

# HERMES SARGENT BATES

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AND COUNSELORS

## Points of Interest:

- Condemnation Damages

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## INTERSTATE NORTHBOROUGH PARTNERSHIP, ET AL., V. STATE OF TEXAS (OCT. 25, 2001)

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In Interstate Northborough Partnership, et al. v. State of Texas decided by the Texas Supreme Court on October 25, 2001, the Court recognized a landowner's right to recover damages for loss of curb appeal, green space and "buffer" zone in connection with the State's widening of I-45 in Houston. This case will be helpful to landowners in their negotiations with condemning authorities.

In the typical road-widening project, the abutting landowner receives compensation based upon the value per square foot of the property taken. The landowner is also entitled to compensation if access to its property is substantially and materially impaired by the taking. Substantial and material impairment of access is often difficult to prove.

In Interstate Northborough Partnership, the commercial landowner sought damages for the cost to redesign two driveways that provided access from the frontage road as well as for the decrease in value of the remaining property caused by the increase in proximity of its office building to the frontage road. Access was not substantially and materially impaired, in fact the landowner retained the ability to access its property from five existing driveways. The State argued that the



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decrease in proximity was something that affected all owners along the frontage road and therefore resulted in only non-compensable "community damages."

The landowner presented expert testimony concerning the decrease in value of the building as a result of its location decreasing from 96 feet to 23 feet from the frontage road. The expert testified that the building's classification dropped from "A" to "B". The Court found that this testimony was evidence of unique (not community) damages to the subject property. The landowner's expert also testified that the two driveways providing access from the frontage road had become unsafe, because the driveways were too short. Because the access was unsafe, rather than simply impaired, the Court approved the landowner's recovery of damages for the cost to redesign the affected driveways.