads. Federal Laws, Regulations, and Other Materials Relating to Highways. Washington: Government Printing Office, 1960.

D. INTERVIEWS

Barnes, George. Project Director, Buchart-Horn Consulting Engineers. Personal interview, September 9, 1970.

Buckner, Henry K. Attorney, Tennessee Highway Department. Personal interview, September 8, 1970.

Donnelson, Lewis R., James L. Netters, and Thomas A. Todd. Memphis City Council members. Personal interview, September 9, 1970.

Lewis, Hal. Executive Director, Memphis Park Commission. Personal interview, September 9, 1970.

Pollard, William S. Vice President, Harland Bartholomew and Associates. Personal interview, January 30, 1970.

Prewitt, Thomas R. Attorney, Memphis, Tennessee. Personal interview, January 30, 1970.

Ragsdale, Frank. President of Memphis Transit Authority. Telephone interview, September 10, 1970.

Stoner, Mrs. Anona. Secretary, Citizens to Preserve Overton Park, Inc. Telephone interview, September 8, 1970.

Wilkinson, Robert. Director of Planning, Memphis-Shelby County Planning Commission. Personal interview, September 9, 1970.

E. UNPUBLISHED MATERIAL

- Bates, Herbert. "Interstate 40," address at Tennessee State Highway Department's public hearing conducted at the Memphis, Shelby County, Tennessee Courthouse, March 14, 1961.
- Flannery, Thomas A., United States Attorney, "Citizens to Preserve Overton Park, Inc., et al. v. John A. Volpe, Civil Action No. 3396-69," Memorandum of Points and Authorities in support of motion to dismiss in opposition to plaintiffs' motion for a preliminary injunction filed in U. S. District Court, District of Columbia.
- Ford, Hubert James. "Interstate 40 Through North Nashville, Tennessee, A Case Study of Location Decision Making." Unpublished Master's thesis, The University of Tennessee, Knoxville, 1970.
- Hanover, J. Alan, Attorney, "Citizens to Preserve Overton Park, Inc., et al. v. John Volpe and Charles E. Speight, Civil Action Nos. 20,344 and 20,345," Brief for Appellee Charles E. Speight filed in U. S. Sixth Circuit Court of Appeals, Cincinnati, Ohio.
- Iddins, R. L., Assistant Design Engineer, Tennessee State Highway Department. "Interstate 40," address at Tennessee State Highway Department's public hearing conducted at the Memphis, Shelby County, Tennessee courthouse, May 19, 1969.
- O'Donniley, Ronald D. "A Case Study of Metropolitan Nashville and Davidson County . . . The Decision-Making Process in Selecting a Model Cities Neighborhood. Unpublished Master's thesis, The University of Tennessee, Knoxville, 1969.
- Overton, Mrs. Watkins. "Interstate 40," address at Tennessee State Highway Department's public hearing conducted at the Memphis, Shelby County, Tennessee courthouse, March 14, 1961.
- Pollard, William S., Vice President of Harland Bartholomew and Associates. "Interstate 40," address at Tennessee State Highway Department's public hearing conducted at the Memphis, Shelby County, Tennessee courthouse, March 14, 1961.
- Tennessee State Highway Department. "Design Study Report on Project No. I-40-1(90)3," June 18, 1969.
- Vardaman, John W., Attorney, "Citizens to Preserve Overton Park, Inc., et al. v. John A. Volpe and Charles E. Speight, Civil Action Nos. 20,344 and 20,345," Brief for Appellants filed in U. S. Sixth Circuit Court of Appeals, Cincinnati, Ohio.

. "Citizens to Preserve Overton Park, Inc., William Dupree, Sr., and Sunshine K. Snyder v. John A. Volpe, Civil Action No. 3396-69," Brief of Appellants filed in U. S. District Court, District of Columbia.

F. OTHER

Commercial Appeal (Memphis, Tennessee), September 19, 1955-October 1970.

"Interstate Highway Map," Map prepared for Tennessee Department of Highways. New York: Rand McNally & Co., February 1970.

Memphis Press-Scimitar (Memphis, Tennessee), September 1955-October 1970.

Nashville Tennessean (Nashville, Tennessee), January 24, 1970.

Public hearing conducted at the Memphis, Shelby County, Tennessee courthouse by the Tennessee State Highway Department, March 14, 1961.

Public hearing conducted at the Memphis, Shelby County, Tennessee courthouse by the Tennessee State Highway Department, May 19, 1969.