211 VA. 658

Record No. 7328

In the
Supreme Court of Appeals of Virginia
at Richmond

CITY OF STAUNTON

v.

RALPH W. E. ALDHIZER, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF STAUNTON

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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7328

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 14th day of October, 1969.

CITY OF STAUNTON, Plaintiff in error,

against

RALPH W. E. ALDHIZER AND
ELEANOR M. ALDHIZER, Defendants in error.

From the Circuit Court of the City of Staunton
William S. Moffett, Jr., Judge

Upon the petition of City of Staunton, a municipal corporation, a writ of error and *supersedeas* is awarded it to an order entered by the Circuit Court of the City of Staunton on the 4th day of February, 1969, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Ralph W. E. Aldhizer and another were defendants; no bond being required.

RECORD

* * * * *

page 1 }

* * * * *

PETITION FOR CONDEMNATION

To the Honorable William S. Moffett, Jr., Judge of the Circuit Court of the City of Staunton, Virginia:

Your Petitioner, City of Staunton, files this Petition in accordance with Title 33, Chapter 1, Article 5 of the Code of Virginia of 1950, as amended, and such general laws as are applicable for the purpose of condemning the interest in the lands hereinafter described and alleges as follows:

1. George M. Cochran is the City Attorney for City of Staunton and has been authorized and directed to institute this condemnation proceeding in the name of and on behalf of City of Staunton, as set forth in Resolution approved by City Council of the City of Staunton on April 27, 1967, a certified copy of which, marked Exhibit "A", and asked to be read as a part of this Petition, is attached hereto.

2. The real estate which is affected in this proceeding lies in the City of Staunton, Virginia, and is further described as follows:

page 2 } Parcel 051:

Parcel 051 being as shown on sheet #10 of the plans for Rt. 250, State Highway Project 0250-132-101, R/W 201, being all the lands of the landowner lying on the S. W. (right) side of the Survey centerline and adjacent to the S. W. existing right of way line of present Rt. 250, from the lands of the landowner opposite approximate Sta. 58/86, (which is also the N. E. right of way line of Powell St.), to the lands of the landowner opposite approximate Sta. 58/93, containing 0.001 ac. more or less land. Together with the temporary right and easement to use the additional areas as shown, being required for the proper execution and maintenance of the work, containing 0.039 ac. more or less land. Said easement will terminate when the owner of the adjoining lands grades the property adjacent to the land to be conveyed so that there no longer exist cut and/or fill slopes, thus eliminating the necessity of the maintenance of slopes. Together with all interest in and to that portion of buildings Nos.

D-6 and D-8, as shown on the plat attached hereto and are located upon the remaining lands of said landowner.

In addition to the interest in the buildings set forth above, there is also included herewith the temporary right and easement to go upon the remaining lands of the landowner for the purpose of removing the said buildings, in whole or in part, located upon the remaining lands of the said landowner. This temporary right and easement is to terminate when the removal of the buildings has been completed.

The interest in the portion of the buildings D-6 and D-8 described above, which are located upon the remaining lands of the landowner, are not to be construed as transferring to the City of Staunton, Virginia, any permanent interest in the lands underlying the said portion of the buildings.

This being a part of the same land acquired by the landowner by deed dated March 15, 1960, from Mary E. Argenbright, widow, recorded in Deed Book 116, Page 143 in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia.

This property is also shown on a plan or plans on file in the Central Office of the State Highway Department, Richmond, Virginia, identified as Rt. 250, Project 0250-132-101, R/W 201, Sheet No. 10, showing outlined in Red the land taken in fee simple and in Green the temporary right and easement, a copy of which plans are hereto attached marked Exhibit "B" and asked to be read as a part of this Petition.

page 3

3. The rights and property taken and intended to be compensated for in this proceeding are fee simple title to the lands outlined in Red, including all interest in and to that portion of buildings No. D-6 and D-8, together with the temporary right and easement to use the additional areas as shown in Green on the aforesaid plans, all of which are described and set forth in Exhibit "B" and described in detail in Paragraph 2 of this Petition.

4. The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenance and repair of a portion or portions of a city street which is a part of the street system of the City of Staunton, and is also embraced in the Virginia Highway System, known as Rt. 250, Richmond Avenue, in the City of Staunton, Virginia, between The Chesapeake and Ohio Underpass and the eastern corporate limits of the City of Staunton.

5. Your Petitioner has made a *bona fide* but ineffectual effort to purchase said real estate and easements from the

owner thereof and has been unable to do so because of inability to agree upon the purchase price.

6. On or about May 18, 1967, Petitioner caused to be recorded in the Office of the Clerk of this Court, in Deed Book 158, at Page 521, Certificate No. 14, as provided by Article 5 of Chapter 1 of Title 33 of the 1950 Code of Virginia, as amended.

7. Thereupon pursuant to the provision of the aforesaid Article 5 of Chapter 1 of Title 33 of the 1950 Code of Virginia, as amended, title to the lands and easements described in Paragraph 2 vested in the City of Staunton.

8. Your Petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained by this proceeding are the following:

page 4 } Ralph W. E. Aldhizer, 203 Fraser Lane, Staunton, Virginia; Eleanor M. Aldhizer, 203 Fraser Lane, Staunton, Virginia, Peyton Cochran and George M. Cochran, Trustees, Barristers Row, Staunton, Virginia, and Planters Bank & Trust Company, Staunton, Virginia, Beneficiary.

There is an encumbrance of record affecting Parcel 051 consisting of a deed of trust from Ralph W. E. Aldhizer and Eleanor M. Aldhizer, his wife, to Peyton Cochran and George M. Cochran, Trustees, dated March 18, 1960, and recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia in Deed Book 116, Page 144, securing an obligation of $13,000.00 payable to the order of Planters Bank & Trust Company, Staunton, Virginia, as disclosed by title examination of the above-described lands, but the appointment of a Special Commissioner appears unnecessary because of the probability that the landowners and the beneficiary under said deed of trust will agree upon a division of the compensation.

WHEREFORE, your Petitioner respectfully prays to this Honorable Court in accordance with the provisions of Article 5 of Chapter 1 of Title 33 of the Code of Virginia of 1950, as amended, that commissioners may be summoned and appointed to ascertain and report what is the value of the interests in the land taken (including easements and including the easement for the relocation of utilities if such relocation is required) and damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue, beyond the enhancement in value, if any, to such residue, by reason of the taking; that this Court be directed to confirm the vesting of title in the City of Staunton as aforesaid

and take all such other steps to carry out the intents of Article 5 of Chapter 1 of Title 33 of the Code of Virginia of 1950, as amended, as may be necessary; and that
page 5 } your petitioner may have such other, further and general relief as the nature of the case may require.

And your Petitioner will ever pray, etc.

City of Staunton,

By George M. Cochran
Counsel

George M. Cochran
Counsel for Petitioner

STATE OF VIRGINIA

County of Augusta, to-wit:

This day personally appeared before me, the undersigned Notary Public, George M. Cochran, and made oath that he is City Attorney for the City of Staunton, Virginia, and is authorized to file the foregoing Petition on behalf of the City of Staunton and that the facts and statements set forth therein are true and correct to the best of his knowledge and belief.

Given under my hand this 15th day of January, 1968.

Maxine T. Benson
Notary Public

My commission expires June 28, 1971.

Filed in the Clerk's Office of the Circuit Court of the City of Staunton, Va., the 15th day of January, 1968.

Teste: Margaret W. White, Dep. Clerk.

* * * * *

page 29 } INSTRUCTION NO. 4

A.

The second duty of the Commissioners is to ascertain the damages, if any, to the residue of the property resulting from the taking.

B.

The measure of damages to the residue of the land is the difference between the fair market value of the residue immediately before the taking and its fair market value immediately after the taking.

C.

While the Commissioners may give consideration to individual items of damage, they should not compute the damages to the residue by simply adding these items. The determination of damages should be based upon the overall difference in the fair market value of the residue before and after the taking.

The Commissioners should consider every circumstance, present or in the reasonably near future, which affects the value of the residue. Remote and speculative advantages and disadvantages are not to be considered.

page 30 } In arriving at the damages to the residue of the land, the Commissioners should consider the reasonable costs, if any, of adjusting the residue of the property to the new conditions, and the inconvenience, if any, to which the landowners will be subjected in the future operation of their property caused by the taking. The Court also instructs the Commissioners that the construction of a median strip in the street is an exercise of police power and cannot be considered in determining damages.

E.

The landowners have the burden of proving, by a preponderance of the evidence, damage to the residue which is not disclosed by the Commissioners' view of the property.

F.

While the parties to this proceeding have presented testimony which the Commissioners should consider carefully, the Commissioners are not bound by the opinion of the witnesses who have testified, or by the apparent weight of evidence. The Commissioners, having viewed the property, have a right to exercise their own judgment, based upon facts obtained by their view, and in accordance with these instructions. This, however, does not permit the Commissioners to make an arbitrary or *capricous* award.

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G.

The Commissioners should not make any award by what is termed the "Quotient method"; that is, a method whereby each Commissioner indicates on a slip of paper or otherwise the amount which he thinks should be awarded, and all the Commissioners agree in advance to make the award the amount obtained by dividing the aggregate amount thereof by the number of Commissioners. An award made in this manner is not valid.

H.

It is not necessary that all Commissioners shall agree upon the report, but a majority have the right to file their report. If the minority desire to do so, they may file a minority report.

I.

The Commissioners are required to report two separate items of their award:

First: The fair market value of the land and easements actually taken by the City.

Second: The damage, if any, to the residue of the property resulting from the taking, beyond the enhancement, if any, to such property.

* * * * *

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* * * * *

REPORT OF COMMISSIONERS

TO: The Honorable William S. Moffett, Jr., Judge of said Court:

We the undersigned Commissioners appointed by the above-named Court on November 1, 1968, to fix the value of the land, buildings and easements therein taken and damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of the taking, do hereby certify that on November 1, 1968, we were duly

sworn and went upon said lands in the custody of the City Sergeant of the City of Staunton, Virginia, or one of his Deputies, to view the same as directed by the Order of said Court.

PARCEL 051:

Parcel 051 being as shown on sheet #10 of the plans for Rt. 250, State Highway Project 0250-132-101, R/W 201, being all the lands of the landowner lying on the S. W. (right) side of the Survey centerline and adjacent to the S. W. existing right of way line of present Rt. 250, from the lands of the landowner opposite approximate Sta. 58/86, (which is also the N. E. right of way line of Powell St.), to the lands of the landowner opposite approximate Sta. 58/93, containing 0.001 ac. more or less land. Together with the temporary right and easement to use the additional areas as shown, being required for the proper execution and maintenance of the work, containing 0.039 ac. more or less land. Said easement will terminate when the owner of the adjoining lands grades the property adjacent to the land to be conveyed so that there no longer exist cut and/or fill slopes, thus eliminating the necessity of the maintenance of slopes. Together with

page 34 } all interest in and to that portion of buildings Nos. D-6 and D-8, as shown on the plat attached hereto and are located upon the remaining lands of said landowner.

In addition to the interest in the buildings set forth above, there is also included herewith the temporary right and easement to go upon the remaining lands of the landowner for the purpose of removing the said buildings, in whole or in part, located upon the remaining lands of the said landowner. This temporary right and easement is to terminate when the removal of the buildings has been completed.

The interest in the portion of the buildings D-6 and D-8 described above, which are located upon the remaining lands of the landowner, are not to be construed as transferring to the City of Staunton, Virginia, any permanent interest in the lands underlying the said portion of the buildings.

This being a part of the same land acquired by the landowner by deed dated March 15, 1960, from Mary E. Argenbright, widow, recorded in Deed Book 116, Page 143 in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia.

Upon a view of the property and upon such evidence as was before us we did fix the value of the aforesaid land, buildings and easements therein taken by the City of Staun-

ton and the damages which may accrue to the residue, beyond the enhancement in value to such residue by reason of the taking as follows:

Value of Land, Bldgs. and Easements	Damage, if any, to Residue	Total
$20,000.00	$500.00	22,500.00
2,000.00	$500.00	
$22,000.00		

Given under our hands this 1st day of November, 1968.

