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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1219**

Cup Foods, Inc., et al.,
Appellants,

vs.

City of Minneapolis, et al.,
Respondents.

**Filed February 23, 2026
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-24-16716

Michael B. Healey, Jordan Cardenas, Wagner, Falconer & Judd, Ltd., Minneapolis,
Minnesota (for appellants)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the dismissal of their petition for a writ of mandamus related to respondents' actions, appellant-business owners argue that the district court erred in concluding that respondents' actions did not constitute an unconstitutional (A) per se

physical taking, (B) regulatory taking, or (C) right-of-access taking. Because respondents' actions did not constitute an unconstitutional taking, we affirm.

FACTS

The facts of this case are not disputed. On May 25, 2020, George Floyd was killed by Minneapolis Police Officer Derek Chauvin outside of the property where appellant CUP Foods, Inc. operates. Cup Foods is owned by four brothers, who also own appellants Southside Electronics, Inc.; NMA Investments, LLC; 3759 Chicago Ave., LLC; and Menthol Tobacco, LLC, which are located in or near the same property. Floyd's death sparked riots and protests in respondent City of Minneapolis (the city) and, in response to Floyd's death, a memorial was created for Floyd outside of CUP Foods at the intersection of East 38th Street and Chicago Avenue in the city.

The civil unrest also prompted the city to place concrete barricades at the north, south, east, and west entry points of East 38th Street and Chicago Avenue on June 2, 2020. The barriers were accompanied by signs stating, "Road Closed," and "Residents Only," and the signs redirected traffic around the area. Within the barricaded area, "civilian occupiers" "guard[ed]" the area and "create[d]" an autonomous zone that became known to local residents as the "No Go Zone." The city also limited, but did not completely eliminate, police response to this area. Consequently, this area experienced a "drastic increase in violent crime."

The concrete barriers blocking the entry points to the intersection of East 38th Street and Chicago Avenue remained in place until June 3, 2021, despite repeated requests by appellants to remove the barriers. In fact, the city acknowledged the detrimental economic

impacts of the barriers on local businesses, including appellants' businesses. In an effort to counter the adverse economic effects of the barriers, the city approved a one-time \$50,000 forgivable loan program for businesses and property owners in the affected area. The city also created the THRIVE Strategic Development Plan to address the social and economic problems created by the concrete barriers.

Despite the existence of the concrete barriers, appellants' businesses remained open. But in 2021, CUP Foods reported gross sales of \$598,181, a 11.49% decrease from 2019; Menthol Tobacco reported gross sales of \$237,316, a 49.96% decrease from 2019; and Southside Electronics reported gross sales of \$899,642, a 50.56% decline from 2019. And by 2023, Southside Electronics closed.

In November 2024, appellants filed a petition for a writ of mandamus, seeking a writ compelling the city and respondent Mayor Jacob Frey (collectively, respondents) to (1) begin condemnation proceedings for unlawfully taking their properties through inverse condemnation; and (2) provide police protection to their properties and the surrounding area. Respondents then moved to dismiss or, in the alternative, for summary judgment. The district court granted respondents' motion to dismiss under Minnesota Rule of Civil Procedure 12.02(e). In a detailed and well-written opinion, the district court determined that respondents' actions did not constitute a per se physical taking, regulatory taking, or right-of-access taking. The district court also determined that appellants' claim for a writ

of mandamus compelling respondents to provide police protection to their properties failed for several reasons not relevant here.¹ This appeal follows.

DECISION

Appellants challenge the district court's order granting respondents' motion to dismiss their petition for writ of mandamus to compel condemnation proceedings. When we review a dismissal under rule 12.02(e), and "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." Minn. R. Civ. P. 12.02; *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). The parties agreed at oral argument that the district court referred to, and relied upon, information outside of the pleadings in granting respondents' motion to dismiss. As such, the parties agree, as do we, that we should treat the district court's order as one granting summary judgment.

This court reviews a grant of summary judgment de novo and affirms "if no genuine issues of material fact exist and if the court accurately applied the law." *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371-72 (Minn. 2022). In doing so, we "view the evidence in the light most favorable to the nonmoving party." *Id.* at 372 (quotation omitted). "Whether a governmental entity's action constitutes a taking is a question of law that we review de novo." *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 631 (Minn. 2007).

