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LAND ACQUISITION
MEMORANDUM #181

181-1 RHODE ISLAND SUPREME COURT HOLDS OWNER ENTITLED TO COMPENSATION FOR
LOSS OF DIRECT ACCESS TO HIGHWAY WHERE DIRECTOR OF PUBLIC WORKS WAS
NOT COMMITTED TO CONSTRUCTING A FRONTAGE ROAD ADJACENT TO THAT
HIGHWAY

The State planned to convert the George M. Cohan Memorial Boulevard, which was the most heavily traveled highway in the State, to a limited-access freeway which would form a part of Interstate Highway 195. The owner of the subject property, on which a gasoline service station was located, brought suit to either enjoin the director of public works from obstructing his access to the north side of the boulevard which was contiguous to his property or to award him just compensation for loss of the direct access. A trial court awarded him \$68,028 and both parties appealed.

The evidence showed that it was proposed to include the southerly portion of the boulevard within the freeway bounds and that part of its northerly portion abutting the owner's property would be converted into a frontage road which would be available for two-way traffic. The portion of the freeway adjacent to the frontage road would be below its grade and between the two would be a retaining wall. Upon completion of the project, the subject property, although it would still abut on and have access to such portion of the boulevard as would then be included within the frontage road, would not be accessible to the many thousands of vehicles which each day would use the new express lanes except by way of a circuitous route which the trial justice described as a "maze of streets" and reachable only "by virtue of most diligent search combined with a considerable degree of good fortune in taking the right turns and having resort to the right ramp." Concededly, the enforced diversion of traffic from and inaccessibility to the owner's property would substantially lessen its market value.

The director of public works argued that compensation was not payable for any decrease in property which was caused by a diversion of traffic and circuitry of travel. The court noted that the question originally argued by the parties was whether an enforced substitution of a right of access to a frontage road for an existing direct means of ingress and egress to and from heavily traveled through-traffic lanes constituted a taking requiring compensation within the contemplation of the State constitution. The court stated, however, that it did not have to answer this question since the director of public works did not commit himself, through condemnation instruments, to construct the frontage road and to preserve it, if it was constructed.

The director did not dispute that there was no commitment to build the frontage road, but he urged that his good faith and integrity, and that of the State properties committee and the Federal Bureau of Public Roads (which would contribute 90 percent of the acquisition and construction costs of the project) compelled the conclusion that there "is a genuine commitment that this project, as thus proposed, will be consummated." The court did not question the good faith or the intentions of these public officials, but ruled that where, as here, the condemnation instruments in no way inhibited the condemner from a complete destruction of the owner's right of access between the boulevard and his property, the mandate of just compensation required payment as if the right were to be obliterated. In short, in cases like this, if compensation was to be just it must be measured by what the condemner could do and not by what he intended to do, it being the rule that the damages were to be assessed on the most injurious method of construction that was reasonably possible. The appellate court, therefore, affirmed the award of the trial court. (Sullivan v. Marcello, 214 A.2d 181, November 1965)

181-2 HIGHEST COURT OF MARYLAND DECIDES ORDINANCE REQUIRING REDUCTION OF ELEVATION OF LOTS AT CORNERS WAS A TAKING OF PROPERTY WITHOUT PAYMENT OF JUST COMPENSATION

The City of Salisbury, Maryland, passed an ordinance "As an aid to freer safe movement of vehicles at and near street intersections and in order to promote more adequate protection of the safety of children, pedestrians, operators of vehicles ***." This ordinance limited the height of fences, walls, hedges, shrubbery and other fixtures within a triangle of a corner lot, two sides of which were measured from the point of intersection for a distance of 25 feet, in all districts where front yards were required on corner lots. The objects mentioned had to be limited to a height not over three feet above the elevation of the curb level at the intersecting streets. The ordinance also provided that within the triangle, the ground elevation of the front yards could not exceed three feet above the established curb elevation of the intersecting streets.

Three landowners were ordered to reduce certain fixtures in their front yards to the required height. They appealed to the court of appeals. That court held that the provision requiring an owner to reduce the ground elevation of his land amounted to the taking of property without payment of compensation because the purpose of the ordinance was to benefit the public by obtaining unobstructed vision at corners. If the ordinance were allowed to be put into effect, the land of an owner would be confiscated since there would be an interference in the enjoyment of his land in order to put part of his land to the public use of a "sight easement".

The appellate court further held that the other provisions of the ordinance relating to fixtures might be valid under the police power if the trimming would not destroy the usefulness of the object trimmed or result in substantial loss to the property owner. (Stevens v. City of Salisbury, 214 A.2d 775, December 1965)

181-3 NEW YORK COURT DECIDES UTILITY COMPANY ENTITLED TO BE REIMBURSED FOR EXPENSES INCURRED IN PROTECTING ITS PIPELINE FROM PRESSURE OF NEW ROAD

A gas pipeline company had obtained an easement in certain property and had laid part of its line under the surface. Subsequently, the County of Albany purchased the fee of the land, subject to the company's easement. A new highway was constructed on this land and, at the request of the county, the company encased its pipeline at the point where it passed under the highway. The company brought action to be reimbursed for the expenses which were incurred to protect its pipeline from the pressure of the new highway.