C. S. Peeler
J. M. Kunkle
Murray Wright
A. Russell Thomas
Irvin Weinberg
Commissioners

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* * * * *

ORDER FILING REPORT
OF COMMISSIONERS

It appearing unto the Court that the Commissioners heretofore appointed herein have made their Report dated November 2, 1968, the Court doth accordingly ORDER that said Report of Commissioners be filed herein.

Enter:

Wm. S. Moffett, Jr.
Judge

Entered Nov. 2 1968
Chancery Order Book No. 18
Page 355

page 36 }

* * * * *

EXCEPTIONS TO REPORT OF COMMISSIONERS AND MOTION

City of Staunton excepts to the Report of Commissioners filed herein on November 2, 1968, on the following grounds:

1. The Court erred in admitting, over petitioner's objection, evidence of the cost of constructing the building now located on the subject property, replacing the buildings thereon acquired in these proceedings.
2. The Court erred in refusing to grant petitioner's Instruction No. 4 as tendered.
3. The award of said Commissioners is contrary to the law and to the evidence and is without evidence to support it, and could not have been based upon the Commissioners' view of the property and is excessive.

MOTION

Petitioner moves the Court for a new trial.

City of Staunton,

By Counsel.

George M. Cochran,
Cochran, Lotz and Black,
Barristers Row,
Staunton, Virginia,

Counsel for Petitioner.

page 37 } I hereby certify that a copy of the within Exceptions and Motion was mailed to W. B. Timberlake, Jr., Esquire, First Security Bank Building, Staunton, Virginia, Attorney for Defendants, this 6th day of November, 1968.

George M. Cochran

Filed Nov 6 1968 Circuit Court Clerk's Office City of Staunton, Va.

Edith H. Paxton, Clerk

By M. W. White, D. C.

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* * * * *

ORDER OVERRULING EXCEPTIONS TO REPORT OF COMMISSIONERS AND MOTION FOR NEW TRIAL AND CONFIRMING REPORT OF COMMISSIONERS.

This cause came on to be heard on January 7, 1969, upon Petitioner's Exceptions to Report of Commissioners and Motion for a New Trial, and was argued by counsel. The Court, after hearing argument, and being of the opinion that said Exceptions and Motion are not well taken doth accordingly ADJUDGE, ORDER and DECREE that the same be and they are hereby overruled, to which ruling of the Court Petitioner, by counsel, excepts.

The Court doth further ADJUDGE, ORDER and DECREE that the Report of Commissioners, which Report, together with the Certificate of the Clerk who administered the oath to the said Commissioners, was duly returned to and filed by the Court herein on the 2nd day of November, 1968, wherein the following award was made:

Parcel 051	Value of land, Buildings and Easements	Damage, if any, to Residue	Total
Ralph W. E. Aldhizer and Eleanor M. Aldhizer, his wife	$22,000.00	$500.00	$22,500.00

be and the same hereby is, confirmed and approved, to which ruling of the Court Petitioner, by counsel, excepts.

page 39 } And it appearing to the Court that the City of Staunton has heretofore caused to be recorded in the Clerk's Office of this Court Certificate No. 14 for $13,774.00 as to Parcel 051, and that the title to the aforesaid property thereby vested in the City of Staunton in accordance with the provisions of Title 33 of the Code of Virginia, 1950, as amended, the Court doth ADJUDGE, ORDER and DECREE that the City of Staunton pay to the Clerk of this Court on behalf of Ralph W. E. Aldhizer and Eleanor M. Aldhizer, his wife, and Planters Bank & Trust Company, Staunton, Virginia, the sum of $8726.00, with interest at the rate of 5% per annum on the sum of $8726.00, this being the excess of the award over the amount represented by the aforesaid Certificate from May 18, 1967, the date on which

said Certificate was duly recorded in the Clerk's Office, and said sum of $13,774.00 was deposited with the Clerk to the date upon which the additional sum is paid into Court; and the Court doth further ORDER that City of Staunton be released from any liability by virtue of the recordation of the Certificate aforesaid, and that the proceedings herein be recorded and indexed as provided by Section 33-67.1 of the Code of Virginia of 1950, as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where the said Certificate No. 14 is spread, to which ruling of the Court Petitioner, by counsel, excepts. And the Court doth further ORDER that the City of Staunton pay the costs herein including $20.00 each to the Commissioners appointed herein, namely, J. M. Kunkle, A. Russell Thomas, Irvin Wineberg, Murray Wright and C. S. Peeler, and the sum of $5.00 each to Charles E. Furr, J. Erman Bryan, G. Conrad Harris, and J. Russell Wisely, who were summoned and appeared but did page 40 } not serve herein, and the same shall be charged and taxed by the Clerk of this Court as part of the costs herein, as provided by law.

And upon said payments to the Clerk herein provided for, nothing further will remain to be done in this cause and the Clerk is hereby ORDERED to strike the same from the docket, to which ruling of the Court Petitioner, by counsel, excepts.

ENTER: 2/4/69

Wm. S. Moffett, Jr.
Judge

I ask for this:

Wm. B. Timberlake, Jr.
Counsel for Defendants

Seen:

Geo. M. Cochran
Counsel for Petitioner

Entered Feb. 4, 1969
Chancery Order Book No. 18
Page 451

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* * * * *

NOTICE OF TENDER
OF TRANSCRIPT.

TO: W. B. Timberlake, Jr., Esquire,
Timberlake, Smith and Thomas,
First Security Bank Building,
Staunton, Virginia,
Counsel for Defendants.

You are hereby notified that the transcript of evidence taken in the above case will be tendered to the Honorable William S. Moffett, Jr., Judge of the Circuit Court for the City of Staunton, for certification at his office in the Augusta County Court House on March 24, 1969, at 9:45 A. M., or as soon thereafter as the matter may be considered. The transcript has been lodged with the Clerk of the Circuit Court for the City of Staunton where you may examine the same.

City of Staunton,

By George M. Cochran
George M. Cochran, Counsel.

I hereby certify that a copy of the within Notice was mailed to W. B. Timberlake, Jr., Esquire, Timberlake, Smith and Thomas, First Security Bank Building, Staunton, Virginia, counsel for Defendants, this 14th day of March, 1969.

George M. Cochran

Filed in the Clerk's Office of the Circuit Court of the City of Staunton 3-14-69 11:05 A. M.

Teste:

G. Franklin Reese, Dep. Clerk.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

NOTICE OF APPEAL:

Notice is hereby given that the City of Staunton will apply for an appeal from the Order in the foregoing case entered on February 4, 1969, by the Circuit Court of the City of Staunton Overruling Exceptions to Report of Commissioners and Motion for New Trial and Confirming Report of Commissioners.

ASSIGNMENTS OF ERROR:

Said City of Staunton, by counsel, assert as their Assignments of Error the following:

1. The Court erred in admitting, over petitioner's objection, evidence of the cost of constructing the buildings now located on the subject property, replacing the buildings thereon acquired in these proceedings.
2. The Court erred in refusing to grant petitioner's Instruction No. 4 as tendered.
3. The award of said Commissioners is contrary to the law and to the evidence and is without evidence to support it, and could not have been based upon the Commissioners' view of the property and is excessive.

CITY OF STAUNTON

By George M. Cochran
Of Counsel

page 43 } George M. Cochran

By George M. Cochran
Cochran, Lotz and Black
Barristers Row
Staunton, Virginia

and

Robert A. Johnson

By George M. Cochran
Special Counsel
Virginia Department of Highways
1221 East Broad Street
Richmond, Virginia

I hereby certify that I have this 26th day of March, 1969, mailed a true copy of the foregoing Notice of Appeal and Assignments of Error to W. B. Timberlake, Esquire, of the firm of Timberlake, Smith & Thomas, Industrial Bank Building, Staunton, Virginia.

George M. Cochran

Filed 1969 Mar 26 PM 3:03 Circuit Court Clerk's Office City of Staunton, Va.

Edith H. Paxton, Clerk

By E.H.P., D. C.

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* * * * *

STIPULATION

Petitioners by counsel and Defendants by counsel do hereby stipulate that Instruction No. 4 was submitted to the Court by counsel for Petitioner at the trial of this case in form set forth in the copy attached hereto, and was overruled by the Court, and said overruled Instruction No. 4 shall become a part of the record in this case.

George M. Cochran
Counsel for Petitioner

W. B. Timberlake, Jr.
Counsel for Defendants

Certified
Wm. S. Moffett, Jr.
Judge 3/31/69

Filed 1969 Mar 31 AM 11:57 Circuit Court Clerk's Office City of Staunton, Va.

Edith H. Paxton, Clerk

By Margaret W. White, D. C.

page 45 } INSTRUCTION NO. 4

A.

The second duty of the Commissioners is to ascertain the damages, if any, to the residue of the property resulting from the taking.

B.

The measure of damages to the residue of the land is the difference between the fair market value of the residue immediately before the taking and its fair market value immediately after the taking.

C.

While the Commissioners may give consideration to individual items of damage, they should not compute the damages to the residue by simply adding these items. The determination of damages should be based upon the overall difference in the fair market value of the residue before and after the taking.

The Commissioners should consider every circumstance, present or in the reasonably near future, which affects the value of the residue. Remote and speculative advantages and disadvantages are not to be considered.

page 46 } The Court also instructs the Commissioners that the construction of a median strip in the street is an exercise of police power and cannot be considered in determining damages.

E.

The landowners have the burden of proving, by a preponderance of the evidence, damage to the residue which is not disclosed by the Commissioners' view of the property.

F.

While the parties to this proceeding have presented testimony which the Commissioners should consider carefully, the Commissioners are not bound by the opinion of the witnesses who have testified, or by the apparent weight of evidence. The Commissioners, having viewed the property, have a right to exercise their own judgment, based upon facts obtained by their view, and in accordance with these instruc-

tions. This, however, does not permit the Commissioners to make an arbitrary or *capricous* award.

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G.

The Commissioners should not make any award by what is termed the "Quotient method"; that is, a method whereby each Commissioner indicates on a slip of paper or otherwise the amount which he thinks should be awarded, and all the Commissioners agree in advance to make the award the amount obtained by dividing the aggregate amount thereof by the number of Commissioners. An award made in this manner is not valid.

H.

It is not necessary that all Commissioners shall agree upon the report, but a majority have the right to file their report. If the minority desire to do so, they may file a minority report.

I.

The Commissioners are required to report two separate items of their award:

First: The fair market value of the land and easements actually taken by the City.

Second: The damage, if any, to the residue of the property resulting from the taking, beyond the enhancement, if any, to such property.

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page 1 }

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Transcript of trial of above matter, heard at Staunton, Virginia, on November 1st and 2nd, 1968, the Honorable William S. Moffett, Jr, presiding.

The following evidence was taken and reduced to writing by the undersigned reporter and is hereby certified to be a true and correct transcript of same.

