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Record Nos. 6843, 6844

In the Supreme Court of Appeals of Virginia at Richmond

BOARD OF ZONING APPEALS OF ROANOKE COUNTY, ET AL. v. Record No. 6843 BLUE RIDGE STONE CORPORATION

A. M. EVANS, ET AL. v. Record No. 6844 BLUE RIDGE STONE CORPORATION

FROM THE CIRCUIT COURT OF ROANOKE COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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

Record No. 6843

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 1st day of December, 1967.

BOARD OF ZONING APPEALS OF ROANOKE COUNTY AND PAUL B. MATTHEWS, ADMINISTRATOR UNDER ROANOKE COUNTY ZONING ORDINANCE, Appellants,

against

BLUE RIDGE STONE CORPORATION, Appellee.

From the Circuit Court of Roanoke County
Frederick L. Hoback, Judge

Upon the petition of Board of Zoning Appeals of Roanoke County and Paul B. Matthews, administrator under Roanoke County zoning ordinance, an appeal is awarded them from a decree entered by the Circuit Court of Roanoke County on the 14th day of March, 1967, in a certain proceeding then therein depending, wherein Blue Ridge Stone Corporation was plaintiff and the petitioners and another were defendants; no bond being required.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6844

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 1st day of December, 1967.

A. M. EVANS, C. H. LEWIS AND CHARLES A. MAURER, Appellants,

against

BLUE RIDGE STONE CORPORATION, Appellee.

From the Circuit Court of Roanoke County
Frederick L. Hoback, Judge

Upon the petition of A. M. Evans, C. H. Lewis and Charles A. Maurer an appeal is awarded them from a decree entered by the Circuit Court of Roanoke County on the 14th day of March, 1967, in a certain proceeding then therein depending, wherein Blue Ridge Stone Corporation was plaintiff and Board of Zoning Appeals of Roanoke County and others 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 $300, with condition as the law directs.

RECORD

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page 104 }

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COMMISSIONER'S REPORT

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page 105 }

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FACTS

The facts are not in dispute and are as follows:

Adams Construction Company—a partnership—(hereinafter called "Adams") is engaged primarily in the road and high construction business, which includes the operation of asphalt plants. While Adams does not generally operate stone quarries, it participates in the search and development of adequate supplies of stone for its asphalt plants. In anticipation of the construction of Interstate Route 81 through Roanoke County, and prior to the final location of Route 81, beginning in June of 1959, Adams acquired in fee simple or by lease the following tracts of land in Roanoke County, Virginia, on which land is located stone deposits suitable for the production of crushed stone for road construction work and for the production of asphalt surfacing materials. This was one stone deposit although the ownership was in three separate owners and tracts.

1. June, 1959. James B. Thomas tract (hereinafter called "Thomas tract")—130 acres, more or less, located north of State Secondary Route 628 and south of Interstate 81 acquired fee simple interest. Shown on Defendant's Exhibit No. 1, outlined in red.

page 106 } 2. December, 1959. W. P. Todd tract (hereinafter called "Todd tract"). Purchased stone in place, a leasehold interest in about 6 acres. This tract is situated adjacent to the Thomas tract. Shown on Defendant's Exhibit No. 1, outlined in blue.

3. April, 1960. James R. France tract (hereinafter called "France tract"). Purchased stones in place of leasehold interest in about 4 acres. This tract is situated adjacent to the Todd tract. Shown on Defendant's Exhibit No. 1, outlined in green.

On April 18, 1960, the Board of Supervisors of Roanoke County, Virginia, adopted the Roanoke County Zoning Ordinance, and the Thomas, Todd, and France tracts of land and stone were zoned "Industrial District M-2" without distinction as to tracts, parts of tracts, or any combination thereof. The land in question, and so zoned, is shown in brown on Defendant's Exhibit 1. Section 9-1-12 of said Ordinance provides that "stone works, quarries, crushing plants, asphalt plants, and mining operations," are permitted uses in Industrial District M-2. Section 9-2-6 of the Ordinance further provides.

In any Industrial M-2 area where the operation of quarries, stone works, crushing plants, asphalt plants, and mining operations has been undertaken and discontinued for a period exceeding one year, said operations shall not be resumed, nor shall said areas be used for any of the other permitted uses in Industrial District M-2.

There is disputed evidence that Adams, or its representatives, may have participated in the drafting of, or suggested the inclusion of, Section 9-2-6 in the Ordinance.

page 107 } At the time of the adoption of the Zoning Ordinance, there were no stone quarries, crusher plants, mining operations, or asphalt plants in operation on the Thomas, Todd, or France tracts. Quarrying and asphalt plant operations were contemplated, however.

Since Adams was not in the stone quarrying business, it negotiated with Blue Ridge Stone Corporation (hereinafter called "Blue Ridge"), a corporation engaged in the quarrying and crushed stone business, an agreement for Blue Ridge to quarry the stone on the Thomas, Todd, and France tracts. This agreement was negotiated in June, 1960, and provided generally as follows:

(a) Adams assigned to Blue Ridge for quarrying and crushing purposes the stone deposit which it had acquired from Thomas, Todd, and France with the provision that Blue Ridge would first quarry and exhaust the stone deposit purchased from Todd and France before continuing operations on the deposit on the land purchased from Thomas.

(b) Adams gave Blue Ridge the right at any time during the term of the lease to locate its equipment, crushing plant, roads, etc., on the land purchased from Thomas.

(c) Blue Ridge agreed to open up a quarry and install a crushing plant capable of producing 1000 tons per day.

(d) Blue Ridge agreed to produce certain types of stone used by Adams in its road construction work, including the types of stone required by Adams in its asphalt surfacing business.

Shortly, thereafter, Adams located its asphalt plant on the Thomas tract, the location being selected so as to
page 108 } efficiently operate with the stone taken from the Thomas, Todd, and France tracts. See Defendant's Exhibit 1. The asphalt plant has been in continuous operation since its location on the Thomas tract and is still in operation today.

Soon after the agreement of June, 1960, Blue Ridge opened a quarry to quarry the stone in place on the Todd and France tracts and further installed the necessary crushing and processing equipment, locating the same on the Todd tract. Stock piling of the stone was located on the Thomas tract. Blue Ridge's evidence is that it considered the Thomas, Todd, and France tracts as one area and because of the arrangements made to purchase the stone in place on Todd and France tracts and the agreement with Adams, Blue Ridge intended to quarry the Todd and France tracts first and then move over to the Thomas tract.

In the fall of 1963, the total production of Blue Ridge from the Todd and France tracts was insufficient to meet the requirements of Adams for its road construction and asphalt servicing business. Accordingly, Adams negotiated with Blue Ridge for Adams to quarry and process stone on the Thomas tract. Blue Ridge granted this permission by the terms of a supplemental agreement dated September 1, 1962. Petitioner's Exhibit 2. Thereupon, Adams employed Ararat Stone Company (hereinafter called "Ararat") to quarry, process, and stockpile for Adams a quantity of stone for Adams' use only, which was to be done on the Thomas tract. During a part of 1963 and in the winter and spring of
page 109 } 1964, Ararat opened up a quarry east of U. S. Interstate 581 and near the western end of stone deposit located on the Thomas tract. Ararat quarried, processed, and stockpiled a large quantity of stone for Adams, which Adams has continued to use in its road construction

and asphalt surfacing business. A part of the stockpile is still on the Thomas tract. Ararat vacated the premises and discontinued quarrying on May 15, 1964.

By the spring of 1965, Blue Ridge exhausted the economically available stone on the Todd and France tracts. Thereupon, on or about June 7, 1965, Blue Ridge commenced preparation for moving its quarrying operations to the Thomas tract, it being Blue Ridge's intention to quarry stone from this part of the stone deposit pursuant to its agreement of June, 1960. Blue Ridge planned to begin quarrying at the site of the Ararat quarry, which operations were discontinued on May 15, 1964.

By letter dated August 30, 1965, Paul B. Matthews, Administrator under the Roanoke County Zoning Ordinance, advised Blue Ridge that it did not have the right under the Roanoke County Zoning Ordinance, specifically Section 9-2-6, to quarry and process stone at the Ararat deposit. A part of this letter stated:

"Since this quarry has not been operated for a period exceeding one year, the section of the Zoning Ordinance referred to above would prevent it from being reopened unless it is properly zoned as required by the Ordinance."

page 110 } Pursuant to said letter, Blue Ridge did not quarry further in the old Ararat quarry or any other place on the Thomas, Todd, or France tracts, but instead appealed to the Board of Zoning Appeals of Roanoke County, appealing the decision of the Administrator as set forth in his letter. The Board of Zoning Appeals passed on the matter and affirmed the decision of the Administrator. Thereupon, the matter was appealed to this Court. The sole issue is stated in Inquiry No. 1.

INQUIRY NO. 1

Whether petitioner, Blue Ridge Stone Corporation, has the right to commence and continue its quarrying and crushing operations of the stone deposits on the 130 acre tract of land acquired by Adams Construction Company, a partnership, from James B. Thomas, as set forth in Paragraph No. 2 of Petitioner's petition, or whether or not Petitioner has, under the provisions of the Roanoke County Zoning Ordinance, and more especially paragraph 9-2-6 of said Zoning Ordinance, lost or abandoned its rights by discontinuing operations for a period exceeding one year.

Blue Ridge contends that (1) Paragraph 9-2-6 is not applicable and (2) that this section is arbitrary and unreasonable and lacks certainty and definiteness. The Roanoke County Board of Zoning Appeals and Paul B. Matthews, the Administrator, contend that the word "area" as used means something less than district, i.e., part of a district, but not necessarily, the entire district.

The Roanoke County Zoning Ordinance does not define "area" as used in Section 9-2-6. Area could mean the entire district, a part of the district, a tract of land as defined by ownership within a district, or whatever the imagination of the various parties interpreting the Zoning Or-
page 111 } dinance want it to mean. It is a question of degree. It can be a small area of land or an extreme area of land. The ordinance is indefinite and uncertain in this respect.

8 *Municipal Corporations,* McQuillin, 1965 Revised Volume, Section 25-29, states:

Certainly and definiteness. As other ordinances, zoning ordinances are required to be reasonably definite and certain in terms so that they may be capable of being understood. The boundaries or limits of zones or districts must be clearly and definitely fixed, and the restriction on property rights in the several zones must be declared as a rule of law in the ordinance and not left to the uncertainty of proof by extrinsic evidence. The rule of certainty and definiteness of zoning ordinances verges on or is identical with the rule that they must establish a clear rule or standard to operate uniformly and govern their administration, in order that arbitrariness and discrimination in administrative interpretaton and application be avoided.

