

Highway Programs and Highway Laws

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• THIS IS, as far as I know, the first time that so many highway lawyers have been assembled under one roof. I hope that this can become an annual or at least a biennial affair so that highway lawyers can continue to exchange problems of mutual interest.

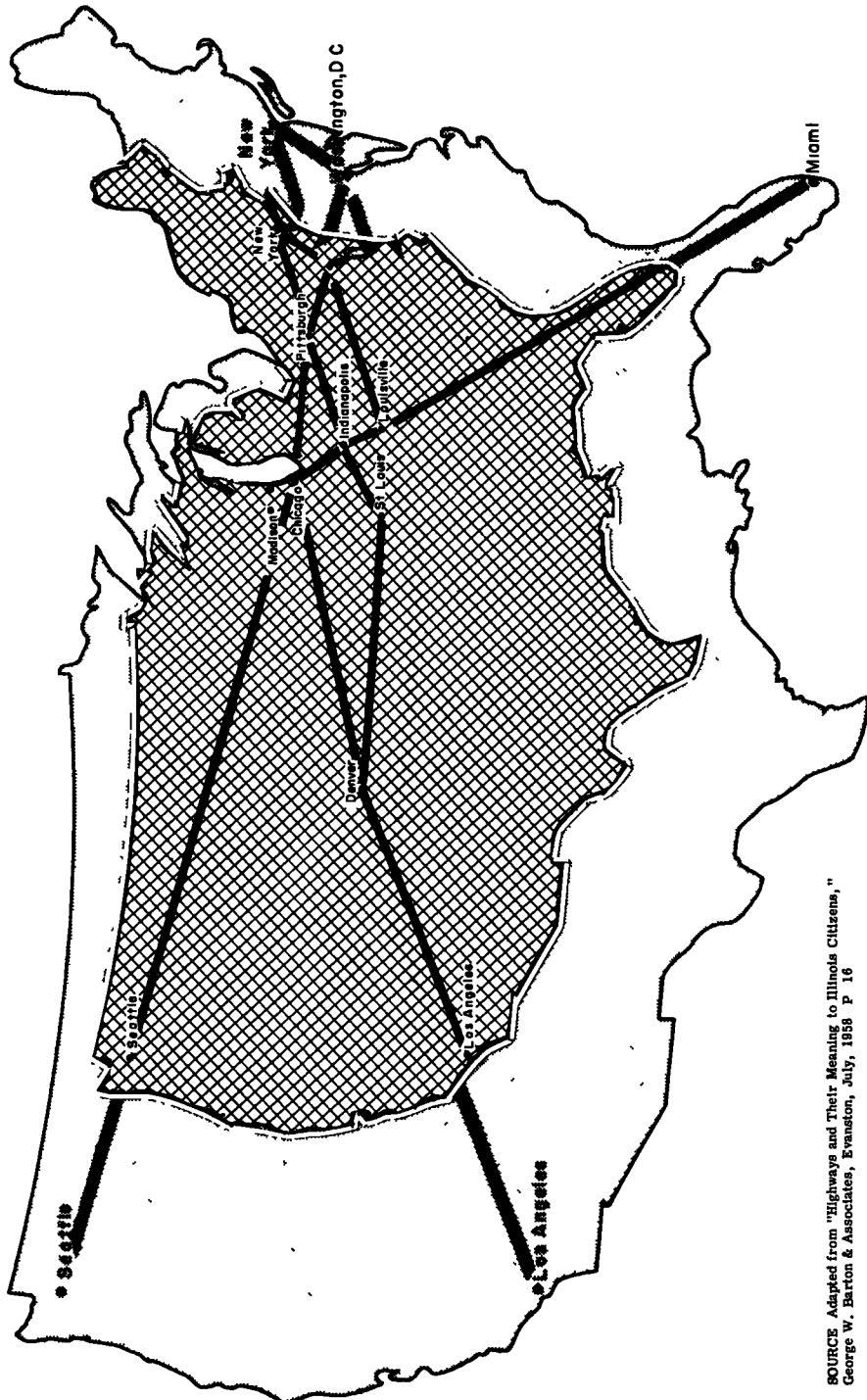
As you know, three or four decades ago this business that all of us are associated with was a relatively simple one. Its orientation was largely engineering. Today, however, there are whole racks of new problems—not engineering problems, but social problems, economic problems, and certainly plenty of legal problems. I thought that I would touch on perhaps fifteen of these new and emerging problems, all of which have legal overtones.

One of the first problems is that of intergovernmental relations. Figure 1 was compiled to show how distance will shrink with the completion of the Interstate System by simply taking the new time between these major points that the Interstate System will take to traverse, in relation to what it is today on highways of normal access design. About a 28 percent economy is achieved. Incidentally, this figure in itself can become a valuable courtroom prop, especially when translated into the same kind of configuration of one's own State. Especially in dealing with the Interstate System, this can be a dramatic portrayal of what this system really entails in terms of time-distance savings (Fig. 2).

There was recently an interesting new development which involves intergovernmental relations and I need not tell you how important, from a legal point of view, this can be. We, of course, have had it all the way

along, in connection with control of access legislation. This has permission of a sort to contact other forms of government within the State in order to facilitate planning or financing, or land acquisition or even construction and maintenance of the Interstate System. It does not go to the point of traffic enforcement as this is in some ways a no-man's land, and it is developing some problems of its own. But recently the counties, as represented by the National Association of County Officials (NACO) (they are a very powerful group in just about every State) have matured to the point where they want to improve their relations, at least formally, with the State highway officials, and have recently established a new group which is the joint AASHO-NACO Committee. This group has determined that the legal and administrative relationships between the States and the counties need up-grading, and need up-grading immediately. They have set in motion a comprehensive program of research and reform, which they hope will result in a much better relationship between the State and the counties and an up-grading especially of their own administrative and legal mechanism. I assume that through the highway planning survey program in many of your States, you will soon be asked, or your State will soon be asked, to sponsor research programs that will examine, within the confines of a particular State, what these State-county relationships are, and of course I am sure that many of the lawyers here will be associated with this project.

We are getting heavily involved in the urban areas today. This is not a frill, really; it is based on the important shifts in population. As you



SOURCE Adapted from "Highways and Their Meaning to Illinois Citizens,"
 George W. Barton & Associates, Evanston, July, 1958 P. 16

Figure 1. Relative saving in driving time on Interstate System (smaller map) compared with present highways. When system is completed, driving time between Chicago, for example, and other major U.S. cities to average 28 percent less than at present.

Church and Chapel Streets overlooking the Green. Capacity 250

HOTEL—18 stories, 4 office floors, 300 rooms. Banquet facilities for 1,000. Completion May 1962

RETAIL SHOPPING AREA—Modern stores ideally situated to revitalize New Haven's central business district

