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Clerk Supreme Court of Appeals
Richmond, Va.

Record No. 7552

In the
Supreme Court of Appeals of Virginia
at Richmond

E. GERALD TREMBLAY, TRUSTEE

v.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7552

Virginia:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 5th day of October, 1970.

E. GERALD TREMBLAY, TRUSTEE, Appellant,

against

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Appellee.

From the Circuit Court of Albemarle County
Lyttelton Waddell, Judge

Upon the petition of E. Gerald Tremblay, Trustee, an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Albemarle County on the 28th day of April, 1970, in a certain proceeding then therein depending, wherein the State Highway Commissioner of Virginia was plaintiff and the petitioner was defendant.

And it appearing that a suspending and supersedeas bond in the penalty of $44,000, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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DECREE CONFIRMING COMMISSIONER'S REPORT

This proceeding came on this day to be heard and William C. Smith, Harry Garth, M. Y. Sutherland, Samuel B. Wells, William B. Townsend, Harley Easter, Lewis Harrison, Leonard Winslow and Frank A. O'Neill, duly summoned disinterested freeholders and residents of Albemarle County, reported to the Court.

Thereupon, Harley Easter, Lewis Harrison, Leonard Winslow and Frank A. O'Neill were struck as provided by law and William C. Smith, Harry Garth, M. Y. Sutherland, Samuel B. Wells and William B. Townsend were appointed to serve as Commissioners, were duly sworn and went upon and viewed the property described in the petition filed herein.

Whereupon, said Commissioners heard the evidence presented and rendered their report awarding the sum of $31,700.00 for the land taken and damages $30,710.00 to the remaining land, which report is dated and filed in this cause on February 14, 1970.

Thereupon, the landowners filed exceptions to said Commissioner's Report within the time prescribed by law, and the Court having considered the same and being of the opinion that such exceptions are not well taken, said exceptions are hereby overruled.

And it appearing to the Court that the property hereinafter described is necessary for the use of the Commonwealth of Virginia as a public highway, it is accordingly ADJUDGED, ORDERED AND DECREED, that said Commissioner's Report be, and the same is hereby approved, ratified and confirmed in all respects, and the Court doth confirm unto the Commonwealth of Virginia, as provided by statute, and indefeasible fee simple title to the strip or parcel of land described in the petition herein filed and the exhibits thereto attached, containing 32.50 acres, more or less as shown on the blueprints and plats attached to said petition identified on Sheets No. 11 and 12, Route 64, Project 0064-002-102 RW 205, photostatic copies of which are recorded in State Highway Plat Book VI, pages 212-216, together with the permanent right

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and easement to use the additional area shown in GREEN on Sheet 12 for the proper construction and maintenance of a drain ditch.

And there is further confirmed unto the Commonwealth of Virginia as provided by statute, any and all easements of access, light or aid incident to the lands of said owner abutting upon said limited access highway.

And it further appearing to the Court that there was recorded in the office of the Clerk of this Court on October 7, 1968, Deed Book 449, page 440, amended Certificate of Deposit No. C-13555 in the amount of $100,612.00; that said sum of $100,612.00 was distributed to E. Gerald Tremblay, Trustee, being the owner of said property, pursuant to an order of this Court entered herein on January 3, 1968; that the amount withdrawn exceeds the amount of the award by $38,202.00; and, that said State Highway Commissioner of Virginia is entitled to a judgement against said landowner for such excess, it is accordingly, ADJUDGED; ORDERED AND DECREED, that said State Highway Commissioner of Virginia recover and have judgement against E. Gerald Tremblay, Trustee for the sum of $38,202.00, and the Clerk of this Court is directed to docket said judgement in the current judgement Lien Docket Book, said judgement to bear interest from date of this Decree.

page 52 } The Clerk of this Court is further directed to record and index a copy of the Commissioner's Report and this decree in the current deed book and to make reference thereto on the margin of Deed Book 449, page 440, where said amended Certificate of Deposit No. C-13555 is recorded.

To all of the above the Defendant excepts as being contrary to the law and the evidence.

And since the Defendant, E. Gerald Tremblay, Trustee, has indicated his intention to apply to the Supreme Court of Appeals of Virginia, for a writ of error and supersedeas to the judgement of this Court, it is ORDERED that execution on the judgement hereinabove rendered, be, and the same hereby is, suspended for a period of four months from this date; and, if the Defendant duly files a Petition for a Writ of Error in the Supreme Court of Appeals of Virginia, execution on the judgement is suspended until the Supreme Court of Appeals has acted upon said Petition; and if a Writ of Error is granted in this case, it is ORDERED that execution on the judgement be suspended until and opinion has been rendered by the Supreme Court of Appeals of Virginia; all of which is conditioned upon the Defendant, E. Gerald Tremblay, Trustee, or someone for him, giving

or filing a bond with surety in this Court within twenty-one days from this date in the penalty of: $44,000.00 conditioned according to law.

