

C-STORE VALUATIONS

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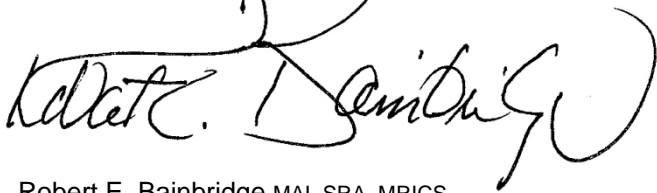
This collection includes the Lexis-Nexis summary of the BARNES Case, along with "Unintended Consequences: the Impact of Raised Medians" by John T. Schmick, featured in the January/February, 2008 issue of *Right of Way* magazine published by the International Right of Way Association. Also included is my article, "Retail Gas Properties and the Economics of Access" featured in the January/February, 2010 issue of *Right of Way* magazine published by the International Right of Way Association. You will also find a PDF copy of the PowerPoint® slides used in my presentation.

For additional information about current valuation issues in the retail convenience channel, you may wish to visit our website at www.cstorevalue.com. On the "Video Insights" page you will find short, appraisal-related video clips on these important topics:

1. Development Process
2. Supply and Demand
3. Hypermarket Competition
4. What Should be in an Appraisal of a C-Store: A Lender's Perspective
5. A Business Appraiser's Perspective
6. Retail Site Analysis
7. Below-Cost Selling

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All the Best.



Robert E. Bainbridge MAI, SRA. MRICS
C-Store Valuations



LexisNexis™ Academic

J. B. **BARNES**, Petitioner v. THE NORTH CAROLINA STATE **HIGHWAY COMMISSION**; H. T. **BUTTS**; HUGH B. **BEAL**, Trustee; SECURITY NATIONAL BANK OF GREENSBORO; STANDARD OIL COMPANY OF NEW JERSEY; W. O. **McGIBONY**, Trustee; THE FEDERAL LAND BANK OF COLUMBIA; and **LATTIE D. MATTHEWS**, Executrix of the Estate of M. A. **MATTHEWS**, Deceased,
Respondents

No. 536

SUPREME COURT OF NORTH CAROLINA

257 N.C. 507; 126 S.E.2d 732; 1962 N.C. LEXIS 389

July 10, 1962, Filed

PRIOR HISTORY: [***1]

Appeal by respondent State Highway Commission from *Clark, Special Judge*, September 11, 1961 Term of Harnett.

Special proceeding in accordance with the procedure prescribed by G.S. § 40-11 *et seq.*, as authorized by G.S. § 136-19, to recover compensation for the condemnation by respondent Highway Commission of a permanent easement for highway purposes over 3.17 acres of petitioner's land.

The 3.17 acres is part of petitioner's tract of 21.63 acres in Neill's Creek Township, Harnett County, about one mile north of Lillington. It was appropriated for highway purposes in connection with Project No. 8.14368, which involved the relocation and improvement of U. S. Highway No. 401 at its intersection with N. C. Highway No. 210 and U. S. Highway No. 421.

It was stipulated that "(t)he date of taking was January 1, 1960."

Prior to January 1, 1960, 1.32 acres of petitioner's 21.63-acre tract was subject to a 60-foot right of way previously acquired by the Highway Commission. This 60-foot right of way, on which #401 was then located, separated a triangular area containing 1.36 acres, referred to hereafter as Tract A and located east thereof, from the remaining area of 18.95 acres [***2] located west thereof.

[SEE ILLUSTRATION IN ORIGINAL]

In connection with Project No. 8.14368, the Highway Commission appropriated: (1) Tract A, being all of petitioner's land (1.36 acres) east of #401; and (2) Tract B,

containing 1.81 acres, consisting of a strip of petitioner's land west of and abutting on #401 and extending at varying widths, in the shape of a crescent, along petitioner's entire frontage (1662.78 feet) on #401. As indicated, all of petitioner's remaining 17.14 acres, after January 1, 1960, is the area west of Tract B.

The map (reproduced herewith), on which the judgment is based, shows (shaded areas) the location of Tracts A and B as of January 1, 1960, and the general location of the buildings on each tract.

Tract A, prior to January 1, 1960, was bounded on all three sides by paved highways. Since all of Tract A was appropriated by the Highway Commission, the questions for decision do not require further explanation as to original location and relocation of highways with reference thereto.

With reference to Tract B: Prior to January 1, 1960, proceeding north or northeast from Lillington, the highway then constituting #401, as it reached petitioner's land, [***3] was also #421 and #210; but shortly thereafter #401 diverged from #421 and #210 and curved to the left as indicated on the map. #421 and #210 continued on the original course until reaching and passing Tract A.

On Tract A, when appropriated, there were (1) a store building and adjacent premises theretofore leased by petitioner to respondent Butts, (2) a service station building and premises theretofore leased by petitioner to Standard Oil Company of New Jersey, and (3) a one-story, three-room frame dwelling. The premises covered by the Standard Oil Company lease were subject to a deed of trust to respondent Beal, Trustee, securing an indebtedness of petitioner to respondent Security National Bank of Greensboro.

Prior to January 1, 1960, there were located, west of and fronting on #401 as then located, (1) filling station and bulk oil premises theretofore leased by petitioner to M. A. Matthews, whose executrix is a respondent herein, and (2) premises occupied by a place of business referred to in the evidence as the Frozen Custard Place and indicated on the map by the word "Cafe." A portion thereof, but not the buildings or other improvements thereon, was appropriated by the Highway [***4] Commission on January 1, 1960, and is included in Tract B.

Tract B, together with other property, was subject to a deed of trust to respondent McGibony, Trustee, securing an indebtedness of petitioner to respondent Federal Land Bank of Columbia.

Hereafter, we refer to petitioner's remaining property (17.14 acres) as being on the west side of #401 as relocated; and we refer to traffic from Lillington toward Raleigh on #401 as northbound and to traffic from Raleigh toward Lillington on #401 as southbound.

Prior to January 1, 1960, #401 was a single (two-lane) highway designed and used for northbound and southbound travel. As relocated, #401 is a dual highway, having two lanes exclusively for northbound travel and two lanes exclusively for southbound travel.

Petitioner's remaining property (17.14 acres), including the portion subject to the Matthews lease and the portion occupied by the Frozen Custard Place, is west of and abuts on the lanes of #401 as relocated for southbound traffic.

After completion of Project No. 8.14368, proceeding north or northeast from Lillington, the highway now constituting #401, as it reaches petitioner's land, is also #421 and #210; but, after passing [***5] a portion of petitioner's land (where the Matthews and Frozen Custard Place premises abut), #401 diverges from #421 and #210 and curves to the left as shown on the map. From Lillington until it reaches "just about to the (north) end of the (petitioner's) property," #401 is a dual highway, the lanes for northbound traffic thereon being separated from the lanes for southbound traffic by a median or divider, with this exception: There is a break or crossover, "just a little bit south of the front of" the Matthews premises, where southbound traffic may turn left, cross over to the lanes for northbound traffic and then proceed north thereon. Northbound traffic may use this crossover but only for the purpose of reaching the lanes for southbound traffic and proceeding south thereon. Petitioner, entering #401 from his abutting property, must proceed south thereon in the lanes reserved exclusively for southbound traffic until he reaches said crossover, at which point he may cross over to the lanes for northbound traffic and proceed north thereon. Where #401 ceases to be a dual highway, "just about to the (north) end of the (petitioner's) property," petitioner may make a left turn, cross [***6] over and then proceed south on the lanes reserved exclusively for southbound traffic to any portion of his property abutting thereon. (Note: The foregoing is in accord with the evidence when taken in the light most favorable to petitioner.)

It was stipulated that the special interests and rights of respondents Beal, Trustee, Security National Bank of Greensboro, McGibony, Trustee, Federal Land Bank of Columbia, and Standard Oil Company of New Jersey "are readily determinable and not now in controversy, and these interests shall be transferred from the land to the fund allowed as damages herein, and then apportioned by the Court among the parties as their interests may appear."

Petitioner, after alleging facts as to the nature and extent of the damages he sustained on account of said Project No. 8.14368, asserted he was entitled to recover \$ 60,000.00 for the appropriation by the Highway Commission of Tract A and \$ 40,000.00 for its appropriation of Tract B.

Respondent Highway Commission, in its answer, denied particular allegations of the petition and thereafter asserted: "respondent does not resist prayer that just compensation be determined according to law by the applicable [***7] procedure set forth in Article 2 of Chapter 40 of the General Statutes insofar as the same is made to apply by G.S. 136-19, and respondent prays that benefits, both general and special, be assessed as offsets against the damages, if any, as is provided therein."

Respondents Butts and Matthews, in a joint answer, admitted the allegations of the petition and prayed that the damages to their leasehold interests be assessed.

The remaining respondents did not answer or otherwise plead.

Commissioners appointed by the clerk filed three separate reports, one assessing petitioner's damages at \$ 78,000.00, another assessing the damages of respondent Butts at \$ 20,000.00, and another assessing the damages of the Matthews estate at \$ 13,000.00. The clerk, in separate orders, confirmed each report. In addition, in a separate and final order of confirmation, the clerk ordered, adjudged and decreed "that the interested parties herein have and recover of the N. C. State Highway Commission the total sum of \$ 111,000 and that the costs of this action be taxed to the N. C. State Highway Commission."

At trial, the court submitted, and the jury answered, three issues, to wit:

"1. What gross sum [***8] are the parties in interest entitled to recover of the respondent, N. C. State Highway Commission, for the appropriation and damage to lands of the petitioner described in the petition, over and above all general and special benefits accruing to petitioner's land by reason of the appropriation for highway purposes?
ANSWER: \$ 77,000.00.

"2. What part of the above gross sum awarded is the respondent, H. T. Butts, entitled to recover? ANSWER: \$ 13,000.00.

"3. What part of the above gross sum awarded is the respondent, Lattie D. Matthews, Executrix of the Estate of M. A. Matthews, Deceased, entitled to recover? ANSWER: \$ 5,000.00."

The Highway Commission contended only the first issue should have been submitted and objected and excepted to the submission of the second and third issues.

The court, in accordance with the verdict, entered judgment providing, in pertinent part: "(t)hat respondent, State Highway Commission, pay into Court the sum of EIGHTY-FOUR THOUSAND, NINE HUNDRED NINETY-FIVE AND 16/100 DOLLARS (\$ 84,995.16) as full compensation to the petitioner, and the respondents, H. T. Butts and Lattie D. Matthews, Executrix of the Estate of M. A. Matthews, deceased, for the [***9] taking of the easement of right of way across said property of petitioner and the taking of all improvements located thereon and for all damages caused by the construction of the aforesaid State Highway Project." (Note: The gross sum of \$ 84,995.16 consists of \$ 77,000.00 plus \$ 7,995.16, the sum of \$ 7,995.16 being interest on \$ 77,000.00 at six per centum per annum from January 1, 1960, to September 23, 1961.)

Provisions as to the respective interests of petitioner and respondents other than the Highway Commission in said gross sum of \$ 84,995.16 are not pertinent to the questions presented on this appeal.

The Highway Commission excepted to said judgment and appealed.

DISPOSITION: New trial.

HEADNOTES:

1. Eminent Domain § 11 --

Instructions as to the measure of damages generally for the taking of a part of a tract of land in eminent domain, approved.

2. Eminent Domain § 2 --

While just compensation must be paid for the taking of land or any interest or easement appurtenant thereto, where a part of a tract of land is taken for highway purposes, any damages resulting to the remaining land from traffic regulations promulgated in the interest of public safety are restrictions [***10] imposed on all members of the public alike in the exercise of the police power, and do not constitute a taking for which compensation must be paid.

3. Eminent Domain § 2; Eminent Domain § 5 --

A part of petitioner's land was taken to widen a two-lane highway into a four-lane highway with a median dividing the two northbound and two southbound lanes. *Held:* Any diminution in value of the businesses located on petitioner's remaining land by reason of the fact that there was direct access therefrom to the southbound traffic lanes only, so that northbound traffic had no direct access to such businesses, is not damage for which compensation may be recovered, since such damage results not from the taking of any interest in the land but from a police regulation governing the use of the highway by the public generally.

4. Eminent Domain § 2; Eminent Domain § 5 --

Where the Highway Commission constructs curbing along a highway adjacent to petitioner's land so as to limit access to the land except at definite spaces provided in the curbing, petitioner is entitled to recover compensation to the extent, if any, such curbing substantially impairs free and easy access [***11] to his land and the improvements thereon. Such restriction does not constitute the highway a limited access highway within the purview of G.S. 136-89.48, *et seq.*, the right of access to abutting land not being entirely cut off.

5. Eminent Domain § 11 --

In proceedings to assess compensation for the taking of a part of a tract of land for highway purposes, the court has discretionary power to submit to the jury in addition to the issue of damages resulting from the entire taking, issues as to what portion of the damages should be allocated to leasehold estates held by lessees of the owner, there being

no dispute as to the ownership of the leasehold estates or their validity G.S. 40-12, G.S. 40-23.

6. Eminent Domain § 11 --

Chapter 1025 of the Session Laws of 1959 does not apply to any taking or causes of action arising prior to 1 July 1960.

COUNSEL: *M. O. Lee, Wilson & Bain and Wiley F. Bowen for petitioner appellee.*

Attorney General Bruton, Assistant Attorney General Lewis, Millard R. Rich, Jr., Member of Staff, and Bryan & Bryan for respondent State Highway Commission, appellant.

