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To the Graduate Council:

I am submitting herewith a thesis written by Hubert James Ford, Jr., entitled "Interstate 40 Through North Nashville, Tennessee: A Case Study in Highway Location Decision-Making." I recommend that it be accepted for nine quarter hours of credit in partial fulfillment of the requirements for the degree of Master of Science in Planning.

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INTERSTATE 40 THROUGH NORTH NASHVILLE, TENNESSEE: A CASE STUDY IN HIGHWAY LOCATION DECISION-MAKING

A Thesis

Presented to

the Graduate Council of

The University of Tennessee

In Partial Fulfillment

of the Requirements for the Degree

Master of Science in Planning

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by

Hubert James Ford, Jr.

December 1970

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ABSTRACT

The purpose of this investigation was to prove that state highway departments are assumed to be technical experts and that this role conception, in fact, enables them to make intuitive political decisions under the guise of technical expertness. The location of Interstate 40 through the black community in North Nashville was used as a case in point.

In order to examine the interaction of the various actors involved, the author emphasized selected decision strategies for each and related the theoretical setting to the legislated, hierarchical, and procedural framework in which highway location decisions are actually made. The extent of rationality and comprehensiveness in the decision-making process in this case study was also analyzed in light of rational decision theory.

It was found that state highway departments are in a position in which they are free to make incremental, political decisions as well as quantified, technically rational decisions. The author concluded that the local government was the primary beneficiary of an interurban Interstate and should have considerably more influence in routing decisions than is permitted in the existing institutional setting.

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CHAPTER I

INTRODUCTION

I. FOREWORD

The Interstate Highway System in the United States was originally justified on the basis of national defense and commerce. In fact, however, the Interstate System is manifest evidence of the growing concern and desire of Americans for universal personal mobility with their automobiles. Eighty percent of America's 60 million families own an automobile and 25 percent own two or more cars.[1]

Our automobile-centered way of life seems to require that more and more land disappear under pavement. "We have willfully ravaged scenic wilderness, farmland, historic sites and landmarks, parks, waterfronts, churches, schools, shops and businesses, suburban towns and city neighborhoods."[2]

Citizen reaction to interurban highways has been building since the inception of the Interstate Highway Program. In 1959, highway builders experienced their first real confrontation in San Francisco. The Embarcadero Freeway, which now stops in mid-air, would have blocked the magnificent view of

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[1]Richard J. Whalen, "America's Highways -- Do We Know Where We're Going," The Saturday Evening Post, XXV (December, 1968), p. 25.

[2]Ibid.

the bay. This threat to civic pride generated 41 protest groups whose perseverence stopped the expressway. Since this confrontation, citizen opposition has arisen in numerous cities. In Cleveland, where a proposed eight-lane highway would pass through Shaker Heights and require an 80-acre interchange in Shaker Heights Park, construction awaited a metropolitan land-use study. Atlanta, Chicago, Philadelphia, Nashville and many other cities have experienced highway opposition. This opposition is a sign that people have stood outside the highway location decision-making process.

II. STATEMENT OF THE PROBLEM

The states responded to the Federal-Aid Highway Act of 1956 with individual proposals for their portion of the Interstate Highway System. First, plans were formulated which designated the corridors throughout the state. Later, routes through or around urban areas were designated which connected the control points determined in the initial corridor designations.

This thesis is directed toward analyzing the decision-making process in which Interstate 40 was routed through a large black neighborhood in Nashville, Tennessee. This routing received considerable publicity and became a controversial issue, ultimately reaching the United States Supreme Court.

The actors involved in the controversy included:

1. The Tennessee State Highway Department.
2. The City of Nashville, later the Metropolitan Government of Nashville and Davidson County.
3. The Metropolitan Planning Commission of Nashville and Davidson County.
4. The Federal Highway Administration, Bureau of Public Roads.
5. The Nashville I-40 Steering Committee.

The position of each of these actors within the decision-making process will be investigated and analyzed.

III. PURPOSE OF THE STUDY

The primary purpose of this study is to show that the highway location decision-making process involves both intuitive incremental and technically expert decisions. The extent of citizen participation within the decision-making process will be analyzed. Attention will also be given to the concessions received through the community organization and action in opposition to the proposed route by the Nashville I-40 Steering Committee.

In summary, the purpose of this case study is to establish the workings of the decision-making process (in regard to highway location) in hope of deriving lessons for general application and pointing up inadequacies in the existing

institutional setting. This chapter will present a general legalistic and theoretical framework for the existing institutional setting in which highway location decisions are made. This will set the stage for a detailed look at the specific decision-making process in the following chapters.

IV. LEGISLATED PROCEDURAL FRAMEWORK

As set forth in the Federal-Aid Highway Act of 1956 and its subsequent amendments, the Federal-aid highway program is administered by the Bureau of Public Roads, U. S. Department of Transportation (previously, the U. S. Department of Commerce). The program is a cooperative one, in which state highway departments choose the systems of routes, plan and select project priorities for each year, and award and supervise construction contracts.

The state highway departments are the delegated leaders in administering a state's Interstate Highway Program. Title 23, Chapter 1, Part 1 of the Code of Federal Regulations sets forth the regulations, standards, and policy statements of the Bureau of Public Roads in administering the Federal-Aid Highway Program among the states (see Appendix A). Section 1.3 specifically states the authority of the state highway departments:

> The administrator [Federal Highway Administrator] shall cooperate with the States, through their respective state highway departments, in the construction of Federal aid highways. Each state highway department,

> maintained in conformity with 23 U.S.C. 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.[3]

Section 1.6 (a) states:

> To insure continuity in the direction of expenditures of available funds, systems of Federal-aid highways are selected or designated by any State that desires to avail itself through its state highway department, of the benefits of Federal aid for highways. Upon approval by the administrator of the selections or designations by a state highway department, such highways shall become portions of the respective Federal-aid highway systems, and all Federal-aid apportionments shall be expanded thereon.[4]

These regulations further state that the state highway department may revise or modify a routing provided the revision is approved by the Administrator. The regulations require the preparation of surveys, plans, specifications, and estimates by or under the immediate direction of the state highway department (Sect. 1.10). The state highway departments may utilize the services of private engineering organizations; however, the highway department is not relieved of its responsibilities (Sect. 1.11[d] and [e]). According to Sect. 1.30(a), state highway departments are required to

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[3]United States Department of Commerce, Federal Laws, Regulations, and Other Material Relating to Highways, (Washington: Government Printing Office, 1965), p. 94.

[4]Ibid., p. 95.

maintain all records and documents relating to all projects for at least three years from the date of the final payment of Federal funds to the State. Part (c) states that these records and documents should be available for inspection by any authorized representative of the Federal Government. Sect. 2.3(d)(2) concerns the procedure in the event of irregularities by a state highway department:

> If the frequency, seriousness, nature, or extent of any violation is such as to cast doubt on the ability of a state highway department to discharge its responsibilities in an adequate manner, or is such as may affect continued eligibility of Federal aid under the provisions of the Federal-aid legislation, regulations, or directives, a complete evaluation of the highway department organization shall be made by the Administrator for the purpose of determining an appropriate course of action.[5]

V. HIGHWAY LOCATION--A THEORETICAL FRAMEWORK

Various authors have analyzed the decision-making process and the various techniques or strategies used in decision-making. These theories explain how past decisions have been reached. The author will present certain decision-making theories which represent the decision methodology of the primary actors involved in the determination of Interstate Highway locations in urban areas--the state highway department (the highway engineer), the local governmental officials (politicians), the generalist planner, and citizen groups. The interaction between the highway department and the city officials will also be pointed out.

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[5] Ibid., p. 105.

A. The Highway Engineer

Technical rationality. According to Altshuler,[6] if an official wishes to convince his superiors and political critics that his decisions should be considered authoritative, his obvious strategy is to maintain that they are technical decisions--that public policy has been derived in a technically rational manner. In order to establish the decision-making rigor of technical expertness, one must narrow one's criterion of rationality (i. e., one's goal) until the number of variables (means) of achieving the goal are reduced to the extent that they may be precisely measured.

The highway engineer is a technical expert. The goal assumed by the highway engineers is to obtain the maximum amount of "traffic service" for the funds available. This goal inherently focuses on low-cost rights-of-way such as parkland, slums, etc. Thus, the engineer's recommended "best" route rests upon this goal and traffic service becomes a quantifiable measurement of vehicle miles traveled on given highway segments in given units of time.

Priorities are clear and decisions are easy in light of quantified cost-traffic service benefit ratios, the only obstacle to "rationality" being the inaccuracy of traffic

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[6]Alan A. Altshuler, The City Planning Process (Ithaca, New York: Cornell University Press, 1965), pp. 334-342.

demand forecasts. Traffic service evolved from a variable to an ultimate value. This is explained by Altshuler as follows:

> Moreover, virtually all men feel a need to consider their work valuable, and every particular set of experts has a narrow range of variables with which it is most familiar. It is likely, therefore, to impart exaggerated value significance to these variables, and in some cases to ignore effects on all others entirely.[7]
>
> In terms of a single variable, the engineer can rank alternatives "expertly" on the basis of cost benefit ratios. Unless he can rank alternatives expertly, he is forced to bring intuition into play. The greater the proporation of intuition in a choice, the less possible it is for the decision maker to allay all suspicion that his personal preference ruled.[8]

This situation would apply for example if a highway department revised a technically expert routing recommended by an engineering consulting firm without the same degree of study and evaluation.

Rational calculation. According to Dahl and Lindblom,

> When one specializes, he focuses his attention on certain categories of repetitive events; by decreasing the number of variables at the focus of attention, specialization enables one to increase his capacity for rational calculations about these particular categories. This increased capacity for rational calculation enables men to undertake social actions hitherto impossible. But these social actions have unforeseen consequences -- unforeseen in part because men can become specialists only by ignoring some of the variables.[9]

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[7] Ibid., p. 338. [8] Ibid., pp. 338-339.

[9] Robert A. Dahl and Charles E. Lindblom, Politics, Economics, and Welfare (New York: Harper and Row, 1953), p. 63.

Thus, decision making that is rational with respect to limited goals may prove to be irrational in the long run or with respect to other goals.

There are four basic problems involved in rational calculation: availability of information, communicating such information, the large number of variables involved, and the complexity of the interrelations among the variables. Dahl and Lindbloom describe three processes for reducing the number and complexity of variables: quantification; sampling; and delegation to leaders, experts, and machines.

State highway departments are the delegated leaders in determining where an Interstate Highway should be located. The department will, in turn, delegate the study to experts on its staff or private consultants. In this situation, the leaders are also the experts. "Experts are usually leaders precisely because their expertness helps them to acquire significantly greater control over decisions than other participants exert."[10] In essence, the "superior" or client of this study is the local government. Dahl and Lindblom point out the same danger of delegation to experts as that pointed out by Altshuler, "experts have their own axes to grind, and it is easy for them to rationalize (e. g., as being in 'the public interest') the substitution of their own goals for those of their superiors."[11]

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[10] Ibid., p. 73.

[11] Ibid., p. 74.

In theory, the superior (client) of a state highway department's study is the local government where interstate highways cut through urban areas. This is due to the fact that an interurban routing is justified on the basis of 90 percent local traffic use. Legislated procedural policies put the local government in a vulnerable position in regard to confronting the highway department's recommendations. This relationship will be discussed further in this chapter (section VE).

The synoptic ideal.[12] There are two basic evaluative schemes of comprehensiveness: the rational deductive ideal and the welfare function. The rational deductive ideal states that ultimate values should be stated in general principles and that these principles should be ordered on the basis of priority and their reliance and effect on one another. Intermediate principles should then be chosen which could be applied in particular cases to indicate which alternative policies would promote desired values. This ideal represents an ideal of science transferred to the field of values.

The welfare function is an attempt to reduce the complications of the rational deductive ideal by treating them quantitatively. Highway engineers' evaluative process should

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[12]David Braybrooke and Charles E. Lindblom, A Strategy of Decision (New York: The Free Press of Glencoe: Collier-MacMillan Limited, 1963), pp. 37-57.

ideally approximate the rational deductive and welfare function schemes. However,

> . . . in the face of multiplicity of values, many analysts simply stop trying to organize it into a rational-deductive system or welfare function. They feel that they do not have time to try, and many would question whether any human mind has the capacity. Some would go so far as simply to declare that an attempt to organize into a rational deductive system such specific values as are involved in the highway-location problem would be ridiculous. . . . As for the welfare function, the number of possible combinations of input and output values (the number of possible social states) that could be expected to result from any decision on highway location staggers the imagination.[13]

Braybrooke and Lindblom point out the failures of the "synoptic ideal":[14]

(1) it is not adapted to man's limited problem-solving capabilities.

(2) it is not adapted to inadequacy of information.

(3) it is not adapted to the costlines of analysis.

(4) it is not adapted to failures in constructing a satisfactory evaluative method (rational deductive, welfare function, etc.).

(5) it is not adapted to the closeness of observed relationship's between fact and value in policy-making.

(6) it is not adapted to the openness of the systems of variables with which it contends.

(7) it is not adapted to the analyst's need for strategic sequences of analytical moves.

(8) it is not adapted to the diverse forms in which policy problems actually arise.

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[13] Ibid., p. 26.

[14] Ibid., pp. 48-54.

In light of the obstacles to an approximation of the synoptic ideal, it is not surprising to find the synoptic method limited to "circumstances in which decisions effect sufficiently small change to make synoptic understanding possible."[15] (See Figure 1.) According to Figure 1, the decision-making process of the highway engineer would tend to fall within quadrant 2. It is a technical analysis of a limited number of variables (facts) to which the highway engineers have imparted "exaggerated value significance."[16] The result is a comprehensive analysis of quantifiable facts and a neglect of value consequences which are not quantifiable.

B. The Politicians

Incrementalism and disjointed incrementalism. The recommendations by highway engineers are only a part of the decision-making process. The agreement of city officials is critical to the location of an Interstate Highway route within a city. The decision of city officials to either accept or decline the State's proposed routing of an Interstate Highway is one of many examples of incremental politics. This is illustrated in Figure 1, quadrant 3, where decisions effect small or incremental change and are not guided by a high level of understanding.

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[15] Ibid., pp. 78-79. [16] Altshuler, p. 338.

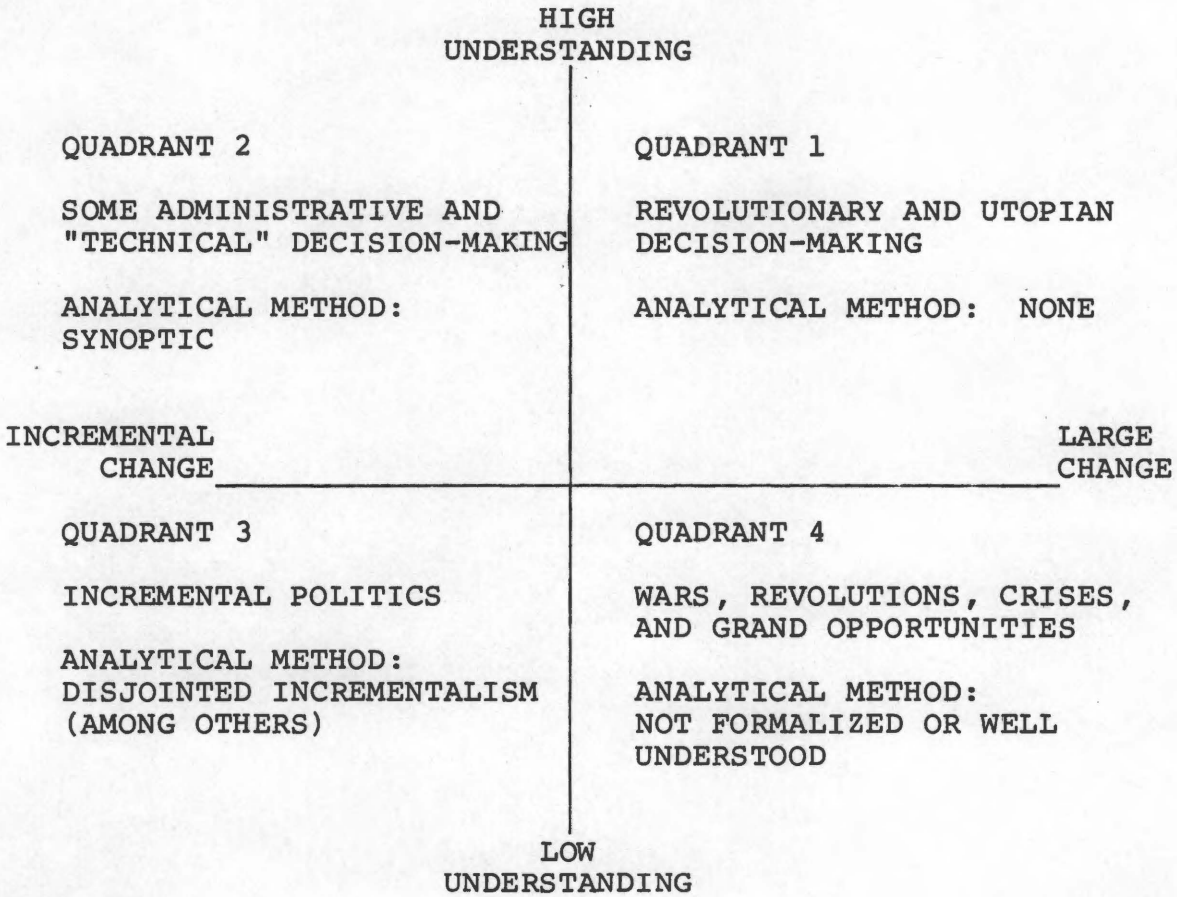


Figure 1. Quadrants representing decision-making methods.

Source: David Braybrooke and Charles E. Lindblom, A Strategy of Decision (New York: Free Press of Glencoe: Collier-MacMillan Limited, 1963), p. 78.

Disjointed incrementalism is the alternative strategy to the synoptic ideal according to Braybrooke and Lindblom.[17] The strategy of disjointed incrementalism is characterized by small incremental moves on particular problems rather than instituting a comprehensive reform program.

> Moreover, it is exploratory in that the goals of policy-making continue to change as new experience with policy throws new light on what is possible and desirable. In this sense, it is also better described as moving away from known social ills, rather than as moving toward a known and relatively stable goal.[18]

These increments, taken together as a set of mutually reinforcing adaptations, constitute a systematic and defensible strategy.[19]

A pertinent example of incremental decision-making is the amendments to the Federal-Aid Highway Act of 1956 in regard to relocation of homeowners. The 1956 Act specified no procedure for assisting persons with relocation. In 1962, the states were required to offer advisory assistance in finding other homes for those displaced. In 1968, Congress stipulated that displaced homeowners be repaid up to $5,000 for the difference between the acquisition price for the old house and the cost of replacement. In 1970, the issue was carried one step further through an administrative directive by Secretary of Transportation Volpe. He stated that the Federal Government

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[17] Ibid., pp. 81-111.

[18] Ibid., p. 71.

[19] Ibid., p. 82.

would not provide funds for any transportation project unless new housing is found for persons displaced.[20] These amendments were enacted because reactions to problems became evident as the original law was implemented.

Rational calculation. Dahl and Lindblom outline some comprehensive processes for rational calculation. Three of these are science, incrementalism and calculated risks. When politicians attempt to make use of the scientific method by delegating a problem to experts, they often neglect the problem of communication and fail to understand that "it is usually impossible to quantify the value of alternative courses of action in comparable units."[21]

The communication problem is described by Dahl and Lindblom as follows,

> . . . often laymen and experts cannot communicate with one another except through intermediaries who can translate the preferences of the layman in terms useful to the expert, and can translate expert findings about techniques into terms understandable to laymen.[22]

The politician consequently is likely to misinterpret the narrow meaning of quantified decisions by experts or to utilize these decisions as a crutch to facilitate his decision which should have been made on a much more comprehensive basis.

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[20]Donald Canty, editor, "In the Path of Interstates," City, IV, i (June/July, 1970), p. 25.

[21]Dahl and Lindblom, p. 81.

[22]Ibid., p. 80.

Experts can not only be used as a method for postponing decisions but experts can also be used to conceal the need for comprehensiveness in decision making.

Dahl and Lindblom outline characteristics of the incremental approach:[23]

(1) consequences of alternatives remotely related to existing reality are more difficult to predict.

(2) people cannot accurately foresee their own wants.

(3) individuals have many goals, some of which conflict and therefore require marginal adjustment and compromise.

(4) incrementalism is an aid to verifying the result of one's choices because it is in keeping with the principle of isolating one variable.

(5) incrementalism helps to insure control.

(6) incrementalism is reversible in that mistakes can more easily be repaired.

(7) incrementalism permits both the survival and the continual alteration of the organization.

The passage of the Federal-Aid Highway Act in 1956 was somewhat a calculated risk because there was no knowledge available concerning the probable consequences of such a program. The politicians set forth the impetus for change and to this very date they have "patched" the program on an incremental, remedial basis as problems arose in such areas as public hearings, relocation aid, use of parklands, etc.

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[23] Ibid., pp. 82-83.

The neglected consequences of incrementalism. "Why, then, if he (the policy-maker) can be expected to anticipate the emerging problems and deal with them does he neglect these consequences in the first place?"[24] The policy maker cannot incorporate the neglected consequences within his original policy analysis. "He can cope with two quite separate successive policy problems where he cannot cope with in integrated problem."[25]

When policy-making becomes remedial, adverse consequences are often more effectively treated as new and separate problems rather than as aspects of the original problem.[26] An example of this situation would be the institution of an urban renewal or model cities program in an effort to cope with problems brought about by cutting through a neighborhood with an Interstate Highway--disruption of local transportation patterns, increased ghettoization, disruption of community facilities and services, dead-end streets, etc.

C. The Generalist Planner

The ideal of general evaluative rationality. "The city planning movement arose because of a recognition that the purposeful actions of individuals often produced by-products

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[24] Braybrooke and Lindblom, p. 125.

[25] Ibid., p. 125

[26] Ibid., p. 126.

that harmed the public's interest."[27] The planning profession has two basic alternatives to technical rationality in giving weight to its recommendations. One is the ideal of general evaluative rationality which specifies that the planner should be "wise" rather than "expert." The planner can function as a sorter and coordinator of many differing points of view and preevaluate these in order that the politicians can make choices among them.[28] It is important that agencies which have general evaluative responsibilities are headed by eminent and capable persons. Otherwise, the agency would not have "commensurate political standing."[29]

The ideal of general inventive rationality. The other alternative to technical rationality is general inventive rationality. This approach specifies that the planner act as an innovator, consequently "widening the range of options open to a political system by redefining problems and by conceiving new means of solving them."[30] The typical planning agency is faced with considerations which usually limit the extent and type of innovation. These include staff, budget, time, effect on other programs, and probability of success.

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[27] Altshuler, p. 340.

[28] Ibid., p. 344.

[29] Ibid., p. 343.

[30] Ibid., p. 345.

It is impossible to separate the evaluative and innovative role of upper echelon planners.

> The senior planner focusing on innovation will continue to perform a largely evaluative role within the planning staff itself. . . . His central preoccupations are bound to be: (1) which bright ideas of subordinates to approve for development into full-fledged proposals, and (2) which proposals to press assiduously on civic and political leaders. It is in his dealings with the latter that he will be able to play an innovative role.[31]

The obvious handicap the innovator will face is the "tight" reasoning used by the specialist in defending his recommendations. Innovative proposals require a considerable length of time for evaluation by politicians. The basic advantage from this endeavor will be the production of a flow of valuable ideas and a constant search for ideas likely to be ignored by operating agencies.[32] The role of innovator generally is lacking at all levels of government.

D. The Relationship of the Existing Highway Location Decision-Making Process to Rational Decision-Making

In the traditional sense, none of the decision theories discussed are rational. Rational decision-making requires comprehensiveness in that no alternatives are excluded from analysis, empirical testing of alternatives, choosing alternatives which maximize the return on investment, and emphasis

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[31] Ibid., p. 348.

[32] Ibid., p. 349.

on using quantitative analysis in order that basic laws can be formulated.[33]

"Technical Rationality," "Rational Calculation," the "Synoptic Ideal," and "Incrementalism" all fail the test of comprehensiveness. The traditional decision model remains an ideal goal for conscientious decision-makers.

Sidney Schoeffler in "Toward a General Definition of Rational Action" designates four types of action which are "nonrational":

(1) ignorant action.

(2) illogical action.

(3) blind action.

(4) rash action.[34]

Ignorant action is decided on the basis of either mistakes in the facts considered or the omission of available relevant facts. Illogical action is decided on the basis of either erroneous deductions from the facts considered or erroneous application of normative criteria. Blind action ignores some of the "value-affected" consequences of the action. Consequently, practically all actions are blind actions. Rash action is adopted after an incomplete consideration of the various alternatives available. These actions are descriptive

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[33]Ronald D. O'Donniley, "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), p. 15.

[34]Sidney Schoeffler, "Toward a General Definition of Rational Action," Kyklos, VII, iii (1954), pp. 245-271.

of the "nonrational" decision-making processes discussed previously.

According to Schoeffler, a "rational procedure" for choosing from among alternative courses of action consists of four steps:[35]

(1) the specification of the set of known possible actions.

(2) the determination, for each of the actions, and using all available relevant information, of the set of all possible consequences of that action and their respective probabilities.

(3) the evaluation in the light of the relevant value-criteria of each of the possible consequences of each of the possible actions.

(4) the derivation, from (3) above, of the "correct" action to be adopted.

Schoeffler outlines 13 facts which are ignored by most definitions of rationality and these have relevant application to the highway location decision-making process:[36]

1. Action in general is not a "one-shot" affair but rather stretches over time.

2. The effects of an action radiate out in many directions and infringe upon other aspects of the world.

3. The results of an action not only involve a large number of variables but affect these variables over a period of time.

4. The state of information of the "actor" must inevitably be taken into account.

5. The accumulation of further information is difficult and costly.

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[35] Ibid.

[36] Ibid.

6. The outcome of an action is, in general, not controllable by the actor.

7. The value criteria of different actors differs.

8. The value criteria of an actor tend to change over time.

9. A person's memories of the past and expectations of the future influence the criteria with which he judges the world today.

10. In view of 2, 3, and 8 above, the process of judging the outcome of a given action may potentially be infinitely long.

11. Judging various possible actions--making all required calculations and logical deductions--is difficult, time consuming and costly.

12. There may be an infinite number of actions among which an actor has to choose.

13. The actor usually has value criteria bearing upon the necessity of choosing an action without having complete knowledge of the various possibilities of action and their outcome.

E. Interaction Between State Highway Departments, Local Politicians, and Planners

Bargaining. "Bargaining is a form of reciprocal control among leaders."[37] In theory state highway departments are advisors to the local decision-making politicians. In fact, the highway departments are the decision-makers. Much needed control which would be exercised through bargaining is obviated because of the untenable position in which local officials find themselves. The local officials find themselves

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[37]Dahl and Lindblom, p. 324.

practically helpless if they attempt to repudiate the "expertly" recommended routing of a state highway department. This situation is explained by the following facts:

1. A state highway department can explain how the routing was "technically" derived.
2. The highway department has the power to reschedule the priorities for various cities within the state.
3. It would be politically unwise for an official to cause the lowering of construction priority for his city.
4. The city is paying nothing and receiving a solution to many local transportation problems and downtown businessmen believe the urban Interstate Highway will make their establishments more accessible to customers.
5. Since the city pays nothing, the psychology of the situation develops to the belief that "beggars cannot be choosers."

In light of these facts, city officials are forced to accept the routing or be decried as prohibitors of the development of the city.

The perceptive planner, no doubt, realizes the position of the city officials and perceives that any effort on his part would be futile. Thus, planners limit themselves to

minor design recommendations. Their recommendation of an alternative route might be feasible; however, time and budget prevent many planning agencies from taking an innovative role.

F. Citizen Participation

The place of citizens in highway location decision-making has traditionally been one of reaction to the location rather than participation in deciding upon the location. Thus, participation becomes a conflict-oriented strategy in which neighborhoods confront existing power centers with the power of numbers. According to Edmund Burke "conflict oriented strategies . . . are inappropriate in governmentally sponsored programs which demand coordination and cooperation."[38] Naturally, conflict oriented strategy is inappropriate but it does point out the lack of provision for citizen input through other strategies--cooption, staff supplement, education therapy, or simply adequate public hearing procedures.

Community organization for the purpose of confronting the official power centers (administrative agencies, city hall, etc.) can ultimately result in providing balance through the judicial branch of government. The community organization can also obtain the services of an advocate planner in order to propose an alternative to the official "unitary plan."

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[38]Edmund M. Burke, "Citizen Participation Strategies," Journal of the American Institute of Planners, XXXIV (September 1968), p. 292.

According to Davidoff, "lively political dispute aided by plural plans could do much to improve the level of rationality in the process of preparing the public [unitary] plan."[39] Although the advocated plan may be primarily designed to favor the interest group rather than the general public, this would be offset by the bias existing in the "unitary plan" and compromise could eventually occur. However, compromise is usually achieved, if at all, through legal action. In an advocate role the planner is forced into an innovative approach to solving the problem.

G. Summary

The highway location decision-making process is a composite of various decision-making processes and strategies by the actors involved. These decision-making processes are not "rational" but simply approach the "rational" ideal.