¹ Appellants do not challenge the dismissal of this claim in this appeal.

Turning now to the takings issue, the state and federal constitutions do not allow the state to take, destroy, or damage private property for public use without just compensation.² 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). “The purpose of the Takings Clause is to ensure that the government does not require some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Wensmann Realty*, 734 N.W.2d at 632 (quotations omitted). Three recognized forms of takings are (1) a per se physical taking; (2) a regulatory taking; and (3) a right-of-access taking. See *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147-48 (2021) (describing per se physical takings); *Wensmann Realty*, 734 N.W.2d at 632 (describing regulatory takings); *Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47, 50 (Minn. App. 1997) (recognizing right-of-access takings), *rev. denied* (Minn. Jan. 28, 1998).

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*, 571 N.W.2d at 50. “Mandamus is an extraordinary remedy that is available only to compel a duty clearly required by law.” *Ly v. Harpstead*, 16

² Because the Takings Clause of the United States Constitution is similar to the Takings Clause of the Minnesota Constitution, we may look to caselaw analyzing a takings claim under the United States Constitution in evaluating a takings claim arising under the Minnesota Constitution. *Wensmann Realty*, 734 N.W.2d at 632-33.

N.W.3d 788, 800 (Minn. App. 2025) (quotation omitted), *rev. denied* (Minn. Apr. 15, 2025). In order to prevail on a mandamus action, the petitioner must establish that the government failed to perform an official duty imposed by law. Minn. Stat. § 586.03 (2024). For mandamus seeking inverse condemnation, a district court “must decide whether a taking of property has occurred in the constitutional sense.” *Id.*

Appellants argue that the district court erred in determining that respondents’ actions did not constitute an unlawful (A) per se physical taking, (B) regulatory taking, and (C) right-of-access taking. We address these arguments in turn.

A. Per se physical taking

A per se taking, also known as a physical taking, occurs when private property is “physically acquire[d]” or “invade[d]” by the government. *Cedar Point*, 594 U.S. at 147, 149. “The clearest sort of [a physical] taking occurs when the government encroaches upon or occupies private land for its own proposed use.” *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). The Supreme Court has also held that “[w]henver a regulation results in a physical appropriation of property, a per se taking has occurred.” *Cedar Point*, 594 U.S. at 149. Courts use a “simple, *per se* rule” to assess these physical-taking claims: “[t]he government must pay for what it takes.” *Id.* at 148.

Appellants argue that the district court erred in determining that respondents’ “actions did not constitute a per se taking” because respondents’ “policy or practice of placing and maintaining concrete barricades at the intersection for over one year, actively withdrawing police protection from the intersection, and the [c]ity murdering . . . Floyd, constituted” such a taking. To support their position, appellants rely on *Cedar Point*, in

which a California regulation required agricultural employers to allow union organizers to physically enter the employers' land for up to three hours per day, 120 days per year to solicit support for unionization. 594 U.S. at 143. The Supreme Court determined that the California regulation was a per se physical taking because it appropriated the owners' right to exclude third parties. *Id.* at 152.

Appellants' reliance on *Cedar Point* is misplaced. Unlike in *Cedar Point*, in which the regulation allowed a third party to physically enter the employers' land, there is no evidence showing that respondents allowed a third party to physically enter appellants' property. Nor is there any evidence showing that respondents physically entered appellants' properties or authorized third parties to do so. In other words, the record reflects that appellants retained full physical possession and use of their properties throughout the relevant time period. Moreover, there is nothing in the record demonstrating that respondents' actions appropriated appellants' rights to exclude third parties from their properties. As such, *Cedar Point* does not support appellants' position.

