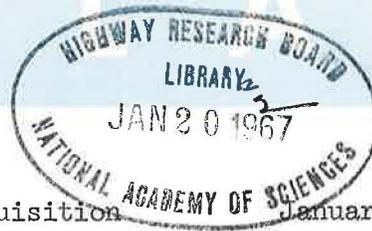


HIGHWAY RESEARCH

CIRCULAR



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Subject Area: Land Acquisition January 1967

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 #186

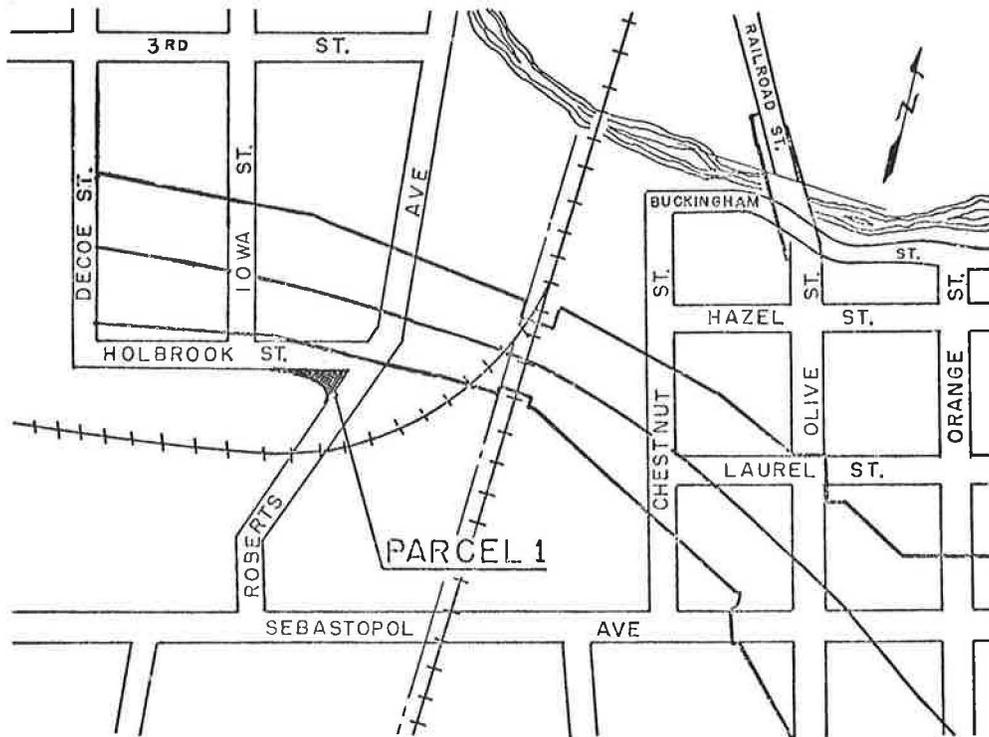
186-1 CALIFORNIA COURT RULES LANDOWNER NOT ENTITLED TO DAMAGES FOR IMPAIRMENT OF ACCESS TO PROPERTY OR FOR LOSS OF VIEW OF PROPERTY FROM HIGHWAY WHICH RESULTED FROM CONSTRUCTION OF FREEWAY ON OTHER PERSON'S PROPERTY

The property involved was outside the city limits of Santa Rosa in Sonoma County. It was leased to a company which operated a wholesale grocery business. The lease was not to terminate until August 1979. The property was improved with a large warehouse containing offices. There was a paved yard used for the parking and maneuvering of trucks in connection with the business which involved the receipt of merchandise brought in by various truckers or picked up by the lessee itself, the internal handling of the same, and its eventual distribution to grocers in the area. Large trucks and trailers were used for this purpose.

The property was bounded on the north by Holbrook Street and on the east by Roberts Avenue. Iowa Street intersected Holbrook from the north immediately across from the property and Decoe Street similarly intersected Holbrook approximately 100 feet to the west of the western boundary of the property. Both Iowa and Decoe Streets did not cross Holbrook, however. Prior to the construction of a freeway, Iowa and Decoe Streets and Roberts Avenue were through streets to the north by means of which the owner's property had access to the general system of streets in Santa Rosa and the vicinity. The freeway ran in a general easterly and westerly direction just north of the property, thereby cutting across all of the aforementioned three streets. After the construction of the freeway, these three streets were closed south of the freeway, thus abolishing direct access from the subject property to any point north. The new route available to the lessee and its customers required going south on Roberts Avenue, east on Sebastopol, and then north on Olive and Railroad Streets to West 3rd and then east on West 3rd. This route was longer by approximately one-third of a mile, involved heavy traffic on Sebastopol Avenue and required a difficult left-hand turn from Roberts to proceed east on Sebastopol. (See sketch)

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CALIFORNIA:
People v. Wasserman,
50 Cal. Rptr. 95, 1966

The condemner took a small portion of the owner's property at the northern tip, but the freeway itself was not built on any part of the land taken, that part being needed to "curve out" the intersection of Holbrook and Roberts to facilitate turning in that intersection. This was deemed necessary by the condemner's engineers since the freeway, by cutting across an angle of the intersection would narrow it.

