

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

CASE NO: 07-983

DIVISION: "H(12)"

**DEREK HUSTON, J. KEITH HARDIE, JR., MAPLE AREA RESIDENTS, INC.
AND CARROLLTON-RIVERBEND RESIDENTS' ASSOCIATION**

VERSUS

**CITY OF NEW ORLEANS and ROBERT MENDOZA, in his capacity as
DIRECTOR, DEPARTMENT of PUBLIC WORKS, CITY OF NEW ORLEANS**

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO FURTHER DELAY
AND REQUEST FOR NOTIFICATION TO FOURTH CIRCUIT
OF VIOLATION OF MANDATORY INJUNCTION**

As the Court is aware, the City of New Orleans, rather than representing the right of the people of New Orleans to use a public street, is defending the illegal and unconstitutional privatization of Newcomb Boulevard for the exclusive benefit of a handful of the City's most privileged residents. Every argument the City and the defendants have made was rejected by the Trial Court, or ultimately by the Fourth Circuit. Since the Supreme Court denied writs on May 17, 2013, the City and Newcomb Boulevard Association (NBA) ^{/1/} have attempted to delay the removal of the obstructions in a number of ways:

- a) moving for and receiving an order staying the matter without requiring Newcomb to pay for (or even post bond for) NBA's continued occupation of public property, which order was subsequently reversed by the Fourth Circuit;
- b) continuing to attempt to re-litigate the issue of the stay in this Court;
- c) claiming that delay was appropriate because NBA was in the process of purchasing the street. However, though an incomplete application was filed in July 2013, that application has never been completed over the six months intervening because NBA has never provided the updated traffic study required by Planning Commission rules. Neither NBA nor the City has ever attempted to explain this failure to the courts;
- d) raising, in its attempt to re-litigate the stay, a new claim that the removal of the fence would create unsafe conditions, when the removal would do no more than restore Newcomb Boulevard to its condition prior to the installation of the obstructions; there has never been any findings by any traffic engineer, including Allen Yrle's recent report, that there were any problems on Newcomb Boulevard

^{/1/} Plaintiffs may have incorrectly indicated that NBA's only status is as an intervenor. However, NBA, though originally just an intervenor, was added as a defendant in the Second Amended Petition, filed in April 2011, and answered on June 28, 2011. NBA is therefore in violation of the Fourth Circuit's mandatory injunction, along with the City.

that would require closure of the street;

- e) claiming that there were “safety concerns” that made it necessary to convert the street to a one-way, when the engineer’s report did not so state; and
- f) failing to provide a timetable for removal of the fence.

Because the lifting of the stay cannot be re-litigated in this Court, and because the City and NBA have failed to provide a reasonable timetable for removal of the obstructions, this Court should immediately notify the Fourth Circuit that the City and NBA are deliberately refusing to comply with the Fourth Circuit’s order, so that the Fourth Circuit can take appropriate action.

Recent Developments

On January 28, 2014, the City Attorney, in an attempt to re-litigate the stay that was reversed by the Fourth Circuit, sent a report (*Exh 1*) apparently prepared by City Traffic Engineer Allen Yrle ^{12/}, stating in her transmittal email (*Exh 2*) that “there is a need to convert this street to a one-way street to address the safety concerns that have been identified.” However, contrary to the City Attorney’s email, Yrle’s report does not find any significant “safety concern” that would prevent the reopening of the street, nor does it state that there is a “need” to convert the street to a one-way or to keep it closed while the City considers whether to convert the street to a one-way. The report merely states that conversion to a one-way could reduce the “conflict” created when vehicles headed in the opposite direction have to navigate around each other, that hedges at 44 Newcomb Boulevard could be trimmed if they obscured the view of motorists, and that vehicles exiting a driveway at # 44 Newcomb – which has been in place for at least forty years with no reported incidents – would have “limited exposure” to vehicles turning right onto Freret. None of these are characterized by Traffic Engineer Yrle as a “safety concern,” which is the pejorative term used by the City Attorney in her attempt to spin the existence of normal everyday traffic conditions into an excuse for the City’s intentional disobedience of the Fourth Circuit’s mandatory injunction.

^{12/} The report is initialed “AMY.”

Discussion

1. Re-opening Newcomb Boulevard will simply reproduce the conditions that existed before the illegal and unconstitutional closure, and there was never any finding that conditions on Newcomb Boulevard prior to the closure were any more unsafe than those on other streets.

The City Engineer's remark that traffic will increase once the street is reopened is simply a statement of the obvious: the seven-year closure has had the effect of reducing traffic, which can be expected to return to its previous volume once the obstructions are removed. Yrle's statement that "conflicts" would arise between vehicles traveling in opposite directions is also an obvious conclusion, but in the long history of this litigation, no complaints of vehicles having significant difficulty navigating those "conflicts" have ever surfaced, and Yrle does not say that those conflicts pose a safety hazard or that the street "needs" to remain closed or converted to a one-way because of the conflicts.

Neither NBA nor the City ever raised these conflicts as an issue in the litigation on the merits. Rather, NBA made two claims: that there was speeding^{/3/} and "cut-through traffic,"^{/4/} which one Newcomb resident described as the use of the public street by "people . . . who don't live there and just use it as a trespass." *Exh 5, Depo Sontheimer, p. 16.*

In response to NBA's complaints about speeding and "cut through" traffic in 2005, the City hired Urban Systems, Inc. (USI) as an expert consultant to study the issue and make recommendations. *Exh 6, USI Study p. 2/USI 563*. Finding that there was some speeding,^{/5/} but

^{/3/} See *Exh 3, Affidavit of Ted LeClercq*, NBA's president from 2004-2011, which complains about "speeding vehicles," but makes no complaints about vehicles having to navigate around each other, and *Exh 4 Affidavit of Charles Gay, Jr.*, complaining about "speeding vehicles" and stating that the fence "completely alleviated the speeding problem."

^{/4/} The USI report characterizes the complaint as "traffic that is using [Newcomb Boulevard] as cut-through to avoid congestion on St. Charles Avenue." *Exh 6, p. 22/USI 583*. Once Newcomb was closed, the outlet it provided from the congestion on St. Charles was eliminated, increasing the congestion on St. Charles Avenue. In his deposition as the designated representative of the City of New Orleans, Allen Yrle said that the intersection of Broadway and St. Charles, two blocks from Newcomb Boulevard, was the "most congested" intersection on St. Charles. *Exh 13, Depo City of New Orleans through Allen Yrle, p 23-4.*

^{/5/} There was no evidence that speeding on Newcomb was unusual or unlike that on other City streets. Plaintiff Keith Hardie testified that there was speeding on Audubon St. *Exh 8, Depo. Hardie, p 68*, and on other university area streets. *Exh 9, Affidavit, Keith Hardie*. Traffic

that the volume of cut-through traffic was “normal and not excessive,” USI did not recommend closing the street, but suggested the much less draconian remedy of speed humps, and recommended that another study be conducted prior to even installing the speed humps.^{16/} *Exh 6, p. 20/USI 581.*

Thus, the 2005 traffic report did not find or mention any issue with vehicles having to navigate around each other, and it certainly did not mention conversion to a one-way or closure as a remedy for those problems. Allen Yrle’s January 27, 2014 report does identify potential “conflicts” between vehicles, but he does not state that these conflicts are significant enough to require that the obstructions remain in place until the process for converting Newcomb Boulevard to a one-way is complete.

2. The driveway at # 44 Newcomb Boulevard has been there for at least thirty years, and there is no evidence that anyone has never suggested that this driveway created any significant safety issues until this month, and the City’s own traffic engineer says that any problems with lines of sight of drivers stopped that the intersection of Freret and Newcomb Boulevard can be remedied by cutting hedges.

The alleged problems created by the driveway at # 44 Newcomb Boulevard cannot be new, as the driveway has been there for over forty (40) years.^{17/} The driveway does not appear to be illegal^{18/}, nor is there any evidence that the City ever exercised its authority to deny a permit^{19/}

Engineer Doug Roberts testified that the speed on Newcomb “didn’t surprise me a bit,” *Exh 10, Depo Roberts, p 105*; and that the closure of Newcomb would only move speeders to other streets: “. . . if they move to another street, they certainly aren’t going to go any slower.” *Id., p 110.*

^{16/} In a deposition, Yrle testified that all connected streets have the potential of drawing cut-through traffic, that the City did not use fences to deal with speeding complaints, and that the only thing that would really stop speeding was enforcement. *Exh 11, Depo Yrle, p 54*

^{17/} *Exh 7, Affidavit of David Keiffer.*

^{18/} *City Code § 146-146* provides: “No driveway shall encroach upon the sidewalk areas formed by the corner radius and the extension of property lines at the corner of an intersecting street.” The driveway at # 44 Newcomb Boulevard is well outside of this area. *Exh 7, Affidavit of David Keiffer.*

^{19/} *City Code § 146-145* provides: “The director of the department of streets may refuse to issue a driveway permit in any case when, in the interest of public safety, the same ought not be granted.”

for an unsafe driveway. Moreover, the occupants of # 44 Newcomb have recently constructed a new driveway on the property's Audubon Street frontage,^{10/} and, even if the Newcomb driveway did pose undue hazards – which City Traffic Engineer Allen Yrle did not claim in his report – the residents could certainly use the Audubon Street driveway. And, of course, they have the option of parking on the street, along with other residents of this dense residential neighborhood.

3. The City Attorney's proposed remedy (conversion to a one-way) to the alleged problem of "conflict" will only worsen the alleged safety issue (speeding) previously complained of by NBA.

As noted above, there is nothing in the voluminous record of this case to suggest that anyone had ever complained that the meeting of two cars in the middle of Newcomb Boulevard (an extremely common situation on many, if not most, two-way streets in Uptown New Orleans) posed a safety issue. The issue, according to residents, again and again, was speeding. However, conversion to a one-way, according to a 1990 study of Newcomb Boulevard by City Traffic Engineers, would only worsen any speeding:

One potential modification which would be appropriate to observed conditions on Newcomb Boulevard would be the conversion to one-way operation in the northbound direction. . . . Such a modification would clearly reduce non-local traffic on Newcomb Boulevard and, by removing the opposing direction of traffic, render northbound flow more efficient. This may, however, also promote the practice of speeding.

Exh 13, 1990, City Traffic Study.

Thus, it is questionable whether conversion to a one-way would increase or decrease safety.

4. The City Attorney is not following this Court's directives and is generating pretexts in an attempt to re-litigate the stay which was lifted by the Fourth Circuit and justify delay.

Plaintiffs understood this Court's directives in the telephone conference of January 24, 2014 were for the City to return with a timetable for removal of the fence. The City has not complied with that directive.

The Fourth Circuit's mandatory injunction was issued on December 30, 2013. On January 2, 2014, the City Attorney wrote to plaintiffs stating that he had "instructed the Department of

^{10/} *Exh 9, Affidavit of Keith Hardie.*

Public Works to commence removal of the barrier at Newcomb Boulevard and Freret Street without delay,” but that it might take a “few days” to get the “appropriate work orders and crews in place.”^{/11/} The City was then silent for almost two weeks, when it announced that its “only remaining question pertains to the scope of the injunction.”^{/12/} This Court has indicated its inclination to limit the scope of removal, to which Plaintiffs object, but the Court has not stayed the removal of those obstructions over which there is no dispute. Despite the City’s promises to proceed “without delay,” and its estimate that the work would commence in a “few days,” and the City Attorney’s representation that the only remaining question was the scope of the removal, it is now almost a month since the Fourth Circuit’s order, and the City has yet to even provide a timetable.

Following this Court’s January 24, 2014 directive to the City to produce a time table for removal, the City used its traffic engineer not to create a time table, but to spin out more unsupportable grounds for delaying the removal and to produce a report concerning “conflicts” that might arise and alleged issues with a driveway. Those issues are shown above to be irrelevant, as they pre-existed the erection of the fence and the removal of the fence will not create any issues which were not present before the fence was erected.

5. The City cannot re-litigate the lifting of the stay by the Fourth Circuit in this Court.

The Fourth Circuit granted writs on Plaintiff’s Writ Application and ordered that the stay imposed by Judge Bagneris be lifted. The City did not file an opposition to that writ application,^{/13/} and Newcomb did not raise the new claims concerning the alleged “safety concerns” in their opposition. Having failed to raise these concerns before the Fourth Circuit, they cannot raise them now. The Fourth Circuit’s order is now the law of the case, and the defendants cannot be

^{/11/} *Exh 14.* In a letter issued after the Fourth Circuit denied writs, the City Attorney stated that he had been “advised by the Department of Public Works that the project can be commenced in approximately two weeks and will take approximately one week to complete.” *Exh 15, Letter, City Attorney, July 15, 2013.*

^{/12/} *Exh 16, Email, City Attorney, January 13, 2014.*

^{/13/} In fact, the City did not file an appeal from Judge Bagneris’ March 22, 2012 judgment. NBA was the only party that filed an appeal.

allowed to continue to raise new justifications for staying the removal of the obstructions. These alleged issues – which are clearly pretexts – must be taken up with the Fourth Circuit or the Supreme Court.

CONCLUSION

Two traffic studies of Newcomb Boulevard have been made, one by the City in approximately 1990, *Exh 13* and the other in 2005 by USI, *Exh 6*. In neither study are there any findings of safety problems with “conflicts,” and no report, including the brief report of Allen Yrle prepared on January 27, 2014, suggests that closure of the street or the conversion to a one way is required by any conditions existing on Newcomb Boulevard. In fact, the 1990 report states that converting the street to a one way could have the effect of worsening the speeding issue, which was the only complaint given any credence at all in the 1990 and 2004 studies.

As to the alleged issues with the driveway at # 44 Newcomb, neither the 1990 study nor the 2004 studies, which required traffic engineers to inspect the street, noted any safety issues with that driveway. Nor has the City produced any reports of accidents or complaints connected with this driveway or the intersection. In addition, the residents at # 44 Newcomb are free to use their Audubon Street driveway or park on the street if they feel that they cannot safely use the Newcomb Boulevard driveway, though that driveway has been used without any record of an accident or report to the City of an unsafe condition for over forty years.

It is clear that the City is creating pretexts with the intent of prolonging ^{/14/} the illegal occupation of public space by the residents of Newcomb Boulevard. From the allegedly “pending” application that was never completed, to the City’s refusal to demand compensation for the continued use of public property, to the City Attorney’s mis-characterization of Allen Yrle’s report, the Court has been provided nothing but spin by the City Attorney, which has worked to protect the illegal and unconstitutional occupation of public property by the privileged few at the expense of the general population.

^{/14/} Dilatory tactics by a public body designed to avoid compliance with a court order constitutes contempt of court. *Charter School of Pine Grove, Inc. v. St. Helena Parish School Bd.*, 9 So.3d 209, 2007-2238 (La.App. 1 Cir. 2/19/09), rehearing denied.

In light of the intransigence of the City and NBA, Plaintiffs ask the Court to immediately advise the Fourth Circuit that the City and NBA are refusing to comply with its December 30, 2013 order. *See State ex rel. Saizan v. Judge of Eleventh Judicial District Court for Parish of St. Landry*, 48 La. Ann. 1501, 21 So. 94 (La. Nov 30, 1896); *Motichek v. O'Keefe*, 230 So.2d 267 (La.App. 1st Cir 1969). (Failure to comply with an order of the Court of Appeal should be brought to that Court's attention so that it can take appropriate action).

Respectfully Submitted



**THOMAS W. MILLINER (#9580)
ANZELMO, MILLINER & BURKE LLC
3636 S. I-10 Service Rd. W., Suite 206
Metairie, Louisiana 70001
Telephone: (504) 835-9951
Fax: (504) 835-9984
Email: tommymilliner@fastmail.net**

**MICHAEL LAUGHLIN (#1668)
3636 S. I-10 Service Rd. W., Suite 206
Metairie, Louisiana 70001
Telephone: (504) 835-9951
Fax: (504) 835-9984
Email: laughlinmichael@hotmail.com**

**JAMES R. LOGAN IV (#1095)
LOGAN & SOILEAU, L.L.C.
1010 Common Street, Suite 2910
New Orleans, Louisiana 70112
Telephone: (504) 522-5900
Fax: (504) 522-5998
Email: jlogan@loganandsoileau.com**

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE

I hereby certify that the I have on the 4th day of February, 2014, served a copy of the foregoing pleading on counsel for all parties, via fax or email and by mailing same by United States mail, properly addressed, first class postage prepaid.



