

The director did not dispute that there was no commitment to build the frontage road, but he urged that his good faith and integrity, and that of the State properties committee and the Federal Bureau of Public Roads (which would contribute 90 percent of the acquisition and construction costs of the project) compelled the conclusion that there "is a genuine commitment that this project, as thus proposed, will be consummated." The court did not question the good faith or the intentions of these public officials, but ruled that where, as here, the condemnation instruments in no way inhibited the condemner from a complete destruction of the owner's right of access between the boulevard and his property, the mandate of just compensation required payment as if the right were to be obliterated. In short, in cases like this, if compensation was to be just it must be measured by what the condemner could do and not by what he intended to do, it being the rule that the damages were to be assessed on the most injurious method of construction that was reasonably possible. The appellate court, therefore, affirmed the award of the trial court. (Sullivan v. Marcello, 214 A.2d 181, November 1965)

181-2 HIGHEST COURT OF MARYLAND DECIDES ORDINANCE REQUIRING REDUCTION OF ELEVATION OF LOTS AT CORNERS WAS A TAKING OF PROPERTY WITHOUT PAYMENT OF JUST COMPENSATION

The City of Salisbury, Maryland, passed an ordinance "As an aid to freer safe movement of vehicles at and near street intersections and in order to promote more adequate protection of the safety of children, pedestrians, operators of vehicles \*\*\*." This ordinance limited the height of fences, walls, hedges, shrubbery and other fixtures within a triangle of a corner lot, two sides of which were measured from the point of intersection for a distance of 25 feet, in all districts where front yards were required on corner lots. The objects mentioned had to be limited to a height not over three feet above the elevation of the curb level at the intersecting streets. The ordinance also provided that within the triangle, the ground elevation of the front yards could not exceed three feet above the established curb elevation of the intersecting streets.

Three landowners were ordered to reduce certain fixtures in their front yards to the required height. They appealed to the court of appeals. That court held that the provision requiring an owner to reduce the ground elevation of his land amounted to the taking of property without payment of compensation because the purpose of the ordinance was to benefit the public by obtaining unobstructed vision at corners. If the ordinance were allowed to be put into effect, the land of an owner would be confiscated since there would be an interference in the enjoyment of his land in order to put part of his land to the public use of a "sight easement".

The appellate court further held that the other provisions of the ordinance relating to fixtures might be valid under the police power if the trimming would not destroy the usefulness of the object trimmed or result in substantial loss to the property owner. (Stevens v. City of Salisbury, 214 A.2d 775, December 1965)

181-3 NEW YORK COURT DECIDES UTILITY COMPANY ENTITLED TO BE REIMBURSED FOR EXPENSES INCURRED IN PROTECTING ITS PIPELINE FROM PRESSURE OF NEW ROAD

A gas pipeline company had obtained an easement in certain property and had laid part of its line under the surface. Subsequently, the County of Albany purchased the fee of the land, subject to the company's easement. A new highway was constructed on this land and, at the request of the county, the company encased its pipeline at the point where it passed under the highway. The company brought action to be reimbursed for the expenses which were incurred to protect its pipeline from the pressure of the new highway.