Date: Enter

by Lyttelton Waddell
Circuit Court Judge

4/28/70

Filed This 28 Day of April 1970

Shelby J. Marshall Clerk

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NOTICE OF APPEAL
AND ASSIGNMENT OF ERROR

TO: Shelby J. Marshall, Clerk of the Circuit Court of the County of Albemarle Clerk's Office, Charlottesville, Virginia 22901

Notice is Hereby Given that E. Gerald Tremblay, Trustee, appeals from a final judgement rendered by this Court on the 28th day of April, 1970, and announces his intention of applying for a writ of error and *supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR:

(1) The Court below erred in refusing to instruct the commissioners in accordance with defendant's instruction 3(f), that in assessing damages for loss of access to any parcel of the residue, it must not consider adjoining land owned by one of the beneficiaries of defendant's trust as providing access for defendant, but that the defendant must be treated as a separate and distinct person.

(2) The Court below erred in refusing to instruct the commissioners to disregard testimony of the sale of the land in the vicinity of the property condemned when it became

apparent the sale was made at public auction for the purpose of liquidating a decedent's estate.

(3) The Court below erred in refusing to admit evidence of comparable land in the vicinity of the property condemned made within several months of the taking which tended to show the true value of the condemned property.

page 57 } (4) The Court below erred in admitting for the commissioners' consideration plaintiff's exhibit 5 and 6, which were unreliable, misleading and prejudicial in suggesting a large portion of the defendant's property was subject to flooding.

(5) The award of the commission was grossly inadequate, far less than the actual fair market value of the property taken and the amount of damages to the residue, inconsistent with the evidence and failed to consider proper elements of damages.

(6) The trial court erred in overruling the exceptions to the commissioners' report by the landowner for the reasons set forth in paragraphs (1) through (5), above.

Given under my hand this 14th day of May, 1970.

E. GERALD TREMBLAY, TRUSTEE

By Lloyd T. Smith Jr.
Of Counsel for Defendant
Lloyd T. Smith, Jr.

Tremblay, Colmer & Smith, p. d.
105 East High Street
Charlottesville, Virginia 22901

Filed This 12th Day of May 1970

Shelby J. Marshall Clerk

* * * * *

APPEARANCES: Mr. Charles R. Haugh
Gordon & Haugh
Fifth Street, N. E.
Charlottesville, Virginia
and
Mr. Henry Gordon
Gordon & Haugh
Fifth Street, N. E.
Charlottesville, Virginia
Attorneys for Highway Department

Mr. E. Gerald Tremblay
Tremblay, Colmer & Smith
105 East High Street
Charlottesville, Virginia
and
Mr. Lloyd Smith
Tremblay, Colmer & Smith
105 East High Street
Charlottesville, Virginia
Attorneys for Defendant

* * * * *

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* * * * *

CARLTON W. LINGHAM, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Gordon:

Q. Would you state your name and address please?

A. Carlton W. Lingham. I live at 1107 Welford Street in the City.

Q. What is your occupation Mr. Lingham?

A. I'm a Hydrologist in charge of the Sub-district office of the U. S. Geological Survey.

Q. Does that cover the Moore's Creek area?

A. That's in our area.

Q. Do you have any data on the flooding at Moore's Creek? Does your office keep any record of that?

A. We have this so-called flood prone area map.

Q. Is this an official document?

A. Yes.

page 12 } Q. I'd like to offer this in evidence Your Honor . . .

Court: All right, sir . . .

Smith: I object

Court: All right, I think it will have to be authenticated in some way Mr. Gordon.

Gordon: He said it was an official document.

Court: Not every official document is admissible.

Carlton W. Lingham

Gordon: How was the data compiled on this map Mr. Lingham?

A. Along the main Rivanna River it was compiled from a corps of engineers profiles of the April 1937 flood from something like a mile upstream from Free Bridge where Route 250 crosses on down to the edge of the map and going up Moore's Creek, about the only evidence we had was a photograph from the Daily Progress of the level of the August 1955—August 18, 1955 flood and from the water level that showed there we were able to estimate what the level would be on the contour lines of the map.

Q. And this was done from what, that data?

A. Yes from the data.

Q. We offer this in evidence Your Honor.

Smith: Your Honor may we argue this out of the hearing of the Commissioners?

Court: Yes, gentlemen would you retire please.

(Commissioners retired to the jury room)

page 13 } Smith: Your Honor my objection to this is that what they are presenting as I understand it is certain materials showing areas that are flood prone areas superimposed over 1937 geodetic survey map. There are estimates that are made and they are made for totally different purposes—I have a brochure here that tells the purposes for which they are made and they state right on it that each of these maps shows areas subject to flooding by a relative large flood. Now to show this to the Commissioners and there are portions—they have the entire Polo Field and things like that included in it. I think this would be highly prejudicial to show this . . .

Court: Well doesn't the Polo Field flood.

Smith: It may flood on occasions but that doesn't mean it isn't useful and to show this . . .

Court: Well you may cross examine with respect to the extent of his data but I don't—there is sufficient evidence it seems to me before the court to show that—at least on one occasion it's flooded, maybe only one.

Smith: I think it's perfectly fine to say that it's flooded on one occasion but to present a document of this sort I think is just inherently prejudicial. It is put on official paper and it gives the appearance of something that the

Government has decided. Now I think he can testify if he has been down and looked at the property and this sort of thing but to present the document . . .

page 14 } Court: Let me see the document.

Smith: I might also point out Your Honor that this does not indicate the boundary of the subject property at all.