Thomas W. Milliner

**EXHIBITS TO
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO FURTHER DELAY
AND REQUEST FOR NOTIFICATION TO FOURTH CIRCUIT
OF VIOLATION OF MANDATORY INJUNCTION**

- Exhibit 1. Report of Allen Yrle, January 27, 2014
- Exhibit 2. City Attorney's Email of January 28, 2014, transmitting Yrle Report
- Exhibit 3. Affidavit of Ted LeClercq
- Exhibit 4. Affidavit of Charles Gay, Jr.
- Exhibit 5. Deposition, Stephen Sontheimer, excerpts
- Exhibit 6. USI Report
- Exhibit 7. Affidavit, David Keiffer
- Exhibit 8. Deposition of Keith Hardie (p 68)
- Exhibit 9. Affidavit of Keith Hardie, 1/30/14
- Exhibit 10. Deposition of Doug Roberts (p 110)
- Exhibit 11. Deposition of Allen Yrle
- Exhibit 12. Deposition of City of New Orleans, through Allen Yrle
- Exhibit 13. Traffic Study by City of New Orleans, 1990
- Exhibit 14. Email, City Attorney, January 2, 2014
- Exhibit 15. Letter, City Attorney, July 15, 2013
- Exhibit 16. Email, City Attorney, 1/13/14
- Exhibit 17. Email, Allen Yrle, 1/14/14

Newcomb Boulevard Fence Removal

January 27, 2014

This report is prepared to examine the expected results of the removal of the fence that has been in place on Newcomb Boulevard at Freret for the last several years.

Existing Conditions:

Newcomb Boulevard is comprised of a 21 foot wide roadway operating in the lake and river directions. It is a one block street extending between St. Charles and Freret, with a fence across the Freret end forcing all vehicular traffic to enter and exit at the St. Charles end.

Parking is restricted on the uptown side but allowed on the downtown side of the street with a 2-hour residential parking restriction. A large percentage of the available on-street parking spaces are regularly occupied.

The closure at the Freret end limits the amount of traffic currently using the street, with local traffic and some university parking comprising the bulk.

Fence Removal Analysis:

The removal of the fence will bring some significant changes to the traffic on the street. Given the few roadways connecting St. Charles to Freret in this area, the volume of traffic is expected to increase substantially. While the road can handle this volume, the biggest concern over the larger number of vehicles will be when motorists must pass each other. The narrow width of the roadway forces drivers to find gaps between the parked cars to pull over when faced with opposing traffic.

The opening of the Freret end will reintroduce vehicular traffic through the intersection. Lakebound traffic on Newcomb turning onto Freret will benefit from the restriction of parking along the riverside of Freret. Motorists should have a good view of traffic on Freret approaching from the right (heading uptown), but the tall hedges alongside 44 Newcomb could create a sight restriction when a motorist looks to the left at downtown bound traffic. The extent of this obstruction cannot be fully shown until the fence comes down.

Additionally, 44 Newcomb has a driveway approximately 10 feet from the Freret roadway and 4 feet from the Freret sidewalk. Vehicles exiting this driveway will have limited exposure to vehicles turning right from Freret onto Newcomb.

Possible Modifications:

The increase in traffic will result in more conflicts between passing vehicles. The conversion of Newcomb to a one-way street would remove these conflicts. This conversion can be initiated provided the residents of the street support this.

If the hedges adjacent to 44 Newcomb do create a sight obstruction, the trimming of the hedges may be required to improve conditions for drivers.

AMY

From: "Sharonda R. Williams" <shrwilliams@nola.gov>
Sent: Tuesday, January 28, 2014 8:34am
To: "Tonya Jupiter" <tjupiter@orleanscdc.com>
Cc: "laughlinmichael@hotmail.com" <laughlinmichael@hotmail.com>,
"jlogan@loganandsoileau.com" <jlogan@loganandsoileau.com>, "tommylinner@fastmail.net"
<tommylinner@fastmail.net>, "tgray@fpwk.com" <tgray@fpwk.com>,
"Charles.Gay@arlaw.com" <Charles.Gay@arlaw.com>, "Adam J. Swensek"
<ajswensek@nola.gov>
Subject: Huston, et al. v. City of NOLA, et al., No. 07-983: Telephone Status Conference

Dear Tonya:

As we discussed, the City sent a traffic engineer to Newcomb Boulevard to analyze traffic effects that will be posed by removal of the fence. In accordance with the Court's instructions to provide an update to the parties today, I am attaching the traffic engineer's report. As stated in the report, there is a need to convert this street to a one-way street to address the safety concerns that have been identified. Conversion of the street to a one-way requires City Council approval. This process could take 1-2 months. The City, of course, will adhere to the Court's ruling to act without delay to get this matter put on the Council agenda as quickly as possible. Further, the City, of course, will participate in further discussions and/or status conferences with the parties and/or the Court to further discuss these issues as needed. Please let me know if you have any additional questions.

Best regards.

Sharonda R. Williams
City Attorney
City of New Orleans
Law Department
1300 Perdido Street
Suite 5E03
New Orleans, LA 70112
Phone: 504-658-9920
Mobile: 504-472-7075
Fax: 504-658-9868
shrwilliams@nola.gov<mailto:shrwilliams@nola.gov>

This electronic mail transmission may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

In accordance with 31 C.F.R. Section 10.35(b)(4), this message has not been prepared, and may not be relied upon by any person, for protection against any federal tax penalty.

P Memo Opp Re-Litigation Exhibit 2 City Attorney Email 1/28/14

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 07-983

DIVISION "H-12"

DEREK HUSTON, J. KEITH HARDIE, JR., MAPLE AREA RESIDENTS, INC. AND
CARROLLTON/RIVERBEND RESIDENTS' ASSOCIATION

VERSUS

CITY OF NEW ORLEANS AND ROBERT MENDOZA, IN HIS CAPACITY AS DIRECTOR,
DEPARTMENT OF PUBLIC WORKS OF THE CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

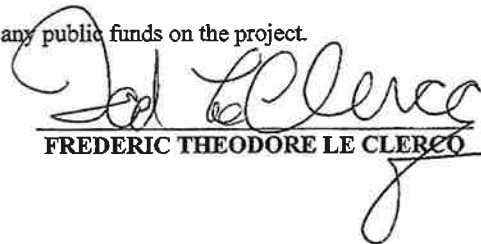
BEFORE ME, the undersigned Notary, personally came and appeared:

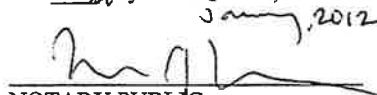
FREDERIC THEODORE LE CLERCQ

who, after being duly sworn, did depose and state:

1. My name is Frederick Theodore Le Clercq. I am over 18 years of age and have personal knowledge of the statements made in this affidavit and each is true and correct.
2. I am a resident of Newcomb Boulevard, am a member of Newcomb Boulevard Association ("NBA"), and served as the NBA's President from 2004 until early 2011.
3. Newcomb Boulevard is a unique street.
4. Although Newcomb Boulevard is a two-way street (with a third "lane" for parking), it is very narrow (22 feet wide), over 1400 feet long, and has no cross street or outlets.
5. Newcomb Boulevard is also very close to Tulane University and Loyola University.
6. For several decades, there has been serious problem with vehicles speeding on Newcomb Boulevard.
7. The speeding vehicles, combined with the unique characteristics of Newcomb Boulevard, have created grave safety issues for the surrounding residents and their guests, especially for children.
8. For several decades, the residents of Newcomb Boulevard have expressed their concerns about speeding and safety to the City of New Orleans ("City").

9. The residents had asked the City of New Orleans to take some action to address these issues, but nothing was done.
10. In late 2005, a petition, signed by most of the residents of Newcomb Boulevard, was submitted to the City requesting relief from the speeding and safety problems.
11. The petition, and ultimately a plan to construct a traffic control device to restrict vehicular traffic through the Freret Street intersection, was referred to the Director of the Department of Public Works, City of New Orleans (at the time, John Shires) in early 2006.
12. At the request of the New Orleans Fire Department, a modification was made to the design of the traffic control device to add a demountable center panel for access by emergency vehicles.
13. On or about January 31, 2006, Mr. Shires, as Director of the Department of Public Works, City of New Orleans, granted NBA permission to erect a traffic control device at the end of Newcomb Boulevard, where it intersects with Freret Street. A true and correct copy of the letter of authority from the Director is attached hereto as Exhibit "A-1."
14. The purpose of the traffic control device was to address the grave safety hazard caused by speeding vehicles on this unique residential street.
15. NBA assumed responsibility for the funding, design, construction, and installation of the turnaround and traffic control device and coordinated these tasks with City employees.
16. Residents of Newcomb Boulevard funded all of the work associated with the installation of the turnaround and traffic control device, at a cost of over \$65,000.00.
17. The City of New Orleans did not expend any public funds on the project.


FREDERIC THEODORE LE CLERCQ

Sworn to and subscribed before me
this 3rd day of ~~December~~, 2011.
January, 2012

NOTARY PUBLIC

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 07-983

DIVISION "H-12"

DEREK HUSTON, J. KEITH HARDIE, JR., MAPLE AREA RESIDENTS, INC. AND
CARROLLTON/RIVERBEND RESIDENTS' ASSOCIATION

VERSUS

CITY OF NEW ORLEANS AND ROBERT MENDOZA, IN HIS CAPACITY AS DIRECTOR,
DEPARTMENT OF PUBLIC WORKS OF THE CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, personally came and appeared:

CHARLES F. GAY, JR.

who, after being duly sworn, did depose and state:

1. My name is Charles F. Gay, Jr. I am over 18 years of age and have personal knowledge of the statements made in this affidavit and each is true and correct.
2. I have been a resident of Newcomb Boulevard a total of almost thirty (30) years.
3. I am a member of Newcomb Boulevard Association ("NBA").
4. Newcomb Boulevard is a unique street. Although it is a two-way street (with another lane for parking), it is very narrow (22 feet wide), over 1400 feet long, and has no cross street or outlets.
5. Newcomb Boulevard is also very close to Tulane University and Loyola University.
6. Since I have lived on the street, there has been serious problem with vehicles speeding on Newcomb Boulevard.
7. The speeding vehicles, combined with the unique characteristics of Newcomb Boulevard, have created grave safety issues for the surrounding residents and their guests, especially for children.

8. Since I have lived on the street, the residents of Newcomb Boulevard have expressed their concerns about speeding and safety to the City of New Orleans ("City").
9. The residents had asked the City of New Orleans to take some action to address these issues, but nothing was done.
10. In 2005, I signed a petition, along with most of the other residents of Newcomb Boulevard, asking the City to provide some relief from the speeding and safety problems.
11. The City permitted NBA to construct a traffic control device a traffic control device at the end of Newcomb Boulevard, where it intersects with Freret Street.
12. The traffic control device completely alleviated the speeding problem on Newcomb Boulevard.

Charles F. Gay Jr.

CHARLES F. GAY, JR.

Sworn to and subscribed before me
this 24 day of December, 2011.

Don S. McKinsey

NOTARY PUBLIC

Don S. McKinsey
Notary Public
State of Louisiana
La. Bar No. 28685
My commission is for life.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

DEREK HUSTON, ET AL NO. 07-983

VS.

THE CITY OF NEW ORLEANS,
ET AL DIVISION "H"

Deposition of STEPHEN SONTHEIMER,
taken on Wednesday, May 25, 2011, in the law
office of Schonekas, Evans, McGoey & McEachin,
650 Poydras Street, Suite 2105, New Orleans,
Louisiana.

REPORTED BY:

JAN I. SCHMIDT, CCR
Certified Court Reporter

K E L L Y & A S S O C I A T E S, L.L.C.
Certified Court Reporters
(504) 891-6333

ORIGINAL

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MICHAEL J. LAUGHLIN
ATTORNEY AT LAW
3636 I-10 Service Road, Suite 206
Metairie, Louisiana 70001

FOR THE DEFENDANT, NEWCOMB BOULEVARD
ASSOCIATION:

SCHONEKAS EVANS MC GOEY & MC EACHIN, LLC
(BY: THOMAS M. MC EACHIN, ESQ.)
650 Poydras Street, Suite 2305
New Orleans, Louisiana 70130

FOR THE CITY OF NEW ORLEANS:

CITY ATTORNEY'S OFFICE
(BY: MATTHEW J. LINDSAY, ESQ.)
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

ALSO PRESENT:
J. KEITH HARDIE, JR.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S T I P U L A T I O N

It is stipulated and agreed to by and between counsel that the deposition of STEPHEN SONTHEIMER is hereby being taken pursuant to notice under the Louisiana Code of Civil Procedure for all purposes permitted under law.

All formalities, including those of sealing, certification, and filing, are hereby waived, the original to be read and signed.

All objections, except those as to the form of the question and/or the responsiveness of the answer, are reserved until the time of the trial of this case. All objections are to be considered under C.C.P. Article 1443, Paragraph D.

* * * * *

JAN I. SCHMIDT, CCR, State of Louisiana, officiated in administering the oath to the herein witness.

1 STEPHEN SONTHEIMER, 12 Newcomb
2 Boulevard, New Orleans, Louisiana, on
3 Wednesday, May 25, 2011, after having
4 been first duly sworn to tell the truth,
5 the whole truth, and nothing but the
6 truth, was examined and testified as
7 follows:

8 EXAMINATION BY MR. LAUGHLIN

9 Q. Mr. Sontheimer, my name is Mike Laughlin.
10 I've asked to take your deposition today
11 in a case entitled Derek Huston, Keith
12 Hardie, Maple Area Residents,
13 Carrollton/Riverbend Neighborhood
14 Association versus City of New Orleans and
15 its director of Public Works. I
16 appreciate you being here today. I'm
17 going to try to be a little briefer than
18 we were with Mr. LeClercq. would you
19 please give me your full name and
20 residence address?

21 A. Steven L. Sontheimer, S-O-N-T-H-E-I-M-E-R,
22 12 Newcomb Boulevard, New Orleans,
23 Louisiana 70118.

24 Q. When did you acquire your home on Newcomb
25 Boulevard?

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

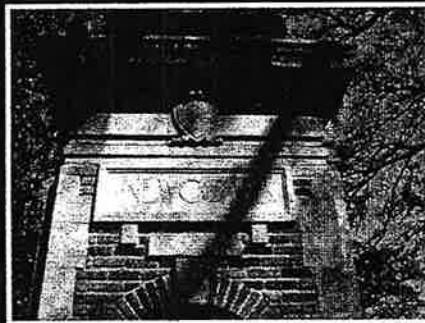
- 1 A. well, it was certainly more difficult
2 because of the numbers of people who were
3 speeding down the street who don't live
4 there and just use it as a trespass, as a
5 cross through from one end to the other,
6 either direction.
- 7 Q. was the problem with backing up a problem
8 with not being able to see the traffic?
9 That's what I'm trying to understand.
- 10 A. You could see them and they'd be on you so
11 fast.
- 12 Q. All right. Did you ever have occasion to
13 meet with Councilman Batt about your
14 safety concerns?
- 15 A. No.
- 16 Q. Did you ever have occasion to meet with
17 council member Midura about your safety
18 concerns?
- 19 A. No.
- 20 Q. Did you ever have occasion to meet with
21 council member Guidry about your concerns?
- 22 A. No.
- 23 Q. Let me show you what I'm going to mark as
24 S-1, and I'm sorry, counsel, I can't share
25 with you.



TRAFFIC ENGINEERING SERVICES - CITY OF NEW ORLEANS



*General Meyer Avenue at
Odeon Street*



Newcomb Boulevard



*Pine Street at
Hampson Street*



April 2005

P Memo Opp Re-Litigation

Prepared by

Urban Systems, Inc.