Appellants also rely heavily on *Hunters Capital LLC v. City of Seattle*, 499 F. Supp. 3d 888 (W.D. Wash. 2020) (*Hunters I*). In that case, the court considered a motion to dismiss a series of claims filed by a class of individuals, including an unlawful-taking claim under the Fifth Amendment. *Hunters I*, 499 F. Supp. 3d at 899, 903-04. Underlying the claim were facts demonstrating that, in the summer of 2020, during civil-rights protests following the death of Floyd, a 16-block section of Seattle became known as the Capitol Hill Occupying Protest ("CHOP"), an area with no official law-enforcement presence and barriers separating it from the rest of the city. *Id.* at 893. In denying the City of Seattle's

motion to dismiss the plaintiffs' takings claims, the court determined that the plaintiffs "plausibly assert that the [City of Seattle's] endorsement of, and the provision of material support to, CHOP set in motion a series of acts by certain CHOP participants, who the City [of Seattle] knew or reasonably should have known would deprive [the p]laintiffs of protected property interests." *Id.* at 904. The court concluded that "[t]hese allegations support the claim that the [City of Seattle's] conduct was causally related to the private misconduct and it was sufficiently direct and substantial to require compensation under the Fifth Amendment." *Id.* (quotations omitted).

However, in *Hunters Capital LLC v. City of Seattle*, 650 F. Supp. 3d 1187, 1203-04 (W.D. Wash. 2023) (*Hunters II*), which was decided after *Cedar Point*, the plaintiffs' per se takings claim did not survive the City of Seattle's motion for summary judgment. In that case, the court recognized that the plaintiffs did "not allege that the City [of Seattle] itself physically invaded their properties. Rather, [the p]laintiffs contend[ed] that the City [of Seattle] authorized third-party physical invasions." *Hunters II*, 650 F. Supp. 3d at 1203. But the court determined that the plaintiffs "presented no evidence that the City [of Seattle] expressly authorized any of the third-party physical invasions at issue," and the City of Seattle "did not adopt a regulation or ordinance granting protesters a 'formal entitlement' to enter [the p]laintiffs' properties." *Id.* at 1203-04. Therefore, the court granted the City of Seattle's motion for summary judgment as it related to the plaintiffs' per se theory of liability. *Id.* at 1204.

As the district court here acknowledged, the rulings in *Hunters I* and *Hunters II* "underscore the critical doctrinal point in this case: a per se physical taking requires actual

physical appropriation or compelled third-party occupation of property by the government—not merely toleration, negligence, or indirect support.” (Emphasis omitted.) Even viewing the evidence in the light most favorable to appellants, there is no evidence supporting appellants’ theory that respondents physically appropriated or compelled third-party occupation of their property by placing the concrete barriers and reducing police presence in the area. More specifically, there is no evidence showing that respondents physically occupied appellants’ properties, that appellants lost the right to possess their properties, or that they lost the right to exclude others from their properties. Moreover, there is no evidence indicating that respondents instituted policies or regulations allowing third parties to occupy appellants’ properties, such as affirmatively planning, creating, or executing the protest-related encampment near East 38th Street and Chicago Avenue. Rather, the record can only support that respondents’ involvement consisted of ongoing public-safety decisions and strategic restraint amid evolving community tensions. As the district court determined, appellants’ “theory rests on inaction and passive acquiescence—precisely the kind of allegations the court found legally insufficient in *Hunters II*.” *See Hunters II*, 650 F. Supp. 3d at 1203-04 (rejecting the plaintiffs’ per se theory of liability where no evidence was presented that the City of Seattle “expressly authorized any of the third-party physical invasions at issue,” and “did not adopt a regulation or ordinance granting protestors a ‘formal entitlement’ to enter [the p]laintiffs’ properties”). Therefore, the district court did not err in determining that appellants failed to demonstrate a per se physical taking.

B. Regulatory taking

Appellants also contend that the district court erred when it held that respondents' actions did not constitute a regulatory taking. "A regulatory taking occurs when the government goes too far in its regulation, so as to unfairly diminish the value of the individual's property, thus causing the individual to bear the burden rightly borne by the public." *Fletcher Props., Inc. v. City of Minneapolis*, 24 N.W.3d 287, 300 (Minn. 2025) (quotation omitted). But as the Supreme Court has acknowledged, "[t]he rub of course, has been—and remains—how to discern how far is 'too far.'" *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005). And our supreme court has stated that "[t]he determination of whether a regulatory taking has occurred is highly fact-specific, depending on the particular circumstances underlying each case." *Fletcher Props.*, 24 N.W.3d at 303 (quotation omitted). Nonetheless, when, as here, the facts are not disputed, the takings issue is a question of law. *See Wensmann Realty*, 734 N.W.2d at 631.

