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Supreme Court of Appeals
Records

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Records Nos. 5125, 5126

In the Supreme Court of Appeals of Virginia at Richmond

ESTELLE CRAFFORD WATTS, ET AL., ETC.,
v.
STATE HIGHWAY COMMISSIONER OF VIRGINIA

T. R. VERMILLION, ET AL.,
v.
STATE HIGHWAY COMMISSIONER OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG AND JAMES CITY COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

IN THE

Record No. 5126

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 24th day of November, 1959.

T. R. VERMILLION, ET AL., Appellants,

against

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Appellee.

From the Circuit Court of the City of Williamsburg and James City County

---

Upon the petition of T. R. Vermillion and Marguerite S. Vermillion an appeal is awarded them from a decree entered by the Circuit Court of the City of Williamsburg and James City County on the 3rd day of June, 1959, in a certain proceeding then therein depending wherein the State Highway Commissioner of Virginia was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5125

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 24th day of November, 1959.

ESTELLE CRAFFORD WATTS, ET AL., ETC.,
Appellants,

against

STATE HIGHWAY COMMISSIONER OF VIRGINIA,
Appellee.

From the Circuit Court of the City of Williamsburg and James City County

---

Upon the petition of Estelle Crafford Watts and Virginia Trust Company, Co-Executors and Trustees under the will of Robert B. Watts, deceased, Estelle Crafford Watts, L. C. Watts, T. R. Vermillion, L. L. Watts, Emily W. Vermillion, Jane W. Coffman, Elizabeth W. McGraw, and Ida W. Weisbrod an appeal is awarded them from a decree entered by the Circuit Court of the City of Williamsburg and James City County on the 3rd day of June, 1959, in a certain proceeding then therein depending wherein State Highway Commissioner of Virginia was plaintiff and the petitioners were defendants; upon the petitioners, other than the Co-Executors and Trustees, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs; no bond being required of the Co-Executors and Trustees.

RECORD

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Record No. 5125

ESTELLE CRAFFORD WATTS, ET AL., ETC.

v.

STATE HIGHWAY COMMISSIONER OF VIRGINIA.

PETITION FOR CONDEMNATION PROCEEDINGS.

To one of the Honorable Judges of said Court:

Your Petitioner, State Highway Commissioner of Virginia, files this petition in accordance with Title 33, Chapter 1, Article 5 (Sections 33-57 to 33-75) of the Code of Virginia, as amended, and such statutes as may be applicable for the purpose of condemning certain lands in James City County as hereinafter described, and alleges as follows:

(1) That Russell M. Carneal is the duty authorized agent and attorney of S. D. May, State Highway Commissioner of Virginia, as is shown by the signed declaration of the said S. D. May, dated Sept. 30, 1958, hereto attached, marked "Exhibit A," and asked to be read as a part of this petition, and that the said Russell M. Carneal is authorized to file this proceeding in the name and on behalf of the State Highway Commissioner of Virginia.

(2) That Robert B. Watts was the owner of a tract of land embraced in Public Highways of the State known page 2 } as Route 31, in James City County, Virginia, which is described in certificate of Petitioner, copy of which is attached hereto marked "Exhibit C," said land being a portion of a tract containing about 169 acres in Jamestown Magisterial District, James City County, Virginia, the same having been acquired by said owner as follows:

(a) By deed dated September 4, 1941 from John W. Avery, et ux to R. B. Watts and recorded in James City County Deed Book No. 33, Page 520 on September 4, 1941.

(b) That the said Robert B. Watts departed this life testate on August 1, 1948. That in his last will and testament which was duly admitted to probate and is recorded in James City County Will Book 5 at page 136, the said Robert B. Watts devised all of his real property to Eugene Crafford Watts and the Virginia Trust Company, as Trustees for the benefit of Estelle Crafford Watts, L. C. Watts, T. R. Vermillion, L. L. Watts, Emily W. Vermillion, Jane W. Coffman, Elizabeth W. McCraw, and Ida W. Weisbrod, in accordance with the trust provisions set forth fully in said will.

(3) That the particular part of said land which is here sought to be condemned, is shown and described on a blueprint filed as Sheet No. 4 A, Project No. 2847-03, State Highway No. 31, and which sheet is marked "Exhibit B" and prayed to be taken and read as a part of this petition. The

State Highway Commissioner of Virginia, Condemnor,

v.

Estelle Crafford Watts, Widow, and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, Condemnees.

Beneficiaries under the Will of Robert B. Watts:

ESTELLE CRAFFORD WATTS
Amblers on the James
James City County, Virginia

L. C. WATTS

T. R. VERMILLION
128 Indian Springs Road
Williamsburg, Virginia

L. L. WATTS

EMILY W. VERMILLION
Richmond, Virginia

JANE W. COFFMAN
Harrisonburg, Virginia

ELIZABETH W. McCRAW
Farmville, Virginia

IDA W. WEISBROD
Lutherville, Maryland

site approximate Station 39+00 to the lands of T. R. Vermillion opposite approximate Station 51+00, and containing 1.16 acres, more or less, land.

AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 39C+08 (office revised line C), the lands of the landowner, thence along said pro-
page 4 } posed north limited access line to a point opposite approximate Station 40C+10 the lands of the landowner; also from a point on the proposed north limited access line, opposite approximate Station 40C+30, the lands of the landowner, thence along said proposed north limited access line to a point opposite approximate Station 51ABC+00, lands of T. R. Vermillion and shown in blue on said photo copy.

The State Highway Commissioner of Virginia further declares that nothing herein contained shall be construed as denying the landowner, his successors, heirs or assigns, the right of ingress to or egress from any of the landowner's lands which abut upon any service road now or hereafter constructed by the Commonwealth.

(6) That your Petitioner has made a *bona fide* and ineffectual effort with the owners of said land to effect a purchase of the right and title here sought to be acquired; and that as far as is known or by due diligence can be ascertained, the said Estelle Crafford Watts, widow, and Virginia Trust Company, Richmond, Virginia, Trustees, and Estelle Crafford Watts, L. C. Watts, T. R. Vermillion, L. L. Watts, Emily W. Vermillion, Jane W. Coffman, Elizabeth W. McCraw and Ida W. Weisbrod, beneficiaries under the will of Robert B. Watts, are the only parties in interest.

(7) Your Petitioner alleges that there is filed in the Clerk's Office of this Court with the petition a certificate of the Pe-

said parcel of land so sought to be acquired is required for State Highway Project No. 2847-03. By these proceedings the Commonwealth seeks to condemn and acquire title to the said parcel or strip of land along, through and over such portion of the said property as described in "Exhibit C" above referred to, and is also shown on blueprint filed as "Exhibit B" and indicated thereon within the area included within the red lines, together with the existing easements or rights of access, light and air, on and belonging to the abutting lands or lands, which easement is also described in "Exhibit C" and shown in "Exhibit B" within the area included within the blue lines.

(4) That the right and property intended to be taken by this proceeding is the fee simple title to the strip or parcel of land of the said owners hereinabove described, to-
page 3 } gether with existing easements or right of access, light and air, incident to the land or lands abutting upon said Limited Access Highway and/or upon any of its ramps, loops, or connections at or with intersecting highways except that until such time as the service road or roads shown and provided for on said survey and plans shall be constructed, the owner or owners of the said land or lands abutting the said land or lands to be acquired in fee simple shall have permissive use of the existing way or ways of access, or such way or ways of access as may be permitted by the said State Highway Commissioner, as a means of ingress and egress to and from the said abutting land or lands of said owner or owners.

(5) That the said strip or parcel together with the existing easements or rights of access, light and aid, incident to the land or lands abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with interesecting highways, to be acquired, is necessary for the construction, reconstruction, alteration, or other improvement and maintenance of a road embraced in the State Highway System, known as Route 31, Project No. 2847-03, in Jamestown Magisterial District, James City County, Virginia, containing 1.16 acres, more or less, land; and it is necessary, requisite and suitable that the said strip or parcel of land of the aforesaid owner for the purpose aforesaid be of the width and on the route and grade as shown on the aforesaid blueprint and is described as follows:

Being as shown on plans approved February 11, 1955, and lying on the northwest (left) side of survey centerline (Line C) and adjacent to the existing northwest right of way line of present Route 31 from the lands of the Landowner oppo-

ants, that said petitioner would, on the 28th day of July, 1958, apply to the said Circuit Court for the appointment of Commissioners in said cause, NOW THEREFORE, The Court doth ADJUDGE, ORDER AND DECREE that (1) Alex Harwood, Jr., (2) James E. Vaiden, (3) Willard Gilley, (4) H. B. Smith, and (5) James C. Graff, five disinterested freeholders and residents of said County by, and they are hereby, appointed Commissioners, and three or more of whom may act, whose duty it shall be to go upon and view said lands and ascertain what will be a just compensation for said lands, and award such damages, if any, as may result to the adjacent or other property of the owner thereof, or page 7 } to the property of any other person beyond the benefits that will accrue to such properties, respectively, from the construction, reconstruction, alteration, maintenance and repair of the public road to be *buildt* on said land, as described in said petition.

The Clerk of this Court is hereby directed to summon said Commissioners to appear before this Court on the 16th day of December, 1958, at 10:00 o'clock A. M. for the aforesaid purposes.

Enter this 11/10/58.

R. T. A.

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et als.

GROUNDS OF DEFENSE.

The defendants set forth the following Grounds of Defense:

1. The value of the land taken, including the easements and rights sought to be condemned herein, is $21,600.00.

titioner, marked "Exhibit C," which is to be considered as a part of this petition.

(8) Your Petitioner alleges that your Petitioner estimated the sum of $1,160.00 to be the fair value of the land taken and damage done and in order that work may proceed, paid said sum into the Circuit Court of the City of Williamsburg and County of James City for the benefit of the land owners as represented by certificate of deposit No. C 203, dated September 30, 1958.

WHEREFORE, your Petitioner prays for the appointment of Commissioners, as provided by law, to ascertain what will be a just compensation for the land proposed to be condemned for the use of the State of Virginia, as a Public Highway, and to award damages, if any, resulting to the adjacent or other property of the owner, or to the property of any other person beyond the benefits that will accrue, respectively, from the construction, reconstruction, page 5 } alteration, improvement and maintenance of said road, as aforesaid.

S. D. MAY,
State Highway Commissioner of Virginia
By RUSSELL M. CARNEAL

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow, and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et al.

ORDER APPOINTING COMMISSIONERS.

It appearing to the Court that the said State Highway Commissioner of Virginia, has duly filed his petition in this Court seeking to condemn a fee simple title in certain lands described in said petition and belonging to the above-named defendants; that due notice has been given to said defend-

State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow, and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et al.

REPORT AND AWARD OF COMMISSIONERS.

We, Willard Gilley, Alex Harwood, Jr., H. B. Smith, James C. Graff and James E. Vaiden, Commissioners appointed by the Circuit Court of the City of Williamsburg and County of James City, Virginia, by order entered November 10, 1958, to ascertain what will be a just compensation for such land of the freehold whereof Estelle Crafford Watts, widow, and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, and beneficiaries under said Will of Robert B. Watts, are the owners, and assess the damages, if any, resulting to the adjacent or other property of said owners, and to the property of any other persons beyond the peculiar benefits which will accrue to such properties respectively from the construction, reconstruction, alteration, maintenance, and repair of a road embraced in the State Highway system, as set in the petition and exhibits, do certify that on the 16th day of December, 1958, the day designated in said order, we met together in the Clerk's Office of this Court, and were there duly sworn, and we also met together on, and viewed, the land taken by the page 11 } said State Highway Commissioner from the said owners, the limits of which were then and there described to us as follows:

Being as shown on plans approved February 11, 1955, and lying on the northwest (left) side of survey centerline (Line C) and adjacent to the existing northwest right of way line of present Route 31 from the lands of the Landowner opposite approximate Station 39+00 to the lands of T. R. Vermillion opposite approximate Station 51+00, and containing 1.16 acres, more or less, land.

AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the

2. The damages to the remaining property of these defendants resulting from the limitation of access to and from their remaining property, the difference in appearance of the property before and after the taking of the land and building of the highway, the making of the entire highway in front of their property a limited access highway, the elimination of the existing easements or rights of access, light and air instant to the remaining lands of these defendants abutting upon the said limited access highway and the lessening in value of the remaining property of these defendants by reason of the taking of a portion thereof and the making of the limited access highway and the taking of the existing easements or rights of access, light and air instant to the lands of these defendants abutting upon said limited access highway is $100,000.00.

ESTELLE CRAFFORD WATTS
VIRGINIA TRUST COMPANY,
Co-Executors and Trustees
under the Will of Robert B.
Watts, deceased

page 9 } ESTELLE CRAFFORD WATTS
L. C. WATTS
T. R. VERMILLION
L. L. WATTS
EMILY W. VERMILLION
JANE W. COFFMAN
ELIZABETH W. McCRAW
IDA W. WEISBROD
By Counsel.

SUTTON & CAUSEY
West Point, Virginia
Attorneys for Defendants.

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Filed Dec. 12, 1958.

VIRGINIA BLANCHARD, Clerk.

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et als.

ORDER.

This day came the defendants by counsel, and asked leave to file written exceptions to the report of the Commissioners returned in this case, and it appearing to the court that not more than ten days have elapsed since the return of said report, the court doth grant leave to the said defendants to file written exceptions to said report and it is ordered that the said exceptions be received and filed.

Enter this 12/23/58.

R. T. A., Judge.

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et als.

EXCEPTIONS TO COMMISSIONERS' REPORT.

The defendants in the above styled cause respectfully except to the report of the Commissioners returned herein on the following grounds, to-wit:

1. That the court erred in directing that this cause be consolidated for hearing with three other condemnation proceedings, to-wit: State Highway Commissioner of Virginia *v.* T. R. Vermillion et al.; State Highway Commissioner of Virginia *v.* R. B. Gilliam; and State Highway Commissioner of Virginia *v.* F. H. Gilliam; over the objection of the defend-

landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 39C+08, (office revised line C), the lands of the landowner, thence along said proposed north limited access line to a point opposite approximate Station 40C+10 the lands of the landowner; also from a point on the proposed north limited access line, opposite approximate Station 40C+30, the lands of the landowner, thence along said proposed north limited access line to a point opposite approximate Station 51ABC+00, the lands of T. R. Vermillion and shown in blue on said photo copy.

And after being duly sworn and upon a view of the land aforesaid and of the adjacent and other property of said owners and of the property of any persons who will be damaged in their property by the construction, reconstruction, alteration, maintenance and repair of said road and upon such evidence as was before us we are of the opinion and do ascertain that $10,500.00 will be a just compensation for the land and damages to the adjacent and other property of owners and the property of any other persons who may be damaged in their properties by reason of the construction, reconstruction, alteration, maintenance and repair of such road, beyond the peculiar benefits which will accrue to such properties respectively therefrom are as follows:

Land: $3,000.00
Damages: 7,500.00
Damages to other persons:

Given under our hands this 17 day of December, 1958.

WILLARD GILLEY
JAMES C. GRAFF
H. B. SMITH
ALEX HARWOOD JR.
JAMES E. VAIDEN

Filed Dec. 12, 1958.

VA. BLANCHARD, Clerk.

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, Widow and Virginia Trust Company, Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et als.

ORDER CONFIRMING COMMISSIONERS' REPORT.

This day came the Chairman of the Highway Commission of Virginia, by his attorney, and the defendants, by their attorney, and it appearing to the Court that the report of the Commissioners hereinbefore appointed for the purposes set out in the order appointing said Commissioners, with the certificate of the Clerk of this Court administering the oath to the said Commissioners, was on the 17th day of December, 1958, duly returned to and filed by the Court herein, that exceptions to said report were duly filed in writing by the defendants, the Court doth overrule said exceptions and doth confirm the report of the Commissioners hereinbefore filed, to which action of the Court the defendants duly except.

And it appearing to the Court that the said Commissioners ascertained that for the interests or estate in the part of the land sought to be condemned, and for the other property so taken, the sum of $3,000.00 was a just compensation, and that the damages to the adjacent or other property of the tenant or owner, and the property of other persons by reason of the construction, reconstruction, operation, alteration, maintenance and repair of said road, beyond the benefits and enhancement in value that will accrue to said property from the construction, reconstruction, operation, alteration, maintenance and repair, amount to $7,500.00, that no other person was damaged; the Court doth approve, ratify and
page 16 } confirm said report in all particulars, and doth confirm unto the Commonwealth of Virginia, the fee simple title to the following described property:

Being as shown on plans approved February 11, 1955, and lying on the northwest (left)side of survey centerline (Line C) and adjacent to the existing northwest right of way line

ants in this proceeding, and that such action by the court was prejudicial to the interests of the defendants herein.

2. That the award returned by the Commissioners in this cause was insufficient and contrary to and unsupported by the evidence.

3. That the admission in evidence before the Commissioners of an application for building permit made to the Commissioner of the Revenue of James City County by T. R. Vermillion, over the objection of the defendants, constituted error and was prejudicial to the interests of the said defendants.

4. That by reason of the consolidation of this cause for trial with condemnation proceedings pending against other persons not parties to this proceeding as stated above, evidence was introduced before the Commissioners page 14 } not relevant to the cause of these defendants, which said evidence was prejudicial to their interests, and that the Commissioners were not instructed, nor was it possible for them in this form of proceeding, to consider in this case only the evidence pertaining to this particular case in arriving at their award.

Respectfully,

ESTELLE CRAFFORD WATTS
VIRGINIA TRUST COMPANY,
Co-Executors and Trustees under the Will of Robert B. Watts, deceased
ESTELLE CRAFFORD WATTS
L. C. WATTS
T. R. VERMILLION
L. L. WATTS
EMILY W. VERMILLION
JANE W. COFFMAN
ELIZABETH W. McCRAW
IDA W. WEISBROD
By Counsel.

SUTTON AND CAUSEY
West Point, Virginia
Attorneys for Defendants.

Filed Dec. 23, 1958.

VIRGINIA BLANCHARD, Clerk.

and that this decree be spread and duly indexed in the current Deed Book, together with said Commissioners' report, with reference to be made showing the book and page number of such recordation on the margin of the page where the said Certificate of Deposit No. C 203 is spread. And it appearing further to the Court that all sums required to be paid by the condemnor have been paid into Court and disbursed to the defendant in accordance with the orders of this Court, the condemnor is hereby discharged from all liability occasioned by this matter.

TO ALL OF WHICH ACTIONS OF THE COURT THE DEFENDANTS DULY EXCEPT.

And the Court doth further order and direct that the costs herein, includnig $10.00 each per day, for two days, to the Commissioners acting herein, namely; Willard Gilley, Alex Harwood, Jr., H. B. Smith, James C. Graff, and James E. Vaiden, shall be paid by the Chairman of the Highway Commission of Virginia.

Enter this 6/3/59.

R. T. A.

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State Highway Commissioner of Virginia,

v.

Estelle Crafford Watts, and Virginia Trust Company, Co-executors and Trustees under the will of Robert B. Watts, deceased, et al.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of the City of Williamsburg and County of James City:

of present Route 31 from the lands of the Landowner opposite approximate Station 39+00 to the lands of T. R. Vermillion opposite approximate Station 51+00, and containing 1.16 acres, more or less, land.

AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 39C+08, (office revised line C), the lands of the landowner, thence along said proposed north limited access line to a point opposite approximate Station 40C+10 the lands of the landowner; also from a point on the proposed north limited access line, opposite approximate Station 40C+30, the lands of the landowner, thence along said proposed north limited access line to a point opposite approximate Station 51ABC+00, the lands of T. R. Vermillion and shown in blue on said photo copy.

And it appearing to the Court that the State Highway Commissioner has heretofore filed in the Clerks' Office of this Court a Certificate No. A 682 for $1,160.00, and an Amended Certificate No. C 203, and that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of Section 33-70.4 of the Code of Virginia of 1950, as amended, and it appearing further to the Court that the State Highway Commissioner of Virginia has deposited with the Clerk of this Court the said total sum of $1,160.00; and the sum of $9,340.00 being the difference between the amount of said certificates and the sum of $10,500.00 awarded herein, with interest at the rate of 5 per cent per annum on the said $9,340.00 from the 20th day of March 1957, the date on which the above mentioned certificate was duly filed in the Clerk's Office, to the date of the payment into this Court, the Court doth

page 17 } further adjudge, order and decree that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the certificates aforesaid;

Counsel for Estelle Crafford Watts and Virginia Trust Company, Co-executors and Trustees under the will of Robert B. Watts, deceased, Estelle Crafford Watts, L. C. Watts, T. R. Vermillion, L. L. Watts, Emily W. Vermillion, Jane W. Coffman, Elizabeth W. McGraw and Ida W. Weisbrod, defendants in the above styled cause pending in the Circuit Court of the City of Williamsburg and County of James City, hereby give notice of appeal from the order entered herein on the 3rd day of June, 1959, and set forth the following assignments of error:

1. That the court erred in directing that this cause be consolidated for hearing with three other condemnation proceedings, to-wit: State Highway Commissioner of Virginia *v.* T. R. Vermillion and Marguerite S. Vermillion; State Highway Commissioner of Virginia *v.* R. B. Gilliam; and State Highway Commissioner of Virginia *v.* F. H. Gilliam; over the objection of the defendants in this proceeding, and that such action by the court was prejudicial to the interests of the defendants herein.

page 19 } 2. That the court erred in permitting the introduction in evidence before the Commissioners, over the objection of the defendants, of an application for building permit made to the Commissioner of Revenue of James City County by T. R. Vermillion.

