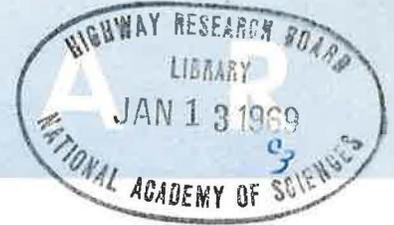


87 HIGHWAY RESEARCH CIRCULAR



Number 87 Subject Land Acquisition
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COMMITTEE ACTIVITY

Committee on Condemnation and Land Use Control, LS-1
Department of Legal Studies, Highway Research Board

LAND ACQUISITION
MEMORANDUM #195

195-1 NEW YORK COURT OF APPEALS UPHOLDS THE AWARD BY NEW YORK COURT OF CLAIMS OF CONSEQUENTIAL DAMAGES TO REMAINING PROPERTY FOR PARTIAL TAKING OF RESIDENCES FOR HIGHWAY, BASED ON LOSS OF PRIVACY AND SECLUSION, A LOSS OF VIEW, THE TRAFFIC NOISE, LIGHTS AND ODORS

The aftermath of this condemnation of a portion of the residential property and the construction of the highway section is described in the opinion of the Court of Claims in the following language:

"As a result of the appropriation, a new highway has been constructed which crosses Old Mill Brook at a point westerly of claimants' residence and continues across the westerly part of the claimants' premises at a distance of about 200+ feet from said residence. In place of the beautiful view of forest and mountain, which claimants could see from their westerly windows and living areas on the west side of their residence, has been substituted the new highway supported by an embankment approximately 27 feet above grade level at its crossing of Old Mill Brook and averaging approximately 20 feet in elevation above the westerly lawns of claimants' property. All of the sylvan beauty afforded by the forest pre-existing the highway and the privacy and quiet it provided are gone for the State necessarily removed the trees in the course of constructing the new highway. The complete privacy and quiet the claimants enjoyed has been taken from them because the new highway presents a stream of automobile traffic with its attendant noise, lights, and odors."

In awarding the consequential damages for the partial taking of the residential property, the Court of Claims took into consideration the loss of privacy and seclusion, the loss of view, the traffic noise, lights and odors as factors causing consequential damages to the remaining property.

HIGHWAY RESEARCH BOARD

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In affirming the order of the lower courts the State of New York Court of Appeals commented on the problems and inconveniences which have resulted from the massive public highway construction in recent years. The highest court of the State expressed particular concern over the damage done to the quiet beauty of the once remote and inaccessible areas, as well as the intrusion of the seemingly endless line of asphalt and concrete into the enclave which many people have sought as surcease from the hustle and bustle of modern day life.

This home was located in a remote wooded area in the path of the Luzerne Road-Lake George Interchange. The area in which this colonial frame house was located consisted of generally high and beautifully wooded and landscaped land. The lower courts did not make a separate award for damages due to noise, but rather merely considered it as one factor in determining the decrease in value to the remaining property. The highest court observed that it would have been practically impossible for the lower courts to separate the noise element from the other elements which were considered-- the loss of privacy, seclusion, and view. Any reduction made would be purely arbitrary and at best speculative in affirming the order of the lower courts. The highest court referred to cases in this as well as in other jurisdictions which have recognized that, where there has been a partial taking of property of the kind present here, the noise element may be considered as one of several factors in determining consequential damages. (Ira Dennison v. State of New York, Court of Appeals No. 537).

195-2 THE LAW OF AIRSPACE, by Robert R. Wright

This recently published text is an outstanding work in this field, and will become a classic in its field. It is particularly timely because of the increasing use of airspace in connection with highways, railroads, and other public and private improvements. THE LAW OF AIRSPACE was authored by Robert R. Wright, Professor of Law, University of Arkansas, Fayetteville, Arkansas, and was published by the Bobbs-Merrill Company, Indianapolis, Kansas City, and New York.

Under a chapter heading, Airspace Ownership in Modern America, Professor Wright provides an enlightening discussion of conflicting legal theories that prevail in the field, some of the recent airport cases, the well-known railroad cases with some dramatic sidelights of fact, and the highway and bridge cases that are pertinent. To this he adds a section on applicable State legislation, and Federal statutes and regulations.

As is true with so many other fields of the law, it is necessary to provide a proliferation of nonlegal fact and to understand better the basis for legal judgment and legal opinion. The author makes use of this device throughout his text, but especially in a chapter identified as Socio-Economic Growth and the Principle of Change. Among other things, there is included a helpful catalog of airspace developments in the United States which should interest lawyer and layman alike.

A somewhat unusual chapter of the text deals with the valuation of airspace -- with problems of appraisal, appraisal techniques, the determination