Balance in the decision-making process is obviated because of the sovereign position of the state highway department in relation to the local governmental officials and the impoliticness of local government opposition even if it chose to protest. Judicial action by interest groups has been the primary method of voicing opposition to the location of interstate highways.

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[39] Paul Davidoff, "Advocacy and Pluralism In Planning," Journal of the American Institute of Planners, XXXI (November, 1965), p. 332.

CHAPTER II

BACKGROUND

I. THE INTERSTATE HIGHWAY PROGRAM

The Interstate Highway System is scheduled for completion by the mid-1970's and will comprise 41,000 miles of highways. Presently, "highways and their rights of way cover 15 million acres, or the area of the state of West Virginia."[1] The Interstate Highway System is the largest single public works project in history.[2] Now, 70 percent complete, at a cost so far of $38.8 billion, the system is coming under increasing attack.[3] This opposition is primarily from city dwellers who protest disruption of neighborhoods, disappearance of parklands, and the destruction of historic sites in the Interstate Highway's path.

The states dealt with rural portions of the system first and only later tried to construct the highways through urban areas. This situation, whereby costs were sunk and control points established outside the urban area, only added

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[1]Richard J. Whalen, "America's Highways--Do We Know Where We're Going," The Saturday Evening Post, XXV (December, 1968), p. 24.

[2]Donald Canty, editor, "In the Path of Interstates," City, IV, i (June/July, 1970), p. 25.

[3]Ibid.

impetus to construction through the urban area. Civic opposition is now holding up about 150 miles of interstate construction.[4] The largest reason for public protest has been the displacement and relocation of persons. "Federal Highway Administrator Francis Turner estimates that federal-aid highway displacements will average 25,000 dwellings annually for the years immediately ahead."[5]

Since its passage in 1956, the Federal-Aid Highway Act has been amended to deal with problems on an incremental basis. The major changes have been in the areas of relocation, park-lands, and public hearings. The law originally required only one public hearing on a corridor which, according to engineers at the Tennessee State Highway Department, could vary as much as one mile from the route selected even within an urbanized area. Thus, it is obvious that the old public hearing procedure could hardly have been designed to include an affected neighborhood.

> Former Secretary of Transportation Alan Boyd tried to strengthen the role of public opinion in highway planning by putting into effect a requirement for two separate public hearings -- the first to provide for comments before a route was selected, the second to be held after the highway was designed. Although a public hearing had been mandatory in federally financed projects, the practice of many highway departments was to delay public hearings until the plans for the highway were so far along that any major change in the route would be economically unfeasible.[6]

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[4] Ibid. [5] Ibid. [6] Ibid., p. 27.

II. NASHVILLE I-40--THE MEMPHIS ROUTE

This case study is concerned with a section of Interstate 40 through the northwestern portion of Nashville. Originally, this was called the Memphis route which had to connect the inner loop with a control point on the western periphery of the city.

A. Selection of the Corridor

In the early 1950's, the City of Nashville contracted Clarke and Rapuano, Consulting Engineers, New York, to perform a corridor study for the Interstate controlled-access highway system in Nashville and Davidson County. This move was in anticipation of the probable passage of the Federal-Aid Highway Act. The city officials realized that this study would give the city an advantage when the State Highway Department began to assign priorities on the design and construction of the Interstate System in Tennessee.

According to Mr. Bill Wilson, Planning and Research Division, Tennessee Highway Department, there had been only one expressway study previous to Clarke and Rapuano's corridor study.[7] This study was performed in 1946 by the consulting firm of H. W. Lochner and Company of Chicago and contained

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[7]Statement by Bill Wilson, Planning and Research Division, Tennessee Highway Department, Nashville, Tennessee, telephone interview, August 12, 1970.

expressway recommendations for the city. In regard to northwest Nashville, the west expressway basically centered between Broadway and Charlotte Avenue. This was somewhat south of the Memphis route corridor recommended by Clarke and Rapuano (see Figure 2).

The corridor study or "preliminary route study" was completed in 1955. According to the report, "the routes recommended are the result of detailed study based upon criteria established by the Bureau of Public Roads for the Interstate Highway System, namely":[8]

(1) Service to Nashville and its environs.

(2) Density of rural population.

(3) Land use pattern.

(4) Relation to principal topographic features.

(5) Connection with city approach routes.

(6) Location of undeveloped land.

(7) Circumferential and distribution routes.

(8) Relation to traffic generating focal points.

(9) Relation to urban and suburban planning.

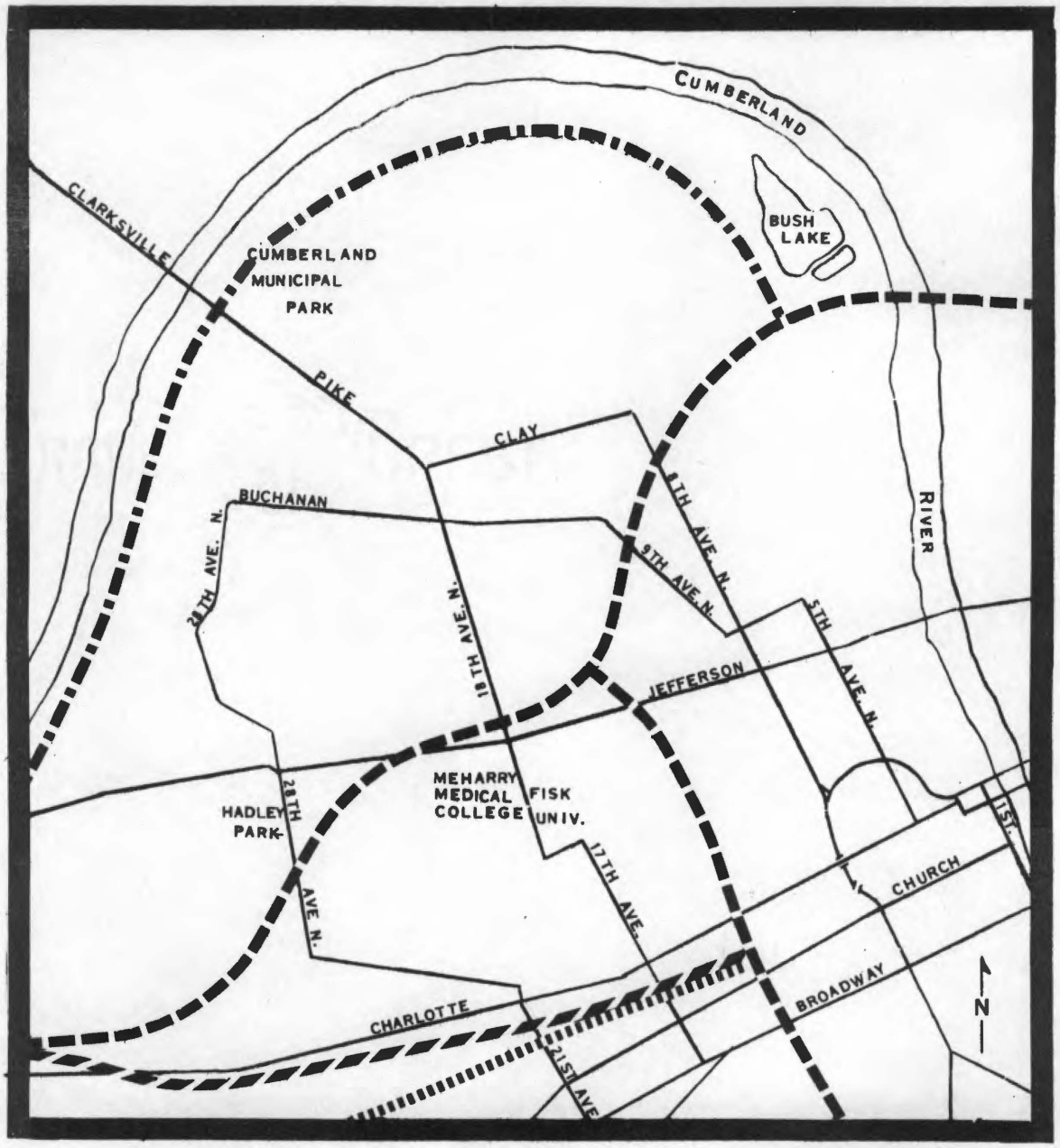
(10) Civil defense.

(11) Existing neighborhoods.

(12) Land values.

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[8]Gilmore D. Clarke and Michael Rapuano, "Report on the Interstate Controlled-Access Highway System--City of Nashville, Tennessee" (New York: Clarke and Rapuano, Consulting Engineers, September 30, 1966), p. 2. (Unpublished.)



LEGEND:
- Freeway Routing Recommended by H. W. Lochner and Company, 1946
- Preliminary "Route" (Corridor) Clarke and Rapuano, 1955
- Final Routing Recommended by Clarke and Rapuano and the State Highway Department, 1955
- Alternative Route Recommended by Advocate Planner Yale Rabin and the I-40 Steering Committee, 1967

Figure 2. Proposed westerly freeway routings, northwest Nashville.

The listing of these variables in such a manner gives the impression of a study of greater depth than that required by a corridor study. Also, the study refers to "recommended routes." For these reasons it is understandable that many people later perceived of this study as a route recommendation rather than a corridor recommendation. To point out the fact that this was actually a corridor study Mr. Alex Koltowich, an engineer with Clark and Rapuano's Nashville office, explained in an interview that the final study for the State Highway Department cost approximately 40 times more than the preliminary study done for the city.[9] The corridor study describes the Memphis "route" as follows:

> Beginning at the intersection of the Inner Loop of the Nashville Expressway in the vicinity of Charlotte Avenue and 12th Avenue North, this section of the expressway extends in a westerly direction between Charlotte Avenue and State Street crossing under 18th Avenue North. It continues north of the Mid-Baptist Hospital Crossing under 21st Avenue North. Paralleling Charlotte Avenue, it continues in a westerly direction, north of Centennial Park, passing through the Nashville, Chattanooga and St. Louis Railroad yards and intersecting the Outer Loop in the vicinity of Park Avenue and 33rd Avenue North. The route then curves in a northwesterly direction crossing over Charlotte Avenue between 37th Avenue North and 38th Avenue North. Continuing in a westerly direction across the Nashville, Chattanooga and St. Louis Railroad, the expressway continues between Delaware Avenue and Alabama Avenue crossing over Richland Creek to the Nashville City Corporation line at Twin Street.[10] (See Figure 2.)

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[9]Statement by Alexander Koltowich, engineer, Clark and Rapuano Consulting Engineers, Nashville, Tennessee, personal interview, August 11, 1970.

[10]Clarke and Rapuano, p. 8.

From the list of variables mentioned previously, it is evident that land value was heavily weighted in the consultant firm's evaluation. This is evidenced by the following statement in the report concerning "soft spots":

> The location of major arterial highways in urban areas presented problems quite different from those encountered in similar studies for rural areas. Modern controlled access highways appropriately are, we believe, important factors in preventing (a) economic stagnation of communities, (b) the deterioration of business areas and (c) blighted neighborhoods; they also provide one means of preventing the flight of business to suburban satellite areas. These traffic arteries may also be coordinated in the establishment of redevelopment projects to revitalize blighted areas aimed toward reversing tax delinquencies from areas in the center of the City. . . .
>
> After a careful study of all the areas within the City of Nashville, it was possible, in most cases to find areas of relatively light development, or of no development at all, or where structures, for the greater part, are obsolescent that may appropriately be called "soft spots," in most cases are located between the central business district and the good residential neighborhoods.
>
> Locating the proposed routes through these blighted areas eliminates blight in the center city areas and develops the possibility of providing several redevelopment areas. . . .[11]

The author finds it difficult to understand how, considering this seeking of "soft spots," any proposed Memphis route corridor did not pass through the black community of north Nashville in this preliminary study.

The preliminary "route" paralleling Charlotte Avenue skirted the southern boundary of the black neighborhood. This routing would have virtually segregated the black community from the white area to the south.

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[11] Ibid., p. 3.

B. The Selection of the Route

After the preliminary study for the City of Nashville, the State Highway Department contracted the firm of Clarke and Rapuano to prepare final route recommendations for the Interstate Highway System in Nashville.

(The author was surprised to find that little, if any, scientific method was used in determining the final route recommendation in regard to the Memphis route. When questioned about cost-benefit studies of alternative routes, Mr. Koltowich of Clarke and Rapuano, stated that none had been prepared since the routing through the black community was the only obviously feasible alternative. Therefore, other alternatives were ruled out on the basis of a mental thought process considering the problems and the criteria.)

The route recommended by Clarke and Rapuano (and consequently by the State Highway Department) connected the Inner Loop in the vicinity of 11th and 12th Avenues North and proceeded westward between Jefferson Avenue and Scovel Street, crossed Jefferson Avenue in the vicinity of the Tennessee Central Railway line and continued in a southwesterly direction crossing 28th Avenue North in the vicinity of Morena Street (see Figure 2, page 30).

Mr. Koltowich of Clarke and Rapuano, stated that the corridor paralleling Charlotte Avenue was no longer feasible in light of land acquisition cost of the commercial and

railroad properties. Also, design requirements forced the interchange with the inner loop northerly since access had to be provided at Charlotte and Broadway to the inner loop. Thus, it became a question of how far north. At this point consideration was given to the desire line of local traffic movement because the construction of an urban Interstate segment must contemplate at least 90 percent local traffic use. This factor, coupled with low land acquisition cost, resulted in the present routing through the black community. The desire lines at the time were basically the same as the 1980 desire lines illustrated in Figure 3, the primary difference being the traffic volumes. According to Bill Wilson of the State Highway Department, the final route satisfies total movement (through and local) better than the Charlotte route would have done and provides access to the Fisk-Meharry Area.

In searching the files of the Metropolitan Planning Commission of Nashville and Davidson County two significant staff memorandums were discovered which indicate involvement of the Planning staff by the State Highway Department and Clarke and Rapuano in regard to the route change. On June 23, 1955, the meeting discussed the preliminary Memphis route paralleling Charlotte Avenue:

> It was agreed that both the State Highway Department and Clarke and Rapuano would review these routes and the several locations suggested. The principal problems were identified as including:

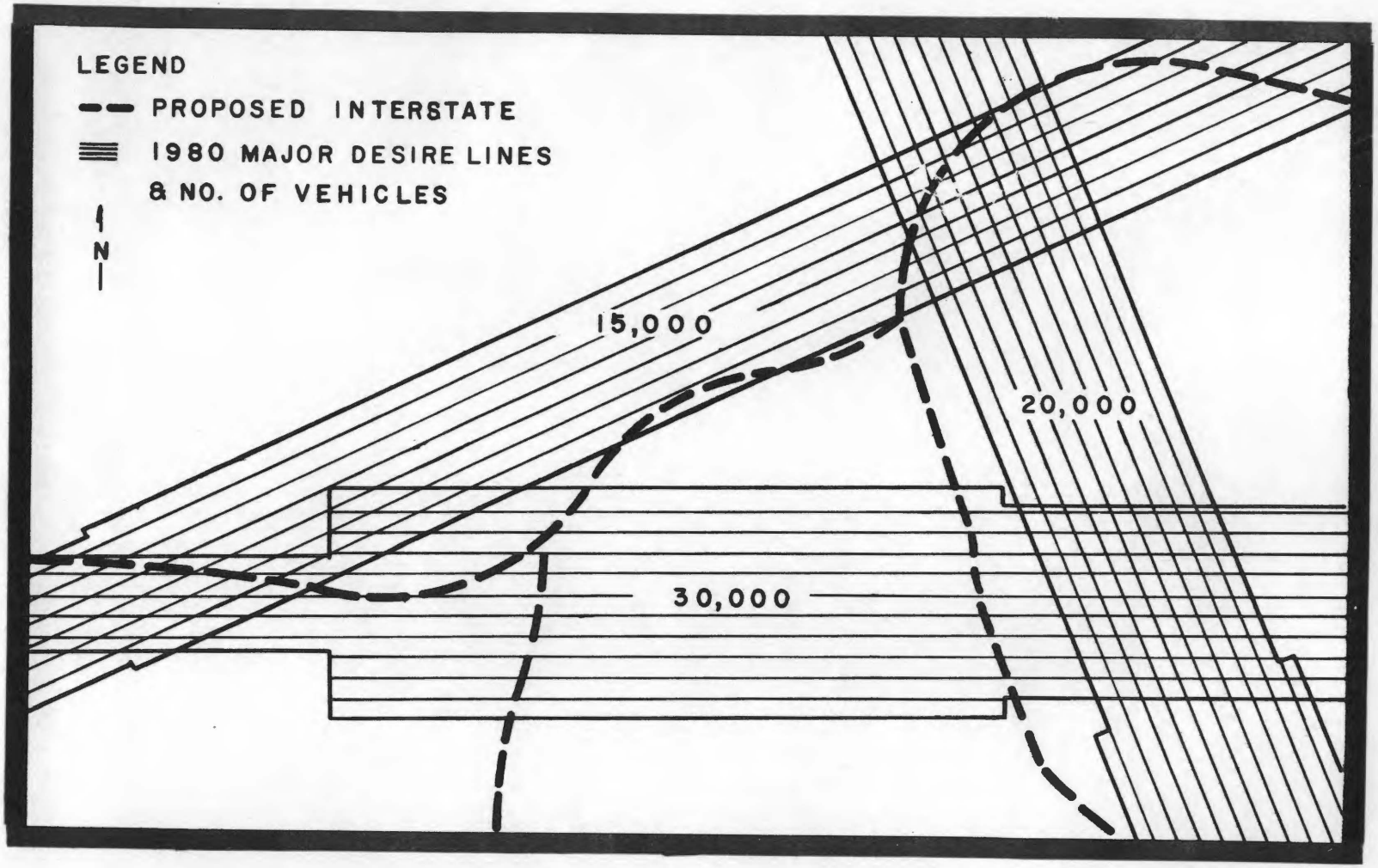


Figure 3. Northwest Nashville major desire lines.

Source: Wilbur Smith and Associates, "Nashville Area Transportation Study," Volume I (New Haven: Wilbur Smith and Associates, 1961), p. 77. (Unpublished.)

(a) If those routes are located too close to railroad rights of way this would complicate handling of access points to the interregional system, the allocation of sufficient area for such access points, and overall alignment of the highway.
(b) The number of access points that should be made available to the controlled-access system and the distances between these points of access. There was comment that there should be such access points no further than a mile apart.
(c) The rough topography encountered in the westerly and southerly portions of the County. It was felt that this would be a determining factor in the selection of the ultimate route.[12]

The second memorandum dated July 11, 12, and 13, 1955 (approximately three weeks later), stated that the Memphis route proposed by the State Highway Department was agreed upon.[13] This was actually the revision proposed by Clarke and Rapuano. A time span of only three weeks would substantiate Mr. Koltowich's statement that no feasibility studies had been conducted. Both of these memorandums are shown in Appendix B.

A final alternative route was recommended by the I-40 Steering Committee and planning consultant Yale Rabin in 1967. This route would have followed the Cumberland River and extended southerly between the river and the Tennessee State University (formerly known as Tennessee A & I University)(see Figure 2, page 30). This route recommendation was not supported by

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[12]Irving Hand, "Interstate Controlled-Access Highway Network" (Nashville: Metropolitan Planning Commission, June 23, 1955), pp. 3-4. (Unpublished memorandum.)

[13]Irving Hand, "Interstate Controlled-Access Highway Network" (Nashville: Metropolitan Planning Commission, July 11-13, 1955), p. 3. (Unpublished memorandum.)

any in-depth study and was readily discredited by officials of the State Highway Department. The disadvantages of this route were:

(1) The route would have been in a flood plain and at least a 20 foot fill would have been necessary.

(2) Even with the fill, the soil was structurally unsuitable.

(3) The route did not satisfy the desire-lines for local transportation and was remotely "out of the way" for east-west traffic movement.

(4) The routing would have disrupted the Cumberland Municipal Park.

C. Comparison of the Preliminary Memphis Route and the Final Recommended Route

Approximately eleven years later, 1967, an analysis was conducted by the Nashville I-40 Steering Committee (the citizens group opposing the routing) comparing the preliminary Charlotte route with the present route. Again, the question arises as to whether or not the Charlotte route should ever have been considered on an equal level with the present route. Although Mr. Koltowich explained the fact that the final study cost 40 times as much as the preliminary study, the author could not find any information which showed a higher level of

analysis or specificity for the final Memphis route recommendation. In light of this, comparison of these two "routes" seems justifiable (see Table I).

In a meeting with Federal Highway Administrator Bridwell in February, 1968, the I-40 Steering Committee was told for the first time why the preliminary route was abandoned.[14]

(1) It would interfere with a hospital complex (at that time all white).

(2) It would interfere with a public park.

(3) It would adversely affect an industrial-business area (the vast majority of which was white).

(4) It would have adverse consequences for the residents of the area (the majority of which were white at the time).

The expressway recommendations proposed by the H. W. Lochner and Company study in 1946 were included as part of the Major Street Plan for the City of Nashville in 1948 by the City Planning and Zoning Commission. This street plan was in effect during 1955-1957 when the final route was selected. The preliminary "route" recommended by Clarke and Rapuano closely conformed to the westerly expressway recommended by H. W. Lochner and Company (see Figure 2, page 30). It appears that this adopted Major Street Plan had no bearing

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[14]Flournoy Coles, "Fisk Challenges I-40 Plan," Fisk News, XLII, ii (Winter, 1968), p. 14.

TABLE I

A COMPARISON OF THE PRELIMINARY ROUTE AND THE FINAL ROUTE RECOMMENDED

Land Uses	Preliminary Route Paralleling Charlotte	Final Route Approved by the State Highway Department
Homes affected by right-of-way	320	626
Businesses affected by right-of-way	45[a]	128[b]
Apartment houses affected by right-of-way	8	27[c]
Churches affected by right-of-way	2	6
Schools affected by right-of-way	1	0[d]

[a]Including some white businesses.

[b]Virtually no white businesses.

[c]About 50 percent of which were built within the last five years.

[d]Excluding Fisk, Meharry and Tennessee State University (formerly known as Tennessee A & I).

Source: Flournoy Coles, "Fisk Challenges I-40 Plan," Fisk News, XLII, i (Fall, 1967), p. 16.

on the action taken by the State Highway Department and the Planning Commission staff in endorsing the final route recommendation.

On July 14, 1955, Mr. Irving Hand, Director of Plans and Research, Advance Planning Division, City and County Planning Commission, presented the proposed Interstate System to the Commission. However, it appears that no official action was taken by the Commission on the proposed Interstate System until its adoption in May of 1958, approximately one year after the public hearing.

D. The Controversial Public Hearing In 1957

According to the Federal-Aid Highway Act of 1956, a public hearing was required on the corridor study.

> Section 116 (C) -- Any State Highway Department which submits plans for a Federal-Aid highway project involving the by-passing of or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Commissioner of Roads that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic effects of such a location: Provided, that, if such hearings have been held a copy of the transcript of said hearings shall be submitted to the Commissioner of Public Roads, together with the certification.[15]

The law emphasized the total economic effect of an urban Interstate System on the city in question rather than emphasizing input from those persons likely to be affected.

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[15]United States Congress, Public Law 84-627, Section 116(C), U. S. Statutes at Large, Vol. 70, 84th Congress (Washington: Government Printing Office, 1956), pp. 385-386.

Neither the statute nor the Bureau of Public Roads Policy and Procedure Memorandum 20-8 (see Appendix C) specified how notice of public hearings should be given.

According to testimony in the United States District Court, B. G. Taylor, assistant right-of-way engineer with the State Highway Department, stated that he posted a notice of the hearing illustrated by the first paragraph of Appendix D in the following post offices:[16]

(1) North Station -- 6th and Monroe

(2) Northeast Station -- 310 Wilburn Street

(3) East Substation -- Gallatin Road

(4) Woodbine Branch -- Acklen Station

(5) West Station -- Charlotte Pike

(6) Main Post Office -- Broadway

Mr. Taylor agreed that these post offices were all primarily used by "whites" and located in "white" neighborhoods. No notices were posted in the local newspapers. The appellant (Nashville I-40 Steering Committee et al.) also pointed out that the public hearing was actually held on May 15, 1957, whereas the notice stated May 14, 1957 (compare Appendix D and Appendix E).

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[16] "I-40 Steering Committee et al. vs. Ellington et al.," Official Transcript of Proceedings, United States District Court, Nashville, Tennessee, Civil Action 4903 (Nashville: John Hamlin, Court Reporter, October, 1967), pp. 326-327. (Unpublished.)

The public hearing greatly emphasizes the economic effect of the entire Interstate System in Nashville (see Appendix E). The transcript of the hearing was sketchy due to the failure of the two microphones in the front of the courtroom to record individuals' identification and questions that came from the back of the courtroom. However, according to testimony by Mr. Cantrell of the Bureau of Public Roads, a predominance of Negroes attended the 1957 hearing.[17]

It should be pointed out that this hearing concerned the final route (as far as the Memphis route was concerned) approved by the State Highway Department and the City of Nashville in 1955 rather than the corridor designations. As pointed out previously, the procedure of delaying public hearings until plans were so far along that a change was economically unfeasible was a usual practice by many state highway departments.[18]

The approval of the City's planning staff is further evidenced by a comment by Mr. Irving Hand, Director of Plans and Research,

> We feel that, by virtue of that cooperation among our local city, county and state officials and Bureau representatives, we have been able to proceed in the location of this System and its general planning in a most constructive manner, . . . Of course, we feel that every consideration should be given to this work within our metropolitan area so that it can be the economic asset that we hope it will be within our community.[19]

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[17] Ibid. [18] Canty, p. 27.

[19] "Interstate System in Davidson County," Transcript of Hearing (Nashville: Tennessee State Highway Department, May 15, 1957). (Unpublished.)

CHAPTER III

THE CONTROVERSY DEVELOPS

I. RELATIVELY QUIET YEARS (1957-1967)

During the ten-year period between 1957 and 1967, members of the black community contended, at the 1967 trial, that they had received evasive replies from officials in seeking more definite information concerning the routing. They stated that they had been told that the route was still "preliminary" and "subject to change."[1]

On April 28, 1957, approximately two weeks before the public hearing on May 15, a map released by the State Highway Department was printed in The Nashville Tennessean showing the first link of the Nashville Interstate System scheduled for construction (see Figure 19, Appendix F). The text accompanying this map implied rather definitely that the Interstate would be built:

> . . . this staff map shows the route of the first link of the Nashville expressway scheduled for construction. First portions of the expressway to be built will be the eastern link from Donelson to the Cumberland River and the stretch along Jefferson Street. The state will begin allocating money for buying right-of-ways on the first link of the Nashville expressway within the next two months.[2]

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[1] A. Q. Mowbray, Road to Ruin, (Philadelphia: J. B. Lippincott Company, 1969), pp. 179-180.

[2] News item in The Nashville Tennessean, April 28, 1957.

It would appear that this notice was ample warning to the black community had they desired to take legal action against the route at the time. This article proves contrary to claims that the black community did not know the exact routing of the highway because the article specifically states:

> [The route] passes under Eighteenth Avenue between Scovel and Jefferson Streets and turns westward, leaving the northern side of Jefferson open between Eighteenth Avenue and the Tennessee Central railway, crosses the Tennessee Central just north of Jefferson; passes under Jefferson Street between the Tennessee Central railway and Twenty-sixth Avenue, with access. Frontage roads run along both sides of [the] expressway through this area connecting streets that are blocked by [the] expressway; passes over Twenty-eighth Avenue between Albion Street and Clare Street; . . .[3]

The Federal Highway Administration approved the routing in 1958. However, the State waited seven years before acquiring property for right-of-way in 1965. According to Sam Morrison, location engineer with the State Highway Department, the right-of-way acquisition did not take place until 1965 simply because the second phasing did not call for right-of-way acquisition until that time. The original phasing had called for much earlier right-of-way acquisition; however, this was revised when the Bureau of Public Roads slowed the scheduled completion of the entire national Interstate System.[4]

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[3] Ibid.

[4] Statement by Sam Morrison, Location Engineer, State Highway Department, Nashville, personal interview, August 11, 1970.

II. THE BLACK COMMUNITY FIGHTS BACK

It is the opinion of the author that the national civil rights movement had a significant bearing on the black community's organization and appeal to the courts. Specifically, the institutional setting changed between 1957 and 1967 as a direct result of the Civil Rights Act of 1964. This is supported by the fact that the petition for an injunction to halt construction of the highway in 1967 charged that the I-40 routing was "arbitrary and based on race."

A. Formation of the Nashville I-40 Steering Committee[5]

On September 26, 1967, a telegram was sent to Governor Buford Ellington by the Fisk University Faculty and Administration expressing concern about possible adverse consequences the routing of Interstate 40 would have on the Northwest Nashville community. Governor Ellington referred the matter to the State Highway Department for further study. On September 29, 1967, State Highway Commissioner Speight replied to the University,

> A firm of consulting engineers had spent the last three years preparing the construction plans, and had received approximately $360,000 for its efforts, more than $10 million had been expended for the acquisition of rights-of-ways, and that the location and preparation of plans for the route had been decided in consultation with officials of the Metropolitan Government of Nashville and Davidson County.

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[5]Flournoy Coles, "Fisk Challenges I-40 Plan," Fisk News, XLII, ii (Winter, 1968), pp. 13-15.