3. That the court erred in permitting, under the procedure of consolidation objected to by the defendants, the introduction of evidence before the Commissioners not relevant to the cause of these defendants.

4. That the court erred in overruling the motion of the defendants that the evidence in each case be heard separately and that the Commissioners in each case, at the conclusion of the evidence in that particular case, hear the argument on that case and render that award before hearing the evidence in any future case.

5. That the court erred in not instructing the Commissioners to consider in this case only the evidence pertaining to this particular case in arriving at their award.

6. That the court erred in confirming the award made by the Commissioners in this proceedings, in that the award was insufficient and contrary to the law and the evidence.

7. That the court erred in overruling the exceptions to the

award of Commissioners filed by the defendants in this proceeding.

SUTTON AND CAUSEY
Counsel for Estelle Crafford Watts, and Virginia Trust Company, Co-executors and Trustees under the will of Robert B. Watts, deceased
Estelle Crafford Watts
L. C. Watts
T. R. Vermillion
L. L. Watts
Emily W. Vermillion
Jane W. Coffman
Elizabeth W. McGraw
Ida W. Weisbrod
By JOHN PAUL CAUSEY
Attorney.

Filed July 23, 1959.

Va. BLANCHARD, Clerk.

Record No. 5126

T. R. VERMILLION, ET AL.,

v.

STATE HIGHWAY COMMISSIONER OF VIRGINIA.

(a) By special warranty deed dated February 1, 1956 from Estelle C. Watts and Virginia Trust Company, and recorded in James City County Deed Book No. 57, Page 44 on February 16, 1956.

(3) That the particular part of said land which is here sought to be condemned, is shown and described on a blueprint filed as Sheet No. 4A, Project No. 2847-03, State Highway No. 31, and which sheet is marked "Exhibit B" and prayed to be taken and read as a part of this petition. The said parcel of land so sought to be acquired is required for State Highway Project No. 2847-03. By these proceedings the Commonwealth seeks to condemn and acquire title to the said parcel or strip of land along, through and over such portion of the said property as described in "Exhibit C" above referred to, and is also shown on blueprint filed as "Exhibit B" and indicated thereon within the area included within the red lines, together with the existing easements or rights of access, light and air, on and belonging to the abutting land or lands, which easement is also described in "Exhibit C" and shown in "Exhibit B" within the area included within the blue lines.

page 2

(4) That the right and property intended to be taken by this proceeding is the fee simple title to the strip or parcel of land of the said owners hereinabove described, together with the existing easements or rights of access, light and air, incident to the lands of the landowner abutting upon said Limited Access Highway/or upon any of its ramps, loops, or connections at or with intersecting highways except that until such time as the service road or roads shown and provided for on said survey and plans shall be constructed, the owner or owners of the said land or lands abutting the said land or lands to be acquired in fee simple shall have permissive use of the existing way or ways of access, or such way or ways of access as may be permitted by the said State Highway Commissioner, as a means of ingress and egress to and from the said abutting land or lands of said owner or owners.

(5) That the said strip or parcel together with the existing easements or rights of access, light and air, incident to the land or lands abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, to be acquired, is necessary for the construction, reconstruction, alteration, or other improvement and maintenance of a road embraced in the State Highway System, known as Route 31, Project No. 2847-03, in Jamestown Magisterial District, James City County, Vir-

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State Highway Commissioner of Virginia, Condemnor,

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife, 128 Indian Springs Road Williamsburg, Virginia, Condemnees

PETITION FOR CONDEMNATION PROCEEDINGS.

To one of the Honorable Judges of said Court:

Your Petitioner, State Highway Commissioner of Virginia, files this petition in accordance with Title 33, Chapter 1, Article 5 (Sections 33-57 to 33-75) of the Code of Virginia, as amended, and such statutes as may be applicable for the purpose of condemning certain lands in James City County as hereinafter described, and alleges as follows:

(1) That Russel M. Carneal is the duly authorized agent and attorney of S. D. May, State Highway Commissioner of Virginia, as is shown by the signed declaration of the said S. D. May, dated September 30, 1958, hereto attached, marked "Exhibit A," and asked to be read as a part of this petition, and that the said Russell M. Carneal is authorized to file this proceeding in the name and on behalf of the State Highway Commissioner of Virginia.

(2) That T. R. Vermillion and Marguerite S. Vermillion, his wife, are the owners of a tract of land embraced in Public Highways of the State known as Route 31, in James City County, Virginia, which is described in certificate of Petitioner, copy of which is attached hereto marked "Exhibit C," said land being a portion of a tract containing about 2.47 acres in Jamestown Magisterial District, James City County, Virginia, the same having been acquired by said owners as follows:

included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 51 ABC+00 (survey centerline), the lands of Robert B. Watts Estate, thence along said proposed north limited access line to a point opposite approximate Station 53+20, the lands of F. H. Gilliam; also from a point on the proposed south limited access line, opposite approximate Station 43B+90, the lands of Robert B. Watts Estate, thence along said proposed south limited access line to a point opposite approximate Station 44B+06, the lands of R. P. Wallace; from a point on the proposed south limited access line, opposite approximate Station 44B+58, the lands of R. P. Wallace, thence along said proposed south limited access line to a point opposite approximate Station 53+10 the lands of F. H. Gilliam and shown in blue on said photo copy.

The State Highway Commissioner of Virginia further declares that nothing herein contained shall be construed as denying the landowner, his successors, heirs or assigns, the right of ingress to or egress from any of the landowner's lands which abut upon any service road now or hereafter constructed by the Commonwealth.

page 4 } (6) That your petitioner has made a *bona fide* and ineffectual effort with the owners of said land to effect a purchase of the right and title here sought to be acquired; and that as far as is known or by due diligence can be ascertained, the said T. R. Vermillion and Marguerite S. Vermillion, his wife, are the only parties in interest.

(7) Your Petitioner alleges that there is filed in the Clerk's Office of this Court in James City County Deed Book No. ...., Page ...., a copy of which is attached hereto, a certificate of the Petitioner, marked "Exhibit C," which is to be considered as a part of this petition.

(8) Your Petitioner alleges that your Petitioner estimated the sum of $1,160.00 to be the fair value of the land taken and damage done and in order that work may proceed, paid said sum into the Circuit Court of the City of Williamsburg and County of James City for the benefit of the land owners as represented by certificate of deposit No. C 285, filed September 30, 1958.

WHEREFORE, your Petitioner prays for the appointment of Commissioners, as provided by law, to ascertain

ginia, containing 1.158 acres, more or less, land; and it is necessary, requisite and suitable that the said strip or parcel of land of the aforesaid owner for the purpose aforesaid be of the width and on the route and grade as shown on page 3 } the aforesaid blueprint and is described as follows:

PARCEL NO. 1—

Being as shown on plans approved February 11, 1955, and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31 from the lands of the Commonwealth opposite approximate Station 43+10 to the lands of R. P. Wallace opposite approximate Station 44+00, and containing 0.058 acre, more or less, land.

PARCEL NO. 2—

Being as shown on said plans and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31, from the lands of R. P. Wallace opposite approximate Station 44+51 to the lands of F. H. Gilliam opposite appromate Station 53+15, and containing 0.87 acre, more or less, land.

PARCEL NO. 3—

Being as shown on said plans and lying on the northwest (left) side of the survey centerline and adjacent to the existing northwest right of way line of present Route 31 from the lands of Robert B. Watts Estate opposite approximate Station 51+00 to the lands of F. H. Gilliam opposite approximate Station 53+20, and containing 0.23 acre, more or less, land.

Parcels 1, 2, and 3 contain 1.158 acres, more or less, land.

AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is

and ascertain what will be a just compensation for said lands, and award such damages, if any, as may result to the adjacent or other property of the owner thereof, or to the property of any other person beyond the benefits that will accrue to such properties, respectively, from the construction, reconstruction, alteration, maintenance and repair of the public road to be built on said land, as described in said petition.

The Clerk of this Court is hereby directed to summon said Commissioners to appear before this Court on the 16th day of December 1958, at 10:00 o'Clock A. M. for the aforesaid purposes.

Enter this 11/10/58.

R. T. A.

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion and Marguerite S. Vermillion.

GROUNDS OF DEFENSE.

The defendants set forth the following Grounds of Defense:

1. The value of the land taken, including the easements and rights sought to be condemned herein, is $21,580.00.

2. The damages to the remaining property of these defendants resulting from the limitation of access to and from their remaining property, the difference in appearance of the property before and after the taking of the land and building of the highway, the making of the entire highway in front of their property a limited access highway, the elimination of the existing easements or rights of access, light and air instant to the remaining lands of these defendants abutting upon the said limited access highway and the lessening in value of the remaining property of these defendants by reason of the taking of a portion thereof and the making of the limited access highway and the taking of the existing

what will be a just compensation for the land proposed to be condemned for the use of the State of Virginia, as a Public Highway, and to award damages, if any, resulting to the adjacent or other property of the owner, or to the property of any other person beyond the benefits that will accrue, respectively, from the construction, reconstruction, alteration, improvement and maintenance of said road, as aforesaid.

S. D. MAY,
State Highway Commissioner of Virginia
By RUSSELL M. CARNEAL

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Filed 11-10-58.

VA. BLANCHARD, Clerk.

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page 6 }

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife.

ORDER APPOINTING COMMISSIONERS.

It appearing to the Court that the said State Highway Commissioner of Virginia, has duly filed his petition in this Court seeking to condemn a fee simple title in certain lands described in said petition and belonging to the above-named defendants; that due notice has been given to said defendants, that said petitioner would, on the 28th day of July, 1958, apply to the said Circuit Court for the appointment of Commissioners in said cause, NOW THEREFORE, The Court doth ADJUDGE, ORDER AND DECREE that (1) Alex Harwood, Jr., (2) James E. Vaiden, (3) Willard Gilley, (4) H. B. Smith, and (5) James C. Graff, five disinterested freeholders and residents of said County by, and they are hereby, appointed Commissioners, and three or more of whom may act, whose duty it shall be to go upon and view said lands

on, and viewed, the land taken by the said State Highway Commissioner from the said owners, the limits of which were then and there described to us as follows:

PARCEL NO. 1—Being as shown on plans approved February 11, 1955, and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31 from the lands of the Commonwealth opposite approximate Station 43+10 to the lands of R. P. Wallace opposite approximate Station 44+00, and containing 0.058 acre, more or less, land.

PARCEL NO. 2—Being as shown on said plans and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31, from the lands of R. P. Wallace opposite approximate Station 44+51 to the lands of F. H. Gilliam opposite approximate Station 53+15, and containing 0.87 acre, more or less, land.

PARCEL NO. 3—Being as shown on said plans and lying on the northwest (left) side of the survey centerline and adjacent to the existing northwest right of way line of present Route 31 from the lands of Robert B. Watts Estate opposite approximate Station 51+00 to the lands of F. H. Gilliam opposite approximate Station 53+20, and containing 0.23 acre, more or less, land.

Parcels 1, 2, and 3 contain 1.158 acres, more or less, land.

page 10 } AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 51 ABC+00 (survey centerline), the lands of Robert B. Watts Estate, thence along said

easements or rights of access, light and air instant to the lands of these defendants abutting upon said limited access highway is $125,000.00.

T. R. VERMILLION
MARGURITE S. VERMILLION
By Counsel.

SUTTON & CAUSEY
West Point, Virginia
Attorneys for Defendants.

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Filed Dec. 12, 1958.

VA. BLANCHARD, Clerk.

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State Highway Commissioner of Virginia, Condemnor

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife, 128 Indian Springs Road, Williamsburg, Virginia, Condemnees.

REPORT AND AWARD OF COMMISSIONERS.

We, Willard Gilley, Alex Harwood, Jr., H. B. Smith, James C. Graff and James E. Vaiden, Commissioners appointed by the Circuit Court of the City of Williamsburg and County of James City, Virginia, by order entered November 10, 1958, to ascertain what will be a just compensation for such land of the freehold whereof T. R. Vermillion and Marguerite S. Vermillion, his wife, are the owners, and access the damages, if any, resulting to the adjacent or other property of said owners, and to the property of any other persons beyond the peculiar benefits which will accrue to such properties respectively from the construction, reconstruction, alteration, maintenance, and repair of a road embraced in the State Highway system, as set in the petition and exhibits, do certify that on the 16th day of December, 1958, the day designated in said order, we met together in the Clerk's Office of this Court, and were there duly sworn, and we also met together

ORDER.

This day came the defendants, T. R. Vermillion and Marguerite S. Vermillion, by counsel, and asked leave to file written exceptions to the report of the Commissioners returned in this case, and it appearing to the court that not more than ten days have elapsed since the return of said report, the court doth grant leave to the said defendants to file written exceptions to said report and it is ordered that the said exceptions be received and filed.

Enter this 12/23/58.

R. T. A., Judge.

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife.

EXCEPTIONS TO COMMISSIONERS' REPORT.

T. R. Vermillion and Marguerite S. Vermillion, defendants in the above styled cause, respectfully except to the report of the Commissioners returned herein on the following grounds, to-wit:

1. That the court erred in directing that this cause be consolidated for hearing with three other condemnation proceedings, to-wit: State Highway Commissioner of Virginia *v.* Estelle Crafford Watts and Virginia Trust Company, Executors, etc., et als.; State Highway Commissioner of Virginia *v.* R. B. Gilliam; and State Highway Commissioner of Virginia *v.* F. H. Gilliam; over the objection of the defendants in this proceeding, and that such action by the court was prejudicial to the interests of the defendants herein.

2. That the award returned by the Commissioners in this cause was insufficient and contrary to and unsupported by the evidence.

proposed north limited access line to a point opposite approximate Station 53+20, the lands of F. H. Gilliam; also from a point on the proposed south limited access line, opposite approximate Station 43B+90, the lands of Robert B. Watts Estate, thence along said proposed south limited access line to a point opposite approximate Station 44B+06, the lands of R. P. Wallace; from a point on the proposed south limited access line, opposite approximate Station 44B+58, the lands of R. P. Wallace, thence along said proposed south limited access line to a point opposite approximate Station 53+10 the lands of F. H. Gilliam and shown in blue on said photo copy.

And after being duly sworn and upon a view of the land aforesaid and of the adjacent and other property of said owners and of the property of any persons who will be damaged in their property by the construction, reconstruction, alteration, maintenance and repair of said road and upon such evidence as was before us we are of the opinion and do ascertain that $13,835.00 will be a just compensation for the land and damages to the adjacent and other property of owners and the property of any other persons who may be damaged in their properties by reason of the construction, reconstruction, alteration, maintenance and repair of such road, beyond the peculiar benefits which will accrue to such properties respectively therefrom are as follows:

Land: $3,235.00
Damages: $10,600.00
Damages to other persons:

Given under our hands this 17 day of December, 1958.

WILLARD GILLEY
JAMES C. GRAFF
H. B. SMITH
ALEX HARWOOD, JR.
JAMES E. VAIDEN

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife.

attorney, and it appearing to the Court that the report of the Commissioners hereinbefore appointed for the purposes set out in the order appointing said Commissioners, with the certificate of the Clerk of this Court administering the oath to the said Commissioners, was on the 17th day of December, 1958, duly returned to and filed by the Court herein, that exceptions to said report were duly filed in writing by the defendants, the Court doth overrule said exceptions and doth confirm the report of the Commissioners hereinbefore filed, to which action of the Court the defendants duly except.

And it appearing to the Court that the said Commissioners ascertained that for the interests or estate in the part of the land sought to be condemned, and for the other property so taken, the sum of $3,235.00 was a just compensation, and that the damages to the adjacent or other property of the tenant or owner, and the property of other persons by reason of the construction, reconstruction, operation, alteration, maintenance and repair of said road, beyond the benefits and enhancement in value that will accrue to said property from the construction, reconstruction, operation, alteration, maintenance and repair, amount to $10,600.00, that no other person was damaged; the Court doth approve, ratify and confirm said report in all particulars, and doth confirm unto the Commonwealth of Virginia, the fee simple title to the following described property:

page 13 } PARCEL NO. 1—Being as shown on plans approved February 11, 1955, and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31 from the lands of the Commonwealth opposite approximate Station 43+10 to the lands of R. P. Wallace opposite approximate Station 44+00, and containing 0.058 acre, more or less, land.

PARCEL NO. 2—Being as shown on said plans and lying on the southeast (right) side of the survey centerline (Line C) and adjacent to the existing southeast right of way line of present Route 31, from the lands of R. P. Wallace opposite approximate Station 44+51 to the lands of F. H. Gilliam opposite approximate Station 53+15, and containing 0.87 acre, more or less, land.

PARCEL NO. 3—Being as shown on said plans and lying on the northwest (left) side of the survey centerline and adjacent to the existing northwest right of way line of

3. That the admission in evidence before the Commissioners of an application for building permit made to the Commissioner of the Revenue of James City County by T. R. Vermillion, over the objection of the defendants, constituted error and was prejudicial to the interests of the said defendants.

4. That by reason of the consolidation of this cause for trial with condemnation proceedings pending against other persons not parties to this proceeding as stated above,
page 13 } evidence was introduced before the Commissioners not relevant to the cause of these defendants, which said evidence was prejudicial to their interests, and that the Commissioners were not instructed, nor was it possible for them in this form of proceeding, to consider in this case only the evidence pertaining to this particular case in arriving at their award.

Respectfully,

T. R. VERMILLION
MARGUERITE S. VERMILLION
By Counsel.

SUTTON AND CAUSEY
West Point, Virginia
Attorneys for Defendants.

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Filed Dec. 23, 1958.

VIRGINIA BLANCHARD, Clerk.

page 14 }

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion, and Marguerite S. Vermillion, his wife.

ORDER CONFIRMING COMMISSIONERS' REPORT.

This day came the Chairman of the Highway Commission of Virginia, by his attorney, and the defendants, by their

present Route 31 from the lands of Robert B. Watts Estate opposite approximate Station 51+00 to the lands of F. H. Gilliam opposite approximate Station 53+20, and containing 0.23 acre, more or less, land.

Parcels 1, 2, and 3 contain 1.158 acres, more or less, land.

AND WHEREAS, all or a part of said Route has been designated as a Limited Access Highway in accordance with the provisions of Title 33, Chapter 1, Article 3, of the 1950 Code of Virginia, as amended, the said State Highway Commission of Virginia has also directed to be taken any and all easements of access, light or air incident to the lands of the landowner abutting upon said Limited Access Highway and/or upon any of its ramps, loops or connections at or with intersecting highways, the estimated fair value of which is included in the amount above specified, the line or lines upon which said easements are taken being shown in blue on said copy and described as follows:

From a point on the proposed north limited access line, opposite approximate Station 51 ABC+00 (survey centerline), the lands of Robert B. Watts Estate, thence along said proposed north limited access line to a point opposite approximate Station 53+20, the lands of F. H. Gilliam; also from a point on the proposed south limited access line, opposite approximate Station 43B+90, the lands of Robert B. Watts Estate, thence along said proposed south limited access line to a point opposite approximate Station 44B+06, the lands of R. P. Wallace; from a point on the proposed south limited access line, opposite approximate Station 44B+58, the lands of R. P. Wallce, thence along said proposed south limited access line to a point opposite approximate Station 53+10 the lands of F. H. Gilliam and shown in blue on said photo copy.

page 16 } And it appearing to the Court that the State Highway Commissioner has heretofore filed in the Clerk's Office of this Court a Certificate No. A 684 for $1,160.00, and an Amended Certificate No. C 285, and that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of Section 33-70.4 of the Code of Virginia of 1950, as amended, and it appearing further to the Court that the State Highway Commissioner of Virginia has deposited with the Clerk of this Court the said total sum of $1,160.00; and the sum of

$12,675.00 being the difference between the amount of said certificates and the sum of $13,835.00 awarded herein, with interest at the rate of 5 per cent per annum on the said $12,-675.00 from the 20th day of March, 1957, the date on which the above mentioned certificate was duly filed in the Clerk's Office, to the date of the payment into this Court, the Court doth adjudge, order, and decree that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the certificates aforesaid; and that this degree be spread and duly indexed in the current Deed Book, together with said Commissioners' report, with reference to be made showing the book and page number of such recordation on the margin of the page where the said Certificate of Deposit No. C 285 is spread. And it appearing further to the Court that all sums required to be paid by the condemnor have been paid into Court and disbursed to the defendants in accordance with the orders of this Court, the condemnor is hereby discharged from all liability occasioned by this matter.