Court: I think that can be done independently. Now it doesn't seem to me—this is listed here approximate area occasionally flooded it says on the map.

Tremblay: It doesn't show which side Your Honor of the creek that it comes up on and therefore, how could he testify where the boundary of our property is—the question is what area of the property in question is flooded—I don't believe that that shows on that map.

Gordon: We will explain that later . .

Haugh: We have one on a larger scale Your Honor if this is admitted, then we have a contour map of larger scale that we can pick out the 325 mark which is what that's on and it shows much better but we stuck that on ourselves. Your Honor we have a map of this scale that shows it much better but we just did this ourselves—the map is official but the coloring we just did ourselves.

Court: Objection is overruled.

Smith: We respectfully except—can we discuss this other one too, because it's coming right after . . .

Court: All right, what is the other one?

Haugh: This Your Honor is a regular contour map in which the 325 line which this gentleman will tes-

page 15 } tify to as the line is just colored in from the creek there to show in more detail what the other map is . .

Court: It simply shows . . .

Haugh: This information was taken off of a smaller map . . .

Court: Well now has he testified that this was to the 325 line . . .

Haugh: He will . .

Court: Are you prepared to testify . . .

A. I didn't submit it with my copy of the map . . .

Tremblay: Where is the 325 line?

Haugh: Here is Moore's Creek—here is this property line that is sketched in here on this side—this is just a sketch.

Q. What is the contour line—I'm talking about on the

town side and on the mountain side there—the elevation—I say contour I mean the elevation—delineate the flood plain?

A. The 320 foot contour line falls below the high water flood line. The map itself has contour intervals of 20 feet—you will see at the bottom of the page so it would appear that the flood line was above the 325 foot. In fact there is one place the bank goes up to 340.

Q. That's the flood line?

A. Yes.

Q. Now Mr. Lingham have you—what's the highest water that you know of in Moore's Creek?

page 16 } A. That August 1955.

Q. Have we any pictures showing that?

A. This one clipping—a copy of a clipping . .

Haugh: Do you want to hear all this evidence?

Court: Yes, this is on the question of admissibility.

A. This is a copy—that's the Moore's Creek Bridge . . .

Gordon: You have already ruled this was admissible haven't you Your Honor?

Court: I wanted some further evidence from him as to how he arrived at this.

Gordon: He said that there was high water in 1955 and here are pictures of high water.

Haugh: Do your files indicate how often this floods or what floods you used in compiling the data?

A. No, it simply indicates that that was the flood of August'55 there at that point near Route 20 crossing which you can compare with the elevation of the filling station in back there and get a general idea. First your width of line there amounts to about a foot difference so it's not really exact. It's as close as you can determine from the picture.

Gordon: That's the '55 flood Your Honor. (indicating to the Judge a picture of the flood)

Tremblay: That might not necessarily have been . . .

Court: But it's how he arrived—how he got . . .

Smith: Do you purpose to introduce these . . .

page 17 } Gordon: I don't . . .

Court: Not unless you want to—you may introduce them if you wish . . .

Smith: These photographs of all this flooding . . .

Court: I wouldn't think—no I wouldn't think so.

Smith: I wouldn't think they were relevant.

Court: No—I'm just examining those on the *voir dire* to determine the admissibility of the map and I rule that it's admissible.

Carlton W. Lingham

Gordon: All right, I would like for the Commissioners to see that—you say I cannot do that?

Court: No, not admissible unless they want to question him as to how he got his data and as far as I'm concerned I am ruling that the map is admissible.

Smith: This is . . .

Court: Both of them, yes. He has testified that it showed that it went above the 325 line.

Smith: All right, Your Honor, we except.

Court: All right, call the Commissioners please.

(Commissioners returned to the courtroom at this time)

Q. Now will you take this map and explain to the Commissioners what it is suppose to represent with the flood line and the elevations that are within the flood plain?

A. This is suppose to represent the edge of the high water up at Route 20 crossing. We have a photograph of

page 18 } the—of a level of the August 1955 flood and from the surrounding land we were able to estimate that the flood came at least that high which is above the 325 contour I believe. Here is the 320 down in here further down the stream bed.

Q. Then anything between these two lines is subject to . . .

A. Occasional flooding as the map speaks.

Q. All right, now what is the highest water you have had heretofore—that you got this information from? What date was it?

A. On Moore's Creek the best information we had was the photograph in the paper—August 1955. Alone the main river this was based on a profile by a corps of engineers—I mean the April 1937 flood which was considerably higher on the main river.

Q. In the 1955 flood was that water up on Route 53 the road that goes up the mountain?

A. Yes, it's covered as shown by the edge of the water.

That's all.

CROSS EXAMINATION

By Mr. Smith:

Q. Mr. Lingham, your estimates on the flood plain were based on projections from a water line shown in a different area, is that right?

page 19 } A. Yes from the mouth of the creek on up—where I've indicated on this picture.