*Robert Morgan for respondents Butts and Matthews, appellees [***12] .*

JUDGES: Bobbitt, J.

OPINION BY: BOBBITT

OPINION: [*513] [**737] As to the measure of damages, the court instructed the jury, *inter alia*, as follows: ". . . where only a part . . . of a tract of land is appropriated by the State Highway Commission for public purposes, the measure of damages in such proceeding is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of what is left immediately after the taking. The items going to make up this difference embrace compensation for the part taken and compensation for injury to the remaining portion which is to be offset under the terms of the controlling statute by any general or special benefit resulting to the landowner from the utilization of property taken for a highway." This instruction is in accord with our decisions. *Proctor v. Highway Commission*, 230 N.C. 687, 691, 55 S.E. 2d 479; *Robinson v. Highway Commission*, 249 N.C. 120, 105 S.E. 2d 287, and cases cited.

There is no controversy as to petitioner's right to recover compensation for the part taken, to wit, Tract A (including improvements thereon) and Tract B.

The primary question for decision is [***13] whether, in determining the injury, if any, to the remaining portion (17.14 acres) of his land, petitioner is entitled to compensation for diminution in the value thereof [*514] caused by the fact he now has *direct* access therefrom only to the lanes of #401 (as relocated) reserved exclusively for southbound traffic and only southbound traffic has *direct* access thereto. The question is drawn sharply into focus by exceptions and assignments of error relating to portions of petitioner's pleading and evidence and to portions of the court's instructions, including the allegations, evidence and instructions set forth in the following three paragraphs.

Petitioner alleged his remaining property, particularly the portions occupied by the Matthews filling station and bulk oil premises and the Frozen Custard Place, was greatly

damaged "by the division of the lanes of travel in such a manner that said property can only attract and serve potential customers traveling in a southerly direction along said highway."

Petitioner offered evidence, which, as stated by the court, tended to show "that the sum of \$ 40,000.00 damage to the remainder of his tract which was not taken consisted [***14] primarily of diminution in value because of the way in which the highway was constructed, particularly the construction of what has been referred to as a median strip, . . ."

The court instructed the jury that petitioner had offered evidence tending to show that, after the taking on January 1, 1960, #401 (as relocated) "had four lanes divided by an elevated median strip or divider, ten (10) to twelve (12) inches high above the surface of the highway and that traffic bound in only one direction had access to his property; further that the State Highway Commission had constructed elevated islands, 10 to 12 inches high above the surface of the highway, in front of . . . the Matthews property and the Frozen Custard property, so as to control and restrict access of the petitioner and others to the property. That if the petitioner has so satisfied you of this by the greater weight of the evidence then the court instructs you that this is relevant as circumstances tending to show diminution in the overall fair market value of the property *as an element* of damage to the remainder of that tract of land by reason of the location and construction of the highway." (Our italics)

"The question [***15] of what constitutes a taking is often interwoven with the question of whether a particular act is an exercise of the police power or of the power of eminent [**738] domain. If the act is a proper exercise of the police power, the constitutional provision that private property shall not be taken for public use, unless compensation is made, is not applicable." McQuillin, Municipal Corporations, Third Edition, Volume 11, § 32.27. "The state must compensate for property rights taken by eminent domain; damages resulting from the exercise of police power are noncompensable." *State v. Fox* (Wash.), 332 P. 2d 943, 946; *Walker v. State* (Wash.), 295 P. 2d 328, and cases cited.

[*515] Petitioner contends the Highway Commission, by the relocation of #401 so that he now has direct access only to the lanes thereof reserved exclusively for southbound traffic, has appropriated a property right for which, under the law of eminent domain, he is entitled to compensation. The Highway Commission contends the relocation of #401 and the separation of the lanes for northbound and southbound traffic by a median is a traffic regulation adopted in the exercise of the police power vested in [***16] it by G.S. Chapter 136, Article 2, and injury to petitioner's remaining land caused thereby is not compensable.

Prior to January 1, 1960, the paved portion of #401 was twenty-four feet. Petitioner testified the traffic on the highways then passing his property "was tremendous." Project No. 8.14368, in its entirety and with reference to #401, was designed to promote the safety and convenience of the public by reducing the hazards of travel and expediting the flow of traffic. Petitioner does not allege, nor does he contend, the public safety and

convenience were not served thereby.

"An individual proprietor has no right to insist that the entire volume of traffic that would naturally flow over a highway of which he owns the fee pass undiverted and unobstructed. In fact, while under some circumstances and conditions he has a right of access to and from his own premises, he has no constitutional right to have anyone pass by his premises at all." Nichols on Eminent Domain, Third Edition, Volume 2, § 6.445; *Board of Com'rs. of Santa Fe County v. Slaughter* (N.M.), 158 P. 2d 859; *City of Memphis v. Hood* (Tenn.), 345 S.W. 2d 887.

As stated by Kyle, J., in *Muse v. Mississippi* [***17] *State Highway Commission*, 103 So. 2d 839: "Multiple lane highways have been constructed in all parts of the country; and median strips or neutral zones between lanes of traffic on multiple lane highways, with interchanges or crossovers at reasonable intervals to enable motorists to pass from one traffic lane to another, have been authorized and provided for in the standards of design adopted for the construction of such highways. Such median strips or neutral zones provide for a complete separation of traffic moving in opposite directions, and reduce the hazards incident to motor vehicle travel; and the establishment of such median strips or neutral zones have been recognized as a proper exercise of the police power."

In *Walker v. State, supra*, the plaintiffs owned property fronting five hundred feet on the south side of a primary four-lane state highway on which they operated a motel. The State Highway Commission installed a concrete center line curb, thereby preventing direct access from the plaintiffs' property to the lanes for westbound traffic. In [*516] holding that the plaintiffs were not entitled to injunctive relief or compensation, the court, in opinion by [***18] *Weaver, J.*, said:

"Plaintiffs have no property right in the continuation or maintenance of the flow of traffic past their property. They still have free and unhampered ingress and egress to their property. Once on the Highway, to which they have free access, they are in the same position and subject to the same police power regulations as every other member of the traveling public. Plaintiffs, and every member of the traveling public subject to traffic regulations, have the same right of free access *to* the property *from* the highway. Re-routing and diversion [**739] of traffic are police power regulations. Circuity of route, resulting from an exercise of the police power, is an incidental result of a lawful act. It is not the taking or damaging of a property right.

"We have found no authority, nor has any been called to our attention, which allows, to the abutting property owner, damages allegedly arising from statutes or ordinances (a) establishing one-way streets; (b) forbidding 'U' and left turns; or (c) authorizing the use of other suitable traffic-control devices deemed necessary by the proper authorities to warn, regulate, and guide traffic upon public [***19] thoroughfares.

"Although an abutting property owner may be inconvenienced by one-way traffic regulation immediately in front of his property, he has no remedy if such regulation be

reasonably adapted to the benefit of the traveling public. The property owner must point to illegality, fraud, or arbitrary or capricious conduct."

In accord: *Department of Public Works and Bldgs. v. Mabee* (Ill.), 174 N.E. 2d 801; *Iowa State Highway Commission v. Smith* (Iowa), 82 N.W. 2d 755, 73 A.L.R. 2d 680; *State v. Ensley* (Indiana), 164 N.E. 2d 342; *State v. Fox* (Wash.), *supra*; *People v. Ayon* (California), 352 P. 2d 519, *certiorari* denied *sub nomine Yor-Way Markets v. California*, 364 U.S. 827, 81 S. Ct. 65, 5 L. Ed. 2d 55; *State v. Linzell* (Ohio), 126 N.E. 2d 53; *In re Appropriation of Easements for Highway* (Ohio), 137 N.E. 2d 595, appeal dismissed, 131 N.E. 2d 395. See Annotation, "Abutter's Access-Traffic Regulation," 73 A.L.R. 2d 689, 692, where the author states: "In no case has a court held unreasonable, on account of interference with access, a regulation of the general direction, flow, or division of all traffic on a given street or highway."

As stated [***20] in *People v. Ayon, supra*: "The compensable right of an abutting property owner is to direct access to the adjacent street and to the through traffic which passes along that street. (Citation) If this [*517] basic right is not adversely affected, a public agency may enact and enforce reasonable and proper traffic regulations without the payment of compensation although such regulations may impede the convenience with which ingress and egress may thereafter be accomplished, and may necessitate circuitry of travel to reach a given destination."

Except as noted below, petitioner, from his entire frontage, has direct and unrestricted access to and from the lanes of #401 (as relocated) reserved exclusively for southbound traffic. The Highway Commission (as indicated in the quoted portion of the court's instructions) constructed curbing at certain points in front of that part of petitioner's remaining property occupied by the Matthews filling station and bulk oil premises and the Frozen Custard Place. In this way, entrance into and exit from these places of business is restricted to the spaces provided therefor.

"While entire access may not be cut off, an owner is not entitled, [***21] as against the public, to access to his land at all points in the boundary between it and the highway; if he has free and convenient access to his property and to the improvements thereon, and his means of ingress and egress are not substantially interfered with by the public, he has no cause of complaint." 39 C.J.S., Highways § 141; Elliott on Roads and Streets, Fourth Edition, Volume II, § 882; *Iowa State Highway Commission v. Smith, supra*, and cases cited; *State v. Ensley, supra*; Annotation, "Traffic regulations which interfere with or restrict access to and from abutting property," 100 A.L.R. 491.

[**740] With reference to said restriction on direct access between said places of business and the lanes of #401 (as relocated) reserved exclusively for southbound traffic, plaintiff is entitled to recover compensation on account of injury to this portion of his remaining property to the extent, if any, such curbing substantially impairs free and convenient access thereto and the improvements thereon.

Petitioner, in his brief, states: "In the cases cited and relied on by the appellant, all that was done was to divide the lanes of travel or establish one-way traffic, etc., [***22] and no additional land of the abutting owner had been taken. Certainly if the appellant in this case had only divided the lanes of travel in the existing right of way and had not taken additional land, the petitioner would not have been entitled to recover damages for the exercise of the police power in dividing the lanes of travel. In the present case, however, additional land was taken and in the reconstruction of said highway the lanes of travel were divided."

In *State v. Ensley, supra*, a strip taken off the entire east side of the Ensley property, to wit, the frontage on Keystone Avenue as originally located, was appropriated "for the purpose of widening Keystone [*518] Avenue and constructing thereon" an improved and divided highway on which the remaining portion of the Ensley property fronted. A similar factual situation was involved in *People v. Ayon, supra*, and in *City of Memphis v. Hood, supra*, and in *In re Appropriation of Easements for Highway, supra*.

Here, #401 as relocated is essentially the same highway. The Highway Commission's original right of way is included in the right of way on which #401 is now located. All of petitioner's remaining [***23] property is west of said highway. Whether petitioner is entitled to compensation for diminution in the value of the remaining portion (17.14 acres) of his land by reason of the fact he now has *direct* access only to the lanes of #401 (as relocated) reserved exclusively for southbound traffic and only southbound traffic has *direct* access to his property does not depend upon whether a portion of his land was appropriated in connection with Project No. 8.14368. The separation of the lanes of #401 for northbound traffic from the lanes thereof for southbound traffic was and is a valid traffic regulation adopted by the Highway Commission in the exercise of the police power vested in it by G.S. Chapter 136, Article 2, and injury, if any, to petitioner's remaining property *caused thereby* is not compensable. We conclude, therefore, that the instruction that injury, if any, *caused thereby* was for consideration by the jury as an element of petitioner's damages, and the admission of evidence as to the injury to the remaining portion (17.14 acres) of petitioner's property *caused thereby*, were erroneous and entitle the Highway Commission to a new trial.

The present factual [***24] situation is quite different from that considered in *Hedrick v. Graham*, 245 N.C. 249, 96 S.E. 2d 129, and in *Kirkman v. Highway Commission, ante*, 428, S.E. 2d . These decisions involved limited access highways where ingress to and egress from the abutting land was entirely cut off and the owner's right of direct access completely destroyed.

Shortly after our decision in *Hedrick v. Graham, supra*, the General Assembly enacted Chapter 993, Session Laws of 1957, now codified as G.S. § 136-89.48 *et seq.* Petitioner contends #401 (as relocated) is a "controlled-access facility" as defined therein.

In *Hedrick v. Graham, supra*, the plaintiff contended the defendants, *under existing statutes*, had no authority to condemn his right of direct access to and from the highway on which his property abutted. This Court held the State Highway Commission had

implied statutory authority to do so. The 1957 Act conferred *express* statutory authority to do so. In our opinion, and we so hold, a "controlled-access [**741] facility," as defined in the 1957 Act, is a limited access highway where the Highway Commission acquires the legal right to cut off entirely [***25] the abutting [*519] owner's right of direct access to and from the highway on which his property abuts.

Here, the Highway Commission has not designated #401 (as relocated) as a "controlled-access facility." It asserts no right to bar petitioner from direct access to the traffic lanes of #401 (as relocated) on which his property abuts. The judgment does not purport to vest such rights in the Highway Commission. It adjudges the Highway Commission has acquired an easement of right of way over Tracts A and B "for highway purposes."

Petitioner cites *Hiatt v. Greensboro*, 201 N.C. 515, 160 S.E. 748, and *Thompson v. R. R.*, 248 N.C. 577, 104 S.E. 2d 181. These decisions are discussed by *Parker, J.*, in *Smith v. Highway Commission*, *ante*, 410, S.E. 2d , and further discussion is unnecessary. Suffice to say, they involve different factual situations and different legal principles are applicable.

