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LAND ACQUISITION
MEMORANDUM #180

180-1 TEXAS SUPREME COURT RULES OWNER ENTITLED TO COMPENSATION IF HE HAS NO REASONABLE ACCESS TO HIS PROPERTY, BUT COMPENSATION IS NOT PAYABLE IF ACCESS TO ONE STREET IS CUT OFF BUT HE RETAINS ACCESS TO ANOTHER STREET

In the first case the property of the owner (DuPuy) fronted on South 17th Street with full access thereto. The property did not front on any other street. The City of Waco constructed a viaduct 14 feet above the existing street. A concrete support formed a solid barrier to the immediate right of DuPuy's building. As a result, the building was left fronting on a cul-de-sac under the viaduct. Both the owner and the traveling public could get to the building, but by a very long and circuitous route. (See diagram in 396 S.W.2d at 105.)

In the second case, the property of Archenhold Automobile Supply Company was located immediately across from the DuPuy property. However, the Archenhold property also extended to and fronted on Franklin Avenue. The construction of the viaduct did not interfere with the owner's full access to Franklin Avenue. (See diagram in 396 S.W.2d at 113.)

A court of civil appeals denied any compensation to both owners, ruling that the city had used its police power when it interfered with the owners' access to their properties. Both owners appealed to the supreme court. The decision in the first case was reversed, but the judgment in the second case was affirmed.

In the DuPuy case the supreme court noted that the State constitution provided that private property could not be damaged for a public use without the payment of just compensation. It stated it had been settled that a direct physical invasion of property was not required to entitle an owner to compensation. It further stated it was the rule in the State of Texas that an abutting property owner possessed an easement of access which was a property right; that this easement was not limited to a right of access to the system of public roads; and that diminishment in the value of property resulting from a loss of access constituted damage.

The court pointed out that the viaduct was constructed for a public use, the necessary consequence of which was the causing of a property loss to DuPuy not common to the general public. These elements were generally considered to be supportive of special damages in law whether or not termed an exercise of the power of eminent domain.

The court noted it was obvious that the construction of a large public improvement would have a different effect upon ingress and egress to and from

properties which were differently located. The determination in a given situation of whether or not there had occurred a compensable damaging under the constitution was to be approached from the premise that an access right was an easement judicially recognized as appurtenant to tangible property to protect the benefits of private ownership. This should not be extended to recognize a compensable damaging where a property owner had reasonable access to his property after construction of the public improvement. The initial and primary question was whether DuPuy's access rights had been impaired to an extent which constituted a damage to property for a public use. In the court's view this was a question of law and it held that such had been shown in the DuPuy case. It therefore awarded the owner the amount the property had decreased in value as a result of the impairment of access. (DuPuy v. City of Waco, 396 S.W.2d 103, October 1965)

In the Archenhold case, the appellate court stated it was clear that the subject property was more favorably circumstanced than the property of DuPuy both before and after construction of the viaduct. The latter's property was left abutting on a cul-de-sac on the street on which it fronted, and the only street to which it had access. Archenhold, on the other hand, continued to front on, and to have full access to, Franklin Avenue. It, therefore, had been left with substantial access. The question of whether Archenhold retained reasonable access should not be made to turn on what happened on South 17th Street apart from the unimpeded frontage on Franklin Avenue. In the court's opinion, the better rule was that of the courts of New York which hold that one of two public streets could be closed without compensation to an abutting landowner if the remaining street furnished suitable means of access. The supreme court, therefore, held that Archenhold had not been deprived of reasonable access. It admitted however that Archenhold suffered special damage not suffered in common with the general public, but stated that this was not sufficient to invoke the compensation provision of the constitution concerning payment of compensation for damaging private property for public use.

The dissenting judge stated that the reasons expressed in the DuPuy case were a just basis for a recovery by Archenhold. The majority recognized that Archenhold had suffered special damage not suffered in common with the general public. It was, therefore, beyond question that the property rights of the owner had been substantially damaged for the public use. Since the State constitution provided that private property could not be damaged for public use without the payment of adequate compensation, it was clear to this judge that the owner was entitled to compensation. (Archenhold Auto. Supply Co. v. City of Waco, 396 S.W.2d 111, October 1965)

180-2 NEW JERSEY SUPREMENT COURT RULES SUIT BY BOARD OF EDUCATION CLAIMING HIGHWAY CONSTRUCTION WOULD SO DAMAGE SCHOOL AS AMOUNT TO A TAKING WAS PREMATURE

In Highway Research Circular No. 18, March 1966 (Land Acquisition Memorandum 177-1) it was reported the appellate division of the New Jersey superior court ruled that a trial court should not have summarily dismissed a board of education's suit in which it was claimed that the beneficial use of the land and building of a particular school would be destroyed due to the construction of a highway which would virtually surround the school so that it would become an island and that such action would amount to a taking of the school property. The superior court remanded the case to the trial court for a determination as to whether the board could prove that the school could no longer be used and if so, the board would be entitled to compensation even though there was no actual physical invasion of the school property.