This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1621

Hader Properties, LLC, et al.,
Respondents,

vs.

State of Minnesota,
by its Commissioner of Transportation,
Appellant.

Filed June 12, 2023
Affirmed in part, reversed in part, and remanded
Kirk, Judge[*]

Goodhue County District Court
File No. 25-CV-20-1720

Stuart T. Alger, Alger Property Law, P.L.L.C., Minneapolis, Minnesota (for respondents)

Keith Ellison, Attorney General, Jeffery S. Thompson, William Young, Mathew A. Ferche, Assistant Attorneys General, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Kirk, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this inverse-condemnation action, appellant State of Minnesota argues that the district court erred by concluding that respondents Hader Properties LLC ("Hader") and others interested in the property at issue had abutters' rights to access two highways when the state closed an intersection of the highways. By notice of related appeal, respondents assert that the district court erred by concluding that they did not have an easement to access the highways that the state damaged by closing the intersection. We reverse as to the abutters'-rights issue, affirm as to the easement issue, and remand for the district court to enter judgment in the state's favor.

FACTS

In 1963, the state took 8.96 acres in Goodhue County to realign State Trunk Highway 52 (Highway 52), which runs north and south. The taking left a 14.89-acre tract of private land abutting the new Highway 52 right-of-way from the west. A triangular piece of the Highway 52 right-of-way bounds the northeast corner of this private tract near the County State Aid Highway 24 (Highway 24) right-of-way, which runs west and east-southeast. The state constructed an at-grade intersection of the highways to the immediate north-northeast of the 14.89-acre tract of private land.

In 1968, the Goodhue County District Court approved a final certificate of condemnation that included the 1963 taking. The certificate provides that the 1963 taking included "all right of access, being the right of ingress . . . and egress" between the land

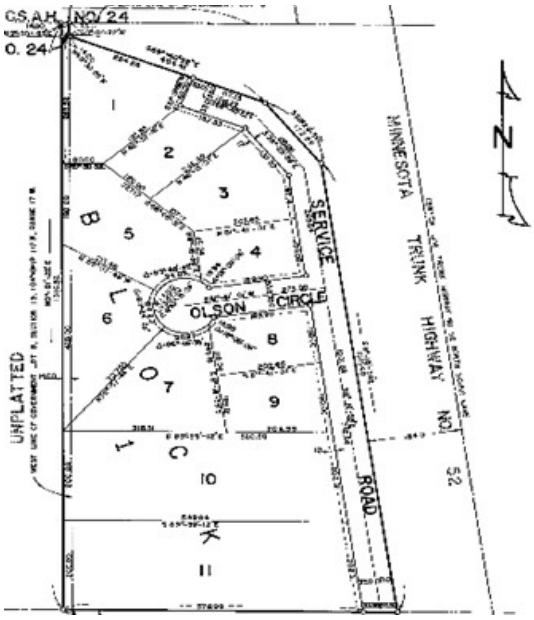
not taken and Highway 52. This is known as an "access control" provision.[1] It is undisputed that the state compensated the owners of the 14.89-acre private tract for taking access control.

However, the certificate of condemnation contains an exception to access control at issue here. The exception states that "the abutting owner shall retain the right of access extending northwesterly from the most westerly corner" of the triangular piece of the Highway 52 right-of-way described above. The exception further states that "said owner shall retain the right of access by way of [Highway 52] on the southwesterly side of" the intersection of Highways 52 and 24 ("the highways"). The access point provided by the exception is on the north boundary of the 14.89-acre private tract.

In 1976, the owners of the 14.89-acre tract subdivided it into 11 sublots and platted it as "Cannondale Center." The following image shows the Cannondale Center plat[2] along with relevant portions of the rights-of-way for the highways.

