

169-3 CALIFORNIA SUPREME COURT RULES THAT OWNERS OF RURAL AND URBAN  
PROPERTY MUST PROVE SUBSTANTIAL IMPAIRMENT OF ACCESS BY CREATION  
OF A CUL-DE-SAC TO RECEIVE COMPENSATION

In two cases reported in Memorandum 162-1, March 1964, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research News, No. 12, June 1964 (Breidert vs Southern Pac. Co., 34 Cal.Rptr. 237, October 1963; Valenta vs County of Los Angeles, 34 Cal.Rptr. 155, October 1963), a district court of appeal in California in effect held that compensation was payable to an owner of urban property as a matter of law for damages caused by the creation of a cul-de-sac which cut off access to the next intersecting street in one direction, but that an owner of rural property had to prove that it was substantially damaged by a cul-de-sac.

The supreme court held in both cases that although destruction of access to the next intersecting street in one direction constituted a significant factor in determining whether the landowner was entitled to damages, it alone could not justify recovery in absence of facts which disclosed a substantial impairment of access.

The district court of appeal relied on the case of Bacich vs Board of Control, 144 P.2d 818 (1943) wherein it was held that an owner of property abutting upon a public street had a property right in the nature of an easement in the street which was appurtenant to his abutting property and which was his private right, as distinguished from his right as a member of the public. It was also held in that case that a person's right of access extended in both directions to the next intersecting street, and if access in one direction was cut off, the property owner suffered immediate and direct damage.

The supreme court recognized the above mentioned easement of access and the right to reach the general system of public streets, but the court said "to do so over either of the next intersecting streets in two directions, does not mean that in every case an allegation of impaired access to the next intersecting street in one direction will establish a compensable right.... Loss of access to the next intersecting street will be a significant factor in finding an impairment of the general right; and, as Bacich held, obstruction of access to the next intersecting street serves as one element of such impairment."

The highest court further held that whether there was a substantial impairment had to be decided by the trial court as a matter of law. If the court made such a determination, then the jury had to determine the amount of damages to be paid.

In the first case involving the urban property, the supreme court ruled that the trial court should not have dismissed the case since the owners and lessees had alleged that the closing of a street at the right-of-way of a railroad had substantially lessened and seriously impaired the free and full use by them of their property. In the other case, the court noted that the owners had only alleged that they had been placed in a cul-de-sac and that this was not enough to state a cause of action. It ruled, however, that they should be permitted to amend their complaint to show the use to which their property was put; the added distance, if any, which they had to travel in order to reach the general system of public streets or public highways; the lack of availability of reasonable alternative routes to such general system of public streets or highways; and whether the closing had substantially impaired their right of access to such streets and highways. (Breidert vs Southern Pac. Co., 394 P.2d 719, August 1964; Valenta vs County of Los Angeles, 394 P.2d 725, August 1964)