St. Mary's Law Journal

Volume 5 | Number 2 Article 12

6-1-1973

Public Impairment of Right to Access Is Compensable.

Larry W. Harrison

MUNICIPAL CORPORATIONS—Eminent Domain—Public Impairment of Right to Access Is Compensable

Olivares v. City of San Antonio, 490 S.W.2d 922 (Tex. Civ. App.—Beaumont 1973, writ granted).

On April 10, 1969, the City of San Antonio passed an ordinance which provided for the closing of a portion of a dedicated street (Breneman) usually referred to as an alley by its users.[1] This ordinance authorized the execution of a quitclaim deed of the closed portion of the street to the First National Bank of San Antonio, owner of both sides of the street in question. Additionally, the ordinance required the bank to pay certain consideration to the city for the land and dedicate a new alleyway (extending north from Breneman Street to East Pecan). Upon fulfilling these requirements, the bank physically closed the street and subsequently built a parking garage on the newly acquired land.

All the abutting landowners except the plaintiff were apparently satisfied with the results of the ordinance. The plaintiff, Olivares, was the lessee of a hotel which abutted a portion of Breneman Street actually unaffected by the ordinance. Because Olivares' leasehold was adjacent to and in the same block as the closed portion of Breneman Street, he brought suit against both the bank and the city for damages to his hotel business. The loss of business was brought about because access to the hotel from East Travis Street via Breneman Street was permanently blocked. Before trial on the merits, the suit against the bank was settled for $35,000. Following a directed verdict for the defendant-city, Olivares perfected this appeal. Held—*Reversed and remanded.* A city is liable for monetary damages to an abutting landowner when evidence establishes that the landowner suffered *material and substantial* impairment of right to access.[2]

Historically, cities which exercised the power of local self-government[3]

---

1. San Antonio, Tex., Ordinance 37409, §§ 1-3, April 10, 1969 states that:
Section 1. That portions of the alleyways located in New City Block 408, more particularly described by field notes contained in the Quitclaim Deeds attached hereto, are hereby closed and abandoned as public ways of the City of San Antonio.
Section 2. The City Manager is hereby authorized to execute Quitclaim Deeds to said parcels of land to the abutting owners in consideration of $16,860.00 plus the dedication of a new alleyway to be located in New City Block 408.
Section 3. That the above described Quitclaim Deeds are not to be delivered to Grantees until such time as proper replatting, containing the new alleyway dedication, has been accepted and approved by the City Planning Commission.

2. Olivares v. City of San Antonio, 490 S.W.2d 922 (Tex. Civ. App.—Beaumont 1973, writ granted) (emphasis added).

3. TEX. REV. CIV. STAT. ANN. art. 1175 (1963) allows cities to have power of

to close, alter or re-route streets have encountered many complaints and law suits from landowners who were commercially dependent upon direct access to the original route of travel.[4] Although a city has the statutory authority to close and abandon streets,[5] the exercise of such authority may subject the municipality to possible suit.[6] In such cases, the liability arises not from the mere passage of the ordinance, but from the actual enforcement of its provisions.[7] A city has the power to close a street by abandoning control over it, but neither the city nor anyone else may *physically* close a street.[8]

Generally, when a city physically blocks a street, the aggrieved landowner will seek an injunction to prevent deprivation of access and diminution of property value.[9] This action by abutting landowners is a distinctive statutory right to seek injunctive relief against a city that has closed a street.[10] In addition to these statutory claims, landowners have special common law rights which entitle them ingress to and egress from their prop-

---

Home Rule: "Cities adopting the charter or amendment hereunder shall have full power of local self-government . . . ." Furthermore, a city's power to enforce necessary ordinances is granted by TEX. REV. CIV. STAT. ANN. art. 1175, § 34 (1963). It should be noted that the power of eminent domain "does not apply when a municipality invokes its police power for the protection of the health, safety and general welfare of its citizens." City of San Antonio v. Pigeonhole Parking, 158 Tex. 318, 320, 311 S.W.2d 218, 219 (1958).

4. City of Beaumont v. Marks, 443 S.W.2d 253 (Tex. Sup. 1969); Lee v. City of Stratford, 125 Tex. 179, 81 S.W.2d 1003 (1935); Cobb v. City of Dallas, 408 S.W.2d 292 (Tex. Civ. App.—Dallas 1966, no writ); Elston v. City of Panhandle, 46 S.W.2d 420 (Tex. Civ. App.—Amarillo), *writ ref'd*, 121 Tex. 553, 50 S.W.2d 1090 (1932); Industrial Co. v. Tompkins, 27 S.W.2d 343 (Tex. Civ. App.—Amarillo 1930, writ ref'd); Blair v. Astin, 10 S.W.2d 1054 (Tex. Civ. App.—Galveston 1928, writ ref'd).