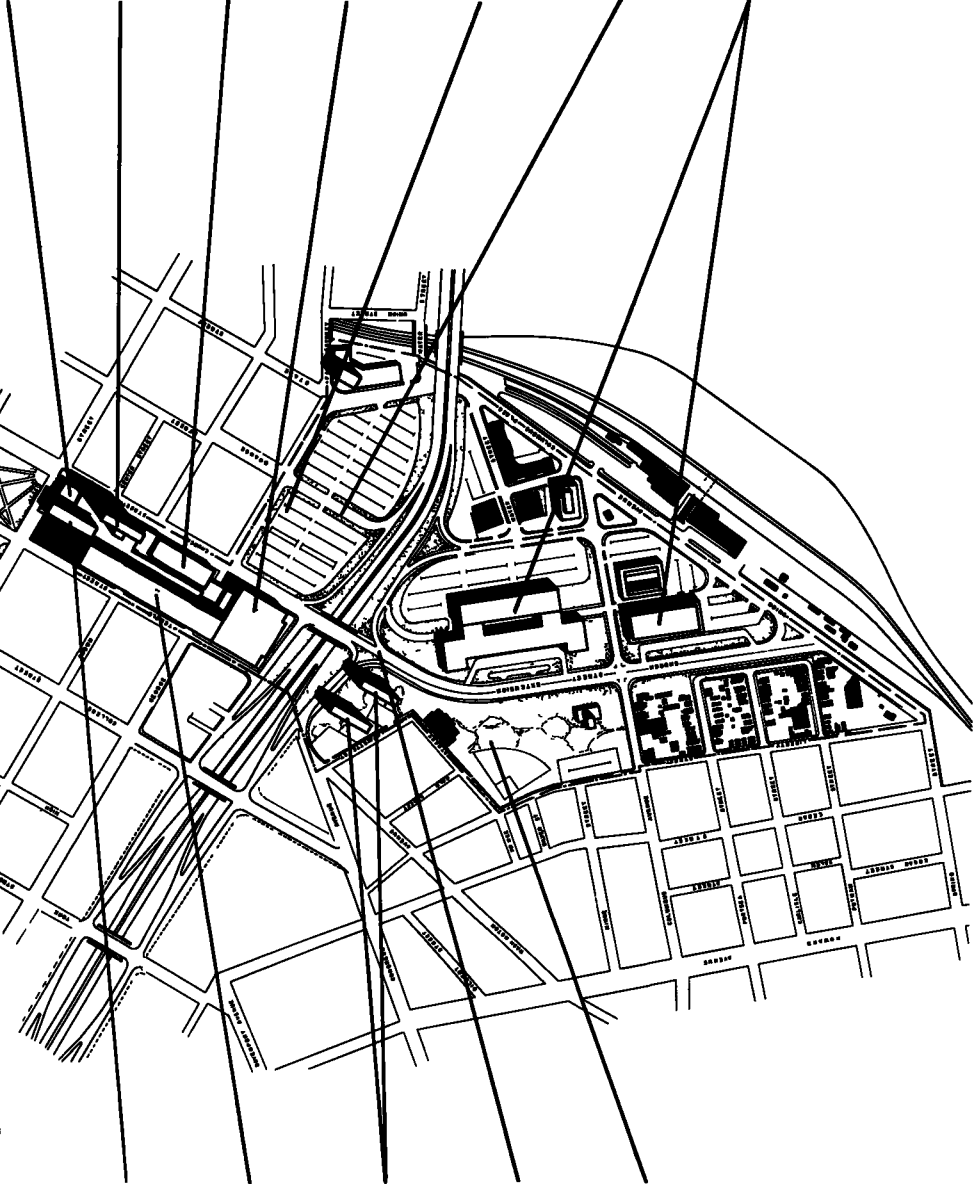
DEPARTMENT STORE—240,000 square feet of selling space on three floors to attract thousands of shoppers from all over south central Connecticut

TEMPORARY BUSINESS RELOCATION STRUCTURES—Attractive project to provide premises for firms waiting for stores in the retail shopping area. Completion February 1959

CONNECTOR PARKING LOTS—1,300 parking spaces in area bounded by Church Street Extension, George Street, State Street and Oak Street Connector

COMMERCIAL PARK—19 acres to be developed for office, wholesale or research uses

Note: Projects will be completed by September 1961, except for the school-recreation facility, and apartment and commercial developments



NEW FIRST NEW HAVEN NATIONAL BANK BUILDING—8 stories, 150,000 square feet. Completion July 1960

SHOPPERS' GARAGE—Indoor ramp parking for 1,500 cars. Direct access to retail shopping and conveniently located for all downtown New Haven

APARTMENT DEVELOPMENT—High-rise apartments to be built by private capital on 3-acre site between Church Street Extension and Congress Avenue

CHURCH STREET—Widened 20 feet from George to Chapel and extended from George Street to the Railroad Station

SCHOOL-RECREATION FACILITY FOR THE HILL—8-acre site allocated for new school and recreational facilities in the area of Prince Street School

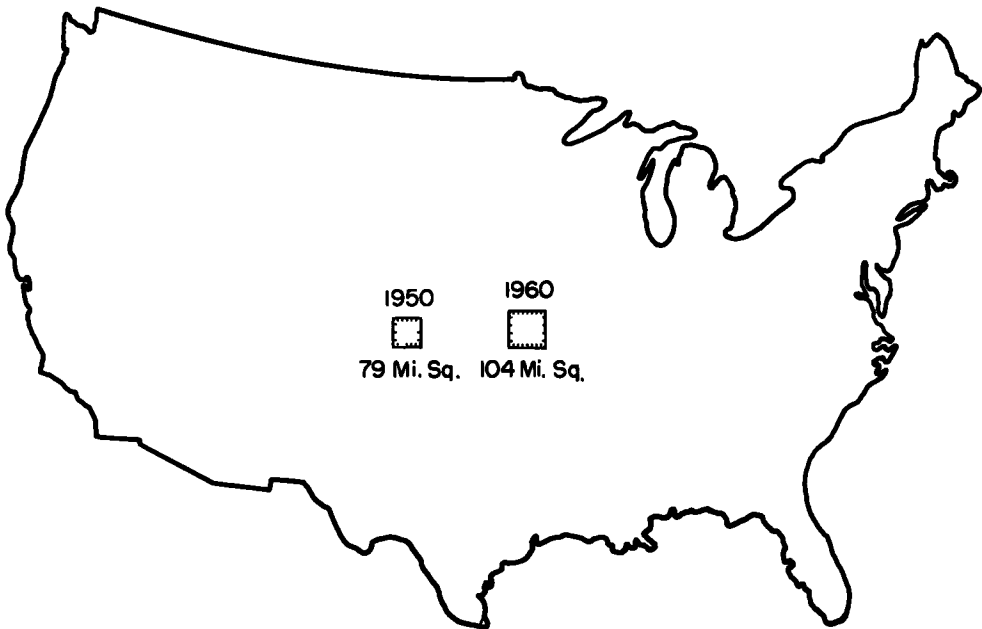
Figure 2. Church Street, New Haven, Conn., redevelopment and renewal area.

know, something like two out of three Americans now live in urban areas. If we extrapolate the population curve, by 1970, three out of every four Americans will be living in urban areas, and by 1980, seven out of every eight Americans will be living in such areas. Therefore for us in the highway business if we are going to do a realistic job, we have to build a surface transportation plant that will cater to the people where they are five, ten, and fifteen years from now rather than where they were for the past twenty or thirty years. Figure 3 shows this dramatically.

If you add the physical areas of the central cities of all the urbanized areas in the United States, they add up to a little square about 104 mi on end, and this comprises something like 3 percent of the total land area of the United States. Yet in this little 104-mi square, there lived in 1960

almost 58 million people, or about 30 percent of the population. So, in this little square, we have to provide a modern surface transportation system to cater to 58 million people. As all of us have discovered, to our dismay sometimes, this is no simple task. Increasingly it is generating all kinds of legal problems.

Another new problem which is emerging in some of the States, although it is not entirely new because we have already seen the necessity of actually being involved in this, is trying to build highways in urban areas in conjunction with other kinds of public programs which also involve the urban areas. A particular illustration is New Haven, Conn. New Haven was one of the first cities to take advantage of the 1947 and 1949 housing acts, and accordingly, it is farther along with its urban renewal activities than most other States or



<u>ITEM</u>	<u>1950</u>	<u>1960</u>
AREA (SQUARE MILES)	6,213	10,838
POPULATION	48,377,240	57,975,132
NUMBER OF CENTRAL CITIES . .	172	254

Figure 3. Central cities of urbanized areas in the United States, 1950 and 1960. (Source: Department of Commerce, Bureau of Census)

cities. You can see a section of modern highway with an extensive urban redevelopment area here. This, incidentally, is one of the best examples of how the highway program and urban renewal program have been developed simultaneously; where the officials, both State and local, talked to each other at the very earliest stages and all the way down to the present time when the physical structure is being completed.

This is also a good illustration of a rather complete functional unit. As you know, we have been criticized sometimes to the effect that we are trying to build highways and we are ignoring some of the other non-highway elements. This is an illustration where just about all of them were taken into account. For example, here is provision for school and recreation areas, and of course, there are many commercial buildings, a bank, a high-rise office building, etc. As you know, in this connection we are cooperating more and more with the Housing and Home Finance Agency, and a program of considerable planning proportions is being developed with this Agency making use of its money and also the 1½ percent fund. There are legal problems involved in all of this.