And Section 25-26 states in part:

Standard or rule to govern administration. The fundamental rule that an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases, and that an ordinance is invalid where it leaves its administration or enforcement to the ungoverned discretion or arbitrary action of the municipal legislative body or of administrative bodies or officials, is fully applicable to zoning ordinances. In other words, zoning ordinances and regulations should establish uniform rules to guide administrative and other officers in the application and enforcement

of the zoning laws. The rule is sometimes regarded as an extension of the requirements of definiteness and certainty of zoning regulations and restrictions, although fundamentally it is based upon the lack of power in municipal authorities to delegate or redelegate legislative powers.

See also 21A *M. J.*, Zoning, paragraph 5, es-
page 112 } pecially at page 185, *Ciaffone* v. *Community Shopping Corp.*, 195 Va. 41 (1953).

The Ordinance fails to establish or define an area in which a quarry may be opened, or where operations may not reopen after twelve (12) months. Where a quarry has ceased operations for twelve (12) months, could a new quarry be located 1 foot, 10 feet, 100 feet, 1000 feet, 4000 feet, or any other arbitrary distance from the old quarry and be excluded from the provisions of Section 9-2-6? Yes. Counsel for Roanoke County Board of Zoning Appeals and the Administrator concede that under the Ordinance, Blue Ridge could have continued its quarrying on over from the Todd tract to the Thomas tract; and also could have opened a quarry in an area on the Thomas tract other than at the old Ararat quarry. Thus, the division line between areas which can or cannot be quarried is not definied and is subject to the arbitrary decision of the Administrator. The Ordinance fails to define a standard. Obviously, then Section 9-2-6 is uncertain and indefinite, and it leaves the decision of an area to the ungoverned and arbitrary discretion of the Administrator. It is, therefore, invalid.

As a matter of interest, the Court's attention is called to *Code of Virginia,* Sections 15-844 and 15-845 (both now repealed), the enabling statutes under which the Ordinance was passed. Section 15-844 provided that the Board of Supervisors of a county may provide by Ordinance for zoning. Section 15-845 provided:

page 113 } Division into districts. For any or all of such purposes, the board of supervisors of any county may divide the county into districts of such number, shape, and area as it may deem best suited to carry out the purposes of this article and within each such district all regulations established as provided in § 15-844 shall be uniform; but the regulations in one district may differ from those in other districts.

The Ordinance, Section 9-2-6, provides that in any area where quarrying is discontinued for a period of one year, it shall not commence again. Again, the question is what

does "area" mean. It could mean an area of land of any size, or in this case, a 130 acre tract of land. No standard is established to define "area." Obviously, it is incapable of uniform application within Industrial M-2 Districts and, therefore, is invalid. The Ordinance did not conform to the enabling statutes, Sections 15-844 and 15-845, in effect at the time of its adoption.

Your Commissioner, therefore, finds and reports to the Court that Blue Ridge has the right to commence and continue its quarrying and crushing operations of the stone deposit on 130 acre tract of land acquired by Adams from Thomas.

INQUIRY NO. 2

In determining the questions set forth in No. 1 above, the Commissioner shall take evidence to ascertain the facts ,and shall consider the pleadings and exhibits filed herein and, in addition thereto, if the Commissioner deems it relevant, to consider any evidence taken before the Board of Zoning Appeals on November 22, 1965.

As indicated in the preliminary statement, your
page 114 } Commissioner has complied with this Inquiry.

INQUIRY NO. 3

Any other matter specially stated, which the Commissioner may deem pertinent or which any party may, in writing, request be so stated.

Your Commissioner's findings are not intended to reflect on the sincerity and integrity of the Administrator of the Roanoke County Zoning Ordinance. The Administrator has in good faith sought to enforce the Ordinance as written.

The parties stipulated that quarrying operations by Blue Ridge were stopped pursuant to the Administrator's letter of August 30, 1965, and that the statute of limitations for quarrying operations would be tolled as of the date operations were stopped pursuant to said letter. Operations were stopper immediately upon receipt of the letter on or about September 1, 1965.

Respectfully submitted:
ERNEST W. BALLOU
Commissioner in Chancery

Commissioner's Fee: $375.00
Marcus A. Bieler, Court Reporter: $77.90

page 115 } CERTIFICATE

This is to certify that, pursuant to Section 8-256, *Code of Virginia,* 1950, the undersigned Commissioner in Chancery gave notice of the filing of this report in the Clerk's Office of the Circuit Court for the County of Roanoke, Virginia, on October 11, 1966, to all the parties who appeared herein, or their counsel of record, by mailing said notice on October 11, 1966, to their post office address, said counsel so notified and their post office addresses being:

KIME, JOLLY, WINSTON, & CLEMENS
Attorneys at Law
430 Clay Street
Salem, Virginia

EDWARD H. RICHARDSON
COMMONWEALTH ATTORNEY FOR
ROANOKE COUNTY
Court House
Salem, Virginia

FITZGERALD AND SMITH
Attorneys at Law
10560 Main Street
Fairfax, Virginia 22030

HAZLEGROVE, CARR, DICKINSON,
SMITH, & REA—Attorneys at Law
Colonial-American Bank Building
Roanoke, Virginia

Given under my hand this 11th day of October, 1966.

ERNEST W. BALLOU

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page 143 }

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COURT'S OPINION

* * * * *

On June 3, 1966, a Decree of Reference was entered in the

above matter referring the cause to Ernest W. Ballou, Esq., one of the Commissioners in Chancery of this Court, to report on the inquiries set forth in said Decree.

The Commissioner filed his report on October 11, 1966, by Decree entered on this date. Thereafter on October 21, 1966, exceptions to the Report were filed by Counsel for A. M. Evans and others, intervenors, and on October 21, 1966, exceptions to the Commissioner's Report were filed on behalf of the Board of Zoning Appeals of Roanoke County and Paul B. Matthews, Zoning Administrator, Defendants.

A hearing was had by this Court on November 7, 1966, on the exceptions to the Commissioner's Report, and thereafter the Petitioner's Supplemental Argument and Memorandum of Authority was filed on November 17, 1966, and Defendant's Reply Memorandum thereto was filed on December 1, 1966.

Upon consideration of the Exceptions, arguments of Counsel, and Memorandum filed, the Court is of the Opinion that the Exceptions to the Commissioner's Report should be overruled, and the Report of the Commissioner ratified, approved and confirmed.

In the exceptions, it is contended, among other things, that the Commissioner had no right to determine the validity of the Zoning Ordinance in question. However, in the Decree of Reference entered on June 3, 1966, under Inquiry No. 3 therein, it is specifically stated:

"Any other matter specially stated, which the Commissioner may deem pertinent or which any other party may, in writing, request be so stated."

page 144 } Certainly nothing could be more pertinent than the validity of the Zoning Ordinance itself which has given rise to these proceedings.

Without reiterating all that the Commissioner has reported, this Court agrees that the Zoning Ordinance is vague and indefinite and does not undertake to define the meaning of the word "area", and it apparently has been variously interpreted by not only the Board of Zoning Appeals, but by all parties to this proceeding, in different manners and without any uniformity as to its alleged meaning. The ordinance itself does not state that in any Industrial M-2 *area* where the operation of a *quarry* is discontinued for a period exceeding one year that the quarry shall not be re-opened, which apparently is the contention of the Board of Zoning Appeals. The ordinance is in the plural and recites that:

"In any Industrial M-2 area where the operation of quarries, stone works, crushing plants, asphalt plants, and mining operations has been undertaken and discontinued for a period exceeding one year, said operations shall not be resumed—"

A literal interpretation of this ordinance would mean that all of the operations in the area would have to be discontinued and not simply the discontinuance of a single quarry, or any one of the other named works.

Another interpretation is that as long as any of the works detailed in the ordinance were continued, then the one year provision would not be applicable. The ordinance is subject to many interpretations and lacks a definition of just what is meant by "area' 'and other provisions therein, and the Court agrees with the Commissioner that it is void for uncertainty.

While it is not necessary to pass on any other matters, the Court is of the opinion that so far as the Petitioner is concerned, it is more logical to adopt the interpretation that the word "area" embraces all of the lands over which the Petitioner has authority and right to proceed with any of the permitted quarrying and related activities, and is not limited to a particular tract. If this latter interpretation were adopted, then it would be necessary to acquire in one conveyance the entire area over which quarrying
page 145 } activities were to be performed. Also, it would not be logical to contend that if three separate individuals each acquired one tract that each tract would be an area, but if one person acquired three separate parcels, the three parcels together could not be an area. Obviously the described vicinity must be meant, by the term "area," and not tract, but this is certainly not clear from a reading of the ordinance.

It is also contended in the Exceptions filed on behalf of A. M. Evans and others that the decision of the Board of Zoning Appeals was null and void inasmuch as no Board of Zoning Appeals was legally in existence until after these proceedings were instituted. It is true that the Board of Zoning Appeals was appointed by this Court pursuant to the request of the Board of Supervisors after these proceedings were pending, nevertheless, the same persons, who were ostensibly acting as a Board of Zoning Appeals at the time of the decision in question, were appointed by this Court, and it is logical to assume that their holding would be the same if the matter came before the Board again for another hearing. In either event, the matter would ultimately come before

this Court for final decision as to the validity of the ordinance in question, as it is the Opinion of this Court the interpretation of the Board of Zonng Appeals as to the validity of the zoning ordinance is subject to review by the Court.

It must be conceded, however, that the pleadings in the instant case are almost as involved and perplexing as the Zoning Ordinance itself. This is apparently due to the fact that the Board of Supervisors and the Defendants did not comply with the provisions of the Code as to the appointment of the Board of Zoning Appeals, and, certainly the Defendants should not now be permitted to complain of their own failure to comply with the Code provisions as to the appointment of a Board of Zoning Appeals. The Intervenors are likewise chargeable with knowledge as tothe Code Provisions and requirements.

Under all of the circumstances of the instant case, it is the opinion of this Court that the Commissioner's Report is correct and that all of the exceptions filed herein should be overruled and denied and that the Petitioner should
page 146 } be granted the required permit to proceed with quarrying operations over the lands in question.

An appropriate Decree may therefore be prepared for entry in accordance with the views herein set forth.

The Court also desires to have a conference with Counsel to discuss the question of costs in this suit, and, accordingly requests Counsel for the Petitioners to prepare a proposed Decree and to also arrange for a suitable time for this conference.

The original of this Opinion is being placed with the papers in the suit file.

February 22, 1967. F. L. HOBACK, Judge

page 147 }

* * * * *

This cause came on again this day to be heard upon the former proceedings had herein, including sundry motions, orders and decrees, and upon the report of Ernest W. Ballou, a Commissioner in Chancery of this Court, to whom this cause was referred by decree entered on June 3, 1966, to report on the inquiries set forth in said decree, which report was filed on October 11, 1966, by decree entered on that date; upon the exceptions to the Commissioner's Report, a hearing upon

which exceptions was had on November 7, 1966, and upon the several memoranda filed by the parties hereto on November 17, 1966, and on December 1, 1966, and was argued by counsel.

