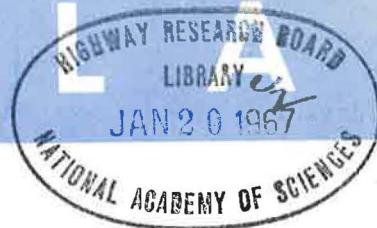


# HIGHWAY RESEARCH CIRCULAR



Number 59

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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 #185

185-1 HIGHEST COURT OF PENNSYLVANIA DECIDES DIVERSION OF TRAFFIC BY CONSTRUCTION OF MEDIAL DIVIDERS MAY NOT BE CONSIDERED IN DETERMINING AFTER VALUE OF CONDEMNNEES' PROPERTY

The subject property was located on the northerly side of U. S. Route 11--an east-west highway. This land had a 200-foot frontage along that highway and was improved with a gasoline service station, a seven-unit motel, an office and the condemnees' residence. Access to the property was by means of a driveway from the highway.

In 1958 the Pennsylvania Department of Highways took steps to transform Route 11 at a point in front of the subject property from a three-lane to a five-lane highway. It condemned a portion of the property; it constructed a concrete curb along the highway for a distance of approximately 70 feet in front of a gasoline station; it provided access to and from the property at two points along the highway; and it erected two concrete dividers on the highway within the existing right-of-way to accommodate westbound traffic desiring to turn south. These dividers prevented eastbound traffic from crossing over into westbound lanes near the condemnees' property.

A jury returned a verdict which was about four times as much as the award made by a board of view. The department of highways appealed to the supreme court. Neither that portion of the property actually taken nor the curbing constructed along the highway were directly at issue on the appeal.

The trial judge permitted the condemnees to testify as to the effect of the construction of the medial dividers on traffic in the eastbound lanes desiring to enter their property and opinion evidence as to the effect on the after value of their property of the diversion of eastbound traffic by reason of the construction and location of the dividers. The condemner objected to such testimony and, after the jury verdict, again raised the question of its admissibility in a motion for a new trial.

The trial court believed that the taking of a portion of the property involved and the construction of the medial dividers on the highway were integral parts of one and the same transaction. It, therefore, concluded that evidence of

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the dividers and the impact of their location upon the diversification of east-bound traffic from ready and direct access to the property were matters properly received in evidence and were properly for consideration by the jury as factors in arriving at the after value of the property. The supreme court did not agree with that conclusion.

That court pointed out that certain facts were beyond dispute: (1) the medial dividers were located upon the existing right-of-way and not upon any portion of the property actually taken; (2) the location of the dividers did not prevent ready access of westbound traffic to the property nor access from the property to the westbound lanes of the highway; (3) upon completion of construction of the highway, means of reasonable ingress to and egress from the property were assured; (4) by reason of the location of the dividers on the highway, eastbound traffic, desiring to go to the subject property, would have to proceed to a point from 1500 to 1700 feet east of the property, turn into the westbound lanes from a cross-road and retrace its path to the points of access to that property; (5) to eastbound traffic, desiring to enter the property, the location of the dividers created a situation which did not deny any access to the property but did require a circuitry of travel to reach a point where access to the property could be effected.

The appellate court noted that by reason of such necessitated circuitry of travel, the condemnees contended that business which might have been reasonably expected and anticipated to be generated from vehicular traffic in the east-bound lanes would be considerably diminished and that such diminution should be considered as an element in determining the after value of their property. The real complaint of the condemnees was not of any loss of access but of a diversion of traffic created by the new highway construction.

The supreme court ruled that the owner of land abutting on a highway had no property or other vested right in the continuance of a certain amount of traffic over that highway so long as he was not deprived of reasonable access to his property. All traffic on a public highway was controlled by the police power of the Commonwealth, and what the police power could give an abutting property owner in the way of traffic on a highway it could take away without being liable for any decrease of property values caused by a diversion of traffic. To hold otherwise would make the Commonwealth liable for consequences far too remote and speculative and would transform the right of an abutting property owner to reasonable access to the highway into a right not only to such access but to a continuance of the flow of traffic on the highway in front of his property.

In the instant case the condemnees retained their right of access to and from the highway by reasonable and convenient means. The location of the dividers was entirely unrelated to that portion of their property which was acquired by the Commonwealth. The dividers were placed on the highway under the police power of the Commonwealth and this was not done in either an arbitrary or unreasonable manner. The purpose of the dividers was the enhancement of public safety on the highway and the efficient flow of vehicular traffic. Such diversion of traffic as occurred in the eastbound lanes, even though it resulted in a diminution

of the condemnees' business, was not an element or factor to be considered in determining the after value of their property. (Wolf v. Commonwealth, 220 A. 2d 868, June 1966)

185-2 SUPREME COURT OF SOUTH DAKOTA HOLDS OWNERS ENTITLED TO COMPENSATION FOR DAMAGES PECULIAR TO THEIR PROPERTY WHICH WERE CAUSED BY MATERIAL INTERFERENCE WITH ACCESS THERETO

The claimants had acquired two lots in Rapid City at different times. One lot was located on the corner of Omaha Street and West Boulevard. The other lot adjoined the first lot on the west. The two streets had been conventional streets and the owners had open, free, and unobstructed access to West Boulevard on the east of their lots for a distance of 162 feet and to Omaha Street on the south for a distance of 80 feet. The State converted West Boulevard into part of Interstate Highway 90 and erected a steel barrier along the west side of that boulevard. The barrier ran along the entire east side of the claimants' property and extended around the corner on Omaha Street for a distance of 10 feet. The barrier precluded all direct access from their property to West Boulevard.

The referee found that the highest and best use of the two vacant lots before the highway improvement was as a unit for a service station with a fair market value of \$30,000. After the construction of the barrier, the property was no longer usable as a service station and had a fair market value of \$10,000. He, therefore, found that the owners were damaged in the amount of \$20,000. The State excepted to the referee's report contending that there had been no compensable taking or damaging of the property and that there was not a unity of use between the two lots sufficient to support a consequential damage award as one parcel. The supreme court adopted the report and entered a judgment for \$20,000 together with interest from April 19, 1959, the date the barrier was erected.

The supreme court stated that an owner of property abutting on a highway had a right of access thereto which could not be taken for public use or materially impaired without compensation. The right to an unobstructed street in front of an owner's property for light and air and ingress and egress, belonging to an abutting owner, constituted the most valuable part of the property, especially in crowded thoroughfares and on business streets, and without these rights the property, in many instances, would be greatly diminished in value.

The court noted that until the latter part of the last century most States refused to compensate an owner of land which had been damaged by the construction of a public improvement where there was no physical taking of any part of the property on the theory that consequential damages were not recoverable under the "taking" clauses of their eminent domain constitutional provisions. However, about half of the States, including South Dakota, had adopted constitutional amendments which provided that private property should not be taken or damaged for public use without compensation. It was under such an amendment that an owner could claim compensation for the destruction or disturbance of easements of light and air, and of accessibility, even though no property was taken from him. However, an abutting landowner's right of access was not absolute, but was subject to reasonable regulation and restriction by the State under its police power in the public interest. The use of the police power by the State to improve its streets and thereby control