

THURS. SEPT. 23, 1971

I-40 Plaintiffs Awarded One New Count

Plaintiffs in the Overton Park expressway case were allowed to amend their original complaint yesterday to charge the government with failing adequately to plan for future traffic needs on the unconstructed part of Interstate 40.

The ruling, by United States Dist. Judge Bailey Brown, allows the plaintiffs to contend that Secretary of Transportation John A. Volpe violated federal laws by approving the park route on the basis of traffic projections which fall four years short of those required.

Judge Brown noted that as a result of the amendment if the park route were finally approved I-40 might have to be widened, thus taking even more of the disputed park land.

The ruling applies the federal laws only to that part of I-40 between Claybrook on the west of the park and Bon Air on the east. The section includes 3.47 miles, of which only about 4,200 feet would be inside the park itself.

Judge Brown denied the conservationists' request that the federal laws also be applied to portions of Interstate 40 which are already under construction.

The laws require that any highway construction project be "adequate to enable the project to accommodate the types and volumes of traffic anticipated for the project for a 20-year period beginning on the date of its approval." Based on the law, the plaintiffs said, traffic projections should have been prepared through Feb. 26, 1989, though they

were prepared only through 1985.

"This kind of amendment might best be offered by the AAA (American Auto Association), rather than the conservationists," Judge Brown said. "It seems to me the court might rule (based on the laws) that we need a bigger expressway through the park. I'm not saying I would, but that's a possibility."

Michael Lackner, an attorney for the plaintiffs, said, "We contend that the secretary approved a route that will be too narrow to adequately handle the traffic needs of the community and that the results will be more accidents, more pollution in a smaller area and poor over-all traffic conditions."

United States Atty. Thomas F. Turley Jr. did not object to the plaintiffs' amendment. Representing the Department of Transportation, he said, "I think we can meet the allegations. I believe the court ought to allow the amendment and let 'em have at it."

J. Alan Hanover, special counsel for the Tennessee Highway Department, argued, however, the amendment should apply only to the unconstructed portion of the highway.

Charles F. Newman, also an attorney for the plaintiffs, said later he will present "about a half dozen alternate routes over which Interstate 40 might be built." Along with those routes, which he said have been given no previous consideration, he will present some

alternatives which have been presented "but not adequately explored."

Judge Brown then quipped, "I'm prepared to have the marshal's office beef up the number of marshals who guard the courtroom when you present those alternatives."

Once the newspapers print whose toes those routes might step on we're going to have a crowded courtroom."

The full hearing of the case will begin at 9:30 a.m. Monday. Attorneys for both sides have said they expect it could last at least one month.

C.A.

9/23/71