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SUPREME COURT OF VIRGINIA
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In The

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 750212

STATE HIGHWAY COMMISSIONER OF VIRGINIA — Appellant

v.

DONALD G. CARTER and JANET E. CARTER — Appellees

APPENDIX

ANDREW P. MILLER
Attorney General of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia

WALTER A. McFARLANE
Deputy Attorney General
1401 East Broad Street
Richmond, Virginia

FRANCIS A CHERRY, JR.
Assistant Attorney General
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Richmond, Virginia

Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Plaintiff, v. DONALD G. CARTER 6121 Mann Drive Mechanicsville, Virginia 23111 and JANET E. CARTER 6121 Mann Drive Mechanicsville, Virginia 23111, Defendants.	PETITION Docket No. 100-B-1973 FILED Teste: OCT 10 1973 Richard L. Shelton, Clerk By Virginia H. Hall Dep. Clerk

TO: The Honorable Edward P. Simpkins, Jr., Judge of the aforesaid Court:

Your petitioner, the State Highway Commissioner of Virginia, files this petition in accordance with Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article 7 of the Code of Virginia of 1950, as amended, and such general laws as are applicable for the purpose of condemning the land hereinafter described and alleges as follows:

1. Andrew J. Ellis, Jr. is the duly authorized agent and attorney for the State Highway Commissioner of Virginia, for the purpose of instituting this condemnation proceeding as is shown by a signed declaration hereto attached, marked Exhibit A, and asked to be read as a part of this petition, and Andrew J. Ellis, Jr. is authorized to file this proceeding in the name of and on behalf of the State Highway Commissioner of Virginia.

2. The real estate which is affected in this proceeding lies in Chickahominy Magisterial District, in Hanover County, Virginia, and is further described as follows:

Being as shown on Sheets 4 and 5 of the plans for Route 301, State Highway Project 0301-042-101,

2,

RW-201, and lying on both sides of the proposed Route 301 northbound lane centerline and adjacent to the southeast existing right of way line of present Route 301 from the lands of Ruth D. Timberlake at approximate Station 351+70 to the lands of Ray E. Mallory and Vivian Bradley Mallory at approximate Station 358+12, and containing 0.95 acre, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain ditch right of approximate Station 352+70.

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 Route 301, Project 0301-042-101, RW-201, Sheet Nos. 4 and 5, a copy of which plans being hereto attached, marked Exhibit B, and prayed to be read as a part of this petition.

3. The right and property taken and intended to be compensated for in this proceeding is the fee simple title to the land shown within red lines, along with such easements as are shown within green lines, all of which is 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 public highway embraced in the Virginia Highway System known as Route 301, in Hanover County, Virginia.

5. This project is for the improvement of a section of Primary System Route 301 between 0.934 Mi. N. Henrico-Hanover Co. Line and 4.481 Mi. N. Henrico-Hanover Co. Line and will include right to construct, reconstruct, repair, improve, alter and maintain the said Route 301 in accordance with the attached plans market Exhibit B. It also includes the right to utilize the land in the future (1) for construction, reconstruction, alteration, improvement, repair and maintenance of the said Route, (2) for

all other Highway purposes, and (3) in accordance with all the rights and incidents normally acquired in the property by (fee simple, easements, etc.).

6. Your petitioner has made a bona fide but ineffectual effort to purchase said real estate and easement from the owners thereof and has been unable to do so because of inability to agree upon the purchase price.

7. On or about the 4th day of September, 1973, petitioner caused to be recorded in the Office of the Clerk of the Court in Deed Book 357, at page 274, Certificate No. C-23410 as provided by Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia of 1950, as amended.

8. Thereupon pursuant to the provisions of the aforesaid Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia of 1950, as amended, title to the land described in paragraph 2 vested in the Commonwealth of Virginia.

9. 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 Donald G. and Janet E. Carter, as disclosed by title examination of the above described land.

