

HIGHWAY RESEARCH CIRCULAR

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LAND ACQUISITION
MEMORANDUM #182

182-1 HIGHEST COURT OF MICHIGAN RULES OWNERS MUST BE COMPENSATED FOR DAMAGES
TO THEIR PROPERTY CAUSED BY CHANGE IN GRADE OF A HIGHWAY WITHIN EXISTING
RIGHT-OF-WAY

Mr. and Mrs. Thom owned 80 acres of land which fronted on highway M 53. On this land were located their home, farm buildings and farm machinery. In addition to this tract, they owned an aggregate of 258 acres in four separate areas. The M 53 site served as headquarters for a farming operation involving all of this land. The attractive farm home on the first tract was regarded as somewhat of a local showplace.

Highway M 53 ran north and south in front of the Thom home, and access was had to it by means of a U-shaped driveway which encircled the home and intersected the highway at two points. In 1961 the State highway department began to improve the highway and this involved an alteration of the grade in front of the home property. When construction was completed, the grade of the highway was 10 feet higher than the Thom drive at its southern intersection and eight feet higher at its northern intersection, leading one witness to testify that "it looks as though they built in a hole." In addition, the grade along the frontage of the property from almost its southern boundary was substantially raised, and the highway grade was not level again with abutting property until approximately 400 feet north of the existing north drive.

The State agreed that it would be dangerous to go onto the highway from the driveway. The trial court ruled that the owners were not entitled to compensation because the change in grade had been made within the existing highway and that the State was immune from liability for acts committed in performance of a governmental function. The owners appealed to the supreme court.

The latter court stated that it had previously been committed to a liberal interpretation of the "taking" clause in the State's constitution by holding that there need not be a physical invasion of property to constitute a taking of private property for which just compensation had to be paid. It had formerly characterized the right of reasonable access by an abutting owner as an "indefeasible right", so that when the State injured that right of access, it injured a property interest, and that injury constituted a "taking" for which just compensation constitutionally was required. The court pointed out that if improvement of a highway was of great public benefit, the public could afford to pay for it.

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As to the State's contention that it was immune from suit, the court ruled that to permit that defense in this case would result in utterly vitiating the constitutional provision providing for just compensation for the taking of private property for public use, for it would mean that the owner of property alleged to have been taken without compensation would be left without judicial recourse. While an owner's property was subject to the power of eminent domain, it would be contrary to the explicit guarantee of the constitution to say that if the State took property without giving the required compensation, it thereby became immune from any suit to obtain that compensation.

The trial court's decision was reversed and the case was remanded for a determination of the decrease in value of the property. (Thom v. State, 138 N.W.2d 322, December 1965)

182-2 FLORIDA COURT RULES STATE DID NOT ABUSE DISCRETION IN TAKING SITE OF FUTURE CHURCH PARISH SINCE CONVENIENCE AND ECONOMY COULD BE CONSIDERED IN CHOOSING LAND TO BE USED FOR FILL.

The Florida State Road Department brought action to condemn an unimproved parcel of land owned by the Catholic Burse Endowment Fund, Inc. The purpose for taking the land was to obtain a source of fill for the construction and maintenance of a portion of Interstate Highway 75. The owners had intended to use the land as a Catholic parish, which in the future was to include church, school, convent, and rectory buildings. The trial court granted the department's petition for an order of taking, and upon appeal by the owners to a district court of appeal this order was affirmed.

The trial court made the following findings of fact: (1) The site in question consisted of 18 to 20 acres, and was located between Florida Avenue and Interstate 75, abutting to some extent upon both. (2) The intended borrow pit would be considerably less than 300 feet from both of these highways. (3) In order to locate the borrow pit on the subject land, the department had waived its own regulation which required borrow pits to be set back 300 feet from an Interstate right-of-way. (4) The department's search for a borrow pit site, except for an examination of the subject property, had been superficial, but the location chosen was ideal from the standpoint of cost and convenience to the contractor building the road. (5) From an esthetic point of view, the location of a borrow pit on the intended site would constitute a blight on the surrounding area, including apparently the view from the highway as well as the surrounding neighborhood. (6) The land was well suited for its intended use by the owners as a parish site and comparable property in the area was not readily available.

The owner contended that the department's apparent disregard of factors other than the cost, plus the "arbitrary" limitation of the area from which to obtain fill, amounted to a gross abuse of discretion. It further contended that the condemner should have considered the owner's intended use of the property, the benefit to the community from this intended use, and the effect of the condemner's use on the surrounding property from an esthetic point of view.