

FILED JUL 27 1949

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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1949

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No. 9

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R. GARLAND CHISSELL et al,  
*Appellants,*

vs.

THE MAYOR AND CITY COUNCIL OF  
BALTIMORE CITY,  
*Appellees.*

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APPEAL FROM THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY  
(MASON, J.)

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**JOINT APPENDIX**

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CHARLES H. HOUSTON,  
DONALD G. MURRAY,  
Solicitors for Appellants.

THOMAS N. BIDDISON,  
HAMILTON O'DUNNE,  
Solicitors for Appellees.

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**JOINT APPENDIX**

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**BILL OF COMPLAINT**

The Bill of Complaint of your Complainants, R. Garland Chissell and Augusta Chissell, his wife; William R. Boykin, Sr. and Willie Mae Boykins, his wife; Raymond A. C. Young and Helen B. Young, his wife; Clarence M. Mitchell, Jr. and Juanita Jackson Mitchell, his wife; Thomas J. Smith and Maseolia J. Smith, his wife; George Mercer Smith and Harriet S. Smith, his wife; Thomas H. Winkey, Sr. and Alease H. Winkey, his wife; Thomas H. Winkey, Jr.; a minor by his next friend and parent, Thomas H. Winkey, Sr., by their Solicitors Donald G. Murray and Charles H. Houston, respectfully represent unto your Honor.



1. That each of the adult Complainants is a citizen and resident of the United States of America and the State of Maryland, and as such entitled to all the rights guaranteed them by the Constitution and the laws of the United State, particularly the Fourteenth Amendment and the Federal Civil Rights Law 8 U.S.C.A. Sections 41 and 43; that each of the adult Complainants is a resident and taxpayer of Baltimore City, living on Druid Hill Avenue or McCulloh Street where they have made their homes since the date of the acquisition of their properties, photostatic copies of the deeds by which each of the Complainants acquired their title, or the receipted tax bills covering the same being attached herewith and prayed to be considered herewith designated as Complainants' Exhibits #1 to 7, inclusive; that some of the adult Complainants are parents of the individual minor Complainants who are under their care and protection as part of their respective households. All the Complainants sue in their own rights and as representatives of a class of citizens, residents, and taxpayers, and children living on McCulloh Street and Druid Hill Avenue. This class is too large for all its members to be brought individually before this Court but their interests are fairly and adequately represented herein.

2. That the Respondents constitute the Mayor and City Council of the City of Baltimore, a municipal corporation, and have all the rights, duties and obligations of the Mayor and City Council of Baltimore City by virtue of the provisions of the City Charter approved by the voters of Baltimore City on November 6, 1946 and by its terms effective May 20, 1947, and as such have supervision, control and management of the streets of Baltimore City and the Collection of Taxes of Baltimore City.

3. That Druid Hill Avenue and McCulloh Street since years long past have been developed into a highly desirable residential area containing approximately one thousand (1,000) homes of substantial character; that

both McCulloh Street and Druid Hill Avenue have been zoned, in the blocks where Complainants' properties are located, residential use districts since years long past; that such few businesses as are on either or both of the streets are predominantly local corner store consumer businesses, such as grocery, drug, restaurant, confectionary, etc., that prior to the passage of Ordinance #169 approved March 18, 1948 the vehicular traffic on McCulloh Street and more particularly Druid Hill Avenue, was local traffic of persons resident in or visiting the neighborhood and of moderate or below moderate volume; that the adult resident pedestrians, and the minor or child resident pedestrians prior to the passage of the said Ordinance #169, were comparatively safe in using said streets and intersections due to the fact that the vehicular traffic on the said streets was of moderate or below moderate volume.

4. That on the said streets the population density is far above the average population density of the remainder of Baltimore City; that there is no adequate playground and recreational space on or near these two streets for the children in this area which forces the children residing in this area to play on the sidewalks and in the streets both on Druid Hill Avenue and McCulloh Street; further that there are three Negro schools with a total enrollment of approximately two thousand, two hundred (2,200) children located on Druid Hill Avenue and Lafayette Avenue, Druid Hill Avenue near Biddle Street, and McCulloh Street and Lafayette Avenue; there are six (6) more Negro schools within one (1) or two (2) blocks of McCulloh Street or Druid Hill Avenue with a total enrollment of approximately one thousand, nine hundred children (1,900) located at Division Street near Lanvale Street, Preston Street near Druid Hill Avenue, Pennsylvania Avenue and Dolphin Street, Pennsylvania Avenue and Robert Street, Biddle Street near Pennsylvania Avenue, and Francis Street near Pennsylvania Avenue. That hundreds of Negro school children of immature age and discretion are forced

to cross and recross Druid Hill Avenue and McCulloh Street every school day to get to and from said nine (9) schools, and for other purposes. That further, all the Negro school children living in the northwest section of Baltimore City east of McCulloh Street and Druid Hill Avenue are forced to cross these streets and intersections because there are no schools for Negro children in this communal area east of McCulloh Street.

5. That the minor Complainants are pupils of the public schools in this area resident on McCulloh Street and have to cross one or both the said streets to attend school.

<i>Name</i>	<i>Residence</i>	<i>School</i>	<i>Crosses to Attend School</i>
Thomas H. Winkey, Jr.	2567 McCulloh St.	P. S. 120	Druid Hill Ave. & McCulloh St.
Nancy Winkey	2567 McCulloh St.	P. S. 120	Druid Hill Ave. & McCulloh St.

6. That by said Ordinance #169, approved March 18, 1948, over the vehement protest of Complainants and other residents and taxpayers living on Druid Hill Avenue and McCulloh Street, the Respondents designated Druid Hill Avenue and McCulloh Street one-way streets for through truck, automobile and bus travel from the outlying sections of Baltimore City to the downtown section of Baltimore City; that the effect of such designation, has already been to increase the traffic on both streets to the extent that it has become hazardous and dangerous for the minor Complainants to cross the streets as before; that the traffic load on the said streets will progressively increase until traffic becomes a continuous and ever present hazard not only to minors but also to adults; and your Complainants specifically point out that the peak of the morning traffic load comes during the very time that the minor Complainants and other children are forced to cross the said streets to get to their respective schools.

7. That the effect of the said Ordinance will be to change the character of the traffic from local traffic to high speed through traffic, further endangering the safety of the residents of the said streets; that upon abandonment of fixed rail traffic as provided by the ordinance, busses are proposed to travel on Druid Hill Avenue which still further increases the noise, the noxious fumes and foul odors in the air from the volume of traffic creating hazards to the health of the residents and Complainants and depriving the residents and Complainants of their rights to peacefully and quietly enjoy their respective homes.

8. That the aforesaid conditions create a public nuisance specially injuring the Complainants and the class they represent; that the Respondents acted in the premises arbitrarily and capriciously and with utter disregard for the health, welfare, comfort, and safety of the Complainants and the class they represent; and the Respondents by so acting denied your Complainants and the class they represent the equal protection of the law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

9. That the Respondents on or about October 1, 1947 caused the tax assessments on some of the adult Complainants' properties to be increased, said increase being predicated on the use and value of said properties as residences and for residential purposes exclusively; that under the law, the time for appealing from said increase assessment has expired and they are final and binding.

<i>Name</i>	<i>Property</i>	<i>Old Date</i>	<i>New Date</i>
Clarence M. Mitchell, Jr.	1324 Druid Hill Ave.	\$3780—1947	\$5080—1948

10. That when the Respondents caused the tax assessments to be increased, they had already decided to change Druid Hill Avenue and McCulloh Street to one-way arterial thoroughfares and had secretly put city machinery to work to that end; and they further well knew that the effect of making these streets one-way arterial

thoroughfares for through traffic would be to decrease materially the value of the Complainants' properties as residences and for residential purposes. Notwithstanding, in order to lull the Complainants into inaction against said increase in tax assessment, and to deprive and conceal from them the fact that they had already decided on action which would decrease substantially the value of the Complainants' properties for residential purposes, the Respondents did withhold public action on making said streets one-way arterial thoroughfares, and did increase said assessments for residential purposes until after the statutory time for appealing from the said increase in assessments had expired and only then did the Respondents officially designate said streets as one-way arterial thoroughfares; thereby fraudently representing to the Complainants that they had no present plans to destroy the value of the Complainants' property and lulling the Complainants into quiescence. The Complainants say that if they had known Druid Hill Avenue and McCulloh Street had already been programmed as one-way arterial thoroughfares, they would have protested the tax increase, but being ignorant of that fact and relying on the good faith of the Respondents not to destroy the value of their properties as residences or for residential purposes, they took no action as provided by law to resist the said tax increase. They are without remedy against said increase except by injunctive relief in this Court, and say that the increase of said assessments leave the Complainants completely without remedy. The increase of said assessments under these circumstances constitutes depriving the Complainants of their property without due process of law as guaranteed them by the Fourteenth Amendment of the Constitution of the United States of America.

11. That your Complainants are advised that individually and as specially interested citizens and taxpayers of Baltimore City and on behalf of other citizens and taxpayers having similar rights, duties and obligations, they

are entitled to restrain the Respondents from enforcing this ordinance.

12. That because of the said action or threatened action, your Complainants allege that they are or will be irreparably injured and damaged and that they have no adequate remedy by law, and that unless this Honorable Court intervenes by way of injunction, your Complainants and others will be deprived of their lawful rights to enjoy the peace and quiet of their respective homes.

TO THE END, THEREFORE THAT:

1. That your Honorable Court issue a preliminary injunction restraining the Respondents from enforcing Ordinance #169 making the said streets one-way arterial thoroughfares to the great and irreparable damage and harm to your Complainants until the hearing of the case and further order of this Court upon this petitioner giving such bond and complying with such other requirements as to the Court shall seem fit.

2. Or that if this Honorable Court shall see it unfit to grant relief prayed for by your Complainants in Paragraph One of the prayers immediately above, your Complainants respectfully pray that this Court set the date for a full hearing in this case as expeditiously as possible, so that the Complainants may be fully and finally heard.

3. That this Honorable Court issue a permanent injunction restraining the Respondents from enforcing Ordinance #169 making the said streets one-way arterial thoroughfares to the great detriment and irreparable damage and harm to your Complainants.

4. That your Honorable Court declare this ordinance illegal and void and all acts, measures and things done or to be done thereunder or in consequence thereof be restrained or enjoined forever.

5. That your Honorable Court issue a permanent injunction restraining the Respondents from collecting any

taxes based upon increased assessments in 1947 upon any of the residential properties located on McCulloh Street and Druid Hill Avenue because of the fraudulent manner in which such increased assessments were made by the Respondents.

MAY IT PLEASE YOUR HONOR to grant unto your Complainants the Writ of Subpoena directed to the Respondents in their official capacities and comprising the Mayor and City Council of Baltimore City, directing them and each of them to be and appear in this Honorable Court on some certain date to be named therein to answer and abide by such order or orders that may be passed therein.

And to grant such other and further relief as the nature of the Complainants' case may require.

AND, AS IN DUTY BOUND, ETC.

DONALD G. MURRAY,  
CHARLES H. HOUSTON,  
Solicitors for Complainants.

(Affidavit attached.)

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DEMURRER

To the Honorable, the Judge of said Court:

The Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor and Hamilton O'Dunne, Assistant City Solicitor, demurs to the Bill of Complaint in the above entitled case and for reasons therefor states:

1. The Bill of Complaint states no grounds sufficient to justify the relief which it seeks.
2. The relief sought by the said Bill of Complaint seeks to enjoin action on the part of the City, the exercise

of which action is a matter to be determined by the sound discretion of the legislative body of the Mayor and City Council of Baltimore.

3. The Bill of Complaint seeks to have an Ordinance of the Mayor and City Council of Baltimore declared null and void, and the Bill shows on its face that is within the power of the Mayor and City Council of Baltimore to legislate on the subject matter of the said Ordinance.

4. And for other good and sufficient reasons to be shown at the hearing.

THOMAS N. BIDDISON,

HAMILTON O'DUNNE,

Attorneys for Respondents.

(Affidavit)

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ORDER

THE ABOVE ENTITLED CAUSE, having been heard before me on oral argument on the Demurrer on the 11th day of September, 1948, it is, this 21st day of September, 1948, by the Circuit Court No. 2 of Baltimore City, and by the Authority of this Court, Adjudged, Ordered and Decreed, that the Demurrer be hereby overruled and leave given to Complainants to amend their Bill of Complaint.

ROBERT FRANCE,

Judge.

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AMENDED BILL OF COMPLAINT

The Amended Bill of Complaint of your Complainants, R. Garland Chissell and Augusta Chissell, his wife; William R. Boykin, Sr. and Willie Mae Boykin, his wife; Raymond A. C. Young and Helen B. Young, his wife; Clarence M. Mitchell, Jr. and Juanita Jackson Mitchell, his wife; Thomas J. Smith and Maseolia J. Smith, his



wife; George Mercer Smith and Harriet S. Smith, his wife; Thomas H. Winkey, Sr. and Alease H. Winkey, his wife; Thomas H. Winkey, Jr; a minor by his next friend and parent, Thomas H. Winkey, Sr., and Nancy Winkey; a minor by her next friend and parent, Thomas H. Winkey, Sr., by their Solicitors Donald G. Murray and Charles H. Houston, respectfully represent unto your Honor:

1. That each of the adult complainants is a citizen and resident of the United States of America and the State of Maryland, and as such entitled to all the rights guaranteed them by the Constitution and the laws of the United States, particularly the Fourteenth Amendment and the Federal Civil Rights Law 8 U.S.C.A. Sections 41 and 43; that each of the adult complainants is a resident and taxpayer of Baltimore City, living on Druid Hill Avenue or McCulloh Street where they have made their homes since the date of the acquisition of their properties, photostatic copies of the deeds by which each of the Complainants acquired their title, or the receipted tax bills covering the same being attached to the original Bill of Complaint and prayed to be considered herewith designated as Complainants' Exhibit #1 to 7, inclusive; that some of the adult Complainants are parents of the individual minor Complainants who are under their care and protection as part of their respective households. All the Complainants sue in their own rights and as representatives of a class of citizens, residents, and taxpayers, and children living on McCulloh Street and Druid Hill Avenue. This class is too large for all its members to be brought individually before this Court but their interests are fairly and adequately represented herein.

2. That the Respondents constitute the Mayor and City Council of the City of Baltimore, a municipal corporation, and have all the rights, duties and obligations of the Mayor and City Council of Baltimore City by virtue of the provisions of the City Charter approved by the voters of Baltimore City on November 6, 1946 and by its terms

effective May 20, 1947, and as such have supervision, control and management of the streets of Baltimore City and the Collection of Taxes of Baltimore City.

3. That Druid Hill Avenue and McCulloh Street since years long past have been developed into a highly desirable area containing approximately one thousand (1,000) homes of substantial character; that both McCulloh Street and Druid Hill Avenue have been zoned, in the blocks where Complainants' properties are located, residential use districts since years long past ;that such few business areas as are on either or both of the streets are predominantly local corner store consumer businesses, such as grocery, drug, restaurant, confectionary, etc., that prior to the passage of Ordinance #169 approved March 18, 1948 the vehicular traffic on McCulloh Street and more particularly Druid Hill Avenue, was local traffic of persons resident in or visiting the neighborhood and of moderate or below moderate volume; that the adult resident pedestrians, and the minor or child resident pedestrians prior to the passage of the said Ordinance #169, were comparatively safe in using said streets and intersections due to the fact that the vehicular traffic on the said streets was of moderate or below moderate volume.

4. That on the said streets the population density is far above the average population density of the remainder of Baltimore City; that there is no adequate playground and recreational space on or near these two streets for the children residing in this area which forces the children residing in this area to play on the sidewalks and in the streets on both Druid Hill Avenue and McCulloh Street; further that there are three Negro schools with a total enrollment of approximately two thousand, two hundred children (2,200) located on Druid Hill Avenue and Lafayette Avenue, Druid Hill Avenue near Biddle Street, and McCulloh Street and Lafayette Avenue; there are six (6) more Negro schools within one (1) or two (2) blocks of McCulloh Street or Druid Hill Ave-

nue with a total enrollment of approximately one thousand, nine hundred children (1,900) located at Division Street near Lanvale Street, Preston Street near Druid Hill Avenue, Pennsylvania Avenue and Dolphin Street, Pennsylvania Avenue and Robert Street, Biddle Street near Pennsylvania Avenue, and Francis Street near Pennsylvania Avenue. That hundreds of Negro school children of immature age and discretion are forced to cross and recross Druid Hill Avenue and McCulloh Street every school day to get to and from said nine (9) schools, and for other purposes. That further, all the Negro school children living in the northwest section of Baltimore City east of McCulloh Street and Druid Hill Avenue are forced to cross these streets and intersections because there are no schools for Negro children in this communal area east of McCulloh Street.

5. That the minor Complainants are pupils of the public schools in this area resident on McCulloh Street and have to cross one or both the said streets to attend school.

<i>Name</i>	<i>Residence</i>	<i>School</i>	<i>Crosses to Attend School</i>
Thomas H. Winkey, Jr.	2567 McCulloh St.	P. S. 120	Druid Hill Ave. & McCulloh St.
Nancy Winkey	2567 McCulloh St.	P. S. 120	Druid Hill Ave. & McCulloh St.

6. That by said Ordinance #169, approved March 18, 1948, over the vehement protest of Complainants and other residents and taxpayers living on Druid Hill Avenue and McCulloh Street, the Respondents designated Druid Hill Avenue and McCulloh Street one-way streets for through truck, automobile and bus travel from the outlying sections of Baltimore City to the downtown section of Baltimore City; that the effect of such designation, has already been to increase the traffic on both streets to the extent that it has become hazardous and dangerous for the minor Complainants to cross the streets to school and for other purposes, and to play on the sidewalks and about the streets as before; that the traffic load on the said streets will progressively increase

until traffic becomes a continuous and ever present hazard not only to minors but also to adults; and your Complainants specifically point out that the peak of the morning traffic load comes during the very time that the minor Complainants and other children are forced to cross the said streets to get to their respective schools.

7. That the effect of the said Ordinance will be to change the character of the traffic from local traffic to high speed through traffic, further endangering the safety of the residents of the said streets; that upon abandonment of fixed rail traffic as provided by the ordinance, busses are proposed to travel on Druid Hill Avenue which still further increase the noise, the noxious fumes and foul odors in the air from the volume of traffic creating hazards to the health of the residents and Complainants and depriving the residents and Complainants of their rights to peacefully and quietly enjoy their respective homes.

8. That the aforesaid conditions create a public nuisance specially injuring the Complainants and the class they represent; that the Respondents acted in the premises arbitrarily and capriciously and with utter disregard for the health, welfare, comfort, and safety of the Complainants and the class they represent; and the Respondents by so acting denied your Complainants and the class they represent the equal protection of the law guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

9. That the Respondents on or about October 1, 1947, caused the tax assessments on some of the adult Complainants' properties to be increased, said increase being predicated on the use and value of said properties as residences and for residential purposes exclusively; that under the law, the time for appealing from said increased assessment has expired and they are final and binding.

<i>Name</i>	<i>Property</i>	<i>Old Date</i>	<i>New Date</i>
Clarence M. Mitchell, Jr.	1324 Druid Hill Ave.	\$3780—1947	\$5080—1948

10. That when the Respondents caused the tax assessments to be increased, they had already decided to change Druid Hill Avenue and McCulloh Street to one-way arterial thoroughfares and had secretly put city machinery to work to that end; and they further well knew that the effect of making these streets one-way arterial thoroughfares for through traffic would be to decrease materially the value of the Complainants' properties as residences and for residential purposes. Notwithstanding, in order to lull the Complainants into inaction against said increase in tax assessment, and to deprive and conceal from them the fact that they had already decided on action which would decrease substantially the value of the Complainants' properties for residential purposes, the Respondents did withhold public action on making said streets one-way arterial thoroughfares, and did increase said assessments for residential purposes until after the statutory time for appealing from the said increase in assessments had expired and only then did the Respondents officially designate said streets as one-way arterial thoroughfares; thereby fraudulently representing to the Complainants that they had no present plans to destroy the value of the Complainants' property and lulling the Complainants into quiescence. The Complainants say that if they had known Druid Hill Avenue and McCulloh Street had already been programmed as one-way arterial thoroughfares, they would have protested the tax increase, but being ignorant of that fact and relying on the good faith of the Respondents not to destroy the value of their properties as residences or for residential purposes, they took no action as provided by law to resist the said tax increase. They are without remedy against said increase except by injunctive relief in this Court, and say that the increase of said assessments leaves the Complainants completely without remedy. The increase of said assessments under these circumstances constitutes depriving the Complainants of their property without due process of law as guaranteed them

by the Fourteenth Amendment of the Constitution of the United States of America.

11. That your Complainants are advised that individually and as specially interested citizens and taxpayers of Baltimore City and on behalf of other citizens and taxpayers having similar rights, duties and obligations, they are entitled to restrain the Respondents from enforcing this ordinance.

12. That because of the said action or threatened action, your Complainants allege that they are or will be irreparably injured and damaged and that they have no adequate remedy by law, and that unless this Honorable Court intervenes by way of injunction, your Complainants and others will be deprived of their lawful rights to enjoy the peace and quiet of their respective homes.

To The End, Therefore, That:

Your Complainants respectfully pray that this Court set the date for a full hearing in this case as expeditiously as possible, so that the Complainants may be fully and finally heard, and upon and after hearing upon the merits:

(a) That this Honorable Court issue a permanent injunction restraining the Respondents from enforcing Ordinance #169 making the said streets one-way arterial thoroughfares to the great detriment and irreparable damage and harm to your Complainants.

(b) That your Honorable Court declare this ordinance illegal and void and all acts, measures and things done or to be done thereunder or in consequence thereof be restrained or enjoined forever.

(c) That your Honorable Court issue a permanent injunction restraining the Respondents from collecting any taxes based upon increased assessments in 1947 upon any of the residential properties located on McCulloh Street and Druid Hill Avenue because of the fraudulent manner

in which such increased assessments were made by the Respondents.

May It Please Your Honor to grant unto your Complainants the Writ of Subpoena directed to the Respondents in their official capacities and comprising the Mayor and City Council of Baltimore City, directing them and each of them to be and appear in this Honorable Court on some certain date to be named therein to answer and abide by such order or orders that may be passed therein.

And to grant such other and further relief as the nature of the Complainants' case may require.

And, As In Duty Bound, etc.

DONALD G. MURRAY,

CHARLES H. HOUSTON,

Solicitors for Complainants.

(Affidavit attached.)

---

#### ANSWER TO AMENDED BILL OF COMPLAINT

The Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, and Hamilton O'Dunne, Assistant City Solicitor, in answer to the Amended Bill of Complaint in the above entitled case, represents unto this Honorable Court:

1. In answer to Paragraph 1 of the Amended Bill of Complaint, your Respondent admits the allegations therein except that your Respondent has no knowledge whether the Complainants sue as representatives of a class of citizens, residents and taxpayers and children living on McCulloh Street and Druid Hill Avenue.

2. In answer to Paragraph 2 of the Amended Bill of Complaint, the allegations therein are admitted.

3. In answer to Paragraph 3 of the Amended Bill of Complaint, your Respondent states that the description

of the neighborhood therein is so described as to be a characterization thereof by the Complainants, and, so as not to disclose to the Respondent sufficient facts to allow your Respondent either to admit or to deny the allegations therein, the Complainants allege that Druid Hill Avenue and McCulloh Street have developed into a "high desirable area" containing homes of "substantial character", and such expressions can only evidence the subjective determination of the Complainants and do not constitute facts capable of affirmance or denial. In further answer to said Paragraph, your Respondent denies that prior to the passage of Ordinance No. 169, approved March 18, 1948, the vehicular traffic on McCulloh Street and Druid Hill Avenue was local traffic of persons resident in or visiting the neighborhood. The allegations therein that this traffic was "of moderate or below moderate volume" and that persons "were comparatively safe in using said streets and intersections due to the fact that the vehicular traffic on the said streets was of moderate or below moderate volume" again represent conclusions of the Complainants and there are no standards by which said descriptions can be interpreted so as to be rendered capable of affirmance or denial. Therefore, all of said statements are neither admitted nor denied by said Respondent but proof thereof is demanded so that the meaning thereof may be determined by your Respondent.

4. In answer to Paragraph 4 of the Amended Bill of Complaint, the allegations therein with respect to number and location of schools and the number of children attending, are admitted, but the allegation that "on the said streets the population density is far above the average population density of the remainder of Baltimore City" is so vague, indefinite and intangible as to be incapable of being answered by your Respondent, and thus this allegation is neither admitted nor denied but strict proof thereof is demanded so that the meaning thereof may be determined by your Respondent.



5. In answer to Paragraph 5 of the Amended Bill of Complaint, the allegations therein are admitted.

6. In answer to Paragraph 6 of the Amended Bill of Complaint, it is admitted that Ordinance No. 169, approved March 18, 1948, designated Druid Hill Avenue and McCulloh Street one-way streets. In further answer, your Respondent states that the Complainants have no vested right to have their children play in the public streets of Baltimore City entirely free from traffic hazards and that traffic hazards are necessarily present on streets where there is a flow of traffic, but that this is a necessary hardship which must be borne by persons living in Cities or heavily traveled areas.

7. In answer to Paragraph 7 of the Amended Bill of Complaint, your Respondent states that the speed of traffic will continue to be regulated by the police and that although increased traffic does increase traffic noise and traffic fumes, such noise and fumes are indigenous to all Cities where there is motorized traffic and that to that extent the Complainants have no vested right to live in their homes in the City entirely free from traffic noises and fumes.

8. In answer to Paragraph 8 of the Amended Bill of Complaint, the allegations therein are denied.

9. In answer to Paragraph 9 of the Amended Bill of Complaint, the allegations therein are admitted.

10. In answer to Paragraph 10 of the Amended Bill of Complaint, your Respondent states that the increased assessments complained of were not made with any fraudulent intent or so timed as fraudulently to deter the Complainants from protesting the assessments, but were made pursuant to a plan adopted according to law by which one-fifth of all property in the City of Baltimore is re-valued and re-assessed every year and that the increase in property values in the area in which the said properties were located and that the assessment was

made independently of any effect which the passage of Ordinance No. 169, approved March 18, 1948, would have on said property. The Respondent vigorously and vehemently denies that the assessments were increased with any fraudulent or nefarious purpose and further denies that by reason of such assessments the Complainants have been deprived of any Constitutional rights.

11. In answer to Paragraph 11 of the Amended Bill of Complaint, it is admitted that the Complainants received the advice which the said Paragraph alleged they received.

12. In answer to Paragraph 12 of the Amended Bill of Complaint, your Respondent denies the allegation therein.

Wherefore, having fully answered, your Respondent prays the Amended Bill of Complaint be dismissed with costs.

THOMAS N. BIDDISON,

City Solicitor,

HAMILTON O'DUNNE,

Assistant City Solicitor,

Solicitors for Respondent.

(Affidavit attached.)

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OPINION

MASON, J.:

The Bill of Complaint in this case was filed on June 6th, 1948, by the plaintiffs as citizens, residents and taxpayers of Baltimore City living on Druid Hill Avenue or McCulloh Street. It recites that Druid Hill Avenue and McCulloh Street are residential streets, and prior to the passage of Ordinance No. 169 of the Mayor and City Council of Baltimore City, were safe for pedestrians due to the fact that vehicular traffic on said streets was of

moderate or below moderate volume. That because of the density of population, the absence of recreational space, the large number of schools and the many scholars in them, many children of immature age and discretion are forced to cross the two streets. That by Ordinance No. 169 approved March 18, 1948, over the protest of complainants, the respondents designated Druid Hill Avenue and McCulloh Street one way streets for through truck, automobile and bus travel from the outlying sections of Baltimore City to the downtown section of Baltimore City, which has increased the traffic on both streets and rendered them hazardous and dangerous. That the Ordinance will further change the character of the traffic to high speed traffic and increase the noise, noxious fumes and foul odors and deprive the residents and complainants of their right to peacefully and quietly enjoy their respective homes. Complainants then go on to charge that the aforesaid conditions create a public nuisance specially injuring them.

After the foregoing, complainants allege that on or about October 1st, 1947, respondents caused the tax assessments on some of the adult complainants properties to be increased, it being then too late to appeal from said increased assessment. That the respondents had determined to make said streets one way arterial thoroughfares but withheld said information until the assessments were increased, thereby lulling complainants into inaction until it was too late to appeal the assessments. The Bill prays for an injunction restraining the enforcement of Ordinance No. 169 making said streets one way arterial thoroughfares and restraining the City of Baltimore from collecting any taxes based upon increased assessments in 1947 upon any residential properties located on McCulloh Street and Druid Hill Avenue.

A demurrer was filed to the bill and it was overruled with leave, however, to amend and thereafter an amended Bill was filed which does not differ substantially from the original bill.

On September 23, 1948, respondent filed its answer stating that traffic hazards are incidents of all cities or heavily traveled areas, that the speed is regulated by the police department and that traffic noise and fumes are "indigenous" to all cities. Respondent denied that conditions caused by the one way streets specially injured the complainants or that it acted arbitrarily or capriciously or denied complainants the equal protection of the law.

Respondents admitted that the assessments were increased on or about October 1, 1947, but stated that the increased assessments were not made with any fraudulent intent or timed to deter the complainants from protesting but pursuant to a plan by which one-fifth of all property is revalued and reassessed every year. That the assessment was made independently of any effect which Ordinance No. 169 would have on said property.

Taking the first question that is as to traffic hazards— That there will be increased traffic upon the two streets can hardly be denied. The testimony in the case certainly indicates an increase in traffic. Whether this will produce the hazards to life and limb anticipated by the complainants is another question. The figures on St. Paul and Calvert Streets do indicate a very slight increase in accidents. Common experience indicates an increase in noise and dust. There will also be the disadvantage to the property owners of having restricted parking on the streets. Assuming all these things is the Court justified in enjoining the enforcement of the Ordinance. Although the complainants produced certain testimony in support of above allegations, nevertheless, the traffic experts, employees of the City, whom the complainants called to testify, stated that in their opinion the making of the streets one-way would have the effect of decreasing rather than increasing safety hazards. However, these allegations, even conclusively proven, would not be sufficient to entitle the complainants to the relief which they seek.

In the case of *Murphy v. State Roads Commission*, 159 Md. 7, 15, the Court of Appeals said:

“Ordinarily the question of whether a proposed highway is required by public necessity is legislative rather than judicial (*Elliott on Roads and Streets*, sec. 213; *Nichols on Eminent Domain*, secs. 333, 334); and while the question as to whether the proposed use is public in its nature may ultimately become a judicial one (*Ibid.*, sec. 52; *Van Witsen v. Gutman*, 79 Md. 405), when the Legislature has determined that a proposed improvement in public in its nature, the prima facie presumption is that the use thus declared to be public is public. (*Nichols, Eminent Domain*, sec. 52.)”

Indeed, this Bill of Complaint seems rather conclusively controlled by the case of *Baltimore v. Himmel-farb*, 172 Md. 628. In that case the property owner sought damages against the City for loss of value to his property by reason of deprivation of light and air, and invasion of dust and gases resulting from the erection of a viaduct across St. Paul Place. There was testimony tending to prove that the plaintiff's light and air from the south and west were materially cut off, that shadows darkened his house severely, that whirls or currents of air caused by the construction carried exhaustive dust and gases into his house and diminished the use of it. The Court, however, held that none of these elements entitled the plaintiff to damages against the municipality.

The Court said that in the absence of the actual taking of private property in a situation of this kind there could be no liability on the part of the City. The Court declared at page 631:

“There has been no destruction of access or use of the plaintiff's property. The cutting off of light and air as described could not constitute destruction of it, nor could the blowing of dust and gases into it, except by a fiction too far removed from the fact. The

light and air are not obstructed directly, or obstructed at all beyond a degree that is common among city buildings. Tall municipal office buildings on both sides of the street might have interfered as much, but would not have given a right to compensation. So a much-traveled highway relocated in front of a house might cause as much dust and gas to enter, but gives no such right. The damages are only consequential. And the case is analogous to that of *Mayor, &c., of Cumberland v. Willison*, 50 Md. 138, in which it was held that damages done to the water power of a mill by means of an increased flow of water carrying debris into the race caused by the grading and paving of a street was not taking of the property. 'Property thus injured is not in the constitutional sense taken for public use.'

"Public improvements often cause severe incidental damages for which, under this rule, no compensation may be obtained. But it must be remembered, as has been pointed out in other case, that despite the examples of constitutional amendments and statutes enacted in other jurisdictions to provide the compensation, none have been enacted in this State; and the fact imposes on the courts all the more firmly the duty of observing the limits of the constitutional prohibition. It is not their part to provide otherwise. *Garrett v. Lake Roland Elec. Co.*, 79 Md. 277, 183, 29 A. 830; *Krebs v. State Roads Commission*, 160 Md. 584, 594, 154 A. 131."

Another suggestion made by the complainants is that they were not aware of the fact that the Ordinance making the above-mentioned streets one-way streets was being considered or that any consideration was being given to the designation of these streets as one-way streets. Although the record discloses that as early as 1945 rather widespread publication was given to the general plan under consideration, including the publication of a map containing these streets and the contemplated

change thereof to one-way streets, nevertheless, even the complete lack of knowledge on the part of the complainants would not be sufficient to justify the Court in enjoining the enforcement of the Ordinance. As the Supreme Court has said in the case of *Townsend v. Yeomans*, 301 U.S. 441, 451, the legislature acting within its sphere is presumed to know the needs of the people of the State. The subject matter, therefore, of streets, being one delegated to the City of Baltimore by Section 6, sub-section 29, of the new Baltimore City Charter, action taken by legislature in this field is presumptively correct. There is also some complaint made by the complainants that the points of view of the residents of the neighborhood were not given proper consideration. Again, however, this contention is answered by the *Yeomans* case, *supra*, wherein the appellants contended that certain legislature action was invalid and should be considered as arbitrary because taken without investigation. The Court disposed of this contention and stated:

“There is no principal of constitutional law which nullifies action taken by a legislature, otherwise competent, in the absence of a special investigation. The result of particular legislative inquiries through commissions or otherwise may be helpful in portraying the exigencies to which the legislative action has been addressed and in fortifying conclusions as to reasonableness.”

The Supreme Court has held similarly in the case of *Bowles v. Willingham*, 321 U.S. 503, 519. In the *Willingham* case the congressional rent control legislation was challenged because there was no provision for a hearing giving landlords a chance to express themselves before a regulation fixing rents became effective. The Court held that there was no obligation on the legislative body to grant a hearing to those who would be affected by passage of the legislation and quoted from an opinion of Mr. Justice Holmes:

“Where a rule of conduct applies to more than a few people it is impracticable that every one should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that effect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.”

In reply to this, complainants say that while it may not be necessary for the City Council of Baltimore to hold a hearing on a proposition such as this, when it does announce and hold a hearing it must be in good faith and not *pro forma*. They further say that in this case the authorities had decided to make the streets one-way before the hearing was held and as proof of that say the City had spent about \$400,000.00 upon the driveway around the southeastern perimeter of Druid Hill Park which would be of little use without the one-way streets. The answer to this seems to be that the proposition had been discussed as early as 1945. Plans and reports had been made advocating the change and an ordinance had been introduced in the City Council. This ordinance, however, had not been passed by the Council and, of course, it had not been signed by the Mayor. It is true that the Mayor testified that at the hearing he told some of the complainants or their neighbors that he would sign the ordinance if the Council passed it. Ordinance No. 169 had not been passed or approved when the hearing was held, it was still open, could have been defeated and whatever the convictions of Mr. Holland, Chief Engineer, or the Mayor, one cannot say that the hearing was a farce or fraud.

The complainants have also asked that a permanent injunction be issued to restrain the City from collecting



any taxes based upon increased assessments in 1947 upon any of the residential properties located on McCulloh Street and Druid Hill Avenue because of what is alleged to be the fraudulent manner in which the increased assessments were made by the respondents.

The fraud is said to exist because Ordinance No. 169 was approved after it was too late to take an appeal from the increased assessments. This fact alone would not be sufficient to justify the Court in finding the assessment fraudulent. Mr. Fitzpatrick, the head of the Department of Assessments, was called by the complainants, and he testified that the properties involved were assessed in 1947 pursuant to the plan adopted in accordance with Section 175, sub-section 8 of Article 81 of the Maryland Code, 1939 edition. This last referred to Article directs that for the purpose of assessments for tax purposes the City of Baltimore be divided into five geographical districts, and that the property in each district should be re-assessed or at least reviewed for re-assessment purposes once every five years. Thus, the statutory scheme embraced within that section of the Code just referred to results in a reconsideration for re-assessment purposes of all the property in the City once every five years.

Mr. Fitzpatrick further testified, and the complainants produced no evidence to contradict him, that the property involved in this case was re-assessed in 1947 pursuant to the terms of Article 81, section 175, supra. He testified that this property was within the geographical district scheduled for reconsideration and re-assessment in 1947 and that none of the property was re-assessed out of the normal order in which it would have been in accordance with Article 81, section 175 of the Maryland Code.

The complainants have produced testimony of owners of property in the vicinity to the effect that the increased traffic on Druid Hill Avenue and McCulloh Street has rendered the enjoyment of their property less desirable

than formerly, and thus decreased the value of their property. However, although the time for appeal to the Board of Municipal and Zoning Appeals for the purpose of contesting the assessment has expired (Section 129, Baltimore City Charter, effective May 20, 1947), nevertheless, the complainants have not availed themselves of the remedy provided by Section 190 of Article 81 of the Maryland Code, 1939 edition. This section of the Code provides that upon the request of a taxpayer the Appeal Tax Court (now the Board of Municipal and Zoning Appeals) shall hold a hearing for the purpose of reconsidering assessments providing the demand be filed before July 1st preceding the taxable year in question. Although the evidence is clear, that well in advance of last July 1st, 1948, the complainants were made aware of the situation about which they now complain, none of them demanded a reconsideration by the Board for the purpose of re-assessing their property. Thus, it is apparent that as far as the assessments of the complainants' properties are concerned, they had an adequate remedy at law but did not avail themselves of the opportunity to use it. If the complainants are still of the same opinion next spring as they expressed themselves presently to be in the Bill of Complaint, then they may file a demand for a reconsideration of their assessments pursuant to Section 190 of Article 81 of the Maryland Code, but the situation does not seem to be one for interference by a court of equity.

For the foregoing reasons the Bill will be dismissed and a decree may be submitted accordingly.

January 21st, 1949.

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#### DECREE

The above entitled case having come on for hearing and testimony having been produced by all parties and heard in open court, counsel for each party having been heard and memoranda of the law having been submitted

by counsel for all parties, and the testimony, arguments and memoranda having been considered, it is this 26th day of January, 1949, by the Circuit Court No. 2 of Baltimore City, Decreed, that the Bill of Complaint in the above entitled case be dismissed, the costs to be paid by the Complainants.

E. PAUL MASON,  
Judge.

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TESTIMONY

(St. Tr. pp. 3-122):

GEORGE A. CARTER,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Houston:

Q. Your official position with the city? A. Deputy Director of Public Works.

Q. You have been Deputy Director for how long? A. Since July of 1947, when the new charter went into effect.

Q. Prior to that time you were what? A. Deputy Chief Engineer.

Q. You were Deputy Chief Engineer for how long? A. I think October, 1943.

Q. Who was the Chief Engineer at that time? A. Nathan L. Smith.

Q. Were you the second in the office under Mr. Smith? A. That is right.

Q. During that time did your office make any recommendations concerning the designation of Druid Hill avenue and McCulloh street prospectively as one-way

streets? A. Mr. Smith prepared a report entitled "Analysis of Traffic Conditions and Present and Post-War Highway Requirements." That was dated in May of 1945, I believe. In that report he had recommended certain one-way street operations, McCulloh and Druid Hill avenue being one of them.

Q. Do you have that report with you, sir? A. I certainly do. (Witness produced document and exhibited same to counsel.)

Q. Will you turn to the section of the report in which the recommendation is made? A. On page 21.

Q. How far does the report deal with Druid Hill avenue and McCulloh street? A. I think there is another reference there a few pages back.

(Mr. O'Dunne) I think on page 29.

(The Witness) Yes, on page 29.

(Mr. Houston) May I ask that this be marked as Plaintiffs' No. 1.

(Mr. O'Dunne) The whole book?

(Mr. Houston) Yes, the whole book, and I will read certain sections.

(Document referred to offered and received in evidence as Plaintiffs' Exhibit 1.)

(Mr. Houston) If the Court pleases, I am reading now from page 21:

"The Commission on City Plan is making similar studies to determine the feasibility of one-way street development to the northwest. This problem is more difficult, due to the operation of important car lines on Pennsylvania Avenue, Madison Avenue and Druid Hill Avenue. There are now street car routes traversing these three streets, three streets, all of which connect the general vicinity of the Park Terminal with the western

part of the Central business district. If these lines can be combined on Pennsylvania Avenue and Madison Avenue, Druid Hill Avenue may be used in combination with McCulloh Street for alternate one-way traffic.

“McCulloh Street is now designated as a through highway, but at its northern terminus it is quite inaccessible. By carrying both McCulloh Street and Druid Hill Avenue across the corner of Druid Hill Park into Auchentoroly Terrace and widening that thoroughfare, excellent connection can be made with Gwynns Falls Parkway, Liberty Heights Avenue and Reisterstown Road. If, by reason of the operation of these transit lines out of the Park Terminal, Druid Hill Avenue could not be freed of street car tracks, it would then be desirable to use Madison Avenue for this purpose, transferring the lines operating thereon to Druid Hill Avenue and directing traffic northbound upon it, and southbound on McCulloh Street.”

(Mr. Houston) Then on page 29:

“Ultimately an expressway from the vicinity of Franklin and Pearl Streets to the southwest corner of Druid Hill Park or to the general vicinity of Fulton Avenue and Pennsylvania Avenue, thence continuing northwest and connecting with Gwynns Falls Parkway, Liberty Heights Avenue, Reisterstown Road, Wabash Avenue, Park Heights Avenue, and Greenspring Avenue will be required. Two tentative locations have been considered for this expressway; one to the west of Pennsylvania Avenue and the other to the east. The latter would be more direct, but would involve the use of the western edge of Druid Hill Park. The former would be longer and would require the acquisition of a greater amount of private property. We recommend the prompt study of both locations to the end that the most feasible route may be selected and control of the development of property affected by it undertaken.

“For the immediate future, the development of one-way street traffic should be undertaken, and we reiterate the desirability of removing the car tracks from either Druid Hill Avenue or Madison Avenue and the use of these thoroughfares in combination with McCulloh Street as the most desirable.”

Q. What was done with this report? A. It was given wide publicity, submitted to the Mayor, approved by the Mayor, and submitted to the Commission on Plan and approved by that Commission. In addition, negotiations were started with the Transit Company to realize some of the recommendations in the reports.

Q. Specifically did Mr. Smith ask the Transit Company for the following changes: The removal of tracks from Druid Hill Avenue so that Druid Hill Avenue and McCulloh Streets could be made one-way streets? A. That is right.

Q. That was approximately when? A. I think November, 1947. The negotiations culminated in the publishing of The Riders Digest of the Transit Company.

Q. Do you mean 1947 or 1945? A. 1945. I beg your pardon.

Q. Do you have the report that the Baltimore Transit Company made to the Mayor and members of the City Council? Let me ask you this: Is the report in The Riders Digest a verbatim report? A. I would not know, sir.

Q. Did the Transit Company make a report to the Mayor and City Council? A. That I don't know either.

Q. Did it publish a reply? Did it publish copies of its report or what purported to be its report to the Mayor and City Council in its Riders Digest of November, 1945? A. Just by reading this I assume so. I have no evidence to that effect.

Q. Did there come to your department knowledge that a report had been made by The Baltimore Transit Company concerning the request of Mr. Smith to designate—to remove the tracks from Druid Hill Avenue, so that Druid Hill Avenue and McCulloh Street could be made one-way streets? A. I assume so; yes.

Q. As Deputy Chief Engineer at that time, didn't you know, as a matter of fact, that the knowledge did come to your department that The Transit Company had made such a report? A. The report was not submitted to me. We investigated the reroutings as suggested in the Riders Digest. The Riders Digest came to me, not the official report of the Transit Company to the Mayor and City Council.

Q. But there did come to your department suggested reroutings which the Transit Company proposed? A. That is right.

Q. And the justifications for those reroutings also came to your office? A. That is true.

Q. On the basis of that, did there come a time when a cut-off was made near Auchentoroly Terrace in Druid Hill Park? A. Do you mean the paving of a road around the western perimeter of Druid Hill Park, is that what you mean?