TO ALL OF WHICH ACTIONS OF THE COURT THE DEFENDANTS DULY EXCEPT.

And the Court doth further order and direct that the costs herein, including $10.00 each per day, for two days, to the Commissioners acting herein, namely: Willard
page 17 } Gilley, Alex Harwood, Jr., H. B. Smith, James C. Graff, and James E. Vaiden, shall be paid by the Chairman of the Highway Commission of Virginia.

Enter this 6/3/59.

R. T. A.

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State Highway Commissioner of Virginia,

v.

T. R. Vermillion and Marguerite S. Vermillion, his wife.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of the City of Williamsburg and County of James City:

Counsel for T. R. Vermillion and Marguerite S. Vermillion, defendants in the above styled cause pending in the Circuit Court of the City of Williamsburg and County of James City, hereby give notice of appeal from the order entered herein on the 3rd day of June, 1959, and set forth the following assignments of error:

1. That the court erred in directing that this cause be consolidated for hearing with three other condemnation proceedings, to-wit: State Highway Commissioner of Virginia *v.* Estelle Crafford Watts and Virginia Trust Company, Co-executors and Trustees under the will of Robert B. Watts, deceased, Estelle Crafford Watts, L. C. Watts, T. R. Vermillion, L. L. Watts, Emily W. Vermillion, Jane W. Coffman, Elizabeth W. McCraw and Ida W. Weisbrod; State Highway Commissioner of Virginia *v.* R. B. Gilliam; and State Highway Commissioner of Virginia *v.* F. H. Gilliam; over the objection of the defendants in this proceeding, and that such action by the court was prejudicial to the interests of the defendants herein.

2. That the court erred in permitting the introduction in evidence before the Commissioners, over the objection of the defendants, of an application for building permit made to the Commissioner of Revenue of James City County by T. R. Vermillion.

page 19 } 3. That the court erred in permitting, under the procedure of consolidation objected to by the defendants, the introduction of evidence before the Commissioners not relevant to the cause of these defendants.

4. That the court erred in overruling the motion of the defendants that the evidence in each case be heard separately and that the Commissioners in each case, at the conclusion of the evidence in that particular case, hear the argument on that case and render that award before hearing the evidence in any future case.

5. The the court erred in not instructing the Commissioners to consider in this case only the evidence pertaining to this particular case in arriving at their award.

6. That the court erred in confirming the award made by the Commissioners in this proceeding, in that the award was insufficient and contrary to the law and the evidence.

7. That the court erred in overruling the exceptions to the

award of Commissioners filed by the defendants in this proceeding.

SUTTON AND CAUSEY
Counsel for T. R. Vermillion and
Marguerite S. Vermillion
By JOHN PAUL CAUSEY
Attorney.

Filed July 23, 1959.

VA. BLANCHARD, Clerk.

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prejudice of the land owner so far. In fact, the awards have been quite favorable. I would overrule your motion to try them separately.

I have told Mr. Carneal whenever he wishes to page 4 } change I will give it some consideration.

Mr. Causey: We respectfully except to the action of the Court in consolidating and directing that the four cases be tried together.

Mr. Geddy: Although I am not associated in the cost of the court reporter I join counsel, for the purpose of the record, in his motion and exception.

Mr. Sutton: We, of course, make the motion now, in view of the fact the cases have been consolidated, to which action we excepted, we respectfully move the Court that the evidence in each separate case be heard and that the Commissioners, in each case, at the conclusion of the evidence of that case, hear the argument on that case and render their award before hearing the evidence which is presented at Court in the next case.

The Court: As I told you, that is the very reason we try several of them together, because we save the time of the Commissioners going out and considering the thing. I feel they can consider several tracts of land better than they could one. We are going to try them in the usual way we have done in the past. In other words, we will hear all the evidence and the Commissioners will make their page 5 } awards at one time.

Mr. Sutton: We respectfully except to the action of the Court.

Note: At this point Court and counsel enter the courtroom, whereupon court is convened, the Commissioners called and sworn, the court reporter is sworn, and the hearing is continued as follows:

Before the Commissioners.

The Court: As you know you have been selected as Commissioners to hear these four matters, and it is my duty to instruct you as to the law which applies to these particular cases.

I will now read you the instructions. There is some duplication in them as the instructions were prepared by different parties, but I have decided to go ahead and read them as they are, rather than eliminate the duplication.

Note: The Court now reads the written instructions to the

TRANSCRIPT OF RECORDS NO. 5125-5126.

Virginia:

In the Circuit Court of the City of Williamsburg and County of James City.

State Highway Commissioner of Virginia,

v.

Frederick Hanson Gilliam, R. B. Gilliam and Elizabeth A. Gilliam, T. R. and Margueritte S. Vermillion, Estelle Crafford Watts, Widow and Virginia Trust Company—Co-Executors and Trustees under the Will of Robert B. Watts, deceased, et als.

Transcript of all the evidence and other incidents of the above when tried on December 16 and 17, 1958 before Honorable Robert T. Armistead, Judge and Commissioners.

Appearances: Mr. Russell M. Carneal, counsel for the condemnor;
Mr. V. M. Geddy, Jr., counsel for Gilliams;
Mr. David Nelson Sutton and Mr. John Paul Causey, Jr., counsel for Vermillion and Watts Estate.

* * * * *

page 3 } Note: Court and counsel convene at 10:00 o'clock a. m. in Chambers as follows:

Mr. Causey: Counsel for Vermillion and the Watts Estate object to the trying of these two cases together with the cases against Gilliam on the ground, one, that they are entitled to a separate trial upon the issues involved in each case; that the consolidation of the four cases for trial, because of different factors involved in each case, will result in confusion so far as the Commissioners are concerned in arriving at their respective verdicts and with respect to instructions given to the Commissioners; that the consolidation of these cases is contrary to the statute provided for *eminent domain* proceedings and that such consolidation will operate to the prejudice of the Watts Estate and Vermillion.

The Court: As I told you at the calling of the docket, it has been the procedure here for a long time to try several adjoining tracts together, and it has never operated to the

Mark H. Culbertson.

Route 31. That is 20 feet wide. And its back point is 8 feet wide, sort of a triangle, pie-shape *afair*.

The next parcel would be immediately to the north of Mr. Wallace's store.

Q. May I interrupt a minute. This parcel north of Mr. Wallace's store is not contiguous with this, is it?

A. No, sir. That is correct. Immediately north of the store is the next parcel. That is also 45 feet wide. That contains .87 of an acre.

A Commissioner: That runs over to here?

page 8 } A. Right here. (Continuing) In front of these two parcels we have constructed a service road. Between the right-of-way line and the service road is located your limited access line, which counselor also brought up.

Q. Would you point out the limited access line as it appears on the plat?

A. Yes, sir. That is approximately 20 feet in front of the existing right-of-way. This line, blue line—there are so many lines on here that it is difficult to tell—but this is it, and you will be able to tell when you view the property on the ground.

On the northwest side of Route 31 is the third parcel owned by Mr. Vermillion, which has approximately 220 feet of frontage and contains .23 of an acre, a little bit less than one quarter of an acre.

This limited access line is situated right along here. The right-of-way width is 45 feet from this red line over to this red line.

This area as you see down here is this county secondary road tying into the service road which leads on down to the property of the Watts Estate.

They are the three that are owned by Mr. Vermillion.

Now the Watts' property, the right-of-way width starts at nothing and in 112 feet it widens out to 45 feet, page 9 } which it is all the way through to the Vermillion property: 45 feet wide. And along this section here we have constructed our service road. The limited access feature is again approximately 20 feet towards the center of the highway from the center of the present service road. Now that parcel of land contains 1.16 acre of land.

Q. You are referring now to the Watts property.

A. That's right, the Watts Estate. And they join onto Mr. Vermillion on the north end.

Commissioners, following which opening statements are made to the Commissioners; thereupon the hearing continues as follows:

page 6 } Mr. Carneal: If Your Honor please, with agreement of counsel I would like to introduce at this time this map of the area which probably will better facilitate the use by the Commissioners.

The Court: That will be Commonwealth Exhibit 1 and 2.

Note: The above referred to map is now marked and filed Commonwealth Exhibit 1 and 2.

MARK H. CULBERTSON,

introduced on behalf of the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

Q. State your name, sir?

A. Mark H. Culbertson, Jr.

Q. What is your business or profession, Mr. Culbertson?

A. Right-of-way agent with the Department of Highways.

Q. How long have you been so employed?

A. As a right-of-way agent since 1955.

Q. Mr. Culbertson, I hand you plat which has page 7 } been introduced as Plaintiff's Exhibit 1 and 2 and ask you if you will explain to the Commissioners the amount of land taken and the explanation of the various markings on this particular plat to the Commissioners as to what land is taken, and the explanation of the various marks.

The Court: Go around and hold it in front of the Commissioners. Point out the boundaries. You can explain in more detail later on if you like.

Note: The witness steps down from the witness chair and stands before the Commissioners.

A. Gentlemen, I will cover Mr. Vermillion's property first. You remember counsel said there were three parcels. This would be the first parcel just south of Mr. Wallace's store. It contains .058 of an acre. The right-of-way which we are acquiring is 45 feet along the front of what is now existing

Mark H. Culbertson.

By A Commissioner:

Q. Do the landowners own the property between the service road and the highway back there?

page 11 } The Court: He can get onto the service road but not the main road.

Mr. Carneal: Mr. Vaden asked the question if the landowners owned the land. The Highway Department owns the property between the service road and the main road.

Mr. Vaden: The Highway owns the property back to the red line out to the red line, right?

Mr. Culbertson: Yes, sir. This is the service road in here.

By A Commissioner:

Q. He still has to cross the Highway Department property to get to the service road, is that permissible?

A. They would have to cross it—They have the right to cross the right-of-way to the service road.

Mr. Carneal: The Highway Department could not refuse them the right to the service road.

Are there any more questions about the Vermillion-Watts property?

By Mr. Sutton:

Q. May I ask this to get it clear: From this point, which is the end of the Watts and Vermillion property, where is the cross over that you can get from the service road into the main road? Where is it on the map?

page 12 } A. Right at this point here. The distance is approximately 1100 feet from where your pencil is. The other side is right around Mr. Wallace's store, in this general vicinity here. We will have to check on the ground to be sure.

By A Commissioner:

Q. This is it here, is it not?

A. That's right. Here is where you come into the Festival area to go to the exhibition building. You come in here like so.

By Mr. Sutton:

Q. You would come down to this point to get into Route 31, would you not?

Mark H. Culbertson.

Now, Mr. F. H. Gilliam, he owns on either side of Route 31—

Mr. Geddy: Show where the Jamestown Festival is with relation to—

A. Down in here, over this way.

By A Commissioner:
Q. Where is the exit from this road right here?
A. Right here.

By Mr. Carneal: (Continuing)
Q. Mr. Culbertson, how many feet is this from this corner down to here, approximately?
A. It is approximately 1100.

By A Commissioner:
Q. Now these people, this is Vermillion's, they can do anything, they can come onto this—what you call your service road—at any point they want to, is that right?
page 10 } A. Yes, sir.
Q. On both sides, whoever owns the land bordering on those service roads, they can sell building lots, or business, or anything of that sort?
A. What I am getting at, the limited access feature is actually inside the proposed highway. He can have access anywhere along this service road right here.
Q. He can actually sell building lots or whatever he wanted to with the property that fronts on the service road.
A. Yes, sir. Exactly right.
Q. He has to come down here 1100 feet to get onto Route 31?
A. That's right, onto Route 31.

By Mr. Geddy:
Q. I want to be sure this point is clear with the Commissioners: Mr. Culbertson, you say that any of this property that fronts on the service road itself, that those people who own that property have the right to come into that service road without any hindrance at all?
A. They have a right to go into the service road. Yes, sir.

Mark H. Culbertson.

A. That is correct. We have not built a service road along his property.

By Mr. Geddy:

Q. Even if you built a service road he couldn't use it, is that right?

A. That's right. (Continuing) Now this taking along the portion where the dwelling is included the septic tank, drain field, I believe it was nine fruit trees, and the relocation of a chicken house. I believe I am correct in that.

By A Commissioner:

Q. Let me ask one question.

A. Yes, sir.

Q. Why is his property so much different from Watts that he cannot use the service road to come on here?

A. Mr. Gilliam's property primarily, the way it is set up, faces these roads over here. In other words his house faces the secondary road over here. He has access to this secondary road.

Q. This service road—Say in March 20, 1957 this is the road that he utilized and had access to?

A. That is correct.

By Mr. Carneal: (Continuing)

page 15 } Q. He still uses and has access of that road, has he not?

A. Yes, sir.

By Mr. Geddy:

Q. Just a minute. Mr. Graff asked a question which may have led to a misunderstanding. Prior to March 20, 1957, Mr. Gilliam had access at any point along here, Route 31, did he not?

A. Was that your question?

A Commissioner: No, I did not ask that question.

A. But he did.

By the Court:

Q. Mr. Culbertson, let me ask you this question to clear up a point, if I may: There is no service road constructed along here as constructed in front of the Vermillion-Watts property?

Mark H. Culbertson.

A. Yes, sir.
Q. From here down to this point to get into Route 31.
A. That's right.

By A Commissioner:
Q. You would come to this point here to get to the Festival area?
A. These points are approximately opposite each other.

By Mr. Sutton:
Q. The next cross over in this direction is how far from this cross over?
A. Let me take a look at these stations, please.
page 13 } Approximately four thousand feet.

Mr. Sutton: All right, sir.

A. (Continuing) I was speaking on this east side, now, which I believe is correct.
All right. Gentlemen, the property of Mr. Gilliam: As you can see he owns property on both sides of the road. The tract that his improvements, his dwelling is located on contains approximately fifteen acres. The tract on the other side of the road contains sixty acres.
Now this portion that his dwelling is located on we are acquiring 1.54 acres.

By Mr. Geddy:
Q. How wide a strip is that?
A. 45 feet wide, sir. (Continuing) There, our limited access line, in this case, is just outside of our right-of-way, parallel right-of-way line. Mr. Gilliam, along the tract where his dwelling is, does not have any service road. All the access to Route 31 would be down just in front of where his home is. He faces these two secondary roads: one being 614 and one being 680 that comes down right beside his house and between he and Mr. Vermillion.

By the Court:
Q. Is his house shown on there?
A. Yes, sir. This is it.
Q. The way Mr. Gilliam's property is different
page 14 } from the other is that he cannot even use the service road, is that correct?

Mark H. Culbertson.

The Court: All right. Go on to R. B. Gilliam.

A. Mr. Gilliam has another tract on the opposite side which contains sixty acres. From that tract we are acquiring 1.73 acres. Now this tract will be another strip 45 feet long down all the frontage on Route 31. Along this particular tract we have constructed a service road, and the limited access feature is between the service road and Route 31, which would enable him to use the service road.

By Mr. Geddy:

Q. Where are the entrances, if any, from his property to the main highway portion, Mr. Culbertson?

A. None right opposite his property.

Q. How far would he have to go?

A. Well, let's see.

Q. I mean from the south side of his property to reach the main highway how far along the access road would he have to travel?

A. From the north property line it would be—

page 18 } A Commissioner: How far would it be down here?

A. —approximately a thousand feet; from the south property line it would be approximately thirteen hundred feet.

Q. Does he have to go up to the one at the far end of the Watts property going in that direction?

A. That's right.

Q. Almost to Powhatan Creek in that direction.

A. That is correct.

(Continuing) Now the last parcel, gentlemen, is the one owned by Mr. R. B. Gilliam, which has been referred to as the five acre tract. The parcel we are acquiring is triangular in shape. It fronts on what was the secondary road, I believe Route 614, for approximately 100 feet and at its widest point it is approximately twenty-five feet wide. Now that triangle shape tract contains .01 of an acre.

By Mr. Carneal: (Continuing)

Q. Mr. Culbertson, this line here indicates the limited access feature?

A. Yes, sir.

Q. Mr. Gilliam does not come directly out in here but comes on up this service road?

A. That is correct. That is not one.

The Court: Therefore Mr. Gilliam could not go across there because there was no service road for him to use.

By A Commissioner:
Q. Let me ask you this: In case they do build a service road he still cannot use it, is that right?
A. He still could not. The limited access fea-
page 16 } ture is just outside the proposed right-of-way line, as I said before.

Mr. Geddy: The service road would have to be built between the limited access line and the main highway.

By A Commissioner:
Q. I cannot understand how you all operate. If this man down here has access to the service road at any point, why can't Mr. Gilliam use it?

By Mr. Carneal:
Q. Point out to the Commissioners the line indicating the limited access line, Mr. Culbertson.
A. The limited access point is out here with the right-of-way line being back here, which means that these people have the right to come down to the limited access line in here to the service road; where in the case of Gilliam the limited access line is the same as the right-of-way line, and there is no—See, over here, down in here somewhere—

A Commissioner: It looks like he should be just as entitled to use it as—
Mr. Carneal: The limited access line prevents him from using it.
The Court: The Highway Commission has done it that way, and that is the way it is. It doesn't make a whole lot of difference.

page 17 } By Mr. Carneal: (Continuing)
Q. Continue with the F. H. Gilliam property, Mr. Culbertson, and explain it further to the Commissioners.
A. This tract where the improvements are I believe we have gone over everything, unless there are any questions. This is the one with his dwelling, the fifteen acre tract.

Mark H. Culbertson.

A. That's right. He comes on up in here.

Mr. Carneal: Do you gentlemen have any
page 19 } further questions?

The Commissioners: No, sir.

Mr. Carneal: The witness is with you, Mr. Sutton.

Mr. Sutton: I do not care to question the witness at this time.

The Court: You reserve the right to question him?

Mr. Sutton: Yes, sir.

The Court: This is primarily, gentlemen, to explain the various boundary lines. I thought perhaps it would be better to have it explained in here than it would be outside because it is a little bit cool today.

Mr. Carneal: I have no further questions of this witness, Your Honor.

The Court: Gentlemen, we are ready, then, to view the property. As I have told all of you before let's try to stick together; do not try to hear the whole case outdoors. The purpose in going there is to see the property; not to take evidence.

I understand Mr. Culbertson and Mr. Tucker will accompany you for the Highway Commission; Mr. Vermillion will accompany you to point out his property and the
page 20 } Watts'; F. H. Gilliam and R. B. Gilliam will each point out their own property to you.

I want to tell you gentlemen this is not the occasion to argue your case or take any testimony. The purpose of the view is solely to give the Commissioners an opportunity to see the property. All the testimony and arguments should be here in the courtroom where the court reporter might take it down. We will leave now.

Note: At 11:15 o'clock a. m. the Commissioners, Court, and counsel go and view the land in question, at which time land marks, boundaries. improvements, and so forth are pointed out; thereupon the Commissioners, Court, and counsel return to the courtroom, after luncheon recess, and the hearing continues at 1:45 o'clock p. m. in the presence of the Commissioners, as follows:

The Court: Are there any further questions of Mr. Culbertson?

Mr. Carneal: If Your Honor please, I have no further questions on direct examination.

Mark H. Culbertson.

The Court: Mr. Sutton, do you wish to ask any questions of Mr. Culbertson?

Mr. Sutton: Yes, sir. Whenever we have page 21 } the opportunity.

The Court: Mr. Culbertson, take the stand again, if you will, please?

Mr. Geddy: Your Honor, may I ask that Mr. Culbertson's testimony be confined to the case in which Mr. Sutton is interested at this point?

The Court: No, sir. He has already gone into the other. We might as well have whatever cross examination you have now.

MARK H. CULBERTSON,

resumes the stand for cross examination, having been previously sworn, testified further as follows:

CROSS EXAMINATION.

By Mr. Sutton:

Q. Mr. Culbertson, how far is it from where Route 680 formerly entered Route 31 to the place where Route 680 now enters Route 31? Route 680 is the road that comes from Green Spring.

The Court: Route 5.

Q. —coming from Route 5 over to Route 31.

A. Approximately 1800 feet.

Q. That entrance where the road from Green page 22 } Springs formerly came into Route 31 is entirely blocked off, is it not, Mr. Culbertson?

A. Entirely blocked off from Route 31.

Q. From Route 31.

A. Yes, sir.

Q. I understood you to say on the ground this morning, I don't know that it got in the record, I will ask you about the grade where the service road now is on the property that is south of the Wallace property, what was the grade along there formerly?

A. South of the Wallace property?

Q. Parcel 1, opposite parcel 1.

A. Would that be in comparison with the elevation of the service road?

Q. In comparison to the road as it was originally, as Route

Mark H. Culbertson.

A. That is correct.

Q. Now there is only one place that you can enter from the service road to Route 31, opposite the part of the Watts property that is being condemned, is that correct?

