

# HIGHWAY RESEARCH CIRCULAR



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## 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 #184

184-1 A COURT IN OHIO RULES LOSS OF INDIRECT ACCESS TO MAIN HIGHWAY NOT  
COMPENSABLE BUT AVAILABILITY OF THAT ACCESS MUST BE CONSIDERED IN  
DETERMINING VALUE OF PROPERTY BEFORE THE TAKING OF A PART THEREOF

In 1956 the condemnees erected a motel at the intersection of Bible Road and U. S. Route 25, which was north and east of Lima, Ohio. U. S. 25 was a four-lane divided highway of limited access. The flow of traffic to the motel was from that highway via Bible Road. A part of the motel property was taken for the purpose of converting U. S. 25 to Interstate Highway 75. The conversion resulted in loss of the indirect access to that main highway.

Both appraisers for the State had initially appraised the before value of the property on the basis that it had access from Bible Road to U. S. Highway 25, but they lowered their appraisals when they were instructed by the State that the owners had no compensable or direct or indirect access from their property to that highway. They gave a low after value because the motel had only salvage value after the loss of indirect access to the main highway. The owners were awarded \$3,500 for the condemned land, and \$23,000 for damages to their remaining property, plus interest. They appealed from this judgment on the ground that the verdict was based on the State's witnesses' appraisals which were founded on an erroneous and illegal premise that they had no right of access to U. S. 25 which was taken away from them in the improvement thereof to meet the standards for an Interstate highway.

A court of appeals (an intermediate court) ruled that since U. S. 25 had been created as a limited-access highway and the landowners had no right of direct access from their property to that highway, no right which belonged to them was taken away when they lost their indirect access to that highway and, therefore, they were not entitled to any damages for loss of access. However, it ruled it did not follow that the State's appraisers, in determining the fair market value of the land before the taking of a part thereof, should consider the land as if it had had no access to U. S. 25, because every element that affected that value had to be considered.

Although the owners had no right of access directly from their land to U. S. 25, once they had gained access to Bible Road, they had a privilege, or license, shared with the general public, of access via that road to U. S. 25, and all their customers, potential and actual, had a like privilege of ingress and egress to and from U. S. 25 over Bible Road. Even had the landowners

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conveyed away all possible rights or privileges of access which they individually had to and from that main highway, their customers had not done so, and so long as the intersection remained open they had the privilege of reaching the motel premises through the intersection. The effective closing of that intersection did not result in the loss of any right for which anyone was entitled to direct compensation, but until that event the ability of customers to enter and leave U. S. 25 was as much an element to be considered in determining market value as was the opposite and negative factor, which always existed from the time of the creation of the intersection, that the State had the right to alter same and leave no access whatsoever to the highway at that point. All the appraisers considered the latter factor, but the State's appraisers were instructed to and did not consider the former.

Had the State of Ohio not taken any of the land belonging to the owners and/or had not changed the grade of Bible Road where it abutted their land, they could have recovered nothing by reason of the change of the intersection of Bible Road and U. S. 25, so that the former would no longer have access to the latter, and vice versa. But the moment the State took some of the owners' land and/or caused damage thereto by the change of grade of Bible Road, they were entitled, in the determination of compensation and damages, to have "every element that can fairly enter into the question of value" considered, including the fact that the property had been indirectly accessible to and from U. S. 25.

Since the testimony of the State's appraisers was based on a false and erroneous conception or foundation, it had no probative value on the issue of market value as of the date of taking, and the verdict of the jury and the judgment entered thereon were manifestly against the weight of the competent evidence, consisting of testimony of the landowners' witnesses, which did have probative value. A contrary holding would result in the landowners not being awarded just compensation as required by the State's constitution. For this reason, the case was remanded to the trial court for further proceedings. (In re Appropriation of Easements for Highway Purposes, 215 N.E.2d 612, March 1966)

184-2 SOUTH CAROLINA SUPREME COURT DECIDES TRAFFIC NOISE AND LOSS OF VIEW AND BREEZE MAY BE CONSIDERED IN DETERMINING AFTER VALUE OF PROPERTY EVEN THOUGH OTHER PROPERTIES IN AREA ARE AFFECTED BY THESE FACTORS

The State highway department condemned 20.5 acres out of a 146-acre farm for a right-of-way for a portion of Interstate 95, a controlled-access highway. The condemner contended that the court erred in permitting the jury to consider, in assessing compensation, four factors claimed by the condemnee as elements of special damage: (1) increased traffic noise at the owner's residence; (2) loss of breeze at the residence because of the elevation of the highway; (3) loss of view from the residence because of such elevation; and (4) circuitry of travel between 39 acres of the farm lying on one side of the controlled-access highway and his remaining land on the other side.

The condemner argued that increased traffic noise resulting from construction of the highway near the condemnee's residence did not constitute special damage because there was no showing that the alleged injury was special and peculiar to him and was not commonly suffered by all others whose homes were in close proximity to that highway.