5. TEX. REV. CIV. STAT. ANN. art. 1175, § 18 (1963).

6. Bower v. Machir, 191 S.W. 758 (Tex. Civ. App.—Fort Worth 1916, no writ). The majority, in ruling on whether a city was a party to a suit that involved a street-closing ordinance, explained that the City of Fort Worth was not a necessary party to the suit "even though it could be said that the city was a proper party." *Id.* at 760.

7. Bower v. Machir, 191 S.W. 758, 760 (Tex. Civ. App.—Fort Worth 1916, no writ); Burton Lumber Corp. v. City of Houston, 101 S.W. 822, 827 (Tex. Civ. App.—1907, writ ref'd); *accord*, Elston v. City of Panhandle, 46 S.W.2d 420, 422 (Tex. Civ. App.—Amarillo), *writ ref'd*, 121 Tex. 553, 50 S.W.2d 1090 (1932).

8. Dallas Cotton Mills v. Industrial Co., 296 S.W. 503, 505 (Tex. Comm'n App. 1927, jdgmt adopted). The court, holding in favor of plaintiff, stated:

> Whether physical closing of the street, in relation to Dallas Cotton Mills, should be classed as a "taking" of its property or as a "destruction" or a mere "damaging" thereof, it would be forbidden because the action would not be for or on account of the "public use."

Id. at 505.

9. Dykes v. City of Houston, 406 S.W.2d 176 (Tex. Sup. 1966). *See generally* 11 E. MCQUILLIN, MUNICIPAL CORPORATIONS, § 30.200 (3d ed. rev. 1964).

10. TEX. REV. CIV. STAT. ANN. art. 4646a (1952). The court in Kahn v. City of Houston, 121 Tex. 293, 303, 48 S.W.2d 595, 599 (1932) held that this article, prohibiting injunctive relief against a city's closing streets, except at the suit of abutting landowners, was constitutional.

erty[11] and which permit them to recover damages[12] or injunctive relief[13] for a lessening or total deprivation of access to their property. These special rights are acquired when an individual purchases land with reference to a map or plat upon which streets and alleys are laid out.[14] Thus, the purchaser acquires by implication a private easement in the alleys or streets shown on the plat.[15] This principle of implied easements was reaffirmed by the Texas Supreme Court in *City of Houston v. Fox*[16] when Justice Greenhill defined the easement acquired by an adjacent landowner as a private right of passageway to and from one's property, which continues even after a city has vacated a street.[17]

Because a city's interest in a street usually does not include a proprietary title or right to exclusive possession,[18] a city assumes the role of trustee[19] and merely maintains a public easement for the sole benefit of the public.[20] On the other hand, ownership of a street, unless owned by the city, is vested in the adjacent landowners.[21] Their property interest extends to the center of

---

11. As stated in State v. Meyer, 403 S.W.2d 366, 370 (Tex. Sup. 1966):
> The Texas Courts have recognized that abutting property owners have certain private rights in existing streets and highways in addition to their right in common with the general public to use them. Generally, the most important of these private rights is the right of access to and from the highway.

12. City of Waco v. Texland Corp., 446 S.W.2d 1 (Tex. Sup. 1969); DuPuy v. City of Waco, 396 S.W.2d 103 (Tex. Sup. 1965).

13. Dykes v. City of Houston, 406 S.W.2d 176 (Tex. Sup. 1966). It should be noted that an "equitable remedy [mandatory injunction] may be invoked even though the party whose property is thus threatened with destruction may have an adequate remedy at law." Southwestern Tel. & Tel. Co. v. Smithdeal, 104 Tex. 258, 264, 136 S.W. 1049, 1052 (1911).

14. Dykes v. City of Houston, 406 S.W.2d 176, 181 (Tex. Sup. 1966); Dallas Cotton Mills v. Industrial Co., 296 S.W. 503, 504 (Tex. Comm'n App. 1927, jdgmt adopted); *see* 28 C.J.S. *Easements* § 39 (1941). In order for a property owner to have a cause of action for loss of these rights, a special injury must be shown that is not common to the community generally. Archenhold Auto Supply Co. v. City of Waco, 396 S.W.2d 111, 114 (Tex. Sup. 1965); Hartwell Iron Works v. Missouri-K.-T. R.R., 56 S.W.2d 922, 925 (Tex. Civ. App.—Galveston 1932, no writ); Kalteyer v. Sullivan, 46 S.W. 288, 291 (Tex. Civ. App. 1898, writ ref'd).