WHEREFORE, your petitioner respectfully prays to this Honorable Court in accordance with the provisions of Title 25, Chapter 1.1 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 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, by reason of the taking; that this Court be directed to confirm the vesting of title in the Commonwealth as aforesaid and

take all such other steps to carry out the intents of Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article 7 of the Code of Virginia of 1950, as amended, as may be necessary; and that your petitioner may have such other further and general relief as the nature of the case may require.

Respectfully,

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

By _____
His Attorney

Andrew J. Ellis, Jr.
Mays, Valentine, Davenport & Moore
P. O. Box 1122
Richmond, Virginia 23208

Counsel for Petitioner

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF RICHMOND)

This day Andrew J. Ellis, Jr. personally appeared before me, the undersigned, a Notary Public in and for the City of Richmond, Commonwealth of Virginia, in my City aforesaid, and being first duly sworn, says that he is attorney for the State Highway Commissioner of Virginia, and as such is duly authorized to execute the above Petition, and that the matters and things stated therein are true to the best of his knowledge and belief.

Given under my hand this 5th day of October, 1973.

My Commission expires: October 28, 1974.

Commissioned as Judith B. Sauls

Judith B. Clarke
Notary Public

Ed. 6-27-74 CPB Judge

INSTRUCTION NO. 7

The Court instructs the Commissioners that when private property is taken under the exercise of the power of eminent domain the law requires that just compensation be paid to the landowner. Just compensation means a fair and full equivalent for the loss sustained. It would be unjust to the Commonwealth if it were required to pay more than the loss sustained by the property owner and it would be unjust to the property owner if he should receive less than his loss.

Just compensation is to be ascertained as of the time the Commonwealth acquired the property, which in this case is Sept 4, 1973.

Just compensation includes two separate issues which the Commissioners must determine:

FIRST: The fair market value of the land and easement actually taken by the Commonwealth.

SECOND: The damage, if any, to the residue of the property resulting from the taking and new construction beyond the enhancement in value, if any, to the residue by reason of the taking and new construction of the highway.

23.

INSTRUCTION NO. 2

The first duty of the Commissioners is to ascertain the fair market value of the land, and easement which the Commonwealth is taking, without regard to effect upon the remainder of the property owned by the defendant.

The fair market value of property is the price it will bring when offered for sale by one who desires, but is not obliged, to sell, and is bought by one who desires, but is under no necessity, to buy.

It is not a question of the value of the property to the Commonwealth or to the owner. Nor can the value be increased or reduced by an unwillingness to sell it or because the Commonwealth needs the particular property; nor because of the proposed construction of the road.

The Commissioners should consider all uses to which the property may be reasonably adapted with respect to its surroundings and natural advantages, or disadvantages, and shall determine its fair market value at the time of the taking in the light of such uses. The Commissioners should consider these uses with relation to the existing business, residential, agricultural, or other demands of the community, or such as may be reasonably expected in the immediate future. The uses to which the land is adaptable must be so reasonably

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probable as to have an effect on the market value of the land at the time of taking. Purely imaginative or speculative value should not be considered.

gd. 6-27-74 EPS Rpt.

INSTRUCTION NO. 3

The second duty of the Commissioners is to ascertain the damages, if any, to the residue of the property resulting from the taking and new construction beyond the enhancement in value, if any, to the residue by reason of the taking and new construction of the highway.

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

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.

In arriving at the damages to the residue of the tract, the Commissioners should consider the reasonable

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costs, if any, of adjusting the residue of the property to the new conditions, and the inconvenience, if any, to which landowner will be subjected in the future operation of his property caused by the taking and the new construction.

If the Commissioners find that the new construction which has been made or planned enhances the value of the residue of the property, the Commissioners shall offset the enhancement in value against the damage to the residue.

If the damage exceeds the enhancement in value, the Commissioners should report the amount of excess damage.

On the other hand, if the enhancement in value exceeds the damage, the Commissioners cannot award any damages; nor can the Commonwealth recover the excess from the landowner.