David Black indicated that legislation is being considered now (the 1962 Federal-Aid Highway Act) with respect to planning. The following quote from the Act may also have some legal implications in its applications:

It is declared to be in the national interest to encourage and promote the development of balanced transportation systems, embracing all appropriate modes of transport in a manner that will serve the states and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the states as authorized under this title, in the development of long range highway plans and programs, properly coordinated with plans for improvement in other forms of transportation, and formulated with due consideration to their probable effect on the future development of metropolitan areas.

In other words, this is a much broader directive than we have ever

had before from the Congress of the United States. To continue:

After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section.

The objective is stated. If this is enacted into law we are given about three years to execute this fully. Now here again, anyone who has been involved in these affairs knows that there are all kinds of legal problems generated by these and other developing relationships, or by the new emphasis. The relationship has been there for a long time, but the increased emphasis which this has provided will generate some new legal problems.

Another problem this new bill will involve is relocation. Here again, we are being confronted more and more not with the physical engineering problems but with human problems—problems of sociology and psychology and economics. What do we do with the families that are sitting on the land needed for highway purposes. Of course, we have always tried to compensate these families in a manner that we thought was pursuant to the law and consistent with the just compensation provisions of the Constitution, and I think largely we have done a good job. But as good a job as we have done on the compensation side, there has been some public clamor. We have received more criticism from this particular element than any other aspect of the highway program. To diminish this reaction, the Congress has proposed a provision in the 1962 Federal-Aid Highway Act which involves two things: One is payment of compensation for families and persons that are displaced from the highway right-of-way, to the extent authorized by State law. This compensation could go up to, but cannot exceed \$200 in the case of a residence relocation and \$3,000 in the case of a business relocation.

This is a fairly definitive kind of program and it will be capable of administration within certain limits. There is, however, another provision that may prove even more troublesome:

The Secretary prior to his approval of any project under section 106 of this title for right-of-way acquisition or actual construction shall require the State highway department to give satisfactory assurance that relocation advisory assistance shall be provided for the relocation of families displaced by acquisition or clearance of rights-of-way for any Federal-aid highway.

The Secretary shall approve, as a part of the cost of construction of a project on any of the Federal-aid highway systems, such relocation payments as may be made by a State highway department, or a local public agency acting as an agent for the State highway department for this purpose, to eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project. However, the Secretary shall not require a State to pay relocation payments where not authorized by State law.

This is quite a set of requirements. It involves economics, it involves sociology, and many other elements.

Figure 4 is many years old actually and it is testimony to the fact that highway officials, even without regard to the proposed requirement just referred to, in a good many States have been aware of this problem and have sought to do things to alleviate adverse social impact. Here is a case of an expressway improvement, where a number of houses were on the right-of-way that was needed for the new construction. The adjacent area was low land and they had a lot of excess dirt from the highway right-of-way. As construction permitted, this excess fill was dumped in the low areas, which then made some very nice building sites. Then they moved over the structures that were capable of being moved; the others were demolished. In this way, of course, highway officials were able to eliminate a lot of criticism, and they also saved themselves a great deal of money because, instead of paying a lot of severance and other kinds of

damage, they just paid the moving costs and the cost for re-establishment. The owners were quite pleased too because their homes and facilities were generally better.

This is being done in a number of cities. New York City, for example, has a Tenant Relocation Board, which has done an amazing job of seeking alternate accommodation for the displaced.

Here again, we might need some new legislation at the State level in order to comply, not necessarily with the Federal-aid requirements—in a way, these requirements are the result rather than the cause of the problems about which we are talking. The Federal-aid legislation recognizes a condition which has existed for some time so that I am sure that with one or the other phase of the problem we will probably need some new legal equipment at the State level.

Another problem involves severance damage. We have a growing program of severance damage research, which has very definite operational objectives. That is, we are not spending research money just for the sake of keeping in research. On the contrary, it is felt that we can save a lot of right-of-way dollars by doing this research, and then applying the findings to the regular appraisal and right-of-way acquisition processes.

Figure 5 shows a negotiated case, for example, which had a "before" value of \$19,000. The State needs this land for highway purposes. This is controlled access from 78th Street along this frontage. The State paid \$4,800 for the land and \$2,000 for severance damage, or a total of \$6,800. If this is subtracted from the \$19,000 before value, there is an imputed value of the remainder of \$12,200. Well, lo and behold, almost before this pavement of the highway improvement was dry, the owner sells a small part, 100 by 160 ft, of this remainder for \$37,500 on the open market. This was not ten years after; this was within a short time after the taking by the State. If this sale is in the open market between a

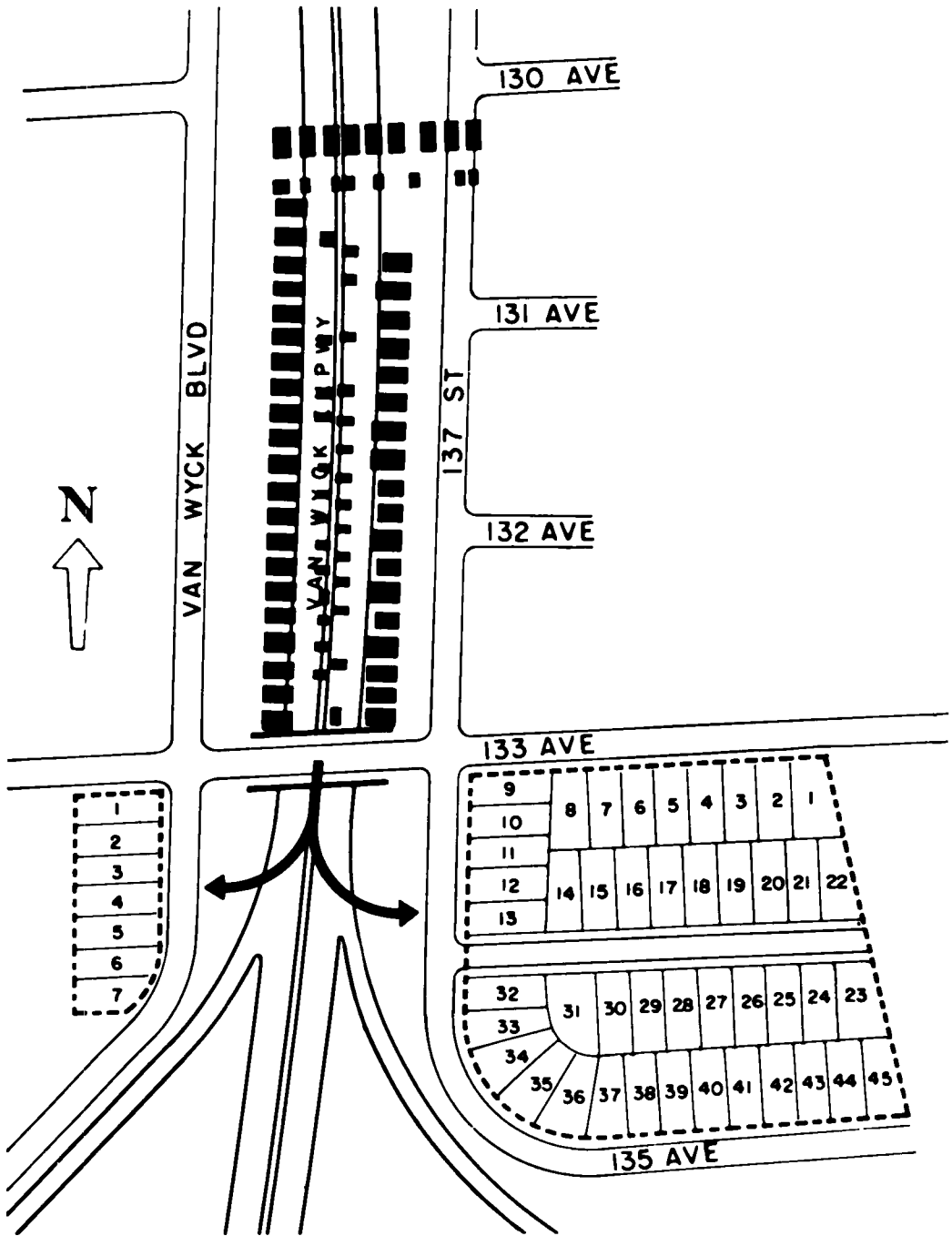
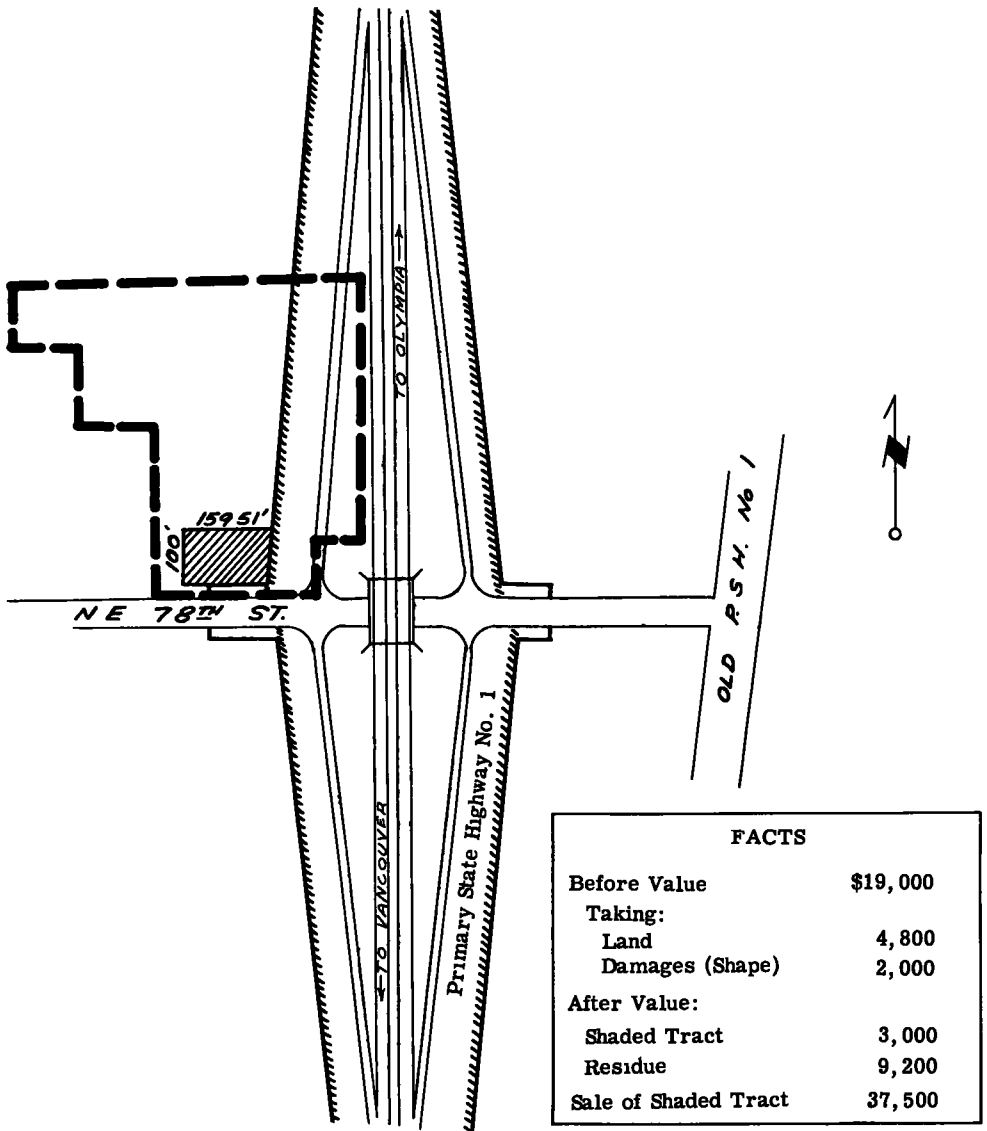