15. Dykes v. City of Houston, 406 S.W.2d 176, 181 (Tex. Sup. 1966); Dallas Cotton Mills v. Industrial Co., 296 S.W. 503, 504 (Tex. Comm'n App. 1927, jdgmt adopted); *see* 28 C.J.S. *Easements* § 39 (1941).

16. 444 S.W.2d 591, 592 (Tex. Sup. 1969).

17. *Id.* at 592, *citing* Dallas Cotton Mills v. Industrial Co., 296 S.W. 503, 505 (Tex. Comm'n App. 1927, jdgmt adopted).

18. City of Mission v. Popplewell, 156 Tex. 269, 273, 294 S.W.2d 712, 715 (1956).

19. *Id.* at 273-74, 294 S.W.2d at 715.

20. *Id.* at 274, 294 S.W.2d at 715. As the court in Dykes v. City of Houston, 406 S.W.2d 176, 181 (Tex. Sup. 1966) said:
> [A] city has the general power to regulate the use of the streets within its territory and the general duty to protect the public from hazards therein and to promote the public convenience.

21. Mitchell v. Bass, 26 Tex. 372, 380 (1862); Town of Refugio v. Strauch, 29 S.W.2d 1041, 1045 (Tex. Comm'n App. 1930, jdgmt adopted); *see* 10 E. McQUILLIN, MUNICIPAL CORPORATIONS, § 30.32 (1966 rev. vol.); 39 C.J.S. *Highways* § 136 (1944).

the street[22] and these owners have exclusive right to the land subject to the public's right of passage.[23] Therefore, if use of a street is discontinued by the city, the freehold would revert to the adjacent landowners.[24]

The property of abutting landowners is also constitutionally protected from public procurement.[25] "No person's property shall be taken, *damaged* or destroyed for or applied to public use without adequate compensation being made . . . ."[26] A city's closing of a street, even under the announced purpose of public benefit, is not exempt from this liability for property damaged.[27] As early as 1911, the supreme court, in *McCammon & Lang Lumber Co. v. Trinity & B.V. Ry.*,[28] stated that a city may not abrogate a landowner's right to have the street left open without providing adequate compensation for damage caused to the property.[29] Again in 1965, in *DuPuy v. City of Waco*,[30] a landowner was entitled to compensation where his property, after construction of a viaduct, was left fronting on a cul-de-sac which was held to constitute a damage to property for a public use.[31]

The question "why did a city close a particular street" is asked by many landowners whose property is adjacent to the newly closed street. The court in its response cannot inquire into the motives of the city council for such action,[32] but is restricted to a consideration of the purpose for which the ordinance was enacted.[33] Upon finding that the city's actions are for a

22. Mitchell v. Bass, 26 Tex. 372, 380 (1862); *see* 39 C.J.S. *Highways* § 136 (1944).

23. Mitchell v. Bass, 26 Tex. 372, 380 (1862).

24. *Id.* at 380; 39 C.J.S. *Highways* § 137 (1944). Thus, a street-closing ordinance has the effect of relinquishing the public easement in the street. Cobb v. City of Dallas, 408 S.W.2d 292, 294 (Tex. Civ. App.—Dallas 1966, no writ)stated:

> One may of course acquire a private easement in a street or alley existing contemporaneously and harmoniously with the public easement, and while the City might have the power to relinquish the public easement, the private right would be left intact.

25. TEX. CONST. art. I, § 17.

26. *Id.* (emphasis added).

27. Elston v. City of Panhandle, 46 S.W.2d 420, 421 (Tex. Civ. App.—Amarillo), *writ ref'd*, 121 Tex. 553, 50 S.W.2d 1090 (1932).

28. 104 Tex. 8, 133 S.W. 247 (1911). The court in discussing the effect of TEX. CONST. art. I, § 17 stated:

> The words "damaged or destroyed" show the purpose to secure compensation for losses not within the language previously used, and evidently were intended to include effects upon private property of public enterprises which might be held not to constitute takings.

Id. at 15, 133 S.W. at 250.

29. *Id.* at 15, 133 S.W. at 250.