Marjorie O'Roark Associates

By Jon D. Watson

For the City: George M. Cochran, Esquire

For the Landowner: W. B. Timberlake, Esquire

* * * * *

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Mr. Timberlake:

* * * * *

page 8 }

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Now the situation that has been created by this taking is this—at the time of the taking Mr. and Mrs. Aldhizer had a two-story building with an *auxilliary* building to the side which was used as a store room—one story—that basic building, the two-story building, and the evidence which will be introduced before you from the standpoint of the property owners as to value and nature concerning that building, a two-story building that was the main building in the take, but that building essentially was devoted to the conduct—on the first floor it was devoted to the conduct of a mercantile establishment, that is, it was devoted wholly to the use of a commercial or grocery business. Mr. and Mrs. Aldhizer had owned and operated that business over a period of years. The second story constituted an apartment which was *regulary* rented at a rather substantial source of income to the owners, independent of the first floor operating which I say was of a mercantile operation nature. As Mr. Cochran told you, you will be involved here in the determination of two questions: the value of the property taken in this proceeding from Mr. and Mrs. Aldhizer, which essentially—outside of a small portion of land—essentially

page 9 }

are these buildings, and it will be the question for you to determine as to the top value of this take of the buildings based upon their reasonable market value, and in consideration of the use, the highest and best use to which they were put. The first floor was for business, and the second floor right above it was for residential purposes for the rent—those facilities having been rented for a number of years, at a figure of $65.00 per month. Then it will be your further obligation to determine the damage to the residue of the Aldhizer's property resulting from this take. And in consideration of that damage the Court will tell you that it is proper to consider the reasonable expense to which these owners have been put in adapting the residue of their property to proper and reasonable use. The evidence will show
page 10 } you that in that connection they have constructed a new one-story building that does not substitute for or take the place of the old building from the standpoint that it has no second story with the rental space above that had existed in the former building—it's a one-story mercantile building, as you will see when you take your view, moved back to the property line and there is no space in the rear for either parking or delivery. There is some space in front and on the side for ingress and egress. We feel that it would be proper for you to consider the expense to which these parties have been put in seeking to adapt the residue of that property to the use to which it was put and the evidence will show you that in the construction of the building alone —which Mr. Aldhizer will tell you is in no way a proper substitute for the facilities he had before—he had an expenditure of approximately $20,800, and we feel that under the Court's instructions it will be—aside from the value of the property taken—it will be proper for you to consider the reasonable and proper expense to which these parties were put in seeking to adapt the residue of that property to the usability that it had before this taking. I won't go into further details now. You will be afforded an opportunity to view the property and then you will hear argument and evidence from both sides.

* * * * *

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* * * * *

ALLEN E. TURNER - DIRECT

By Mr. Cochran:

Q. Please state your name, age, residence and occupation?

A. My name is Allan E. Turner, my age is 46, my residence is Oakton, Virginia, my occupation is Real Estate Broker and Appraiser.

Q. How long have you been engaged in that business?

A. As a broker for the past 18 years, and as an appraiser full time for the past 10 years. My work has been in Virginia, West Virginia, Maryland, the District of Columbia—

Q. Would you state any particular educational qualifications that you have for this type of work?

A. I have a Master degree in Economics and page 14 } Agricultural Economics, and I'm just about six months short of the Doctorate in the double major of both those fields. I have taught appraising in Arlington-Fairfax educational system to adults. I also have a degree in Accounting. I have worked for the office of Business Economics as a business analyst and an economics analyst.

Q. Do you belong to any appraisal organizations or societies?

A. Only as associate of the Society of Residential Appraisers and the American Society of Appraisers.

Q. Do you appraise on a professional basis for private landowners as well as public agencies?

A. Yes sir. My private appraisal work is as well for condemnation proceedings, and it's getting more and more involved in appraisals for states.

Q. Is the bulk of your professional appraisal work at this time and during the last several years in the State of Virginia?

A. Yes sir.

Q. Were you employed to make an appraisal of the property with which we are concerned today owned by Mr. and Mrs. Aldhizer?

A. Yes sir. Gentlemen, the date of take is May 18, 1967.

Q. Mr. Turner, did you undertake to familiarize page 15 } yourself with the plans to determine what was being acquired by the City of Staunton?

A. Yes sir I did.

Allen E. Turner

Q. And did you undertake to make an appraisal of the value of what property, including easements, was being acquired together with damage, if any, to the *residuee* of the Landowners? Beyond any enhancement from the take?

A. Yes sir I did.

Q. What approaches did you use in reaching your determination?

A. I used the three approaches to value—the income approach, the cost approach, and the land value comparison approach as to value.

Q. Did you consider any other approaches and if not, which, if any, of the three approaches did you actually use in this case? And why?

A. I used the cost approach and the market approach because a study of the income approach to value indicated that the property at best was worth only approximately half of what it would sell for by comparison with the market. The income approach simply is very little, and I base this income judgement on the rent that was received on the upstairs dwelling and computed a rent value to the building below giving consideration to income data provided by the owner for a three year period. That's the net income from the operations—

page 16

Q. What rental figure were you furnished for the apartment?

A. The rent for the apartment was $45.00 per month plus utilities, and the *tennant* had lived there seven years. His name was Joseph Sigler. It was a month to month lease, but it was a good quality income stream as evidenced from the seven year occupancy.

Q. All right, would you continue to outline the approach which you used to determine the value of what is being acquired by the City of *Staunon* from the Aldhizers?

A. Yes sir.

Q. Let me ask you this first—what in your opinion was the highest and best use of the property?

A. The highest and best use of the property was as it was —then improved by this structure recognizing that there was serious obsolescence in the building by virtue of its proximity to the property line. But the buildings definitely contributed value to this.

Q. Did you determine the zoning—

Mr. Timberlake: Did he determine what the highest and best use was?

Allen E. Turner

page 17 } Mr. Cochran: The use it was being put to.

A. The zoning is R-3, single family dwelling residential unit.

Q. Then of course this was a non-conforming use?

A. Yes sir.

Q. All right, Mr. Turner, go ahead and *procede* to tell the Commissioners the approach or approaches which you used and the results of using the approaches.

A. Yes sir. Gentlemen, the tract of land to begin with is comprised of 0.129 acres, which is 5600 square feet of land. The property was improved by—I have some photographs.

Q. Did you take some photographs of the buildings which have since been demolished?

A. Yes sir, and the date was April 10, 1965.

Q. Did the pictures that you took at that time fairly portray the condition of the property and its appearance as of May 18, 1967?

A. Yes sir.

Mr. Timberlake: Did I understand him to say the pictures were taken April 10, 1965?

A. Yes sir.

Q. All right now Mr. Turner, do you wish to page 18 } refer to these pictures now, or do you wish to continue to explain your method of determining value?

A. I go right into the method of determining value. Gentlemen, in regard to the study of the income approach to the value of this property, taking the rent of the apartment that was yielded by the apartment—$45.00 a month—that's $540.00, and this was an owner used lower floor and set a rent of $45.00 per month on this store area. Arriving at the $45.00 per month I took into consideration the income data that was furnished me, I also considered it as a upper limit of rent that would be yielded by the store. This consumes —$45.00 per month would consume approximately 20 to 25% of the net income reported to me for the years '64, '63, and '62. This is the gross income data that I was furnished Mr. Cochran.

Mr. Timberlake: Did I gather that this witness is suggesting that this information was furnished to him by Mr. Aldhiser?

Allen E. Turner

A. Yes sir.

Mr. Timberlake: Personally?

A. Yes sir. This is the data, sir, if you wish to—. Gentlemen, that indicates a gross income of $1,080.00 for this property, and analyzing expenses and taxes on the property of $162.00, proper insurance of $50.00, maintenance
page 19 } and repairs of $100.00, and *Vacany* loss of $45.00 —reserved for vacancy loss—and 5% for managing this investment, which is $54.00, the total expenses are $411.00, which leaves $669.00 of income that's being yielded by the land and the improvements. I appraised the land at $2,500.00 for the site.

Q. How did you arrive at that figure?

A. I arrived at that figure by market comparison, which is the basis of establishing land value.

Q. How much does that figure then—do you figure it on an area basis?

A. Yes sir. That amounts to approximately $.45 a square foot for the land, or $19,380 an acre rate. That's the effective value of this 5600 square feet.

Mr. Timberlake: What per acre?

A. $19,380.00. That's the acre rate. The square foot rate, gentlemen, is approximately $.45.

Q. Now you valued the land—that's the total land in this property at $2,500.00?

A. Yes sir. Gentlemen, considering that the land should yield at a rate of 7% rate of return in an investment, that's the proper capitalization rate, that requires $175.00 of income, which leaves $494.00 that's being returned
page 20 } out of the income stream on the buildings and improvements. I considered that by virtue of the nature of these improvements, their age, their condition, that they would be recovered over—an investor would look to recovering their value over a 20 year period, and at a 5% rate of recovery, a 6% interest rate on the investment, which means an 11% capitalization rate for the improvements. This projects a value of the improvements—based on $494.00 income—of $4,491.00. The value of the land at $2,500.00 added to it projects a value by the income approach of $6,991.00.

Q. Then did you exclude this approach after having considered it and turned to another method of determining value?

Allen E. Turner

A. Yes sir.

Q. All right. Explain what that was.

A. Gentlemen, this type of improvement is typically—will analyze out similar to this. The income approach will not set the high level of value that will be reflected in the market comparison approach. People generally buy this type of an improvement to obtain a way of life income operating as—operating it themselves and that is one of the reasons they pay more than will be realized by someone content to operate

page 21 } an improvement of this kind to yield them a return—a general investment rate of return, and people will pay for it at a higher price in order to obtain a way of life income out of real estate. For this reason I have considered that the cost approach and the land value comparison approach was the proper approach to the value, and with regard to the market I said that they found a value of $2,500.00 for the land. With regard to the building it's comprised of one two-story area and porches, and the reproduction cost of this building—

Q. Well before we get into the building why don't you tell us what figure then you valued the land being taken?

A. The land I valued at $2,500.00.

Q. But all of the land wasn't being taken. I'm talking about the land being taken in fee simple—the take in other words.

A. The total value of the take?

Q. That's right.

A. Yes sir. The total value of the taking gentlemen is $11,407.00.

Q. Well that's the—that includes the land and buildings that were taken too. What I want you to do first is give me the value of the 44 square feet of land taken in fee simple.

A. The 44 square feet of land taken in fee simple

page 22 } is $19.00.

Q. All right, and based on what rate?

A. Based on $19,380.00 an acre rate. Or $.45 a square foot.

Q. All right, did you find that evaluation supported by comparable sales or otherwise?

A. Yes sir. I've studied the market on Route 250 from within the City Limits out to this—out to the county line and past the county line. The zoning is mixed Business and Industrial and Residential. In Augusta Terrace there's the residential zoning and typical residential use there. The value, however, is I think influenced by the frontage on Route 250, and at $.45 a foot it's reflecting the appraised value. I

also considered appraising this site—the topography of this site—just simply removing the dwelling from the site, and it leaves a topography of a level where the building is and then a rise of about 9′ and then rises going back to the rear property line. I took that into consideration in the appraised value that I found.

Q. All right sir. Now go ahead and *procede* with the other evaluations which you concluded to be proper in this case.

A. The—

Q. What about the construction easements and
page 23 } the slope easement, both of which were temporary?

A. For the 0.039 acre temporary construction easement a value of $100.00. The total for the land and the easement is $119.00.

Q. That's land and all the easements?

A. And all the easement, yes sir.

Q. What about the buildings?

A. The depreciated value of the one and two story frame store dwellings—I found a value of $10,709.00.

Q. All right. How did you arrive at that figure?

A. The reproduction cost on the one and two story frame dwelling is necessarily broken into five parts, all at different rates of value. The building reproduces at a reproduction cost of $21,419.00.

Q. Now how did you determine that reproduction cost?

A. I'd like to provide the floor plan of the—

Q. It is a floor plan of the building?

A. Yes sir.

Q. Including the store and apartment?

A. Yes sir.

Q. Did you prepare this yourself?
page 24 } A. Yes sir. This shows the store area down below, and this is the apartment on the second floor.

Mr. Cochran: Your Honor, I would like this put into evidence and marked as Petitioner's Exhibit #2.

Court: All right, Mr. Cochran, if there is no objection it will be introduced and so marked for identification.

Q. All right, Mr. Turner, referring to this will you *procede* to testify concerning the building?

A. Yes sir. The breakdown of areas, gentlemen, for the

two-story area of the building, which was 1,360 square feet at $13.00 a square foot is $17,680.00—

Mr. Timberlake: How many square feet?

A. 1,360 square feet at $13.00 a square foot. For the one-story area, 306 square feet at $4.00 a square foot—$1,224.00. For this two-story open front porch, 276 square feet at $7.00 a square foot—$1,932.00. For the open rear porch of 106 square feet at $5.50 a square foot—$583.00. The total is $21,419.00.