And the Court being of the opinion, for reasons stated in a written memorandum, which written memorandum is hereby made a part of the record in this case, that the exceptions to said Commissioner's Report should be overruled and said report be ratified, approved and confirmed, it is so ADJUDGED, ORDERED and DECREED.

And the Court being of the opinion that Section 9-2-6 of the Zoning Ordinance of Roanoke County, which undertakes to define the manner in which quarries, stone works, crushing plants, asphalt plants and mining operations

page 148 } can be undertaken and discontinued in any Industrial M-2 area is not only vague and indefinite but does not undertake to define the meaning of the word "area" and is subject to diverse and conflicting interpretations and is plural in its application, and further that it clearly appears from the evidence in this case that there was never a cessation in quarrying, crushing or in the operation of the asphalt operations discontinued for a period exceeding one year on the three combined tracts of land known as the Todd tract, the France tract and the Thomas tract, all of which continguous tracts were acquired by plaintiff either by lease or purchase, and the Court doth so find ,and it is thus so ADJUDGED, ORDERED and DECREED.

And it is still further ADJUDGED, ORDERED and DECREED that the Blue Ridge Stone Corporation, petitioner-plaintiff, be and it is hereby permitted to proceed with its quarrying, stone crushing and asphalt plant operations; to which findings by the Court the respondents, by counsel, excepted; and respondents having paid the costs herein it is ORDERED that this cause be stricken from the docket.

Enter March 14, 1967.

F. L. HOBACK, Judge

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page 149 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

* * * * *

Now comes the Defendants, the Board of Zoning Appeals of Roanoke County, Virginia, and Paul B. Matthews, Zoning Administrator of Roanoke County, Virginia, and file this Notice of Appeal from the Decision and Final Decree of this Court and assign error as follows:

1. The Court erred in overruling the exceptions to and ratifying and confirming the report of the Commissioner herein in that the validity of the section of the zoning ordinance of Roanoke County concerned should not have been considered in this proceeding of *certiorari* from a decision of the Board of Zoning Appeals.

2. The Court erred in holding that the term "area" as used in Section 9-2-6 of the Zoning Ordinance of Roanoke County was so vague and indefinite as to render the said section invalid.

3. The Court erred in overruling and reversing the decision of the Board of Zoning Appeals of Roanoke County, such action being contrary to the law in evidence in this case.

THE BOARD OF ZONING
APPEALS OF ROANOKE
COUNTY and PAUL B.
MATTHEWS, Defendants

By ROBERT C. FITZGERALD
Counsel

ROBERT C. FITZGERALD
FITZGERALD AND SMITH
Counsel for Defendants

Filed in the Clerk's Office Circuit Court of Roanoke County Va., Apr. 4, 1967.

Teste; U. C. LOGAN, Clerk

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page 151 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

* * * * *

Now comes the intervenors, A. M. Evans, C. H. Lewis and Charles A. Maurer, in their own behalf and on behalf of such other of the intervenors in this cause who desire to joint in this appeal, who do hereby give this Notice of Appeal from the decision and final decree of this Court in this cause, and do assign error as follows:

1. The Court erred in over-ruling interevnors' Exceptions to the Report of the Master Commissioner in Chancery in this cause and raitfying and confirming said report, in that the validity of the section of the Zoning Ordinance of Roanoke County involved in this proceeding should not be considered in any proceeding of *certiorari* from a decision of a Board of Zoning Appeals, even if the members of the Board of Zoning Appeals were in fact duly appointed according to law.

2. The Court erred in holding that the term "area" as used in §9-2-6 of the Zoning Ordinance of Roanoke County is so vague and indefinite as to render the said section invalid.

page 152 } 3. The Court erred in overruling Exceptions 1 and 2 filed by the intervenors, A. M. Evans, and others, who were ostensibly acting as a Board of Zoning Appeals at the time of the decision in question did not lawfully constitute a Board of Zoning Appeals, but having been subsequently appointed by the Court according to law, it was logical to assume that their holding would be the same if the matter came before the Board again for another hearing; and that the Court therefore did have jurisdiction on a Petition for a Writ of *Certiorari* to review the decision of an unlawfully appointed and therefore non-existing Board of Zoning Appeals.

4. The Court erred in holding that it had jurisdiction in this proceeding to invalidate an enactment of the Board of Supervisors of Roanoke County although said Board of Supervisors of Roanoke County is not a party to this litigation, and the general public is not before the court in this litigation.

Mr. James M. White

5. The Court erred in overruling and reversing the decision of the Board of Zoning Appeals of Roanoke County, such action being contrary to the law and evidence in this case.

A. M. EVANS, C. H. LEWIS,
CHARLES A. MAURER

By Counsel.

FURMAN WHITESCARVER, SR.
Salem, Virginia.

Filed in the Clerk's office Circuit Court of Roanoke County, Va., May 11, 1967.

Teste N. C. LOGAN, Clerk

* * * * *

Bd. Z.A. 1965 page 6 } MR. JAMES M. WHITE called as a witness in behalf of Blue Ridge Stone Corporation, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Smith:

Q. You are Mr. James M. White, is that correct?

A. Right.

Q. What is your position with the Blue Ridge Stone Corporation?

A. Vice President.

Q. Now, Mr. White, you signed I believe the Appeal of Blue Ridge Stone Corporation filed in this cause?

A. Yes, sir.

Q. Now, I want to briefly, without going into a great deal of detail, review the allegations which are set forth in the Appeal of Blue Ridge Stone Corporation, and I believe the best way is for me to ask some more or less direct questions to shorten the proceeding.

Mr. Whitescarver: (interposing): Lead him if you want to.

Mr. James M. White

By Mr. Smith:

Q. In June, 1960, is it a matter of fact that Blue Ridge Stone Corporation entered into a lease agreement with Adams Construction Company, which is a partnership consisting of W. B. Adams and other members of the partnership? Is that correct?

Bd. Z.A. 1965 page 7

A. That is correct.

Q. Now explain briefly to this Board the various interests in real estate that were involved in that lease agreement?

A. Well, there were three tracts, continguous tracts of land that had rock deposit on them. Mr. Adams and his other partners had bought either the rock or the land on all three of these tracts—

Q. In other words—

A. —for the purpose of taking it out for road building primarily.

Q. Well, to get down to the names, I believe that he had acquired from a Mr. Thompson approximately—

A. Thomas I think.

Q. —Mr. Thomas, a hundred and thirty acres of land in fee?

A. That's right.

Q. Now adjoining that, on the east I believe, he had acquired the stone in place?

A. The stone in place from Mr. Todd.

Q. Mr. Todd. And then further east that he had bought the stone in place from Mr. France?

A. That's correct.

Bd. Z.A. 1965 page 8

Q. Now, when Blue Ridge entered this lease agreement, did Blue Ridge agree to install a quarry and produce stone for Bill Adams, as well as other parties?

A. Yes, we agreed to. It was part of our agreement with the Adams partnership that we would install a plant and quarrying material of a capacity that would satisfy needs for a primary and interstate road construction, which means that it's got to be more capacity, of course, than a secondary road. That was part of the agreement, and that we would furnish such material to them.

Q. Well, now, did this agreement further provide that you would have—that is you and that is Blue Ridge, would have the Blue Ridge Stone Corporation, or would have the right to quarry on the tract which Adams Construction Company bought from Thomas after you had used the stone on the Todd and France tracts?

Mr. James M. White

A. Depending entirely upon the demand for the stone.

Q. Well—

A. We could not tell exactly how much stone until we were finished quarrying we would get off of this tract. We referred to it as "the tract" and you referred to it as "three tracts". But we were to quarry all of it, all of the Todd and France tracts before we went on to the Thomas tract.

Bd. Z.A. 1965 page 9 } If that had been a sufficiency, we might not even have goe to the Thomas tract.

Q. Well, isn't—the reason for that was that when Bill Adams bought this stone in place, he only had a limited period of time to remove it?

A. That's right.

Q. So you wanted to remove that first?

A. We had to get that first.

Q. Before you went back to the stone on the Thomas tract?

A. Right.

* * * * *

Bd. Z.A. 1965 page 10 } Q. (continued) Now, Mr. White, pursuant to your agreement, or the agreement of Blue Ridge Stone Corporation, did Blue Ridge go in and set up a quarry on the land here involved today?

A. Yes, sir.

Q. Well, now, explain to this Board about how you went about setting up this quarry, and what I'm particularly interested in is the original quarry, which was on the Todd and France tract. Right? That's the quarry pit?

A. The pit was opened up originally onto the Todd-France property, but beginning on the Todd line and going into the France property.

Q. Well, now, when you originally set up this quarry, wasn't part of the operation of the plant on the Thomas tract as well as—

A. Part of the top operation was, yes. It's always been that way.

Q. Well, what part was on the Thomas land?

A. Well, the plant was sitting in the—the scales may have been across the line—I couldn't be sure of that. But the

whole crushing operation was close to or on the property line between the Thomas tract and the Todd tract and we, in our agreement with the Adams partnership, we had the right to use all of his Thomas tract at the same time because there wasn't enough room on the other two to operate anyway.

Bd. Z.A. 1965 page 11 } Q. In other words, you have continuously operated on the Thomas tract from the very beginning, under your lease agreement?

A. Well, that's right, as part of our operation.

* * * * *

Q. Now, in your Petition it is alleged that this area, which included the so-called Thomas farm of a hundred and thirty acres, and the stone in place purchased from Todd and purchased from France, was all zoned industrial M-2 under the Roanoke County Zoning Ordinance of 1960. Is that a fact?

A. Put that again, please?

Q. Isn't it a fact that this entire area, including the land which Bill Adams acquired from Thomas, the stone in place acquired from Todd and the stone in place acquired from France, was zoned as industrial district M-2?

A. To the best of our knowledge, this is true.

Q. Is it your understanding that such zoning permits the operation of quarries, asphalt plants, crushing plants?

Bd. Z.A. 1965 page 12 } A. Yes, sir.

Q. Now explain to this Board the quarrying on the Thomas tract, or the part of land acquired by Adams Construction Company from Thomas of stone by a party other than Blue Ridge?

A. All right. Now this is the Thomas tract and I have the name rather as "Thomas", as best my memory deals with it. The situation was such we had a certain capacity in our operation of materials, but it was not a sufficient capacity to satisfy all the requirements of the heavy construction, particularly on interstate roads, that Mr. Adams and his partnership needed. We did not at the time have additional equipment; we had no other crushing plant to move in there, and he requested that we allow him to quarry on a part of this leased land.

