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SUPREME COURT OF VIRGINIA
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In The
SUPREME COURT OF VIRGINIA
At Richmond

Record No. 750334

STATE HIGHWAY COMMISSIONER
OF VIRGINIA, Now
STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA — Appellant

vs.

AUBREY C. FOSTER — Appellee

APPENDIX

ANDREW P. MILLER
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Counsel for APPELLANT

VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

VS. . . . . PETITION FOR CONDEMNATION

AUBREY C. FOSTER
Elkwood,
Virginia

TO: THE HONORABLE JUDGE OF THE CIRCUIT COURT OF CULPEPER COUNTY, VIRGINIA:

Your Petitioner, the State Highway Commissioner of Virginia, 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 land hereinafter described and alleges as follows:

1. W. D. Reams, 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 W. D. Reams, 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 Stevensburg Magisterial District, Culpeper County, Virginia and is further described as follows

Being as shown on Sheet 10 of the plans for Route 15, State Highway Project 6015-023-106, RW-201, and lying on the south (right) side of present Route 15 and adjacent to the Southern Railroad right of way and the lands of Willie C. Brown and Lillian L. Brown from the lands of Andrew W. Perrow opposite approximate survey centerline Station 423+90 to the center of present

Route 676 opposite approximate Station 428+70 and containing 0.434 acre, more or less, land, of which 0.01 acre is included in the existing right of way and 0.424 acre, more or less, is additional land.

The 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 15, Project 6015-023-106, RW-201, Sheets No. 10 and 10B. a copy of which plans being 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 and right of way to the land shown within red lines on the aforesaid plans along with such easements as are needed, 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 15, in Culpeper County, Virginia.

5. Your Petitioner has made a bona fide but ineffectual effort to purchase said real estate and easement, if any, from the owner thereof and has been unable to do so because of inability to agree upon the purchase price, or inability to locate the owners, or the inability of the owner to convey a clear title by reason of disability.

6. On or about the 1st day of March, 1972, Petitioner caused to be recorded in the Office of the Clerk of this Court in Deed Book 222, Page____, Certificate No. C-21168 as provided by Article 5 of Chapter 1 of Title 33 of the 1950 Code of Virginia.

7. Thereupon pursuant to the provisions of the aforesaid Article 5 of Chapter 1 of Title 33 of the 1950 Code of Virginia, title to the land described in Paragraph 2 vested in the Commonwealth of Virginia.

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 is Aubrey C. Foster, widow, 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 Article 5 of Chapter 1 of Title 33 of the Code of Virginia of 1950, as amended, that commissioners may be appointed to ascertain and report what will be a just compensation for the land and easement, if any, herein condemned including the easement for the relocation of utilities, if any such relocation is required; and to determine a just compensation for damages, if any, resulting to the adjacent or other properties of the owner beyond any enhancement in the value of the property brought about by reason of the location or construction of this public highway; that pursuant to the provisions of Chapter 1 of Title 33 of the Code of Virginia of 1950, as amended, any and all defendants hereto shall be required to file in writing in this cause any grounds of defense which they may have hereto, that this Court confirm the vesting of title in the Commonwealth 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 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.

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

By: _____
Of Counsel

W. D. Reams, Jr.
Attorney at Law
149 W. Davis Street
Culpeper, Virginia 22701

Counsel for Petitioner

STATE OF VIRGINIA

COUNTY OF CULPEPER, to-wit:

This day, W. D. Reams, Jr., Attorney for the State Highway Commissioner of Virginia, personally appeared before me, Nancy H. Kuhls, a Notary Public in and for the County and State aforesaid and made oath that he is the duly appointed Attorney for the State Highway Commissioner of Virginia, whose name is signed to the above Petition by him and that the matters and things stated in said Petition are ture to the best of his knowledge and belief.

My commission expires: February 22, 1975.

Given under my hand and notarial seal this the_____ day of March, 1972.

_____
Notary Public

VIRGINIA

IN THE CIRCUIT COURT OF CULPEPER COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

v.

REPORT OF COMMISSIONERS

AUBREY C. FOSTER

TO: THE HONORABLE VANCE M. FRY, JUDGE OF SAID COURT

We the undersigned commissioners appointed by the above named Court on July 10, 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 July 10, 1974, we were duly sworn and went upon said land in the custody of the Sheriff of Culpeper 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 Sheet 10 of the plans for Route 15, State Highway Project 6015-023-106, RW 201, and lying on the south (right) side of present Route 15 and adjacent to the Southern Railroad right of way and the lands of Willie C. Brown and Lilian L. Brown from the lands of Andrew W. Perrow opposite approximate survey centerline Station 423+90 to the center of present Route 676 opposite approximate Station 428+70 and containing 0.434 acre, more or less, land, of which 0.01 acre is included in the existing right of way and 0.424 acre, more or less, is additional land.

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 State Highway Commissioner (including any easements taken) at $ 1000.00 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 hands this 10th day of Feb, 1974.

Commissioners

VIRGINIA

IN THE CIRCUIT COURT OF CULPEPER COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

vs.

EXCEPTIONS FILED ON BEHALF
OF STATE HIGHWAY COMMISSIONER
TO REPORT OF COMMISSIONERS

AUBREY C. FOSTER
Parcel 032

TO: HONORABLE VANCE M. FRY

Comes now the State Highway Commissioner of Virginia, by counsel, and respectfully excepts to the report of the commissioners filed July 10, 1974 as follows:

(1) The State Highway Commissioner excepts to the finding of the commissioners that the value of the land taken was $1,000.00 on the ground that said amount is excessive, being in excess of the evidence presented both on behalf of the State Highway Commissioner and on behalf of the landowner, and that such award indicates that the commissioners acted arbitrarily and capriciously.

(2) The State Highway Commissioner excepts to the finding of the commissioners that the damages to the residue, beyond enhancement in value to such residue by reason of the taking was $4,000.00, on the ground that said amount is excessive, being in excess of the evidence presented both on behalf of the State Highway Commissioner and on behalf of the landowner, and that such award indicates that the commissioners acted arbitrarily and capriciously.