Q. All right, yes. A. Yes.

(The Court) You do not mean to cut off the street car line.

(Mr. Houston) Oh, no. My question was not clear.

Q. Following the report of the Transit Company, acting upon the request of Mr. Smith, for the removal of car tracks from Druid Hill Avenue, so that Druid Hill Avenue and McCulloh Street could be made one way streets, did thereafter come a time when a road was cut through Druid Hill Park near Auchentoroly Terrace? A. That is right, yes, sir. There is an official letter in

the file submitting such a proposal to the plan Commission.

Q. Will you get us that letter and give us the date?

A. That letter was August 9th, 1946.

(Mr. Houston) I would like to introduce this as Exhibit No. 2.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 2.)

Q. Prior to the proposed dual highway that is mentioned in the letter of August 9th, 1946, from the Chief Engineer to Mr. Maxwell, as director of the Parks, what were the outlets from Druid Hill Park south coming to the center of the city? A. The outlets from Druid Hill Park?

Q. Yes. A. Druid Hill Avenue, I think Auchentoroly Terrace or east of Auchentoroly Terrace, another one at Druid Hill Avenue, another at Madison, and another at Eutaw.

Q. Which was the main one? A. I would say Eutaw.

(The Court) The one at Druid Hill Avenue was an inlet, wasn't it?

(The Witness) I believe it was, Judge, one way in.

Q. Was there a reply by Mr. Maxwell to this letter from the Chief Engineer of August 9th, 1946? A. The reply took the form of suggestions in so far as paths, and whatnot, and the final approval was in the form of discussing the only letter we have from Maxwell.

Q. Wasn't there a reply from Mr. Maxwell concerning certain solicitude for the trees in Druid Hill Park? A. No, not that I know of, sir.

Q. Did the Chief Engineer's office, in making that recommendation, consider the damage to the trees? A. Very definitely. The trees were located by a survey



party and a road through the park, around the perimeter of the park, was suggested to do as little damage as possible.

Q. When you get out of the park, down Druid Hill Avenue, what was the nature of that neighborhood? A. Nature of the neighborhood?

Q. What was the nature of the territory there? The streets through which Druid Hill Avenue passed, the proposed one-way street.

(Mr. O'Dunne) Is that going south?

(Mr. Houston) Yes. My difficulty is that I don't know the city directions.

A. I would say the character of that development was the same as any other in town, residential and some commercial scattered along the residential.

Q. What about McCulloh Street? A. About the same I would say, maybe a little more residential than Druid Hill Avenue.

Q. Did your committee also take into consideration pedestrian traffic in Druid Hill Avenue and McCulloh Street? A. I think you are asking me questions that are not part of the Department of Public Works.

Q. I am talking about the Chief Engineer's office. A. That is the Department of Public Works. The Chief Engineer is the head of the Department of Public Works, or was the head of the Department of Public Works. The Chief Engineer of the Bureau under the Charter change was made head of the department. So far as the pedestrian traffic is concerned and so far as vehicular traffic is concerned, that is a function of the Traffic Division of the Police Department, and any studies made there were made by the Police Department.

Q. Do I understand, then, the only thing your department considered was the question of damage to the

trees? A. No, damage to any other property. We did not take into consideration traffic.

Q. Or safety? A. That is the work of the Police Department.

Q. Just answer my question. Did the Chief Engineer's office, in connection with the proposed designation of these streets as one-way streets, in connection with this dual highway through Druid Hill Park, take into consideration any other factors except the damage to the trees in Druid Hill Park?

(The Court) He answered that, didn't he? I thought he answered that by saying any other property damage. Isn't that right?

(The Witness) Yes, sir, I did.

Q. If you did not consider traffic, what was your concern about making these one-way streets? A. You asked me a specific question about pedestrian traffic. No, we did not make pedestrian traffic counts. We took into consideration traffic, which is one of the functions of the Department of Public Works in conjunction with the Police Department and Plan Commission, to solve traffic generally, but when it comes to making specific traffic counts, whether pedestrian or vehicular, our department does not do that.

Q. I am not asking you about specific traffic counts. Do you consider pedestrian traffic as part of the total traffic? A. Certainly.

Q. Did you consider pedestrian traffic as a part of the total picture? A. Yes, sir. When we decided on the plan to make Druid Hill Avenue one-way we considered it the same as we considered pedestrian traffic when it was suggested that Calvert and St. Paul Streets be made one way, and Mulbery or Franklin.

Q. Part of the reason for designation of streets as one-way expressways is to increase the flow of vehicular

traffic on the streets, is it not? A. Also to make it safe for pedestrian traffic to cross it.

Q. Will you tell us, then, what was the character of the pedestrian traffic, particularly as to school children, crossing Druid Hill Avenue and McCulloh Street? A. What do you mean by character?

Q. What are the hazards? A. I don't understand the question.

Q. You have stated that pedestrian traffic was part of the total traffic picture which you considered. Would you also say that the question of school children crossing streets going to and coming back from school was part of the pedestrian traffic picture? A. Yes.

Q. Will you, then, tell us what was the condition of the school children, hazards to school children crossing back and forth over Druid Hill Avenue and McCulloh Street at the time that you proposed, your office proposed the designation of McCulloh Street and Druid Hill Avenue as one-way streets? A. I would say it was extremely hazardous with two-way operations on the streets.

Q. So that there was an extremely hazardous condition. How many schools were involved in the area? A. I have never counted them.

Q. There was no study of the schools and there was never a study of the school children, was there?

(Mr. O'Dunne) I am going to object to any further questions along this line on the ground they are not calculated to prove fraud.

(The Court) I don't know what it will lead to, but I will take it subject to exception and you can move to strike it out afterward.

A. The Planning Commission made those particular studies. I don't think, though, the Planning Commission studied the problem of how many schools were along the streets, how many churches along the streets.

Q. Did you have that before you when you made the suggestion? A. Yes.

Q. Do you have it now? A. No, it is in the records of the Planning Commission, not in the records of the Public Works office.

(Mr. O'Dunne) May my objection go to each of these questions?

(The Court) I will give you a general exception to this line of inquiry.

Q. When was the dual highway through Druid Hill Park completed?

(The Court) Don't you want, while you are on that point, to ask him anything about the results? What part those studies played in the final decision?

(Mr. Houston) Yes, I will ask him that.

Q. When did you receive those studies from the City Planning Commission prior to your proposal of this dual highway and also the designation of McCulloh Street and Druid Hill Avenue as one-way express highways? A. If I remember it correctly, it was during the period between the report of Mr. Smith and the actual introduction of the Ordinance into the Council.

Q. So that Mr. Smith made his proposal prior to receiving a report of the City Planning Commission? A. Yes.

Q. Tell us when the proposed dual highway through Druid Hill Park or the edge of Druid Hill Park was completed? A. In January, 1948.

Q. When was this work on it begun? A. The contract for grading was advertised on May 17th, 1947, it was awarded on June 5th, and work started shortly after that.

Q. And it was completed in January? A. January, 1948.

Q. The whole value of this proposed dual highway was dependent upon the designation of Druid Hill Avenue and McCulloh Street as one-way streets? A. Yes, sir.

Q. So that unless McCulloh Street and Druid Hill Avenue were designated as one-way streets, the cost and trouble and damage to the city's park, Druid Hill park, for building that dual highway was wasted; is that correct? A. I would not say that, no. I mean it had a value. It could have been used as a branch of a dual highway north of Cloverdale Road.

(The Court) North of where?

(The Witness) North of Cloverdale Road. I believe it is just below the south perimeter of the park.

Q. So far as southern outlets are concerned, the immediate purpose was to take care of the traffic at Druid Hill Avenue and McCulloh Street? A. That is right, but it could still be used. If there was no one-way operation on Druid Hill Avenue and McCulloh Street the roads through the park could be used as two way highways because they carry the same traffic as Druid Hill and McCulloh do south of the park.

Q. But they were constructed for the purpose of taking the traffic off Druid Hill Avenue and McCulloh Street? A. Yes.

(The Court) Hasn't that dual highway been blocked off ever since it has been completed?

(The Witness) It has been blocked off at Fulton Avenue by reason of the traffic coming up. If you made them both two ways and divided them by a center line, we would be all right; but pending the decision of this case we had to block Fulton Avenue, with the resultant confusion of traffic at Fulton Avenue, and the new highway.

Q. And the funds for that came from the reconversion fund of the street car company, did it not? A. I believe so, yes.

(Mr. Houston) Your witness.

## CROSS-EXAMINATION

By Mr. O'Dunne:

Q. Mr. Carter, the Judge just asked a question whether a certain segment of this new improvement has been blocked off. You said yes, it had. Can you tell us why it was blocked off? A. Awaiting the outcome of this particular case. It would be a hazardous thing otherwise. We are carrying the traffic down Auchentoroly terrace southbound, and to put it into effect northbound, it would have been hazardous, and for that reason the traffic has been diverted into McCulloh Street.

Q. In other words, it has been blocked off to prevent an increase in safety hazards? A. Yes, that is right.

Q. You, being in the engineering department of the city, are familiar with the way a project of this character is eventually placed before the City Council. What is the practice of your department with respect to approval or disapproval of a project of this character in presenting it to the City Council? In other words, do you approve the project first? A. There are two phases to this. The phase involving the road through the park does not require legislative action or action by the City Council. That particular phase is administrative. Funds were available from the Transit Company money. The park, of course, is park property and required the approval first of the Plan Commission, and second, approval of the Board of Park Commissioners before your actual paving or construction of a new highway could get started. When it came to McCulloh Street and Druid Hill Avenue as a designation of one-way streets by ordinance, the usual procedure on that is to have the Police Department, the Department of Public Works and the Plan Commission collaborate in the ordinance, and the ordinance introduced in the council and followed through from there. The council refers it back to the Board of Estimates, back to Public Works, and back to the Plan Commission for recommendation, and that same thing is gone through

again before the Mayor signs it. So that there are recommendations made by the official agencies before the Ordinance becomes law.

Q. Prior to the time the ordinance is submitted to the Council, the various departments of the City examine it? A. Police Department, Department of Public Works, and the Plan Commission.

Q. It has been alleged by the complainants in this case that City machinery was secretly put to work on this project. Do you know anything about City machinery secretly put to work on this project? A. I certainly do not. The project, so far as a project was concerned, received wide newspaper publicity. I think I have some or at least one newspaper clipping in the file here.

Q. Mr. Carter, I hand you a paper which you have just handed me, and ask you if you can tell the Court what it is? A. It is briefly a map of the western edge of Druid Hill Park, which shows the proposed highway along that perimeter of the park connecting with McCulloh and with Druid Hill Avenue and showing existing routes through the park, showing how much more directly the proposed plan is.

Q. In the form in which you have this map, where did it originally appear? A. In The Morning Sun of September 30th, 1946.

Q. Of Baltimore City? A. Yes.

(Mr. O'Dunne) I would like to offer it as defendant's exhibit 1.

(Clipping referred to offered and received in evidence as Defendant's Exhibit 1.)

Q. As far as you know, was there any attempt to keep this project secret by any city department? A. None whatsoever. In fact, the day it was brought up to the plan Commission the press was present and carried a

story that very afternoon. Unfortunately, I don't have the clippings.

Q. From the time of Mr. Smith's first report in 1945, was there any effort, as far as you know, of any city officials to keep it a secret? A. None that I know of.

Q. As far as Druid Hill Avenue and McCulloh Street are concerned, they carry some traffic now? A. I am hardly a witness qualified to discuss the traffic count on those streets. We have people in court who are more qualified than I, but from personal observation I do know that McCulloh Street carries a good deal more traffic than Druid Hill Avenue on a two-way basis.

Q. Do you know the source of the traffic that now uses McCulloh Street and Druid Hill Avenue? A. I assume it originates in the northwesterly section of the city, either west of Pennsylvania Avenue and north and south of Gwynns Falls Park, right around to the north and even as far around as Green Spring Avenue.

(The Court) A lot of that traffic comes from Mount Royal Avenue and finds its way down St. Paul Street, doesn't it?

(The Witness) A good bit of it, yes, sir. That was one of the considerations in proposing our scheme for that northwest traffic as well as down Mount Royal Avenue, and it crosses at right angles with the extremely heavy north-south flow on Charles, St. Paul and Calvert, and this scheme was designed to remove or alleviate that traffic and make it practical for those people to go directly down town.

(The Court) The completion of Charles and Cathedral Streets as one-way streets would do more than anything else to remove that, wouldn't it?

(The Witness) That still would not remove that cross conflict crossing on Mount Royal Avenue with your north-south crossing traffic.



(The Court) What is holding up the Cathedral Street project?

(The Witness) The Transit Company conversion program. We have practically reached an agreement on their conversion project so that in the early spring we will be able to go ahead with that.

(The Court) That has been negotiated about two years, hasn't it?

(The Witness) That was all included in this Riders Digest, the proposed reconversion of the Transit Company, but the stumbling block occurred on the paving of Kelly Avenue in Mount Washington, which amounted to too many dollars for the city to economically appropriate so we had to agree on a scheme to take fixed wheel traffic out of Mount Washington to bus service.

(The Court) Has that ever been done?

(The Witness) We have almost reached a conclusion on that; not quite.

Q. I hand you a paper and ask you if you can identify that? A. That is a map prepared by the Bureau of Surveys at our request.

Q. Does this show the location of this proposed project? A. It shows the proposed one-way operation on McCulloh Street and Druid Hill Avenue and also shows the existing highway around the perimeter of the park.

(Mr. O'Dunne) I would like to offer this at this time and have it marked Defendant's Exhibit 2.

(Paper referred to offered and received in evidence as Defendant's Exhibit 2.)

Q. Were there any other choices of streets that could be used besides the ones selected, that is to say, McCulloh Street and Druid Hill Avenue? A. The only other choice was Madison Avenue as compared to Druid Hill Avenue, and that is further to the east than your Druid

Hill Avenue, and it would have meant, when you connected it with the park, it would disturb more of the park area.

Q. From an engineering point of view, would Madison Avenue have been as satisfactory as Druid Hill Avenue and McCulloh Street? A. Not quite for the reason you would have done more damage to the park and at the other end you would have more of a problem at your southern terminus of Druid Hill Avenue.

Q. More of a traffic congestion at the southern terminus of Madison Avenue? A. Yes.

Q. Would the use of Madison Avenue have had any effect on the non-automobile traveling public? A. I cannot see where it would have any more effect one way or the other.

Q. Would it have been feasible to have used Madison Avenue if the street car tracks had continued to use Madison Avenue? A. No. You could not possibly operate fixed wheel traffic two ways on a one-way street.

(Mr. O'Dunne) Your Honor, in order that the record may be fairly clear, I wonder if it would not be well, with the Court's permission, to mark it north, south east and west.

(The Court) I think that is a good idea. Suppose you mark it right now.

Q. I am pointing to immediately above two sets of lines, two of them diagonal and two of them straight, and immediately underneath is the other end of the map south, then facing the map I have north and on top of the part to the left is west and to the right is east. I will ask you to explain that map to the court? A. Generally the map is to show we are trying to establish one-way streets radiating from the congested business center in all directions if the street pattern so permits. Back in 1934, after negotiations with the Transit Company, street car tracks were removed from Franklin

Street and from Mulberry. That was the first one way street operation from a thoroughfare standpoint, in order to expedite the movement of traffic, and it proved, I think, very successful because traffic has moved a little freer from the western edge of the city into the business district. The final way of solving the traffic problem is by the construction of expressways or freeways with grade crossings. We had \$10,000,000 appropriated for that purpose, but we have not up to the present time been able to get the City Council to construct any freeway construction farther north than the Russell Street bridge and Kent Street in Westport. So we have to take advantage of what we have and that is two streets that are parallel with approximately the same curb width and designate them as one-way traffic, for one-way traffic. The second set of one-way traffic streets was the instigation of one-way traffic on Calvert and St. Paul Streets, which I think has expedited the movement of traffic from the central business district to the north.

(Mr. O'Dunne) Is it clear where those streets are on the map, your Honor?

(The Court) Yes. I can see they are designated by the heavy lines.

(The Witness) The next set we tried was the McCulloh Street and Druid Hill Avenue set and that ordinance is, of course, under consideration now. If that is passed we will probably consider the one-way operation on Orleans and Jefferson Streets east and connecting with the freeway from the southwest on Ridgely and Russell Streets, as you see designated by the dotted lines on the south end of the map.

Q. Actually that is St. Paul and Calvert Streets running directly north and south. A. North and south.

Q. And the dotted lines next to those— A. Are more or less for Cathedral and Charles Streets one-way designation.

Q. And to the left of that, in the northwest quadrant—  
A. The McCulloh Street-Druid Hill.

(Mr. O'Dunne) All right, sir.

### REDIRECT EXAMINATION

By Mr. Houston:

Q. You said that this dual highway has now been blocked off awaiting the outcome of this case; is that correct? A. Yes.

Q. And the reason it is blocked off is because as traffic now moves on Druid Hill Avenue and McCulloh Street there is such a hazard that it is dangerous to let that traffic flow into those dual highways, isn't it? A. As you have two way traffic on Druid Hill Avenue from Cloverdale north to Fulton Avenue, it would be hazardous to turn one-way traffic coming down Auchentoroly Terrace to conflict head on at that point.

Q. It is then true, isn't it, unless these one-way streets are designated as one-way streets, that the dual highway is useless? A. No, because you could make two way operation on the street above.

Q. What street would that be? A. Auchentoroly Terrace.

Q. How would that carry traffic? A. It would carry northbound the same as Druid Hill Avenue now carries it.

Q. Why is it you have not now designated Auchentoroly Terrace as a two-way street and given the city the benefit of this dual highway at the present time.

(Mr. O'Dunne) That is a conclusion.

(Mr. Houston) I asked him why.

(The Court) I will overrule your objection. I think they are entitled to know that. As a matter of fact, I

wondered myself why it has been blocked off so long if there is anyway it can be used in a practical manner.

A. From an expense standpoint, it would mean revising all the traffic signals along the line, and if we had one way operation it would mean changing the traffic signals back. Traffic is moving right now without any hazard, it moves every morning and it moves every evening, until this case is decided.

Q. But it is moving now with the highway blocked, isn't it? A. Yes, but you still have not overcome the objections or overcome the thing we designed this thing for, to eliminate the conflict between east-west traffic on Mount Royal Avenue with the conflict of north-south traffic.

Q. Then the whole conception of this dual highway was that Druid Hill Avenue and McCulloh Street would be one-way expressways? A. Not expressways, one-way streets; not expressways.

Q. Was there a hearing on this matter before the Police and Jail Committee of the City Council on February 17th and at which you testified?

(Mr. O'Dunne) I object as improper redirect.

(The Court) I think it is not proper redirect. I think Mr. Houston should confine himself to whatever the cross-examination was.

(Mr. Houston) All right, I will be very happy to.

Q. You testified that Madison Avenue would not be as satisfactory as Druid Hill Avenue for the reason that there would be more damage to the park? A. That is one reason.

Q. What would it do so far as alleviating hazards to the children crossing the streets on the way to and from school? A. None that I know of.

Q. Well, where are the schools located in that area? A. They are on the map.

Q. Are they east or west of Madison Avenue? A. Most of them are west of Madison Avenue.

Q. So that locating a highway on Madison Avenue would alleviate at least one of the one-way streets that the children would have to cross; isn't that correct? A. No, sir, because there are children living on the other side, so that they would still have to go across the street.

Q. Did you inquire or did you have the benefit of any study which showed— A. The Planning Commission studied all of it.

Q. Just a moment. Did you inquire or have the benefit of any study showing the distribution of these children's homes and the routes they had to take to school? A. No.

Q. As a matter of fact, you did not care what became of the children, did you, in designating these streets? A. We certainly would not have investigated—

Q. Can you answer that yes or no before you make your explanation? A. Yes, we took it into consideration for the reason we located the schools along with the number of students at each school, in that particular area.

Q. How many schools are in that area? A. Four of them, I think.

Q. When did you learn there were four schools in that area? A. From the information of the Planning Commission.

Q. When? A. I wouldn't have an idea.

Q. As a matter of fact, in 1947, February, 1947, you were of the opinion that there were only two schools in that area, weren't you? A. Abutting the street, yes.

Q. And you made that statement? A. Abutting the street.

Q. Didn't you also testify that regardless of the children you had to get this traffic down town? A. That is true, yes.

Q. And you testified to that at the hearing? A. That's right, yes.

Q. What information did you have at the time that you testified and made the statement that regardless of the children you had to get the traffic down town, what information did you have or any other city department concerning it? A. The Planning Commission study.

Q. What was the date of that study? A. I haven't the slightest idea. It was prior to our recommending an ordinance.

Q. You testified about getting the traffic down town, that was the whole purpose of getting this one-way street system is to take traffic off, not encourage traffic, but traffic from one extreme of the city, to bring it down to the time of the study, and vice versa, to take it out?

(Question objected to.)

A. That is the purpose of every one-way street we have.

(Mr. O'Dunne) I would like to object to this on the ground it would be more properly direct examination.

(The Court) I think that is true. I will sustain the objection.

Q. And it was contemplated that there would be further restrictions upon the parking, the use of the neighborhood residents in the parking of their cars and the use of the street?

(Question objected to.)

(The Court) I think that is the same situation, Mr. Houston.

(Mr. Houston) Your Honor will allow me an exception.

(The Court) I will give you an exception.

Q. And you contemplated such a heavy flow of traffic at Druid Hill Avenue that could not—there would be a bottle neck at the end of Druid Hill Avenue, did you not?

(Question objected to.)

(The Court) That might be more pertinent to the question of the selection of Druid Hill Avenue and Madison Avenue and McCulloh. Overrule the objection.

(Question read by the reporter.)

A. There is a bottle neck where any one-way street leads into a two way street and that problem is being given serious consideration now and has been for the past three years.

Q. As a matter of fact, you have moved the outlet down towards Madison Avenue, have you not? A. Towards Madison Avenue?

Q. Yes. A. No.

(The Court) Why let it still remain at Eutaw Street?

(The Witness) Druid Hill Avenue dead ends at Eutaw Street. We are condemning property across the parking lot and plan to connect Druid Hill Avenue with Centre Street at the Greyhound bus station and designate Centre Street one-way eastbound and Monument one-way westbound to hook into Druid Hill Avenue, which would give a perfect flow. That is shown on this map. This would be one-way westbound on Madison, from Cathedral west and running into McCulloh. Druid Hill Avenue would go on down into Eutaw and cut across the lot here right into Centre Street to St. Paul.

Q. But the existing outlet of Druid Hill Avenue would have to be changed? A. That is the problem.



Q. In order to take care of the increased volume of traffic which you anticipated would be brought on Druid Hill Avenue by its designation as a one-way street? A. That is correct.

(The Court) Do you have a copy of the report of the Planning Commission who recommended these changes?

(The Witness) I think they got that from Lang when they took his deposition.

(The Court) You don't have it.

(The Witness) No, sir.

(Testimony of the witness concluded.)

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INSPECTOR BERNARD J. SCHMIDT,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Houston:

Q. You are a police inspector of the Police Department? A. That is right.

Q. And you have been inspector of the Police Department for how long, Mr. Schmidt? A. June, 1948.

Q. Prior to that you were what? A. Captain.

Q. In charge of what? A. Traffic Engineering Bureau.

Q. You have been in charge of that bureau how long?  
A. Since August, 1946.

Q. Did your department make any report to any city officer or any city department or commission prior to 1946 concerning the use of Druid Hill Avenue or McCulloh Street as one-way streets? A. Prior to 1946?

Q. Yes. A. Not to my knowledge.

Q. Was your office called in regarding the conversion of Druid Hill Avenue as a dual highway with Druid Hill Park? A. Not during the planning of it. We were called in after the construction had begun.

Q. The decision had been made when you were first called in to deal with problems of traffic on the proposed highway? A. Yes.

Q. Was your department called in by any City Board concerning the designation of McCulloh Street and Druid Hill Avenue as one-way streets? A. Yes, sir.

Q. What department? A. The Department of Public Works and the City Planning Commission.

Q. When was that? A. I judge that was during the summer or fall of 1947.

Q. And that was after the work had started on the proposed dual highway? A. Just about the time of the beginning of that work or after.

Q. And the purpose of calling you in at that time was to study the flow of traffic on Druid Hill Avenue and McCulloh Street into the dual highway, was it not? A. No. I would say that the purpose of calling us in at that time was to get our opinion on the feasibility of determining whether or not McCulloh Street and Druid Hill Avenue should be designated as one-way thoroughfares.

Q. But that was after the city had been committed to the dual highway and construction had begun? A. I presume so.

Q. That was also in connection with the proposed plan of the Transit Company to change its traffic on Druid Hill Avenue from fixed wheel to free wheel traffic, was it not? A. That was in conjunction with the designation of those two streets as one-way thoroughfares.

Q. Is truck traffic permitted on the dual highway through Druid Hill Park? A. As far as I know, it is generally prohibited through all the city parks. Specifically on that highway, I think yes.

Q. It is prohibited? A. Within the park. That is a Park Board regulation.

Q. It is not prohibited however, on Druid Hill Avenue or McCulloh Street? A. That is correct.

Q. What happens to the truck traffic which goes up or down Druid Hill Avenue and McCulloh Street and which on a normal flow of traffic would be fed into this dual highway? A. What direction?

Q. Let us take it first coming from the city, moving toward the park. What becomes of that traffic? A. Where would they be destined for?

Q. Suppose they were destined for some place that would normally use this proposed dual highway through the park we have been talking about, and let us say that truck traffic is moving up either Druid Hill Avenue or McCulloh Street, and if it were a private automobile, would go into and on that dual highway. The question is, since it is truck traffic, where does it go instead of going on the dual highway?

(Question objected to; objection overruled.)

A. That depends on where it is destined to. Will you make your question more specific?

(The Court) Suppose it were destined for Westminster or Pittsburgh or in that direction, how would it get off of McCulloh Street or Druid Hill Avenue going north. It would go up McCulloh Street, wouldn't it?

(The witness) Yes, sir.

(The Court) How would it get off McCulloh Street?

(The Witness) Say it was destined to Reisterstown Road and was northbound on McCulloh Street, the most

logical route for the truck traffic would be northbound on McCulloh Street to North Avenue, west on North Avenue to Reisterstown Road.

Q. Suppose you were coming down from the northwest section of the city, what would it do, where would it go?  
A. Reisterstown Road.

Q. And you were coming to the downtown section and suppose it were a private pleasure car, private automobile which would use that dual highway, what would the truck use coming from the same point instead of the dual highway?

(Question objected to; objection overruled.)

A. The truck would have a multiple choice of different streets. The most logical route would be southbound on Reisterstown Road to Fulton Avenue, east on Fulton Avenue to Druid Hill Avenue, south on Druid Hill Avenue. As I say, he would have a multiple choice of other streets in that area.

Q. Why is truck traffic barred from Druid Hill Park?  
A. I can't answer that, that is a regulation of the Park Board.

(The Court) It goes back to the horse and buggy days.

Q. You have no connection with the designation of the nature of traffic moving through the park? A. No.

Q. Do you have any connection with the designation of traffic moving in places within the city of Baltimore?  
A. Yes, within the city of Baltimore. With regard to what?

Q. Truck traffic? A. We have no authority to designate truck traffic in the city.

Q. Did you make a study of the hazards to children which would be met in case the Druid Hill Avenue and McCulloh Street were designated as one-way streets?

A. No, no particular study, and I would like to explain that answer, your Honor, if I may.

(The Court) Go right ahead.

A. Because the designation of a one-way street normally reduces the hazards to pedestrians.

Q. You have had actual experience with some of the streets in Baltimore which have been designated as one-way streets? A. Yes, sir.

Q. Isn't it true that the uniform experience in Baltimore has been that the designation of one-way streets has lessened the accidents on the streets? A. In some instances yes and in other instances no.

Q. So that your statement has to be qualified that the designation of the street as a one-way street lessens traffic hazards. A. I said normally. There are other factors to take into consideration.

(The Court) You would have to test that by the number of cars operating on the street, wouldn't you?

(The Witness) Yes, sir, qualify it.

(The Court) If you took the number of cars and divided it in proportion to the accidents, perhaps on St. Paul Street now you might have more accidents than you had two or three years ago; but, on the other hand, maybe your volume on St. Paul Street is three or four times what it was.

(The Witness) Yes, sir. The potentialities are greater with the increase in traffic.

(The Court) You would have to take the percentage increase there on the number of cars.

(The Witness) Yes.

Q. You are not saying, therefore, that the accident count is less on the one-way streets? A. Numerically, no. As I say, it would depend on certain other factors.

Q. What has been the common experience as to the actual count numerically in the number of accidents on the one-way street, has it increased or decreased? A. I think Mr. Murphy has those figures.

Q. Your office made no specific or special study of the hazards to the children you testified, that is correct, is it not? A. No, that is not correct. I don't understand your statement.

Q. When you were called upon to make your recommendations concerning the designation of Druid Hill Avenue and McCulloh Street as one-way streets, you made no study as to the hazards to the school children as the result of the designation of those streets as one-way streets? A. We make studies, but a general study affecting the whole class of people, not particularly school children.

Q. You did, however, make a specific study as to the traffic flow, that is, vehicular traffic flow on those streets, did you not? A. Yes.

Q. As the result of that study, you decided you would have to enlarge the outlet of the traffic on Druid Hill Avenue? A. We decided to assure a more successful plan of one-way operation that there should be an additional outlet provided at the southern end of Druid Hill Avenue.

Q. Where, at Eutaw Street? A. At Eutaw Street.

Q. What has been your experience as to the rate of speed on one-way streets, vehicular speed on one-way streets? Do the big vehicles move faster on one-way streets than on two way streets?

(Question objected to; objection overruled.)

A. I will have to explain this. If you mean the specific rate of speed, that is not increased by the mere designation of a one-way street; but traffic in general is expedited through one-way streets.

Q. Is it expedited by the individual vehicle moving faster, at a higher speed? A. No, I would not say at a higher speed. I would say at a more uniform speed, and utilizing the complete capacity of a particular street.

Q. Is it a fact that the vehicles on the one-way streets in Baltimore move faster, as a general proposition, that the rate of flow of traffic is faster, at a faster speed? A. It is moved more efficiently. Again, I say, not at a specific rate of speed. It is moved more efficiently.

Q. And that means a larger volume of traffic? A. Yes, sir. That is based upon past experience.

Q. And it also means a greater interference with cross traffic, does it not? A. No, sir, not necessarily.

Q. It means, however, limiting cross traffic in favor of the traffic on one-way streets, does it not? A. No, that is not true either. Not over a two-way street. Perhaps I don't understand your question.

Q. The purpose of designating Druid Hill Avenue and McCulloh Street as one-way streets was to take care of the volume of vehicular traffic flowing from the outskirts of downtown to the business center and vice versa, wasn't it? A. That is one of the reasons, yes, sir. To make better use of the existing facilities.

Q. So that you could get a larger volume of that traffic down town in a shorter period of time with less friction? A. That is not true. To get it down town more efficiently. A larger volume, particularly on McCulloh Street, is problematical.

Q. Do you know whether any statement has been made in your department, meaning by that, the Police Department, the official statement has been made in the Police Department that the conversion of the one-way operation would result in a peak hour of volume of traffic by ninety per cent.? A. That may have been made by someone other than myself. I don't think it was made by me.

personally. Perhaps some engineering study was referred to. I would refer that question to Mr. Murphy.

Q. But it would very materially increase the volume of traffic? A. I say that is problematical. I say that because at the present time McCulloh Street is a through boulevard highway. As to what the increase on McCulloh Street would be, I don't know. But I feel certain that there would be an increase on Druid Hill Avenue.

Q. What was the experience on St. Paul and Calvert Streets?

(Question objected to.)

Q. I mean a comparable experience.

(The Court) I will let him answer. Give you an exception.

A. Mr. Murphy has some figures on that, your Honor. Do you want to refer to those figures or do you want my opinion?

Q. I want your opinion. A. In my opinion, there has been an increase.

Q. A very substantial increase? A. In some parts of St. Paul and Calvert Streets.

Q. And there has been a very substantial increase in the speed at which traffic is moved on St. Paul Street and Calvert Street, has there not? A. No, sir.

Q. Do you recommend traffic regulations concerning parking and stopping on streets? A. Yes, sir.

Q. What recommendations have you made concerning parking on Druid Hill Avenue and McCulloh Street, if and when the act goes into operation, as one-way streets? A. Originally we recommended that if and when Druid Hill and McCulloh were designated as one-way streets that the same regulations as are in effect on St. Paul and Calvert Streets be adopted. Briefly, on Druid Hill Avenue that would mean the southbound



street in the morning, there would be no parking, loading or unloading between 7:30 and 10 on both sides of the street. Conversely, on McCulloh Street, the evening rush hour, being a northbound street, the original recommendation was that parking, loading and unloading would be prohibited on both sides between the hours of four and six. Thereafter at the hearing held by the City Council, there was a compromise with the Police Department agreed to, although by no means were we convinced that it was the thing to do, but, nevertheless, we agreed that if and when the streets were inaugurated as one-way thoroughfares, we would limit the parking during the morning and evening rush hours on those streets to only one side of the street.

(The Court) That means you would make that, a three lane proposition instead of four?

(The Witness) Yes, sir.

Q. Did your department address any written communication to the City Council or to the Committee on Jails and Police concerning this ordinance? A. Yes, sir, we did.

Q. Do you have that? A. Yes (handing paper to counsel).

Q. Is this your complete file? A. Yes, sir.

Q. Will you tell us which communication was addressed to the City Council? A. You understand, Mr. Houston, that correspondence within the police department is through the Chief Inspector's office and the Commissioner's office. Starting off with this letter here of December 15th, that was our recommendation to the Chief Inspector that the ordinance be introduced. Thereafter, on February 12th, 1948, proposed Ordinance No. 378, which designated those streets, and which apparently the chief inspector recommended. Thereafter, on March 9th, 1948, the Highways Engineer requested an opinion of the Police Department of the desirability of

passing that ordinance and that was our answer on March 10th, 1948.

(Mr. Houston) I will ask that this be marked as Plaintiffs' Exhibit No. 3.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 3.)

Q. Mr. Schmidt, I will ask you to take Plaintiffs' Exhibit No. 3, and tell us whether or not that recommendation in there does not concern the control of vehicular traffic? A. No, sir.

Q. Will you point out the recommendations which concern control of pedestrian traffic? A. That is a general recommendation, considering both vehicular and pedestrian.

Q. Will you point out there where there is anything which concerns the control of pedestrian traffic? A. It is not necessary to point it out, Mr. Houston, that is part of the general recommendation. It is not the policy to say particular things concerning pedestrians or vehicular traffic.

Q. Will you point out anything in there which concerns the safety, which relates to the safety of pedestrian traffic in your regulations governing recommendations for traffic control on Druid Hill Avenue and McCulloh Street as one-way streets? A. The only way I can answer that, your Honor, is that it was a general recommendation on the part of the department. I cannot point particularly to pedestrian or vehicular.

Q. Do you mean you cannot point to vehicular in those recommendations? A. Yes, I can point to vehicular, but you are talking about safety hazards.

Q. I am asking you is there anything in there in your proposed recommendations concerning control of vehicular traffic which relates to the use of the intersections or

the streets by pedestrians? A. I don't think I understand your question.

(The Court) I think you have to make your question a little more specific. I think I know what his difficulty is, but try to make your question a little more specific for him.

Q. This letter of December 15th, 1947, is report from C.O. Traffic Engineering Bureau to the Chief Inspector, subject Druid Hill Avenue and McCulloh Street as one-way projects. That is true, is it not? A. Yes, sir.

Q. In there you deal with the matter of the flow of traffic, the direction of the flow of traffic? A. Yes.

Q. You also deal with the matter of parking and standing? A. Yes.

Q. You deal with violations of the parking and standing and the flow of traffic movement? A. Yes, sir.

Q. I ask you was there anything in that report which gave consideration to pedestrians, either by way of setting up control intersections or anything else? A. The reason that this report—

Q. Just answer yes or no, first. A. I can't answer that question yes or no.

(The Court) Let him answer it in his own way, so long as it is responsive.

A. This recommendation is in this form because to do the things recommended here requires legislation. Now, conversely, for the safety of pedestrians, which is an integral part of this whole proposal, it is not necessary to have any legislation. Therefore, if I am answering your question, it is worded in this manner because legislation was needed for these particular things.

Q. Do you have a written report in your department which is contemporaneous or preceding that of December 15th, 1947, which deals with the matter of pedestrian

traffic and control of the traffic on the streets to provide safety for pedestrian traffic? A. I think there are some reports on that. Yes. Here is a report dated January 6th, 1948.

Q. May I see that?

(Witness handed paper to counsel.)

(Mr. Houston) May we ask that this be introduced as Plaintiffs' Exhibit No. 4.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 4.)

Q. Mr. Schmidt, during the school sessions the children will be usually crossing intersections on the way to school during the peak of the down town morning traffic movement, wouldn't they? A. That is presently true, Mr. Houston.

Q. It has always been true, hasn't it? A. That's right.

Q. Do you know whether there are any schools in this area which would be affected by the designation of Druid Hill Avenue and McCulloh Street as one-way streets which have afternoon platoon sessions? A. Not with platoon sessions, no, I would not be familiar with that.

Q. Did you make any inquiry in the matter of your study of traffic conditions, pedestrian and traffic hazards, as to whether there were any such schools having afternoon platoon sessions which would let the children out during the time that you would have—during the peak traffic flow up town, away from the city, in the afternoon? A. We did not make any particular studies because the schools in that vicinity now cross McCulloh Street, which is a through boulevard highway, and which carries a very heavy volume of traffic, and we feel, as I have stated previously, that the one-way operation is a safer operation than the two way operation.

Q. The answer, then, is that you made no such study? A. Because of the reason I have just stated.

(Mr. Houston) Your witness.

## CROSS-EXAMINATION

By Mr. O'Dunne:

Q. Mr. Schmidt, when a street is made a one-way street, are traffic regulations governing safety or speed immediately suspended? A. No, sir, they remain in full force and effect.

Q. You referred to the fact that one-way streets decrease certain hazards. Would you explain to the Court the way in which that is brought about by making the street one-way? A. I think Mr. Murphy has some studies on that, but if I may give an illustration—

Q. Just give us an illustration. A. For example, Calvert and Lexington Streets here, Calvert Street is a one-way street southbound and Lexington Street is a one-way street westbound. When the traffic is stopped for southbound on Calvert Street at Lexington, pedestrians may cross Calvert Street without interruption from turning vehicles.

Q. Calvert Street on what side of Lexington? A. On the north side of Lexington. If that were a two-way street you would have conflict with turning vehicles turning into that street. So a pedestrian may cross a one-way street without turning, in other words, without turning interference from vehicular traffic. In addition to that, I might say that is also true of vehicular traffic in that it reduces the possible points of conflict between the various movements of the vehicles.

Q. Do you know the points of origin and destination of the traffic presently using McCulloh Street? A. Not to any degree of certainty. I can estimate it generally. At the present time it is around the section of Liberty Heights, Park Heights, Reisterstown Road and over into Green Spring Valley. That's the origin in the morning, and destined for either West Baltimore or the central business district or other parts of the city.

Q. It is said in the bill of complaint in this case that prior to March 18th, 1948, the vehicular traffic on both McCulloh Street and Druid Hill Avenue was local traffic of persons resident in or visiting the neighborhood. From your experience, can you tell me whether that statement is true or not? A. I don't agree with that statement.

Q. Will you tell us why you don't agree with it? A. Because those streets then and now are used by the origin and destination which I have just quoted.

Q. You mentioned Ordinance No. 378. Is there any relationship between that Ordinance and Ordinance No. 169? A. Yes, Ordinance 378, in so far as I am able to ascertain, was the first number and after that ordinance was enacted into law, it was then given a permanent number and made Ordinance No. 169.

Q. When you limit the parking on only one side of a one-way street as opposed to both sides, what effect will that have on the volume of the traffic using this street? A. It will have the effect of reducing the potential capacity of that street to three lanes instead of four lanes.

(Mr. O'Dunne) That is all.

(Mr. Houston) No further questions.

(The Court) Tell me this, Inspector. What are you going to do with the truck traffic up there in the vicinity of Druid Hill Park? These trucks cannot go through the park, as I understand it, unless you get a special ordinance through.

(The Witness) Yes, sir.

(The Court) Won't they continue to go up to Druid Hill Park and then have to find their way out through some of the side streets or something of the kind?

(The Witness) No, sir. We would post directory signs. For example at North Avenue at McCulloh, which would direct truck traffic across North Avenue. However, that would only be advisory because they would have the

choice of going up to Whitelock Street or they would have the choice of going up to Cloverdale Road and continue back through Francis Street to Reisterstown. It would be advisory only.

### REDIRECT EXAMINATION

By Mr. Houston:

Q. Just one question. There is no limitation on the size of the trucks which would be permitted to use Druid Hill Avenue and McCulloh Street, is there? A. We have no authority as to limitation of size of vehicles on the city streets.

Q. Who has that authority? A. No one at the present time. I may answer that more directly. It would require legislation.

(Testimony of the witness concluded.)

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### CHARLES J. MURPHY,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

### DIRECT EXAMINATION

By Mr. Houston:

Q. Mr. Murphy, what is your position? A. Traffic Engineer of the Baltimore Police Department.

Q. You have been that how long? A. Since March, 1947.

Q. Did you have any official connection or any official reason to make a study of traffic prior to 1947? A. No, I did not.

Q. Do you have any record of the traffic counts on Franklin and Mulberry, St. Paul and Calvert, prior to

the times when they were designated as one-way streets?

A. No, I don't have that information.

Q. Do you have the information concerning Calvert and St. Paul Streets? A. Yes, I have those.

Q. Do you have it written? A. Yes, I do.

Q. Will you let us have those?

(Papers handed to counsel by witness.)

(Mr. O'Dunne) To be consistent, your Honor, I would like to object to this on the ground it is not relevant.

(The Court) Give you an exception.

A. This is the Calvert Street count, this is the St. Paul Street count (indicating).

Q. May I just ask you a question. I see one is marked, apparently it was introduced in the deposition. A. Yes.

Q. Is this the accompanying one? A. That's right.

(Mr. Houston) I ask that these be marked as Plaintiffs' Exhibits 5 and 6.

(Papers referred to were received in evidence and marked Plaintiffs' Exhibit 5 and Plaintiffs' Exhibit 6, respectively.)

Q. Can you translate these two charts into terms of figures for us or in terms of percentages? A. Yes. These two sheets show the before and after volume counts on Calvert and St. Paul Streets on a twenty-four hour basis. Of course, the volumes vary from point to point along each street, and it raises—I will read off some of the volumes at various points before the study. St. Paul Street, south of Fayette, for example, there were 15,818 vehicles over a twenty-four hour period prior to the designation of that street as a one-way street. After designation as a one-way street, there were 16,944. I picked a portion of the street which is not one way inadvertently here. Take Mount Royal Avenue, south of



Mount Royal Avenue, on St. Paul, it was 14,999 before one-way operation and 18,259 after, on a twenty-four hour basis.

(The Court) You are now talking about St. Paul Street.

(The Witness) I am now talking about St. Paul Street; yes, sir.

(The Court) To put it a short way, the increase runs from twenty to fifty per cent. over what it was. In one place it is fifty per cent., isn't it?

(The Witness) In one place.

(The Court) And in another place it runs around twenty per cent.

(The Witness) That is correct. Here we have a one hundred per cent. increase below 29th Street. On Calvert Street the same thing implies, the same interpretation of the data.

Q. And that increase is in the residential area? A. On St. Paul Street there is an increase all along the street.

Q. But it is heaviest in the residential portion? A. That is correct. On St. Paul Street, that is.

Q. I will ask you if you have an accident survey on St. Paul Street before and after? A. Yes, I have. Is it in order for me to make a remark, your Honor?

(The Court) He just asked you if you have the survey. Do you have it?

(The Witness) Yes.

(Mr. Houston) I want to introduce this and have it marked as an exhibit.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 7.)

(Mr. Houston) If your Honor please, I would like to call your Honor's attention particularly to the question

of accidents involving turning movements. I think Mr. Schmidt testified as to that, and the increase is shown as an increase of 221% after designation.

Q. As a traffic engineer, you are concerned with traffic flow, are you not? A. We are concerned with the movement of both vehicles and pedestrians.