Now, we are referring to the leased land always as we had thought as the one tract, although it is three different owner-

ships. But we had just as much right on—as soon as we finished on the Todd-France, to move over there, or to move over to the Todd-France-Thomas. Anywhere on this whole tract that Adams had control of that we could operate. And we had the exclusive right.

So he had to come to us for additional agreements if there was to be, or if there was to be an additional tonnage. I think it was in the year 1963 when things were getting short, or sometime during that year, he had to have more crushing capacity than we had anticipated or he had anticipated. So we made another agreement with him that he could go in there and crush for himself the additional quantities of stone needed, and he so did. I think they finished that sometime in 1964.

Bd. Z.A. 1965 page 13

Q. Well, now that is in the Petition filed. That is in Paragraph 8, which is set forth on Page 4 of the Petition, in which you describe in detail the fact that Ararat Stone Corporation went in there in behalf of Adams Construction Company and quarried for Adams Construction's sole use additional stone?

A. This was. The fact that Ararat crushed it for Adams didn't affect it; we had no agreement with Ararat; our agreement was with Adams. He could have anybody he wished crush the stone, as long as it was for his use for the projects which he had.

Q. In other words, he couldn't sell it?

A. No, we didn't want somebody else in there competing with us on our own quarry location.

Q. Now in your Petition you stated that on or about May 15, 1964 Ararat Stone Company, who was crushing for Adams Construction Company, ceased its operations?

A. If I remember, it was in 1964, sometime in the summer time.

Bd. Z.A. 1965 page 14

Q. Well, you said May 4th—May 15th.

A. Well, I have the record. I don't know, but I don't have it with me.

Mr. Whitescarver: Would you want to agree on that date, Mr. Smith? Would you want to agree on that date of May 15th, 1964?

Mr. Smith: It's in the Petition and it is signed under oath.

Mr. Whitescarver: All right.

Mr. James M. White

By Mr. Smith (continues examination):

Q. Now, when did you finish up at your first location, or the first location of your quarry pit?

A. It was this year, the early part of the year. I would have to refresh my memory again. It's sometime within around the first of March I think—

Q. All right.

A. —or the latter part of February or early March. It's in that area. We didn't crush very long this year.

Q. In your Petition you state "on or about June 7, 1965 you commenced to open up a quarry pit at another location," on the same—on this same general tract of land that we have been talking about?

A. That's right.

Q. Will you tell the Board where you intended to go in and open up a new quarry pit to continue your

Bd. Z.A. 1965 page 15 } operations on this same general area?

A. This is the same tract that is on the Thomas part of this same tract.

Q. Well, is it close to where Ararat had gotten out stone for—

A. Oh, yes, we intended to use, to the best advantage that we could, what he had already opened up.

Q. I believe in that connection that you had moved the creek bed so that you could get into it?

A. Yes, that's right.

Q. And then I believe it is set forth in the Petition that you were notified by Mr. Matthews that you could not proceed with the opening up of this quarry?

A. Yes, sir.

Q. And that is the letter which is filed as an Exhibit to the Petition, is that correct?

A. That's right.

Q. At about the time that you opened up your original quarry in 1960, isn't it a matter of fact that Adams Construction Company opened up or installed a blacktop plant?

A. Yes, I'm not—I can't confirm the date without looking at the record.

Q. But it was about the same time?

A. Yes, that's right.

Q. Wasn't the basic underlying agreement that

Bd. Z.A. 1965 page 16 } you were going to produce stone that he could run and process through his blacktop plant?

A. That's the reason he moved his equipment

in there, because we had agreed to furnish stone for him.

Q. Well, now, isn't it a matter of fact that that blacktop plant was continuously operated since 1960?

A. If you're talking about on an annual basis, yes, it is still operating right on through this summer. I mean there are certain winter months when they can't operate.

Q. Well, there's never—except for the seasonal part of the year—it's been a continuous operation?

A. Yes, that's right.

Q. Well, isn't, as a matter of fact, that this—that what we have been referring to as the Todd tract and the France tract, that is stone which was purchased in place and aren't they relatively small areas that were subject to this lease agreement?

A. Yes, relatively small and too small for us to operate on without using all three together.

Q. Well, I believe there weren't over four or five acres in each of the so-called France and Todd tracts—

Mr. Whitescarver: More. Four in France and six in Todd. "Not over four" it says "in France' 'and "six in Todd".

Bd. Z.A. 1965 page 17

The Witness: There again I'd have to go to the record. It is something like a combined total of ten acres we had the use of in this area of those two tracts.

By Mr. Smith (continues examination):

Q. But you had the use of all of the Thomas tract?

A. That's right.

Q. As far as you were concerned, you were concerned as lessee under this agreement, you were dealing with one owner and it was one tract of land—

A. Yes.

Q. —regardless of how—

Mr. Whitescarver: Mr. Smith, I think the time of argument might come later. You are arguing the case now.

By Mr. Smith:

Q. Well, could you have operated on the Todd and France tracts alone?

A. I don't think we would have undertaken this type of

operation on that small land there. I don't think we could have done it physically. We never did, we never tried it.

Mr. Smith: Okay, Mr. Whitescarver.

CROSS EXAMINATION

By Mr. Whitescarver:

Q. Mr. White, your Company, the Petitioner here, has never set off a blast on the Thomas place yet, has it, in any rock quarry pit over there?

Bd. Z.A. 1965 page 18

A. No, sir.

Q. On the Thomas place?

A. We have set off blasts over there, but we haven't crushed anything.

Q. You haven't crushed any quarry pit on the Thomas land?

A. That's right.

Q. And nobody has ever operated any quarry pit on the Thomas land, except Ararat, isn't that right?

A. As far as I know, that is correct.

Q. And it hasn't been operated since May the 15th, 1964, that pit hasn't?

A. As far as I know, it hasn't, that is true.

Q. And that is the pit we are talking about right now, isn't it? That is the one where you want to operate now?

A. Well, it's the—it's exactly the same area. It's not—

Q. In other words, you want to operate a quarry pit where one has been and has been closed since May the 15th, 1964? And isn't that correct?

A. Will you ask that again, please, sir?

Q. Yes, sir. You said you want a permit to operate a quarry pit which has previously been worked by Ararat but has not been worked by anybody since May the 15th, 1964?

A. Well, if you're speaking of there, yes, sir.

Bd. Z.A. 1965 page 19

Q. I'm talking about where you want to run this pit.

A. We are asking for a permit. We thought we were operating in a zoned area and that is—

Q. But you are trying to re-open a quarry pit that has been closed since May the 15th, 1964?

A. There had been no operation on that exact spot that I know of since then.

Q. Or anywhere else on the hundred and thirty-one and one-fourth acres of Thomas land, is it?

Mr. James M. White

A. Yes, sir, the entire asphalt plant set-up.

Q. I didn't say asphalt plant, I said "operating a quarry pit". Has any quarry pit been operated on the Thomas land exception this one that Ararat had?

A. Not that I know of, no.

Q. And that is the one you want to re-open and you have been denied that because your more than a year's time expired since it closed, isn't that correct? And this is the reason for this appeal, that is the reason we are here, isn't it?

A. Yes, sir, we are here because when Mr. Matthews told us we couldn't operate it, if that's what you're saying.

Q. Well, I think machinery that you wanted to put in there is in place right at the site of this old quarry pit right now, isn't it? At least it was Friday or Saturday afternoon.

Bd. Z.A. 1965 page 20 } A. We have a complete crushing outfit there now as part of the machinery.

Q. And it's been sitting there right for the purpose, as you have just stated, of re-opening this same quarry pit that Ararat vacated in 1964?

A. Yes, sir, we have the full complement of crushing equipment out there right now.

Mr. Whitescarver: Have you got any questions you want to ask him?

Mr. Creasy: No.

By Mr. Whitescarver:

Q. I think that's clear. You're going to use the same face of stone there that Ararat left, aren't you?

A. Yes, sir.

Q. So there is no question about the fact that you want to re-open an abandoned quarry pit. No question about it is there?

A. Well, there isn't—there is in my mind, sir, if I may answer that question what I think.

Q. Well, all right, answer it any way you want to, but I just asked you: Is there any doubt of your trying to re-open a closed and vacated quarry pit? And you said, "No, that's exactly what you want to do".

A. Yes, sir, we're trying to operate at the same spot that Ararat operated. That is Yes.

Bd. Z.A. Q. How far is it from this quarry pit on the

Mr. James M. White

1965 page 21 } Thomas property which has been abandoned and the one that you just about worked out down there on the France and Todd place? How far apart are they?

A. Well, I don't know, sir.

Q. Would'nt you say?

A. Several hundred feet.

Q. Wouldn't you say it's around four thousand, two hundred feet or four-fifths of a mile?

A. I don't know, sir.

Q. Pretty good distance, isn't it?

A. Yes. I don't know whether it's four thousand feet or not though; I couldn't tell you that.

Q. You are quite familiar, I suppose, with the underlying strata of stone in that area all over the so-called Williamson Road, North 11 area and on down towards Hollins, and you know that is solid stone all the way through there, isn't it?

A. I don't know, sir.

Q. You are a stone man, aren't you?

A. Yes, sir. This is the only stone that we have drilled out in this area.

Q. Well, don't you know it's at least eighty-five per cent stone in that whole area?

A. No, sir.

Q. And it runs all the way from on the other side of Botetourt County to the other side of Roanoke County and Montgomery County. Don't you know that?

Bd. Z.A. 1965 page 22 } A. No, sir.

Mr. Whitescarver: Ask Bobby Churchill, he'll tell you. He put some sewer lines out there (laughter). That's all.

RE-DIRECT EXAMINATION

By Mr. Smith:

Q. Mr. White, has Blue Ridge Stone Corporation abandoned any of its rights with respect to this property?

A. No, sir.

Q. Isn't it, as a matter of fact, that you were going out there and intended to open up a new quarry adjacent to where Ararat left when you were stopped by Mr. Matthews?

A. Yes, sir.

Q. And the reason why you came here to petition this Board is to satisfy that, and there were no objections to your

going—no legal objections to your going in there and operating?

A. Yes, sir.

Q. So that you—haven't Blue Ridge Stone Corporation—Blue Ridge Stone Corporation hasn't abandoned anything?

A. No, sir, not as yet. Not as far as that agreement is concerned.

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Bd. Z.A.
1965
page 30 }

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By Mr. Andrews: (Member of Board):

Q. I would like to ask Mr. White: When did Blue Ridge move its equipment into this Thomas, or this pit that we're talking about that had been closed? What date did you move the equipment?