Since it is probable the same question will arise at the next trial, we consider the Highway Commission's exceptions and assignments of error directed to the court's submission of the second and third issues.

The Highway Commission contends only the first issue should [***26] have been submitted; that the second and third issues involved matters with which it was not concerned; and that the respective interests of petitioner, Butts and the Mattews estate, *inter se*, in the gross amount the Highway Commission is required to pay, should be subsequently determined. Appellees contend it was for the court, in its discretion, to determine whether all issues should be determined in a single trial.

G.S. § 40-12 required the petitioner to state in his petition the names of all parties "who own or have, or claim to own or have, estates or interests in the said real estate," and that summons be served "on all persons whose interests are to be affected by the proceedings." *Hill v. Mining Co.*, 113 N.C. 259, 18 S.E. 171; *Raleigh v. Edwards*, 234 N.C. 528, 67 S.E. 2d 669; *Tyson v. Highway Commission*, 249 N.C. 732, 107 S.E. 2d 630. While this statute contemplates the respective interests of all parties who claim an estate or assert an interest in the real estate are to be determined in such proceedings, it contains no provision as to *when* or *in what manner* such determination is to be made.

G.S. § 40-23 provides: "If there are adverse and conflicting [***27] claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court *may* direct the money to be paid into the said court by the corporation, and *may* determine who is entitled to the same and direct to whom the same shall be paid, and *may* in its [*520] discretion order a reference to ascertain the facts on which such determination and order are to be made." (Our italics)

G.S. § 40-23 refers specifically to "adverse and conflicting claimants." Manifestly, the

provision that the court "may determine who is entitled to the same and direct to whom the same shall be paid" contemplates a situation where such determination may be made *as a matter of law*. It does not deprive any claimant of his right to a jury trial as to controverted issues of fact. Moreover, the provision that the court "may in its discretion order a reference to ascertain the facts on which such determination and order are to be made" does not deprive any claimant of his right to except to an order of compulsory reference and preserve his right to a jury trial as to controverted issues of fact. See *Light Co. v. Horton*, 249 N.C. 300, 106 S.E. 2d 461. G.S. [***28] § 40-23 contains no mandatory provision as to *when* or *in what manner* the respective interests are to be determined.

"The rule is generally recognized (though not invariably followed) that, where there [**742] are several interests or estates in a parcel of real estate taken by eminent domain, a proper method of fixing the value of, or damage to, each interest or estate, is to determine the value of, or damage to, the property as a whole, and then to apportion the same among the several owners according to their respective interests or estates, rather than to take each interest or estate as a unit and fix the value thereof, or damage thereto, separately." 18 Am. Jur., Eminent Domain § 239; Nichols on Eminent Domain, Third Edition, Volume 4, § 12.36(1); Lewis on Eminent Domain, Third Edition, Volume II, § 716; Annotations, 69 A.L.R. 1263 and 166 A.L.R. 1211.

In accordance with this general rule, the court properly submitted the first issue, relating to the gross amount the Highway Commission is required to pay on account of the appropriation of the land and the improvements thereon without regard to the separate interests of Butts, the Matthews estate, and other respondents. [***29] The court was required, then or later, to order disbursement of the gross amount the Highway Commission was required to pay. To determine what part thereof, if any, should be paid to Butts and the Matthews estate, it was necessary, then or later, that the damages each had suffered be determined.

Tract A included the land and improvements subject to the Butts lease. Butts lost his lease by reason of the appropriation by the Highway Commission of Tract A. To the extent he suffered loss on account thereof, Butts is entitled to compensation. Tract B included a portion of the land, but not the improvements thereon, subject to the Matthews lease. To the extent the appropriation of Tract B decreased the value of the Matthews lease, the Matthews estate suffered loss for [*521] which it is entitled to compensation. There is no controversy as to the validity of the Butts lease or of the Matthews lease or as to any of the terms thereof. The second and third issues relate solely to the damage, if any, suffered by the lessees; and much of the evidence relevant and competent in relation to these issues was also relevant and competent in relation to the first issue.

Under these circumstances, [***30] whether the issues relating to the damages, if any, sustained by Butts and the Matthews estate, should be determined by the same jury upon the same evidence in a single trial, or deferred for trial by another jury upon other evidence, was determinable by the court in the exercise of its discretion. Hence, in our opinion, and we so decide, appellant's exceptions and assignments of error to the

submission of the second and third issues are without merit.

It should be noted that we are not presently concerned with a factual situation where the pleadings raise issues (1) as to who owns the land or particular interests therein, or (2) as to the validity or terms of a contract, lease, mortgage, etc. Ordinarily, the trial of such collateral issues, involving a determination of *what* the respective claimants own, should be separate from the trial to determine the gross amount the Highway Commission is required to pay.

In *Light Co. v. Horton, supra*, the controversy between respondents Horton and respondents Strikeleather, *et al.*, related to what interest each owned in the condemned land. In *Miller v. Asheville*, 112 N.C. 759, 16 S.E. 762, cited by appellant, the property [***31] was owned by a life tenant and (contingent) remaindermen; and the only factual element, in determining their respective interests in the gross amount, related to the life expectancy of the life tenant. See also, *Miller v. Asheville*, 112 N.C. 769, 16 S.E. 765. In *Meadows v. United States* (C.C.A. 4th), 144 F. 2d 751, the question was whether the court erred in submitting one issue as to the gross amount rather than separate issues (1) as to the land and improvements and (2) as to the timber.

We have considered the decisions from other jurisdictions cited by appellant. Different statutory provisions were involved [**743] and discussion thereof would serve no useful purpose.

It seems appropriate to refer to the comprehensive statute, Session Laws of 1959, Chapter 1025, entitled, "AN ACT TO AMEND G.S. 136-19 AND TO ADD A NEW ARTICLE TO CHAPTER 136 OF THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEDURE APPLICABLE TO THE STATE HIGHWAY COMMISSION." However, this statute does not apply "to any takings or causes of actions arising prior to the effective date" thereof, to wit, July 1, 1960. Present decision relates to the law applicable on January 1, 1960.

[*522] Appellant's [***32] remaining exceptions and assignments of error relate to questions as to the competency of certain evidence. Since the questions presented thereby may not arise at the next trial, discussion thereof is deemed unnecessary.

On the ground stated above, a new trial is awarded.

New trial.

Unintended Consequences: The Impact of Medians



BY JOHN T. SCHMICK

Mention the word median to an appraiser and the first thoughts that come to mind are the use of police power, not compensable and settled law. The reality is that an appraiser should be thinking about the unintended consequences of medians and their impact on real estate markets. Ultimately, from an appraisal point of view, the issue of a median revolves around the conflict between how appraisers measure market changes in value and a possible legal requirement to ignore those changes. What is undeniable is that medians are only one factor, within a larger project, that impact market value. The challenge to the appraiser is to recognize and measure the magnitude of that factor.

In most states, a search of past litigation will turn up any number of cases where judicial decisions reflect a thought process that equates the construction of a median to the exercise of police power rather than the exercise of eminent domain power. For example, if a median is constructed in an existing street right of way with no need to take land from the adjacent private property, the argument is whether the city, county or state has that right as part of its existing right of way. However, in cases where the street must be widened and/or rebuilt and a new median is included in the project, one can argue that construction of the median cannot be accomplished without additional land being condemned and taken from the adjacent private property. Consequently, the median and the land taken are so inextricably connected that the median itself, as a component of the total road project, becomes a factor in the overall damage measurement to the adjacent property. By taking a broader viewpoint of road projects with new medians, we find that both sides misidentify the important issues in this type of eminent domain case.

To understand the dilemma for the appraiser, one has to understand what medians are intended to accomplish. In their basic, functional use, medians are designed to change traffic patterns. This often results in higher traffic speeds and the need for more control of street access and vehicle movement. Medians are generally described as safety features that will result in fewer vehicle crashes and better pedestrian movement in high traffic areas. However, appraisers recognize that changing traffic patterns influences market values and marketability of land in the area of the project. It is well recognized that reduced access can have a negative impact on value. As a result, the appraiser is caught between the responsibilities to measure how real estate markets react to a road project that includes a new median, and measuring only those parts of the total project that condemners argue can or cannot be recognized in an eminent domain case. This conflict may bring the appraiser perilously close to violating Uniform Standards of Professional Appraisal Practice (USPAP) as well as state appraiser license rules when appraisal theory and legal theory collide. While appraisers can avail themselves of legal instructions from clients as to local legal practice, the appraiser is also walking into a hypothetical, and unrealistic, condition when instructed to ignore some part of the market reaction to a specific project attribute. At the same time, it provides an opportunity for appraisers to educate all parties involved as to the inherent conflict between legal and appraisal theories presented by such cases. At the very least, full disclosure of legal instructions to ignore certain parts of a road project is required.

Market Realities

As mentioned, road projects with new medians are designed to change traffic patterns. Frequently, this involves the need to accommodate higher levels of traffic and/or to reduce congestion in a given area. An example would be an area where vehicles turning left from a traffic lane back up traffic during periods of heavy volume. Medians may be used to control where traffic can turn left, thereby controlling traffic into and out of a particular property or area. A limited number of medians, combined with controlled intersections, may be a good traffic management tool in a high traffic area, but to the extent that all properties do not have the same level of access, there will be winners and losers for the available consumer dollars when a new median is installed. A classic example of this concept is around a shopping mall that has an interior perimeter road routing traffic through specific controlled intersections for access to primary streets. Small, independent properties with reduced access may be inconsistent with the new road and traffic patterns. If they cannot effectively compete in the market as a result of the road project and new median, they will eventually be combined, either voluntarily or involuntarily, into larger sites with better access.

Closely associated with new medians as a part of road projects is the reduction in curb cuts or driveways providing access to the main road. If the goal of the road project is to increase traffic flows in terms of volume and/or speed, then reducing the number of direct access points is consistent with that goal. In developed areas, there is a trend with this type of road project to combine driveways for smaller properties. However, that technique has its own specific legal and valuation issues which will not be addressed here.

Markets have always reacted to changing traffic patterns. When a new interchange is built on a major highway, development soon follows since a new area with good highway access has been created. Generally, we find commercial uses (and users) locating closest to the highway interchange and residential uses locating farther away. Conversely, when a highway interchange is closed or removed, existing commercial development usually suffers, then declines. We often find the same phenomenon in neighborhoods when a street is upgraded from a local collector street to an arterial street. The increases in visibility to higher levels of traffic attract businesses as long as there is good accessibility. Take away the accessibility, however, and all you have is a second-rate noisy corridor. The question is not whether markets react to changing traffic patterns, but how they react. Since most medians are found

in commercial areas, the focus of this discussion will be on commercial property, particularly retail properties.

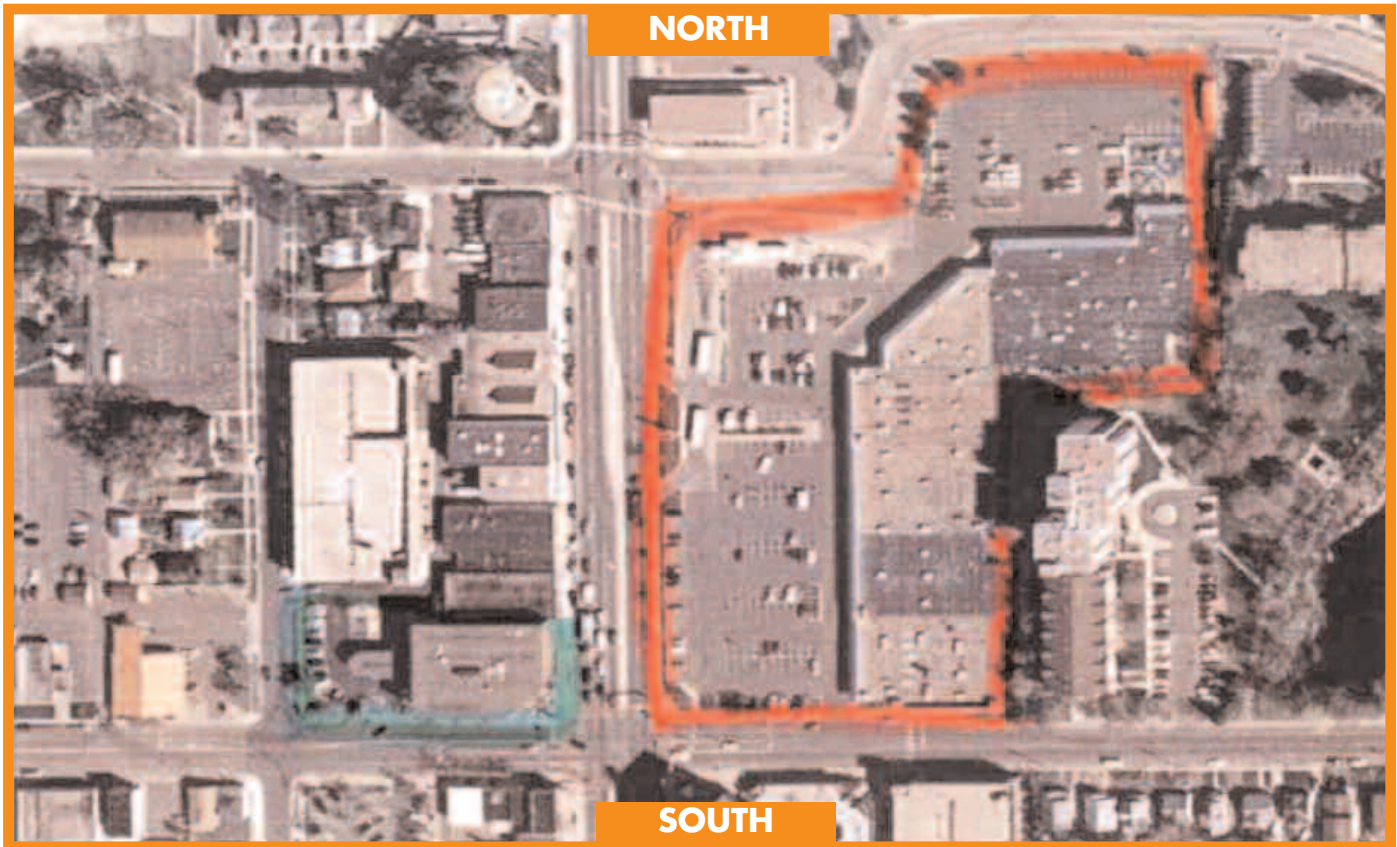
Furthermore, the impact of a new median is relative to the overall development of the neighborhood when it is constructed. If the land on either side of the road is vacant before the new median is constructed, developers can adapt their project plans to accommodate the road and other infrastructure. The shapes and sizes of lots to be platted, and interior streets within the project, can be designed to minimize the impact of a median. However, in older or fully developed areas, existing platted lot shapes, lot sizes and access points cannot easily be changed. Existing buildings were designed for two-way traffic and oriented based on existing setback requirements. When a road is widened and a new median incorporated in these areas, many small buildings become a nonconforming use. Consequently, economic viability is challenged and obsolescence increases. In short, the highest and best use of the site is negatively impacted.

