

HIGHWAY RESEARCH CIRCULAR

Number 15

Subject Classification: Land Acquisition

January 1966

COMMITTEE ACTIVITY

Committee on Land Acquisition and Control of Highway
Access and Adjacent Areas, Department of Economics,
Finance and Administration, Highway Research Board

LAND ACQUISITION
MEMORANDUM #175
January 1966

175-1 HIGHEST COURT OF INDIANA DECIDES OWNERS ENTITLED TO COMPENSATION FOR
DAMAGES CAUSED BY CREATION OF CUL-DE-SAC BEYOND THEIR PROPERTY SINCE
THEY NO LONGER HAD REASONABLE ACCESS

The persons involved in this case owned property located on a county gravel road. They had operated a steel fabricating plant thereon since 1952. Their raw materials and finished products had been transported to and from the factory over the gravel road to U. S. Highway 136, which was a main thoroughfare for vehicular traffic of all kinds. This was the only improved public road available to the owners by which they could reach other improved roadways for the receipt of raw materials and the delivery of their products to various parts of the State of Indiana.

In 1959, the State of Indiana and Vermillion County closed the gravel road between the owners' property and the intersection with U. S. Highway 136 in order to permit a limited access (Interstate) highway to be constructed parallel to U. S. 136. A barrier was placed on the gravel road where it ran into the Interstate highway so that no one could proceed northward across the new highway. A cul-de-sac was created by these actions and the owners' only means of access from their property was to the south of the gravel road. This required the crossing of a bridge which was in "bad shape" and had a load limit of 3,000 pounds. However, the trucks going to and from the owners' factory hauled as much as 50 tons of steel. In order to continue their manufacturing business, the owners purchased land one-fourth mile north of U. S. 136, constructed a new factory thereon and abandoned the property in controversy for business purposes.

The owners brought an action against the State and Vermillion County, alleging the taking of their land without condemnation. The jury rendered a verdict in their favor for \$13,500 as damages, plus interest. The State and the county appealed to the supreme court which adopted the modern rule that a person was not entitled to damages caused by the creation of a cul-de-sac located away from his property since he still had access to the road on which his property abutted and, hence, to the general highway system so that his injury was the same in kind as that suffered by the general public. However, it upheld the trial court's decision that in this case there was a denial of the owners' right of access to their property and a taking of property rights which was compensable in the amount assessed as damages by the jury. It stated that since their access in one direction was cut off and the only remaining

alternate route was insufficient for their needs, the injury to their steel fabricating plant was far greater and of a kind and nature different from the injury suffered by the general public and, therefore, came within the exception to the rule stated above. In fact, under these exceptional circumstances, the closing of the highway had the effect of depriving the owners of any suitable access to their business.

A judge who concurred in the decision stated that he was of the opinion that recovery of damages should be limited to a case of extreme hardship because any person in business might suffer injury "far greater and of a different kind and nature from the injury suffered by the general public." He was of the opinion that persons suffering such injury were not to be compensated. He thought that in the case at bar, the peculiar circumstances as well as the nature of the owners' business, which necessitated the hauling of extremely heavy loads over what was obviously an inadequate bridge and highway, might be considered to be the exception to the modern rule. (State v. Tolliver, 205 N.E. 2d 672, April 1965)

175-2 NEW YORK COURT HOLDS REVOCABLE LICENSE TO USE CONDEMNED EASEMENT FOR ACCESS TO REMAINING LAND CANNOT BE CONSIDERED IN DETERMINING SEVERANCE DAMAGES BUT STATE SHOULD GRANT UNREVOCABLE PERMIT IN ORDER TO MITIGATE DAMAGES

The claimant owned a 156 plus-acre tract of land which was best suited for residential purposes. The State appropriated for highway purposes 0.9 of an acre in fee and two permanent easements 0.7 plus of an acre in area. It was unquestioned that the State had taken all of the condemnees' access unless it could be found he had access across the area appropriated for the permanent easements. The easement description provided that the owner had the right and privilege of using the easement property providing he did not, in the opinion of the superintendent of public works, interfere with the easements which were taken for drainage purposes. The owner proceeded at the trial under the theory that there was no reasonable means of access left to his property and thus the remainder had only a nominal residual value. The State contended that the claimant had suffered no loss of access since he could build a bridge across the permanent easements and that, therefore, the only damage to the remaining property was the cost of constructing access across the easements.

The trial court upheld the contention of the owner since it awarded him practically 100 percent damage for the remaining land. The State appealed from the judgment of \$71,000, \$69,975 thereof representing severance damages to the remainder.

The appellate court pointed out that although a witness for the State testified that the owner could build a bridge across the easement area, the State did not offer any instrument which would grant him in perpetuity the right of access across that area. The language in the appropriation petition permitting the owner the right to use the easement area unless he interfered with the exercise of the easement was only a license which in no way guaranteed that the remaining land could be utilized for residential purposes and the