400 N. Peters Street
New Orleans, LA 70130

Exhibit 6 USI Report



TABLE OF CONTENTS

PURPOSE OF THE STUDY 2

TASK I – General Meyer Avenue at Odeon Street 3

Study Location..... 3

Methodology..... 3

Intersection Characteristics..... 4

Traffic Characteristics..... 5

Manual Turning Movement Counts 5

24-Hour Traffic Counts..... 8

LOS and Capacity Analysis..... 10

Conclusions and Recommendations 12

TASK II – Newcomb Boulevard..... 13

Study Location..... 13

Methodology..... 13

Roadway Characteristics..... 14

Traffic Characteristics..... 14

Manual Turning Movement Counts 14

24-Hour Traffic Counts..... 17

Speed Counts..... 18

Trip Generation..... 19

Conclusions and Recommendations 20

TASK III – Pine Street at Hampson Street..... 23

Study Location..... 23

Methodology..... 23

Intersection Characteristics..... 23

Traffic Characteristics..... 24

Manual Turning Movement Counts 24

Conclusions and Recommendations 27



PURPOSE OF THE STUDY

The City of New Orleans retained Urban Systems Associates, Inc. to perform the following traffic engineering services. This report is divided into the following three tasks and the specific scope for each task is detailed below.

Task I – General Meyer Avenue at Odeon Street

- Collect 24-hour traffic volume counts for five (5) weekday and two (2) weekend days.
- Collect manual turning movement counts for the weekday peak periods (morning, mid-day, evening) and a weekend mid-day peak.
- Perform a signalized intersection capacity analysis for the peak periods for existing conditions (2-phase permitted left turns).
- Perform a signalized intersection capacity analysis for the peak periods for a proposed phase change (protected left turn phasing for General Meyer Avenue).
- Present findings and make recommendations.

Task II – Newcomb Boulevard

- Collect 24-hour traffic volume counts for five (5) weekday and two (2) weekend days.
- Collect speed data for five (5) weekday and two (2) weekend days
- Collect manual turning movement counts for the weekday peak periods (morning, mid-day, evening) and a weekend mid-day peak at the following intersections:
 - a. Newcomb Boulevard @ Freret Street
 - b. Newcomb Boulevard @ St. Charles avenue
- Inspect the site and record roadway widths, operational features, parking characteristics and observe traffic circulation.
- Present findings and make recommendations.

Task III – Pine Street at Hampson Street

- Collect 24-hour traffic volume counts for five (5) weekday and two (2) weekend days.
- Collect manual turning movement counts for the weekday peak periods (morning, mid-day, evening) and a weekend mid-day peak.
- Present findings and make recommendations.



TASK II – Newcomb Boulevard

Study Location

The study location for Task II is Newcomb Boulevard, located in the uptown area of New Orleans in close proximity to Tulane University and Loyola University. Figure 12, illustrates this location. Newcomb Boulevard is a two way residential street that runs between St. Charles Avenue and Freret Street. It runs in a general northeast/southwest orientation, but for the purposes of this report will be labeled as the north/south roadway. The speed limit on Newcomb Boulevard is 25 MPH.

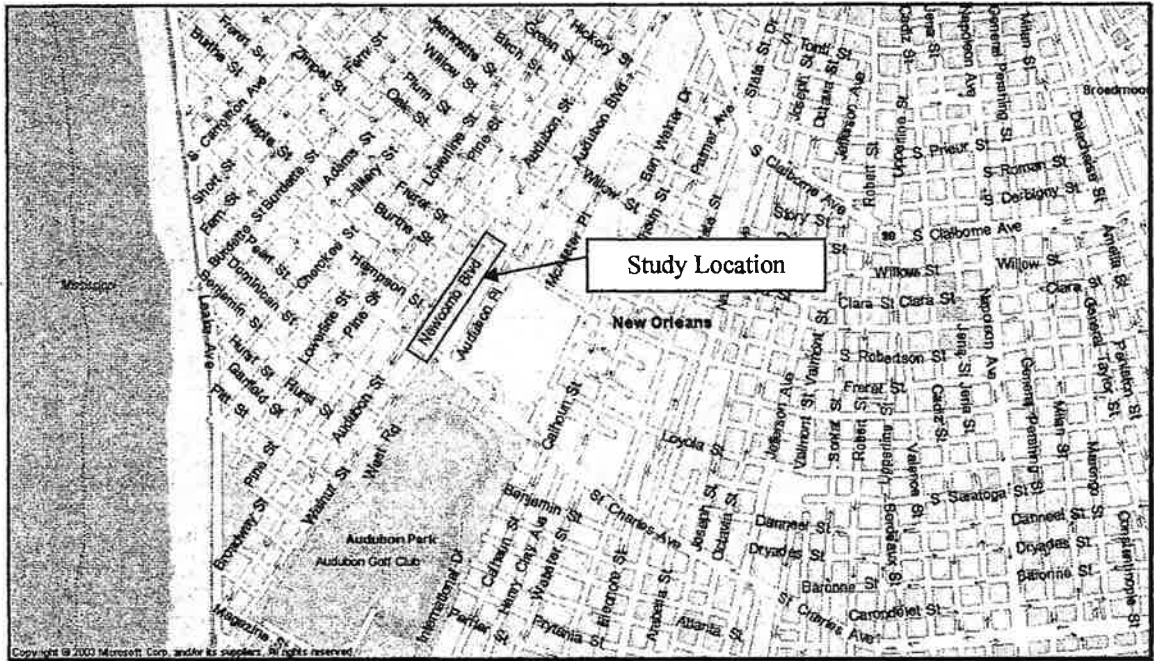


Figure 12 – Study Location

Methodology

On-site observations were conducted at the subject roadway, which included a review of existing geometry, signage, pavement markings, parking characteristics and traffic circulation.

To document current traffic volume and flow conditions on the subject roadway, manual turning movement counts were conducted at both of the terminus intersections (Freret Street & St. Charles Avenue), by Urban Systems staff. In addition to the turning movement counts, 24-hour volume counts were conducted on the subject roadway. Speed counts were also collected as part of this study.

Operations were evaluated utilizing the procedures developed by the Transportation Research Board and contained in the Highway Capacity Manual, 2000 edition. In addition, a speed study analysis was performed to evaluate the speeding characteristics of the roadway. Based on the results obtained from the data analysis and a review of



the operations at the subject intersection, operational deficiencies were identified and recommendations were developed.

Roadway Characteristics

Newcomb Boulevard is a residential street that is approximately 1475 feet in length with a general cross section that is 22 feet wide with residential / 2-hour parking along the west side for its entire length. The southern terminus of the roadway is St. Charles Avenue, while the northern terminus is Freret Street. The roadway currently operates as a 2-way street. There are approximately 36 single family homes that front Newcomb Boulevard



Figure 13 – Newcomb Boulevard Northbound



Figure 14 – Newcomb Boulevard Southbound

Traffic Characteristics

Manual Turning Movement Counts

Manual Turning Movement Counts were conducted at both of the terminus intersections (Freret Street & St. Charles Avenue) by Urban Systems staff for a typical weekday am peak, mid-day peak and pm peak, as well as a weekend mid-day peak. These counts are presented in Figures 15 and 16.

A review of the volumes indicated that, at the intersection of Freret Street at Newcomb Boulevard, the Freret Street eastbound approach has a weekday volume demand of 424 vehicles in the am peak, 248 vehicles in the mid-day peak and 425 vehicles in the pm peak. The weekend mid-day volume demand was 154 vehicles.

The Freret Street westbound approach has a weekday volume demand of 285 vehicles in the am peak, 310 vehicles in the mid-day peak and 518 vehicles in the pm peak. The weekend mid-day volume demand was 163 vehicles.

Figure 15

TURNING MOVEMENT COUNT SUMMARY SHEET

LOCATION New Orleans, LA

INTERSECTION OF: Freret St. @ Newcomb Blvd.

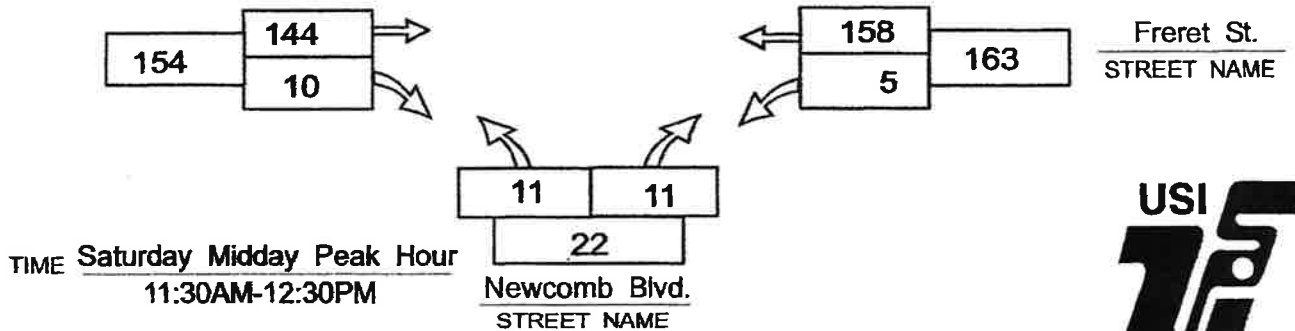
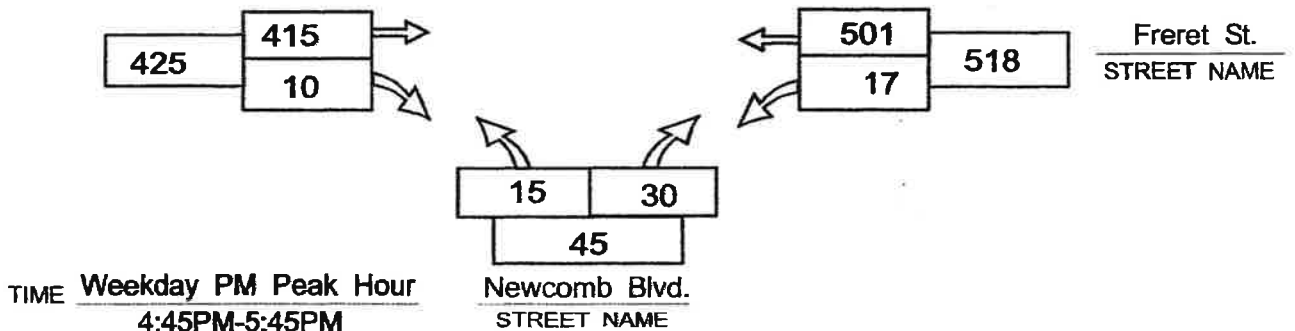
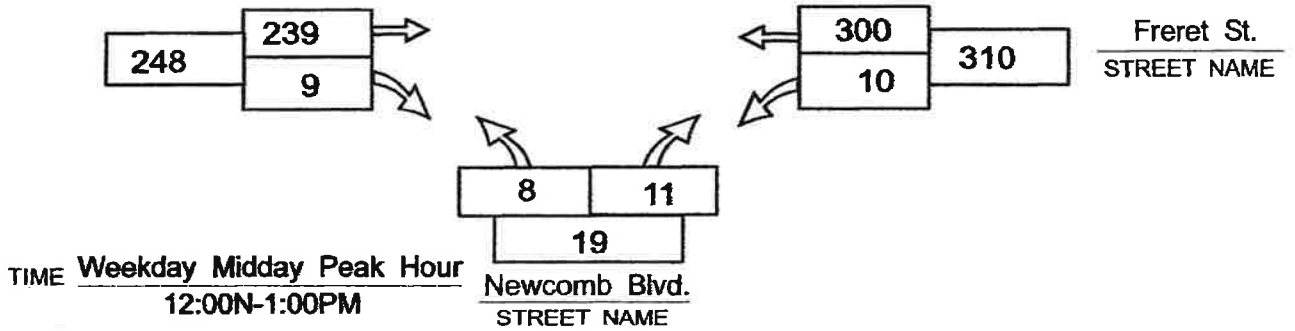
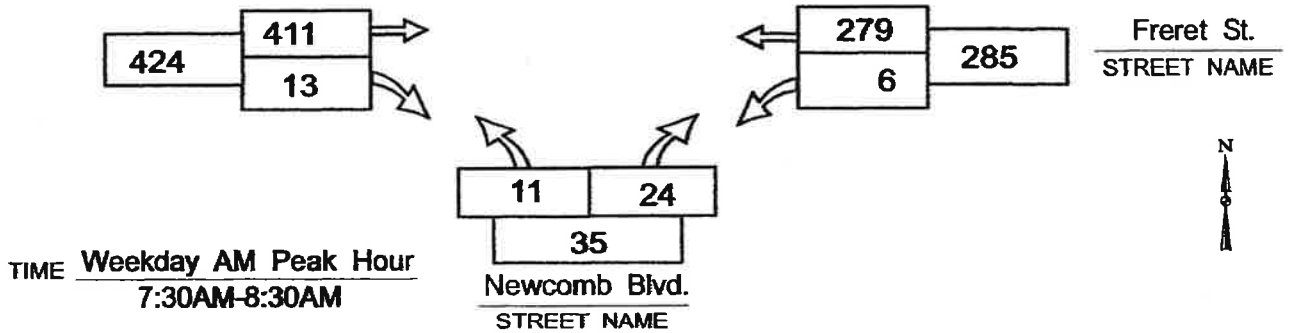
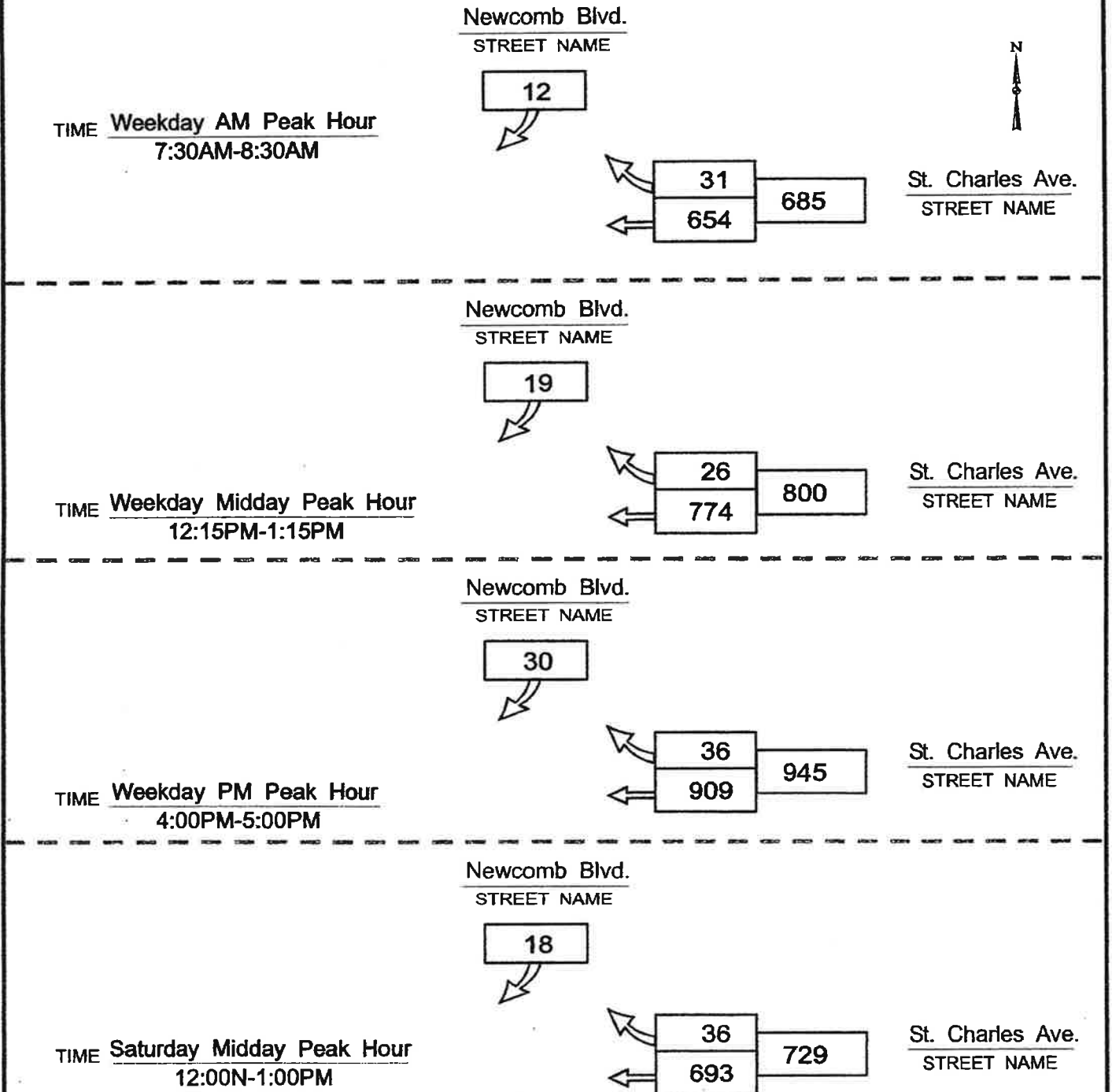


Figure 16

TURNING MOVEMENT COUNT SUMMARY SHEET

LOCATION New Orleans, LA

INTERSECTION OF: St. Charles Ave. @ Newcomb Blvd.