Q. And that's reproduction cost?

A. Yes sir.

Q. All right. Now what did you determine the fair market value of that building?

page 25 } A. I determined the fair market value of the building to be $10,709.00.

Q. How did you arrive at that figure?

A. That's based upon a 50% depreciation of the building. I considered in that depreciation, gentlemen, that the physical —by virtue of its age and its condition was 30%, and 10% was the reserve for maintenance and repairs to that building, and 10% of the depreciation that I considered is functional —it's outdated architecture, and it had a poor functional floor plan as viewed from the floor plan itself.

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page 37 }

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A. Yes sir. Photograph #1, gentlemen, is a photograph looking from this point here into the dwelling—into the dwelling store. The dwelling store—this mark here is the opening porch on the double-decker front porch. This is the main dwelling, this is the one-story addition, and this is a rear porch. This is an entry way coming into the property and the two buildings that were additionally acquired. This photo is looking up at Powell Street, and the corner of the building.

* * * * *

Q. Is that photograph #4?

Allen E. Turner

A. Yes sir. On this photograph this is the
page 38 } driveway going into the property here, gentlemen,
right here. It's looking from the west side of Powell Street northeast into the—showing the rear of the dwelling and down this side of the building. This is the side of the building and that's the rear.

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page 40 }

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Photograph #18 is a photograph looking from the center of Route 250 up Powell Street showing the side of the dwelling, nature of—the nature of Powell Street before the taking, and the car shown parked there in the gravel entry way. Photograph—

Q. In which direction was that taken?

A. That was looking south from Route 250. Photograph #24 is looking from the center of Route 250 southwesternly into the front of the building. It shows the complete frontage
—this is the one-story area and this is the two-
page 41 } story area.

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page 42 }

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Q. Now, Mr. Turner, you have put photographs into evidence showing the buildings and property—I believe before that you had reached a point in your testimony where you were testifying as to the fair market value of the main building, D-6?

A. Yes sir.

Q. Is that correct?

A. That's correct sir.

Q. And I believe that you had given your opinion that the fair market value was $10,709.00?

A. Yes sir.

Q. All right, sir. Now will you *procede* then to give your other evaluations of the lands or easements taken by the City including other buildings?

Allen E. Turner

A. Yes sir. Gentlemen, for the frame structure that was acquired that is seen as D-7 on the plans, it is comprised of a frame shed 71½ square feet in good condition,
page 43 } at $3.50 a foot—the cost to reproduce that building $250.00. I considered it had a use value based on its function on the side of $75.00—that was its contributing value to the property—$75.00. For the third building, which is a frame shed, and shown as D-8 on your plans—

Q. Now what was D-7 used for?

A. It was storage—a frame storage shed.

Q. All right. Now D-8?

A. D-8 is a garage, 152 square feet, had a reproduction cost on that building of $5.00 per square foot or $760.00. It had a poured concrete foundation and was in average condition. I considered a contributed value of $300.00 to the property.

Q. What was the construction of that garage?

A. It was gable roof and crip metal roofing, painted frame siding, a soiled floor, a poured concrete foundation, and in average condition.

Q. All right, what about the storage shed? What was its construction?

A. It had shed roof with rolled roofing, painted vertical board siding, wood floor, unfinished interior, it was set on four inch posts set in the ground for its foundation, and I had it rated here descriptively as fair condition.

page 44 } Q. All right, sir, now were there other *compensible* items in your opinion?

A. Yes sir. That gave for a total value of the buildings, gentlemen, the three buildings, $11,084.00. That was the total value of the three buildings acquired. Also acquired or affectively acquired was miscellaneous fencing on the property that totaled $72.00 in appraised value. And miscellaneous side improvements, which included the driveway, the clothesline, landscaping, and abandoned cisterns, total of $132.00. The total value of the taking of land, buildings, fencing, and these side improvements is $11,407.00.

Q. Maybe I left something out—I had a value of buildings at $11,084.00.

A. Yes sir.

Q. And miscellaneous fencing $72.00?

A. Yes sir.

Q. And miscellaneous side improvements were what?

A. $132.00.

Q. $132.00?

Allen E. Turner

A. Yes. And the value of the land and the easements $119.00.

Q. All right, and that figure then for the land, page 45 } easements, and buildings taken was $11,407.00?

A. That's right.

Q. All right, Mr. Turner, did you consider the matter of damages, if any, to the residue of the landowner's land over and above any enhancement from the project?

A. Yes sir.

Q. What was your conclusion in this respect, Mr. Turner?

A. Gentlemen, in regard to the affects of this taking on this property, I considered the fact that the acquisition of the building in the taking was beneficial to the remainder for the reason that it relies on half its use as a store and it also relies as a store on parking—there is no on-site parking there except for a *tennant* area. Now this is a neighborhood store and parking is essential. In valuing this property it is recognized that parking was very essential to the income from it and to the use of the property. If the dwelling were just remaining here, had they not taken the dwelling, it would have been totally functionally *obsolest* on the first floor area by virtue of lack of parking, and I considered that this was actually an economic benefit peculiar to this property—the actual acquisition of the building—in that the building fronted fully on the front property line right to page 46 } the front property line and there was no possibility of curing access to that building from even the rear or the side. As to the site that's left there with the building removed, the front part is graded down—with the building removed—the front part is graded down as it was to *accomodate* the structure that existed, and there are not any limitations placed on this site or problems there after the taking that didn't exist before the taking as to this site as it *accomodated* this structure. In effect, what I considered is that in the after condition there is a lot here with a problem for utilization for its use. It is zoned Residential, and the taking itself did not contribute any of these conditions that involved a re-development plan of this property. There were the topography limitations of the site before the take. And as to that damage and as to what else is congregated here, I considered that the site has a very excellent, particularly excellent access afforded to it by virtue of the way the construction has been accomplished. It's very unique that the median is as wide and *accomodating* in front as it is at this time. There is excellent side access. There is no *identifaction* of damages resulting from the taking.

Allen E. Turner

Q. All right, sir. Does that conclude then your opinion as to the value of the property and interests acquired if—and damage if any to the residue?

page 47 } A. Yes sir.

Q. Your total figure then is $11,407.00 is it not?

A. Yes sir, that's correct.

TURNER - CROSS

By Mr. Timberlake:

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page 64 }

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Q. Now, Mr. Turner, I wanted to ask you this—you tell us that aside from the value that this Commission sees fit to place upon the property of Mr. and Mrs. Aldhizer that was taken, that from the standpoint of the residue you don't consider that there was any damage, is that cor-

page 65 } rect?

A. No sir. There is absolutely no possible basis of judging damage to the site which didn't exist before the take.

Q. Did you, in formulating that opinion, did you consider the reasonable cost if any to adjusting the residue of the property to the new conditions?

A. I could not conceive what use was going to be made of it—whether it was going to be residential or commercial in the after condition or what site plan would be followed. There was a problem to be met by a site plan, and I felt it had no bearing in being—in being created by the taking, and therefore it did not—I concluded that there was no damage resulting from it.

Q. Well a proper—you will concede that a proper element in determining whether or not there was any damage is—one of the elements is the reasonable cost if any to adjusting the residue of the property to the new conditions, will you not?

A. I think that is what we call in appraising a cost-to-cure a problem that's been created by the taking. There is no identifiable problem that's been created here that's curable. There is no problem here that didn't exist in the before condition.

Allen E. Turner

Q. Curable by doing just what Mr. and Mrs. Aldhizer have done—by going out and putting up this *substitue*
page 66 } building, isn't it?

A. It was their elected use of the site for—recognizing this is what they owned before—not what was created by virtue of this taking. This was the topography they owned, this was the land they owned. All that was taken from it was this building, and there was no change in the nature of their improvement. They have elected to do considerable to it but it has no bearing on the question of damage.

Q. In your opinion it has no bearing on the question of whether or not the residue was damaged?

A. I considered it, but what had been done is the meeting of a problem that existed before this taking.

Q. And had nothing to do with the taking in your opinion?

A. No sir. It was not created by the taking.

Q. You are entitled to your opinion, sir. Did you consider in determining whether or not there was any damage the inconvenience to which—inconvenience if any to which the landowners will be subjected in the future operation of their property caused by this taking?

A. In answer to that, I testified that I think that the owners have a superior—one of the most superior
page 67 } accesses and improved corners after the taking on Route 250 in my opinion. I think they're on the—they are in one of the best conditions after what they have done and I don't believe there's any inconvenience.

Q. Well in answer to my question, Mr. Turner, my question was did you consider in determining and reaching your conclusion that there was no damage done to the residue the inconvenience if any to which the Landowner will be subjected in the future operation of their property caused by the taking and new construction? Did you consider that factor?

A. Not as inconvenience. Are you thinking in terms of economic inconvenience? I did feel that it had an effect on the use of their property.

Q. You did?

A. Certainly. I feel they have been left in an excellent condition and position.

Q. And do you—I'll repeat the same question that I asked —did you consider the inconvenience if any to which the Landowners will be subjected in the future operation of their property caused by the taking and new construction?

Mitchell R. Shell

A. Yes sir. I considered that there was none.
Q. That's all.

MITCHELL R. SHELL—DIRECT

page 68 } By Mr. Cochran:

Q. Please state your name, age and occupation?

A. I'm Mitchell R. Shell, I'm 45 years old, and my residence is in Manassas, Virginia. I am a real estate broker and a part time builder and primarily an appraiser.

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

A. Since 1948.

Q. Will you state your educational qualifications?

A. I'm a graduate of VPI in Education. I have taken several of the appraisal courses, I am a member of the American Institute of Real Estate Appraisers, I am a member of the Society of Residential Appraisers, and of the American Right of Way Association.

Q. Will you name some of the organizations that you have employed—been employed by to make appraisals for?

A. I, as a staff—for several years was with the Virginia Department of Taxation doing re-assessments. I worked for FHA—the Federal Housing Administration, in Washington, D. C. I worked for the Bureau of Public Roads in Washington, D. C. and in Delaware, and since 1958 I have

page 69 } been self employed. I have done appraisals for the Virginia Department of Highways, the City Government in Washington, D. C. in Alexandria, I have worked in Manassas for the town and the county and for a number of private individuals.

Q. You do make appraisals from time to time for private individuals as well as public agencies Mr. Shell?

A. Yes sir, I do.

Q. Has most of your professional appraisal work been done in the State of Virginia?

A. Most of it has. I've done some work in Delaware, some in the District of Columbia, a little in West Virginia.

Q. Mr. Shell, were you employed by the City of Staunton to make certain appraisals in connection with this joint project in which the City and the United States Government and the Commonwealth of Virginia is engaged in on Richmond Avenue in the City of Staunton?

A. Yes sir, I was.

Q. Did you make an appraisal of the acquisitions from Mr. and Mrs. Aldhizer, the Landowners in this proceeding?

A. Yes sir.

Mitchell R. Shell

Q. Did you undertake to make an appraisal of
page 70 } the value of the land and the easements and building being taken by the City of Staunton and damages, if any, to the residue of the Landowner's property?

A. Yes sir.

Q. Over and above any enhancement?

A. Yes sir.

Q. All right, will you please tell the Commissioners what approaches if any you considered in going about your appraisal work?

A. First of all I did the appraisal on a number of properties in there and had checked sales on Route 250, some in town and some outside of town, and also some other sales around and in other sections of the city which I felt were reasonably representative. In this particular appraisal—first in appraising the land I relied most heavily on the following three sales—the first was Wall to Harner in October 1962, Deed Book 275, page 576. It was approximately 40,000 square feet sold for $21,000.00 or *approximatley* $.53 a square foot. This property was outside of town, outside of the city, it fronted about 200′ on Route 250, and it was slightly above grade. It was zoned Residential at the time. There was a sale from Shree to Harner, January 1964, Deed Book 138, page 373, of approximately 9,845 square feet and sold for $3,000.00. This was inside the city and it's on the north side of 250, it's considerably
page 71 } closer in to town than the Aldhizer property is. This sold for $.30 a square foot, and it had an old building on it which was in very poor condition—and I feel that it was primarily bought for the land—

Mr. Timberlake: What was that?