On October 10, 1967, the Nashville I-40 Steering Committee was formed. Dr. Flournoy Coles was chairman of the committee. This unincorporated association had the following objectives:

1. To cause further developments regarding the construction of the highway as now planned to be halted at once, at least before contracts are let on October 31 and construction begins.

2. To enter into consultation with Metro, State, and Federal Government officials for the purpose of reviewing in full all the implications and ramifications -- political, social, economic, cultural, and otherwise -- of the proposed highway extension as now planned.

3. To consider feasible alternatives before reaching agreement on a route which takes into consideration total community needs, interests, and welfare to the maximum extent possible.

The I-40 Steering Committee obtained the services of Mr. Yale Rabin, City Planner from the University of Pennsylvania. The Steering Committee and Mr. Rabin recommended the alternative routing between Tennessee State University and the Cumberland River (see Figure 2, page 30). His study found (1) the absence of coordination of the proposed Interstate with land use plans for the area or the metropolitan region; (2) that this lack of planning arose out of the fact that the

public hearing was conducted more than ten years previous; (3) that the proposals reviewed at the public hearing had changed in the intervening years so as to be no longer relevant to the current proposal; and (4) that the proposals reviewed at the public hearing were so vague and general that it was impossible to assess the impact of the Interstate on the North Nashville Community.

In a meeting with the Mayor of Nashville, the I-40 Steering Committee was told "that local government had no control over the routing of interstate highways, and that frequent attempts, which he did not elaborate upon, by him to have the route altered were unsuccessful."[6]

On October 20, 1967, the I-40 Steering Committee received a reply from the Department of Transportation stating that it concluded that the public interest warranted the receipt of bids as scheduled. This led to an emergency meeting of the Executive Committee of the Steering Committee. The Committee resolved to appeal by letter to Secretary of Transportation Alan Boyd for assistance in obtaining a 90-day postponement for receiving bids and that if this measure failed the Committee decided to institute a suit for temporary injunctive relief in the U. S. District Court. In the letter to Secretary Boyd, the I-40 Steering Committee listed the following perceived consequences of the construction of Interstate 40:[7]

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[6] Ibid., p. 13.

[7] Ibid., pp. 14-15.

1. Expansion of the Negro ghettoes in North Nashville and an intensification of the problems of these ghettoes at a time when efforts are being made to solve the problems of Negro ghettoes across the nation.

2. Demonstration of the impotency of the middle-class Negroes' essentially moderate approach in its relationships with the white power structure, so far as the more aggressive and violent Negro elements are concerned, with consequent increased unrest and tension among Negroes in the community.

3. Relocations or bankruptcies of many Negro businesses in the community because of being cut off from their customers. The loss of these businesses will weaken the community's Negro-middle class structure, decrease employment opportunities for Negroes in the area, and deprive residents and institutions in the area of readily accessible goods and services.

4. Isolation and disruption of the North Nashville community in the face of developing plans by the Metropolitan Government (under the Model Cities Demonstration Program) and of the Fisk University/ Meharry Medical College educational complex for the social and physical rehabilitation and redevelopment of the community.

5. Frustration of efforts by responsible citizens in the community to promote rational and necessary social change in a peaceful manner.

6. Limitation of access of residents of the area to existing transportation routes to available jobs outside the area, and impediments to planning for a more rational intracity transportation system which can make existing and developing industries in the Metropolitan area more accessible to Negroes in North Nashville.

7. Reduced accessibility of the residents of North Nashville to the libraries, public schools, and the major institutions of higher education in the area (Fisk University, Meharry Medical College, and Tennessee A & I State University).

8. Substantially increased difficulty for the above-named institutions of higher learning in decreasing the "grown versus town" atmosphere, and in relating to the community in terms of making meaningful contributions to the solution of the many and complex problems of the area.

9. Severe limitations in contacts between the various educational institutions (at all levels) in the area, and increased obstacles in the way of developing relationships between the community institutions of higher learning and those in other parts of Metropolitan Nashville.

10. Reduction in the available supply of housing for low-income Negroes in Nashville, in the face of population increases and demolitions for necessary and anticipated industrial, commercial and public works expansions.

11. Increased traffic congestion and, consequently, increased traffic hazards for individuals in the vicinity of the hospital and school at Meharry Medical College, of Fisk University, of Tennessee A & I State University, of several elementary and secondary schools, and of numerous churches of all faiths in the area.

12. Reduced accessibility for the residents of the area to Hadley Park and other already inadequate recreational facilities in the community.

13. Reduced accessibility for the residents of the community to the recently funded community health facility, the proposed multiphase health care being provided by Meharry Medical College and its Hubbard Hospital.

14. As a result of the increased traffic flow and congestion in its vicinity, decreased effectiveness of the life-saving capabilities of Hubbard Hospital's Emergency Service.

15. Reduced effectiveness of the joint efforts of Fisk University and Meharry Medical College to provide a wider range of educational opportunities for their students because of the anticipated greatly increased flow of traffic along Eighteenth Avenue North which separates the two schools.

16. Destruction of the "sense of community" in the area with consequent feelings of isolation and frustration in relationships with other elements in and the power structure of Greater Nashville.

17. Increased economic and social difficulties for many residents of the area, predominantly low-income and many aged and welfare-recipients, who are forced to move out of their unusually modest residences and somehow and somewhere, find other places to live in accordance with their very meager incomes.

The I-40 Steering Committee did not receive a reply from Secretary Boyd but saw an article in The Nashville Tennessean quoting Secretary Boyd as saying he would not intervene. Consequently, the I-40 Steering Committee filed suit in the United States District Court on October 26, 1967.

B. The Route Through the Courts

U. S. District Court. Plaintiffs (I-40 Steering Committee et al.) filed suit against Governor Buford Ellington, State Highway Commissioner Speight and Metropolitan Mayor Beverly Briley in the U. S. District Court. The suit contended that:[8]

(1) no public hearings or opportunity therefor, were held or afforded by state officials and certified to federal officials as required by the Federal Highway Statutes before approval of the plans and expenditure of federal funds.

(2) defendants failed to comply with U. S. Department of Transportation Policy and Procedure Memorandum 80-5 dated April 20, 1967, requiring separate and additional public hearings subsequent to November 15, 1962, to discuss the relocation plan where considerable time has elapsed since the required public hearings on a project.

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[8]Avon Williams, "Nashville I-40 Steering Committee et al. vs. Buford Ellington et al., Civil Action 4903, Trial Brief filed in U. S. District Court (Nashville: Avon Williams, Attorney, October 28, 1967), pp. 1-3. (Unpublished.)

(3) the alleged public hearing held by state officials May 15, 1957, is inadequate to support the implementation and construction of said highway because no consideration was given to the highway location in any particular portion of the community, proposals were vague and general, and proposals changed so substantially in the intervening ten years that such hearing no longer has relevance for the current proposals.

(4) the routing of said link of the highway through the North Nashville ghetto in its present location constitutes discrimination on the grounds of race, color, and socioeconomic condition of the plaintiffs. . . .

(5) said link of Interstate Highway through North Nashville is arbitrarily located and is discriminatory . . . in that it was designed and planned in the absence of any comprehensive land use plan.

Social impact. At the U. S. District Court trial, planning consultant Yale Rabin testified that 80 percent of the Negro businesses in the area would be disrupted by the Interstate and it would destroy one-third of the park facilities. He further stated that it would cut through a cluster of small Negro colleges, cutting off one from the other two; it would increase ghettoization of the entire community by weakening the middle-class structure, undermining the economic base of the business community, decreasing employment opportunities, and cutting residents off from readily accessible goods and services.[9]

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[9]Mowbray, p. 181.

Black businessmen told the court that it was impossible to relocate their businesses because of a lack of commercially-zoned land in the community and a barrier to relocation in white areas. The demise of the black businesses paralleled the construction of a new white-owned shopping center just north of the ghetto.

Route vs. corridor issue. Mr. Rabin's testimony indicates that he concluded that Clarke and Rapuano's preliminary "route" was more a route than a corridor. Mr. Cantrell, location engineer with the State Highway Department, testified that the preliminary route recommended by Clarke and Rapuano was a corridor location. When questioned by plaintiff's attorney Avon Williams as to why the change was made from the preliminary routing, Mr. Cantrell stated that "further refinements are always necessary in an original corridor location . . . the specifics would take me a week to tell you." Mr. Williams proceeded to ask Mr. Cantrell if he had considered "the economic impact of cutting across a business district, the Negro business district on Jefferson Street." Mr. Cantrell replied "Yes, that the location that was finally selected was the most sound location from all standards that had been imposed" and that "race had nothing to do with it."[10] Later, Mr. Cantrell

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[10] "I-40 Steering Committee et al. vs. Ellington et al.," Official Transcript of Proceedings, United States District Court, Nashville, Tennessee, Civil Action 4903 (Nashville, John Hamlin, Court Reporter, October, 1967), pp. 385-390. (Unpublished.)

stated that "all of our studies pointed to the fact that it [the present routing] was the most sound thing that we could do towards making the improvement through the city." When questioned about the studies and the basic reasoning by Mr. Williams, Mr. Cantrell replied that "we made numerous studies. I do not understand the basic reason."[11] He stated that the studies were made by the Planning and Research Department. Mr. Williams asked Mr. Cantrell if he could make the studies available at lunch time. Mr. Cantrell replied that he would do his best.[12] No mention is further made of these studies in the transcript.

In an interview with Mr. Bill Wilson with the State Highway Department, Planning and Research Division, he knew of only two studies that had been done for the State Highway Department in addition to Clarke and Rapuano's work. These were the expressway recommendations of H. W. Lochner and Company in 1946 and Wilbur Smith and Associates origin-destination study in 1961 (both previously mentioned in this case study, see Figure 2, page 30, and Figure 3, page 35).[13]

In further questioning, Mr. Williams showed Mr. Cantrell the extent of exactness exhibited in the preliminary

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[11] Ibid.

[12] Ibid

[13] Statement by Bill Wilson, State Highway Department Planning and Research Division, Nashville, telephone interview, August 12, 1970.

"route" study for the city by referring to a large map in the back of the Clarke and Rapuano report (see Figure 20, Appendix F).

Court's findings. On November 2, 1967, Judge Gray denied the motion for a temporary injunction to halt the letting of contracts. He found that the public hearing was in conformity with section 116(c) of the Federal Aid Highway Act of 1956, and had considered the economic effects of the Interstate. He further stated that "most of the evidence presented by plaintiffs goes to the wisdom and not to the legality of the highway department's decision."[14] In regard to the adverse effects of the highway location Judge Gray stated that

> . . . plaintiffs have shown that the proposed route will have an adverse effect on the business life and educational institutions of the North Nashville community. The proof shows that the consideration given to the total impact of the link of I-40 on the North Nashville community was inadequate. However, inadequate consideration does not constitute proof of a deliberate purpose to discriminate against the residents of North Nashville on the basis of race or socioeconomic conditions.[15]

The case was dismissed in regard to defendant Mayor Beverly Briley. The court concluded that the mayor had no jurisdiction over the location of an Interstate Highway and could not

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[14]Federal Reporter, 2nd Series, Vol. 387 (St. Paul, Minn.: West Publishing Co., 1968), p. 181.

[15]Flournoy Coles, "Fisk Challenges I-40 Plan," Fisk News, XLII, ii (Winter, 1968), p. 2.

participate in any Interstate Highway decision process. In regard to the discrepancies in the public hearing in May, 1957, the judge found that any irregularities and inadequacies of that meeting were a matter between the State Highway Department and the Bureau of Public Roads.

U. S. Sixth Circuit Court of Appeals. By this time over $9.5 million had been spent for acquisition of over a thousand parcels of property for right-of-way, not to mention the cost of engineering "studies." The costs were sunk; the city administration, the Nashville Area Chamber of Commerce and the Governor were all applying pressure for the construction of the highway. "Despite court suits, human adversity, and community damage, this kind of economic stake had a momentum all its own."[16] Nevertheless, the I-40 Steering Committee continued to fight. On November 4, 1967, the NAACP Legal Defense and Education Fund, Inc., joined the undertaking. The I-40 Steering Committee appealed the decision of the U. S. District Court to the U. S. Sixth Circuit Court of Appeals in Cincinnati, Ohio.

The defendants' brief in opposition to the motion for an injunction pointed out that the four and one-half mile segment was the only link remaining to complete Interstate 40

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[16]Mowbray, loc. cit.

between Memphis and Knoxville with the exception of a 25-mile section in East Tennessee. They pointed out that the highway had been in the planning stage for some ten years and that right-of-way acquisition had been in process for two years. They pointed out that

> . . . the burden of proving that the harm sought to be avoided outweighs the harm to be done to the defendants or to the public falls upon the plaintiffs. The plaintiffs fail to prove any purpose or intent to discriminate against either Negroes as a class or persons of a lower economic position.[17]

In regard to alternative routes, the defendant's brief states:

> It is self-evident that the location of a highway, or any other public project requiring the exercise of the power of eminent domain for that matter is not a judicial matter. It is not even a political matter. Rather it is one of engineering and prudent expenditure of public funds for the greatest benefit to the public as a whole. The courts are in no position whatever to judge the preferability of one route as opposed to another. . . . It should be pointed out that defendants-appellees had only three days, two of which were Saturday and Sunday, prior to the hearing to assemble proof as to their choice of the route in question, which choice was made nearly ten years ago. This Court must assume under such circumstances that a much more comprehensive record might be made if more time were available for the marshaling of facts and the calling of witnesses.[18]

At this point it should be noted that discrimination because of socioeconomic level can, in fact, be an indirect product of the high weighting given to land value in the

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[17]George McCanless, "Nashville I-40 Steering Committee vs. Ellington," Civil Action 18288, Trial Brief filed in U. S. Sixth Circuit Court of Appeals (Cincinnati, Ohio: George McCanless, Attorney General, November 8, 1967), pp. 1-5. (Unpublished.)

[18]Ibid.

selection of a route. The socioeconomic level of a community and its relative land value are highly correlated. Secondly, if the court did assume that a more comprehensive record could have been produced had the defendants had more time, it made a hasty and unwise assumption. The author, after some six months of data gathering and interviews, could uncover no more scientific methodology in the final determination of the route than the defendants produced in the three days. Specifically, it is the opinion of the author that the court was sold on the technical, engineering aspect of highway location and closed its mind to the fact that location can possibly be highly intuitive and political. It would appear that highway departments need only to act as though a decision is technically rational and others respond accordingly.

Although the court does not have the authority to comment on the wisdom of a highway's location it does have the authority to determine if due process of law has been violated and the routing has been arbitrary. From the evidence produced thus far, it would appear that the selection of the Memphis route was arbitrary in comparison with scientific methodology utilized in the selection of most routes. The selection of the route virtually ignored the City of Nashville's adopted Major Street Plan at the time. The plaintiffs had a valid argument in regard to arbitrariness; however, the evidence they produced was not very substantial.

On December 8, 1967, a three-judge panel heard the case, and three weeks later issued their decision upholding the decision of the lower court with the exception of its dismissal of defendant Mayor Briley. The court stated:

> We reverse the order of the District Court dismissing the Metropolitan Mayor as a party defendant to this litigation. Although the District Court is correct in its conclusion that the Mayor has no legal power to decide the location of an interstate highway, it cannot be doubted that he possesses considerable powers of persuasion and cooperation.[19]

The court did grant a 20-day Stay Order, in regard to construction, so that plaintiffs would have time to prepare an appeal to the U. S. Supreme Court.

United States Supreme Court. The I-40 Steering Committee appealed to the U. S. Supreme Court on December 1, 1967. Associate Justice Stewart issued a 20-day Stay Order in order to provide time for the Court to decide whether or not to review the case. On December 28, the Court refused to hear the case and it was remanded back to the lower court (U. S. District Court).

III. THE FIGHT COMES TO A CLOSE

The Steering Committee met with Federal Highway Administrator Bridwell on November 9 and February 13. Mr. Bridwell finally disclosed his decision in regard to the

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[19] Federal Reporter, p. 186.

routing in a letter to Dr. Coles, Chairman of the Steering Committee, dated February 26, 1968. Administrator Bridwell included a copy of a telegram sent to Governor Ellington specifying several conditions which had to be met by the State Highway Department in order to obtain Federal aid in constructing the section of I-40 from 46th Street to 18th Avenue. Following are the conditions specified by Mr. Bridwell:[20]

> 1. An additional vehicular and pedestrian underpass will be constructed on Batavia Avenue west of 28th Avenue in order to additionally facilitate communication among residents south and west of Hadley Park with those on the east side of the freeway.
>
> 2. Modify the ramp structure on the interchange with Jefferson Street in order to eliminate the necessity of controlling access to certain properties which can otherwise be used successfully to maintain and improve business and social services to the residents of the North Nashville community.
>
> 3. Construct an additional vehicular and pedestrian underpass immediately east of the freeway overpass of the Tennessee Central Railroad north of Jefferson Avenue in order to provide for the planning of the 28th South Ave. arterial street pledged by the City of Nashville. This will open additional access to the Jefferson Avenue business area for the residents of North Fisk Park and will assist materially in keeping traffic off 18th Avenue between Fisk University and Meharry Medical College.
>
> 4. Construct an additional underpass at 21st Street in order to open up access not now available to the residents north of Jefferson Avenue and west of 18th Avenue.

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[20]Flournoy Coles, "Fisk Challenges I-40 Plan," Fisk News, XLII, ii (Winter, 1968), p. 2.

> 5. Modify the design of the cut for the freeway under 18th Avenue so that space over the freeway may be made available for the construction in air rights of whatever structures are deemed desirable as a result of the planning under the "Model Cities" Project now being undertaken by the City of Nashville and the residents of the area. This space should extend westward from the 18th Avenue overpass to whatever point is possible in order to maintain the necessary 16-foot clearance for vehicles on the roadway and to make the air rights structure or structures convenient from a standpoint of existing topography or grade level. Federal-aid funds will participate in the cost of retaining walls or whatever other design is reasonable desirable in order to support the air rights structures.

Mr. Bridwell's letter pointed out the positive aspects brought about, in his opinion, by the efforts of the I-40 Steering Committee.

> Your efforts have succeeded in bringing closer coordination and cooperation between such programs as highways, those of the Department of Housing and Urban Development and the Small Business Administration in Nashville. I am equally confident your efforts have focused attention upon the need for better coordination among Federal, State and Local agencies. And perhaps most importantly, your efforts have led to meaningful citizen participation in the planning process. While this participation obviously occurred late in the time span of this particular project, it nevertheless resulted in substantial changes which should benefit the community and its residents and businesses.
>
> The citizen participation you developed as members of the I-40 Steering Committee should be carried over into the "Model Cities" Program because of its close relationship. The changes being made in the highway project should offer you the opportunity in the early stages of the "Model Cities" project to plan the kind of business, academic setting you want for the community in the vicinity of Jefferson Avenue.[21]

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[21] Ibid.

The I-40 Steering Committee persisted with a letter to President Johnson on February 22, 1968, seeking his help in halting the highway. A reply was sent by Secretary of Transportation Boyd in behalf of President Johnson. The letter emphasized the concessions granted by Mr. Bridwell and likewise expressed hope of coordinating the "Model Cities" Program and the Federal-Aid Highway Program in the affected area and elsewhere in the United States. He stated, "In retrospect, it may well have been more desirable to locate the highway on a different line."[22]

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[22] Ibid., p. 15.

CHAPTER IV

THE CURRENT DEVELOPMENTS

I. INTRODUCTION

This chapter is concerned with the current status of the concessions given by Federal Highway Administrator Bridwell. An effort will also be made to determine the success of all offers and concessions in terms of neighborhood reconsolidation and revitalization in coordination with the "Model Cities" Program.

II. THE TWO CURRENT ISSUES

Following is a listing of Federal, State and Local design plans and concessions and a discussion of their current state of development. Figure 4 illustrates the locations of these concessions with corresponding numbers.

CONCESSION	GRANTOR
1. Vehicular and pedestrian underpass on Batavia Avenue west of 28th Street.	Federal Highway Administration
2. Modification of the ramp structure on the interchange with Jefferson Street.	Federal Highway Administration

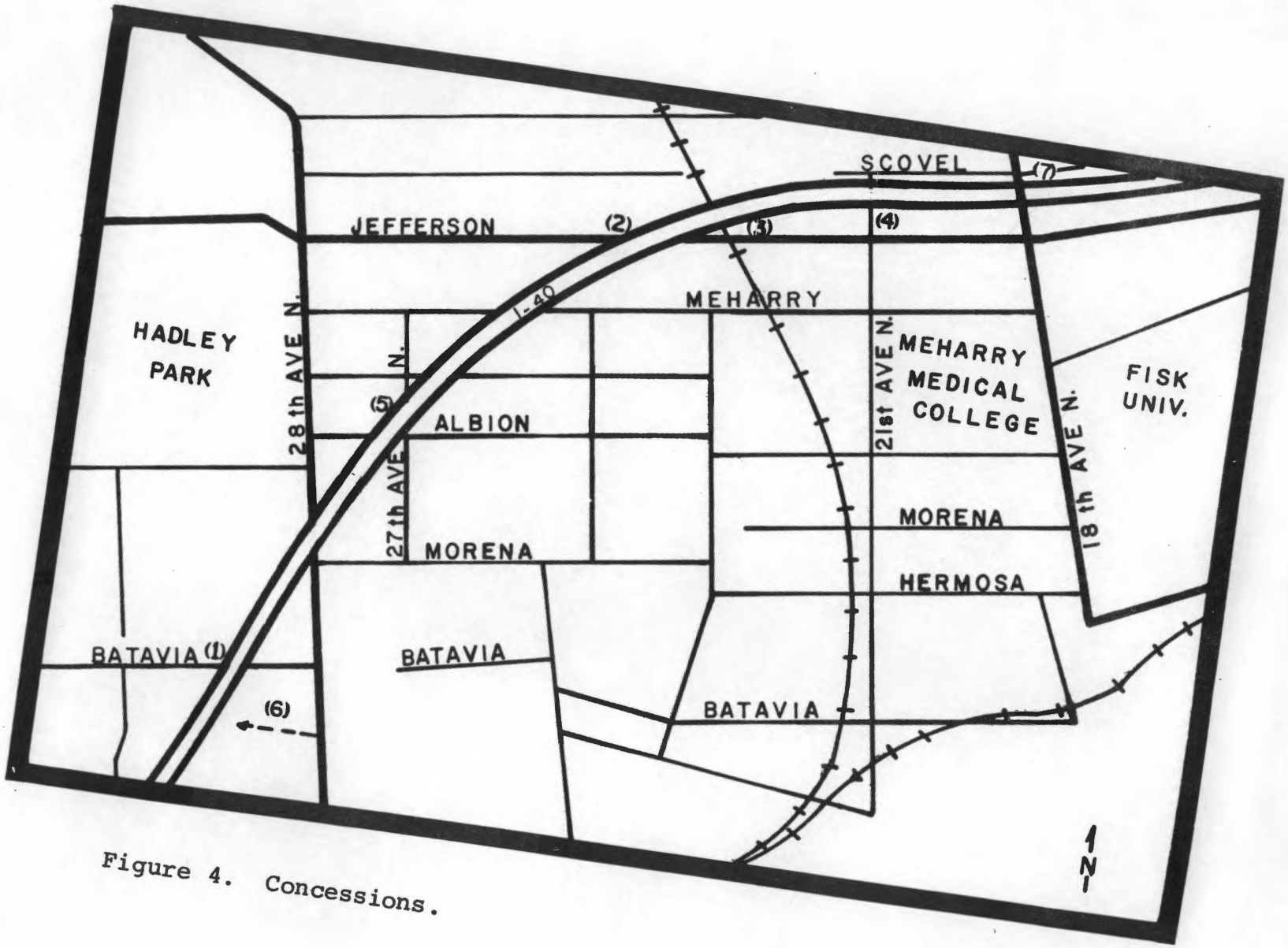


Figure 4. Concessions.

3. Construction of an additional vehicular and pedestrian underpass east of the freeway overpass of the T. C. Railway north of Jefferson Avenue.	Federal Highway Administration
4. Construction of an additional underpass at 21st Street.	Federal Highway Administration
5. Construction of a pedestrian overpass at 27th Avenue North (see also Figure 5).	State Highway Department
6. The relocation and widening of 28th Avenue North in order to relieve north-south traffic flow on 18th Avenue through the University area.	City of Nashville
7. Modification of the design of the freeway under 18th Avenue so as to provide space over the freeway for the construction of air rights structures (see also Figure 6).	Federal Highway Administration



Figure 5. Photograph illustrating a pedestrian overpass provided at 27th Avenue North.



Figure 6. Photograph illustrating the depression of the highway in order to allow for air rights development.

Notice 18th Avenue North crossing the highway.

8. Frontage roads. State Highway Department

Items 1 through 5 have been integrated into the design of the Interstate Highway and there is little controversy over their inclusion as stated. On May 29, 1969, Mayor Briley received a letter from State Highway Commissioner Speight stating that the concessions outlined by Mr. Bridwell had been incorporated into the design,

> The captioned projects are those sections of I-40 from 46th Avenue North to a point East of 18th Avenue North. The projects have been under construction for over a year. Numerous changes were made to these projects during construction in an effort to meet the needs of the local citizenry, the I-40 Steering Committee, and the Metropolitan Government of Nashville and Davidson County. An interchange was added at 46th Avenue North, separation structures were added at Batavia and 21st Avenue North, the outfall ditch along the old Tennessee Central Railroad will be covered and the grades adjusted on Jefferson Street. The Department has acted in good faith to implement all of the recommendations contained in the telegram of February 25, 1968, from Mr. Lowell K. Bridwell to Governor Ellington.
>
> In addition, the Department committed itself to participate in the construction of the platform over I-40 in the area now being studied for air-rights usage, if such construction is found feasible by the studies now underway by Marcou, O'Leary and Associates and if approved for financing by the Bureau with 90-10 funds.[1]

In regard to Item 6, the City has decided to relocate 28th Avenue North to the west where it will parallel the Interstate, thereby avoiding the severing of a neighborhood

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[1]Based on correspondence between Charles W. Speight, Commissioner of Highways, and Metropolitan Mayor Beverly Briley, May 29, 1969.

with a major traffic route (projected 10,200 A.D.T. for 1980[2]).

In regard to Items 7 and 8, there is presently considerable citizen reaction through the Citizens Coordinating Committee, Inc., -- the recognized citizen participation organization under the "Model Cities" program. It should be pointed out that another citizens' group, The Community-Highway Planning Committee, Inc. (formerly the I-40 Steering Committee), is not recognized by the Model Cities Agency. Nevertheless, this group continues to comment on the various developments concerning Interstate 40.

A. The Air Rights Project

In a letter to State Highway Commissioner Speight, John Logan, Division Engineer, Bureau of Public Roads, related four items which should support any proposal for air rights development:[3]

> (1) There must be positive proof that the ultimate plan for this joint development has complete community acceptance.
>
> (2) The nonprofit development corporation which will be responsible for the implementation of the joint development must be legally constituted and a functioning mechanism.

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[2]Based on correspondence between Robert H. Paslay, Planning Director, and Dr. Edwin Mitchell, Committee on Highway-Community Planning, October 21, 1969.

[3]Based on correspondence between John S. Logan, Division Engineer, Bureau of Public Roads, and State Highway Commissioner Charles Speight, July 28, 1969.

(3) There must be firm financial commitments from public resources for the air rights development.

(4) A legal agreement should be entered into between the State, Metro Government, and the development corporation, indicating the acceptability of the joint development project to all parties concerned, and the general terms under which it will function.

The consulting firm of Marcou, O'Leary and Associates performed a study for the Nashville Model Cities Agency, Tennessee Department of Highways and the U. S. Bureau of Public Roads concerning the air rights project over the Interstate 40. Their preliminary report concerned the project's desirability, economic feasibility, and design alternatives.

Desirability and feasibility. The study listed the following goals for the joint development of the air rights project:[4]

(1) minimize highway construction delays and resultant slowdowns in the pace of community development.

(2) maximize resident participation in the planning process.

(3) provide needed commercial, residential and social facilities for the Model Neighborhood.

(4) create economic and physical development opportunities in North Nashville.

(5) minimize disruptive and adverse environmental effects of the Interstate Highway.

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[4]Marcou, O'Leary and Associates, "Preliminary Report: Air Rights Project, Interstate Highway 40, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, May, 1969). (Unpublished.)

In regard to feasibility, the study determined that the development of commercial, public services, and related multifamily housing developments were feasible and that a market existed for these facilities in North Nashville. However, the study pointed out that lack of feasibility, strictly on a total construction cost basis, should not justify abandonment of the project to the community. For this reason, the costs of preparing Interstate 40 for air rights development were not entered into the feasibility consideration.

Design alternatives. The preliminary study presented two design alternatives -- the limited development approach and the comprehensive development approach.

The limited development approach would simply be a minimal effort to affect the adverse effects of the highway. It would be designed to primarily (1) link the two sides of the portion of North Nashville severed by the highway; (2) minimize the nuisance effects of the Interstate through platform development; and (3) provide a small range of neighborhood service and business facilities for the intermediate 18th and Jefferson area (see Figure 7).

The comprehensive development approach would utilize an extended platform and adjacent area development to develop a large range of commercial, community, and housing facilities (see Figure 8).

