

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANT

Theodore E. Rokita
Attorney General

Francis Barrow
Supervising Deputy Attorney General
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES

Stephen L. Huddleston
Dustin D. Huddleston
Huddleston & Huddleston
Franklin, Indiana

IN THE COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

The Market Place at State Road
37, LLC, et al.,
Appellees-Defendants

May 17, 2023

Court of Appeals Case No.
22A-PL-2765

Appeal from the
Johnson Superior Court

The Honorable
Marla Clark, Judge

Trial Court Cause No.
41D04-1910-PL-140

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] This case arises from the State’s construction of Interstate 69 (“I-69”) through Johnson County. As part of that construction, the State initiated eminent-domain proceedings to acquire a small portion of property owned by The Market Place at State Road 37, LLC (“Market Place”). In the eminent-domain proceedings, Market Place submitted evidence of damages relating not only to the condemnation of the land, but also to the State’s closure of a nearby intersection. The State challenged the admission of this evidence, arguing the closure of the intersection is not a “taking” for which Market Place is entitled to compensation. The trial court held Market Place could present the evidence at trial, and the State appeals that determination. Agreeing with the State that the closure of the intersection is not a taking, we reverse.

Facts and Procedural History

- [2] In 2007, Market Place acquired title to a 14.274-acre lot (“the Property”) in Johnson County.¹ The Property is located at the northeast corner of the intersection of State Road 37 (“S.R. 37”) and Fairview Road. The Property is bordered by S.R. 37 to the west, Fairview Road to the south, and Bluff Road to

¹ A CVS store sits on the Property. Market Places owns only the land, and the owner of the CVS store is not involved in this appeal.

the east. The Property includes two access points for ingress and egress—onto Fairview Road and onto Bluff Road. The Property does not have direct access to S.R. 37. Rather, to access S.R. 37, motorists must turn west onto Fairview Road and travel approximately 350 feet to the stoplight intersection of Fairview Road and S.R. 37.

[3] In 2019, the State initiated eminent-domain proceedings to condemn a .211-acre strip of the Property running along S.R. 37 to assist in the construction of the new I-69. As a result of this project, S.R. 37 will become the new I-69. The State also plans to close the intersection of Fairview Road and S.R. 37 (now I-69). Fairview Road will not intersect with the new I-69. Instead, Fairview Road will end in a cul-de-sac just west of Market Place’s driveway, where it previously intersected with S.R. 37. Motorists on I-69 who wish to get to the Property will now have to take a longer route—either exiting south of the Property at Smith Valley Road, requiring an additional three miles of travel, or north of the Property at County Line Road, requiring an additional mile of travel.

[4] In the eminent-domain proceedings, the court-ordered appraisers valued the .211-acre strip to be condemned at \$26,400. Market Place also conducted an appraisal, which concluded Market Place was entitled to compensation of \$2,710,000, most of which was damages resulting not from the condemnation of the .211-acre strip, but from the State’s closure of Fairview Road at S.R. 37.

- [5] The State filed a motion to exclude evidence and a motion for partial summary judgment, arguing in both that Market Place cannot introduce damages sustained as a result of the intersection closure because it is not a constitutional taking. Market Place argued that “access to its property will be made more difficult by the elimination of all access to I-69 through Fairview Road” and the “interference is substantial and material” enough to constitute a taking. Appellant’s App. Vol. V p. 183. The trial court denied the State’s motions, concluding Market Place “is entitled to present evidence as to whether the closing of access to SR 37/I-69 from Fairview Road substantially and materially interferes with its right of access.” Appellant’s App. Vol. II p. 34.
- [6] The State then sought and received permission to bring this interlocutory appeal.

Discussion and Decision

- [7] The State argues the trial court erred in determining that Market Place could present evidence of damages relating to the closure of Fairview Road at S.R. 37, contending the closure is not a taking and thus Market Place is not entitled to any damages. We agree.
- [8] Article 1, Section 21 of the Indiana Constitution provides, “No person’s property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.” The Fifth Amendment of the U.S. Constitution similarly provides, in part, “nor shall

private property be taken for public use, without just compensation.” The Fifth Amendment’s Takings Clause applies to the states via the Due Process Clause of the Fourteenth Amendment. *State v. Kimco of Evansville, Inc.*, 902 N.E.2d 206, 210 (Ind. 2009). Our Supreme Court has held that the state and federal takings clauses are to be analyzed identically. *Id.*

[9] There is no dispute that the State’s exercise of its eminent-domain power to condemn the .211-acre strip of the Property constitutes a constitutional taking. The question is whether the State’s closure of Fairview Road also constitutes a taking for which Market Place is entitled to compensation. Whether a taking has occurred is a question of law, which we review de novo. *State v. Dunn*, 888 N.E.2d 858, 861 (Ind. Ct. App. 2008), *trans. denied*.