Q. You are concerned with the movements of the motor vehicles and you have made a study, have you not, of the use of this proposed dual highway through Druid Hill Park in connection with Druid Hill Avenue and McCulloh Street? A. We have made certain studies of the comprehensive plan.

Q. Was your office called into consultation on the decision to close the dual highway through Druid Hill Park while Druid Hill Avenue and McCulloh Street are being used as two way traffic streets? A. I personally was not consulted about that, to my knowledge. However, Inspector Schmidt, may have been in consultation with the other authorities.

Q. Is it within the duty of your department to estimate anticipated increase in traffic flow in the change of streets from one-way to two ways and two ways to one-way? A. My job primarily, I would say, would be to devise a system of control along those streets to afford the greatest measure of safety to the people using those streets and to expedite the flow of traffic on those streets. The proposed increase, while we recognized there would be an increase, we were not so much concerned with the magnitude of it, but rather whether we could effectively control it.

Q. Was your office called into consultation in making the proposed estimates of additional signals at a cost of \$19,991.14 which appears in the report of January 6th, 1948? A. That is right.

Q. To justify an additional expenditure of approximately \$20,000 for additional signals, you had to anticipate a considerable increase in the volume of vehicular

traffic, did you not? A. Not necessarily. I don't understand what you mean by "considerable increase".

Q. Let me put it this way: What anticipated increase in the volume of vehicular traffic on those two streets justified your recommended expenditure of nearly \$20,000 for new signals.

(Mr. O'Dunne) I object. He did not say it was an increase of traffic to justify it.

(The Court) I understood him to say he anticipated an increase, but the question was not how much the increase was but how effectively they could control it.

(The Witness) That is right, Judge.

(The Court) Your question is whether the increase was sufficient to justify the expenditure of \$20,000.

(Mr. Houston) That is right.

(The Court) I think the question is all right. Overruled. A. The decision was made that the streets were to be proposed as one-way streets. That was to be considered by the City Council and acted upon. We had to assume that the streets that were going to be designated one-way streets and had to plan for the control thereof. After they were so designated, then it was our function to execute that plan. After the streets were made one-way it was necessary for us to locate the signals and signs regardless of the increase on those streets.

Q. What were the conditions, then, which justified an expenditure of \$20,000? What change from a two-way street to a one-way street was there if it was not volume of traffic? A. I can explain that. A one-way street is not inherently better than a two-way street because traffic travels on it only in one direction. But because of effective signal control and proper signing, you can make traffic travel in platoons, which provides gaps in the traffic for cross traffic and also for pedestrians. You cannot get that characteristic of traffic flow unless you

have your traffic signals properly placed along the arteries. If you have it properly signalized, the vehicular cross traffic and pedestrians have an opportunity to cross safely not only at signalized intersections but at unsignalized intersections.

Q. But moving the traffic into compact platoons anticipates an increased volume, isn't that true? A. You get an increased volume because you are using the street more efficiently. You cannot draw the conclusion from that that it is more hazardous or that the street is in use more than it was previously.

Q. Having given us this accident survey of St. Paul Street, showing an increase in the number of accidents after the designation as a one-way street, let me ask you if you have any study which shows a contrary experience where there has been an increase in the flow of traffic over the street after the designation. I say when there has been an increase in the volume of traffic? A. Of course, it isn't simply a matter of so many accidents you have had and the total volume of traffic over a twenty-four hour period. There is a time element in traffic and we are concerned in moving a given number of specified vehicles at a given time, say at evening peak. I can show you accident data on Calvert Street, where we have had a decrease, and indicates we have had a considerable increase in volume during the peak hour.

(The Court) Gentlemen, suppose we go ahead after lunch. Take a recess now until 1:30 p. m.

(Recess from 12:30 p. m. until 1:30 p. m.)

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CHARLES J. MURPHY,

whose examination was suspended for the purpose of taking the noon recess, resumed for

## DIRECT EXAMINATION (Continued)

By Mr. Houston:

Q. Mr. Murphy, as Traffic Engineer, you are concerned with the control of traffic both vehicular and pedestrian?

A. That is correct.

Q. Total traffic on the street? A. That is correct.

Q. Did you make a study of the density of the area, population density of the area? A. No.

Q. Do you know whether the area there is of greater density in population than most other sections of Baltimore? A. I don't know that as the result of studies that we have made for that particular purpose, but I suspect that it is densely populated.

Q. The presence of young children on the street is an element in controlling traffic, is it not? A. It is one of the things that must be considered.

Q. Did you make any study of the recreation areas available in the neighborhood on the question as to the presence of young children on the street after school hours or during vacation time? A. I personally did not.

Q. Do you know whether any such study was made in connection with your recommendations? A. That, of course, is primarily a responsibility of the department of Planning. We made our recommendations as they made theirs.

Q. Did you have such information available to you at the time you made your recommendations January 6th, 1948? A. I don't recall specifically a report we had in hand, but that was one of the things we considered of course.

Q. What is the status of the recreational areas in that particular neighborhood? A. I am not able to recall off-hand the particular layout of recreational facilities in

that area, though I may have been cognizant of that at some later date.

Q. Did you have any conference with principals of schools or other educational authorities as to whether your plan adequately provided for the safety of children? A. To my knowledge, no.

Q. On a one-way street, let us say, going north toward the park and a child is crossing west to east, with a one-way street traffic is much closer to a child moving north on the west curb than it would be on a two-way street, is it not? A. No.

Q. Why? A. Because you have southbound traffic on that street.

Q. I am talking about a one-way street. You have traffic only one way and I am talking about the matter of one-way directional traffic, where the traffic uses the entire street. A. Yes.

Q. And traffic making a lefthand turn off a one-way street into an intersection, let us say going north, and making a lefthand turn to go west, it is much nearer a child on the west side of the street than it would be on a two-way street, isn't it? A. The northbound traffic is closer to the child, but on a two-way street you still have southbound traffic.

(Mr. Houston) That is all.

### CROSS-EXAMINATION

By Mr. O'Dunne:

Q. Mr. Murphy, with respect to one-way streets, have you in your experience as a traffic engineer, acquainted yourself with the experience that other cities have had with respect to one-way streets, in so far as traffic loads are concerned? A. Yes, I have.

Q. Will you tell the Court what the experience in some cities has been with one-way streets? A. In many cities

they have had one-way streets for years. Philadelphia is one, Buffalo another, Detroit is another. In each case they found where they got an increase in the general volume of traffic, as much as ninety to one hundred per cent. during certain periods of day almost without exception they got a decrease of accidents of almost fifty per cent.

(The Court) you mean with reference to the number of vehicles using the street?

(The Witness) That is the absolute number for the accidents. If you put in an exposure factor, of course it looks much better. But this is on the basis of purely the number of accidents.

(The Court) How do you account for the fact that one-way traffic streets like St. Paul and Calvert Streets show an increase?

(The Witness) There are a number of reasons. Of course, in the case of Calvert Street, you have a 17% decrease, and if you consider Calvert and St. Paul as one street in fact, because it acts as a dual highway, so you can consider it as one artery, the pair of them together, and if you summarize the accidents on those two streets you have practically no change in the accident rate. Of course, you can ask why we don't have a pronounced decrease, and I think that can be attributed to a number of things. In the first place, the sample we are considering actually is comparatively small, it is only a one year sample, and these other cities have had an opportunity to arrive at an average rate, they have had the initial period during which you have many accidents over with, and they got settled down. Then, too, on St. Paul Street, you are operating under the handicap of abnormal times. Everyone has been attracted to St. Paul Street and it is carrying more than it should. That is one reason why we are anxious to get Druid Hill and McCulloh Street. So you have an abnormal load on St. Paul Street; and, further, on St. Paul Street, you have

some grade conditions that cause accidents. You have the heavy grade below Monument Street and you have a bad grade at Chase.

(The Court) It would seem to me you get excessive volume of traffic on Calvert and St. Paul Streets, you would get a far better result on two parallel streets, Maryland Avenue and Cathedral, than you would get by going up McCulloh and making a one-way street out of that.

(The Witness) Of course, there was a very comprehensive study made, the Maryland transportation study, which showed the origin and destination and relationships within the city, where people start from and where they want to go. On the basis of that information and the theoretical capacity of the street surveys available, it was determined not only do we need McCulloh and Druid Hill Avenue to take care of the northwest flow, but we need both Charles, St. Paul and Calvert and Cathedral to make it flow north. Then after we get those streets, there is still going to be traffic congestion because of the time element. Everybody seems to want to get home by five or five-fifteen and we try to relieve the congestion and hazards that exist.

(The Court) There is no statute pending, so far as you know, against Maryland Avenue and Charles Street, is there?

(The Witness) No, there is not, but there are many agencies involved there. For instance, the police department could very well hold up the conversion of this street until we put in the signals and the signs. That isn't the case, but it could be.

(The Court) What is the case?

(The Witness) My understanding is that the 25 line must be converted to free wheel operation or at least rerouted to Maryland Avenue above Chase Street.



(The Court) Don't you have to reroute some traffic on Druid Hill Avenue to run street cars going up Druid Hill Avenue?

(The Witness) No, sir.

(The Court) They have been taken off?

(The Witness) They have been taken off.

(The Court) How is it they could get those off and could not get the 25 line off?

(The Witness) Your Honor, I can't answer that question. That is a matter of the timing of the execution of these plans.

Q. (By Mr. O'Dunne) Actually Druid Hill Avenue and McCulloh Street are designed to take care of traffic destined to different sections than the traffic customarily using Calvert and St. Paul Streets, are they not? A. They should use St. Paul and Calvert. The point is that some of this traffic that originated in the northwest section now goes down Druid Hill Park to Mount Royal and goes across Mount Royal, then feeds south on either Cathedral, Charles or Fallsway. That creates a bottleneck at North Avenue, on your north and southbound streets because you are controlled by traffic signals and you must divide the green time of those intersections to take care of both the north-south flow and the cross flow. Right now we have congestion on St. Paul Street because we cannot open up the signal system. If you could divert the traffic that now goes across there, if you could bring that down Druid Hill Avenue and McCulloh and let those streets serve the areas between the two served by the northwest area to the down town area, then you could relieve North Avenue and give more time to St. Paul and Cathedral Streets, when they are converted, then you will begin to have some sort of a traffic plan that may function properly.

(The Court) The reason I ask these questions is this: Wasn't the first street plan in Baltimore that was in-

volved for one-way streets what they called the number 5 plan? Wasn't that the number 5 plan of the Baltimore Transit Company which involved the removal of street cars off Charles Street and Maryland Avenue and off Calvert Street? Wasn't that the first bit of planning that was done except possibly for the Franklin Street-Mulberry Street one-way thoroughfares?

(The Witness) Of course, I hesitate to answer your question—

(The Court) Was that before your time here?

(The Witness) That was before my time. I think Mr. Holland has all of that in connection with the history of the cases.

Q. Did you make a study, Mr. Murphy, with respect to the number of accidents on Calvert Street before it was made one-way and after it was made one-way? A. Yes, I did.

Q. Did you give such a study to Mr. Houston, the results of such a study? A. I did.

Q. At any time? A. Yes.

(The Court) We have a diagram in evidence that shows that, I thought.

(Mr. O'Dunne) That is what I was looking for.

(The Witness) That is the only one I gave to anyone today, Mr. O'Dunne.

Q. Do you have one now that shows the number of accidents occurring on Calvert Street before it was made one-way as compared with the number after it was made one-way? A. Yes, I have.

Q. I hand you a paper which you have just handed me, and ask you if you can identify this? A. This is a tabulation of the accident experience on Calvert Street before and after the conversion to one-way operation.

(Mr. O'Dunne) I would like at this point to offer this document in evidence that the witness just identified and ask that it be marked Defendant's Exhibit 3.

(Paper referred to offered and received in evidence as Defendant's Exhibit 3.)

Q. At the present time is McCulloh Street carrying its full capacity of traffic flow? A. I would say that it is. We made certain volume counts on McCulloh Street and Druid Hill Avenue both and the results of those studies caused us great concern not only for the hazards that existed there to vehicular traffic but also to school children. For example, between Robert Street and Presstman Street on McCulloh Street there is a peak of traffic flow, peak hour flow of 903 vehicles. That occurred in the morning between the hours of 8 a. m. and 9 a. m. That is just the southbound flow. If we were to consider that volume of vehicles in relation to the street capacity, which we did, we had to assume that some of those cars were traveling on the wrong side of the street because a two-way street just won't carry 450 cars per lane, particularly when you have parking conditions that now exist on McCulloh Street. That means that some of these cars are traveling over the center line which is extremely hazardous not only to cars traveling in the opposite direction but to pedestrians also. In addition to that, of course, you had 227 vehicles during that same period traveling northbound. Our concern was with the pedestrian traffic and was simply this. On a two-way street you have practically a constant stream of traffic when you have volumes of that magnitude. There is no gap in traffic because you have the southbound stream traveling down McCulloh Street, you have the northbound stream traveling up McCulloh Street, and there is just no break. When that street is converted to one-way operation the vehicles will be bunched into platoons and there will be a definite break between platoons of traffic as they proceed up McCulloh Street.

Q. Based on those figures, how would the safety conditions of McCulloh Street at present compare with those you expect to find on McCulloh Street when McCulloh Street is made a one-way street, according to the provisions of the ordinance we are considering here? A. We feel very definitely that a one-way street is not only a better system because it expedites vehicular traffic, but also, and equally important, because it gives the pedestrian a break. As Inspector Schmidt stated, a pedestrian can cross Calvert Street on the north side of Lexington without any conflict as long as the vehicles and he obey the traffic signal. If you try to cross at Howard and Lexington, you want to get from the east side of Howard to the west side, you have righthand turns interrupting the pedestrian street and creating a hazard. Even at the unsignalized intersections on a one-way street, you have a definite break in traffic. In the first place, you only have to look in one direction. In the second place, of course, there is a definite gap for pedestrians to get across. We feel if and when that street is converted to one-way operation, both from a vehicular and pedestrian standpoint it will be a safer operation.

Q. Can you tell us anything with respect to what is contemplated in the way of traffic controls and safety devices on Druid Hill Avenue and McCulloh Street? A. Yes. Of course, the policy of the police department is to assign a traffic officer to all school crossings, in so far as the number of men they have available permits them to do so; at primary crossings there is usually an officer. In addition to that, new signals are proposed because they have to be prepared and considerable preliminary work done to install traffic signals at various locations along those streets.

Q. Have you any chart showing the contemplated installation of those signals? A. Yes, I have.

Q. The paper which you have just handed me I will hand back to you and ask you if you can identify it? A.

This is a layout of the existing and proposed signal layout for Druid Hill Avenue and McCulloh Street between Whitelock Street and Eutaw Street.

Q. It is a legend sheet showing which are existing and which are proposed? A. The proposed are shown in green and the existing in red.

(Mr. Houston) When was this made?

(The Witness) That particular plat was just drawn up recently from a rough copy we had in the office.

(Mr. Houston) Was this made since your deposition was taken?

(The Witness) That particular layout was, yes.

(Mr. O'Dunne) I would like to offer this in evidence.

(Paper referred to offered and received in evidence as Defendant's Exhibit 4.)

(The Court) I notice a good many, seven signals on Druid Hill Avenue.

(The Witness) Yes, your Honor.

(The Court) And those signals cost about \$2,000 apiece, don't they, something like that?

(The Witness) Roughly.

(The Court) Have you ever given any consideration to the system like they use in New York City, for instance, where you stop on a signal at an intersection?

(The Witness) Yes, sir. We have observed that many times.

(The Court) Would there be any reason why that could not be used on a street like this?

(The Witness) We don't feel that system is as efficient as the one we propose to use there and as the one we now have in operation on our one-way streets.

(The Court) When you get a progressive flow of traffic, you move the traffic along at a continuous rate.

(The Witness) Yes, sir, continuously. The new York system is the result—the signal installation was put in about thirty years ago, whereby each signal is not controlled by a separate control but remotely and they all go green at the same time. You have to stop at the nearest intersection to let cross traffic through.

(The Court) They certainly save a good many signals that way, don't they?

(The Witness) Of course, all they save there is the cost of control, which is about ten per cent. less than the cost of installation, but still they have to be installed, that being a good part of the expense. We feel ten per cent. of the cost of installation is a pretty good investment, on Calvert Street, for example, to be able to travel thirty-six blocks without stopping. You cannot do that in New York.

(The Court) I can understand why you need so many signals on the one-way streets because what you want to do is not to keep the traffic starting and stopping, you want to keep it continuously moving, don't you?

(The Witness) Yes, sir; and still provide gaps for pedestrians and cross traffic.

(The Court) This probably is not the time to ask some things that are in my mind. One of them is, why is it necessary to stop four or five times say going up Howard Street to Biddle Street?

(The Witness) Because Howard Street being a two-way street, has all the evils of the two-way streets. You have a lefthand turn at Franklin Street, for example. Then you get somebody tying up the traffic in the inside lane, and you have a traffic operation in the outer lane, loading and unloading, the street is blocked. On the one-way street you always have one-way to open lanes and

there is no conflict with a left turn vehicle, which is a tremendous advantages.

Q. (By Mr. O'Dunne) Are trucks presently barred from using Druid Hill Park? A. Yes, commercial vehicles.

### REDIRECT EXAMINATION

By Mr. Houston:

Q. Mr. Murphy, you testified about experience on one-way streets in other cities, are you testifying on the basis of personal observation? A. No.

Q. On what are you basing your testimony? A. On information that has been published in technical journals which have been properly documented to my knowledge.

Q. Give me the names of some of those articles. A. The Traffic Engineering Hand Book.

Q. Which issue? A. I don't have that. I cannot quote it exactly, I can supply the necessary documentary evidence, if you desire.

Q. When, approximately, was that study published? A. I can get you all of those details but I don't have them now.

Q. How recent is your information? A. I can make a guess, but I am not going to try because I want to give you the exact information. If you want the exact information, I will bring in the original source.

Q. What particular cities do they apply to? A. Philadelphia.

Q. Give us the source of your information concerning Buffalo? A. The reference I am making was to a table in a particular section, or the two references I have in mind, in which the experience of various cities was stated and the actual count given.

Q. What was the other reference you gave us, another reference? A. I think it is called "Traffic Engineering Plans and Functions."

Q. What is the date of that? A. I don't remember the date exactly. That is a recent publication. I can't give the exact date.

Q. Do you know anything about the question of traffic controls in those cities before and after designation of their one-way streets? A. The practice is in Philadelphia, I know through observation, to signalize their one-way streets.

Q. No. My question is, in reaching this question about the accident experience, can you tell us what were the traffic controls exercised on a particular street on which the accident experience was taken before and after the designation of one-way streets? A. No, I cannot give you a detailed report on that.

Q. So there may be many factors entering into the result which you have not accounted for? A. That is quite true.

Q. In this matter of the decrease of accidents on Calvert Street, there has not been a significant increase of traffic volume on Calvert Street since its designation as one-way streets, has there? A. There has been a significant increase in the volume rate during certain hours. For example, on Calvert Street during the peak hour that is, from eight a. m., to nine a. m., below Preston Street, the before volume was 1188 and the after volume was 2144.

Q. Can you tell me where that appears or what you are reading from? A. This is before and after volume study at the peak hour. It was taken from the same basic data from which they appear, but it has another derivation.

(The Court) The other one is a twenty-four hour period.



(The Witness) That is right.

Q. You mean there is a breakdown there? A. Of the peak hour.

Q. Can you tell me whether you have the accident rate for the peak hours? A. The accident rate for the peak hours?

Q. Yes. A. No, I don't have that break down.

Q. You cannot really make any generalization unless you give us the accident rate for the peak hour. You made a statement that the accident rate on Calvert Street had decreased? A. That is not a generalization.

Q. You say that is a fact? A. Yes, sir.

Q. Then I asked you whether there has been any increase in the volume of traffic on Calvert Street and you said yes, during the peak hours. A. I qualified that. I said there had been an increase in the volume rate.

Q. In the volume rate during the peak hour? A. Yes.

Q. Now, I want to get the accident rate during the peak hour. A. I cannot supply that to you right now.

Q. Can you tell me whether you have put in any more traffic controls on Calvert Street after its designation as a one-way street? A. Yes, there were additional traffic control signals placed on Calvert Street. I cannot give the specific locations offhand.

Q. And there were additional traffic controls placed on St. Paul Street? A. Yes.

Q. And with the increased volume of traffic over a twenty-four hour period on St. Paul Street, even in spite of that you had this increase in accidents on St. Paul, is that correct? A. Yes, there was an increase; but, again, if it is in order, I would like to state the sample we are discussing is limited. I don't know whether you can draw any concrete conclusions from it for that rea-

son. Accident rates vary considerably from year to year without any change in conditions; at an intersection, for example.

Q. You had your deposition taken in connection with this case, did you not? A. Yes, sir, that is right.

Q. And you knew we were concerned with the matter of relating the question of accidents to traffic volume? A. Yes.

Q. And you made a study of the traffic volume on Calvert Street during the peak hour? A. Yes.

Q. But you did not make a study of the accident rate on Calvert Street during the peak hours, did you? A. No.

Q. Would you say, having adverted to your figures as to McCulloh Street, that McCulloh Street as a two-way Street is now carrying all the traffic it could carry as a one-way street? A. No.

Q. So that you do anticipate an increase in the volume of traffic on McCulloh Street over the present volume, when it is designated as a one-way street? A. That does not necessarily follow.

Q. I ask you what you anticipate? A. We anticipate an increase, yes.

Q. You talked about traffic control signals. Are you in the 1948-1949 appropriation year at the present time?

A. We are in the 1948 appropriation year at the present time.

Q. Has the appropriation been exhausted for traffic lights? A. Yes, it has.

Q. So that when you told the Court about the proposed traffic controls you are going to install, you are not talking about something for which funds are now available, are you? A. Funds have already been appropriated and have been expended for signals on Druid

Hill Avenue and McCulloh Street and preliminary work has been done on those controls and no more money is needed to execute the plan presented to the Court.

(The Court) You mean the money is now in hand.

(The Witness) It has already been appropriated, and we have bought the equipment and much of the preliminary work has been done and the plan could be executed in a very short time.

(The Court) How do you do that? Here in the Court House they told us a couple months ago they had no more money.

(The Witness) This was a special appropriation granted by the Board of Estimates shortly after the request was made, and after we got it, we spent it for the necessary equipment and preliminary work, even though the matter was still pending before the Court.

(The Court) Then the equipment is available, is that it?

(The Witness) Yes, sir.

Q. (By Mr. Houston) I ask you whether on October 27th, 1948, you were present when the depositions of Mr. Schmidt were taken? A. Yes.

Q. You were assisting him with such information as he did not have that you had available? A. Yes.

Q. I will ask you if this was the testimony from Mr. Schmidt, supplemented by you—

(Mr. O'Dunne) I object to that unless he shows that Mr. Murphy was asked the same question.

(Mr. Houston) Well, Mr. Schmidt was asked the question and Mr. Murphy answered it.

(Mr. O'Dunne) You told Mr. Schmidt this morning that nothing was said about it.

(The Court) I think there is something reasonable in Mr. O'Dunne's position. I don't think this witness should be asked to answer a question that was asked Inspector Schmidt.

(Mr. Houston) Except that he answered it.

(Mr. O'Dunne) Inspector Schmidt answered it.

(Mr. Houston) No, Mr. Murphy answered it.

(The Court) Then ask him if he said such and such a thing then and says something else now.

Q. You stated, Mr. Murphy, back on October 27th, 1948, did you not, that the appropriation for traffic controls and other things had been exhausted the day preceding? A. That is correct.

Q. And at that time the work for these lights and things had not been completed, had they? A. All of the equipment had been purchased quite a while before that time and much of the work had been done at that time.

Q. What additional work and what additional expenditures would have had to have been incurred since October 26th, 1948, for you to put all of these signals in operation? A. None.

Q. No work at all? A. No.

Q. Well, where are the signals now, on the street or in the warehouse? A. All of the work has been accomplished. We have not hung the signals because we are awaiting the outcome of this case. We did not want to be in the position of anticipating the finding of the Court by going ahead with the plan which is now in question before the Court.

(The Court) Then the equipment is not available, it is on order?

(The Witness) No, we have it.

(The Court) Is that interchangeable? Did you get that for Maryland Avenue and Charles Street?

(The Witness) No, we bought the equipment and held it in reserve in stock.

Q. How long has this rule been in effect there should be a traffic officer on duty at all principal school intersections? A. I cannot answer that question.

Q. You have been a traffic engineer now for how long? A. Since March, 1947. However, I am not associated with the enforcement policies of the Police Department.

Q. But you testified it was a rule to put a traffic officer at all school intersections. A. Where those men are available. It has been my observation when men are available they are assigned to school crossings morning and evening.

Q. Do you know whether any policemen were regularly assigned to school crossings in this particular area before this case started? A. That I do not know. I know nothing about the assignment of officers in specific areas.

(Mr. Houston) That is all.

(The Court) I am not clear on this equipment business. I understood you to say you had the equipment on hand.

(The Witness) Yes, sir.

(The Court) Then I understood you to say you did not want to buy the equipment because you did not want to anticipate the judgment of the Court.

(The Witness) We did not want to install the equipment, your Honor.

(The Court) But you have the equipment available somewhere?

(The Witness) That is correct, it is in the storeroom.

(The Court) It is in the storeroom of the Traffic-Engineering Department?

(The Witness) Yes, sir.

(The Court) Do you have all of it?

(The Witness) We have all that is necessary to execute that plan.

(Testimony of the witness concluded.)

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JOHN J. LANG,

a witness of lawful age, produced on behalf of the plaintiffs, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Houston:

Q. Will you state your official position? A. Deputy Director of Planning.

Q. You have been Deputy Director of Planning how long? A. Since January of 1948.

Q. Prior to that, what was your official position? A. Secretary-Engineer of the Planning Commission.

Q. Did you have any other position besides Secretary? A. I had charge of the operation of the staff.

Q. Were you the senior engineer of the Commission? A. We have no such position in our department. The Secretary-Engineer was the ranking civil service position on the Commission's staff.

Q. I ask you if you testified in your deposition on October 8th, 1948 in this case? A. I don't know the exact date, but we appeared over in the office of the City Solicitor and you were present, along with Mr. O'Dunne, and I testified on that day.

Q. I will ask you whether you recall this question and answer: "Q. Your official position? A. Deputy Director

of the Department of Planning. Q. And you have been that how long? A. I have been Deputy Director since February of this year, but senior engineer of the Commission since 1939." A. I could not have said "senior engineer" because there is no position of senior engineer. I was secretary-engineer of the Commission up to that time.

Q. That was the Planning Commission? A. Yes.

Q. Will you tell us whether the Planning Commission functioned with regard to the designation of the streets, arterial highways or anything like that? A. It is not our responsibility to designate direction of traffic.

Q. Did you study or work on the question of traffic designation? A. Our Commission, in cooperation with other municipal departments, study the highway patterns, and that is part of the general planning scheme to study traffic.

Q. Did you work with anybody else except municipal agencies? Did you work with any other bodies besides municipal agencies, Baltimore Transit Company for instance? A. I don't understand your question.

Q. Let me ask you this. Do you recall this answer in your deposition: "Q. Under the Planning Commission, what was the function of the Planning Commission with regard to the designation of streets, as either one-way expressways, arterial highways, or what? A. Those particular matters would be studied and worked out jointly with the other municipal agencies, the Transit Company, Public Service agencies, and being, we would say, a part of the traffic and highway matters, it would come to our Commission for approval." A. That is correct. I repeat that statement.

Q. I ask you prior to 1946, was there an overall plan for development of traffic in Baltimore City? A. The overall pattern was in the process of being studied.

Q. I will ask you what studies or reports the Planning Commission made concerning the development of traffic in Baltimore City prior to the new city charter, while you were secretary? A. Our Commission itself made no written report on traffic since 1939 or 1940.

Q. Did you adopt any report that had been made concerning the development of one-way streets? A. We conferred and discussed with various agencies, including The Baltimore Transit Company, one-way streets because it was part of the overall traffic and transit improvement program that was launched by The Baltimore Transit Company.

Q. Didn't the Baltimore Transit Company submit to the president or members of the City Council of Baltimore its own plan for the designation of one-way streets, copy of which was given to your Planning Commission? A. You are referring to the Riders Digest?

Q. Yes. A. That plan was discussed with our Planning Commission.

Q. Did your Planning Commission adopt that and approve the report and make it in substance its own report? A. I don't believe our records will show we gave the entire document an outright approval. There were certain changes that would have to be made, there were various phases of this program that would have to be approved by our request of the Mayor and City Council. Our Commission reserved the right to approve the improvement program of the rapid transit and reconversion program and the designation of streets based on the various projects. They have anywhere from one to six or seven projects.

Q. But the designation of McCulloh Street and Druid Hill Avenue as one-way streets, with removal of the fixed wheel traffic to free wheel traffic on Druid Hill Avenue, was a project of the Transit Company? A. Yes. Our Commission concurred in that plan.



(The Court) Where did the plan originate, in your Commission or in the Transit Company?

(The Witness) I would say it originally was brought up in the highway pattern which was developed by the Chief Engineer or the director of Public Works, and the plans were discussed with our Commission and our then Chief Engineer, Mr. Nathan L. Smith made a comprehensive report on traffic arteries and traffic.

(The Court) Are you using the plan that originated with Mr. Nathan Smith?

(The Witness) This particular plan?

(The Court) This particular plan, yes.

(The Witness) I don't know I can make that direct statement. I would have to check our records.

Q. (By Mr. Houston) What comprehensive study of traffic in Baltimore City, showing points of origin and points of destination, was in existence prior to, say, 1946, if any? A. As far as the comprehensive origin and destination studies, the documents that are there that were made by the State Roads Commission jointly with the City of Baltimore, and the Federal Government. That is the only real comprehensive origin and destination survey.

(Mr. Houston) We can examine those after the Court recesses. May we leave these here?

(The Court) You can leave them here during the trial of the case and we will see that you get them back, Mr. Lang.

Q. Did the Planning Commission make any reports as to the state of pedestrian traffic on these streets that were proposed by the Baltimore Transit Company as one-way streets, with removal of fixed wheel traffic to free wheel traffic on Druid Hill Avenue? A. None.

(The Court) Your answer is no?

(The Witness) No, sir.

Q. Did the Planning Commission make a study of the proposal for the dual highway in Druid Hill Park connecting with Druid Hill Avenue and McCulloh Street?

A. Our Commission records show that there were some previous studies made on that project and then the final plan was developed in the Department of Public Works, and our Commission approved that particular plan on September 25th, 1946.

Q. And that was approved after the report of The Baltimore Transit Company regarding the designation of Druid Hill Avenue and McCulloh Streets as one-way streets, with removal of the fixed wheel to the free wheel traffic on Druid Hill Avenue? A. Yes, because their report came out in 1945 and our approval was in September, 1946.

Q. Also the dual highway was constructed with re-conversion funds which were acquired from The Baltimore Transit Company? A. I could not answer that question. That is not a responsibility of our department.

(The Court) That has been testified to earlier in the case.

Q. There has been earlier testimony, Mr. Lang, of the consideration of Maryland Avenue as an alternative to Druid Hill Avenue.

(The Court) Madison Avenue.

(Mr. Houston) I am sorry. There has been testimony of the consideration of Madison Avenue as an alternative to Druid Hill Avenue as one of the one-way streets. Are you familiar with that from your official position with the Planning Commission? A. You say Madison Avenue?

Q. Yes. A. Our department did not discuss Madison Avenue as part of the one-way system.

Q. Your department approved of the dual highway through Druid Hill Park as an integral link with Druid

Hill Avenue and McCulloh Streets as one-way streets?

A. Yes.

Q. So that the decision to make McCulloh Street and Druid Hill Avenue as one-way streets, so far as your department is concerned, had been arrived at by 1946?

A. I can say yes to that question.

Q. The dual highway would have very little use compared to its potentialities unless Druid Hill Avenue and McCulloh Street were designated as one-way streets, would it not? A. That would make it more efficient for a dual highway, yes.

Q. Much more efficient? A. Yes.

Q. And it would carry a much larger volume of traffic into and out of the dual highway? A. I don't know what percentage of increase but it will separate the traffic. In other words, you have a total volume moving in two directions on the two-way street. That same volume will be divided up and will be a safer movement in the one-way direction.

Q. At the present time it is testified that because of traffic hazards, this dual highway has been closed off at Druid Hill Avenue and McCulloh Street? Are you familiar with that fact? A. Right there by the car barn, do you mean Cloverdale Road?

Q. Yes. A. You mean the cutoff from the car barn through the park there is a link where you make a left turn?

Q. Yes. That has been blocked off?

(Mr. O'Dunne) I don't think he understands the question.

Q. Are you familiar with the fact that that has been blocked off? A. If you make it clear to me exactly what locations you are talking about being blocked off, I travel through there and I can see the street that is blocked off.

(The Court) He is talking about the section from Cloverdale Road up to Fulton Avenue and Druid Hill Avenue.

(The Witness) I have not been through for the past two weeks, your Honor, and I am not familiar with whether the street is blocked or not.

Q. Mr. Lang, as secretary of the Planning Commission, did you consider the density of population through which these one-way streets, McCulloh Street and Druid Hill Avenue, would move? A. Our Commission, in studying a street pattern, would take that particular subject into consideration.

Q. Well, did you? A. The Commission, knowing and being so familiar with the area of the city, I would not know whether the Commission themselves when they discussed it, took the density of population into consideration. Most of the members of our Commission are very familiar with all sections of the city, and I am pretty sure they knew the characteristics of that particular neighborhood.

Q. Is there anything which would let you say that the Commission did take into consideration the density of the population in that particular area when it considered the question of approving McCulloh Street and Druid Hill Avenue as one-way streets? A. I don't believe the Commission—it probably felt that the population would not have any effect on that particular project. If it had been a serious problem, they probably would have considered it because they consider all angles before they make a recommendation and give approval to such a plan.

Q. You know, as a matter of fact, do you not, that this particular area is the most densely populated in the City of Baltimore? A. I know it is one of the most heavily populated areas; yes, sir.

Q. Did you take into consideration the location of schools in reference to the designation of these two streets as one-way streets? A. They were cognizant of the factor of the location of the schools and churches.

Q. Will you locate the schools and churches for us in that area? A. From that map or from memory?

Q. Oh, either.

(The Court) If you want to use the map, you are at liberty to do so.

A. Just from memory I would not want to testify at this location there is such and such a school, but we have a map in the office that would indicate the location of schools and churches along that route.

Q. Is there anything in the records of the Commission which would show that the Commission considered the question of the schools and churches in reaching its approval of Druid Hill Avenue and McCulloh Streets as one-way streets?

(Mr. O'Dunne) I object. Wouldn't that be a conclusion of the witness? The records would be the best evidence.

(The Court) He does not seem to know. He is testifying more or less at random I think. I do not like to characterize it that way, but he says he feels sure the Commission took into consideration those, and feels sure that the Commission took into consideration the safety condition with regards to school children, and now that he has gotten that far, counsel is pinning him down a little bit.

(Mr. O'Dunne) He is now asking what is in the records of the Planning Commission. I don't see how that is a fair question. The records would be the best evidence of what is in them, and the witness is being asked to characterize what is in the records and to state his conclusions of what they show.

(The Court) He was asked whether he knew the location of the schools and churches.

(Mr. O'Dunne) He was asked if he knew the location of the schools and churches.

(The Witness) We have maps in the office which show the location of schools and churches.

(The Court) You personally don't know where they are, do you?

(The Witness) I have a general idea. It is ninety-two square miles and I have a general idea of where schools and churches are. I do know there are public schools and churches along those highways. Our use maps will show it.

(The Court) It has not changed much in years and I once lived close by there. I have a pretty good idea.

(The Witness) I think our land maps indicate the uses along those two streets.

Q. Are there minutes of the City Planning Commission which show the action of the City Planning Commission on the extension of Auchentoroly Terrace and on the designation of Druid Hill Avenue and McCulloh Street as one-way streets? A. I have a copy and I believe I gave you a copy of that hearing in October. Here is a copy of excerpts of the Commission minutes of September 25th, approving the Auchentoroly project.

(Mr. Houston) May we have this marked as Plaintiffs' Exhibit 8.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 8.)

(Mr. Houston) Your witness

(Mr. O'Dunne) No questions.

\* \* \* \* \*

(St. Tr. p. 122):

CLARENCE J. ROBERTS,  
2323 Ivy Avenue

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. p. 123):

Q. What school and what position? A. I am principal of School No. 103.

Q. Which is located where? A. Division Street near Lanvale, in the 1300 block Division Street.

Q. What is the enrollment of your school? A. 799.

Q. Of your pupils, can you give us approximately the number who have to cross Druid Hill Avenue or McCulloh Street to get to school?

\* \* \* \* \*

(St. Tr. pp. 123-124):

A. I have 285 children who must cross one or the other of those two intersections, 285.

Q. Do you have experience with McCulloh Street before it was designated an arterial highway? A. When was it designated? I have been at this school since 1947, September, as principal. I have had experience at School 125 in 1938.

Q. May I ask whether this school No. 125 has the same crossing problem that your school No. 103 has? A. It does. It is located at Pennsylvania Avenue and Dolphin Street, so we have children coming from Brevard Street or McCulloh, Madison, Jordan Street, and others.

Q. Are you also acquainted with the flow of traffic on Druid Hill Avenue? A. Yes, very much so.

Q. I will ask you whether the traffic on McCulloh Street flows faster than the traffic on the other streets which are not designated as arterial thoroughfares.

(Mr. O'Dunne) Will you fix the time?

Q. Now. A. As far as human judgment is concerned, I would say yes. It flows faster to my eye.

\* \* \* \* \*

(St. Tr. pp. 125-126):

Q. Will you state which street carries the most traffic in the vicinity of the school? A. Which of the two streets?

Q. Yes. A. McCulloh Street carries the more traffic.

Q. And at a greater speed? A. As far as I can judge, it certainly flows faster. I can make more time down McCulloh Street when I go to work.

\* \* \* \* \*

(St. Tr. p. 126):

Q. Have you had the service of a traffic officer at your crossings for an extended period of time? A. At those two crossings or are you speaking of something else?

Q. Those two streets? A. No, we have not had. I have had to go there or send a teacher or take some other means. We have not had service there.

\* \* \* \* \*

(St. Tr. p. 128):

Q. What are the recreational facilities in the area for the children when they are out of school? A. We have been granted permission to block off the bed of Division Street between Lanvale and Lafayette, but only during school hours. I would say the recreational facilities are limited to a community house.

\* \* \* \* \*

(St. Tr. p. 129):

Q. After school hours, are there any facilities for play in the school yards and any equipment? A. No, there is no equipment. The school yard is not fitted for recreation nor is there proper supervision.



Q. Is there any place except this one community house for the children to play, any other place in the area except in the streets and the alleys? A. They make use of a little space there in the 1200 block of Etting Street, but it is full of glass and dangerous. There, too, they get into trouble with the neighbors.

\* \* \* \* \*

(St. Tr. pp. 129-130):

FRANK J. SORRELL,  
2503 Montebello Terrace

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 130-131):

Q. And your position? A. I am principal of School 137 located on Francis Street facing Clifton Avenue.

Q. And your present enrollment is what, sir? A. 991.

Q. Do you have students who are compelled to cross Druid Hill Avenue and McCulloh Street in order to get to and from your school? A. Yes, in the neighborhood of 250 children.

Q. How long have you been in the area teaching? A. Since February, 1947.

Q. Were you familiar with the area prior to February 1947? A. Yes. At one time I lived in the 2000 block Druid Hill Avenue.

\* \* \* \* \*

(St. Tr. p. 131):

Q. Have you had the service of an officer at the principal intersections which your children have to cross to get to school? A. No.

\* \* \* \* \*

(St. Tr. p. 132):

Q. What about Druid Hill Avenue, is there any traffic officer or policeman directing traffic to facilitate children crossing those streets? A. For twenty years I have never seen one above Lafayette Avenue.

\* \* \* \* \*

(St. Tr. p. 134):

JESSE P. PEAKER,  
421 Cummings Court

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. p. 135):

Q. Are you president of the Parent-Teacher Association of School No. 122? A. Yes.

Q. Will you state where that school is located? A. That school is located on Preston Street, between Pennsylvania Avenue and Druid Hill Avenue.

Q. Do you know the enrollment of that school? A. The enrollment of that school is 1381.

Q. Do you know how many children have to cross Druid Hill Avenue and McCulloh Street in order to get to school? A. 502 children.

Q. How long have you been acquainted with the traffic conditions on McCulloh Street? A. Well, I have lived in the vicinity for the last seven years.

Q. Was McCulloh Street designated as an arterial highway within the last seven years? A. To my knowledge not until recently.

\* \* \* \* \*

(St. Tr. pp. 136-137):

Q. What have you observed as to the experience of children in attempting to cross the street from McCulloh

Street and Druid Hill Avenue on the way to and from school? A. It is a hazard for small children crossing those streets and quite a number of them have to cross both of them. Children crossing Druid Hill Avenue and McCulloh Street from No. 122, particularly at McCulloh Street and Presstman Street.

Q. Has there been a traffic officer stationed there at the times children have been coming to and from schools to assist them in crossing? A. During the last year there has been an officer at McCulloh Street and Preston.

Q. Any place else? A. There is another at Pennsylvania Avenue and Preston that takes care of school 122.

Q. How long has he been there? A. A little longer than the other officer, approximately eighteen months.

Q. Is there any at all at Druid Hill Avenue? A. There is none at all at Druid Hill Avenue.

\* \* \* \* \*

(St. Tr. pp. 137-138):

WILLIAM N. PARROTT,  
1312 West Lanvale Street

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. p. 138):

Q. And your position in the school? A. Principal of School 125, located at Pennsylvania Avenue and Dolphin Street.

Q. What is your enrollment? A. 583.

Q. Do any of your students have to cross Druid Hill Avenue and McCulloh Street to get to school? A. 147.

Q. Are you familiar with traffic conditions on McCulloh Street and Druid Hill Avenue? A. Somewhat.

Q. Since how long have you been familiar with those traffic conditions? A. I have spent practically all my life in that particular vicinity and I have been at the present school since 1942.

\* \* \* \* \*

(St. Tr. pp. 140-141):

Q. What about the traffic conditions in the morning as compared with traffic conditions at the time your school left out, which would, as you say, was more acute? A. I would say that the morning is more acute because it happens at the rush hours of folks going down town.

Q. Are there any recreational facilities in the area of your school for children to play in out of school hours? A. Very few. We have a scattering of the folks who come into the school yards, but there is no recreational facilities planned for them and no supervision for them. The community house is located in the 1200 block Etting Street, but that takes care of a handful, and we have one or two lots in that vicinity; but outside of that, no recreational facilities have been provided.

Q. Would you say that the play time of the children has to be spent on streets? A. Decidedly so.

Q. I mean in that area? A. Yes.

\* \* \* \* \*

(St. Tr. p. 144):

#### REDIRECT EXAMINATION

By Mr. Houston

Q. How large is your school yard? A. Well, I will give you some idea. We had to stagger our recess periods so that there would be no more than three classes on yard time at any one particular time.

Q. And three classes would amount to how many children? A. Three classes approximately forty children per class.

Q. So how many recess periods do you have to have in your school? A. We begin to have recess at ten and with eighteen classes will give you some idea of how many. We have to have at least six.

Q. Six recess periods because of lack of space? A. That's right.

\* \* \* \* \*

(St. Tr. pp. 145-147):

CLARENCE J. ROBERTS

Recalled

DIRECT EXAMINATION

By Mr. Houston:

Q. Mr. Roberts, you are under oath as you have already testified. Are any classes in your school on an afternoon shift? A. We have two classes on an afternoon shift.

Q. Will you tell us what two classes they are? A. They are 1-B classes and beginners, six year old children.

Q. What time does that class leave out? A. It dismisses at quarter after four.

Q. Is that a time within which the afternoon traffic has begun to increase? A. We have to go to the corner with them because we notice that it is a little heavier. It is heaviest round about four-thirty, but the children take a little time to get up to that point. They have some difficulty because of the increase of traffic unless the parents come for them.

Q. You also have a morning shift class, do you not, which comes in at eight o'clock in the morning? A. We have two classes morning shifts, they are 1-B classes, six year old children also.