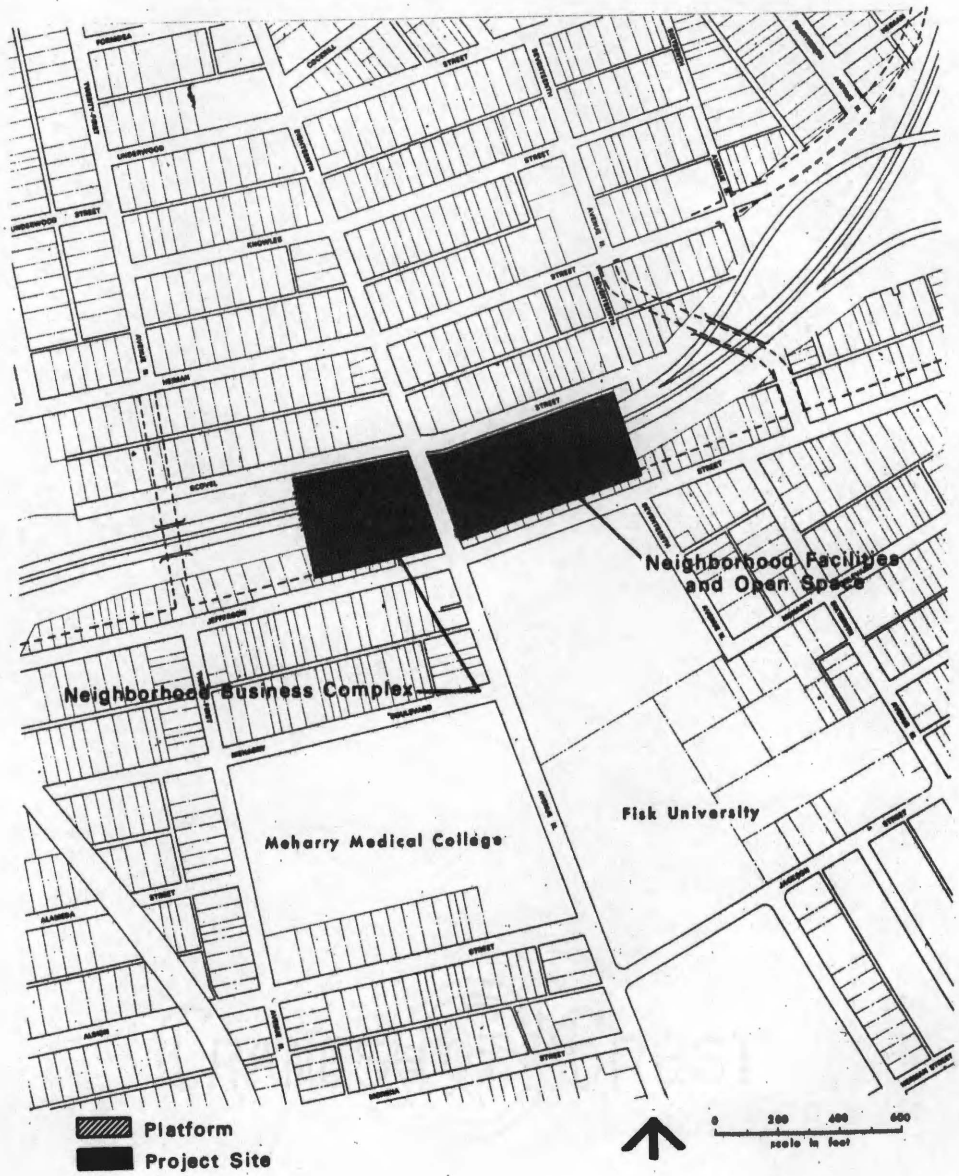


Figure 7. Air rights, limited development approach.

Source: Marcou, O'Leary and Associates, "Preliminary Report: Air Rights Project, Interstate Highway 40, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, May, 1969). (Unpublished.)

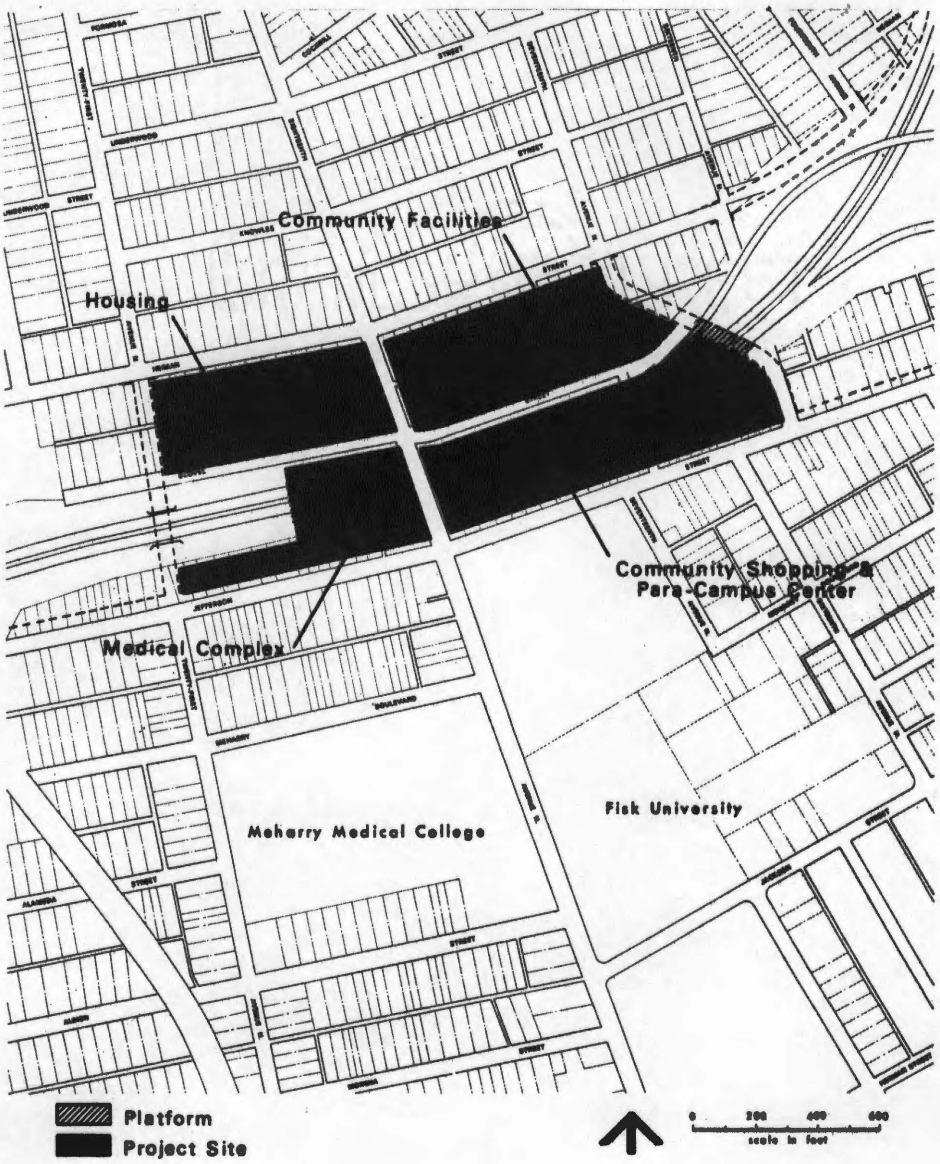


Figure 8. Air rights, comprehensive development approach.

Source: Marcou, O'Leary and Associates, "Preliminary Report: Air Rights Project, Interstate Highway 40, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, May, 1969). (Unpublished.)

The following statement by Marcou, O'Leary and Associates explains their purpose and strategy in proposing the two approaches in the preliminary stage:

> Both the limited and comprehensive alternatives were judged to be valid conceptual approaches, though each satisfied planning desirability criteria in different degrees. Both met the desirability criteria of minimizing highway construction delays and genuinely involving citizens in the planning process. They both provided facilities needed in the immediate neighborhood, although the limited approach yielded comparatively more open space. They successfully limited highway nuisance effects through coverage provided by the platform and overcame, through the platform and vehicular and pedestrian crossings, I-40's presence as a barrier in the neighborhood.
>
> In focusing on a narrowly defined area and attempting to provide comparatively few uses, the limited development concept could be carried out with minimum amount of coordination and less consequent stress. However, the comprehensive approach would achieve to a much greater degree the two highly important criteria of (1) providing a full range of needed community-wide social services, housing, and commercial facilities in a suitable location, and (2) strongly promoting job, business ownership and economic development opportunities for the community. For these reasons, the comprehensive approach was preferred by the project consultant for joint development in the Model Neighborhood.
>
> There were two bases for proposing the alternative development approaches in the preliminary study phase. First, all participating public agencies needed sufficient analytical information and initial conclusions of the project consultant in order to reach a decision regarding the scope and character of their participation in project execution. These decisions, in turn, might have necessitated modifications in specific planning recommendations during the scheduled remainder of the air rights feasibility study.
>
> Second, outlining two possible development approaches and stating the reasoning behind the consultant's preferred strategy established a clear framework in which effective citizen involvement could take place.[5]

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[5]Marcou, O'Leary and Associates, "Interstate Highway 40, Air Rights Project, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, January, 1970), pp. 20-22.

The citizen groups expressed disapproval of both of the development approaches. The Committee objected to the necessary acquisition of residential property and consequently further community disruption and dislocation of citizens. They also objected to the intensive development proposed in the comprehensive approach because they felt that it was incompatible with the surrounding residential area. Consequently, the community groups urged the consultants to formulate a development concept that minimized displacement and large scale construction.

As a result of this opposition by the citizen groups, Marcou, O'Leary and Associates proposed a revised development approach. This approach provides for a community shopping complex, motor lodge, and office space for professional, business, and public services. It differs from the two previous proposals in that it requires the acquisition of much less property (see Figure 9). "Only six privately owned properties lying between the platform and Jefferson Street need be acquired for project use."[6] The revised approach accomplishes this by multilevel design with the project fronting on Scovel Street (see Figure 10). The deck would be 1,000 feet long and extend from 17th Avenue North to a point about 200 feet west of 18th Avenue North. The width of the proposed structure would vary from 200 to 250 feet.

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[6] Ibid., p. 23.

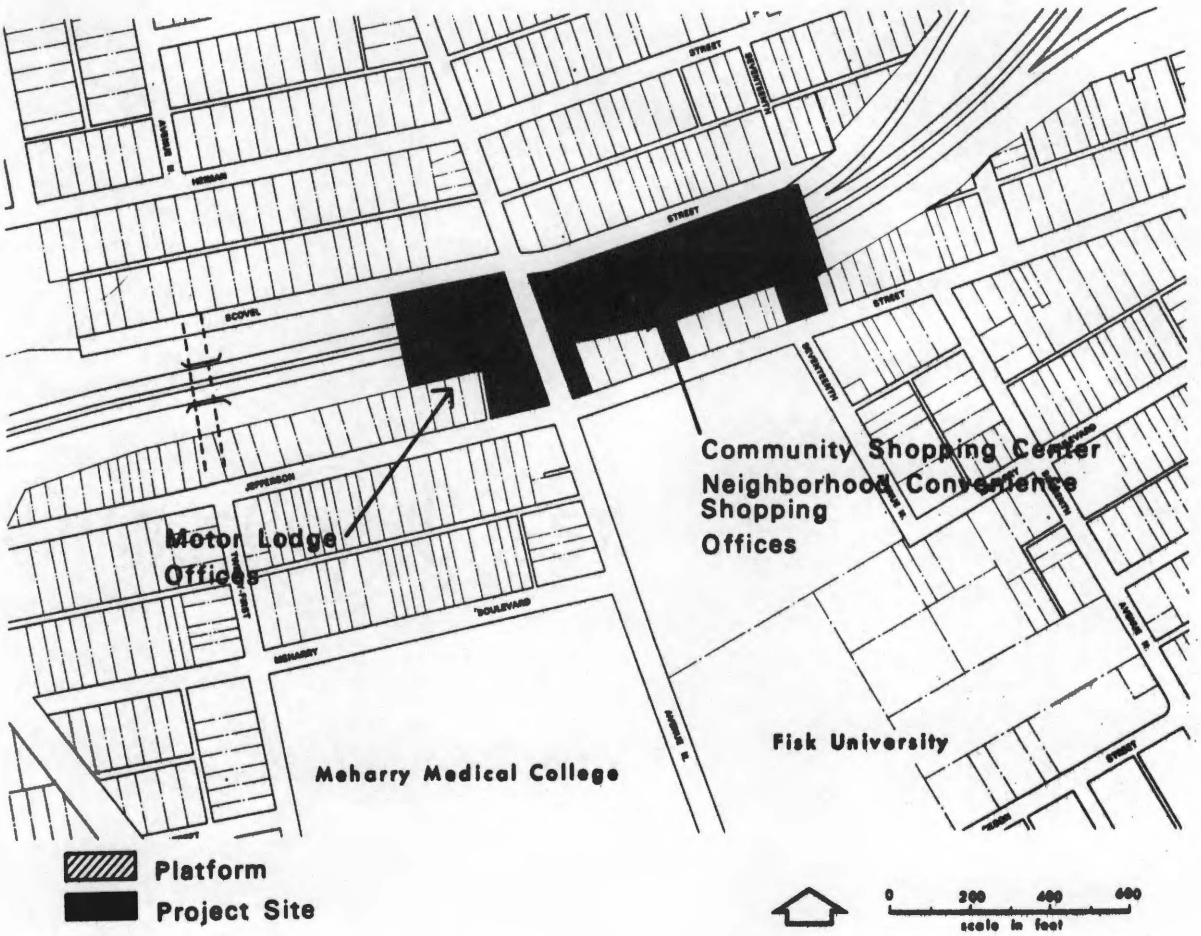


Figure 9. Air rights, modified development approach.

Source: Marcou, O'Leary and Associates, "Interstate Highway 40, Air Rights Project, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, January, 1970), pp. 20-22.

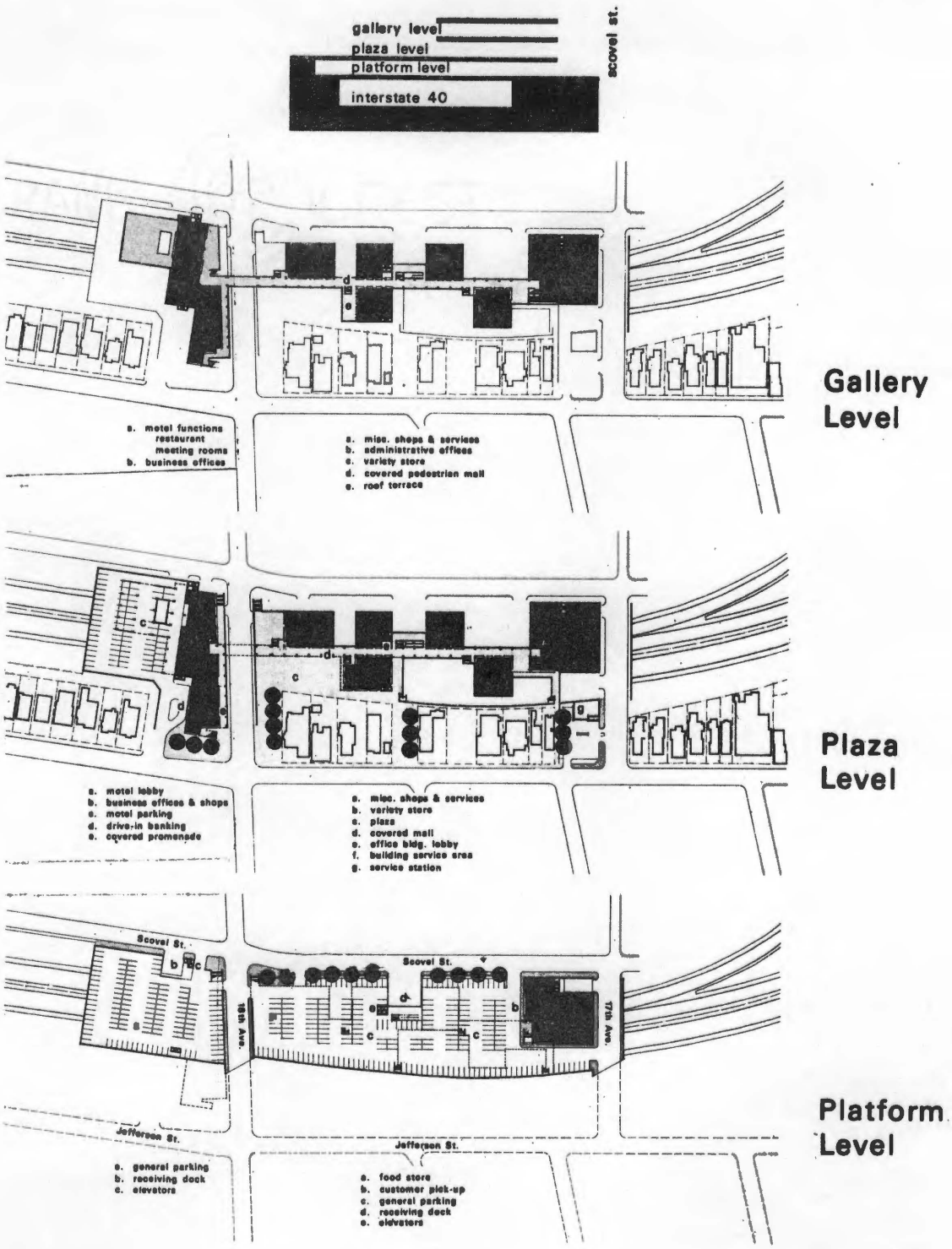


Figure 10. Multilevel design of the modified air rights project.

Source: Marcou, O'Leary and Associates, "Interstate Highway 40, Air Rights Project, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, January, 1970), pp. 20-22.

The State Highway Department has stated that the revised development approach will require mechanical ventilation and has proposed four alternative designs which would not require mechanical ventilation.

B. Frontage Roads

In a letter to State Highway Commissioner Speight, Mr. Ferris Deep, Executive Director, Metropolitan Planning Commission stated seven justifications for the frontage road system:[7]

1. The proposed frontage roads delineate the neighborhood by routing traffic around, rather than through, the neighborhood.

2. With traffic routed to the neighborhood's periphery, pedestrian-vehicular conflicts within the neighborhood can be greatly minimized allowing safer movement to and from schools, parks, and community centers. This has special significance in the North Nashville area because most children walk to the neighborhood facilities.

3. The frontage road system allows streets to be tied into the system that might otherwise be cut off at the interstate right-of-way, thereby giving much greater access to the affected parcels.

4. The proposed frontage road would provide a smooth, continuous flow between major routes.

5. The frontage road system, including the connecting structure across I-40 in the vicinity of 16th Avenue North, would take pressure off local streets within the neighborhood and would also help relieve heavily traveled streets such as 8th Avenue North and 18th Avenue North.

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[7]Based on correspondence between Francis Deep, Executive Director, Metropolitan Planning Commission and Charles Speight, Commissioner of Highways, August 18, 1969.

6. By providing greater access to areas adjacent to the Interstate right-of-way, the frontage road system would greatly increase the effectiveness of fire and police protection, mail service, garbage collection, and other local services.

7. There is evidence to suggest that properties adjacent to the interstate right-of-way have witnessed an unusually rapid degree of deterioration since clearance first began for the interstate project. It is the judgment that further deterioration is imminent, especially in those areas adjacent to the interstate right-of-way that do not have good access, unless a frontage road system is provided. It is clear that the proposed frontage road system would greatly increase access to affected properties and could help stem the tide toward further deterioration by actually increasing property values.

Figure 11 illustrates the proposed frontage road and transportation system for the neighborhood.

At a public hearing on June 18, 1970, frontage roads paralleling the Interstate and an additional pedestrian overpass near the T. C. Railway line were scheduled for discussion. The citizens group opposed the frontage road system because it would require the acquisition of approximately 35 homes. The residents made no comment for or against the additional pedestrian overpass.[8] Figure 12 illustrates only one of many dead-end streets created by the Interstate which should be eliminated with frontage roads. "Ray Moredock, assistant design engineer with the highway department, recommended the roads because they

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[8]News item in The Nashville Tennessean, June 19, 1970.

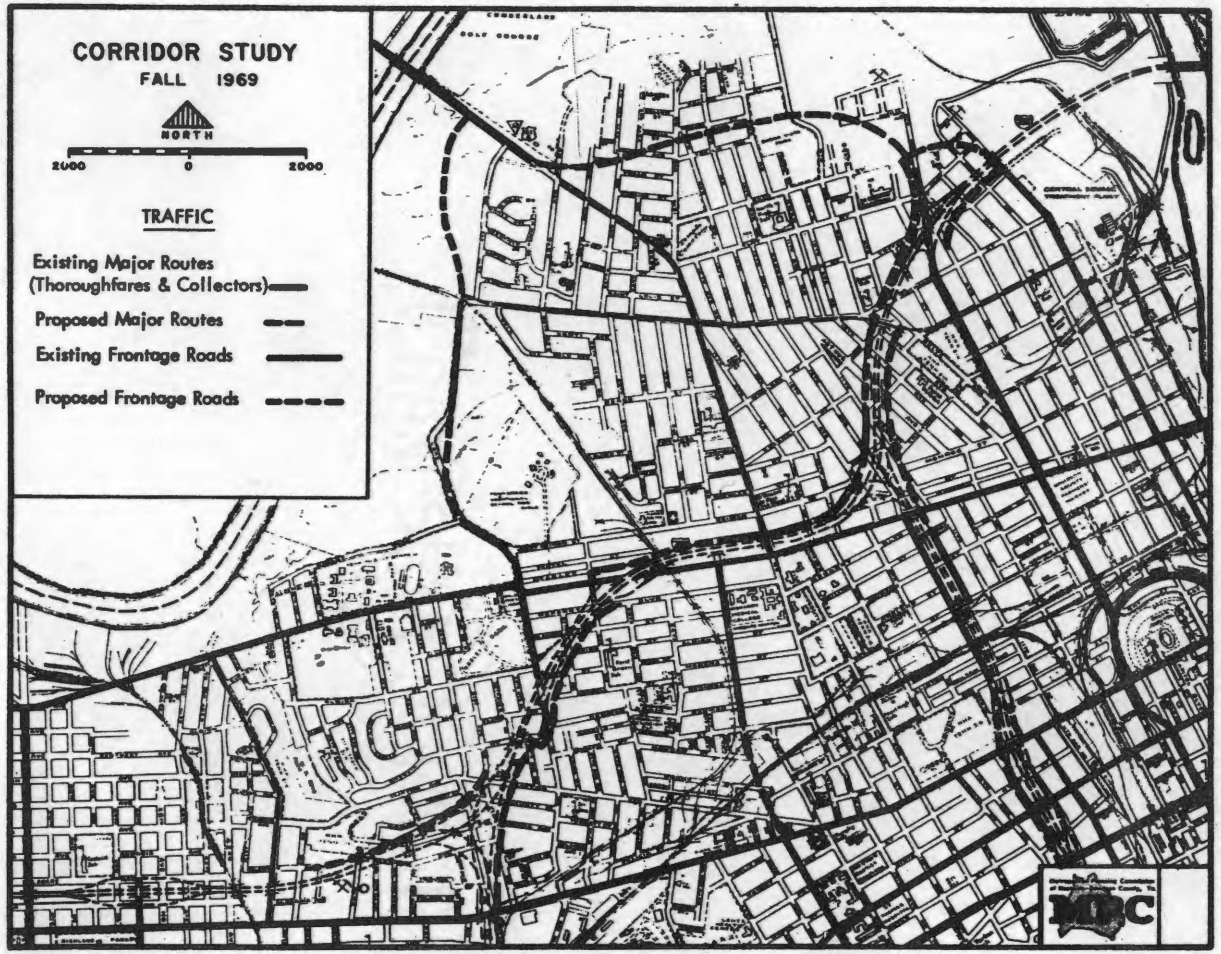


Figure 11. Existing and proposed frontage road system.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 10. (Unpublished memorandum.)



Figure 12. Photograph illustrating one of many dead-end streets created by the passage of the Interstate through North Nashville.

would make thoroughfares of deadends . . . and serve as buffers between the highway."[9]

III. NORTH NASHVILLE'S BLACK BUSINESSES: ECONOMIC ENVIRONMENT AND POTENTIAL FOR RECOVERY WITH THE AIR RIGHTS PROJECT

A. Economic Environment and I-40's Impact

The economy of North Nashville is characterized by a low level of capital production and investment. The population of this area is 77 percent nonwhite. In 1966, the median family income of blacks in Nashville was approximately $3,000 or 52 percent of the median income of whites. Data from the U. S. Bureau of Labor Statistics indicates that an annual income of $8,522 is required for a family of four to live moderately in Nashville. This low income situation explains the capital poverty of black businesses since 91.8 percent of the customers of black businesses are black.[10] Adding further to the problem of black capital accumulation is the competition from white chain merchants whose generally lower prices attract low income blacks. These marginal black businesses are generally isolated in black neighborhoods where they are

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[9]News item in The Nashville Tennessean, June 19, 1970.

[10]Henrietta R. Davis, "The North Nashville Community -- A Study In Conflict" (unpublished term paper, Vanderbilt University, Nashville, 1970), p. 21.

cut off from the mainstream of commerce and credit (only 5 percent of the black businesses in Nashville have received a loan from the Small Business Administration.[11]

As of January 15, 1969, of the 61 business establishments located primarily on Charlotte and Jefferson Streets, 39 percent had closed and another 24 percent had moved. Approximately 85 percent of the businesses suffered as a result of Interstate disruption.[12]

According to a report by the Middle Tennessee Business Association prepared for the Small Business Administration and the Model Cities Agency concerning "Operation Northtown":

> It appears that 47.5 percent of Nashville's participating Negro businesses have already [as of January 21, 1969] been affected by the routing of this highway [I-40] through North Nashville. Furthermore, an additional 21 percent of Nashville's Negro businesses that have not yet been adversely affected by the construction of the I-40 highway expect to be so affected. This means that more than two-thirds, or 68.5 percent of the businesses owned and operated by Negroes in Nashville have been and/or expect to be adversely affected by the construction of the I-40 highway [See Table II] . . . All of the identifiable businesses that still must move as a result of the routing of the I-40 highway through the North Nashville Negro Community foresee difficulties in relocating their businesses satisfactorily. At the same time only 27.3 percent of those business firms that have moved or are to be moved . . . have applied for a

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[11]"Project Operation Northtown--Phase I" (Nashville: Middle Tennessee Business Association, January, 1969), p. 36.

[12]Ibid., pp. 26-31.

TABLE II

BUSINESSES CLOSED, MOVED, OR TO BE MOVED DUE TO THE CONSTRUCTION OF THE I-40 HIGHWAY THROUGH THE NORTH NASHVILLE NEGRO COMMUNITY

Name of Business	Old Address of Business	Closed	Moved	To be Moved
Ace Hotel	1122 Charlotte Avenue	X		
Angel Cleaners	1038 21st Avenue, N.			X
Audrey's Auto Trim Shop	608 12th Avenue, N.			X
Ballew's Market	918 28th Avenue, N.		X	
Bill's Cab Company	1123 Charlotte Avenue		X	
Black Hawk Restaurant	1124 Charlotte Avenue	X		
Blue Ribbon Inn	605 12th Avenue, N.			X
Buck's Radio and TV	2604 Jefferson Street		X	
Charlie's Restaurant	Heiman Street	X		
Club Del Morocco	2419 Jefferson Street	X		
Community Federal Savings and Loan Association	2430 Jefferson			X
Cozy Corner Cafe	12th Avenue and Jefferson Street	X		
Ebony Hut	12th Avenue and Jefferson Street	X		
Ed's Phillips 66 Service Station	1200 Jo Johnston St.			X
Eddie's Barber Shop	427 12th Avenue, N.	X		
Eddie's Beauty Shop	427 12th Avenue, N.	X		
Esquire Cleaners	2631 Jefferson Street		X	
Evening Star Cafe	428 12th Avenue, N.			X
Ferrell's Grocery	205 36th Avenue, N.	X		
Frisco Inn	1230 Pearl Street	X		
G. S. Barnes Grocery (W)	14th Avenue and Jefferson Street	X		
Gay Liquor Store	521 12th Avenue, N.			X

TABLE II (continued)

Name of Business	Old Address of Business	Closed	Moved	To be Moved
George's Grocery	932 28th Avenue, N.	X		
George Hall's Restaurant	13th and Charlotte Avenue			X
Gilbeartha's Tailor Shop	1130 Charlotte Avenue			X
Gilliam-Hodge Bi-Rite (W)	606 25th Avenue, N.	X		
Gordon's Grocery	2000 Jefferson Street	X		
Dr. William H. Grant's Medical Office	2603 Jefferson Street			X
Green Lantern Inn	1131 Jefferson Street	X		
Hemphill Press	2034 Jefferson Street		X	
Holmes Funeral Home	440 12th Avenue, N.			X
Hotel Annex	1304 Charlotte Avenue			X
Hut Restaurant	2038 Jefferson		X	
Coin Laundry	2035 Jefferson			X
Jefferson Street Rug Service	2604 Jefferson Street			X
Joyce's House of Glamour	2421 Jefferson Street		X	
Kimbrough's Grocery	11th Avenue and Scovel Street		X	
Leonard's Drive-In Market	2042 Jefferson Street	X		
Mac's Cash Market (W)	28th Avenue and Clifton Street	X		
Mary's Barbecue	12th Avenue and Scovel Street		X	
Master Cleaners	1203 Jo Johnston St.			X
Minit Saver Market #1	2037 Jefferson Street			X
New Era Club	1200 Charlotte Avenue			X
New Era Variety Store	1200A Charlotte Avenue			X

TABLE II (continued)

Name of Business	Old Address of Business	Closed	Moved	To be Moved
Northington Snack Shop	2830 Clifton Street	X		
North Carolina Mutual Insurance Company	2005 Jefferson Street		X	
Office Building	1130 Charlotte Avenue			X
Otey's Development Company	2520 Jefferson Street		X	
Pack and Sack Food Town (W)	2610 Jefferson Street	X		
Pullen Brothers TV Service	28th and Jefferson		X	
Porter's Grocery	Arthur and Garfield Sts.	X		
Reedus Styling Studio	2629 Jefferson	X		
Red Apple Grill	12th Avenue, N.	X		
Restaurant Inn	1304 Charlotte Avenue (Rear)			X
Rip's Car Wash	1304 Charlotte Avenue			X
Silver Sand Cafe	425 12th Avenue		X	
Sonny Side Inn	606 12th Avenue, N.			X
Superior Barber Shop	1127 Charlotte Avenue			X
Val Dot Liquors	12th Avenue and Jefferson Street		X	
Wade's Billiard Parlor	1128 Charlotte Avenue	X		
Wilson's Service Station	2040 Jefferson Street	X		
	Totals	24	15	22

Source: "Project Operation Northtown--Phase I" (Nashville: Middle Tennessee Business Association, January, 1969), pp. 28-31.

relocation allowance. This failure to even apply for such an allowance is probably due to a widespread belief that it would not be granted anyway.[13,14]

B. Project Development Potential

Financing and staging. The financing of the air rights platform calls for 90--10 percent federal--state participation, respectively, as a part of the Interstate Highway Program. The Metropolitan government is to construct all associated local street improvements and provide financial guarantees. The North Nashville Non-Profit Development Corporation (hereinafter NNNDC), organized under Tennessee statute, is to obtain title to all project land and arrange for the design, development, and operation/marketing of all project components.