“there will be winners and losers for the available consumer dollars when a new median is installed.”

The installation of a new median in front of a property creates an immediate change in accessibility. Left-turning traffic must now turn right and proceed to the next available left turn or continue to the next opening in the median to turn around. This may or may not be an intersection with another street and may or may not be a controlled intersection. In either case, a driver must either perform a U-turn or turn left/right and follow an alternative route back to the planned destination. If the goal of the road

project with a new median installation is to increase traffic flow, it is counterproductive to encourage a high volume of U-turning vehicles. More difficult access affects traffic patterns that may begin to shift to alternative routes. Small retail properties are generally the hardest hit by this change in traffic patterns as competing commercial areas, with better access on the alternate route, will draw business away. What was once a top tier commercial site can slip to a second or third tier commercial site.

The diminished accessibility created by medians can be corrected by building a service road that provides full turning access to the individual properties but channels traffic to controlled access points to the main street or road. However, this means taking more land area to build the new street. If a service road is placed adjacent to the main road, it will often require either removing some of the existing buildings, or it may end up being right at the front door of an existing building. If the service road is placed behind the front row of adjacent properties, the access to those properties may be inconsistent with the existing building's orientation on the lot. In either case, the market views the property as being less than optimal given market standards for top tier commercial retail properties.



Example #1: West side of street shows existing development while east side of street shows market reacting to median through assemblage and redevelopment of larger retail property with significant access point on side street. Large building on west side, south end has reoriented front access to rear of property away from median.

As the full extent of the overall road project, including the new median component, becomes widely known, the market will recognize that normal development patterns have been affected. Smaller sites with commercial or retail buildings will generally exhibit the earliest warning signs of changing neighborhood dynamics, as the decline in business due to reduced accessibility leads to more vacant buildings and/or deferred maintenance of those properties. While appraisers often talk about a reduced functional utility in those properties, what really occurs is a change in highest and best use. As sales volumes decline in the smaller retail properties, fewer tenants and types of tenants are willing to locate in the property which, in turn, affects the amount of rent that can be charged. This directly impacts the market value of the property. As the number and type of tenants decline from national top credit tenants (tier one) to regional tenants (tier two), and/or to local tenants with less credit worthiness (tier three), the economic obsolescence of the property increases. As a result, the overall neighborhood retail 'pulling power' can suffer.

More importantly, the downward pressure on rents and possible increased market vacancy can create a negative environment for smaller properties, which has a broader market impact, because neighborhood land use patterns are also affected. While occurring

over time, the negative impact of a median may begin or accelerate the economic decline of existing smaller commercial properties in that neighborhood or commercial corridor. As neighborhood commercial activity declines, the area becomes a target for eventual redevelopment into larger properties that better fit with the new traffic patterns. Neighborhood life cycle patterns are disrupted and/or accelerated from stable to declining, and finally to redevelopment. The length of time for completion of this cycle is different for each neighborhood. In some cases, long term comprehensive growth plans of cities must be updated, and zoning changes may be needed in order to address the changing highest and best use of the individual properties, as well as the overall neighborhood.

To the extent that local government units do not act to address the declining neighborhood commercial activity, market participants themselves can initiate redevelopment. Developers can either assemble property, or request the local city use its power of eminent domain to assemble property, for a larger development that is more consistent with the city's investment in infrastructure. Consequently, road projects with new medians are sometimes viewed by the market as the beginning of a long term drive, or opportunity, to facilitate redevelopment in a neighborhood.



Example #2: Properties on streets with medians develop alternative access points to address one direction front access.

Appraiser's Dilemma

The appraiser who is asked to offer an opinion of value on the impact of a road project that includes a new median faces a real dilemma. Quite often, the appraiser is directed NOT to measure a certain component of the public project that the client believes is not compensable under the current law in that jurisdiction. The appraiser, however, has the responsibility to remain unbiased when measuring the impact of any public project on the subject property. To artificially eliminate one component of the overall larger project and attempt to measure just the remaining components is unrealistic in terms of market data. When was the last time the market reacted to the impact of only half a project? If the appraiser does not know what the full impact of the project is on a given property, how can that appraiser accurately measure some arbitrary or defined percentage of the project? For that matter, who determines what percentage of a given road project a new median represents?

To accept an assignment under this condition requires the disclosure, under appraisal professional standards, of either an extraordinary assumption or a hypothetical condition. In either case, the measurement of damages becomes less than credible, as

only part of the full impact is being measured. Consequently, the triers of fact will have a much more difficult time evaluating the testimony because they are left to wonder what the full impact is and what relationship the appraiser's opinion on damages has to the full impact. If you don't have the full picture, it is hard to evaluate the significance of a small part of the picture.

Realistically, there is an increased risk of error in measuring damages when part of the project is ignored. Real property markets, with their lack of full and equal knowledge for all participants, are not efficient. While searching for market data to measure the change, or impact, a project has on a property, the appraiser needs to be cognizant of interrelationships and/or overlapping impacts within the available data. By measuring the full impact of a project, the appraiser is in a position to identify all the major components of the project and analyze the importance the market places on each component. To that extent, the appraiser can establish a hierarchy of impacts and the relationship each has on the other. For example, in one case a median may have the greatest impact on access while in another case, the speed and volume of traffic may make access more difficult, rendering the median of secondary importance. Each is a factor in the overall project. By focusing only on what is termed 'compensable' under state or case law, the appraiser often fails to fully understand the total impact of a

project on the property. In the end, the appraiser's analysis for allocation of total damages between what is classified as 'compensable' and 'non-compensable' increases both the information available to the trier of fact and the appraiser's ability to articulate the impact of the project

It is a rare appraisal report that discusses the intended goals of a new road project. Appraisers generally describe the physical attributes of the eminent domain taking and focus on the incremental change in value that the project may have caused. However, changes in traffic patterns that include reduced access, higher traffic volumes, increased traffic speed and alter traffic flow cannot be ignored. Appraisers often value a property based on the concept of 'the day before and the day after.' This simple concept assumes the project did not exist the day before the date of taking but does exist the day after the date of taking. Consequently, it is easy to miss the long term unintended consequences of a road

project with a new median. However, value is a forward looking concept based on the past and the current environments. Perceptions of changing traffic patterns by market participants do impact anticipated future uses, development patterns and values. As a result, appraisers should take a broader viewpoint of this type of assignment to identify the full impact of the project on the adjacent properties.

Earlier, I stated that an assignment to estimate the impact on a property caused by a road project with a new median is an opportunity to educate the parties involved with the case. Only by measuring the full impact that a partial taking has on a property will the parties recognize all of the other issues raised by the taking. Certainly, allocation of the full impact among the various issues provides all parties with a better understanding of the facts of the case. More importantly, it forces appraisers to consider whether or not the issue they were instructed to ignore is, in fact, an important one. For example, if a partial taking changes on-site traffic patterns such that customers can enter the property, but cannot turn around to exit, or have no place to park, can a case be made that the median is causing all the damage? Can the appraiser reasonably separate the impact of the median alone from the on-site traffic/parking problem? Isn't it possible that some issues will overlap?

Ultimately, if appraisers take a broader valuation viewpoint, including the issue of new medians as one of many components of the larger road project, they will recognize the impact and change to the highest and best use of individual properties and the neighborhood overall. Given the goal of road projects with new medians to change traffic patterns and traffic behavior, it is clear that appraisers have a responsibility to recognize the market reaction to those changing traffic patterns and the impacts on individual properties. New medians, as a part of a larger road project, may be good traffic management tools, but their market impacts are much broader and usually result in unintended, and sometimes intended, consequences for the neighborhood.

Conclusion

Medians and their impacts on neighborhood development patterns have generally not received much attention in appraisal literature. In areas where development is starting, land use patterns and development plans can be designed to mitigate the impact of road designs. In older areas where the adjacent land is fully developed, the impact of a road project that includes a new median is much more severe, as improved properties cannot easily adapt to the changing traffic patterns. However, changing neighborhoods patterns are often not recognized or are diagnosed as increased functional and/or economic obsolescence. Certainly the issues presented here could benefit from more investigation, debate and commentary from readers of this publication.

The author would like to acknowledge Robert J. Strachota, MAI, CRE, for his contributions to this article.

Road with New Median Project Goals	Result
<ul style="list-style-type: none"> ▪ Increase traffic flow ▪ Increase traffic speeds ▪ Increase traffic volume ▪ Reduce access 	Change in Neighborhood Traffic Patterns

Impact on Neighborhood	Result
<ul style="list-style-type: none"> ▪ Reduced access to/from properties ▪ Lost business to alternative traffic routes ▪ Decline in retail 'pulling power' ▪ Increased vacancy, lower rents ▪ Change in building orientation ▪ Decline in neighborhood ▪ Change in development patterns ▪ Possible change in zoning 	Change in Highest and Best Use of Properties and Neighborhood

Retail Gas Properties **and the Economics of Access**



For many retail businesses, ease of street access can make or break the bottom line.

BY ROBERT E. BAINBRIDGE MAI, SRA, MRICS

Emerging research conducted by several transportation authorities indicates that vehicle-oriented businesses, such as gas stations, car washes and fast-food restaurants often suffer a higher degree of economic damage than other types of businesses as a result of access management takings. These economic impact studies show a higher economic loss to retail gasoline properties than any other property type. In some cases, impaired access can make the business unviable and the property unmarketable as a gasoline outlet. The potential for severance damages from access management takings should be regarded with greater scrutiny by stakeholders and the courts when retail gasoline properties are involved.

Access management is a denotative term widely used in transportation planning and refers to the practice of coordinating the location, number, spacing and design of access points to minimize site access conflicts and maximize

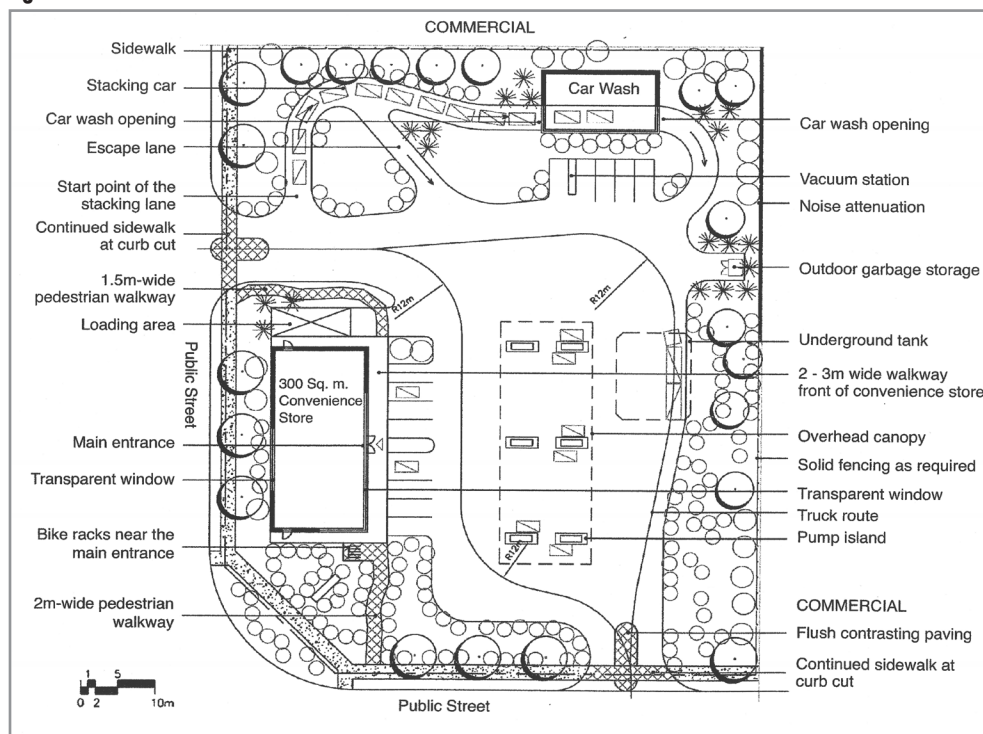
the traffic capacity of a roadway. According to the American Association of State Highway and Transportation Officials (AASHTO), “Access management involves providing or managing access to land development while simultaneously preserving the flow of traffic on the surrounding road system in terms of safety, capacity and speed.”