30. 396 S.W.2d 103 (Tex. Sup. 1965). *See generally* 13 E. MCQUILLIN, MUNICIPAL CORPORATIONS, § 37.228 (1971 rev. vol.); Stoebuck, *The Property Right of Access Versus The Power of Eminent Domain*, 47 TEXAS L. REV. 733, 744-48 (1969).

31. DuPuy v. City of Waco, 396 S.W.2d 103, 110 (Tex. Sup. 1965).

32. Hartwell Iron Works v. Missouri-K.-T. R.R., 56 S.W.2d 922, 925 (Tex. Civ. App.—Galveston 1932, no writ); *see* 11 E. MCQUILLIN, MUNICIPAL CORPORATIONS, § 30.186 (3d ed. rev. 1964).

33. Hartwell Iron Works v. Missouri-K.-T. R.R., 56 S.W.2d 922, 925 (Tex. Civ.

purely private and not public interest, the court may grant injunctive relief to restrain a closing of a street.[34] Even if closure were for a public purpose, the abutting landowners may be entitled to compensation for damages to their property.[35] In determining a city's liability for such damage, the Amarillo Court of Civil Appeals, in *Elston v. City of Panhandle*,[36] found that the closing ordinance was "void and *ultra vires*."[37] The court added, however, that there was no cause of action against the City of Panhandle and that "this is especially true where it does not appear that the city itself occasioned the actual closing of the street."[38] Ultimately, the issue of public use is a question for determination by the courts,[39] but the initial burden of showing that the ordinance was not for public purposes remains on the party who objects to the proceeding.[40]

Proving that the abutting landowner has been damaged by deprivation of access by the closing or altering of a street is often more difficult than establishing the city's liability. Damages due to impairment of access is a vitally important issue which has been explained by a series of Texas Supreme Court cases. In 1965, the court in *Archenhold Auto Supply Co. v. City of Waco*[41] held that the plaintiff had not been deprived of "reasonable access" to his property as a result of the construction of a viaduct and that "[t]he damages suffered by Archenhold as a result . . . [were] damnum absque injuria."[42] Using the same standard of "reasonable access," the court allowed recovery in *DuPuy v. City of Waco*[43] because the construction of the viaduct did deprive the landowner of reasonable access.[44] "It is obvious that the construction of a large public improvement will have a different effect upon ingress and egress to and from properties which are differently located."[45] Under a rigid test of reasonable access, compen-

App.—Galveston 1932, no writ); *see* 11 E. McQUILLIN, MUNICIPAL CORPORATIONS, § 30.186 (3d ed. rev. 1964).

34. Dykes v. City of Houston, 406 S.W.2d 176, 180 (Tex. Sup. 1966), *noted in* 20 BAYLOR L. REV. 359 (1968).

35. City of Waco v. Texland Corp., 446 S.W.2d 1, 2 (Tex. Sup. 1969); *accord*, DuPuy v. City of Waco, 396 S.W.2d 103, 110 (Tex. Sup. 1965).

36. 46 S.W.2d 420 (Tex. Civ. App.—Amarillo), *writ ref'd*, 121 Tex. 553, 50 S.W.2d 1090 (1932).

37. *Id.* at 422.

38. *Id.* at 422.

39. Housing Authority v. Higginbotham, 135 Tex. 158, 166, 143 S.W.2d 79, 83 (1940).

40. City of San Antonio v. Pigeonhole Parking, 158 Tex. 318, 326, 311 S.W.2d 218, 223 (1958); Hartwell Iron Works v. Missouri-K.-T. R.R., 56 S.W.2d 922, 925 (Tex. Civ. App.—Galveston 1932, no writ).

41. 396 S.W.2d 111 (Tex. Sup. 1965).

42. *Id.* at 114.

43. 396 S.W.2d 103 (Tex. Sup. 1965).

44. *Id.* at 110.

45. *Id.* at 109. This effect of location upon ingress and egress can be distinguished by comparing the decisions of similar fact situations in *Archenhold* and *DuPuy*. *See generally* Cabaniss, *Inverse Condemnation In Texas—Exploring The Serbonian Bog*, 44 TEXAS L. REV. 1584, 1595-96 (1966).

sable damage occurs only when the owner has been deprived of all practical approach to his land. Again in 1969, the Supreme Court in *City of Beaumont v. Marks*[46] followed this standard of "reasonable access" and held that damage resulting from loss of reasonable access cannot be founded upon "circuity of travel and diversion of traffic."[47] The court in *Marks* emphasized that:

> It was not error to admit the evidence depicting the changes in the streets brought about by the construction and the circuitous routes necessary to travel in reaching the plaintiff's property; however, it was harmful error to fail to instruct the jury that the diversion of traffic from the old to the new and the "circuity of travel" cannot constitute a deprivation of reasonable access.[48]