A. Yes, sir, that is correct.

Q. That is almost at the southern entrance, the southern end of the parcel that is being condemned, is it not, sir?

A. That is correct.

Mr. Sutton: Thank you, sir.

The Court: Mr. Geddy, do you have any questions?

Mr. Geddy: Yes, I have, Your Honor.

page 25 } By Mr. Geddy:

Q. Mr. Culbertson, calling your attention to the plat of the F. H. Gilliam property, at that point approximately where the old road to the 4H Camp, I believe it is 614, intersects with 31—Is that 614 by the way?

A. Yes, sir.

Q. 614 intersects, there is at present a crossing, is there not?

A. Yes, sir. You mean a tie-in with 31.

Q. A tie-in with 31 from both sides of the highway, is that correct?

A. That is correct.

Q. Is there a break in the blue line designating the line along which your limited access rights are taken at that point?

A. On these plans, no, sir.

Q. Am I correct, then, in assuming that those ways of access from the Gilliam property on either side of the road are merely permissive ways of access which the State Highway Department has permitted to remain there?

A. Well, the access goes across the blue line, if that would be the answer to your question, Mr. Geddy.

By the Court:

Q. I think what he is getting at is this: Does the State Highway Department have to leave the access into

page 26 } Route 31 as it is now or can they change it?

A. Your Honor, I don't know the answer to that question.

Q. You do not know the answer?

A. No, sir.

31 was before there was any taking and building of any new road.

A. If I follow you correctly the service road, as best I remember, is in sort of a cut, it's slightly lower. And the elevation of it, just say for instance where the store is, is slightly higher than the elevation of Route 31 where we were standing.

Q. There was no cut along there until the service road was built, that is what I am getting at.

A. That is correct.

page 23 } Q. The property that came out and bordered on Route 31 was substantially of the same level as Route 31?

A. I would say so, yes, sir.

Q. On both sides of the Wallace property, that the Vermillion property on both sides of the Wallace property—

A. Yes, sir.

Q. What is the total frontage of the Vermillion property on the east side of the road?

A. Approximately 874 feet.

Q. And the frontage of the Vermillion property on the west side of the road?

A. Approximately 221 feet.

Q. The road from Green Springs formerly came down through that parcel of land, did it not, sir?

A. The parcel on the west side?

Q. Yes. Three.

A. Yes, sir.

Q. So that Vermillion actually owned each of the corners where the road from Green Springs, I think it is Route 680, intersected with Route 31, is that not correct, sir?

A. That is correct. Yes, sir.

Q. Now may I ask you how far the Watts property fronts along the highway? The total frontage of the Watts property.

A. Would that be all the way to the river?

page 24 } Q. No, sir. I mean as far as what is being condemned here.

A. Approximately 1100 feet.

Q. There is no cross over at any point opposite the Vermillion property, is there, sir?

A. No, sir, there is not.

Q. Formerly you could enter the highway Route 31 at any point from the Vermillion property on either side of the road, wherever the property is situated, is that not correct?

Morton G. Thalhimer.

A. I inspected the Vermillion properties on two occasions, I studied the records of sales of various properties in that general area and other comparable areas and of listings of properties that were for sale, and the result of my appraisal of the Vermillion properties: The property referred to on the State Highway map as item No. 004, total acreage being 16.21 acres and being on the east side of Highway No. 31, that particular case the amount of land taken was .87 acres. .87 of an acre, having a road frontage of 854 feet by a depth of 45 feet. That was being taken and there would be a service road in front of it, and it would be cut off along its frontage from general access to Highway 31.

It was my opinion that the fair market value of the land, the total of the 16.21 acres before the taking was $1,750.00 per acre, which would mean that the fee value of that piece of land to be $28,370.00. The land taken based on $1,750.00 per acre is valued at $1,525.00. I think that the balance of the property is damaged by $2,500.00, and there-
page 34 } fore I have appraised the value of the land taken at $1,525.00 and the damage at $2,500.00, the total for that taking is $4,025.00.

Q. Mr. Thalhimer, in considering damages to the property, what elements of damage did you consider?

A. I considered the fact that the property would be cut off from direct access to the highway and it would be fronting on an access road.

In my opinion the, generally speaking, the highest and best use of the property was for some general type of residential development, and in many instances a residential development is not only equally as good but better if it fronts on an access road rather than being on the danger of a direct highway. There is, however, of course, disadvantages. Those disadvantages were what I weighed and the damages amounted to $2,500.00.

Q. Mr. Thalhimer, as of what date did you—First of all let me ask you: When did you appraise this property?

A. I appraised the property this year. My appraisal was made, however, as of March 20, 1957.

Q. All right, sir. Would you next consider parcel No. 2 of the Vermillion property which you have as Item No. 002.

A. This property has a total size of 4.99 acres,
page 35 } approximately 5 acres.

The land taken is a very small piece of land .058 acres having a frontage on the road of 20 feet by a depth of 45 feet, and then a very small triangular shaped connected

Morton G. Thalhimer.

By Mr. Geddy: (Continuing)

Q. I repeat again, sir: There is no break in the blue line?

A. That is correct.

Q. That blue line designates where the limited access lies, all access right have been taken, is that not true, Mr. Culbertson?

A. Yes, sir, that's true.

Q. One more question, Mr. Culbertson: If that crossing is disregarded, what is the distance of the next nearest crossing to the Gilliam property? How far away is it?

A. This crossing that ties into the secondary road to the side where his dwelling is—

Q. I say disregarding that crossing because there is no break in the blue lines there, what is the next nearest crossing or cross over that would give Gilliam access from his property on either side of the road to the main traveled part of 31?

A. That would be at the southern end of the page 27 } Watts property.

Q. How many feet is that away?

A. Approximately three thousand feet.

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page 31 } MORTON G. THALHIMER,

introduced on behalf of the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

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page 33 }

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Q. Mr. Thalhimer, at my request did you conduct an appraisement of certain properties belonging to T. R. and Marguerite Vermillion in James City County?

A. Yes, I did.

Q. Will you tell the Commission the results of your appraisement of that property, sir?

Morton G. Thalhimer.

Q. Now Mr. Thalhimer, when you made the appraisement, did you also have at your disposal the plats of the Highway Department indicating the property concerned?

A. Yes, sir.

Mr. Carneal: If Your Honor please, that is all the questions I have for Mr. Thalhimer at this time. I do not know how Your Honor would want us to conduct this, whether you want to permit Mr. Sutton to cross examine as to this testimony and then proceed to the next piece of land, or whether you would want me to go ahead and finish up with my examination.

The Court: It looks like it would be better for you to complete your whole examination in chief and then let each one of them cross examine.

Mr. Carneal: I have no objection, if Your Honor please.

page 39 } Mr. Causey: If Your Honor please, simply for the record we would renew our objection at this point for the procedure for the reasons heretofore stated.

The Court: All right.

By Mr. Carneal: (Continuing)

Q. Mr. Thalhimer, may I direct your attention to the R. B. Watts Estate.

A. The R. B. Watts Estate property is referred to on the Highway map as Item No. 001, and has a total size of, in the tract of, a total of 75 acres in the tract.

The land taken amounts to a total of 1.16 acres. In my opinion the highest and best use for this land is for residental development, and I think that the land, the total 75 acres of land would have an over-all value for the whole of $1,500.00 per acre, or if sold as a whole as of March, 1957, the fair market value of it would have been $112,500.00.

The actual taking which comprises this 1.16 acres is a strip of land fronting on the highway in the, approximately between 1100 and 1120 feet by a depth of 45 feet, and it would be cut off from Highway No. 31, and will have a service road in front of it.

The value of the land taken in my opinion is $2,320.00.

page 40 } Now the damage to the remainder is $6,300.00, for a total for the land taken and the damage to the remainder of $8,620.00.

Q. All right, sir. May I direct your attention now to the property of F. H. Gilliam.

with it that does not at present front on any highway. Total highway frontage was 20 feet in width by a depth of 45 feet.

This piece of property is close to the park property and in my opinion the property as a whole had a value of $4,000.00 an acre, or in round figures $20,000.00 for the 4.99 acres.

The value taken on a pro-rata basis would be, this little strip 20 x 45, including the triangle, which represents .58 of an acre at its pro-rata part at $4,000.00 an acre is $235.00.

As to the damage to the remainder they took a strip fronting on the road 20 feet by a depth of 600 feet which equals 12,000 feet, and 12,000 feet roughly is .3 of an acre and at $4,000.00 an acre would be worth in the area of $1,200.00.

I gave that piece a 50 per cent damage, or $600.00. To summarize these values: The .058 acres, the value of the land taken $235.00, the damage to the remainder $600.00, the total of $835.00.

Q. All right, sir.

page 36 } A. On item number, referred to on the Highway map as Item No. 005, this property is located on the west side of the highway and consists of a total area of 3.58 acres. The actual total land taken by this strip is .23 acres. .23 of an acre.

In my opinion the value of the total, the total value of the acreage on that side of the road and that location is $1,500.00 an acre. .23 of an acre in round figures would have a fee value of $350.00.

And the property after the taking would have a frontage on the service road, and my opinion it would have a value of, the damage to the remaining property would be $750.00, making the total for land taken and damage to the remainder $1,100.00.

Q. Mr. Thalhimer, in considering these values and the use of the land, did you have available the traffic count and use of cars on Route 31, sir?

A. Yes, sir. I studied the traffic count in the area as well as the number of cars that used the ferry; getting the information, statistical information from the Highway Department and the traffic count as of January 1, '57.

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page 38 }

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adjacent property owner. So I am not assuming
page 42 } that there is any right of use or any right of en-
trance from the Gilliam land to the road which I would say is on the southeast side of the property. In other words he has no right to enter that property at all.

The property is suitable principally for, in my opinion, for residential development, and it would have to have nice and it does have a very nice frontage on Route 680.

Q. All right, sir.

A. On the opposite side of the road, on the east side of the road, property is referred to on the Highway map as Item No. 006 and it is a tract of land somewhat rectangular in shape, contains a total of 60 acres.

The Highway Department is taking in fee 1.73 acres which consists of a strip of land fronting on the highway 1,670 feet by a depth of 45 feet. The property would be separated from 31 entirely and will be serviced by a service road running in front of it.

I considered the, all of those factors and in my opinion the value of the property as a whole, I took the road frontage and the total value of all of the land at $45,000.00 for the 60 acres of land.

The land taken at a $1,000.00 an acre equals $1,730.00. The damage to the balance of the land $5,000.00, and I
allowed $120.00 for a two inch twenty-five foot
page 43 } deep well which was in the part taken, giving a
total damage of $5,120.00, and total taking $1,-730.00 for a total in all of $6,850.00.

Q. Did you consider the best use of this land in making this appraisement, Mr. Thalhimer?

A. Yes, I did. I think the highest and best use of the property is for residential development at some future date; that is, the vast majority of it.

Q. Now may I direct your attention to the property of R. B. and Elizabeth A. Gilliam.

A. This is a little, small piece of property. The property of R. B. and Elizabeth A. Gilliam was referred to as Item No. 0010 located generally on the east side of Route 614. It has a very small triangular piece of property with a very small frontage on Route 614, and it contains in all .01 acre. That is, would be .01 of an acre. A little triangle, is a portion of the parcel of land containing approximately five acres which has a frontage on 614 of about 200 feet.

It is our opinion that property has the value of, a small parcel of that kind used for residential development, of

Morton G. Thalhimer.

A. The property of F. H. Gilliam lying on the west side of the highway has a total—and is referred to as Item No. 007—and has a total of 15 acres of land together with a house and several out buildings.

The fair market value of the property as a whole as of March 20, 1957 in my opinion was $26,000.00, which I divided as follows: Value of the land $18,000.00 and value of all of the improvements of $8,000.00, making a total of $26,000.00.

The amount of the land taken in my opinion is, the taking is 1.54 acres of property which consisted of a strip 45 feet by 1480 feet along Highway No. 31—frontage of this particular property.

I estimate that the value of the part taken is $3,000.00. I estimate the damage to the remainder of the property, septic tank and drain field $550.00, moving of the chicken house $200.00, the loss of nine trees on each side of the property $450.00, damage to the residence by virtue of the fact that the highway ownership will be 45 feet closer to the property than it was prior to the taking, even though there is not going to be a service road the Highway
page 41 } Department will own that 45 foot strip, in my opinion that to some extent, and it would be considered as a damage, I have estimated that damage at $750.00. The damage to the remainder of the property because it is deprived of access to the highway and does not have a service road $3,750.00. Other incidental damages of moving and so on during some of this construction period $150.00. Total damage $4,850.00. Total for the land taken $3,000.00, making a total in all $7,850.00.

I am assuming in that estimate of damage that the road on the north side of the Gilliam property, or on the northwest side, which on my map is marked 680 and the road on the other end nearest to the river is marked on my map as 614—I am not sure that that marking of those roads is necessarily accurate—but I am using the markings on this plat that is the road on the side nearest the City of Williamsburg is 614 at that point I am assuming that the ownership of this property has the right to cross No. 31 and cross at that point and turn back northwardly toward Williamsburg. In other words I am assuming a cross over of the highway at that particular point. At the other end of the property, the point nearest the Jamestown Festival and the river which is marked on my map as 614, I understand that the Gilliam property is cut off from that road by a little strip that is owned by the

Morton G. Thalhimer.

Mr. Carneal: Usually a certified copy is offered, Mr. Sutton; not the book itself.

Mr. Sutton: We offer in evidence the deed. We will provide a copy for the record, of course.

Mr. Carneal: No objection, Your Honor.

The Court: All right, sir.

By Mr. Sutton: (Continuing)

Q. You found also of record in the same Deed Book, did you not, an option to sell the 4.99 acres of which the little piece now condemned is you testified a part, dated

page 46 } March 6, 1957, recorded in Deed Book 60, page 389?

A. Yes, sir.

Q. The option price for that five acres of land at that time was $50,000.00, is that correct, sir?

A. $10,000 an acre, yes, sir.

Mr. Sutton: If Your Honor please, we offer that option in evidence, Deed Book 60, page 389, and we will provide a certified copy for that.

The Court: All right.

Q. You also found that that option was taken up in the conveyance of that piece and some additional land in deed from Vermillion to Haynes, dated March 26, 1957, Deed Book 60, page 517, did you not, sir?

A. Yes, sir.

Q. And you ascertained that at that time there was a conveyance of a one-half interest in this five and a fraction acres plus some additional land which went back to the creek and that the purchase price of the half interset was $40,000.00, did you not, sir?

A. Yes, sir.

Mr. Sutton: We offer in evidence the deed from Vermillion to Haynes dated March 26, 1957 recorded in Deed Book 60, page 517, and will have a certified copy made for insertion in the record.

Q. You found a deed of trust executed by

page 47 } Haynes the same date conveying the same half interest in the property dated March 26, 1957, Deed Book 60, page 517, securing $39,000.00, did you not, sir?

A. Yes, I did.

$1,000.00 an acre. And basing it on pro-rata part of that the value of the land would be worth roughly $10.00. I appraised it, however, for the purposes of this taking
page 44 } at $25.00 for the land taken and $25.00 damage to the remainder, a total of $50.00.

Mr. Carneal: Would you answer Mr. Sutton's questions, please.

CROSS EXAMINATION.

By Mr. Sutton:

Q. Mr. Thalhimer, I will ask you only as to the Vermillion property and as to the Watts Estate. Now, when was the date you first visited the property?

A. March the 12th—I mean November the 12th, I beg your pardon, '58. I beg your pardon. I visited the property on November 14th and again on November 19th.

Q. They are the two occasions you visited this property for the purpose of appraisal?

A. Yes, sir.

Q. Mr. Thalhimer, you say you examined the records as to recent sales and contracts for sales around and prior to March of 1957?

A. Yes.

Q. You found a deed, did you not, to R. B. Wallace dated December 15, 1954 recorded in Deed Book 60 at Page 3 conveying a parcel of land which is bordered on both sides of the Vermillion property.

A. Yes, sir.

Q. And you ascertained that the sale price for
page 45 } that parcel of land, 50 x 200 feet, was $10,000.00, did you not, sir?

A. Yes, sir.

Q. You viewed the plot, I take it, to that parcel of land which was recorded with the deed?

A. Yes, sir.

Mr. Sutton: If Your Honor please, we desire to offer this deed and the plot in evidence.

The Court: Tell me how are you going to take it out of the book? I do not see how you can do that.

Mr. Sutton: We can, of course, a copy can be made for the record. We have a right to offer the deed in evidence if we care to do so.

Morton G. Thalhimer.

the frontage area. I didn't think it was significant
page 49 } to do so. I valued the tract as one tract of land.

Q. Isn't the portion on the highway far more valuable than the portion at the back in the marsh?

A. Well, I guess the highway frontage is always more valuable for entrances and exists. In some ways, for certain types of development, people prefer to get off of the highway.

Q. Did you actually walk to the back of that property along the marsh to see how far it was from the high land to the creek?

A. No, I didn't walk all the way to the back of the property, Mr. Sutton. As I told you before, I didn't, I considered the property all as good, usable property, except the property immediately adjoining the creek.

Q. Now, parcel No. 3 which is on the west side of the highway belonging to Vermillion, that formerly was an intersection of two highways, was it not?

A. Parcel No.—?

Q. It is the .23 of an acre.

A. Item No. 5, 005.

Q. In this case it has been referred to, this particular parcel has been referred to as No. 3 on the plot filed in this proceeding. I do not know what you are following. I am following the plat filed in the proceedings here today. It is
the .23 of an acre, the only parcel on the west side
page 50 } of the highway belonging to Vermillion.

A. Yes.

Q. That formerly had two corners where highways intersected, did it not?

A. Yes.

Q. How much land was in the area that you appraised there?

A. The part I am referring to has 3.58 acres.

Q. That was split in two by one public highway that leads from Route 5 to Route 31 and faced along Route 31 prior to this condemnation, did it not?

A. Just a minute. I'm not sure—You mean split in two by the road marked 614?

Q. By the public road leading from Route 5 over to Route 31.

A. I am not sure that it splits it in two.

Q. Was it your information that it lie on both sides of a pnblic road and also fronted on a public road—

A. Yes.

Morton G. Thalhimer.

Mr. Sutton: We offer that deed of trust, if Your Honor please, in evidence and will have a certified copy made for the purpose of the insertion in the record.

Q. Now, as to the second parcel concerning which you testified that is being taken from Vermillion containing .87 of an acre, that joins immediately the parcel conveyed by Vermillion to Wallace, does it not, sir?

A. Yes, it does.

Q. And extends on up the highway for a distance of some 860 feet, is that correct, sir?

A. My plat says 854, but that's close enough.

Q. I believe you valued this, the larger tract of land—How many acres were in the tract that you gave a valuation for?

A. 16.21 acres.

Q. Does that go back to the marsh?

A. It goes back to Powhatan Creek.

Q. Goes back to a creek.

A. Yes, sir.

Q. Well, there is a marsh along side that creek, page 48 } is there not?

A. Yes, sir.

Q. Is the marsh land included in that 16.21 acres?

A. I think so, yes.

Q. How much marsh was included there in the 16.21 acres?

A. Well, I don't think there was a great deal of marsh in the 16.21 acres. Probably, my judgment would be an acre and a half, two acres.

Q. You valued the sixteen and a fraction acres at how much?

A. $28,370.00, which is $1,750.00 an acre.

Q. The portion of marsh would, of course, be far less valuable than any other part of the property, would it not, sir?

A. I beg your pardon?

Q. The marsh would be much less valuable than any other part of the property?

A. I would think so. If the property ever got very valuable the property probably could be better drained and could be gotten rid of, if it reached that point, residential or any other part of development.

Q. What did you value the marsh area as?

A. I did not divide the property into the marsh area and

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Q. —or do you know about that one way or the other?

A. I have the plat right here. 614—It certainly has a frontage on what is referred to as 614, and it has a frontage of 221 feet on No. 31.

Q. Did it lay on both sides of what you call—

page 51 } A. 614, yes, sir. I said I did, I didn't know that it split it equally in half. I can't answer that question.

Q. Where those roads, public highways intersected there surely the primary value would be as business property, would it not, sir?

A. You mean where 614 enters 31?

Q. Where the highways intersect.

A. I wouldn't say it was necessarily business, no, sir.

Q. I say that would be the primary, the greatest value of it would be for business property, would it not?

A. Not necessarily, no. Not in my opinion.

Q. What valuation did you put on that parcel, the entire parcel on both sides of one highway and fronting on another highway?

A. I put a value of $5,400.00 for the 3.58 acres.

Q. For the how many acres?

A. 3.58 acres.

Q. The State is taking the road front there on Route 31, closing entirely the entrance from that other public highway to Route 31, is it not?

A. The road is, the Highway Department is taking a 45 foot strip in front of the property on Route 31 by the full frontage of 221 feet on Route 31.

Q. The other highway no longer intersects at

page 52 } that point, is that not correct, sir?