The Newcomb Boulevard northbound approach has a weekday volume demand of 35 vehicles in the am peak, 19 vehicles in the mid-day peak and 45 vehicles in the pm peak. The weekend mid-day volume demand was 22 vehicles.

A review of the volumes indicated that, at the intersection of St. Charles at Newcomb Boulevard, the Freret Street westbound approach has a weekday volume demand of 685 vehicles in the am peak, 800 vehicles in the mid-day peak and 945 vehicles in the pm peak. The weekend mid-day volume demand was 729 vehicles.

The Newcomb Boulevard southbound approach has a weekday volume demand of 12 vehicles in the am peak, 19 vehicles in the mid-day peak and 30 vehicles in the pm peak. The weekend mid-day volume demand was 18 vehicles.

24-Hour Traffic Counts

24-Hour Traffic Counts were conducted by Urban Systems staff. The counts were taken using automatic traffic recorders. The Average Daily Traffic (ADT) for a typical weekday for Newcomb Boulevard is 464 vehicles in the northbound direction and 294 vehicles in the southbound direction. The counts are presented in graphical form in Figures 17 and 18.

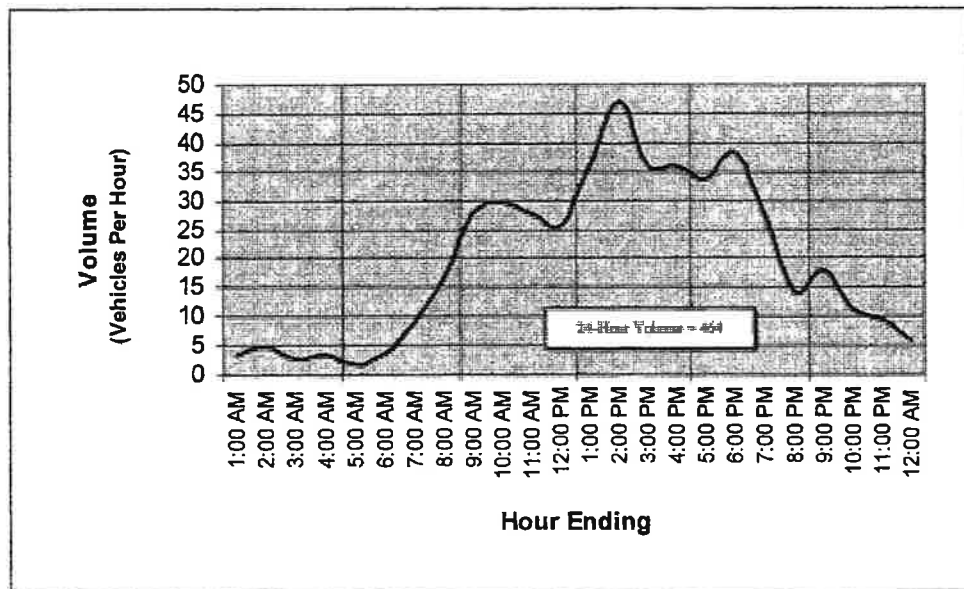


Figure 17 – Hourly Traffic Volumes (Newcomb Boulevard Northbound)

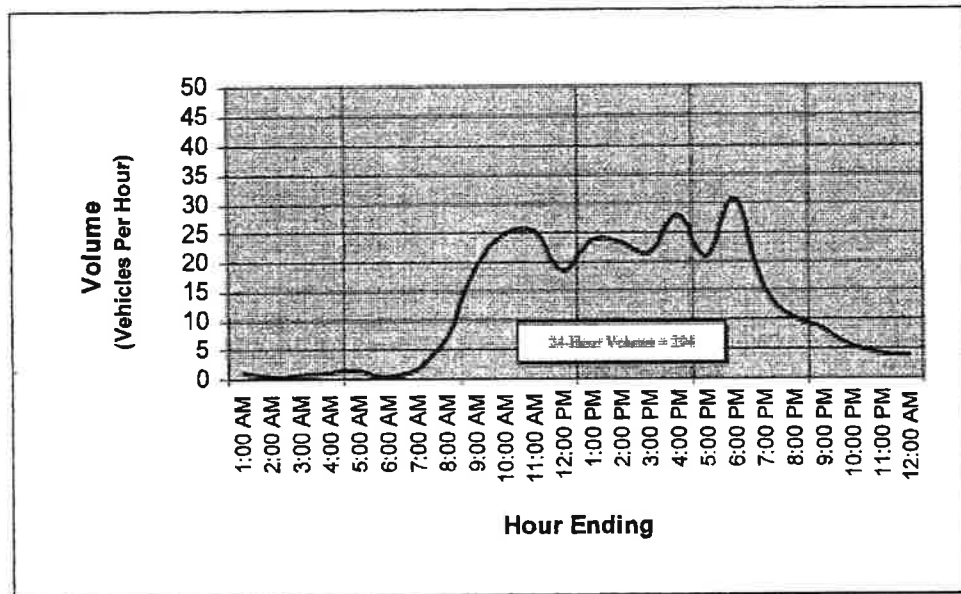


Figure 18 – Hourly Traffic Volumes (Newcomb Boulevard Southbound)

The graph of the northbound volumes on Newcomb Boulevard, Figure 17, indicates that the volumes reach roughly 30 vehicles around 10:00 am. The volumes then taper off slightly before rising to approximately 47 vehicles at 2:00 pm. There is an additional peak of close to 37 vehicles at 6:00 pm. The volumes taper off after 6:00 pm.

The graph of the southbound volumes on Newcomb Boulevard, Figure 18, indicates that the volumes reach roughly 25 vehicles around 10:00 am. There is a small mid-day peak of close to 25 vehicles at 1:00 pm, and two additional peaks at 4:00 pm and then at 6:00 pm between 25 and 30 vehicles. The volumes taper off after 6:00 pm.

Speed Counts

Speed Counts were conducted on Newcomb Boulevard by Urban Systems staff. The counts were taken in both the northbound and southbound direction using automatic traffic recorders.

Table 4 presents the results of the speed data collected including the average speed, 50th percentile speed (that speed at or below which 50 percent of the vehicles are traveling) and the 85th percentile speed (that speed at or below which 85 percent of the vehicles are traveling).



Description	Newcomb Northbound	Newcomb Southbound
Posted Speed	25 mph	25 mph
Average Speed	25 mph	22 mph
50 th Percentile Speed	26 mph	23 mph
85 th Percentile Speed	34 mph	31 mph

Table 4 – Speed Study Results

The results of the speed study indicate that vehicle speeds are higher than the posted speed limit in both directions. The 85th percentile speed exceeds the posted speed limit by 9 mph on Newcomb Boulevard in the northbound direction and 6 mph in the southbound direction. 85th percentile speeds of 5 mph or more over the posted limit generally indicate a speeding concern and should be addressed to determine what measures can be taken to reduce driver speed.

Trip Generation

In order to estimate which portion of traffic is using Newcomb Boulevard as a cut through street and not a final destination, a trip generation analysis was performed to estimate that portion of the traffic that is generated by the 36 single family homes on Newcomb Boulevard.

Vehicle trip demand associated with Single Family Detached Housing is well documented. The primary source of vehicle trip demand estimates is the informational report, Trip Generation, (7th edition) published by the Institute of Transportation Engineers. This document represents the summary of vehicle trip generation studies conducted by public and private sector entities for a wide variety of land uses. Data reported in Trip Generation is considered to be appropriate for use in the estimation of traffic impacts resulting from land development and, as such, is accepted by the City of New Orleans Traffic Engineering Division for use in traffic studies.

Using data contained in Trip Generation for “Land Use 210 Single-Family Detached Housing” based on the number of homes and using the fitted curve equations, it is estimated that the 36 homes would generate approximately 406 vehicle trips on an average weekday, with 203 entering and 203 exiting. An average weekend day would generate approximately 402 trips, with 201 entering and 201 exiting.

The ADT determined in the study was 758 vehicles. It can be concluded that there is approximately 352 vehicles a day, 46%, that are using Newcomb Boulevard as a “cut-thru” street on a normal week day.



Conclusions and Recommendations

There are two major concerns indicated to Urban Systems Staff by neighbors that live on Newcomb Boulevard. The first is speeding along Newcomb Boulevard. The neighbors believe that there is a speeding problem and would like to address it. The data collected and analyzed indicates that speeding exists, as the total traffic exhibit 85th percentile speeds greater than the posted speed limits (by 9 mph on Newcomb Boulevard in the northbound direction and 6 mph in the southbound direction).

There are several steps that should be taken when speeding concerns exist on residential streets. The following should be completed before considering the installation of physical traffic calming devices:

1. Perform a speed study and make observations.
2. Review the signing, pavement markings and traffic control.
3. Deployment of a radar speed trailer

The results of steps 1 and 2 are included in this report. Step 3 would show graphically actual speeds of the vehicles and would notify the drivers in a visual way of their speed. After this has been implemented, additional speed counts should be conducted to observe if positive results have been achieved. If this measure produces little or no effect, then physical traffic calming measures may be installed.

The Institute of Transportation Engineers (ITE) defines Traffic Calming as "*The combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users.*" Traffic Calming is used to reduce vehicular speed and discourage drivers from using certain streets. This can be done using a number of Traffic Calming measures that alter the design of the street to make the path a bit more difficult for vehicular traffic and consequently force motorists to drive slower.

There are many Traffic Calming measures available and in use today. They are generally categorized into Speed Control Devices and Volume Control Devices. For the purpose of the speeding concerns, we will focus on the Speed Control Devices. The most widely accepted are speed humps.

Speed humps are changes in the vertical alignment of a roadway that are placed in mid-block locations. They are most effective when used in series and spaced every 300 to 500 feet. An illustration and photograph of a speed hump can be seen in Figure 19.

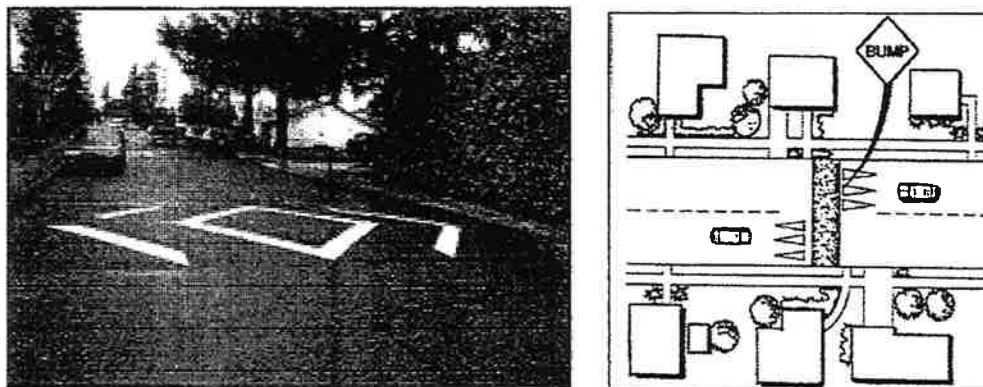


Figure 19 – Speed Humps¹

Speed humps have proven to be very effective and studies have shown that they can reduce the 85th percentile speeds by as much as 22%². There are disadvantages to speed humps as well. These devices can sometimes increase traffic noise due to vehicle braking and acceleration. When the devices are spaced too far apart, speeding can sometimes occur between the devices.

Figure 20 represents the 85th percentile speed versus the spacing of speed humps. It can be observed in Figure 20 that the spacing of the speed humps directly correlates to the 85th percentile speeds. Closer spacing between the speed humps produces the lowest speeds and conversely larger spacing between the humps produces higher speeds.

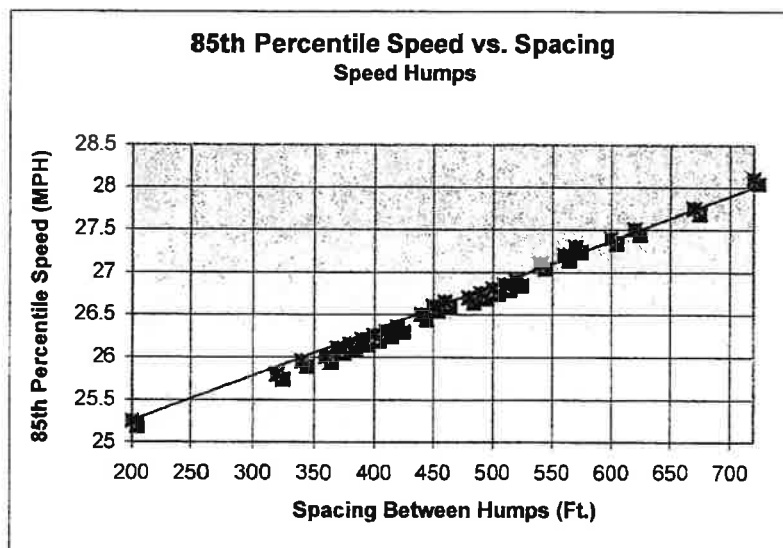


Figure 20 – 85th Percentile Speed Vs. Spacing -Speed Humps³

¹ Source (Illustration) – Institute of Transportation Engineers (ITE), *Traffic Calming – State of the Practice*.
Source (Photograph) – Trafficcalming.org - Website

² Source– Institute of Transportation Engineers (ITE), *Traffic Calming – State of the Practice*.

³ Source – City of Portland, Traffic Calming Program, 1997
P Memo Opp Re-Litigation



Based upon the street length of approximately 1475 feet, it is estimated that three speed humps could be implemented at a spacing of around 370 feet. The approximate cost of installation is \$2,500 to \$3,500 for each speed hump, which includes proper signage and pavement markings. Further study should be considered before implementation of such devices.

The second major concern as indicated by the neighbors is cut-through traffic. The community believes that a large portion of traffic that utilizes Newcomb Boulevard is traffic that is using it as cut-through to avoid congestion on St. Charles Avenue.

The data estimated by the Trip Generation Analysis indicates that approximately 406 vehicle trips should be generated on a typical weekday by the residents of the 36 homes located on Newcomb Boulevard. Using the directional split obtained from the ADT data collected (464 vehicles northbound - 61%, 294 vehicles southbound - 39%) and applying it to the trips generated it is estimated that 248 of the 406 vehicles will travel northbound and 158 will travel southbound. If you compare these trips to the actual ADT data collected it can be estimated that 216 vehicles traveling northbound and 136 vehicles traveling southbound are using Newcomb Boulevard as a cut-through street.

Whereas, statistically, it would appear that since 46% of the total traffic on Newcomb Boulevard is "cut-thru" traffic, a total of 352 vehicles in a 24 hour period in this area of the city is considered to be normal and not excessive.