Minnesota courts have used two tests to determine whether a regulatory taking has occurred: the *Penn Central* balancing test set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and the *Alevizos* test set forth in *Alevizos v. Metropolitan Airports Commission of Minneapolis and St. Paul*, 216 N.W.2d 651 (Minn. 1974) (*Alevizos I*). *See Fletcher*, 24 N.W.3d at 304 (applying *Penn Central* test); *see also Haeussler v. Braun*, 314 N.W.2d 4, 9-10 (Minn. 1981) (applying *Alevizos* test to takings claim). Appellants challenge the district court's decision that they failed to satisfy either one of these two tests.

1. *Alevizos* test

In *Alevizos I*, the supreme court recognized that, “[t]raditionally,” property rights include “the rights to possess, use, and dispose of property.” 216 N.W.2d at 661. But the supreme court also recognized that “[t]his does not mean that every noise or interference with a property owner’s use and enjoyment thereof constitutes a taking” because every landowner must endure a “level of inconvenience, discomfort, and loss of peace and quiet which can be reasonably anticipated by any average member of a vibrant and progressive society.” *Id.* at 662. Nonetheless, when interference with property causes “a measurable decrease in property market value, it is reasonable to assume that, considering the permanency of the [actions at issue], a property right has been, if not ‘taken or destroyed,’ at the very least ‘damaged,’ for which our constitution requires that compensation be paid.” *Id.* The supreme court then established a test to determine if there was a compensable regulatory taking. *Id.* at 662. Under the *Alevizos* test, “[o]nly when these two factors are proved: (1) substantial invasion of a property right; (2) resulting in definite and measurable diminution in market value, can it be said that a taking has occurred.” *Haeussler*, 314 N.W.2d at 9 (acknowledging the test established in *Alevizos*).

Appellants argued that the “district court erred when it held [that they] failed to satisfy the *Alevizos* market value test.”³ We disagree. Importantly, after prescribing the *Alevizos* test, the supreme court in *Alevizos I* stated that “[t]o justify an award of damages it must be proved that [the alleged] invasions of property rights are not of an occasional

³ The district court never considered, nor do the parties argue, that the *Alevizos* test is inapplicable to this case.

nature, but are repeated and aggravated, and that there is a reasonable probability that they will be continued in the future.” 216 N.W.2d at 662.

Here, appellants acknowledge in their complaint that the concrete barriers were removed after approximately one year. Although the presence of the barriers may have constituted a “repeated and aggravated” interference for about a year, there is no probability that any interference “will be continued in the future” because the barriers have been removed. *See id.* As such, the record lacks evidence supporting appellants’ theory of a regulatory taking under the *Alevizos* test.

Not to be deterred, appellants argue that the removal of the barricades “after one year does not make the barricades an ‘occasional’ interference” because the barricades “stood [for] 24 hours a day for 366 days,” and “blocked 911 traffic access to [a]ppellants’ properties and severely limited pedestrian traffic.” And appellants contend that the existence of the barricades in this time period caused the intersection to become “so violent” that it “prevented [a]ppellants and the public from accessing [a]ppellants’ properties.”

Appellants’ argument is unavailing. The *Alevizos* test requires a “direct and substantial invasion” of a property right in order to be granted relief. *Id.* But viewing the evidence in the light most favorable to appellants, there is no evidence in the record consistent with their theory of the case that would satisfy this requirement. Rather, as the district court recognized, appellants’ “theory rests on indirect harm—i.e, that the [c]ity’s withdrawal of police presence, tolerance of barricades, and inaction in the face of protests led to a loss in value.” The alleged indirect harm is insufficient to satisfy the first part of

the *Alevizos* test. And because appellants fail to satisfy the first part of the *Alevizos* test, appellants' takings claim under that test fails.