In no event can the Commissioners offset enhancement in value against the fair market value of the land and easement taken by the Commonwealth.

The landowner has the burden of proving, by a preponderance of the evidence, damage to the residue which is not disclosed by the Commissioner's view of the property.

On the other hand, the Commonwealth has the burden of proving, by a preponderance of the evidence, enhancement in value which is not disclosed by the Commissioner's view of the property.

INSTRUCTION NO. 4

The Commissioners are governed by the following additional instructions in their determination of this case:

They should take into consideration the fact that the Highway Commissioner is entitled to occupy the entire right of way acquired.

They cannot consider any expense or annoyance to the owner by reason of having to attend and defend these condemnation proceedings, neither are they to consider any annoyance or inconvenience caused by dirt, noise, or temporary obstruction of access due to the actual construction of the highway.

While the parties to this suit 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 but an award cannot be made that does not relate to the evidence. This, however, does not permit the Commissioners to make an arbitrary or capricious award.

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The Commissioners should not make an 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 illegal manner is not valid.

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.

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

FIRST: The fair market value of the land and easement actually taken by the Commonwealth;

SECOND: The damage, if any, to the residue of the property, resulting from the taking and new construction beyond the enhancement in value, if any, to the residue by reason of the taking and new construction of the highway.

"A"

Refused 6-27-74

s/ E.P.S., Jr., Judge

The Court instructs the Commissioners that Circuity of of [sic] Access, that is the fact that the property will front on the northbound lane of travel only is not an element of damage and should not be considered as such.

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Plaintiff,	)	
v.	)	REPORT OF COMMISSIONERS
DONALD G. CARTER and JANET E. CARTER, Defendants.	)	Docket No. _____

TO: The Honorable Edward P. Simpkins, Jr., Judge of the aforesaid Court:

We the undersigned Commissioners appointed by the above named Court on June 27, 1974, to fix the value of the land taken herein 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 June 27, 1974, we were duly sworn and went upon said land in the custody of the Sheriff of Hanover County, Virginia, or one of his deputies, to view the same as directed by the order of said Court, said land being briefly described as follows, to-wit:

> Being as shown on Sheets 4 and 5 of the plans for Route 301, State Highway Project 0301-042-101, RW-201, and lying on both sides of the proposed Route 301 northbound lane centerline and adjacent to the southeast existing right of way line of present Route 301 from the lands of Ruth D. Timberlake at approximate Station 351+70 to the lands of Ray E. Mallory and Vivian Bradley Mallory at approximate Station 358+12, and containing 0.95 acre, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain ditch right of approximate Station 352+70.

Upon a view of the property and upon such evidence as was before us, we did fix the value of the aforesaid land taken by the

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State Highway Commissioner (including any easements taken) at $ 7000 00 and we do further fix the damages which may accrue to the residue, beyond the enhancement in value to such residue, by reason of the taking, at $ 4000 00.

Given under our hand this 27 day of June, 1974.

John G. Bennette

J. H. Darby Jr.

E. S. Crack

Merle W. Smith

F. J. Dabney

Commissioners

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Plaintiff,	)	
v.	)	EXCEPTIONS TO REPORT OF COMMISSIONERS
DONALD G. CARTER and JANET E. CARTER, Defendants.	)	Docket No. #100-B-73

TO: The Honorable Edward P. Simpkins, Jr., Judge of the aforesaid Court:

Exceptions are hereby tendered and filed to the report of the Commissioners in the above-styled matter upon the following grounds:

1. The awards for the value of the land taken and the damages to the adjacent property bear no reasonable relationship to the evidence in the case.

2. The actions of the Commissioners were arbitrary and capricious in returning an award not related to the value of the property.