AFFIDAVIT OF
DAVID KEIFFER

State of Louisiana
Parish of Orleans

Before me, the undersigned notary public, came and appeared

David Keiffer, III,

who, being duly sworn, did depose and state:

He is 55 years of age and has lived at 7718 Freret Street in New Orleans since 1992;

When he was in high school he lived with his parents at 7721 Freret Street;

He has lived in the 7700 block of Freret Street for most of his life and is familiar with the Uptown University neighborhood of New Orleans, including the intersection of Newcomb Boulevard and Freret Street;

The 7700 block of Freret Street is approximately 8 blocks from the intersection of Newcomb Boulevard and Freret Street, and he has driven, ridden or walked by that intersection many times over his life;

Between approximately 1971 and 1976, he was a member of the De La Salle High School Swimming Team and walked from his parents home to team practice at a pool in the Tulane University Student Center, and in doing so walked past the intersection of Newcomb Boulevard and Freret Street on a regular basis during training season;

He recently looked at the house located on the down river side of Newcomb Boulevard at its intersection with Freret Street, which is 44 Newcomb Boulevard;

44 Newcomb Boulevard has a driveway which runs from Newcomb Boulevard under a *porte cochere* on the Freret Street side of the house, and that driveway has been there for as long as he can recall, and was certainly there when he began walking to swimming practice in about 1971;

The driveway is on the river side of the fence currently at the Freret Street end of Newcomb Boulevard, and is not within the area described by the corner radius and the extension of property lines at the corner of Newcomb Boulevard and Freret Street;

He drove through the intersection of Freret Street and Newcomb Boulevard many times when the street was open, and never experienced or observed any unsafe traffic conditions at the intersection;

He has witnessed speeding on many streets in the Uptown and University areas.



David Keiffer, III

Sworn and subscribed,

before me, this 30th

day of January, 2014.



Notary Public



5	<p>1 JOSEPH KEITH HARDIE, JR.,</p> <p>2 after having been first duly sworn by the</p> <p>3 above-mentioned Certified Court Reporter, did</p> <p>4 testify as follows:</p> <p>5 EXAMINATION BY MR. MCEACHIN:</p> <p>6 Q. Good morning, Mr. Hardie. We met</p> <p>7 before. I'm Thomas McEachin. I represent the</p> <p>8 intervenors and possible defendants in this case,</p> <p>9 Newcomb Boulevard Association. And I know you're</p> <p>10 an attorney, so I'm not going to waste our time</p> <p>11 with instructions about how a deposition should</p> <p>12 be conducted, but I will say we're going to first</p> <p>13 depose you in your individual capacity and later</p> <p>14 depose you as representative of the Maple Area</p> <p>15 Residents, Incorporated. So let's keep that</p> <p>16 distinction in mind in this first deposition.</p> <p>17 MR. MCEACHIN:</p> <p>18 And, Counsel, are we operating</p> <p>19 under the usual stipulations?</p> <p>20 MR. LAUGHLIN:</p> <p>21 Yes, usual stipulations.</p> <p>22 I'm sorry. I hate to do this, but</p> <p>23 I forgot to tell him something.</p> <p>24 MR. MCEACHIN:</p> <p>25 Sure. Let's take a break.</p>	7	<p>1 afternoon about 4 o'clock. And I know</p> <p>2 -- I'll let you state your position.</p> <p>3 MR. LAUGHLIN:</p> <p>4 Well, my position is I'll keep an</p> <p>5 open mind about it. I'm not in a</p> <p>6 position to agree. No lawyer is just</p> <p>7 going to casually agree to a second</p> <p>8 deposition of his client. I will keep</p> <p>9 an open mind upon a discovery</p> <p>10 conference as to whether or not a</p> <p>11 second deposition is appropriate.</p> <p>12 Ultimately the judge may have to</p> <p>13 decide, and that's not unusual. We may</p> <p>14 oppose. We may not oppose.</p> <p>15 Personally, though, I think once</p> <p>16 you had a chance to fully digest the</p> <p>17 amendment, the intent of the amendment</p> <p>18 was to add Newcomb as a defendant</p> <p>19 because it's been expressed a couple of</p> <p>20 times that they are the responsible</p> <p>21 party. And I don't think that's going</p> <p>22 to affect your questions today being a</p> <p>23 defendant or an intervenor.</p> <p>24 And second, it was determined to</p> <p>25 do a full recitation of law. Whether</p>
6	<p>1 (Break taken.)</p> <p>2 MR. MCEACHIN:</p> <p>3 We were just talking about the</p> <p>4 usual stipulations, and I think I heard</p> <p>5 Mr. Laughlin say --</p> <p>6 MR. LAUGHLIN:</p> <p>7 Yes, we are.</p> <p>8 MR. LINDSAY:</p> <p>9 We agree.</p> <p>10 MR. MCEACHIN:</p> <p>11 One more housekeeping matter. We</p> <p>12 sent an E-mail yesterday, which I'm</p> <p>13 going to attach to the record. It's</p> <p>14 about -- I'm not going to say an</p> <p>15 objection issue we had about a recently</p> <p>16 filed second amended petition. And</p> <p>17 it's our position, and I believe the</p> <p>18 city joins us --</p> <p>19 MR. LINDSAY:</p> <p>20 That's correct, we do join.</p> <p>21 MR. MCEACHIN:</p> <p>22 -- in this deposition and the</p> <p>23 other depositions scheduled for the</p> <p>24 plaintiff should be kept open given</p> <p>25 these new allegations raised yesterday</p>	8	<p>1 or not that's more appropriate for a</p> <p>2 brief or for a petition is debatable,</p> <p>3 but the decision was made to go ahead</p> <p>4 and set it up in the petition. I don't</p> <p>5 think this is a deposition that's going</p> <p>6 to go into questions of law.</p> <p>7 The only other factual</p> <p>8 allegations, no witness of ours is</p> <p>9 going to have first knowledge of --</p> <p>10 personal knowledge no matter when you</p> <p>11 depose them. All they can do is read</p> <p>12 back the records to you that were</p> <p>13 gathered and decided in a petition. To</p> <p>14 ask -- If you ask him today about those</p> <p>15 facts, he will give you his best</p> <p>16 recollection of those records. And if</p> <p>17 you ask him a month from now, it will</p> <p>18 be the same, either he can read the</p> <p>19 records to you or he can give you his</p> <p>20 best memory of them.</p> <p>21 So I don't know what there would</p> <p>22 be new to depose him about. That's why</p> <p>23 I can't just say, "I agree." It's not</p> <p>24 a typical case where I'm alleging</p> <p>25 brand-new facts where my client has</p>

ON THE RECORD, INC.

(504) 378-3850

P Memo Opp Re-Litigation

Exhibit 8 Depo Hardie Excerpts

9

1 personal knowledge of it. But I'll
 2 keep an open mind. If you point to
 3 something and then say, "This is the
 4 first we ever heard of this," well,
 5 then I'm reasonable, I may agree to it.
 6 If I think it's unreasonable, I will
 7 oppose it, you will file a motion to
 8 compel, and the judge will give us the
 9 answer.
 10 MR. MCEACHIN:
 11 Okay. So we're going to attach
 12 the E-mail dated April 12th, yesterday,
 13 one from me and then up the chain from
 14 Mr. Lindsay as Exhibit 1.
 15 (Document marked for identification as
 16 Exhibit 1.)
 17 MR. LAUGHLIN:
 18 And when we take a break, I may
 19 attach my response which basically says
 20 what I just said.
 21 MR. MCEACHIN:
 22 Sure.
 23 EXAMINATION BY MR. MCEACHIN:
 24 Q. Okay. Can you state your name and
 25 address, please, sir?

10

1 A. Full name is Joseph Keith Hardie, Jr.
 2 I live at 618 Audubon Street, New Orleans,
 3 Louisiana.
 4 Q. What is your date of birth?
 5 A. May 5th, 1949.
 6 Q. And how about the last four digits of
 7 your Social? And we can agree that it will be
 8 redacted from the deposition transcript if it's
 9 ever offered into evidence to keep it out of
 10 public record.
 11 A. I would like it redacted.
 12 Q. Sure.
 13 A. 1341.
 14 Q. What is your educational background?
 15 A. I have a bachelor's in literature,
 16 Southwestern Louisiana, which I think is now
 17 University of Louisiana; a master's in literature
 18 from the same place; a doctorate in English from
 19 the University of Oregon; and a JD in law from
 20 LSU.
 21 Q. And you are employed as an attorney,
 22 correct?
 23 A. Correct, self-employed.
 24 Q. How long have you been self-employed?
 25 A. Since approximately 1990.

11

1 Q. Where is your office?
 2 A. It's 757 St. Charles Avenue.
 3 Q. How long have you been at that address?
 4 A. Probably about 1992.
 5 Q. Do you ever work from your home?
 6 A. Occasionally. Well, yes, probably more
 7 than occasionally.
 8 Q. And in a typical week do you spend --
 9 how many days do you spend at home rather than
 10 the office?
 11 A. I'd say probably half day, twice a
 12 week.
 13 Q. Are you married?
 14 A. Yes.
 15 Q. Do you have children?
 16 A. No.
 17 Q. Is your spouse employed?
 18 A. She's retired now.
 19 Q. When did she retire?
 20 A. About two years ago.
 21 Q. Prior to her retirement, did she work
 22 from the home or did she --
 23 A. No. She's a -- She was a graphic
 24 designer. She had her -- The business is still
 25 ongoing. It's at 757 St. Charles, Zehmo,

12

1 Z-E-H-N-O.
 2 Q. Did she work from the home prior to
 3 retirement?
 4 A. No.
 5 Q. How long have you lived at 618 Audubon?
 6 A. I'd say approximately 20 years.
 7 Q. I'm going to show you a copy of a
 8 notice of deposition. I'd just ask you, take a
 9 quick look at that.
 10 A. (Reviewing document.)
 11 Okay.
 12 Q. And that's the notice of your
 13 deposition, your individual deposition for this
 14 morning. This is the reason why we are here
 15 today, correct?
 16 A. Uh-huh (indicating affirmatively).
 17 MR. MCEACHIN:
 18 I'm going to attach this as
 19 Exhibit 2.
 20 (Document marked for identification as
 21 Exhibit 2.)
 22 EXAMINATION BY MR. MCEACHIN:
 23 Q. This litigation revolves around a --
 24 what we refer to as a traffic control device that
 25 was placed on Newcomb Boulevard at the Freret

ON THE RECORD, INC.

(504) 378-3850

P Memo Opp Re-Litigation

Exhibit 8 Depo Hardie Excerpts

65

1 Q. Is 7634 Plum within the MARI
2 boundaries?
3 A. Yes.
4 MR. MCEACHIN:
5 Are you doing okay? Do you need a
6 break or anything?
7 THE WITNESS:
8 Yes.
9 (Break taken.)
10 EXAMINATION BY MR. MCEACHIN:
11 Q. I want to make sure I understand the
12 exact name of the complaints raised in the
13 lawsuit. Part of your complaint is you dispute
14 the process that was taken and the approval,
15 correct?
16 A. Correct.
17 Q. And your position or you and the other
18 plaintiffs' position is that the decision to
19 allow the permanent object made by John Shires
20 was not within his purview, correct?
21 A. Correct.
22 Q. And you say instead the city council
23 should have made this decision through
24 legislative action, correct?
25 A. Correct. I mean there may be other

66

1 alternatives, but, you know, I don't -- Just like
2 you, I don't want to get boxed in and I'm trying
3 to give you my answer. That's as I understand it
4 is the major thrust.
5 Q. Can you point to any other -- Besides
6 the failure to obtain council approval, is there
7 anything else that was done incorrectly? And I'm
8 not asking you for a legal theory. I'm just
9 saying factually.
10 A. Well, let me think here. There was --
11 I think that maybe they should have done another
12 traffic study after Newcomb was closed, and maybe
13 that was done to see what the effect of it would
14 be. I think, you know -- And, of course, the
15 problem with that would be that post-Katrina were
16 any traffic patterns really relevant to anything.
17 You know, were they predictive of what was going
18 to happen in the future, something that you are
19 doing in the fall of 2005 when the city is in
20 chaos and students are all gone.
21 So no, you know, inadequate study. You
22 know, I think he -- there was no CPC hearing,
23 there was no council hearing, you know. And then
24 the question is, of course, should they have been
25 required to purchase the street and, you know,

67

1 should there have been an appraisal and should
2 they have been required to take over the
3 maintenance of the street bed and to pay the cost
4 of the electric lights.
5 Q. Anything else?
6 A. You know, I'm sure there is, but, you
7 know --
8 Q. Sitting here today you can't think of
9 any other thing?
10 A. Right.
11 Q. Would you agree with me that Newcomb
12 Boulevard is a unique street in that it travels
13 what would normally be several blocks of distance
14 without any intersecting streets?
15 A. It's not part of -- You know, it's not
16 in the usual grid pattern.
17 Q. Right. And I think there were some
18 documents you produced that from early on in
19 Newcomb's history that showed that maybe Hampson
20 and Maple were intended to run into Newcomb, but
21 they never were built through, correct?
22 A. I believe what happened was that the
23 developer made a deal with the city that the city
24 would give him those street beds of the cross
25 street, Hampson, Maple, et cetera, and in

68

1 exchange he would dedicate the street to public
2 use.
3 Q. And there are no stop signs or other
4 traffic devices that would slow down drivers from
5 St. Charles to Freret on Newcomb Boulevard,
6 right?
7 A. You know, I assume you are speaking in
8 2005?
9 Q. Correct, before the device.
10 A. You know, again, I don't remember
11 checking the street to see if there are any speed
12 bumps on it, but I don't remember any being
13 there.
14 Q. Do you dispute that these natural -- I
15 won't say natural. Do you dispute that these --
16 the existence of these facts create a heightened
17 risk for speeding?
18 A. I think that the traffic report
19 certainly showed that there was some speeding
20 there, and I can tell you that I have speeding on
21 my street which is -- you know, on one side backs
22 up to Newcomb, so there is no intersection there.
23 In other words, my street is a T, and so, yeah,
24 there is certainly some speeding on my street and
25 I'm sure there was on Newcomb too.

ON THE RECORD, INC.

(504) 378-3850

P Memo Opp Re-Litigation

Exhibit 8 Depo Hardie Excerpts

AFFIDAVIT OF
J. KEITH HARDIE, JR.

State of Louisiana
Parish of Orleans

Before me, the undersigned notary public, came and appeared

J. Keith Hardie Jr.,

who, being duly sworn, did depose and state that

He has resided at 618 Audubon Street in New Orleans since approximately 1992;

Audubon Street runs parallel to Newcomb Boulevard and runs behind the homes on the downriver side of Newcomb Boulevard;

He is familiar with the property at # 44 Newcomb Boulevard, and voted at # 44 Newcomb Boulevard when it was a polling place during the 1990's and part of the 2000's;

44 Newcomb Boulevard fronts on Newcomb Boulevard and the rear of the property is on Audubon Street;

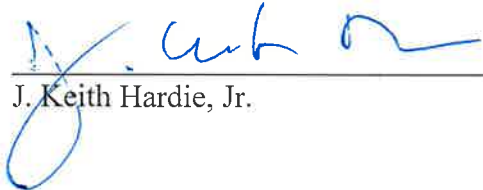
44 Newcomb Boulevard has a driveway which runs from Newcomb Boulevard under a porte cochere on the Freret Street side of the house, and that driveway has been there for as long as he can recall, and certainly was there when he began voting there in approximately 1992;

The driveway is on the river side of the fence currently at the Freret Street end of Newcomb Boulevard, and is not within the area described by the corner radius and the extension of property lines at the corner of Newcomb Boulevard and Freret Street;

Within the last few months of 2013, the fence at the rear (Audubon St. side) of # 44 Newcomb Boulevard was repaired or rebuilt, and a driveway was added (or an old driveway restored), providing access for parking at the rear of the property;

He drove through the intersection of Freret Street and Newcomb Boulevard many times when the street was open, and never experienced or observed any unsafe traffic conditions at the intersection.

He has witnessed speeding on Audubon Street and other streets in the Uptown and University areas.



J. Keith Hardie, Jr.

Sworn and subscribed,

before me, this 30th
day of JANUARY, 2014.



Notary Public

Alvin J. Robert, Jr.
NOTARY PUBLIC
State of Louisiana
Bar No. 20401
My commission is issued for life.