The NNNDC and its affiliated Development Credit Corporation will supposedly increase black ownership and control of neighborhood developments. Specifically, the functions of the NNNDC are:[15]

1. Directly undertaking housing and business development projects and then managing, selling, or leasing them. Housing projects could include rehabilitation or new development on single, scattered lots or large tracts. Federal assistance for low- and moderate-cost dwellings would be used.

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[13] Ibid., pp. 26-32.

[14] The varying percentages of affected businesses indicate the lack of uniform criteria for such statements as 85 percent "suffered" or 68.5 percent were "adversely affected." Nevertheless, one could conclude that a significant number of businesses were affected by the routing.

[15] Marcou, O'Leary and Associates, p. 59.

2. Obtaining development rights of projects and then contracting for actual development with subsidiary or outside corporations.

3. Providing loans, help in obtaining loans, and management assistance and training to new and existing Model Neighborhood businesses and housing corporations.

The major source of financing for the corporation would be a revolving fund initially capitalized through pledges, loans, and contributions hopefully reaching $3 million at the end of five years. Figure 13 illustrates the proposed staging of the project.

Degree of neighborhood unity.[16] The success of the project will require a high degree of unity on the part of black citizens within the community. A recent finding by a graduate student at Vanderbilt University, in preparing a paper concerning the North Nashville area, indicated the splitting of the black community into several factions. "The displaced Jefferson Street merchants seemingly are to have little future with respect to participation in any air rights platform -- if it materializes at all."[17]

An interview with Buford Drake, recently appointed Director of the Model Cities Program, revealed that the disagreements in regard to the project presented the possibility that the state might withdraw its offer of construction and

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[16] Davis, pp. 24-30. [17] Ibid., p. 25.

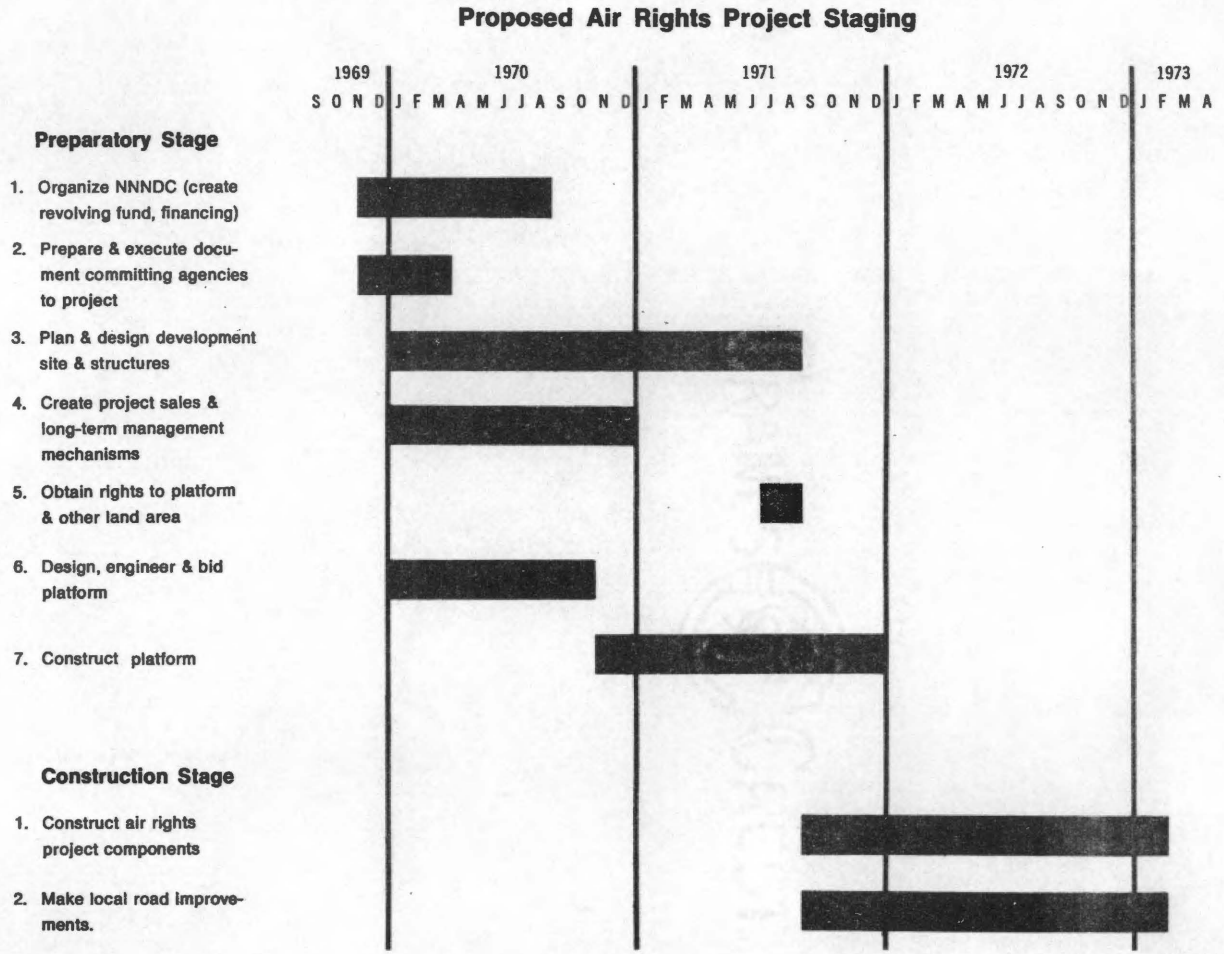


Figure 13. Proposed air rights project staging.

Source: Marcou, O'Leary and Associates, "Interstate Highway 40, Air Rights Project, Nashville, Tennessee," (Washington: Marcou, O'Leary and Associates, January, 1970), p. 57.

long-term (free) lease of the platform. He further stated that the citizens simply did not understand that their function was one of advice and cooperative participation rather than control. He cited the modification of the projects design as an example of a legitimate exercise of influence. Mr. Drake felt that the real problem seemed to be a belief, on the part of certain members of the Citizens Coordinating Committee, that the NNNDC's capitalization should be "controlled by them for ends they deemed necessary."[18]

Dr. Noella Mitchell, a member of the Committee for Highway Community Planning, stated that the Federal Government could fund such a development corporation as the NNNDC and cited an example in the Chicago Model Cities Program. It was her feeling that black business on Jefferson Street was dead and gone and that any development that took place on the Air Rights Project would be white anyway. She further contended that the NNNDC should be primarily concerned with building homes since only 8,300 remained of some 13,000 housing units prior to Model Cities and Interstate 40.[19]

Conclusion. Plans and proposals have concentrated on the Air Rights Project as a development whereby the disrupted businesses might reestablish themselves. It appears that this will not be the outcome for several reasons:

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[18] Ibid., p. 28. [19] Davis, pp. 28-29.

1. Citizen emphasis on control rather than cooperative and constructive participation.
2. Fractionalization within the community in regard to what should be re-development goals.
3. Many people seem to feel that no air rights development would be better than an air rights development with "white" capital.
4. The inability of many black businessmen to obtain loans because of a poor financial background based on lack of managerial ability (especially if the NNNDC does not develop).

IV. IMPACT OF THE INTERSTATE ON THE COMMUNITY

A. Housing

A study by the Metropolitan Planning Commission reveals that where blocks were severed to construct the highway there has been a complete turnabout in the condition of housing. A comparison of housing condition in a 35-block corridor reveals that housing in 1960 was 68 percent sound and 32 percent substandard while eight years later 33 percent was sound and 67 percent substandard (see Figure 14).[20]

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[20] "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 10. (Unpublished memorandum.)

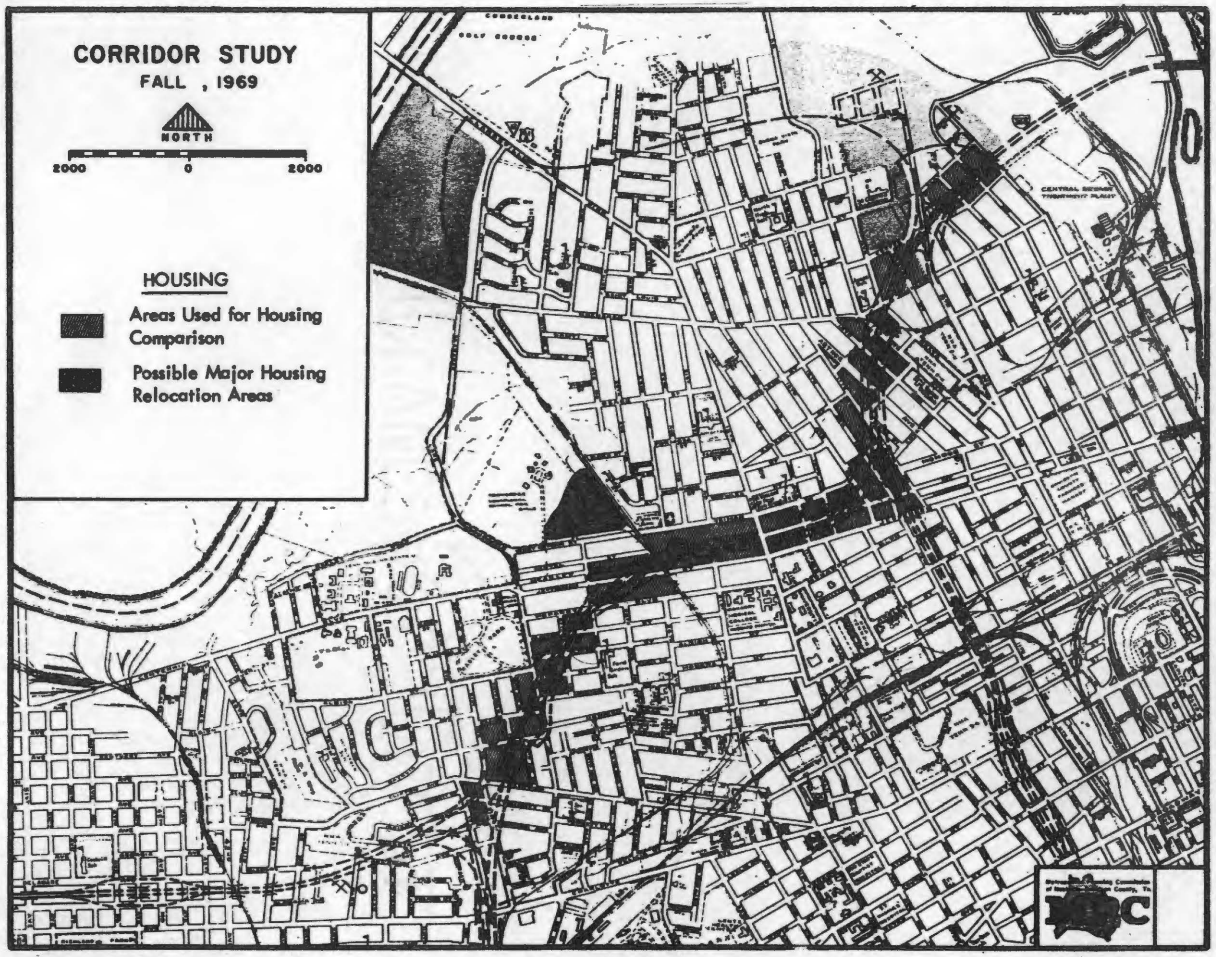


Figure 14. Neighborhood housing analysis of the I-40 corridor.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 11. (Unpublished memorandum.)

B. Neighborhood Composition

The passage of the Interstate through the community resulted in the delineation of eight neighborhoods served by nine elementary schools. The neighborhood delineations respect definite boundaries (major streets) in order to minimize vehicular-pedestrian conflicts (see Figure 15). This is an important consideration since car ownership per capita is lower in North Nashville than in the City and County as a whole.[21]

C. Commercial Facilities

With the destruction and disruption of many black businesses by the Interstate, it is necessary that the air rights project develop because the commercial, office, and public facilities are needed in order to have a viable community.

For the air rights project to be fully functional its orientation facing Scovel Street demands that frontage roads be constructed (see Figure 11, page 78). The only reasonable alternative if frontage roads are not agreeable (as it presently seems they are not), would be the redesign and orientation of the air rights project fronting on Jefferson Street.

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[21] Ibid., p. 12.

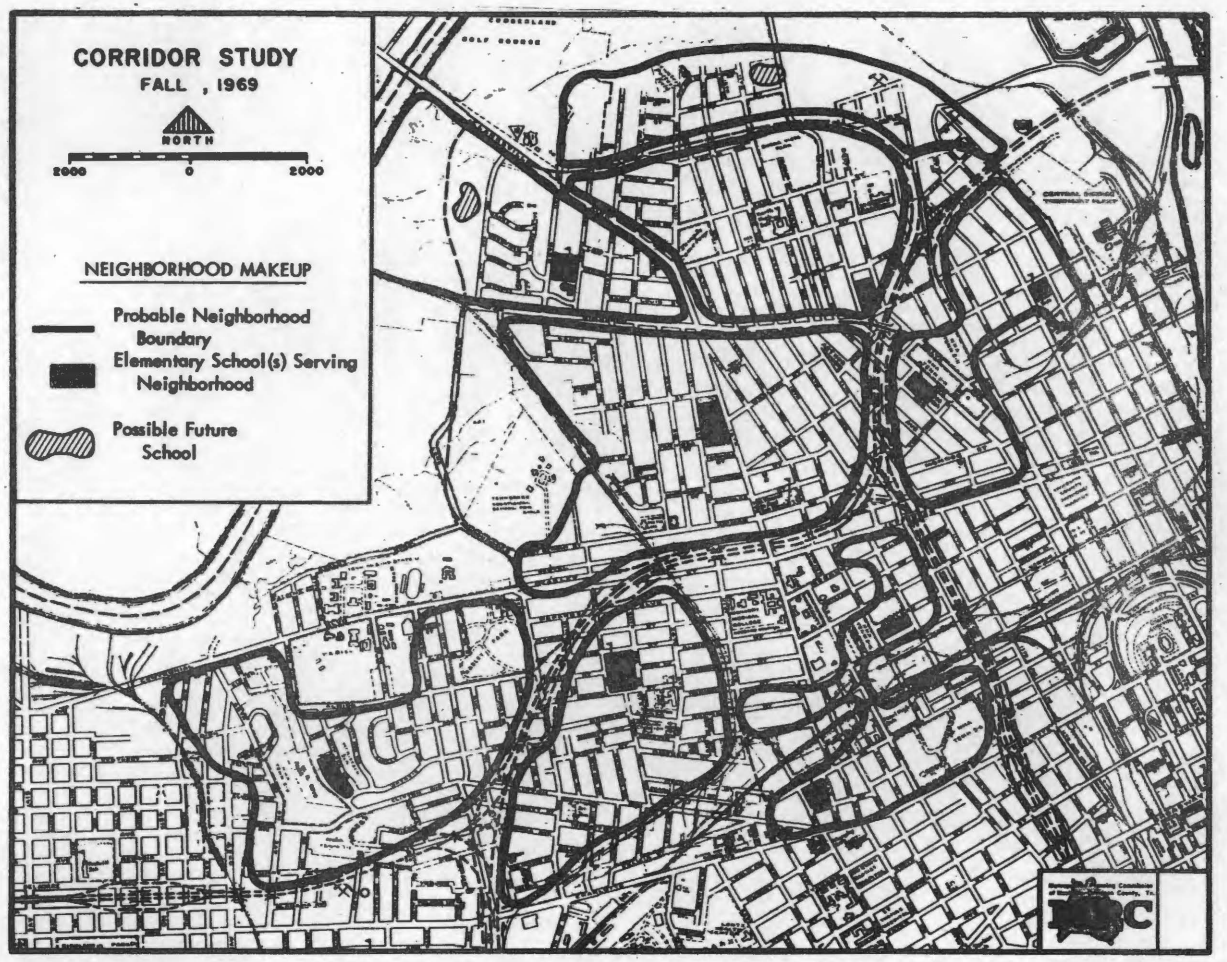


Figure 15. Neighborhood composition.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 13. (Unpublished memorandum.)

D. Detailed Proposals[22]

The Metropolitan Planning Commission has prepared detailed proposals concerning the entire Interstate corridor. Their recommendations concerning the segment of interest follow.

The expansion of Fisk University is anticipated within the area east of 17th Avenue North. The area west of 18th Avenue North is a possible expansion area for Meharry Medical College (see Figure 16). Street changes include Scovel Street as a frontage road serving the air rights development and the widening of Jefferson Street.

Figure 17 depicts the western portion of the anticipated campus expansion area. Proposals include a railroad overpass which would go under the frontage road and the Interstate and over Jefferson Street, the utilization of the small isolated strips between Jefferson Street and I-40 for recreational areas, and the widening of an alley north of Meharry Boulevard and west of the railroad. The small vacant area north of I-40 and east of the railroad is recommended for a ten-unit apartment complex.

Figure 18 illustrates the interchange of Interstate 40 and Jefferson Street. Since 28th Avenue North (the other major north-south artery in addition to 18th Avenue North)

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[22] Ibid., pp. 30-40.

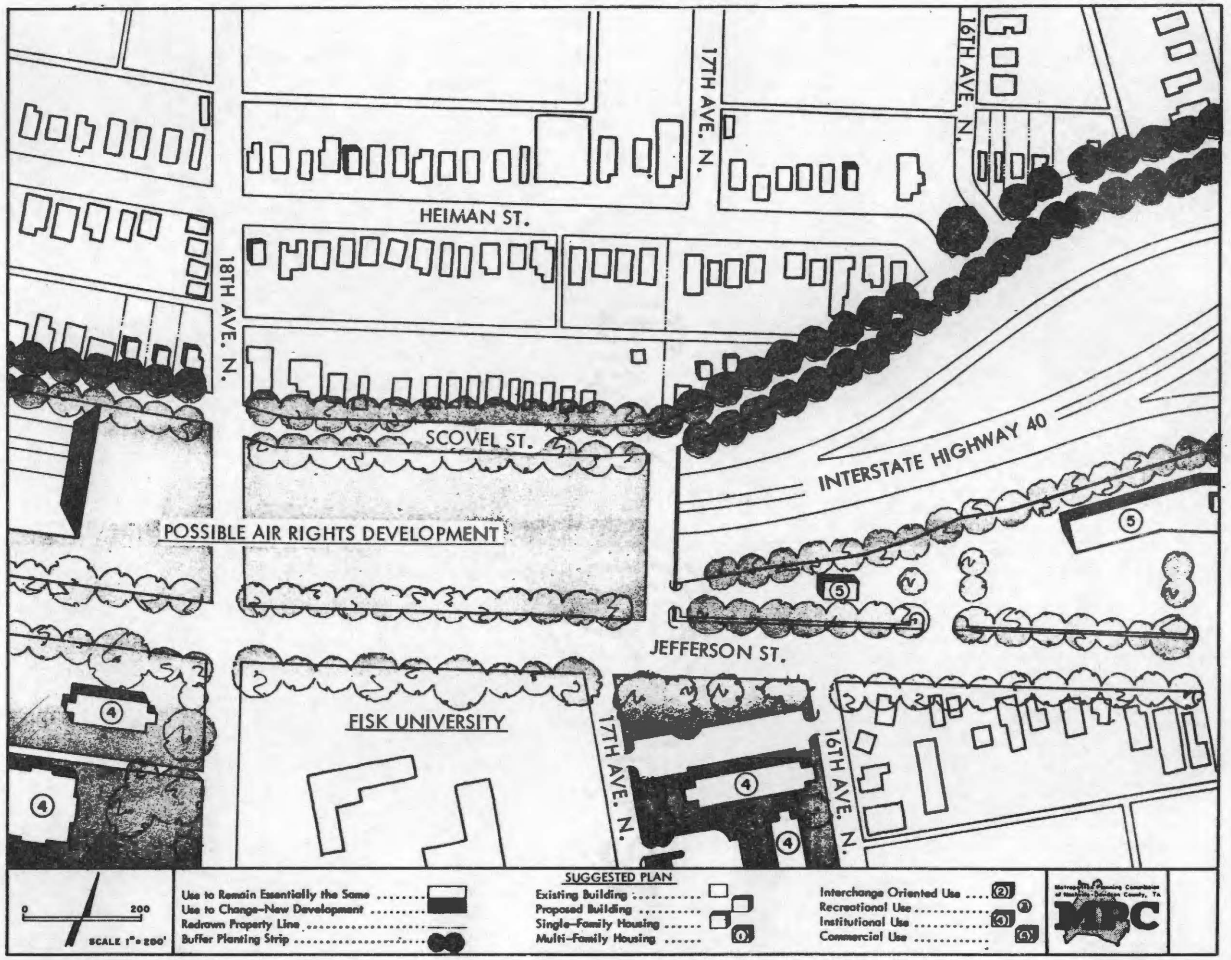


Figure 16. Air rights development and surrounding area.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 34. (Unpublished memorandum.)

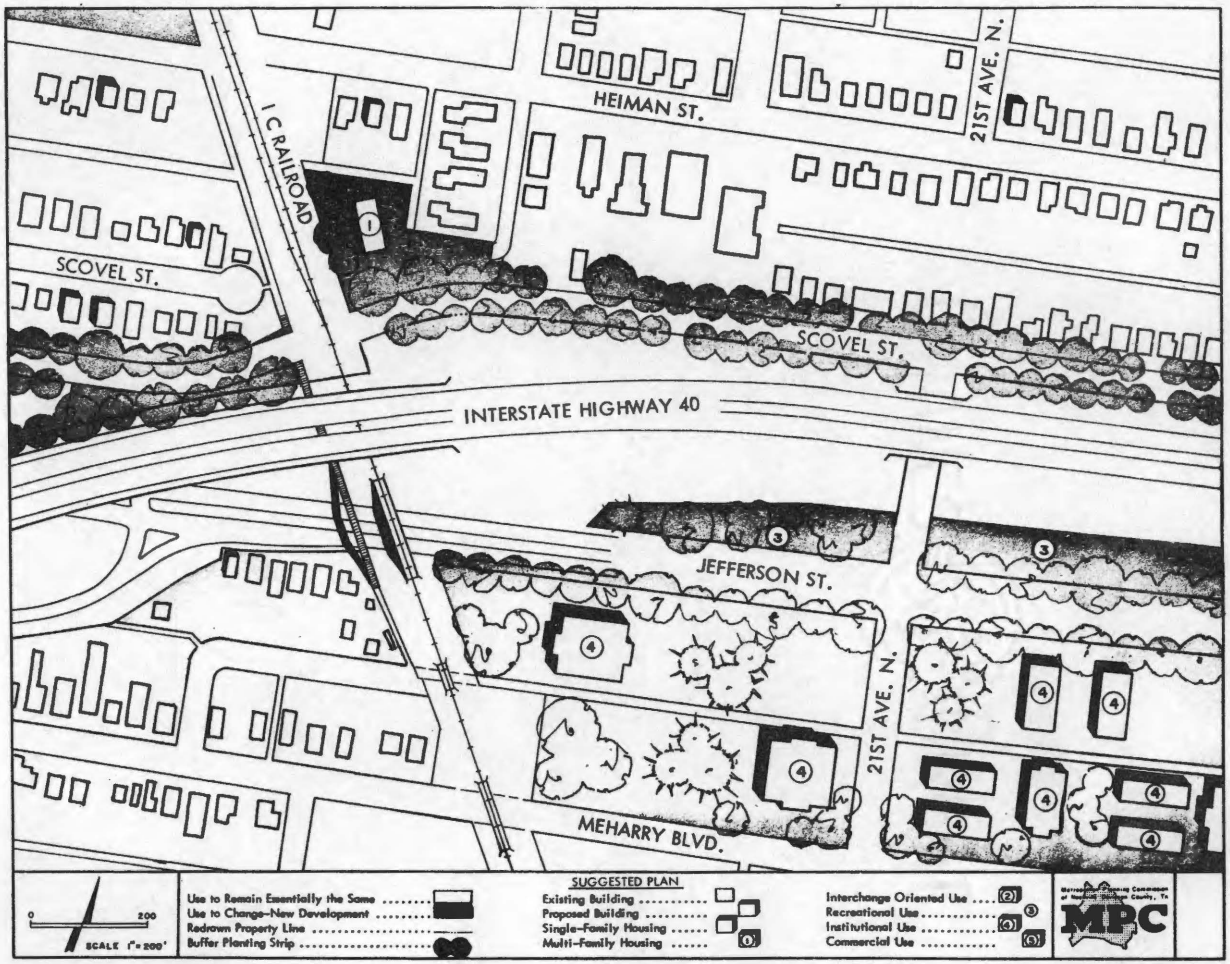


Figure 17. Railroad and pedestrian overpass -- apartment complex.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 37. (Unpublished memorandum.)

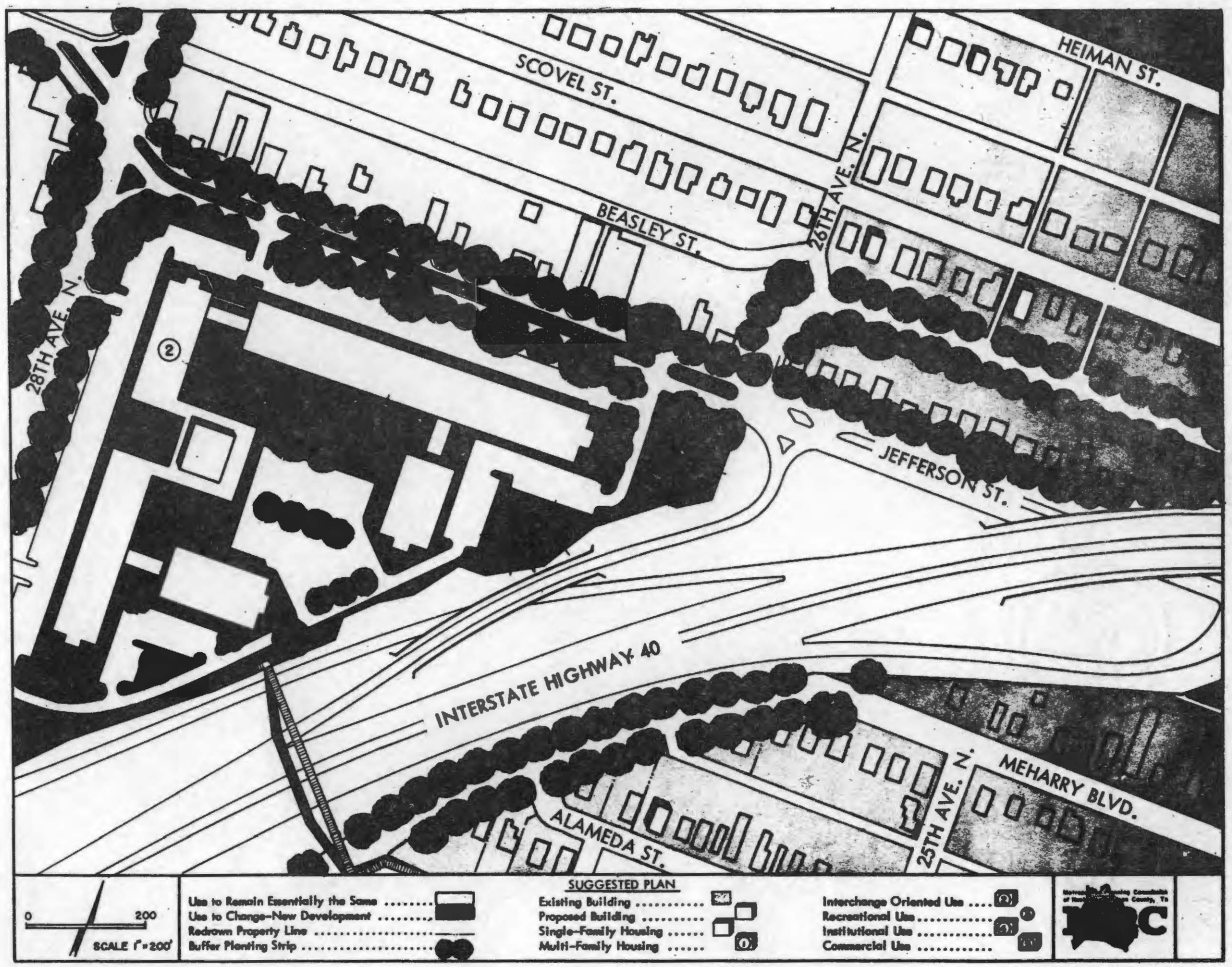


Figure 18. Jefferson Avenue interchange, pedestrian overpass and commercial area.