Figure 4. Land acquisition and tenant relocation, Van Wyck Expressway.

willing buyer and a willing seller at an arm's length transaction—if this small piece is worth \$37,500—what business did we have paying \$2,000

severance damage? There was no damage there. Of course, we did not have any alternative before the fact in paying this damage.



SOURCE: Land Economic Study, No. 5, Washington State Highway Commission
 Figure 5. Severance damage study interchange.

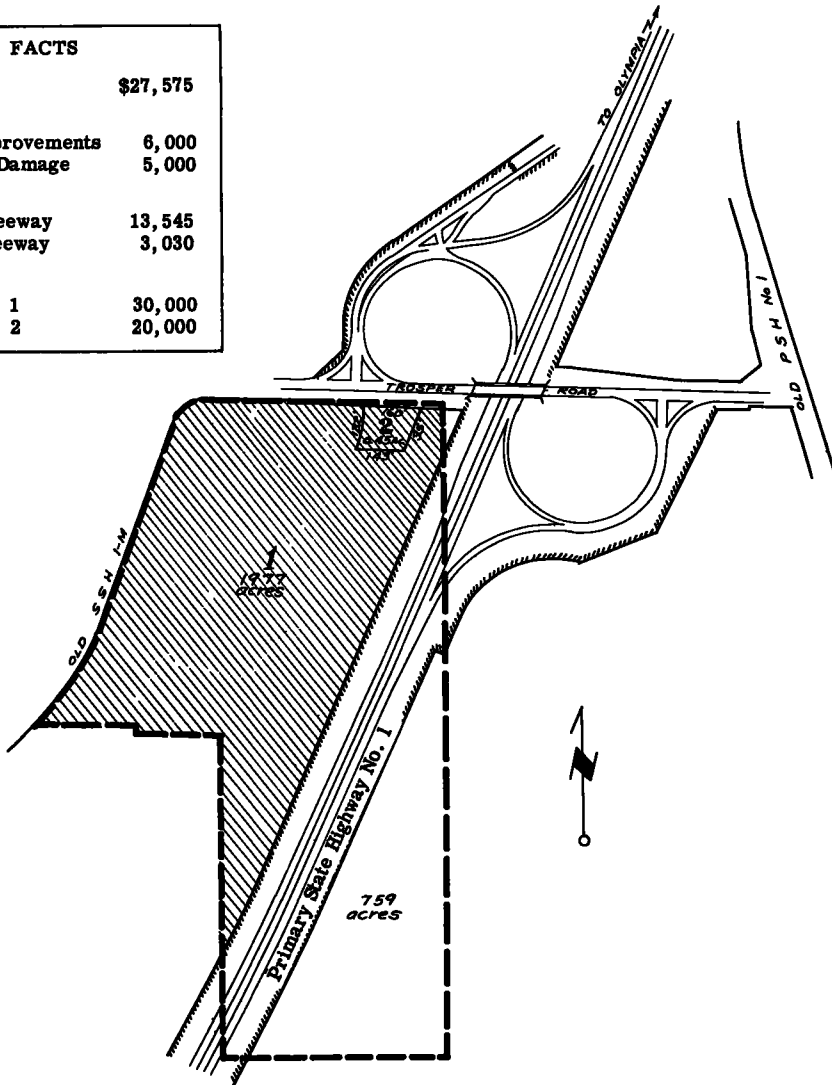
Our hope is that once we get a bank of severance damage cases in every State, and a national bank which we are developing right now, we will be able to get enough comparables out of these State and national banks so that in future cases, we can show, to the satisfaction of courts and juries, and in all the negotiated cases to the appraiser for the

property owner, that there is no severance damage. In most States we could not go too much farther than that because some States cannot offset benefits against the value of the actual taking. But at least we can begin to eliminate or diminish the large severance damage item.

Figure 6 shows another case. The original value is appraised at \$27,595

FACTS

Before Value	\$27,575
Taking	
Land & Improvements	6,000
Severance Damage	5,000
After Value:	
West of Freeway	13,545
East of Freeway	3,030
Sales:	
Portion No. 1	30,000
Portion No. 2	20,000



SOURCE: Land Economic Study, No. 2, Washington State Highway Commission SD 2

Figure 6. Severance damage study interchange.

(this is agricultural). The State goes through the middle of the farm with a primary State highway, controlled access. For this, the State pays \$11,000 severance damages. You take \$11,000 off the \$27,595 and you have an imputed value on the remainder of about \$16,595. Here again, just within a short time after this transaction with the State, the owner sells parcel number two for \$20,000 (commercial), and he sells parcel number one for \$30,000. In other words, he

recoups \$50,000 plus \$11,000 from the State which is \$61,000, and he still has 7½ acres of land. So apparently our appraisal technique today is not sufficiently sharp to estimate properly the actual value. And naturally in retrospect, we should not have paid this. But here again, under rules existing now without the benefit of these comparables, we may not have any alternative but to pay these kinds of damages, and we will continue to pay them until we can de-

velop a persuasive background backlog of data which the courts and juries and property owners in negotiated cases will accept.