A. I don't have a plat that would show me that. Not having the same plat, Mr. Sutton. I'm not trying to in any sense of the word evade answering your question, but I think Route 614 which is the road that separates the T. R. Vermillion property from the F. H. Gilliam property—Are we talking about the same thing?

Q. To answer your question you apparently are not familiar with the situation. The testimony of the State Engineer was that the road comes through the Vermillion property with Vermillion property on both sides.

Mr. Carneal: If Your Honor please, this man is not bound by what testimony any other witness has given in the court. This man is only bound to answer the questions pro-

pounded to him by counsel, from his own knowledge and own opinion not from what somebody else testify to.

The Court: What is your objection?

Mr. Carneal: My objection is counsel is setting forth certain facts which the highway man testified to and is asking Mr. Thalhimer to verify them.

Mr. Sutton: If Your Honor please, he is his witness.

The Court: I do not think he is asking the
page 53 } witness for any verification; he is just making
a statement.

By Mr. Sutton: (Continuing)

Q. Mr. Thalhimer, you do not know where that road came through, do you?

A. No, I didn't say that, Mr. Sutton. I wasn't here during the testimony of the Highway Department.

Q. I am asking you of your own knowledge now, do you know where the road formerly intersected?

A. I know where the intersection of 614 is with Route 31, which separates the F. H. Gilliam property on the west side of No. 31, which is generally on the northwest of the T. R. Vermillion property and that Route No. 614, which I understand was only accepted by the, into the highway system comparatively recently, this year, is still there. It was still there when I was there and it would still inter—so far as I know—at its, still at this point along the Vermillion property which would be, that I would consider the north side of the tract we are talking about.

Q. All right, sir. On one side of that road is whose property?

A. One side of the road is the Vermillion property, and the Vermillion property I am told is on the opposite side of the road to the extent of a narrow strip of about 30 feet that
separates it from the Gilliam property.

page 54 } Q. In other words the Vermillion property is on
both sides of that road, then?

A. That's right.

Q. Did that road formerly intersect Route 31 at that point, or do you know?

A. Yes. It entered 31 at that point.

Q. It no longer enters 31 at that point, does it, or does it?

A. No. It's, it doesn't cross 31 at that point.

Q. Does it enter 31 at that point?

without depreciating the rear part of the property if the road frontage is used for any type of use that could be considered advantageous; we'll say for residential development.

Q. How much of the 75 acres is timber land?

A. I didn't estimate any timber value there. If there is any real timber value there it should be added to, timber value should be added to the land that is being—

Q. How much of it, then, is wood land, scrub, any kind of wood land?

A. The land being taken by the State certainly doesn't have any marketable timber on it.

Q. How much of the 75 acres has what you would call wood land, scrub wood on it, any kind of wood on it?

A. My guess would be about at least a third of it. But it seemed to me that in my estimate of the value, I estimated that the highest and best use of the entire parcel

page 57 } would be for eventually for a good residential development; and the fact that some of it was further away from the highway—in answer to your question—might be an advantage rather than disadvantage in a residential development. Most of the land that has been developed between Williamsburg and the Park on Highway 31 has been developed for residential development, and apparently it has been successfully developed and profitably developed, and this seems to me to be the ultimate highest and best use for this particular property.

Q. Do you know how far it is from the Watts property to the nearest cross over, service road toward Williamsburg?

A. The one the Watts property being in the neighborhood of not over three thousand feet, on the one going up north.

Q. If that were developed for residential property, what size lots would you anticipate; how many lots would you get to the acre?

A. I would think that a residential development of that kind would try to average approximately an acre to a dwelling.

Mr. Sutton: That is all.

By Mr. Geddy:

Q. Mr. Thalhimer, let me ask you a hypothetical

page 58 } question if I may, sir: Assuming that your studies of this property had led you to the con-

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A. When I was there it seemed, I thought that you could enter from 614 to 31, yes, sir.

Q. Thank you, sir. That is what I am trying to get at. You based your appraisal on your belief that you could enter from 614 to Route 31?

A. I didn't base my appraisal entirely on it, but I assumed—

Q. That was a fact that you took into consideration.

A. I assumed 614 was a usable road insofar as it would come to Route 31.

Q. Now passing to the Watts Estate property; how large a tract do you say you appraised in connection with that?

A. 75 acres, I think.

Q. How far back does that extend from the

page 55 } highway? The part that you appraised, how far did it run back from the highway?

A. Approximately three thousand feet.

Q. Approximately three thousand feet, over half a mile?

A. Yes.

Q. And you appraised the 75 acres which extend more than half a mile back from the highway at how much?

A. At $112,500.00.

Q. $1,500.00 an acre, is that right?

A. Yes. Exactly.

Q. Part of that property that is half a mile from the highway would not have comparable value to the part that did lay immediately along Route 31, would it, Mr. Thalhimer?

A. No, not necessarily. And I didn't value it exactly the same. My appraisal of the Watts property was that the part fronting on the highway, which was 1.16 acres, had a value of $2,000.00 per acre, which came to the total of $2,320.00.

Q. In other words you gave a differential of only $500.00 per acre for part of that property that lay more than half a mile from the highway as against that which bordered immediately on that highway, is that correct?

A. Well, I, I wouldn't say that is correct. I

page 56 } would like to make my thinking clear to you. The 75 acre tract as a whole I thought was worth $112,500.00. It would require considerable study on anybody's part that owned 75 acres of land as to whether they would ruin or spoil, depreciate the rear portion of the land for a certain type of development that they might put on the road frontage, and it might be very much more advantageous economically to consider a development of the entire property. I don't think you can sell off a road frontage

thousands and thousands of feet of agricultural land into business property would seem to me so far in the future that it isn't something that I would anticipate as a probable thing to happen.

Q. I see, sir. Would you, and this again is page 60 } hypothetical, not directly related to the Gilliam property, but if a land owner had been approached several times within a short period of times to sell a part of his property for business purposes and had received no offers for the sale of a part or all of his property for residential purposes, would it not be more logical to assume that in this particular period business use is more reasonable to be expected than residential use?

A. Well, speaking hypothetically and forgetting about any of these properties, trying to answer your question, Mr. Geddy: Anybody that travels any of the highways or byways know that there are occasional business establishments such as filling stations, or a corner grocery store, or a restaurant of some kind. Those are spotted on the highways throughout Virginia and I suppose every other state in the Union, but because there is an entry for a filling station or a business doesn't mean that the balance of the property is usable. A man might have a frontage on the highway of ten thousand feet and very well could have an entry for a business that could consume fifty feet or a hundred feet, or two hundred feet for some type of business, but you must remember that in all this thinking, hypothetically, that the value of the property is not because it fronts on the road, the value of the property is based on how many people are constantly passing it day in and day out, week in page 61 } and week out, year in and year out, and not because of any one special occasion or one special event that may attract people. Like if you have a circus in town, somebody could rent a little vacant lot, pay a hundred dollars for it for the week that the circus is there and sell pink lemonade and make money, but that wouldn't mean that after the circus moved away that the property would rent for a hundred dollars a week for an indefinite period of time.

Here you have a highway that is not the only way to get to the Jamestown Festival, it's just one of, and probably the least interesting way for tourists. I do not think there is enough traffic on small highways of this kind to justify the thought that large portions, large frontages can be de-

clusion that the highest and best use of this property was for business development catering to the trade that travels on the highway, would your appraisal of this frontage, which after all is what is being taken, would your appraisal of that frontage be higher than the figures that you have now stated?

A. Yes. If I could conceive the highest—You are talking about the Gilliam property?

Q. Yes, sir. Talking about the Gilliam property specifically.

A. The study, any study which would develop that the property for any given distance the highest and best use was for business property it would be my opinion that the evaluation would be larger than the valuation than if it were residential property.

Q. Let me ask you this: Would the development of retail business along the frontage of the Gilliam property on either side in any way depreciate the value of the rest of the land for agricultural purposes?

A. No, I don't think it would.

Q. And that land at present is used for agricultural purposes, is it not?

A. Well, the land on the west side I would say, yes. I don't know that it is used very profitably for crops
page 59 } that are growing things there, but it is apparently used for agricultural purposes.

Q. It is used for agricultural purposes. Wouldn't it be fair to say, Mr. Thalhimer, that the frontage considered alone has its highest and best use in retail business since it would not damage the rest of the property in its present use and would yield a far higher value than it would if the entire tract were used for residential purposes?

A. Well, all I can say in answer to that question is, I studied it as carefully as I knew how. There is six miles on both sides of the road which would be about sixty thousand front feet, at least, of land between William and Mary and the entrance to the festival. In the City of Richmond, the metropolis population of 350,000 people traveling up and down the streets, the good business area is comparatively limited. There isn't anything like if you took all of Williamsburg and all of No. 60 and all of 168, you wouldn't have anything like the amount of land that is on No. 31 from Williamsburg to the ferry that is owned by private individuals that could be developed. The idea of developing literally

Morton G. Thalhimer.

RE-CROSS EXAMINATION.

By Mr. Sutton:

Q. Mr. Thalhimer, have you not handled hundreds of deals in which the property was sold with a very, very small down payment?

A. No, sir.

page 64 } Q. How about the F. H. A. transactions now?

A. Well, Mr. Sutton, F. H. A. transactions are no more comparable to a sale of vacant land, in my opinion, than day is with night. F. H. A. was designed to help the man of the small income buy a home and pay for it over a long term of years. F. H. A. loans are not applicable to sales of raw land of this kind. And the answer to your question is that I have not seen hundreds of sales of this type sold, a $40,000.00 sales on a thousand dollar cash payment. The answer is no.

Q. Have you not handled sales when there was no cash payment given, when the purchaser was quite responsible and capable for the whole amount?

A. I cannot recollect any that I have handled where there was a *bona fide* arms length sale, where the cash consideration of a *bona fide* sale was as small as the amount involved, a $40,000.00 sale with two and a half thousand dollars cash, no, sir.

* * * * *

page 66 } The Court: Let me ask him this question:

By the Court:

Q. Mr. Thalhimer, did you mean to imply that the sale from Mr. Vermillion to Mr. Haynes was not *bona fide?*

A. Sir, if Your Honor please, I didn't mean to imply anything. If Mr. Sutton—

The Court: That has answered the questions.

A. —I resent the fact that Mr. Sutton—

The Court: That answers the question.

Mr. Sutton: You may take your seat.

Q. Mr. Thalhimer, let me ask you this question: One of your reasons you said that the land was not susceptible—you did not say susceptible—for business development was

veloped for business purposes. That is the basis, the fundamental basis of, let's say, my opinion.

Q. Your opinion, Mr. Thalhimer, is not based on any knowledge of whether or not Mr. Gilliam has received any offers or inquiries from business, is it?

A. No, sir.

Q. You have no knowledge of that.

A. I have no knowledge of any offers of Mr. Gilliam's, no, sir.

Q. Mr. Thalhimer, did you personally own any real estate in James City County during 1957?

A. No.

page 62 } Q. Did you participate in the sale of any real estate in James City County as an agent or broker during the year 1957?

A. I don't think so.

Mr. Geddy: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Carneal:

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Q. Thank you, sir. Now, Mr. Thalhimer, Mr. Sutton asked you about a certain conveyance from T. R. Vermillion—First of all there was an option to purchase half interest in 4.99 acres and some other land for a price of $50,000.00, and then there was apparently an actual purchase of said land exercising said option for $40,000.00, and then there was placed behind that a Deed of Trust for $39,000.00, indicating that only a thousand dollars in cash actually passed hands on the $40,000.00 transaction. From your forty-four years of experience as a real estate agent would you say that was rather a unique way of handling a matter of that kind, involving that much money, only $1,000.00 being paid?

A. I would say it was very unusual.

Mr. Carneal: Thank you, sir. That is all.

E. E. Falk.

Q. All right, sir. Now, in making the appraisement of the Watts property, Mr. Falk, what elements did you take into consideration?

A. May I say that almost the same elements are present in all of the properties that are being discussed. The taking is of a 45 foot strip of road on each side of Route 31 with the intentions of making it a limited access road. All of the properties except one parcel have been provided page 70 } with a service road by the State. In general Route 31 is a secondary road between Williamsburg and Jamestown; the main road being the Colonial Parkway. This road at its southerly end terminates at the ferry landing with the ferry across the river. There is comparatively little development along the road. There is one motel along there. There are several very good sub-divisions closer to Williamsburg, and there are a few filling stations along the road.

In considering the property I gave thought to the potential use as well as to its present use in trying to find its highest and best use in what the property would bring the highest price for.

At the present time the property is being used for farm purposes. And actually they are almost too small to be economically worked as farms. And I think they have a far greater value than they could possibly have as farm land.

I also gave consideration to its use as commercial property, particularly because of its fronting on Route 31. And in studying highway traffic counts and the general traffic in the area, I felt that the property did not have sufficient traffic to occasion much commercial use. When you consider that from the bridge, where this limited access road begins, to the Jamestown Festival entrance there is a total of over 11,000 feet on both sides of the road: there might page 71 } be a commercial demand for one or two spots, but the property could not possibly be developed commercially. As an example of that: For the entire city of Newport News, Washington Avenue, the main shopping center, is only 4800 lineal feet of business property from one end to the other. 2000 feet of that is considered good property. The Duke of Gloucester Street only has about 860 feet of business property which serves most of Williamsburg. When you consider 11,000 feet along there it seems almost impossible to feel that it could be used for that.

due to the fact that there is approximately twelve miles of frontage counting both sides of the road between Jamestown and Williamsburg, is that correct?

A. Yes, sir.

Q. Would your opinion be affected any if part of that land was restricted for residential purposes so that it could not be developed?

A. Your Honor, I measured the land on both sides of the road of the properties that I testified to today. And coming from the bridge to the entrance to the, or down page 67 } to the Vermillion property where the American Oil Company filling station is located, there is over 11,000 front feet on both sides of the road. That 11,000 front feet is—assuming that the Gilliam land, the Watts land, the Vermillion land, and the, what is the name of the man? Let's see if I can get this list in here—

Q. Murray.

A. (Continuing) That land alone, there is so much more land than could be used in this area for, if it grew to be a city of 50,000 people. It is a tremendous amount of land for business purposes, in my opinion, and certainly there would be some which there could possibly be some development of it for filling stations or small business; but certainly it couldn't all be developed over the forseeable future, or any appreciable amount of it. That is what I was trying to say to Mr. Geddy.

Q. You do not think any appreciable amount of it could be developed?

A. Only a small part of it could be used for business purposes.

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page 68 } E. E. FALK,

introduced in behalf of the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

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E. E. Falk.

made on that road before the taking, was the one sale to Wallace. So it showed that there wasn't too much demand at that time.

Now, in consideration of the sale to Mr. Haynes. Frankly, I was rather non-plused at that sale. The price was at the rate of $16,000.00 per acre. The sale, the deed specifically stated that the new owner was to get no benefits from the condemnation and was not even to get the rent from the filling station which was on the property. The consideration, the cash consideration was only $1,000.00, and it called for no payments compulsively for three years. I have been in the real estate business since 1925 and frankly we have handled no sales in my experience under that type of terms. And I have discounted that sale as a result of the terms.

Q. All right, sir. Now, Mr. Falk, with that background would you turn, please, to the appraisement of the T. R. Vermillion property and will you tell the Commissioners what value you appraised on the property being taken by the Highway Department and the damage to the remainder, if any?

A. This property consists of three separate parcels. Parcel No. 1 is known as, one parcel is known as Parcel 002, which is a portion of, only .058 acres taken out of a 4.99 page 74 } acre tract.

The other parcel which is being taken is No. 004, which is a taking of a piece .87 acres out of a total tract of 16.21 acres. This parcel has a frontage of about 854 feet on Route 31 and the other parcel had a frontage of only 21 or 20 feet on Route 31.

And then the third parcel is at the intersection of Route 614 and 31, where the taking is .23 acres out of a total parcel of 3.58 acres and fronting 221.20 feet on Route 31.

In considering the taking and the damages there, I have lumped these three parcels together because I do not believe the damages and the taking affects the complete value of each separate parcel.

The total amount of the taking is 1.16 acres. And I have valued the land at a $1,000.00 per acre, which is about what Mr. Vermillion paid for most of that land, or $1,160.00. In my opinion he has remaining a total acreage of 23.62 acres, and I believe this is damaged in the area of $2,362.00, or a total taking and damages of $3,525.00.

In assessing my damages I have taken into consideration the fact that Mr. Vermillion still has an access road in front of all of his properties; and then the highest and best use

E. E. Falk.

In my opinion the best use of the property is for residential sub-division.

Q. Is that true specifically of the T. R. Vermillion property, now?

A. I should say of all three parcels, with the possible exception of the 4.99 acre tract of Vermillion facing the Festival.

Q. In considering the appraisement of this property, Mr. Falk, did you use any comparable sales?

A. Yes, sir, I did. I tried to check most of the sales that were made in the neighborhood. Now on September 5, 1956 Mr. Vermillion acquired approximately ten acres from the Watts Estate at a consideration of approximately $900.00 per acre, judging from the revenue stamps. Then on August 24, 1956, I can give you the Deed Book number of these if you would like, Mr. Vermillion acquired 3.59

page 72 } acres from the Watts Estate with a consideration that showed a thousand dollars an acre. Then again on June 29, 1956 he acquired 11.43 acres from the Watts Estate showing, a revenue stamp showing consideration of a thousand dollars per acre.

Now I also took into consideration a transaction whereby Mr. Vermiillion sold to R. P. Wallace a lot 50 x 200 at the rate of a dollar per ten thousand, which is at the rate of one dollar per square foot, and I have also given consideration to the transaction where Mr. Vermillion gave an option to Mr. Haynes and later followed it with a deed for 4.99 acres. The deed being for something over 4.99 acres, didn't give the exact number of acreage but calling for a price of $40,000.00 or about $8,000.00 per acre for a half interest in this property.

In evaluating these sales I have taken into consideration the fact that the sale to Mr. Wallace was, in my opinion, an expectation of the tremendous rush of visitors for the Jamestown Festival that was just about to start at that time. In my opinion with the speculative development that was going on at that time, with the feeling that the Festival would be a tremendous success, that the average party wouldn't mind how much he paid for a single parcel of property to get close to the Festival. But one piece of property does not make the value for many thousands of feet an actual fact.

page 73 } I also took into further consideration that this taking was as of March 20, 1957. The Festival was projected in 1955 and yet this was the only sale that was

E. E. Falk.

A. Now, getting to the west side. There is a completely different problem. This taking consists of 1.54 acres out of a total original area of 15 acres, and there is approximately 1450 foot of frontage involved by a depth of 45 feet. Here you have improvements of a two story frame dwelling, frame garage, chicken house, and a shed and fruit trees on the property. The side is fronting on Route 31. This property fronts on 680, although I think there is some question as to the name of the road, 680 or 614. Anyway, there is a state road that goes in front of the property.

In my opinion the total value of the land and improvements on this side of the road are $22,500.00, of which $15,000.00 is land. And the value of the taking 1.54 acres at a thousand dollars per acre is $1,540.00. I have allowed damages of two hundred per acre of twenty per cent on this property instead of the ten per cent I have allowed on the other property because it does not have a service road in front of it. Of course the service road isn't es-
page 78 } sential because it fronts on the other; yet it is cut off from Route 31. So that amounts to $2,690.00. I have allowed $500.00 for a new septic tank and drain field. I have allowed $200.00 for moving the chicken house; $275.00 for nine fruit trees; and in an effort to give the benefit of the doubt to the condemnee I have allowed them a thousand dollars damage to his home due to the closeness to the highway in spite of the fact that since there is no access road the highway isn't any closer than it was before, but he is closer to the right of way. So that gives a total damages of $4,-665.00, say $4,670.00 or a total damage and taking on the west side of $6,210.00; or total damage to Mr. Gilliam on both sides of $13,870.00 damages and taking.

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Mr. Carneal: All right. Answer—

The Court: Did you appraise the R. B. Gilliam property?

The Witness: Yes, sir, I did.

By Mr. Carneal: (Continuing)

Q. Will you tell the Commissioners your appraisement of that particular land?

being for residential property, our experience has been that an access road where property fronts on a service
page 75 } road, there is no substantial damage for that use being on a service road.

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Q. Would you turn next to the R. B. Watts property, Mr. Falk?

A. Yes, sir.

Q. Would you tell the Commissioners your appraisement of that particular land?

page 76 } A. This is a 75 acre tract of land of which the taking is 1.16 acres, and approximately 1125 foot frontage by a depth of 45 feet. I consider this the most valuable tract of the group that are taken because it's bordered by the Colonial Parkway and faces the Colonial Park and the Festival across the road. In my opinion the value of the land taken is $1,500.00 per acre and 1.16 acres is $1,740.00. I feel that the remaining property of 73.84 acres has been damaged to the extent of $11,075.00, being about ten per cent of its total evaluation. Giving a total damages in taking of $12,815.00.

