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Condemnation of Fairfield during World War II: A City's Quest For Just Compensation

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**Abstract**

During World War II, when allied cargo ships were being sunk by German U-boats, the Federal government in a bid to expand its ship building capabilities, condemned land in Fairfield, Baltimore, Maryland. The land was given to Bethlehem Steel Corporation, primarily to build and repair ships. After the owners of property in the condemned area were compensated, the District Court in the District of Maryland convened to determine what compensation if any the Mayor and City of Baltimore were entitled to for the alleys that were condemned.

The Court granted the Mayor and City of Baltimore only nominal damages as just compensation for the alleys. The Court reasoned that the condemnation of the land to which the alleys abutted, removed any use of the alleys and thus, there was no need to replace the alleys.

The Court also found that since the City held the land in the alleys in trust for the benefit of the public, its interest in the alleys were beneficial use interest. To receive just compensation however for condemnation, the City had to have a fee interest.

The Mayor and City of Baltimore appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit upheld the District Court's awarding the Mayor and City of Baltimore nominal damages.

### **Disciplines**

Law, Legal History

## **Condemnation of Fairfield during World War II: A City's Quest For Just Compensation**

### **I. Background Facts**

In 1940, the United States Federal Works Administration chose Fairfield as the site for the production of Liberty Ships.<sup>1</sup> Liberty is derived from the speech President Franklin D. Roosevelt made in reference to SS. Patrick Henry, the first Liberty Ship, telling the country the ships will bring liberty to Europe.<sup>2</sup> At the time, Fairfield was billed as the largest ship building yard in the East Coast of the United States.<sup>3</sup> The exact location where Bethlehem Steel Corporation built 508 steel ships during World War II (WWII), is the point where the harbor tunnels go underground.<sup>4</sup> Bethlehem Steel Corporation, is the company to whom the government gave the land it condemned at Fairfield in this case.

The land was given to Bethlehem Steel to establish ship building and repair facilities as part of the government's efforts to prosecute the war and increase its ship building capacity. President Roosevelt had put together a \$ 350 million ship building program.<sup>5</sup> The yard at Fairfield, was first established by the Union Shipbuilding Company during World War I.<sup>6</sup>

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<sup>1</sup> Bethlehem-Fairfield Shipyard, 1940-1945, available at <https://mappingbaybrook.org/?landmarks=bethlehem-fairfield-shipyard>

<sup>2</sup> What is a Liberty Ship? Project Liberty Ship, available at <http://www.ssjohnwbrown.org/the-ships/>

<sup>3</sup> *Supra* note 1

<sup>4</sup> Robert C. Keith, Baltimore Harbor: A Pictorial History 65-66 (2005)

<sup>5</sup> *Supra* note 2

<sup>6</sup> *Supra* note 4, 65

During the war, Bethlehem Steel had an outstanding order for 50 ships, and as a result, leased the yard from Union in 1941.<sup>7</sup> This was in addition to Bethlehem Steel's operations at Sparrows Point which was the main focus of the company.<sup>8</sup>

With allied cargo boats threatened by German U-boats, ship construction, was a high priority.<sup>9</sup> The first Liberty Ship was built at Bethlehem-Fairfield Shipyard in 1941, shortly before the United States entered World War II.<sup>10</sup> That ship, SS Patrick Henry, was launched from the Shipyard with President Franklin D. Roosevelt in attendance.<sup>11</sup>

The workers at Fairfield Shipyard built 384 liberty ships.<sup>12</sup> It is estimated that one liberty ship carried, 2,840 jeeps, 440 tanks, or 230 million rounds of ammunition.<sup>13</sup> It took 244 days to build SS Patrick Henry, but that time was quickly reduced to an average of 42 days by the middle of the war.<sup>14</sup> At Fairfield, the workforce was much more efficient making the average time of producing a Liberty Ship at 28 days.<sup>15</sup>

### **Baltimore economy:**

By the 1930s, Iron and Steel dominated Baltimore's economy and the major companies including, Glenn L. Martin and Bethlehem Steel Corporation.<sup>16</sup> The impact of the war on

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<sup>7</sup> *Id.*

<sup>8</sup> Kenneth Warren, Bethlehem Steel: Builder and Arsenal of America, 146 (2008)

<sup>9</sup> Bethlehem Steel, Forging America: The History of Bethlehem Steel – Chapter 6, available at <http://www.mcall.com/all-bethsteel-c6p2-story.html>

<sup>10</sup> *Supra* note 1

<sup>11</sup> *Supra* note 9

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Tony Long, 1941: First Liberty Ship To Be Launched, More To Follow, September 27, 2011.

<sup>15</sup> The Yards That Built Liberty Ships, Project Liberty Ship, available at <http://www.ssjohnwbrown.org/the-yards/>

<sup>16</sup> Kenneth D. Durr, Behind The Backlash: White Working-Class Politics in Baltimore, 1940-1980, 8 (2003).

industrial growth and increase in labor was great in a short period of time. By the end of 1939, 150,000 people were employed in manufacturing and by May 1942, that number had grown to 251,000 people.<sup>17</sup> The City's workforce was heavily geared towards supporting the war effort. Around this same time, four in five people worked in war time related industries.<sup>18</sup>

Bethlehem Steel Corporation also gained so much growth and influence as a result of the war spending. By 1939, even before WWII started, Bethlehem Steel had lucrative defense contract orders, and by 1940, the company was dependent on defense contracts.<sup>19</sup> The company also became Baltimore City's largest single employer.<sup>20</sup> Bethlehem Steel opened its Fairfield Shipyard in 1941, to build Liberty Ships for the U.S. Maritime Commission. The Fairfield plant opened with 350 workers and by the end of 1941, employed 10,000.<sup>21</sup> This growth in workforce at Fairfield, peaked in October 1943, at 46,700 with most of these workers employed in the industries that supported the wartime effort.<sup>22</sup>

The wartime boom also contributed a housing crisis in the City as south Baltimore largely due to its proximity to the shipyards, became popular among the workers at nearby factories.<sup>23</sup> When builders refused to construct low-income housing, the federal government and the City, stepped in to built projects, including five hundred apartments near Fairfield Shipyard.<sup>24</sup>

This shortage in housing during the war, disproportionately affected African American workers who moved to the City in great numbers looking for work.<sup>25</sup> From 1940 to 1942, 33,000

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<sup>17</sup> *Id.*, 16

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, 8, 19.

