

Additional Two Weeks Of Hearings Possible In Overton Park Lawsuit

By MICHAEL LOLLAR

The month-old Overton Park expressway lawsuit showed signs yesterday that it may extend into another two weeks of testimony.

After a brief but heated argument by attorneys on both sides of the 16-year old case, United States Dist. Judge Bailey Brown ruled that plaintiffs will be allowed to present rebuttal witnesses to dispute testimony by witnesses for the state and federal governments.

The full hearing of the case began Sept. 27, and the Citizens to Preserve Overton Park and other plaintiffs presented 10 witnesses through Oct. 13. The government has presented 13 witnesses since Oct. 14.

John W. Vardaman, attorney for the plaintiffs, asked Judge Brown yesterday if he could present at least three new witnesses and recall one who testified earlier.

He argued that the plaintiffs were required to present their proof at the beginning of the trial and that the government has since presented expert wit-

nesses which the plaintiffs did not expect.

Thomas F. Turley Jr., attorney for the federal defendants, argued, however, that "one thousand experts might testify, and they might all disagree as to where Interstate 40 should be built and how. When you get right down to it, you're just going to get a lot of testimony that's in controversy."

Judge Brown ruled, though, that rebuttal testimony is proper since the scope of the trial has been broadened to extend beyond the administrative record in the case and that it includes facts not considered by the secretary of transportation when he approved the route through Overton Park.

Mr. Vardaman said he will present a siphon expert from Southern Methodist University to testify that it would be feasible to build a siphon to divert Lick Creek under a depressed highway; J. D. Braman, assistant secretary of urban systems and environment; a demographer, who will outline population patterns in the city

in an effort to prove that motorists would use a highway built along a route outside Overton Park; and, he will recall Robert Hart, a city planning expert from New York.

Mr. Turley then asked Judge Brown if the federal government would be allowed to present another anti-siphon witness since the plaintiffs are allowed to present a pro-siphon witness.

"No, sir," Judge Brown said.

Earlier, Robert C. Odle, a development engineer with the Tennessee Highway Department, testified that the state had done everything possible to minimize damage to the park.

On direct examination by J. Alan Hanover, attorney for the highway department, Mr. Odle said highway officials in Nashville altered the final design plan of I-40 which was submitted by Buchart-Horn Inc.

He testified the design changes were made at the request of the Federal Highway Administration in order to depress the highway as much as possible. The changes, he said, were made prior to approval of the design by Secretary of Transportation John Volpe in November 1969.

Mr. Odle said the state decided to build partial retaining walls on both sides of I-40 from "just east of Lick Creek through the wooded areas further to the east."

"The addition of the retaining walls in this area allowed us to minimize the width of construction and save additional trees that are actually within the right-of-way."

The retaining walls, ranging from six to eight feet high, will be built about 30 feet away from the shoulders of the roadway. "We feel this is the safest design possible while using a retaining wall," he said. "If you put walls down right next to your shoulder line, you will have the same effect as in a tunnel. And, statistics show that most highway accidents are caused by vehicles that run off the road and hit roadside obstructions within a distance of 30 feet from the edge of the travelway."

Later, he said all trees located within 30 to 50 feet of the right-of-way have been mapped by the highway department, and that "some of the more important trees located along the border of the right-of-way will be preserved."

He said tree wells would be built around those trees along the edge of the construction limits. "I have been in the highway department for 38 years . . . and I don't believe that there has ever been another project in the history of the highway department that had as much individual attention as the Overton Park project," he added.

On cross-examination by Mr. Vardaman, however, he said the highway department has never analyzed the possible effects of expressway exhaust pollution on the trees and other vegetation in Overton Park.

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Just a reminder to the boys and ghouls who will be out spooking on Halloween: The giraffes at the Overton Park Zoo say be careful crossing streets. Don't stick your neck out.

—Staff Photo by Richard Gardner