Wherefore, the State Highway Commissioner of Virginia moves the court to set aside the report of the commissioners both as to the value of the take and to damages and to impanel a new commission to view the property, hear evidence and make a report.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By_____
Of counsel

Shackelford & Robertson
P. O. Box 871
Orange, Virginia 22960
Counsel for State Highway Commissioner

C E R T I F I C A T E

I certify that a true copy of the foregoing exceptions was mailed to Robert A. Niles, Esq., Attorney at Law, Remington, Virginia, attorney for landowner, this 18th day of July, 1974.

_____

VIRGINIA

IN THE CIRCUIT COURT OF CULPEPER COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

VS

AUBREY C. FOSTER

ORDER OVERRULING EXCEPTIONS AND CONFIRMING COMMISSIONERS' REPORT

It appearing to the court that the report of the commissioners hereinbefore appointed with the certificate of the clerk of this court administering the oath of said commissioners, was on the 10th day of July, 1974 duly returned to and filed by the court herein; that thereafter within the time provided by law the State Highway Commissioner, by counsel, duly filed his exceptions to said report; that on the 21st day of October, 1974, such exceptions were argued by counsel for the State Highway Commissioner and by counsel for the landowner, and the court, after hearing the argument, overruled the exceptions, and no cause having been shown against said report, the same is accordingly confirmed.

And it appearing to the court that the said commissioners ascertained that the value of the land taken herein was $1,000.00 and that the damages to the residue, beyond the enhancement in value to the residue by reason of the taking, was $4,000.00, and it appearing that the said report should be confirmed; therefore, the court doth approve, ratify and confirm said report in all particulars, and doth confirm unto the Commonwealth of Virginia the fee simple title to the following property:

> Being as shown on Sheet 10 of the plans for Route 15, State Highway Project 6015-023-106, RW 201, and lying on the south (right) side of present Route 15 and adjacent to the Southern Railroad right of way and the lands of Willie C. Brown and Lilian L. Brown from the lands of Andrew W. Perrow opposite approximate survey centerline Station 423+90 to the center of present Route 676 opposite approximate Station 428+70

and containing 0.434 acre, more or less, land, of which 0.01 acre is included in the existing right of way and 0.424 acre, more or less, is additional land.

And it appearing to the court that the State Highway Commissioner has heretofore caused to be recorded in the Clerk's Office of this court certificate #C-21168 for $535.00 and that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of Section 33.1-119 and Section 33.1-122 of the Code of Virginia (1950), as amended, the court doth ADJUDGE, ORDER and DECREE that the State Highway Commissioner of Virginia pay to the clerk of this court on behalf of Aubrey C. Foster the sum of $4,465.00 with interest at the rate of 6% per annum on the sum of $4,465.00, this being the excess of the award over the amount represented by the aforesaid certificate of deposit, from the 1st day of March, 1972, the day on which the abovementioned certificate was duly recorded in the Clerk's Office, to the date upon which the principal sum is paid into court; and the court doth further order that the Clerk pay said sum to Aubrey C. Foster and R. A. Niles, his attorney, and may deliver said sum to R. A. Niles; and the court doth further order that the Commonwealth of Virginia 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 25-46.27 of the Code of Virginia (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 of deposit #C-21168 is spread.

And the court doth further order and direct that the costs herein shall be paid by the State Highway Commissioner, but it appearing to the court that the commissioners who served herein and those persons who were summoned and appeared but did not serve have been paid in another cause tried on the same day, they shall be entitled to no further compensation.

The State Highway Commissioner of Virginia, having excepted to the rulings of the court herein, is hereby granted leave to file his notice of appeal and assignments of error and to petition the Supreme Court of Virginia for a writ of error and supersedeas, and the execution of this order is suspended during the pendency of this appeal.

It is further ordered pursuant to Rule 5:9(a) of the Rules of the Supreme Court of Virginia that the transcript of this proceeding shall become a part of the record herein.

ENTER: (s) Vance M. Fry
Judge

DATE: 11-25-74

Seen:
(s) Robert A. Niles
Counsel for Landowner

Excepted to:
(s) Lloyd C. Sullenberger
Counsel for State Highway Commissioner of Virginia

A COPY _ Teste: Dorothy A. Faulconer, Clerk

By: Rebecca T. Tilton, Deputy Clerk

VIRGINIA

IN THE CIRCUIT COURT OF CULPEPER COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA
Appellant

VS

AUBREY C. FOSTER
Appellee

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

The State Highway Commissioner of Virginia, by counsel, petitioner, hereby gives notice that he appeals from a final judgment of the Circuit Court of Culpeper County, entered November 25, 1974, and sets forth the following assignments of error:

(1) The court erred in overruling the State Highway Commissioner's exception to the report of the condemnation commissioners and in not setting aside the award for the land taken as being excessive, such award being unsupported by the evidence, indicating arbitrary and capricious action by the commissioners.

(2) The court erred in overruling the State Highway Commissioner's exception to the report of the condemnation commissioners and in not setting aside the award for the damages to the residue as excessive, such award being unsupported by the evidence, indicating arbitrary and capricious action by the commissioners.

A transcript of the trial of the case is to be hereinafter filed.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By _____
Of counsel

Lloyd C. Sullenberger
Shackelford & Robertson
P. O. Box 871
Orange, Virginia 22960
Counsel for State Highway
Commissioner of Virginia

C E R T I F I C A T E

I certify that a true copy of the foregoing Notice of Appeal and Assignments of Error was mailed to R. A. Niles, Esq., Counsel for landowner, Remington, Virginia, this 27 day of November, 1974.

_____

July 10, 1974
Court convened at 10:00 A.M.

COURT: Call the Commissioners.

Commissioners were called and sworn.

COURT: Members of the Commission, are each of you over the age of eighteen? All of you are residents of the County of Culpeper for at least six months and for the State of Virginia for at least one year? I take it you all are. We have two cases here to try today, two condemnation proceedings. One of them is the State Highway Commission against Aubrey C. Foster. Are any of you related by blood or marriage to Aubrey C. Foster?

