

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.

A supreme court noted that the issue of who paid such expenses when a new highway was constructed was one of first impression in the State of New York. There were countless cases involving removal of utility facilities under existing highways, but these cases were not controlling since they referred to public streets and the "common law" right applicable to franchises in streets as limited by the "police power". However, the police power concept had been specifically rejected in situations similar to the one presented in this case. In the majority of jurisdictions dealing with a situation like the one in the instant case, it had been held that a utility company was entitled to reimbursement of its expenses because the company's easement was "property" in the constitutional sense, and an interest in land for which the owner was entitled to compensation if it was taken or injured. The court followed this rule and ordered the county to pay the costs incurred by the company. (New York State Natural Gas Corp. v. County of Albany, 262 N.Y.S.2d 661, August 1965)

181-4 NEW YORK COURT RULES CITY MUST PAY RELOCATION COSTS OF WATER COMPANY BECAUSE IT INITIATED THE STREET-WIDENING PROJECT

A supreme court had previously held that the City of New Rochelle was bound by its contract with the New Rochelle Water Company to pay the cost of relocating water mains which was necessitated by the widening of Quaker Ridge Road. (227 N.Y.S. 2d 741, 1962. See Memorandum 152-4, April 1963, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research News, No. 3, May 1963.) In that case, the court dismissed the city's contention that it was not required to pay the relocation costs since it had not instituted the change in grade of the street nor had it authorized the reconstruction. The court noted that there was nothing before it to indicate any agreement which might have been made by the city with the County of Westchester and/or with the State of New York regarding the widening of the street and, in any event, the contract provision relative to paying relocation costs was only between the company and the city.

On appeal to a supreme court, appellate division, it was held that the trial court should not have entered a summary judgment for the water company because there were factual issues which had to be considered. (238 N.Y.S.2d 169, 1963.) The judgment of the trial court was vacated and the case was remanded. The present decision was made by the trial court after the remand. That court affirmed its previous decision that the city had to reimburse the water company for the costs incurred in relocating some of its facilities.

The trial court had to interpret the contract provision which required the city to pay the relocation costs in excess of \$600 "When the City shall determine to make any change in the line or grade of, or to do any other public construction authorized by the City in any street which has been accepted by the City and in which there is an established grade \*\*\*." Quaker Ridge Road was an accepted street having an established grade. The question then was whether the city had determined to make a change in the line or grade of that street, or had determined to do other public construction, within the meaning of the contract terms.

The evidence showed that the council of the City of New Rochelle adopted a resolution authorizing a petition to the board of supervisors of the County of Westchester to request the State of New York to allocate funds "from the Federal Aid Improvement Program for Secondary Roads, for the construction and widening of Quaker Ridge Road." When the city was informed that Federal funds had been allocated for this purpose, it approved the reconstruction plans which were made by the State and acquired the land needed for widening the street. The county agreed that the reconstructed street would be maintained as a county road.