In rejecting circuitous travel as a compensable deprivation of access, the court in *Marks* cited *State Highway Commission v. Humphreys*[49] and *Pennysavers Oil Co. v. State*.[50] In *Humphreys*, the complainant was not entitled to enjoin construction of a new highway even though customers' sales declined 80 percent because of the re-routing.[51] Similarly, Pennysavers' service station business was ruined due to a loss of access to a highway.[52] The state was not liable for the loss of the business because the station operator's access to the new highway was not completely eliminated.[53] Both Humphreys and Pennysavers were denied recovery because access to their respective businesses was not totally divested. These decisions indicate that landowners could not recover money damages for deprivation of access so long as another, even though less desirable, route was available. With these extremely rigid decisions as precedent, the court in *Marks* stated that "diversion of traffic resulting in the necessity of using circuitous routes is not compensable."[54] Justice Smith's majority opinion in *Marks*, however, noted that an abutting landowner's right of access included "the right to have the premises accessible to patrons, clients, and customers."[55] Ironically, the court found that Marks had been deprived of reasonable access, but reversed and remanded because diversion of traffic and circuity of travel cannot constitute deprivation of reasonable access.[56] Thus the issue of damages due to a

46. 443 S.W.2d 253 (Tex. Sup. 1969).
47. *Id.* at 257.
48. *Id.* at 256-57.
49. 58 S.W.2d 144 (Tex. Civ. App.—San Antonio 1933, writ ref'd).
50. 334 S.W.2d 546 (Tex. Civ. App.—San Antonio 1960, writ ref'd).
51. State Hwy. Comm'n v. Humphreys, 58 S.W.2d 144 (Tex. Civ. App.—San Antonio 1933, writ ref'd).
52. Pennysavers Oil Co. v. State, 334 S.W.2d 546, 547 (Tex. Civ. App.—San Antonio 1960, writ ref'd). "The record shows that prior to the construction of the Freeway appellant's filling station was a very prosperous business, but after its construction the filling station became a losing proposition and it was finally closed." *Id.* at 547.
53. *Id.* at 548.
54. City of Beaumont v. Marks, 443 S.W.2d 253, 257 (Tex. Sup. 1969).
55. *Id.* at 256.
56. *Id.* at 257.

loss of business resulting from forced circuitous routes by customers has been a difficult problem to resolve by the courts.

In 1969, the supreme court in *City of Waco v. Texland Corp.*[57] and *City of Houston v. Fox*[58] (decided the same day) attempted to ease the difficulty of recovering for loss of reasonable access. The court in *Texland* held that "[P]roperty has been damaged for a public use within the meaning of the Constitution when access is *materially and substantially impaired even though there has not been a deprivation of all reasonable access . . . .*"[59] The court in *Fox* determined that the facts presented did not evidence a violation of any access rights even though the more liberal standard of "material and substantial" was applied.[60] Once again the court failed to recognize diversion of traffic or circuity of travel as a compensable injury.[61] When applying *Texland* then, it seems that recovery is predicated upon whether the landowner has been materially and substantially deprived of his right of access to his property.[62] Although this principle should not be interpreted to mean that circuity of travel is compensable, it does indicate that a landowner could recover even though a circuitous route is being used to abate the hardship of the material and substantial loss of access.

Olivares was no exception to the confusion courts have experienced in distinguishing circuity of travel and access. To add to the dilemma, *Olivares* was a case of first impression in that the plaintiff was seeking damages without attempting to enjoin either the bank or the city.[63] Cases that have awarded money damages for injury to landowners who were victims of efforts to promote public welfare were decided within the purview of the Texas Constitution.[64] Likewise, damage resulting from a closing ordinance should be

---

57. 446 S.W.2d 1 (Tex. Sup. 1969).

58. 444 S.W.2d 591 (Tex. Sup. 1969).

59. City of Waco v. Texland Corp., 446 S.W.2d 1, 2 (Tex. Sup. 1969) (emphasis added).

60. City of Houston v. Fox, 444 S.W.2d 591, 593 (Tex. Sup. 1969).

61. *Id.* at 593.

62. *See* Stalcup & Williams, *Property, 1971 Annual Survey of Texas Law*, 25 Sw. L.J. 20, 29-30 (1971). The authors emphasized that:

> The difficulty in applying the new rule is evidenced by the court's [Texas Supreme Court] action in two cases on the same point. In *City of Houston v. Fox*, decided on the same day as *Texland*, the damage to the landowner's access was *held not to be material and substantial and, therefore, noncompensable.*

Id. at 29 (emphasis added).