Commissioners replied in the negative.

COURT: The other case is the State Highway Commission against Broadus Maddox and Irma H. Maddox. Are you related by blood or marriage to either one of those parties?

Commissioners replied in the negative.

COURT: Are any of you employees of the State Highway Department?

Commissioners replied in the negative.

COURT: Do any of you presently have pending against you any proceedings by the State Highway Department, to condemn any of your land or any proceeding by the State Highway

1 to acquire any of your property by negotiation or otherwise?

2 Commissioners replied in the negative.

3 COURT: Are all of you landowners in Culpeper

4 County? All of you own real estate in Culpeper County?

5 Commissioners replied in the affirmative.

6 COURT: I am not sure where this project is

7 located.

8 SULLENBERGER: If it please the court, the Maddox

9 Property is on Route 15 between Brandy Station and Elkwood on

10 the southside of the highway near a Gulf Service Station, a

11 Gulf sign there. Mr. Foster's Property is located across the

12 railroad tracks just about behind the Maddox Property, off of

13 a secondary road.

14 COURT: Has anyone discussed these two properties

15 with any of you?

16 Commissioners answered in the negative.

17 COURT: Do you have any particular knowledge of

18 the property being taken, other than the general location of

19 the area?

20 Commissioners replied in the negative.

21 COURT: Do any of you know of any reason why you

22 cannot hear these cases and render a fair award in accordance

23 with the evidence, your view and the law?

24 Commissioners answered in the negative.

25 COURT: Mr. Sullenberger, do you have any questions?

1 SULLENBERGER: I have no questions.

2 COURT: Mr. Niles?

3 NILES: I have no questions.

4 COURT: Do you wish to proceed with a view at

5 this time?

6 SULLENBERGER: I would like to make a brief

7 opening statement at this time, if the court please and then

8 we will proceed with the view.

9 COURT: All right sir.

10 Opening Statements by counsel at this time

11

12 WILLIAM E. TRIBBLE, Having been duly sworn

13 testified as follows:

14 DIRECT EXAMINATION

15 By: Mr. Sullenberger

16 Q Would you state your name, place of residence

17 and occupation please?

18 A William E. Tribble, I live in Richardsville

19 in Culpeper County and I am a Right-of-Way Agent for the

20 Virginia Department of Highways.

21 Q Mr. Tribble, I show you sheet number 10 and 10B

22 of some highway plans and ask you if they show the property of

23 Aubrey Foster?

24 A Yes sir, they do.

25 Q If the court please, these have been filed as

1 an exhibit with the petition...

2 COURT: All right, they will be marked as Highway

3 Commissioners Exhibits 1 and 2, in that sequence. You better

4 mark them according to,....yes, F1 and F2.

5 HIGHWAY COMMISSIONERS EXHIBITS 1 and 2 so marked

6 at this time by the Court Reporter.

7 Q Would you step down please Mr. Tribble? Would

8 you point out and trace on the plat the Foster Property before

9 the take of the boundaries shown on the map?

10 A This rectangular piece that we see here, plus

11 this area and this roadway. . .

12 Q Now, what road is this?

13 A 754 I believe is the designation of that road.

14 Q What....is the land to be taken by the Highway

15 Department outlined in red on here?

16 A Yes it is. The red lines are the actual take.

17 Q What was the area of Mr. Foster's property

18 prior to the take?

19 A According to my records it was 1.16 acres, 1.16.

20 Q How much is being taken?

21 A .424.

22 Q What is the residue?

23 A The residue is .736.

24 Q That point four plus is the land within the

25 red line?

A That's correct.

Q For what purpose is the highway department going to use this land?

A This will be a service road which crosses through these properties.

Q According to the plans, how far is the front porch of the Foster property from the proposed right-of-way?

A Approximately ten feet.

Q How far is it from the surfaced portion of the road as shown on the plans?

A From the surfaced portion of the road I picked the edge closest to the house.

Q From the porch to the closest edge?

A It's approximately twenty-seven feet.

Q You testified that this is to be a service road, how is it to be surfaced?

A This will have a sixteen foot gravel surface with approximately four foot shoulders. They may vary according to whether they are cut or filled but roughly four feet on either side.

Q What is the cut and fill situation generally from the beginning of the tail as you referred to it, to the property line?

A Actually, as we come from Route 754, there was a slight fill all the way back to the property until we get to

the very end which we saw going across the fence. At that point there is a little hump there as you noticed and we will be cutting that down, it will be about a foot or a foot and a half cut.

Q You say a slight fill?

A Yes, from zero to eight tenths of a foot.

Q Eight tenths of....

A About nine inches, right. Zero to nine and a half inches.

Q It would be a ditch.....

A It would be a ditch in the cut section, there would be none in the fill section. That would fall off just a slight hill.

Q What is the distance from the secondary road, 754 to what we call the main part of the Foster Property?

A Approximately 340 feet.

Q Will the new road, according to the plans, follow the course of the existing lane generally?

A Yes, generally until it gets to the Foster Property and then we have a curve which brings it back closer to the right-of-way of the railroad track.

Q I have no further questions.

CROSS EXAMINATION

By: Mr. Niles

Q Mr. Tribble, I know there is an indication of something that is to be removed, does that arrow point to this property?

A Yes. This is apparently an old pipe which runs under the roadway and it looks like it starts back in here. This would be in the ditch line as near as I can see and understand the old road and comes under the entrance way into the property and this is the old pipe. The new pipe would be put further back and the new ditch line.

Q Are you aware of what was situated in this square at the end of the roadway owned by Mr. Foster?

A No.

Q If I told you that was a well, would you dispute that?

A No, I couldn't dispute it.

Q All of this in red is the full take of Mr. Foster?

A Yes sir.

Q What was the date of taking this case Mr. Tribble?

A The Foster Property was March 1, 1972.

Q That's all.

REDIRECT EXAMINATION

By: Mr. Sullenberger

Q Mr. Tribble, are you familiar with the farm that this proposed road would give service?

