"Hearing Is Due In Park Route Case"

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Hearing Is Due In Park Route Case

By RICHARD LENTZ

Opposing sides in the Overton Park expressway hassle will probably troop back into federal court sometime this summer for a hearing on a key motion before the entire case is argued Sept. 27.

Conservationists, led by Citizens to Preserve Overton Park, have filed a motion to allow them to amend their suit contesting the routing of Interstate 40 through the park.

No hearing date has been set on the motion yet.

The proposed amendment charges the secretary of transportation violated the National Environmental Policy Act of 1969 when he approved a construction contract for a leg of I-40 from Bon Air Street west to Lick Creek in the park.

"It's a very important motion," said J. Alan Hanover, special state Highway Department counsel in the case. He indicated defendants will oppose the request to amend the complaint.

The United States Supreme Court remanded the case to Chief Judge Bailey Brown of United States District Court in Memphis for a new hearing in a decision announced March 2.

The judge was ordered to review the administrative record to determine generally if federal laws were followed in the decision-making process. The high court held that the judge could not, however, substitute his judgment for that of the agency.

Mr. Hanover said the Supreme Court held that the secretary did not have to make specific findings on environmental factors under the Parklands Statute, a law cited by plaintiffs when they attacked the routing in federal court.

The Parklands Statute prohibits a federally financed highway from cutting through a public park unless there is "no prudent and feasible alternative." It also requires "all possible planning to minimize harm" if a highway is built through a park.

Mr. Hanover said as he interprets the Supreme Court decision Judge Brown basically was ordered to determine if the decision to build the road through the park was reasonable in light of federal laws and information available in the administrative record.

The National Environmental Policy Act of 1969 requires specific findings by agencies and officials on items such as noise level, ecological balance and other environmental values, he said. "It requires a more in-depth look."

Mr. Hanover said he will argue that plaintiffs are trying to apply the law retroactively and had ample opportunity to raise the issue of the 1969 law before the case went to the appellate courts.

The proposed amendment said the secretary violated the National Environmental Policy Act by failing to:

Consult with federal agencies which have jurisdiction or special expertise on any environmental impact.

Study, develop and describe adequately the alternatives to the recommended route.

Work with the Council on Environmental Quality to insure that environmental values are given proper consideration along with costs and engineering problems.