A. During this past summer, during this past summer.

Q. At what time?

A. I would have to refer to my records to tell you the exact time.

Q. Prior to May the 15th or after May 15th?

A. It was after May the 15th I imagine. It was probably in June, the best I can remember.

Q. That would make it about thirteen months then.

Mr. Matthews: (interposing): I wrote to Blue Ridge Stone on August the 30th. Sometime possibly on the 29th or 28th I got a call that equipment was being moved in.

Mr. Andrews: In August?

Bd. Z.A.
1965
page 31 }

Mr. Matthews: And I went out there and I apparently was there on the morning of August the 30th and they were just getting it off the trucks and so forth. But they were digging a channel and at that time and I asked one of the workmen there what they were planning on doing, and he told me what they were planning on doing, they were going to get power down there.

And why pay this man a lease on the property when we

can get stone out here on here without paying royalty. He talked right freely about it and I didn't tell him who I was. Now maybe I should have told him.

The Witness: We started our preparations, as stated in here, (indicating), on or about June the 7th and our office records will show that, and will show the date of unloading whatever new equipment we have under there. I reckon our records will show that.

By Mr. Andrews:

Q. It was—it would have been more than twelve months then, wouldn't it?

A. No, sir, we were operating out there this year.

Q. I mean that Ararat moved out in May 15th, '64?

A. That's the information we have from them, that they moved out in May.

Q. 1964?

A. Well, 15th, if that's what I have written down here. That's the best of our knowledge.

Mr. Andrews: All right. Thank you.

Bd. Z.A.
1965
page 32 } By Mr. Kime:

Q. Now, I think this is very significant that I bring this out. Mr. Whitescarver stopped you a few minutes ago. The asphalt plant which under the agreement you had with Adams—I'll just call him "Adams"—to furnish a character of rock to make asphalt was in continuous operation except that you said during the winter months?

A. Yes, sir.

Q. And it's been operated within the last twelve months?

A. Oh, yes, sir.

Q. Part of this stone was used for that purpose and part of it was used—I don't know whether you call it the base stone or not—or on 81 and 581?

A. Yes, sir, it was used for asphalt plant mix, mixed stone. We had to furnish the type of stone he could use in his asphalt plant, according to our agreement.

Mr. Kime: All right.

By Mr. Smith (continues examination):

Q. To clarify the record, Ararat Construction Company didn't have any right to quarry stone on this tract of land here involved. Isn't that a fact?

A. Oh, no, Ararat Stone—they had—

Mr. James M. White

Bd. Z.A. 1965 page 33

Q. In other words, to get the record clear, it was Adams Construction Company that quarried the stone, not Ararat, which was merely its employee?

A. Yes, sir, they quarried solely for Adams Construction Company.

Q. And Adams Construction Company stockpiled and used that in its operations?

A. If I'm not mistaken, Adams merely went and paid them so much a ton to crush stone for him. That's all there was to it.

Q. Now, where you intended to set up the continuing operations, isn't that really adjacent to this place where Ararat got stone at?

A. Well, we had no intention of using the exact face and if I stated that I guess I made a mistake, because we never had any intention of using the exact face. But there is no use in saying that this location is not in, well, approximately at least the same pit that Ararat worked as a matter of convenience to ourselves.

Ararat was not working the way we intended to work because that is the reason we have gone to the intention of moving the creek. We have not—we are not operating the exact face. As a matter of fact, it may be necessary to operate on Ararat's pit, not operate at all for that matter. And it is a matter of convenience to us that we do this.

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Bd. Z.A. 1965 page 7

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MR. JAMES M. WHITE a witness of lawful age, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION

By Mr. Smith:

Q. Mr. White, state your full name and occupation?

A. James M. White. I'm Vice President of Blue Ridge Stone Corporation.

Q. Mr. White, I'm showing you the map which was filed as Exhibit 1 with the Petition. Will you describe to the Commissioner the parcels of land, or interests in the land which

Mr. James M. White

Blue Ridge Stone Corporation acquired the right to operate on from Adams Construction Company?

Comm. Hear. 1966 page 8 } A. With reference to this map (indicating)?

Q. Right, this map here (indicating).

A. Well, we have a lease agreement with Adams on all the Thomas tract (indicating), that his Company owns; we had a lease agreement with the—a portion of this Todd tract, consisting of about four acres and a quarry pit with a right to use approximately six acres to remove over-burden, and the right to use about ten acres which extended down to the Thomas property line for crushing and stocking, and the right to use approximately four acres on the James R. France property.

Now, these properties, the only thing that Mr. Adams and his partner bought in this Todd and France property was the stone in place (indicating). This Thomas tract, consisting I think of about one hundred and thirty acres, they bought outright (indicating). The whole area then was turned over to us by agreement with Adams Construction Company for the purpose of our mining and crushing the rock, first on the Todd and France properties, and then to the extent that was required or deemed feasible on the Thomas property.

Q. When did you begin quarrying operations?

A. 1960.

Q. Describe briefly what you mean by "quarrying operations"?

A. The actual physical work of it?

Q. That's right.

Comm. Hear. 1966 page 9 } A. Well, the first move is to go in and drill as a testing process to see where we would find the rock deposit and how feasible it would be to get it out, and sell it commercially, which is the first move that we made on these properties.

The next thing—and some of this is in two phases of it and can be going on at the same time—after we have determined the location, the proper location to mine or quarry, is to move the over-burden and waste off the top of it and that would be the part that would not be suitable for the type of construction that we furnish materials for. And Mr. Adams primarily does, now that is road and highway construction.

At the same time we can be preparing a site and pouring footings to set up a crushing plant and, normally speaking, we would have all of this part of the operation completed at the same time and be ready to go in and shoot down rock

and haul it to the crusher.

Q. Approximately where was the crusher located?

A. The crusher—I don't know how many feet, but the crusher was very close to this line (indicating), between it, that separates the Todd properties from the Thomas property, the property line there (indicating). It is right in this area. And if I might point to it, between this line (indicatng) and ths one (indicating), and right in this area right in here.

By The Commssioner (interposing):

Q. On the Todd property?

A. The crushing plant was actually on the Todd property, that's right.

Comm.
Hear.
1966
page 10

By Mr. Smith (continues examination):

Q. Now are the quarries, or is the quarry site on the France and Todd tracts shown in pencil?

A. Yes. Yes, this is approximately (indicating). I don't know about the dimensions of that, of what is on the map, but that is the general area and location of that pit, yes.

Q. Well, now did Adams Construction Company construct a blacktop plant on the Thomas tract, we'll say?

A. Yes, very soon after we had reached an agreement with Mr. Adams and his partners, they made arrangements to put an asphalt plant in.

Q. Approximately where was the asphalt plant?

A. It was on the Thomas tract, fairly close to the Todd line, maybe two or three hundred feet. I don't know, I have not measured it.

Q. Well, now when you commenced operations in 1960, did you operate continuously up until the time that you started to move the quarry in the spring of 1965?

A. Yes, we operated from the time we started crushing to the spring of 1965, with intermittent stops due to weather conditions and things of that sort.

Q. Explain the reason for the supplement to the basic lease with Adams Construction Company?

Comm.
Hear.
1966

A. This supplement — the supplement you refer to is the one that brought in the Ararat Stone Company?

Q. That's right.

Mr. James M. White

page 11 } A. Well, our situation was such in 1962—I hope I'm remembering the date correctly—that we could not furnish from our location all of the stone that Adams needed for highway construction. He wanted a certain type of base stone that we couldn't manufacture and manufacture at the same time all of the stone he needed for his asphalt plant, and so we entered into an agreement with him where he was allowed to go on the property that we had under lease to crush stone for a definite purpose, that is for a definite highway construction project. And this is about all there is of it. That is what he did because of the fact we couldn't furnish it, or couldn't furnish the tonnage, and we couldn't furnish the tonnage he needed for this construction work.

Q. Now in the Petition itself, it states that under this supplemental agreement that Adams Construction Company employed Ararat Stone Company to quarry stone for it, that is Adams' own use. Approximately where was the quarry which Ararat Stone Company operated?

A. It was on the Thomas property, in this area (indicating), very closeto where the interstate spur comes off of 81 going into Roanoke—581 is the spur.

Q. Now the Petition states that Arat Stone Company finished up or left the area on or about May 15, 1964?

A. That's right.

Comm. Hear. 1966 page 12 } Q. How do you verify that date?

A. We verified that with the personnel from the Adams Construction Company, who had records of a trucking permit to move the equipment that belonged to Ararat off of this property onto highways and permits to haul excessive loads on the public highway.

Q. Mr. White, isn't it a matter of fact that you acquired the right to operate on the so-called Thomas-Todd and France tracts at one time under one instrument?

A. Yes, sir.

Q. So far as you were concerned, was that one parcel of land that you could operate on?

A. Yes, sir.

Q. Now why did you cease operations at the original quarry site on the France and Todd lands in the spring of 1965?

A. We had exhausted the deposit on the France property, the rock that he had sold Mr. Adams and his partners, and which we in turn bought from Mr. Adams. This was exhausted on the Todd property. We had taken out all the stone that we could economically take out for the purpose that we

went in, that is for highway construction principally, that was gone and that is the reason we stopped there.

Q. And then what did you undertake to do?

A. Then we undertook to move over on the other end of the property to quarry.

Comm. Hear. 1966 page 13

Q. In the Petition you state that you began setting up to operate on the Thomas tract on June the 7th, 1965?

A. Ahum, yes.

Q. How do you verify that date?

A. Well, by payroll records of the people we sent out there to prepare the site.

Q. In the Petition it states that by letter dated August 30, 1965, Mr. Matthews, the executive officer of Roanoke County, advised you that you couldn't continue to operate at the proposed location on the Thomas tract. Is that a matter of fact?

A. Yes, sir.

Q. Have you complied with those directions since receiving that letter?

A. Yes, sir.

The Commissioner: Let me say one thing, Mr. Smith: You asked him last when he stopped operations and why, and I believe at our last hearing it was stipulated, although we didn't have a Court Reporter, that the Statute of Limitations insofar as the operations were concerned was tolled as of the time he stopped, when he stopped pursuant to Mr. Matthews' letter and tolled until such time as this matter was finally disposed of. And we might as well get it in the record.

Mr. Fitzgerald: Right.

Comm. Hear. 1966 page 14

The Commissioner: And this pertains to the actual operation as such.

Mr. Fitzgerald: I think we're talking about it pertained that he had tried to start operating on the Thomas property within one year of the time he had stopped on the Todd and France property.

The Commissioner: Yes, that's right.

Mr. Fitzgerald: All right.

CROSS EXAMINATION

By Mr. Fitzgerald:

Q. Mr. White, do you know what the understanding of

Blue Ridge Stone Corporation with Adams was as to how the lands would be left after you finished up your operations in any given area?