[10] To determine whether a taking of property has occurred, we look at whether the landowner has shown that it has an interest in land which has been taken for a public use without having been appropriated under eminent-domain laws. *Id.* at 862. In the specific context of a landowner’s claim of loss of access due to reconfigured highways, our Supreme Court has enumerated two rules. *AAA Fed. Credit Union v. Ind. Dep’t of Transp.*, 79 N.E.3d 401, 405 (Ind. Ct. App. 2017) (citing *Kimco*, 902 N.E.2d at 213-14), *trans. denied*. First, the right of an abutting landowner to ingress and egress over the public roads is a cognizable property right, and substantial or material interference with this right by the state is a compensable taking (“the ingress-egress rule”). *Id.* Second, by contrast, an abutting landowner has no cognizable property right in the free flow of traffic past his property (“the traffic-flow rule”). *Id.* “The traffic-flow rule denies

recovery to landowners who complain that, as a result of highway improvement or reconfiguration, the landowner's invitees must take a more circuitous or inconvenient route to the land, while the points of ingress and egress over the land remain unaffected." *Id.*

[11] Market Place argues this case is controlled by the ingress-egress rule and that therefore the question is whether the closure created a substantial or material interference. We disagree. Market Place is not arguing that its right to ingress and egress from the Property to the public roads has been eliminated or interfered with. Nor could it, as its point of ingress and egress is the same as it has always been—Fairview Road. Instead, it is arguing that the closure of the intersection of Fairview Road and S.R. 37 has made the Property so inconvenient to access that it effectively eliminated its ingress and egress routes. We have previously declined to identify such arguments as ingress-egress cases. *See Dunn*, 888 N.E.2d at 867 (differentiating between ingress-egress cases and traffic-flow cases and noting the “degree of interference” in traffic is “irrelevant” to the question of whether a taking occurred); *State v. Cheris*, 287 N.E.2d 777, 780 (Ind. Ct. App. 1972) (rejecting landowner's contention that the degree of circuitry of travel is a factor in determining whether there is a taking).

[12] This case falls squarely within the traffic-flow-rule cases. For example, in *Green River Motel Management of Dale, LLC v. State*, 957 N.E.2d 640 (Ind. Ct. App. 2011), *trans. denied*, the owners of a motel sued after the State closed a nearby intersection, resulting in motorists having to drive several miles further to reach the motel. This Court acknowledged that the State's action resulted in damages

to the motel's business but noted there was no interference with ingress or egress—motorists could still access the motel, albeit through “a more circuitous route.” *Id.* at 645. Therefore, because the State's action “merely alter[ed] the flow of traffic,” it was not a taking. *Id.*

[13] The situation here is almost identical to that in *Green River*. Market Place has inarguably suffered loss of business by the State's closure of Fairview Road. But this closure has not interfered with Market Place's right to ingress and egress. Instead, the damages are due to the longer route motorists must take to get to the Property. As such, this case is controlled by the traffic-flow rule. And because under this rule a landowner has no cognizable property right in the free flow of traffic past his property, this is not a taking. *See also AAA Fed. Credit Union*, 79 N.E.3d at 408 (no taking where the State relocated U.S. 31 and the abutting property owners, who previously had direct access to U.S. 31, now had access only to a frontage road).

[14] Additionally, Market Place argues that the closure of Fairview Road constitutes a taking because it was granted a right in its deed to “access SR 37 via Fairview Road.” Appellee's Br. p. 22. We disagree. The deed grants Market Place an opening from the Property to Fairview Road, not from the Property to S.R. 37. *See Appellant's App. Vol. V p. 148.* And Market Place still maintains its access to Fairview Road, so this right has not been taken. *Cf. Coutar Remainder I, LLC v. State*, 91 N.E.3d 610, 615 (Ind. Ct. App. 2017) (finding closure of owner's access to I-69 was a taking where their deed “expressly provide[d]” for that access), *trans. denied*.

[15] The trial court erred in determining that evidence of Market Place's damages resulting from the intersection closure could be submitted at trial.

[16] Reversed.

Tavitas, J., and Foley, J., concur.