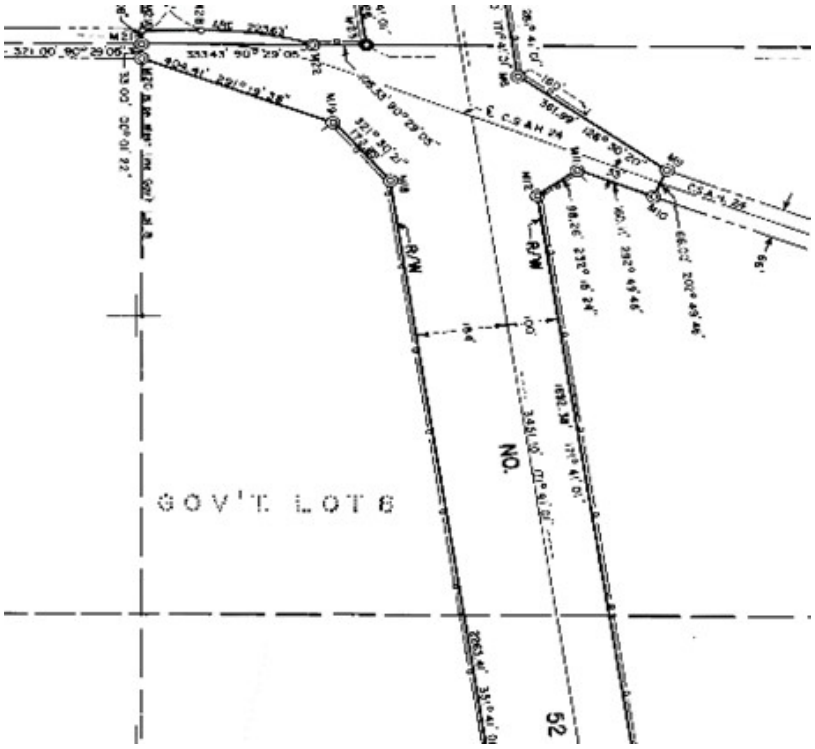
[1] The state may take property rights, "including rights of access," to establish controlled-access highways under Minn. Stat. § 160.08, subds. 1, 3-4 (2022). *See Hendrickson v. State*, 127 N.W.2d 165, 169 (Minn. 1964).

[2] "A plat is 'a delineation of one or more existing parcels of land,' which 'depict[s] the location and boundaries of lots, blocks, outlots, parks, and public ways.'" *In re Moratzka*, 988 N.W.2d 42, 43 (Minn. 2023) (alteration in original) (quoting Minn. Stat. § 505.01, subd. 3(f) (2022)).



The platters "donate[d] and dedicate[d]" the service road shown on the plat "to the public for public use forever." The service road, now known as 64th Avenue, is a public street maintained by the City of Cannon Falls.

In 1977, the state recorded a monumentation plat of the area of the 1963 taking that shows the intersection of the highways. The plat also shows where Highway 52 is access controlled with lines segmented by dots. The access point remaining from the 1963 taking is shown by a solid line running west-northwest to the top left corner of the following portion of the monumentation plat.



In 2012, Hader purchased part of Cannondale Center. The purchase included sublots seven through nine, part of sublots five and six, and part of the now-vacated cul-de-sac labeled "Olson Circle" on the Cannondale Center plat. Per the deed, Hader acquired the property "according to the plat on file and of record at the [c]ounty [r]ecorder's [o]ffice, Goodhue County." When Hader purchased the property, 64th Avenue intersected with Highway 24 around 600 feet north of the property. That intersection provided access between 64th Avenue and the intersection of the highways.

In September 2014, the state closed the intersection of the highways. This severed Highway 24 into separate streets on both sides of Highway 52 and eliminated Highway 24 as a route from 64th Avenue to Highway 52. However, the state constructed an interchange approximately 3,500 feet south of the property. To access the property from Highway 52 or vice versa, one must now use the new interchange before or after using several newly

constructed roundabouts and side streets. Access is similar from the property to the new Highway 24 east of Highway 52. But one must continue east through the interchange shortly before turning through a roundabout back to the north toward the new Highway 24.