<sup>20</sup> *Id.*, 8.

<sup>21</sup> *Id.*, 15-16

<sup>22</sup> *Id.*, 16

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, 17

<sup>25</sup> *Id.*, 24

African Americans moved to Baltimore from rural Maryland and the South, most of whom however, paid exorbitant rent for accommodation in undesirable housing.<sup>26</sup> A study estimated that the City's black population, which was 20%, occupied 2% of the residential space.<sup>27</sup> This is a very small area for a large group of people to occupy. While it makes the point that the black population of Baltimore at the time lived in undesirable conditions, it is possible that this was a clerical error by the writers of the text since the residential area is too small. The other explanation might be that there were general estimations of population size and land occupied that underpinned the study to begin with.

## II. Court Documents

### *Petition of the United States of America*

The United States filed a petition for condemnation of certain tracts of land in Fairfield, Baltimore on December 2, 1942 in the United States District Court for the District of Maryland.<sup>28</sup> The petition for condemnation was described on the docket of the District Court for the District of Maryland as Civil [Case] No. 1814. Wilmer H. Driver, Special Assistant to the Attorney General represented the the Federal government in the condemnation petition.<sup>29</sup> The process of condemnation started with the Chairman of the United States Maritime Commission, E.S. Land.<sup>30</sup> The Chairman was authorized to acquire by condemnation,

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> United States v. Certain Parcels of Land I Fairfield, Baltimore, Maryland, and Albert Parker, et al. No. 1814 – Condemnation Petition of United States. (*Hereinafter referred to as Certain Parcels of Land No. 1814*)

<sup>29</sup> *Id.*

<sup>30</sup> Certain Parcels of Land No. 1814 – Declaration of Taking.

“such land in Maryland that was necessary for the construction of facilities to be used for the construction and repair of ships and the operation of such facilities for public use and advancement of the war effort.”<sup>31</sup>

The government attached a map outlining the land at Fairfield it intended to condemn. The map is attached as Annex A.

An Amendment to the government’s petition was filed on September 8, 1943.<sup>32</sup> On that same day the Judge William Chestnut, of the District Court, ordered the Clerk to give notice to all defendants named in the petition and to all people directly or indirectly interested in the condemnation proceeding.<sup>33</sup> The notice to all interested parties was given through publication in the Daily Record, a newspaper published in Baltimore, Maryland.<sup>34</sup> Under the Court’s Order, the first publication of the Notice was to be made by September 1, 1943 and the publication was to continue for three consecutive weeks.<sup>35</sup>

The Notice advised all the interested parties to file their objections to the proposed condemnation of the land and buildings at Fairfield, with the Court by October 18, 1943.<sup>36</sup> The petition for condemnation in this instance was heard before Judge William C. Coleman on Wednesday, December 15, 1943 at ten O’clock.<sup>37</sup>

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<sup>31</sup> *Supra* note 28.

<sup>32</sup> Certain Parcels of Land No. 1814 – Amendment to Condemnation Petition of the United States.

<sup>33</sup> Certain Parcels of Land No. 1814 – Order of the Court by Judge Chestnut.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Certain Parcels of land No. 1814 – Civil, Hearings As To Interests of Mayor and City Council of Baltimore.

After the government filed its petition for condemnation on December 2, 1942, there were several trials in connection with the condemnation of the different lots of land and properties at Fairfield.<sup>38</sup>

### ***Authority for condemnation***

According to the petition, the condemnation was pursuant to certain Acts of Congress, which authorized the Chairman of the United States Maritime Commission to acquire land on behalf of the the United States, for a public purpose.<sup>39</sup> The public purpose was:

“for the construction of facilities to be used for the construction and repair of ships and the operation of such facilities for war purposes and for other public uses at Fairfield, Baltimore, Maryland.”<sup>40</sup>

At the time of filing the petition and notifying the public of the condemnation proceedings, the government had already appropriated money for this purpose of acquiring the land and had set the money aside with the United States Maritime Commission.<sup>41</sup>

The government relied on the following provisions of law as the legal basis for the condemnation of land at Fairfield:

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<sup>38</sup> Certain Parcels of land No. 1814 – Other related condemnation hearings.

<sup>39</sup> *Supra* note 28.

<sup>40</sup> *Id.*; Certain Parcels of land No. 1814 – Notice of Condemnation.

<sup>41</sup> *Supra* note 40

“Act of Congress approved August 1, 1888 (25 Stat. 357; U.S. Code, Title 40, §257),

Act of Congress approved December 26, 1941 (Public Law 378, 77th Congress, 55 Stat. c. 630),

Act of Congress approved February 7, 1942 (Public Law 441, 77th Congress, 55 Stat. c. 46),

Act of Congress approved March 27, 1942, designated as the Second War Powers Act, 1942 (Public Law 507, 77th Congress, 55 Stat. c. 199),

Act of Congress approved August 25, 1941, Public Law 247, 77th Congress, and

Act of Congress approved March 5, 1942, Public Law 474, 77 Congress.”<sup>42</sup>

Under the provisions in the above laws, the Chairman of the United States Maritime Commission was designated as the acquiring authority for this purpose on behalf of the United States.<sup>43</sup> Pursuant to the law, the Chairman had to ascertain whether the land is necessary for the public purpose, and the title to the land was to be acquired by condemnation under judicial process.<sup>44</sup> The commission would then accordingly apply to the Attorney General of the United States to cause the condemnation proceedings to be commenced within the judicial process.<sup>45</sup>