A. I feel that it was bought primarily for the land, and this was $.30 a square foot. The third sale was Eddings to Brown in September 1964, Deed Book 143, page 265, approximately 11,456 square feet for $5,500.00. This also had an old vacant two-story dwelling on it, it was zoned Light Industrial and it was on the north side of Route 250 between the Aldhizer property and Route 11. This was $.48 a square foot. So based on my studies in the area and—including these three I have reported here—it is my opinion that the land had a value of $.55 a square foot, which is $23,953.00 per acre.

Q. What was that total?

Mitchell R. Shell

A. $23,953.00 per acre.

Q. All right, and you determined that by your study of market conditions?

A. Yes sir.

Q. All right. Did you consider other approaches to determine value in this case?

page 72 } A. This was to determine the value of the land, which incidentally would compute to $3,090.00. In appraising the property as a whole I looked at it from several different approaches—by a replacement cost or so-called cost approach, I came up with a value including the land of $16,494.00.

Q. What was that figure again?

A. I'm sorry - $16,495.00.

Q. That was the value of what?

A. This was an indication of one of the ways of looking at this piece of property. And indication of what it would take to build it at the date of take or the date of the appraisal less depreciation.

Q. I see, and—

A. The so-called cost approach.

Q. All right. Did you consider any other approaches?

A. Yes. I made a study of several small groceries in the area. First of all I have Wade's Grocery which is out on West Beverly right at the City Limits—that building is 22 x 58, it has 1276 square feet, it's a little smaller building, it's a one-story building. It does have parking. That was renting for $75.00 a month according to Mr. Wade. I talked to Mr. Argenbrights at Leo's Market, which is coming into town a little closer in on West Beverly—it's at the intersection of Cherry Street. He is renting a two-story

page 73 } building, he has some parking, and it contains approximately 1600 square feet so it's a little bigger than the building in question. He has been renting for a number of years for $100.00 a month. He says that at the time I talked to him that he felt he was going to have to pay more rent—the $100.00 was a little under the market, but it is some indication of value. I talked to Mr. Ham down on Route 254 out here close into town at Hampton and Middlebrook Streets. He is renting a two-story *centerblock* building with a grocery on the first floor and he has a recreation hall up above—that building contains 1472 square feet, which is just slightly larger than Mr. Aldhzier's building was. He pays $150.00 per month for the building. So based on those three and also talking to these operators it was my opinion

that the first floor had a fair rental value of $85.00 per month. The upstairs second-floor of this building, at the time I was there, had been rented for several years at $45.00 per month. The combination of the two would be $130.00 a month and that would be a reasonable rent for this property in my opinion. And based on a—on research on some of these other properties which were renting in the area—houses and larger stores—it was my opinion that this would indicate that the property is worth $16,900.00. This is one of the
page 74 } guides at arriving at my opinion.

Q. All right, now just exactly what is it that you value at $16,900.00?

A. This would be the total property—the land and all improvements. This is not a value, this is one of the approaches and indications or ways that I arrived at in my opinion of values. So based on the cost approach at $16,-495.00, and the income approach a little bit higher, it was my opinion that the total property before the take was worth $16,750.00.

Q. That was $16,750.00?

A. Yes sir.

Q. All right sir, now—

A. Now I might say that there were some other personal sales and transactions in that area of different type of property that do give some general indication of the general range that people were paying for property in the area.

Q. All right sir, now did you value the 44 square feet of land being taken in fee simple?

A. Yes sir. I valued it on a square foot basis and it computes to $24.00.

Q. How much per square foot?

A. $.55.

Q. And that's how many dollars?

page 75 } A. That's $24.00.

Q. Now what value did you place on the temporary easements also being acquired? The construction easement in front, the construction and slope easements at the side which have all terminated?

A. The easement took the building, and the easement itself, once the building was removed, if you—I felt it was just a normal thing and which I placed a nominal value of $100.00.

Q. Then did you undertake to place a value on the building being taken, and if so please state your results?

A. Based on my total value of $16,750.00 the store had a value of $13,000.00, the storage shed, the small storage shed of $50.00 and the—

Mitchell R. Shell

Q. On the store—that's D-6—how much did you place on that?

A. $13,000.00.

Q. All right, go ahead.

A. On the storage shed, D-7, I placed a value of $50.00. On the garage, D-8, I placed a value of $110.00. We had several small things there—

Q. Now wait a minute—on the garage that was what? $110.00?

A. Yes.

page 76 } Q. All right, go ahead now.

A. There was 7′ in the take and I valued that at $11.00, there was a few feet of driveway there that I valued at $7.00, the landscaping at $48.00—

Mr. Timberlake: Could you let me have those figures again? After the garage then what did you have?

A. Yes sir. I had fence at $11.00.

Mr. Timberlake: And next?

A. Driveway $7.00 and the landscaping at $48.00, and the cistern I put a nominal value on that of $50.00. The cisterns weren't being used as a water supply.

Q. Now, Mr. Shell, how did you arrive at the figure of $13,000.00 for the store?

A. It was based on this breakdown of total value of $16,-750.00. I testified that in my opinion the land was worth $3,090.00, based on the cost approach the store computed to something a little less than $13,000.00. And these are primarily rounded figures from the cost approach breakdown. The shed computed to 56 and I rounded it to 50, the garage computed to 122 and I rounded it to 110, and the others are proportionate.

Q. As I understand it then the approach that you finally used in this case in making your appraisal was

page 77 } not the replacement cost less depreciation?

A. No. My opinion is based on an analysis of the cost approach—the cost less depreciation is based on an analysis of the income and to some extent the general level of values on the market approach—this is an opinion based on all the information I had available with which to make the opinion.

Mitchell R. Shell

Q. Now, Mr. Shell, did you take photographs of these buildings on the Aldhizer property?
A. Yes sir, I did.

Mr. Timberlake: Before you go into that, what is the total Mr. Shell has—he didn't give a total?

Q. What is your total—in your opinion what is the total compensation that should be paid to Mr. and Mrs. Aldhizer for the land taken, the easements, and the buildings?
A. Well what I have testified to came to $13,400.00 and in addition to that there is a cistern which was left on the property and there's landscaping, there's fence, and there's the driveway, which obviously had no value once you took the building off so I had valued those at $384.00 before the take, I put a nominal value of ten dollars on the whole after the take, which would *created* a damage to those buildings of $374.00.

page 78 } Q. So your total figure then would be $13,774.00?
A. That's true.
Q. Now you mentioned a cistern—were there two cisterns?
A. There were two cisterns—one was in the take and the other was not.
Q. Let me show you this—these pictures which were put into evidence by Mr. Turner and ask you if they fairly represent the buildings on the Aldhizer property when you viewed them, and if they fairly represent these buildings at the time of the take, which was May 18, 1967?
A. I think he has a view of almost everything here, yes sir.
Q. Well do you have any photographs in addition to these introduced by Mr. Turner that you feel would be necessary to introduce to depict any one of the buildings on the Aldhizer property, and if not we won't put any in, but if you have some that would add anything of course we could introduce them.
A. I think his pictures are complete. I have just about the same thing.
Q. All right, sir. Now, Mr. Shell, you have given your testimony about the value of the property and interests therein taken, did you then give consideration

page 79 } to the matter of damage if any to the residue of the Aldhizer property over and above any enhancement from the take and the project?

Mitchell R. Shell

A. Yes sir, I did. What's left there—I have testified that the buildings, the small buildings have no value in the after situation, the land that was left in actuality is a lot—its almost the same size as it was before the take. You take the building off and the land that was under the building is excavated, and in my opinion the lot has the same value afterwards as it did before. It's zoned R-3, he did have a use permit to operate a grocery there. The land itself I feel has the same value as it did before and therefore there was no damage after the take.

Q. All right then, is the sum of your testimony that your opinion of fair compensation to the Landowners in this case would be the sum of $13,774.00 total?

A. Yes sir, it is.

SHELL - CROSS

By Mr. Timberlake:

* * * * *

page 83 }

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page 84 } Q. Mr. Shell, you testified to the Commissioners that aside from these non-essential little improvements that were on the residue of the property—the cistern, landscaping, and whatnot—that you didn't consider that there was any damage to the residue, is that right?

A. That's correct.

Q. In coming to that conclusion did you consider the reasonable cost if any of Mr. and Mrs. Aldhizer in adjusting the residue of the property to the new conditions?

A. Yes I did. We are talking about a piece of vacant land which is at grade at the front after taking the building off —I see no major expense to put the lot back in acceptable use.

Q. It was vacant by virtue of the part that was taken by the project, isn't that correct?

A. Well I've testified that in my opinion the lot was worth $3,090.00 before and that's still my opinion—that it's worth $3090.00 after the take.

Q. And in reaching that conclusion did you or did you not consider the reasonable cost if any of Mr. and Mrs. Aldhizer

in adjusting their residue of their property to the new conditions—that is the conditions brought on by this taking?

A. Yes sir, I did.

page 85 } Q. And you didn't feel that they had any reasonable expense?

A. As I say, it's a vacant piece of land and the only expense would have been for some minor grading.

Q. The vacant lot was a result of the taking wasn't it?

A. Yes and I have testified that in my opinion—

Q. And the taking of these buildings created new conditions that had to be met by Mr. and Mrs. Aldhizer if they were to enjoy the use of their property and have it as it was in the past, didn't it?

A. Most vacant lots have some problems. In order to build on most vacant lots they have to be cut or filled to some extent and I took that into consideration, yes.

Q. But that's all based on the premise that this lot wasn't made vacant by virtue of this taking, isn't it *m*r. Shell?

A. Well I testified that in my opinion there was *comensation* for the building.

Q. Did you or did you not undertake to determine whether or not the residue of the property was damaged, the inconvenience if any to which the Landowners would be subjected due to the taking and new construction in the

page 86 } future operation of their property?

A. Well I'll have to answer that the same as I did the other one. It's a vacant lot—I took into consideration the inconvenience of the operation of it, yes sir.

Q. And you still came up with no damage to the residue?

A. That's true.

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CLEM - DIRECT

By Mr. Timberlake:

Q. Mr. Clem, state your full name, your age—

A. John A. Clem III.

Q. And your age?

A. I'm 56 today.

Q. And you reside in the City of Staunton?

John A. Clem, III

A. Yes sir.

Q. What is your occupation?

page 90 } A. I'm a broker in real estate and insurance.

Q. And how long have you been engaged in the real estate business in the City of Staunton?

A. Over 25 years.

Q. And during that period of time have you had an opportunity to familiarize yourself with the fair market value of real estate in and near the City of Staunton from the standpoint of the purchase or sale of—handling the purchase and sale of parcels?

A. I believe so, yes sir.

Q. Do you consider yourself generally familiar with real estate values in this area?

A. Yes sir.

Q. Have you, Mr. Clem, been asked to evaluate the property of Mr. and Mrs. Ralph Aldhizer on Richmond Avenue across from the Yankee Cemetery?