Carlton W. Lingham

Q. Have you ever been on the subject property?
A. Not that bank of the river.
Q. So you have no personal knowledge of whether that property floods or not, is that right?
A. That's true.
Q. It's based on an estimate of what your map shows the contour line is?
A. That's correct. Those are from aerial photographs however, the basic map is made up from aerial photographs.
Q. This one—the one that is the map of the flood plain areas?
A. Right.
Q. And the dark lines that are drawn in, is it not correct show areas that might be flooded in a relatively large flood, is that the correct language?
A. Occasionally, yes. Actually we probably don't have enough information on Moore's Creek to say how large is a large flood or how frequent it might occur. It has been flooded.
Q. But you don't really have sufficient information to say how far it will go in on either side of the creek, is that correct?
A. Just the evidence in the picture.

Q. Now are you familiar with Moore's Creek in
page 20 } this area?
A. Yes.

Q. Is it true that the north side of the creek is lower than the south side?
A. More of the flood plain is there yes.
Q. More of the flood plain is on the north side . . .
A. North side . .
Q. And that is not the subject property?
A. Right.
Q. And is there any estimate of how frequently the flood will occur in this area?
A. It would have to be arrived at by somewhat synthetic methods. I imagine our Region Office would probably make a projection from estimates from other streams nearby from the main river.
Q. Is there any estimate as to how high the water will get at any particular point?
A. No, other than we have shown on the map.
Q. Well the map just shows the water may go up. It doesn't show how high it will go, will it?
A. That indicates how high it goes for that one flood.
Q. For that one flood—that's the . . .

Carlton W. Lingham

A. 1955, right.

Q. Is there any other data of that having been flooded at any other time?

page 21 } A. Not that we have definitely. Probably some of the other large storms have brought it up that high or possibly higher.

Q. Are you just speculating or do you have knowledge of this?

A. Only from records of past floods in the area, the rain fall records.

Q. Well why have you simply picked the August '55 flood—is that the highest one?

A. That's the one that we had the best evidence of.

Q. And that was a photograph of the water . . .

A. Printed right here in the paper, right.

Court: You couldn't say whether Moore's Creek was higher in the 1937 flood or not, could you?

A. I have no definite information, no sir.

Q. By way of comparison, Mr. Lingham, do you happen to know whether the town of Scottsville is shown in a flood plain in a similar area?

A. No, they are in the process of making a map down there. Scottsville so far is in the process of being put on this seven and a half minute program and at present it's on a fifteen minute program which is a much smaller map and it doesn't require as much detail as is shown.

Q. So you don't know whether Scottsville is in a flood plain comparable to this or not?

page 22 } A. James River is certainly a much larger river—there's no question about that point.

Q. My question is do you know whether it would be in a comparable flood plain? Do you know or do you not know?

A. Scottsville has a flood plain yes.

Q. Is the whole town in it?

A. Yes.

Thank you.

A. That's the 1870 flood that flooded Scottsville, about .8 of a foot higher than this past August '69 flood.

Q. 1870 flood?

A. Yes.

Thank you.

Clinton E. Price

CLINTON E. PRICE, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Gordon:

Q. State your name and address please?

A. Clinton E. Price, 1630 Center Avenue.

Q. Where do you work Mr. Price?

A. For the City of Charlottesville.

Q. And what is your vocation—where do you work?

A. At the Moore's Creek Disposal Plant.

Q. How long have you worked there?

page 23 } A. I've been there since the plant was built in 1960.

Q. Any high water down there this summer?

A. Yes sir.

Q. How high did it get?

A. Well twice—the first time about 18 feet and the second time it was about 22 feet.

Q. Was that this summer?

A. Yes sir.

Q. Did that water reach Franklin Street?

A. Yes it did.

Q. On both occasions?

A. Well it was at the edge of it the first time and the second time it was over it.

Q. How deep was it in Franklin Street the second time?

A. I would say about half a car high.

Q. A half car high?

A. That's right.

Q. As high as this what you are sitting behind—high as this in Franklin Street? (Referring to the witness box)

A. Give or take say eight or ten inches from that.

Q. Those are the two highest water levels that you've had down there during the time you have been there?

A. Yes that's the first I've seen that.

Q. Did that bottom across from the sewerage

page 24 } plant flood?

A. Yes sir.

Q. How high was the water in that bottom?

A. Oh, it was way up to those trees there—couldn't say exactly how deep it would be.

All right, sir your witness.

Mitchell Shell

CROSS EXAMINATION

By Mr. Tremblay:

* * * * *

page 25 } Q. The property that is right across the Sewerage Disposal Plant, is that the property that you are referring to that flooded?

A. Yes and on both sides—across the creek from it.

Q. I see. Did it flood more on your side of the creek than it did on the other side of the creek, that is more on the north side than on the south side?

A. Well in this particular spot where the plant is it was more on the other side because we are kind of on a bank a little bit but then above us it was—I would say it was on both sides about the same, maybe a little more towards Franklin Street.

Q. More towards Franklin Street?

A. A little I would say.

Q. Those are the only two occasions you know of?

A. That's the only ones I've seen. I've heard of it back there several years ago but I don't know anything about that.

* * * * *

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* * * * *

MITCHELL SHELL, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Haugh:

Q. Would you state your full name and address please?

A. Mitchell Shell, I live at Manassas—my office is at 121 North Grant Avenue, Manassas, Virginia.

Q. What is your profession Mr. Shell?

A. Land and Real Estate Appraisor and Real Estate Broker, do some land developing occasionally.

Q. Now would you give the Commissioners and the court your qualifications, first your education and experience in your field?