### ***The Petitions of the Mayor and the City Council of Baltimore***

The Mayor and City Council of Baltimore, represented by their attorney, Simon E. Sobeloff, filed petitions against the government’s condemnation seeking compensation for

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

unpaid taxes and liens on metered water on some of the condemned lots of land and also as compensation for land in which the City had an ownership interest. On April 3, 1944, for example, Mayor and City Council of Baltimore asked the District Court to authorize the payment of \$173.45 as unpaid taxes on: portion of Lot No. 500 known as 3332 Weldon Street, Lot No. 501, Lot No. 505 and Lot No. 531.<sup>46</sup>

The United States had deposited this money in the Court's registry in order to pay out claims under the condemnation proceedings.<sup>47</sup> Judge Coleman authorized the payment of the sum that same day.<sup>48</sup> Again, on June 18, 1945, the Mayor and City Council of Baltimore represented by their attorney, Simon E. Sobeloff, petitioned the Court for payment of \$ 2380 as compensation for parcels No.23, 44, 77, 78, 295, and East ½ of 502. On June 18, 1945, Judgment was entered by Judge Coleman in favor of the Mayor and the City of Baltimore for the taking by the government.<sup>49</sup>

### ***District Court Decision***

Mayor and City Council of Baltimore were also made party to further condemnation proceedings, because part of the land in Fairfield that was condemned for the expansion of Bethlehem Ship yard, was land on which public alleys were located.<sup>50</sup> The City in these proceedings, asked the Court for just compensation for the taking of private property, in the

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Certain Parcels of land No. 1814 – Order of Court/ Petition relating to Lots No. 500 known as 3332 Weldon Street, 501, 505 and 531

<sup>49</sup> Certain Parcels of land No. 1814 – Order of Court / Petition relating to Lots No.23, 44, 77, 78, 295, and East ½ of 502

<sup>50</sup> United States v. Certain Parcels of Land, 54 F. Supp. 667. (D. Ct. 1944)

alleys, for public use.<sup>51</sup> The compensation, the City argued, should be the equivalent of the property condemned so that City is put in as good a position as the City would have been if the condemnation had not taken place.<sup>52</sup> The measure of equivalency of the property to the City of Baltimore, was to use the land measurements of the alleys, which covered an area approximately 1 ½ acres and the Mayor and City Council of Baltimore sought compensation on that basis for the sum of \$ 5,432.

The City demanded the fair market value of the alleys at the time of the taking in October / November 1942.<sup>53</sup> The District Court sitting by consent of the parties without a jury, awarded the City of Baltimore \$ 1 as full and just compensation for the taking by the United States of the City's interest in one and a half acres of land, part of the land in Fairfield condemned for the expansion of Bethlehem Ship yard, on which were located public alleys.<sup>54</sup>

Pursuant to the petition for condemnation, many lot owners whose land was condemned, settled their claims in various proceedings and were awarded compensation after jury trials in the District Court.<sup>55</sup> The Mayor and the City Council of Baltimore were made defendants in these condemnation proceedings, because of the Municipality's ownership of certain public alleys running through the condemned land at Fairfield.<sup>56</sup>

The alleys were laid out seven years ago as the neighborhood became residential neighborhood.<sup>57</sup> The alleys were paper improvements as no sewer or water utility lines had ever

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<sup>51</sup> *Id.* at 668.

<sup>52</sup> *Id.*

<sup>53</sup> Certain Parcels of land No. 1814 – Mayor and City Council of Baltimore Response Petition.

<sup>54</sup> Certain Parcels of land No. 1814 – Order of District Court for the District of Maryland

<sup>55</sup> Supra note 50 at 668.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; Also See Certain Parcels of land No. 1814 – Hearing As To The Interest of the Mayor and City Council of Baltimore (Testimony of Harry U. Riepe, Jr.)

been constructed under these alleys.<sup>58</sup> The City however, had laid sewer and water lines under some of the street beds and the government agreed not to condemn these streets.<sup>59</sup> The alleys were 20 feet wide, covered an area approximately 1 ½ acres and the Mayor and City Council of Baltimore sought compensation for them in the sum of \$ 5,432.<sup>60</sup> The alleys which were not improved in any way by the City, were used by the property owners whose land abutted to the alleys.<sup>61</sup>

During the trials to determine the compensation to award the lot owners whose land bordered these alleys, juries took into account the rights of way created by the easements, since these arguments were presented by both the property owners and the government.<sup>62</sup> The question for the court, which was not decided in these earlier jury trials between lot owners and the government, then became, what compensation the City was entitled to receive as a result of the condemnation of the beds of the alleys.<sup>63</sup> This question which was reserved and heard separately, under these proceedings, by the District Court and by agreement between the parties, trial by jury was waived.<sup>64</sup>

The government's principal argument was that at the time of the taking, the alleys had no market value as all their value had gone into the abutting lots and that the City was therefore entitled to recover only nominal damages.<sup>65</sup> The City on the other hand, put forth four arguments. First, that under Maryland law, the owners of the abutting lots possessed only a

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<sup>58</sup> *Supra* note 50 at 668.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 668-69

<sup>61</sup> *Baltimore v. United States*, 147 F.2d 786, 788. (4th Cir. 1945)

<sup>62</sup> *Supra* note 50 at 668

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

naked fee while the City possessed the beneficial use of the land in the alleys.<sup>66</sup> Second, that the City had lost its highway rights, rights to lay sewer and water pipes and other sub-surface and surface rights.<sup>67</sup> Third, that the property owners had lost no pecuniary value in the taking of the alleys by the government, while the City on the other hand, lost pecuniary value in these alleys.<sup>68</sup> Fourth, that when the general area condemned is eventually returned to private or industrial use, the City will be obligated to lay water and sewer pipes, and the maintenance of such structures, will require the City to compensate the new owners for such re-acquisition.<sup>69</sup>