A No sir.

Q I have no further questions.

Witness stood aside.

JOE WINGATE, Having been duly sworn testified as follows:

DIRECT EXAMINATION

By: Mr. Sullenberger

Q Would you state your full name, occupation and residence please?

A I am Joe Wingate, I live in Roanoke and I am a real estate appraiser and consultant.

Q How old are you Mr. Wingate?

A Thirty-eight.

NILES: If it please the court, Mr. Wingate has testified in these cases before and we will stipulate his qualifications.

COURT: You admit that he is an expert appraiser?

NILES: I do.

Q I would like to submit these qualifications as an exhibit.

COURT: No objection they will be received into

1 evidence as exhibit F3 and the same one in the other case too.
2
3 HIGHWAY COMMISSIONERS EXHIBIT F3 so marked at this
4 time by the Court Reporter.
5
6 Q Mr. Wingate, I'll ask you just a few questions
7 concerning your qualifications to elaborate on what's on the
8 exhibit. When did you first become familiar with property and
9 property value in Culpeper County?
10 A In the early nineteen sixties, probably around
11 1962.
12 Q How was that?
13 A We had a contract at one time with Culpeper
14 County to keep their Property Identification Map, their tax
15 map up to date. We'd map in the transfers when a partial sell-
16 off of a piece of property was made, we'd map it in and make an
17 identification reference to it and also, we'd help the
18 Commissioner of Revenue in picking up new construction, new
19 buildings that were built during the year and we would assist
20 in evaluating these for tax purposes and that went on for
21 probably two years.
22 Q Have you had any other reason to appraise
23 property or be familiar with property values in Culpeper County?
24 A In addition to appraising on this particular
25 project for the Highway Department I have also made appraisals

all along route 211, in the northern end of Culpeper County.

Q Over what period of time does this extend?

A These appraisals for the Highway Department have been since 1970. The route 211 project was probably in late seventy and this particular project began, I believe, in 1971.

Q Do you do this on a contract basis with the Highway Department?

A On a lump sum basis.

Q Are you being paid to testify here today?

A Yes sir, I am.

Q Does your payment depend on what you testify here to today?

A No sir, it does not.

Q Would you tell the Commissioners how you went about appraising this project and tell us a little something of what went into it?

A When the contract was first made with the Highway Department, the first thing that was done was to study sales in the area and this study was made from the inland area all the way to Remington, the county line along route 15 and 29 and in doing this we wanted to satisfy ourselves as to what different type property was selling for, the land and buildings and also to talk to builders and people in construction to gain some knowledge of building cost in the area and that sort of

1 thing.

2 Q Now, did you appraise the Aubrey Foster

3 Property?

4 A Yes sir.

5 Q As of what date was your appraisal made? What

6 was the date of take?

7 A The effective date was March 1, 1972.

8 Q Would you describe this property to the

9 Commissioners from the appraisers point of view?

10 A Yes sir, this property is located just this

11 side of Elkwood. It's bounded....the northside of the property

12 bounds the right-of-way line with the Southern Railroad, the

13 main tract is approximately 130 feet by 330 feet, that's the

14 main tract where the dwelling is located and then there is a

15 strip 315 feet long from the property back to secondary route

16 676. This is where the present access road is located and the

17 strips average about 25 feet wide.

18 Q What was the access to this property prior to

19 the taking?

20 A There was a private road or a gravel lane

21 constructed along this 25 foot strip leading to route 676.

22 Q Would you describe improvements on the property?

23 A Yes sir, there is a dwelling on the property

24 which was built approximately 1905, or around 1900. There are

25 five rooms, no basement and it's built on a pier foundation.

There is no plumbing inside the house. There is a well on the side with a hand pump, it is not in the house. The first level has a living room, kitchen, bedroom and the second level has two bedrooms. The outside, or exterior, of the house is asbestos shingle and it has two porches, wood porches. That pretty well describes it. I have additional information if you care to look at it.

Q That's all right. What other buildings, if any, are there on this property?

A There are three storage sheds located, one of them is to the side of the dwelling and two of them are at the rear of the dwelling and the well is a forty-two foot well with a hand pump and there are also scattered shrubs, two pear trees along side the house and a cedar tree in front of it and some flowers and shrubs and that sort of thing.

Q Would you give the Commissioners your evaluation of the property prior to taking?

A Of the whole property?

Q The whole property?

A The land contains an area of 1.16 acres. I valued the land at $1,500.00.

Q What does that work out per acre?

A That's at the rate of $1,300.00 per acre.

Q What was your basis for that value?

A This was based on land sales that were studied

in the area. We found probably seventy-five sales up and down route 15 and 29 of which we used fifty of them and found them to be fair market sales, arms length transactions and that's the only sales that were considered. One of the most comparable properties that was sold, to this Foster Property in land, was located on route 678. This is just north or northeast from the dwelling. This piece of property that Raymond Brown sold to the Skyline Exchange Corporation and they later built a house on it. It was a two acre tract that sold for $1,500.00 in July of 1970. This would be at a rate of $750.00 per acre. I might add that any of these sales that this property, the Foster Property is being appraised as of March, 1972 and this sale took place in 1970. Our investigation of sales showed that property was increasing considerably from year to year so before we attempted to make a comparison between the tracts we up dated the sales by 25% per year, which is a relatively large increase but it seemed to be justified based on market increase.

Q Were there any other sales used in determining the value of the Foster Land?

A There were many other sales that were considered, this one I think would be the best. There are some properties over along....across the railroad tract, well, here is one up near Brandy that John Hume purchased from Graves - in August of 1970, an acre and thirty-seven hundreds and paid $2,700.00 for it. This is a rate of $1,970.00 per acre. This is a very

desirable lot, on a small knoll with a good view and probably a more desirable piece of property. It wasn't affected by the railroad right-of-way. It was in a better residential area. These and there were others.

Q How far was this Brown Property that you first referred to from the subject property, in your estimate?

A A quarter of a mile I would estimate.