5

1 STIPULATION

2

3 IT IS STIPULATED AND AGREED by and among

4 counsel for the parties hereto that the

5 deposition of the aforementioned witness is

6 hereby being taken under the Louisiana Code of

7 Civil Procedure, Article 1421, et seq., for all

8 purposes, in accordance with law;

9 That the formalities of reading and

10 signing are specifically not waived;

11 That the formalities of sealing,

12 certification and filing are specifically waived;

13 That all objections, save those as to

14 the form of the question and the responsiveness

15 of the answer, are hereby reserved until such

16 time as this deposition, or any part thereof, may

17 be used or sought to be used in evidence.

18

19 * * * *

20

21 CONNIE M. FINESCHI, Certified Court

22 Reporter, in and for the State of Louisiana,

23 officiated in administering the oath to the

24 witness.

25

6

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. LAUGHLIN:

3 Before we get started, I assume we

4 are going to have the usual

5 stipulations. Mr. Robert would like to

6 read and sign his deposition.

7 Also, I received a request from

8 Newcomb's counsel yesterday for

9 documentation submitted to Mr. Robert

10 about Trianon. There was a single-page

11 document. It was originally withheld

12 properly because it's work product

13 prepared by Tommy Milliner. But

14 without waiving any other protected

15 documents covered by work product, Code

16 of Civil Procedure, we are going to go

17 ahead and produce the document that was

18 given to Mr. Robert.

19 MR. MCEACHIN:

20 Okay. While we disagree about the

21 privileged nature of the document, I

22 appreciate your producing this to me

23 finally.

24 MR. LAUGHLIN:

25 I didn't say privileged. I said

7

1 it was work product.

2 MR. MCEACHIN:

3 Protected nature, then.

4 Why don't you make some copies and

5 we can circulate them around.

6 (Break taken.)

7 DOUGLAS B. ROBERT, P.E.,

8 after having been first duly sworn by the

9 above-mentioned Certified Court Reporter, did

10 testify as follows:

11 EXAMINATION BY MR. MCEACHIN:

12 Q. Good morning, Mr. Robert. My name is

13 Thomas McEachin. I'm here to take your

14 deposition in some litigation brought by Mr.

15 Hardie and Mr. Huston against the City of New

16 Orleans and my client, the Newcomb Boulevard

17 Association.

18 Can you give us your name and your

19 service address, please?

20 A. Douglas B. Robert, 2616 North Bengal

21 Road, Metairie, 70003.

22 Q. And that address is somewhere you would

23 be in the normal workday?

24 A. Yes.

25 Q. What's your date of birth?

8

1 A. 1/11/50.

2 Q. Why don't you briefly describe your

3 educational background?

4 A. I have a Bachelor of Science degree

5 from Tulane in civil engineering. I have a

6 master's of engineering from Tulane and several

7 courses toward the doctorate level.

8 Q. And how about your employment history?

9 A. I was originally with the -- I went to

10 work for the Army at a headquarters level in

11 Washington, D.C. I got out of the Army and went

12 to work for Jefferson Parish in 1975, was traffic

13 engineer for 19 years and took over as supervisor

14 in traffic engineering until 2004. I retired in

15 2004 and continued working in my forensic

16 practice that I had been doing while I was

17 employed with Jefferson Parish.

18 Q. And so the dates of employment of those

19 various jobs, those are accurately reflected on

20 the resumé that you provided?

21 A. Yes, they are.

22 Q. What were your job duties as -- Let's

23 start with traffic engineering from 1975 to 1991?

24 A. I was responsible for the signing,

25 signals, pavement markings, and roadway planning

ON THE RECORD, INC.

9

1 of Jefferson Parish. I was a registered
 2 professional engineer in the office, and as in
 3 most traditional traffic engineering offices, you
 4 do pretty much everything that has to do with the
 5 movement of persons or goods.
 6 Q. And that was --
 7 A. I dealt quite heavily also with
 8 coordination with DOTD in projects and
 9 operational problems that existed between their
 10 roadways and our roadways which intersected.
 11 Q. And did you have occasion to deal with
 12 the Manual of Uniform Traffic Control Devices?
 13 A. Yes.
 14 Q. Is it okay if I just refer to it as the
 15 manual? Would you understand what I meant?
 16 A. Yes, that's fine.
 17 Q. Did you have occasion to interpret
 18 codal provisions or statutes involved with your
 19 work as a traffic engineer?
 20 A. Yes.
 21 Q. Did your job duties or responsibilities
 22 change when you became the -- is it the
 23 supervisor?
 24 A. Yes.
 25 Q. What additional duties or

10

1 responsibilities did you have as supervisor?
 2 A. I took over the supervision of
 3 approximately 50 people, the direct supervision
 4 of approximately 50 people, trucks, and
 5 inventory.
 6 Q. When you say --
 7 A. Inventory being traffic control signs,
 8 signals, and equipment to install that.
 9 Q. Have you had any specialty training
 10 other than the degrees you have obtained?
 11 A. I have. I'm just trying to figure out
 12 exactly what -- Are you talking about in regard
 13 to this type of what we are here today for or
 14 just in civil or what?
 15 Q. Is your hesitation to talk about it
 16 that there has been a large volume of it and you
 17 don't want to waste too much time?
 18 A. No. I just want to answer your
 19 question.
 20 Q. Why don't you talk about in general and
 21 then we will confine it to the issues in this
 22 case.
 23 A. Okay. In addition to going to Tulane
 24 for postgraduate level civil engineering, you
 25 know, I participated in numerous seminar courses.

11

1 Most of those were -- that had to do with the
 2 driver, they had to do with signals, had to do
 3 with maintaining -- or the maintenance of the
 4 manual, quote, unquote, because of the new
 5 manuals that came along through the years. And I
 6 also participated in the National Academy of
 7 Forensic Engineers seminars, which is the
 8 accident reconstruction side of what I do for
 9 expert witness.
 10 I had the traffic engineering short
 11 course back in the early '70s, which actually put
 12 me onto this track of traffic engineering when I
 13 was in the military. And when I went from the
 14 military to the parish, you know, I had that
 15 particular training.
 16 Q. Of those various types of topics of
 17 seminars, which of those would you say relate to
 18 the issues in this case?
 19 A. Well, probably -- Well, the Traffic
 20 Engineering Short Course in 1973, Positive
 21 Guidance in 1977, the Manual Use and Revisions in
 22 '89, Pedestrian Bicycles Technology Sharing, a
 23 short course symposium. The next, Millennium
 24 METCD Update in 2001 and a lot of experience
 25 dealing with the neighborhoods through my nearly

12

1 30 years working with the neighborhoods.
 2 Q. You were reading from part of your
 3 C.V., I guess?
 4 A. Yes.
 5 Q. Looking at pages 6 and 7, is that --
 6 A. I believe so, right.
 7 Q. Has there been anything, specialty
 8 training or seminar training, concerning the
 9 topics at issue in this litigation since 2001?
 10 A. I've read a great deal of research on
 11 it, but I haven't gone to any particular classes
 12 or seminars. I do participate quite heavily in
 13 the Institute of Transportation Engineers, the
 14 Deep South section and the Southern District, and
 15 numerous times they will have issues that deal
 16 with neighborhood traffic control and I'll
 17 participate in that.
 18 Q. Can you point to any particular
 19 seminar?
 20 A. They are not going to be on this.
 21 Q. Do you recall any seminars or specialty
 22 training that you've had on any topic related to
 23 this litigation since 2001?
 24 A. No.
 25 Q. Have you had any specialty training or

ON THE RECORD, INC.

(504) 378-3850

P Memo Opp Re-Litigation

Exhibit 10 Depo Roberts Excerpts

105

1 university and other desires to go back and forth
 2 from Freret Street to St. Charles. It was pretty
 3 typical. Seven hundred vehicles a day was fairly
 4 typical I thought.
 5 And one last thing. I'm sorry. And
 6 the last thing was that they were not specific at
 7 all about, you know -- They didn't make any
 8 recommendations at all about closure. They
 9 didn't even mention a closure. They just talked
 10 about cut-throughs, which I guess that's what
 11 the -- I kind of guess that's what the neighbors
 12 were looking for because, you know, I have been
 13 in -- I had some knowledge in that, okay, and
 14 generally people want to cut the street off
 15 because they don't want anybody else on the
 16 street.
 17 Q. Do you know if there were any
 18 complaints about safety or speeding on the
 19 street?
 20 A. Yeah, they had speeding, which is a
 21 common thing in the neighborhoods, and the speed
 22 didn't surprise me a bit.
 23 Q. You came -- You seemed to come to the
 24 conclusion, and you can tell me if this is not a
 25 conclusion, it's just a comment. But you say,

106

1 "This illustrates to me that the street was being
 2 utilized by other drivers, and the closure
 3 affected the general public, not just Newcomb
 4 Boulevard residents."
 5 A. Yes.
 6 Q. How does that jive with your statement
 7 just a minute ago that the cut-through traffic
 8 was I think you said relatively low?
 9 A. I mean it wasn't outrageous. But what
 10 that told me, though, what I was referring to is
 11 that this was not just a street that was being
 12 utilized by the residents. It was being utilized
 13 by other people.
 14 Q. Is there a correlation between the
 15 relatively low volume of cut-through traffic
 16 reflected in the Urban Systems report and the
 17 effect that the closure of Newcomb Boulevard
 18 would have on the surrounding neighborhoods?
 19 A. No. I didn't do any further study.
 20 Okay. I just took -- Are you asking me for my --
 21 what would happen?
 22 Q. In your experience as an expert, if the
 23 problem was relatively low, then getting rid of
 24 the problem is going to have a relatively low
 25 impact on the other neighborhoods. Is that fair?

107

1 A. Well, you have to look at it. Okay.
 2 Now, if there is only 3 or 400 vehicles that are
 3 being rerouted, okay, you would have to look at
 4 where they are going to be going and what would
 5 happen to them. Generally a system could
 6 assemble that over a day. Now, if it was in an
 7 hour, no, you would have some problems at
 8 Broadway probably.
 9 Q. But along the line of the numbers you
 10 were able to review in the Urban Systems
 11 report -- and you use the term "relatively low,"
 12 which I think you took right out of their report,
 13 right?
 14 A. I took it right out of their report.
 15 Q. Those numbers wouldn't indicate to you
 16 anything other than a relatively low impact on
 17 the surrounding areas caused by the closure,
 18 right?
 19 A. It's just what I said. But on the
 20 other hand, you wouldn't have to close the road.
 21 I mean, so --
 22 Q. You agree with me there is a
 23 correlation. So if it's not a big problem for
 24 Newcomb, then it's not likely to be a big problem
 25 for everybody else?

108

1 A. Well, that's called having to work with
 2 the neighborhood and work with the government
 3 side of it. Okay. That's where the art comes
 4 in.
 5 Q. And you had experienced as the director
 6 in Jefferson Parish, you had to make the call on
 7 which way to go on those things, right?
 8 A. No. I made the call to the councilman
 9 on how I thought he should do it. I never closed
 10 streets.
 11 Q. In Jefferson Parish --
 12 A. We never close -- I never closed a
 13 street, and I don't think my boss ever closed a
 14 street because that was strictly a governmental
 15 issue and it is very sensitive. I mean we were
 16 pretty smart about it, and, quite frankly, we
 17 knew that we wouldn't mess with that because that
 18 was a district councilman's job.
 19 Q. And your decisions were guided by the
 20 Jefferson Parish ordinances, not the New Orleans
 21 ordinances? I mean that's fair, right?
 22 A. Well, they were driven by neighborhoods
 23 and the safety of the neighborhoods and the fair
 24 play that we try to do as traffic engineers to
 25 try to, you know, calm everybody down and not

109

1 create a big issue on one location by doing
 2 something at another location.
 3 So it was a little bit more than
 4 just – It was dealing with people, and the
 5 people are the same in New Orleans as Jefferson.
 6 Q. Right. And you used your discretion as
 7 the head of the department to make decisions
 8 about those type of things all the time, right?
 9 A. Sure. Sure.
 10 Q. You note that, "Parking, turning
 11 movements to other streets with increased volumes
 12 and speed, and possible increases in conflicts
 13 and resulting congestion at nearby intersections
 14 are probable outcomes." Let me break that down.
 15 What did you mean by "turning movements
 16 to other streets with increased volumes and
 17 speed"?
 18 A. Well, if the people continue to want to
 19 go from St. Charles to Freret or vice versa, then
 20 they are going to have to find another place to
 21 do it, so they will go to that location.
 22 Q. And so is it your testimony that --
 23 A. So they will have to go and it will
 24 cause some kind of increase in the conflicts that
 25 are involved.

110

1 Q. Is it your testimony that the existence
 2 of the barricade on Newcomb increases speed on
 3 other streets?
 4 A. I don't want to put it in terms of – I
 5 didn't study the Newcomb closure. I just took
 6 the information that was provided. Okay? I'll
 7 give you experience that, you know, people will
 8 have – if they move to another street, they
 9 certainly aren't going to go any slower. I can
 10 tell you that. They are going to go at least the
 11 speed they were traveling or maybe higher. Some
 12 of them aggravated because they have to go two or
 13 three blocks out of their way where they used to
 14 be able to travel a particular route.
 15 Q. Won't the conditions on the alternative
 16 street guide the speed of the driver on that
 17 street? It's not just going to be their mood
 18 having to drive an extra block, right? You're
 19 going to look at other things such as cross
 20 streets, stop signs, traffic?
 21 A. Sure.
 22 Q. You can't say to any degree of
 23 certainty that speed on other streets was
 24 increased by the existence of this barricade?
 25 A. No. I didn't do the studies. See,

111

1 that's the thing, I didn't do the after study for
 2 this, if it's what you're asking. I never
 3 presented that I did the after study. I just
 4 presented my opinions based upon my experience of
 5 probably what would happen. That's all.
 6 Q. So it's your opinion that speed would
 7 increase on other streets given the existence of
 8 this barricade on Newcomb?
 9 A. I didn't do the studies. I suspect
 10 that yes, they would.
 11 Q. And that suspicion is based upon what?
 12 A. My experience in dealing with
 13 neighborhoods and knowing – being able to look
 14 at a street and determine that. Okay? Just
 15 based upon my experience.
 16 Q. Not based on any data or observation of
 17 this particular area?
 18 A. Correct.
 19 Q. Now, we touched on it earlier, if you
 20 had been presented with a traffic impact study
 21 related to Newcomb Boulevard, that would have
 22 been an important factor in making the opinions
 23 reflected in this paragraph, correct?
 24 A. It would have been interesting to
 25 compare the Urban Systems report with that

112

1 particular report, if there was one, to compare
 2 the dates of them, and to see when it came and
 3 which time frame. And knowing what the city's
 4 report was for the Trianon Plaza issue, it would
 5 have been interesting to see what the city said
 6 about Newcomb.
 7 Q. And if the city determined that the
 8 traffic from Newcomb could be absorbed into the
 9 surrounding street with a negligible impact,
 10 would that be something that would be important
 11 in making your determinations?
 12 MR. LAUGHLIN:
 13 Objection to form. What time
 14 frame?
 15 EXAMINATION BY MR. MCEACHIN:
 16 Q. Can you answer the question? Any time
 17 frame.
 18 A. We're talking about -- I couldn't say
 19 it was incorrect. I just hadn't done any study
 20 on that. So if they did a study and they said
 21 that that's what they thought -- you know, I know
 22 the players who were writing the studies too,
 23 okay, and I trust their judgment -- I would look
 24 at the study and I wouldn't, you know, throw it
 25 out.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

DEREK HUSTON, ET AL NO. 07-983

VS.

THE CITY OF NEW ORLEANS,
ET AL DIVISION "H"

Deposition of ALLEN YRLE, taken on
Wednesday, May 11, 2011, in the law office of
the City Attorney's Office, 1300 Perdido
Street, Suite 5E03, New Orleans, Louisiana.