Q. Total of $12,815.00?

A. That is correct.

Q. That is on the Watts property.

A. Uh huh.

Q. All right, sir. Turn next, please, sir, to the F. H. Gilliam property.

A. Taking the east side of the road there you have a parcel of 60 acres of which 1.73 acres are taken, and this involves a frontage of approximately 1670 feet by a depth of 45 feet. Now a part of this land is rather low, but in my opinion it can still be used very satisfactorily for subdivision purposes, and I don't believe that it detracts from it to any considerable extent, and in my opinion the acreage taken is valued at a thousand dollars per acre or $1,730.00 for the 1.73 acres. I feel in a similar manner to the other
page 77 } because this property is served by an access road, that it's damages are limited to about ten per cent of the remaining value of $5,827.00. I have also allowed $100.00 for a two inch twenty-five foot deep well which was on the property; giving a total damages in taking of $7,-657.00 or say $7,660.00 on that side of the road.

Q. All right, sir.

A. This tract of only .01 acres out of a five acre piece, it had no frontage on Route 31. It fronts on Route 614. And all that has been taken off is a slight corner. In my opinion the taking and damage of $25.00 for the two, $50.00 would be a very full figure.

Q. For damages and taking of the land, too?

A. $25.00 taking, $25.00 damages; although I can see no damages.

Mr. Carneal: All right, sir. Answer Mr. Sutton's questions, please.

page 80 } CROSS EXAMINATION.

By Mr. Sutton:

Q. What is a limited access road?

A. A limited access road is a, just about what it implies, a road that you can only enter at specified places. You do not have free entry at any, at all portions of the road.

Q. Is that all?

A. That is the principal thing. Yes, sir.

Q. Along the side of a limited access highway the State has a right to build a wall any height it saw fit, can cut off entirely both air and light from abutting property—

Mr. Carneal: If Your Honor please, isn't that a question of law?

Mr. Sutton: He is your expert appraiser.

The Court: He has estimated the damages to it and I think he can question him as to what affect it may have on it. I will overrule the objection.

Mr. Carneal: Note the exception, if Your Honor please.

A. I would say, Mr. Sutton, that a party would not have a right to build a wall to cut off light and air and so forth from his neighboring property on any road; page 81 } limited access or otherwise.

Q. It was upon that basis that you made your appraisal in this case, Mr. Falk?

A. On what basis?

Q. On that premise.

A. I made my appraisal on the premise that the limited access road is a road controlled by the State or by the Government whereby free ingress and egress is not allowed except at specified points.

Q. Did you know, sir, at the time you made your appraisal

that in this particular case the Department of Highways of the Commonwealth of Virginia is condemning the easement of light and air which otherwise would apply to the abutting property owners?

A. No, sir, I did not.

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Q. Very well, sir. Mr. Falk, did you own any property in James City County during the year 1957?

A. No, sir, I did not.

Q. Did you participate in any sales made during that year?

A. I was negotiating for property in James City in the year 1957, yes, sir.

Q. Was it property in this area?

A. Not in this area.

Mr. Geddy: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Carneal:

page 83 } Q. Mr. Falk, do you know the legal definition of a limited access highway?

A. No, sir, I do not. If you ask me to go into that—

Q. You do not know the legal term?

A. That's right.

Q. All right, sir. Do you know, from your experience do you know of any limited access highway in the State of Virginia or otherwise where a wall so high that all the light and air has been kept out of peoples property has been built?

A. I have seen many limited access highways; I have seen them fenced but I have never seen them walled.

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page 84 } GEORGE MAXWELL LANIER,

introduced on behalf of Vermillion and the Watts Estate, first being duly sworn, testified as follows:

George Maxwell Lanier.

A. Yes, sir.

Q. Mr. Lanier, did you have occasion in the fall of 1956 to view and for the purpose of appraising and to
page 86 } actually appraise the Vermillion property a part of which is being taken in this action?

A. Yes, sir.

Q. At that time had there or not been any notification of any kind with regard to limited access highway?

A. Not at that time, no, sir.

Q. Did you later have occasion to appraise that property and if so when was the next date?

A. Yes. Mr. Vermillion asked me to go back at around March 20th, and I think I made a couple of trips out there. One on the 20th and then possibly a week later to view that property again for Mr. Vermillion.

Q. March 20, 1957?

A. Yes, sir.

Q. Do you recall the date on which you viewed and appraised the property in the fall of 1956?

A. Yes, sir. It was, it was in November.

Q. November of 1956?

A. November the 12th.

Q. Tell us, sir, something of the activity which was going on there in that particular area between November 12, 1956 and March 20, 1957.

A. Well, up to about the 1st of November of 1956 activity, there was some activity but nothing that a person could consider as being too active or in the nature of
page 87 } a sudden boom in real estate, anything of that kind; but along about the 1st of November from then until about the 1st of March there was a great acceleration in activity, in *inquires* to buy, offers and suggestions for business sites at and in the vicinity.

I, as a broker, had several inquiries and requests to find out if land could be purchased in that area, and I went to Mr. Vermillion with the idea of perhaps getting him to agree to sell some of that property and he wouldn't sell it. He said he didn't want to sell it right then, he thought it was going to be worth more later on. And I didn't get an opportunity to sell any of it.

Q. You are familiar with the property that is now being taken from the Vermillions in this proceeding, are you not, sir? The separate parcels that are being taken?

A. Yes, sir.

George Maxwell Lanier.

DIRECT EXAMINATION.

By Mr. Sutton:

Q. What is your full name, Mr. Lanier?

A. George Maxwell Lanier.

Q. How old are you, if you don't mind?

A. Almost 52.

Q. Where do you live?

A. On Richmond Road in Williamsburg.

Q. How long have you lived in this vicinity?

A. Almost 52 years.

Q. All your life?

A. Yes, sir.

Q. In what business are you engaged?

A. I am a realtor and appraiser.

Q. How long have you been engaged in the real estate business?

A. Ten years.

Q. At what place?

A. In Williamsburg.

Q. Have you during that time had occasion to handle sales of real estate in Williamsburg and in James

page 85 } City County?

A. Yes, sir.

Q. Is that the principal place where your business has been conducted?

A. Williamsburg and James City County, yes, sir.

Q. Over what period of time, you said—?

A. Over the past ten years.

Q. Have you had occasion to appraise property during that period of time?

A. Yes, sir.

Q. For what types of agencies, for individuals or corporations, have you had to appraise property?

A. I have appraised for individuals, for banks, for the Williamsburg Restoration, for the Commonwealth, Federal Government—

Q. Were you familiar with the development that took place in the vicinity of Jamestown, which was first the Jamestown Festival and now the Jamestown Foundation?

A. Yes, sir.

Q. Are you familiar with the property in that part of James City County, sir?

A. Yes, sir.

Q. And sales in that part of James City County?

George Maxwell Lanier.

sold to Mr. Wallace, I put a value of $100.00 per front foot. That was before March 20, 1957. Which would make $2,000.00 for 20 feet.

The Court: $100.00 a front foot?

Mr. Carneal: I understood that, sir. He said that was before March the 20th.

The Court: Before March 20, 1957, which would be a value of $2,000.00 for the 20 foot strip.

Q. All right, sir. What is your value after March 20, 20, 1957?

A. After March 20, 1957, by virtue of the fact that this limited access highway had come into existence, I figured that the value had dropped to $40.00 per front
page 90 } foot, for 20 feet which would be $800.00; which would be its value after March 20, 1957.

Q. What is the difference or resultant damage there?

A. The damages and resultant damages would be $1,200.00.

Q. Which makes a total land and damages for that parcel of how much?

A. $1,780.00.

Q. Will you take parcel No. 2, please, sir.

A. Parcel No. 2, which is separated from parcel No. 1 by a strip of land 50 feet wide and on the east side, or east from parcel 1—that is on the Williamsburg side—the amount of land involved there was .87.

Q. How much did you value that land in November and in March?

A. $10,000.00 per acre, making the total $8,700.00 for land, additional land to be acquired.

Q. What damages do you estimate to the remaining property of that parcel by reason of the making of the limited access road?

A. The value of that piece of property before March 20, 1957 or before the limited access was approximately 864 feet, that is the frontage, 864 feet to a depth of the first 200 feet would be worth $150.00 per front foot, or
page 91 } $129,600.00.

Q. That is the entire frontage going back a depth of 200 feet?

A. 200 feet. I figured the next 200 feet immediately behind the first 200 feet, which would make a depth of 400

George Maxwell Lanier.

Q. Will you please give the Commissioners the benefit of your views as to the value of this property on March 20, 1957, taking each of the tracts separately. We will start with either one that you may wish to start with.

A. Now I viewed this property and appraised it from the point of view of strictly commercial property and for commercial reasons. I have always, since I have been in the real estate business, I have been more of what I would term a specialist in commercial property than I have page 88 } been in sub-division property or property used for the building of homes. I am frank to admit that I am not as well qualified relevant to sub-division residential property as I am with commercial property in this immediate area. Consequently I appraised this property from the point of view of a four hundred foot depth setting a value on the first two hundred feet at so much per front foot based on what I thought it would bring actually in November of 1956, based on my knowledge of the market and the conversations that I was having at that time about potential, with potential buyers.

Now parcel No. 1, which is the little twenty foot frontage parcel adjoining Mr. Wallace's shop—

Q. How much land is in that parcel?

A. The land involved and being taken is .058 acres.

Q. That is not—

A. You are correct. That is Parcel 1, sir, right. That is what I term parcel 1.

Q. Yes, sir.

A. By virtue of prior sales and as business property, I put a value of ten thousand per acre on that parcel.

Q. Which would make the value of the land—?

A. Value of the land taken $580.00.

Q. At that time, in November of 1956, nothing page 89 } had been mentioned so far as you knew about any limited access highway, had it, sir?

A. I had no knowledge of it at that particular time, sir.

Q. When the limited access highway was established there on March 20, 1957, what in your opinion would be the damage sustained by the remaining property there by reason of that limited access highway?

A. Well, on that particular parcel prior to March 20th, 1957, and considering a 20 foot frontage and a depth of 200 feet, which is the same, about the same depth as the parcel

George Maxwell Lanier.

Q. —as the fair value at that time?

page 93 } A. Now that, I am speaking of the value of it and the possibilities before March 20, 1957.

Q. That is what I am talking about.

A. Subsequent to March 20, 1957, I don't know what I could do. I haven't had any inquiries.

Q. There have been no inquiries since that was made a limited access road? You have had no inquiries concerning the property in this vicinity?

A. Only to the extent of determining definitely there was a limited access highway in the vicinity.

Q. What is that, sir?

A. Only to the extent of finding out definitely if there was a limited access highway in the vicinity, and of course when I said that there was, why then no more questions were asked about it.

Q. Now, sir, will you give your appraisal of parcel No. 3 as you made on November, 1956 and again on March 20, 1957?

A. Well, parcel No. 3, I'm sure these gentlemen are familiar with the location of it by now, was at an intersection before the limited access highway came into being, which made it attractive, I think as a business site especially, service station, perhaps; and I have put a little higher value on that 220 feet or .23 acres than I did the other.

page 94 } I have valued that at $12,000.00 per acre, for .23 acres or $2,760.00.

Q. Had you had that property listed for sale at that time do you have reason to believe that you could have sold it on that basis, sir?

A. I think I could. I was approached by the representatives of a corporation who had previously been to Mr. Vermillion and they were a little late, because I think someone else was ahead of them. Anyway, they couldn't acquire the property so they came to me for additional site information on down the highway. But if that site had been available at the time I think I could have sold it. Yes, sir.

Q. At the price at which you appraised it?

A. Oh, yes, sir. For more than that.

Q. More than the price—

A. That is so far as the acreage value that I put on it of the land acquired.

Q. What, in your opinion, is the damage to the remaining property there by reason of the making of that Route 31 a

feet altogether, that the next 200 feet would be worth half as much as the front 200 feet, or $75.00 per front foot, making a total of $64,800.00; which would make the total value of the 864 feet by four hundred feet depth $194,400.00.

Q. That was the value that you put on the land before March 20th, before this was made a limited access road at that time.

A. Yes, sir.

Q. After the making of the limited access road, what in your opinion was the change in value of that property?

A. Purely from a commercial point of view and as I have stated before that my entire appraisal is based on a commercial basis, that after the limited access road appeared that 864 feet to a depth of 200 feet was worth just half as much as it was before the limited access highway or $75.00 per front foot, which is $64,800.00.

Q. That is the resultant damage, in your opinion, as to that parcel of land?

A. I will show the resultant damage after I have finished with the next 200 feet, sir.

page 92 } Q. I beg your pardon. That is the first 200.

A. That is the valuation of the property after the limited access road came into being, or subsequent to March 20th. The next 864 feet, or the next 200 feet immediately to the rear I valued at $50.00 a foot or $43,200.00.

Q. All right, sir.

A. Making a total value after March 20th of $108,000.00. In my opinion 864 feet to a depth of 400 feet before the limited access highway appeared could have and in my opinion would have brought at least $194,400.00. In my opinion after March 20th it wouldn't have brought but $108,000.00.

Q. Or a resultant damage—

A. Or a difference in damages of $86,400.00.

Q. What does that make the total for the land and damages for that parcel No. 2?

A. $95,100.00.

Q. It is your opinion as a real estate man in this particular area that you could *reaonsably* have sold the property at that price at that time?

A. I have every reason to believe that if I had had it listed I could have. Yes, sir.

Q. At the prices that you place thereon—

A. Yes, sir.

George Maxwell Lanier.

Q. By the way, sir, are these parcels, are both of these parcels the nearest privately owned property to the Festival grounds?

A. Yes. I think that is very definite with the exception of more property between this particular parcel of the Watts estate and the river, which of course is owned by the Watts Estate. But for present purposes I would say that this land is the only commercial property that could possibly be used close to the Festival grounds.

Q. What was the value in your appraisal of the Watts Estate as of March, before the limited access was made there in March, 1957, the property taken from the Watts

page 97 } Estate?

A. Well, the acreage taken 1.16, I value at the same thing I valued Mr. Vermillion's, at $10,000.00. It is all in the immediate vicinity and all had the same, about the same frontage on the same highway, Route 31.

Q. That would amount to—?

A. $11,600.00.

Q. All right, sir. Now, what about the remaining property?

A. The value of the remaining property for commercial purposes I appraised it at the same value that I did Mr. Vermillion's, and that is $150.00 a front foot for the first 200 feet and it was 1100 feet of frontage involved making $165,000.00. The second 200 feet of depth I valued at $75.00 a foot or $82,500.00; making a total of $247,500.00.

Q. After the taking what did you value it?

A. After March 20th or at the time of the taking of the limited access I valued it, the first 200 feet, 1100 feet at 200 foot depth $75.00 a front or $82,500.00; and the next 200 foot depth at $50.00 a foot, front foot or $55,000.00; making a total of $137,500.00 as being the commercial value of that property subsequent to its being taken for limited access highway.

Q. What is the total damages?

A. The resultant damages would be $110,000.00; or a total for land and damages of $121,600.00.

page 98 } Q. That is for the property now being taken from the Watts Estate.

A. Yes, sir.

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limited access highway and eliminating the intersection which the other road formerly had into Route 31?

A. Well, the value, I have put a value, there is only 220 feet frontage involved; for the first 200 foot depth—in a similar manner as I did the property across the highway—

page 95 } at $200.00 per front foot, or $44,000.00, for 220 feet by 200 feet depth. And the next 200 feet of depth at $100.00 or half as much, or $22,000.00; making a total value of that parcel before the limited access highway of $66,000.00. Now that is based on a statement made to me by the owner of the property. I'm saying that the owner told me thus and so.

Q. Was that in your opinion the fair value of that property at that time in the amount for which you reasonably expected to sell to a depth of 400 feet, 220 feet?

A. $66,000.00, yes, sir.

Q. After the making of the limited access highway, what was your value?

A. Worth just half as much, or $33,000.00. $100.00 for front foot for the first 200 feet and $50.00 a front foot for the second 200 feet of depth, making a difference or damages of parcel No. 3 of $33,000.00.

Q. $33,000.00. What is the total for land and damages for parcel No. 3 according to your appraisal?

A. $35,760.00.

Q. I understand from you these are valuations which you actually put on this property when you appraised it in November of 1956, is that correct, sir?

A. It is, with the exception of parcel No. 3. But I viewed the property at that time. I'm familiar with the location.

page 96 } Q. You actually appraised the others at that time and again in March?

A. Yes, sir.

Q. You appraised parcel No. 3 in March?

A. Yes, sir.

Q. Of '57?

A. Yes, sir.

Q. Now, Mr. Lanier, you are familiar with the Watts property that is being taken in this action?

A. Yes, sir.

Q. That extends I believe from the Vermillion property on the west side of the road back towards the, opposite the Festival grounds, does it not, sir?

A. Yes, sir. 1.16 acres.

his property. Mr. Wallace purchased his property about December 15th of the same year.

Q. 1956?

* * * * *

Q. Mr. Lanier, you said as a real estate agent you had certain inquiries and requests made of you concerning property in that area; did you at any time ever have a firm offer from anyone for property in that area, or was it merely an inquiry as to whether there was some available?

page 101 } A. I had no firm offer, no, sir, of that particular property.

Q. I am speaking now of the Vermillion property.

A. I was asked to find out if the property was for sale, and at that time it was not.

Q. It was not?

A. As far as I as a broker was concerned.

Q. Did you in behalf of your clients make any offer to Mr. Vermillion at all, or did you merely seek him out to see whether or not the property was for sale?

A. I sought him out to see if he would allow me to sell the property.

Q. No discussion of amount was ever considered, is that right?

A. Well, only to the extent that Mr. Vermillion asked me if I would appraise this property with the idea of maybe selling it.

Q. I am speaking now, Mr. Lanier, of when you went to him in behalf of certain clients whether or not you made or were requested to make any offers concerning the purchasing of this property?

A. No concrete offers.

Q. No concrete offers were made, just inquiries as to whether some was available?

A. Yes, sir.

page 102 } Q. You get quite a few requests during the year, do you not, for availability of houses and other property which does not materialize into any suit?

A. Oh, yes, sir.

Q. Could you estimate approximately how many you receive a year?

A. Oh, well, it would be an estimate; I guess I get my share of inquiries. Not so many for the past twelve months.

Q. Quite a few, quite a large number?

George Maxwell Lanier.

CROSS EXAMINATION.

By Mr. Carneal:

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Q. Mr. Lanier, can you define for me what a limited access highway is?

A. I can't give it to you in legal terms: My idea of a limited access highway is one that is designed in such a manner that entrance into it or from it, or exit from it is limited to certain specified spots as designated by the Government, and usually a limited access road in a rural area will run parallel to a more primary highway.

Q. Did you consider also in your appraisement the right to build a high wall and cut off the light and air to the remaining property?

A. I was aware of the fact but it did not influence my thinking. No, sir.

Q. In other words in your appraisement of the resulting damages, that did not enter into it at all?

A. Only to one extent, and that would be where, oh, say, these tall poplars might be planted along so thickly that it would screen the adjacent property.

page 100 } Q. But in this particular area there haven't been any tall poplars planted, have there?

A. Not to my knowledge, no, sir.

Q. Mr. Lanier, I believe you said that you viewed the property first on November 12, 1956 at the request of Mr. Vermillion.

A. Yes, sir.

Q. And at that time you, I believe you said you made an appraisement. You mean you actually wrote it down, you did make an appraisement at that time of the total value of the property?

A. Yes, sir.

Q. Was that before or after Mr. Wallace had purchased his piece of land from Mr. Vermillion?

A. That was just prior to the time Mr. Wallace purchased

George Maxwell Lanier.

A. I don't think it would particularly affect the value of the business sites, Mr. Carneal, by virtue of the fact that those sites were the only sites in the immediate vicinity of that final designation out there.

Q. So the actual use of the road by people coming to and from Williamsburg would not enter the picture so far as you are concerned?

A. No, sir. Not to any appreciable extent.

Q. Mr. Lanier, you have testified, I believe, that on this .23 acres of land taken by the Highway Department, and I refer now to parcel No. 3, that the value of that, you put the value on that of $12,000.00 an acre, am I correct in that?

A. Yes, sir.

page 105 } Q. You then said that the resulting damage to the next 200 feet immediately behind that is approximately $20,000.00, if I follow your—

A. $22,000.00.

Q. —figures correctly?

A. $22,000.00, yes, sir. Half as much.

Q. Or twice as much?

A. Half as much. That is the 220 feet, the first 200 foot depth, is that what you are referring to, or are you talking about the acres acquired?

Q. I am talking first of the .23 of an acre which the Highway Department has taken in this condemnation proceeding, which you place a value of $12,000.00 an acre on.

A. Yes, sir.

Q. And then you testified that right immediately behind that, that because of the taking of that area there of that $12,000.00 property that immediately behind that, that that property has been damaged to the extent of $20,000.00 an acre or $200.00, I believe you said, per front foot.