A. Yes sir.

Q. As it was, before it was taken that is?

A. Yes sir.

Q. Will you please give the Commission the benefit of your appraisal?

A. Gentlemen, there are three generally accepted procedures or ways to try to arrive at the value of a piece of real estate—they are the cost approach, the in-

page 91 } come approach, and the market approach. In this case I have taken two of the three and tried to put them together and come up with what I considered to be a reasonable evaluation of the property. As of the time of the take which was in May of 1967, there was a building there —a two-story frame building at 902 Richmond Avenue with the grocery store on the first floor, at Richmond Avenue elevation, and a six room apartment on the second floor. First I will give you my findings by way of the cost approach. The building was approximately 40 x 50 feet, which is approximately 2000 square feet, two stories, and I'm going to give you the replacement value and then depreciate it back. I'm evaluating it at $10.00 per square foot on the first floor which would be $20,000.00, and the same—$10.00 per square foot on the second floor which I valued at $10.00 or would be $20,000.00. There was a 400—approximately a 400′ storage area there that I valued at $5.00 or $2000.00. A total replacement value of $42,000.00. I have depreciated this property based on a 50 year life of the property, and I have

estimated the property to be approximately 30 years of age, and I have taken 2% per year depreciation, or 60% depreciation, which would figure up to $16,800.00. If you take your depreciation from the replacement value you arrive at a value after depreciation of $25,200.00. I valued the lot, which according to my figures is indicated to be
page 92 } 50 x 112—at $5,000.00 so—

Q. If I might interject there, Mr. Clem, the value of the lot at $5,000.00—do you consider that to be the market value or—

A. Yes sir, I do. I think that's $100.00 a foot for that area in there and I consider that to be a very very fair value for this land. Now to go back—It valued after depreciation $25,200.00 and the value of the land at $5,000.00 gives you $30,200.00 for the evaluation of the property. I tested it or applied it back against the income approach to see how near the income approach and the cost approach were equal. I have set up the income for the two units—the apartment at $65.00 a month and the store $185.00 a month or a combined income of $250.00 a month, which extends to $3,000.00 a year. I have reduced that by the amount of the taxes of $145.00 and the estimated insurance of $100.00 and $25.00 for maintenance or $270.00 per year reduction from the gross which gives you a net income on this property, estimated income, of $2730.00. Now if we allow the land at $5,000.00 as I have already stated I thought it to be worth and if we allowed the Landowner a 6% return on his money for the land the land will earn him $300.00 a year at 6%. So I reduced my net income on the building from $2730.00 by $300.00, the money that the land earned, and I arrived at $2430.00
page 93 } net income after we value the—after the value of $300.00 for the land is taken away. Now I have capitalized the building 10% of its net income—in other words any building, I think a building certainly of this type that earns $2430.00 a year income, net income, and capitalize it 10% it would make the value of it $24,300.00. So you see I arrived at the value of the building by the cost route at $25,200.00 and I arrived at the cost of the building by the income route of $24,300.00. That would satisfy myself that I'm somewhere in the accurate figures. I added those two and divided them by 2 and I came up with $27,250.00 as the value of the building.

Mr. Timberlake: What was that figure?

John A. Clem, III

A. $27,250.00.

Q. Now let me see—you had the value based upon the cost approach at $25,200.00 did you not?

A. I'm sorry Mr. Timberlake, I didn't catch your question.

Q. You had the value of the building from the standpoint of the cost approach at $25,200.00 after depreciating it?

A. Yes sir.

Q. And the value of the income approach was at $24,300.00?

A. Yes sir.

page 94 } Q. And then what did you do—did you take an average of those two?

A. I added the two together and divided it by 2.

Q. And that would give you between $24-and $25,000.00 wouldn't it? Did you add in the lot?

A. No sir, I'm not talking about the lot.

Q. What was your average then?

A. The income approach was $24,300.00 for the building—

Q. Yes—

A. Then $30,200.00 for the—I beg your pardon, I picked up the lot.

Q. I assumed you had. What you intended to do was average the $25,200.00 and the $24,300.00, is that correct?

A. That's correct, yes sir.

Q. Could you do that now on a piece of scratch paper?

A. Yes. I see I picked up the value of the lot and the building. So I want the $25,200.00—

Q. And the $24,300.00?

A. That's right.

Q. And then you add those two together, is that right?

A. Yes sir.

page 95 } Q. And divide by—the total is divided by 2?

A. Yes sir.

Q. And what is that figure?

A. Let's see. $24,700—

Q. $24,700.00?

A. $24,750.00? Is that right Mr. Timberlake?

Q. I suppose so, I don't know.

A. Yes sir. I'm sorry I picked up the lot, that's correct.

Q. The figure is $24,750.00?

A. Yes sir. So that brings me to the $24,750.00 for the building—this is going to change my figures across here too. We take the total of the land at $5,000.00 plus $24,750.00—

Q. Gives you $29,750.00 as your total appraisal?

A. Yes sir, total appraisal. A total of $29,750.00.

Q. All right, sir. And now, Mr. Clem, can you give us any

assistance in determining the fair value of the apartment area in that building, as distinguished from the building as a whole based upon the income approach or the cost approach?

page 96 } A. I included it in the accumulated value—I went all the way through with the combination figure, Mr. Timberlake.

Q. I realize that.

A. And I took my take and damage that were all as one damage.

Q. Well the thing—I don't know whether you are aware of the fact or not, and it's a matter to be dealt with subsequent to the evidence, that there is presently a building on the property, a one-story building that does not have the apartment facilities this one does have—

A. Yes sir.

Q. I was trying to find some way if you are able to give it to us that would be an evaluation of the apartment unit?

A. Well if we go right back it won't be too difficult sir—if we go right back to our original size of 40 x 50 at $10.00, that would be approximately 2000 feet or $20,000.00 and depreciate it 60%—

Q. That would be $12,000.00 wouldn't it?

A. Yes sir, $12,000.00—this is from your cost approach, and would leave a value of about $8,000.00 on the apartment by itself.

Q. All right, that's on the cost approach—now

page 97 } what about the income approach?

A. All right. On your income you would have $65.00 a month and for 12 months you've got $780.00 income and you take $270.00—well that will make it a little difficult—

Q. You better take half of that, don't you think?

A. Yes. Half of that or $135.00 of that would be taxes and maintenance.

Q. And insurance?

A. Yes, or would give you a net income off of the apartment of $645.00. I believe that's right—$645.00.

Q. Yes, that's right.

A. Well $645.00 capitalized at 8% for the building would be $8,000.00. Now I just said that the building in my opinion should be capitalized at 10% and I do think it should—in this case, gentlemen, I think the rent is too low and this property should have—to earn 10% it should have rented for $77.50, but to capitalize that 8% you would have—8% against $640.00 would give you in round figures around $8,000.00.

John A. Clem, III

Q. So taking *if* from the different approaches you feel that the apartment as a unit added to the—had a separate value of $8,000.00?

page 98 } A. Yes sir. This is a separate income bearing entity or property and you have to treat it separately. It's not like downstairs.

Q. That's all unless you have something you would like to add?

A. Well I was just going to carry it on through—

Q. All right, go right ahead.

A. I took the value of the building which was $24,750.00 and there was approximately 45 square feet of land taken, so the total take of the property, Mr. Timberlake, would have been $24,750.00 plus $40.00 for land, or $24,790.00 and you can round that out to $24,800.00 and that was the total take. If the building was $24,750.00 and the $40.00—wait a minute—we have $24,800.00 for that take including the—

Q. The $40.00?

A. Round it off to $50.00, yes sir, and that gives you $24,800.00.

Q. I take it that you didn't go into the value of damage to the residue?

A. Yes sir, I did.

Q. All right, sir, go right ahead with that, Mr. Clem.

page 99 } A. It will take me just a minute, Mr. Timberlake, I'm embarrassed and terribly sorry that I mis-cued this because it's thrown all of my figures off and I have to re-do them all. So we have now $24,800.00, is this right sir? You keep me on tract of my figures here. Now the building was $24,750.00 total *appraisment,* right Mr. Timberlake?

Q. Yes.

A. Total *appraisment.* The land I estimated to be $5,000.00 which gives you a total value in my figures of $29,750.00, am I right Mr. Timberlake?

Q. Yes.

Mr. Cochran: Your Honor, could the witness please give his own figures instead of asking for confirmation?

A. Well I just want it to be right. I'm doing it very quickly —I'll be glad to have them checked with you if you like. That gives a total value of $29,750.00 total value. Now we have taken $24,800.00 of that in take—$24,750.00 for the building and $50.00 in the land. We have taken $24,800.00 away so we have left—

John A. Clem, III

Q. $4550.00?
A. Well I come up with $4850.00, Mr. Timberlake.

Mr. Cochran: If Your Honor please, I will be more than glad to correct him on that because it's $4950.00
page 100 } I believe.
Mr. Timberlake: Mine was just an arbitrary guess.

A. So that's $4950.00 value left in the land. I believe that you will agree with me that strategic location is of importance to the site of a place like this and it is a fact that this property was on the front of the lot before the take or the damage from the temporary easement, and now it's situated so that there is one completely blind side, and I have damaged the balance left 10%. So I damaged that property 10% and it leaves the value of the property left at $4465.00 or you might round it to $4500.00.
Q. Now Mr. Clem, in considering that aspect of the matter did you undertake to consider the cost if any, reasonable cost if any occurred by the property owners in adjusting the property as it now is to the changes brought about by the taking and new construction?
A. No sir, Mr. Timberlake, I viewed it from—strictly from looking at the property.
Q. You didn't consider it from the aspect of any cost they might have incurred from this?
A. No sir.
Q. And by the same token did you take into consideration the future inconvenience if any that might be a
page 101 } factor in depreciating the value of the residue?

Mr. Cochran: If Your Honor please, I am going to object to any question along the line of this question for reasons previously assigned.
Court: Mr. Timberlake, would you repeat the question, please, I couldn't quite get what you said.
Mr. Timberlake: I asked him first if he took into consideration in undertaking to determine the damage if any to the residue, whether or not he considered the reasonable cost if any incurred by the property owners in adjusting the residue of the property to the new conditions—he said that he did not—and then I asked him the question whether or not he had, in undertaking to determine the damage if any to the residue, considered the inconvenience if any to which the Landowners will be subjected in the future operation of their property caused by the taking and new construction there.

John A. Clem, III

Court: Very well, then, we'll save Mr. Cochran's point and he may answer the question.

A. I depreciated the property 10% because I feel the property was left with a blind side—the east side I consider a blind side—and that reduced the value of the
page 102 } property. That is the approach I took, Mr. Timberlake.

Q. Well do I understand from your answer that you—although you considered that factor you did not consider the inconvenience if any to which these parties might be subjected to in the future operation of their property?

A. No sir.

CLEM - CROSS

By Mr. Cochran:

Q. Mr. Clem, I had quite a bit of difficulty with some of your figures—let's go over these figures and see if we agree on them. You said that you figured $10.00 a square foot for 2000 square feet on the first floor, making a total of $20,000.00 for the replacement cost of this building—$20,000.00 for the first floor—$10.00 a square foot on the second floor or another total of $20,000.00—4000 square feet in a storage shed at $5.00 or $2000.00, making a total replacement cost of $42,000.00, is that correct?

A. Yes sir.

Q. All right, and you said you depreciated it on the basis of a 50 year life, is that right?

A. Yes sir.

Q. And you also said that you took 2% per
page 103 } year for 30 years, isn't that right?

A. Yes sir.

Q. That's 60%. Now would you re-figure that, and I think you will not come up with $25,200.00. I think the 60% figure is $25,200.00 and I ask you if it would not be proper to subtract that from the $42,000.00 to get the correct figure?

A. That's right.

Q. So then there's a fairly sizeable error in your testimony as to the value of that building after depreciation, is there not? Using that approach? And instead of the value of the building being $25,200.00 it actually is $16,800.00 isn't it?

A. I'm sure—this is correct—what you have figured—but I'm sure that what happened is that I picked up my wrong figure.

John A. Clem, III

Q. Well I'm just merely using the figures that you used, and the actual figure based upon your own figures, and even accepting your figure of 2000 square feet for two floors, you still come up with a value of that building instead of $25,200.00 of $16,800.00, isn't that correct?

A. Based on these figures that I have here, yes.

Q. And those are your figures aren't they?

page 104 } A. Yes sir.

Q. Now as a matter of fact, to come up with any area like 2000 square feet you had to add in an awful lot of open space like porches—both below and above did you not?

A. To get that, Mr. Cochran, these are the figures that were given me and in addition to this I sent one of my representatives—I myself did not strike this measurement—but I sent one of my representatives to check these figures—I cannot get up here and tell you that I know this to be 40 x 50 or not.

Q. Well then you wouldn't be able to answer if I asked you if it were nearer 1400 square feet excluding the porches?

A. I couldn't under oath give you an answer to that.

Q. All right sir, now you get down to the income approach which you used to cross check yourself on this replacement cost approach less depreciation and is incorrectly figured. Do I understand you to say that you figured store rental at $185.00 a month?