A. Yes, I think so.

Q. Well, what were you and how were you supposed to leave the land?

A. In as neat a condition as we could possibly leave it.

Q. So it could be used?

A. Are you speaking of this whole tract, I assume?

Q. Any one of the quarrying sites.

A. Any areas that we quarry, we—

Q. Yes, sir.

Comm. Hear. 1966 page 15 }

A. —we should leave it in as neat a condition as we could under the circumstances, that's right.

Q. Wasn't in order so they could be used for other uses after you got through with, if possible?

A. Well, I feel sure that there would be other uses for the land, but I'm not familiar with what the intent is.

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Comm. Hear. 1966 page 16 }

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Mr. Fitzgerald: I would like to have this map marked about the same as the other one. It does show some other information on this map and I would like to have this marked "Defendant's Exhibit No. 1".

(Map referred to above was received in evidence and marked "DEFENDANT'S EXHIBIT NO. 1.")

Q. (continued) Now, Mr. White, I would like to ask you to look at this map marked Defendant's Exhibit No. 1. First of all—Mr. Kime, you all don't have any objection to this map being used?

Mr. Kime: No, sir, we don't have any objection.

Mr. Fitzgerald: And I'd like to have it offered in evidence then.

Mr. James M. White

The Commissioner: It's already been received.

Mr. Kime: We presume, of course, that the locations as indicated on the map are approximately at least correct.

Comm. Hear. 1966 page 17

Mr. Fitzgerald: Yes, sir. I want to ask Mr. White about it.

Mr. Kime: All right.

By Mr. Fitzgerald:

Q. I show you an area outlined in an irregular green shape and outlined with a No. 2 in green in the middle of it on the France and Todd land (indicating). Would you say that that approximately locates your quarry operation on those parcels of land?

A. Yes. Yes, sir.

Q. And I show you an irregular shaped line in red with a red "1" in the middle of it at the opposite end of that zone (indicating). Would you say that that approximately approximates the location of the Ararat quarry operation?

A. Yes, sir.

Q. And this also approximates the location where you had started to go back into operating when Mr. Matthews gave you a stop order?

A. Yes, sir.

Q. Would I be correct, from the scale of this map, to say that from center to center of those quarry operations is approximately four thousand feet?

A. I don't know, sir.

Mr. Kime: I think we will admit that.

Mr. Fitzgerald: All right, sir.

Mr. Smith: We will admit whatever the scale is.

Comm. Hear. 1966 page 18

By Mr. Fitzgerald:

Q. All right. This also shows a crusher location on the Todd property (indicating). Is that approximately the location where it was?

A. This is the creek, I assume (indicating)?

Q. That is the creek line.

A. It would be on this side (indicating).

Q. It should be on the opposite side of that creek?

Mr. James M. White

A. I think so, because it came all the way up to this—almost up to the Thomas line.

Q. Would you just put an X with that, or approximately where you believe the crusher was?

A. This is my idea of where it is (witness made "X" on map).

Q. All right, sir. Now a circle in red here is shown as the asphalt plant on the Thomas land. Do you agree that is the approximate location where that was located?

A. Yes, sir.

Q. All right, sir. It is true, isn't it, that up until the time last year that Blue Ridge Stone Corporation went to quarry location No. 1 that they had never operated this, or at this location.

A. Blue Ridge had never operated at that location.

Comm. Hear. 1966

Q. All right. And that it had been closed for more than a year from the time Ararat or anyone else operated there. That is stipulated, I believe.

page 19 } Mr. Kime: Now may it please the Commissioner, there is a legal question in regard to that, and that legal question is an interpretation, of course, to it and of the supplemental agreement because Ararat was working for Blue Ridge.

Mr. Fitzgerald: Well, I don't think so.

Mr. Kime: And I'm putting this out not on the stand.

Mr. Fitzgerald: I will rephrase the question. There is no question that Quarry No. 1 had ceased operation for more than one year.

Mr. Kime: Yes, sir, there is no question. We understand that.

The Commissioner: That is agreed to.

Mr. Fitzgerald: Yes, sir, I just want to make sure I relate it to this location.

Mr. Kime: Yes, sir.

Mr. Fitzgerald: No further questions.

By The Commissioner:

Q. May I ask one question? When you quarry, what do you do with the stone—I mean does it have to be crushed?

A. Yes, sir, it has to be crushed and in several different sizes to meet the requirements of the State Highway Department, if that is the type construction that the stone is being used for. By that I mean primarily for that and other things.

Comm. Hear. 1966

Mr. James M. White

page 20 } Q. Who crushed the Ararat stone?

A. Ararat Stone Company. I think that is the name of it. Actually it was crushed, in our mind it was crushed by Adams Construction Company, and he could hire anyone he wished to do it as long as he stayed within the limits of our agreement.

Q. Was that on the premises? Was that done on the premises?

A. I don't believe I understand you sir.

By Mr. Kime (interposing):

Q. Wait a minute. Hold on just a minute. Was that done on the Thomas premises?

A. Yes, sir.

Q. It was. But you all did not crush that stone?

A. No, sir.

Q. When I say "you all" I mean Blue Ridge?

A. Yes, sir.

Q. Is the crushing operation essentially—an essential to a quarrying operation, or are they separate?

A. They go together. The quarrying operation is, as I have referred to, it is burning the material out of the pit or the stone deposit; the crushing operation is sizing the stone to meet specifications required by the State.

Comm.
Hear. Mr. Kime: All right.
1966 The Commissioner: All right.

page 21 } RE-DIRECT EXAMINATION

By Mr. Smith:

Q. Mr. White, and the way you quarry in fact you shoot large pieces of stone and shoot down from the stone deposit large pieces of stone, is that right?

A. Yes, sir.

Q. And then you haul that to the crusher and in big trucks?

A. Yes, sir.

Q. And then break it down into much smaller sized stones so as to meet the highway specifications?

A. Yes, sir.

Q. It was much less than a year from the time that you ceased your operations on the Todd and France tracts?

The Commissioner: They agreed to that.

By Mr. Smith:
Q. And then you started your operation at the Ararat site?

The Commissioner: And they agreed to that too.
Mr. Smith: All right, go ahead.

RE-CROSS EXAMINATION

By Mr. Fitzgerald:
Q. Blue Ridge Stone Corporation had neither, or nothing to do with either a quarrying or the crushing at the Ararat location when Ararat was operating?
Comm. Hear. 1966 page 22
A. Other than to the limitations of the lease that we had.
Q. I'm talking about the physical operation.
A. The physical operation? No, sir.

Mr. Fitzgerald: All right, no further questions.
The Commissioner: Okay. All through?
Mr. Fitzgerald: That's all I want.

And further this deponent saith not.

MR. JAMES M. WHITE.

By ERNEST W. BALLOU
Commissioner.

The Commissioner: All right, got anything else?
Mr. Kime: Yes, sir, put Mr. Adams on the stand right now.

MR. W. B. ADAMS a witness of lawful age, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION

By Mr. Kime:
Q. Are you the W. B. Adams who is mentioned in the—as having acquired what is known as the "Thomas tract"?
Comm. Hear. 1966 page 23
A. Yes, sir.
Q. Sometimes referred to as the "Thompson tract" erroneously?
A. Yes, sir, I am the senior partner of Adams Construction Company.

Mr. W. B. Adams

Q. And how many partners are there in your Construction Company?

A. Six at present.

Q. Inclusive of yourself?

A. Yes, sir.

Q. Mr. Adams, how long have you been in the road building business?

A. Forty-two years.

Q. I believe it's in evidence here that you acquired this Thomas tract and later on you acquired—so the information says—the stone in place on the portion of the Todd tract, is that correct?

A. Yes, sir.

Q. And then subsequent to that you acquired the right to quarry, or do limited quarrying and not go below I believe the stream level or branch level of certain stone on the James R. France tract?

A. Correct, sir.

Comm. Hear. 1966 page 24

Q. Now why was it—why did you acquire—after you had acquired this large tract of land, a hundred and thirty and one-fourth acres of land of Thomas, why were you interested in acquiring the stone on the Todd and France lands subsequent thereto?

A. Well, this takes in a good bit of territory and a good bit of time involved in this thing. At the time we acquired the Thomas property, at first that we knew in some near future date—whether it would be one year or three years—that 81 would likely to be built and we do this research work not only in Roanoke County but all over the State. In fact, we have a similar situation in Allegheny County that we're producing over two million ton of stone, and we found no stone in that area.

It takes a lot of time and research to do this. We found this deposit of stone and we tried to get it on as orderly a basis as we could, and we continue—and this was three or four years even before they had secured the right of way. And then in doing this drilling on the Thomas property we traced the rock on down and found this faced on the France and Todd property (indicating), and it was exposed. And we felt sure that somebody else would be looking at that piece of rock.

Mr. W. B. Adams

So after about two years of negotiating with Todd, we finally agreed with him for the rock and I think, and I agreed with him that he had probably fifteen years to get the rock out. I believe I'm correct.

Comm. Hear. 1966 page 25 } Q. Anyway, the instrument speaks for itself, whatever agreements you made with Todd and with France?

A. Yes. So we found the center line on the France property. So then we went in and secured the France property by a lump sum, and the Todd property by a lump sum. Then we closed the whole thing up.

No, at that time it was no zoning ordinance and we asked about the zoning ordinance before we actually paid the money for this property, and we were assured that it would be safe. And in securing this property for manufacturing of stone and asphalt for which we did. Then as the years went by, why it developed and we proceeded to operate.

Q. Now let me ask you this: Why didn't you go in there and crush the stone on these three parcels of land?

A. Why didn't we?

Q. Yes. Why didn't Adams Construction Company? So explain that to the Commissioner, how you went to operate?

A. We are in the paving business, gentlemen, and we are not in the rock business. It is just like we're not in the grading business. Now we have ten of these locations over the State, and that we couldn't possibly get in the stone business ourselves.

Now we have a good asset or access to people like Blue Ridge and Rockydale and Ararat and Vulcan and Lambert Brothers, that we do the research for them and they come in and give us a price to produce this stone, and so

—

Comm. Hear. page 26 } Q. Is that why you entered into your agreement with Blue Ridge as to these tracts of land?

A. Yes, sir, that laid dormant for about two or three years, and then as it developed we had to deal with someone. And we also at that time and still have at present an asphalt plant on the Blue Ridge property at Blue Ridge, Virginia, and Big Stone, from that side of the County and State. And secondly, that we felt they would be logical people to deal with this on this producing stone, as they were strictly in the stone producing business and not in the paving and contract business. And they being local Companies also.

