

Appeals Court Rejects Park Route Foes' Efforts To Halt I-40 Paving

By MICHAEL LOLLAR

The Sixth Circuit Court of Appeals yesterday denied three pretrial motions by opponents of the Overton Park expressway, paving the way for completion of Interstate 40 to within 1.5 miles of the park's eastern edge.

The plaintiffs, Citizens to Preserve Overton Park and Mrs. Sunshine Snyder, had asked the appeals court for an injunction to forbid paving and erection of signs from Bon Air to White Station Road.

That segment of Interstate 40, which stops 1.5 miles from the park, has already been graded. The request to prevent paving and erection of signs was shot down along with two motions that the plaintiffs be allowed to amend their original complaint in order to charge the government with violation of the 1970 National Environmental Policy Act (NEPA).

The first motion involving NEPA was a petition that the appeals court overrule United States Dist. Judge Bailey Brown's June 24 ruling which denied applicability of the act to the park case. The second motion was a technical move asking the appeals court to grant the plaintiffs a summary judgment applying NEPA to the case.

Judges Paul C. Weick, Anthony J. Celebrezze and John W. Peck of the Sixth Circuit submitted the ruling on the ecologists' motions in a one-paragraph statement early yesterday. They said they had considered the motions, but were denying them all.

be unacceptable to the community?" Mr. Vardaman asked.

Mr. Swick said he had never heard the routes discussed, although he had seen "correspondence" indicating some damages would have resulted if either route were chosen. One route is to the north and one to the south of the park.

However, he said no serious efforts were made to modify the state proposals in order to make them less disruptive.

"The only modification that I ever heard discussed, and it was rather casually, was one

tially over the road that now exists (North Parkway)."

A "viaduct" would be equivalent to an elevated roadway. Mr. Swick said the proposal was dismissed as "disruptive to everything. Any structure of that kind is very visible for one thing. It isn't a pretty thing to look at."

Much of his testimony was in defense of the government's position that the expressway, if built through the park, should not be depressed along its entire length. The plaintiffs

contend the highway should be sunk to a depth of 16 feet throughout the park to shield park visitors from a view of expressway traffic.

Mr. Swick said the highway should crest to near grade level in the middle of the park in order to cross Lick Creek. Running the expressway across Lick Creek, he said, would maintain "gravity drainage" of the creek and prevent possible flooding of the highway during heavy rains.

If the expressway ran below

the level of the creek, he maintained, a complex system of siphons and drainage pumps would be required to prevent flooding. In that case, the water would have to be pumped beneath the expressway through "two or three" large concrete culverts.

And, the machinery required to operate the pumping device would cause a "sustained vibration," which the plaintiffs have maintained excites animals in the nearby zoo and disrupts their breeding habits.

On cross-examination by J. Alan Hanover, special counsel for the state Highway Department, Mr. Swick also said that a power failure might knock out the pumping device. If the power were knocked out during a storm, for instance, the highway might flood "and be very dangerous," especially at night.

Attorneys for both sides assumed the roles they played in the actual questioning of Mr. Swick, while most of Mr. Swick's testimony was read by

Robert Kennan, special counsel for the National Wildlife Federation, an intervening plaintiff.

Testimony became very dull by the end of the day. At its conclusion, Judge Brown asked: "Are we going to have another deposition in the morning, or will we get a live witness?"

The plaintiffs assured him: "We will have a live witness on the stand."

"That's a cheerful thought," Judge Brown signed, shaking his head.

The hearing will resume at 9:30 this morning, with the plaintiffs presenting as their first witness Dr. Arlo I. Smith, a biology professor at Southwestern. Robert Hart, a city planning expert from New York, is also scheduled to testify today.

Mr. Swick was asked early in the Washington interview about two routes proposed by the state Highway Department in 1965 as possible alternatives to the approved route.

The state-proposed routes have been attacked by the plaintiffs as alternatives designed to silence critics of the existing route. John W. Vardaman, an attorney for the Citizens to Preserve Overton Park, claims both routes proposed by the state would have damaged several of Memphis' major institutions, including Southwestern.

"Did you ever suspect that the state purposely chose routes which they knew would of building a viaduct along the north side of the park, essen-

Their ruling, however, did not dull the plaintiffs' hope. "It doesn't affect our basic appeal motion in any way," an attorney for the plaintiffs said. The "basic appeal motion" asks the court to forbid all construction on Interstate 40 within the city, pending the outcome of the current hearing in federal court.

Yesterday's proceedings in federal court here were devoted entirely to the reading of a 396-page deposition taken Aug. 12 and 13 from Edgar H. Swick, executive director of the Federal Highway Administration. The testimony was taken in Washington by attorneys for the plaintiffs and defendants.

Most of his testimony was concerned with design alternatives to the expressway location as it now exists.