2. *Penn Central* test

Appellants also challenge the district court's determination that they failed to satisfy the *Penn Central* test. The Minnesota Supreme Court has "used the *Penn Central* framework in . . . cases to analyze takings claims arising under the [United States] and Minnesota Constitutions." *Wensmann Realty*, 734 N.W.2d at 633; see *Fletcher Props.*, 24 N.W.3d at 303 (stating that, "[w]hen considering regulatory takings claims under the Minnesota Constitution, we have generally adopted the flexible test developed in *Penn Central*"). Under this test, courts must consider (i) the economic impact of the government regulation on the claimant; (ii) the extent to which the regulation has interfered with distinct investment-backed expectations; and (iii) the character of the government action. *Penn Central*, 438 U.S. at 124. "The *Penn Central* approach is flexible, with the factors often being balanced." *Wensmann Realty*, 734 N.W.2d at 633. But the primary focus of the injury is on "the severity of the burden that government imposes upon private property rights." *Lingle*, 544 U.S. at 539.

i. Economic impact

The inquiry under the first *Penn Central* factor "turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Fletcher Props.*, 24 N.W.3d at 304 (quotation omitted). Courts generally determine this by "compar[ing] the value that has

been taken from the property with the value that remains in the property.” *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 497 (1987).⁴

Appellants argue that the first *Penn Central* factor weighs in their favor because respondents “instituted a policy or practice of placing and maintaining the concrete barricades surrounding [a]ppellants’ properties for over one year and actively withdrawing police protection, which caused [them] to suffer economic harm.” And appellants contend that this economic harm included a drastic decline in sales revenue as well a \$660,000 decline in the value of their properties. We are not persuaded.

Appellants do not allege that respondents entered their land, condemned it, or imposed any legal restriction on its use or development. Instead, appellants acknowledge in their complaint that they retained possession of their properties and continued to operate their businesses while the barricades were in place. Although the city acknowledged in a letter that the existence of the barriers was “harming local businesses,” the existence of the barriers was just one factor that caused the decline in appellants’ property values and the sales related to their businesses. In light of the fact that appellants’ retained possession of their properties and operated their businesses while the barricades were in place, as well as other factors that caused the harm to appellants’ businesses, the economic impact related to respondents’ actions and the degree to which it interfered with their property interests

⁴ The supreme court in *Fletcher Properties*, noted that “we have not articulated a standard that applies in all cases” related to the first *Penn Central* factor, but “assume[d] without deciding” the *Keystone* standard applied in that case because neither party disputed the application of the *Keystone* standard. 24 N.W.3d at 304 n.10. For the same reasons, we assume that the *Keystone* standard applies here.

falls short of a taking. *See Fletcher Props.*, 24 N.W.3d at 304 (stating that the first *Penn Central* factor “turns in large part, albeit not exclusively, upon the magnitude of a regulation’s economic impact and the degree to which it interferes with legitimate property interests” (quotation omitted)). As such, this factor does not weigh in appellants’ favor.

ii. Interference with distinct investment-backed expectations

The second *Penn Central* factor requires us to examine “the extent to which the regulation has interfered with distinct investment-backed expectations.” *Penn Central*, 438 U.S. at 124. “In examining a property owner’s investment-backed expectations, the existing and permitted uses of the property when the land was acquired generally constitute the ‘primary expectation’ of the landowner regarding the property.” *Wensmann Realty*, 734 N.W.2d at 637. These expectations remain legally intact so long as the property can continue to be used in concert with governing regulations. *Minn. Sands*, 917 N.W.2d at 784.

Appellants argue that this factor weighs in their favor because they “invested their own money . . . into their businesses with the reasonable expectation of continuing to use their properties and receive a business profit” only to have respondents’ “actions destroy[]” their businesses. But appellants’ businesses were not restrained by changes to the property’s zoning or otherwise altered by any legal framework governing its use. Although the barriers and lack of police presence may have resulted in less business, appellants acknowledge that the public still had access to their businesses. And appellants acknowledge that they remained open while the barriers were in place. In fact, the barriers

were removed after approximately one year. Consequently, this factor does not weigh in appellants' favor.

iii. Character of the government action

The third *Penn Central* factor focuses on the character of the government action. *Penn Central*, 438 U.S. at 124. Our supreme court has recognized that the “appropriate focus” of this factor “is on the nature rather than the merit of the governmental action, with an important consideration being whether the regulation is general in application or whether the burden of the regulation falls disproportionately on relatively few property owners.” *Fletcher Props.*, 24 N.W.3d at 306-07 (quotations and emphasis omitted). “A ‘taking’ may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.” *Penn Central*, 438 U.S. at 124 (quotation omitted).

