

Overton court case still reverberates



Nikki Boertman/The Commercial Appeal

Charles Newman, a local attorney who represented Overton Park's supporters in the 1971 court case, stands near the new plaque commemorating the ruling and 50th anniversary of the nation's interstate system.

Justices' 1971 ruling protects parkland from interstate intrusion

By Tom Charlier
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The nation's interstate highway system turns 50 today, but as other communities celebrate the 46,837 miles of concrete and asphalt that were built, Memphis will reflect back on the four or so miles that weren't.

The long-planned stretch of Interstate 40 that was to go through Midtown and Overton Park sparked a landmark legal battle that three decades later continues to shape not just the local transportation system but highway projects across the nation.

Like a long, winding road, *Citizens to Preserve Overton Park vs. Volpe* made it all the way to the U.S. Supreme Court. Its 1971 decision, holding that federal highway projects avoid parkland unless there is no feasible or prudent alternative, set in motion a series of events leading to the park route being scuttled by the early 1980s.

On the 50th anniversary of President Dwight D. Eisenhower's signing of a highway bill that cleared the way for the interstate system, the Tennessee Department of Transportation will host events that include a ceremony set for 10 a.m. today at the Downtown Memphis I-40 Welcome Center.

TDOT will unveil a special historic marker documenting the Overton Park case. The event also will include appearances by two local attorneys -- Charles Newman and William M. Walsh -- who were on opposing sides during the battle.

Although his firm was on the losing side, Walsh, 85, remains convinced of the lasting significance of the court fight.

"It was a very important case... It was a warning to road planners not to design roads that go through parkland," said Walsh, a retiring partner with Harris Shelton Hanover Walsh, whose predecessor firm represented TDOT in its efforts to build the expressway.

Walsh was a peripheral player in the case. The lawyer most directly arguing it for the firm was his longtime partner, Jay Alan 'Skippy' Hanover, who died last November. But he remembers the bitter fight vividly.

Walsh said the firm worked on behalf of the highway project because "that was our appointment and our position." Many planners felt the route through the park was a "very logical" location in between the north and south loops of I-240 and the Wolf River and Nonconnah Creek, he said.

"There are two sides to everything," Walsh said. "It was difficult at the time because there was a lot of controversy."

Newman, 69, needs no reminder of the intensity of the case. Working with Washington attorney Jack Vardaman, he represented the local citizens and national environmental groups who took on TDOT and much of the city's power establishment in trying to keep the highway out of the park.

Their suit, filed in 1969, hinged on a parkland-preservation provision written into the Federal Highway Act of 1966. After experiencing defeats at the district- and appellate-court levels, the group won because the Supreme Court "read a lot of teeth" into the highway act, said Newman, who's a partner in the firm Burch, Porter & Johnson.

"The outcome was always in doubt until the end," he added.

The Supreme Court ruling in the case is one of the nation's most cited decisions in administrative law, Newman said.

With the defeat of the park route, I-40 was redirected onto the north loop of I-40-240, while the portions of the expressway that had been finished became part of Sam Cooper Boulevard. The changes have forced TDOT to undertake costly, long-term projects to revamp and upgrade the two interchanges where I-40 and I-240 intersect.

Still, Newman said the effects of completing the highway would have been much worse.

"Interstates are wonderful between cities and around cities," he said.

"When they're built through cities they become Chinese walls dividing one part of the city from the other and doing a great deal of damage."

While some believe the loss of the Midtown-Overton route hurt Downtown by depriving it of direct east-west expressway access, Newman believes the opposite is true. He cites evidence that expressways "suck strength" from downtowns.

"I do believe the city's better off without it," he adds.

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