Mitchell Shell

A. Well I'm a graduate of V. P. I., been in the appraising business about 20 years. I'm a member of the American Institute of Real Estate Appraisors and the Society of Real Estate Appraisors—have spent five years with the State of Virginia, Department of Taxation and one year of that was here in Albemarle and that was back in 1948—I spent several years with the Federal Government and since 1957 I have been in business for myself.

Q. Are you a license broker at this time?

page 42 } A. Yes I am.

Q. Are you presently in the process of developing real estate?

A. I have a couple of pieces that I have a preliminary plat on, yes.

Q. Now have you had occasion to appraise property in Albemarle County in connection with Interstate Route 64?

A. I was Vice-President of the American Real Estate Appraisal Corporation in 1967 and we contracted with the Highway Department as a corporation to do the appraisals from this property to the Fluvanna County line and later we contracted to do most of the property west of the country store up to Afton Mountain.

Q. How many do you think you have appraised in connection with this?

A. I, personally, probably appraised in the neighborhood of 40 properties.

Q. Now have you had occasion to appraise the subject property as of July 27, 1967?

A. Yes I did.

Q. Would you describe to the Commissioners the neighborhood and this property?

A. The property is at the foot of Monticello Mountain. It doesn't have frontage on a public road so to speak. It's off of Route 53. It adjoins the Thomas Jefferson

page 43 } Memorial Foundation on the northeast and Jefferson Lake and Monticello Memorial Park *Cemetary* on the south. There is quarry which adjoins below the creek, southwest and the boundary was Moore's Creek, on the western boundary. Of course the neighborhood in the inside would be considered Charlottesville at Moore's Creek, there is a livestock yard and a sewerage disposal plant and flood plain land along the creek. The area—the cemetery is well kept, up the mountain on Route 53 is semi-room—there is very little development of the earth—of the lake itself, semi-private lake area. There is not a lot of development . . .

Mitchell Shell

Q. Now you are talking as of July 27, 1967?
A. Yes.
Q. Now what is the acreage of the subject property?
A. As determined by this survey—total of 107.36 acres.
Q. Now describe the terrain of this property if you would please?
A. The soil is—it's been somewhat mistreated. It was primarily in fields at one time and this soil was subject to erosion, had gone back into lime 30 or 40 or 50 years ago. There were some pine on it. A lot of it had been cut out, had been thinned and cut in spots. The soil is moderately—is deeply eroded and in the bottom had some 15 acres I estimated was in the Flood Plain at Moore's Creek.

page 44 } Q. At that time did you find any trees of commercial value on the property?
A. It has been cut in spots. There were some trees, some popular trees, maybe a few pine but no big trees. It was field pine grown over 30 to 50 years and there was some oak—this type of trees on it.
Q. In your examination of this property did you discover any flood plain land?
A. The area long Moore's Creek is subject to flooding, an alluvial type soil, it's boxed in by erosion. When I was there you could see some evidences of washing or debris in the area.
Q. Looking at Plaintiff's Exhibit 6, did you compute to try to figure an acreage that would be in that flood plain?
A. Yes I would estimate it was somewhere around 15 acres. I haven't computed it so it would be just an estimate.
Q. All right, now did you look into the problems of access roads to this property prior to the take?
A. Yes I did.
Q. What access roads were there?
A. There of course is a 20 foot right of way coming into the Jefferson Lake itself off of Route 53 and that is the primary entrance into it . . .
Q. And that is the 20 foot road as shown on our Exhibit 7?
A. Right, there's also a roadway along Moore's Creek that came off of 53 and ran along by the quarry up to

page 45 } the old house that was in the take, part of the property. Linden Street is an access there—it is a 30 foot public street down to Moore's Creek and there was an abutment on each side of the creek. There was no bridge there and it wasn't in use.

Mitchell Shell

Q. Now going back to this road as shown on our plat Exhibit there extending to Route 53, what kind of a grade was there on that road, say at Route 53 entrance? Come up and show the Commissioners what I'm talking about.

A. This is 53 as it comes up Monticello Mountain going up here—this is the road going into the lake itself. These contours run to 25 foot intervals. This 25 foot interval crosses right at the 30's. The entrance into 53 would be about at 530. Here is a variation 439—this is an elevation of 320 up to 530—this is a *horitizonal* distance. It's showing the right of way and . . .

Q. Now this quarry road, point out on the Topo map please where it ran? I don't think you can see it on this plat?

A. It came off of 53 right here along the end of the creek. It went in at this part here, at Moore's Creek, right here. It was in the flood plain . . .

Q. What shape was that road in when you examined the property as of the date of take?

A. I didn't drive in it. Probably in good weather you could drive to the house.

page 46 } Q. All right, now getting back to this road, this 20 foot road running to Route 53, getting to the subject property, are you familiar with the cost that would be involved in changing that into a 50 foot road, meeting sub-divisions standards in Albemarle County?

* * * * *

A. The fact that a 50 foot road is the minimum acceptable to the Highway Department at the present time unless there is extenuating circumstances that is already there.

* * * * *

page 47 } A. The—generally it would require a 50 foot entrance way there into this to make it a feasible sub-division street—10 percent is about the maximum that the State would accept. There have been occasions when short distances, may accept more than that but here you've got a long distance, a lot of water going down, require pavement and gutters on both sides.