Appellants argue that this factor weighs in their favor because “the ‘nature’ of [r]espondents’ actions—murdering . . . Floyd, surrounding [a]ppellants’ businesses with concrete barricades for over one year, and withdrawing police protection—caused” appellants severe economic damage. We disagree. The concrete barriers and diminished police presence did not single out appellants’ properties for adverse treatment. And the diversion of traffic resulting from the barriers applied to the public intersection in general and affected a broad area of adjacent streets. Further, appellants offered no evidence indicating that respondents’ actions imposed a unique or disproportionate burden on appellants’ businesses as compared to similarly situated businesses in the area. As such,

respondents' actions are characterized as a general application rather than a burden that fell disproportionately on appellants. *See Fletcher Props.*, 24 N.W.3d at 306-07.

Moreover, the supreme court has recognized that the government may, under its broad police powers, “impose any reasonable restrictions and may make any reasonable regulations, in respect to the use which the owner may make of his property, which tend to promote the general well-being or to secure to others that use and enjoyment of their own property to which they are lawfully entitled.” *Johnson v. City of Plymouth*, 263 N.W.2d 603, 606-07 (Minn. 1978) (quotation omitted). It is only when the government attempts to forbid property owners from making use of their property—which use is not harmful to the public and does not interfere with the rightful use and enjoyment of their own property by others—that the government action invades property rights secured to the owner by both the state and federal constitutions. *Id.* at 607.

Here, the record reflects that respondents placed the concrete barriers in response to widespread civil unrest after Floyd's death, which occurred at the intersection where appellants' businesses are located. In doing so, respondents acted to preserve public safety, facilitate emergency access, and manage community tensions. These actions fall within respondents' general police powers and constitute a reasonable response to promote the general well-being of the public. *See id.* at 606-07. And respondents' actions did not constitute a taking because respondents' exercised their police powers in a reasonable fashion so as to not unduly restrict appellants' ability to use their properties. As such, the third *Penn Central* factor weighs heavily against appellants. And because all three *Penn*

Central factors weigh against appellants, the district court did not err in determining that respondents' actions did not constitute a regulatory taking.

C. Right-of-access taking

Lastly, appellants challenge the district court's decision that they failed to establish a right-of-access taking. Such a taking is recognized in Minnesota because state law establishes that property owners have the right of "reasonably convenient and suitable access to a public street or highway that abuts their property." *Grossman*, 571 N.W.2d at 50 (quotation omitted). This access 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). Thus, when an abutting property owner's access to a roadway is altered, a taking may occur even if no property is physically appropriated. *Grossman*, 571 N.W.2d at 50.

Our supreme court has recognized that a city government is permitted to exercise its police powers to improve public streets in the interest of public safety and welfare. *Johnson*, 263 N.W.2d at 606. But such an exercise becomes a taking if it has the effect of denying abutting property owners the right of reasonable access to their property. *See id.*; *see also State ex rel. Lachtman v. Houghton*, 158 N.W. 1017, 1021 (Minn. 1916) ("[W]hen the legislative power attempts to forbid the owner from making a use of his property which is not harmful to the public and does not interfere with the rightful use and enjoyment of their own property by others, it invades property rights secured to the owner by both the state and federal Constitutions."). "What constitutes reasonable access . . . depend[s] to some extent on the nature of the property under consideration." *Johnson*, 263 N.W.2d at

607. Not every change in access supports a claim for damages, and even a “substantial inconvenience” may not support a reasonable-access claim. *Id.*