Now we have a going program of this research, and we have a manual that Mr. Bartelsmeyer talked about. The manual involves a suggested standard form. It is a rather simple form. It is designed for machine operation. Most States have either the "650" or the "1401" equipment. You have the machine capacity to work with the severance damage program. If you put all your severance damage cases on this form, once you develop the technique, you begin to get a bank of comparables. You may have an agricultural piece of land which presents appraisal problems; for example, 80 acres of dairy land in the middle of Wisconsin, 12 miles from the closest urban area. For fairly good agricultural land, an acre would sell for about \$450 in the open market. It is a bad severance, like the last one mentioned. If you want to get comparables from the bank, all you have to do is punch appropriate codes, and out will come all of the cases that have the same set of basic characteristics as the subject property, and you can immediately have a bank of comparables. From this point on, you can use them as any other comparables. If an appraiser will have to testify in court, he will probably want to make these comparables part of his own personal experience. At least you have a quick and scientific method of getting to these comparables.

The next question that would arise in connection with this particular program is, can you use these data in court? We have recently done a little study called "Economic Evidence in Right-of-Way Litigation" by Sidney Goldstein, a member of our staff; he has examined most of the pertinent law, at least in a brief way. As of now, in many States, we are still fighting uphill on the legal side, on this issue. In a good many States, this kind of evidence is not admissible on direct, although sometimes you can get it in through the cellar door

in qualifying an expert, but in some States, it is admissible. We have made a plea in the study to have it admissible on direct. And I think the more scientific this study becomes, the better chance we will have of it being recognized in the courts. For example, we make analogies in the article to U.S. census data. Now if you want to use census data, you can use it right out of the book; you do not have to take the census yourself, you do not have to testify that you were one of the census takers or that you were associated with the actual process of evolving the results. You can use the data because it is an unbiased, scientifically-derived economic survey and nobody disputes it. It is admissible as an exception to the hearsay rule. We are hopeful if we do these severance damage studies pursuant to this specification, that this will become as scientific a survey as census.

Incidentally, we are looking for the negative as well as the positive. So far, we have a number of cases where we did not pay enough severance damage. Of course, if you count the number of cases right now in the national bank, I think you will find that there are about nine pluses to each minus, but that is the way the cards fall.

Another matter that involves some legal problems comes from Iowa where a segment of the Interstate System cut through a farming area (Fig. 7). Looking at what the superimposition of the Interstate would do in interchange area, on these farms, Mr. Boone would have had four fragments, Mr. Baty, formerly having a nice little square, would have had land on both sides of a limited-access highway and how would he intercommunicate between these two separated pieces of land. The same with Johnson, and look what the improvement would do to Mr. Spencer.

The appraiser who originally looked over the situation started to make notes as to the value of the land taken and damages to remainders. Talking to Mr. Baty he asked: "Would you be willing to deed this

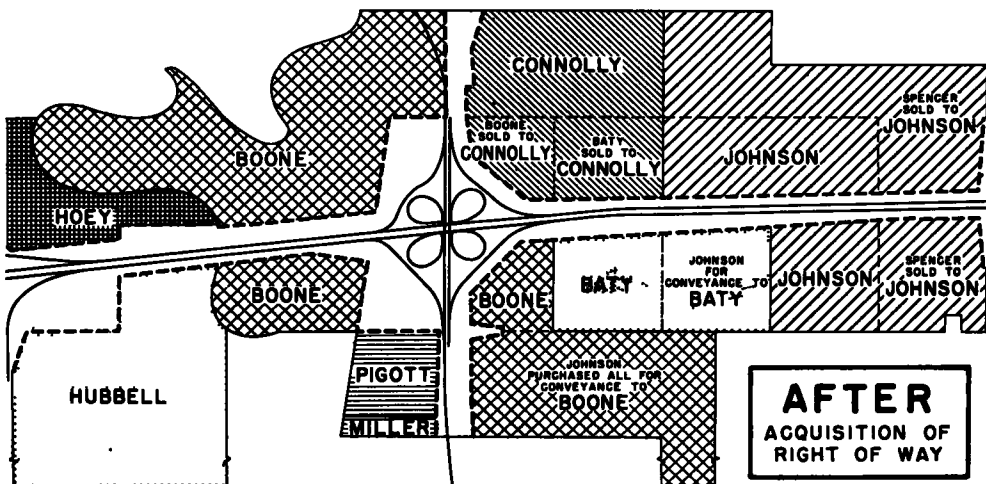
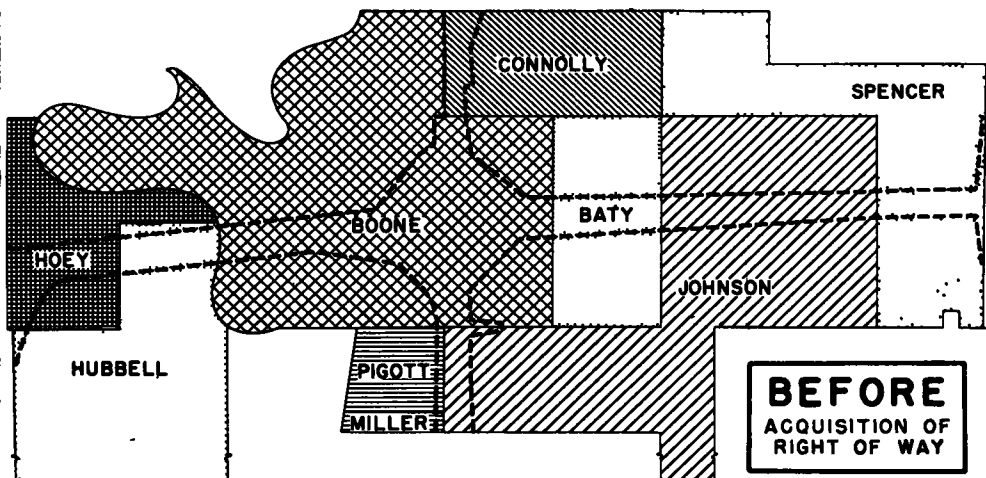


Figure 7. Portion of right-of-way on Interstate 35, Polk County, Iowa.

parcel of land to Mr. Connolly on this side, if we could prevail on Mr. Johnson to deed you some over here?" Mr. Baty thought it would make sense. He would have about the same area, all on the same side of the highway instead of on two sides. Encouraged by this, the appraiser from the State began exploring the thinking of the other owners, and with a little effort and time, and a lot of resourcefulness, he arranged a whole series of exchanges.

He got Baty to sell a parcel to

Connolly, and he got Johnson to sell him one so he now ended up with a nice parcel on this side of the road. As we agreed, Spencer wanted to retire from farming entirely anyway, so he sold out to Johnson; Johnson now ended up with two nice parcels, on both sides, but he has sufficient area on each side to do something with it. Baty sold some of his land to Connolly, so Connolly now has in fact more land than he formerly had, and in one quadrant of the area. Now Johnson sold this to Boone, so Boone

did not actually come out too badly; he was fragmented but it must be remembered that the interchange area in even some of the rural areas becomes very valuable, so he was not about to complain either.

As a result of this, the State saved a great deal of severance damage money. Perhaps even more important than the savings are the public relations implications of this effort. If this had been executed as it was originally, owners would have been muttering for years as to what the highway department did to them in their agricultural operations. How they are singing the praises of the State! They got paid fairly well and they now have what continues to be logical agricultural arrangements. We are going to have to get into this kind of thing more and more whether we like it or not, because we are maturing and as we do so in a democracy, we must take cognizance of these social and economic problems, and we are increasingly saddled with them.

All kinds of legal problems are involved. I think in Iowa, in that particular case at least, they engineered most of the transactions between the owners. They had some other transactions where this activity was funneled through the State highway department, and the highway department deeded it back to the owners. There are some legal tricks involved. For example, you must have authority to acquire land that is not needed for the highway right-of-way proper—land that you can use for exchange purposes. Not all States have this, and there are some other legalities too—can you use highway funds for this purpose?