3. The award was excessive.

4. The Court erred in refusing to grant petitioner's instruction "A."

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By _____ Counsel

Andrew J. Ellis, Jr.
Mays, Valentine, Davenport & Moore
P. O. Box 1122
Richmond, Virginia, 23208

Counsel for Petitioner

FILED

JUL 1 1974

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Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

JUDGES

EDWARD P. SIMPKINS, JR.
HANOVER, VIRGINIA 23009
(804) 798-6041

DIXON L. FOSTER
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LANCASTER, VIRGINIA 22503
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COUNTIES OF
NORTHUMBERLAND
WESTMORELAND
SPOTSYLVANIA
KING GEORGE
LANCASTER
CAROLINE
STAFFORD
RICHMOND
HANOVER
ESSEX
CITY OF FREDERICKSBURG

September 6, 1974

Robert R. Gwathmey, III, Esq.
5808 A Mechanicsville Pike
Mechanicsville, Virginia, 23111

Andrew J. Ellis, Jr., Esq.
1200 Ross Building
P. O. Box 1122
Richmond, Virginia, 23208

RE: State Highway Commissioner of Virginia
v. Donald G. Carter and wife

Gentlemen:

I have considered the Exceptions filed to the Report of the Commissioners in the above styled matter. I have also read all of the cases cited by the attorneys in the memoranda. The award for the value of the property was in excess of the testimony of the Highway Commissioner and the witnesses for the landowner and the award of damages was also in excess of said testimony.

The Commissioners were instructed at the request of the attorney for the Highway Commissioner as follows:

> "While the parties to this suit 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 but an award cannot be made that does not relate to the evidence. This, however, does not permit the Commissioners to make an arbitrary or capricious award".

There is nothing before the Court to justify a conclusion that the Commissioners proceeded upon erroneous principles.

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The other question to be answered is, was the award so "grossly excessive as to show prejudice or corruption" on the part of the Commissioners. While the award was in excess of the amounts testified to by the witnesses the Commissioners viewed the property and the information obtained in this view which is not in the record can and should be considered as evidence. Experts often differ in their opinion of value and if the Commissioners may base their findings largely upon facts obtained by their own view, then the Court does not think that it can, as a matter of law, say the award is excessive.

With reference to the Instruction offered by the Counsel for the Highway Commissioner and refused, the Commissioners were told during the course of the trial when the witness for the landowner stated that one of the elements of damages which he considered was the location of the cross-over between the lanes of the proposed highway, that they should disregard this testimony and not consider the location of the cross-walk as an element of damages. Later on during the course of the case Mr. Blair again alluded to the location of the cross-walk which testimony was not objected to by Counsel for the Highway Commissioner.

All of the instructions given were offered by Counsel for the Highway Commissioner and given as requested. They were the usual instructions given in Highway Cases. The Instruction concerning Circuity of Access was offered by Counsel for the Highway Commissioner and refused for the reasons that the Court did not feel it necessary in light of its ruling on the testimony and for the further reasons that it dealt with one specific part of the testimony which the Commissioners had been told to disregard, and was negative in form. The general principles,governing the case,given in the oth instructions were, in the Court's opinion, adequate and sufficient.

The Court will, therefore, overrule the Exceptions filed by Counsel for the Highway Commissioner.

Counsel will please prepare an Order confirming the Commissioners Report.

Very truly yours,

Edward P. Simpkins, Jr.

EPSjr:jch

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Plaintiff,	)	ORDER CONFIRMING COMMISSIONERS' REPORT
v.	)	
DONALD G. CARTER and JANET E. CARTER, Defendants.	)	Docket No. 100-B-73

This day came the State Highway Commissioner, by his attorney, and it appearing to the Court that the report of the Commissioners hereinbefore appointed with the certificate of the Judge of this Court administering the oath to the said Commissioners was on the 27th day of June, 1974, duly returned to and filed by the Court herein, and that exceptions were filed against said report by the petitioner, which exceptions are hereby overruled, and said report is accordingly confirmed.