Appellants rely extensively on the *Kick’s Liquor Store, Inc.* line of cases to support their position that respondents effected a compensable taking of their right of access by erecting concrete barriers and converting public streets into pedestrian-only zones near their businesses. The *Kick’s* cases stemmed from the City of Minneapolis’s creation of a permanent cul-de-sac that effectively eliminated a business’s only direct vehicular access to a main thoroughfare—Broadway Avenue—by closing off a side street, McNair Avenue, which served as a liquor store’s exclusive driveway access. *Kick’s Liquor Store, Inc. v. City of Minneapolis*, 587 N.W.2d 57, 58 (Minn. App. 1998) (*Kick’s I*). Although vehicles could still technically enter McNair from Broadway, the creation of the cul-de-sac meant that traffic could no longer traverse McNair through Farrant Place and Queen Avenue North, which were the only routes allowing free movement from the south. *Id.*

Based on the city’s actions, the liquor store sued the city, seeking a writ of mandamus to compel inverse condemnation. *Id.* The liquor store argued that the city’s closing of McNair Avenue, which was the only street through which their parking lot was accessible, deprived the store of its property. *Id.* On appeal from summary judgment in favor of the city, this court reversed and remanded for a trial on whether a compensable taking had occurred. *Id.* at 60. In so ruling, this court stated that, to prove that a compensable taking has occurred by the closing of a public street, the abutting property owner has the burden of proving that it (1) suffered special injury; (2) suffered actual damage; and (3) is left without reasonably convenient and suitable access to the main

thoroughfare in at least one direction. *Id.* Following a trial on remand, the district court determined that the City of Minneapolis’s actions constituted a taking or damaging of the liquor store’s property for which just compensation must be paid, and this court affirmed. *Kick’s Liquor Store, Inc. v. City of Minneapolis*, No. C4-00-2063, 2001 WL 506937, at *1 (Minn. App. May 15, 2001) (*Kick’s II*).⁵

Appellants argue that, like the decisions in the *Kick’s* line of cases, they satisfied the criteria establishing a right-of-access taking. This argument is unavailing.

1. Special injury

To establish a taking, the property owner must first show special injury due to the government’s action. *Kick’s I*, 587 N.W.2d at 60. Special injury is “one different in kind from that suffered by the general public as the result of the city’s action.” *Id.*; *see also Hendrickson v. State*, 127 N.W.2d 165, 170 (Minn. 1964).

Appellants argue that, like *Kick’s II*, they suffered “a special injury different than any injury suffered by the general public” because respondents “placed four concrete barriers” at an intersection that “blocked all vehicle traffic from accessing [a]ppellants’ properties from all four directions”; “authorized third-party occupiers to install additional

⁵ The supreme court granted review of *Kick’s II*, but stayed proceedings pending its review of this court’s decision in *Dale Properties, LLC v. State*, 619 N.W.2d 567 (Minn. App. 2000), and after issuing its decision in *Dale Properties, LLC v. State*, 638 N.W.2d 763 (Minn. 2002), vacated this court’s opinion in *Kick’s II*, and remanded for proceedings consistent with its decision in *Dale Properties*. On remand, this court affirmed its decision in *Kick’s II*, concluding that *Dale Properties* did not affect the decision. *Kick’s Liquor Store, Inc. v. City of Minneapolis*, No. C4-00-2063R, 2002 WL 1364018, at *4-5 (Minn. App. June 25, 2002) (*Kick’s III*), *rev. denied* (Minn. Sept. 17, 2003).

barriers in the intersection with signs stating, ‘ROAD CLOSED’ and ‘RESIDENTS ONLY’”; and “actively withdr[ew] police from the intersection” resulting in unprecedented levels of violent crime in the area. But *Kick’s II* is distinguishable. In that case, the liquor store suffered a very specific and individual injury in that the traffic change created a de facto cul-de-sac that forced uninvited traffic to enter and turn around in the liquor store’s parking lot. *Kick’s II*, 2002 WL 1364018, at *2.

Here, as respondents point out, appellants’ “alleged injuries as pled were suffered by the [community] as a whole in response to the uprising, and more locally, by all the businesses in and around 38th [Street] and Chicago [Avenue] and in other protest zones in the [area].” In other words, unlike in *Kick’s II*, appellants suffered the same inconveniences and challenges as the general public and other businesses. Moreover, the record reflects that sidewalk access, alley access, and alternative routes remained available to reach their businesses. As the district court determined, unlike in *Kick’s II*, appellants “did not lose their sole ingress or egress. An impenetrable cul-de-sac did not encircle them.” Finally, the barriers were installed during a public emergency and were temporary, lasting only about a year. In contrast, the configuration in *Kick’s II* was indefinite and implemented outside the context of civil unrest or emergency response. Thus, unlike in *Kick’s II*, the record here does not demonstrate a special injury.