Q Did it front on what type of road?

A It fronted on a secondary road. Paved road, route 678. This would be the road as you leave the Foster Property and go to the Elkwood Post Office on the southside of the railroad tract, you would pass the property. So, it's between the Foster Property and the Elkwood Post Office.

Q All right, now give the Commissioners the benefit of your appraisal and improvements?

A The dwelling, I have estimated to have a value of $7,500.00 and three sheds would have a combined value of $600.00, the water system...a forty foot well with a hand pump I would value at a $1,000.00 and other land improvements which would include trees, shrubs and so forth I valued at $400.00.

Q What did that give you for a total value of this property?

A A total for the whole property, $11,000.00.

Q How much was taken Mr. Wingate?

A The take was .0424 acres.

1 Q What, in your opinion, is a fair market value
2 of the land?
3 A The land taken is just a matter of extending
4 the $1,300.00 per acre and applying it to this area being taken,
5 which would be $550.00 for the land.
6 Q To your knowledge, was there any improvements
7 or any other items within the take?
8 A There was one cedar tree along the property
9 line adjacent to the farm. This is where the take ends, adjacent
10 to the property line on that side, which was in the take. I
11 allowed $25.00 for that.
12 Q Just briefly, is that the value of the tree,
13 the contributory value to the property or what?
14 A I would think so, yes sir. That would be the
15 value it would contribute, yes. It was rather far removed from
16 the house and it didn't have any shade value and so forth, it
17 was strictly ornamental.
18 Q In your opinion, was there any enhancement to
19 the residue or damages to the residue?
20 A I could find none. This, of course, before
21 the taking the land had to be maintained by the owners, it
22 wasn't a state maintained road and it may be some enhancement
23 as it now has a public road leading directly to the property.
24 The right-of-way line is approximately 10 feet off the porch
25 at it's closest point and it would be another 18 feet from the

1 pavement on the road which would be a total of 28 feet approxi-
2 mately off the porch and from the main house the porch has a
3 width of eight feet and this would be 18 feet from the main
4 house section to the closest point to the right-of-way and this,
5 considering the nature of the road, it will be a dead end road
6 right in front of this property and it won't be a busy highway
7 type of roadway so I can see no reason that it would be damage
8 for this.

9 COMMISSIONER: May I ask him something?

10 COURT: Yes.

11 COMMISSIONER: Did you take into consideration the
12 traffic going by closer to that house and closer to the farm to
13 which this right-of-way runs?

14 A Yes sir, I took that into account. When the
15 road ends in front of the Foster Property, it then becomes a
16 private lane as it goes back to the barns.

17 COMMISSIONER: It will still make it available to that/property.

18 A That's correct. That will be the only access
19 to the farm, through that area. The farm, this one farm, will
20 be the only property served by the private road.

21 Q So, in your opinion there is no damage to the
22 residue by this offset?

23 A That's correct. I think any loss to the house
24 due to the road and the traffic in front of it will be offset
25 due to the landowner will no longer have to maintain this lane

1 into the property which is approximately 400 feet long and I
2 think that would more than adequately offset it....any damage
3 that might have occurred to the house.
4 Q Mr. Wingate, you testified that the house, in
5 your opinion, has a fair market value of $7,500., the house
6 itself? What was your basis for that? What method did you
7 use and what supporting data?
8 A There are three exceptive approaches to
9 estimating the value of property. That being the income
10 approach which is based on the amount of income produced. The
11 cost approach, which would be the cost new less any depreciation
12 for wear, tear and use and so forth and also the market approach.
13 The market approach is arrived at by comparing sales of similar
14 properties, properties that have actually sold to the property
15 being appraised and in this case there were two properties up
16 at the Inland Area which were very similar to the Foster Property,
17 in my opinion. One of these was on the southside of the rail-
18 road track just the same as the Foster Property and had access
19 off of route 665. The tract containing .94 of an acre which was
20 improved with a five room house, it had a bath and stove heat,
21 very similar except that it did have plumbing and bath. It had
22 a garage and two miscellaneous buildings. This property sold
23 in November, 1970 for $7,500.
24 Q Do you have a picture of that house?
25 A Yes sir I do.

Q Did you take this photograph?

A I did.

COURT: I would like to know who bought it and who sold it?

Q Who was the seller in this instance?

A It was sold by Arthur VanLieu to Dowell-Rowe Corporation, that is made up of David Canavan, Lyle Thompson and Roger Parr. This was sold November 27, 1970. Deed Book 213, page 224.

Q I would like to introduce this as states exhibit, F4.

HIGHWAY COMMISSIONERS EXHIBIT F4 so marked at this time by the Court Reporter.

Q This shows the comparable sale, is that correct?

A Yes sir, that's the dwelling and the yard area there and the outer dwellings.

Q You have any other comparable sales?

A Yes sir, there is one other which is located on route 655. This is the road leading north out of - - - approximately four tenths of a mile north of routes 15 and 29. This was sold by James Kerns to Kenneth Jennings in February of 1971. It's an acre of land, 210 foot square lot. Improved with a one story cinderblock dwelling with no basement. It has

1 six rooms plus a utility room and one bath. It is heated with
2 a wall furnace and this sold for $15,200.
3 Q Do you have a photograph of that?
4 A I really don't have a detailed photograph but
5 this shows general location and dwelling.
6 Q I'll introduce this as exhibit F5.
7 COURT: I understand there is no objection. It
8 will be received in evidence.
9
10 HIGHWAY COMMISSIONERS EXHIBIT F5 so marked at
11 this time by the Court Reporter.
12
13 Q That doesn't show the house very well.
14 A It was made some distance from the house. I
15 am sorry I don't have a close up of it. The house has thirteen
16 hundred square feet in it and in addition to the house there
17 was a small storage building with one hundred and twenty square
18 feet in it.
19 Q So, if you could recapitulate briefly your
20 opinions as to the value of the take, please sir?
21 A The value of the take, land at thirteen hundred
22 an acre, five hundred and fifty dollars. The Cedar Tree at
23 twenty-five dollars for a total take of five hundred and
24 seventy five dollars.
25 Q No damages are not offset by this?