HEIGHTENED SENSITIVITY

The heightened role that access plays for retail gasoline properties may not be widely recognized. For example, when access management projects are implemented by transportation agencies, the focus may be more on enhancing safety and reducing traffic congestion than providing adequate access to retail properties. As a result, they may seek to limit the number of access points, as well as lengthen turn radii and limit left-turn maneuvers.

**Typical Site Plan
Figure 1**

Since gasoline businesses require an increased need for accessibility both to and across their sites, access management issues are usually more complex than for most other types of properties. One of the reasons why these properties are particularly sensitive to access management issues is that the sale of motor fuel requires retail dispensing improvements, such as underground tanks, dispensers and canopies that are situated on-site, but separate from the main building. The placement of the fuel dispensing improvements, car wash and other profit centers involves more intensive use of those portions of the site outside the building footprint, as shown in Figure 1.



COSTS AND BENEFITS

Transportation agencies cite several public benefits from their access management practices, such as improving overall roadway safety, reducing the number of vehicle trips, decreasing interruptions in traffic flow, and minimizing traffic delays and congestion. The central tenet of access management is that numerous access points along a corridor create conflicts between turning and through traffic, which causes delays and accidents. In essence, it seeks to reduce the number of access points while improving design quality.

Until recently, the most current literature on access management was from the 1990s, when transportation authorities teamed up with local universities in Florida, Iowa, New Hampshire and Texas and conducted a significant amount of research on the subject. However, that initial research focused primarily on the design and implementation programs. The economic impact of access management was not included.

Current economic impact studies analyze corridors before and after the installation of access management improvements. The methodology often involves surveys,

and less frequently, statistical analysis of land values. William Eisele, who wrote about methodologies for determining the economic impacts of raised medians, ranked various property types according to the survey results. This study analyzed retail gasoline properties as a separate category and found that they suffered the most when raised medians were installed as compared to all other property types in the study. Eisele found there was a 17.6% decline in customers per day, a 2.4% decline in gross sales and a reduction of 5% in the number of full-time employees.

ACCESS MANAGEMENT AND COMPENSABILITY

According to the National Association of Convenience Stores, retail gasoline properties derive roughly 50 percent of their gross sales from selling motor fuel. Degradation of the existing access to the property can have negative consequences for the business that are directly related to the diminished real estate quality. Therefore, both the business and the real estate are affected.

Gas stations are single-purpose economic enterprises. Because of their specialty of design, they cannot be readily converted to other types of businesses without a significant loss in value. The fuel service dispensers, underground

tanks and canopy are so use-specific, that if it becomes unprofitable to sell motor fuel at a certain site, the contributory value of the fuel service will be zero or even negative. Unlike a generic retail store or office building, the fuel service can not be put to any other use.

In takings cases, this specialty of design and economic narrowness of use can result in an after value that is comparatively low. Since severance damages are essentially the difference between the before value and the after value, the amount of severance damages to retail gasoline properties can be significantly higher than those for the same set of circumstances applied to other types of property. The current position of the courts needs to evolve to a more informed and nuanced view of how access quality varies from differing property types, such as light-industrial to commercial to retail, when determining compensability.

For example, New York and many other states hold that access impaired by guard rails, one-way regulations, prohibition of left turns and U-turns, median strips and other traffic regulations is not compensable. In Missouri, the court cited *Filger v. State Highway Commission*, 355 S.W. 2d 425 (Mo., 1962), stating, “This change (reduction of access) may result in some inconvenience respecting ingress and egress... They must stand the loss... so long as their access rights are not materially altered or destroyed.”

In deciding access-related cases, the courts deny compensation based on the fact that that access limitation is an exercise of police power, not eminent domain, and police power actions by the government are not a compensable loss to a property owner. The installation of a raised median where none existed before, for example, is regarded as a police power action in many states and is not compensable. In other instances, the court may rely on an ephemeral process to arrive at their conclusion about reasonable access.

In his paper on Real Estate Valuation in Litigation, James D. Eaton noted, “In defining the limits of a property owner’s access rights, the courts have referenced reasonable access, suitable access, and free and convenient access... In other words, case law indicates that an abutting property owner is entitled to reasonable, convenient and adequate access for proper use and enjoyment of his property for its present and for its reasonable uses in the foreseeable future.”

The mistake the courts are making in these cases is that they view access without distinction as to property type.

It is apparent that access issues are much more important to vehicle-related businesses, such as car washes, retail gasoline properties and fast food restaurants, and yet these businesses are not compensated accordingly.

CONVENIENCE VS. DESTINATION

The reduced access to a destination concept, such as a movie theatre, may be reasonable in the after condition. For a convenience concept, such as a retail gasoline business, the same reduction in access may be unreasonable. The courts in the cited cases do not make any such distinction. Yet, the real world makes the distinction.

According to *The Site Book*, written by Richard M. Fenker, “If your business is convenience oriented, drop-in access will have a significant impact on sales, ranging from 10 to 30 percent, as construction or ingress/egress problems make access a challenge. Convenience stores, gas stations, fast-food restaurants, and many other convenience concepts have made a science of defining and measuring drop-in access and constructing sites that rate high on this measure. On the other hand, if your business is destination oriented and has good visibility, poor access will not matter a great deal, possibly impacting your business only two to five percent.”

Measuring the importance of access to convenience properties, as opposed to destination properties, appears to have been completely lost on the courts. This unrecognized difference is a disservice to many convenience-related property owners in cases involving takings, as their claims have been ignored in the past. The majority of the cited cases in access-related severance damage claims involve retail gasoline properties, thereby illustrating the high degree of sensitivity these types of uses experience in property access changes, as well as the owners’ willingness to go to court over the issue. Stakeholders, transportation officials, the courts, attorneys and appraisers need a better understanding of the importance access plays to various property types. A better understanding of how access requirements vary from one property to another will lead to better conclusions of law regarding compensability.

COMMON APPLICATIONS AND THEIR IMPACT

There are several types of improvement projects that have the potential to hamper access to a retail convenience business and result in damages that warrant compensation.

RAISED MEDIANS

Traffic count in front of the retail gasoline property is a fundamental criterion in location decisions for national oil companies. Traffic count is so important to the success of retail gasoline properties that a minimum traffic count threshold may be specified before a site will be considered for construction. ExxonMobil, for example, stipulates that traffic counts must be a minimum of 20,000 vehicles per day. A site that meets this criteria in the before condition can be rendered below this standard in the after condition when a raised median is installed as part of an access management project along a corridor.

When installed after initial construction, raised medians can reduce the number of potential drop-in or convenience customers by 50 percent.

THREAT FROM COMPETITORS

New medians often alter existing traffic configurations. When combined with nearby competitors, the economic viability of a retail gasoline property can be significantly reduced.

Consider a newly-installed raised median that routed traffic coming from the freeway further west than before. The new traffic flow required the Sinclair gas station's customers to travel west and make a U-turn at the next intersection in order to access it. However, at the U-turn, customers first passed by an existing Shell station. The raised median made it easier (and faster) for the customers to stop at the Shell location. The Sinclair store closed within six months as a result of the new

median. The underground fuel tanks, canopy and dispensers (all classified as real property) were subsequently removed at a substantial cost and loss in value. To date, the property remains unoccupied and unused, while other retail properties along the corridor remain.

LOSS OF TURNING RADIUS

Another common example that results in severance damages is a widening project. When a portion of the frontage is taken, the remainder parcel has less physical depth than before, and the result creates diminished customer accessibility to the fuel service.

This type of severance damage is often found in takings projects resulting from the creation of new right turn lanes or new taper lanes at intersections. In both these cases, the takings require additional land from the abutting properties at the intersection.

The loss of site depth can create a problem that stems from the minimum turning radius for a standard-size car. Most oil company engineers specify 15 feet of minimum depth between the property line and the edge of the outside fuel spanner, or island. Depths that are reduced significantly from 15 feet can make it difficult or impossible for customers to access the outside fuel position rendering it less useful. Clifford Johnson addresses this problem in his article on Appraising Successful Service Stations, stating, "Any compromise of the minimum dimensions because of right of way acquisition tends to place the property in a less competitive position and thereby causes a decline in its value."



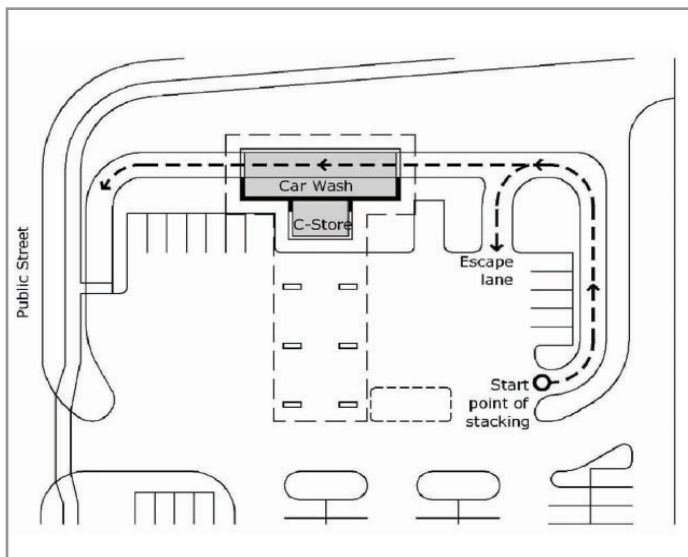
This retail gasoline business in Ontario, Oregon closed within six months of the median installation. The underground fuel tanks, dispensers and canopy have been subsequently removed.

Johnson showed that even a three foot reduction in the distance between the property line and the outside edge of a fuel spanner can so reduce the turning radius that a standard automobile would not be able to readily access the fuel positions on that side of the site. He goes on to measure the loss in property value using a reduction in gallonage. Loss of side distance is especially acute for small sites of about 15,000 square feet.

LOSS OF STACKING DISTANCES

Takings that reduce the size of the remainder parcel can also affect the stacking distance. Stacking distances measure the lanes dedicated to customer vehicles using a drive-up window or other vehicle related service. The specified distance is usually number of cars rather than linear feet.

Typical Stacking Lane
Figure 2



Oftentimes, a co-branded retail fuel site must meet the site criteria of the food operation, which include specifications for size, traffic count, zoning-related issues and stacking distances. A McDonald's, for example, will require a stacking distance of at least eight vehicles for drive-up window lanes.

Other businesses like car washes, which are designed specifically to keep customers moving with minimum delay, may also require stacking distances, which can be affected by features like reader boards and payment terminals and designed. Figure 2 shows a typical stacking lane for a car wash on a retail gasoline site.

DRIVEWAY SLOPE

Driveway slope (vertical alignment) can also be problematic when street levels have been elevated as a result of a public improvement project. If the slope of the driveway is too steep, this may force customers to unduly slow their speed when entering or existing a driveway. A customer slowing to negotiate a steep driveway may block a street's through traffic and cause traffic to slow. Access driveways on major streets should allow the customer to maneuver smoothly and comfortably at a minimum speed of 10 miles per hour. In all cases, there must be adequate clearance between the surface and the vehicle.

REDUCED SITE DISTANCES

Even visual improvements can reduce accessibility by compromising sight distance, the length of roadway visible to a driver. A safe sight distance is the distance needed by a customer exiting the driveway to verify that the road is clear and to avoid conflicts with other vehicles. Safe site distances for a vehicle exiting a driveway will vary according to the speed of the street traffic.

For example, the Iowa Department of Transportation recommends these Safe Site Distances:

Posted Speed Limit	Desirable Distance	Minimum Distance
35 mph	395	265
45 mph	560	395



The inadequate site distance is demonstrated here, showing how the street appears to a customer exiting the driveway. The need for site distance from driveways increases with higher traffic speeds on the street being entered.

The concept of site distances is illustrated below. In Figure 3a, a customer is exiting a driveway onto the main street. In this case, adequate site distance is preserved. The situation in Figure 3b shows how a street bench (to the left) and landscaping improvements (on the right) can interfere with site distance, which is a form accessibility degradation.