A. Yes sir.

Q. Well on what did you base that? Do you know of any other comparable neighborhood groceries that rented for that?

page 105 } A. No sir. I don't have any comparable neighborhood groceries but I have comparable space Mr. Cochran.

Q. Well would you say that Ham's Grocery might be comparable?

A. Ham's Grocery?

Q. Yes?

A. I don't know Ham's Grocery.

Q. On Middlebrook Avenue?

A. I don't know of Ham's Grocery.

Q. Do you know of Leo's Market?

A. Leo's Market?

Q. On West Beverly Street?

A. I know the location of it but I do not know—

Q. Then you wouldn't know if it was comparable either?

John A. Clem, III

A. Well I know that the comparable rent space on Holiday Court rents for $2100.00 and I know that the Homestead Restaurant recently paid $1800.00. I know that, Mr. Cochran.

Q. Well I'm asking you about any comparable neighborhood groceries and rentals there and I just mentioned a few to see if you would have any feeling about those. Now on the value of the land, you figured it at $5,000.00?

page 106 } A. Yes sir.

Q. Do you have any comparable sales to support your evaluation of that?

A. This is an evaluation of judgment, Mr. Cochran, but in May 1964, Rhodes sold to Aerhart 87′ of frontage at an indicated price of $107.00 a foot. Now as I say, this is an area of judgment, because Mr. Aldhizer's lot is 112′ and this is 180′. On October 18, 1965, sold was a lot on the corner of Richmond Avenue and Sumerson's Row, approximately 100′ x 125′ at an indicated price of—well if you take the frontage off of Sumerson's Row you get—

Q. How much per acre?

A. I wouldn't attempt to appraise this out here by the acre.

Q. Well using your figures how much does it come out to on a per acre basis? What are the dimensions of the lot?

A. 112 x 50.

Q. Well that's 5600 square feet isn't it?

A. It's 5600 square feet and it's—there's 43,000-odd square feet to an acre.

Q. Approximately an eighth of an acre?

A. Yes sir, approximately an eighth of an acre.

page 107 } Q. How much an acre?

A. $40,000.00.

Q. $40,000.00 an acre?

A. Approximately.

Q. And do you know of any such land in Staunton that sold for any such price prior to May the 18th 1967?

A. There's some other land that sold down in that area, Mr. Cochran, but I submit to you that you can't sell this type of land by the acre, because it's a small, like you said it's a neighborhood grocery store type lot.

Q. I'm perfectly willing, Mr. Clem, to go along with your approach on the thing of selling it on a square foot basis—all I'm trying to do is bring out to the Commissioners how much that figures out to at a per acre basis.

A. That's approximately $40,000.00 on a per acre basis.

John A. Clem, III

Q. And I'm asking you if you know of any sales in Staunton anywhere near that kind of price for comparable land?

A. Not comparable—not by the acre, Mr. Coch-
page 108 } ran.

Q. On a square foot basis apply it for an acre.

A. Well Mr. Simmons sold to Moore Brothers in 1967—

Q. Well now just one minute. That was a special purchase sale for contractors on this job, wasn't it?

A. Well that's just as special purchase as this *grocercy* store down here—I mean that's one of the sales—

Mr. Cochran: If Your Honor please, I expect that that answer should be stricken. It's improper, and I move that any reference to that sale be stricken.

Mr. Timberlake: Well I don't agree with that, Your Honor, I think Mr. Cochran asked for it and I think Mr. Clem is prepared to give it to him.

Court: Well gentlemen, I don't know—there is no evidence —I don't know what kind of sale it was, I have no idea—do you want to go into the specifics, gentlemen, of what it was for?

Mr. Cochran: Yes sir, I'll ask him if it wasn't to put fill dirt on acquired by the contractors on the job.

A. Mr. Cochran, I don't care what they got it
page 109 } for, I just care about what they paid for it. I
submit to you that you can't go out on right here on Richmond Road *an* buy a 50′ front for less than $100.00 a foot. It's just not out there for that.

Q. What we're talking about is before the time of take. I would like to have you name any sale that you can come up with that figures out on a square foot basis to anything like $40,000.00 an acre?

A. Well I don't know about—I'm mixed up with my figures today—the—on September 15, 1967, there was—

Mr. Cochran: If Your Honor please, that was after the take in this case.

A. What was the date of the take? It was what—May?

Q. May 18, 1967.

A. Well, in May, 1964, Rhodes—J. H. Rhodes sold to Bob Aerhart 87′ on Richmond Avenue at an indicated sale price of $107 a foot.

Q. How much does that figure out to on a per acre platform?

John A. Clem, III

A. Well it's 15,747 square feet and the indicated price was $15,000.00—15,700 square feet and an indicated price of $15,000.00—without getting into it any deeper that's roughly a dollar a square foot, so there's 43,000 square
page 110 } feet to the acre, that's close to $1.00 a square foot or $43,000.00 an acre.

Q. All right. Mr. Clem you were aware of the fact, were you not, that the building on the Aldhizer property was built right up to the street right of way, and in fact portions of the step or porch in front encroached on the street right of way?

A. Yes sir.

Q. Then you were also aware of the fact that all of the parking in the front of this building was permissive parking in the street right of way, were you not?

A. Yes sir.

Q. And of course that necessarily would have an effect on the market value of the property, wouldn't it?

A. I think, Mr. Cochran, and here I'm giving an opinion you may not agree with, to me no it does not.

Q. In other words no parking space in front as a matter of right didn't have anything to do with market value in your opinion, so far as this piece of property is concerned?

A. It doesn't affect the value of this property at that time, no sir. Because it was there—the parking was
page 111 } there.

Q. I understand that, but you do understand that there was no right—it was purely permissive use of the street right of way for parking purposes, you understand that don't you?

A. Yes sir.

Q. And you understand that it could be terminated at any time?

A. Well no I don't understand that.

Q. That would change your entire approach, would it not?

A. No sir.

Q. It wouldn't?

A. No sir.

Q. You didn't know that, but that wouldn't make any difference, is that right?

A. Mr. Cochran, he had the parking other than in front, too.

Q. Where did he have parking?

A. There was parking on the side and in the back.

Q. Well there's still parking on the side isn't there?

A. Well there's a right hard bank there, I think it's legal perhaps but there's a slope easement too.

Q. Well the easement's been terminated, were
page 112 } you aware of that?

A. Yes.

Q. Well then there isn't any easement there is there?

A. Well even without that it's just—you just can't park there.

Q. Well the street is there, of course, and that could be used for parking I take it, don't you?

A. Not the way it is now, no sir. You have slope there one place and you have a hole in the street on down below, and I presume of course that this would be repaired. But I would think that it would be terribly difficult to park there.

Q. Well I think the Commissioners can decide that for themselves. But in any event, you take the position that this lot of land with no improvements on it, 50′ frontage by 112′ in depth, with the building built right up to and even encroaching into the street right of way was worth $5,000.00?

A. Yes sir.

Q. So it's worth as much or more than any property down there that didn't have any parking problem at all, is that right?

A. It compared favorably with the price of
page 113 } other property here.

Q. All right Mr. Clem, now let's see if we can get your figures summarized again. You and—you say that you can round off the 45 square feet taken at $50.00, which of course would be something over a dollar a square foot?

A. Yes.

Q. And then based on one of your approaches you come up with the value of the building at $24,750.00 is that right?

A. Yes sir.

Q. Now on the other approach we agree, I believe, that you come up with a value of the building at $16,800.00?

A. Yes.

Q. All right. Now on the land, which you value at $5,000.00, let me ask you this, Mr. Clem—you say you think that land after you take the $50.00 off of that corner that was acquired by the City and reduced it down to $4950.00—what other damage is there to the land? It's still the same land there except that corner isn't there?

A. Yes, but that corner does not have the value that it did because it's been blinded on one side and it's not the same.

page 114 } Q. Well it's exactly the same as it was—the

John A. Clem, III

dimensions of the property haven't been changed one iota except for taking the corner—the 45 square feet off the corner?

A. Yes, but the condition of the property changed.

Q. Yes, but you're talking about that parking area out front?

A. I am not, you are, not me.

Q. Well what has been changed about the bare land? You take the building off and you pay the man the value of the building or buildings, then what's different about the land?

A. It's just not as good as it was when it was out at the street's exposure.

Q. Well as a matter of fact the access—the ingress and egress to and from it is far superior now than it was before?

A. I'm not sure it is.

Q. Well your own—you're not sure it isn't are you?

A. Well it's debatable but I'm not sure it is.

Q. And you are familiar with that project and the cut in the median strip across there in front of this

page 115 } property are you not? Opposite this property? Are you familiar with it?

A. Yes sir.

Q. And is it not correct that the value of this property has been enhanced from this improvement, Mr. Clem?

A. The value of the lot has been enhanced by this?

Q. Yes?

A. No sir, I do not.

CLEM—RE-DIRECT

By Mr. Timberlake:

Q. Mr. Clem, do you in fact feel that in light of the condition of this building as it was in May 1967, its structural condition, that it had actually depreciated 60% in value?

Mr. Cochran: If Your Honor please I don't—

Court: Do what, Mr. Timberlake? I couldn't hear the last part?

Mr. Timberlake: I asked him if he felt that in light of the actual condition of the building in May 1967, structural condition of the building, whether he felt that the building has actually depreciated to the extent of 60%.

page 116 } Mr. Cochran: If Your Honor please, I object to that. He went into it in great detail on direct examination of the witness—

Mr. Timberlake: Well Your Honor he went into it on cross examination.

Mr. Cochran: That's right, and he said he depreciated it 2% a year for 30 years, and I think it would be manifestly improper to try and get him to change it now.

Court: Well I think Mr. Clem indicated some question about some of his figures and I would permit you to further explore it Mr. Timberlake.

Mr. Cochran: If Your Honor please I would like to respectfully except to the Court's ruling.

Mr. Timberlake: Your Honor, he said he simply took a rule of thumb in determining depreciating and I was asking him if the building itself, in its actual condition as he knew it in May of 1967 had depreciated as much as 60%.

Court: Mr. Clem, can you answer Mr. Timberlake's question?

A. Shall I answer it?

Court: Yes sir.

A. Judge, I got my figures all twisted and I'm not denying a thing that Mr. Cochran accused me of, but
page 117 } I'm telling you true that in 1967 that building was worth more than $16,800.00.

Q. All right, now, Mr. Clem, I'd like to ask you this—can you state whether it is or is not true that in the great majority of business establishments in the City of Staunton the parking available to those establishments is or is not permissive parking on the City streets?

A. In my judgment I think it is.

CLEM - RE-CROSS

By Mr. Cochran:

Q. You depreciated the building 2% a year for 30 years right?

A. Yes sir, but my figures were wrong. I'm sorry but I got the wrong figures here and that's all there is to it.

RALPH W. E. ALDHIZER - DIRECT

By Mr. Timberlake:

Q. You are Mr. Ralph W. E. Aldhizer?

A. Yes sir.

Ralph W. E. Aldhizer

Q. What is your age?
A. 59.
Q. Is it correct that you and your wife are the joint owners of the property that's involved in this case?
A. Yes sir.
page 118 } Q. Your wife's given name is what?
A. Eleanore.
Q. Will you tell the Commission please how long you have —you and your wife have operated this business known as Ralph's Superette at its location—at the location that existed in May 1967?
A. About 18½ years.
Q. And throughout that period were the structures the same as they were on May 18, 1967? I mean as far as the nature of the building is concerned?
A. Yes sir.
Q. Throughout that period it had the downstairs store room and the upstairs apartment?
A. Yes sir.
Q. Or apartment space?
A. Yes sir.
Q. Certainly over that period of 18 years or whatever the period was, the downstairs wasn't a dwelling as suggested by Mr. Turner was it?
A. No.
Q. Mr. Aldhizer, does the or did the nature of that building or the buildings on your property substantially conform to what has been shown on the plans that have been introduced and the photographs that have introduced?
page 119 } A. Yes sir.
Q. At the time of this take?
A. Yes sir.
Q. And do you know the inside floor space of the main building?
A. It's 32½ by 39′.
Q. And then was there any additional structure to that?
A. Yes—on the side we had a storage room that was 12 x 30.
Q. That was used as an integral part of the building?
A. Yes sir.
Q. At the time of this taking, Mr. Aldhizer, of course you and your wife were the owners of the real estate and you were operating your business on the first floor?
A. Yes sir.
Q. Were you charging yourself rent?
A. No sir.