A That's correct, yes.

Q Would you answer Mr. Niles' questions?

CROSS EXAMINATION

By: Mr. Niles

Q Mr. Wingate, are you familiar with the farm this service road will provide access to?

A Yes sir, I made an appraisal of the farm.

Q How large a farm is it?

A I don't recall the exact acreage, I would say in the neighborhood of three hundred acres.

Q It is a dairy farm isn't it?

A Yes.

Q How many houses are on it?

A There are three houses that this road would provide access to.

Q When was the last time you were on the farm?

A It would have been a year or more, eighteen months maybe.

Q If I told you there were nine houses on it at the present time would you disagree with that?

A I know that the property has sold in recent months maybe and it could be...

Q Sold to a Mr. Pollard didn't it?

A I believe that's correct, yes sir. They may

1 have been built since then.

2 Q You are not aware of the fact that he has

3 placed six more additional houses on that property?

4 A No sir, I wasn't aware of it.

5 Q It is a fact is it not that farm was almost

6 four hundred acres?

7 A As I said, in the three hundred acre range.

8 I don't recall the exact acreage.

9 Q It is also a fact that milk trucks will have

10 to use this service road, will they not?

11 A They use this each morning, yes.

12 Q Do you know of anything that would prohibit

13 Mr. Faller from increasing the number of houses from nine on?

14 A No sir. As far as I know it wouldn't be any-

15 thing other than the zoning ordinance, health ordinances.

16 Q What method do you use to determine the price

17 of which property sells?

18 A This is based on a study of properties that

19 are actually sold, is that the question.

20 Q You do that in the land records?

21 A Yes sir. After the sale is found we go into

22 the....go to the property and talk to the buyer and seller, if

23 we are unable to contact both of them we try to contact one at

24 least and find out at least the nature of the property and the

25 nature of the sale.

Q What I am specifically asking Mr. Wingate, is there a method by which you could determine from looking at a deed, what the purchase price was?

A You can tell whether or not by the tax stamps, yes sir.

Q The tax stamps are $20.00, that means it sold for twenty thousand dollars, is that not correct?

A That would be based on the sellers tax, yes sir.

Q Did you appraise the Merle Whitman Property in Elkwood, almost adjacent to this property?

A Merle Whitman, I appraised the Brown Property which adjoins this.

Q This doesn't adjoin it, on the other side of the road, on 29?

A I don't recall the name right off, no sir.

Q Now, it's your testimony that milk trucks daily or the traffic from nine houses at the present time going right in front of Mr. Foster's House does not result in damages to the residence of this property?

A I shouldn't think so. This, of course, is built as a service road and there won't be the amount of traffic....what I intended to do, the idea to put across was that this is not a through road as such and there wouldn't be traffic back and forth continuously as there would be on a primary

1 or a road that served a greater area.

2 Q It's not a dead end road?

3 A As far as public maintenance it dead ends at

4 the end of this property but it extends in a private nature

5 through the farm.

6 Q Is not all the farm machinery required for

7 this farm would have to go across this?

8 A That's correct. This would be a public road-

9 way up to the farm.

10 Q It is also a fact, is it not, that Mr. Foster

11 will have no control over this property taken from him? The

12 Highway Department has the right to use it all?

13 A That's correct. They are, of course, building

14 the road under certain specifications and plans.

15 Q Which are all subject to change?

16 A They possibly could change to some degree, I

17 don't know....the construction features and so forth, but the

18 elevation of the road I don't believe they would change that,

19 without creating damage to do it and then I think Mr. Foster

20 would be entitled to a different claim.

21 Q This comes within ten feet of his porch, did

22 you say?

23 A The right-of-way line is approximately ten

24 feet off the closest point of the porch, yes.

25 Q I have no further questions.

1 COURT: You may stand aside.

2 Witness stood aside.

3 SULLENBERGER: The Highway Department rest.

4 COURT: All right. Under the Commission it has

5 been decided that...to proceed with all of the evidence on the

6 Foster Case and then proceed with the evidence on the other

7 case. Now, the landowner in the Foster Case will proceed with

8 his evidence.

9

10 R. CARL FALLER, Having been duly sworn testified

11 as follows:

12 DIRECT EXAMINATION

13 By: Mr. Niles

14 Q Give Your Honor and the Commissioners your

15 name and address please?

16 A Carl Faller, Remington, Virginia.

17 Q What is your occupation Mr. Faller?

18 A Real Estate Appraisals.

19 Q Are you a Real Estate Broker?

20 A Yes sir I am.

21 Q Where is your office located?

22 A Remington, Virginia.

23 Q Have you bought and sold property in Culpeper

24 County?

25 A Yes sir I have.

Q Are you familiar with any values in the Elkwood Area?

A Yes sir I am.

Q Concede his qualifications and ask...

COURT: All right, it's admitted that this man is a qualified expert appraiser. Has Mr. Sullenberger seen a list of his qualifications?

SULLENBERGER: I have seen them.

Q Now, Mr. Faller did you have an occasion, at the request of Mr. Aubrey Foster, to make an appraisal of his property located in the village of Elkwood?

A Yes sir I did.

Q Was the date, the effective date of that appraisal March 1, 1972?

A I have date of take, March 2, 1972.

Q Would you give his Honor and the Commissioners the benefit of this appraisal please?