In 2020, respondents petitioned for a writ of mandamus requiring the state to initiate condemnation proceedings. Respondents asserted that by closing the intersection of the highways, the state took or damaged their "easement and rights of access to and from [the highways] and 64th Avenue." The state moved for summary judgment, arguing that respondents had no right to access the highways when the intersection of the highways closed. Respondents moved for partial summary judgment, arguing that they had abutters and easement rights to access the highways when the intersection closed.

The district court granted partial summary judgment to respondents on the abutters'-rights issue, denied partial summary judgment to respondents on the easement issue, and denied summary judgment to the state. This court dismissed the subsequent appeal by the state and cross-appeal by respondents as taken from a nonappealable partial judgment. On remand, the parties stipulated to waive their trial rights in this file and request a writ of mandamus and order for the state to commence condemnation proceedings. The district court adopted the stipulation and entered final judgment, stating that the parties "waived further district court proceedings" and finding no just reason for delay. Per the stipulation, the district court stayed the writ of mandamus and judgment pending appeal. The state appealed the abutters'-right issue, and respondents cross appealed the easement issue.

DECISION

The state argues that the district court erred by granting partial summary judgment to respondents on the abutters'-rights issue and should have granted summary judgment to the state. By notice of related appeal, respondents assert that the district court erred by denying them partial summary judgment on the easement issue.

On appeal of a motion for summary judgment, we must "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 630 (Minn. 2007); *see also* Minn. R. Civ. P. 56.01. These are de novo determinations. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). Here, the parties do not dispute any relevant facts. We therefore consider only whether the district court correctly applied the law to the undisputed facts. *See Wensmann Realty*, 734 N.W.2d at 630.

Under the state and federal constitutions, the state may not take, destroy, or damage private property for public use without just compensation. U.S. Const. amend. V; Minn. Const. art. I, § 13; *Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 200 (Minn. 2020). If a property owner shows "that the state interfered with ownership, possession, or enjoyment of a property right," the property owner may obtain a writ of mandamus for "inverse condemnation" requiring the state to initiate condemnation proceedings to determine just compensation. *Oliver v. State ex rel. Comm'r of Transp.*, 760 N.W.2d 912, 915 (Minn. App. 2009), *rev. granted* (Minn. Apr. 29, 2009), *and appeal dismissed* (Minn. Nov. 16, 2009); *Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47, 50 (Minn. App. 1997), *rev. denied* (Minn. Jan. 28, 1998). But an injury to property by the state is not

compensable unless the owner shows "damage . . . different in kind and not merely in degree from that experienced by the general public." *Hendrickson*, 127 N.W.2d at 170. Whether interference with a property right by the state amounts to such an injury is a legal question. *Chenoweth v. City of New Brighton*, 655 N.W.2d 821, 824 (Minn. App. 2003) (stating that "[w]hether a taking has occurred is a question of law").

I. The district court erred by concluding that respondents had abutters' rights to access the highways when the intersection of the highways closed.

The state argues that the district court erred by concluding that respondents had abutters' rights of access to the highways when the intersection of the highways closed. "Owners of property abutting a public roadway have a right to reasonably convenient and suitable access to the roadway." *Oliver*, 760 N.W.2d at 916 (quotation omitted). This "property right" is "in the nature of an easement." *State by Mondale v. Gannons Inc.*, 145 N.W.2d 321, 329 (Minn. 1966). Nonabutting owners do not have this right. *Hendrickson*, 127 N.W.2d at 170-71. "An abutting owner . . . is one whose property abuts the right-of-way" of the road. *State by Spannaus v. Nw. Airlines, Inc.*, 413 N.W.2d 514, 518 (Minn. App. 1987) (en banc), *rev. denied* (Minn. Nov. 24, 1987).