Q. So that the youngest children are the children who are most exposed to the rush hour traffic, is that right?

A. These children go to school at quarter of eight until twelve o'clock.

\* \* \* \* \*

(St. Tr. p. 149):

MISS AIMEE WEBER,  
2634 North Charles Street

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. p. 149):

Q. Where is your residence with reference to St. Paul Street? A. I live on Charles Street, which runs parallel to St. Paul Street.

Q. Is Charles Street near St. Paul Street? A. Charles Street is one block west of St. Paul Street. Charles Street is the dividing line of the city between east and west.

\* \* \* \* \*

(St. Tr. p. 150):

Q. And Calvert Street is where with reference to your residence? A. Calvert Street is two blocks east of Charles, North Charles.

\* \* \* \* \*

(St. Tr. p. 151):

Q. Will you state what has happened? A. Traffic has increased very considerably. The people have been subjected to things in the way of noise and dust, heat, fumes from the gases, that have made their lives miserable, and many, many of them have moved. \* \* \*

\* \* \* \* \*

(St. Tr. p. 152):

Q. Do you drive your own car? A. I drive my own car. I don't travel on St. Paul and Calvert Streets because I consider it very dangerous. I am afraid to travel

on them. I was almost killed on St. Paul Street the first night it was instituted one-way street, so I go up the Fallsway. What was your question?

(Question read by the reporter.)

A. Yes. I was standing on the corner of St. Paul Street and 26th Street about two weeks ago and the automobiles were speeding at least forty miles an hour, judging from driving myself.

(The Court) How many years have you been driving?

(The Witness) Since 1930 I think.

(The Court) I think you are qualified to estimate speed under the Maryland rules.

\* \* \* \* \*

(St. Tr. pp. 155-157):

MISS JOYCE BARKER,  
1710 St. Paul Street

#### DIRECT EXAMINATION

By Mr. Houston:

Q. Miss Barker, how long have you lived on St. Paul Street? A. Since 1926.

Q. You were living on St. Paul Street before St. Paul Street was designated as a one-way street? A. Yes.

Q. Can you tell us whether you have observed any changes in St. Paul Street since its designation as a one-way street? A. Yes, there has been a great change.

Q. Will you give his Honor the nature of the changes you have observed personally? A. Well, there are more vehicles, a great many more vehicles, and the speed is greater. There is more dirt blown into the houses on account of so many vehicles and speeding so fast, and they come closer to the houses. One time last winter, when there was a snow and slush, melting snow on the street, to give an example of how close the vehicles do

come, I was walking on St. Paul Street, and although as close as I could get to the houses, I was splashed with the muddy slush. And making these streets one-way has enabled the Transit Company to put the buses there, which are a great annoyance on account of the fumes and noise, earsplitting noise, and in summer time we have to keep our windows closed all the time on the street on account of the bus noise and the horns from the automobiles. They are continually blowing, evidently from cars going from one lane to another. Anyway, there is a great deal of horn blowing. We have to have our windows closed all the time in the summer time, and, of course, in the winter.

Q. Are there any trucks on the street late at night?

A. There are trucks on the street all the time. They jar the houses so that the new plastering we had put on our front room recently has cracked all over from the jarring from the trucks. You can feel the house just vibrate.

\* \* \* \* \*

(St. Tr. pp. 165-166):

CLARENCE MITCHELL,  
1324 Druid Hill Avenue

#### DIRECT EXAMINATION

By Mr. Houston:

Q. You are a native Baltimorean? A. I am.

Q. How old are you? A. Thirty-seven.

Q. Have you been acquainted with this area all your life? A. I have.

Q. Have you lived in it or near it all your life? A. The majority of my life I have lived in that area.

\* \* \* \* \*



(St. Tr. p. 166):

Q. You came back here and was city reporter for the Afro-American in 1935? A. 1932.

\* \* \* \* \*

(St. Tr. pp. 167-169):

Q. And you have been N.A.A.C.P. secretary since 1946? A. That is right.

Q. How many children do you have? A. I have three children

Q. Two of school age? A. Two of school age.

Q. Do you know the total number of children in these areas? A. There are approximately 7,000 children of school age in that area.

Q. Do you arrive at that from an analysis of a study you have made of the United States Census? A. That is right, based on the census.

Q. Will you check that for us and see whether it is 7,000 or 14,000? A. The total school enrollment in that area is 7,000 in the nine schools we are concerned with, and 4,000 approximately of those children cross these streets which are marked for speedways.

Q. And also there are about 14,000 total in the area, are there not? A. There are approximately 12,000 children in the area, according to the census tract, 8,000 of them or more from one year up to fourteen years of age.

Q. This area which we are talking about from Dolphin Street north, Druid Hill Avenue and McCulloh Street, has that been considered perhaps the best negro area in Baltimore? A. It has been so considered ever since I can remember.

Q. What is the situation so far as the negro area expanding? A. The area is hemmed in pretty much by

various actions on the part of property owners in the surrounding areas. For example—

\* \* \* \* \*

(St. Tr. pp. 170-177):

Q. Is there a concentration of schools in that area?

A. There are nine schools in that area, which is, according to the census information, one of the most densely populated areas per acre in the city, the most densely populated.

Q. Is that according to a study made by the city itself?

A. It is a study made by the city itself, based on information which apparently they got from the Bureau of Census and redevelopment of blighted residential areas in Baltimore, July 1st, 1941, of the Commission on City Plan.

Q. Will you state whether there has been any change in the traffic on Druid Hill Avenue that you have observed since the passage of this ordinance? A. There has been a considerable increase in the traffic, particularly of trucks, apparently under the impression that it is already a speedway because they move with great rapidity there, and it is especially noticeable in the houses when one is trying to sleep.

Q. What does it do to a person trying to sleep or what does it do to you? A. As far as I am concerned, it makes life pretty miserable. It keeps me awake all night from the noise. The trucks come down and stop, say at the intersection of Dolphin and Druid Hill, which is about a block and a half away from my house, and when they begin to start up again they make an awful noise at that time of the morning, and the southbound trucks stop at the intersection of Lafayette and Druid Hill Avenue because the cross traffic there is usually heavy even late at night, and when they start up, there is more noise and of course worse because it is closer.

Q. What about buses? A. We have noticed as far as the bus traffic is concerned it is much more speedy than the street cars were and a greater hazard to the children playing on the sidewalks, in that the street cars, as fixed wheel traffic, could not vary out of their bed, but the buses switch back and forth in an effort to get in front of other traffic and they are always operated at what appears to be a very excessive speed.

Q. Have you paced any of these buses or cars? A. I have, because it has been my experience in going to work in the morning—my office is in Washington, your Honor—and I walk to the station in the morning, going out Lanvale Street, and it is necessary for me to cross McCulloh, I have been doing it for the last three or four years, and always there has been an awful lot of traffic there and everybody is going fast, so I decided I would make an effort to pace that traffic and see how fast it was going, and on two days, one in October and one in November, I got in my car and followed some of those automobiles down the street, and I went the limit of about thirty or thirty-five miles an hour, and everybody left me way behind.

(The Court) This is on McCulloh Street?

(The Witness) On McCulloh and Druid Hill Avenue, I paced them on both streets.

(The Court) Is Druid Hill Avenue a boulevard also?

(The Witness) No, there is a marker at Dolphin and Druid Hill and at that point it makes it a through street, and a lot of the people are of the impression that the whole thing is a through street and there is an awful screeching and grinding of brakes.

Q. Do you have any policemen at the intersections for the school children? A. There has never been any policemen at the intersection of Lanvale and McCulloh Streets. And at Lafayette and Division Streets prior to the time that our neighbors up there had gotten inter-

ested in this whole problem. I have observed school children, at the peak of the school hours, getting off the buses at Dolphin and McCulloh and crossing at Lanvale and McCulloh virtually fighting their way across the heaviest waves of traffic, and the only way they could get across was to get together and go over in groups. Lately part of the time there have been policemen there.

Q. Tell us something about the matter of school children playing in the streets. What about the recreational places in that area? A. There is practically no recreational space, there is only one school in that area which actually is used as a recreation center out of those nine, and that area, which is down on Preston Street near Druid Hill Avenue, was subtracted from by the addition of some Quonset huts which were built by the Government for vocational training. Mrs. Mitchell made some effort to get some recreational activity started across the street from us and went out among our neighbors to solicit funds for the purchase of the school equipment which was to be placed in the school yard. The city let the thing operate for about one summer and thereafter it ceased altogether. Up on the northern end of it, there is a so-called playground for children, which is at present on the east side menaced by the northbound traffic that comes up from McCulloh Street, and if this southern speedway is opened, it will effectively isolate that playground on the northern perimeter of this area and make it necessary for children who cross there to cross that speedy traffic on the east and the west, and the traffic will converge at either end, so there is no way of getting across there. I have frequently taken my children to the park for various outings and crossed that area, and as it is now situated it is virtually impossible for me, an adult, to get across there now. I just shudder to think of what will happen to the children.

Q. Has there been a fatal accident up there by that playground?

(Question objected to; objection overruled.)

A. There has been a fatal accident. Last year a child attempting to go over there on a bicycle was killed.

(The Court) That is near Druid Hill Park.

(The Witness) That is the playground I just referred to at Cloverdale and Druid Hill Park.

(The Court) Where the old men used to play croquet over there, isn't it?

(The Witness) Approximately, your Honor.

Q. Have you seen any accidents on Druid Hill Avenue from buses? A. Yes, I have seen several and one in particular I saw last summer. There was a child riding down the street on a bicycle and when she got to the intersection of Lafayette and Druid Hill, a bus which was coming southbound on Druid Hill struck her from behind. I believe she wasn't very far from the curb, as close as she could get to the curb because there were cars parked between her and the actual curb, and a bus knocked her off the bicycle and while she was lying on the ground the driver got out and took her—

Q. Well, you can skip that. Were your taxes increased from 1947? A. Yes, they were.

Q. By how much? A. By approximately \$34.

Q. I will ask you if you have your bills prior to the increase and the bill after the increase? A. I do.

Q. What was it before the increase? A. Before the increase it was \$128.17.

Q. And after the increase? A. \$162.93

Q. Let me ask you if it were not for the matter of this designation of Druid Hill Avenue as a one-way expressway, you would protest that increase? A. No, I want to carry my share of the burden of the city expenses, I

have no objection to paying it as long as I am not penalized by some nuisance in front of my house.

(The Court) What is the number of your house?

(The Witness) 1324 Druid Hill Avenue, just approximately in the middle of the block.

Q. Would you have protested within the twenty days provided by the statute, if this Druid Hill Avenue had at that time been designated as an expressway?

(Question objected to.)

A. I most certainly would.

\* \* \* \* \*

(St. Tr. pp. 177-179):

Q. The question is, if Druid Hill Avenue at that time, at the time the assessment was increased, had been designated as a one-way street, would you have protested the increase within the twenty days provided by the law? A. I most certainly would have, your Honor, because I consider that a real penalty and a nuisance and a hazard so far as the children are concerned.

Q. What is the effect on you and the use of your property, as a resident, as the result of this designation? A. Well, it makes it necessary for me to consider two things. Either decide whether I am going to suffer a nervous breakdown because of the possible accidents which might involve my children or other children in the neighborhood that I have come to know and I am fond of, or consider the possibility of moving out of the city or into some other area, and I am pretty much stopped from either of the latter alternatives because, first, in Baltimore there is no place I can move, and, second, in Washington I have not been able to find anything there that is reasonably within my means.

Q. Are there any front yards on that street? A. There are no front yards on that street.

Q. How wide are the sidewalks? A. Approximately seven feet from step to curb, and maybe two feet more if you include the building line.

Q. And from the curb to the steps it would be about what? A. That is only four feet.

Q. Would that be the only place the children have to roller skate? A. As far as I know, they have no other place to play but on the sidewalks. In my case, I have spent about \$300 trying to recondition my back, which is not as large as this court room, so my children would have a place to play, and it is impossible to use action toys there like bicycles and skates, which children need for muscular development.

\* \* \* \* \*

(St. Tr. pp. 179-208):

HONORABLE THOMAS D'ALESSANDRO

DIRECT EXAMINATION

By Mr. Houston:

Q. Mr. Mayor, how long have you been in office? A. About eighteen months.

Q. Before that you were a resident of Baltimore, were you not? A. All my life.

Q. Are you acquainted with the area of Druid Hill Avenue and McCulloh Street? A. Yes, sir.

Q. And you are acquainted with the density of population there? A. Yes.

Q. Does that area have just about the densest population area in Baltimore? A. I don't know. I would have to make a survey of the whole city to find out.

Q. Do you remember whether there has been— A. Down where I live you will find it very heavily populated.

Q. Do you remember there has been a redevelopment study by the Commission on City Plan on July 1st, 1945, are you familiar with that? A. No, I am not.

(Mr. Biddison) This is three years ago.

Q. You have never seen this? A. I probably have seen it, but I don't have time to read all of those reports. If I did, I couldn't do any work. I get reports every day.

Q. Is the area around Druid Hill Avenue and McCulloh Street very densely populated? A. I would not say very densely, it is densely populated, but not very densely.

Q. What about the recreational areas? A. You will have to get hold of the Director of the Park System. It is impossible for the Mayor to know all of those things. You are probably going to ask me about the Police Department. I can't coordinate all of these things. I am Mayor and all I have to do when these matters come before me is to use my best judgment.

Q. Mr. Mayor, the program to make Druid Hill Avenue and McCulloh Street one-way streets came before you, did it not? A. Yes, it did.

Q. And you made a study of that before you gave your approval? A. Yes.

Q. Did you know the origin of the plan came from The Baltimore Transit Company? A. That plan was adopted in the previous administration after a thorough study, then it was brought before me.

Q. I asked you if you know the origin of it isn't in connection with The Baltimore Transit Company? A. No, I did not.

Q. Did you know it was part of the plan for the reconversion of traffic from fixed wheel traffic to free wheel traffic by The Baltimore Transit Company? A. I think it was a plan to help solve the traffic situation not only in that section but throughout the city.



Q. Mr. Mayor, in giving consideration to the matter of designating a street one-way or one-way express-way, consideration would normally be given to the citizens who are residents along the way, would it not? A. We always give consideration to the citizens. I gave them a hearing in my office before I signed the bill.

Q. Didn't you tell the people who conferred with you in your office you could not do anything with it inasmuch as the bill was your measure? A. That is not so.

Q. Do you remember Mr. Milton Brown? A. Yes, I remember him, but I did not say it was my measure. I just told you no, that it was a baby of the previous administration.

Q. Did you tell Mr. Brown you could not veto it because you had asked for the ordinance? A. That isn't so.

Q. Did you tell Mr. Brown that you could not veto it because the city had already spent \$400,000? A. That is right—I did not say the amount of money. I made a statement which I would like to read, if the Court permits.

Q. Will you let me finish my question? A. All right.

Q. Did you make a statement to Mr. Brown— A. I never made a statement to Mr. Brown at any time. I spoke to a group of people. Mr. Templeton was head of the Committee.

Q. Did you make a statement to a group, of which Mr. Templeton was the head, and at which Mr. Brown was present, in which you said you could not veto this because the city of Baltimore had already created a dual highway through the western end of Druid Hill Park and that dual highway would be of no use to the city unless— A. I believe I did say—

Q. I have not finished. A. I said at considerable expense to the city too.—

Q. I still have not finished. A. I cannot answer that. I am not that good, Mr. Houston, for you to talk for a half hour and then answer your question.

(The Court) I think, Mr. Houston, the Mayor thinks you are asking too many questions at one time. Just read so much of the question that has been asked, then see whether it is a proper place to terminate it, and maybe split it a little bit.

(Question read by the reporter as follows:)

Q. Did you make a statement to a group, of which Mr. Templeton was the head, and at which Mr. Brown was present, in which you said you could not veto this because the City of Baltimore had already created a dual highway through the western end of Druid Hill Park and that that dual highway would be of no use to the city unless—

(The Court) Now, then, Mr. Houston, complete your question.

Q. —unless Druid Hill Avenue and McCulloh Street were designated one-way expressways? A. I believe I did.

Q. Now, may I see what you are about to read. A. It is the statement I made when I signed the ordinance.

Q. Was that the statement which you made when this delegation was before you? A. That is right.

Q. Did you read that written statement at the time, sir? A. Yes, sir, not only the statement but they asked me—at the time I told them I was going to sign the bill, they asked me if they could come back—they appeared to be satisfied and would not go to court on a bill, and later on they told me they would probably come back in the way of more traffic regulations, playground facilities and other improvements there to help control the situation, and I told them they could come back at any time, that I would be willing to give them a hearing and if I could help improve the conditions at any time in that location, I would be glad to do it.

(The Court) Mr. Houston, do you want his Honor, the Mayor, to read that statement?

(Mr. Houston) I have no objection to his reading the statement, your Honor.

(The Court) He said he wanted to read it. You have him under examination.

(Mr. Houston) I have no objection to his reading the statement.

(The Court) All right, Mr. Mayor.

A. (Reading): "I will sign ordinance No. 378, making Druid Hill Avenue, from Fulton Avenue to Eutaw Street, Paca Street, from Druid Hill Avenue to Franklin Street, McCulloh Street from Eutaw Street to Cloverdale Road, and Auchentoroly Terrace, from Holmes Avenue to Fulton Avenue, one way streets for vehicular traffic.

"The enactment of the bill in question was a clear necessity in view of the urgency of the situation relative to the traffic problem in the northwest part of the city which links Druid Hill Avenue with McCulloh Street with the dual highway that has been built along the southwestern perimeter of Druid Hill Park. The City has spent considerable money to provide new roads through Druid Hill Park, but as I stated before, these are useless and remain clogged until the principal thoroughfares feeding them are fitted into the integrated street plan which was adopted after mature consideration. The ordinance, as enacted by the Council with its various amendments, was legislated only after the objections raised by those who opposed the bill had been carefully considered and weighed. Recently I conferred with Captains Kaste and Schmidt of the Police Department with regard to the safety measures that must be provided for the residents of the area. It was agreed that

every consideration would be given to all valid complaints. Some of the questions discussed were the following:

1. The Police Department assures the installation of traffic signals at suitable intersections ,thereby making it less hazardous to both school children and adults alike. Further, motorcycle officers will patrol these streets.

2. The Director of Public Works informs me that the streets will be adequately relighted almost the entire length of the two thoroughfares which will afford ample lighting of the streets and at the same time not cause annoyance to the people in their homes. The Director further states that Druid Hill Avenue will be resurfaced in such a manner as to reduce noise very materially.

3. Parking facilities have been provided on each of these one-way streets granting the right to park on one side to a non-restricted extent. On the restricted side of each street the restrictions will apply only between 7:30 and 10 a. m., and between 4 and 6 p. m.

As Mayor of Baltimore City I must necessarily deal with this and related problems from the point of view of the entire city rather than from a sectional viewpoint. While I can appreciate and am fully cognizant of the fact that traffic on Druid Hill Avenue and McCulloh Street will become increasingly heavy after the new plan, I am of the firm conviction that Ordinance No. 378 which now becomes law, will materially aid the traffic situation not only in the heavy populated northwestern section of the city but will synchronize with the entire plan for moving vehicular traffic, thus linking northwestern Baltimore with the central part of the city."

Your Honor, I made that statement after that hearing and took into consideration the objections the people made there, and particularly the matter of the lights and policemen patrolling the streets, and they wanted a state-

ment of this kind. They left my office satisfied, at least, partly satisfied, that they would not go into Court, and it was some time after—it was not the next day or the next week, but quite a long time after that, they went into Court, to my surprise, when I read it in the paper.

Q. Let me ask you if Mr. Smith was there? A. He was there.

Q. Mr. Mayor, this is an unsigned statement or this release? A. To the papers, yes, all the papers had it. Your paper had it.

Q. It was sent out over your signature to all the papers? A. Yes, sir.

Q. What day was it sent out? A. The day I signed the ordinance.

Q. You are very positive that you read a prepared statement to that committee and that this is the prepared statement? A. The prepared statement was written when I signed the ordinance. I spoke to that committee and told the committee I would take up any of their objections and I read that to them, the remarks they made and I made.

Q. I entirely misunderstood you, then, because I understood what you have said—Mr. Reporter, will you read back there as to whether his Honor said he read that statement to the committee? A. I did read the statement to the committee. It might not have been word for word that statement.

Q. I thought I asked you whether that was the statement that you read to the committee.

(The Court) I was under that impression at first, but I reached a little later on the conclusion that he made a statement to the Committee, and that it was the substance of what he read here.

(The Witness) That is right, Judge.

(The Court) I thought he said, when he started, that this is what he read to the committee.

(The Witness) That is right, Judge.

(Mr. Houston) I would like very much to clear that up.

(The Witness) I have cleared it up—

(Mr. Houston) Let me have it from the reporter, not from you, but from the reporter.

(Testimony read by the reporter as follows:)

“Q. Now, may I see what you are about to read? A. The statement I made when I signed the ordinance.

“Q. Was that the statement which you made when this delegation was before you? A. That is right.

“Q. Did you read that written statement at the time, sir? A. Yes, sir, not only the statement but they asked me—at the time I told them I was going to sign the bill they asked me if they could come back—they appeared to be satisfied and would not go to court on a bill, and later on they told me they probably would come back in the way of more traffic regulations, playground facilities, and other improvements there to help control the situation, and I told them they could come back at any time, that I would be willing to give them a hearing, and if I could help improve conditions at any time in that location I would be glad to do it.”

(The Witness) At that point, your Honor, there were two meetings. Mr. Templeton was there at one meeting, then I think the Councilman Edelman was there. When this was read over to another group, it was not a large group, it might have been one or two of a committee. It has been so far back I don't remember. I know the statement was made before a group. I don't think it was made the first time because I had an open hearing and I was prepared for them when they came the

second time, and that is when I read "I will sign the ordinance." I thought I was taking in the objections and satisfying them by putting it in writing that the city would see to it that the police department would patrol the street and the lights would be placed and it would be well illuminated, and we would take every precaution to protect the children of that district. They left and they said, "Can we come back again, Mr. Mayor?" I said, "Of course, if this thing becomes a traffic hazard my job is to protect the life and limb of every one," and with that they went out and I thought they were satisfied.

Q. Who was it you told about this matter of coming back, about the matter of protecting the life and limb of the children? A. I think it was the time that Mr. Templeton was there and I think Mr. Brown was there and the gentleman you pointed out was there, I am sure they were there.

Q. After that conference, what steps did you take to check up on the matter of protecting these children? A. That is when I called in Captain Kaste and Captain Schmidt and the director of Public Parks and the Engineering Department.

Q. Will you tell us, please, what was the date that the Committee came in to see you, if you remember, in relation to the day you signed the ordinance? A. I would not remember the dates.

Q. Mr. Mayor, are you a member of the City Planning Commission? A. Yes, sir.

Q. I will ask you, if as a member of the City Planning Commission on November 12th, 1947? A. Yes.

Q. I will ask you, if as a member of the City Planning Commission, you approved this master plan, department of Planning Master Street Plans? A. I doubt whether I was to the meeting, I don't go to all of the meetings.

Q. Well, you took the responsibility for it? A. No, I didn't take the responsibility for it. Why should I take the responsibility for the City Plans? I disagree with them a lot of times. That is a city ordinance and I have to study it.

Q. It is in the way of performance of the City Plan Commission, isn't it? A. Well, I disagreed with them lots of times.

Q. Can you say whether you disagree with this? A. I would have to sit down and study the maps or have someone explain them to me, before I could disagree with it. It does not have the names of streets or anything on it.

Q. You say it does not have the names of streets? A. Now, I see the streets.

Q. Do you see McCulloh Street? A. Yes, sir.

Q. And Druid Hill Avenue? A. Yes.

Q. Do you see the legend on the map about arterial connections? A. Yes, sir.

Q. Do you approve of this map showing that McCulloh Street and Druid Hill Avenue are designated as arterial connections?

(Question objected to; objection overruled.)

A. I am not an engineer, gentlemen, I have to get engineering advice. The Mayor runs for office and an engineer is picked because he studies engineering questions. I can't answer it.

(The Court) You don't know whether you do or not?

(The Witness) Whether I approve it?

(The Court) Yes. He asked did you approve the plan delineated on the map.

(The Witness) Your Honor, this plan was adopted by the previous administration, we inherited it.



Q. Yes, but you passed it November 12th, 1947, didn't you? A. Do you mean the City Council passed it?

Q. No, sir, approved by the Baltimore City Planning Commission. A. Well, the Planning Commission might have but that does not mean that the Mayor had.

Q. Are you a member of the City Planning Commission? A. Yes, but I don't go to all the meetings. It is impossible. I have to be at a meeting today, one at 11:30 and one at 12 o'clock, and I have to miss one today.

Q. Do you now want to disapprove of it? A. Knowing the engineers recommended it, I will be glad to support the engineers because I have confidence in them. If the City Planning Commission approved it, ninety-nine chances out of a hundred I would approve it because they went into a long study. I thought you were talking about a specific street, about a specific item, but if this is an overall traffic plan they have before it, I am for it.

(Mr. Houston) Your Honor, may we mark this as an exhibit now ?

(The Court) Yes.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 11.)

Q. Mr. Mayor, what is the difference between the designation of a street as a one-way street and an arterial highway? A. I wish you would ask the engineers those questions. They are embarrassing questions. I am Mayor and not an engineer.

Q. I will ask you, Mr. Mayor, if you wrote that letter?  
A. Which letter are you talking about?

(The Court) What is the date of it?

(Mr. Houston) February 26th, 1948.

A. Yes, if it is in the Journal, I wrote the letter.

Q. You said before at the outset of your testimony that you did not know about the fact this was part of the plan of the Baltimore Transit Company of reconversion from fixed wheel to free wheel? A. I did not say I did not know it was part of the plan to convert to buses. The way you put the question is this way, did you know this was part of the plan of the Baltimore Transit Company, that is what you asked me, you did not complete your sentence.

(The Court) The question was, as I recall it, did you know that this plan originated with the Baltimore Transit Company.

(The Witness) That is right, and I did not know that. I said it was from the other administration.

Q. I would like to read you this paragraph from your letter of February 26th, 1948, to the president and members of the City Council: "The establishment of St. Paul and Calvert Streets last June as one-way streets as the first step in a street program in connection with the Conversion plan of the Baltimore Transit Company furnished a dramatic demonstration of its value in expediting traffic, relieving congestion, and obtaining maximum use of existing facilities. It was the intention to designate other streets for one-way traffic shortly thereafter. Progress along this line, however, was interrupted when a stockholder sued the Transit Company. Although the stockholder's action was successfully resisted by the company's lawyers, with the cooperation of the then City Solicitor, Simon E. Sobeloff, the company saw fit to delay until after the decision of the Court of Appeals. That appeal has likewise been decided in the company's favor. A short delay was then thought desirable because of the fuel situation. This emergency will have been cleared up by the time the conversion to bus operation can be made. The city's traffic situation will not improve by delay, nor will further discussion help us. I am anxious to go ahead with the next step—the designation of Mc-

Culloh Street and Druid Hill Avenue for one-way traffic. The city has spent considerable money to provide new roads through Druid Hill Park, but these are useless and remain clogged until the principal thoroughfares feeding them are fitted into the integrated street plan which was adopted after mature consideration." That is your statement, Mr. Mayor? A. That is right.

(Mr. Houston) I ask that be marked as a Plaintiffs' exhibit.

(Paper referred to offered and received in evidence as Plaintiffs' Exhibit 12.)

(Mr. Houston) That is all.

(Testimony of the witness concluded.)

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THOMAS J. SMITH,  
1729 McCulloh Street

DIRECT EXAMINATION

By Mr. Houston:

Q. How long have you been living on McCulloh Street?

A. Thirty-five years.

Q. Are you a native Baltimorean? A. Sixty-six years, I am sixty-six years old; lived here all my life.

Q. Mr. Smith, has the neighborhood of Druid Hill Avenue and McCulloh Street been stabilized as a very desirable residential area ever since you can remember it?

A. Ever since I can remember; yes, sir.

Q. Tell us what has been your experience on McCulloh Street, since McCulloh Street has been designated an arterial thoroughfare? A. Well, conditions are almost unbelievable there and the noise and the traffic on different occasions, I have taken count of the traffic at certain periods, and any period in the morning or at night, in the evening during the rush period, there are one

hundred cars, approximately one hundred cars passing in five minutes.

Q. Do you drive a car yourself? A. I do, yes.

Q. How long have you been driving? A. Twenty-eight years.

Q. What observation, if any, have you made as to the speed of the cars on McCulloh Street before and after its designation as an arterial thoroughfare? A. It is difficult to get across the street in the mornings, when you get out the line of traffic is so long. Where I live is between North Avenue and Lafayette Avenue. At present there are only lights at those streets.

(The Court) 1700 block is between where?

(The Witness) Between Laurens and Wilson. The nearest light is Lafayette Avenue on the south and North Avenue on the north. You go across the street after the cars back up at North Avenue, it takes you four or five minutes just to cross the street. That is for adults. For children, I wonder how they ever do get across. In the evenings at North Avenue the traffic is backed up there when the light changes for about three squares down. The other thing is that in the early morning and at nights—all that territory along there is on made land, all the old folks will tell you when that was a swamp or hollow, and those trucks coming down McCulloh Street, and I presume Druid Hill Avenue is the same, if you lived in an earthquake territory, you can realize what a tremor is. My house, I fear for it because of the fact it is being shaken down. There were some alterations I wanted to make, but I am afraid to make them because I am afraid the city will condemn the wall if I do anything to the house. I have had to rearrange the furniture in my house to keep the heavy furniture off the front of the house and have these trucks shake it down. Before one tremor is through, there comes another one. You can sit in our house and feel the vibrations. I wonder why

it has stood as long as it has. Of course, when I moved on McCulloh Street these conditions did not exist.

(The Court) How long ago was that?

(The Witness) 1913. Of course, it has grown considerably after that. After it was designated to be a one-way street way and after they opened up the Druid Hill Park entrance, it makes life miserable. You are afraid to sit out front in warm weather because you don't know when a car is coming up on the pavement and knock you in the house.

Q. Has your property assessment been increased? A. My assessment was increased in 1947, \$650.

Q. If you had known that McCulloh Street and Druid Hill Avenue were to be designated as one-way expressways, would you have protested the increase? A. I sure would have.

(Mr. Houston) Your witness.

(The Court) Didn't you have some inkling they might be designated as one-way streets?

(The Witness) There was something in the papers about it but there was nothing definite.

(The Court) It was not settled.

(The Witness) No, it was not settled. They had not decided about it. The Druid Hill Park arrangement was made before there was any decision as to Druid Hill Avenue and McCulloh Street being made one-way Streets.

### CROSS-EXAMINATION

By Mr. O'Dunne:

Q. Apparently from what you say, the situation there where you live is pretty bad? A. It is.

Q. It could not be much worse? A. I should not like to see it worse. It will be worse when they finally designate it as a one-way street.

Q. When cars come up one hundred every five minutes, is that both ways or just one way? A. Right now that is both ways.

Q. When did you first learn that the city was thinking of making the streets one-way? A. Well, when I read it in the papers—oh, some time back—that they were considering it but they had not decided anything about what they were going to do.

Q. When did you first read that? A. About McCulloh Street I don't remember that.

Q. Was it over a year ago? A. I don't remember that.

Q. Was it before your property was reassessed? A. I don't think so.

Q. You knew there had been some talk about it before your property was reassessed, didn't you? A. Well, only what I read in the papers.

Q. Beg your pardon? A. Only what I read in the papers and you can't believe what you read in the papers.

Q. That was before your property was reassessed that you read it in the paper? A. Yes.

Q. When did you first know of the passage of this ordinance? A. Oh, I knew of the passage of the ordinance. I was one of the committee that waited on the Mayor to ask him not to sign it.

Q. So you knew it was approved in March of this year. A. I knew it was approved in March of this year.

Q. After that ordinance was passed, did you make any petition to the assessors' office to decrease your assessment? A. After that ordinance was passed, no, I did not. I did not pay the tax bill.

Q. You did not request that your assessment be lowered, did you? A. No, I did not, because I knew efforts were going to be taken to see if we couldn't have it

lowered. It was too late then. I knew when they send out an assessment unless it is objected to or reasons given within a certain time, it is too late.

Q. How did you know that, did your lawyer tell you that? A. No, my lawyers didn't tell me that. I have been owning a house and I have been reassessed several times, and I knew there was a limit on it.

Q. You are pretty familiar with the reassessment feature, are you? A. I wouldn't say I am familiar, but I know something about it.

Q. Then the answer to my question is that you did not make any protest as to your assessment? A. I did not.

Q. And the reason you did not do that— A. The reason I did not do it was because the limitation of the time for making a protest was past. Then I did not know that the conditions were going to be as they are.

Q. Have they changed since the passage of the ordinance? A. Oh, considerably so. The buses have been put on since the passage of the ordinance.

Q. Since March of 1948? A. Yes.

Q. You started to say that one of the reasons you did not protest was because you knew that something was going to be done to see if you all could not do something about the situation, or you expressed it in some way like that. When did you first know this suit was going to be instituted? A. Well, the Mayor said in his office, "I understand that if this case goes through you are going to enter suit against—no, "You are going to take it to court," I think were his words. He said it would not be any use to do that.

\* \* \* \* \*

(St. Tr. pp. 211-212) :

MRS. LILLIE M. JACKSON,  
1216 Druid Hill Avenue,

DIRECT EXAMINATION

By Mr. Houston:

Q. Are you a native Baltimorean? A. Born and reared here.

Q. How much time have you spent in the area we are now discussing, Druid Hill Avenue and McCulloh Street?  
A. I was born in this area, lived there all my life with my parents and grandparents.

Q. Do you drive a car, Mrs. Jackson? A. I do.

Q. How long have you been driving? A. Since 1925.

Q. Have you observed any change in the traffic conditions on Druid Hill Avenue since March, 1948? A. I have.

Q. Will you state what they are? A. Druid Hill Avenue has been our residential section, Druid Hill Avenue and McCulloh Street, and the speed has always been a normal speed according to the traffic laws, but since Druid Hill Avenue has been designated as a one-way street, the traffic has increased and we have the heavy buses and the interstate buses coming through at night and the large trucks, and our houses on Druid Hill Avenue are old. We paid exorbitant prices for them by being the best residential community, we paid for the community, certainly not the buildings. Every wall in our house is cracked and it looks like—

\* \* \* \* \*

(St. Tr. pp. 212-214) :

Q. Mrs. Jackson, what effect, if any, has it had on the physical property itself? A. The trucks and the large buses coming through jar our property to the extent that our ceilings are falling and we are in danger at any



time, it is old plaster, and it is heavy, not like the new housing, and if at any time the children—I have grown children and even grown persons, if that plaster would fall down—we have had a heavy bedroom ceiling to fall. Fortunately we were not in there. But you are in danger. My walls on the first floor are all cracked and this has all been definitely since these interstate buses and the trucks have been going up and down Druid Hill Avenue.

Q. What about the churches along Druid Hill Avenue and McCulloh Street? A. The Bethel African Methodist Church has our largest seating capacity and our most influential church. That church and things of that sort—

Q. Where is that located? A. On Druid Hill Avenue and Lanvale. It has a large stone front. In front of me is the Union Baptist Church, one of the oldest Baptist Churches in the city of Baltimore.

Q. Where is that? A. Right in the 1200 block of Druid Hill Avenue, with a very large congregation and Sunday School on Sunday morning and church services at eleven, afternoon and night, certainly Sunday has been our day on Druid Hill Avenue that we relax and where we can be at home and it is quiet. If you go home from Pennsylvania Avenue, it is just like starting out of hell into heaven, that's the way we feel about our community. We have organized a Northwestern Protective Association and as citizens, we have spent thousands of dollars in the Courts protesting the invasion of undesirable commercial activity in our community, showing how much we were perfectly willing to go into court to protect our residential community, and the city has cooperated in helping us to maintain this as a residential, church and school area. That is just what it is, densely populated. When there used to be one family houses, 1134 Druid Hill Avenue, where I was reared, we had just one family, our whole family occupied that house, but now these houses which were one family houses have been con-

verted into three to seven apartments because of the overcrowded conditions and the lot of the parents and their children and their grandchildren—

\* \* \* \* \*

(St. Tr. p. 215):

Q. You are the president of the Baltimore Branch of the NAACP, are you not? A. I am.

Q. As the result of your position, are you in constant touch with churches and familiar with their membership? A. I am.

Q. Can you give us the approximate membership of Bethel Church? A. In the neighborhood of fifteen hundred to two thousand.

Q. What about the one immediately across from you? A. About one thousand or fifteen hundred.

Q. Are you a member of the Board of Trustees of Sharpe Street Church? A. Sharpe Street Memorial Methodist Church, that is one block from Druid Hill Avenue and Etting Street.

Q. How many members do you have there? A. We have about fifteen hundred. \* \* \*

\* \* \* \* \*

(St. Tr. p. 216):

Q. Is there a Trinity Baptist Church? A. There is a Trinity Baptist Church at Druid Hill Avenue and Mc-Mechen Street.

Q. What is the membership? A. I would say about five hundred.

Q. Is there a Metropolitan Baptist Church? A. The Metropolitan Baptist Church on McCulloh Street, in the 1500 block, on the corner of Mosher and McCulloh.

Q. And its membership? A. About a thousand members.

Q. Would you say that there are more colored churches in the particular area than any other comparable section of Baltimore? A. It is. There is eleven churches on Druid Hill Avenue and McCulloh and the immediate vicinity and nine schools.

\* \* \* \* \*

(St. Tr. pp. 218-219):

Q. Let me ask you whether one of the persons who originally was contemplated as one of the plaintiffs here has been killed on McCulloh Street, Mr. Watkins? A. Yes, Mr. John Watkins, an old former resident, his parents and grandparents, he was killed at Whitelock and McCulloh Streets. The man was rushing up McCulloh Street and struck him and he never got up. He died.

Q. When was that approximately, was it this year? A. Oh, yes, in 1948. Early part of the summer I would say.

Q. Do you own a house on McCulloh Street? A. I do.

Q. Did you own a house on Franklin Street before Franklin Street was designated as an arterial thoroughfare? A. Yes.

Q. State where your house is on Franklin Street. A. 946 Franklin Street.

Q. Are you familiar with the area, that block 946 Franklin Street? A. I am.

Q. Are you familiar with what was the condition before the designation as a one-way street, of Franklin Street? A. I am.

(Mr. O'Dunne) I want to note my objection here. I think this is irrelevant.

(Mr. Houston) It is a question of common experience and common results.

(The Court) I think it is probably offered for comparison. Give you an exception. Overruled.

Q. What has been the experience of that block as to—  
 what was it first, residential? A. It was residential. \* \* \*

\* \* \* \* \*

(St. Tr. p. 220):

Q. What has been the history of the neighborhood in  
 the 900 block Franklin Street, comparing its condition  
 before the designation of Franklin Street, with an arterial  
 thoroughfare and after its designation? A. It has be-  
 come a rundown community, a change in tone of the  
 residents. It has become more or less tenant property.

\* \* \* \* \*

(St. Tr. pp. 220-221):

Q. I am coming to your taxes. Has your taxes been  
 increased on Druid Hill Avenue? A. Yes, it has. In  
 1947 I paid \$150. In 1948, of course, I pay my taxes—

(The Court) Do you mean your assessment was \$150  
 or the tax was \$150?

(The Witness) My tax was \$150, my assessment was  
 \$4300, and it went to \$6040, with a ground rent. It jumped  
 from \$150 to \$200.86; \$50.85 increase in a year, with less  
 peace and security.

\* \* \* \* \*

(St. Tr. p. 222):

Q. You would have protested if you would have known  
 this was going to be designated a one-way street? A. I  
 say I would have protested. Even the \$50 raise I thought  
 was too much.

\* \* \* \* \*

(St. Tr. pp. 224-225):

(The Court) Do you know anything specific about  
 sales in the neighborhood? Have there been any sales  
 recently?

(The Witness) Yes, there was a house next door to me  
 sold.

(The Court) Would that be 1208?

(The Witness) 1218. I would like to tell you about that.

(The Court) You say that has been sold.

(The Witness) It has been sold. The overcrowded condition has forced my people to pay any price that unscrupulous real estate men ask, to live with their children. Of course, there are people who migrate here and who are anxious to get in a better section of the city than where I live, and they crowd into these places.

(The Court) What about this particular house?

(The Witness) I am saying this particular house was bought by out of town people, at least out of town people are living in it —

\* \* \* \* \*

(St. Tr. pp. 228-229):

JOHN N. COTTON,  
2337 Ivy Avenue

### DIRECT EXAMINATION

By Mr. Houston

Q. Mr. Cotton, you are employed in the Public Schools? A. I am.

Q. Will you state your position? A. I am principal of the Junior High School 130 located at Lafayette Avenue and McCulloh Street.

Q. How many children do you have enrolled in the school? A. Today we have 1,567.

Q. How many of those children have to cross Druid Hill Avenue and McCulloh Street? A. Four out of every five. That makes a little over 1220 that cross every day to and from school.

Q. What are the traffic conditions? A. We have a traffic light at Lafayette Avenue and McCulloh Street. Just recently we have a police officer stationed at Lanvale and McCulloh Streets from 8:45 in the morning until 9 o'clock, and usually from 2:30 until 3 o'clock.

Q. Were there any traffic policemen stationed there before June 10th, 1948? A. No. We had a traffic officer at the light at Lafayette Avenue and McCulloh Street but we felt we should have a traffic officer at Lanvale Street and McCulloh and we did speak to the sergeant on the post and they began to change the traffic officer from McCulloh and Lafayette Avenue to Lanvale and McCulloh Street.

\* \* \* \* \*

(St. Tr. p. 230):

Q. What would you say as to the hazards, if any, for children coming to your school and going from your school? A. The hazards have been increased since the bus line has been established. I mean by that this. The regulation that the bus is to be pulled up to the curb to discharge passengers, automobiles and trucks can pass on the other side of the bus while the bus is discharging passengers. That means that we have to be exceedingly cautious of the boys and girls crossing the street because they cannot see the automobiles coming. Fortunately we have been able to have it so that no accidents have happened. But every time I hear the brakes screeching or some noise, I am expecting to hear about some accident.

\* \* \* \* \*

(St. Tr. p. 231):

ALEXANDER J. ALLEN,  
842 Peach Orchard Lane

DIRECT EXAMINATION

By Mr. Houston:

Q. Mr. Allen, are you the secretary of the Baltimore Urban League? A. Yes.

Q. And you have been for how long? A. Since 1942 in the capacity of industrial secretary. Since 1945 as executive secretary.

Q. Mr. Allen, as industrial secretary of the Urban League, have you had occasion to make a study of housing conditions in Baltimore?

\* \* \* \* \*

(St. Tr. pp. 234-235):

Q. Did the Urban League make a study of marginal neighborhoods in that particular section? A. Yes, we did.

Q. By marginal neighborhoods, I mean the northwestern section. A. Yes, the largest negro community in Baltimore is in the northwestern.

Q. Does that include McCulloh Street and Druid Hill Avenue? A. That includes McCulloh Street and Druid Hill Avenue. Up until 1945 the western boundary for that area was Fulton Avenue. Beginning early in the spring of 1945, colored people began to move into Fulton Avenue and beyond Fulton Avenue, and that movement has continued up to the present time. We made a study of the housing prices in Fulton Avenue area in the latter part of 1945, and the first part of 1946, to get some indication of the extent to which prices were increasing because housing was now being sold to colored people rather than to white persons. We based the survey on the record of the sales in the Record Office of the Court House, as indicated by the Federal and State sales records, and we got that information, indicating on the housing study an average increase had taken place of 175% during a period in which Mr. C. Philip Pitt, the secretary of the Baltimore Real Estate Board, informed us that the general—

\* \* \* \* \*

(St. Tr. pp. 236-238):

Q. Did you also study the matter of new construction?

A. Yes, we have. I am not citing now Urban League studies, but I can read here from a report of the Government's Commission on problems affecting the negro population, which was done by persons expert in this field, indicating—I cannot read the exact quotation, but I can tell you what it says.

Q. If you summarize it, it will be sufficient. A. Doctor Ivan MacDougall, Professor of Sociology and Economics of Johns Hopkins University and Goucher College, made a study in 1937 which indicated in the history of the city less than 150 new houses had been built for negro occupants. That is related in the conclusion of the study.

(The Court) Do you mean within the city limits or city and suburban districts?

(The Witness) In surveying the city's negro housing situation, Doctor MacDougall found—

(The Court) Wouldn't you say more than that number were built in the Cherry Hill section alone?