Source: "A Study of the I-40 and I-265 Corridor Areas in North Nashville" (Nashville: Metropolitan Planning Commission of Nashville and Davidson County, December, 1969), p. 40. (Unpublished memorandum.)

and Jefferson Street will generate substantial traffic volumes, the interchange is recommended for interchange related use. Twenty-eighth Avenue North should be widened. This study also recommends the frontage road south of I-40 and the extension of the existing pedestrian overpass across this frontage road.

E. Conclusions

The development of the air rights project (the greatest concession achieved out of the struggle) is instrumental to the reconsolidation and revitalization of the community. The vehicular and pedestrian underpasses and overpasses which have been constructed will provide for easy access between neighborhoods and parks which otherwise would have been impossible. This lacing of crossovers will also insure accessibility to any commercial ventures either within the air rights project or elsewhere within the vicinity.

The frontage roads are practically a necessity if the community is to optimize the benefits of all the interrelated improvements. The detailed plans and proposals recommended by the Metropolitan Planning Commission further complement the concessions already obtained.

It is the opinion of the author that the community has the opportunity to make the most of an unfortunate disruption. However, continued opposition to frontage roads and the loss of the air rights development may result in community severance and economic decline.

CHAPTER V

CONCLUSION

I. A COMPARISON OF THE THEORETICAL HIGHWAY LOCATION DECISION-MAKING PROCESS (PRESENTED IN CHAPTER I) AND THE DECISION-MAKING PROCESS UNCOVERED IN THIS CASE STUDY

The decision-making theories of "technical rationality," the synoptic ideal, and rational calculation (quantification of data and delegation to experts) do not apply to all highway location decisions. Granted, many location decisions are based on quantitative analyses, but others are based on limited qualitative analyses.

The decision-making process, in regard to the selection of the Memphis route through North Nashville, was not based on any comprehensive quantitative analysis. In fact, the decision to dispense with the "route" paralleling Charlotte Avenue and to select the present alignment took place within an approximate time span of three weeks. The selection of the present route was based upon no more detailed analysis than that involved in the selection of the "corridor." Nevertheless, the State Highway Department continued to

convince people that there was a difference. The author was frankly told by Mr. Alexander Koltowich of Clark and Rapuano that no cost-benefit or feasibility studies concerning this link were compiled by his firm. Likewise, Mr. Bill Wilson, Director of Planning, State Highway Department, Planning and Research Division, stated that he knew of no such studies compiled by his division at the time, as testimony by Mr. Cantrell at the U. S. District Court trial would have led one to believe (see Appendix G). The appeal used by State attorneys in their brief filed in the U. S. Sixth Circuit Court of Appeals, in opposition to the court's hearing the case, also implied that extensive studies supported the routing decision of the State Highway Department. It appears that the technical role expectation of state highway departments is such that they need only to act as though a decision is technically rational and others respond accordingly. In view of the above facts, the author concludes that the selection of the Memphis route link of Interstate 40 was a disjointed incremental political decision rather than the technical expert decision expected. The decision strategy would also be classified as nonrational because of the incomprehensive decision process.

In theory, the State Highway Department should not be the decision maker when an Interstate Highway passes through an urban area. Within an urban area, approximately 90 percent

of the total traffic volume will be local traffic. Thus, with the local population the real client of an interurban interstate, the local government officials should in theory be the decision-makers.

In an address before the American Association of State Highway Officials Richard J. Whalen warned road builders of this situation:

> No one has placed the road builders in the cross fire of competing publics. If you get caught it is because you have put yourselves in that awkward position, because you are defending power and authority for which you are not directly accountable to the voters in our democratic system. It is because you are assuming the job which properly belongs to elected political officials.[1]

II. THE INSTITUTIONAL SETTING

The dual role of decision-maker and technical expert is a result of the legislated setting which provides the highway departments with entirely too much power.

The State Highway Department assigns priorities to various segments of the state-wide Interstate System. It can explain to local politicians that the route location is based on "expert" analysis. At the same time, the department has indirect control of the purse strings. Consequently, local

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[1]Richard J. Whalen, "Roadbuilders--Face the Challenge of Change," address before the American Association of State Highway Officials, American Road Builders Association Public Information Workshop, St. Louis, Missouri, May 19, 1969.

politicians do not find it politically advantageous to defy the Highway Department. It is politically wise to accept the State Highway Department's recommendation. The result of this strategy (no opposition by local politicians) is that State Highway Departments make the decision in the absence of any form of local control. Consequently, with the doors left open, the Highway Departments become free to make both intuitive incremental decisions and technically expert decisions. Thus, how is control provided?

The element of control has come through the judicial process. In regard to this case study, the institutional setting was modified in 1964 with the passage of the Civil Rights Act. This Act gave a measure of assurance and confidence to those persons heretofore discriminated against. As stated previously, it is the opinion of the author that this new institutional setting provided the impetus for the black community's reaction once it began to feel the pain of rights-of-way acquisition in 1965. The reason that citizen involvement has come through the judicial process is that there has been no adequate legal provision for it in any other way. Until the dual public hearing procedure initiated by Secretary of Transportation Alan Boyd, there was no meaningful provision for citizen input to the decision-making process.

Control can also come from the executive branch of State government. If he chooses, a governor can be instrumental in the location of a highway, particularly in a rural

area. However, as with local politicians, in times of controversy a governor often finds it just as politically wise to express total reliance on the decision of the delegated expert (the State Highway Department).

The methodology of highway planning is changing as a result of changing institutions and values. This change is reflected by a past president of the American Association of State Highway officials in an article "Changing Highway Concepts,"

> Thus, it is no longer sufficient to examine highway proposals solely from such standpoints as traffic service, economics, and engineering feasibility. An entirely new range of considerations has developed, and must be accepted by those responsible for the highway program.
>
> Such matters as the social impact of highways, environmental enhancement, and pollution are becoming integral elements in the highway planning process . . .
>
> I am persuaded that the engineering mind which failed to break out of its narrow confines when faced with the challenge of decision-making has contributed to some of the widespread criticism of the highway program in these past few years.
>
> Consider, for example, the concept of the cost-benefit ratio . . . in lining up his neatly identified and labeled benefits, [the engineer] left out all the intangibles which took benefits away from the nonmotorist or from the motorist more interested in his environment than in his automobile.[2]

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[2]Douglas B. Fugate, "Changing Highway Concepts," Traffic Quarterly, XXIII (April, 1970), pp. 165-166.

The institutional setting of the 1950's placed high priority on assuring individual mobility with the automobile. However, in view of changing values, the institutions which guided the highway program began to give way in recognition of the many unrealized ramifications associated with the location of highways.

III. CONCLUSIONS FROM THE CASE STUDY AND LESSONS FOR GENERAL APPLICATION

One would conclude that the decision to locate the Memphis route on its present alignment was an arbitrary decision since it disregarded the adopted Major Street Plan for the City of Nashville and was not based on the level of quantified scientific analysis as was typical in the selection of most routings. There is no hard evidence that the route was selected with any consideration of comprehensive planning.

Participation by affected black businesses in the Air Rights Project seems doubtful due to the fragmentation of community goals and citizens' emphasis on controlling the Model Cities Program rather than participating in it. This situation is an example of the effect one program (the Interstate Highway Program) can have on a following program (The Model Cities Program) and remedial efforts such as those of the Planning Commission. The Planning Commission, in responding to the present community needs, may become a villain in the eyes of the black community.

It is difficult to determine any one villain perceived by the black community since the community is fragmented. The more liberal and crusading members of the community seemingly perceive the white establishment as the villain. However, the more conservative elements probably still perceive the State Highway Department as the real villain responsible for the community's problems today.

The ultimate lesson to be learned from this case study is the lack of balance in the interurban highway location decision-making process. In view of the politicians' fear to take a stand, considerable influence should come through meaningful citizen involvement in the early stages of the highway planning process. When judicial control is sought by citizens late in the process, in the absence of involvement in making the decision, participation becomes conflict oriented. This conflict can generate animosity to such an extent that the goals and identities of the community become fragmented and divergent. This is exactly what happened in North Nashville. Thus, it is imperative that citizen participation be involvement oriented rather than post facto conflict oriented. Involvement-oriented participation, however, cannot be maximized after conflict has been generated in previous programs.

Considerable balance could also occur if state highway departments would give adequate attention to local comprehensive

planning. Local government officials could encourage planning staffs to be innovators and thereby increase the level of comprehensiveness in any highway location decision-making process.

Another lesson to be learned is that the values of minority groups do not always coincide with those of the established majority. For example, in an interview with Mr. Henry Buckner, State Highway Department Attorney, he related a most interesting fact. He stated that a consultant working on the Air Rights Study had told him that blacks have a different value conception of land ownership than does the average white person. He pointed out that title to a particular parcel of land is highly cherished by black individuals.[3] This shed new light on the issue. Previously it had seemed that the refusal of frontage roads and the redesign of the air rights project (because they required the acquisition of too much property) was simply an example of obstinancy. In view of this value conception, however, it points out again the imposition of one groups' values upon the values of another group.

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[3]Statement by Henry Buckner, Tennessee State Highway Department Attorney, personal interview, August 7, 1970.

It should also be pointed out that a decision can indirectly be discriminatory. When heavy weight is given to low land values in picking an urban route (as was obviously done in this case) this automatically singles out those neighborhoods of a lower socioeconomic level. Consequently, discrimination has indirectly occurred because of the high correlation between a community's socioeconomic level and land value.

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APPENDIXES

APPENDIX A

VOL. IV. REGULATIONS, STANDARDS, AND STATEMENTS OF POLICY

ADMINISTRATION OF FEDERAL AID FOR HIGHWAYS

23 C.F.R., Ch. 1, Pt. 1

Part 1 of Chapter 1 of Title 23 of the Code of Federal Regulations is revised to read as follows: [1]

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AUTHORITY: §§ 1.1 to 1.38 issued under sec. 315, 72 Stat. 915, 23 U.S.C. 315.

[1] Published in the Federal Register, 25 F.R. 4162, May 11, 1960.

Sec. 1.1. Purpose

The purpose of the regulations in this part is to implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways.

Sec. 1.2. Definitions

(a) Terms defined in 23 U.S.C. 101(a), shall have the same meaning where used in the regulations in this part, except as modified herein.

(b) The following terms where used in the regulations in this part shall have the following meaning:

Administrator. The Federal Highway Administrator.

Advertising Policy. The national policy relating to the regulation of outdoor advertising declared in title 23 U.S.C. 131.

Advertising Standards. The "National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways" promulgated by the Secretary (Part 20 of this chapter).

Commissioner. The Commissioner of Public Roads.

Federal laws. The provisions of title 23, United States Code, and all other Federal laws, heretofore or hereafter enacted, relating to Federal aid for highways.

Latest available Federal Census. The latest available Federal decennial census, except for the establishment of urban areas.

Project. An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.

Secondary road plan. A plan for administration of Federal aid for highways on the Federal-aid secondary highway system pursuant to 23 U.S.C. 117.

Secretary. The Secretary of Commerce.

State. Any State of the United States, the District of Columbia and Puerto Rico.

Urban area. An area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available published official Federal census, decennial or special, within boundaries to be fixed by a State highway department, subject to the approval of the Administrator.

Sec. 1.3. Federal-State cooperation; authority of State highway departments

The Administrator shall cooperate with the States, through their respective State highway departments, in the construction of Federal-aid highways. Each State highway department, maintained in conformity with 23 U.S.C 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.

Sec. 1.4. Cooperation of governmental instrumentalities

The State highway department shall be responsible for any project to be undertaken with the cooperation of, or with funds provided by, any other governmental instrumentality.

Sec. 1.5. Information furnished by State highway departments

At the request of the Administrator the State highway department shall furnish to him such information as the Administrator shall deem desirable in administering the Federal-aid highway program.

Sec. 1.6. Federal-aid highway systems

(a) *Selection or designation.* To insure continuity in the direction of expenditures of available funds, system of Federal-aid highways are selected or designated by any State that desires to avail itself through its State highway department, of the benefits of Federal aid for highways. Upon approval by the Administrator of the selections or designations by a State highway department, such highways shall become portions of the respective Federal-aid highway systems, and all Federal-aid apportionments shall be expanded thereon.

(b) *Revisions.* A State highway department may propose revisions, including additions, deletions or other changes, in the routes comprising the approved Federal-aid highway systems. Any such revision shall become effective only upon approval thereof by the Administrator upon a determination that such revision is in the public interest and consistent with Federal laws. There is no predetermined time limit for the submission of the full selection of the systems.

(c) *Selection considerations.* Each Federal-aid system shall be so selected or designated as to promote the general welfare and the national and civil defense and to become the pattern for a long-range program of highway development to serve the major classes of highway traffic broadly identified as (1) interstate or interregional; (2) city-to-city primary, either interstate or intrastate; (3) rural secondary or farm-to-market; and (4) intraurban. The conservation and development of natural resources, the advancement of economic and social values, and the promotion of desirable land utilization, as well as the existing and potential highway traffic and other pertinent criteria are to be considered when selecting highways to be added to a Federal-aid system or when proposing revisions of a previously approved Federal-aid system.

(d) *Identity.* The Federal-aid highway systems as now constituted and approved are identified as:

(1) The Interstate System, as described in 23 U.S.C. 103(d), comprised of highways of the highest importance to the nation;

(2) The Federal-aid primary system, as described in 23 U.S.C. 103(b), comprised of important city-to-city, interstate and intrastate highways, serving essentially through traffic; and

(3) The Federal-aid secondary system, as described in 23 U.S.C. 103(c), not to exceed in any State at one time a mileage that can be initially improved within a reasonable period of years and thereafter maintained with income expected to be available.

(e) *Integration.* The highways of the Federal-aid systems shall form integrated and connected networks in each State and nationwide. The individual routes of Federal-aid systems that cross the boundary line between contiguous States are to connect at the bound-

ary line, and except in unusual cases the identity of the Federal-aid system for any such route shall be the same in the States involved.

Sec. 1.7. Urban area boundaries

Boundaries of an urban area shall be submitted by the State highway department and be approved by the Administrator prior to the inclusion in a program of any project wholly or partly in such area involving funds authorized for and limited to urban areas.

Sec. 1.8. Programs of proposed projects

Each State highway department shall prepare and submit to the Administrator, for his approval, detailed programs of proposed projects in such form and supported by such information as the Administrator may require. The Administrator shall not authorize any State to proceed with any project, or part thereof, until the program which includes such project has been approved.

Sec. 1.9. Limitation on Federal participation

Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this part, and policies and procedures prescribed by the Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost.

Sec. 1.10. Surveys, plans, specifications and estimates

(a) *Preparation.* Surveys, plans, specifications and estimates shall be prepared by or under the immediate direction of the State highway department and shall be of such content and form as prescribed by the Administrator.

(b) *Approval.* No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until plans, specifications, and estimates have been submitted to and approved by the Administrator and the State has been so notified.

Sec. 1.11. Engineering services

(a) *Federal participation.* Costs of engineering services performed by the State highway department or any instrumentality or entity referred to in paragraphs (b) and (c) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects. Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraphs (b) and (c) of this section shall not be eligible for Federal participation.

(b) *Government engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any project.

(c) *Railroad and utility engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of the affected railroad companies for railway-highway crossing projects and of the affected utility companies for projects involving utility installations.

(d) *Private engineering organizations.* Private engineering organizations may be utilized on projects in accordance with requirements prescribed by the Administrator.

(e) *Responsibility of the State highway department.* The State highway department is not relieved of its responsibilities under Federal law and the regulations in this part in the event it utilizes the services of any engineering organization under paragraphs (b), (c) or (d) of this section.

Sec. 1.12. Authorizations to proceed with projects

No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for contract, prior to authorization thereof by the Administrator.

Sec. 1.13. Changes in project work and cost

Subsequent to authorization by the Administrator to proceed with a project or any undertaking thereunder, no change shall be made which will increase the cost of the project to the Federal Government or alter the termini, character or scope of the work without prior authorization by the Administrator.

Sec. 1.14. Project agreements

Project agreements, and modifications thereof, shall be in forms satisfactory to the Administrator, evidencing acceptance by the State highway department of conditions to payment of Federal funds, as prescribed by Federal laws and the regulations in this part, and the amount of Federal funds obligated.

Sec. 1.15. Construction contracts and force account work

(a) *Competitive bidding.* Except as provided in paragraph (b) hereof or when the Administrator finds that because of unusual circumstances some other method is in the public interest, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway department shall assure opportunity for free, open and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with procedures and requirements prescribed by the Administrator.

(b) *Force account work.* When the Administrator finds that it is in the public interest, construction work may be performed by force account pursuant to requirements and procedures prescribed by him. Before such finding is made, the State highway department shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and economically.

Sec. 1.16. Licensing and qualification of contractors

With respect to Federal-aid projects, no procedure or requirement for prequalification, qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate

to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by or may be awarded to a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's experience, personnel, equipment, financial resources, and performance record.

Sec. 1.17. Health and safety

Contracts for projects shall include provisions designed (a) to insure full compliance with all applicable Federal, State and local laws governing safety, health and sanitation, and (b) to require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

Sec. 1.18. Furnishing of materials

Contracts for projects shall require the contractor to furnish all materials incorporated in the work, except as otherwise authorized by the prior approval of the Administrator.

Sec. 1.19. Restrictions upon materials

No requirement shall be imposed and no procedure shall be enforced by any State in connection with a project which may operate (a) to require the use or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or (b) to prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Commerce as evidenced by requirements and procedures prescribed by the Administrator to carry out such policies.

Sec. 1.20. Surety bonds and insurance

No procedure or requirement shall be imposed by any State in connection with any project which operates to restrict competitive bidding by discriminating against the purchase of a surety bond or insurance policy from any surety or insurer outside the State and authorized to do business in the State.[2]

[2] Amended March 23, 1963, 28 F.R. 2901.

Sec. 1.21. Subcontracting

(a) *Contractor's organization.* Contracts for projects shall require that the contractor perform with his own organization contract work amounting to not less than 50 percent of the total contract price. If any of the contract work requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole, such work may be designated in the advertised specification as "Speciality Items" and may be performed by subcontract. The cost of such "Specialty Items" may be deducted from the total contract price before computing the amount of work required to be performed by the contractor with his own organization.

(b) *Exception.* Upon the request of a State, the requirements of this section may be modified by the Administrator for a project prior to or after the award of a contract, heretofore or hereafter made, to such extent as he may determine to be in the public interest.

Sec. 1.22. Patented or proprietary items

Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process, specifically set forth in the plans and specifications for a project, unless

(1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items; or

(2) The State highway department certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

Sec. 1.23. Rights-of-way

(a) *Interest to be acquired.* The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway departments shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with section 1.35 of the regulations in this part.

(c) *Other use or occupancy.* Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines

that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

Sec. 1.24. Labor and employment

(a) *Convict labor.* No convict labor shall be employed and no materials manufactured or produced by convict labor shall be used in the construction of a project. No convict labor shall be employed at the site of a project after the approval of the program including the project and prior to the completion of its construction.

(b) *Selection of labor.* No procedure or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a project.

(c) *Wage rates; Interstate system projects.* The advertisement or call for bids on any contract for the initial construction of a project on the Interstate System either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.

(d) *Wage rates; other Federal-aid projects.* Contracts for the construction of projects other than those for initial construction of the Interstate System shall require that laborers and mechanics employed on such construction shall be paid rates of wages not less than the minimum rates therefor set forth in the contract for such construction as predetermined under State law or, in the absence thereof, by the State highway department.

(e) *Construction by Federal agencies.* In those cases where construction work on Federal-aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.

Sec. 1.25. Railway-highway crossing projects

(a) *Requirements for agreements or orders.* Before a project for the elimination of hazards at a railway-highway crossing shall be approved for construction with the aid of Federal funds, irrespective of the Federal share of the cost of such construction, either (1) an agreement shall have been entered into between the State highway department and the railroad concerned; or (2) an order authorizing the project shall have been issued by the State public utility commission or other agency or official having comparable powers. Such agreement or order shall contain provisions specifying responsibility for and pertinent details concerning construction, maintenance, and railroad contributions relating to the project, which, subject to 23 United States Code, section 130, and other applicable Federal law, conform to, and are not inconsistent with, the policies, classifications of projects and procedures prescribed by the Administrator. In extraordinary cases, where the Administrator finds that the circumstances are such that requiring such agreement or order would not be in the best interests of the public, projects may be approved for construction with the aid of Federal funds without requiring such agreement or order prior to such approval, provided provisions satisfactory to the Administrator have been made with respect to construction, maintenance and railroad contributions relating to the project.

(b) *Applicability of State laws.* State laws pursuant to which contributions are imposed upon railroads for the elimination of hazards at railway-highway crossings shall be held not to apply to Federal-aid projects.

Sec. 1.26. Highway planning and research projects

(a) The funds programed for highway planning and research projects under 23 U.S.C. 307(c) (1) and (3) shall be administered as a single fund, but the identity of such funds, as Interstate, primary, secondary or urban, shall be preserved.

(b) The funds programed for highway planning and research projects under 23 U.S.C. 307(c) (2) shall be administered as a single fund.[3]

Sec. 1.27. Maintenance

The responsibility imposed upon the State highway department, pursuant to 23 U.S.C. 116, for the maintenance of projects shall be carried out in accordance with policies and procedures issued by the Administrator. The State highway department may provide for such maintenance by formal agreement with any adequately equipped county, municipality or other governmental instrumentality, but such agreement shall not relieve the State highway department of its responsibility for such maintenance.

Sec. 1.28. Diversion of highway revenues

(a) *Reduction in apportionment.* If the Secretary shall find that any State has diverted funds contrary to 23 U.S.C. 126, he shall take such action as he may deem necessary to comply with said provision of law by reducing the first Federal-aid apportionment of primary, secondary and urban funds made to the State after the date of such finding. In any such reduction, each of these funds shall be reduced in the same proportion.

(b) *Furnishing of information.* The Administrator may require any State to submit to him such information as he may deem necessary to assist the Secretary in carrying out the provisions of 23 U.S.C. 126 and paragraph (a) of this section.

Sec. 1.29. Vehicle weight and width limitation

When requested by the Administrator, each State shall certify to the Administrator, with such pertinent information as he may require, whether or not its laws and regulations conflict with the limitations of 23 U.S.C. 127 as to weight and width of vehicles which may lawfully use the Interstate System within the boundaries of that State.

Sec. 1.30. Records and documents

(a) *General.* Each State highway department shall maintain or cause to be maintained all records and documents relating to the undertaking, carrying out and maintaining of each project in such form and manner as will enable the State to make available to the Administrator such information and data as he may require and shall be retained for a period of not less than 3 years from the date of the final

[3] Amended Oct. 19, 1965, 30 F.R. 13255.

payment of Federal funds to the State with respect to the particular project.

(b) *Toll facilities.* If Federal funds participate in a project for the construction of a toll bridge, toll tunnel or approach to a toll facility, under 23 U.S.C. 129, the State highway department shall maintain or cause to be maintained, in addition to the records specified in paragraph (a) of this section, such financial and other records relating to the construction, acquisition, income, expenditures, maintenance and the operation of the facility as will enable the Administrator to determine compliance with the provisions of 23 U.S.C. 129. Such records shall be retained until the facility shall have been operated on a free basis for a period of at least 3 years.

(c) *Availability for inspection.* Records and documents maintained under paragraphs (a) and (b) of this section shall be available at all reasonable times for inspection by any authorized representative of the Federal Government and copies thereof shall be furnished when requested.

Sec. 1.31. Payments

States may submit requests for payments of Federal funds claimed to be due on account of a project. Such requests shall be in the form of vouchers as prescribed by the Administrator, and shall be certified and accompanied with such supporting data as the Administrator may require. Such vouchers may be submitted from time to time as the work progresses and shall be submitted promptly after completion of the project to which the voucher pertains.

Sec. 1.32. Policies and procedures

The Administrator shall promulgate and require the observance of such policies and procedures, and may take such other action as he may deem necessary for carrying out the provisions and purposes of the Federal laws and the regulations in this part.

Sec. 1.33. Conflicts of interest

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

Sec. 1.34. Secondary road plan

The approval by the Administrator of a State's certified statement of its secondary road plan, pursuant to 23 U.S.C. 117 will remain in effect for such time as the Administrator in his discretion may determine. Projects undertaken pursuant to such approved certified statement shall not be subject to the following sections of the regulations in this part: §§ 1.10; 1.15; 1.16; 1.18; 1.19; 1.20; 1.21; 1.22; 1.24 (b), (c), (d), and (e).

Sec. 1.35. Advertising

(a) *Agreements.* Any agreement entered into pursuant to the provisions of 23 U.S.C. 131 shall provide for the control or regulation of outdoor advertising, consistent with the Advertising Standards and Advertising Policy, in areas adjacent to the entire mileage of the Interstate Systems within that State, except such segments as may be excluded from application of such Standards and Policy by 23 U.S.C. 131. Such agreements may be modified, amended or supplemented as the Administrator may determine is necessary.

(b) *Informational sites.* Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the Advertising Policy and consistent with the Advertising Standards, submitted to and approved by the Administrator.

(c) *Acquisition of advertising rights.* Federal funds may participate in the cost of acquiring rights to advertise or to regulate advertising only if the purpose of such acquisition is to accomplish the objectives stated in 23 U.S.C. 131. Projects for the acquisition of advertising rights shall embrace a segment of the highway of sufficient length to promote the objectives of the Advertising Policy. Within the limits of any such segment, provision shall be made for acquiring all of the advertising rights on both sides of the highway necessary to effectuate the Advertising Policy and Advertising Standards. No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

Sec. 1.36. Compliance with Federal laws and regulations

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

Sec. 1.37. Delegation of authority

The Administrator has been delegated authority to perform the functions vested in the Secretary under Federal law, except the apportionment of Federal-aid funds among the States. The Secretary has reserved to himself the function of issuing or revising regulations.

The Administrator is authorized to redelegate any power or authority conferred upon him to the Commissioner or to any other official or employee of the Bureau of Public Roads as in his judgment will result in efficiency and economy in the effectuation of the purposes of Federal law and the regulations in this part. Any redelegation by the Administrator may include the power to make successive redelegations of authority to the extent deemed desirable by him. Delegations made under regulations heretofore in effect shall continue in full force and effect until modified or revoked.

Sec. 1.38. Application of regulations

The regulations in this part shall take effect upon publication in the Federal Register and shall supersede all regulations heretofore in effect for carrying out the provisions of Federal laws.

Dated May 5, 1960.

Recommended:

[SEAL]

B. D. TALLAMY,
Federal Highway Administrator.

Issued:

FREDERICK H. MUELLER,
Secretary of Commerce.

[F.R. Doc. 60-4226; Filed, May 10, 1960; 8:48 a.m.]

Effective May 11, 1960

STATEMENT OF POLICY AS TO ADMINISTRATIVE ACTION TO BE TAKEN BY THE FEDERAL HIGHWAY ADMINISTRATOR IN INSTANCES OF IRREGULARITIES[1]

23 C.F.R., Ch. I, Pt. 2

On April 18, 1962, a statement of proposed policy as to administrative action to be taken by the Federal Highway Administrator, Bureau of Public Roads in instances of irregularities related to the administration and execution of the direct-Federal and Federal-aid highway programs was published in the Federal Register (27 F.R. 3692). Interested persons were invited to submit written comments or suggestions with respect to the proposed policy. After consideration of all such relevant matter as was presented the following policy is hereby adopted and is added to Title 23, Chapter I of the Code of Federal Regulations as a new Part 2:

Sec.
2.1 Purpose.
2.2 Definitions.
2.3 Nature of administrative action.
2.4 Administrative action to be taken under various situations.
2.5 Other instances of irregularities.
2.6 Notice of proposed administrative action.
2.7 Hearings.
2.8 Determination and notice of administrative action.

AUTHORITY: §§ 2.1 to 2.8 issued under sec. 315, 72 Stat. 915, 23 U.S.C. 315.

