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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0475**

Cannon Falls Mall Inc.,
Respondent,

vs.

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

**Filed December 9, 2019
Reversed and remanded
Slieter, Judge**

Goodhue County District Court
File No. 25-CV-18-131

Gary A. Van Cleve, Rob A. Stefonowicz, Bryan J. Huntington, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

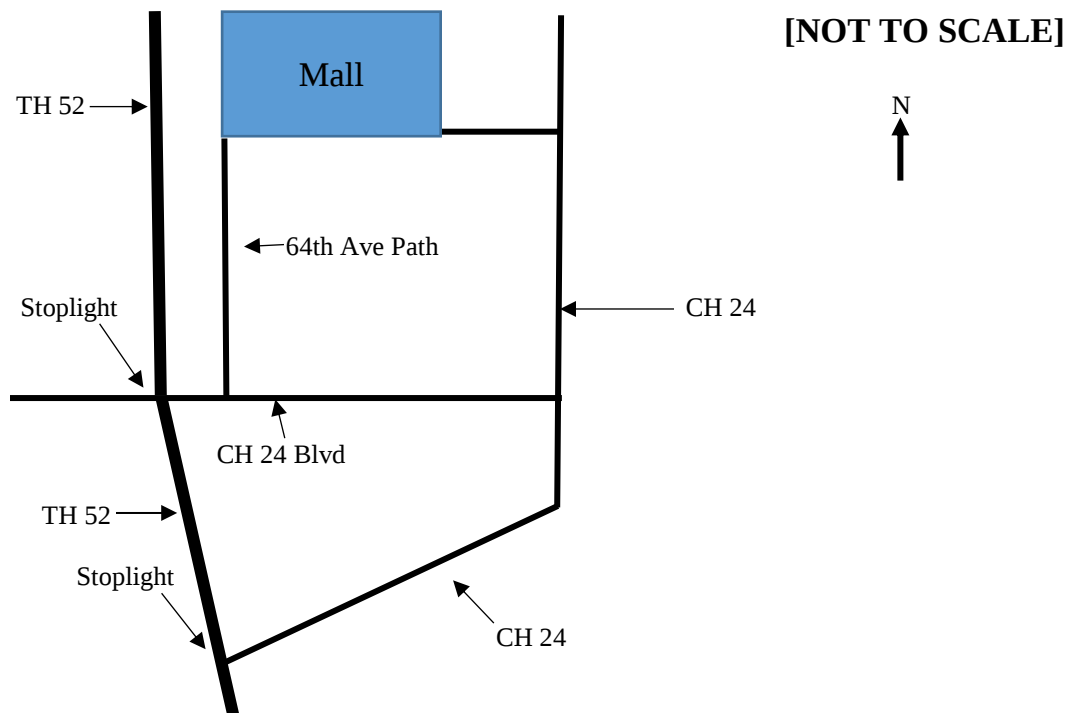
SLIETER, Judge

In this inverse-condemnation action, appellant Commissioner of Transportation (MnDOT) challenges the district court’s summary judgment in favor of respondent Cannon Falls Mall Inc. (CFM). MnDOT argues that the district court erred by concluding that Cannon Falls Mall’s right to reasonably convenient and suitable access to an abutting

highway was taken by MnDOT's road modifications.¹ Because there exist genuine issues of material fact as to whether reasonably convenient and suitable access was taken by MnDOT, we reverse and remand.