REPORTED BY:

JAN I. SCHMIDT, CCR
Certified Court Reporter

K E L L Y & A S S O C I A T E S, L.L.C.
Certified Court Reporters
(504) 891-6333

ORIGINAL

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MICHAEL J. LAUGHLIN
ATTORNEY AT LAW
3636 I-10 Service Road, Suite 206
Metairie, Louisiana 70001

FOR THE DEFENDANT, NEWCOMB BOULEVARD
ASSOCIATION:

SCHONEKAS EVANS MC GOEY & MC EACHIN, LLC
(BY: THOMAS M. MC EACHIN, ESQ.)
650 Poydras Street, Suite 2305
New Orleans, Louisiana 70130

FOR THE CITY OF NEW ORLEANS:

CITY ATTORNEY'S OFFICE
(BY: MATTHEW J. LINDSAY, ESQ.)
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXAMINATION BY:

Mr. Laughlin	5
	62
Mr. McEachin	60
Mr. Lindsay	61

E X H I B I T I N D E X

AY-1 - Letter	33
AY-2 - Traffic Impact Study	37
AY-3 - Letter dated 1/31/06	47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S T I P U L A T I O N

It is stipulated and agreed to by and between counsel that the deposition of ALLEN YRLE is hereby being taken pursuant to notice under the Louisiana Code of Civil Procedure for all purposes permitted under law.

All formalities, including those of sealing, certification, reading, signing, and filing, are hereby waived.

All objections, except those as to the form of the question and/or the responsiveness of the answer, are reserved until the time of the trial of this case. All objections are to be considered under C.C.P. Article 1443, Paragraph D.

* * * * *

JAN I. SCHMIDT, CCR, State of Louisiana, officiated in administering the oath to the herein witness.

1 ALLEN YRLE, 1300 Perdido Street,
2 Suite 6W03, New Orleans, Louisiana, on
3 Wednesday, May 11, 2011, after having
4 been first duly sworn to tell the truth,
5 the whole truth, and nothing but the
6 truth, was examined and testified as
7 follows:

8 EXAMINATION BY MR. LAUGHLIN:

9 Q. would you go ahead and state your name and
10 address, please?

11 A. Allen Yrle, 1300 Perdido, Room 6W03, New
12 Orleans, Louisiana 70112.

13 Q. What part of town do you live?

14 A. I live in Lakeview.

15 MR. LINDSAY:

16 Mike, housecleaning first, this is
17 the deposition of Allen Yrle, correct,
18 not of the City at this point?

19 MR. LAUGHLIN:

20 Yeah, this is the deposition of
21 Allen, is it Yrle?

22 THE WITNESS:

23 Yrle.

24 MR. LAUGHLIN:

25 This is the deposition of Mr. Yrle.

1 BY MR. LAUGHLIN:

2 Q. What is your position with the City of New
3 Orleans?

4 A. I'm Chief Traffic Engineer.

5 Q. How long have you held that position?

6 A. Since late 2008.

7 Q. Did you work for the City prior to 2008?

8 A. I've been with the City 20 years.

9 Q. Okay. Can you take me through your
10 positions working backward from Chief
11 Traffic Engineer?

12 A. Senior Traffic Engineer, Traffic Engineer,
13 and Engineering Training II, Engineering
14 Training I.

15 Q. Can you give me a description of your
16 duties as Chief Traffic Engineer?

17 A. Responsible for all the traffic control
18 devices out on the city streets, signs,
19 city pavement markings, approval of
20 various permits for the use of City
21 right-of-way.

22 Q. Did your duties as Chief Traffic Engineer
23 change from those of Senior Traffic
24 Engineer?

25 A. Honestly, no.

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

- 1 Q. I'm just trying to see when there was a
2 big change in duties. And was there
3 change in duties from Senior Traffic
4 Engineer to Traffic Engineer?
5 A. I'd say no as well.
6 Q. And presumably there was a change from
7 Engineer Training II and Training I?
8 A. Yes.
9 Q. When did you become Traffic Engineer.
10 A. '95 or '96.
11 Q. Okay.
12 A. I'm not sure of the exact date.
13 Q. So for roughly 15 or 16 years you've had
14 some responsibility for traffic control
15 devices on city streets and permits on
16 city rights-of-way?
17 A. Correct.
18 Q. Were you employed anywhere prior to the
19 City of New Orleans?
20 A. Part-time job during college.
21 Q. Where did you attend college?
22 A. UNO.
23 Q. And what degree did you earn?
24 A. Bachelor of Science in electrical
25 engineering.

- 1 Q. Do you know what this -- I'm taking your
2 deposition. I didn't actually introduce
3 myself. Sorry about that. My name is
4 Mike Laughlin. I represent the plaintiffs
5 Derek Huston, J. Keith Hardy, Jr., Maple
6 Area Residents, Inc., and
7 Carrollton/Riverbend Neighborhood
8 Association, I'm one of their attorneys,
9 in a lawsuit against the City of New
10 Orleans and Mr. Mendoza in his capacity as
11 Director of the Department of Public works
12 for the City of New Orleans. And I've
13 asked to take your deposition today. Have
14 you ever given a deposition before?
- 15 A. Yes.
- 16 Q. And you're represented by counsel today,
17 also?
- 18 A. Yes.
- 19 Q. The only ground rules I'll go over with
20 you is two basic ones. If you don't
21 understand a question I'm asking, simply
22 stop me and say I don't understand what
23 you're saying, ask me to rephrase it.
24 Because when you answer a question I want
25 to know that you're answering what I asked

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

1 a resident or residents for the City to
2 look at to address cut-through traffic?

3 MR. MC EACHIN:

4 Object to the form.

5 MR. LINDSAY:

6 Same objection.

7 THE WITNESS:

8 In general, the complaints that
9 come through aren't going to say, just
10 say we need to get rid of this
11 cut-through traffic. It's more of a we
12 have traffic doing A, B and C we want to
13 try to address. And a lot of cases it's
14 not that it can't be addressed. Again,
15 it's a public street. They're allowed
16 to use it. Everything is in place as it
17 should be, speed limit signs, the proper
18 stop signs and other things, if they
19 want to use the street, they're allowed
20 to use it.

21 BY MR. LAUGHLIN:

22 Q. All right. Let's talk about speed then.
23 What traffic devices, what devices within
24 your arsenal as Traffic Engineer for the
25 City do you use to address complaints of

- 1 speed on a street?
- 2 A. As of right now really there's nothing we
3 use to address speed other than
4 enforcement. We do put speed limit signs
5 up. They don't really address speed.
6 There's been a couple of failed attempts
7 at some kind of speed bumps. They were
8 removed after a short trial period because
9 no one liked it. The people that
10 complained didn't like it, the drivers
11 didn't like it. Other than that we have
12 not addressed, I mean, we haven't gone any
13 further into any other kind of speed
14 control.
- 15 Q. Okay. What about using a fence? That
16 would certainly stop speeding, at least at
17 the point of the fence, right?
- 18 A. That would stop any vehicle in theory.
- 19 Q. Does the City use fences to stop speeding
20 complaints?
- 21 A. No.
- 22 Q. Okay. Why is that?
- 23 A. Once again, has to do with the public
24 road, you know. It's a public road. The
25 public has a right to use it. A fence,

- 1 again, is not just to stop speeding. It's
2 to stop all traffic altogether which is
3 not something a traffic engineer likes to
4 do.
- 5 Q. Well, within your Traffic Engineering
6 Division, are fences used to address a
7 compound problem of both speeding and
8 cut-through traffic?
- 9 A. I've not been involved in any case where
10 I've recommended a fence for any purpose.
- 11 Q. Is a fence even considered a traffic
12 control device within your division?
- 13 MR. MC EACHIN:
14 Object to the form.
- 15 THE WITNESS:
16 Like I said previously, anything
17 that attempts to control traffic I
18 consider a traffic control device. And
19 the fence does attempt to control
20 traffic.
- 21 BY MR. LAUGHLIN:
22 Q. Because it disallows any form of traffic,
23 non speeding, speeding, focused,
24 cut-through. It stops everything, right?
- 25 A. Right. A fence definitely changes what

1 you normally drive through, you can't
2 drive through any more. It's a change in
3 the traffic pattern. It's controlling the
4 traffic.

5 Q. Are there any practices or are there any
6 criteria or guidelines within your
7 department to determine when to use a
8 fence to control speeding or cut-through
9 traffic?

10 A. No.

11 Q. Is that because it's just never done?

12 MR. MC EACHIN:

13 Object to the form.

14 MR. LINDSAY:

15 Same objection.

16 THE WITNESS:

17 Again, I never have approved a
18 fence and I don't think a fence is
19 appropriate in itself.

20 MR. LAUGHLIN:

21 No, I heard you on that I'm just
22 trying to understand.

23 BY MR. LAUGHLIN:

24 Q. You said there's no standard, there's no
25 criteria or guidelines within your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

DEREK HUSTON, ET AL

NO. 07-983

VS.

THE CITY OF NEW ORLEANS,
ET AL

DIVISION "H"

Deposition of CITY OF NEW ORLEANS,
THROUGH ALLEN YRLE, taken on Wednesday, May 11,
2011, in the law office of the City Attorney's
office, 1300 Perdido Street, Suite 5E03, New
Orleans, Louisiana.

REPORTED BY:

JAN I. SCHMIDT, CCR
Certified Court Reporter

K E L L Y & A S S O C I A T E S, L.L.C.
Certified Court Reporters
(504) 891-6333

ORIGINAL

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE PLAINTIFFS:

MICHAEL J. LAUGHLIN
ATTORNEY AT LAW
3636 I-10 Service Road, Suite 206
Metairie, Louisiana 70001

FOR THE DEFENDANT, NEWCOMB BOULEVARD
ASSOCIATION:

SCHONEKAS EVANS MC GOEY & MC EACHIN, LLC
(BY: THOMAS M. MC EACHIN, ESQ.)
650 Poydras Street, Suite 2305
New Orleans, Louisiana 70130

FOR THE CITY OF NEW ORLEANS:

CITY ATTORNEY'S OFFICE
(BY: MATTHEW J. LINDSAY, ESQ.)
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXAMINATION BY:

Mr. Laughlin	5
	56
Mr. McEachin	57

E X H I B I T I N D E X

City 1 - Re-Notice of Depo	6
City 2 - E-mail dated 1/10/06	31
City 3 - Letter dated 1/31/06	32
City 4 - Urban Systems report	48
City 5 - Requests for Admissions	57
City 6 - Requests for Admissions	57

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S T I P U L A T I O N

It is stipulated and agreed to by and between counsel that the deposition of CITY OF NEW ORLEANS is hereby being taken pursuant to notice under the Louisiana Code of Civil Procedure for all purposes permitted under law.

All formalities, including those of sealing, certification, reading, signing, and filing, are hereby waived.

All objections, except those as to the form of the question and/or the responsiveness of the answer, are reserved until the time of the trial of this case. All objections are to be considered under C.C.P. Article 1443, Paragraph D.

* * * * *

JAN I. SCHMIDT, CCR, State of Louisiana, officiated in administering the oath to the herein witness.

1 CITY OF NEW ORLEANS, 1300 Perdido
2 Street, Suite 6W03, New Orleans,
3 Louisiana, on Wednesday, May 11, 2011,
4 after having been first duly sworn to
5 tell the truth, the whole truth, and
6 nothing but the truth, was examined and
7 testified as follows:

8 EXAMINATION BY MR. LAUGHLIN:

9 Q. Mr. Yrle, let me show you what's labeled
10 City 1. Have you ever seen this document?

11 A. Yes.

12 Q. I asked to take the deposition of the City
13 of New Orleans in the case Derek Huston,
14 J. Keith Hardie, Jr., Maple Area
15 Residents, Inc., and Carrollton/Riverbend
16 Residents' Association versus the City of
17 New Orleans and Robert Mendoza, in his
18 capacity as Director of Public Works. And
19 you've just given an individual
20 deposition. You've just given an
21 individual deposition in this case,
22 correct?

23 A. Yes.

24 Q. You understand that you've been designated
25 as the representative of the City of New

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

1 Orleans for its deposition?

2 A. Correct.

3 Q. Looking at the first topic that I have
4 designated on the notice, have you had a
5 chance to consider that?

6 A. Yes.

7 Q. Okay. What is the City's practice and
8 procedure fore closing of a street? And
9 let me define that, a specific example of
10 closing the street. If someone were to
11 install a fence or other type of barrier
12 created across the street to cause its
13 physical closure, what are the City's
14 practices and procedures to allow that?

15 MR. MC EACHIN:

16 Object to the form.

17 MR. LINDSAY:

18 Same objection.

19 THE WITNESS:

20 First I want to clarify, talking
21 about permanent closure? It's not a
22 temporary like a festival?

23 BY MR. LAUGHLIN:

24 Q. Yeah, let me rephrase it. Do I have to
25 read the whole thing back or can I just

1 BY MR. LAUGHLIN:

2 Q. what is the basis for treating them
3 differently?

4 A. I can't sit here and say they were treated
5 differently. Again, I was not involved in
6 either of these things. I can only go by
7 documents that are in our files and have
8 been produced. If you want to present
9 what I produced, I can read them and tell
10 you what may have been different about it,
11 but from Public Works perspective, the
12 closure was treated the same way. I can't
13 speak for why the requirement or how this
14 purchase of the street came about.

15 Q. Can you speak to traffic conditions on St.
16 Charles Avenue between State and Broadway.

17 A. How do you want me to speak to them?

18 Q. Volume, congestion, whatever types of
19 words the Traffic Engineering Department
20 wants to use?

21 A. What I can say is that St. Charles and
22 Broadway has always been of the
23 intersections along St. Charles are most
24 congested. Broadway carries a lot of
25 traffic as does St. Charles, that they're

KELLY & ASSOCIATES, L.L.C.

(504) 891-6333

1 both one lane streets coming into it, and
2 quite often you get some congestion at
3 that intersection which does back up, you
4 know, from front of the park and in either
5 directions, all four directions as a
6 matter of fact, at various times during
7 the day depending on what's going on.

8 Q. And part of the, part of the benefit of
9 multiple parallel streets off of St.
10 Charles is to hopefully relieve some of
11 that congestion?

12 A. It's to provide other options of going
13 where you're going.

14 Q. Outlets?

15 A. Yes.

16 Q. Has the City done any measurements on the
17 affect of the closure of Newcomb on other
18 streets such as the other multiple
19 parallel street off of St. Charles between
20 State and Broadway?

21 A. I couldn't find anything where we did.

22 Q. So the City has no idea as to what effect
23 the closure of Newcomb, the closure of
24 Newcomb at Freret is having on adjacent
25 parallel streets?

CITY OF NEW ORLEANS
DEPARTMENT OF STREETS
DIVISION OF TRAFFIC ENGINEERING

TRAFFIC IMPACT STUDY
NEWCOMB BOULEVARD

INTRODUCTION

The following report is prepared in response to a request received from residents of Newcomb Boulevard, relative to a number of conditions experienced along that thoroughfare. These consist of the profuse incursion of non-local traffic as well as associated speeding and illegal parking activities. Inasmuch as the original request involved no specific traffic control modification, a general investigation was conducted.

EXISTING CONDITIONS

Newcomb Boulevard is a residential thoroughfare in uptown New Orleans, 22 feet in width, which operates two-way in a north-south direction. It extends from St. Charles Avenue on the south to Freret Street on the north, a distance of 1420 feet. It is unique in that no cross streets intersect throughout this entire section. As such, neither entry nor departure is available except at the endpoints. Due to the relatively narrow width, on-street parking in the segment is limited to the west side curblin and a maximum duration of two hours to non-residential parking permit holders. Since Newcomb Boulevard enjoys no special status as defined in section 38-73 of the Code of the City of New Orleans, its designated speed limit is 25 mph.

The configuration of the roadway network, and thus the traffic circulation pattern, of this area is dictated by the proximity of the campuses of Tulane and Loyola Universities. Their adjacent complexes of buildings, parking facilities, and athletic fields extend from St. Charles Avenue on the south to South Claiborne Avenue on the north, and from the rear property line of properties along the west side of Calhoun Street on the east to the rear property line of the private homes along the east side of Audubon Place on the west.