A Yes sir. The date of take, March 2, 1972, the day of the appraisal was the same. The property is located near the village of Elkwood, the Stephensburg District of Culpeper County, Virginia. Acreage is one, the zoning is A1 or two acres per single family dwelling with a sixty feet set back from a right-of-way line. Utilities are telephone and electricity. The highest and best use is single family residence. The property is improved with a two story asbestos shingle house

with two bedrooms, living room, dining room, kitchen, storage room and flower room. Heat is by oil space heater and wood heater in kitchen. It has a metal roof and the floors are pine or hardwood. Toilet facilities are by pit pivet, the well is 42 feet approximately in depth. In arriving at the fair market value I used a cost approach minus depreciation in similar sales approach. The cost approach, I used a different square footage for each level in the house and each room in the house. In the pantry I used a eight dollar per square foot value, which would be five hundred and sixty dollars. In the kitchen area twelve dollars a square foot, two thousand three hundred fifty two dollars, the living room and dining room area, four hundred and twenty square feet, twelve dollars a square foot, five thousand forty and a flower room, forty-five square feet, twelve dollars a square foot, the front porch at four dollars a square foot, side porch of four dollars a square foot and the second floor at four hundred and twenty square feet, ten dollars a square foot for four thousand two hundred dollars, for a total replacement cost new, thirteen thousand seven hundred and twenty-one dollars. Minus my depreciation of two thousand seven hundred and forty-two dollars and forty cents or a total depreciated, replacement cost of ten thousand nine hundred and sixty-nine sixty. That is just the dwelling itself. To that I added the well at three hundred dollars, the land at one thousand dollars for a total replacement cost of

land and improvements of twelve thousand, two hundred and sixty nine sixty. I rounded that back to twelve thousand dollars.

COMMISSIONER: What was that figure again?

A Total land and the house, twelve thousand two hundred and sixty-nine sixty and I just dropped the two hundred sixty-nine sixty and made it a round figure of twelve thousand dollars. The similar sale that I considered was that of Garcia Dan Thorpe that was conveyed October 22, 1971. It was conveyed to Marion O. Glascock and the consideration was sixteen thousand, nine ninety-five for three quarters of an acre. It is located near Brandy Station. This property, I had to do a considerable amount of adjustment in that it was superior to the subject property. The sale price was sixteen, nine ninety-five and of course I had to adjust it back in line with the subject property in that it had a bath and a half, it was somewhat larger, it was a little bit better wiring quality and it had a garage. Now the fair market value then before the take would be twelve thousand dollars and was point four three four acres of land taken. At a thousand dollars per acre, it would be four hundred thirty-four dollars for the take. The total fair market immediately after the take would be eleven thousand, five sixty-six. The damage to the residue is two thousand five hundred dollars for a total take in damages of two thousand, nine hundred and thirty-four dollars, the fair market value after take and damages would be nine thousand and sixty-six dollars. In

1 reference to my thousand five hundred dollar damage figure, by
2 placing the service road in the right-Of-way within approximately,
3 it will be placing the right-of-way line within approximately
4 ten feet of the front porch and I felt that this was a con-
5 servative damage figure of twenty five hundred dollars. The
6 required setback line from any right-of-way area is sixty feet
7 and it will be approximately now, ten feet. They could almost
8 spit out their own right-of-way. It would also be placing it
9 in a non-conforming lot size for that area, it would be less
10 than what is required. I have some pictures of similar sales
11 if you would like to see it.
12 Q We would like to introduce them into evidence.
13 COURT: All right, it will be defendant's F2 and
14 F3, isn't it?
15 NILES: Yes sir.
16
17 DEFENDANT'S EXHIBITS F2 and F3 so marked at this
18 time by the Court Reporter.
19
20 Q By non-conforming lot size is it correct to
21 say that if the house burnt down you could not replace it?
22 SULLENBERGER: If the court please, that's a
23 legal . . . . . question. I don't know that this witness...if
24 a real estate appraiser qualified..
25 COURT: Well, if he is familiar with the zoning

1 ordinances of the County of Culpeper and what effect they would
2 have he can answer the question. In otherwords, this property
3 has been rendered.....the question is whether or not this
4 property can be used for residential purposes in the event the
5 present use is terminated because of destruction of property
6 or the improvements. I don't know whether he knows or not. It
7 would depend upon his knowledge of the zoning ordinance for
8 Culpeper County and most appraisers are familiar with them.
9 Q As he stated in the record it was non-conforming,
10 that's based on knowledge of the zoning ordinance.
11 COURT: Well, I think one of the things an
12 appraiser considering no damage to the residue is whether or not
13 if something happens to the existing use of it or improvements on
14 it, whether or not it can be reused for that same purpose or
15 not. Do you know whether that is so or not?
16 A It is my understanding sir, from the Zoning
17 Office, that if a property in a non-conforming use is burned
18 down and is vacant for a year then it would be limited to being
19 rebuilt. I am not saying that it's impossible but the ordinance
20 would require you to rebuild within a year. If for some reason
21 you didn't you would lose the use to...
22 COURT: Unless you got a variance?
23 A Yes sir.
24 Q I have no further questions. Answer Mr.
25 Sullenberger's questions.

CROSS EXAMINATION

By: Mr. Sullenberger

Q As a matter of fact, this lot in the former situation was non-conforming, was it not?

A Yes sir. In the before situation the zoning is two acres, however, lot of record would be the grandfather clause and it would exempt them, therefore, a one acre lot would be recognized as a buildable lot of record whether or not the house was existing or not.

Q Nevertheless, it doesn't conform strictly to the zoning?

A At the present time, no sir, it does not but the grandfather clause would exempt it and in the one acre zone after you take the point four acres off, it would be non-conforming land in as much as it is a one acre lot.

Q In your cost approach to this you used a replacement value less depreciation?

A Yes sir.

Q As a matter of fact, houses comparable to this aren't being built today, are they?

A No sir, you wouldn't build a home today with the inadequacies that this home has at the present time.

Q Without bath or...

A No sir.

Q Without interior water?

A They have but I would say the market would not bear it, no sir.

Q In using replacement cost it's fairly speculated as to what it cost to replace something that is not being built isn't it?

A No sir. The price that I reflected there in replacement would be to put the structure back in the same use as it is now. Of course, you would not build it without a bath or central heat but, of course, it would cost you more than twelve dollars a square foot.

Q When was this house built?

A I don't know sir.

Q Would you say it was seventy-five years old, seventy or seventy-five years old?

A If it is seventy-five years old it fools you from looking at it. I wouldn't say it is that old.

Q But you don't know, Mr. Foster didn't tell you?