(The Witness) That is since 1947. In Cherry Hill approximately 800 houses were built by private enterprise during the war, and perhaps a hundred more since the war. But the point which I think is important is that private building at present is proceeding in Baltimore at a rate exceeding five thousand dwelling units per year, whereas less than one hundred units are being built for negro occupants, and this is the Baltimore area as well as the city limits.

(The Court) I think that is probably true of private capital but that does not take into account that large units were built by Federal capital.

(The Witness) It should be said that no housing at all has been built since the war by public auspices. Our State government does not build houses and our municipi-



pal government does not build houses, and there has been no Federal money since the funds were exhausted, so that there has been no Federal housing built.

Q. In connection with these studies, did you make a study of the population density? A. We don't have figures that I can quote on population density, but I can say this, and I can cite references here again in the Government's Commission report to the same effect, that Baltimore is even worse in terms of congestion and density than most cities, so far as negro population is concerned, because Baltimore has an area which may be indicated as the colored area, which is in the shape of a wedge or slice of pie, which has access to the periphery of the City and normal progression and growth is possible into the counties and into the suburban areas.

Q. That is as to other cities. In Baltimore, however, there is another reason, isn't there? A. The major negro population centers are islands which leave very little expansion. I can give you something on vacancy rates, if that would be pertinent.

\* \* \* \* \*

(St. Tr. pp. 238-240):

Q. Have you made a study of the recreational facilities for the negro population of Baltimore in this section? A. We have made no independent inquiry on the part of the Urban League, but from general familiarity with the study done by the National Recreational Association for the entire city of Baltimore in 1943, under the general supervision of the State Plan Commission.

Q. What were the findings? A. The findings were that Baltimore, as a whole, was far below standard in the terms of the amount of built areas and the types and quality of its recreational outlets, but it was exceedingly below standard so far as negro population is concerned.

Q. What about the particular area in which Druid Hill Avenue and McCulloh Street are located? A. That same thing is true there, and perhaps concentrated because of the amount of concentration and congestion.

(The Court) That would not apply to the northern part of the section because you have all of Druid Hill Park there, which is certainly not below standard.

(The Witness) That is true.

(The Court) Probably the best in the city.

(The Witness) To the extent that is available for negro use, but there are some severe limits there.

(The Court) I have seen the football grounds there and things like that, and I think they compare very favorably with any park in the city.

(The Witness) Druid Hill Park to some extent is available.

(The Court) It seems very satisfactory to me. It may not be as large as Clifton Park, but certainly the facilities are equal with Clifton Park facilities.

(The Witness) I am not sure I made myself clear. I was referring to the fact of the present administration of the Park Department. All of those facilities are not available for the use of the colored citizens.

(The Court) The ones I speak of are.

(The Witness) Yes, some are.

Q. (By Mr. Houston) Those that are available, are they adequate to take care of the population? A. No, they are not, and that can be substantiated by the study to which I referred.

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(St. Tr. pp. 241-242):

AUGUSTA T. CHISSELL

DIRECT EXAMINATION

By Mr. Houston:

Q. Your husband is a physician, resident in this area?

A. Yes.

Q. Will you tell exactly where you live? A. At 1534  
Druid Hill Avenue.

Q. How long have you lived there? A. Around twenty  
years.

Q. Before that were you still living on Druid Hill  
Avenue? A. We moved from 23rd Street to Druid Hill  
Avenue, to 1534.

Q. Mrs. Chissell, you heard Mrs. Jackson testify, did  
you not, as to conditions there on Druid Hill Avenue,  
traffic conditions since the ordinance was passed naming  
it as a one-way street? A. Yes.

Q. Is your testimony the same as Mrs. Jackson's as to  
the inconveniences and the disturbances? A. Yes, they  
are dreadful.

\* \* \* \* \*

(St. Tr. pp. 242-243):

Q. Did you have any experience on Druid Hill Avenue  
about a week ago? A. Do you mean pertaining to my-  
self?

Q. Yes. A. That was McCulloh and McMechen Streets.  
I had an occasion to be riding on the McCulloh Street  
bus one day and when I got off at McCulloh and Mc-  
Mechen Streets, I made it my business to be the first one  
off because I was in a hurry, and while the other passen-  
gers were being discharged I started across the street,  
and just as I started across the street an automobile  
whizzed right by me. I could have touched it. It nearly  
frightened me to death. I think the buses have caused

a hazardous and really tragic condition, especially at the intersections. You take Druid Hill Avenue and Mc-Mechen Street, the buses stop and the cars stop to discharge passengers, and I have been accustomed to that, and that is the reason when I get off of the bus at McCulloh Street I started right across.

\* \* \* \* \*

(St. Tr. p. 246) :

Q. In 1947, the assessment for 1326 Druid Hill Avenue was \$4,338, with a total tax bill of \$128.17; in 1948 the assessment was \$5,080, with a total tax bill of \$162.93. Had you known at the time your assessment was raised that Druid Hill Avenue was going to be designated as a one-way express street, would you have protested the increase in the assessment? A. Why certainly. The property had depreciated.

\* \* \* \* \*

(St. Tr. pp. 248-278) :

M. FRANK FITZPATRICK

DIRECT EXAMINATION

By Mr. Houston:

Q. Will you please state your official position? A. Director of the Department of Assessments.

Q. You have been in that position how long? A. Since June 1st, 1937.

Q. What are your duties as director of the department of assessments? A. To supervise the assessing of all real and personal property in the city of Baltimore.

Q. What procedure have you followed when a person's assessment has been changed with reference to giving him an opportunity to be heard? A. When his assessment has been raised, or changed, there is a notice mailed from our department stating the former and proposed assessments, and giving him fifteen days in which to

reply, and there are certain interrogatories attached to that notice which he can fill out and return at the time.

Q. What elements do you consider in determining the assessment of residential property generally? A. Well, the main factor, the real factor in residential property is the market price, the purchase price.

Q. And you reach that by what? A. By an analysis of the sales in the neighborhood.

Q. Did you have occasion during the year 1947 to reappraise the values of real property in McCulloh Street and Druid Hill Avenue north of Fulton Avenue? A. Yes, sir.

Q. Did you appraise the real property in that area which was being used for residential purposes? A. For all purposes.

Q. And as to the residential property in that area, did you follow the same system for reappraisal that you followed in the rest of the city for residential property? A. Yes, sir.

Q. Are there any elements that go into the market value except sales? A. Well, the main factor, as far as market value is concerned, are sales and if there are very few sales by which we can be governed, then we will have to attempt to analyze the rents paid for the property and see what a person has paid for such property based on the rents, the potential rent or available rent.

Q. When you consider potential rents or actual rents, do you also consider the nature of the neighborhood as to whether any particular uses are being made of the neighborhood which might affect its desirability for residential property? A. Such conditions are usually reflected in the selling price, the conditions are usually reflected in the selling price of the properties in that neighborhood.

Q. But suppose that the area is so recent that there have not been the number of sales which would give you or reflect the change in the use, would you still consider the use, particular use to which the property is being made, or the neighborhood is being made, in determining its effect upon property? A. Yes. For instance, we are in a neighborhood in which some drastic change has taken place and there are not any sales, of course, we will attempt to make a study of the area, we will try to compare that with some section that has had a similar condition affecting it, and see what the effect has been in that other area, and maybe act accordingly.

Q. Let me go to this matter of Franklin Street. Have you had occasion to consider the use of Franklin Street as an arterial thoroughfare in making your appraisals of property in that area?

(Question objected to; objection overruled.)

A. At the present time every assessment that we have made, whether it is in an area that is subject to such conditions as Franklin Street or Mulberry Street, we feel that there is only one determining factor at the present time which governs the value of real property. Everything else is subordinate to it. The main thing at this time is the desire for shelter, and that predominates in every instance, and it is hard to say whether or not any one way street would affect it. It is hard for us to come to a definite conclusion. We may be able to surmise, but it is evident even in Franklin and Mulberry Streets that in our reappraisal we found values were always higher than they were the last time we assessed it.

Q. Did you find, nevertheless, although the values are higher there, they did not represent an increase which is proportionate to the rest of the city? A. I think the increases throughout the city have been for the most part on a par, with the exception maybe of what we term luxury homes. Luxury homes are, of course, such as we have in Guilford and Homeland, which is usually slower

to respond to any increase, but when the increase takes place it is more accelerated than in any other section.

Q. Let me ask you flatly. In the reappraisal—

(The Court) You mean it is more pronounced, don't you, not that it is more accelerated?

(The Witness) I mean it is slower starting but it does not take long for it to get up to the same condition that exists as far as other properties are concerned.

Q. Let me ask you this. Did anybody in the city government notify you or your department that Druid Hill Avenue and McCulloh Street were to be one-way expressways when you were making your appraisal in 1947?

A. No, sir.

Q. If you had been so notified that the plan of the city was to name Druid Hill Avenue and McCulloh Street as one-way expressways in 1947, at the time you were making your appraisal, would you have taken that into consideration?

(Question objected to.)

(The Court) Just a minute. Is it a fact that they are one-way expressways?

(Mr. Houston) That is the way I understand they have been so designated.

(The Court) They are one-way arterial streets, aren't they?

(Mr. Houston) That is right.

(The Court) Don't we consider an expressway a street to which access is limited? That has been the general use of the term in Baltimore I think. For instance, what was called an expressway was the street that was proposed between Mulberry and Franklin Streets, and to be below the area of the rest of the street so there could not be any access to it from cross streets.

(Mr. Houston) I will strike that out because I don't want to confuse the record.

Q. If you had been advised that the city had made its plan, that is, the plan to make Druid Hill Avenue and McCulloh Street one-way arterial thoroughfares in 1947, at the time that you made your reappraisal of property on Druid Hill Avenue and McCulloh Street, would you have taken that factor into consideration in reaching your assessment?

(Mr. O'Dunne) I object, your Honor. I want to object on the ground that the assessment is made as of a certain period and that the market value of the property is appraised as of that time. Now, unless this question includes a date when he was told that the highways were devoted to one-way operation and what their effect would be, I don't think that the question is a legitimate question. I object to it on that ground.

(Mr. Houston) My theory of this case, your Honor, is that in 1946 the City had already been committed to making Druid Hill Avenue and McCulloh Street one-way arterial thoroughfares just as rapidly as possible. They had spent \$400,000 and the testimony here is that the dual highway through the park has been closed off because they were not made. In January, 1948, appeared the ordinance introducing this plan in the City of Baltimore, it was all part of one transaction. It is part of our case and basic to our case, and if it is true that naming these streets as one-way arterial thoroughfares would reduce the value of the residential property and therefore be reflected in the assessment, that for the city to withhold that information from the people and from its own officers making the reappraisals, constitutes a fraud on the property owners to raise their assessments and withholding that information. Therefore, it is particularly material for me to find out if he had had that information would he have taken it into consideration, because that is the foundation of the testimony of experts that inevi-



tably it follows when you designate a street as a one-way arterial thoroughfare, its value for residential purposes declines.

(The Court) Of course, he could not know what it would be because he would have to have the ordinance and that ordinance was not passed until 1948, was it?

(Mr. O'Dunne) That is right.

(Mr. Houston) Except that that might be true under an ordinary situation. The ordinance, however, is simply a formalization of the plan. The plan itself was accepted and adopted by the city. We have it here in the Riders Digest, which the City Planning Commission had adopted.

(The Court) I do not think you can do it that way, Mr. Houston. I think what you can do possibly is to recite to him the known facts in the case at the time of the assessment and ask him if he knew those facts. I think that is as much as you can do.

(Mr. Houston) All right, sir.

Q. Mr. Fitzpatrick, if you had known that the city had approved the plan of making Druid Hill Avenue and McCulloh Street as one-way streets, that this plan was also the plan or part of a plan of the Baltimore Transit Company for reconversion of its fixed wheel traffic to free wheel traffic, and that as a part of that plan a dual highway had been built through the western edge of Druid Hill Park at a cost of \$400,000, and that this dual highway through Druid Hill Park was useless practically as a dual highway unless Druid Hill Avenue and McCulloh Street were named as one-way arterial thoroughfares, and if you knew that there was heavy pressure on the city authorities to have these streets named as one-way arterial thoroughfares, especially in view of the completion of that dual highway, would you then have taken those facts in consideration in determining your assessment of the real property, residential property on Druid Hill Avenue and McCulloh Street in the year 1947?

(Mr. O'Dunne) I object.

(The Court) Overruled.

A. I think, Mr. Houston, that I would have to explain our policy. The law calls for full cash value on the day of finality. We must abide by that, but at the present time prices throughout the city of all types have skyrocketed to such an extent that when we set out to cover the city, under the five district plan, we adopted as a base sale prices indicating what seemed the intrinsic value of the property, and therefore our conception of the full cash value were the sale prices of the year 1942, and the early part of 1943. Our assessments in the area spoken of will reflect the sales prices of that time, so that if anything occurred in the year 1948 it could hardly affect the market price of 1942 and 1943.

Q. Let me ask you this. Why did you take the year 1942-1943 when you were making an assessment in 1947?

A. We started out in the first district in the year 1942. There had been during the 1930's, as everyone knows, a tremendous drop in prices and the year 1942 was the last year in which there had been any very great extent of home building, and it seemed that the prices paid at that time before there were any, you might say, inflationary trends, that we considered that year would be the fairest year to hold as being the intrinsic value of the property, and we held to that during the following cycles we went through.

Q. In other words, you are saying now, although you made your assessments on Druid Hill Avenue and McCulloh Street in 1947, you still took the values, so far as sales were concerned in 1942 and 1943? A. Yes, sir.

Q. You accepted the sales prices as reflecting the fair market value of an open, unrestricted market, is that correct? A. That is right.

Q. Did you take into consideration that along Druid Hill Avenue and McCulloh Street you do not have an open unrestricted market? A. In 1942 and 1943 we did.

Q. Did you take into consideration the fact that so far as negroes purchasing property was concerned, they could not purchase property all over the city and were restricted to certain areas?

(Question objected to.)

(The Court) I really do not see how that throws any light on it.

(Mr. Houston) It throws this much light on it. We have had the testimony of 175% immediate increase in the property values when they are turned over. We have already had evidence of a restricted market. He talks about the matter of sales prices, and I respectfully submit on an open, unrestricted market you would never get the prices you get that Druid Hill Avenue and McCulloh Street have been getting for property on Druid Hill Avenue and McCulloh Street. I just want to get the basis of his assessments.

(The Court) That is somewhat debatable in this way. There has not been an unrestricted market in Baltimore since 1941 or 1942 because you could not get materials to build houses.

(Mr. Houston) But such as we have you still have definite markets.

(The Court) That might be, but I think it is rather hard to figure that with respect to this property. When you start to compare Druid Hill Avenue property, for instance, with property around Lafayette Square, it is all in the same category.

(Mr. Houston) May I make this tender because I think I can develop right now he is going to testify that he does consider it?

(The Court) I do not think it is pertinent.

(Mr. Houston) Let me strike that question and ask you this.

Q. Did you consider the fact in 1947 the real estate market—that the negro real estate market was artificially restricted by restrictive covenants?

(Mr. O'Dunne) I object. I have not seen one restrictive covenant in evidence.

(The Court) I will sustain the objection and give you an exception on it.

Q. Do you realize that there may be a shelter premium paid for homes which is above the ordinary real estate market? A. We recognize that to a very great extent. That is the reason we took a back year instead of the current year.

Q. Would you recognize that there is a shelter premium paid for homes on McCulloh Street and Druid Hill Avenue over and above the shelter premium which might be paid for homes generally throughout the city? A. I find there is a shelter premium paid every place, but I would say that in cases where negroes have to buy homes the prices are usually higher when they are being changed—when there is a transition from a white to a colored neighborhood.

Q. Did you consider that the designation of the street as a one-way arterial thoroughfare affects the street, affects the property, the value of the property for assessment purposes, for residential property? A. We cannot anticipate values, we have to follow them. If you want my personal opinion, it should have an affect on properties, but we would have to follow that effect. We would take the conditions as they exist at the time we make the assessment.

Q. So, if you had the information which I have just given you as the state of affairs in the City Government as to its planning and as to partially effecting its plan through the building of this proposed new highway, you say you would or would not have taken that into

consideration? A. When we considered the basis we use for our assessment, I think we would not have deviated from that in the slightest.

(Mr. Houston) That is all.

### CROSS-EXAMINATION

By Mr. O'Dunne:

Q. Mr. Fitzpatrick, by using as a norm the sales in 1942 for what assessments should be in 1947, as opposed to using the sales in 1947, did that have the effect of raising or lowering the amount of the assessment? A. In every instance it increased the price because, if you will permit me to use the figures, in the year 1931 the real property basis in Baltimore city was \$1,201,000,000; the price decreased during the entire 30's, so that it was the year 1947 before the real property basis again reached \$1,200,000,000 despite the fact that during that period there had been erected a total of \$147,000,000 worth of new improvements.

Q. So, actually, if you had used as a norm sales in 1947, the assessments would have been raised even more; is that right? A. That is right.

Q. By using the 1942 sales, the property owner got a break so to speak, is that right? A. Yes.

Q. Can you tell the Court the circumstances in which you happened to assess in the 1200, 1300, 1400, 1500 block Druid Hill Avenue and the 1700 to the 2500 block McCulloh Street, will you tell us the circumstances under which that property was assessed? A. The city is divided into five districts in accordance with an act passed by the General Assembly in the year 1943—

Q. Are those five districts reflected on this map? A. This map shows the five districts that we have laid out for that.

(Mr. O'Dunne) I would like to have this marked.

(The Court) Very well.

(Map referred to offered and received in evidence as Defendant's Exhibit 5.)

Q. Can you see this map from there, Mr. Fitzpatrick?  
A. Yes.

Q. Can you tell the Court with reference to that map where this area in question is located? A. It is known as the 14th Ward and also as the 11th and 17th Ward, right in the center of the map.

Q. Well, now, will you explain the procedure under which you assess property in the city, that is to say, do you assess all the property every year or what happened? A. No, we divided into five districts. That map is rolled a little bit. The legend shows in the lower left-hand corner each district, most of the districts are contiguous areas, and in trying to arrange so that there is about an equal amount of property in each area—

Q. So that in other words, you reassess one-fifth of the city every year? A. That is right.

Q. So at the end of five years— A. The cycle is completed.

Q. So far as the year 1947 is concerned, were the properties in the blocks I have mentioned on Druid Hill Avenue and McCulloh Street taken out of order or was that the year they were to come up for reassessment? A. The 14th Ward assessment was a year lower than the 17th and the 11th, the 11th and 17th were assessed in the year 1948. On Druid Hill Avenue the 1200 and 1300 blocks are in the 11th and 17th wards, the dividing line there is Lafayette Avenue. The 1400 block is above Lafayette Avenue. That is the 14th ward.

Q. 1300 block of Druid Hill Avenue, that was— A. Druid Hill Avenue was also the dividing line between the 11th and the 17th wards, so that the west side of

Druid Hill Avenue in the 1200 and 1300 blocks are in the 17th ward and the east side in the 11th ward?

(The Court) I did not understand you to answer Mr. O'Dunne's question. Was that assessment out of order so far as the five year plan was concerned?

(The Witness) No, we just completed our five year plan.

(The Court) In other words, nobody there was assessed within five years of the time they had been assessed before, is that right?

(The Witness) That is right.

Q. (By Mr. O'Dunne) Mr. Fitzpatrick, is it customary, in your office which is charged the assessment of property in the city, for other departments to give you notice of any improvements they might contemplate, so that you can consider those improvements in connection with your assessments? A. The only time we are notified is that under the new charter we are also charged with the condemnation of property, which had been a function of the Commissioner for Opening Streets, and Highways will then submit a preliminary plat to us that they intend to open or widen a street. Other than that, we are not governed by any act of any other department.

Q. Did you make any effort, Mr. Fitzpatrick, as the assessor of Baltimore City, to conceal the fact from people whose properties were to be reassessed, there was to be any improvement on Druid Hill Avenue and McCulloh Street? A. No, no one came to the office. If you came to the office or anyone asking questions, we were perfectly willing to answer them at all times. Our records are always open to the public, the law requires them to be open to the public. If anyone asks us now what section we are going to review for the year 1950, we will tell them.

Q. Did you make any effort to conceal from anyone, until it was too late for them to appeal the assessment,

the fact that McCulloh Street and Druid Hill Avenue would be made into one-way streets? A. No. Every notice would be mailed out and return date thereon prior to the first day of October.

Q. Did you hide from these people any information with respect to their assessments? A. No.

Q. Mr. Fitzpatrick, once an assessment is made—I think you said there are twenty days in which an appeal can be taken from an assessment. To whom is that appeal taken? A. To the Board of Municipal Zoning Appeals.

Q. If that appeal is not taken within twenty days, are the persons whose properties are reassessed powerless to do anything about that reassessment for the next five years? A. Not for the next five years. For that particular year they may at any time file a petition to the Department of Assessments prior to the first day of July, asking for a review for the next taxable year. We will make that particular examination and notify them on the first day of October of what action we have taken.

Q. If a petition is filed for review, do you consider other factors that may have intervened between— A. We take the facts as we find them on examination on that petition.

(The Court) Take the present case; anybody who is a party to this case or any other person out in that section that you reassessed in 1947, could come in this year before the first of July and appeal to have the assessment reduced, could they not?

(The Witness) Yes.

(The Court) In fact, they can do that anywhere in the city, can't they?

(The Witness) Any time of the year.



## REDIRECT EXAMINATION

By Mr. Houston:

Q. That would not give them any relief, however, as to the 1947 assessment, would it? A. No, not for the year they filed the appeal.

Q. So that if the action in naming Druid Hill Avenue and McCulloh Street one-way arterial thoroughfares did not actually go through the City Council until more than twenty days after your assessment, then that assessment would be fixed for that particular year and there could be no relief by administrative proceedings?

(Mr. O'Dunne) I object to that. I think the date the ordinance went through the City Council has nothing to do with it.

(The Court) I don't know as I know what Mr. Houston means. I think he means within the current year this Ordinance became effective, this plan, whatever it was, came twenty days too late for the people in that district to do anything by the way of appeal.

(Mr. O'Dunne) No, the ordinance was passed in March, 1948.

(The Court) Then it does not apply to this case.

(Mr. Houston) This is our theory, your Honor. Our theory is that the city had made up its mind and was committed to naming these streets as one-way arterial thoroughfares—

(The Court) When?

(Mr. Houston) It had made up its mind in 1946 and was committed to it. Then in 1947, it had the assessment raised. Knowing all of this, and they all had started on the execution of the plan because we say it cannot be separated, then it did not put the thing through so as to give the people opportunity for a legal test, because, as

Mrs. Jackson testified, the question became in the paper, at least, whether they were going to put it up on Madison Avenue.

(The Court) As a matter of fact, you had until the 1st day of July in 1947 to appeal the assessment.

(Mr. Houston) No, in 1948. The assessment did not come out until 1947 and the ordinance was in March, 1948. It would only be prospective for the next year.

(The Court) Oh, no.

(Mr. Houston) Yes, sir. You could not go back and make it retroactive.

(The Court) You could not do that, but it would be for the assessable basis as of October 1st, 1947. Of course, it would be for the next year.

(Mr. Houston) But then they would owe the taxes for 1947 and 1948, and there could be no relief in that.

(The Court) But you could not get back there anyhow.

(Mr. Houston) You could have if you had been familiar and they had disclosed this fact.

(The Court) What is the date you think they should have disclosed it?

(Mr. Houston) I think they should have done it at the time the assessment went through. I don't think the city can say the right hand does not know what the left hand is doing. I think it is all part of one governmental agency. I think there is a positive duty, under those circumstances, to acquaint the assessor with the facts and to take those facts into consideration.

(The Court) He has told you he could not assess it prospectively.

(Mr. Houston) Then it gets down to the question—because I was going after that on his statement, of the total valuation.

(The Court) What is the question, Mr. Goetz?

(Question read by the reporter.)

(The Court) I think you will have to change the question. I will sustain the objection.

Q. Let me ask it this way: When is the property taxed, as of what date? A. Do you mean when our tax is due?

Q. Yes. A. January 1st.

Q. So that when did your assessment, increase of assessment made in 1947 become effective as a basis for the taxes January 1st, 1948? A. On October 1st the assessments are officially concluded.

Q. And that assessment was used as a base for the tax which was assessed for January 1st, 1948? A. Yes.

Q. And any petition that was filed on July 1st, on or before July 1st, 1948, would not affect the tax which was assessed January 1, 1948, but could only effect the tax to be assessed January 1, 1949; is that correct? A. That is correct.

(The Court) I did not get your explanation of the twenty days.

(The Witness) The twenty days notice means that we have reviewed the property and that it becomes official on the first day of October and they have the right of appeal from our decision from the first day of October to the Board of Municipal Appeals.

Q. You have stated the total valuation of the City of Baltimore in 1931, is that correct? A. Yes.

Q. And you stated that was \$1,470,000,000? A. No. I stated it was \$1,201,000,000.

Q. And I understand you to say that fell? A. It fell to such an extent that it was not reached again until 1947.

Q. Can you tell me whether the property in Druid Hill Avenue and McCulloh Street fell? A. In every section of the city. Most people don't know when their property is reduced. If we reduce property we don't give them any notice because the very fact of our not giving them notice is to invalidate the assessment and if they would want the assessment invalidated, it would go to a higher figure, so we don't send a notice when we reduce property.

Q. That isn't my question. A. That is the reason I say most people don't know that the property has been reduced. But I could not say that the property 1302 Druid Hill Avenue was reduced, but the chances are that in every section of the city in which we went property was reduced.

Q. But you won't say that this particular restricted area of Druid Hill Avenue and McCulloh Street, as a negro residential area, the property fell, would you? A. Undoubtedly it did. I haven't the figures before me to say what happened, but the chances are inasmuch as we reduced property all over the city that we reduced it there also.

Q. Do you want to say or are you ready to say that the sales prices of property for negro residential property on Druid Hill Avenue and McCulloh Street fell during the 30's? A. It fell every place during the 30's.

Q. You are willing to say it fell there during the 30's? A. Yes.

Q. Are you prepared to say how much? A. No, I am not prepared to say how much. I would have to have figures before me.

Q. Let me ask you this question: Are you prepared to say that the prices of negro residential property on

Druid Hill Avenue and McCulloh Street did not reach the 1931 prices until 1947? A. I would not say in the year 1947, no. It undoubtedly reached them again some time between 1942 and 1947.

Q. Are you willing to say— A. There was a steady reduction from 1931 until 1939. In the year 1940 was the first increase in the assessable real property basis during all of that time and the increase was only \$600,000. Every year after that the increase was slightly more. In 1947 it was \$82,000,000. At least for 1948 it was \$82,000,000, and for 1949 it was \$90,000,000. It had increased from \$600,000 increase in 1940 up to \$80,000,000 and \$90,000,000.

Q. That still isn't my question. My question is, are you prepared to say that the prices, market value prices as reflected in sales of negro residential property on Druid Hill Avenue and McCulloh Street, from Fulton Avenue north, did not reach the 1931 prices until 1942?

(The Court) You don't mean Fulton Avenue north.

Q. I mean Dolphin Street north, it did not reach the 1931 sales prices until 1942? A. I would say that the trend was. I cannot pick out any particular property. I refuse to pick out any particular property, but I can take the general trend of values, which decreased during the 30's, then started to rise again in the 40's, and this is most likely applicable for the entire city, but I am not going to cite any particular property.

Q. By not citing any particular property, you mean not citing any particular area, because I am not asking you about any particular property? A. Any particular area, yes. I am not going to make any statement unless I have figures before me.

Q. Will you tell me in the law where your standard is that you take the actual present value— A. Section 11 of Article 81 says the property shall be assessed at the full cash value on the day of finality.

Q. Is that the Maryland Code? A. That is the Maryland Code?

Q. What is the article? A. Article 81, section 11.

Q. (Reading) "Except as herein provided, all property directed in this year to be assessed shall be assessed at the full cash value thereof on the date of finality." Now, I understand your interpretation of that is that in 1947 you assessed on the basis of the sales in 1942 and 1943?

A. My conception of the full cash value was the 1942 and 1943 sales.

Q. As the value in 1947. A. Yes.

(Mr. Houston) That is all.

(Testimony of the witness concluded.)

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(St. Tr. p. 279):

MILTON P. BROWN,  
603 Avondale Road

DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 280-282):

Q. As part of your work, have you conducted a survey and supervised a survey to determine the experience, real estate experience with reference to one-way streets, arterial thoroughfares, on residential properties in Baltimore? A. Yes, a heavily traveled traffic street.

Q. Has it included a comparison of values of the types of houses found on Druid Hill Avenue and McCulloh Street? A. That is correct.

Q. Was that by an inspection of the City records as well as house to house canvas? A. It was both.

Q. For whom were you making that study in connection with the preparation of this case? A. We were

making it at the request of the citizens speedway committee.

Q. Under whose direction were you making the study?

A. Under Mr. Frederick M. Babcock.

Q. Do you recognize Mr. Babcock here today? A. Yes, Mr. Babcock is sitting there in the back seat.

Q. Would you tell us what details you covered in your survey? A. On our house to house survey the following questions were asked of the individuals and residents of that particular section: First of all, we gave the address, the date of the interview, the person interviewed, the type of dwelling, the material, the age and yard space, the number of stories and the number of of rooms. Under use, the income, whether it was owner occupied and the income weekly or monthly and the rental, whether it was a rental property, income weekly or monthly, or commercial value of apartments, rooming houses, or other uses. Under sales price, checked the previous sales price, the last sales price. Under length of occupancy, whether it was owner rented or tenant occupied, the number of years and the number of months. Together with the comments which were entered at the discretion of the interviewer.

Q. Did you also make a comparison of comparable houses on a back street and a heavily traveled thoroughfare in the same neighborhood? A. Yes, that is correct. That was the procedure.

(Mr. Houston) Your witness.

\* \* \* \* \*

(St. Tr. p. 284):

FREDERICK M. BABCOCK,  
 6410 Meadow Lane,  
 Chevy Chase, Maryland  
 DIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 285-286):

Q. What is your professional field, Mr. Babcock? A. Real estate consultant and evaluation.

Q. Does that include the matter of rating of investment risks, analysis of projects, evaluating real properties and urban problems? A. Yes, it does.

Q. Will you give us something of your business background? A. I have been active in the real estate and real estate consultant appraisal field since 1920, commencing with a rather rich experience all during the 20's in connection with the value of property in thirty-seven States, the United States and in Canada. I was at one time an assistant administrator of the Federal Housing Administration, in charge of all the technical matters having to do with the acceptance of mortgages insured by FHA. I have been on the appraisal staff of the Prudential Insurance Company at one time.

Q. About the FHA, may I ask you whether you organized and operated the entire rating staff of the FHA? A. Yes, I did.

Q. Did you establish the techniques of the Merit System and the Training Program? A. Yes, I did.

Q. Were you fully responsible for all case decisions in FHA? A. I was.

\* \* \* \* \*

(St. Tr. p. 287):

Q. Have you given appraisal courses in the American Institute of Real Estate Appraisals? A. Yes, I have.



Q. And you have been an author of several books and you have contributed to professional journals? A. Yes, I have.

\* \* \* \* \*

(St. Tr. p. 289) :

Q. Mr. Babcock, let me ask you first whether from your experience in the thirty-seven States and Canada, and also your experience with the Federal Government, you can state whether the conversion of ordinary residential streets into arterial thoroughfares, increases the load of traffic?

\* \* \* \* \*

(St. Tr. pp. 290-292) :

A. Within my experience, the presence of traffic, the greater the amount of the traffic the lower the value would be; all other things being equal.

Q. Will you explain the ways in which the traffic causes the lowering in value? A. First of all, value of real estate is related to the usefulness of real estate. In connection with the use of real estate, of residential properties, the presence of traffic, at least, that is, primarily the volume of traffic and the character of traffic, that does the damaging. I have in this report summarized the major factors in the traffic which, in my opinion, depreciates the value of real estate. That list includes the physical danger that is present from the presence of the traffic. Number two here would be the noise. Number three is the turmoil and confusion that accompanies fast moving volume of traffic. Another item is dirt. The next item here is one that I think is very important, the size of the vehicles. Larger vehicles are much more damaging to residential values than are ordinary passenger cars. Another one in the list is limited circulation, by which I am making reference to the difficulties of parking. This would relate to one-way operation streets, for instance, the fact that people are not free to move away from their own properties or to go toward them, but have to make a rather studied detour in circulating to

use automobiles in connection with their property. The next item I have mentioned here is the fact that all of the factors permeate and become particularly important in relation to children. And the last one in this list is the matter of the hours of street use.

Q. Will you elaborate on that for us a bit? A. On the hours of street use I am referring to the fact when streets become arterial highways and invite the use of the streets by freighting vehicles, we have to consider the fact that they are very frequently used during night hours. The trucks, a large number of trucks usually are loaded during the day and make their trips at night. So that where streets are used to accommodate that type of traffic, the traffic period that would disturb the abutting owners may be greatly extended; in fact, in some cases, may run all night.

Q. Is this traffic volume one that is generally considered in making appraisals of real estate values? A. Oh, definitely. In appraising residential real estate an appraiser should take into account everything that relates to the enjoyment or the impairment of the enjoyment of the property by the occupants, and it would be an incorrect appraisal to neglect to take into account traffic factors.

\* \* \* \* \*

(St. Tr. p. 295) :

Q. I will ask you to summarize the results of the interview survey reports in the 2000 block of McCulloh Street and the 2000 block of Druid Hill Avenue, with reference to the residential character of those streets.

\* \* \* \* \*

(St. Tr. pp. 296-298) :

A. The figures shown on this chart represent the results I found by reviewing the questionnaires and tabulating the results. There were thirty-seven interviews of occupants, thirteen of them on Druid Hill Avenue and twenty-four on McCulloh Street. I found that twenty of

the thirty-seven represented structures that were owner occupied. That is, the owners of the properties were also the sole occupants of the properties. Five only of the thirty-seven properties were what we define as rental properties on the form, by which we mean that the owner was in the property occupying it himself but rented out space to additional families or groups, or something of the sort. Then the third classification, the remainder, there were twelve cases classified as commercial, by which we do not mean retail commercial, but we mean the property is owned by an absentee owner and all of the space in it is occupied by tenants of the owner.

(The Court) That was how many?

(The Witness) Twelve cases, sir. The same figures divided into percentages indicate that the percentage owner occupied on the two streets was fifty-four per cent. That percentage on McCulloh Street was 59% and on Druid Hill Avenue 46%. The percentage of properties that were rental properties, defined as I did define the word, "rental" was 14% only. That is 4% on McCulloh Street and 31% on Druid Hill Avenue. The commercial and the combined percentage was 32% which divides between 37% on McCulloh Street and 23% on Druid Hill Avenue. There was also a tally indicating the numbers of rooms. Out of the thirty-seven cases, the two largest items are eighteen cases that were dwellings with nine rooms in them and fourteen cases with twelve rooms. Then there was a scattering of five cases that had eight, ten or eleven rooms. The average number of rooms per house was calculated at 10.16 rooms. We also got some figures on the average years of occupancy. The owner occupants, that particular group of twenty families, on the average was 17.9 years. The renters had been there 15.2 years.

Q. Will you state whether that survey and the analysis which you have just made, together with your experience in viewing the outside of the houses gives you any opinion as to the character of the neighborhood?

(Question objected to; objection overruled.)

A. I gathered the impression that for all purposes they were of a very high grade character, and I also draw the conclusion definitely that the relative high percentage of owner occupancy and the long period of occupancy was very significant.

\* \* \* \* \*

(St. Tr. p. 301):

Q. Let me put it another way. You have sat in the Court room and heard the witnesses testify as to the traffic conditions which have developed on McCulloh Street and on Druid Hill Avenue. If that testimony is true, can you state whether such traffic—what effect, if any, such traffic would have on the values of the properties in the 2000 block of McCulloh Street and Druid Hill Avenue for residential purposes.

(Question objected to; objection overruled.)

A. It would have a decidedly adverse effect.

\* \* \* \* \*

(St. Tr. p. 302):

Q. Let me put it this way: Mr. Babcock, I am asking you hypothetically that if the traffic is increased on those streets over what it is at present, and if in the increase in traffic you have buses, heavy trucks, what effect, if any, would that have on the values of the properties in the 2000 block of McCulloh Street and Druid Hill Avenue?

(Question objected to; objection overruled.)

A. It would have a decidedly adverse effect, it would have the effect of lowering the values of the properties.

\* \* \* \* \*

(St. Tr. p. 303-304):

Q. For purposes of determining the effect of heavy traffic on arterial thoroughfares in Baltimore, have you made any study of the 1000, 1600 and 1700 blocks of

Franklin Street, Mulberry Street and Edmondson Avenue? A. Yes, I have.

Q. Can you tell us why you picked those particular blocks and those particular streets?

(Mr. O'Dunne) I want to make the same objection.

(The Court) Give you an exception.

A. I picked those particular streets because Franklin and Mulberry Streets are heavy traffic streets, and Edmondson Avenue is a light traffic street. In this connection, in the same survey there were ninety-seven interviews to determine the same kind of facts that we secured on Druid Hill Avenue and McCulloh Street.

Q. May I ask you also as to whether you picked these blocks because the houses are comparable on all of these blocks, with the only difference being the factor of the traffic? A. That is substantially true. As a matter of fact, on Edmondson Avenue I believe the average lot was one and one-half feet narrower than the other two streets. But that was the only physical difference that was self evident.

\* \* \* \* \*

(St. Tr. pp. 305-311):

Q. State the character of the properties, will you please?

(Mr. O'Dunne) We make the same objection.

(The Court) Overruled.

A. The significant part of the survey was we found a number of sales, eleven I think, in the area. By taking those reported sales and averaging them, that is taking all of the ones on Franklin and Mulberry, we found that the average sale during that period had been—the period was from 1940 to 1947, all of the sales reported in those years, we found that the average of those sales—that again includes the fact we took the ground rents and

capitalized them at 6%, and added them to the price paid for the leasehold estate—we found that figure came out at \$5,308. That is the average of the sales on Franklin and Mulberry Streets. Those on Edmondson average \$7,243. That is pointed out on that chart. The red one is Edmondson Avenue. That is \$7,243. Taking that as one hundred per cent. and calculating the ratio of \$5,308, the pale color there to the left is 73.3%, which would indicate that there is a difference of 26.7% attributable, so far as you can tell, to merely the difference in the matter of traffic, because otherwise the properties appear and were reported to be substantially alike. The two part color bars at the right of the chart, the green and the orange way over to the right, are exactly the same analysis except that they were based on a per room basis. There was a slight difference in the numbers of rooms of the particular houses that have been subject to sale, and there the figures show \$831 for the sales price per room on Edmondson Avenue and \$637 per room in the cases on Franklin Street and Mulberry Street, and that lower figure is 76.6% of the higher figure. And, again, would be interpreted in my opinion as representing primarily the percentage difference in the values of the properties.

Q. Did you make a comparison of sales in the 1600 and 1700 blocks of Franklin Street and Edmondson Avenue?

A. Yes. I have another chart, Mr. Brown, chart C, which actually includes the same properties as are in this one.

(Mr. O'Dunne) I would like to make the same objection.

(The Court) You have an objection and exception to all of this. A. This eliminated the properties in the 1000 block in an attempt to make certain that the comparisons relate to exactly parallel blocks rather than jumping all over the area. Here again the same general results are shown on a per house basis. The Edmondson Avenue sales show \$7,350 average and the Franklin Street sales show \$6,133, and the ratio of difference is 83.4%, that is

the houses that were on the heavy traffic street. The sales indicate that they were only on a basis of 83.4% on the basis of the sales on the other streets. The other part of the diagram indicates the same thing on a per room basis and the second figure is percentage, which is 86.5%, which represents 13.5% penalty that apparently buyers of properties attached to their bidding when they are bidding for properties on these traffic streets.

(The Court) Strike out about the penalty. It is a difference, that is all.

(The Witness) Yes, a difference, not a penalty.

Q. Did you make an analysis of the real estate tax assessments of the city of Baltimore for 1943, concerning the 1000 blocks of Franklin, Mulberry Street and Bennett Place, to determine whether the difference in the sale value is reflected in the assessments?

(Question objected to; objection overruled.)

A. Yes, I did.

Q. Will you give it to us as to the 1000 block in Franklin and Mulberry and Bennett Place? A. The area taken was the three opposite blocks, three single blocks on those streets, and they are all in the 1000 block and I took the "publication of real estate tax and assessments in Baltimore, 1943" which on the cover of it was purported to have been published by the Mayor and City Council, and took all of the assessed valuations reported there, that is, I added the land and buildings assessments which are presented, and made totals of them for all of the inside properties. That is, I omitted the corner properties in each case. By and large, these streets are apparently improved by identically the same kind of properties, there is no substantial difference between them. The comparison, of course, is primarily between Bennett Place as a light traffic street and Franklin and Mulberry Streets, which are heavy traffic streets. There was 21 properties on Franklin Street with an average assessed

valuation of \$2,181, in that year, and Mulberry Street there was 17 properties which averaged \$1,708; an average for both of those streets representing heavy traffic streets, \$1,880. On Bennett Place the average of 36 properties averaged \$2,722, and the percentage difference was quite pronounced which indicated that the heavy traffic street assessments were 69.1% of the assessments of the other streets.

Q. Did you also make a comparison of the 1943 real estate assessments by the City of Baltimore in the 1700 blocks of Franklin Street and Edmondson Avenue? A. Yes, I did. In this case the comparison relates to two single and opposite blocks, using the four street frontages form, with the corners excepted just as in the previous comparison. The Franklin Street assessment evaluations relating to the 22 inside properties average \$2,410; the Edmondson Avenue cases, 17 properties average \$3,217. The percentage difference is calculated in the same manner and showed that on the heavy traffic street the assessments were 7.9% of the assessments of the other street, a light traffic street.

Q. May I ask if you, in order to check your findings made a comparison of 1943 assessment in another section of East Baltimore, 2400 blocks of Orleans and Jefferson Streets? A. Yes, I did. The results are shown on this chart, which shows that on Orleans Street the average of eight properties, the assessments on eight properties were \$2,416; on Jefferson Street, 21 properties, the average was \$2,710. The percentage difference being 10.8%. That is the difference, which is much less than in the other examples. I might point out the reason there are only eight properties on Orleans Street on this particular comparison is because the physical characteristics on the balance of the frontages were not comparable kinds of real estate.

Q. Did you make a comparison of the 1943 assessments in the 2000 blocks of Orleans and Jefferson Streets? A.



Yes. This comparison is similar to the preceding one and relates to a pair of blocks or two blocks away from the other one. In this case, the heavy traffic street, Orleans Street, there was 31 properties in the comparison, the average assessment was \$2,463—that is the green part of the chart—and the light traffic street, Jefferson Street, 29 properties, the average assessment was \$2,737, and the ratio of difference is exactly 10% in this particular instance.

\* \* \* \* \*

(St. Tr. pp. 312-313):

Q. As to Baltimore, what is your finding as to the extent of valuation impairment apparently in similar properties based upon the difference of being on a heavy traffic street and a light traffic street? A. By scanning all of these cases and the findings related to them, I arrived at the opinion that the value impairment due to the heavy traffic as against comparatively light traffic is somewhere in the neighborhood of between 15 and 25%, or, say for convenience, that it is 20%.

Q. Does that reflect the only difference in value of property or desirability of property for dwelling purposes as being on a light traffic street and heavy traffic street? A. In my opinion, no, it does not. The assessments that were used as the basis of the comparison are, of course, in part very definitely related to the sales values, the prices that the assessor himself has observed by keeping track of the records of sales. Some of the comparisons, the first two, were based on reported sales, I am under the impression, in the case of properties occupied by negroes, as all of these properties in the comparisons are, and if there is any error it is in the direction that the percentages actually are greater because, in general, the negroes do not have the opportunity and flexibility of movement, and during the periods of a housing shortage which we had during the war and since, they don't have freedom of movement and may be logically presumed to have paid more for properties on

the heavy traffic street than they would if they had complete freedom of choice.

Q. So there is an artificial support of the price values on the heavy traffic streets under such circumstances?

A. That is my opinion.

\* \* \* \* \*

(St. Tr. p. 319):

REDIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 320-322):

Q. There are no properties involved on McCulloh Street or Druid Hill Avenue which are in any way comparable to properties on Connecticut Avenue, which Mr. O'Dunne has been cross-examining you about, are there?