Site Distances

Figure 3a

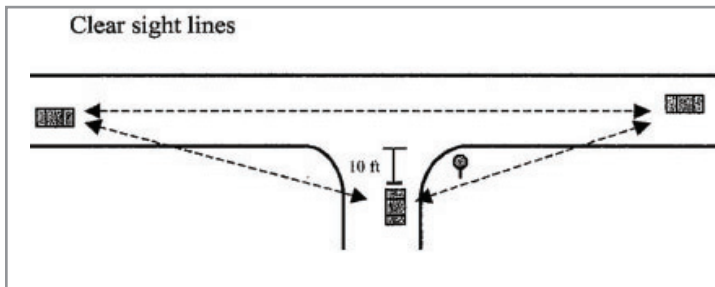
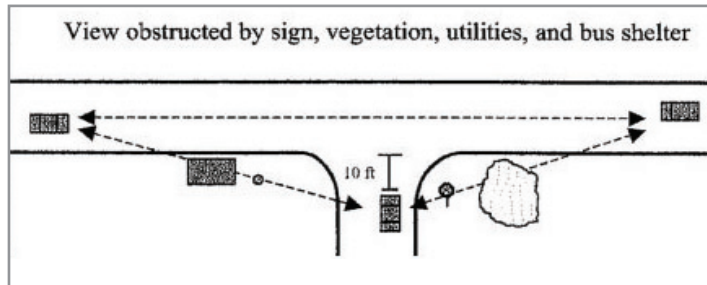


Figure 3b



The hierarchical structure of access sensitivity for various property types can be categorized as follows:

Retail Uses – Most Sensitive

- Gas Stations
- Convenience Stores
- Fast Food Restaurants
- Neighborhood Grocery Stores
- Sit Down Restaurants
- General Merchandise
- Specialty Retailers

Non-Retail Uses - Least Sensitive

- Office
- Automotive Services
- Light Industrial
- Single-Family Residential
- Multifamily Residential

CONCLUSION

Current research is finally beginning to recognize the differing effects of access degradation. The earliest indication of this difference is found in economic impact studies that

analyze the before and after condition. It is apparent that the economic loss to retail gasoline properties is greater than for any other property type.

The logical conclusion when comparing the differences in economic loss is that adequate access for one property type may be inadequate access for another type. This has long been recognized by retail property owners and users. Since the courts have frequently decided compensation claims based on “reasonable” and “convenient and adequate” access, the legal system also needs to recognize these differences if fairness is sought in severance damage claims.

Additional studies in locations across the country would no doubt confirm the validity of these early studies. However, economic impact studies should distinguish the different impacts on various property types. As further research on the economic impact of access management is conducted, the courts may one day find that degradation in access may be compensable for some property types and not for others.

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Robert E. Bainbridge MAI, SRA, MRICS

Recipient of the Appraisal Institute’s 2004 George L. Schmutz Award for his book *Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues*, Robert manages C-Store Valuations, a consulting practice specializing in convenience retail properties in Ontario, Oregon.

ALI ABA CONFERENCE
EMINENT DOMAIN AND LAND VALUE LITIGATION

**When Access and Use
Are Inextricably Tied:**

**THE CASE FOR GREATER COMPENSATION
FOR CONVENIENCE OUTLETS THAT
SUFFER ACCESS IMPAIRMENT**

Takeaways:

1. Recognize the Difference Between “Convenience” and “Destination” Retail Sites.
2. Recognize the Inadaptability of “Special-Built” Retail Improvements.

Takeaways:

3. Be Aware that Published Studies show C-Stores and Gas Stations Suffer the Most with Access Impairment.

-2.4% to -17.6%

Takeaways:

4. FINAL: a -7% Reduction in Gross Sales is the Tipping Point for the Average C-store or Gas Station.

NO PROFIT

Results in an Extraordinary Loss in the Value of Special-Built Improvements.

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**A Field Guide to Commercial
Real Estate Evaluation**



by Richard M. Fenker, Ph.D.

Convenience v. Destination Retail

“As you make decisions about real sites, special considerations are the rule not the exception.”

Richard M. Fenker, PhD
The Site Book

CONVENIENCE v. DESTINATION RETAIL



DESTINATION:

Wal-Mart

Mall of America

McCormick & Schmick's

CONVENIENCE v. DESTINATION RETAIL



CONVENIENCE:
*Gas Station
Convenience Store
Fast-Food Restaurant
Car Wash*

CONVENIENCE v. DESTINATION RETAIL

KEY POINTS FOR DESTINATION RETAIL

1. Access and Parking are less important.
2. Neighborhood and employee demographics are very important. Sales are usually driven by specific demographic groups.
3. Being of the going-home or going to work side of the road is largely irrelevant.

Fenker, 1996

CONVENIENCE v. DESTINATION RETAIL

KEY POINTS FOR CONVENIENCE RETAIL

1. Visibility, Access and Parking are very important.
2. Neighborhood and employee demographics do not matter much. Sales are usually driven by a broad range of demographic groups.
3. Being of the going-home or going to work side of the road may be crucial.

Fenker, 1996

CONVENIENCE v. DESTINATION RETAIL

KEY POINTS FOR CONVENIENCE RETAIL

4. Good position in the trade area is the key.

Fenker, 1996

Ask the Question:

Will the TAKING change any one of these existing factors?

CONVENIENCE v. DESTINATION RETAIL

Access Sensitivity



Two Extreme Examples of Access Issues

ACCESS ISSUES: An Obvious Example

Frontage Lost Due to Access Management



ACCESS ISSUES: A Subtle Example



Section 1

NATURE OF C-STORES

Special-Built Nature

NATURE OF C-STORES

Over 160,000 retail
gasoline outlets in the
USA

NATURE OF C-STORES

Special-Built Nature

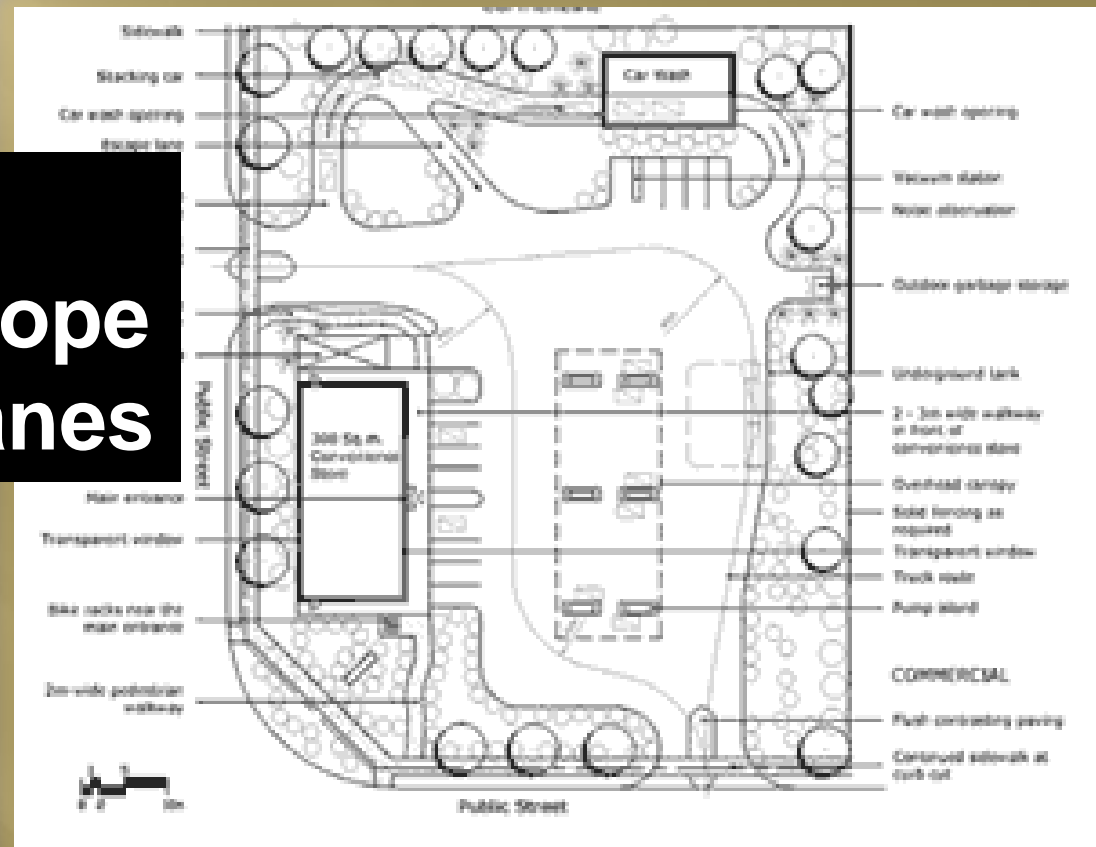
**IMPROVEMENTS ARE DESIGNED FOR A NARROW
AND SPECIFIC ECONOMIC USE**

NATURE OF C-STORES



NATURE OF C-STORES

1. Forecourt
2. Store Envelope
3. Stacking Lanes



NATURE OF C-STORES

Industry Sales Mix

**HEAVILY DEPENDENT ON
FUEL CUSTOMERS**



NATURE OF C-STORES

NEW URBAN STORE DEVELOPMENT COSTS

Land	\$798,510	41%
Store	\$745,542	38%
Fuel Service	<u>\$405,277</u>	<u>21%</u>
Total	\$1,949,329	100%

NATURE OF C-STORES

What becomes of a Closed Gas Station?



Section 2

RECENT PUBLISHED STUDIES

RECENT PUBLISHED STUDIES

Most of the new economic
impact studies pertain to
Raised Medians

A raised median is...XXX

RECENT PUBLISHED STUDIES

These are some of the first studies of their kind that measure the economic impact on different types of land uses, such as gas stations, general retail and restaurants.

RECENT PUBLISHED STUDIES

**A METHODOLOGY FOR DETERMINING ECONOMIC IMPACTS OF
RAISED MEDIANS: FINAL PROJECT RESULTS**

by

William L. Eisele, P.E.
Assistant Research Engineer
Texas Transportation Institute

and

William E. Frawley, AICP
Associate Research Scientist
Texas Transportation Institute

Report 3904-4
Project Number 7-3904
Research Project Title: Economic Impact of Median Design

Sponsored by the
Texas Department of Transportation

October 2000

TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

Study No. 1

*A Methodology for
Determining the
Economic Impacts
of Raised Medians:
Final Project
Results*

1999
William Eisele
Texas Transportation Institute

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

A METHODOLOGY FOR DETERMINING ECONOMIC IMPACTS OF
RAISED MEDIANS: FINAL PROJECT RESULTS

*“Gas stations indicated the LARGEST DECREASE in
passerby traffic at 17.5%.”*

William E. Frawley, AICP
Associate Research Scientist
Texas Transportation Institute

Report 3904-4
Project Number 7-3904
Research Project Title: Economic Impact of Median Design

Sponsored by the
Texas Department of Transportation

October 2000

TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

Eisele, pp 57

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

A METHODOLOGY FOR DETERMINING ECONOMIC IMPACTS OF
RAISED MEDIANS: FINAL PROJECT RESULTS

“Gas station business owners/managers indicated WORSE for a majority of the responses for property access, business opportunities, customer satisfaction, and delivery convenience.”

Report 3904-4
Project Number 7-3904
Research Project Title: Economic Impact of Median Design

Sponsored by the
Texas Department of Transportation

October 2000

TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

Eisele, pp 70

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

A METHODOLOGY FOR DETERMINING ECONOMIC IMPACTS OF
RAISED MEDIANS: FINAL PROJECT RESULTS

“Gas stations, auto repair and other service businesses indicated DECREASING customers per day and gross sales after the raised median was installed.”

Texas Transportation Institute

Report 3904-4
Project Number 7-3904
Research Project Title: Economic Impact of Median Design

Sponsored by the
Texas Department of Transportation

October 2000

TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

Eisele, pp 85

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

A METHODOLOGY FOR DETERMINING ECONOMIC IMPACTS OF
RAISED MEDIANS: FINAL PROJECT RESULTS

**THIS IS ENOUGH TO CLOSE THE
BUSINESS**

Texas Transportation Institute

Report 3904-4
Project Number 7-3904
Research Project Title: Economic Impact of Median Design

Sponsored by the
Texas Department of Transportation

October 2000

TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

Eisele, pp 69

RECENT PUBLISHED STUDIES

ACCESS MANAGEMENT RESEARCH AND AWARENESS PROGRAM
PHASE IV FINAL REPORT

CTRE Management Project 97-1

November 1999



Center for Transportation
Research and Education

IOWA STATE UNIVERSITY



Study No. 2

Access Management Research and Awareness Program: Phase IV Final Report

1999

Tom Maze

Center for Transportation R
Research and Education
Iowa State University

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

ACCESS MANAGEMENT RESEARCH AND AWARENESS PROGRAM
PHASE IV FINAL REPORT

“...half of businesses reporting COMPLAINTS were auto-oriented businesses, including gasoline filling stations, convenience stores, and fast food restaurants.”



Center for Transportation
Research and Education

IOWA STATE UNIVERSITY



Iowa Department
of Transportation

Maze, pp 3

RECENT PUBLISHED STUDIES

BEFORE AND AFTER

ACCESS MANAGEMENT RESEARCH AND AWARENESS PROGRAM
PHASE IV FINAL REPORT

“...these businesses report complaints at a higher than proportional rate to their numbers.”

**THIS INDICATES THAT THESE
BUSINESSES SUFFER MORE!**

RECENT PUBLISHED STUDIES

Conclusion:

Convenience Retail

(gas stations, fast-food, convenience stores, etc.)