### **III. Study the Site**

Fairfield is a large piece of land located approximately four miles south of downtown Baltimore and since the 1900s, has been used for heavy industry.<sup>70</sup>

The first recorded non indigenous settlement of Fairfield was in 1663 when Paul Kinsey recorded 200 acres of land on the Northern shore of Marley Creek, eventually naming the estate Curtis's Neck.<sup>71</sup> Then John Cromwell in 1670 recorded 6000 acres of land north of Marley Creek.<sup>72</sup> Cromwell later named his estate Plantation Fairfield; and it is Cromwell Family gave the peninsula the name Fairfield.<sup>73</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Supra* note 61 at 788; *Also See Supra* note 1 (“After the war, industries were returned to the original owners”); Certain Parcels of land No. 1814 – Hearing As To The Interest of the Mayor and City Council of Baltimore (Testimony of Harry U. Riepe, Jr.’s testimony for the City, stating that, properties that were condemned during WWI, were returned to their previous owners after the war.)

<sup>70</sup> An Environmental Assessment of an Industrial Area: Fairfield – A Waterfront Study, 1991.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

The Cromwell family sold most of the land south and west of what is now Chesapeake Avenue to the Crisp family in the early 1800s.<sup>74</sup> By the mid-1800s land to the South became the site of Freetown, reputed to be the first settlement of free African Americans in eastern United States.<sup>75</sup> There are reports of Fairfield being racially harmonious as early as 1911; “there is no color line in Fairfield, blacks call whites by their first names and whites fraternally greet blacks in the same spirit.”<sup>76</sup>

In a different account of the early settlers, in 1652, Lord Baltimore ceded 1,555 acres along the waterfront above Curtis Bay to five individuals; among them, Paul Kinsey and George Yates.<sup>77</sup> Yates was a surveyor and he patented a 300 acre parcel of this land to John and William Cromwell, planters who named their parcel, Cromwell’s adventure.<sup>78</sup> According to this theory, the first land patent was granted to Jon Kinsey on June 29, 1663, and Yates acquired land next to Kinsey on July 18, 1679. It is reported that the only patent available on Fairfield is for 400 acres and patented by Thomas Sparrow in 1652.<sup>79</sup> During this time, the land was primarily used for agricultural purposes;<sup>80</sup> mainly, vegetable, tobacco farming and cutting timber for maritime use in Baltimore.<sup>81</sup> Transportation to the City was by ship and road, through what today is Linthicum Heights.<sup>82</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Patrick A. McGuire, Ms Jennie’s Crusade, Sun Magazine, March 23, 1993.

<sup>77</sup> Philip Diamond, An Environmental History of Fairfield/Wagner Point, based upon the Collective research of the Faculty and Students in the Fall of 1997 Building Baltimore Seminar, University of Maryland School of Law, (1998), 8, n. 5

<sup>78</sup> *Id.* at 8

<sup>79</sup> *Id.* at 9-10

<sup>80</sup> *Supra* note 70

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

In the 1870s, the Patapsco Land Company of Baltimore City, formerly Patapsco Company, began to promote industrial development in the Curtis Bay area.<sup>83</sup> The increase in industrial use was enabled by: 1) the construction in 1856 of the Light Street Bridge, and late the removal of its toll in 1878, which connected this tract of land to Baltimore City; 2) the Construction of B&O Railroad bridge across Perry Branch of the Patapsco in 1882.<sup>84</sup> These two events opened Fairfield for industrial development.<sup>85</sup> The Patapsco company was counting on the peninsula's proximity to water and available farmland to market its plans of combining industrial and residential land use to factory owners.<sup>86</sup>

Prior to 1856, communication from Baltimore City to Anne Arundel County, was by ferries.<sup>87</sup> In 1856, Crisp and Richard Cromwell, Jr., were given the right to build a toll bridge from Ferry Bar across to Brooklyn, Anne Arundel County.<sup>88</sup> They charged high tolls for people seeking to use the bridge – 5 cents for a pedestrian, 25 cents for a one-horse buggy, and 50 cents for a two horse buggy; unable to pay the high toll costs, most farmers took the longer land routes to the City.<sup>89</sup>

The bridge was operated until 1880, when it was purchased by the Mayor and City Council of Baltimore City and the County Commissioners of Anne Arundel County at \$3,500;

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Supra* note 77 at 23

<sup>87</sup> Fifth, Sixth, Seventh and Eighth Annual Reports of the State Roads Commission For The Years: 1912, 1913, 1914 and 1915 To The General Assembly Of Maryland, 59 (1916).

<sup>88</sup> *Id.*

<sup>89</sup> *Supra* note 77 at 20

the toll was abolished and the structure was known as Light Street Bridge.<sup>90</sup> In 1891, the bridge was reconstructed at a cost of \$ 156,000 and increased the traffic over it to southern Maryland.<sup>91</sup> An attempt in 1913 to set aside \$2,000,000 to replace this bridge was defeated by popular vote, however, in 1914, the Legislature appropriated \$1,600,000 from the State Road Loan construct a new bridge along the lines of Light Street Bridge.<sup>92</sup>

Because of the Peninsula's isolation, it was also ideal for setting up a public pest hospital; which the City did in 1845.<sup>93</sup> Marine Hospital, as it came to be called, was initially built to house sick immigrants and sailors, but was also used by the U.S. government during the Civil War.<sup>94</sup>

From 1880's until the start of WWI, development and industrial uses in the area increased greatly, as steel, chemical, and railroad-related business located operations in Fairfield.<sup>95</sup> The industrial development also spurred rapid growth in nearby residential areas around, Fairfield, Curtis Bay, and Brooklyn and by 1893, about 260 people lived in Fairfield.<sup>96</sup> Around the same year, the factories in Fairfield, employed 2,100 workers, majority of whom commuted to work.<sup>97</sup>

Ellis company, later bought by U.S. Asphalt Refinery Company, was the first company to introduce petroleum to Fairfield in 1906. Today terminal operations of several oil companies dot the Fairfield landscape.