Q. You're talking about percent of grade now?

A. Yes.

Q. All right.

Mitchell Shell

A. This actually computes to about 12 percent. I think by putting in a few curbs that you could get it down to 10 percent. It would require a plant mix of asphalt and concrete probably heavier in strength than you would normally expect in a subdivision, I would estimate that probably in the neighborhood of $20,000 to get the street from 53 down to the property below the lake.

Q. You mean to the lake from 53?

A. That's right, to the property line . . .

Q. Oh, to the property line?

A. Yes sir.

Q. All right, now were there any improvements on the property?

A. There was one old house, a very old house, had a basement, two stories above the basement—a three story house, had two rooms on each level. The house was probably built in 1800 or even before that, had dirt base-
page 48 } ment, had a big central hall on the first floor, one room on each side of the hall, big stairway and two rooms upstairs, each side of the hall.

Q. What was the roof made of?

A. The roof was out of tar paper.

Q. Now was there any hot or cold water on the property?

A. There was water in the kitchen. Had city water running into a spigot into the kitchen.

Q. What about hot water?

A. There was no hot water.

Q. What about bathrooms?

A. No bathrooms.

Q. Now do you have any pictures of this house on the subject property?

A. Yes sir.

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A. These two, the one at the bottom of course is the house itself, taken from the front of the house. It shows that there is a basement, first floor level—the other picture was taken along Moore's Creek, showing partial take right along the stream. That's a picture of the house. This top picture is a picture of the back of this, along the bank so to speak. This

picture 10— the little house was right about here—the picture that I showed you, the first picture is taken in this area here. This top picture and this bottom picture, picture number 10 was taken right about here, shooting in that direction. Picture 1, there was on this property down below the lake in the take, in this area here, a horse exercise ring—this shows that . . .

Q. That's all been taken, is that right?

page 50 } A. That all has been taken. This picture 2 was taken back here in this area and so was 3—3 was taken back there and 4 was taken there. There is a little stream that runs down in here in part of the take, a little easement about this point here and that was the picture of that easement on there. 11 and 12 show the residues, this is a picture of parcel A which was above . . .

Q. All right, Mr. Shell, before we—we are a little out of place but did you put a value on this property? Did you arrive at what you consider the value of this—the improvements, this whole inhabitant?

A. The house was habitant but it was in very poor condition. It had very little road frontage. I felt that it didn't have much value—someone could use it and I valued it at $950, and $50 for the chicken house and sheds.

* * * * *

Q. All right, now did you form an opinion as to the highest and best use of all this property prior to date of take?

A. Yes I did.

Q. What was that—in your opinion as to its highest and best use?

A. I felt that the property with the access that it does have, the expense of getting into it for any concentrated development would preclude immediate development. I feel that the highest and best use is for investment

page 51 } holding, using it for agricultural purposes . .

Q. Now define what you mean by investment holdings?

A. Well frankly this close to town—this property is right across from the city. It has possibility of water and sewer, it has possibilities of providing access to it at sometime in the future—it has some potential for increase in value. My interpretation of investment holding is land that can be sold to people who would buy it for long term holding, interim

use, farming purposes and expect to get an increase in value over a period of years.

Q. Now what was the actual use of the property prior to date of take?

A. Well I don't—in the past few years partially for—in connection with horse operation there. Most of it is not actually in use much, just pasture.

Q. Now Mr. Shell, did you form an opinion as to the market value of this property as of date of take and if so, give us your opinion of the market value and give your reasons or how you arrived at it?

A. Well it's primarily unimproved property, has a little value but it's primarily a vacant piece of land—as I've stated before when I did research into the market, running from the Fluvanna County line to around Charlottesville and on up to Afton Mountain. I feel that I'm pretty well familiar with land transfers in Albemarle County along about this page 52 } time and so this is the basis for my opinion about it. I felt that the property had a value as of the date of take of $900 an acre which would be $96,624.

Q. $96,924?

A. $96,624—as I stated before the dwelling $950, the chicken house shed $50, the exercise corral $420—a total of $98,044

Q. All right, now did you form an opinion as to the value of take?

A. Now the main take was parcel 036—32.67 acres at $900 is $29,583—there's a little easement taken from this parcel which I valued at $75. Parcel 38 is one tenth of an acre and that's there in front of that old building on the stream is $90—the total value of the take $31,118.

Tremblay: Excuse me, $31,000 and what?

A. $31,118.

Q. Now the take resulted in three parcels, starting with parcel A, would you tell us your opinion of the value of the residue, starting with each one of those parcels and going through each one?

A. Residue A lies up near the lake—it still has access through the property where Mr. Dettor lived, going by the lake is 16.37 acres. I felt that it had the same value as before at $900 an acre would be $14,733. Residue B is the little parcel that lies in behind the *cemetary* there and page 53 } you will notice it's very narrow in spots there

and it's six or seven feet wide in places and it's cut off from any sale to any other individual—the *cemetary* is on one side and the Interstate Route is on the other. When you were there this morning you noticed that the—as you walked behind the lake that you couldn't—no road into this 8 1/2 acres from the lake side so I damaged that to—back to having a value of $260 per acre which would in the after situation the 8 1/2 acres at $260, a value of $2210.