A pair of two-way local thoroughfares, Freret and Willow Streets, cross the university grounds in an east-west direction, Freret nearest St. Charles, Willow nearest South Claiborne. McAlister Drive, a private road of northbound orientation, extends north from Freret to Willow Street. A two-way private road, Ben Weiner Drive, exists north of that point with access to South Claiborne Avenue. No north-south thoroughfare, public or private, serves to

TRAFFIC IMPACT STUDY
 NEWCOMB BOULEVARD
 PAGE TWO

connect St. Charles Avenue and Freret Street between Calhoun and Audubon Place.

As such, circulation between these two roadways is limited to Calhoun Street and Palmer Avenue, a pair of one-ways of opposing direction, east of the complex, and to Broadway, a two-lane-divided minor arterial, on the west. Inasmuch as Calhoun is a southbound one-way, it is probable that motorists using westbound St. Charles as an access to the university complex and/or Freret Street will do so from the west, or Broadway, side of the campus. Three streets exist, however, west of the grounds of Tulane University in advance of Broadway. The first to be encountered, Audubon Place, is a private road and therefore closed to general traffic. Audubon Street, the nearest to Broadway, is open to the public, but operates one-way in the southbound direction. Newcomb Boulevard, the second of the three, offers easy access to Freret Street, some 400 feet prior to the Broadway crossing. In addition to the distance saved, the Newcomb alternative offers a means of avoiding the traffic signals on St. Charles at Broadway and on Broadway at Freret.

TRAFFIC VOLUMES

Traffic volume counts were recorded at key points on area thoroughfares. This process was initiated with university activities in session and repeated on a typical weekday between scheduled semesters. The results in terms of 24-hour volume totals are as follows:

Street	Dir	Between		Students	
		Street 1	Street 2	In	Out
Freret	W	Newcomb	Audubon St.	5427	3675
Freret	W	Audubon Pl.	Newcomb	5605	3790
Freret	E	Audubon St.	Newcomb	5732	3992
Freret	E	Newcomb	Audubon Pl.	5845	3520
Newcomb	N/S	St. Charles	Freret	921	526
St. Charles	W	Newcomb	Audubon St.	11744	10399
St. Charles	W	Audubon Pl.	Newcomb	11236	10680
Audubon St.	S	Freret	St. Charles	382	274
Broadway	N	St. Charles	Freret	5947	4722

TRAFFIC IMPACT STUDY
NEWCOMB BOULEVARD
PAGE THREE

VEHICLE SPEED DATA

A sampling of prevailing vehicle speeds for each direction of travel was obtained on Newcomb Boulevard. The relative speeds and the number of vehicles measured at each is given below:

Speed	Northbound	Southbound
28 mph	8	2
27	12	3
26	27	7
25	25	16
below 25	28	72

Vehicle speeds were generally found to be at or near the designated speed limit of 25 mph. A directional disparity was found to exist in that 47% of all northbound vehicles were recorded above the speed limit, though none greater than 28 mph. In the southbound direction, conversely, only 12% were in this range. This condition is probably indicative of the fact that northbound is the predominant direction of flow.

OBSERVATIONS

Observations conducted along Newcomb Boulevard generally revealed light to moderate traffic volumes with on-street parking at or near full capacity. A high percentage of the motorists noted were young adults, quite probably students. On afternoon and weekend visits, parking demand was found to be far less critical.

While the traffic volume figures represent only a one day random sample, it is apparent that the presence of the university-related traffic produces a marked increase in volume in this area. This effect is progressively greater on the lower volume and internal streets within the system and, in fact, reaches its highest level on Newcomb Boulevard, which reflects a 75% increase.

Other noteworthy patterns are discernible from the data. The volume on St. Charles Avenue downstream of Newcomb was found to be lesser than the corresponding upstream total when classes were not in session. With students present, conversely, the downstream total was some 500 vehicles higher than the upstream. This suggests an increased efflux from Newcomb Boulevard during those periods, indicative of students utilizing Newcomb in lieu of Audubon or Broadway.

Similarly, the eastbound count stations on Freret at either side of the Newcomb intersection reflect higher upstream totals during the school term, but larger downstream volumes at other times. This indicates a significant right turning movement from Newcomb into Freret coincidental with school activities. These factors tend to support the claims of residents regarding the incursion of university traffic.

REMEDIAL MEASURES

One potential modification which would be appropriate to observed conditions on Newcomb Boulevard would be the conversion to one-way operation in the northbound direction. This is consistent with the direction of preference as voiced by local residents and would complement the existing southbound flow on Audubon Street, creating a balanced situation. It would also be more commensurate with the abbreviated roadway width of 22 feet.

Such a modification would clearly reduce non-local traffic on Newcomb Boulevard and, by removing the opposing direction of traffic, render northbound flow more efficient. This may, however, also promote the practice of speeding. Furthermore, a one-way operation would present a significant inconvenience to Newcomb Boulevard residents, particularly those with homes near the endpoints. The 1420 foot unbroken segment between St. Charles and Freret is somewhat lengthy for uni-directional flow and thus would necessitate circuitous alternate routes and extended travel times.

Residents have also inquired as to the possibility of the complete closure of Newcomb Boulevard at Freret Street through the implementation of a cul-de-sac arrangement. Such a proposal would necessarily require extensive operational and design considerations.

First, it must be ascertained that the non-local traffic volumes displaced could be adequately accommodated elsewhere. Inasmuch as the obvious alternate route in this case is Broadway, a capacity analysis must therefore be performed for that thoroughfare. Such an investigation is documented in the following section.

It must also be determined if the physical parameters of the subject location will support the required design elements. The minimum outside radius for a circular cul-de-sac for passenger vehicles only is 30 feet. This translates to a 60-foot diameter.

Since the public right-of-way along Newcomb is 45 feet, an additional 7 1/2 feet would be needed at either side. It has been indicated that the property owners near Freret Street may be willing to yield sufficient land to the City to accomplish the circular design. A field investigation, however, has shown that the proximity of steps, porches, or other private structures may preclude this, particularly since it will be necessary to maintain a safe distance between the travel path of the vehicles and pedestrian movements to and from the entrances to private homes.

Given that a configuration of this type could be accommodated, the question of larger vehicles must be addressed. Delivery trucks, emergency units, and other outsized vehicles, unable to negotiate the turn, would necessarily require access into one end of the segment and out of the other. Although this can be achieved through the use of mountable curbs in the cul-de-sac section, such a design would invite the return of general traffic. Some type of non-permanent physical barrier, such as a gate, would therefore be required. This raises further questions as to whether a gate would remain locked, who would secure the key(s), and how quickly could access to the key(s) be gained.

CAPACITY ANALYSIS FOR BROADWAY

The theory of roadway capacity is generally to determine a maximum service volume for a given thoroughfare for prevailing conditions and parameters. Once this is accomplished, existing and/or projected hourly volumes are compared to this factor to yield a ratio and thus a precalibrated degree of acceptability called "level of service." For a one-way roadway, 22-feet in width, with parking on one side in an outlying district of a metropolitan population center in excess of one million, a basic hourly service volume of 2000 vehicles is derived from the chart in figure 6.5 on page 134 of the Highway Capacity Manual, Special Report 87 of the Transportation Research Board. Adjustment factors applied to this figure as recorded from chapter 6 of this reference are shown below:

Peak hour factor	1.14
Percentage of left turns (10%)	1.00
Percentage of right turns (10%)	1.00
Percentage of trucks (1%)	1.05
Volume of buses (5/hr)	0.95
Traffic signal timing (50%)	0.50

$$\begin{aligned} \text{Service volume} &= 2000(1.14)(1.00)(1.00)(1.05)(0.95)(0.50) \\ &= 1137 \text{ vehicles per hour} \end{aligned}$$

TRAFFIC IMPACT STUDY
 NEWCOMB BOULEVARD
 PAGE SIX

This service volume is now applied to the highest recorded hourly total on Broadway to determine the current peak-hour level of service of that roadway. The hour by hour differential of Newcomb Boulevard traffic with classes in and out of session is determined, yielding and hourly approximation of "non-local" traffic. These volumes are then added to the corresponding hourly totals for Broadway. The previous calculation is then repeated in order to derive the projected peak-hour level of service on Broadway which can be anticipated if Newcomb were closed to through traffic.

It should be noted at this point that Newcomb Boulevard, as a 22-foot two-way roadway, is too narrow to procure directional volume counts. The figures displayed represent the combined total of the northbound and southbound movements. For the purpose of these calculations, however, it is assumed that the entire complement of "non-local" traffic is comprised of northbound vehicles. This yields an absolute "worst case scenario" relative to impacted conditions on Broadway. The following chart illustrates this concept.

	Newcomb with students	Newcomb without students	Newcomb non-local traffic	Broadway with students	Broadway with students +non-local
12 MD	9	7	2	85	87
1 AM	3	8	0	53	53
2	3	2	1	36	37
3	1	1	0	20	20
4	1	0	1	14	15
5	2	5	0	18	18
6	4	1	3	33	36
7	14	5	9	136	145
8	70	24	46	344	390
9	85	41	44	436	480
10	64	37	27	323	350
11	72	23	49	326	375
12 NO	58	35	23	202	225
1 PM	76	39	37	415	452
2	65	34	31	355	386
3	59	53	6	457	463
4	62	32	30	530	560
5	79	43	36	514	550
6	63	44	19	495	514
7	45	34	11	332	343
8	28	13	15	263	278
9	24	17	7	280	287
10	18	11	7	174	181
11	16	12	4	106	110
Totals	921	526	395	5947	6342

Existing conditions on Broadway

$$\begin{aligned} \text{Volume/capacity} &= 530/1137 \\ &= 0.46 \end{aligned}$$

Projected conditions on Broadway

$$\begin{aligned} \text{Volume/capacity} &= 560/1137 \\ &= 0.49 \end{aligned}$$

Both v/c ratios as calculated fall within limits defined as level of service "A", or free flow conditions. The conclusion is therefore that, were Newcomb Boulevard converted to one-way operation or closed altogether to through traffic, Broadway could accommodate volumes so displaced with little or no negative impact.

CONCLUSION

Clearly, existing traffic volumes on Newcomb Boulevard are sufficiently light such that, if redistributed by measures enumerated herein, they can be absorbed into the surrounding roadway system with negligible impact. A one-way conversion, while requiring council action, can be implemented quickly and easily on a temporary basis in order to determine its functional efficiency and to provide residents an opportunity to voice their opinions. If desirable, it can be retained. Otherwise, original conditions can be restored with relatively little effort.

The cul-de-sac concept, conversely, is questionable from the standpoint of design, operation, and logistics. In addition to such physical considerations is the issue of policy. To modify a public street for the sole purpose of limiting its functional use to local residents is a decision which may not be regarded kindly by residents of other areas and elected officials. Still, Newcomb Boulevard is unique in that it does not continue north of Freret or south of St. Charles and, as such, is not a primary component of any area circulation pattern or grid system. Its restriction in the manner described, nevertheless, would not be considered at this time.

From: "Adam J. Swensek" <ajswensek@nola.gov>
To: "Michael Laughlin (laughlinmichael@hotmail.com)" <laughlinmichael@hotmail.com>, "TommyMilliner@fastmail.net" <TommyMilliner@fastmail.net>, "tgray@fpwk.com" <tgray@fpwk.com>
Subject: Huston v. CNO, et al.
Date: Thu, 2 Jan 2014 19:40:43 +0000

Gentlemen,

This afternoon we received the Fourth Court's order granting a writ in the above-referenced matter.

In accordance with the court's order, I have instructed the Department of Public Works to commence removal of the barrier at Newcomb Boulevard and Freret Street without delay.

With the holidays still wrapping up and many folks in City Hall out this week, it may take a few days to get the appropriate work orders and crews in place. I will get you an estimated timetable for completion as soon as I receive one from DPW.

Thanks,

Adam

Adam J. Swensek
Assistant City Attorney
City of New Orleans
Law Department
1300 Perdido Street, Room 5E03
New Orleans, Louisiana 70112
Telephone: (504) 658-9810
Fax: (504) 658-9868

P Memo Opp Re-Litigation

Email City Attorney 1/2/14



CITY OF NEW ORLEANS
LAW DEPARTMENT
1300 PERDIDO STREET, 5TH FLOOR EAST
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: (504) 658-9800
TELECOPIER: (504) 658-9868

MITCHELL J. LANDRIEU
MAYOR

SHARONDA R. WILLIAMS
CITY ATTORNEY

July 15, 2013

Thomas W. Milliner
Anzelmo, Milliner & Burke LLC
3636 South I-10 Service Rd., Suite 206
Metairie, LA 70001

Re: *Derek Huston, et al. v. the City of New Orleans, et al.*, No. 2007-983

Dear Mr. Milliner:

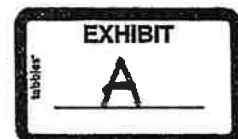
I represent the City in the above-captioned matter and write this letter in response to your correspondence dated June 12, 2013.

The City has obtained an estimate for removing the fence currently located across Newcomb Boulevard where it intersects Freret Street. I have been advised by the Department of Public Works that the project can be commenced in approximately two weeks and will take approximately one week to complete.

The Newcomb Boulevard neighborhood association informs me that it plans to commence proceedings to purchase Newcomb Boulevard and dedicate the street to private use. If their efforts are successful – and I understand the application filing is imminent – the residents are likely to keep the fence in its current location.

To avoid needless expense by the City and to spare the Newcomb residents the cost of reconstructing the existing fence, would your client be willing to stay proceedings and delay any fence removal until the Association's application has been processed? We would, of course, include provisions sufficient to ensure that the Newcomb neighbors are diligent in pursuing their application.


AN EQUAL OPPORTUNITY EMPLOYER



July 15, 2013
Thomas W. Milliner
Page 2

Please call me at your convenience ((504) 658-9810) so that we may discuss the matter further. Failing to obtain an agreement, I believe we should schedule a status conference so the neighborhood association can raise the issue of a stay with the judge.

Thank you in advance for your courtesy.

Sincerely,

Adam J. Swanson
Assistant City Attorney

cc: Ted Le Clercq

From: ajswensek@nola.gov

> To: tjupiter@orleanscdc.com; Thomas@semmlaw.com; laughlinmichael@hotmail.com; shrwilliams@nola.gov; Ron.Sholes@arlaw.com; jlogan@loganandsoileau.com; tommymilliner@fastmail.net; tgray@fpwk.com

> Subject: RE: Huston, et al. v. City of NOLA, et al., No. 07-983: Status Conference scheduled on Jan. 15th

> Date: Mon, 13 Jan 2014 19:14:28 +0000

>

> Tonya,

>

> Judge Bagneris had stayed his injunction pending a status conference that was intended to discuss the Newcomb Boulevard Association's progress in purchasing the street. The Association was to report on its progress at the status conference, so that the Court could determine whether the gate had to be removed. The Fourth Circuit, however, has ordered that the gate currently obstructing Newcomb Boulevard be removed immediately. Our only remaining question pertains to the scope of the injunction. In light of the pending application to purchase the street, the City seeks the Court's guidance on how much of the fence must be removed at this time. Accordingly, the City believes that a status conference is still needed.

>

> Thanks,

> Adam

>

> Adam J. Swensek

> Assistant City Attorney

> City of New Orleans

> Law Department

> 1300 Perdido Street, Room 5E03

> New Orleans, Louisiana 70112

> Telephone: (504) 658-9810

> Fax: (504) 658-9868

Subject: RE: Newcomb Boulevard
From: Allen M. Yrle (ayrle@nola.gov)
To: keithhardie@yahoo.com;
Date: Tuesday, January 14, 2014 11:36 AM

No.

Allen Yrle
Chief Traffic Engineer

From: Keith Hardie [mailto:keithhardie@yahoo.com]
Sent: Tuesday, January 14, 2014 11:36 AM
To: Allen M. Yrle
Subject: Newcomb Boulevard

Has the updated traffic study for Newcomb Boulevard been submitted yet?

Keith Hardie, Jr.
keithhardie@yahoo.com
757 St. Charles, Suite 304
New Orleans, LA 70130
(504) 522-6222
(504) 522-6226 (fax)