The trial court relied on the decision of People ex rel. Department of Public Works v. Symons, 357 P.2d 451 (1960) in denying the owner any compensation for impairment of access. In that decision it was held that damages for the impairment or diminution of an easement of access were not recoverable where they were caused by the construction, maintenance or operation of improvements made on the lands of others. In the instant case, the freeway proper was constructed on land taken from others and damage resulting therefrom had "nothing to do whatsoever" with the condemnation of the corner of the owner's property. The appellate court upheld this ruling, but it noted that the condemner, while not disclaiming the benefit of that ruling, took the position that the next intersecting street rule was also applicable and that under that rule no impairment of access could occur since the owner's right of access extended in both directions to the next

intersecting street, its theory being that after the construction of the freeway there would still be access westward along Holbrook Street to the intersecting Iowa and Decoe Streets even though vehicles could move thereon only up to the freeway. The appellate court stated that it could find no merit in this contention since these streets, which were through streets before construction of the freeway, were to be fully barricaded in the immediate vicinity of their intersection with Holbrook. Although the court found no reported California case involving a comparable factual setting, it believed it was implicit in the next intersecting street rule that such street be available for travel and passage. Both Decoe and Iowa Streets were now merely residual stubs of former thoroughfares, virtually phantom streets having no real existence. The owner's property, therefore, did not have access westerly along Holbrook to an intersecting street because neither Iowa nor Decoe was in reality an intersecting street at this point.

The appellate court stated that if it assumed that the Symons decision was not controlling in this case, so that the owner was not precluded from asserting impairment of access arising from the closing of the three streets by the construction of the freeway, nevertheless it had to conclude that no substantial and actionable impairment of access had been shown. Compensation was only payable if the property owner showed a substantial impairment of his right of access to the general system of public streets. Whether there was such an impairment had to be determined as a matter of law. Loss of access to an intersecting street in one direction could be considered as a significant factor but this alone did not justify recovery of damages. It was necessary to determine whether the facts as a whole disclosed a substantial impairment of the owner's access to the general system of public streets and highways. This was tantamount to an inquiry as to whether the owner's right of access had been unreasonably interfered with. In the instant case, the route which the owner's lessee now had to use was only a third of a mile longer than the old route. The fact that the new route was difficult to traverse, particularly during peak traffic hours, could not be considered because a person could not assert a right to protection from the burdens or hazards of traffic which he had to share with the general public.

The owner had also contended that the trial court erred in ruling that his easement of reasonable view was not substantially impaired. The appellate court pointed out that it was settled that the owner of real property abutting a public highway had an easement of reasonable view of his property from the highway and the destruction or impairment of that view was the destruction of a valuable property right. In the instant case the owner argued that the view of his property from the north on Roberts Avenue was cut off by the solid earth embankment of the freeway and that it had been completely destroyed. He made no claim of impairment of view in respect to Holbrook Street. The appellate court again relied on the rule announced in the Symons case in holding that any impairment of view of the property from the north on Roberts Avenue was a non-compensable item of severance damages since the improvement causing such loss of view, the freeway itself, was not located on the property taken from the owner.

The appellate court stated that if it agreed with the owner that the Symons decision was not applicable, it still had to rule that there was no impairment of view because after construction of the freeway, there was nothing which impaired or diminished the visibility of the subject property in respect to persons traveling on either of the two streets abutting it -- Holbrook or

Roberts. There could be no impairment of visibility in respect to traffic on Roberts north of Holbrook since all traffic had been cut off by the freeway under circumstances involving no substantial impairment of access. The theory supporting an easement of reasonable view of the property from the abutting streets -- "that places of business may be established along the highway and parties traveling along the highway may thus be attracted to the places of business and become customers" -- simply did not exist in the last set of circumstances. In short, there now being no traffic to the owner's property from the north there were no persons in respect to whom the visibility of the property could be said to be impaired. (People v. Wasserman, 50 Cal.Rptr. 95, March 1966)

186-2 WISCONSIN SUPREME COURT RULES STATE CAN CONDEMN SCENIC EASEMENTS,
THEREBY RESTRICTING USE OF LAND, UPON PAYMENT OF JUST COMPENSATION

The State highway commission decided to acquire, in the name of the State, so-called scenic easements, across land of various owners, to a depth of 350 feet from the Great River Road, which was a highway that ran along the Wisconsin shore of the Mississippi River. The owners did not accept the monetary offers and brought action to contest the right of the highway commission to condemn such easements. A trial court dismissed their complaint, where-upon they appealed to the supreme court which affirmed the judgment.

In most instances the land involved was being used for agricultural purposes. The description of the scenic easement proposed to be taken from the owners of one tract of land (which was typical, although some of the easements varied in detail) stated that the highway commission, having determined that it was necessary to preserve and protect, for scenic purposes the natural beauty of the areas adjoining the highway and to prevent any future developments which might tend to detract therefrom, had ordered the acquisition of an easement, in the name of the State, and right in perpetuity to restrict the future use and development of the land involved. The restrictions were as follows: (1) No dump of ashes, trash, rubbish, sawdust, garbage or offal, or any other unsightly or offensive material could be placed upon the restricted area. Existing use for any such purpose had to be discontinued except where such use was incidental to the present occupation and use of the land, and when it conformed to applicable State and local requirements. (2) No signs, billboards, outside advertising structures or advertisements of any kind could be hereafter erected, displayed, placed or maintained upon or within the restricted area. Existing use for any such purpose had to be terminated by a specified date, except that one sign of not more than eight square feet in size could be erected and maintained to advertise the sale, hire or lease of the property, or the sale and/or manufacture of any goods, products or services incidental to a permitted occupation or use of the land. (3) No trees or shrubs could be destroyed, cut, or removed from the restricted area, except as might be incidental to a permitted occupation or use of the property, or required for reasons of sanitation and disease control, and except for selective cutting of timber by methods prescribed by written permit from the highway commission. (4) Lots used, leased or sold within the restricted area for residential purposes had to have a frontage on the adjacent highway of not less than 300 feet for each residence.

Land within the restricted area could be used for the following purposes:
(1) General crop or livestock farming including construction, erection, maintenance and repair of buildings incident to such use, and construction, maintenance