Q. All right, now parcel C, the one next to Moore's Creek?

A. Parcel C is 49.52 acres. It's on Moore's Creek. It has about 15 acres of flood land. It's down near the sewerage disposal plant, part of the area is within 1,000 feet of the sewerage plant which would preclude some government financing on it. It has only one access and that's a 30 foot street across from Moore's Creek with no bridge so I feel that there is considerable damage to the property. I do feel however that there is access to it, that there could be put in a temporary bridge and use it as a home site or two home sites as far as acreage—it's close to town. In the future it will have water and sewer right across the creek. In the future it could be, time change and in a number of years it will have use for other purposes so it's close to town and that makes it valuable and I still feel that it has a value of $400 an acre—49.52 acres at $400 an acre is $19,808.

Smith: $19 . . .

page 54 } A. $19,808.

Q. Now did you find any other damages to the residue of the property as a result of the construction?

A. No sir, I don't think so. That is the damage.

Q. All right, what is your total figure on that, do you have that?

A. The total damage would be $30,250.

* * * * *

Q. Now you mentioned something about government financing because of the disposal plant, would you explain what you meant by that?

A. Well I worked for F. H. A. for about two and a half years as an appraisor—policy is that they will not insure or take a house within a 1,000 feet of a sewerage disposal plant and part of this tract is within 1,000 feet.

Q. Would you come up here and show the Commissioners what you are talking about?

Mitchell Shell

A. This is the sewerage disposal plant here, I drew this line in myself in rough pencil which would show that there is 20 acres within that 1,000 foot distance and if you were using government financing it would be—it would not be accepted within that 20 acres.

That's all we have.

page 55 } CROSS EXAMINATION

By Mr. Tremblay

* * * * *

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Q. All right, sir. Now again talking about parcel C—as a result of the take, was access to that parcel completely taken away?

A. It's my feeling that there is access across that stream there at Linden Street. I went into it in considerable detail. There was a bridge across at one time and the old deed shows that this was a part of a piece of property that had access across that road. It's a 30 foot street down to the water's edge and there's an abutment to an old bridge there. At one time that street was used to get across Moore's Creek to this property. It is my thinking that there is still available access across Moore's Creek.

Q. Now—but you have testified that there is no bridge?

A. That's true.

Q. Had you made any calculation or gotten any information with regard to the cost of development of Linden Street down to where those bridge abutments end, the cost of erecting a bridge to go over Moore's Creek?

page 59 } A. I got a rough estimate from the Highway Department it would cost 30 to $50,000 to build a bridge across there.

Q. That's just the bridge alone?

A. That's right and that's a 30 foot right of way so it's not an acceptable width of right of way so it would have to be widened.

Q. And you testified that it would have to be for State Highway purposes at least 50 feet?

A. That's true. This of course would not preclude putting

in a much cheaper bridge for use of one individual—that's what I testified to in situation after the take, that as a temporary thing, that man could put in a wooden bridge and build a house over there—it wouldn't wash out once in every 25 to 30 years and then build it back. It's not completely prohibitive to use this piece of ground.

Q. Now you had on there in your testimony sir, that as to the flood plain down on parcel C, you said you calculated there was 15 acres I believe is what you testified . . .

A. I said a rough estimate, around 15 acres.

Q. Did you make any precise calculation?

A. No, indeed.

Q. You gave a total damage to parcel C of $24,500. Did that take into consideration what it would cost to build a bridge to gain access?

page 60 } A. My testimony was that this land—its highest and best use is for investment holding, for use for anticipation of selling it at some future date at an enhanced value. This is the highest and best use after the take—this was the basis of my opinion in the after situation—is based on the market, on what I think that this piece of ground would bring, considering the fact that it's adjacent to the city of Charlottesville, it has water and sewer available to it, and its possible to get to it.

Q. Now you testified about parcel B which is the 8 1/2 acre parcel that is adjacent to Monticello Memorial Park. Now you testified—I believe you said something to this effect that the parcel could not now be used, is that what you testified to?

A. Well what I testified to it's very impractical to use this. There is a steep bluff at the lake which is almost impossible to get up to the road. It's a long narrow strip running behind the *cemetary* in a piece of land over there so the only access that they have to it is by this lake and it would be prohibited to build a road in there on 8 acres of land, plus the cost of the road.

Q. You left the value of $260 an acre and I ask you if it's virtually unuseable why did you leave an acreage evaluation of $260?

page 61 } A. Well for one thing it adjoins the *cemetary*. There is always a possibility of expansion of that *cemetary*. There is the possibility for using this land in conjunction with settlement of lot around that lake—it's a big lake and 8 acres, $260 is not very much money for land just to roam much so to speak.

Mitchell Shell

Q. But you have no knowledge about the *cemetary* wanting any property surrounding this area do you?

A. None except hearsay.

Q. In developing, is it better to have tracts or a big parcel of land hooked together, that is an intervale piece of property for development or is it better to have them spread apart?