And counsel for the petitioner having indicated to the Court that petitioner will appeal this ruling, the order directing payment shall be deferred to allow petitioner time to perfect his appeal.

Enter:

Edward L. Smithey, Jr.
Judge

Oct 22, 1974

I ask for this:

Robert R. Gwathmey, III
5808 A Mechanicsville Pike
Mechanicsville, Virginia 23111
Counsel for Defendants

Seen and objected to:

Andrew J. Ellis, Jr.
Mays, Valentine, Davenport & Moore
1200 Ross Building
Richmond, Virginia 23219
Counsel for Petitioner

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA

v.

DONALD G. CARTER and JANET E. CARTER

STATEMENT OF FACTS

The above case was heard on June 27, 1974, before Floyd J. Dabney, Merle Smith, John E. Burnette, E. S. Crack and H. H. Parsley, Jr., who were duly appointed as qualified Commissioners, all of whom with the possible exception of H. H. Parsley, Jr. had served a number of times on Highway condemnation cases in Hanover County and all of whom were picked in this case without objection.

Opening statements were made by counsel for both parties and a view of the land was taken by the Commissioners.

Upon completion of the view, Robert R. Temple, a right-of-way agent for the Highway Department testified that .95 of an acre of land was taken in fee for the improvements to Route 301 and .06 acre was taken for a permanent drainage easement. Mr. Temple, in addition, testified that certain trees along the front of the property were included in the taking, that there would be a fill of from one to seven feet across the front of the property and that the property would slope generally towards the rear. He did not know whether a septic tank could be placed at the rear of the property. Mr. Temple testified on cross examination that though the frontage on the highway would be greater after the take, the taking would result in a sharp triangular front coming to a sharp point on the North rather than the square frontage present before the taking. He also mentioned the crossover between the North and South bound lanes in his evidence concerning the taking.

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W. G. Puryear qualified as an expert appraiser for the Highway Department and testified that the total property consisted of 4.55 acres of land fronting on Route 301 and that a strip of land along the entire width of the property fronting on Route 301 containing .95 of an acre was taken for the improvements to Route 301. A permanent drainage easement containing .06 of an acre was taken to construct a drain ditch. Mr. Puryear testified that in his opinion the value of the acreage taken based on comparable sales amounted to the sum of $4,750.00 for .95 of an acre. The value of the easement of .06 of an acre amounted to $270.00 or a total valuation for the land and easement taken of $5,020.00. He further testified that in his opinion there was no damage to the residue as upon completion of the project, the residue would have more road frontage and its usability would not be affected by cutting off the front.

Charles J. Blair, Jr., qualified as an expert witness for the landowner and testified as to the value of the land and easement taken and damage to the residue. During the course of his testimony, Mr. Blair stated that he considered as an element of damage the fact that after construction, the residue would front only on the northbound lane of Route 301 with access only as to northbound traffic and the fact that in order to reach the southbound lane of Route 301, the owner of the property would have to go to a crossover a short distance away.

Objection was made to this testimony which was sustained and the Commissioners were directed to disregard it. Upon Mr. Blair testifying that the date of his appraisal was the date of the trial, objection was made to his entire testimony, which objection was sustained as the Certificate was recorded on September 4, 1973.

Mr. Blair testified that he could revise his testimony as to values and did so. Using the date of September 4, 1973, as the date of his values, his testimony was that the value of land and

easement taken was $4,512.00 and damage to the residue of $2,390.00 or a total of $6,902.00.

Mr. Blair gave various reasons for arriving at his damage figure, which included the fill, the trees, the slope of the back land, that in his opinion the best land and trees seemed to be included in the taking and that after construction the residue would front only on the northbound lane of Route 301 with access only to northbound traffic, and in order to reach the southbound lane of the property the owner of the property would have to go to a crossover a short distance away. No objection by counsel for the Petitioner was made to the latter portion of the damage element the second time Mr. Blair testified. Mr. Blair testified that 80 feet of the best land on the place was being taken and that whereas the front 100 feet of the property, of which the 80 feet was included, had a very gradual slope, the land dropped off considerably at quite a grade after the front 100 feet, and he testified with regards to the effect this might have on the septic tank; the fact of the setback from the highway which would use up a good percentage of the balance of the property; the 15 percent grade; the fill; the loss of shade trees as considered damages, and stated "there would certainly be other damages you can't tell right away."