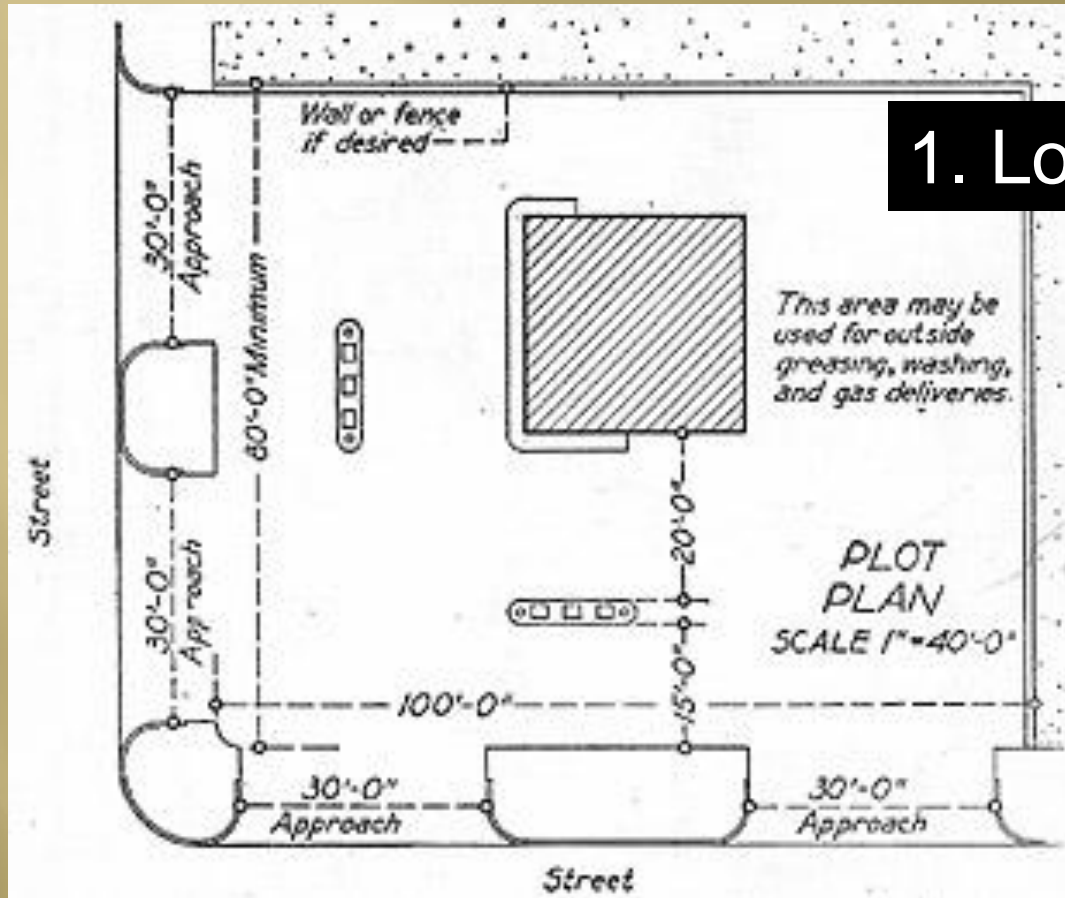
suffer more severely
when access is degraded.

Section 3

COMMON ACCESS ISSUES

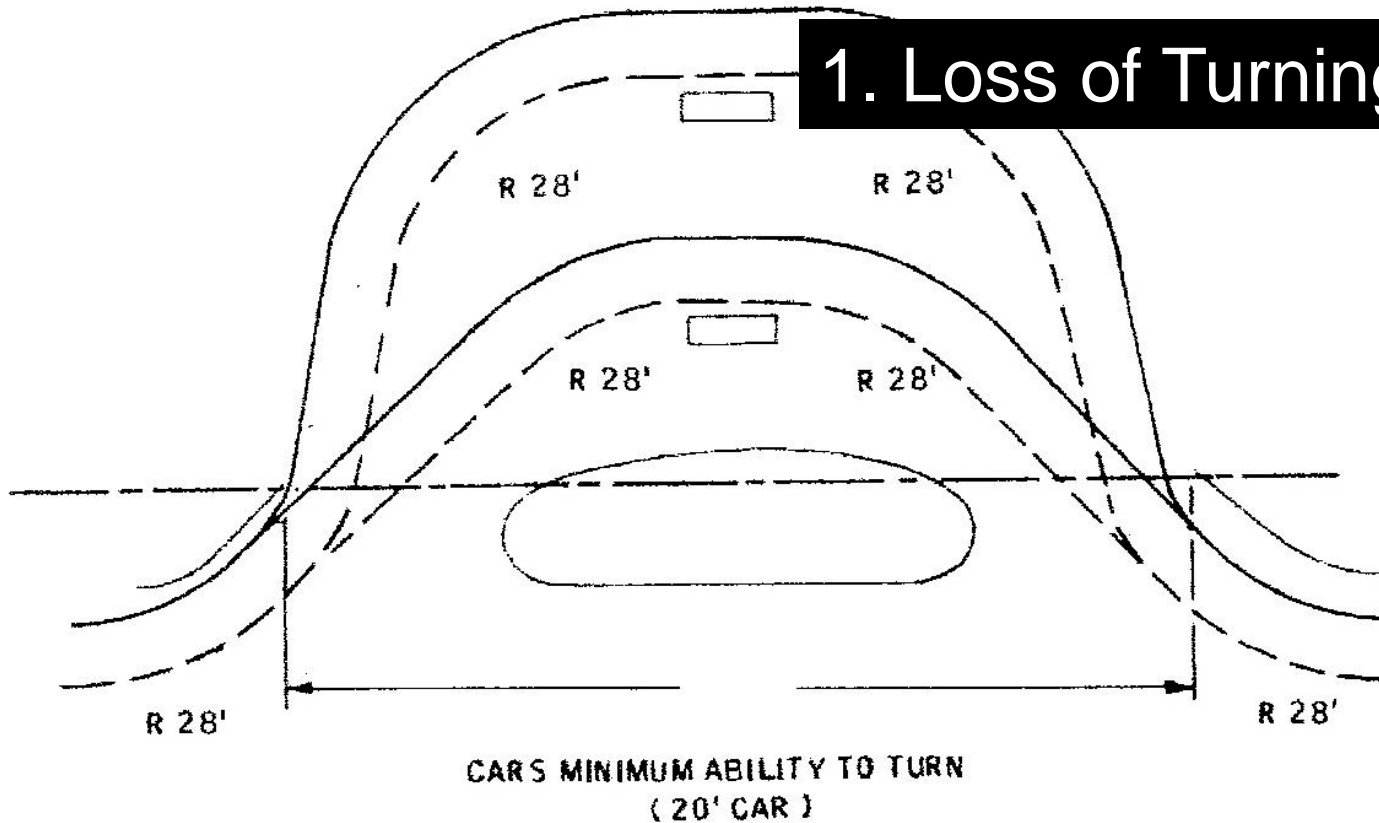
COMMON ACCESS ISSUES

1. Loss of Turning Radius



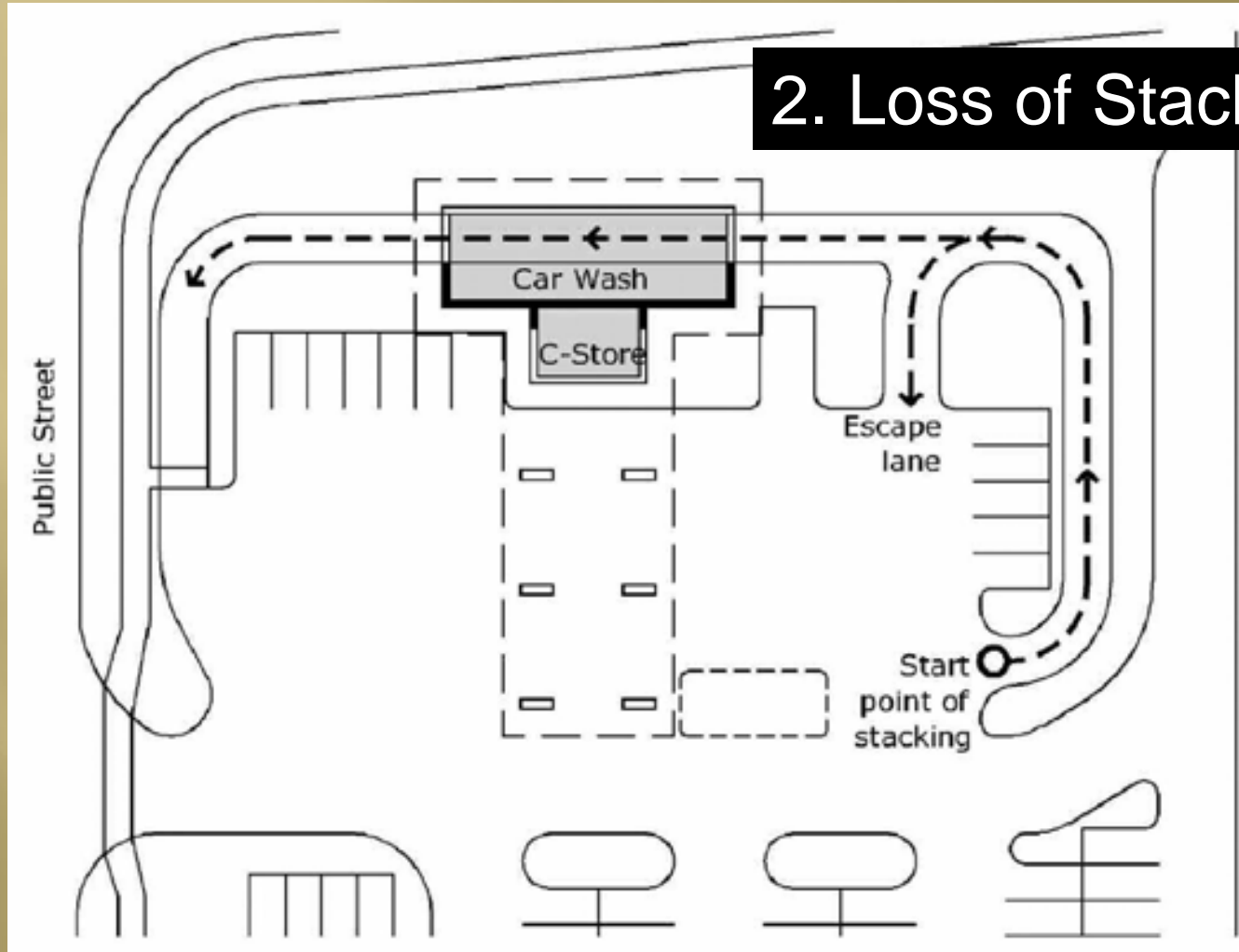
COMMON ACCESS ISSUES

1. Loss of Turning Radius



COMMON ACCESS ISSUES

2. Loss of Stacking Distance



COMMON ACCESS ISSUES

2. Loss of Stacking Distance



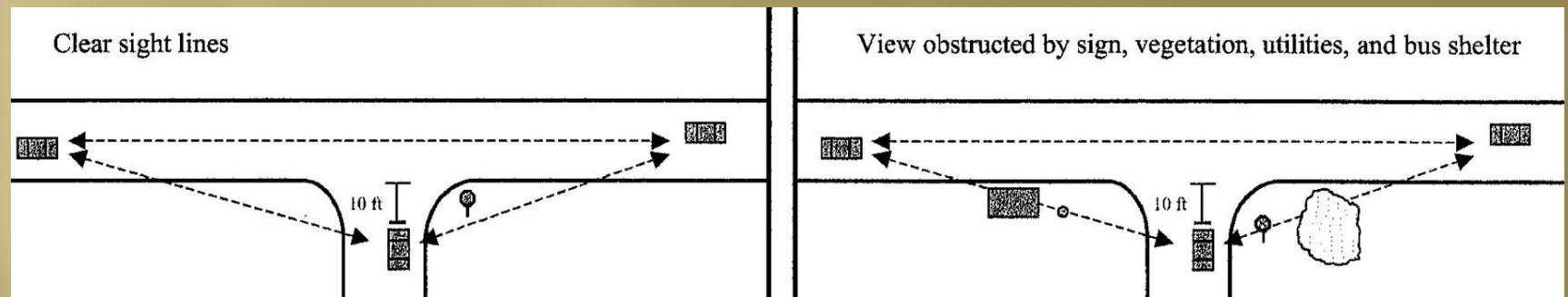
COMMON ACCESS ISSUES



3. Loss of Site Distance

COMMON ACCESS ISSUES

3. Loss of Site Distance



COMMON ACCESS ISSUES

3. Loss of Site Distance

Posted Speed Limit	Distance Required	
	Desirable	Minimum
35 MPH	395	265
45 MPH	560	395

COMMON ACCESS ISSUES

5. Drive-Way Slope



COMMON ACCESS ISSUES



6. Raised Median

Section 4

CASE STUDY

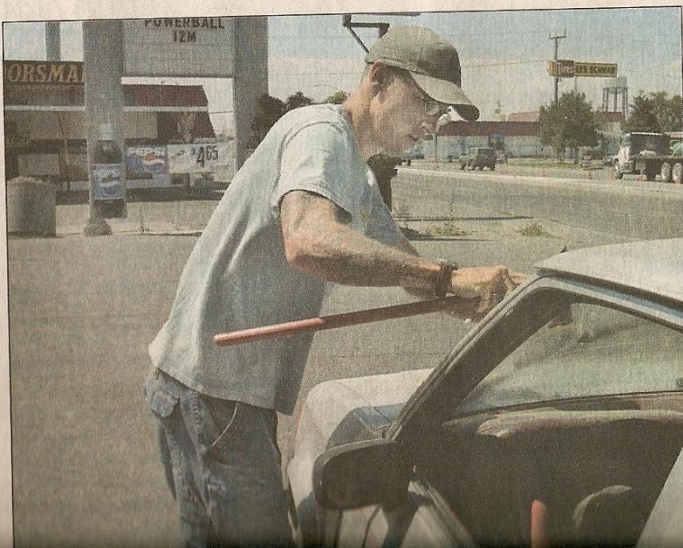
**RAISED MEDIAN: A Disaster
for Convenience Retail Use
Ontario, Oregon**

CASE STUDY

For one store, new traffic divider means closing up shop

Local business becomes casualty of median

Tilley services a customer's car at the Rode Stop on East Idaho Avenue. The shop expects to close by the end of the year because of reduced business brought on by the new median strip.