A. No, properties on Druid Hill Avenue are old row houses, built out practically to the street; nothing but the sidewalk. I imagine the majority of them are right on the building line, the private property line. The Connecticut Avenue apartments to which Mr. O'Dunne referred run clear up and down the street. There is first of all—I don't recall the exact number of feet, but there is a building line that is well back, requiring private lands. In addition to the sidewalk, many of the owners have pulled back, I think, even to erect apartments. I do know from personal experience that the architects worked tooth and nail to design the apartments so they would get the advantage of the Connecticut Avenue addresses, Connecticut Avenue transportation, but the individual apartments they tried to throw back to the other frontages to the maximum degree they could design them.

Q. Mr. O'Dunne questioned you about the desirability of some of these properties on thoroughfares for professional offices. Are the properties in Druid Hill Avenue and McCulloh Street readily adaptable to conversion

over to offices? A. Does your question refer to doctors and possibly real estate men?

Q. Yes, I will put it that way. A. Well, no, in my opinion they are not. In both lines of work the matter of parking would be a vital thing to the conduct of the business and the source of the business, whatever value there might be of showing a sign to passing automobiles destined to suburban zones would be negligible.

Q. Even in cases where professional offices are located on heavily traveled streets, there is a necessity for parking facilities and so forth on side streets, is there not? A. Yes, or on private land.

Q. So that the lack of parking facilities at the office is still a handicap to a professional office on a busy street? A. That is right.

\* \* \* \* \*

(St. Tr. pp. 324-326):

(Mr. Houston) If your Honor please, I should like to offer in evidence the Report to the Commission on City Plan of the City of Baltimore, by the Advisory Engineers, dated January 29th, 1942, at page 64. That is the Gold Street Ordinance. May I read it?

(The Court) Yes.

(Mr. Houston) This is the Report to the Commission on City Plan of the City of Baltimore on Present and Proposed Physical Facilities.

The Commission on City Plan presented us with the following list of twenty-four proposed street widenings which were considered by them as pressing and necessary as a part of a three or four year improvement program. Our comments and recommendations will be found following each of these items, except where the same conclusions apply to two projects, in which case they are listed together.

1. Auchentoroly Terrace cut-off, and a McCulloh Street and Cloverdale Road, via Druid Hill Park and Tioga Parkway to Reisterstown Road. Proposed width 54 feet between curbs. Cost of property acquisition and razing, none. Cost of construction, \$217,000.00. Total estimated cost, \$217,000.00.

This improvement has merit since McCulloh Street has been designated as a through highway and is heavily traveled morning and evening. However, we are opposed to undertaking it for the following reasons:

McCulloh Street traverses a solidly built negro section, with two large public schools facing it. It is now carrying as much traffic as it can well handle, and the opening of the proposed outlet would tend to increase its use.

\* \* \* \* \*

(St. Tr. p. 327):

(Mr. Houston) No. 5 Line—Pimlico-Patterson Park—following the present route from the termini at Belvedere Car House and Manhattan Loop by Park Heights Avenue and Pennsylvania Avenue to Fulton Avenue, then by a new route continuing on Pennsylvania Avenue to North Avenue, to Madison Avenue, to Eutaw Street, to Lombard Street, to South Street, to Pratt Street, to Calvert Street, to Lombard Street, returning over same route.

(Note: Paper above referred to, having been offered in evidence was filed and marked Plaintiffs' Exhibit No. 22.)

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ARNETT FRISBY

DIRECT EXAMINATION

\* \* \* \* \*

(St. Tr. p. 328):

By Mr. Houston:

Q. What is your business, Mr. Frisby? A. I am a real estate broker.

Q. How long have you been a real estate broker in the City of Baltimore? A. 19 years.

Q. Are you acquainted with the territory or the area of McCulloh Street and Druid Hill Avenue? A. Yes.

Q. Will you state whether you, in the course of your business, have had occasion to make loans and sales in those territories? A. I have.

Q. Will you state whether your business keeps you in constant touch with those territories? A. Yes.

Q. How long have you been familiar with the territory in a professional way, as a real estate broker for loans and sales? A. For the 19 years I have been in the business.

Q. Have you also made appraisals? A. I have, sir.

\* \* \* \* \*

(St. Tr. p. 332):

Q. (By Mr. Houston) Can you estimate about how much you think that the designation of these streets as one-way streets will affect it?

(The Court) Don't you think you should ask him how it will affect the value?

Q. (By Mr. Houston) Will you say whether it affects it adversely or beneficially? A. I would say adversely.

\* \* \* \* \*

(St. Tr. pp. 333-338):

Q. Will you state what, in your opinion, is the fair market value of your property?

Question objected to.

(The Court) Do you mean now?

(Mr. Houston) Yes.

(The Court) I will let him answer that but tell me what property it is. A. Do you mean my residence.

Q. (By Mr. Houston) Yes. A. I would say the fair value of my residence would be between \$6,500.00 and \$7,000.00.

(The Court) What property is that?

(The Witness) That would be 517 North Arlington Avenue.

Q. (By Mr. Houston) No, I am talking about Druid Hill? A. No, I don't have property there; I'm sorry.

Q. Do you know the Mitchell property, Clarence Mitchell property; that is 1324 Druid Hill Avenue? A. Yes.

Q. Will you state what the fair market value of that property is? A. The fair market value of that property would be approximately \$7,000.00.

(The Court) You think it is worth \$7,000.00 today? I mean on the general market, and not as a tax assessor, and not as a sales agent for an owner?

(The Witness) On the general market, yes, your Honor, I think it is valued at \$7,000.00.

(The Court) You think it is worth \$7,000.00.

Q. (By Mr. Houston) Does that include the premium which negroes would have to pay on account of restrictions on places they have to have in Baltimore? A. Yes.

(Objected to; objection sustained; exception noted.)

Q. (By Mr. Houston) Will you state how much, in your opinion, that property would be affected by the use of Druid Hill Avenue as a one-way express thoroughfare?

(Question objected to; objection overruled; exception noted.)

A. I think twenty or twenty-five per cent.

Q. Are you acquainted with Mrs. Jackson's property at 1216 Druid Hill Avenue? A. Yes.

Q. Will you state the fair market value of that property today? A. I would consider that the same.

Q. Will you state how much, in your opinion, that property would be affected?

(Question objected to; objection overruled; exception noted.)

A. I would say the same, twenty or twenty-five per cent.

Q. Are you acquainted with Mrs. Chissell's property, 1534 Druid Hill Avenue? A. Yes.

Q. Would you give us an estimate as to the value of that property?

(Objected to.)

Q. Will you give us your opinion as to the fair market value of that property? Today. A. The fair market value of the property would be about between ten and eleven thousand dollars.

Q. And, in your opinion, how much would the fair market value of that property be affected by the use of the street, by the designation and use of the street as a one-way express thoroughfare?

(Question objected to; objection overruled; exception noted.)

A. I would say twenty-five per cent.

Q. Are you acquainted with the Thomas Smith property at 1729 McCulloh Street? A. Yes.

Q. Will you give us the fair market value of that property? A. \$6,500.00.

Q. And how much would that property be affected by the use of McCulloh Street as a one-way expressway?

(Question objected to; objection overruled; exception noted.)

A. About twenty per cent.

Q. Are you acquainted with the property of Mercer Smith, 2415 McCulloh Street? A. No, I am not.

Q. How about the property of Thomas Winkey, one of the houses sitting back in the yard? Are you familiar with those houses? A. Oh, yes, yes.

Q. What is your opinion as to the fair market value of the Winkey property today? A. About four thousand dollars.

(The Court) Do you mean in fee? Have you ever been inside this property?

(The Witness) Not this particular property. I am taking it from the general neighborhood.

(The Court) I don't think he can testify to the value of it; he has never been in it.

(The Witness) I know the character of those properties up there.

(The Court) You don't know whether it has six or seven rooms?

(The Witness) I know it has six rooms.

(The Court) You don't know the condition of it, do you?

(The Witness) No, I don't know the condition.

(The Court) I sustain the objection.

(Mr. Houston) It is the same basis on which the assessors value. They don't go inside, your Honor will recall.

(The Court) They frequently do.

(Mr. Houston) They definitely testified on the stand they didn't go on the inside. They look at the outside and consider sales.



(The Court) I don't think he ought to testify to a property he has not examined.

Q. (By Mr. Houston) Raymond Boykin (?), 2466 McCulloh Street; are you familiar with that? A. Yes.

\* \* \* \* \*

(Tr. p. 339):

Q. (By Mr. Houston) In appraising and estimating market value of real estate, the fair market value of real estate, residential property, do you consider the use to which the neighborhood or the street is going to be put, in estimating the fair market value of a street bed?

(Question objected to; objection overruled; exception noted.)

A. I do.

\* \* \* \* \*

(St. Tr. p. 339):

MILTON P. BROWN

\* \* \* \* \*

(St. Tr. p. 340):

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 342-344):

Q. (By Mr. Houston) Have you made a check count of the schools in the neighborhood of Druid Hill Avenue and McCulloh Street? A. That is correct.

Q. Will you state to his Honor what that check count shows?

(Mr. O'Dunne) Objected to. Simply on the ground that it is immaterial how many schools are in that neighborhood.

(Objection overruled; exception noted.)

A. There are nine schools in that area.

Q. Can you spot them? A. Yes, they are spotted on the maps which we have made.

Q. Will you come and get them and indicate them to his Honor. A. Surely.

(Note) Plat was thereupon pinned on the board.

(The Witness) The area concerned—am I at liberty to testify?

(The Court) Go ahead.

(The Witness) The area concerned, this is Druid Hill Avenue here, this is McCulloh Street right here (indicating). Now, these schools, the orange-colored circles are junior high-schools, the blue-colored circles are elementary schools, and the green are vocational schools. This particular area, where this proposed conversion is to take place, you can see that there is a concentration of schools in the vicinity which necessitates the students of all the schools in this area, at least a portion of the students' crossing these proposed one-way thoroughfares, going to and from the schools. There are two schools which are immediately adjacent to the proposed one-way thoroughfare, which would necessitate all of the students crossing one or the other of the two streets.

Q. (By Mr. Houston) Can you name those?

\* \* \* \* \*

(St. Tr. pp. 344-346) :

A. All right. School 131, which is located at Biddle near Druid Hill Avenue; School 127, which is located on Biddle near Druid Hill Avenue; School 122, which is located on Preston near Druid Hill; School 118, which is located at Lanvale near Argyle Avenue; School 125, which is located at Pennsylvania near Dolphin; School 103, which is located at Lanvale near Division, at Division, I mean, near Lanvale; Vocational School 451, located at Lafayette near Druid Hill, Druid Hill and Lafayette, and Junior High School 130, located at McCulloh and Lafayette.

(The Court) Did you name one at Lafayette and Division?

(The Witness) Lanvale and Division is School 103. School 120, which is located at Robert near Pennsylvania Avenue, and there is also School 60, which is located at the extreme north at Clifton and Francis Street. This constitutes a rather unique concentration of schools in that particular vicinity, and none of the other proposed highways one-way streets that are present in operation have such a concentration, have such a concentration of schools in their vicinity.

Q. (By Mr. Houston) Have you made, for the purposes of this case, a study of the population density of that area, compared with other areas in the City of Baltimore? A. Yes, that is correct. The study was not made personally. We have studied the reports of authorities who have made studies. That is done in the Hubbard Report, which, I think, is the best information on that.

Q. I will ask you to turn to that section of the Hubbard Report which deals with the matter of density of population in that area? A. This is the development of certain residential areas in Baltimore, Commission on City Plan, published July 1st, 1945. The information is contained in figure 6.

Q. And what does that show, as to this area? A. It indicated that the particular area in question has over one hundred and twenty-five persons per acre, and that is the most densely populated section in the City. Bordering on these two streets the population runs between one hundred and one hundred and twenty-four, and seventy-five to ninety-nine persons per square acre.

\* \* \* \* \*

(St. Tr. p. 349):

REDIRECT EXAMINATION

By Mr. Houston:

\* \* \* \* \*

(St. Tr. pp. 349-353):

Q. (By Mr. Houston) What is the character of the occupancy of Pennsylvania Avenue, as compared with Druid Hill Avenue? A. Pennsylvania Avenue is largely commercial; Druid Hill and McCulloh Street, the area is largely residential.

(The Court) I want to ask just a few questions.

Q. (By the Court) I know that you are sincerely interested in not only that section of Baltimore City but all of it. A. That is correct.

Q. Suppose you had the designation of two streets to go through that section as one-way streets, what two would you take? A. If it was my choice?

Q. Yes. That would be northwest and southeast, running northwest and southeast? A. Well, it is my opinion, and, of course, you have asked for my opinion, that Eutaw Place would be a much better facility.

Q. Eutaw Place would be better? A. That's right, because, if the City is faced with an emergency as to moving traffic, Eutaw Place could be very easily widened, and the only sacrifice would be the particular space that constitutes the boulevard, and it would be one arterial thoroughfare, and you could have two lanes on either side.

Q. You couldn't do that all the way up Eutaw Place; above North Avenue it is only the width of the ordinary street. A. That is correct.

Q. You would have to have another street, and, I suppose, it would have to be contiguous to Eutaw Place. Would you say that Linden Avenue would make a better

north and south thoroughfare? A. If you are trying to get your arterial thoroughfares in proximity to one another, the natural other conclusion would be Madison which was originally proposed at one time.

Q. Wouldn't that have the same effect practically as the two streets we are talkin about? A. It wouldn't be quite as serious, in my opinion, but, however, it would be serious. Any plan of this nature is going to affect the particular area that it is placed upon. The problem is as to how greatly.

Q. Isn't it a fact that Madison Avenue and Eutaw Place converge together at Madison Street? A. That's correct.

Q. The lower end you would have all your traffic, north and south, running into one space? A. Yes, that is, at that point. They are faced with that same problem in the proposal, in that they would have to make another entrance.

Q. Wouldn't that rule out the use of those two streets as one-way streets, if all the traffic north and south converged into one point at the southern end? A. Well, it would constitute a problem; there is no question at all about that.

Q. But you think Madison and Eutaw would be better than the two streets that have been designated? A. That is my opinion. You asked me my personal opinion.

(The Court) I did. All right.

## RE CROSS EXAMINATION

By Mr. O'Dunne:

Q. If Eutaw and Madison Avenue had been designated in place of Druid Hill and McCulloh, it would not have eliminated the necessity of children crossing those streets? A. No, it would not have eliminated the necessity. However, I think it would have limited the number.

Q. You think more come and go through the eastern part than the western part? A. That's correct.

\* \* \* \* \*

(St. Tr. pp. 354-362):

REV. VOLLEY V. STOKES

DIRECT EXAMINATION

By the Bailiff:

Q. State your name and address? A. Reverend Volley V. Stokes, 1526 McCulloh.

By Mr. Houston:

Q. Are you the Minister of a church in the area of McCulloh and Druid Hill Avenue? A. I am, sir.

Q. What Church is that? A. Trinity Baptist Church.

Q. And the location? A. Druid Hill Avenue and Mc-Mechen Street.

Q. How many members do you have? A. Around 500.

Q. Will you state how long you have been there, in that location? A. I have been Pastor of that church 19 years now.

Q. Are you familiar with traffic conditions there? A. I think so.

Q. Will you state how the designation of Druid Hill Avenue as a one-way express-way will affect your church?

(Mr. O'Dunne) I don't think there is anything in here about affecting a church, in the Bill of Complaint.

(Mr. Houston) We have pointed out the fact that it will affect the neighborhood, traffic conditions in the neighborhood.

A. It will affect our church in that it will give our children—we have one hundred and fifty who are in

our Sunday School—the same hazard that it gives children in the public school, and it will also have its effect upon special gatherings and funerals, and so on.

Q. (By Mr. Houston) You live on McCulloh Street.

A. I have lived there 15 years.

Q. Are you acquainted with the conditions of traffic on McCulloh Street? A. I am.

Q. Were you living on McCulloh Street prior to the time that it was designated as a boulevard? A. Yes, sir.

Q. Will you state what the effect, if any, has been on your family and property, as a result of traffic conditions since McCulloh Street was designated as a boulevard, as compared to the time before it was designated as a boulevard? A. Well, I can say very definitely that, if it were possible and within reason of my means, I would be very glad myself to get away from 1526 McCulloh Street.

Q. For what reason? A. Because of the speeding of the traffic, and it is a greater hazard than it was before, and the noise that it gives, the fumes of the buses that stop just above, the length of two buses, from my door, and, then, the very unfortunate situation of having a light that shines in my bedroom at night.

Q. Do trucks use it, large trucks? A. Yes, sir.

Q. What, if any, experience have you had as a result of trucks using it? A. Well, we have just a degree more of noise, of course, than the other.

Q. What is the condition late at night? A. Almost unbearable.

Q. Because of what? A. Because of the heavy traffic; the trucks move more at night than in the day.

Q. Is there anything happening to the house, physically? A. It is getting a big shaking. I don't know how soon we will have some trouble, but I know I am uneasy about it.

Q. Are you able to feel that? Is that conscious? A. Yes, it is very definite.

(Mr. Houston) Your witness.

### CROSS EXAMINATION

By Mr. O'Dunne:

Q. Have there been any increased traffic fumes, as a result of the streets being made one-way? A. Any increased traffic accidents, do you mean?

Q. Fumes from the gasoline? A. Oh, yes.

Q. And vibration, I suppose, noises? A. Certainly.

Q. How about dust? Is there any extra dust caused? A. Yes.

Q. The traffic there now, is it worse at certain periods of the day than it is at other periods during the day? A. Well, it is faster, it moves faster, and it's a greater congestion on the downtown traffic on Druid Hill Avenue in the morning than it is in the evening.

Q. What time is the congestion heaviest in the morning? A. I should say until, from around from early morning until around ten o'clock, somewhere around ten or eleven o'clock.

Q. Do you happen to know why it is heavier at that time of the morning? A. Do I know why?

Q. Yes. A. I just know there is more traffic. I might surmise that it is due to rushing down to the business section of the city.

Q. To go to work? A. Yes.

Q. You say you have one hundred and fifty children in your Sunday school, and do they come there every Sunday? A. Every Sunday, and two or three evenings a week we have rehearsals, choir rehearsals, and other young people's meetings.



Q. You said the making of these streets one-way, because of increased traffic, would have the same effect on your children going to Sunday school as it would have on children going to public school. Is that what you meant to say? A. It would constitute the same difficulty. It might not be at the same time but it would have the same difficulty, it would be the same difficulty, especially in the afternoons.

Q. On Sundays you don't have anything like the traffic that you have during the week, do you? A. We don't have the commercial traffic. We have plenty of traffic, just the same.

Q. But it is not nearly as heavy as it is during the week, is it? If it is, then, your surmise is wrong, that it is caused by people coming down to go to work? A. No, it wouldn't be the same amount of commercial traffic, but it is heavy on Sundays.

Q. It is not as heavy as it is during the week? A. I don't suppose it would be, if you eliminate the cause of going to and from work.

Q. You are there. You know that it isn't? A. I wouldn't say it isn't.

Q. You have lived there for a long number of years? A. Yes, I have lived there for 15 years.

Q. You have told Mr. Houston that you are in position to observe the effect of increased traffic? A. I did.

Q. So I conclude, if you observed the effect, that you observed that traffic has increased, have you not? A. I can only say what I have said before, that, eliminating the rush traffic of going to and from work, we don't have that same traffic, but we have traffic, folks coming to church and going other places, to the ball games, wherever they want to go, and they don't slow down because it is Sunday.

Q. I know they don't slow down. You surmise the volume is not too much on Sunday but you can't say whether that is true or not? A. I can't say that it is any less.

(Mr. O'Dunne) Or any heavier.

Q. (By the Court) You never counted it, did you, Reverend? A. No, I never counted it, Judge, Your Honor.

Q. Is traffic on Druid Hill Avenue as heavy during the week-day as it is on Charles Street? A. Well, I wouldn't know about Charles Street. I haven't lived there. I only cross there on business.

\* \* \* \* \*

(St. Tr. p. 365):

R. BROOKE MAXWELL  
DIRECT EXAMINATION

\* \* \* \* \*

(St. Tr. p. 365):

By Mr. Houston:

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(St. Tr. pp. 366-367):

Rule 41 of the Rules and Regulations of the Department of Recreation and Parks of the City of Baltimore, Maryland. The use of trucks is restricted and limited to automobiles classified as pleasure vehicles, to include station wagons, motorcycles, bicycles and passenger vehicles (limited to nine person capacity only). Omnibuses adapted for more than nine-person capacity shall operate in any park only by permit. Vehicles constructed or adapted for or engaged in the carrying of merchandise or the hauling of equipment and appliances, but not limited thereto, are prohibited from using any park, except when necessary to make deliveries in such parks or where necessary because of fire, accident, impending danger, public disaster, or other emergency.

Q. (By Mr. Houston) How long have you been in your present position? A. I came with the City as Director of Parks in August of 1945. About a year later we had the Charter changed, and the title of the position was changed to that of Director of the Department of Recreation and Parks, and I have been in that for a period of about two and a half years.

Q. Will you state whether this Rule 41 in substance was in effect at the time that you came to the Department of Parks, the Department of Recreation? A. Yes. A rule similar to this has been in effect for many years; I don't know how many.

\* \* \* \* \*

(St. Tr. pp. 368-408):

PAUL L. HOLLAND

DIRECT EXAMINATION

By the Bailiff:

Q. State your name and address? A. Paul L. Holland, 31st and St. Paul Street.

By Mr. O'Dunne:

Q. What is your position? A. Director of Public Works of the City of Baltimore.

Q. How long have you been in that position? A. January 20th, 1948.

Q. What do the duties of that office entail? A. The Director is charged with the responsibility for the operation, guiding the operation of eleven bureaus that are comprised in the Department of Public Works.

Q. What did you do prior to that time? A. I was Chief Engineer of the Public Service Commission of Maryland for seventeen years.

Q. As such could you tell, just roughly, what your duties consisted of? A. They consisted of handling the

engineering work in utility regulation; in the promulgation and formulation to the Commission of safety rules for motor carriers, under the jurisdiction of the Commission, for trucks, buses, taxicabs, and so forth; similar duties in connection with the vehicles of the Baltimore Transit Company, and, during the course of that time I had occasion to serve as a member, and part of the time as chairman, of the Mayor's Traffic Committee, which was in effect from 1934 until 1942, I think, during which time we made, perhaps, the first recommendations in regard to one-way streets in Baltimore that I know of.

Q. What experience have you had with the planning of streets, as far as cities and municipalities are concerned? A. With what?

Q. What other experience, in addition to your work with the Public Service Commission, have you had, with respect to the city planning of streets, with respect to traffic and traffic conditions? A. I am ex officio a member of the City Planning Commission, which is the City body charged primarily with the study of the use of the physical abilities of the City, as to one-way streets, two-way, and so forth, the design of streets, width, and so forth, all development of newly-built sections, and changes in the older parts of the City. That is a Charter provision.

Q. Are you familiar with the procedure that is followed in Baltimore, with respect to the opening of new streets, or the redesignation of existing streets? A. I am.

Q. Would you tell us what the steps are, any provisions that ultimately are adopted relating to street facilities, the procedural steps that are taken? A. It is the function of the City Planning Commission to designate streets, in general locate and designate them as one-way or two-way arteries. However, other considerations enter into the picture, and, no later than yesterday afternoon there was a conference in my office,

practically all afternoon in which the designation of additional one-way streets was discussed at length. That arose in connection with a meeting of what is known as the board of counsellors of the community and counsel on traffic. I happen to be a member of the Board of Counsellors, and, in connection with the proposed reroutings of the Baltimore Transit Company, we discussed at length additional one-way streets. Ordinarily, if the City Planning Commission contemplates a street, or a change of any kind in a street, other than that involved in a new real estate development, plans for which must be approved by the Planning Commission, that Commission consults with the various bureaus in the Department of Public Works, to see what physical changes in existing overhead or underground facilities are necessary to regrade, relocate, widen, or alter in any way the existing street facilities.

Q. Are you familiar generally with this Ordinance No. 169, approved in March of 1948, pursuant to which McCulloh Street and Druid Hill Avenue were designated as one-way streets? A. I am familiar by reference to reports in my office as to the events leading up to it. Of course, the Ordinance was passed during my tenure in office as Director, and had my approval.

Q. Could you tell his Honor what the events were that led up to the passage of the Ordinance, so far as you know from records in your possession.

(Mr. Houston) I would like to see the record. I have no objection to his relating to us the events, but, as to the contents of the record, I would like to see it.

Q. (By Mr. O'Dunne) I don't mean for you to give us the contents of any record.

(The Court) All you want Mr. Holland to give is the sequence of events that occurred leading up to the final passage of the Ordinance.

(Mr. O'Dunne) Yes.

(Mr. Houston) I have no objection to that.

A. The only documents in my file having to do with this subject are in evidence in this case already, including the report to my predecessor, Mr. Nathan L. Smith, which was dated sometime in 1945. I did find, subsequent to the time Mr. Carter was on the stand, one additional letter which, some way or another, had been misplaced and was not in that file, having to do with that subject.

(The Court) Can you answer the question? The question is, give us the sequence of actions that led up to the final ordinance which designated these two streets to be one-way streets?

(The Witness) There was some discussion in the period during which I served on the Mayor's Traffic Committee.

(The Court) When was that?

(The Witness) 1934 to 1942. No definite decisions were reached in regard to one-way streets, except in the case of some minor extensions, such as the extension to the eastward, or the one-way operation on Saratoga Street, and, I think, perhaps, the extension on Lexington Street. Then, in 1945, a further study was made by the Department of Public Works, and the results thereof are embodied in the report of Mr. Smith which is in the record in this case.

(The Court) Was that in 1945?

(The Witness) That was in 1945, Mr. Smith's report. From that time on there was discussion in the Department of Public Works, the Planning Commission, and in the Public Service Commission that they were all together at that time in regard to the complete conversion program of the Baltimore Transit Company. That was approved by ordinance of the City Council, and the conversion plan is in the record in this case. It was ap-

proved by the City Council sometime in May, 1946. It was signed by the Mayor, I believe, on May 16th, 1946.

From that time on there has been constant discussion of means of implementing that conversion plan. Those discussions are continuing up to the present time.

In 1946, in anticipation of the conversion of Druid Hill and McCulloh, which was a part of the so-called Smith Plan, the Department of Public Works had constructed the dual road along the outskirts of Druid Hill, the southwestern limits of Druid Hill Park, to connect with those two streets. The additional letter to which I refer, do you want to put this in evidence? It is just an additional letter to the file, which Mr. Carter had found subsequently.

Q. (By Mr. O'Dunne) There has been certain discussion of the correct designation for McCulloh Street and Druid Hill Avenue. It has sometimes been called a boulevard street, sometimes been called an express-way or free-way. What is the correct designation, from an engineering point of view, as called for in this Ordinance? A. A boulevard street is a street on which traffic has the right of way over traffic entering from either side. McCulloh Street at the present time is a boulevard street. A number of our two-way arteries are boulevard streets. An express-way is a street at grade, with grade crossing intersections, but upon which such intersections are limited to three or four or five blocks. It has limited access to a certain extent with grade crossings. A free-way is a street to which direct access is entirely eliminated, except at the grade crossing points where traffic is led into the free-way along lanes that are specifically designed to enhance the safety and increase the speed and capacity of the street. There are no grade crossings on a free-way. Those are the three general definitions. The express-way is simply a part of the grid system. A free-way is an entirely different form.

Q. Into which category will Druid Hill and McCulloh Street fall? A. They will be one-way boulevards, neither expressways nor free-ways. It's a one-way boulevard.

Q. Does a one-way boulevard increase the velocity with which traffic moves? A. The velocity is dependent entirely upon the automobile and traffic signals. One-way operation or boulevard operation in itself does not increase or decrease average velocity.

Q. Are you familiar with the proposed location of the traffic signals? A. I am not, since they are prepared by the Police Department, which department is charged with the handling of traffic on public streets.

Q. Do you happen to know whether the funds to perfect those signals have already been appropriated or not? A. I think they were appropriated in last year's budget. If not, they are in this year's budget. I am pretty sure they were in last year's budget.

Q. There has been some suggestion that perhaps Druid Hill Avenue and McCulloh Street, before conversion, were not the best streets for the one-way Street. Will you tell us what, if any other streets were considered, and why McCulloh Street and Druid Hill Avenue were adopted, as opposed to any other choice? A. I can not say firsthand as to why they were adopted. I can say from my own experience why they should be adopted, and I can say, from my conversations with men in my own department, the Bureau of Highways, as to why they were adopted.

(Mr. Houston) I object to the conversations.

(The Court) You tell us why they were.

(The Witness) From my own knowledge of the matter, I can say Druid Hill and McCulloh, from a physical point of view, offer the most direct and most feasible connection of the highways along the western perimeter of Druid Hill Park to the downtown area, in the general



line of direction in which traffic desires to move, much more direct and much more easily constructed than any other connecting links, as between downtown and the northwest, than would be any other two streets in that particular vicinity. One particular reason for picking those western limits along the Park was to prevent the destruction of the Park. The other plat which was presented, either one of them, would have to be a more circuitous route, or bisect the Park with thoroughfares, and it is not desirable to have thoroughfares bisecting the Park. So the dual lane from Park Circle down to anywhere where the dual lane comes into either the present Reisterstown Road or pending Reisterstown Road offers a direct route from there, without acquiring or utilizing or making unusable more than a few square feet of the Park. The south end of these two streets particularly lend themselves to interconnection with the grid system in the downtown area.

For instance, it is proposed to carry Druid Hill across that vacant lot now used as a parking space at the western limit of Centre Street. Condemnation proceedings have been instituted, and it is proposed to buy that lot, or negotiations are under way to buy the whole lot. Condemnation, of course, only covers the portion needed for the street. That will then connect by gentle grades, the principal grade being something like about three feet, with Centre Street. It is proposed to make that one-way all the way from Druid Hill Park, the northern end of Druid Hill, along Druid Hill, across Howard to Centre and St. Paul Place.

On the northbound route it is proposed to make Monument Street from Cathedral, that is, the western end of the Gardens, Mount Vernon Place, one-way westbound to McCulloh Street at Eutaw, where a very easily and cheaply constructed connection can be made to McCulloh Street northbound.

No other two streets are so easily connected for this service as these two, and no other two streets could take care of the traffic which they are designed to handle.

The traffic survey made jointly by the City, State, and Federal Government several years ago indicates that traffic into the downtown area, the volume charts, in this quadrant is greater than any other similar quadrant in the City.

It is rather interesting to show the charts that indicate the volume of that traffic distributed into the downtown area. From the southeast we have a very small amount of traffic. I ask for the record—is this in evidence (indicating)?

(The Court) I think it is.

(The Witness) This is a report of Transportation Study, Baltimore, Metropolitan Area, Volume 1, which gives the results of this survey.

(Mr. O'Dunne) We offer it in evidence.

(Note) Report referred to, having been offered in evidence, was filed and marked Defendants' Exhibit No. 6.

(The Witness) That shows the traffic coming into the congested area from the southeast (indicating). That shows the traffic coming in from slightly north of west.

Q. (By Mr. O'Dunne) May I make a suggestion? Instead of referring to it as "that", so the record will identify it, what is the first picture? A. This is Plate 10 of Volume 1 of the Report of the Transportation Survey.

Q. That is the first one you referred to? A. That is the first one I referred to.

Q. And the one you have just referred to? A. Is Plate 11 of the same survey, showing traffic coming in from the northwest. Plate 12 is the continuance of traffic coming in from the northwest. The sum of the traffic—

(The Court) While you are doing that, give us an idea of the traffic coming in from the north, so we will have something to go by?

(The Witness) Traffic from the north, which is shown on Plate 13, totals 28,591 total trips.

(The Court) May I see that plate?

(The Witness) (indicating) It will be noted that the sum total of that coming in from the northwest and here (indicating) is equal to traffic coming in from the north. As you swing either way from north and northwest, traffic piles up very very rapidly.

(The Court) What would you say as to the traffic coming into the City, or the third; it is not the first because you say the north is the first, how would it relate?

(The Witness) If you take from Edmondson Avenue, or a little north, the traffic on Edmondson Avenue, around the northwest quadrant, it is even better than a similar length of the quadrant for the north, even. In other words, the area shown on Plates 11 and 12, coming in from the northwest represents 37,000 trips, coming in from the north it is 28,591. The northwest quadrant is even greater than the north quadrant. A further reference to the diagram shown on plates 11 and 12 indicates that this traffic is distributed for points almost as far as the Fallsway, but that Centre Street, which will be one-way east as far as St. Paul Street, will take care of the last bit of that traffic; in other words, we couldn't pick any artery which could so conveniently serve to distribute that traffic as Centre Street, southbound and eastbound.

(The Court) I am a little curious to know why you stopped at St. Paul Street as one-way on Centre Street, when Calvert Street is a one-way street?

(The Witness) If you will notice, that is the end of the traffic coming from that direction. No traffic comes be-

tween St. Paul Street and there (indicating), practically none. It shows perfectly. That is the tip end of it down here (indicating). Down here we come into these other streets and turn around. Then, too, we didn't want to carry—of course, the upper and lower level, St. Paul Place, St. Paul Street, since it is the most convenient southbound lane, will take care of all the traffic that comes in from that direction. It will not be necessary to terminate the traffic movement into St. Paul, from the location of the railroad station and the new Sunpaper.

(The Court) I overlooked the proposition that St. Paul is one-way there.

(The Witness) Yes.

Q. (By Mr. O'Dunne) As far as the effect on Druid Hill Avenue and McCulloh Street, with respect to handling traffic that they are designed to handle by the new connection, how would Eutaw Street and Madison compare as substitutes? A. Not comparable at all. They wouldn't serve the purpose as directly, nor as conveniently, nor as economically, as far as money outlay is concerned.

Q. Will you explain that to the Court? A. We would have to build a circuitous line through the Park. Eutaw goes into the Park at the present time along Park Drive which is badly congested. It would be a circuitous route, and not in line with the traffic movement, the doctrine of distinction, "lines of desire", as we call it. At the south end no other two streets serve so conveniently to tie in with the congested downtown area and deliver traffic where it wants to go.

Q. No such two streets as what? A. As Druid Hill and McCulloh. That is the best we know of, both on the point of the direction of traffic, the lines of desire, and the physical means of connecting them.

Q. As I understand it, Madison Avenue at one time was considered as a substitute for either Druid Hill Ave-

nue or McCulloh Street? A. It was one of the streets considered, but I understand there was objection from the Transit Company. But that is hearsay. From our personal point of view I can state that it is not as desirable, by any means.

Q. Would your reasons from a physical point of view be the same as you have already given to the Court, namely, because of the relationship of Madison Avenue to Eutaw Street? A. Regardless of the Transit Company's desires, or their plan for eliminating or adding to the traffic, it would still be the fact that Druid Hill Avenue and McCulloh offer the two best routes because they are direct.

Q. Before the passage of this Ordinance are you in a position to tell us what the nature of the traffic was on Druid Hill Avenue and McCulloh Street? I might explain that by saying that the Bill of Complaint says that before the passage of the Ordinance the vehicular traffic on McCulloh Street, and more particularly on Druid Hill Avenue was the local traffic of persons resident in or visiting the neighborhood? A. I have no personal knowledge of that.

Q. The Bill of Complaint alleges that such Commissioner was secretly put to work in the construction of these streets or the adoption of them as one-way. Do you know anything about any commissioner being at work secretly? A. I know it was not done secretly, because it was publicized in the paper, has been for the last five years, several years, at least.

Q. As far as the Department of Public Works was concerned, was there anything absolutely irrevocable about the decision to make these streets one-way, if hearings should have revealed the fact that it wouldn't be proper to so make them? A. No decision of the Department is irrevocable. We can always change it. It might be expensive to make it but it can be changed.

(Mr. O'Dunne) All right, that's all.

## CROSS EXAMINATION

By Mr. Houston:

Q. Mr. Holland, did you come to Baltimore to take an official position with the City? A. No, with the State of Maryland.

Q. And that was in what year? A. 1931.

Q. Prior to that what was your first experience in relation to traffic conditions and streets? A. I was in the office, staff engineer, of the firm of Mace and Mace in Charlotte, North Carolina, consulting engineers, who constructed all kinds of things, from streets to hydroelectric plants.

Q. And you came from there to the State, and how long did you stay with the State of Maryland? A. 17 years.

Q. And were you with the State of Maryland when you were Chief Engineer of the Public Service Commission? A. That is a State agency.

Q. And how long were you Chief Engineer of the Public Service Commission? A. 17 years.

Q. As Chief Engineer of the Public Service Commission, you were, of course, familiar with this report to the Commission on City Plan of the City of Baltimore on Present and Proposed Facilities? A. No, the Public Service Commission had nothing to do whatsoever with that, and the fact is I never read a copy or never saw a copy of it until a few weeks ago. My duties with the State had to do with public utilities, transportation and otherwise, the operation, safety rules, schedules, rates and valuations and so forth of public utilities. They had nothing to do with utilities owned, or very little to do with utilities owned by municipalities, for the simple reason that property owned by the City is exempted from public utility regulation, and the utility serving the City of Baltimore is a private-owned utility.

Q. You did have something to do with the Baltimore Transit Company, did you not? A. Quite a bit, yes.

Q. And your contact with the Baltimore Transit Company required you to consider the traffic use of Baltimore City streets, did it not? A. Very definitely.

Q. Were you aware of the fact that in 1942 that report to the Commission on City Plan by the consulting engineers made the observation against the designation of McCulloh Street as a through highway on the ground that it traversed a solidly built negro section, with two large public schools facing it? A. No, I am not yet familiar with that; I never read it.

Q. Doesn't the fact that there are large public schools on a highway, does that constitute a material fact to be taken into consideration in the matter of the designation of the street as either a boulevard, express-way, through street, or what not? A. Does the existence of schools?

Q. Yes. Is the existence of schools facing on a street that near a factor to be taken into consideration in determining the character of the traffic use of the street? A. The traffic on the street, of course, is determined by the nature of the territory through which the street traverses.

(The Court) That isn't his question. What he wants to know is this: He wants to know whether, in effecting two through highways like we have under consideration, how much weight do you give before you designate them, to the fact that they are contiguous to schools. Isn't that what you want?

(Mr. Houston) That is right.

A. There was very little weight given to the mere fact that they are contiguous to schools, because when they are designated one-way streets, they are usually protected by traffic lights, and the street becomes a safer street in many respects than it is before. So the mere

fact that it traverses a school has nothing to do with it at all.

Q. (By Mr. Houston) Your conclusion about the matter of safer streets: You are acquainted with the accident evidence that has been introduced here as to St. Paul Street? A. I am.

Q. That doesn't bear out your conclusion? A. Yes, sir.

Q. It does? A. I think it does.

Q. You do not give consideration to the question of what injury you will do to the Park in the matter of designating your streets, do you? A. We give consideration to all damages, whatever they may be, and, in connection with a proposition like this, it is necessary to pick those streets that will cause the least damage and the greatest gain.

Q. By least damage you mean, at least as one factor, the damage to the Parkway passage, certainly? A. There would be no purpose in utilizing a park which is of general benefit to the public, if some other route could be obtained, just as well and, perhaps, better.

Q. Without consideration of the safety or convenience or property values of the neighborhood through which the route passes? Is that correct? A. No, that is not correct at all.

Q. You are familiar with the Smith report, you say, of 1945. That was an adoption, was it not, of the report for reconversion of the Baltimore Transit Company? A. No, the Baltimore Transit Company plan, modified very greatly from its original plan, was not adopted until 1946. There are certain things in the Smith report that were adopted by the Transit Company, and certain things in the Transit Company original discussions which appear to have been included in the Smith report.

Q. If you will just answer my question, as to whether the Smith report was not an adoption of the plan for



reconversion of vehicular traffic that was made by the Baltimore Transit Company, and in existence at the time of the Smith report? A. No, I don't know that, because you can see there are quite a number of differences.

Q. Will you point out wherein they are different? A. The Smith report covers only a small part of the conversion plan of the Baltimore Transit Company, a very small part of it.

Q. Well, then, state whether the Smith report as to that portion of the Baltimore Transit Company report was not an adoption of that particular portion of the BTC report? A. I would have to take each individual item, and take it item by item, to answer that question. It was, certainly, so far as I know, no blanket adoption of anybody's report.

Q. But you don't want to go on record as saying that the two reports did not actually coincide as to the or as to certain particular things in the Smith report? A. In certain things they coincided exactly.

Q. You are familiar, also, with Order 42685, in 1946, are you not, the Order of the Public Service Commission, passed October 9th, 1946? A. I don't remember it by number, but I am familiar with that. I was Chief Engineer of the Commission at the time that was adopted.

Q. Will you look on page 4, and tell us whether that order didn't contemplate sending the traffic, particularly the BTC route, taking it off Druid Hill Avenue and sending it down another street?

(Mr. O'Dunne) Objected to. The document speaks for itself.

(Objection overruled; exception noted.)

A. The Order tells the Baltimore Transit Company to reroute its electric railway and trackless trolley service in the following manner: The Number 5 Line, Pimlico-Patterson Park Line—following the present route from

the termini at Belvedere Car House and Manhattan Loop by Park Heights Avenue and Pennsylvania Avenue to Fulton Avenue, then by a new route continuing on Pennsylvania Avenue to North Avenue, to Madison Avenue, to Eutaw Street, to Lombard Street, to South Street, to Pratt Street, to Calvert Street, to Lombard Street, returning over same route.

Q. That is the line which was on Druid Hill Avenue, is it not? A. Yes; I think part of the distance on Druid Hill.

Q. And on Druid Hill in this very territory that we are talking about, over McMechen and Mosher, and the other streets? A. That's true.

Q. That line served this northwest territory that you have talked about as having such a heavy traffic flow, is that correct? A. That's true.

Q. So that in 1946 the Public Service Commission, of which you were Chief Engineer, considering the desirability of Druid Hill Avenue, and also of Madison Avenue and Pennsylvania Avenue, passed that order, taking the traffic off Druid Hill, on to these other streets in this area? A. That's true. It is necessary to get two-way street car operation off of a street before you can make it one-way. We did it up on Maryland Avenue.

(The Court) He says that because he realizes how difficult it has been over a period of two years to get it off Maryland Avenue.

Q. (By Mr. Houston) The point there in making a one-way movement, your Commission and you as Chief Engineer moved it off Druid Hill and placed it, one on Pennsylvania and the other on Madison? A. That's correct.

Q. When was the Auchentoroly Terrace cut-off finished? A. A year ago this month, a year ago next month, I believe it was.

Q. Is it not true that you have stated that the Auchentoroly Terrace cut-off is practical only in connection with the designation of McCulloh Street and Druid Hill Avenue as one-way streets? A. If it had not been contemplated, it wouldn't have been built.

Q. And at the present time it has been boarded off and not used, because Druid Hill Avenue and McCulloh Street are not used as one-way streets? A. Because of this litigation right here, exactly.

Q. And, also, the Auchentoroly Terrace cut-off was made as a means of doing minimum damage to Druid Hill Park, was it not? A. That is one of the factors. If you will look at the map you will find this direct route not only minimizes the damage to the Park but furnishes the most direct route from the Carlin's Park area downtown.

Q. So the final decision, then, necessarily, was to make Druid Hill Avenue and McCulloh Street one-way streets when the decision was made to build the Auchentoroly Terrace cut-off, at a cost to the City of \$400,000.00. A. No, you have the cart before the horse. When the decision was made to make Druid Hill Avenue and McCulloh Street one-way streets, then the decision was made and construction actually started on the connecting link to take that over to a connection at Carlin's Circle.

Q. When was the decision made to make Druid Hill Avenue and McCulloh Streets one-way streets, if it was made before the construction of the Auchentoroly Terrace cut-off was begun? A. I don't know the exact date, but it stemmed from the Smith report in 1945, I presume. It was recommended at that time.

Q. Does your department install traffic lights? A. No, sir, the Police Department.

Q. And your Department has received no special instructions concerning Druid Hill Avenue and McCulloh Street since January 1st, 1948? A. What do you mean "no instructions"?

Q. What instructions has your Department received to your personal knowledge, concerning Druid Hill Avenue and McCulloh Street, since January 1st, 1948? A. We received no instructions. I don't know where we would get such instructions.

Q. The answer is no? A. Very definitely, unless you assume that the passage of that Ordinance, which was in 1948, is an instruction. We propose to resurface the streets, improve them very materially, in accordance with the plan which is approved by the City Council. That might be construed to be an instruction.

Q. You have testified here as to the history of this matter, and I will ask whether your deposition was taken in this case on or about October 8th, 1948? A. It was.