Donald Carter, one of the landowners, testified without objection that he had personally seen the proposed land use map, which had been adopted by the County, and that his property being condemned was within the area designated for business. He also testified that there was a business almost directly across the highway and there had been a motel and restaurant just adjoining his property on the North. He gave no figure as to the value and was not asked for his opinion with reference to either value or damages.

Counsel for Petitioner offered the usual instructions which were granted by the Court, and in addition offered Instruc-

tion A which was refused by the Court.

The Commissioners unanimously agreed on an award of $7,000.00 for the value of the land and easement taken, and $4,000.00 for the damages to the residue.

On June 29, 1974, exceptions were filed to the award of the Commissioners on the grounds that such award bore no reasonable relationship to the evidence in the case, the actions of Commissioners were arbitrary and capricious in returning an award not related to the value of the property, the award was excessive and the Court erred in refusing to grant the Petitioner's Instruction A.

On September 6, 1974, the Court rendered an opinion overruling the exceptions filed by Petitioner.

APPROVED:

Edward Humphrey Jr.
Judge
Oct 22, 1974

Seen and Agreed To:

Counsel for Petitioner

Robert N Grossman
Counsel for Landowner

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA Plaintiff v. DONALD G. CARTER and JANET E. CARTER DEFENDANTS	)	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR DOCKET NO. 100-B-73

NOTICE OF APPEAL

In accordance with Rule 5:6 of the Rules of the Supreme Court of Virginia, notice is hereby given that the State Highway Commissioner of Virginia, the Petitioner herein, will appeal to the Supreme Court of Virginia from the final order entered in this proceeding on October 22, 1974, by the Circuit Court of the County of Hanover, and sets forth the following Assignments of Error.

ASSIGNMENTS OF ERROR

1. The trial court erred in refusing to set aside the awards for the value of the land taken and the damages to the residue since such awards bore no reasonable relationship to the evidence presented by the parties in the case, and therefore, violated the provision of §25-46.21 that the view shall not be considered by the commission as the sole evidence in the case.

2. The trial court erred in refusing to set aside the award on the grounds that the commissioners were manifestly arbitrary and capricious in returning an award not related to the value of the property and not related to the evidence of such value presented by the parties.

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3. The trial court erred in refusing to set aside the award on the grounds that such award, as to both land and damages, was excessive, shocked the conscience of the court, and clearly evinced a misconception on the part of the commissioners of the principles of valuation under Virginia condemnation law.

4. The trial court erred in refusing to grant Petitioner's Instruction "A" to the effect that circuity of access was not a compensable element of damage and should not be considered by the commissioners.

STATEMENT OF FACTS

A statement of facts summarizing testimony and other incidents of the trial has been filed and approved by opposing counsel and the trial court.

Respectfully submitted,

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

By _____
Counsel

ANDREW P. MILLER
Attorney General of Virginia

WALTER A. McFARLANE
Deputy Attorney General

FRANCIS A. CHERRY, JR.
Assistant Attorney General
1401 East Broad Street
Richmond, Virginia 23229

ANDREW J. ELLIS, JR.
Attorney at Law

CERTIFICATE

I hereby certify that a true copy of the above Notice of Appeal and Assignments of Error has been served on Donald G. Carter and Janet E. Carter by mailing a copy to their counsel of record, Robert R. Gwathmey, III, 5808 A Mechanicsville Pike, Mechanicsville, Virginia, 23111, this 18th day of November, 1974.

69 _____
Francis A. Cherry, Jr.