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<sup>90</sup> *Supra* note 87 at 59 - 60

<sup>91</sup> *Id.* at 59

<sup>92</sup> *Id.* at 60

<sup>93</sup> *Supra* note 77 at 16-17.

<sup>94</sup> *Id.* at 17.

<sup>95</sup> *Supra* note 70

<sup>96</sup> *Id.*

<sup>97</sup> *Supra* note 77 at 27

Fairfield was originally part of Baltimore County, and in 1698, County Commissioners were appointed by the General Assembly to delineate the first official southern boundary line of the county, below the Patapsco River.<sup>98</sup> Complaints from residents having to travel long distances from the far parts of the County to the Courthouse, led the State Assembly in 1725, to repeal the 1698 law, leading to the annexation of Fairfield by Anne Arundel County.<sup>99</sup> In 1918, Baltimore City annexed Fairfield by convincing the Maryland General Assembly that the plan was beneficial to the entire state and that Fairfield would be used as an industrial expansion at the time of World War I.<sup>100</sup>

From 1930 to 1940, industrial development in Fairfield was stagnant until WWII when the U.S. government chose Fairfield as one of the locations for the massive production of Liberty Ships.<sup>101</sup> It was the largest shipyard in the East Coast.<sup>102</sup>

#### **IV. Biography**

Simon E. Sobeloff was born in Baltimore, Maryland, December 3, 1894.<sup>103</sup> He was the son of Jacob and Mary Hilda (Kaplan) Sobeloff, who were Russian Jewish immigrants.<sup>104</sup> Judge Sobeloff attended local public schools including Baltimore City College and the University of Maryland School of Law. He graduated from law school in 1915.<sup>105</sup> From 1919 to 1923 he was

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<sup>98</sup> *Supra* note 77 at 10 - 11

<sup>99</sup> *Id.* at 11 *foot note* 7

<sup>100</sup> *Supra* note 77 at 51-52, 55, and 57.

<sup>101</sup> *Supra* note 70

<sup>102</sup> *Id.*

<sup>103</sup> The Judges in Maryland: Hon. Simon E. Sobeloff. Daily Record, May 18, 1960

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*; Judge Sobeloff dies at 78. *The Baltimore Sun*, July 12, 1973

named by Mayor Broening as the assistant city solicitor for Baltimore and was again appointed the deputy city solicitor for Baltimore from 1927 until 1931 in the next Broening administration.<sup>106</sup>

In 1931 Simon became the U.S. Attorney for the District of Maryland, holding that office until 1934.<sup>107</sup> Later, Mayor Theodore R. McKeldin selected Judge Sobeloff to be the Baltimore City Solicitor of Baltimore.<sup>108</sup> He remained in the position into the first six months next Mayor, Thomas D'Alesandro Jr.'s, first term, and when replaced, remained Mayor D'Alesandro's labor-relations consultant until 1952.<sup>109</sup>

Upon the retirement of Chief Judge Charles Markell from the Court of Appeals of Maryland, Judge Sobeloff was named seventeenth Chief Judge of the Court of Appeals in December 1952 by Governor Theodore R. McKeldin.<sup>110</sup> At the time of the condemnation proceedings, Theodore R. McKeldin, was the Mayor of Baltimore. When Philip B. Perlman resigned as Solicitor General of the United States, President Eisenhower nominated Simon Sobeloff to the position.<sup>111</sup> He resigned his position as Chief Judge of the Court of Appeals in July 1955 to take up the Solicitor General appointment.<sup>112</sup>

As Solicitor General, Judge Sobeloff declined to sign the government's brief in a security risk case pending before the Supreme Court because of his conviction that the government's

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<sup>106</sup> *Supra* note 103; *Supra* note 105

<sup>107</sup> *Supra* note 103

<sup>108</sup> *Supra* note 105

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Solicitor General's Website

<sup>112</sup> *Supra* note 105

position was constitutionally untenable.<sup>113</sup> It is believed that his stand in this case cost him an appointment to the U.S. Supreme Court.<sup>114</sup>

When Judge Morris A. Soper retired in July 1955, Judge Sobeloff was appointed to the United States Court of Appeals.<sup>115</sup> His confirmation in the Senate was delayed by Southern Democrats, concerned about his position on school segregation.<sup>116</sup> As Solicitor General, Judge Sobeloff presented the United States argument on the implementation of *Brown v. Board of Education* which outlawed segregation in public schools.<sup>117</sup>

As judge on the Fourth Circuit, he decided many bitterly fought cases against segregationists in southern states.<sup>118</sup> Some Civil Rights activists however, considered him so much of a gradualist.<sup>119</sup> He was sworn in to the Court on July 19, 1956.<sup>120</sup> Upon the death of Chief Judge John J. Parker, Judge Sobeloff became Chief Judge by seniority, on March 19, 1958.<sup>121</sup> Both Judges Morris A. Soper and John J. Parker, were on the panel that heard the appeal in this case, by the Mayor and City Council of Baltimore against the District Court Judgment awarding the Mayor and City of Baltimore nominal damages for the condemnation of the alleys by the government.<sup>122</sup>

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<sup>113</sup> Simon Sobeloff 1894-1973. *The Daily Record*, September 28, 2000; *Supra* note 105

<sup>114</sup> *Supra* note 113

<sup>115</sup> The Judges in Maryland: Hon. Simon E. Sobeloff. *Daily Record*, May 18, 1960; *Supra* note 105

<sup>116</sup> *Supra* note 105

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Simon E. Sobeloff. *The Baltimore Sun*, July 13, 1973.