For one store, new traffic divider means closing up shop

LARRY MEYER
ARGUS OBSERVER

ONTARIO

A raised median strip designed to prevent collisions between traffic on East Idaho Avenue has apparently claimed a victim of its own.

An employee at The Rode Stop, 590 East Idaho Avenue, confirmed this week the establishment is closing because of the loss of business since the median was constructed.

"The divider really killed us. We're not making the money we need to stay open," Josh Tilley, a clerk for The Rode Stop, said.

Sharon Grisham, manager of The Road Stop, said Wednesday the median made an immediate and lasting impact. Grisham said the median stripped away more than 40

Tilley noted by the time motorists could get off the freeway or those driving from Fruitland and Payette get to the end of the median to turn around, they are closer and have an easier route to another gas station and convenience store. Potential customer Grisham said, simply go somewhere else instead of going back to the Rode Stop.

"It really took away our business," he said. Tilley said the slowdown began with the construction of the median and never fully picked back up. While the store's regular customer's are still coming, he said, there has not been enough to support the business, without the additional traffic coming off the freeway or coming across the Snake River from Payette or Fruitland.

Tilley said the company, Fletcher Oil, owned the business for three or four years but there has been a business at that location for at least 60 years. Tilley said he does not know of any plans to move to another location and, although the announcement had been made, the store will close, he said. **ALIABA**



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Part 7

Case Study

CASE STUDY

This property evolved to a lower-order highest and best use:

Now a Used Car Sales Lot.

CASE STUDY



**Fuel Service
Removed**

**Approximately
30% of Property
Value.**

CASE STUDY



**Signage
Removed**

**Now high-rise
post must be
removed.**

CASE STUDY



**Store Building
Under-utilized**

**Approximately 20%
of Property Value**

CASE STUDY

What remains today:

- **Fuel Service is gone**
- **High rise sign is decapitated and a burden to the site.**
- **Store building is substantially under-used.**

CASE STUDY

What remains today:

Total Impact on Value:

Real Property	-50%
Business Value	-100%

Section 5

FINANCIAL EXAMPLE

FINANCIAL EXAMPLE



FINANCIAL EXAMPLE

How Retail Property Value is Created

TRADE AREA FACTORS

SUPPLY

- Competition

DEMAND

- Population (Customers)
- Income Levels

SITE FACTORS

- Size
- Traffic Volume
- Visibility
- Access



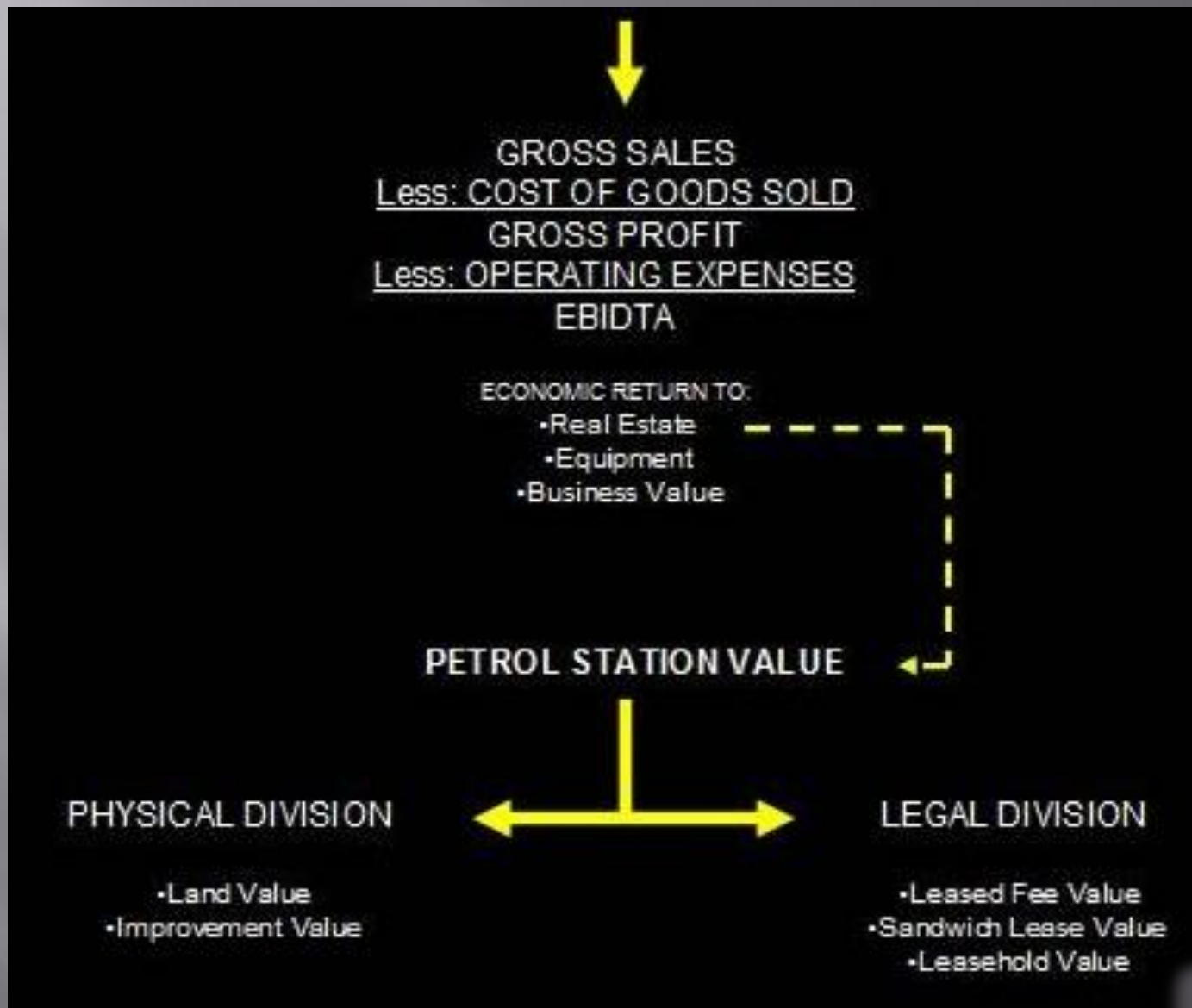
FUEL VOLUME

- Shop Sales
- Car Wash Sales
- Other



GROSS SALES
Less: COST OF GOODS SOLD
GROSS PROFIT

FINANCIAL EXAMPLE



FINANCIAL EXAMPLE

Documented Economic Impact of Raised Medians on Existing Gas Stations

Customers Per Day	-17.6%
Gross Sales	-2.4%

FINANCIAL EXAMPLE

2009 INDUSTRY AVERAGES PER STORE

Gross Sales	\$4,750,000
Cost of Goods Sold	\$4,300,000
Gross Profit	\$450,000
Less: Operating Expenses	\$370,000
EBIDTA	\$100,000
Pre-Tax Profit	\$34,000

FINANCIAL EXAMPLE

2009 INDUSTRY AVERAGES PER STORE

Gross Sales

\$4,400,000

7%

\$4,000,000

**DECLINE IN
GROSS SALES**

\$400,000

\$370,000

\$100,000

Pre-Tax Profit

\$0

FINANCIAL EXAMPLE

-2.4% TO -17.6% is a reasonable range of magnitude of the economic impact.

These do not necessarily represent extreme ends of the range.

FINANCIAL EXAMPLE

Customers Per Day

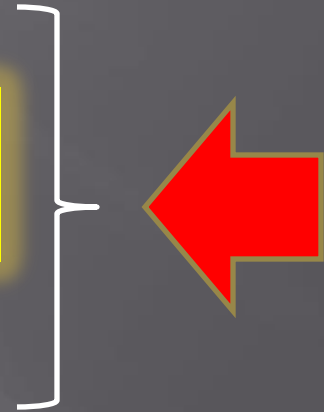
-17.6%

BREAKEVEN POINT

-7%

Gross Sales

-2.4%



FINANCIAL EXAMPLE

The FUEL CUSTOMERS drive gross sales.

A 7% decline in customers or gross sales leaves the property unprofitable.

If the business does not make a profit, there is no reason to own the real estate!

FINANCIAL EXAMPLE

The Special-Built Improvements become worthless.

A burden to the site.

Further Study

Section 6

BARNES CASE

LexisNexis™ Academic

J. B. **BARNES**, Petitioner v. THE NORTH CAROLINA STATE **HIGHWAY COMMISSION**; H. T. **BUTTS**; HUGH B. **BEAL**, Trustee; SECURITY NATIONAL BANK OF GREENSBORO; STANDARD OIL COMPANY OF NEW JERSEY; W. O. **McGIBONY**, Trustee; THE FEDERAL LAND BANK OF COLUMBIA; and LATTIE D. **MATTHEWS**, Executrix of the Estate of M. A. **MATTHEWS**, Deceased,
Respondents

No. 536

SUPREME COURT OF NORTH CAROLINA

257 N.C. 507; 126 S.E.2d 732; 1962 N.C. LEXIS 389

July 10, 1962, Filed

LexisNexis™ Academic

J. B. BARNES, Petitioner v. THE NORTH CAROLINA STATE HIGHWAY COMMISSION; H. T. BUTTS; HUGH B. BEAL, Trustee; SECURITY NATIONAL BANK OF GREENSBORO; STANDARD OIL COMPANY OF NEW JERSEY; W. O. MCGIBONY, Trustee; THE FEDERAL LAND BANK OF COLUMBIA; and LATTIE D. MATTHEWS, Executrix of the Estate of M. A. MATTHEWS, Deceased,
Respondents

No. 536

SUPREME COURT OF NORTH CAROLINA

257 N.C. 507; 126 S.E.2d 732; 1962 N.C. LEXIS 389

July 10, 1962, Filed

FACTORY: [***1]

Respondent State Highway Commission from *Clark, Special Judge*, September 1962, in the County of Harnett.

Proceeding in accordance with the procedure prescribed by G.S. § 40-11 *et seq.*, and by G.S. § 136-19, to recover compensation for the condemnation by the Highway Commission of a permanent easement for highway purposes over petitioner's land.

The tract is part of petitioner's tract of 21.63 acres in Neill's Creek Township, Harnett County, about one mile north of Lillington. It was appropriated for highway purposes in connection with Project No. 8.14368, which involved the relocation and improvement of U. S. Highway No. 401 at its intersection with N. C. Highway No. 210 and U. S. Highway No. 421.

It was stipulated that "(t)he date of taking was January 1, 1960."

Prior to January 1, 1960, 1.32 acres of petitioner's 21.63-acre tract was subject to a 60-foot right of way previously acquired by the Highway Commission. This 60-foot right of way, on which #401 was then located, separated a triangular area containing 1.36 acres, referred to hereafter as Tract A and located east thereof, from the remaining area of 18.95 acres [***2] located west thereof.

[SEE ILLUSTRATION IN ORIGINAL]

In connection with Project No. 8.14368, the Highway Commission appropriated: (1) Tract A, being all of petitioner's land (1.36 acres) east of #401; and (2) Tract B,

Access
Degradation is
Compensable

Inverse Condemnation?

[**740] With reference to said restriction on direct access between said places of business and the lanes of #401 (as relocated) reserved exclusively for southbound traffic, plaintiff is entitled to recover compensation on account of injury to this portion of his remaining property to the extent, if any, such curbing substantially impairs **free and convenient access** thereto and the improvements thereon.

Exercise of Police Power?

In the BARNES Case

Land was taken from the property owner, which the court viewed as significant in making this a *compensable taking for access degradation caused by the new median.*

FOR FURTHER READING

1. “Unintended Consequences: the Impact of Medians”, *Right of Way*, January/February, 2008. International Right of Way Association.
2. “Retail Gas Properties and the Economics of Access”, *Right of Way*, January/February, 2010. International Right of Way Association.

FOR FURTHER READING

3. J.B. Barnes, Petitioner v. THE NORTH CAROLINA STATE HIGHWAY COMMISSION, et al. No. 536 SUPREME COURT OF NORTH CAROLINA. 257 N.C. 507; 126 S.E. 2D 732 1962 N.C. Lexis 389.

FURTHER STUDY

FOR FURTHER READING

All of these readings are available as downloadable PDFs at our website:

www.cstorevalue.com

Conclusions

- Convenience Retail Uses suffer the most with access degradation.
- A 7% loss in gross sales is enough to close the average c-store/gas station.

The Challenge Ahead

- ✓ Property Owners, Appraisers and Attorneys must educate the courts about these market-place facts.
- ✓ The courts must recognize that convenience retail suffers the most with access degradation.