A. Yes, sir.

Q. So the property behind that which was taken by the Highway Department is more valuable than that which was taken by the Highway Department once it was taken?

A. Well, if the Highway Department had not taken the frontage of that property and limited the access

page 106 } to the property immediately behind it that you are referring to, then the property behind the acquired property would have been twice as high as what I have it.

Q. All right, sir. Assuming that is true, if the property behind that which is taken is worth $20,000.00, why isn't the property in front of that which is taken worth $20,000.00?

George Maxwell Lanier.

A. Some materialize, some don't. As a general rule a broker is able to estimate the approximate cost of land which the client wishes to acquire; but if he is intelligent he certainly allows himself plenty of latitude, I must admit, in an intangible thing of that kind. Usually you don't try to sell property unless you have it listed at a specific price.

Q. You had no listing of this property?

A. I had no listing of this property. No, sir.

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page 103 } Q. In commercial use of commercial property, Mr. Lanier, is it fair to say that the number of people using that particular area, such as a corner or road, that the commercial value of that property, particularly for a motel or filling station or something of that nature, that the number of people that use that particular road certainly is a basis that should be used in determining the value of that site?

A. In ordinary instances, yes, sir; in this particular case, no, sir.

Q. Would you explain that to me?

A. Well, one of the principal values and one of the principal profits derived by a corporation, a national corporation by virtue of a business bearing their brand in this vicinity—I am speaking of Glass House Point as well as Williamsburg—is it's value in national advertising; and I have made sales in the community where the statement was made that they didn't expect to realize any profit on their investment, that it was a national affair so far as advertising was concerned and that it was a national and international affair and as such it was feasible to pay high prices for a business site.

page 104 } Q. Would it be fair to say, Mr. Lanier, that that is the unusual rather than the usual, however, as far as business is concerned?

A. That is the unusual, I think, but particularly applicable to the Williamsburg area.

Q. Mr. Lanier, let me ask you a hypothetical question if I might: Assuming that people leaving Williamsburg and vicinity go to Jamestown in 1957, that for every five cars leaving this Williamsburg area that four of them use the Colonial Parkway and one uses Route 31; would your estimate of damages for use along that road be the same or would it change some?

A. Well, there is no commercial value to that which is taken at all, now.

Q. Before it was taken.

A. Before it was taken it wasn't limited access property. The 45 feet was worth $200.00 a front foot before.

Q. Before it was taken?

A. Yes, sir.

Q. All right, sir. We took 45 feet by 200. We'll say went back 45 feet and cut off; now that particular area which was taken is worth $12,000.00 per acre, according to your testimony.

A. Yes, sir.

Q. The area immediately behind that which was left after this taking, I think you said, was worth $20,000.00 an acre, if I follow your figures correctly?

A. Well now, that is at a depth of 200 feet, Mr. Carneal, and assumed to be a very logical commercial site with entrance to Route 31.

page 107 } Q. All right, sir. I am following you up to that point. My question is this: Why is the value of the land, the first 45 feet only worth $12,000.00 and the property immediately behind the 200 feet depth is worth roughly, it will figure out, about $44,000.00?

A. Well, in my opinion, sir, it is worth more than $12,000.00, but as a fair market value to the State in my opinion the $12,000.00 an acre would be a fair price to charge the State. I could very easily have put more.

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R. C. BENSCHOTEN,

introduced in behalf of Vermillion and the Watts Estate, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Sutton:

Q. You are Mr. R. C. Benschoten?

A. That's right.

Q. Where do you live, Mr. Benschoten?

A. Williamsburg.

R. C. Benschoten.

Q. How long have you lived in Williamsburg?
A. About eleven years.
Q. In what business are you engaged?
A. Insurance—real estate.
Q. How long have you been engaged in the real estate business in the City of Williamsburg and surrounding area?
A. Eleven years.
Q. Were you engaged in real estate business before you came to Williamsburg, and if so for how long and where?
A. At West Point, since 1928.

page 116 } Q. Have you been engaged in real estate business continuously since 1928?
A. Except for four years during the war, yes, sir.

Mr. Sutton: Mr. Carneal, I think that is thirty years.
Mr. Carneal: Mr. Sutton, I stipulate Mr. Benschoten is qualified to make appraisals.

Q. Have you had occasion to appraise property in this section throughout the last eleven years?
A. Yes, sir.
Q. Have you had occasion to handle sales of real estate in James City County throughout the last eleven years?
A. That's right.
Q. Mr. Benschoten, did you have occasion in December 1957 to make an appraisal of the Vermillion property, parts of which are being now condemned in this action?
A. In 1956.
Q. 1956, I beg your pardon. December, 1956?
A. Yes, sir.
Q. At whose instance did you make that appraisal?
A. Mr. Vermillion.
Q. What date in 1956 was it that you went upon the property for the purpose of determining its fair market value?
A. December the 17th.

page 117 } Q. Do you have a copy of the appraisal that you made on December 17, 1956?
A. Yes, sir, my office copy.
Q. May I see it?
A. There is a lot of scribbling on it.
Q. Is that paper which you now have the office copy of the report which you made to Mr. Vermillion of your appraisal on December 17, 1956?

R. C. Benschoten.

Q. Did you also appraise another lot at that
page 119 } time that belonged to Mr. Vermillion?
A. Yes, sir.

Q. Where was that other parcel with reference to the Festival grounds?

A. It's identified here as approximately five acres immediately west of Item 1. It actually is the parking lot adjoining the Festival property, I think would be a better description of it.

Q. What was that appraised at?

A. $57,500.00.

Mr. Sutton: We offer this in evidence, if Your Honor please.

The Court: I will mark it V-1.

Note: The above referred to paperwriting is now marked and filed as Exhibit No. V-1.

Q. Mr. Benschoten, at that time had you heard anything whatever about any limited access highway on Route 31?

A. No, sir, I had not.

Q. Between December 17, 1956 and March 20, 1957 were the values of real estate in that immediate vicinity increasing or decreasing?

A. Increasing.

Q. You also know, Mr. Benschoten, what is being condemned in this action, do you not, sir?
page 120 } A. Yes, sir, I do.
Q. Have you made an appraisal as of March 20, 1957 of the several tracts of the Vermillion property that are being condemned in this action?

A. Yes, sir, I have.

Q. Will you give the Commissioners the benefit of your veiws, please, sir?

A. I have identified on my notes the .058 acres as follows: Parcel No. 1, Route 31, the triangular piece immediately west of the Robert P. Wallace—property containing .058 acres. Land value $870.00.

Parcel 2, Route 31, approximately 864 feet by 45 feet, .87 acres—$13,050.00.

And Parcel No. 3 is the 220 feet by 45 feet on Route 31 on the opposite side of Route 31, .23 acres—$4,600.00.

Total $18,520.00.

Q. Now that is the value of the land, your estimate of the

A. Yes, sir.

Q. Will you read it to the Commissioners?

A. "Appraisals T. R. Vermillion Property Near Jamestown Island, State Highway No. 31, James City County, Virginia.

"No. 1: 960 feet approximately 1200 feet deep—" I have "—south side—" perhaps it is more the west side, "—State Highway No. 31 adjacent to Jamestown Island entrance and beginning at intersection of State Highway No. 614 (Cutoff from Route 5)—$288,000.00"

Should I read the other items not concerned?

The Court: Suppose you identify that tract first, Mr. Benschoten.

By the Court:

Q. Is that tract on the same side as the Festival is, or on the opposite side?

A. It is on the same side as the Festival. More the east side. I thought the road ran more east and west page 118 } than north and south, but apparently it does not.

By Mr. Sutton: (Continuing)

Q. Going from Williamsburg towards the Jamestown ferry which side of the road is that tract on?

A. Going from Williamsburg to the Jamestown ferry it would be on the left-hand side.

Q. The same side with the Festival.

A. That's right, with the exception of the corner. It's not spelled out in this memorandum here, but the corner on the other side of the road is included. It belonged to Mr. Vermillion; in other words I was looking at the property belonging to Mr. Vermillion, not the Watts property at this time.

Q. That is the Vermillion property on both sides of the road.

A. That's right.

Q. And you included the Vermillion property on both sides of the road in that appraisal.

A. That's right.

Q. And what depth did you appraise that?

A. These are approximate measurements: 960 x 1200. Some of it much more than that, and some quite a bit less.

Q. At what did you appraise that property, sir?

A. $288,000.00.

R. C. Benschoten.

A. 954 by 1000 feet.
Q. What is that amount?
A. $240,000.00.
Q. All right, sir.
A. Now the damages. Item 1, that's the 954 feet—$106,000.00.
Item 2, that's the acre or two of high land and marsh—
Q. The damages you say which are $106,000.00, that pertains which tract?
A. State Highway identification Parcel 2.
Q. Is that the property which now extends from Bob Wallaces place up to the Gilliam line on the side
page 123 } of the road next to the Festival?
A. Actually the damage item includes parcel 1 and 2. Includes the little triangle past Mr. Wallaces place.
Q. Then it would be for the property on both sides of the Bob Wallace's property?
A. That's right. Yes, sir.
Q. On that side of the road. All right, sir.
A. Then the $8,000.00 item up here, the acre or two of high land plus the marsh and frontage on the creek, damage of $4,000.00. And the item 3 across the road, 220 by 400 feet—
Q. Is that where the road comes into Route 31 on the opposite side?
A. Where 614—
Q. Yes, 614, where 614 intersects with Route 31?
A. Yes. Damage there—$20,000.00. Total $130,000.00.
Q. How much did that make for the total damages?
A. $130,000.00.
Q. How much do you have as the total value of the land taken and damages for remaining property?
A. $148,520.00.
Q. That is divided as I understand: $18,520.00 for the land that is taken and $130,000.00 damages for the remaining property?
page 124 } A. That is correct.
Q. That is based on the valuation which you placed on that property when you appraised it in 1956?
A. Yes, sir.
Q. Mr. Benschoten, what was the situation that pertained in the period from December to March with regard to property at this immediate vicinity adjacent to the Jamestown Festival?
A. Well, of course there was a terrific interest in the area because of the coming Festival and the world wide publicity

value of these three pieces of land as of March 20, 1957, is that correct?

A. That is correct, sir.

Q. What is the total for the value of the land there?

A. $18,520.00.

page 121 } Q. Mr. Benschoten, what effect, in your opinion, did the making of this road, Route 31, a limited access highway have on the value of the remaining properties of Vermillion from which these parcels were taken?

A. Perhaps I should have stated that my appraisal was predicated on the use of the property being general business or commercial, and in my experience a limited access road has extremely adverse effect on commercial property, and the allocation for damages, the estimate of damages was based on my feeling that the limited access did pretty well kill the plans and prospects for the area.

Q. Have you made an estimate as to the damages to each of these tracts resulting from the making of a limited access highway and if so will you give the Commissioners the benefit of that, and tell them how you arrived at it?

A. Well now, on this sheet the breakdown of the $288,000.00 is divided three ways. Approximately 954 feet by 1000 feet on the east side of Route 31 and the balance of which would be a couple of acres, I judge, of high land and approximately seventeen acres of marsh fronting on Powhatan Creek.

Mr. Carneal: I do not mean to *interupt* but I didn't hear, Mr. Benschoten, how much high land you said.

A. I don't know exactly. My estimate is an acre or two.

page 122 } The balance is marsh land fronting on Powhatan Creek.

Q. How many acres of marsh land?

A. About seventeen acres. $8,000.00 was the value of that.

And then the 220 feet on the opposite side of Route 31 by 400 feet deep, that's fronting on Route 31 and sided by 614: $40,000.00.

Now the damages in the same—

Q. Just a minute. What was the first item? We didn't get that.

A. Frontage on the Festival side of Route 31?

Q. Yes, sir. You have approximately 900 by 1000 feet.

west side of Route 31. And the value on March 20, 1957 was estimated at $300,000.00.

Q. Do you feel that that would be the price at which you could reasonably have sold that property within a reasonable time on the situation then existing?

A. Yes, I thought so.

Q. How much, in your opinion, is that remaining property which you have valued at $300,000.00 damaged by reason of the making of that road a limited access highway?

A. $120,000.00. Total: $137,400.00.

Q. The total value of the land taken and damages to the remaining property of the Watts Estate is how much?

A. $137,400.00.

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CROSS EXAMINATION.

By Mr. Carneal:

Q. Mr. Benschoten, you testified here that, I didn't quite follow your last testimony in that you said that you considered the twenty-five acres of Amblers and
page 127 } did not consider the remaining part of Amblers back over there?

A. That is correct. Yes. I haven't looked at it.

Q. So your estimation of the value then is based on the twenty-five acres and not on the entire tract?

A. That is correct. Yes.

Q. Would it be fair to ask you what estimation you would put on the entire tract of Amblers, which I believe consists of some 75 acres?

A. I am afraid I couldn't do that, Mr. Carneal, because I have actually not been back in that area. I have not looked at the home or the river front or—

Q. Would it be fair to say, then, that the $300,000.00 that you have placed on the Watts Estate is based solely on twenty-five acres of land?

A. Yes. That is correct.

Q. Then as I figure that, that is roughly $12,000.00 an acre.

A. Approximately, yes. I beg your pardon. That is, of course, not the—It figures out, averages $12,000.00.

Q. For the twenty-five acres some would be worth more than twelve, some less than twelve.

A. That's right.

given it, and all of us in the real estate business and many others besides were, of course, interested in the situation there, and naturally we were all interested in potential sales and the possibility of making sales. But subsequent to the appraisal I understood either from Mr. Vermillion or someone that had talked to him that he did not propose to sell very much anyway until, I believe it was April. He had in mind when, you know, the busiest time of the Festival. So actually I did not make any sales there or actually show any property there.

Q. When was the Festival to open?

A. April, 1957.

Q. Mr. Benschoten, in your opinion could you have sold the property on this basis had you received the permission to sell it in March of 1957?

page 125 } A. At that time I had every reason to believe that a substantial portion of it could have been sold reasonably soon at that figure.

Q. Have you made an appraisal of the—You know what is being taken from the Watts Estate directly across the road from the main Vermillion property and adjacent to the one parcel of the Vermillion property?

A. Yes, sir.

Q. What in your opinion was the value of that property as of March 20th that is now being taken, which is 1.16 acres of land, approximately 1100 feet long and 45 feet in width?

A. Would you repeat the question?

Q. The question was what in your opinion was the value on March 20, 1957 of the piece of land that is being taken from the Watts Estate which is 1.16 acres, approximately 1100 feet along the highway and a depth of 45 feet?

A. I have it identified here as 1.16 acres.

Q. That's right.

A. 1100 by 45 feet, and the land value as of March 20, 1957 at $17,400.00.

Q. Now, the making of this road a limited access highway on March 20, 1957, what effect in your opinion did it have on the remainder of that Watts property that was immediately adjacent to the strip that was taken by

page 126 } the Department of Highways?

A. On this one I had not looked at and did not consider the back, the residence site and the back of the farm known as Amblers, but only took into consideration approximately twenty-five acres, 1100 by 1000 feet, say, on the

R. C. Benschoten.

Q. Thirty-nine acres?

A. Uh huh. Now seventeen of it is marsh, which is very little value involved. I did not run down that actual acreage. The high land acreage is twenty-one or two acres.

Q. In the thirty-nine acres was this five acres of parking lot included in that?

A. No, sir, I don't think so.

Q. That is in addition to that.

A. Yes.

Q. Mr. Vermillion's holdings on that side of the road, roughly, add up to forty-four acres, assuming he owns that five acres there?

A. Yes. Unless I'm mistaken that is the land that I was concerned about in the original appraisal; two pieces. There was about twenty-two acres of high land, plus the marsh, plus the five acre parking lot. Now the amount of acreage in the marsh I did not verify and it might be fourteen or twenty. I don't know.

Q. That marsh would be on Powhatan Creek, page 138 } would it not?

A. That's right, sir.

Q. When you considered the amount of land taken, appraised it on the ground, Mr. Benschoten, did you have a detailed plat of the Highway Department before you?

A. In December of '56? No, sir.

Q. No, sir. I understood that you made another appraisement later on, am I correct in that?

A. Yes, I have seen the Highway Department map indicating the amount of the land involved.

Q. Did you see that at the time you set the value of the various takings by the Highway Department?

A. Uh huh. Yes, sir.

Q. You saw that at the time; so you were familiar with it at the time?

A. Yes, sir.

Q. Mr. Benschoten, what has been your experience with business property, how much experience have you had in the selling and buying of business property on limited access highways?

A. Not very much. In the past two years only one, one actual instance that involved a limited access highway.

Q. Would it be fair to say that your experience of limited access is also limited?

A. Limited to this extent, Mr. Carneal. There are only

R. C. Benschoten.

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Q. Mr. Benschoten, in appraising this property did you take into consideration the traffic count?

A. No, sir, not in December, at any time I did not, but certainly not in December.

Q. You made your appraisement, you said, as of—

A. No, sir. Yes, sir. No, I did not.

Q. March 20, 1957.

A. No, I did not consider it.

page 136 } Q. Did you take into consideration the amount of marsh land involved on the, what I refer to as the east side, or the Wallace side of the road in making your appraisement?

A. Yes.

Q. If I followed your testimony correctly it was some seventeen acres of marsh land and approximately two acres of high land, am I correct?

A. In that unit. Yes, sir.

Q. You estimated the price of that, sir, to be, the damages to that to be one hundred and—

A. Four thousand dollars.

Q. —four thousand dollars. One hundred four thousand dollars?

A. No, $4,000.00.

Q. $4,000.00?

A. You have it—The one hundred six was on a different item.

Q. Is that the one across the road?

A. No, that is on the same side of the road. The one hundred six thousand damage involves about twenty acres of high land. No marsh at all.

Q. So on the piece of property that you are referring to then contains what acreage as a whole, Mr. Benschoten?

A. Back to the marsh or are you speaking now of the property which is—

page 137 } Q. All of the property on the east side, not counting that little triangle which is south of Bob Wallace's, southeast of Bob Wallace's.

A. That is approximately, including the marsh and all, oh, approximately thirty-nine acres, as I understand.

Q. And you thought these other places would also be there?
A. I did.
Q. But you had no firm offers from anybody to buy.
A. No, sir.

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Mr. Sutton: We rest.

The Court: Mr. Geddy, suppose you go ahead with your testimony, then if there is any rebuttal he can put on his rebuttal as to both parties.

GEORGE MAXWELL LANIER,
recalled by Mr. Geddy in behalf of F. H. and R. B. Gilliam, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Geddy:

Mr. Geddy: Should Mr. Lanier be qualified again?
The Court: No, sir. He has already been qualified.

page 143 } Q. Mr. Lanier, have you had occasion to make an appraisal of the property of F. H. Gilliam on either side of Route 31 in James City County?
A. Yes, sir.
Q. What date was your appraisal made effective of?
A. The date of this appraisal is as of March 20, 1957.
Q. In addition to making an appraisal of Mr. Gilliam's property, Mr. Lanier, did you have any occasion prior to March 20, 1957 to discuss with him the possible sale of all or a part of that property?
A. Yes, sir.
Q. Would you tell the Commissioners and the Court the circumstances of that conversation or conversations.
A. Well—

so many limited access highways in the area and
page 139 } only so many sales involved.

Now the one specific instance I have in mind was on 168 which involved a representative of the Texas Company, and as a matter of fact, as you probably know, oil companies take a couple of months to determine whether they will use the area or not. They took an option, a sixty day option on this acre of land, and later it came to their knowledge that it was about to be declared a limited access area. When they determined that it was limited access they forfeited their option, did not deposit, did not take up the option.

No, I wouldn't say that I have had broad experience in sales of that nature.

Q. You don't know anything of the experiences of business people say on the Shirley Highway between Woodbridge and Washington, D. C., which is a limited access road?

A. Except in the trade it is pretty generally accepted that the majority of business places do not like to be on a limited access highway. On the other hand if it's residential property they prefer it. It improves it.

Q. Do you mean that is inclusive of all business?

A. Pretty much so. I would hesitate to think of, well I wouldn't say all business, there would certainly be some it wouldn't hurt; but in here, I have considered the
page 140 } following the best possible use of the property in which we are concerned is restaurants, motels, filling stations, shops, and so forth. And I cannot think of anything in that category that would be helped and not hurt by a limited access highway.

Q. Let me ask you this, Mr. Benschoten: Beginning we'll say on the side of the road that Mr. Wallace is on, which I believe extends for some eight hundred and some feet, or nine hundred feet, did you visualize that on that side of the road that there would be a restaurant and then perhaps a drive in and then perhaps a filling station, one right after the other: that the entire area of that eight hundred and some odd feet would be used, just one lot right after the other for business purposes?

A. In 1956 I did, yes, sir.

Q. You were aware at that time that the Festival Park contained a restaurant and filling station, also, there in the immediate vicinity?

A. That's right. Yes, sir.

George Maxwell Lanier.

A. No, sir.

Q. Have you received any inquiries for the use of that property for either business or residential purposes since March 20, 1957?