<sup>120</sup> *Supra* note 105

<sup>121</sup> *Supra* note 103; *Supra* note 105

<sup>122</sup> *Supra* note 61

In 1964, when he was 70 years, Judge Sobeloff stepped down as Chief Judge, but remained active on Court matters until his illness.<sup>123</sup> He died July 11, 1973 at 78, capping a 59-year legal career.<sup>124</sup>

## V. Legal Analysis

### ***Just Compensation***

The Fifth Amendment requires the United States to pay just compensation whenever the government takes private property for public use.<sup>125</sup> Just compensation is to be measured by the market value of the property at the time of the taking as this represents a fair balance between the loss to the property owner and the achievement of public good.<sup>126</sup>

The taking of private property under the Takings Clause of the Fifth Amendment, includes the property of state and local governments.<sup>127</sup> This is because, when the government condemns public property, the loss to the public served by the condemned property is similar to the loss in a private taking.<sup>128</sup> The principles governing just compensation where there is a taking by the government, therefore, apply equally both to the condemnation of private and public property.<sup>129</sup>

### ***District Court.***

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<sup>123</sup> *Supra* note 105

<sup>124</sup> *Id.*

<sup>125</sup> U.S. Const. Amend. 5; *United States v. 50 Acres of Land*, 469 U.S. 24, 25 (1984).

<sup>126</sup> *United States v. 50 Acres of Land*, 469 U.S. 24, 33 (1984).

<sup>127</sup> *Id.* at 31

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

Since the acquisition of the condemned land at Fairfield was within the protection of the Fifth Amendment to the Constitution, in order to determine the amount of damages; the District Court sought to determine first the nature of the City's interest in the condemned property.<sup>130</sup> Under Maryland law, the owners of the property abutting on the street, owned the fee in the bed, although this was only a naked fee.<sup>131</sup> The implication was that the fee was held by the property owner subject to a public easement, in this case, that easement was held by the City of Baltimore in trust, for the public.<sup>132</sup> The court in its analysis, looked at two factors. The obligation of municipalities to maintain roads, and the Maryland law stipulating the nature of the City's ownership of the alleys.

Where a landowner has a naked fee title to land, any proposed use of the land by such landowner, "is subject to the right of the state or any member of the public to assert the state's public trust easement."<sup>133</sup> The interest of the lot owners in the alleys was therefore to enable them access the streets, and the lot owners could not develop the alleys without the City of Baltimore asserting its larger ownership interest on behalf of the public.

The public-trust doctrine is a common law theory that the state holds title to the land for the common use and imposes a duty on the state to maintain these resources for public use.<sup>134</sup> In Maryland for example, "the navigable waterways within Maryland's boundaries and lands beneath them, are 'held' for the benefit of the inhabitants of Maryland."<sup>135</sup> Under the public-trust doctrine the state is a "quasi trustee for the public benefit and supports the rights ... to which the

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<sup>130</sup> Supra note 50 at 669

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 671

<sup>133</sup> *Summa Corp. v. California ex rel. State Lands Com'n*, 466 U.S. 198, 205 (1984)

<sup>134</sup> *Save Mille Lacs Sportfishing, Inc. v. Minnesota Dept. of Natural Resources*, 859 N.W.2d 845, 849 (2015)

<sup>135</sup> *Anne Arundel Cnty. V. City of Annapolis*, 352 Md. 117, 132 (1998)

entire public are entitled therein...”<sup>136</sup> The real beneficiaries of the alleys in this case were the citizens of Baltimore and the City of Baltimore was merely a trustee.

The Court found that with regards to the municipality and its taxpayer’s right to maintain roads; the increase in this burden resulting from condemnation of property by the government, necessitates compensation.<sup>137</sup> The standard for compensation in this type of case the Court found, depends on the type of road the City has to ordinarily maintain.<sup>138</sup> In this instance, the use of the alleys was extinguished when the government condemned the private lots of land abutting into the alleys at Fairfield.<sup>139</sup> The condemnation of the land and the alleys meant that, there was no need to replace the ingress egress.<sup>140</sup> Consequently, there was no need for the Mayor and City Council of Baltimore to replace the Alleys or be compensated for their condemnation as they would no longer be needed or used.

The Court further found that the Mayor and City of Baltimore did not own the land in the alleys, but that the City merely held an easement in the alleys for the public’s benefit.<sup>141</sup> Any award to the City for the full market value of the condemned land in the alleys, according to the Court, had to be predicated in the City being an owner in fee.<sup>142</sup> In this case, the City of Baltimore simply held the alleys in trust for the public benefit, the fee ownership remaining in the private lot owners.<sup>143</sup> The City was thus entitled only to nominal damages.<sup>144</sup> The City’s

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<sup>136</sup> City of Baltimore v. Baltimore & Philadelphia Steamboat Co. 104 Md. 485, 65 A. 353, 355 (1906)

<sup>137</sup> Supra note 50 at 671

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 672

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

beneficial use of the alleys and its plans to lay sewer and water pipes, did not rise to the level of being owner in fee or its equivalent.

Two witnesses testified on behalf of the government and one on behalf of the Mayor and City Council of Baltimore in the District Court.<sup>145</sup> Testifying on the government's behalf were, Harrison M. Sandcock, Jr and Harry E. Gilbert; and on the Mayor and City's behalf was Harry U. Riepe, Jr.<sup>146</sup>

The testimony of Harry E. Gilbert, a real estate expert, particularly appears to have swayed Judge Coleman. Mr. Harry E. Gilbert examined the alleys involved in the proceeding and appraised them.<sup>147</sup> He testified as to the fair market value of the City's interest as of October and November 1942, the time of the taking. According to his testimony, the alleys did not have fair market value because all the value in the land in these alleys had gone into the abutting lots.<sup>148</sup>

Further, Harry E. Gilbert, testified that the City, through its real estate departments, like, the tax department, and street opening department, for over thirty or forty years when valuing the lots of land abutting into alleys, incorporated the value of the alleys into the value in the lot of land abutting into that specific alley.<sup>149</sup> He also testified that the attachment of the value of the alleys to the lots of land into which the alleys abut, was reflected in the costs of the lots of land.<sup>150</sup> As a result he continued, the cost of the lots of land abutting into alleys, cost more than the lots of land which did not abut into alleys.<sup>151</sup>