The state agrees that the 64th Avenue right-of-way runs over lots eight and nine and the part of Olson Circle owned by respondents. Therefore, respondents own the underlying land in fee subject to the public's use and improvement. And respondents' property abuts the Highway 52 right-of-way. *See Bolen v. Glass*, 755 N.W.2d 1, 4 (Minn. 2008) ("[A]ny abutting landowner owns to the middle of the platted street . . . subject to the right of the public to use or remove the same for the purpose of improvement." (quotation omitted)).

Respondents do not dispute that by taking access control of Highway 52 where its right-of-way abuts respondents' property, the state prevented that abuttal from creating abutters' rights of access. *See Hendrickson*, 127 N.W.2d at 169 ("[A] controlled-access highway is one to which an abutting property owner may have only limited access or no access whatever."). Respondents also concede that their property does not abut the Highway 24 right-of-way. Rather, respondents argue that they succeeded to abutters' rights to access the highways under the exception to the access-control provision in the 1968 final certificate of condemnation. The district court agreed with respondents. We conclude that this was error.

As an initial matter, we note that platting Cannondale Center severed respondents' property from the abutters' rights appurtenant to sublots one and two, which abut the access point left over from the 1963 taking. *Dawson v. St. Paul Fire & Marine Ins. Co.*, 15 Minn. 136, 142, 15 Gil. 102, 109 (1870) ("[I]f . . . premises to which [a] right[-]of[-]way attached are divided, the right[-]of[-]way passes to each portion . . . *only so far as applicable to such portion*." (emphasis added)); *cf. Finke v. State*, 521 N.W.2d 371, 376 (Minn. App. 1994) (holding that property owner had no abutter's right appurtenant to nonabutting sublot after subdividing owner's larger parcel, part of which abutted street to which owner sought access from sublot), *rev. denied* (Minn. Oct. 27, 1994). And in respondents' deed to the property, the prior owners did not convey any abutter's right. Respondents have not asserted that the prior owners could have conveyed such a right. Respondents merely purchased sublots eight and nine of the Cannondale Center plat and part of Olson Circle, all of which used to be part of the same lot as sublots one and two and only abut Highway

52 where it was previously access controlled. On its own, this purchase did not give respondents abutters' rights to access the highways. *Dawson*, 15 Minn. at 143-44, 15 Gil. at 109-10 (holding that sublot owner lacked easement in street because sublot did not abut street and owner did not acquire easement "either by express grant" in deed to sublot or by necessity). Respondents do not dispute that conclusion.

Respondents instead rely on *Currell v. State, Dep't of Transp.*, 290 N.W.2d 772, 774-75 (Minn. 1980). That case sets forth "a narrow exception to the general rule . . . that nonabutting property owners have no right to . . . convenient access to a public road." *Finke*, 521 N.W.2d at 376. Under this exception, a nonabutting owner may succeed to an abutter's right of access appurtenant to another's lot if: (1) the nonabutting owner's lot was "once part of a greater parcel" that included the abutting lot; (2) the nonabutting owner's property "previously enjoyed access" through the abutting lot to the abutting road; and (3) "the state condemned" the abutting lot to build a new road while the greater parcel was still intact and deprived that parcel of access to the new road without paying damages. *Id.*

Here, respondents are effectively nonabutting owners as to Highway 52 because the state previously acquired all right of access where respondents' property and the Highway 52 right-of-way abut. Respondents' property also does not abut the Highway 24 right-of-way. And at least the third condition of the *Currell* exception is unmet here. Respondents concede that, as part of the 1963 taking, the state fully compensated the owners of the 14.89-acre tract, which the owners later platted as Cannondale Center. In compensating those owners, the state extinguished any right of compensation to which

respondents could have succeeded, leaving a right of access only to the property abutting the Highway 52 right-of-way where the highway is not access controlled.