[1] Published in the Federal Register, 27 F.R. 8448, Aug. 23, 1962.

Sec. 2.1. Purpose

The purpose of this part is to prescribe the administrative action which shall be taken by the Administrator in order to safeguard the Federal interest in instances of irregularities in the administration and execution of the direct-Federal and Federal-aid highway programs. It is applicable to personnel of the Bureau of Public Roads (referred to as the Bureau in this part), and State highway departments, highway construction contractors and organizations including personnel thereof, or to other persons or organizations performing services for the Bureau or State highway departments on a fee or contract basis.

Sec. 2.2. Definitions

Terms defined in 23 U.S.C. 101(a) and Part 1 of this chapter shall have the same meaning where used in this part, except as modified herein.

Sec. 2.3. Nature of administrative action

(a) *General.* When an irregularity occurs as described in §§ 2.4 and 2.5 effective administrative action shall be instituted by the Administrator according to the circumstances, nature, and seriousness of the offense.

(b) *Direct-Federal projects.* Administrative action and procedures involving contractors and contractor organizations performing services for the Bureau in connection with the direct-Federal highway program or against whom administrative action has been taken under § 2.4 or § 2.5 in connection with Federal-aid projects and who are seeking to perform services for the Bureau in connection with the direct-Federal highway program shall be governed by applicable Federal Procurement Regulations (41 CFR Subpart 1-1.6).

(c) *Bureau personnel.* Administrative action with respect to Bureau personnel shall be consistent with and subject to applicable civil service laws, rules, and regulations.

(d) *State highway departments.* (1) The administrative action to be taken by the Administrator with respect to the indicated irregularities shall not relieve a State highway department of its responsibilities in connection with these same matters, nor is such action by the Administrator a substitute for corrective action as would normally be taken by a State under the described situations.

(2) If the frequency, seriousness, nature, or extent of any violation is such as to cast doubt on the ability of a State highway department to discharge its responsibilities in an adequate manner, or is such as may affect continued eligibility of Federal aid under the provisions of Federal-aid legislation, regulations, or directives, a complete evaluation of the highway department organization shall be made by the Administrator for the purpose of determining an appropriate course of action.

(e) *Department of Justice procedures.* Irregularities which warrant referral to the United State Department of Justice shall be processed in accordance with applicable requirements and procedures of that department.

Sec. 2.4. Administrative action to be taken under various situations

(a) *Situation No. 1*—(1) *Irregularity.* Clear and convincing evidence of fraud, bribery, collusion, conspiracy, or other serious offense involving violation of State or Federal criminal statutes in connection with a project requiring Bureau approval or concurrence, with or without evidence of failure of substantial conformity with project plans and specifications.

(2) *Administrative action.* (i) Bureau personnel who are involved shall be subject to suspension pending completion of Bureau or State investigations.

(ii) State personnel who are involved shall be unacceptable for employment on any highway project requiring Bureau approval or concurrence pending completion of Bureau or State investigations.

(iii) The contractor, contractor organization or personnel thereof, or other person or organization performing services for the Bureau or State highway department on a fee or contract basis who are involved shall be unacceptable for employment on any future highway project requiring Bureau approval or concurrence pending completion of Bureau or State investigations.

(iv) Federal-aid reimbursement payments to the State on an affected project shall not exceed 75 percent of the Federal pro rata share of the total cost of such project pending completion of Bureau investigation.

(v) After investigation, Bureau personnel who are found to be at fault shall be subject to removal and disqualification for employment on any highway project requiring Bureau approval or concurrence.

(vi) After investigation, State personnel who are found to be at fault shall be unacceptable for employment on any highway project requiring Bureau approval or concurrence for a period of three months to three years.

(vii) After investigation, the contractor, contractor organization or personnel thereof, or other person or organization performing services for the Bureau or State highway department on a fee or contract basis who are found to be at fault shall be unacceptable for employment on any future highway project requiring Bureau approval or concurrence for a period of three months to three years.

(viii) If investigation discloses a failure of substantial conformity with project plans and specifications, Federal aid reimbursement to the State for project costs of affected items shall be withheld until the work is performed in conformity with project plans and specifications, and Federal funds shall not participate in the costs of correction.

(b) *Situation No. 2*—(1) *Irregularity.* Establishment by admission, or conviction, or judgment of a court of competent jurisdiction that fraud, bribery, collusion, conspiracy, or other criminal offense has been committed in connection with any highway project requiring Bureau approval or concurrence with or without failure of substantial conformity with project plans and specifications.

(2) *Administrative action.* (i) Bureau personnel at fault shall be subject to removal and disqualification for employment on any highway project requiring Bureau approval or concurrence.

(ii) State personnel at fault shall be unacceptable for employment on any highway project requiring Bureau approval or concurrence for a period of six months to three years.

(iii) The contractor, contractor organization or personnel thereof, or other person or organization performing services for the Bureau or State highway department on a fee or contract basis who are at fault shall be unacceptable for employment on any future highway project requiring Bureau approval or concurrence for a period of six months to three years.

(iv) Federal-aid reimbursement payments to the State for project costs of affected items shall be withheld until the work is performed in conformity with project plans and specifications, and Federal funds shall not participate in the costs of correction.

(c) *Situation No. 3*—(1) *Irregularity.* Substantial evidence of a conflict of interest under § 1.33 of this chapter, effective May 11, 1960; or the establishment by admission, or conviction, or judgment of a court of competent jurisdiction of a violation of any law, regulation, or directive of Federal or State government relating to conflict of interest prohibitions in connection with the administration or execution of any highway project requiring Bureau approval or concurrence.

(2) *Administrative action.* To the extent that conflicts of interest result in circumstances similar to those described in paragraphs (a) and (b) respectively, of this section, or involve violation of any law, regulation, or directive of Federal or State government appropriate action shall be taken that is consistent with the remedial measures applicable to such situations.

Sec. 2.5. Other instances or irregularities

With respect to irregularities not described in § 2.4, the Administrator shall consider the individual circumstances thereof and remedial action shall conform as far as practicable to the administrative action prescribed in § 2.4.

Sec. 2.6. Notice of proposed administrative action

(a) *Pending completion of investigations.* The individual, or contractor organization or other person or organization performing services for the Bureau or State highway department on a fee or contract basis who are involved shall be furnished a written notice of unacceptability for employment stating the general reasons therefor and that it is for a temporary period pending the completion of investigations and such legal proceedings as may ensue. A copy of such notice shall be furnished the appropriate State highway department organization.

(b) *After completion of investigations.* The individual, or contractor organization or other person or organization performing services for the Bureau or State highway department on a fee or contract basis shall be furnished a written notice by registered mail (return receipt requested) setting forth the reasons for the proposed administrative action. Such notice shall advise that unless a written request for a hearing is received within 10 days from the date of receipt of such notice, that appropriate administrative action shall be instituted without further notice.

Sec. 2.7. Hearings

(a) *Pending completion of investigations.* Hearings shall not be conducted pending the completion of investigations by the Bureau; or without approval of the Department of Justice when the matter

is under investigation by that Department; or after notice of and during such court proceedings as may ensue.[2]

(b) *Judgment of a court of competent jurisdiction.* Hearings shall not be conducted when administrative action is based on conviction or judgment by a court of competent jurisdiction.

(c) *After completion of investigations.* Hearings requested in connection with proposed administrative action shall be conducted before a Hearing Board, the members of which shall be designated by the Administrator. Reasonable opportunity shall be afforded the contractor, contractor organization or other affected persons or organizations to appear with witnesses and counsel to present facts or circumstances showing cause why administrative action should not be instituted. Hearings shall be nonadversary in nature and the provisions of section 7 of the Administrative Procedure Act (the Act of June 11, 1946, 60 Stat. 241; 5 U.S.C. 1006), shall not apply.

(d) *Notice and time of hearings.* Adequate written notice of the time, place, and date of hearing shall be given to the individual or organization concerned and such hearing shall be conducted within 20 days after receipt of request for a hearing unless the board determines that, for good cause shown, additional time should be granted.

(e) *Administrative findings.* In all hearings conducted under this section, the board shall find the facts specially and shall submit such findings to the Administrator for his review and final action.

Sec. 2.8. Determination and notice of administrative action

(a) Based upon the findings of fact required by § 2.7(e), the Administrator shall determine the administrative action to be taken with respect to any indicated irregularity.

(b) Administrative action as determined by the Administrator shall be final, except that the periods of time during which an individual or organization shall be unacceptable to the Bureau on direct-Federal or Federal-aid projects may be increased or decreased in individual cases at any time, if, in the judgment of the Administrator, compelling reasons warrant such action.

(c) The Administrator shall notify the individual or organization of his determination setting forth the period of time during which such individual or organization shall be unacceptable for employment on highway projects requiring Bureau approval or concurrence. Copies of such notification shall be forwarded to the appropriate state highway organizations.

Effective date. This part shall become effective on the date of its publication in the Federal Register.

Recommended:

REX M. WHITTON,
Federal Highway Administrator.

Issued:

LUTHER H. HODGES,
Secretary of Commerce.

AUGUST 21, 1962.

[F.R. Doc. 62-8548; Filed, Aug. 22, 1962; 10:03 a.m.]

[2] Amended May 24, 1963, 28 F.R. 5206.

APPENDIX B

MEMORANDUM

Subject: Inter-regional controlled-access highway network as it concerns Nashville and Davidson County; as reviewed and discussed at a meeting Thursday morning, June 23, 1955, at 9:00 A. M.

Place of meeting: Office of the Advance Planning and Research Division, City and County Planning Commissions, 305 City Office Building.

Present at meeting: Tennessee State Highway Department:
Cantrell, French and Newball.

City and County Planning Commissions:
Hawkins, Hand and Adams.

Clark and Rapuano:
Ayers.

In the discussion, reference was made to a map of Davidson County (1" = 4000') on which was shown the latest location studies by the State Highway Department and Clarke and Rapuano. This map is in the possession of the parties represented at this meeting and is considered part of this record. This map was prepared by the Planning Commission's Advance Planning staff on the basis of information made available to it. Reference also was made to blueprint map of the State on which the state-wide studies were shown and a map of central Nashville (1" = 400') on which Clarke and Rapuano studies of the downtown loop and relation to proposed inter-regional network were shown.

The discussion concerning the principal elements of the system under study are summarized as follows:

1. Clarksville route.

The Clarke and Rapuano studies show a connection northwest to Clarksville (Evansville, Chicago). This link was studied and shown because of heavy traffic volumes building up on existing facilities in that direction. It also was felt that the provision of such a route would relieve the traffic load on the Louisville route.

Mr. Cantrell and Mr. French recognized the importance of this route. They pointed out however that it could not be included in the current thinking or plans on the inter-regional controlled-access system.

They agreed nevertheless that an improved connection to Clarksville was needed in the over-all highway program. They felt that such an improvement would have to be provided as a separate state and federal aid project and that it would be eligible for improvement on that basis.

Mr. French referred to the latest U. S. Bureau of Public Roads memorandum dealing with criteria concerning the inter-regional controlled-access system. A copy of this memorandum is attached to and made a part of this record. He stated that under these criteria provision could be made for a spur off the inter-regional system that would enable its connection with the Clarksville route. He stated that the east-west connection between the Clarksville route and the Louisville route could not be considered part of the immediately proposed controller-access system. It was generally agreed that a good, improved facility should be provided in the local revision of the major highway plan and program for this area.

2. Louisville route.

General agreement was reached on this route as shown by the Clarke and Rapuano location study. It was thought to be more economical and better for the community plan.

3. Knoxville and Chattanooga routes.

General agreement was reached concerning these preliminary locations and that certain factors would be re-checked before any final determination was made.

The Clarke and Rapuano study brought these routes together at a point of junction east of the City. The State Highway Department studies had shown these routes as coming into the City individually with separate connections to the downtown loop. There was general agreement for the junction of these routes east of the City subject to further field study and review by the State Highway Department.

The Clarke and Rapuano latest studies recommended that the Knoxville route be relocated south of Elm Hill Pike. Previous studies had shown locations paralleling the State plans north of Elm Hill Pike. It was the general feeling that although somewhat rougher topography would be encountered south of Elm Hill Pike, it would be a more economical and easier route.

The route north of Elm Hill Pike was regarded as more difficult and costly because of the extensive developed areas (principally residential) which would be encountered.

4. Birmingham and Memphis routes.

It was agreed that both the State Highway Department and Clarke and Rapuano would review these routes and the several locations suggested.

The principal problems were identified as including:

a. If these routes are located too close to railroad rights-of-way this would complicate handling of access points to the inter-regional system, the allocation of sufficient area for such access points, and over-all alignment of the highway.

b. The number of access points that should be made available to the controlled-access system and the distance between these points of access. There was comment that there should be such access points no further than a mile apart.

c. The rough topography encountered in the westerly and southerly portions of the County --- and outside the County in those directions --- received much comment. It was felt that this would be a determining factor in the selection of the ultimate routes. The Memphis routes under consideration were to be reviewed in light of topography and grades. The Birmingham locations were to be similarly examined, it being kept in mind that the location generally in the direction of Franklin could tie in more directly with the State location at Columbia. This location also would miss the rough topography south of Nashville and Davidson County and west of Franklin.

5. Loop systems.

General agreement was reached concerning the loops presently shown.

It was understood that the inner loop would require re-study for that portion involved in connection with the proposed Clarksville route. It was felt that this portion should be drawn in more closely.

It also was understood that an outer-city loop, generally in the vicinity of the T. C. Railroad, also would be re-examined and consideration given to its being included in the inter-regional system. General comment was made on the need for an adequate circumferential system to relate the arterials coming into the urban area and to serve the different areas of the community.

Further study is to be made concerning the bridge location to the north of the City on the inner circumferential loop.

6. Access points.

Comment was made that generally the junction of the radial lines with the loops would involve functional designs permitting traffic to continually move in the direction in which it was headed and not double back on itself.

Other on and off points on the radial system generally would be handled in a "diamond" arrangement.

7. Final agreement.

Mr. Cantrell and Mr. French reported that the State must submit its recommendations to the Bureau of Public Roads by July 15. The meeting concluded with the understanding that this group would meet again, with Mr. Mike Rapuano, immediately following the July 4th weekend.

MEMORANDUM

Subjects: Inter-state controlled-access highway network as it concerns Nashville and Davidson County; as reviewed and discussed at office meetings and field study Monday evening, July 11, Tuesday, July 12 and Wednesday, July 13, 1955.

Present: Tennessee State Highway Department:
Mr. Cantrell

U. S. Bureau of Public Roads:
Mr. Stephenson (July 12)
Mr. French

City and County Planning Commissions:
Mr. Hawkins
Mr. Hand

Clark and Rapuano:
Mr. Rapuano

In the review of this highway network reference was made to various maps and information in the office of the Advance Planning and Research Division, City and County Planning Commissions, including serial photographs at a scale of 1" - 1000' showing Clarke and Rapuano's interest study locations and a composite topographic map at a scale of 1" - 2000' (made up of a number of individual quadrangle sheets) also showing the above study locations.

The several locations suggested by the State Highway Department, Clarke and Rapuano and the Planning Commissions, were the subject of extensive review in the field.

The conclusions concerning the principal elements of the system were as follows:

1. Clarksville route.

The conclusions reached at the June 23, 1955, meeting of Mr. Cantrell, Mr. French, Mr. Newbill (U. S. Bureau of Public Roads), Mr. Hawkins, Mr. Hand, Mr. Adams (Planning Commissions' technical staff), and Mr. Ayers (Clarke and Rapuano) were retained. Following is the summary of the discussion of that route at that meeting:

"The Clarke and Rapuano studies show a connection northwest to Clarksville (Evansville, Chicago). This link was studied and shown because of heavy traffic volumes building up on existing facilities in that direction. It also was felt that the provision of such a route would relieve the traffic lead on the Louisville route.

"Mr. Cantrell and Mr. French recognized the importance of this route. They pointed out however that it could not be included in the current thinking or plans on the interregional controlled-access system.

"They agreed nevertheless that an improved connection to Clarksville was needed in the over-all highway program. They felt that such an improvement would have to be provided as a separate state and federal aid project and that it would be eligible for improvement on that basis.

"Mr. French referred to that latest U. S. Bureau of Public Roads memorandum dealing with criteria concerning the interregional controlled-access system. A copy of this memorandum is attached to and made a part of this record. He stated that under these criteria provision could be made for a spur off the interregional system that would enable its connection with the Clarksville route. He stated that the east-west connection between the Clarksville route and the Louisville route could not be considered part of the immediately proposed controlled-access system. It was generally agreed that a good, improved facility should be provided in the local revision of the major highway plan and program for this area."

In light of the fact that the north leg of the inner loop is to be drawn in as shown on the Clarke and Rapuano alternate location, connection is to be provided from the north-west section of the loop up to the present Clarksville route as part of the proposed inter-state system.

2. Louisville route.

It was agreed that the location shown by Clarke and Rapuano be followed.

3. Knoxville and Chattanooga routes.

The general agreement reached at the meeting June 23 was made final.

The alignment of the Chattanooga route is to be restudied with the principal adjustment to be made in the general vicinity of Thompson Lane, tying into the control point established by the State.

4. Birmingham route.

The route shown by Clarke and Rapuano was agreed upon.

The southerly portion of this route is to be restudied with the possibility that it might go immediately east, instead of west, of Brentwood.

5. Memphis route.

The route proposed by the State Highway Department was agreed upon.

6. Loop systems.

It was agreed that the inner loop be established as shown on the Clarke and Rapuano study, with the north leg to be in that location identified as the alternate route.

It was agreed that an outer loop be shown in the general vicinity of the T. C. Railroad, connecting the Memphis and Birmingham routes. A line for further study by Clarke and Rapuano was established to continue this outer loop eastwardly, tying into the Chattanooga and Knoxville routes.

7. Access point.

A number of access points were located on the topo map at 1" - 2000'. It was understood that these would be the subject of further study, and discussion, and that locations would be included in the final study map to be submitted by Clarke and Rapuano.

Mr. Cantrell and Mr. French expressed the urgency for submitting an early proposal concerning the inter-state network as ..... located in Nashville and Davidson County to the U. S. Bureau.

Mr. Rapuano stated that he would mail the Planning Commissions his study locations, based on the summary presented herein and the June 23 memorandum, within the next ten days to two weeks. These locations will be on the topographic map, scale 1" - 2000'.

The Advance Planning and Research Division will then map these study locations on individual quadrangles, submitting at least six copies in the State Highway Department.

It is understood that the State Highway Department will use these maps as the basis for the proposal to be submitted to the U. S. Bureau of Public Roads.

Mr. Cantrell and Mr. French were assured of the Planning Commissions' cooperation in the use of mapped information (e. g., land use, population distribution) pertinent to the understanding and support of the proposed inter-state, controlled access highway system.

Mr. Rapuano stated that the balance of his report to the City and County, consisting largely of maps, would be submitted within a matter of several weeks.

Irving Hand
Director of Plans and Research
Advance Planning & Research Division
City and County Planning Commissions

APPENDIX C

U. S. DEPARTMENT OF COMMERCE Bureau of Public Roads	POLICY AND PROCEDURE MEMORANDUM 20-8 Date of issuance: August 10, 1956
PROGRAM AND PROJECT PROCEDURES SUBJECT: PUBLIC HEARINGS, FEDERAL-AID PROJECTS	
Supersedes: This is an original issue.	

1. PURPOSE

The purpose of this memorandum is to prescribe the policy and procedures of the Bureau of Public Roads in administering section 116(c) of the Federal-Aid Highway Act of 1956, with respect to public hearings.

2. REQUIREMENTS AND CONDITIONS

a. Section 116(c) of the Federal- Aid Highway Act of 1956, hereafter referred to as the section, requires any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, to certify to the Commissioner of Public Roads that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic effects of such a location. It requires further that, if such hearings have been held, a copy of the transcript of said hearings shall be submitted to the Commissioner of Public Roads, together with the certification. The intent of this requirement is to give every interested citizen an opportunity to be heard on any such proposed project, and is an opportunity for the State highway department to more fully inform the public of the advantages of such project.

b. The provisions of this memorandum apply to every Federal-aid project, including 1954 Secondary Road Plan projects, for right-of-way for, or the construction, reconstruction or improvement of, a highway bypassing or going through, including projects entering or within, any city, town, or village. Included are projects as follows:

(1) those in accepted program stage 1-A on June 29, 1956, and are subsequently advanced to approved program stage 2.
(2) those in approved program stage 1-B or 2 on June 29, 1956, but for which the State had not submitted P.S.& E. to the district engineer.
(3) those programed subsequent to June 29, 1956.

c. The provisions of this memorandum do not apply to those projects that are solely for further improvement, such as resurfacing, of an existing highway on a location within the limits of the existing right-of-way and which do not change the layout or function of the roads and streets that connect to the existing highway.

3. PROCEDURES

a. The State highway department shall give the officials and other citizens of a city, town, or village affected by the location of a Federal-aid project to which the requirements of the section apply, the opportunity to be heard in public hearings at a location and at a time reasonably convenient for such citizens. Where citizens avail themselves of such opportunity, a public hearing shall be held and a transcript made thereof. The State highway department shall give reasonable advance notice to the district engineer of the location, date, and time for each such public hearing. In cooperating with the State highway departments in carrying out the intent of the section, district engineers will arrange to attend such hearings or review the transcript thereof.

b. Where a Federal-aid project, or a route embodying several Federal-aid projects, to which the requirements of the section apply affects several adjacent cities, towns, or villages, one combined public hearing may be arranged provided the hearing is reasonably convenient in location and time to the citizens of all the affected cities, towns, or villages.

c. The certificate by the State highway department shall recite when and where the public hearing was held or, if a hearing was not held, when and how the opportunity for a public hearing was given and in either case shall contain the statement that the State highway department has considered the economic effects of the location of the project. A transcript of the public hearing shall accompany the certifi-

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cate and shall be forwarded to the district engineer of the Bureau of Public Roads. In those instances where a public hearing was held prior to June 29, 1956, and a transcript thereof was not taken, a statement covering the gist of the discussions will be accepted as satisfying the requirement for a transcript.

d. In those States operating under the 1954 Secondary Road Plan the certificate and transcript of hearings on plan projects shall be submitted to the district engineer by the State at the time it submits the agreement estimate.

e. Where there is available to the State highway department a current master highway plan of a community on which public hearings have been held, the State highway department need not again hold hearings if it satisfies itself that such hearings had been held within a reasonable period of time and had conformed to the procedures prescribed in this memorandum and the location of the Federal-aid project does not differ materially from that in the master highway plan. Under these conditions the State may certify, when it submits plans for Federal-aid projects on highways of the master plan, that hearings have been held and it has considered the economic effects of the location. Transcripts of such hearings shall accompany the certificate unless the hearings were held prior to June 29, 1956, and transcripts are not available, in which case a statement regarding the hearings shall be submitted covering the gist of the discussions.

f. A State highway department may arrange with the appropriate city, county, town, or village officials for holding a hearing and obtaining a transcript of same, but the State highway department must retain responsibility for insuring that such hearing conforms to the procedures given herein and submits a certificate, accompanied by the transcript, that hearings have been held and it has considered the economic effects of the location.

g. The district engineer will authorize a State highway department to proceed with the preliminary engineering or the acquisition of right-of-way or both, of a programed Federal-aid project involving the bypassing, or going through, any city, town, or village with the understanding that the project for preliminary engineering is for the determination of the most feasible location that will reasonably well serve the over-all interests of the general public, or is for preparation of documents for right-of-way acquisition or P.S.& E. for physical construction on a location the economic effects of which have been or subsequently will be considered, and that public hearings as prescribed herein will be held and the economic effects of the location considered before the right-of-way is acquired to an extent committing the State to the proposed location. If certification is given at the preliminary engineering or right-of-way stage that a public hearing has been held and that the economic effects of the location adopted have been considered, further public hearing will not be required.

h. The district engineer will not approve P.S.& E. or authorize advertising for the physical construction of any project covered by the provisions of this memorandum until he has received the certification and transcript and is satisfied that the State has considered the economic effects of the proposed location in the light of the matters presented at the hearing.

C. D. Curtiss

C. D. Curtiss
Commissioner of Public Roads

10186—U.S.Dept.of Comm—DC—1956

APPENDIX D

NOTICE

The Department of Highways and Public Works of the State of Tennessee, in order to comply with Section 116 (c) of Public Law 627 of the 84th Congress, will conduct a public hearing at 9:30 A. M., on May 14, 1957, in the City Council Chamber on the 2nd Floor of the Courthouse at Nashville, Tennessee, regarding all Projects which will comprise the interstate System in Davidson County, both inside and outside of the City of Nashville, the same to consist of an inner loop and an outer loop and legs extending in five directions therefrom.

I certify that I did on the 6th day of May, 1957, post a copy of the above notice at Davidson County Courthouse, left one with the County Judge and Mayor's Office and posted one at the following Post Offices: North Station, 6th and Monroe; North East Station, 310 Wilburn St.; East Sub Station, Gallatin Road; Woodbine Branch Post Office; Acklen Station Post Office; West Station, Charlotte Pike; Main Post Office, Broad Street.

H. J. Taylor
asst. R. of W - Engineer

APPENDIX E

TRANSCRIPT OF HEARING

In the Courthouse in Nashville, Tennessee

9:30 A.M., May 15, 1957

Interstate System in Davidson County

W. M. Leech:

Ladies and Gentlemen, this Hearing this morning has been called for the purpose of hearing statements complying with Section 116(c) of the Public Laws 627 of the 84th Congress, generally known as the Federal Highway Act of 1956, as it relates to the economic effect of the Interstate System in the city of Nashville and Davidson County, both inside and outside the city limits, comprising of an inner loop and an outer loop with five legs going out to be the fourth part of the entire Interstate System. This is the plan that has been developed by the consultant engineering firm of Clarke and Rapuano in connection with the Tennessee Highway Department and the Bureau of Public Roads. I think, here in Nashville, considerable publicity has been given to the planning and providing of this expressway system. This Hearing this morning is not as to how individual pieces of property might be affected. That would be an impossibility. As a matter of fact, there might be some slight changes. The Hearing is upon the over-all plan and its economic effect upon the community. Now with that statement, I am going to ask Mr. Rapuano of Clarke and Rapuano to briefly state the method on which the studies were made and give his opinion as to the economic feasibility of it. Mr. Rapuano.

Rapuano:

When we started off on this project a little while back ----------in the vicinity----------on this project of almost two years ago, first of all, the cities and the county and secondly, thirdly for the State, there were certain fixed points - one was along the route to Knoxville, the next one to Chattanooga and the next one to Birmingham and the next

one to Memphis and the last one to Louisville. In studying the project, it became necessary not only to use different maps but also by walking the different routes and also traveling in a car cross-sectioning all the area to find a place that was the best location possible from a planning standpoint and also from an economic standpoint; i. e., to an engineering standpoint such as to line and grade and its effects on the neighborhood such as locations of schools and churches and generally residential communities. We start off with five spokes of the wheel you might say and we had to go more or less through Nashville on out to get through the City of Nashville without having too much effect on the business and residential communities. The best solution to be found was to come into an inner loop which is this loop, the Westerly leg which is going to Louisville, a leg going through the West of the central business district and general vicinity of the gulch which would pick up all of the traffic coming into this direction and location of another loop on each side of the Tennessee Railroad which is in next stage of developing as the population grows up. And also on the general map of the county, there are another one or two general loops projecting into the future. The route from Memphis more or less goes on a line North of Charlotte between Delaware and Alabama. These are just general and go up Northeast to a point along the Northerly section part of Jefferson Avenue to a point of interchange and here I might state that all of the interchanges on the Interstate System are directional. There is no going North to go South. You go in a direction you wish to go from there we go to a Northeasterly direction to Louisville and this gives you a general line to Memphis route. The route to Knoxville follows more or less in the direction of the Elm Hill Pike toward Hermitage Avenue and Wharf Avenue with a high level crossing of the rivers again between Third and Fourth Streets, roughly in East Nashville on up to Louisville. You have a general directional connection between these two or from Chattanooga which crosses the Murfreesboro Pike and this Nashville Railroad (T. C.) and hits the Murfreesboro Pike and then connects with the Louisville route on in this direction to Memphis or you can tie it along the Southerly part of the city and T. C. Railroad to Memphis and the one to Birmingham follows Franklin Pike between Franklin Pike and a railroad right straight into the city, so by and large the location of these have been inherent which would have the least effect on the natural plans of the city and will be able to bring people in and out of the city in the easiest possible manner along with the profile and the neighborhood locations of Nashville and safer as in our opinion, to the least possible damage for a system of this size; that is in general what we tried to do.

Commissioner Leech:

Mr. Rapuano, one question I want to ask you. From your experience as a consultant engineer in cities where expressways of this type have been built, are they good for the total economy of the city and necessary for the future growth of the city?

Rapuano:

I can answer that by stating that a report was made by Robert Moses. I think you all know him in New York City, trying to weigh the effect of highway work and public improvements on property and general welfare of the city and that report shows that the land value for a good distance around increases in value anywhere from 10 to 1000; as it does have a very very definite value.

Again one of the primary reasons for this particular design we have here is to keep the heart of the city from deteriorating and if we don't do something about bringing people into the city and out of the city and if we don't do something about the traffic, all of the value and all of the welfare and all the good that can be done in the heart of the city is just going to go out.