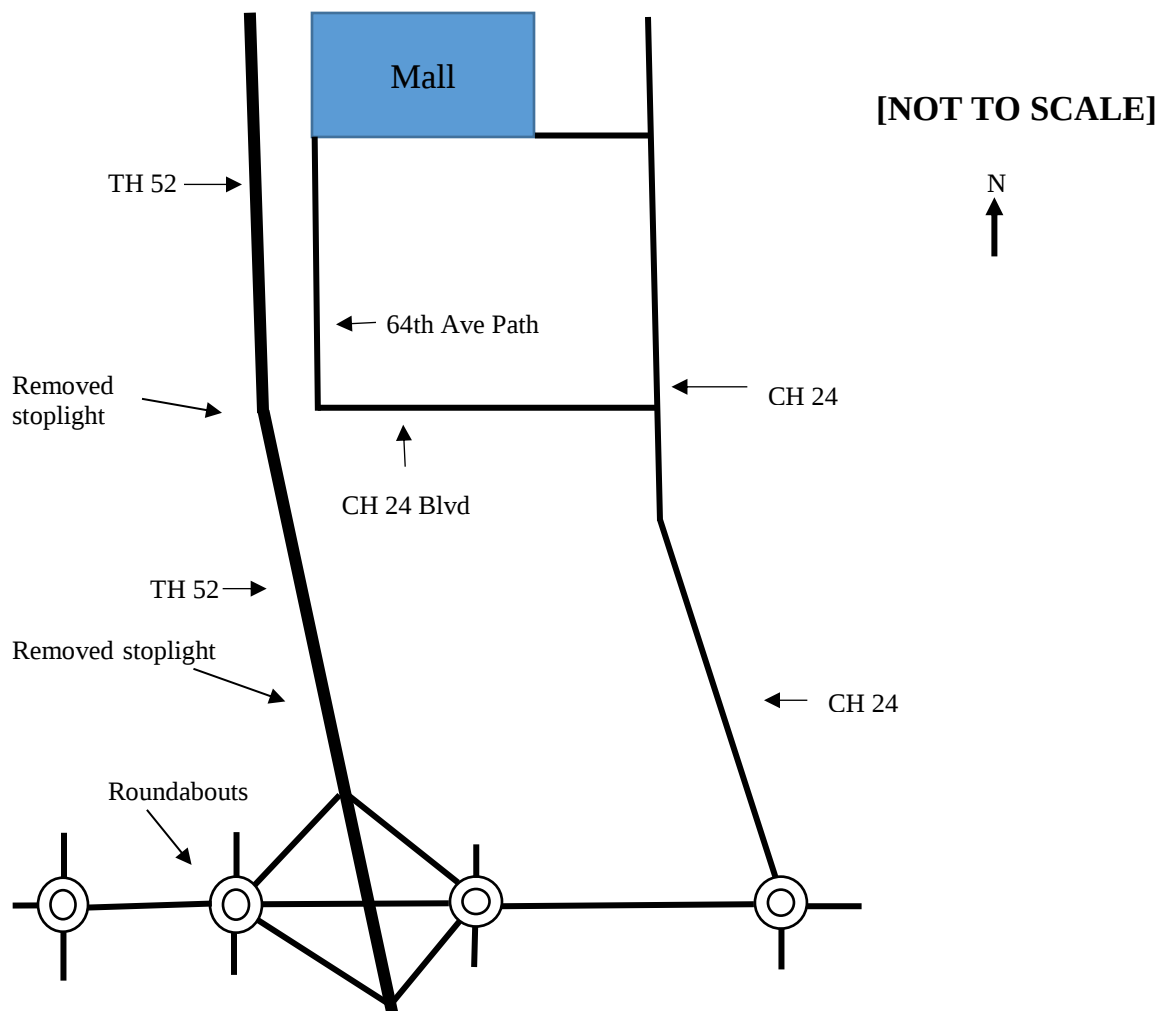
FACTS

The Cannon Falls Mall (the mall) is located in Cannon Falls and is owned by CFM. The mall is between by County Highway 24 (CH 24), to the mall's east, and Trunk Highway 52 (TH 52), to its west. Until 2014, access to the mall was available off TH 52 by a stoplight-controlled intersection with CH 24 Boulevard, southwest of the property.



¹ MnDOT also challenges the district court's conclusions on the valuation of the property and contends that the district court should have granted its summary judgment motion. Because we conclude that genuine issues of material fact exist on the reasonable-access issue, we do not address MnDOT's other arguments.

In 2014, MnDOT modified the mall's access to TH 52. The MnDOT project resulted in the closure of the stoplight-controlled intersection that permitted access to the mall, and replaced it with a series of four roundabouts to the south. The easternmost roundabout now provides access to CH 24 and the mall.



In January 2018, CFM sued MnDOT, alleging MnDOT had taken the mall's reasonably convenient and suitable access to TH 52 by closing the stoplight-controlled access and replacing it with the roundabout system. CFM claims that after MnDOT removed intersections and installed roundabouts further south, a vehicle on TH 52 must

“travel approximately 1.5 miles farther to either the north or south, through local residential and commercial neighborhoods, to finally reach [the mall].”