Q. I will ask you if this question, if you recall this question being put to you: "What is the first time that the proposition about making McCulloh Street and Druid Hill Avenue expressways first came to your special attention? A. I can't give you the exact date. It was sometime after I took office in January that there was discussion in my office about the two arteries." I can't give you the exact date. Do you recall that answer? A. I do.

Q. So that at the present time the only thing you can testify to personally is the fact that after taking office on the 20th of January, 1948, there was some discussion in your office about making Druid Hill Avenue and McCulloh Street one-way streets, that is the first time it came to your personal attention?

(The Court) You said something about 1946?

(Question read by the Reporter.)

A. The discussion was not about making them one-way streets. They had at that time been designated by the Council as one-way streets, and our problem was to hook them up physically to the east as one-way streets.

Q. (By Mr. Houston) That is the first time the matter came to your attention? A. That is the first time personally. It was a matter under discussion when I took office. At that time the marginal road in Druid Hill was under construction, and it was finished a few weeks after I took office, and we immediately proceeded to begin negotiations for acquiring a vacant parking lot at the south end of Druid Hill, in order to connect up and make them useful.

Q. At the time you were Chief Engineer of the Public Service Commission, were you acquainted with the number of schools in the area from North Avenue down to Biddle Street? A. No, sir. Only in a general way. I rode the lines quite often but had no detail on it.

Q. Are you acquainted with the fact that the area through which the traffic will pass on this one-way thoroughfare, those one-way streets, is a very heavily, densely populated area? A. I have heard that testimony and have observed it personally.

Q. Did you give that any consideration in the question of determining the desirability of the traffic movement on those streets? A. Did I give it any?

Q. Yes. A. The matter was decided before I came into the picture at all, but, whether it had been decided or not, that would not have been a controlling factor. As I said, it's a question of moving people from where they are to where they want to go, and we must move them in the most convenient method, ways, at the lowest or the least mechanical cost, taking all things into consideration, and they must be moved safely.

(The Court) Isn't it a fact that they tend to go in the most direct way, anyhow?

(The Witness) They go in the most direct way.

(The Court) The question is whether you provide them freer access?

(The Witness) At the present time that is true. In that particular area the traffic waves first one way and then the other down there, but it comes from the northwest into the central district, a tremendous lot of it. Their attempt is to provide a safe and economical and speedy means of getting to their destination, over the most direct available route.

Q. (By Mr. Houston) Would you say that the heavy movement of one-way traffic in a residential area on a fairly narrow street would have any effect upon residential values, and the desirability of that area as a residential neighborhood?

(Objected to.)

A. Increased traffic is always detrimental to a certain extent to residential properties; there is no question about that. The problem is how to minimize the damage and at the same time take care of those problems which must be solved. We can not surround the downtown area with a Chinese Wall. We have got to get the people in. At the present time all of that traffic, a large part of that traffic coming from the northwest is proceeding over Mount Royal and coming down Calvert and going back to St. Paul, as a result of which the traffic on those two streets is tremendously congested, and getting worse every day.

(The Court) We have had a lot of talk here about the fact tending to show that the, or assuming that one-way streets are more dangerous, from a pedestrian standpoint, than two-way streets: Have you any experience on that?

(The Witness) Very much. If they are properly lighted, traffic-lighted, a one-way street is much less hazardous than a two-way street, for one-way traffic, for pedestrian traffic. When you have traffic moving in opposite directions, just as at a grade crossing with a vehicle, you would be watching one side and disregarding traffic coming in the other direction; the same with pedestrians.

If you have occasion to watch traffic on your right only, and the intersections are properly marked and properly controlled, it is much safer, vastly safer; you haven't anything like the number of turning movements with one-way traffic. When you have traffic on your right only, you have that traffic only to watch, no other turning movements to confuse you, or crossing thoroughfares.

(The Court) I gather from what has been said in the course of this case that the making of these two streets as one-way streets is part of an overall plan for the entire city, is that correct?

(The Witness) That is true. It will be necessary to make many others one-way, in order to handle traffic. We have to make, to construct free-ways or through-ways into the downtown section, and do that for many years to come. It's a question of utilizing our facilities in the most economical and the safest manner. We have to do it.

The meeting in my office yesterday was considering several other one-way arteries.

(The Court) You mentioned about Mount Royal traffic a few minutes ago. It is true that traffic is very heavy at the present time on Mount Royal Avenue from the northwestern part of the city, that is true? That is, the suburbs? A. The traffic which we hope to handle on Druid Hill and McCulloh is coming down the dual highway and following through Park Drive to Mount Royal, and coming down to North Avenue, some coming down Cathedral Street, some Maryland, but a large part of it going over to St. Paul Street, which is the easternmost of the one-way southbound streets. That, in turn, brings about crossings at Charles and Mount Royal to St. Paul and Mount Royal.

(The Court) I assume your expectation and hope is that the making of these two streets into one-way highways will drain off some of that traffic?

(The Witness) Of course, Charles and Cathedral and Maryland will drain off some of the flood traffic coming in directly from where it originates to where it wants to go.

Q. (By Mr. Houston) In connection with your statement that one-way traffic makes for safer conditions, how do you explain this traffic accident list on St. Paul Street? A. This is the total number of accidents, not the total accidents for a thousand vehicles involved. You must take into consideration that you have got nearly double the amount of traffic on those streets. This started thirty-one, the total number of accidents then was ninety. Then there were one hundred and nine. That has no connection at all with the amount of traffic you have got there.

Q. But, as far as residents are concerned, the number actually increases, doesn't it? A. No, so far as residents are concerned, I don't know that these are all residents involved in these accidents.

Q. Tell us about this overall plan. Does that exist now? A. Not in its entirety. The City Planning Commission is engaged now, at the present time, in drafting an overall highway program. It is partly complete but not in final form by any means. The Transit Company is proceeding, and I just dictated a letter a few minutes ago to the Transit Company, urging them to give me their latest report on their conversion program, which must tie in with our City action, and we at the same time are planning additional streets, additional paving, cut-offs, and various and sundry things to expedite the flow of traffic from where it is to where it wants to go. There is nothing fixed about it yet. It is in the period of preparation, but steps, and numerous steps are being taken to complete the program. Of course, it is never complete, and the Planning Commission is charged with keeping it up to date, from year to year.



Q. Tell us in what stage it was in January, 1948? A. I can not answer that question. I couldn't tell you the percentage of completion at all. At that time, in connection with one-way streets, we had two east and west streets, Mulberry and Franklin; we had at that time two north and south streets, Calvert and St. Paul, with two additional north and south Charles and Cathedral under consideration. We had the Druid Hill Avenue and McCullon under consideration. We have the Orleans-Jefferson under consideration, going out east. We have under consideration and plans made for many arterial streets in the city, bring them into the outlying sections, and sometimes all the way down to the constriction area.

Q. Talking about Druid Hill Avenue and McCulloh Street, at that time the Auchentoroly Terrace cutoff had already been completed? A. It was completed about a year ago.

Q. So you didn't have Druid Hill Avenue and McCulloh Street under consideration, if you had already decided on it, by virtue of the fact that you had to decide on it before? A. It had been decided upon heretofore by the City Council at that time.

Q. Before the Auchentoroly Terrace cutoff was completed? A. No, it wasn't approved until the Ordinance was approved, I think in May sometime.

Q. I am talking about the decision—I am not talking about the Ordinance—I am talking about the decision of the City officials to make Druid Hill Avenue and McCulloh Street one-way streets: That was made before they permitted the City to build the Auchentoroly Terrace cutoff? A. Certainly. There wouldn't be any purpose in building the cutoff, if there had been some place to hook them up to.

Q. How long did it take to build the Auchentoroly Terrace cutoff? A. About four or five months.

Q. So you would say the Auchentoroly Terrace cutoff was completed a year ago, which was January, 1948; then,

the decision had to be made sometime not later than mid-summer, 1947? A. It was made prior to that time, definitely.

\* \* \* \* \*

PLAINTIFFS' EXHIBIT NO. 2

August 9, 1946

Mr. R. Brooke Maxwell, Director of Parks  
Department of Public Parks and Squares  
Madison Avenue entrance to Druid Hill Park  
Baltimore 17, Maryland

Dear Mr. Maxwell:

I am forwarding herewith the plan and profile of the proposed dual highway along the northwest boundary of Druid Hill Park, to connect Druid Hill Avenue and McCulloh Street with Reisterstown Road.

In preparing this plan, we have purposely given no consideration to providing vehicular access to and from this highway for persons desiring to use the Park facilities, such as the zoo, picnic grounds, etc., and suggest that the location for these connections be determined by your staff, who are more familiar with the traffic created by the use of these facilities. If the alignment and grade of this highway are satisfactory to you, it is requested that you secure formal approval of this project from the Board of Park Commissioners, in order that we can proceed with the preparation of the contract for this work.

If the Baltimore Transit Company reconversion plan is approved by the Public Service Commission, we hope to advertise this contract soon after the details pertaining to the reconversion are decided.

Very truly yours,

CHIEF ENGINEER

gac:lb

Copy to: Mr. William N. D. Fischer,  
Highways Engineer

## PLAINTIFFS' EXHIBIT NO. 3

March 10, 1948

FROM : C. O. Traffic Engineering Bureau  
 TO : The Chief Inspector  
 SUBJECT : Proposed Ordinance No. 378  
 Druid Hill Avenue—McCulloh Street (etc.)  
 One-Way Streets Project

Returned herewith is letter of March 9, 1948 from James H. McKay, Highways Engineer, relative to proposed ordinance No. 378.

Respectfully recommend that this ordinance be passed as proposed.

BERNARD J. SCHMIDT

Captain

HENRY C. KASTE

Captain

BJS/rjr  
 Copied 4/14/49  
 rjr

## PLAINTIFFS' EXHIBIT NO. 4

January 6, 1948

FROM : C. O. Traffic Engineering Bureau  
 TO : The Chief Inspector  
 SUBJECT : Estimate of Costs—Traffic Signals & Signs  
 Druid Hill Ave.—McCulloh St. One-Way  
 Project

Incident to the proposed designation of Druid Hill Avenue and McCulloh Street as "One-Way" thoroughfares, we have estimated the cost of the necessary signs and additional signals required, as shown below.

In addition to the "ONE-WAY", "STOP—DO NOT ENTER" "PARKING" and other miscellaneous signs,

it will be highly desirable to designate Druid Hill Avenue, Gwynn's Falls Parkway, the New Park Drive and certain sections of Paca Street as "Boulevards".

In developing this estimate, no charge has been made for the labor involved in making the signs, and the cost involves only that which will be incurred for materials.

ESTIMATED COST OF SIGNS

310	"PARKING" signs .....	\$ 186.00
175	"STOP" signs .....	1326.10
145	"ONE-WAY" signs .....	174.00
100	"STOP—DO NOT ENTER" signs .....	60.00
35	"NO RIGHT TURN" signs.....	17.50
35	"NO LEFT TURN" signs.....	17.50
50	Miscellaneous signs .....	112.50
690	Channel Iron Posts.....	1794.00
TOTAL COST OF SIGNS.....		\$3687.60

#2

January 6, 1948

TO: The Chief Inspector

Druid Hill Ave.—McCulloh St. One-Way Project

In order to control speed on these thoroughfares, and at the same time to afford an opportunity for cross traffic to proceed in safety, it is desirable to install signal equipment at the several intersections listed below, the estimated cost of which is indicated in each case.

## ESTIMATED COST—ADDITIONAL SIGNALS

McCulloh & Whitelock Sts.....	\$ 1209.50
McCulloh & Presstman Sts.....	2279.50
McCulloh & McMechen Sts.....	1763.40
McCulloh & St. Mary's Sts.....	1279.50
Druid Hill Ave. & Whitelock St.....	856.60
Druid Hill Ave. & Presstman St.....	2329.50
Druid Hill Ave. & McMechen St.....	1763.70
Druid Hill Ave. & Lafayette Ave.....	1129.50
Druid Hill Ave. & Dolphin St.....	1249.50
Druid Hill Ave. & Biddle St.....	1189.50
Garrison Blvd. & Gwynns Falls Pkwy.....	1683.40
Saratoga & Paca Sts.....	1682.90
Saratoga & Eutaw Sts.....	1682.90

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TOTAL NEW SIGNAL INSTALLATION \$19919.40

At several intersections along these streets, the existing location of the signal would prove hazardous and the present method of installation impracticable under "One-Way" operation. The estimated cost of relocating existing signals and providing proper installation is as follows:

McCulloh St. & North Ave.....	\$ 560.00
McCulloh St. & Lafayette Ave.....	560.00
McCulloh St. & Dolphin St.....	560.00
McCulloh St. & Biddle St.....	560.00
Druid Hill Ave. & North Ave.....	350.00
Druid Hill Ave. & St. Mary's St.....	560.00
10,000' 7 Cond. #10 U. G. Cable..	6000.00
6—Synchronous Controls .....	1560.00

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TOTAL—RELOCATION OF  
EXISTING SIGNALS..... \$10710.00

January 6, 1948

#3

TO: The Chief Inspector  
 Druid Hill Ave.—McCulloh St. One-Way Project.

## S U M M A R Y

SIGNS .....	\$ 3,687.60
New SIGNAL INSTALLATION.....	19,919.40
RELOCATION EXISTING SIGNALS....	10,710.00
	<hr/>
GRAND TOTAL .....	\$34,317.00

In order to provide a safe and expeditious movement of traffic along these several streets when "One-Way" Provisions are put into effect, it is recommended that application be made to the Board of Estimates to appropriate this money immediately.

Respectfully,

BERNARD J. SCHMIDT

Captain

BJS/rjr



## PLAINTIFFS' EXHIBIT NO. 7

POLICE DEPARTMENT  
CITY OF BALTIMORE

Form 121—P. B.

ACCIDENT SURVEY  
SAINT PAUL STREET  
Centre Street to Thirty First Street

## SUMMARY

	"BEFORE"		"AFTER"			
	June 22, 1946 to June 21, 1947		June 22, 1947 to June 18, 1948			
			Before	After	Increase De-crease	%
Total number of accidents.....	90	109	19			21.1
Accidents involving personal injury.....	31	42	11			35.4
Accidents involving property damage....	59	67	8			13.5
Intersectional accidents .....	65	88	23			35.3
Inter-block accidents .....	25	21		4		16.0
Accidents involving turning movements..	8	25	17			221.0
Accidents involving pedestrians.....	15	18	3			20.0
Rear-end accidents .....	8	10	2			25.0
Accidents involving parked cars.....	8	8				0.0
1st six months of 1946	46	accidents				
1st six months of 1948	—42	"				
			4 decrease (8.2%)			

## PLAINTIFFS' EXHIBIT NO. 8

PLANNING COMMISSION

JULY 8, 1948

EXCERPT FROM MINUTES OF MEETING OF  
COMMISSION ON CITY PLAN

September 25, 1946

Opening and Extension of Auchentoroly Terrace,  
Cloverdale Road to Reisterstown Road and Anoka  
AvenueA plan was presented by Mr. Carter which calls for an  
extension of Auchentoroly Terrace as a main traffic



artery from Cloverdale Road through the southwest edges of Druid Hill Park to Anoka Avenue and Reisterstown Road.

The connection in the vicinity of Cloverdale Road would provide arteries for the future one-way street system so that southbound traffic would travel over Druid Hill Avenue and northbound traffic would use McCulloh Street. The Auchentoroly Terrace cut-off would be a dual highway to connect with Reisterstown Road. The whole project is integrated in a one-way street system plan and the reconversion of Baltimore Transit facilities. The dual highway will have two 40-foot drives with a median strip of variable widths, with a minimum damage to park property. It was pointed out that other areas now used by traffic roadways could be reclaimed for park purposes, and that the plan has the concurrence of the Park Department.

After a general review of the plan and the questioning of Mr. Carter on various aspects of the improvement, the following action was taken:

Mr. Pagon moved, seconded by Mr. Sloman, that the Commission on City Plan approve the opening and extension of Auchentoroly Terrace as a dual highway along the southwest edge of Druid Hill Park from Cloverdale Road to Reisterstown Road and Anoka Avenue, in accordance with a plan in the possession of the Chief Engineer's office.

The motion was adopted by six members of the Commission, Mr. Berry voting "No."

## PLAINTIFFS' EXHIBIT NO. 9

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(Amended)

Introduced by the President, by request.  
City Council 378

March 18, 1948

## ORDINANCE NO. 169

An ordinance making Druid Hill Avenue, from Fulton Avenue to Eutaw Street, Paca Street, from Druid Hill Avenue to Franklin Street, McCulloh Street, from Eutaw Street to Cloverdale Road, and Auchentoroly Terrace, from Holmes Avenue to Fulton Avenue, one-way streets for vehicular traffic; regulating the parking of vehicles on Druid Hill Avenue, between Fulton Avenue and Eutaw Street, on Paca Street, between Druid Hill Avenue and Franklin Street, on McCulloh Street, between Eutaw Street and Cloverdale Road, on Auchentoroly Terrace, between Holmes Avenue and Orem Avenue, on Liberty Heights Avenue, between Reisterstown Road and Auchentoroly Terrace and on Reisterstown Road, between Park Circle and Anoka Avenue; and repealing Ordinance No. 416, approved May 22, 1928, and all other ordinances inconsistent with the provisions of this ordinance.

By the CITY COUNCIL OF BALTIMORE, Jan. 12, 1948.

Introduced, read first time and referred to the Committee on Police and Jail and the Police Commissioner.

By order, EDWARD P. O'MALLEY, Chief Clerk.

## REPORT OF COMMITTEE.

Favorable, with amendments.

JACOB J. EDELMAN, Chairman,  
 MEDIO WALDT,  
 SIMON P. JAROSINSKI,  
 WALTER J. DEWEES,  
 JOHN J. McMENAMEN,  
 JOHN T. BOOTH,

Committee.

By the CITY COUNCIL OF BALTIMORE, March 1, 1948.

Reported favorably by the Committee on Police and Jail, with proposed amendments; amendments adopted; read second time and ordered printed for third reading.

By order, EDWARD P. O'MALLEY, Chief Clerk.

By the CITY COUNCIL OF BALTIMORE, March 8, 1948.

Placed on third reading; amendments offered from the floor; amendments adopted; read as amended, and ordered reprinted, as amended, for third reading.

By order, EDWARD P. O'MALLEY, Chief Clerk.

## ORDINANCE

No. ....

An ordinance making Druid Hill Avenue, from Fulton Avenue to Eutaw Street, Paca Street, from Druid Hill Avenue to Franklin Street, McCulloh Street, from Eutaw Street to Cloverdale Road, and Auchenoroly Terrace, from Holmes Avenue to Fulton Avenue, one-way streets for vehicular traffic; regulating the parking of vehicles on Druid Hill Avenue, between Fulton Avenue and Eutaw Street, on Paca Street, between Druid Hill Avenue and Franklin Street, on McCulloh Street, between Eutaw Street

and Cloverdale Road, on Auchentoroly Terrace, between Holmes Avenue and Orem Avenue, on Liberty Heights Avenue, between Reisterstown Road and Auchentoroly Terrace, and on Reisterstown Road, between Park Circle and Anoka Avenue; and repealing Ordinance No. 416, approved May 22, 1928, and all other ordinances inconsistent with the provisions of this ordinance.

**SECTION 1.** *Be it ordained by the Mayor and City Council of Baltimore,* (a) That Druid Hill Avenue, from Fulton Avenue to Eutaw Street, be and it is hereby declared to be a one-way street for vehicular traffic, and to be used by said traffic in a southerly direction only.

(b) Paca Street, from Druid Hill Avenue to Franklin Street, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a southerly direction only.

(c) McCulloh Street, from Eutaw Street to Cloverdale Road, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a northerly direction only.

(Page 2)

(d) Auchentoroly Terrace, from Holmes Avenue to Fulton Avenue, is hereby declared to be a one-way street for vehicular traffic, and shall be used by said traffic in a southerly direction only.

**SEC. 2.** *And be it further ordained,* (a) That between the hours of 7.30 A. M. and 10.00 A. M. and between the hours of 4.00 P. M and 6.00 P. M, on any day, except on Sundays, no vehicle shall be permitted to stand on the east side of Druid Hill Avenue, between Fulton Avenue and Eutaw Street, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise.

(b) Between the hours of 7.30 A. M. and 10.00 A. M. and between the hours of 4.00 P. M. and 6.00 P. M., on any day, except on Sundays, no vehicle shall be permitted to stand on the east side of Paca Street, between Druid Hill Avenue and Franklin Street, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise.

(c) Between the hours of 7.30 A. M. and 10.00 A. M. and between the hours of 4.00 P. M. and 6.00 P. M., on any day, except on Sundays, no vehicle shall be permitted to stand on the west side of McCulloh Street, between Eutaw Street and Cloverdale Road, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise.

(d) Between the hours of 7.30 A. M. and 10.00 A. M. and between the hours of 4.00 P. M. and 6.00 P. M., on any day, except Sundays, no vehicle shall be permitted to stand on the east side of Auchentoroly Terrace, between Holmes Avenue and Orem Avenue, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise.

(e) No vehicle shall be permitted to stand, at any time, on the north side of Liberty Heights Avenue, between Reisterstown Road and Auchentoroly Terrace, longer than actually necessary to take on or discharge passengers, baggage or merchandise.

(f) No vehicle shall be permitted to stand on the west side of Reisterstown Road, between Park Circle and Anoka Avenue, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise, between the hours of 7.30 A. M. and 10.00 A. M., on any day, except on Sundays.

(g) No vehicle shall be permitted to stand on the east side of Reisterstown Road, between Anoka Avenue and Park Circle, longer than actually necessary to take on or discharge passengers, or passengers' baggage transported on the same vehicle, but shall not load or unload merchandise, between the hours of 4.00 P. M. and 6.00 P. M., on any day, except on Sundays.

SEC. 3. *And be it further ordained,* That any person violating the provisions of this ordinance shall be subject to a penalty not exceeding Twenty-five Dollars (\$25.00) for each and every offense.

SEC. 4. *And be it further ordained,* That Ordinance No. 416, approved May 22, 1928, is hereby repealed, and all other ordinances, or parts of ordinances, inconsistent

(Page 4)

with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

SEC. 5. *And be it further ordained,* That the provisions of this ordinance shall become effective upon the abandonment of rail or fixed wheel traffic on Druid Hill Avenue, between Fulton Avenue and Paca Street, and on Paca Street, between Druid Hill Avenue and Franklin Street.

Approved.....

.....  
Mayor of Baltimore City.

.....  
President of the City Council of Baltimore.

Presented to His Honor, the Mayor, this .....  
day of ..... 194.....

EDWARD P. O'MALLEY, Chief Clerk.

## PLAINTIFFS' EXHIBIT NO. 10

## NO. 2 PROJECT

DRUID HILL AVENUE—MCCULLOH STREET  
ONE-WAY

The City Plan provides that Druid Hill Avenue and McCulloh Street be made one-way streets to connect with an Expressway through the western edge of Druid Hill Park to Park Circle, and later along Druid Park Drive and Greenspring Avenue. Eventually the driveways on Park Heights Avenue are to be widened, using the present track area. The Chief Engineer of the City has requested the Company to take steps to meet this plan.

This will require the discontinuance of street car operation on Druid Hill Avenue and on Whitelock Street and Linden Avenue north of North Avenue, and on the loop track on McCulloh Street, making it necessary to reroute two car lines, namely:

No. 5-33—Pimlico-Patterson Park

No. 32—Woodlawn

Eventually, with the completion of the Expressway to Park Circle and the widening of the driveways on Park Heights Avenue, buses will be substituted for street cars on the No. 5-33 line, operating as an Express line by way of Park Heights Avenue, the Expressway and Druid Hill Avenue and McCulloh Street to and from the downtown sections of Baltimore.

When the 5-33 line is changed to a bus line it will be necessary to change the No. 31-Garrison Boulevard line to a free-wheel line.

## FREE WHEELING ON FREMONT AVENUE

The details of the immediate changes, that is the change in the route of the No. 32 car line and of the route of the No. 5-33 line, as long as it remains a car line, are indicated on the No. 2 Project map. A description of the changes in the routes of these two lines follows.

## PLAINTIFFS' EXHIBIT NO. 23

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September 27, 1948

Commissioner Hamilton R. Adkinson  
Commissioner of Police  
Central Police Station  
Baltimore, Maryland

Dear Commissioner:

This organization desires the information listed below and it is understood that much of such information is obtained from the tablets of the Engineer's office. We sincerely hope that your office will authorize the Traffic Engineer's office to forward us the following information:

- (1) Vehicle traffic flow on Monroe Street before and after April, 1929.
- (2) Vehicle traffic flow for Franklin Street before and after December, 1936.
- (3) Vehicle traffic flow for Mulberry Street before and after July, 1942.
- (4) Vehicle traffic flow for Calvert and St. Paul Streets before and after their conversion into one way streets.
- (5) Vehicle traffic flow on McCulloh and Druid Hill Avenue—
  - A—Before March, 1948
  - B—Since April, 1948 and
  - C—Estimated future load when converted into one-way thoroughfares.
- (6) Accident rates, both vehicle and pedestrian, on McCulloh Street and Druid Hill Avenue for 1948.
- (7) Accident rates, vehicle and pedestrian, for St. Paul and Calvert Streets prior and after their conversion to one-way streets.
- (8) Accident rates for Franklin and Mulberry Streets prior and after their conversion into one-way streets.



Will you kindly request the Traffic Engineering Department to furnish us with this information at the earliest possible date.

Yours truly,

MILTON P. BROWN

Executive Secretary

MPB/ahm

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PLAINTIFFS' EXHIBIT NO. 24

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(Seal)

Hamilton R. Atkinson  
Commissioner  
George J. Brennan  
Secretary

POLICE DEPARTMENT  
BALTIMORE 2, MARYLAND  
Office of the Commissioner

October 4, 1948.

Mr. Milton P. Brown, Executive Secretary,  
National Association for the Advancement of  
Colored People,  
402 Dolphin Street,  
Baltimore 17, Maryland.

Dear Mr. Brown,

This will acknowledge your letter of September 27 requesting certain vehicular traffic flow data.

Please be advised that the information desired is not available.

Very truly yours,

HAMILTON R. ATKINSON,  
Hamilton R. Atkinson,

Police Commissioner.

L.

## DEFENDANTS' EXHIBIT NO. 3

POLICE DEPARTMENT  
CITY OF BALTIMORE

Form 121—P. B.

## ACCIDENT SURVEY SUMMARY

## CALVERT STREET

Redwood Street to University Parkway

	"BEFORE"		"AFTER"		
	June 22, 1946 to June 21, 1947		June 22, 1947 to June 18, 1948		
	Before	After	Increase	Decrease	%
Total number of accidents.....	189	154	35	17.5	
Accidents involving personal injury.....	66	44	22	33.3	
Accidents involving property damage....	123	110	13	10.5	
Intersectional accidents .....	143	121	22	15.3	
Inter-block accidents .....	46	33	13	28.2	
Accidents involving turning movements..	30	29	1	3.3	
Accidents involving pedestrians.....	25	17	8	32.0	
Rear-end accidents .....	20	10	10	50.0	
Accidents involving parked cars.....	10	5	5	50.0	
1st six months of 1946	83				
1st six months of 1948	—77				
			6	Decrease (7.2%)	



DESIGNATION OF THE PORTION OF THE RECORD,  
PROCEEDINGS AND EVIDENCE TO BE CON-  
TAINED IN THE RECORD ON APPEAL, AND  
AGREEMENT THERETO BY THE SOLICI-  
TORS FOR THE RESPECTIVE PARTIES

(Filed 12th April, 1949)

The following shall be included in the record in their entirety:

- 1—Bill of Complaint.
- 2—Demurrer to the Bill of Complaint.
- 3—Order of Court overruling Demurrer.
- 4—Amended Bill of Complaint & Order.
- 5—Answer to Amended Bill of Complaint.
- 6—Testimony taken in Open Court—Vols. 1 & 2.  
Plaintiffs' Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10 p. 19,  
11, 23, 24.  
Defendants' Exhibits 1, 2, 3, 4, 5, and plates 10,  
11, 12, 13 of Defendants' Exhibit 6.
- 7—Opinion.
- 8—Decree.
- 9—Order for Appeal.
- 10—Designation of Record.

The following shall be omitted from the record, and it is agreed that their purport and substance are as follows:

Plaintiffs' Exhibit No. 1 being a report entitled "Analysis of Traffic Conditions and present and Post-War Requirements" the purport and substance of the relevant material being contained on pages 5, 6 and 7 of the reporter's transcript of testimony in this case.

Plaintiffs' Exhibit No. 12 being a letter addressed to the City Council of Baltimore City by the Mayor of

Baltimore City, the purport and substance of the relevant material being contained on pages 198, 199, and 200 of the reporter's transcript of testimony in this case.

Plaintiffs' Exhibits 13, 14, 15, 16, 17, 18, 19, 20, 21, which are the tax receipts of Clarence Mitchell, Thomas J. Smith, Lillie M. Jackson, Garland Chissell and Augusta F. Chissell, the plaintiffs' in this suit and which show the following figures:

<i>Exhibit No.</i>	<i>Year</i>	<i>Name</i>	<i>Assessment</i>	<i>Tax</i>	<i>Property</i>
13	1947	C. M. Mitchell	\$3780.00	\$128.17	1324 Druid Hill Avenue
14	1948	" " "	5080.00	162.93	" "
15	1947	Thomas J. Smith	4100.00	137.46	1729 McCulloh Street
16	1947	Lillie M. Jackson	4300.00	141.22	1216 Druid Hill Avenue
17	1948	" " "	6040.00	200.86	1627 " "
18	1946	Garland Chissell	4540.00	159.29	1534 " "
19	1947	" "	5040.00	173.22	" "
20	1947	Augusta Chissell	3780.00	128.17	1326 " "
21	1948	" "	5080.00	162.93	" "

Plaintiffs' Exhibit 22 being Order No. 42685 of October 9, 1946, of the Public Service Commission of Maryland, the purport and substance of the relevant material being contained on page 327 of the reporter's transcript of testimony in this case.

Plaintiffs' Exhibit 25 being Rule 41 of the Rules and Regulations of the Department of Recreation and Parks of the City of Baltimore 1948 the purport and substance of the relevant material being contained on pages 366 and 367 of the reporter's transcript of testimony in this case.

It is agreed and stipulated by and between counsel for all parties to this case that the name of Nancy Winkey, a

minor complainant in this suit, was inadvertently omitted from the introductory paragraph of both the original bill of complaint and the amended bill of complaint and that for purposes of this designation her name shall be considered so inserted in both the bills nunc pro tunc.

It is agreed and stipulated by and between counsel for all the parties to this case that a Report to the Commission on City Plan of the City of Baltimore by the Advisory Engineers dated January 29, 1942, page 64 was offered in evidence by the plaintiffs' but never marked in this case, and the purport and substance of the relevant material being contained on pages 325 and 326 of the reporter's transcript of testimony in this case.

It is also agreed by counsel for all parties that this designation and agreement shall be part of the record in this appeal and shall be one of the papers transferred to the Court of Appeals of Maryland.

DONALD G. MURRAY,

Co-Counsel for the Plaintiffs.

HAMILTON O'DUNNE



FILED AUG 12 1949

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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1949

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No. 9

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R. GARLAND CHISSELL, ET AL.,  
*Appellants,*

vs.

THE MAYOR AND CITY COUNCIL  
of  
BALTIMORE CITY,

*Appellees.*

---

APPEAL FROM THE CIRCUIT COURT NO. 2 OF  
BALTIMORE CITY  
(MASON, J.)

---

**BRIEF FOR APPELLANTS**

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CHARLES H. HOUSTON,  
DONALD G. MURRAY,  
Solicitors for Appellants.





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APPEAL FROM THE CIRCUIT COURT NO. 2 OF  
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**BRIEF FOR APPELLANTS**

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**STATEMENT OF THE CASE**

This is an appeal from a decree passed and entered on the twenty-sixth day of January, 1949, by the Circuit Court No. 2 of Baltimore City. This decree dismissed the amended Bill of Complaint whose prayers asked that Ordinance No. 169 passed by the respondents in 1948 be declared illegal and void, that the respondents be restrained from doing any acts thereunder, and that the re-

spondents be enjoined from collecting raised taxes on the complainants property because of the fraudulent manner in which the increased assessments were made by the respondents.

## **QUESTIONS IN CONTROVERSY**

### **I.**

Whether the Respondents, the Mayor and City Council of Baltimore City, perpetrated a fraud upon the Complainants by raising their tax assessments, while at the same time they had already decided to designate McCulloh Street and Druid Hill Avenue one way arterial thoroughfares, but take no action on such decision until the statutory period within which the Complainants could appeal from the said raised tax assessments had run?

### **II.**

Whether the action of the Respondents was arbitrary, capricious and unreasonable so as to void Ordinance No. 169 (1948)?

## **STATEMENT OF FACTS**

On March 20, 1948, the Mayor of Baltimore City signed Ordinance No. 169 passed by the City Council. The effect of this ordinance was to designate McCulloh Street and Druid Hill Avenue one way arterial thoroughfares (Jt. App. 223-227). These two streets were predominantly residential in character and had been for many years (Jt. App. 11, 106, 124).

Previous to the passage of this ordinance, in 1947, the City of Baltimore had raised the tax assessment on various properties located on the two streets affected by said

ordinance. Some of the complainants' properties were so affected. Under the provisions of legislative and municipal enactments the persons whose properties had been affected by the increase in the assessment no longer had any right to appeal from the raise after October 20, 1947. In January, 1948, a hearing before a subcommittee of the City Council was had on the ordinance which later became Ordinance No. 169. At that time the Complainants and many others protested (Jt. App. 127, 115). Later in the same year and before the final passage of the ordinance which became Ordinance No. 169 the Mayor addressed a letter to the City Council urging passage of the bill and setting forth his reasons therein (Jt. App. 123). The complainants and others met with the Mayor after the passage of the bill and before its signing at which time the Mayor indicated that he could not veto the bill and had to pass it (Jt. App. 116, 120). The Mayor did so sign the ordinance on March 20, 1948, and thereafter the complainants filed their bill in Circuit Court No. 2 of Baltimore City asking that the ordinance be declared illegal and void and that all acts done or to be done under it be enjoined and that because of the fraudulent manner in which the tax assessment on the complainants property was made that the respondents be enjoined from collecting such taxes. Upon hearing and voluminous testimony the bill of complaint was dismissed by the court below.

## ARGUMENT

### I

WHETHER THE RESPONDENTS, THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY, PERPETRATED A FRAUD UPON THE COMPLAINANTS BY RAISING THEIR TAX ASSESSMENTS, WHILE AT THE SAME TIME THEY HAD ALREADY DECIDED TO DESIGNATE McCULLOH STREET AND DRUID HILL AVENUE ONE WAY ARTERIAL THOROUGHFARES, BUT TAKE NO ACTION ON SUCH DECISION UNTIL THE STATUTORY PERIOD WITHIN WHICH THE COMPLAINANTS COULD APPEAL FROM THE SAID RAISED TAX ASSESSMENTS HAD RUN?

The appellants earnestly contend that the answer to this question must be in the affirmative.

The allegations in the bill of complaint, the amended bill of complaint, and the testimony elicited at the trial of this case must be taken in conjunction to decide the issues in this case. The appellants urge that when so taken conjunctively the trial court below erred in dismissing the bill of complaint and refusing the appellants the relief for which they prayed.

The appellants feel that a recapitulation of the allegations and the testimony will serve to convince the court that the contentions of the appellants are correct.

An examination of the testimony presented at the trial disclosed the following facts.

On November 1, 1945, the Baltimore Transit Company, complying with a resolution of the City Council of Baltimore City, published in the Rider's Digest, as Project No. 2, a plan for the discontinuance of street car operation on Druid Hill Avenue and the making of Druid Hill Avenue and McCulloh Street one way streets to connect with an Expressway through Druid Hill Park (Jt. App.

228). There were no hearings on this plan open to the public. Subsequently the Public Service Commission passed order No. 42685 which provided that the Baltimore Transit Company send its vehicles marked No. 5 line, and originally traversing Druid Hill Avenue, on an alternative route south on Pennsylvania Avenue and returning north on Madison Avenue (Jt. App. 202, 252). On September 25, 1946, the City Plan Commission met and voted to approve the opening and extension of Auchentoroly Terrace as a dual highway to connect with Druid Hill Avenue and McCulloh Street to be designated in the future as one way streets. It is to be noted that the only discussion recorded referred to the mechanical details of the construction and the "minimum damage to park property." The plan was presented by Mr. Carter of the Department of Public Works (Jt. App. 221-222). the work on the Auchentoroly Terrace cut off was begun in May, 1947, and completed in January, 1948 (Jt. App. 37). The funds for the new highway came from the re-conversion fund of the Baltimore Transit Company. Mr. Holland, erstwhile member of the Public Service Commission of Maryland and at present Director of Public Works (Jt. App. 205, 206, 211), Mr. Carter, the Deputy Director of Public Works of Baltimore City, Mayor D'Alesandro (Jt. App. 121-122) all testified (see reference supra) that the plan for making Druid Hill Avenue and McCulloh Street "was made", "was adopted" prior to midsummer of 1947.

As of October 1, 1947, the respondents raised the tax assessments effective on some of the complainants' properties as well as those of other residents, citizens, and taxpayers whom they represent in this suit and this appeal. And the time for appeal from this raised assessment had



passed twenty days after October 1, 1947. This was brought out by Mr. Frank Fitzpatrick, Director of the Department of Assessments at page 156 of the Joint Appendix as follows:

“Q. Let me ask you this way: When is the property taxed, as of what date? A. Do you mean when our tax is due?

Q. Yes. A. January 1st.

Q. So that when did your assessment, increase of assessment made in 1947 become effective as a basis for the taxes January 1st, 1948? A. On October 1st the assessments are officially concluded.

Q. And that assessment was used as a base for the tax which was assessed for January 1st, 1948? A. Yes.

Q. And any petition that was filed on July 1st, on or before July 1st, 1948, would not affect the tax which was assessed January 1, 1948, but could only effect the tax to be assessed January 1, 1949; is that correct? A. That is correct.

(The Court) I did not get your explanation of the twenty days.

(The Witness) The twenty days notice means that we have reviewed the property and that it becomes official on the first day of October and they have the right of appeal from our decision from the first day of October to the Board of Municipal Appeals.”

See also Section 129, Baltimore City Charter, effective May 20, 1947, and Section 190 of Article 81 of the Maryland Code, 1939 edition.

The lower court in its opinion adverted to the fact that “rather widespread publication was given to the general plan under consideration” (Jt. App. 23). Mr. Carter in his testimony said “\* \* \* The project, so far as a project

was concerned, received wide newspaper publicity" (Jt. App. 40-41, italics ours). But the facts remain and are uncontroverted that the Auchentoroly cut-off was begun in May of 1947, the tax assessments were raised in the fall of 1947 to become final October 20, 1947, but the actual designation of McCulloh Street and Druid Hill Avenue as one way arterial thoroughfares was not made until March 1948. The appellants feel that the testimony of Mr. Smith (Jt. App. 126-127) succinctly states their position.

"Q. Has your property assessment been increased?

A. My assessment was increased in 1947, \$650.

Q. If you had known that McCulloh Street and Druid Hill Avenue were to be designated as one-way expressways, would you have protested the increase?

A. I sure would have.

(Mr. Houston) Your witness.

(The Court) Didn't you have some inkling they might be designated as one-way streets?

(The Witness) There was something in the papers about it but there was nothing definite.

(The Court) It was not settled.

(The Witness) No, it was not settled. They had not decided about it. The Druid Hill Park arrangement was made before there was any decision as to Druid Hill Avenue and McCulloh Street being made one-way streets.

#### CROSS EXAMINATION

\* \* \* Q. When did you first learn that the city was thinking of making the streets one-way? A. Well, when I read it in the papers—oh, some time back—that they were considering it but they had not decided anything about what they were going to do.

Q. When did you first read that? A. About McCulloh Street, I don't remember that.

Q. Was it over a year ago? A. I don't remember that.

Q. Was it before your property was reassessed? A. I don't think so.

Q. You knew there had been some talk about it before your property was reassessed, didn't you? A. Well, only what I read in the papers.

Q. Beg your pardon? A. Only what I read in the papers and you can't believe what you read in the papers.

Q. That was before your property was reassessed that you read it in the paper? A. Yes.

Q. When did you first know of the passage of this ordinance? A. Oh, I knew of the passage of the ordinance. I was one of the committee that waited on the Mayor to ask him not to sign it. \* \* \*

Here the witness states that he had read of the general plan but the inference is inescapable that he also had read of many plans by the respondents which had never come to fruition and he had no reason to conclude that this one would. He, therefore, as must all the complainants, wait for conclusive action not general planning by the respondents before they could protest this action in any appropriate forum.

Both the witnesses Babcock and Frisby testified, without contradiction as real estate experts, in detail as to how the designation of the streets as one-way arterial thoroughfares would lower the value of property along the streets affected thereby or affected the values adversely (Jt. App. 162, 174). They also stated, over objection, that such designation, with the concomitant factors, i.e., increase in traffic volume etc., should certainly be considered in any correct appraisal (Jt. App. 163, 178). Yet we find that the respondents' Department of Assess-

ments denies knowledge of the planned designation and specifically states that such was not taken into consideration in making the assessment raises of which complaint is made here by the complainants.

It is true that there was no evidence to prove that the raised assessments made in 1947 on the complainants' properties were made otherwise than in compliance with the terms of Article 81, sec. 175, sub-section 8 of the Maryland Code, 1939 edition. Conversely, however, the testimony of the witnesses Babcock and Frisby is also uncontradicted that any designation of these streets as one-way streets would have the effect of depreciating the value of property located along the streets affected and should certainly be taken into consideration for appraisal purposes. It is not enough for the Department of Assessments to say that it had no knowledge of the fact that McCulloh Street and Druid Hill Avenue were to be designated as one-way arterial thoroughfares at the time it made its assessments in 1947 on these particular streets. There rested a positive duty on the part of respondents to take such designation into account to so inform its department of assessments so that the complainants would not be remediless when the time came to appeal from such raise in assessment.

Failure of the respondents to take the steps outlined above resulted in a clear case of fraud for which the appellants had a right to go into a court of equity to secure the remedy therefor. These resident complainants have sustained special damages for which there is no administrative relief available as against their 1947 tax assessment raises.

“The test of liability for failure to disclose facts material to the transaction is some duty, legal or

equitable, arising from the relations of the parties, such as that of trust or confidence or superior knowledge or means of knowledge. When in the circumstances of the particular case such duty is present, failure to disclose a material fact with intention to mislead or defraud is equivalent to a fraudulent concealment of the fact and stands no better than the affirmation of a material misrepresentation." *Newell Brothers v. Hanson*, 123 A. 208, 210, 97 Vt. 297 and cases cited thereunder at 123 A. 210.

"\* \* \* No general rule can be formulated which will fix under all the circumstances the existence of trust and confidence because of which one party to a transaction has a right to a full disclosure of all material facts from the other. However where such relation may be regarded as existing between the parties, there is a duty to disclose all material facts, and failure to do so constitutes fraud. \* \* \* *Particular relations*. The following relations among others have been held confidential so as to impose a duty to reveal all facts material to the transaction involved: Attorney and client, officers of a corporation and stockholders, joint purchasers, joint owners selling jointly owned properties. \* \* \*" 37 C.J.S. sec. 16, pp. 247, 248.

The instant particular set of facts falls peculiarly within the purview of the quotation set forth above. Even admitting that the respondents may have not been in such direct relationship with the complainants as to compel them to disclose the fact that they were committed to the designation of McCulloh Street and Druid Hill Avenue as one-way arterial thoroughfares immediately upon the construction of the Auchentoroly cut-off (which time of completion they could very accurately estimate as the complainants could not), there was such direct relationship between the Mayor's office, the De-

partment of Public Works, the City Plan Commission and the Department of Assessments as made it necessary for the former departments to communicate their knowledge to the last named department. To allow them to withhold such knowledge is in effect a palpable fraud upon the complainants the effect of which a court of equity must alleviate as the complainants had no administrative or legal remedy of which they could avail themselves.

The appellants strenuously contend that the answer to Question I must be in the affirmative and the judgment of the lower court must be reversed.