A I don't know when it was built.

COURT: I notice there is only a thousand dollars difference in Mr. Wingate's appraisal of this property and Mr. Faller's appraisal. Pretty good for appraisals isn't it.

Q I am not going to pursue this very long Your Honor, just one more question. Mr. Faller, would you think twenty-seven hundred dollars depreciation on this house is

1 rather minimal?

2 A No sir, if I had thought different I would

3 have reflected it.

4 Q Is that about a twenty percent...

5 A Yes sir.

6 Q I take it in your opinion the market would

7 reflect this two thousand five hundred dollar damage that you

8 are talking about?

9 A Yes sir.

10 Q In your opinion after the take the property

11 would have brought two thousand five hundred dollars less?

12 A Yes sir.

13 Q Did you consider an enhancement because of

14 the publicly maintained road?

15 A No sir, normally I would but in the after

16 situation the service road goes just beyond the hedge of his

17 property and to me in the before situation it was a better

18 situation in that for a single family dwelling....now, you

19 are going to have, to me it's just a good place for people to

20 pull up there now and stop and drink beer and throw their beer

21 cans out.

22 Q Even though this is in the front yard where

23 he lives?

24 A In the after situation with what you call it

25 here the service road.

1 Q Even though the highway owns the land, it's
2 still right in front of his yard, is it not?
3 A The right of way is within ten feet of his....
4 yea, he doesn't have the two cedar trees they are going to take
5 from him and a nice yard. I think everyone likes a nice yard.
6 Now, I assume he is going to have a gravel driveway or asphalt
7 but either way it certainly doesn't have any amenity to home
8 ownership, I wouldn't think. I haven't seen it reflected in
9 the market. I am sure everyone likes a nice green grass front
10 yard. I certainly can't see any enhancement, no sir.
11 Q They don't like to maintain three hundred and
12 sixty feet of driveway....
13 NILES: I think Mr. Sullenberger is arguing with
14 the witness.
15 COURT: I'll let him finish. I think he is
16 putting it in the form of a question, he will probably ask do
17 they at the end of it.
18 Q You don't think there is any enhancement about
19 the fact that Mr. Foster is not apt to maintain the three
20 hundred and sixty feet, approximately three hundred plus feet
21 lane leading to his basic property from the public road?
22 A No sir, not in this situation. Not with the
23 Foster House being what it is, it's location and everything. In
24 this situation, no sir. Normally, I would have to say yes but
25 in this particular situation I think the road, the entrance to

the house is in balance with the land and the house with improvements.

Q I have no further questions.

COURT: You may stand aside.

Witness stood aside

NILES: No rebuttal Your Honor.

COURT adjourned for lunch.

COURT INSTRUCTS JURY COMMISSIONERS.

VERDICT: Value $1,000 and Damages $4,000.

STATE OF VIRGINIA AT LARGE:

I, Catherine K. Lane, Notary Public in and for the State of Virginia at Large having been so duly commissioned and qualified do certify that the foregoing hearing was duly taken by me at the time and place specified in the caption hereof, said witnesses having been first duly sworn.

I do further certify that said hearing was correctly taken by me by mechanical methods and the same was accurately written out in full and transcribed into the English language and that said hearing is a true, accurate and correct record of the testimony by said witnesses.

I further certify that I am neither attorney nor counsel for or related to or employed by any of the parties to the action in which this hearing was taken and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

My commission expires February 8, 1977.

Given under my hand and seal this 10th day of November, 1974.

Notary Public

INSTRUCTION NO. 1

A.

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 full equivalent for the loss sustained; in other words the loss caused. This means substantially that the owner shall be put in as good a position pecuniarily as he would have been had his property not been taken. It would be unjust to the State Highway Commissioner if there was required to be paid 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.

B.

Just compensation is to be ascertained as of the time the State Highway Commissioner acquired the property, which in this case is March, 1972 THE FOSTER AND IN THE MADDOX CASE IS JANUARY 5, 1973.

IN THE FOSTER CASE —

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

FIRST: The fair market value of the land and improvements actually taken by the State Highway Commissioner.

SECOND: The damage, if any, to the residue of the property resulting from the taking and construction beyond the enhancement, if any, in value to the residue by reason of the taking and construction of the highway. IN THE MADDOX CASE THE COMMISSIONERS MUST DETERMINE THE DAMAGE TO THE RESIDUE OF THE PROPERTY AT SUCH TIME THE TAKING AND CONSTRUCTION

The following instructions will deal separately with the two issues mentioned above and finally will set forth general principles of the law governing the Commissioners in their consideration of this case:

INSTRUCTION NO. 4

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

A.

IN THE FOSTER CASE:

They should take into consideration the fact that the State Highway Commissioner is entitled to occupy the entire property acquired.

B.

IN BOTH CASES, THE COMMISSIONERS

They cannot consider any expense or annoyance to the owner by reason of having to attend and defend these 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.

C.

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 and in accordance with these instructions. This, however, does not permit the Commissioners to make an arbitrary or capricious award; nor shall such view be considered by the commission as the sole evidence in the case.

D.

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.

E.

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.

F.

IN THE FOSTER CASE

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

FIRST: The fair market value of the land and improvements taken by the State Highway Commissioner;

SECOND: The damage, if any, to the residue of 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.

G.

IN THE MADDOX CASE, THE COMMISSIONERS ARE REQUIRED TO REPORT IN THEIR AWARD THE DAMAGE, IF ANY, TO THE PROPERTY RESULTING FROM THE TAKING AND NEW CONSTRUCTION

[illegible]

[illegible]

M.

The Court instructs the Commissioners that although in the proceeding involving the Maddox property the State Highway Commissioner is gaining all easements of access, light or air incident to the lands of the landowner abutting upon Route 15 - to become Limited Access Highway so that the property will not have legal access to a public road, the law of Virginia prohibits the State Highway Commissioner from condemning the portion of a tract of land other that the lands or rights actually being taken of the remainder of such tract contains more than two (2) acres, which is the situation in this case.

[illegible]

[illegible]