There are some significant studies going on at the University of Wisconsin, with highway funds. They will help every man who continues to be associated with highway legal problems. One is the study of condemnation cases, in which researchers are examining all of the condemnation cases, especially the highway condemnation cases, with the view of

trying to find out what happened, in how many of them the highway department was successful and under what conditions, and the range of compensation starting with the appraisal of the highway department and going through the lower, intermediate, and high courts for adjudication. What happened to the actual awards and why? Many other elements are also included.

The other study involves the acquisition of land for future highway use. We know that there are many opportunities for saving large sums of money. If we can anticipate the future by at least five to ten years, we will be doing quite well. Yet there are a lot of legal complications to this business of acquiring land for future use. We need State highway authority and we need a State revolving fund. We need to make sure we can get Federal reimbursement for this if a Federal-aid highway is involved, etc. There is a tremendous number of cases on the acquisition of land for future use, and the general tenor of them does not question the period of time involved. One involved a water case where the court allowed the acquisition of land as far as fifty years in advance for water purposes, for a water development company. The courts are more concerned about certainty of use and about the fact that you chose a plan and a program. They do not care whether it is going to be five years or twenty years, but they do want you to walk into court, especially if this is a litigated case, capable of testifying that you know what you are doing, that you have a plan and a projection on this, and this is a part of a larger program that you have in mind. If you can do this, the chances are you will be successful in the acquisition for future highway purposes.

While we are dwelling on research, in Washington recently, increasingly we have been getting a lot criticism from the Bureau of the Budget and a little from the Department of Commerce and quite a bit from the General Accounting Office, too. We are

told we should be probing into certain kinds of areas with highway research monies and then put the findings to use in operations in these areas. One suggestion involves the psychology of highways. For example, they say we should be spending a lot more money on highway safety research. They have been telling us that if five people were found dead one morning because of defective drugs, there would be a Congressional investigation overnight and the Food and Drug Administration would be asked to explain this. They say that highways continue to kill 38,000 people every year, and what are you doing about it on the research side? Recently we have set up an Office of Highway Safety and I think they want us to spend a lot more money on safety research. The fact is, if we are honest about it, we have not communicated with the motorist in the highway safety field. Maybe there is something wrong with the legal approach here. Maybe, the Uniform Code should be drastically revised. This is another emerging problem.

Another area for legal scrutiny is the electronic highway. In Detroit, they are experimenting with the electronic or the automatic highway. Engineers have identified about ten different schemes, involving different types of vehicles and different types of control mechanisms. Here again, what are the legal implications of the electronic highway? After a little thought it was found that we have certain established legal relationships and accept the responsibility now for certain highway defects.

For example, we build some electronic equipment on the highway and provide the counterparts on the moving vehicles. Something goes wrong with one or the other of these. Who is responsible and for what? Does the highway authority suddenly become legally responsible and for what period of time in the future, and what about the responsibility of the manufacturers of the vehicles and the dealers? It is quite possible under several of these schemes, that we are

going to have to go beyond the electronic right-of-way, whatever that might be, in order to install certain kinds of gadgets. Here again, we are going to have to acquire some rights from the abutters in the areas beyond the right-of-way to permit installation of some of these.

Another problem is one involving the control of land uses at interchanges. Figures 8 and 9 show a section of Interstate, in California, that is under construction. In one corner of the interchange, there are two industrial outfits. Figure 9 shows four years later. There are eight or nine industries in the area. With respect to industries, as well as commercial enterprises, there are all kinds of linkages. Suppliers like to be close to the people they supply, because it eliminates cross-hauls and facilitates other efficiencies. So in these particular cases, with these two industries as a starter and the opportunities for rapid transportation by a system of modern design, you have all kinds of activities piling in here. This makes sense from the private industry point of view. This trend has made this country great, and we do not want to discourage it.

I do not know whether the design capacities of these interchanges are already exceeded, but it is possible that they are, or they may be long before 1972. They were supposed to have been designed for capacities as of 1972. If this trend continues here and if the same thing happens in all the other quadrants for the same reason, we might be exceeding the design capacity. Design engineers assume a design capacity before they can design any one of these sections of the highway and it is on this basis that they design facilities. Therefore, if things became badly congested, and backed up traffic to an intolerable degree, public authority would be forced to rearrange these access facilities and in so doing they might be completely disrupting the entire circulatory system of these private uses. In other words, these uses and their private accesses have been de-

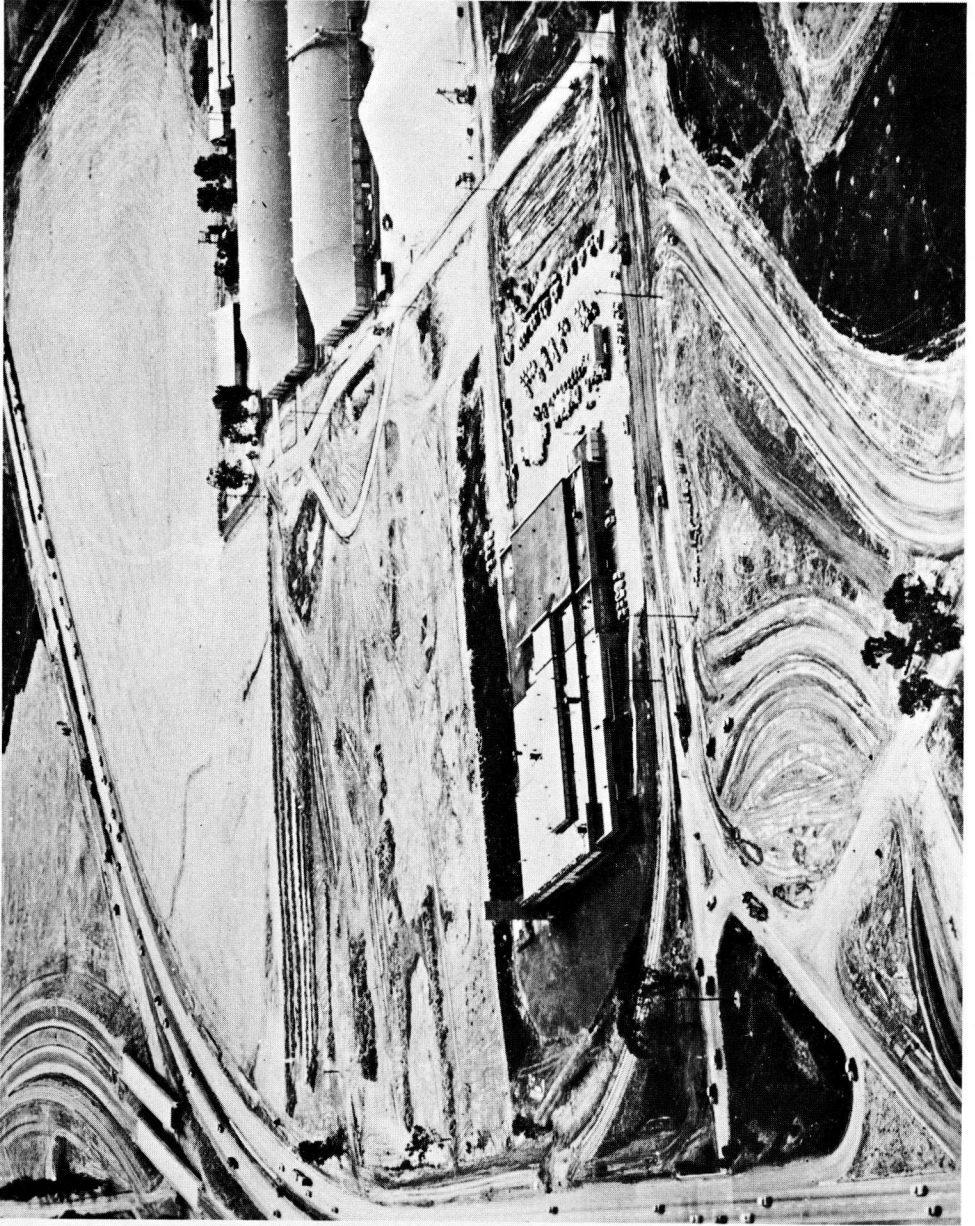


Figure 8. California interchange, before.