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<sup>145</sup> *Supra* note 37

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

## **Appeal by the Mayor and City Council of Baltimore**

On September 5, 1944, the Mayor and City Council of Baltimore, filed the notice of appeal to United States Circuit Court of Appeals for the Fourth Circuit from the judgment of one dollar entered on July 3, 1944 against the United States, in favor of the Mayor and City Council of Baltimore.<sup>152</sup> The case was argued on January 5, 1945, before Circuit Judges; John Parker, Morris Soper and Dobie, and was decided on January 9, 1945.<sup>153</sup>

The City appealed the District Court's judgment alleging that it should have received compensation for the alleys condemned as part of the overall condemnation of land located in Fairfield.<sup>154</sup> The City appealed on the ground that for all practical purposes, it owned the land in the bed of the alleys and was therefore entitled to the market value of \$ 5,432.<sup>155</sup>

The Fourth Circuit, relying on Maryland case precedents, rejected the City's appeal holding that the City is not entitled to compensation as if it were the owner of an unqualified interest in the condemned land.<sup>156</sup> The Court held that City's interest in the alleys was not equivalent to a fee interest, rather, the City acquired the land as public trustee for easements and the right to lay sewers and water pipes.<sup>157</sup> The abutting lot owners retained the fee ownership rights in the land and where the easement in favor of the public was abandoned, the entire beneficial interest reverted back to the abutting lot fee owner.<sup>158</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> *Supra* note 61

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 787

<sup>156</sup> *Id.* at 789

<sup>157</sup> *Id.* at 788

<sup>158</sup> *Id.* at 788-89

The Fourth Circuit also held that under Maryland law, abutting property lot owners are entitled to nominal damages for their interest in the fee in the streets and alleys.<sup>159</sup> This is because the value of the abutting land has been increased by the opening of the street and value of the streets and alleys is reflected in the value of the lots.<sup>160</sup> This increase in value of the land, is the basis of increased taxes on the land owner.<sup>161</sup> Since the City had made no improvements to the alleys when they were taken by the government, and the alleys now closed with no need to reopen or relocate them; the alleys had no market value when taken and the City had no obligation to replace them<sup>162</sup>.

According to Judge Posner in *United States v. Norwood*,<sup>163</sup> the concept of just compensation tends to grossly undercompensate the owners when their property is taken by eminent domain.<sup>164</sup> The City of Baltimore, it might be argued, was undercompensated for the property taken by the government in its condemnation of the Alleys. The City's argument that it would be required, if the shipyard was ever returned to private use, to incur costs in laying new alleys is well founded. Although the District Court considered the argument too speculative to be a basis for an award of damages,<sup>165</sup> there was a precedent for the City's argument. Properties that were condemned during WWI, were returned to their previous owners after the war was over.<sup>166</sup>

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<sup>159</sup> *Id.* at 790

<sup>160</sup> *Id.* at 790

<sup>161</sup> *Id.* (*Also See Supra* note 37 (testimony of Harry Gilbert Jr.; “the City has been compensated for thirty or forty years, or as long as the alleys have been in existence through increased assessment and the taxes collected on these lots during the period of existence of these alleys.)

<sup>162</sup> *Supra* note 61 at 791; 790 (“A taking of a street causes substantial loss to a City requiring compensation, occurs where the City is required to establish and improve another street in the place of the one condemned or to relocate underground structures like water mains and utility pipes. In those instances, the measure of compensation is the costs of creating the substitute.”)

<sup>163</sup> 602 F.3d 830, 834 (7th Cir. 2010)

<sup>164</sup> *Id.*

<sup>165</sup> *Supra* note 61 at 791.

<sup>166</sup> *Supra* note 37 (Testimony of Harry U. Riepe, Jr.)

Further, under §86.19 of the Gift Tax Regulations 108, fair market value is,

“the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the facts.”<sup>167</sup>

In an arms length transaction under the facts in this case, the City would very likely receive more than nominal damages as the fair market value using the criteria of the IRS.

### **Overview on dedication of land for public use**

Land may be dedicated for public use in a number of ways, primarily, through statutory authorization, or by common law. The distinction between a statutory dedication and that done by common law, is that;

“the statutory dedication operates as a grant, while the common-law dedication operates by way of estoppel...”<sup>168</sup>

#### **Dedication by statute**

Public streets and alleys may be created by statute. For a statutory dedication to be valid, the statute must be substantially complied with, and the acts stipulated in the statute, must be performed in the manner stipulated by the legislature.<sup>169</sup> In 1786 for example, the Maryland Legislature directed a survey of land near Conococheague creek, and for the commissioners to

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<sup>167</sup> IRS Rev. Rul. 59-60 (§86.19 of the Gift Tax Regulations 108)

<sup>168</sup> *City of Annapolis v. Waterman*, 357 Md. 484, 504-505 (1999)

<sup>169</sup> Eli Frank, *Title to Real and Leasehold Estates and Liens*, 187 (1912)

“lay out the land into lots, streets, lanes, and alleys.”<sup>170</sup> The returned plats, were considered “conclusive evidence of the streets, lanes and alleys,” of the town.<sup>171</sup>

In 1870, a law authorized Baltimore County commissioners to survey a part of Baltimore County adjacent to Baltimore City by no more than two miles and lay out streets, and alleys in a manner that conformed to the streets and alleys in Baltimore City.<sup>172</sup> After the survey was carried out and a plat returned showing the streets and alleys, this land was annexed and became part of Baltimore City in 1888.<sup>173</sup> The dedication to the public under the statute, is complete and the interest to the public vests, when the plat outlining the subdivision, streets and alleys is filed.<sup>174</sup>