63. Olivares v. City of San Antonio, 490 S.W.2d 922, 924 (Tex. Civ. App.—Beaumont 1973). Chief Justice Dies pointed out: "[W]hen no injunction is sought, as in this case, does Landowner have a cause of action for money damages against City? This is apparently a case of first impression on this question." *Id.* at 924.

64. City of Waco v. Texland Corp., 446 S.W.2d 1 (Tex. Sup. 1969); DuPuy v. City of Waco, 396 S.W.2d 103 (Tex. Sup. 1965). *But see* City of Houston v. Fox, 444 S.W.2d 591 (Tex. Sup. 1969); Archenhold Auto Supply Co. v. City of Waco, 396 S.W.2d 111 (Tex. Sup. 1965).

governed by case law that has determined abutting landowners' rights to adequate compensation for property that has been "taken, *damaged* or destroyed for or applied to public use . . . ."[65]

In *Olivares,* as in *Texland,* the majority held that plaintiff as an abutting landowner did suffer "material and substantial impairment of right to access."[66] By implication, the court also rejected the contention that a landowner was barred from recovery merely because the facts involve circuitous travel by prospective customers.[67] The Beaumont Court of Civil Appeals chose not to decide whether the purpose of the ordinance was private or public. Instead the decision was founded on whether the closing of that portion of Breneman Street materially and substantially impaired Olivares' right to access.[68]

The recent trend of decisions by the Texas Supreme Court has increasingly protected a landowner's property rights.[69] In view of these decisions, abutting landowners may now recover for a material and substantial loss of access which may be evidenced by a decline in business. The standard for recovery, however, as established by the courts, has been clouded by the contention that circuitous travel is not compensable. Even if the landowner stipulates that the city acted in public interest, adequate compensation should be made by the city for material and substantial deprivation of access, regardless of the fact that customers could reach his business by means of a

---

65. TEX. CONST. art. I, § 17 (emphasis added). *See generally* Cabaniss, *Inverse Condemnation In Texas—Exploring The Serbonian Bog,* 44 TEXAS L. REV. 1584, 1591-96 (1966).

66. Olivares v. City of San Antonio, 490 S.W.2d 922, 924 (Tex. Civ. App.—Beaumont 1973, writ granted).

67. *Id.* at 924. The court upheld Olivares' cause of action. "We do not believe these cases [Collins v. City of San Antonio, 443 S.W.2d 563 (Tex. Civ. App.—San Antonio 1969, writ ref'd n.r.e.) and *Fox*] foreclose Landowner's cause of action here." *Id.* at 924.

68. Olivares v. City of San Antonio, 490 S.W.2d 922 (Tex. Civ. App.—Beaumont 1973, writ granted).

69. *E.g.,* City of Waco v. Texland Corp., 446 S.W.2d 1 (Tex. Sup. 1969); City of Houston v. Fox, 444 S.W.2d 591 (Tex. Sup. 1969); DuPuy v. City of Waco, 396 S.W.2d 103 (Tex. Sup. 1965); Archenhold Auto Supply Co. v. City of Waco, 396 S.W.2d 111 (Tex. Sup. 1965). *See* Wingo, *Local Government, 1971 Annual Survey of Texas Law,* 25 SW. L.J. 187, 194-95 (1971). Justice McGee in *Texland* wrote a special concurring opinion wherein he argued for a broad interpretation of TEX. CONST. art. I, § 17:

> To this writer, this provision [TEX. CONST. art. I, § 17] means that any damage, beyond that de minimis or nominal in nature, caused to property by impairment of its appurtenant easement of access is compensable irrespective of the degree of impairment.
>
> . . . .
>
> I believe the proper interpretation of Article 1, Sec. 17 to be that the jury or court may award compensation for damage whenever there is evidence of probative force that there has been a diminution in value in abutting property because of an impairment of an adjacent easement of access caused by the construction of a public improvement.

City of Waco v. Texland Corp., 446 S.W.2d 1, 5 (Tex. Sup. 1969).

circuitous route. In absence of necessity, the city cannot deprive the owner of a profitable interest in his land without rendering itself liable for damages. "Adequate compensation" by a municipality for property that has been "damaged" for public benefit is the only equitable solution. Hopefully, the courts will continue to acknowledge the invaluable right of access to and from one's property.

Larry W. Harrison