Figure 9. California interchange, after.

signed in relation to these public access facilities. If you change this component, you might be putting a lot of inefficiencies into this private operation that were not there before, so actually it is to the private as well as to the public benefit, to make sure that both of these uses can live side by side for a long time to come.

Now the legal problem is this. We have zoning; we have subdivision controls; we have some other gimmicks. Nobody has yet found anything that really works well in these interchange areas. This is a new legal problem that is staring us in the face right now. We are going to have over 41,000 mi of modern highways.

We are going to have something like 14,000 interchanges, and the bulk of the Interstate investment is in these interchange areas. They run from \$150,000 to a couple of a million dollars each, in the urban areas.

Figures 10 and 11 show another case. We have a nice pastoral scene here, rolling land, and if you look hard, you can see a couple of houses behind these shrubs here. Let's see what happens to this area several years later. This happens to be an approach to an expressway and it looks different now. It involves Sears, Roebuck. In the commercial field, just as in the industrial field, wherever Sears or Montgomery



Figure 10. Sears interchange, before.

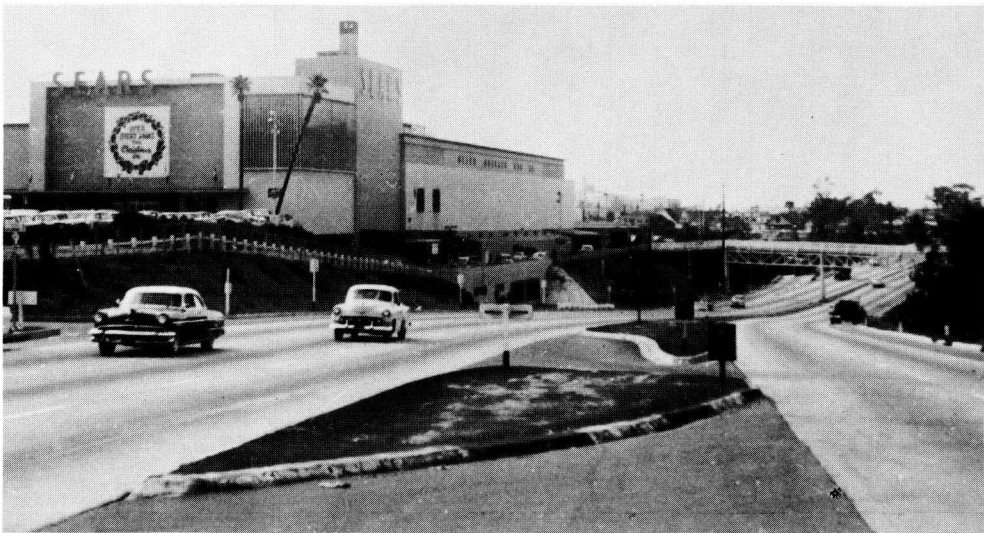


Figure 11. Sears interchange, after.

Ward go, they attract a series of satellite businesses. Sears is like a magnet and a lot of people will come to Sears. They provide ample parking, so other businesses like to be in the shadow of these big giants. When you add this together you get a huge commercial complex. Here again, I ask what this does to interchange capacity figures.

We collectively have to think of some good legal solutions because in the end, without legal authorization and sanction, we cannot do anything to control this. I am not saying we should prevent development at interchanges but what we have to make

sure of is that, through a proper local mechanism or through a proper State mechanism, we reconcile private land uses in the interchange areas with interchange capacity.

Figure 12 shows the main legal layers and superlayers. There are other areas, too. For example, air rights, and we are getting into this under the new authorization of the Federal-aid laws. We can now make use of air-rights for both public and private uses, under or over the Interstate System. This leads to all kinds of legal problems. We are becoming much more aware of water rights. Prof. Beuscher seems to be

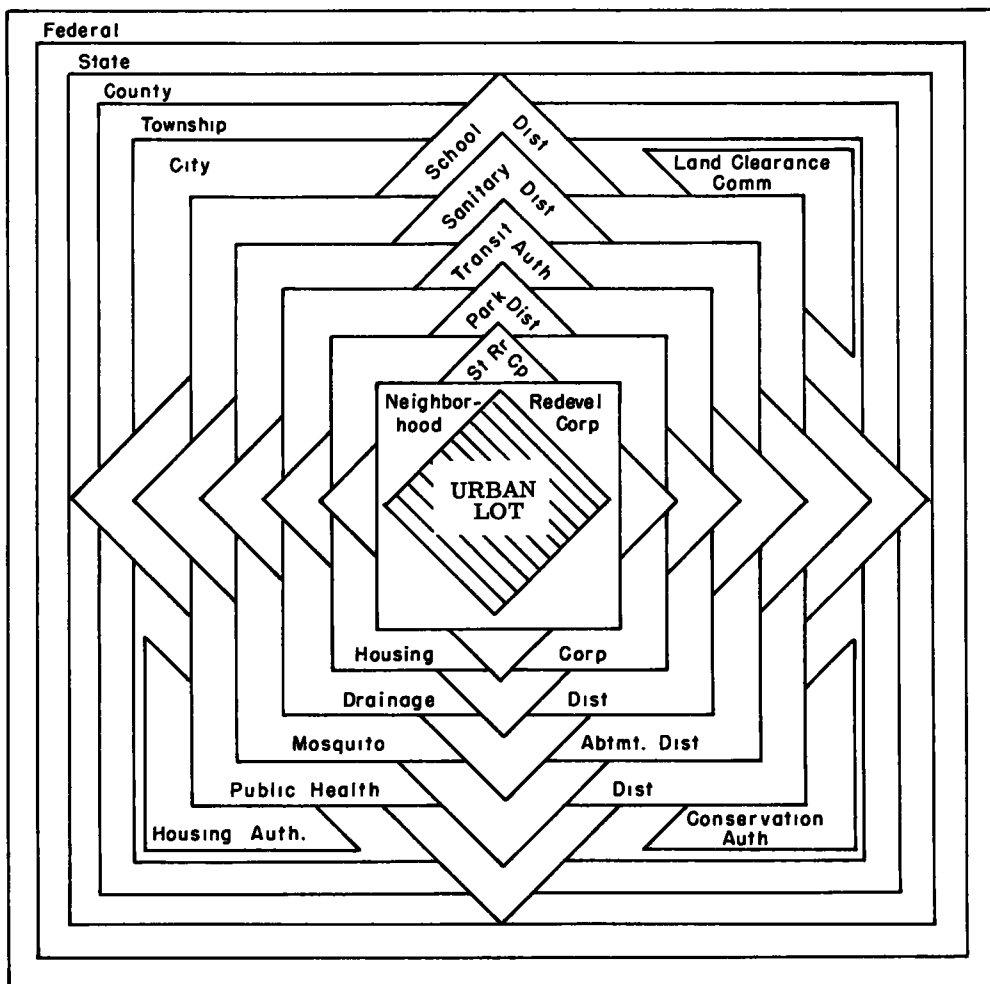


Figure 12. The maze of political and corporate entities having power to affect an urban lot.

in the middle of all these new modern legal developments that are looking to the future, involving water. Water and highways and drainage are getting to be very serious problems. Water has always been a serious problem, especially in the West. But now there are many groups that are concerned about water and what the highway system in both the urban and rural areas is doing to watersheds and pre-existing water arrangements and pre-existing rights and responsibilities. Here again, we are going to be plagued on the legal side with a lot more problems involving water than we ever have had before.

There is one last thing I would mention. You know they say that the highway lawyer or the average lawyer spends approximately three-quarters of his time in the law

library. We have automatic data-processing machines in most State highway departments and for those of you who do not know, both the American Bar Association and some of the private groups that are interested in developing machinery for this have in fact already developed several systems of putting a data retrieval and classification system on the machine which in effect would certainly diminish, if not eliminate completely, the need to use law libraries except for certain limited purposes. In fact, one system would set up one or two National centers for data retrieval, and all you would have to do is subscribe to a telephone service. Such a service would be worth a lot of money, both in not having to invest large capital sums in law libraries, but also in savings of valuable time.