Ralph W. E. Aldhizer

Q. What rent did you receive for the apartment upstairs?
A. We received $45.00 a month rent until one of the appraisers—

page 120 } Mr. Cochran: If Your Honor please, I object to that. I don't think it's proper to go into the why—
Mr. Timberlake: I didn't mean to bring that out. I wanted to know what rent you were receiving at the time of the take, Mr. Aldhizer.

A. $45.00 a month and then we re-rented it for $65.00 a month.
Q. Well at the time the property was taken in 1967 what was the rent?
A. $65.00.
Q. And over how long a period were you receiving that?
A. About a year.
Q. A year?
A. Yes sir.
Q. Mr. Aldhizer, when this highway project came to your attention will you state whether or not you made any effort to—or took any steps towards the removal or moving of your building to a different portion of the lot?

Mr. Cochran: If Your Honor please, I'll object to that and any question along this line for reasons that I have previously assigned.
Court: Mr. Timberlake, what's the relevancy
page 121 } of this question?
Mr. Timberlake: Well, Your Honor, I intended to bring out—the relevancy of the question is Mr. Aldhizer—I expected the evidence to show through Mr. Aldhizer that the moving of the building exceeded in cost any of the figures that have been given by any of the appraisers as to the value of the building itself.
Court: I think Mr. Cochran's objection is well taken and I'll save your point.
Mr. Timberlake: All right, sir, we except to that. I would like for the record to show that I am prepared to tender the amount of a *bona fide* bid, bids, obtained for the removal or moving of the building, and of course except to the Court's ruling.

Q. Now, Mr. Aldhizer, when it became known to you of the plans of the Highway Department in relation to your

property will you please state whether or not you made any efforts to re-locate your business in this area where you could operate?

Mr. Cochran: If Your Honor please, I object to that too and any questions along that line for the reason that it's irrelevant and improper because what we are concerned with here in this proceeding is the fair market value
page 122 } of the lands and easements taken and the damage if any to the residue—

Court: I think your objection is well taken Mr. Cochran, and I'll sustain it.

Mr. Timberlake: Your Honor, I would like for the record to show that I am prepared to enter and tender evidence as to the cost of comparable real estate in this area for use for the purposes to which this property had been put, and I think that is relevant as to comparable values.

Court: Mr. Timberlake, the Court will not stop you from bringing in comparable values, but the fact that Mr. Aldhizer couldn't find other property that suited him in the area is not relevant to this case and I'll save your point on it.

Mr. Timberlake: Well my question wasn't directed as to whether or not he could find—he could find property in the area and he will so state to the Court, and then I wanted to bring out the price of that property.

Court: Well you can bring in those prices to support the damage that he places on this property, but only for that purpose.

Q. Mr. Aldhizer, did you find comparable loca-
page 123 } tions in that area available?

A. Yes sir.

Q. At a price to which you could re-establish your business?

A. Yes sir.

Court: Mr. Timberlake, you haven't asked him about any values yet and you haven't gotten any values from him, and I don't think you can bring this out until you have gotten some values from him.

Mr. Timberlake: Well Your Honor that was going to be my next question, what was the cost of the comparable land that he had located.

Court: Mr. Timberlake, I want to be sure you understand the ruling of the Court—

Mr. Timberlake: I'm afraid I don't understand it, Your Honor, because I thought the Court's ruling was that I could

show the price of comparable land in the area that Mr. Aldhizer found available.

Court: If you desire to establish through Mr. Aldhizer the value of the property that we are concerned with you may do so and you may do so with comparable properties, but of course the Court instructs the Commission that page 124 } they can't consider the fact that Mr. Aldhizer couldn't find comparable property in the community that would suit him as well.

Mr. Timberlake: I don't know whether to *procede* or what —I don't want to say anything improper or incorrect—Mr. Aldhizer's answer wasn't that he couldn't find another piece of property, his answer was that he could find other property and I was simply going to ask him what this would cost him.

Court: Well then I would ask you to *procede* with Mr. Aldhizer and if you did want to ask him what the value of his property was and how he arrived at the value of his property I think you may do that, but I don't think that you may use the route that you are taking.

Mr. Timberlake: We'd like to note an exception, Your Honor.

Court: Yes sir.

Q. Mr. Aldhizer, after your existing buildings on the property owned by you and your wife were taken in connection with this highway project, what if anything did you and Mrs. Aldhizer do to adjust the residue of your property after your buildings were taken to the new conditions?

page 125 } Mr. Cochran: Now if Your Honor please, I object to that. I think it's not relevant to the matter that we have under consideration here. It's the fair market value of what's taken plus damage to the residue.

Court: I'll save your point Mr. Cochran.

Mr. Cochran: Exception noted.

Q. Is that the building that the Commissioners saw this morning?

A. Yes sir.

Q. And in what respects in regard—in what respects if any is that building different from the building that was taken by the highway project?

Mr. Cochran: If Your Honor, please, may it be understood that I'm objecting to all questions along this line of questioning?

Ralph W. E. Aldhizer

Court: It certainly will. You will have a continuing objection.

Q. Mr. Aldhizer, you can answer the question now if you will?

A. Our store room is smaller and our stock room is smaller, and we are without apartments over the store.

Q. What about the similarity of access? Or dis-similarity?

page 126 } A. We have a blind east side, and the median strip—I don't know whether I'm allowed to say this or not—but there was no consideration for our place of business in the road plan, we had to fight—

Mr. Cochran: If Your Honor please, I object to this. That's not proper.

Court: I agree with you Mr. Cochran, and I ask you gentlemen of the Commission to not consider it.

Q. You say that the property as presently situated, as I understand, from the standpoint of west bound traffic what difference is there?

A. We have a blind side on the east side, Mr. Timberlake.

Q. Does the same condition in any degree exist as far as east bound traffic is concerned?

A. No I think east bound traffic will really be all right.

Q. Do you have any space in the rear of this existing building?

A. No sir, none at all.

Q. It borders on the alley, the public alley?

A. Yes sir.

page 127 } Q. It's not adjacent to any privately owned property to the rear?

A. No sir. It's a public alley.

Q. What about light and *ventillation* as compared with your former building?

A. Well, being down in the ground like we are we have no *ventillation* whatsoever, and we have had to install two different kinds of *ventillation* in our stock room and in our store room so we could stay in there—there's just no air at all, and that was additional cost to us also.

Q. Now Mr. Aldhizer, in light of the—will you please state to the Court and Commission the cost to which you and Mrs. Aldhizer were put in adjusting the residue of your property to the new conditions?

Mr. Cochran: Your Honor, is it understood that *that* my objection continues?
Court: Yes sir.

A. Around $20,800.00.
Q. That was the total cost of the construction of the buildings?
A. Yes sir.
Q. And did that include any installation that you may have put in to solve this *ventillation* problem?
A. Yes sir.
page 128 } Q. It included that?
A. Yes sir.
Q. Now, Mr. Aldhizer, will you tell the Court and the Commissioners whether or not there are any inconveniences, or conditions that will cause inconvenience, to which you and Mrs. Aldhizer will be subjected in the future operation of your property caused by the taking and new construction?
A. Well we lose the revenue from the apartments—
Q. And I understand that you do not have any visible—any visibility as far as west bound traffic is concerned?
A. That's right.
Q. Are there any other elements of inconvenience instant to the adjustment that you all have to make to these new conditions?
A. I don't know of any now, Mr. Timberlake.

ALDHIZER - CROSS

By Mr. Cochran:
Q. Mr. Aldhizer, when did you and Mrs. Aldhizer buy this property?
A. It's been about 8 years ago—either in 1959 or 1960.

Mr. Cochran: Now if Your Honor please, I
page 129 } am going to ask a question that is going to provoke an objection—

Q. What did you pay for the property in 1960 Mr. Aldhizer?

Mr. Timberlake: As the Court well knows this has been discussed out of the presence of the Commission, and I informed the Court for the reasons stated out of the presence of the Commissioners that I would object to any such questions as

that, and I do make that objection, and I understand the Court has already ruled on that.

Court: Mr. Aldhizer, can you give us a little more—can you search your mind a little bit and give us as near as you can the exact date of the purchase of this property. You said it was 1959 or 1960?

Mr. Timberlake: Well I think it was in 1960, Your Honor.

Court: I want the record to show the exact time because time is of the essence.

Mr. Timberlake: March the 15th, 1960, is what the record shows.

Court: Very well. Then I'll sustain the objection and save your point Mr. Cochran.

Mr. Cochran: I except to the Court's ruling.

page 130 } Q. Did you make any substantial improvements to the property after you bought it, Mr. Aldhizer?

A. General maintenance and painting. We painted it regularly for two or three years until I found out the road was going to take it.

ALDHIZER - RE-DIRECT

By Mr. Timberlake:

Q. In what conditions from a structural standpoint was your building at the time it was taken by the highway project?

A. What condition?

Q. Yes, what condition?

A. Well I saw most of it torn down, and I'll say this—you can't find material today like was in the building. It was good material in there, every bit of it.

Q. Well was the building or was it not in good condition?

A. Yes sir.

Q. At the time of this take?

A. Yes sir. In fact the man that tore the building down used it to build another house.

Q. And in other structural conditions it was alright?

A. Yes sir.

page 131 } By Mr. Cochran:

Q. Mr. Aldhizer, isn't this true so far as you know that this building was built in the year 1931?

A. I can't answer that.

Q. You can't say whether it was or not?

Ralph W. E. Aldhizer

A. No sir.

Q. Well do you know that your—the deed to *to* the property conveying it to you and Mrs. Aldhizer referred to it —to a strip off the front—

Mr. Timberlake: Your Honor, I thought that all of that had been settled in chambers. As I understand there's no issue whatever about the boundaries of this property, now it seems to me that it's prolonging something that has already been dealt with by the Court.

Court: Mr. Cochran, what is the relevancy of this question?

Mr. Cochran: If Your Honor please—

Court: Is this going back to this deed again, Mr. Cochran?

Mr. Cochran: It's going back to establish the time the building was built.

Mr. Timberlake: The deed doesn't establish it.

Court: Well do you intend to follow this up and call a witness to establish the time it was built?

page 132 } Mr. Cochran: No sir. All I can do is leave it with the deed—the day of the deed.

Court: I think I ruled on this deed, Mr. Cochran, and now if you want to pursue Mr. Aldhizer's information as to when the building was erected of course you may do so.

Mr. Cochran: Well he said he doesn't know, so I'll have to leave it at that. But I except to the Court's ruling on that in reference to the deed.

Landowner Rests

CHAMBERS

Mr. Timberlake: If Your Honor please, there is one matter that I overlooked calling to the Court's attention in connection with these Instructions—they all refer in reference to the taking, the taking of land and easements. Now from a technical standpoint the buildings are a part of the land, but in order that there is no mis-understanding on the part of the Commissioners I think that they should be informed that the taking apply—will apply to land and buildings in this case, because the buildings were taken without the land.

Mr. Cochran: If Your Honor please, I thought

page 133 } inserted as land and buildings—

Court: It has been inserted in a number of places. It may be that there are places where it was left

out, Mr. Timberlake, but I think with what has been said that the Commissioners will fairly understand it.

AWARD

Court: The Commissioners' report, which is signed by all five of the Commissioners indicates that the Commission has concluded that the value of the Land, Buildings, and Easements is $22,000.00, and the Damage to the Residue is $500.00. A total of $22,500.00.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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