Indeed, neither respondents' property nor any part of the Cannondale Center plat abuts the Highway 24 right-of-way. As such, respondents had no abutters' rights to access the highways when the intersection of the highways closed. *See also Cannon Falls Oil Co., Inc. v. Minn. Dep't of Transp.*, No. A16-0672, 2016 WL 7337114, at *3-4 (Minn. App. Dec. 19, 2016) (ruling that mandamus petitioners had no abutters' rights to access the highways when same intersection at issue here closed because petitioners' property did not abut either highways right-of-way).[3] The district court erred by granting partial summary judgment to respondents on the abutters'-rights issue.

II. The district court did not err by concluding that respondents had no easement to access the highways from 64th Avenue that the state damaged by closing the intersection of the highways.

By notice of related appeal, respondents argue that the state damaged their "easement" to access the highways from 64th Avenue by closing the intersection of the highways. Respondents claim that they had such an easement in 64th Avenue because they bought the property with reference to the plats on which the property is located. And according to respondents, the publicly dedicated service road in the Cannondale Center plat (now 64th Avenue), and the state of the roads when respondents purchased their property, show "a clear intent" by the Cannondale Center platters to provide "direct and immediate access" to the highways from 64th Avenue. We conclude that closing the

[3] Minn. R. Civ. P. 136, subd. 1(c) (stating that "[n]onprecedential opinions . . . are not binding . . . but . . . may be . . . persuasive").

intersection of the highways did not cause compensable damage to any easement owned by respondents because any damage to respondents' property rights is not distinct in kind from that to the public.

"An easement . . . is an entitlement to the use or enjoyment of the land . . . ." *State v. Hess*, 684 N.W.2d 414, 420 (Minn. 2004). A property owner has "an easement in the street" abutting their property as a "right of access" to the property "in any direction [that] the street permits." *Vanderburgh v. City of Minneapolis*, 108 N.W. 480, 481 (Minn. 1906). But the owner has no "peculiar right in the other dedicated parts of the plat" on which the property is located, "nor a right that the whole of the streets be kept unobstructed." *Locascio v. N. Pac. Ry. Co.*, 240 N.W. 661, 662 (Minn. 1932) (holding that lot owners alleging public nuisance sustained no special damage from railroad embankments that created dead end in street abutting plaintiffs' lots on blocks to the north and south when lots retained access to surrounding area from streets connecting to abutting street).

Here, the state acquired all right of access from respondents' property to Highway 52. And respondents' property does not abut the Highway 24 right-of-way. Therefore, respondents have no easement in either highway.

Respondents have an easement in the part of the 64th Avenue right-of-way running over their property. But closing the intersection of the highways did not damage this easement because respondents retain access to surrounding streets and highways from both directions on 64th Avenue. *See id.* (distinguishing special damage sustained by lot owners abutting dead-end portion of street from public damage sustained by plaintiffs and other surrounding property owners); *Cannon Falls Oil Co.*, 2016 WL 7337114, at *3-4 (rejecting

claim that "right of access to the abutting roadway . . . include[d] the right" to conveniently access Highway 52 from abutting street, and ruling it "dispositive" that "property still ha[d] reasonably convenient and suitable access" to "both . . . lanes" of abutting street, which connected to new Highway 24 but previously connected to Highway 52). That respondents "to some extent are inconvenienced in the way of ingress and egress" does not change this conclusion. *Locascio*, 240 N.W. at 662; *see also Hendrickson*, 127 N.W.2d at 170-71 ("Those who are not abutting owners have no right to damages merely because access to a conveniently located highway may be denied, causing them to use a more circuitous route.").

It is significant that 64th Avenue is publicly dedicated and that respondents effectively seek damages from the state for impairing passage to the highways from 64th Avenue. *See Locascio*, 240 N.W. 662 (rejecting argument that because plaintiffs' lots were "in the same platted portion of the city" as embankments, creating dead ends violated plaintiffs' "constitutional right" to keep abutting street open).[4] These facts distinguish this case from that relied on by respondents. In that case, the supreme court affirmed an injunction preventing the private defendants from blocking the plaintiffs' access to a lake