A. No, sir.

Q. What was the position taken by the people who had previously approached you after March 20, 1957?

A. Well, the same parties, I took the same parties back after March 20, 1957 with the idea that they might be able to use the property anyhow, and after they saw what the situation was and the frontage was not directly on

page 146 } Route 31 why they just said they weren't interested in any price, and that was the last inquiry or the last occasion that I had anything to do with the possibility of selling any of this property.

Q. Mr. Lanier, going back to your appraisal, what in your opinion was the highest and best use of the Gilliam property prior to March 20, 1957?

A. Well, I would say for a period of approximately six or eight months prior to March 20, 1957 I considered it a very highly desirable business property to a depth of at least 400 feet along Route 31. I gave no thought to the other part.

Q. Had you in making this appraisal considered that residential use might be its highest and best use?

A. It had never, I had never visualized the possibility of a residential sub-division in that immediate area.

Q. Why is that, sir?

A. Because of the fact that it was a national shrine, still one of the, is a national shrine of considerable magnitude as shrines go; the anticipated visitation was considerable, and especially at that time. And I couldn't visualize a residential sub-division of any magnitude being located close to a place with the visitation that would be expected, or that was expected.

page 147 } Q. Mr. Lanier, would you tell the Commissioners the appraisal that you have made of the value of the 3.27 acres which were taken by the Highway Department from Mr. Gilliam on either side of Route 31?

A. The 3.27 acres, taking into consideration a comparable sale of a parcel in the adjoining property on the west, I averaged the value per acre into three parcels, that is, three different sections. And taking into consideration that this land was a little farther removed from the parcel that was sold for $10,000.00 for a quarter of an acre, I valued the first third of Mr. Gilliam's frontage on both sides of Route

George Maxwell Lanier.

Mr. Carneal: If Your Honor please, I object, I believe this would fall within the hearsay evidence.

The Court: Do you want to object to some offer, or—

Mr. Geddy: We hope to show that there was interest in the property, business interest, Your Honor, and Mr. Lanier is only asked to talk of what he knows of his own knowledge.

The Court: Wait a minute. Ordinarily offers
page 144 } are not admissible in evidence. I think the fact that there were a number of people interested may be shown.

Mr. Geddy: Your Honor, I believe I can honestly say that they hadn't got to the point of an offer. The purpose of this is to show that there was business interest in the property.

The Court: Go ahead, Mr. Lanier. How many people were interested in it?

A. I discussed the possibility of a sale of a portion of Mr. Gilliam's property with two major oil companies and if I have to be specific I will, I can name the two companies. I'd rather not since the sale wasn't made. But I can swear that representatives of two major oil companies requested that I contact Mr. Gilliam and see if two parcels of property could be bought for service station use. And I may add that this was after they had been to Mr. Vermillion.

One company, the first one I talked with Mr. Gilliam and asked him if he would be willing to sell a 300 foot frontage on both sides of Route 31 adjoining the Vermillion property or on the west side of Mr. Gilliam's property.

Q. What was Mr. Gilliam's answer to that?

A. Mr. Gilliam at the time asked me what I thought a fair price on that would be.

page 145 } Q. Aside from price, Mr. Lanier, what was the result of your discussion?

A. The result was Mr. Gilliam consulted some other experts on the possibility of selling at that time and the feasability of it, and he told me he was advised that since that was frontage on Route 31 they didn't think it would be good business policy to sell it at that time. Now this was, this happened in the fall of '56.

Q. Mr. Lanier, did you have any other inquiries concerning the possible use of that property for business purposes?

A. I had some inquiries, yes, sir.

Q. Did you have inquiries with reference to the possible use of that property for residential purposes?

31 at $7,500.00 per acre. Now that is the third closest to Mr. Vermillion's property.

The next third I valued at $5,000.00 per acre and the final third I valued at $4,000.00 an acre, which gave an average value of $5,500.00 per acre, making the amount of, the fair market value of the land acquired by the State of $17,985.00.

Q. Is that value predicated upon the use of the property for business purposes?

A. Yes, sir.

Q. Did you make an appraisal of the value of the residue of Mr. Gilliam's property prior to March 20, 1957? Did you determine its value prior to March 20, 1957?

A. I haven't considered the residue, that is, the acreage lying immediately behind.

page 148 } Q. When I say residue I do not mean the property not involved in the taking but the property we maintain is damaged by the take.

A. Well, my damages have been arrived at, sir, on the basis of the 400 foot depth, not the property lying in the back.

Q. You tell the Commissioners what your appraisal of the damages is.

A. I have arrived at a damage figure of the value by using the value of the 400 foot depth before the limited access acquisition on March 20th, and I have split that into, or have divided it into sections of 500 feet each, beginning at Mr. Vermillion's land and working back towards Williamsburg in an easterly direction. And I valued the first 500 feet with a 400 foot depth at $60.00 per foot as being the value of that property prior to March 20, '57. Now the first 500 feet at $60.00 per foot is $30,000.00, and I consider that a conservative estimate. The second 500 feet with 400 feet depth at $40.00 per foot, making $20,000.00, or a total of $50,000.00 for 1000 feet. Now that is for one side of the highway, not both sides. I multiplied that by two to get 2000 feet, which would include both sides of the highway for potential business property, which gave me a total of $100,000.00 as a total for both sides for 1000 feet.

For the next 600 feet, and I was told that there page 149 } was approximately 1600 feet of frontage on both sides of the highway there. On the south side of the highway, the final—

Q. When you say south side, which side do you mean?

A. Opposite Mr. Gilliam's house, other side, opposite side of the highway.

George Maxwell Lanier.

Q. The left-hand side of the road facing from Williamsburg?

A. Going from Williamsburg, yes, sir. A depth of 400 feet and final 600 feet at $20.00 per foot or $12,000.00. And the final 600 feet on which the house is located and which is a pie shaped piece of land I came up with an average value of $10.00 per foot or $6,000.00, making a total evaluation of 400 foot depth on both sides of the highway of $118,000.00.

Q. That is prior to the taking of limited access rights.

A. Prior to March 20th.

Q. What are your values after limited access rights were taken by the Department of Highways?

A. Immediately after that time, with the same division of the same number of feet and 400 feet depth, I evaluated the first 500 feet at $30.00 per front foot or half as much as before, making $15,000.00. And the second 500 feet with 400 feet depth at $20.00 per foot or $10,000.00, total page 150 } for one side of the highway the total would be $25,000.00 and for both sides of the highway would be $50,000.00, that's after the, the value after the limited access land was acquired.

Now the third, the 600 feet on the south side, the additional 600 feet, which would bring it up to 1600 feet, after the acquisition by the State I valued at $10.00 per front foot or $6,000.00. And the 600 feet where the house sits at $5.00 a foot making $3,000.00, or a total evaluation of $59,000.00, being the value of the business property 400 feet depth after the limited access property was acquired. Which made my net damages by virtue of the limited access highway $59,000.00.

Q. Mr. Lanier, did you consider any other damages done to the property or any part of it? And if so, would you tell the Commissioners what damages?

A. In my opinion by virtue of the fact that the house is, the dwelling is now 30 feet from the State right-of-way with no access to Route 31 at that point would bring $5,000.00 less in a sale than it would have brought before the right-of-way was moved that close to the house. That is one point which I considered.

The second point I considered would be that in order to get that $5,000.00 out of the sale of the house it would be necessary to move it and it would cost I estimated $5,000.00

motel for $200,000.00; that on February 11, 1958 he again came to Mr. Cowles and told him he wanted to increase that amount to $400,000.00, which Mr. Cowles changed page 153 } on his application form rather than issue a new one.

Mr. Sutton: We would respectfully object to the introduction of this paper as Mr. Vermillion has not testified as a witness in this case. The Highway Commissioner has a right to call Mr. Vermillion as a witness if he cares to do so.

We respectfully submit that application for a permit to build a tourist court in 1956 or 1958 bears no relationship to the value; that this application for permit to build a tourist court on February 11, 1958 can have no relevant value in fixing the value of the property as it stood, or the resulting damages, on March 20, 1957; that whatever action may have been taken by Mr. Vermillion in 1958 is not pertinent evidence in this case, when the value must be fixed and the damages must be ascertained as of March 20, 1957.

The Court: We are running into this question: One of the principal items of damage is not the land that was taken but the fact that it was taken reduced the value of the residue substantially for business purposes.

It would seem like to me this would be some page 154 } evidence indicating that it could still be used for business purposes; whether he gets at it by either calling Mr. Vermillion and asking him if he did not do so, or whether he does it by the other method of putting Mr. Cowles on, it looks like to me that makes no difference. He has two ways that he could approach it. There has been controversy between the real estate appraisers as to whether or not it would harm it for business purposes; it would seem like to me it would have some bearing on it. I would be inclined to admit it.

Mr. Sutton: We would save the point, then, if and when offered in evidence for reasons heretofore stated.

The Court: There will be no need for you to repeat your objection in front of the Commissioners. I think we can consider this objection as running to it and we should stipulate right now that there will be no need of your repeating the objection and going into it again. I cannot see anything would be accomplished by that.

Note: Court and counsel now return to the courtroom, court is reconvened and the hearing continues before the Commissioners as follows:

page 151 } to move the house to a larger lot in order not to sustain a loss if the house was sold after the acquisition of the highway, and fixed the damage figure at $5,000.00. And the cost of moving the drain field at $411.25. And the cost of moving the sewer and water lines $165.85. I estimated the value of the trees taken, eight or more trees, some of which were fruit trees which had reached the point where they were bearing and productive, at $1,000.00.

Q. What were your total damages for—

A. The total value of the land acquired by the State: $17,985.00.

Q. Is that damages or the value of the land taken?

A. Value of the land, what I consider would be a fair price to charge the State.

By Mr. Carneal:

Q. Would you mind repeating that again, I didn't get it.

A. $17,985.00 as the value of the actual land acquired.

By Mr. Geddy: (Continuing)

A. What is your appraisal of the total damages done?

A. The total damages done: $65,577.10. $65,577.10, making a total land and damages of $83,562.10.

page 152 } Mr. Geddy: Your witness, Mr. Carneal.

The Court: Before you start your cross examination we will take a ten minute recess, gentlemen.

Mr. Carneal: There is one matter that I would like to discuss in Chambers, if Your Honor please.

The Court: Very well.

Note: At this point recess is had. Court and counsel retire to Chambers as follows:

In Chambers.

Mr. Carneal: If Your Honor please, I am going to get Mr. Edmund Cowles, who is the Commissioner of Revenue to whom applications are made, and in whose custody this (referring to paper writing) has been until about five minutes ago, to testify that on the 4th day of December, 1956, Mr. Vermillion made an application to him for certain property which he had purchased in August of that year to build a

cess had been placed where it is, he still could not use the limited access, could he?

A. No, he couldn't use it with the limited access road, and that's why I based the damage at about $1,200.00 because of that fact.

Q. My question is: Regardless of whether the Highway Department had taken the land indicated in red or
page 157 } not, he still did not have access to the limited highway; the fact that the land was taken did not prohibit that fact, access to 31.

A. Not before it was acquired but after it was acquired why it would. That was my impression here.

By the Court:

Q. Let me ask you this, Mr. Lanier: Did he have access to Route 31 before this limited access proceeding? In other words let's go back to the 1st of March.

A. He had access right here. He had access right in front of his place to 31, across this easement here, across this right-of-way; which he does not have now.

By Mr. Carneal: (Continuing)

Q. So he has to come down the road a distance—

A. Yes, sir.

Q. —to get into it.

A. Yes, sir.

Q. You say that you base the damages of $1,200.00—What elements entered into your consideration of that, Mr. Lanier?

A. The difference in probably what it would sell for before and after the limited access highway. He will not be able to get as much for it by losing some frontage and a little more difficult entrance to 31.

Q. Did you appraise the entire five acres?
page 158 } A. No, sir. I viewed it.
Q. You viewed it but did not appraise it.

A. I did not appraise it. No, sir.

Q. So therefore as to the appraisal of the entire value you cannot tell us what that would be?

A. I had in mind what I thought the property was worth, but I made no official appraisal of it, of the whole parcel.

Q. You say the actual value of the land taken is $60.00?

A. Yes, sir.

Q. That is based on $6,000.00 an acre.

A. Yes, sir.

• • • • •

George Maxwell Lanier.

page 155 } Before the Commissioners.

By Mr. Geddy: (Continuing)

Q. Did you appraise the property of R. B. Gilliam involved in this case, Mr. Lanier?

A. Yes, sir.

Q. Would you tell the Court your appraisal of the value of the land taken and your appraisal of the damages done to the residue of Mr. Gilliam's property?

A. The amount of land taken is .01 or one one hundredth acres, and I put a value of $6,000.00 per acre or $60.00 for the value of the land acquired. And he has about five acres there and he lost some frontage in the acquisition of this hundredth of an acre, and I, with the five acres and a house there, I estimated that his damage if he were to sell the property would be approximately $1,200.00 or $1,260.00 total damages and value of the land. And at the time I appraised it why I was under the impression that he had no access to Route 31 except a considerable distance down the highway; that was my impression; and I assume that it is still that way. And that of course would, there would be some damage there, but I think $1,200.00 would be about fair.

Mr. Geddy: Your witness, Mr. Carneal.

CROSS EXAMINATION.

page 156 } By Mr. Carneal:

Q. Mr. Lanier, I believe you said that you are speaking now of R. B. Gilliam; that you appraised that but you had in mind that there was no cross over in the close proximity of his home, entrance to 31, is that correct?

A. Yes, sir.

Q. Did you understand there was an entrance at this point to 31 at this time, or did you understand that was a closed entrance?

A. I was aware of the fact that there would be a cross over somewhere in the vicinity where this secondary road came out into 31, and that he would also have access to this road which has since been abandoned. With the acquisition of this amount of property here why of course he could not use the limited access highway only up here. Not here but here.

Q. Let me ask you this, Mr. Lanier: From the plat here, even if none of his land had been taken and the limited ac-

Thomas D. Savage.

Q. In your opinion is this land, or was this land because of its inherent characteristics adaptable to high type residential sub-division?

A. I wouldn't say so. No.

Q. Based on your belief that business constitutes the highest and best use that the land could be put to, what is your opinion, what was your appraisal of the value of the 3.27 acres taken by the Highway Department?

A. I had a value on the acreage taken of $10,000.00 per acre, this comprising the entire, the total 3.27 acres, being the entire road frontage, and at $10,000.00 an acre would be $32,700.00.

Q. Have you made an appraisal to determine the damages caused to Mr. Gilliam's property by the taking of limited access rights?

A. Well, in dealing with property unlike some of the other testimony presented, I considered it in acreage as compared to frontage: gross acreage basis. And as such, page 162 } you want to know the damage?

Q. Yes.

A. I would say the damages would be at the rate of $500.00 an acre.

Q. How many acres?

A. There were thirty-five acres of open land.

Q. You consider it on the basis of the open land at how much per acre?

A. Damages of $500.00 an acre.

Q. What is the total damages?

A. $17,500.00.

Q. Have you appraised the damage, if any, done to the house and other improvements on Mr. Gilliam's property?

A. Yes. When the road came through there he, of necessity, had to change his septic tank and drain field; he lost some trees; he lost the use of a well in another, on the opposite side of the barn in that area that the well serviced; and the general inconvenience of having a split in his farming operations; the inconvenience and inassessability of having to take equipment from one side to the other and going out of his way to get around there; for lack of access; I figured all of this in a lump sum of $5,000.00. So the total for the acreage taken, the damages, and the dwelling, and this other inconvenience that I was just discussing, a total of $55,200.00.

• • • • •

page 159 } THOMAS D. SAVAGE,
introduced in behalf of F. H. and R. B. Gilliam, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Geddy:

* * * * *

Q. Mr. Savage, have you appraised the property of F. H. Gilliam which is being taken by the State Highway Department?

A. Yes, sir.

Q. Mr. Savage, what in your opinion was the
page 160 } highest and best use of this property prior to March 20, 1957 when the limited access rights were taken and a strip of land on either side of the road were taken?

A. I would say business, business use would be its best adaptation.

Q. Why do you say that, sir?

A. Due to the nearness there of the park, the exposition area, and the volume of traffic anticipated, and that kind—

Q. What sort of business do you regard as being most adaptable to that property?

A. I don't know that you could particularly qualify it as to any sort of business. It would be readily usable for shops, service stations, any type of mercantile.

Q. Business which cater to the traveling public?

A. That is correct.

Q. Do you think it adaptable to business which depends upon a fixed population in the area?

A. Such as a shopping center, that type of thing? No. There is no concentration there to warrant it.

Q. Do you regard the property readily adaptable to residential use at that time, readily adaptable to residential use?

A. The property was being used as farm land and as such,
a bulk of it being open land. I would say no.
page 161 } There are no trees, it was not a wooded area, and would not, in my estimation, lend itself to residential use as readily as business.

Q. You in your business are familiar with residential developments in the Williamsburg-James City—Yorktown area, are you not?

A. Yes, sir.

E. W. Cowles.

Mr. Sutton: He can tell what he did.

The Court: It is not a third party. He said he
page 171 } is quoting what Mr. Vermillion said. I do not
know whether it is relevant or not. I will hear it
out of the hearing of the Commissioners.

The Witness: It's not—It doesn't amount to anything anyway.

The Court: He says it doesn't amount to anything.

Mr. Carneal: Witness with you, Mr. Sutton.

CROSS EXAMINATION.

By Mr. Sutton:

Q. To your knowledge no motel has been built down there has it, Mr. Cowles?

A. No, sir, it has not.

Q. No motel has been started down there so far as you know?

A. No, sir.

Mr. Sutton: That is all.

The Court: This will be marked as Commonwealth's Exhibit No. 3.

Note: The above referred to application for building permit is now marked and filed as Commonwealth's Exhibit No. 3.

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page 173 }

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The Court: Counsel have decided that you gentlemen have listened to the matter intently and would be no need to argue the case as they usually do. They have all agreed to submit the case to you without argument.

• • • • •

The Court: Suppose then you all go to lunch together. There is no need for you to take the instructions with you; you all have the figures that were discussed. Come back at

page 169 } E. W. COWLES,

called in rebuttal in behalf of the Commonwealth by Mr. Carneal, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carneal:

* * * * *

Q. Mr. Cowles, in your capacity as Commissioner of Revenue for James City County, is it also one of your duties to issue building permits for that county?

A. Yes, sir.

Q. I hand you what purports to be an application for building permit and ask you to whom that was issued?

A. This was issued to Mr. Vermillion, and the first one now was issued on the 17th day of December, 1956. And he didn't do any building there in '57. And then he came back because I called him and I asked him to come up here and let's talk it over. So he came back. Now he had—Have you got the other here?

page 170 } Q. I have two others. Yes, sir.

A. He came back to me and told me that he hadn't done any building and that he wanted to disregard, I think, the two, and increase one. This was going to be a tourist court, the $400,000.00. I don't know what those other two are; you got them there.

Q. I am not offering those in evidence, Mr. Cowles.

A. That was on the 11th day of February, 1958, now. I just redated it to keep from writing another one.

Q. In other words then on the 4th day of December 1956 Mr. Vermillion applied for a permit to build a motel in the amount of $200,000.00 and then on the 11th day of February, 1958, he came back and increased that application from two hundred to four hundred thousand dollars.

Mr. Carneal: I would like to offer this in evidence, if Your Honor please.

A. He told me at the time—

Mr. Sutton: If Your Honor please, I necessarily object to some statement made by some third party, what someone told him.

The Court: Mr. Vermillion said, I think, perhaps some statement.

1:00 o'clock and at that time you may take all the instructions to your room with you.

I want to caution you: I do not want you to come to any final conclusion until you have had an opportunity to go over the instructions; but I think perhaps if you just have lunch and a discussion in a general manner together page 174 } you would perhaps benefit from that. When you come back you can retire to your room. After you have had a chance to read the instructions and look over the plats and the exhibits then you may render your final conclusion.

Note: Recess for lunch is now had until 1:30 o'clock p. m. at which time the Commissioners retire to their room to consider the case. The Commissioners return at 3:32 P. M., viz:

The Court: The award to R. B. Gilliam and Elizabeth A. Gilliam: Land, $100.00; damages, $200.00; total $300.00.

T. R. Vermillion and Margueritte S. Vermillion: Land, $3,235.00; damages, $10,600.00; total $13,835.00.

Watts Estate: Land, $3,000.00; damages, $7,500.00; total $10,500.00.

Frederick Hanson Gilliam: Land, $12,000.00; damages, $23,000.00. You did not total that figure. The figure should be a total of $35,000.00.

There is a minority report of Mr. James E. Graff: I refrain from signing this $35,000.00 for Mr. F. H. page 175 } Gilliam. I feel an award of $30,000.00 would be more equitable.

All right, gentlemen, I think that completes your duties. Thank you very much for serving.

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A Copy—Teste:

H. G. TURNER, Clerk.

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