2. Diminution in market value

The second criterion in *Kick’s I* requires that the property owner show that actual damage has occurred in the form of a measurable diminution of the market value of the property. *Kick’s I*, 587 N.W.2d at 60. Appellants argue that they satisfy this criterion

because the record shows that, due to the implementation of the barriers and the lack of police presence in the area, their business and property values declined substantially. We agree that the record shows a measurable diminution in the market value of appellants' properties, as well as loss in business revenue. As such, viewing the evidence in the light most favorable to appellants, we conclude that appellants have satisfied the second criterion in *Kick's I*.

3. Reasonably convenient and suitable access

The third criterion set forth in *Kick's I* requires that the property owner show that, as a result of the government action, it is left without reasonably convenient and suitable access to the main thoroughfare in at least one direction. *Kick's I*, 587 N.W.2d at 60. In other words, a right-of-access taking is compensable only when this criterion is satisfied. *See Hendrickson*, 127 N.W.2d at 172-73.

Appellants argue that the “barricades left [them] without reasonably convenient and suitable access to the main thoroughfare in at least one direction.” But as this court has recognized, even “[i]f access to property in an urban area requires ‘going around the block,’ a substantial inconvenience might still be reasonable access.” *County of Anoka v. Esmailzadeh*, 498 N.W.2d 58, 61 (Minn. App. 1993), *rev. denied* (Minn. May 28, 1993). It is only when “access has been made so inconvenient as to be nearly impossible, [that] there would not be reasonable access.” *Id.* at 61-62.

Here, viewing the evidence in the light most favorable to appellants, access to their properties was not so inconvenient as to be nearly impossible. *See id.* Appellants acknowledge that their businesses were accessible by foot. In fact, they acknowledge that

the alley adjacent to their building was unblocked. Although individuals wanting to access appellants' businesses may have had to park a block away and walk to the business, or be dropped off in the alley near the business, such an inconvenience is not impossible or nearly impossible access. Indeed, our supreme court has recognized that not every change in access supports a claim for damages, and even a "substantial inconvenience" may not support a reasonable-access claim. *Johnson*, 263 N.W.2d at 607; *see also Esmailzadeh*, 498 N.W.2d at 61 ("If access to property in an urban area requires 'going around the block,' a substantial inconvenience might still be reasonable access."). Such is the case here. Appellants had access to their properties, albeit perhaps somewhat inconvenient access at times. As such, appellants have not demonstrated that access to their properties was so unreasonably inconvenient that it rose to the level of an unconstitutional taking.

Because the record fails to show that appellants suffered a special injury, or that respondents' actions resulted in a loss of reasonable and convenient access to their properties, appellants failed to establish a right-of-way taking. Although the record shows a measurable diminution in market value of appellants' properties since Floyd's death, the analysis set forth in *Kick's I* requires that all criteria be satisfied. *See Kick's I*, 587 N.W.2d at 60 (stating that, to prove that a compensable taking has occurred by the closing of a public street, the abutting property owner has the burden of proving (1) it suffered special injury; (2) it suffered actual damage; *and* (3) it is left without reasonably convenient and suitable access to the main thoroughfare in at least one direction); *see also Nash v. Comm'r of Pub. Safety*, 4 N.W.3d 812, 818 n.7 (Minn. 2024) (stating that courts "generally treat

. . . ‘and’ as conjunctive”). Therefore, the district court did not err in determining that appellants failed to demonstrate a right-of-access taking.

In sum, the district court determined that appellants have failed to demonstrate that respondents’ actions constituted an unconstitutional per se physical, regulatory, or right-of-access taking. The district court’s decision is well reasoned and supported by the record. Accordingly, viewing the evidence in the light most favorable to appellants, we conclude that the district court did not err in determining that appellants failed to establish an unconstitutional taking.

Affirmed.