[4] *See also Flynn v. Beisel*, 102 N.W.2d 284, 286 (Minn. 1960) (syllabus) (holding as to public easement that "[w]hen one road commences or terminates at another road, it is intended to furnish a passage from and to that other"); *Church of Sts. Peter & Paul of Lake George v. Lake George Township*, 89 N.W.2d 708, 711 (Minn. 1958) (holding that "primary purpose" of "connecting streets" in platted areas is in part "to connect with other streets . . . for the benefit of the owners" in the plat *and* "the general public"); *Underwood v. Town Bd. of Empire*, 14 N.W.2d 459, 461 (Minn. 1944) ("The right of the public is that of passage, and the deprivation of that right causes the landowner damage of the same sort sustained by the general public. . . . An abutting landowner has, *in addition* to the public right of travel, the . . . distinct right of access to his property.").

over a road expressly dedicated by plat to lot owners within the plat, a group including the plaintiffs. *Bryant v. Gustafson*, 40 N.W.2d 427, 432-34 (Minn. 1950). Unlike there, we conclude here that any damage to respondents is not distinct in kind from that to the public.

We also agree with the district court that respondents argue for "too broad a rule" that would allow "property owners [to] claim easement access to public roads blocks away." This rule would be "inconsistent with the flexibility that cities and counties have in developing and using platted roadways." *Moratzka*, 988 N.W.2d at 51 (holding that Marketable Title Act "does not . . . extinguish *public interests* . . . dedicated by plat" (emphasis added)); *cf. Village of Medford v. Wilson*, 230 N.W.2d 458, 459 (Minn. 1975) (per curiam) ("[W]hen a street is dedicated by plat, a city may choose its own time to occupy, open, and use the street."). It would also risk undermining the supreme court's "war[iness] of creating a legal environment in which the cost of regulating traffic and improving roadways becomes prohibitive." *Dale Props., LLC v. State*, 638 N.W.2d 763, 767 (Minn. 2002). Respondents do not have an easement of the scope they assert from merely buying their property with reference to the plats on which it is located.

To the extent respondents claim an easement to access the highways because they previously had "direct and immediate access" to the highways from their property, we reject that argument. We rejected a similar argument under similar facts in *Yarmon v. Minn. Dep't of Transp.*, No. A16-0486, 2016 WL 6077143, at *2 (Minn. App. Oct. 17, 2016), *rev. denied* (Minn. Dec. 27, 2016). In that case, we observed that the property owners "never enjoyed direct and immediate access to the highway" abutting their property. *Id.* at *2. We also observed that none of the authority cited by the property

owners "recognize[d] an abutting owner's property right to direct and immediate access to their property" separate from their abutters' rights of access. *Id.* Those observations persuasively hold here, except that respondents' property does not abut the Highway 24 right-of-way at all.[5]

In summary, respondents had no abutters' rights to access the highways when the intersection of the highways closed. And by closing the intersection, the state did not cause compensable damage to respondents because any damage was not different in kind from that to the public's interest in the highways and 64th Avenue. We therefore affirm in part, reverse in part, and remand. On remand, the district court shall enter judgment in the state's favor.

Affirmed in part, reversed in part, and remanded.

[5] *See also Courteaus, Inc. v. State, Dep't of Highways*, 268 N.W.2d 65, 68 (Minn. 1978) (holding that mandamus petitioners showed no "property interest" distinct from public's in "retaining . . . three indirect-access openings" to nonabutting highway); *Grossman Invs.*, 571 N.W.2d at 51 (rejecting claim of compensable property right in "direct access" to property from intersection of abutting street and nonabutting highway when closing intersection "increased travel time off the freeway to [the] property from seconds to minutes" but remaining access from another abutting street was "not unreasonable"); *Cannon Falls Oil Co.*, 2016 WL 7337114, at *4 (ruling that because property's prior access to highway was "convenient[] but indirect . . . .[,] the property 'had no vested property interest in retaining the same access'" (quoting *Courteaus, Inc.*, 268 N.W.2d at 68)).