### **Dedication at common law**

At common law, the dedication of land for public use, involves the voluntary offer of the land, to be dedicated for public use, and an acceptance by a public entity.<sup>175</sup> The acceptance by the public entity, made the dedication complete at common law.<sup>176</sup> Usually, the acceptance took the form of the public entity assuming control of the property, or by an express recording of the document.<sup>177</sup>

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<sup>170</sup> *Cushwa v. Burgess & Commissioners of Williamsport* 83 A. 389, 390 (1912)

<sup>171</sup> *Id.*

<sup>172</sup> *United Finance Corporation v. Royal Realty Corporation* 191 A. 81, 82-83 (1937)

<sup>173</sup> *Id.* at 83 (Among the streets laid out on that plat were Baltimore street, Hollins street, Ninth Street West, and Tenth Street West)

<sup>174</sup> *Maryland-National Capital Park & Planning Commission v. McCaw*, 246 Md. 662, 673(1967)

<sup>175</sup> Supra note 168, at 503

<sup>176</sup> *Id.* at 504

<sup>177</sup> *Id.*

“Dedication ordinarily involves the conveyance of an interest in land by the fee owner *to the public*; usually to the local government having jurisdiction over the land.”<sup>178</sup>

Where the dedication of a street or alley was made to a municipal authority at common law, the dedicator retained the fee, which was now subject to the easement which is all that the municipality acquired.<sup>179</sup> For the dedication to be sustained, there must be shown to have been an intent by the owner of the property to dedicate the property to public use.<sup>180</sup> The intent may also be implied from conduct. In *Conway v. Board of County Commissioners for Prince George's County*, a land owner’s conduct over a period of years, allowing his neighbors to use a “ten-foot wide” path along the side of his property, was interpreted by the Maryland Court of Appeals, as an intention to dedicate the road to the public.<sup>181</sup> The dedication also has to be for the benefit of the public and not merely be intended for the “sole use of individual landowners.”<sup>182</sup> That is, between the owner of the property and individuals without the public being involved.

The dedication of land for public streets may be required during the creation of subdivisions or if access roads are needed for additional subdivision plats.<sup>183</sup> In this case for example, the approval of subdivision plans by the Maryland-National Capital Park & Planning Commission, was conditioned, upon the dedication of land for certain roads.<sup>184</sup>

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<sup>178</sup> *Id.* at 506

<sup>179</sup> *Washington Medical Center, Inc. v. The United States*, 545 F.2d 116, 128 (1967)

<sup>180</sup> *Mayor and City of Baltimore v. Gordon et al.*, 104 A. 536, 537 (1918)

<sup>181</sup> 248 Md. 416 (1968).

<sup>182</sup> *Olde Serverna Park Improvement Association, Inc. v. Gunby*, 402 Md. 317, 330 (2007)

<sup>183</sup> See *Maryland-National Capital Park & Planning Commission v. Washington Business Park Associates*, 294 Md. 302 (1982)

<sup>184</sup> *Id.*

At common law, a dedication of land affects the public, but also the people who own land abutting on the street. The public and owners of property abutting on the street may at times have different rights and at times the dedication may not be complete to the public, but complete and offer beneficial use to the abutting owners, as they have relied on the street to purchase their land.<sup>185</sup>

### **Ownership interest**

Common law: For a dedication to be complete, it is not necessary that legal title to the property should pass from the owner of the land.<sup>186</sup> It is enough for the street to be shown in the plat prepared either by the municipal authorities or owner of the land.<sup>187</sup> Therefore, unless there is a clear intention on the part of the property owner, they should not be deprived of property on the ground of a dedication.<sup>188</sup>

The title to the bed of the highway is in the property owner and is not affected by the dedication, as this only gives the public the right of use for such purpose as the property owner intended.<sup>189</sup> When land is dedicated for use “as a street or for other public use,” the owner of the property remains the owner of the land in fee, and his fee interest is subject to a public easement.<sup>190</sup> There is a presumption at common law, a conveyance of land for public use in a road, carries title to the center of the road.<sup>191</sup> The general rule at common law is that;

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<sup>185</sup> Supra note 172 at 86

<sup>186</sup> *McCormick v. The Mayor and City of Baltimore*, 45 Md. 512, 523 (1877); *Also See Harlan v. Town of Bel Air* 178 Md. 260 (1940) (For a dedication to be effective, it is not necessary “for the legal title to pass from the owner of the land.”)

<sup>187</sup> *Harlan v. Town of Bel Air* 178 Md. 260 (1940)

<sup>188</sup> *Bloede v. Baltimore*, 115 Md. 594, 596 (1911).

<sup>189</sup> *North Beach v. North Chesapeake Beach Land & Improvement Co. of Calvert County*, 191 A. 71, 80 (1937).

<sup>190</sup> Supra note 174 at 675

<sup>191</sup> *Gump v. Sibley*, 28 A. 977, 978 (1894).

“a grant of land bounded on a highway ... carries the fee in the highway ... to the center of it, provided that the grantor at the time owned to the center, and there be no words or specific description to show a contrary intent.”<sup>192</sup>

This rule applies to alleys as well.<sup>193</sup>

Statutory Dedication: Unlike under common law where the fee interest remains in the owner of the land at dedication, in the case of a statutory dedication, the fee interest in the property dedicated to public use, vests in the public.<sup>194</sup>

### **Attachment Photographs**

The photographs attached below, are from the Jury’s inquisition, empaneled to visit and examine some of the premises.<sup>195</sup>

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<sup>192</sup> *Id.*

<sup>193</sup> *Tel & Tel. Co. v. Ruth*, 106 Md. 644, 654 (1907)

<sup>194</sup> *General Auto Service v. Maniatis* 765 N.E.2d 1176, 1183 (2002)

<sup>195</sup> United States v. Certain Parcels of Land In Fairfield, Baltimore, Maryland, and Albert Parker, et al. No. 1814 – Jury’s Inquisition.



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BLDG N<sup>o</sup> 6 LOT N<sup>o</sup> 317-18



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