Mr. W. B. Adams

Q. And is there considerable stone deposit or not on what is known as the Thomas lands?

A. Yes, sir, that's why we really bought the property, in fact.

Q. Will you indicate on what is known as Defendant's Exhibit No. 1 where the stone deposits are?

A. I won't write on it, I'll just point.

Q. On the Thomas line. No, don't write anything.

A. No. After we got closed, both closed, all these deals. First we started drilling here (indicating), and there was a little exposed rock just about where this "A" is here, so then—

Q. Now wait a minute. That's not "A" and it doesn't get into the record. You mean where the "A" —

Comm. Hear. 1966 page 27

A. Right at this spot (indicating).

Q. The letter "A" in the word "land"?

A. There was a deposit of rock showing, and so the Blue Ridge—

Q. Wait just a moment, Mr. Adams. When you say the "exposed rock showing", is that about where the "a" is in the word "land", as spelled out on the Thomas tract?

A. Yes, sir.

Q. All right.

A. So then the Blue Ridge people drilled there for I'd say two months and found this deposit of rock. I mean they continued the research. We had drilled it before. We bought the deed knowing there was rock there, but we didn't know exactly. We hadn't gone into the extensive drilling.

Q. Was any estimate made of how much rock was there in the general vicinity of where the word "land' 'is, which is above—

A. Shows a million and a half tons, or less than fifty feet over-burden.

Q. Now you knew that?

A. We knew that. The Boxley people did.

Q. Did Boxley know that?

A. Yes, sir.

Q. Boxley is the same as Blue Ridge?

Comm. Hear. 1966 page 28

A. Yes, sir.

Q. And they knew it too?

A. They had a map of it being drilled.

Q. They did?

Mr. W. B. Adams

A. That's in this file (indicating).

Q. When you entered into an agreement with them, did you know and did they know that too?

A. Sure they did.

Q. If you had that much, why didn't you go in originally and drill? Why did you go down here on the France and Todd lands to drill (indicating)?

A. Well, as we had leased this prior to any contracts being let or anything, this was exposed (indicating), a bluff. And naturally—

Q. When you say "this", you're pointing to what?

A. To the France and Todd properties; it was a bluff (indicating).

Q. I see.

A. So as we had it, we decided we would exhaust this section first, knowing that there was only a limited supply there. And in doing so we located the asphalt plant here (indicating).

Q. When you say "here", is that as shown on—

A. As shown there.

Q. —Defendant's Exhibit No. 1, all right.

A. Yes. In order that, as we developed this property, that the asphalt plant would be in the proper location for this deposit here (indicating), as well as this deposit (indicating).

Comm. Hear. 1966 page 29

Q. In other words, the asphalt plant was approximately—

A. In the proper location.

Q. —in the center, between what is known as the France and Todd quarry site, and what we will call "the Ararat quarry site", as opened up?

A. Yes, sir.

Q. And in close proximity to the million and a half tons?

A. Yes, sir, that's right.

Q. Now what is the understanding that—what was in your contract, that Blue Ridge would go in and get the stone out from Todd and France first?

A. Yes, sir. And their contract called to get it off the Thomas property in the event that this failed or wasn't sufficient or enough (indicating). And after we released the contract to the Blue Ridge people, our contract only called for the creek level, the one that we made with the Todd people. But to concede and with Ararat that they had gotten out by going back to Todd. I think they paid him an additional $25,000 more in order to finish what we had under contract at that time.

Mr. W. B. Adams

Q. And that was two hundred and fifty thousand tons then of the property that was gotten out?

A. Yes, sir.

Comm. Hear. 1966 page 30

Q. And that was gotten out?

A. Yes, sir, that was gotten out, which we didn't make that arrangement with the Todd people. Our arrangements stopped at the creek level. Now we never finished getting the rock out of the France property.

Q. I understood Mr. White to say that they got the rock out of the Todd and France property. Did he ever get all the rock out of the France property, as a matter of fact?

A. No, sir, we did not. There were some houses back in here (indicating) and this was—

Q. Now you're pointing northeast and northeast of the quarry site?

A. Yes, sir—and this France property on the northeast side had a bluff, something like this coming up (indicating), and, well, the Blue Ridge people were quarrying and unfortunately when they first started, they scattered some rock and they had some complaints there. So in place of taking this rock down, they come down on this side (indicating) and used this as a bluff and left this front stone that was brought and paid for still intact.

Q. Is that the rock that is right there now?

A. Yes, which is paid for. They could remove it.

Q. They could have gotten it?

A. If they so desired. But on account of the plant and of the rock up here (indicating) and cooperating with these people back in here (indicating), why they decided the best interest to be would be to leave that as a buffer, and went down deep on the Todd property.

Comm. Hear. 1966 page 31

Q. Now, Mr. Adams, why was it that subsequent to the original agreement that you had with Blue Ridge there was a subsequent agreement which gave you the right to go back then on your own property and get out rock? What gave rise to that?

A. What gave what?

Q. What gave rise to that, the supplemental agreement that was had?

A. Well, what happened there was, if you assume the one where the 81—this contract was let, 581 into Roanoke, and

naturally we were interested in it. And that the supplier of stone that was greater—not only the supply but the manufacture was greater to supply one job, or this job, and this job was from one quarry. And, of course, the Blue Ridge people couldn't touch the property because we had been subjected it as one deal; we had leased the entire transaction to those people. And naturally we couldn't go in there and crush.

We couldn't get anybody else to go in there and crush without their consent; so they gave us consent to go in and open up this deposit here (indicating), which was about two years after this one was opened (indicating).

Q. Now when you say "this was opened", what do you mean? "Two years after this." Because your interest

—

Comm. Hear. 1966 page 32

A. This was opened first (indicating).

Q. You're pointing out to the—you're pointing now to the France and Todd property?

A. This was opened first.

By Mr. Fitzgerald (interposing):

Q. This is No. 2 (indicating) and that is No. 1 (indicating).

A. I could be wrong. This could be it, or it could be two and a half years that we opened this deposit which had never been opened to produce based stone only.

By Mr. Kime (continues examination):

Q. Now explain that to us. Is that a particular kind of stone?

A. Yes, sir, this interstate work has a nine-inch sub-base of one type of stone, then it has another seven-inch type, and six of another type of stone; then it has another seven and a half of another type of stone; and then it has another two and a half of another type of stone; then it has an inch and a half of another type of stone. And since, in quarrying operations, this material has to be produced in advance and stockpiled considerably, and that is why we needed this area, because this—we can—well our production might be on this layer (indicating) and progress on down, and we catch up with the layer and we come back and maybe take the top layer, or work on the shoulder layer. So it is to be stockpiled, and it was essential that the material in the No. 1 location as well as the No. 2 location be stockpiled, and it had been crushed in advance, that is six months to twelve months in advance, in order to prosecute the work economically.

Comm. Hear. 1966

Mr. W. B. Adams

page 33 } Q. And in other words, the quarrying and the crushing and the stockpiling all go hand in hand?

A. Hand in hand. I mean that's right because he might be crushing one stone today and we might need another today; so therefore it's all crushed in advance, or put in a stockpile.

Q. Now coming to my original question, why was it that Blue Ridge couldn't open up on this land? I'm pointing now to the Thomas tract, which you all bought outright. Why couldn't they—why couldn't they get out the necessary stone you needed then?

A. Well, they had got the additional stone from the Todd people and as they went down and added expense to come out of the ramp (indicating). And as Mr. White said, that the economy of the drilling and shooting in that particular deposit would be greater expense to the Company than operating this deposit (indicating).

Q. What I'm asking you specifically is why didn't they come over here (indicating) and operate that? Or getting out enough rock to supply your demands? Could they get enough?

A. No, sir.

Q. Including your asphalt plant?

A. No, and the reason they couldn't, or didn't come here (indicating) was because we were crowding them for these various sizes as they was getting it, and they wasn't able to keep up. And we had to do something in order not to get a penalty from the Highway Department, and so we had to have some additional help.

Comm. Hear. 1966 page 34 }

Q. And that is why they agreed to the supplement?

A. Yes, they agreed to let Ararat come in and produce this base stone. You see, we had a $1,500 a day penalty on those jobs.

Q. Who employed Ararat?

A. Adams Construction Company.

Q. All right. How many times, as a matter of fact, was Ararat in there?

A. Twice. They moved in about two years. Now I could be wrong about this date—about two years I'd say after these people started crushing. They moved in and crushed say from about to November to about March, and then moved away.

Q. Moved clean away?

Mr. W. B. Adams

A. Moved away and stockpiled this material. Then when we got, as I said, this additional work, why we had to have some more, so I'm not sure whether it was eight months or twelve months or fourteen months that they moved back and crushed another two hundred and fifty thousand tons. And nobody ever opened their mouth about this quarry; we never heard it and never had the first complaint.

Comm. Hear. 1966 page 35

Q. Either time?

A. Either time. I don't believe people didn't even know that we were crushing, and the only three or four houses there are up there, which are not far from it.

Q. When you say "we didn't know—or they didn't know there was any crushing," when you say, do you mean "quarrying or crushing"?

A. Drilling and shoting and quarrying and sizing it and putting it in stockpiles. And, of course, we still have a stockpile here that we don't have anything to match with it (indicating). Now, we have had to ship in some stone and haul some stone.

Q. Since this operation was closed down?

A. Yes, sir.

Q. Following Mr. Matthews' letter you mean?

A. Yes, we still have about seven or eight or ten thousand tons of Blue Ridge stone there, but we can't use it because we don't have the other ingredients to go with it.

Q. Has your asphalt plant ever been closed?

A. No, sir.

Q. Has it been in operation since the general quarrying operation?

A. Yes, sir, we have operated every season on the State maintenance work. In fact, we hauled for the Town of Salem out there this last year, and we have completed two small maintenance schedules for the Highway Department this year out of this quarry (indicating), but we had to ship stone.

Comm. Hear. 1966 page 36

Q. That's in 1966?

A. Yes, sir.

Q. So that's never been closed down?

A. Never been closed. In fact, it took us over a year and a half to salvage these stockpiles of Ararat and that they finished. It was a continuous operation of a series of materials.

Mr. Kime: I don't believe I have any further questions.

Mr. W. B. Adams

CROSS EXAMINATION

By Mr. Fitzgerald:

Q. Mr. Adams, can you tell us who operated the asphalt plant shown on Defendant's Exhibit No. 1?

A. Adams Construction Company.

Q. Blue Ridge Stone Corporation had nothing to do with that operation?

A. No.

Q. Nor did Ararat have anything to do with that?

A. They furnished the stones.

Q. Ararat—Adams Construction Company is in the road building itself?

A. Strictly in road building and primarily in the paving business.

Comm. Hear. 1966 page 37 }

Q. I believe that you all look ahead where roads are likely to be built and—

A. Yes, from three to five years.

Q. —in advance and do research work of drilling and the quality of rock testing with anticipation of those things?

A. Yes, sir.

Q. And Adams Construction Company looked for stone in this area because it was known that Route, Interstate 81—

A. Somewhere was coming in.

Q. —was coming in the area, and that was the reason that you wanted to locate stone?

A. When we located this stone, it was done at least three years prior to the time that they ever decided on the actual location.