DISCUSSION

J. H. BEUSCHER, *Professor of Law, University of Wisconsin, and Chairman, Committee on Highway Laws, Highway Research Board, Presiding*

R. D. Canada.—In the new Federal-aid bill there is a requirement for coordinated planning of urban renewal programs and highway programs in urban areas. In Florida our urban renewal program is still embryonic. Have you given any consideration to the problem of financing this type of acquisition from highway funds or on a loan basis until such time as we are ready to qualify for urban renewal funds? This is a very real problem. We have a makeshift arrangement at this time but it is not completely satisfactory.

D. S. Black.—There has been some change in the language of that bill in committee. It now requires that it just be a matter of transportation planning, requiring that by 1965 a State must have instituted a "comprehensive transportation planning process." As I understand it this bill would not make approval of highway projects dependent on receipt of urban renewal funds.

Canada.—The problem is that in many urban areas today we cannot acquire the property we are going to need for urban renewal. Our urban renewal people are willing to do this, but they do not have the funds yet. We are also preparing, in Tampa, for example, to put in the interchanges for the Interstate highways. When we put in these interchanges we know from experience that the value of that property which is now the subject of urban renewal is going to jump. If we have to wait three or four years to acquire it after we have completed our interchange, the urban renewal people are going to be paying twice what they would pay if they could acquire it now.

Black.—So you want to get property that will be needed for urban renewal purposes in the immediate vicinity of highways, and know if we would advance funds for this acquisition of that additional property. I do not think that could be done. We

have under consideration a method to provide easier advance acquisition of right-of-way, but our whole authority is limited to acquisition for highway purposes, and under present law we could not advance funds for urban renewal out of the Highway Trust Fund.

H. J. Morton.—That is correct, we had a request in one State where we have used Federal condemnation to acquire some additional land for urban renewal. We came to the conclusion that we could not spend highway funds for this purpose. We checked it with the Justice Department on the technique of condemnation concerned, and were told we could not do that either. So, on both counts it is a negative answer.

Beuscher.—I hope you can work this out. The funds involved are all public, and it does seem that we should be imaginative enough to figure out how, in investing our money in highways, we could protect the public from paying twice for the land ultimately needed for another public purpose. And I am not so sure that this other public purpose is not so intimately related to the highway that we should not have an amendment that would make this possible.

Canada.—The planning coordination phase does not trouble me at all. Our planning is going along nicely. It is just that urban renewal started later and its funds are not yet available.

Black.—Of course, the Highway Trust Fund is not a bottomless well, either. It could be that, in regard to reimbursement and planning, we will have to parcel it out over a period of time. The tax structure for the Trust Fund is based on what it will cost to complete the Interstate System, and it would take quite a drastic change in the concept of the highway legislation to permit this expenditure for non-highway purposes.

D. R. Levin.—While you cannot spend Federal money, you might get

some new State assistance. For example, in Ohio they have a billion dollars of State pension funds which, under their law, they can spend up to 10 percent for advance highway acquisition, and this is later reimbursed. They have actually used this to save quite a bit of money. It is conceivable that in Florida you might have substantial funds available.

Canada.—At its last session the legislature gave us authority to borrow against that fund, but for highway purposes.

Levin.—For highway purposes, yes. But if you fixed this up to use for highways and urban renewal, you would have what you wanted.

Canada.—I think this is the gist of the solution we have reached.

Levin.—In other words, there is no objection to acquiring more than they need for highway purposes; it is just that the Federal Government will not participate in the excess.

Black.—Yes, our sole concern is with the expenditure of Federal-aid funds for non-highway purposes.

Beuscher.—In connection with what was mentioned in the Federal-aid bill regarding a transportation planning process, I predict that as your highway work gets more intimately meshed with urban renewal and city, metropolitan, and regional planning you are going to become more involved with comparable, and perhaps stricter, Federal conditions to grants-in-aid. We have seen the requirement for a master plan in connection with urban renewal; we have seen it more recently in connection with the Open Space Program; and ultimately, I venture a guess, if we keep creating additional layers of governmental units in our metropolitan area so that we cannot effectively have a transportation or any other kind of planning process in that area, we may find that in connection with highway activities we will be required to show that the planning process has a sufficient meshing of

the activities between the local units to satisfy somebody at the Federal level. Maybe, if we live long enough, the solution to our metropolitan area intergovernmental problems will come in major part through conditions to grants-in-aid.

J. Montano.—Does the tenant relocation provision in the proposed Federal-Aid Act contemplate acquisition of property for relocating people?

Black.—No. This legislation, if enacted, will really not change anything for the moment. All it provides is that those States which now have laws providing for reimbursement for dislocated individuals will be reimbursed from Federal funds up to \$200 per family and \$3,000 for business. I think there are only a handful of States now involved, and this would be an inducement for others to enact such legislation. It is like the utility relocation reimbursement laws. In this connection the proposal also provides that as a condition to approval of land acquisition, there must be one or more feasible methods of orderly relocation of displaced persons.

The payment to the State will be the pro rata Federal share. The Bureau of Public Roads' Policy and Procedure Manual now states that we will not reimburse for items not generally compensable in eminent domain and cities; for example, costs of tenant relocation, change in grade, circuity of travel, goodwill, and business losses. All the proposal does is take one item out and provide that we will no longer regard tenant relocation costs as an item not generally compensable and hence not reimbursable.

Montano.—Would this participation be permitted if your State did not have a statute but had a supreme court decision saying that the item is compensable?

Black.—Yes, this would make it compensable under State law. It would not have to be by statute.

Levin.—Suppose a highway department wants to acquire some land on which to move houses; in effect they would be exchanging. Is this eligible for reimbursement? As I understand it, where a State is eligible to buy land for exchange purposes, would it not be considered a highway purpose?

Black.—Does this get into the "cost to cure" doctrine, which provides that it can be done if it does not exceed the cost of taking the land?

Levin.—Yes.

Black.—Then I assume it would be in the public interest and the Federal interest to do it.

Levin.—In that case, the answer is that it is appropriate if the State could save money, and I assume they would not do it unless this was the case.

J. E. Thomson.—Are you aware of any States that are experiencing this problem regarding controlled-access highways? As you know, the general rule in this country is that where you establish a new highway no access rights accrue since the landowner never had any. There are, however, situations where the State acquires access rights along an existing highway. In many cases we want highways with full control of access, but in Iowa there are many cases where establishment of fully controlled highways will retard development of adjacent land. Therefore, we have tried to get a uniform program for those highways we did not feel should be fully access-controlled so that we could treat all landowners alike and still keep the traffic capacity of the highway. We have developed what we call "special public road connections" to serve adjacent land. We require the landowner to agree to a setback along the highway for a frontage road if in the future it appears to be needed, and in many cases where they do not own enough frontage themselves, they have to get their neighbors to come in with them on the compact. This has never been

contested in court, but it has seemed to be a safety valve, and to serve a need. I think our system can be improved, but I am wondering how.

Levin.—A good deal of economic research has found that where there are factors of productivity and growth present, the establishment of a limited-access highway does not inhibit them. It just means that these factors have to be adjusted to access at interchanges or via frontage roads.

Other States have dealt with this by actually providing the frontage roads where the potential justifies it. These frontage roads are part of the Interstate design. Are you talking about a situation where the frontage road is part of the expressway design?

Thomson. — Where an existing highway is used, we do this to mitigate damages, but we have not gone out and provided them where no legal rights to access exist.

Levin.—This is a new idea. Does the compact become an encumbrance against the adjacent land, like an easement?

Thomson.—This legal aspect has never been tested.

Levin.—I do not know of any other State that is doing this, but it is an interesting idea.

Thomson.—We have been doing this for a number of years and a fair number of property owners have taken it up. The original theory was that we would have them no closer than a quarter of a mile apart and call them temporary public road connections. It did not work too well with some individuals who wanted to come in and put up some industries because they thought their access might be closed at some time. Of course, we did not intend to close access, but we might at some time want to change it and move it to another location, perhaps a quarter of a mile down the road. That may create a future problem. If the highway increases in its use, you may want to cut down the number of public access points, and we have found this frontage road program one of the most difficult to handle because people are afraid that they may at some time be put a half mile or a mile from an access point.

Levin.—Does this compact cost the highway department anything?

Thomson.—No.