CFM requested a writ of mandamus to require the state to commence condemnation proceedings, and it alleged that MnDOT’s road modification constituted a governmental taking. Both parties moved for summary judgment. The district court granted CFM’s motion and concluded that the mall lost reasonably convenient and suitable access to TH 52 because of MnDOT’s project, and that CFM suffered damages as a result. The district court determined that a taking had occurred and ordered the state to initiate condemnation proceedings. This appeal follows.

D E C I S I O N

Summary judgment is appropriate when the record shows “that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.01. This court reviews the district court’s grant of summary judgment *de novo* to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *See Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). Appellate courts “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

To defeat a summary-judgment motion, the nonmoving party must show more than a “metaphysical doubt as to a factual issue.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (quotation omitted). “[T]he nonmoving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material

fact for trial.” *Southcross Commerce Ctr., LLP v. Tupy Props., LLC*, 766 N.W.2d 704, 707 (Minn. App. 2009). “Summary judgment is a blunt instrument that should not be granted when reasonable persons might draw different conclusions from the evidence presented.” *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (quotation omitted).

The state constitution provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Minn. Const. art. I, § 13; *see also* U.S. Const. art. V (“[N]or shall private property be taken for public use, without just compensation.”). “[P]roperty owners have a right to reasonably convenient and suitable access to a public street or highway which abuts their property.” *Johnson v. City of Plymouth*, 263 N.W.2d 603, 605 (Minn. 1978) (quotation omitted). This right is “a property right in the nature of an easement.” *State by Mondale v. Gannons Inc.*, 145 N.W.2d 321, 329 (Minn. 1966).

A taking may occur when the state alters an abutting property owner’s access to a roadway, even if no property was actually physically appropriated, when it damages the property “in the constitutional sense.” *Thomsen v. State by Head*, 170 N.W.2d 575, 578 (Minn. 1969). “Not every denial of immediate or convenient access, however, will support a claim for damages” *Hendrickson v. State*, 127 N.W.2d 165, 173 (1964). An abutting landowner may be entitled to damages when a highway modification substantially impairs “‘reasonably convenient access to the main thoroughfare.’” *Beer v. Minn. Power & Light Co.*, 400 N.W.2d 732, 734 (Minn. 1987) (quoting *Hendrickson*, 127 N.W.2d at 173). Whether reasonably convenient and suitable access exists is “a question of fact to be

determined in light of the circumstances peculiar to each case.” *Johnson*, 263 N.W.2d at 607.

The parties agree that the mall abuts TH 52 and that CFM has a right to reasonably convenient and suitable access to TH 52. The question in dispute is: Do there exist genuine issues of material fact as to whether reasonably convenient and suitable access to TH 52 was taken as a result of MnDOT’s modification?

In support of its summary judgment motion, CFM submitted an affidavit by its CEO that states that following MnDOT’s modification, “drivers on TH 52 need to drive 3 miles round trip: 1.5 miles to arrive at the mall, and 1.5 miles to return to TH 52” and must “navigate side and back roads to reach it.”

MnDOT submitted an expert report opining that access to the mall changed little after the modification. MnDOT’s expert concluded that travel time to the mall increased by an average of only six seconds. He opined that travelers approaching the mall from the east or west experienced no change, and travelers approaching from the north or south experienced very minimal change. The most significant change was for travelers leaving the mall and heading north, which resulted in about 30 seconds added to the trip.

CFM argues, and the district court concluded, that no genuine issue of material fact exists as to whether MnDOT’s modification deprived the mall of reasonably convenient and suitable access to TH 52. The record compels our disagreement.

The conflicting evidence in the record is sufficient to lead reasonable persons to draw different conclusions as to whether the mall retained reasonably convenient and suitable access to TH 52. A fact-finder may determine that the additional travel time

resulting from MnDOT's change leaves the mall with reasonably convenient access. Likewise, a fact-finder may believe the change leaves the mall without reasonably convenient access. "Evaluation of the existence of reasonable access is a question of fact and depends on the unique circumstances of each case, including the characteristics of the property itself." *C & R Stacy, LLC v. County of Chisago*, 742 N.W.2d 447, 458 (Minn. App. 2007); *see also Johnson*, 263 N.W.2d at 607 (stating that reasonably convenient and suitable access is "a question of fact to be determined in light of the circumstances peculiar to each case").

Because genuine issues of material fact exist, summary judgment was improper. Accordingly, we reverse and remand.

Reversed and remanded.