Q. But it was because of 81?

A. Yes, sir.

Q. And then subsequently because of 581?

A. Right, sir.

Q. Now where are you building roads in this area now?

A. Well, the State is—well, we're doing maintenance.

Q. Well, Adams Construction Company is constructing roads?

A. In the area of Roanoke County.

Q. Where you would be using stone from these quarries (indicating)?

A. Well, we have a contract now on, I think it is 601, running from Hollins back to, you know—

Comm.
Hear.
1966 Mr. Whitescarver: Whiteside.
page 38 } The Witness: Which should come out of this quarry. I mean that area is roughly half the distance as it is from our other location, or maybe a third of the distance of the other.

By Mr. Fitzgerald:
Q. But not on 81?
A. No, sir.
Q. And not on 581?
A. We have some work, yes, on 581 down in Roanoke. We have the contract with McDowell and Woods to complete 581 from where we left off.
Q. At the time you tied this property up, you were concerned about the construction of Route 81?
A. Well, yes, sir, we anticipated that it was coming and, of course, then also we anticipated that normally when a new section like that opens or a city moves that way, and they, or we think that and have the set-up.
Q. Now after you had acquired rights either by purchase or by acquiring the stone rights, Roanoke County advertised for the adoption of a zoning ordinance, didn't it?
A. Yes, sir, I think that was—I could be wrong about this —I think it's probably maybe two years after we
Comm. got permission, or there wasn't any zoning.
Hear. Q. Yes, sir.
1966 A. And that there was going to be a zoning
page 39 } ordinance and we would be zoned and was zoned.
Q. But just a minute now. At the time you first heard that there was a zoning ordinance, that it was going to be adopted, this land was not on the plan of the zoning for such use, was it not?

Mr. Kime: I don't know about that.
The Witness: I don't know about that either.

By Mr. Fitzgerald:
Q. Well, did you have someone come to the County or to any of the officials of the County?
A. I come to the County. I contacted the Chairman of the Board of Supervisors and asked him did they have any ordinance. I think Howard Starkey was Chairman of the Board. Then I went to the County Engineer, and we were

given the word, or given—I'm positive we have a letter when we even put the money down to be sure that we wouldn't be violating any ordinance.

Q. I don't want to *interupt* you, but my question was: when you realized that they were going to adopt a zoning ordinance after you had made these agreements and purchased this land, afterwards did you have anybody representing Adams Construction Company to appear before any Board of the County in reference to having a provision put in the zoning ordinance that would allow you to operate a quarry on some basis here?

Comm. Hear. 1966 page 40

A. Yes, this is my recollection of that. We didn't take the zoning ordinance at all under consideration at the first hearing of it. But because that we, in fact, we were drilling. Now I don't know how much we were crushing. And then there was the two other quarries, after the interstate was in, public or advertised. And there were two other locations involved. At the hearing I think it was on the Board, and one is back over here somewhere (indicating) and the other one at Glenvar.

Q. But none in this area. None of those?

A. Automatically the County put us in with those too. We didn't have to ask for it, we were already there and automatically the County put us in the same zone. I believe the Jackson property and the Churchill property was that, or it could have been the Rockydale property.

By The Commissioner (interposing):

Q. That is the Thomas property?

A. Automatically they put us in there.

By Mr. Fitzgerald (continues examination):

Q. Did you understand at the time that the County adopted this zoning ordinance that they wanted to put some limitation on the continuation of such operation in this M-2 zone?

A. The only thing that I recall on that is that you had to be in operation. But I didn't know anything about any pulling in and pulling out, if that is answering your question.

Comm. Hear. 1966 page 41

Q. You had no knowledge at all about the year's termination?

A. No, not the year's termination, not the slightest that we had in any idea. Now we didn't

have any idea if he wanted to move this asphalt plant and go do a job somewhere and in Marion and then come back within a year and come back. Now we didn't have the slightest idea of that.

Q. You just didn't have any idea of the provision in the ordinance?

A. No, and I don't think anybody else did either. If we had, it certainly would have been a different situation. That is certainly no knowledge of ours, that we knew of any restrictions that we had if we moved out.

Mr. Fitzgerald: That's all.

And further this deponent saith not.

* * * * *

Comm.
Hear.
1966
page 42 }

* * * * *

MR. PAUL B. MATTHEWS a witness of lawful age, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION

By Mr. Fitzgerald:

Q. State your name, please, sir?

A. Paul B. Matthews.

Q. And what is your official position in Roanoke?

A. Roanoke County Engineering Executive Officer.

Q. Are you also the Zoning Administrator of Roanoke County?

Comm.
Hear.
1966

A. Yes, I am.

Q. Mr. Matthews, were you employed by Roanoke County at the time the zoning ordinance was adopted?

A. Yes, sir.

Q. Now, were you present at certain hearings?

A. At all of them.

Q. At all the hearings?

A. Yes, sir, at all the hearings.

Q. At all the hearings?

Mr. Paul B. Matthews

A. Yes, sir.

Q. After the ordinance was advertised and the hearings were being held prior to the adoption of the ordinance, was there any question concerning quarry uses within certain areas of the County?

A. The original ordinance that was prepared did not make any provisions for rock quarries, asphalt plants. We were requested—the Planning Commission, to make some provisions for quarries due to the information and due to the forthcoming construction of the highways, and we were thinking about the interstate system and some provisions for those who were now existing. Not only quarrying, but this applied to bar pits and the brick companies, which were used.

I'm thinking particularly where, near Salem, that there was a quarry that had been included in the same.

Comm. Hear. 1966 page 44 } And we did make a provision in this ordinance that land that was put in any M-2 zoning district, that once it was used for a quarry and this was eliminated or discontinued and it could not be used for this purpose.

One of the reasons behind it was that some of the areas that were left had a potential to be developed for residential use, and if it wasn't some means made to protect the adjoining property, particularly used for quarries, then the adjacent properties would have a conflict in developing their lands. And this is why this was put in here at the request of the owners of the land.

The only concept of this zoning was not to make any provisions for quarries whatsoever. They would operate strictly under a non-conforming use and permit to be obtained by the Board, or from the Board.

Q. Excuse me. On that basis, did the Board of Supervisors then adopt the M-2 zone that is shown on Defendant's Exhibit No. 1?

A. There was a letter written to the Commonwealth's Attorney explaining two or three locations, not by name, just by numbers, and asked his opinion as to whether they should be permitted to open. And his reply was that he was of the opinion that they had made substantial effort and they should be permitted to operate.

And then the next thing came out was that to delineate certain districts.

Comm. Hear. 1966 Q. And as a result of that, the area shown in, or the—

Mr. Paul B. Matthews

page 45 } A. In this particular.
Q. —the zoned district shown was called Brown —
A. Yes.
Q. —zoned to the M-2 classification?
A. That's right. And this and other areas in the County that were similarly situated were all delineated on these maps as M-2 zones.
Q. On the basis that you have explained, that if their operations discontinued for a year—
A. Then they couldn't reopen.
Q. —they could not reopen?
A. That's correct, that's the interpretation.

* * * * *

Comm.
Hear.
1966
page 46 }

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CROSS EXAMINATION

Comm. By Mr. Kime:
Hear. Q. I want to ask him just one or two questions.
1966 Mr. Matthews, as a matter of fact, when you say
page 47 } when the original zoning ordinance planning was zoned, the ordinance was considered by Roanoke County Planning Commission, it didn't have any provisions in there in regard to permitting quarries or permitting brick plants and all?
A. That's right.
Q. As a matter of fact, there wasn't anything on earth but just a stereotype set of ordinances that were sent down here from Richmond, wasn't it?
A. The model ordinance I think is used by several localities was prepared I think by the State.
Q. Planning Commission?
A. Planning Commission, that's right.
Q. And based on Florida and New York and one or two other States?
A. That's right. And then you taken it from there and you go up or down with it.

Mr. Paul B. Matthews

Q. All right. And then, of course, it was discovered you had a brick plant out here that had been operating since before 1890 and they couldn't have operated unless it came under the grandfather clause. That's right, isn't it?

A. Some kind of permission, and I think it was at your request.

Comm. Hear. 1966 page 48

Q. I think it was at Pete Jolly's request.

A. Well, your firm anyhow. And that it was set aside on the map just exactly as this is set aside (indicating), and with the same conditions, that if they discontinued for a period of a year, then it would not be used any more.

Q. And you just pointed, in answer, or in your answer to Defendant's Exhibit No. 1 and you pointed to the area, of course, which is shaded to indicate that it was zoned. There's no question about that. For M-2 purposes or for quarry purposes?

A. That's correct.

Q. No doubt about that. Now then you also told us that it was surrounded by the yellow area, which indicates residential; and the green area which represents agriculture. Now this was all zoned prior to the time that 81 was ever constructed, or 581?

A. Oh, yes, yes, it was zoned in 1960.

Q. Thats' what I say, beforehand?

A. That's right.

Q. And, as a matter of fact, now the area here that you show as agricultural and all is right in this intersection, and the fact of the matter is that is actually a great deal out of business there and it's been zoned. I mean similar situated property in Roanoke County has been zoned for business purposes wherever you have those intersections, haven't they?

A. Well, I think you might find this interesction (indicating) would be a little unusual because you cannot get on or off of that darn thing, and the only way you will have, or you can get into here (indicating) and you'd have to come to 117 and get on a secondary route and go back, or you would have to go down to Hollins and get onto a secondary route, and then on and off of the interstate. I'll say this: Since the interstate 581 and 81 have been constructed, there has never been an inquiry in my office as to the use of this property for any purpose whatsoever.

Comm. Hear. 1966 page 49

Mr. Paul B. Matthews

Q. It is dead property then?

A. Yes, as far as the adjoining properties, it hasn't had any inquiry for residential development or business development.

Q. Not at all?

A. No, sir.

Mr. Kime: That's all I want to know then.

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A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded—Record No. 6843	1
Appeal Awarded—Record No. 6844	2
Record	3
Commissioner's Report	3
Memorandum Opinion—February 22, 1967	10
Decree—March 14, 1967	13
Notice of Appeal and Assignments of Error of the Board of Zoning Appeals of Roanoke County, et al.	15
Notice of Appeal and Assignments of Error of A. M. Evans, et al.	16
Witnesses:	
James M. White	17
W. B. Adams	38
Paul B. Matthews	50