## II.

**WHETHER THE ACTION OF THE RESPONDENTS WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE SO AS TO VOID ORDINANCE NO. 169 (1948)?**

Whatever decision may be made in this Honorable Court with regards to Question I the appellants respectfully submit that there can be no answer to Question II but one in the affirmative.

As a general proposition the appellants conceded by stipulation at the outset of the trial in the lower court that the appellants did not "challenge the general authority of the Mayor and City Council of Baltimore as a corporation to control traffic in the streets of the City of Baltimore, consistent with the protection of the total interests of the city" (St. Tr. 2).

The whole basis of the complainants position is that the respondents acted so arbitrarily, capriciously and unreasonably in the passage of this ordinance that the whole ordinance is rendered void.

The appellants to clarify their position insert the definition of "arbitrary" and "capricious" as contained in note 14 in the United States Supreme Court in *United States v. Carmack*, 329 U.S. 230, 243, 244, 67 S. Ct. 252, 258, as follows:

"'Arbitrary' is defined by Funk & Wagnalls New Standard Dictionary of the English Language (1944), as '1. \* \* \* without adequate determining principle; \* \* \*' and by Webster's New International Dictionary, 2d Ed. (1945), as '2. Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, \* \* \* decisive but unreasoned; \* \* \*' "

"'Capricious' is defined by Webster's New International Dictionary, 2d Ed. (1945), as '2. \* \* \*; apt to change suddenly; freakish; whimsical; humor-some'." Cf. *Fox Film Corp. v. Trumbull*, D.C., 7 F. 2d 715, 727; *Puget Sound Power & Light Co. v. Public Utility Dist. No. 1, of Whatcom County*, 9 Cir., 123 F. 2d 286, 290, certiorari denied, 315 U.S. 814, 62 S. Ct. 798, 86 L. Ed. 1212; *United States v. Eighty Acres of Land in Williamson County, D.C.*, 26 F. Supp. 315, 319.

See, also, *United States v. Certain Parcels of Land in Town of Denton of Caroline County, Md., D.C.*, 30 F. Supp. 372, 379; *United States v. Parcel of Land in Town of Middletown, New Castle County, D.C.*, 32 F. Supp. 718, 721.

Further, to clarify appellants' position under Question II, we reiterate that the allegations in the amended bill and the testimony elicited at the trial must be taken conjunctively. For this reason in addition to the facts and testimony to be set forth below, we respectfully ask that

the statements made on pages 4 to 6 of this brief be incorporated as part of the argument under this question.

The departments of the respondents connected directly with the designation of McCulloh Street and Druid Hill Avenue as one-way arterial thoroughfares were the Department of Planning and the Department of Public Works. In tracing the development of this plan Mr. Carter and Mr. Lang both connected the plan with a proposal initiated by the Baltimore Transit Company (Jt. App. 31, 32, 39, 90, 91). Mr. Holland's position was essentially the same (Jt. App. 191, 202, 203).

Nowhere in all the testimony of the city officials is there more than a bare mention of any foresight or care exercised to promote the health, welfare, safety and comfort of the total interests of the whole community:

Mr. Carter testified page 33 of the Joint Appendix as follows:

“Q. Was there a reply by Mr. Maxwell to this letter from the Chief Engineer of August 9th, 1946?  
A. The reply took the form of suggestions in so far as paths, and whatnot, and the final approval was in the form of discussing the only letter we have from Maxwell.

Q. Wasn't there a reply from Mr. Maxwell concerning certain solicitude for the trees in Druid Hill Park? A. No, not that I know of, sir.

Q. Did the Chief Engineer's office, in making that recommendation, consider the damage to the trees?  
A. Very definitely. The trees were located by a survey party and a road through the park around the perimeter of the park, was suggested to do as little damage as possible. \* \* \*”



And again on page 43:

“\* \* \* Q. From an engineering point of view, would Madison Avenue have been as satisfactory as Druid Hill Avenue and McCulloh Street? A. Not quite for the reason you would have done more damage to the park and at the other end you would have more of a problem at your southern terminus of Druid Hill Avenue. \* \* \*”

But he also testified that on page 48 of the Joint Appendix that he had to get the traffic downtown regardless of children (i.e., in the neighborhood through which the traffic passed).

The testimony adduced at this trial showed that all the city officials had made but little, if any, specific study of the density of population of the streets affected, little, or none, of the school population having to cross those said streets, little, or none, of the churches involved, and little, or none of the recreational areas in the area. (See the testimony of the witnesses Carter, Lang, Schmidt, Murphy, D'Alesandro and Holland, Jt. App. 28 et seq., 50 et seq., 87 et seq., 112 et seq., and 188 et seq.). In the face of this can the respondents be said to have acted in less than an arbitrary and capricious manner. The evidence shows that the plan was actually “adopted” by the respondents as part of the Baltimore Transit Company’s reconversion plan.

The control of a municipal corporation over its streets is not an arbitrary one but one held in trust for the benefit, use and convenience of the general public. It is not in accord with such trust that the municipality subserves a merely private interest. See *Townsend, Grace and Company v. Epstein*, 93 Md. 538, 553. Or again “\* \* \*

The police power is not unlimited and cannot be used to oppress." *Kahl v. Consolidated Gas Company*, 60 A. 2d 754, 758.

Respondents argued below and the trial court adopted their arguments in its opinion that the cases *Baltimore v. Himmelfarb*, 172 Md. 628, *Townsend v. Yeomans*, 301 U.S. 441 and *Bowles v. Willingham*, 321 U.S. 503, "rather conclusively" control the case here. The appellants contend that this is not so. In the *Himmelfarb* case supra the plaintiff sought damages against the city which constructed a viaduct which destroyed his light, air, darkened his house, etc. The *Townsend* case supra was one concerning tobacco regulatory taxes in the State of Georgia and the *Bowles* case supra was one involving a statute born of wartime exigencies.

There is no question here of a way by necessity except insofar as the respondents had to justify an expenditure of four hundred thousand dollars (\$400,000.00) for the Auchentoroly Terrace cut-off through Druid Hill Park.

Still more telling in favor of the argument advanced by the appellants here that the action of the respondents in passing this ordinance was arbitrary and capricious is the following principle and set of facts. Authority to act depends on law at the time of the action.

"The public can only act through its authorized agents, and it is not bound until all who are to participate in what is to be done have performed their respective duties. The authority of a public agent depends on the law as it is when he acts." *Colver v. Cleburne*, 131 U.S. 162, 173.

The Baltimore City Charter was effective May 29, 1947 nevertheless there is no testimony or proof anywhere

that the respondents made the barest effort, prior to the passage of Ordinance No. 169 (1948), to comply with the provisions of sections 106, 107, 108, 109, 110, 111, 112, 113, 114, or 115, of this charter. And this despite the fact that the citizens of Baltimore City had adopted the new charter and despite the fact that both the Mayor and the Director of Public Works were ex officio members of the Planning Commission. The respondents cannot so neglect the plain duties imposed upon them by the charter and still contend that they are not acting in such an arbitrary and capricious manner as to deprive the appellants of their rights under the equal protection clause of the Fourteenth Amendment to the Constitution.

The opinion of the court below in referring to the *Bowles v. Willingham* case supra quoted an extract contained in that opinion enunciated by Mr. Justice Holmes. It is apposite to point out that Mr. Justice Holmes also firmly held to another principle and that is that rules, whether made by legislatures or judge-made, are embodiments of social policies, values, ideals and for that reason should be recurrently and informedly re-examined.

The respondents simply rest their case on an established position of assertion of a municipal corporations' power over its streets. The appellants respectfully urge that in the instant case upon the allegations and evidence this principle must be re-examined and found wanting as a balance to weigh in favor of the validity of this Ordinance No. 169 (1948).

**CONCLUSION**

For the reasons hereinbefore set forth it is respectfully submitted that the judgment appealed from be reversed and Ordinance No. 169 (1948) be declared void.

Respectfully submitted,

CHARLES H. HOUSTON,

DONALD G. MURRAY,

Solicitors for Appellants.



FILED SEP 8 1949

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IN THE  
**Court of Appeals of Maryland**

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OCTOBER TERM, 1949

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No. 9

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APPEAL FROM THE CIRCUIT COURT No. 2  
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(MASON, J.)

---

**APPELLEE'S BRIEF**

---

THOMAS N. BIDDISON,  
City Solicitor,  
HAMILTON O'DUNNE,  
Assistant City Solicitor,  
Solicitors for Appellee.



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**APPELLEE'S BRIEF**

---

**STATEMENT OF FACTS**

The Bill of Complaint in the case at bar was filed on June 6, 1948, by the Appellants as citizens, residents and taxpayers of Baltimore City living on Druid Hill Avenue or McCulloh Street. The Bill recited that these streets were residential in character and, alleged that, prior to the passage of Ordinance No. 169 of the Mayor and City Council of Baltimore (approved March 18, 1948), these streets were safe for pedestrians due to the fact that

vehicular traffic thereon was moderate or below, in volume. The Bill contained further allegations that the Ordinance, in designating these streets as one-way streets for vehicular traffic, increased the traffic in both streets and rendered them hazardous and dangerous. Furthermore complaint was made that the effect of the Ordinance would be to change the character of the traffic to high speed traffic, thus increasing noises, fumes and odors, disturbing the residents and the complainants in the enjoyment of the peace and quiet of their respective homes.

In addition to the above allegations, the Bill of Complaint stated that on or about October 1, 1947, the assessments on the Complainant's properties were increased by the Tax Assessor of Baltimore City without regard to what is alleged to be the detrimental economic effect of the Ordinance on their properties. The Complainants asked that the Ordinance be declared illegal and void and that its enforcement be enjoined. Furthermore, the court was requested to issue a permanent injunction restraining the Appellee from collecting any taxes based upon the increased assessment in 1947 upon any of the residential properties located on Druid Hill Avenue or McCulloh Street, because of the alleged fraudulent manner in which the assessments were made (App. 9-16).

The court below dismissed the Bill of Complaint and refused to enjoin the enforcement of the Ordinance or the collection of the increased tax assessments, thus failing to find that the allegation of fraud, in the increase of such assessments, was sustained (App. 19-27). The Appellants bring this appeal from this action of the lower Court.

Ordinance No. 169, originally introduced as No. 378, of the Mayor and City Council of Baltimore was introduced on January 12, 1948 and approved March 18, 1948 (App. 223). Insofar as is pertinent to this case, the Ordinance designated Druid Hill Avenue in the City of Baltimore to be a one-way street for vehicular traffic from Fulton Avenue to Eutaw Street and to be used by the traffic in a southerly direction only. McCulloh Street, running parallel to and adjoining Druid Hill Avenue, was declared to be a one-way street for vehicular traffic in a northerly direction only, from Eutaw Street to Cloverdale Road.

### **QUESTIONS PRESENTED**

The Appellants present to this court the following two questions on which they ask a decision favorable to their position.

#### **I.**

“Whether the Respondents, the Mayor and City Council of Baltimore City, perpetrated a fraud upon the Complainants by raising their tax assessments, while at the same time they had already decided to designate McCulloh Street and Druid Hill Avenue one way arterial thoroughfares, but take no action on such decision until the statutory period within which the Complainants could appeal from the said raised tax assessments had run?”

#### **II.**

“Whether the action of the Respondents was arbitrary, capricious and unreasonable so as to void Ordinance No. 169 (1948)?”

**ARGUMENT****I.****THE APPELLEE WAS GUILTY OF NO FRAUD IN REVISING THE ASSESSMENT ON THE APPELLANTS' PROPERTIES.****(a) The Law Required the Assessor to Assess at the Time He Did.**

It may be convenient if one of the principal sections of the Baltimore City Charter relating to the case at Bar is reproduced at the outset of the argument:

Section 53 of the Baltimore City Charter, effective May 20, 1947, provides as follows:

“DEPARTMENT OF ASSESSMENTS — *Appointments; Duties.* There shall be a Department of Assessments, the head of which shall be the Director of Assessment. He shall be appointed by the Mayor, in accordance with the provisions of the Charter relating to the Classified City Service, and shall hold office in accordance with such provisions. He shall perform the duties and exercise the powers which are herein imposed or conferred upon the Department of Assessments. Consistent with the provisions of the Charter and subject to the powers with respect thereto conferred by the Charter upon the Board of Municipal and Zoning Appeals, the Department, pursuant to the provisions of applicable ordinances as now or hereafter enacted, shall: (1) *continuously fix or revise the assessment for tax purposes of all taxable property situate in Baltimore City or otherwise taxable to the City so that every such assessment may be fixed or revised at least once in each five years, each assessment to be at the full cash value of the property as of the date of finality;* (2) take over and perform the duties with respect to the assessment of property for taxation by the State of Maryland which by any Act of the General Assembly of Maryland any agency of the City is now or hereafter

required to perform, (3) hear and determine applications of property owners for a reduction in the assessment for tax purposes of their property, real and personal; (4) assess the amounts to be paid by or to any person for benefits derived or damage sustained by such person whenever the Department of Public Works, pursuant to ordinance, shall draft plans for the opening, extending, widening, straightening, grading or closing of any street or part thereof in Baltimore City; and (5) in conjunction with the Department of Law, institute and carry on all condemnation proceedings on behalf of the City.” (Italics supplied.)

The Appellants contend that the Appellee was guilty of fraud because its tax assessor raised the tax assessment of their properties in 1947 when it is alleged it had already been decided to change Druid Hill Avenue and McCulloh Street to one way operations, but took no action on such decision until the expiration of the period within which the assessment could be appealed.

Such an argument presupposes that the Assessor in his discretion could wait until the City Council acted on the one way street proposal contained in the Ordinance, before assessing the Appellants’ properties. By the applicable law, property which is being assessed in Baltimore City, must be assessed by October 1.<sup>1</sup> Thereafterwards, the taxpayer is granted a period of 20 days within which to appeal the assessment and if he fails to do so the tax becomes final for the particular year. Thus, it was necessary for the assessor to assess the

<sup>1</sup> Sec. 223, Charter and Public Local Laws of Baltimore City in part provides:

“The valuation of the property subject to taxation in the City of Baltimore, as it shall appear upon the assessment books of said Court on the first day of October in each and every year, shall be final and conclusive, and constitute the basis upon which taxes for the next ensuing fiscal year shall be assessed and levied; \* \* \*.”  
And see Mr. Fitzpatrick’s testimony (App. 151-152).



Appellants' properties by October 1, 1947, and not wait until the following March to determine what the action of the legislative body would be. In addition, is the important if not decisive factor that at the time the assessor was required by law to assess Appellants' property the ordinance had not even been introduced into the City Council. The record is very clear on the proposition that no trickery was employed by the Appellee with respect to the assessments complained of. Mr. M. Frank Fitzpatrick, Director of the Department of Assessments of the City of Baltimore, testified<sup>2</sup> and the court below so found<sup>3</sup> that nothing unusual occurred in the selection of

<sup>2</sup> Mr. Fitzpatrick testified that the City for the purpose of property assessment, is divided into five districts and that one district is assessed each year, so that one-fifth of the City is assessed each year, and at the end of five years the cycle is completed and the entire city has been assessed. Assessment on the property in question involved the assessment of that segment of the city scheduled for assessment in 1947. In other words, none of the Complainants' properties were assessed within five years of the time they had previously been assessed. Under the applicable law the properties were to be assessed by October 1947. Assessment at that time was merely compliance with the law (App. 151-152).

<sup>3</sup> In its opinion, the court stated (App. 25-26) :

"The complainants have also asked that a permanent injunction be issued to restrain the City from collecting any taxes based upon increased assessments in 1947 upon any of the residential properties located on McCulloh Street and Druid Hill Avenue because of what is alleged to be the fraudulent manner in which the increased assessments were made by the respondents.

"The fraud is said to exist because Ordinance No. 169 was approved after it was too late to take an appeal from the increased assessments. This fact alone would not be sufficient to justify the Court in finding the assessment fraudulent. Mr. Fitzpatrick, the head of the Department of Assessments, was called by the complainants, and he testified that the properties involved were assessed in 1947 pursuant to the plan adopted in accordance with Section 175, sub-section 8 of Article 81 of the Maryland Code, 1939 edition. This last referred to Article directs that for the purpose of assessments for tax purposes the City of Baltimore be divided into five geographical districts, and that the property in each district should be reassessed or at least reviewed for re-assessment purposes once every five years. Thus, the statutory scheme embraced within that section of the Code just referred to results in a reconsideration for re-assessment purposes of all the property in the City once every five years.

"Mr. Fitzpatrick further testified, and the complainants produced no evidence to contradict him, that the property involved in this case was re-assessed in 1947 pursuant to the terms of Article 81, section 175, supra. He testified that this property was within the

the time for the assessment of the Appellants' property. According to the practice prevailing in Baltimore City the subject properties were within the geographical district scheduled to be assessed in the fall of 1947. Thus the assessment was made at the time required by law.

**(b) The Method of Assessment Adopted  
Was Valid.**

The expression "full cash value" as used in Section 53 of the Baltimore City Charter, supra, page 4 means "market value". 17 Words and Phrases 774-777.

The following cases also demonstrate that the term "full value" has this meaning.

Appeals of Matson, 152 Pa. Sup. 424, 33 Atl. (2d) 464 (1943) "True cash value" which is the measure of the city's assessment under the statute, is "actual value" and both are incidental with "fair market value".

Appeal of Borough of Millbourne, 329 Pa. 321, 198 Atl. 149 (1938) "Actual value" means "market value" which is the price arrived at between a purchaser willing but not obliged to buy and a seller willing but not obliged to sell.

Appeal of Rohrbach, 156 Pa. Super. 283, 40 Atl. (2d) 142 (1945) "Actual value" means market value.

Mr. Fitzpatrick testified that insofar as possible he attempted to base the assessment on the prices obtained in the sale of comparable property in the community.

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geographical district scheduled for reconsideration and re-assessment in 1947 and that none of the property was re-assessed out of the normal order in which it would have been in accordance with Article 81, section 175, of the Maryland Code."

This is a consideration reflecting on market value which has the approval of the authorities generally, (18 Am. Jur. (Eminent Domain) sec. 351), as well as the Court of Appeals of Maryland. *Williams v. N. Y., Phila. and Norfolk R. R. Co.*, 153 Md. 102, 137 Atl. 506.

Mr. Fitzpatrick further stated that rental values were considered as reflecting on market value in instances when recent sales of similar property were lacking. This, too, is a method approved by the authorities. 18 Am. Jur. (Eminent Domain) sec. 344. Thus no successful attack can be made on the method of appraisal employed by the Assessor.

**(c) The Assessor Should Not be Required to Anticipate Legislative Action.**

The Appellants complain that the Assessor did not consider what effect the passage of the challenged ordinance would have on the value of their properties. However, as has been pointed out, the ordinance had not been passed or even introduced at the time when the law required that the properties be assessed.

It would be completely unsatisfactory to force the adoption of a system of assessments which required the exercise of clairvoyance on the part of the local tax assessor.

Such a system would be palpably unsatisfactory. It is not contemplated by the law under which the Assessor operates. It would require a prognostication of legislative action heretofore unpossessed by even the most practical civic leaders.

The only practical method of assessment is on the basis of present valuation. Present valuation is valua-

tion at the time the assessment is made, unaffected by a projected peer into the future and an appraisal of the effect therein of possible legislation together with an estimate of the likelihood of its introduction, passage and approval.

Furthermore, the Charter states that the date for the valuation of the taxpayer's property is the *date of finality*. This means the date on which the assessments become final. The law does not contemplate valuation as of a future date depending on whether or not certain events transpire by virtue of the ability or failure of a legislative body to agree on a course of action. As the assessor himself testified, "We cannot anticipate values, we have to follow them" (App. 149).

This principle is stated in the Appeal of Baldwin, 20 Erie (Pa.) 98 (1938) (Pa. Com. Pl.) where the rule is announced that property must be assessed not at what it should bring under more favorable conditions but in accordance with actual market values as they exist at the time of the assessment.

**(d) Manifestly Actions of Legislative Bodies Cannot Be Accurately Foretold.**

The appellants make the argument that from some time in 1945 the city officials knew it to be a foregone conclusion that the streets in question would be designated as one way streets. This, of course, overlooks the very practical fact that streets are designated as one way by virtue of Ordinances enacted by the legislative body of the City of Baltimore. It is common knowledge that the City Council is by no means a rubber stamp for the wishes of municipal officials or even unofficials. Indeed, the record demonstrates this fact clearly. Thus,

in this very case the record contains a statement by Mr. George Carter that although certain freeway construction is most desirable from an engineering point of view for the purpose of solving municipal traffic problems, yet municipal officials have, nevertheless, been unable to have the City Council approve the type of freeway construction desired (App. 44).

The Appellants complain of fraud and maintain that had they been aware of the fact that McCulloh Street and Druid Hill Avenue would be made one way streets they would have appealed from the assessment of October 1947. However, it is significant that although any Appellant could, by July of 1948, have appealed his assessment for future periods (App. 153) none of them did so. The chancellor below commented on this failure to appeal stating (App. 26-27):

“The complainants have produced testimony of owners of property in the vicinity to the effect that the increased traffic on Druid Hill Avenue and McCulloh Street has rendered the enjoyment of their property less desirable than formerly, and thus decreased the value of their property. However, although the time for appeal to the Board of Municipal and Zoning Appeals for the purpose of contesting the assessment has expired (Section 129, Baltimore City Charter, effective May 20, 1947), nevertheless, the complainants have not availed themselves of the remedy provided by Section 190 of Article 81 of the Maryland Code, 1939 edition. This section of the Code provides that upon the request of a taxpayer the Appeal Tax Court (now the Board of Municipal and Zoning Appeals) shall hold a hearing for the purpose of reconsidering assessments providing the demand be filed before July 1st preceding the taxable year in question. Although the

evidence is clear, that well in advance of last July 1st, 1948, the complainants were made aware of the situation about which they now complain, none of them demanded a reconsideration by the Board for the purpose of re-assessing their property. Thus, it is apparent that as far as the assessments of the complainants' properties are concerned, they had an adequate remedy at law but did not avail themselves of the opportunity to use it. If the complainants are still of the same opinion next spring as they expressed themselves presently to be in the Bill of Complaint, then they may file a demand for a reconsideration of their assessments pursuant to Section 190 of Article 81 of the Maryland Code, but the situation does not seem to be one for interference by a court of equity."

From the foregoing, it is readily apparent that the chancellor was justified in his failure to find fraud in the assessment of the Appellants' properties. It is clear that no formula established by law was violated. On the contrary, the law was complied with and the methods used by the assessor to determine market value have received the approval of the Maryland courts and the authorities at large. The courts will presume that the taxing power was validly exercised unless its invalidity clearly appears, *Havre de Grace v. Bauer*, 152 Md. 521, 137 Atl. 344, and fraud will never be presumed but must be proven by the party alleging it. *United States Fire Insurance Company v. Merrick*, 171 Md. 476, 491, 190 Atl. 335. Thus on the facts and the applicable law it is submitted that the failure of the court below to find fraud on the part of the Appellees is fully justified.

## II.

**THE ORDINANCE IS A VALID EXERCISE OF  
THE CITY'S POWER.**

The City of Baltimore is given power over its streets by section 6, sub-section 29(d) of the Baltimore City Charter, effective May 20, 1947. This section grants the City of Baltimore the power:

“To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interest of the public. Any such regulation shall not involve any charge of any kind for the use of such street or public way, other than reasonable charges for parking within areas set aside exclusively for that purpose.”

It is submitted that this charter power extends to the City of Baltimore ample authority to enact the legislation challenged by the Appellants. Indeed similar exercises of power have received the approval of this court. For example, the Court of Appeals has recognized in *Murphy v. State Roads Commission*, 159 Md. 7, 15, 149 Atl. 566, that the question of whether or not a proposed highway is a public necessity is legislative rather than judicial. In that case, the court stated:

“Ordinarily the question of whether a proposed highway is required by public necessity is legislative rather than judicial (*Elliott on Roads and Streets*, sec. 213; *Nichols on Eminent Domain*, secs. 333, 334); and while the question as to whether the proposed use is public in its nature may ultimately become a judicial one (*Ibid.*, sec. 52; *Van Witsen v. Gutman*, 79 Md. 405), when the Legislature has determined

that a proposed improvement is public in its nature, the *prima facie* presumption is that the use thus declared to be public is public. *Nichols, Eminent Domain*, sec. 52.”

In the case of *Commonwealth v. Nolan*, 189 Ky. 34, 224 S.W. 506, 11 ALR 202, the court held that the City of Harlan was empowered to pass an ordinance making certain streets, one-way streets, under the grant of power declaring that the City Council of Harlan should have “exclusive control and power over the streets, roadways, sidewalks, alleys,” etc. of the City.

The ordinance in that case was attacked as unconstitutional by the operator of a vehicle who was arrested and fined for violating it. The claim was made that it was discriminatory in merely applying to motorized traffic. The upper court, however, upheld the ordinance and declared:

“At any rate, *a municipal ordinance*, designed to protect the safety or health of the public and necessary to its protection, *will not by the courts be declared invalid merely because its enforcement will subject to inconvenience a single person, a considerable number, or an entire community of persons.* In such case the good of the public will be regarded as of paramount consideration.” (Italics supplied.)

This Court, in *Baltimore v. Himmelfarb*, 172 Md. 628, 192 Atl. 595, announced that the route of a much traveled highway could be changed and relocated in front of a house, thus causing inconvenience by way of disturbances from dust, noise, fumes, vibration etc., without affording to the owner of the house any right of action. In such a case, said the court, the damages would be consequential.



In the *Himmelfarb* case, a property owner sought damages against the city by reason of alleged loss of value to his property because he was deprived of light and air and caused to contend with additional dust and gases because of the erection of a viaduct across St. Paul Street in the City of Baltimore. The testimony tended to show that the light and air from the south and west were materially cut off, that shadows darkened his house severely and that whirls or currents of air caused by the construction carried exhaustive dust and gases into his house and diminished the use of it. This court held, however, that none of these elements entitled the Plaintiff to damages against the municipality, and the court stated:

“There has been no destruction of access or use of the plaintiff’s property. The cutting off of light and air as described could not constitute destruction of it, nor could the blowing of dust and gases into it, except by a fiction too far removed from the fact. The light and air are not obstructed directly, or obstructed at all beyond a degree that is common among city buildings. Tall municipal office buildings on both sides of the street might have interfered as much, but would not have given a right to compensation. *So a much-traveled highway relocated in front of a house might cause as much dust and gas to enter, but gives no such right.* The damages are only consequential. And the case is analogous to that of *Mayor etc. of Cumberland v. Willison*, 50 Md. 138, in which it was held that damages done to the water power of a mill by means of an increased flow of water carrying debris into the race caused by the grading and paving of a street was not a taking of the property. ‘Property thus injured is not in the constitutional sense taken for public use.’ *Mayor etc. of Cumberland v. Willison, supra.* (Italics supplied.)

“Public improvements often cause severe incidental damages for which, under this rule, no compensation may be obtained. But it must be remembered, as has been pointed out in other cases, that despite the examples of constitutional amendments and statutes enacted in other jurisdictions to provide the compensation, none have been enacted in this state; and the fact imposes on the courts all the more firmly the duty of observing the limits of the constitutional prohibition. It is not their part to provide otherwise. *Garrett v. Lake Roland Elec. Co.*, 79 Md. 277, 283, 29 A. 830; *Krebs v. State Roads Commission*, 160 Md. 584, 594, 154 A. 131.”

Just as in the *Himmelfarb* case, the owner of property was held to have no right against the municipality because of an increase in dust, fumes, vibration as so for, so in the immediate case the Appellants cannot be permitted to enjoin a one way street operation simply because of an alleged adverse effect on their property values by reason thereof.

This Court has held that the enjoyment of a person's property may be seriously curtailed by the re-routing or even abandonment of a road on which one might live or have his business, but that, nevertheless, this is not a sufficient reason to interfere with the exercise of the legislative judgment in deciding to change or alter the course of the road. *Krebs et al. v. State Roads Commission et al.*, 160 Md. 584, 154 Atl. 131; *Ragan v. Susquehanna Power Co.*, 157 Md. 521, 146 Atl. 758.

In the *Ragan* case, *supra*, the owner of a farm on a road running north and south complained that the closing and flooding of the only connecting road south of him had deprived him of a customary convenient passage by that route to towns to the east, and that now, as a result of

the flooding, he was forced to reach them by a longer intercepting highway to the north. However, the court held that the comparative inconvenience and consequent loss of value in the property did not render the closing of the road a taking of his property. In the Krebs case, the court declared:

“The inconvenience and loss, we think, cannot be considered as other than injuries incidental to the removal, or consequential upon it; and, to include them within a taking, the court would have to make an extension of the constitutional prohibition, amounting to an amendment, such as has been adopted in many other States, but which the people of this State have not seen fit to make.”

A case which is quite apposite to the case at bar is *Reichelderfer v. Quinn*, 287 U.S. 315, 53 Sup. Ct. 177, 77 L. ed. 331, 83 A.L.R. 1429. In that case the owner of land adjoining a park in Washington, D.C., sought to enjoin the erection of a fire engine house on park property. When the park was acquired, it was by statute “perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoiment of the people of the United States \* \* \*.” Furthermore, the complainant’s land had been assessed to the extent that it had been “specially benefited by reason of the location and improvement” of the park. It was admitted that the attractiveness of the complainant’s lands for residential purposes would be diminished and decreased in value. The court held that even assuming that the proposed building would be a diversion from park purposes, nevertheless, said the court, page 318:

“By dedicating the lands thus acquired to a particular public use, Congress declared a public policy, but did not purport to deprive itself of the power to

change that policy by devoting the lands to other uses. The dedication expressed no more than the will of a particular Congress which does not impose itself upon those to follow in succeeding years."

The court continued:

"It is true that the mere presence of the park may have conferred a special benefit on neighboring owners and enhanced the value of their property. But the existence of value alone does not generate interests protected by the Constitution against diminution by the government, however unreasonable its action may be. The beneficial use and hence *the value of abutting property is decreased when a public street or canal is closed or obstructed by public authority*, Meyer v. Richmond, 172 U.S. 82, 95, 43 L. ed. 374, 379, 19 S. Ct. 106; cf. Whitney v. New York, 96 N.Y. 240; Fox v. Cincinnati, 104 U.S. 783, 26 L. ed. 928; Kirk v. Maumee Valley Electric Co., 279 U.S. 797, 802, 803, 73 L. ed. 963, 966, 967, 49 S. Ct. 507; Smith v. Boston, 7 Cush. 254; Stanwood v. Malden, 157 Mass. 17, 16 L.R.A. 591, 31 N.E. 702, or a street grade is raised, Smith v. Washington, 20 How. 135, 15 L. ed. 858, see Mead v. Portland, 200 U.S. 148, 162, 50 L. ed. 413, 420, 26 S. Ct. 171, or the location of a county seat, Newton v. Mahoning County, 100 U.S. 548, 25 L. ed. 710, *supra*, or of a railroad is changed. Bryan v. Louisville & N. R. Co. (C.C.A. 8th) 157 C.C.A. 98, 244 Fed. 650, 659, *but in such cases no private right is infringed.*" (Italics supplied.)

Just as in the *Quinn case, supra*, the Supreme Court held that a property owner had no vested right in the continuation of public property as a park, so in the case at Bar do the Appellants have no vested right in the continuation of Druid Hill Avenue and McCulloh Street as two way streets.

The Appellants apparently advocate a form of neighborhood autonomy or at least a sectional seclusion from the problems of the municipality as a unit and the intricacies of urban life in general. The suggestion is implicit in the arguments advanced by them that the locality populated by them and their neighbors should remain free from interference and change unless, according to their own subjective analysis the change innures to their advantage. However desirable, such a proposition may be from the point of view of the Appellants it is contrary to the applicable law as announced in the *Himmelfarb* and *Reichelderfer* cases, *supra*.

If one way streets increase safety hazards and cause dust, fumes, vibrations and other sensations distasteful to individuals rendering houses less desirable for residential purposes then the Appellants argue that such streets should be prohibited. However, the solution of all municipal problems does not occur simultaneously. The power to solve them has been given to the City Council and it is the discretion and judgment of this body which must operate to solve them and not that of the courts. Certain changes in the status quo of an individual's environment may prove disagreeable to him and yet advance the interests of the community generally. The sensitivities of the few should not be allowed to stand as an insurmountable barrier to the benefit of the majority.

With respect to one way streets the general rule has developed that

“the public authority invested with power to control and regulate the use of streets or other highways may restrict travel on particular ways or portions thereof to one direction when such a regula-

tion is reasonably calculated to promote the public safety or convenience." 25 Am. Juris (Highways), Section 216.

Indeed, the Appellants seem to concede that the Appellee may properly exercise the power over its streets which the authorities recognize a municipality possesses (Appellants brief p. 11). However, the contention is made that the ordinance is arbitrary and unreasonable and therefore a nullity.

The chancellor below, however, found otherwise and so the question remains, therefore, whether the record demonstrates conclusively that as a matter of law the ordinance involved is arbitrary in failing to be reasonably calculated to promote the public safety or convenience. It is submitted that such disclosures are nowhere to be found in the record.

### III.

**THE RECORD MAKES IT EVIDENT THAT THE ORDINANCE IS NOT ARBITRARY AND IS CALCULATED TO PROMOTE THE PUBLIC SAFETY AND CONVENIENCE.**

**(a) The Streets Were Not Made One Way Without Due Deliberation.**

Complaint is made that the two streets under consideration in this appeal were selected for one way traffic without due deliberation and without consideration having been given to other factors, which the Appellants regard as important. This is a mere allegation and is not substantiated by the testimony.

The record shows that the plan for one way streets originated with Mr. Nathan Smith, Chief Engineer of

Baltimore City (App. 90). He prepared a report entitled "Analysis of Traffic Conditions and Present and Post-War Highway Requirements" around May of 1945, and in that report certain one way street operations were recommended including the conversion of McCulloh Street and Druid Hill Avenue to one way operations (App. 29).

Mr. George Carter, Deputy Director of Public Works, testified that pedestrian traffic, as part of the total traffic problem, was considered, and that the same consideration was given to pedestrians in connection with Druid Hill Avenue and McCulloh Street as was given them in the inauguration of Calvert and St. Paul Streets and Mulberry and Franklin Streets as one-way streets (App. 35).

Inspector Bernard J. Schmidt, Captain in charge of the Engineering Bureau of the Police Department of Baltimore City, stated that his Department was consulted by the Department of Public Works and the City Planning Commission in order to get the opinion of his Department concerning the feasibility of determining whether or not McCulloh Street and Druid Hill Avenue should be designated as one-way thoroughfares (App. 51). He testified furthermore, that a specific study concerning traffic flow and a general study of the effect of one-way streets on the whole class of people was made (App. 55).

The Mayor of Baltimore stated that consideration is always given to the citizens and that he, as Mayor of Baltimore, afforded the protestants a hearing in his office before he signed the Ordinance (App. 114). Furthermore, the statement made by the Mayor and put into evi-

dence by the Appellants (App. 116) stated that the Ordinance in question was legislated only after the objections raised by the opponents had been carefully considered and waived.

Mr. John Lang, secretary of the Planning Commission, testified that the one way street plan was recommended by the Planning Commission and that "they (the Commission) consider all angles before they make a recommendation and give approval to such a plan" (App. 93).

In view of such testimony it is farcical to allege that the one way street plan under attack was the result of snap judgment and lacking in forethought and planning.

**(b) Factors Relating to the Necessity for One Way Streets as Well as the Selection of the Particular Streets Were Considered.**

Despite the protestations of the Appellants, the record is replete with testimony which illustrates that considerable consideration was given by the City officials in the selection of the two streets involved as one way streets and that the making of these streets one way was based on considerations of safety and the handling of a large volume of traffic in a metropolitan city. In addition, the record justifies the selection of the two streets involved as opposed to any substitute streets.

*(1) Druid Hill Avenue and McCulloh Street Were More Suitable than any Other Streets.*

Throughout the testimony in the court below, the Appellants repeatedly made the suggestion that other streets would have been more desirable than the two



selected in Ordinance No. 169. However, Mr. George Carter testified that, from an engineering point of view, considering the vicinity involved, it was most desirable to make Druid Hill Avenue and McCulloh Street one way streets as opposed to any other streets (App. 42-43).

Likewise, Mr. Paul L. Holland, the Director of Public Works in Baltimore City, stated that the two streets involved offered the most direct and most feasible connection of the highways along the western perimeter of Druid Hill Park to the down town area in the general line of direction in which traffic desires to move, and that no other two streets were so easily connected for the service which they were designed to perform. Furthermore, he made the observation that no other two streets could take care of the traffic which they were designed to handle (App. 193-195).

The suggestion was repeatedly made throughout the trial by the Appellants that Eutaw Street and Madison Avenue could have been used as substitute streets for Druid Hill Avenue and McCulloh Street. However, Mr. Holland testified that these two streets would not be at all comparable to the ones selected and would not serve the purpose as directly, conveniently or economically as Druid Hill Avenue and McCulloh Street. He stated that Druid Hill Avenue and McCulloh Street, because they are direct routes, offer the best two routes for handling the traffic problem in the area (App. 197-198).

(2) *A Desire to Solve General Traffic Conditions Throughout the City Was a Factor Motivating the Recommendation and Passage of the Ordinance.*

The statement of the Mayor of Baltimore<sup>4</sup> put into evidence by the Appellants demonstrates quite clearly that the decision to make Druid Hill Avenue and McCulloh Streets one way streets was motivated by the desire to help solve a difficult traffic problem in a manner which would be most beneficial to the City of Baltimore as a whole. The statement demonstrates quite amply that the question of the designation of the streets under consideration as one way streets was not a choice born of caprice and whimsy but a deliberate conclusion fostered by a conscious effort to find a solution not only to a neighborhood problem but to a perplexing situation affecting the municipality as a whole.

(3) *Safety Was Considered in the Selection of the Streets Involved as One Way Streets.*

Considerations of public safety also motivated the decision to make the two streets one-way streets. Mr. George A. Carter testified that one reason for one-way expressways was to enable pedestrians safely to cross the streets (App. 36). Furthermore, he testified that it was

<sup>4</sup>In part the Mayor said:

"As Mayor of Baltimore City I must necessarily deal with this and related problems from the point of view of the entire city rather than from a sectional viewpoint. While I can appreciate and am fully cognizant of the fact that traffic on Druid Hill Avenue and McCulloh Street will become increasingly heavy after the new plan, I am of the firm conviction that Ordinance No. 378 which now becomes law, will materially aid the traffic situation not only in the heavy populated northwestern section of the city but will synchronize with the entire plan for moving vehicular traffic, thus linking northwestern Baltimore with the central part of the city." (Italics supplied.)

extremely hazardous to school children during the period when Druid Hill Avenue and McCulloh Street were two-way streets (App. 36).

Mr. Bernard J. Schmidt stated that the designation of one-way streets normally reduces hazards to pedestrians (App. 54), and that he felt that a one-way operation was a safer operation than a two-way operation (App. 61). Mr. Schmidt observed that one reason why a one-way street was safer was that pedestrians could cross without interruption from turning vehicles (App. 62).

Mr. Charles J. Murphy, Traffic Engineer of the Baltimore City Police Department, testified that the experience of one-way streets in other cities had been to decrease the number of accidents (App. 71-72). He said that he felt that when McCulloh Street and Druid Hill Avenue were made one-way streets, it would be safer for the pedestrian finding it necessary to cross them.

*(4) Traffic Volume on the Streets Contributed to the  
Recommendation That They Be Made  
One Way.*

The record manifests that it was necessary to change these streets to one-way streets in order for them to carry the volume of traffic which was using them. Mr. Murphy testified that there were too many cars using these streets to permit them to remain two-way streets (App. 76), and Mr. Schmidt, stated that, by making the streets one-way, their complete capacity could be utilized and traffic could proceed at a more uniform speed (App. 56). Mr. Schmidt pointed out that, generally speaking, the traffic using McCulloh Street originated around the sec-

tion of Liberty Heights Avenue, Park Heights Avenue, Reisterstown Road and the Green Spring Valley destined either for West Baltimore, or the central business districts, or other parts of the city (App. 62). Mr. Murphy told the Court that on the basis of a comprehensive study it was determined that, not only was it necessary that McCulloh Street and Druid Hill Avenue be made one-way to take care of the northwest flow of traffic, but that in addition other streets were necessary as well (App. 73).

#### IV.

##### A PUBLIC HEARING IS NOT ESSENTIAL TO THE VALIDITY OF THE ORDINANCE.

The Appellants suggest that they were given no bona fide hearing before the adoption of the Ordinance under attack and seem to conclude, ipso facto, that the Ordinance consequently is lacking in validity.

Such allegations are out of harmony with the facts. As the court below found, the Appellants were afforded a hearing by the Mayor of the City of Baltimore before the Ordinance was signed and the court asserted that it did not find that such a hearing was not bona fide (App. 25).

However, assuming *arguendo*, that there had been no hearing, it could not be successfully contended that the lack of a hearing amounted to arbitrary action. As the trial court observed, it was laid down in *Townsend v. Yeomans*, 301 U.S. 441, 81 L. Ed. 1210, 57 S. Ct. 842, that when the legislature acts within its sphere it is presumed to know the needs of the people. The subject matter of streets, therefore, being one delegated to the City of Baltimore by Section 6, sub-section 29, of the Baltimore City Charter, it follows that action taken by the legislature

within this field is presumptively correct. In the Yeomans case, *supra*, the court stated:

“There is no principle of constitutional law which nullifies action taken by a legislature, otherwise competent in the absence of a special investigation. The result of particular legislative inquiries through commissions or otherwise may be most helpful with exigencies to which the legislative action has been addressed and in fortifying conclusions as to reasons. \* \* \* But the legislature, acting within its sphere is presumed to know the needs of the people of the State. *Whether or not special inquiries should be made is a matter for the legislative discretion.*” (Italics supplied.)

Similarly the Supreme Court held in *Boles v. Willingham*, 321 U.S. 503, 519, 88 L. Ed. 892, 64 S. Ct. 641, that there was no obligation on the legislative body to grant a hearing to those who would be affected by the passage of legislation. The court quoted from an opinion of Mr. Justice Homes as follows:

“Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice to its adoption. The Constitution does not require all public acts to be done in town meetings or an assembly of the whole. General statutes within the State power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.”

On the basis of the above analysis of the record which demonstrates that, in the selection of the streets in question as one-way streets, consideration was given to such matters as expediting traffic, pedestrian safety and the

solution of the general traffic problem, it is submitted that it cannot be successfully contended that the chancellor below was clearly wrong in failing to find arbitrary or capricious action on the part of the Appellee.

It is submitted that the testimony shows affirmatively that the Ordinance meets the test of legality in being reasonably calculated to promote the public safety or convenience. However, even in the absence of such adequate support as is disclosed in the record the presumption of legality of legislative action would, it is submitted, suffice to save the Ordinance from the attack made against it.

In *Ellicott v. Mayor and City Council of Baltimore*, 180 Md. 176, 23 Atl. (2d) 649, this court stated that, if it was possible to do so, it had to be assumed by the courts that action of municipal officials was valid and unless clearly invalid their actions would be sustained.

The same rule applies generally and unless palpably and clearly illegal an act of a legislative body receives judicial sanction. The rule is succinctly set out in *People v. Schommer*, 392 Ill. 17, 63 N.E. 2d 744, 167 A.L.R. 1347, as follows:

“It is a general and well-accepted principle of law that all doubt and uncertainty as to the constitutionality of a statute should be resolved in favor of its validity. *People ex rel. Rice v. Wilson Oil Co.*, 364 Ill. 406, 4 N.E. 2d 847, 107 A.L.R. 1500. It is the duty of the court to so construe acts of the Legislature as to uphold their constitutionality and validity if it can be done. Before we can say that the act is unconstitutional, its repugnance to the organic law must clearly appear. *People v. Smith*, 368 Ill. 328, 14 N.E. 2d 82.”

**CONCLUSION**

It is thus respectfully submitted:

1. That no fraud was perpetrated upon the Appellants by the Appellee inasmuch as the assessments were made at the time and in the manner prescribed by law without any misrepresentations being made.

2. That the Ordinance under attack is a valid and legal exercise of the powers of the Appellee and that it is not invalid as involving any unreasonable or arbitrary action on the part of any officer, agency or body, of the Appellee.

It is thus respectfully submitted that the order of the court below dismissing the Bill of Complaint should be affirmed.

Respectfully submitted,

THOMAS N. BIDDISON,  
City Solicitor,

HAMILTON O'DUNNE,  
Assistant City Solicitor,  
Solicitors for Appellee.