Commissioner Leech:

It has been planned and designed to preserve the downtown area as well as others.

Rapuano:

It is a question of getting the people into the downtown area and out again and we have here the advantage of two loops which I think is going to be a great benefit to Memphis.

Commissioner Leech:

Anyone in the audience familiar with the plans or have seen the plans that appeared in the paper and have any statement to make. Irving, since you are chargeable with the transportation in Nashville--

Irving Hand:

My name is Irving Hand and I am Director of Plans and Research in Nashville, City and Davidson County Planning Commissions. At the outset, Commissioner, I would like to express the appreciation of our local city and county officials, planning commissioners and various other departments for the cooperation and coordination that has been affected in the planning and study of this Interstate System in our metropolitan area. We feel that, by virtue of that cooperation among our local city, county and state officials and Bureau representatives, we have been able to proceed in the location of this System and its general planning in a most constructive manner, generally speaking and we do appreciate that very much. With reference to the economic feasibility of this proposal, as Mr. Rapuano has pointed out, this kind of network has been under consideration in other sections of our country prior to the time that the Highway Act of 1956 was adopted, setting out the system on a major basis and it has proved beneficial in many communities insofar as we locally are concerned. Of course, we feel that every consideration should be given to this work within our metropolitan area so that it can be the economic asset that we hope it will be within our community. Insofar as the general plan that has been developed to date is concerned, without reference to any specific segment of it that may be subject to further study, we feel that the approach that has been taken will make it the economic asset that we want it to be. I might mention that the city and county planning commissions have been very close to the work that has been done in this connection, that we are in the process of revising our major street plans for both the city and the county, including the Interstate System, as has progressed in the proposed locations today. We feel that in order to meet the traffic and transportation needs, the circulation need within our community that we must have an up-to-date major street plan that will not only include the Interstate System, but certain proposals relating to major highways throughout our community that will be properly related to that Interstate System that in order to meet the problems and have an effective circulation pattern within our community that will involve not only the Interstate System but a sound major highway network that will be properly coordinated with throughout our community. Insofar as any general comment at this point would be concerned, I might add that on the basis of the work that has proceeded to date, we hope that within the reasonably near future, the Planning Commissions will be in a position to take into consideration the progress that has been made to date on revising our city and county major street plans, adopting an

up-to-date major highway plan by the whole metropolitan area that will include the proposed locations of the Interstate System and the thinking so far has generally been along the lines of the routes that have presently developed with respect to the Interstate System. I don't know that there is much more that needs to be said at this point, Commissioner, but we and several members of our staff are here and will be happy to discuss any aspect of this detail you see fit.

Commissioner Leech:

Let me ask one question. You are familiar with the studies that have been made (I. Hand: Yes) and in your opinion, is the development of the expressway system in Nashville and Davidson County for the best interest of the community as a whole?

I. Hand: I think so.

Commissioner Leech:

Anyone else have any statement to make, a statement relative to the plan or any question relative to the over-all plan.

There is one thing that I do want to mention specifically, and that gives a lot of confusion. A lot of rumors get started and people think we are going to move them out of their property over night. Individual pieces of property that will be affected-the owners of that property will be contacted. Competent real estate appraisers (if the over-all plan is adopted and used by the Bureau of Roads) will look over the property that is actually affected and the individual property owners will be dealt with individually in an effort for the acquisition of the property to be on a voluntary basis, giving the people ample time to relocate. I want to assure you, that nobody's property will be taken over night, no law suits will be filed against people to take their property until after the appraisals have been made and the property owner has been contacted in an effort to buy on a voluntary basis. That is something that we would like to get over to the public that will be affected individually. Anyone else have something you would like to say?

Question:

Commissioner Leech:

I'll have to ask one of these engineers that question, Mr. Ragland. I would say that in every instance of that kind where it would be a major relocation, that ample time would be given.

Question:

Commissioner Leech:

It would be an individual case I think. We would have to negotiate with the owner to see how long it would take. Frankly, our plans are and what we hope to do if we got the over-all plan adopted is to be able to start a year or more in advance towards negotiating with these complicated places. Is that not right, Mr. Cantrell? (Mr. Cantrell: Yes)

In other words, we would like to start within the very near future, even on some projects that won't be built for two or three years, to negotiate it especially with (such as you mention) large concerns to be able to give ample time.

Question:

Commissioner Leech:

From knowing the thinking of the engineers, it will be approved this next week, if there is no real objection in the over-all plan, (Am I correct in that plan, Mr. Cantrell?) (Mr. Cantrell: Yes) because the Bureau has been approached. I think there are several members of the Bureau here today. They have been close to the study all along and it has been developed -- (I am sure Mr. Rapuano will bear me out in this and Mr. Cantrell, Location Engineer) according to the designs and standards adopted by the American Association of State Highway officials since after the Federal Aid Highway Act of 1956 was passed taking (as Mr. Rapuano said) into consideration not only the disbursement of traffic but the moving of traffic down into town and the moving of traffic around the city.

Question:

Commissioner Leech:

Mr. Ragland, it has already been covered and possibly announced for a four-year period what we would like to do and was in the papers some three or four months ago at the time the Legislature was in session (in the middle of January), we outlined a work program all over the State of what we hope to do with the money available during the next four years.

Question:

Commissioner Leech:

Mr. Cantrell, can you point out to them the part that we hope to have under consideration in the next four years.

Mr. Cantrell:

The part that we are working on does not necessarily mean in whole. We are working in the area from Spence Lane to Westboro around this outer loop with the hope that as quickly as we get any particular section of that ready for construction we will put it under construction.

Question:

Mr. Cantrell:

The number one problem is to sum up the geometric plan and get the plans ready for the contractor's agreement with the State to build it and that takes a good bit of time. We have made some rapid strides toward that but we are nowhere near completion. I think that it will take somewhere close to from 6 to 12 calendar months to get any section of it ready. We hope, however, to be able to buy right-of-way within the next six calendar months.

Question:

Mr. Cantrell:

There are a great many contingencies in it. We are trying to build innumerable sections. We are trying to do

it in such a manner not to cut all the little contractors out, make them in size that the little contractor cannot bid on it. That is due to our regulation in the Highway Department pre-qualifications for contractors and agreements so we have got to get our section down to where it is open for all contractors to bid on and many things would control the length of the sections.

Question:

Mr. Cantrell:

No, it will require more time for construction than for design.

Question:

Mr. Cantrell:

If it is possible, yes.

Question:

Mr. Cantrell:

166 stops all told.

Question:

Mr. Cantrell:

No sir.

Question:

Mr. Cantrell:

No sir.

Question:

Mr. Cantrell:

That would require a recounting of the structures. I can answer you generally, that the criteria for design of a structure of this type is best primarily on the traffic, and the traffic volume tends to indicate that there is a necessity for ingress and egress to the system that is provided.

Question:

Mr. Cantrell:

I doubt if I could unless I just walked around the map and told you each place and gave you an indication of what we propose to do.

Commissioner Leech:

Mr. Cantrell, I think his question was though within the plan designed by Clarke and Rapuano for Davidson County and the City of Nashville about -- was that not the question, Mr. Ragland?

Mr. Cantrell:

In answer to that, it would be approximately three points in each mile.

Commissioner Leech:

I think I can ask a question and that will help him on that. Now properties for service roads will be provided in the design, is that correct? The word property will not be shut off from access to get on to the expressway. They may have to go several blocks in order to get on it but there will be a service road in connection with the expressway for the local traffic to use until it gets on the expressway.

Mr. Cantrell:

Yes, sir.

Question:

Mr. Cantrell:

Normally in the city approximately 200 feet within the rural area 300 feet.

Question:

Mr. Cantrell:

The roads for the 11 to 12 foot lanes will be two proposed lanes on each side of 24 feet. In the rural area, there will be a 60 foot medium on all roads in the county.

Question:

Mr. Cantrell:

No sir, this is controlled access.

Question:

Commissioner Leech:

I'll answer that question for you. No sir, the uniform controlled access law was passed in the 1955 Legislature, the uniform which was recorded by the Bureau of Public Roads.

Question:

Commissioner Leech:

25,000 pounds maximum.
Anyone else wishing to make a statement.

Question:

Commissioner Leech:

We are in the process of working that out right now in the metropolitan area of which Nashville, Davidson County, Knoxville, Chattanooga and its places, there is going to have to be close cooperation. I had a meeting with the Mayor and the heads of his Department and with Judge Briley and I know there will be in this area, that cooperation. We are in the process now of preparing a contract with the city whereby they will do this appraising and set up the offices but, of course, the actual payment of the rights-of-way; neither the cities nor the counties will be called upon to contribute to that but we have not worked out all of the details but I will say within the next two weeks, we will have them worked out here in Nashville and the other counties. But we do have them worked out in the other cities, but you are not concerned about that.

Question:

Commissioner Leech:

I'll have to ask Mr. Cantrell. Mr. Cantrell, in what order will the East Nashville section be taken. Of course, we can only look four years ahead. I think I might state this - in fixing the four-year program, they did take into consideration the handling of traffic so we can divert such time as we got a usable section, then you can go over and divert some other. That's the way that it has been designed. Am I correct about that, Mr. Cantrell?

Mr. Cantrell:

Yes.

Commissioner Leech:

And while it might appear that a more critical section needed to be built, something else had to be built in order to carry the traffic while we are doing it. There are many factors that had to be taken into consideration. Now in answer to your question.

Question:

Commissioner Leech:

Normally, we would get a section ready that had less buildings and structures such as this on this design. Primarily we usually start construction on the section that we get the right-of-way and property cleared.

Question:

Commissioner Leech:

It is understandable sir, but it is impossible to answer the question and pinpoint it in one section. There are too many things that enter into it.

Anyone else care to ask a question or make a statement?

Question:

Commissioner Leech:

We think that we did it on the basis of where the need existed by scientific studies in every one of the metropolitan areas.

Question:

Commissioner Leech:

No sir, I don't think so. You can put it this way - to determine what the needs of each one of them was and after all that's the only thing and the over-all picture is to get the needs of every one of them now. Of course, Nashville does run more than Knoxville but when you get into some of the other areas, you get into Chattanooga. You got about one way to get in and out and that's about all. You've got the mountainous area. You've got the same thing up here - Cumberland River. You have the Tennessee River over there but all of these factors were taken into consideration and each metropolitan area was worked at just like the State as a whole on what the need of the area was projected, I believe to 1975. Is that correct - projected to traffic needs of 1975?

Mr. Cantrell:

Yes.

Question:

Commissioner Leech:

On the Interstate System it was necessary for Tennessee Highway Department to agree with each of the adjoining states and the Bureau of Roads at the points where we would come together at the State line. Of course, the over-all Interstate System is designed to connect the large metropolitan areas nation wide and as Mr. Rapuano pointed out - in going out to Nashville, we know we've got to connect Nashville with Memphis, Knoxville, Chattanooga, Louisville and Birmingham and you had these control points to start with have not been to devalue your whole plan. Is that right, Mr. Rapuano?

Question:

Commissioner Leech:

I wouldn't be able to answer that question. Considerable study was given to it and from the standpoint of the traffic pattern, it just didn't develop.

Question:

Commissioner Leech:

Of course, we are discussing today about the Nashville areas but I think if you look at the over-all program and take into consideration the amount of mileage that we had with the total traffic pattern, you will find from these studies that it is located so as to take care of the traffic as it will be developed.

Question:

Commissioner Leech:

No sir, I don't think so. We were going from Nashville to Louisville and on that leg and the best possible route so as to serve the communities along the way and it serves Clarksville too because it will be necessary since we are discussing over-all. I am happy to do it even though for the purpose of your feasibility of this plan for this community. It is actually necessary to develop 41 in each of the primary systems to a high standard to take care of the traffic we will be using then and these studies have been made.

Question:

Commissioner Leech:

You have the one going right straight up to Louisville, that's North. You have the one going South to Memphis and you do have the area in between that but the traffic just isn't there, Mr. Ragland.

Question:

Commissioner Leech:

You are taking into consideration the traffic from Louisville to Nashville.

Question:

Commissioner Leech:

No sir, I would say that the traffic from St. Louis to Nashville coming direct is not sufficient to justify (Am I correct in that?) the location of an Interstate road along that line. You asked me what you will have. You will have to develop 41 to a high standard, just as high a standard as the Interstate System except it will not be controlled access.

Question:

Commissioner Leech:

We are working on sections of it right now - four lane from New Providene on in to Clarksville right now and we are going to do the rest of it as we can, but it is just like the Interstate System, it is going to take a long time.

Anyone else have a statement to make relative to the over-all plan and the economic feasibility of the soundness of this plan as it ties in with the over-all plan.

Question:

Representing the Chamber of Commerce:

I would like to ask if you have any suggestions as to how we may best help you. Our committee and citizens of Nashville would like to give you our full cooperation.

Commissioner Leech:

The State Highway Department and I know the Bureau of Public Roads and the City and State consulting engineers certainly appreciate that and we will be calling on you. I think the main thing that we need to do is to develop an understanding of the necessity of a new type highway to meet the traffic that we have today and I believe when people understand the necessity, will favor anything for the over-all good of a community. I think there has been a lot of misinformation, not particularly in this area but in some other areas as the effect of expressways. I think that especially the Chamber of Commerce and these civic organizations can help us keep down damages that are fancied and not reality, but we will be calling on the Chamber of Commerce because we will have to have help from all these organizations.

Question:

Commissioner Leech:

Yes sir, and in my opinion the presently designed highways we already have are inadequate to carry the type and volume of traffic on it and with the increase, they are increasingly becoming more dangerous and more expensive to keep and operate. We have outgrown the system of highways which we have.

Question:

Commissioner Leech:

Mr. Rapuano, maybe you can answer that.

Mr. Rapuano:

I don't have the figures exactly but they are available through the Bureau of Public Roads, not in an estimate.

Question:

Mr. Rapuano:

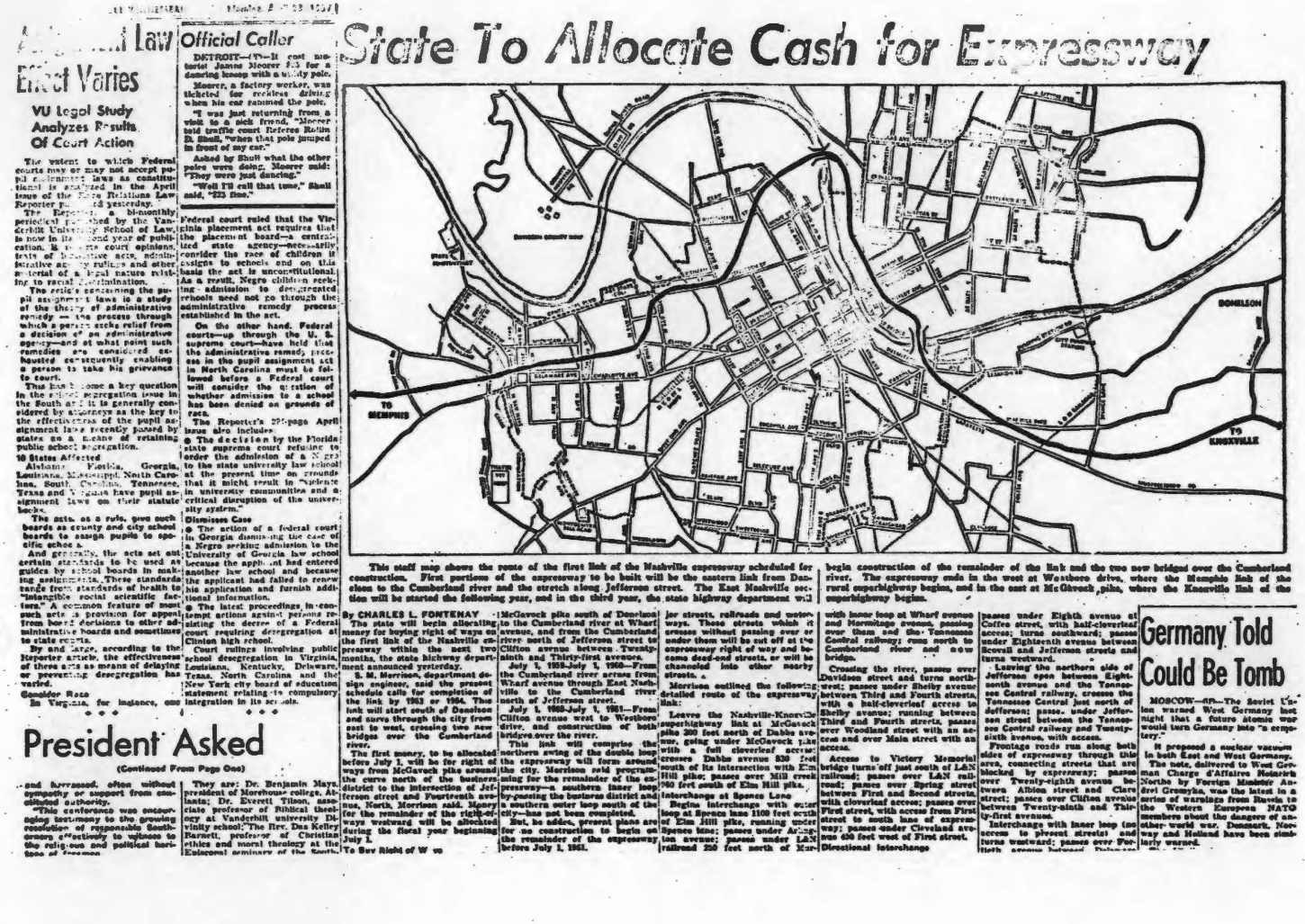
The decrease of cost and also the decrease of operating over steep grades is much more economical to operate on a road of this type than it is on an old-fashioned road and the curves would be less sharp. The curves would be banked to take care of the speed limit prescribed.

Commissioner Leech:

Everything is being done that can possibly be done at the present time such as shoulders on the left hand side of the road and shoulders on the right hand side also for protection not on the Interstate System but now the points of access roads will be close consideration that every time you cross a State Highway (Am I correct, Mr. Cantrell?) there will be an interchange and people will be notified that the business districts are off to the side where they can get to them.

No further question - then let me say that as the plans are developed, they will be on file in the State Highway Department, also by the City Planning Commission and we hope to get them available to the newspaper and get everybody the information they are entitled to.

APPENDIX F



...t Law
Effect Varies

VU Legal Study
Analyzes Results
Of Court Action

The extent to which Federal courts may or may not accept pupil assignment laws as constitutional is analyzed in the April issue of the Race Relations Law Reporter, published yesterday.

The Reporter, a bi-monthly periodical published by the Vanderbilt University School of Law, is now in its second year of publication. It reports court opinions, texts of legislative acts, administrative agency rulings and other material of a legal nature relating to racial discrimination.

The article concerning the pupil assignment laws is a study of the theory of administrative remedy — the process through which a person seeks relief from a decision of an administrative agency—and at what point such remedies are considered exhausted consequently enabling a person to take his grievance to court.

This has become a key question in the school segregation issue in the South and it is generally considered by attorneys as the key to the effectiveness of the pupil assignment laws recently passed by states as a means of retaining public school segregation.

10 States Affected

Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia have pupil assignment laws on their statute books.

The acts, as a rule, give such boards as county and city school boards to assign pupils to specific schools.

And generally, the acts set out certain standards to be used as guides by school boards in making assignments. These standards range from standards of health to "intangible social scientific factors." A common feature of most such acts is provision for appeal from board decisions to other administrative boards and sometimes to state courts.

By and large, according to the Reporter article, the effectiveness of these acts as means of delaying or preventing desegregation has varied.

Consider Race

In Virginia, for instance, one

• • •

President Asked

(Continued From Page One)

...and harrassed, often without sympathy or support from constituted authority.

"This conference was encouraging testimony to the growing recognition of responsible Southerners of the necessity to advance to the religious and political heritage of freedom.

They are: Dr. Benjamin Mays, president of Morehouse college, Atlanta; Dr. Everett Tilson, associate professor of Biblical theology at Vanderbilt university Divinity school; The Rev. Dan Kelley Barnett, professor of Christian ethics and moral theology at the Episcopal seminary of the South.

Official Caller

DETROIT—(AP)—It cost motorist James Mercer $25 for a dancing lesson with a utility pole.

Mercer, a factory worker, was ticketed for reckless driving when his car rammed the pole.

"I was just returning from a visit to a sick friend," Mercer told traffic court Referee Rollin D. Shull, "when that pole jumped in front of my car."

Asked by Shull what the other poles were doing, Mercer said: "They were just dancing."

"Well I'll call that time," Shull said, "$25 fine."

Federal court ruled that the Virginia placement act requires that the placement board—a centralized state agency—necessarily consider the race of children it assigns to schools and on this basis the act is unconstitutional. As a result, Negro children seeking admission to desegregated schools need not go through the administrative remedy process established in the act.

On the other hand, Federal courts—up through the U. S. supreme court—have held that the administrative remedy process in the pupil assignment act in North Carolina must be followed before a Federal court will consider the question of whether admission to a school has been denied on grounds of race.

The Reporter's 228-page April issue also includes:

● The decision by the Florida state supreme court refusing to order the admission of a Negro to the state university law school at the present time on grounds that it might result in "violence in university communities and a critical disruption of the university system."

Dismisses Case

● The action of a federal court in Georgia dismissing the case of a Negro seeking admission to the University of Georgia law school because the applicant had entered another law school and because the applicant had failed to renew his application and furnish additional information.

● The latest proceedings in contempt actions against persons resisting the decree of a Federal court requiring desegregation at Clinton high school.

Court rulings involving public school desegregation in Virginia, Louisiana, Kentucky, Delaware, Texas, North Carolina and the New York city board of education statement relating to compulsory integration in its schools.

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State To Allocate Cash for Expressway

This staff map shows the route of the first link of the Nashville expressway scheduled for construction. First portions of the expressway to be built will be the eastern link from Donelson to the Cumberland river and the stretch along Jefferson street. The East Nashville section will be started the following year, and in the third year, the state highway department will begin construction of the remainder of the link and the two new bridges over the Cumberland river. The expressway ends in the west at Westboro drive, where the Memphis link of the rural superhighway begins, and in the east at McGavock pike, where the Knoxville link of the superhighway begins.

By CHARLES L. FONTENAY

The state will begin allocating money for buying right of ways on the first link of the Nashville expressway within the next two months, the state highway department announced yesterday.

R. M. Morrison, department design engineer, said the present schedule calls for completion of the link by 1963 or 1964. This link will start south of Donelson and curve through the city from east to west, crossing two new bridges over the Cumberland river.

The first money, to be allocated before July 1, will be for right of ways from McGavock pike around the curve north of the business district to the intersection of Jefferson street and Fourteenth avenue, North, Morrison said. Money for the remainder of the right-of-ways westward will be allocated during the fiscal year beginning July 1.

To Buy Right of Ways

McGavock pike south of Donelson to the Cumberland river at Wharf avenue, and from the Cumberland river north of Jefferson street to Clifton avenue between Twenty-ninth and Thirty-first avenues.

July 1, 1959-July 1, 1960—From the Cumberland river across from Wharf avenue through East Nashville to the Cumberland river north of Jefferson street.

July 1, 1960-July 1, 1961—From Clifton avenue west to Westboro drive, and construction of both bridges over the river.

This link will comprise the northern swing of the double loop of the expressway will form around the city. Morrison said programming for the remainder of the expressway—a southern inner loop by-passing the business district and a southern outer loop south of the city—has not been completed.

But, he added, present plans are for no construction to begin on the remainder of the expressway before July 1, 1961.

jor streets, railroads and waterways. These streets which it crosses without passing over or under them will be cut off at the expressway right of way and become dead-end streets, or will be channeled into other nearby streets.

Morrison outlined the following detailed route of the expressway link:

Leave the Nashville-Knoxville superhighway link at McGavock pike 200 feet north of Dabbs avenue, going under McGavock pike with a full cloverleaf access; crosses Dabbs avenue 830 feet south of its intersection with Elm Hill pike; passes over Mill creek 960 feet south of Elm Hill pike.

Interchange at Spence Lane

Begins interchange with outer loop at Spence lane 1100 feet south of Elm Hill pike, running under Spence lane; passes under Arlington avenue; passes under L&N railroad 265 feet north of Main

with inner loop at Wharf avenue and Mermingo avenue, passing over them and the Tennessee Central railway; runs north to Cumberland river and new bridge.

Crossing the river, passes over Davidson street and turns northwest; passes under Shelby avenue between Third and Fourth streets, with a half-cloverleaf access to Shelby avenue; running between Third and Fourth streets, passes over Woodland street with an access and over Main street with an access.

Access to Victory Memorial bridge turns off just south of L&N railroad; passes over L&N railroad; passes over Spring street between First and Second streets with cloverleaf access; passes over First street, with access from First street to south lane of expressway; passes under Cleveland avenue 450 feet west of First street.

Directional Interchange

passes under Eighth avenue at Coffee street, with half-cloverleaf access; turns southward; passes under Eighteenth avenue between Scovell and Jefferson streets and turns westward.

Leaving the northern side of Jefferson open between Eighteenth avenue and the Tennessee Central railway, crosses the Tennessee Central just north of Jefferson; passes under Jefferson street between the Tennessee Central railway and Twenty-sixth avenue, with access.

Frontage roads run along both sides of expressway through this area, connecting streets that are blocked by expressway; passes over Twenty-eighth avenue between Albion street and Clare street; passes over Clifton avenue between Twenty-ninth and Thirty-first avenues.

Interchange with inner loop to access to present streets and turns westward; passes over Fo...

Germany Told Could Be Tomb

MOSCOW—(AP)—The Soviet Union warned West Germany last night that a future atomic war would turn Germany into "a cemetery."

It proposed a nuclear vacuum in both East and West Germany.

The note, delivered to West German Chargé d'Affaires Heinrich Northe by Foreign Minister Andrei Gromyko, was the latest in a series of warnings from Russia to the Western European NATO members about the dangers of another world war. Denmark, Norway and Holland have been similarly warned.

Figure 19. Newspaper article showing the final route, 1957.



Figure 20. Clarke and Rapuano preliminary "route," 1955.

APPENDIX G

EXCERPT FROM TRANSCRIPT OF U. S. DISTRICT COURT TRIAL

Cantrell--Cross

THE COURT: Do you know where all those institutions are?
THE WITNESS: Yes, sir.
THE COURT: Various high schools and location of various churches in north Nashville?
THE WITNESS: Yes, sir.
BY MR. WILLIAMS:
Q. You took all those things into consideration?
A. Yes, sir.
Q. And what were your conclusions with regard to the reason why the location should be changed so as to go between Tennessee A. & I. and Meharry? Where was that sound? You say that is sound? Why?
A. Well, all of our studies pointed to the fact that it was the most sound thing that we could do towards making the improvement through the city.
Q. What studies and what were the basic reasons?
A. Well, we made numerous studies. I don't understand the basic reason.
Q. Well, if you made studies they contained reasons, didn't they?
A. Certainly.
Q. Who made the studies?
A. Most of those studies have been made down through the years by our Planning and Research Department.
Q. Do you mean prior to 1955?
A. No. 1955, this was non-existent facility. It was something that we thought was coming up in Congress.
Q. Well, were there studies made between 1955 and '56?
A. The studies of the State Highway Department was made after the act was passed. Anything done before that was just preliminary stage getting ready for it.
Q. That would have been 1956?
A. Probably.
Q. How long did it take to make those studies?
A. Varying on the particular route that you are studying. The area that you are studying. The cultural aspect that you are considering.
Q. Am I to understand that the State Highway Department made the studies?
A. Yes, sir.
Q. Are they in print?

A. I can't answer that question. I believe we have some studies in print. I'm not sure about the particular ones that we are referring to.
Q. Can you make those available to us at lunch time?
A. I will do my best.
Q. But right at this time you cannot state any reason, you don't know of any reason why you cut--you changed and altered the route so as to go between A. & I. and Meharry?
A. I believe I have answered that question. We considered that the most economical, the most feasible, and we could justify the route with the Bureau of Public Roads.

The city approved it. The county approved it. The Bureau of Public Roads approved it and it was found acceptable by all the agencies and the Bureau of Public Roads as ninety-ten participant dollar-wise in this thing.
Q. Didn't the city approve--hasn't the city--hadn't the city approved this--the Planning Commission approved this plan that is shown in our Exhibits No. 31 and No. 35?
A. If they approved an interstate system in 1955, they approved a non-existent system.
Q. Yes, sir, but you gave as a reason for this alteration that the city approved it? The city had approved this, had it not, the original thinking of Clark and Rapuano?
A. Again I go back to my statement about a corridor location. May I take a little time of the Court, if the Court please, to explain to you something about location.
Q. Explain it.
A. When the need arises for a newly-located road, the first thing that the department, the engineer does, is to establish a corridor through which to make some studies.

Those studies are made completely. In every respect.

VITA

Hubert James Ford, Jr., was born in Knoxville, Tennessee, on September 3, 1945. He attended elementary schools in that city and in Maryville, Tennessee, after moving there in 1955. In 1960, he enrolled at The Webb School of Knoxville and graduated in June, 1964. The following fall, he entered The University of Tennessee and received a Bachelor of Science degree in Business Administration in June, 1968.

In January, 1969, he enrolled in The University of Tennessee, Graduate School of Planning, and received the Master of Science in Planning degree in December, 1970.