A. Well basically it would be better to have a sizeable piece of land in one place and all rectangular if possible.

Q. Did you take that into consideration with regard to the damages you gave this piece of property?

A. Yes I did.

Q. Well you didn't give—I want to go over to Parcel A—you didn't give any damages to that piece of property, did you?

A. I testified that in my opinion the land was worth $900 an acre before the taking and this 16 acres in my opinion is still worth $900 an acre. It may have changed its character a little bit but it's still useable for development lots or use for holding purposes—in my opinion it still has a value of $900 an acre.

page 62 } Q. Now the 16 acre tract that you just mentioned a minute ago that having an intervale piece of property is better, makes it more useable. The fact that the 16 acre tract was separated from the other property, you didn't consider that as any kind of a damage.

Court: He's already answered the question.

Q. All right, sir.

Court: That's merely argumentative Mr. Tremblay so let's don't undertake to argue the case at this time.

Q. Now sir, when you got into Parcel A, the 16 acre parcel, was there access to that land prior to the take? Is there a way to get to it over the other land owned by Jefferson Lake?

A. Well of course I am testifying that from my opinion that there was access through Mr. Dettor's property there through the lake . . .

Q. Now I'm talking about—you're not answering my question . . .

A. Well this is the main entrance into this property. Now there were two other possibilities if you want to argue this point . . .

Court: Don't argue—it's a simple question Mr. Shell. I

don't know that it's a matter that appears of record as a matter of fact . . .

A. I don't know how to answer Your Honor unless I explain it . . .

Court: You'll have to answer it. You may explain it later. Was there access to this property without going over somebody else's land before the take?

page 63

A. Yes sir, there was.

Court: Well that's . . .

Q. All right, it was you say. This was over Jefferson Lake property, correct?

A. It was over the Jefferson Lake property, it was over the quarry road along Moore's Creek and it was also access across Moore's Creek by this abutment—three separate accesses to it.

Q. After the take was there any access to the 16 acres over land—over the land that was owned by Jefferson Lake prior to the take?

A. There is access, yes.

Q. Where is the Jefferson Lake land that affords access to that piece after the taking . . .

A. I'm sorry, there is none there—there is access over Mr. Dettor's property.

Q. The question I asked you sir, after the take was there any access . . .

Court: He's answered your question. He said there was access over Mr. Dettor's land.

Q. Well I asked him Your Honor—I didn't ask him that question, I asked him after the take was there any access over Jefferson Lake land . . .

page 64 Court: All right, I see . . .

A. There isn't any.

Q. There isn't any and you did not give that any weight in determining if there were damages to that property, is that correct?

A. It's my opinion that the 16 acres still had a value of $900 an acre. I was aware of this and was aware of a lot of other factors.

Q. Sir, you testified about the grade in the road on Route

Mitchell Shell

53 down to the Jefferson Lake property line, I presume that —I'm showing you Plaintiff's Exhibit number 7, and starting at Route 53 and then going down to the very southern tip of Parcel B, is that the road that you are speaking of?

A. Yes, the grade here.

Q. Now when you determine the grade isn't it true, sir, that you figured the elevation at Route 53, and the elevation at the complete southern tip of parcel B and then shot a straight line to figure your grade?

A. I testified that that straight line was about 12 percent and I also testified that they could possibly put a road in there at 10 percent.

Q. You didn't take the road as is and check the grade on the road as is?

A. I did not survey it, no.

Q. Sir, again with reference to Parcel C, you
page 65 } mentioned that there was a water line or water—
I don't believe you mentioned a water line—water in the old house that you described, do you know what size water line was there prior to the take?

A. It was a small line—it was either an inch or an inch and a half.

Q. And was that city water?

A. That was city water.

Q. Was that line taken in the take?

A. Yes.

Q. Did you attribute any damage to the taking of that one inch or inch and a half line?

A. No, I did not.

Q. To your knowledge was there any substitute made for that line to the property?

A. The line was severed on the other side of the—Moore's Creek and to the best of my knowledge was not replaced.

Q. When you looked at the house which you described were there people living in it?

A. Yes sir.

Q. When you looked at the area of the take—let me ask you this, did you look at higher area of the take prior to the take?

A. Yes I did.

Q. Did you ride over it, walk over it . . .
page 66 } A. I walked over it.
Q. Was it heavily wooded?

A. My testimony was that there were trees in places on it, pine trees—I've shown pictures and there were trees in

places and other places there weren't. They had been cut recently, within the last several years approximately.

Q. I show you Plaintiff's Exhibit number 2 and in the area of the rink that you testified about I want to show you a notation on the map, it says heavy woods?

A. Uh Huh.

Q. Do you recall that being heavy woods in that area?

A. All I can remember is what I testified to, there were spots of heavy woods and there were also spots that the woods had been cut.

Q. Did you assign any value in the timber or the merchantable trees that were taken off the take?

A. This is a consideration in my opinion that it's worth $900 an acre as an average yes.

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REDIRECT EXAMINATION

By Mr. Haugh:

Q. Just one question Mr. Shell. Would you come up here please. Now this is the road right back of Route 53, can you extend this on and show where the ring was that you are talking about, the horse ring? All right, let's show it on this one, the topo map.

A. This is 53 and this is the entrance into the lake, the road runs right beside here.

Q. And the horse ring is about where?

A. Horse ring is right in here.

Q. Right in there. Now with reference to this
page 69 } road coming in, at the date of take was there any
roadway leading back to what is now this 16 acre parcel residue— was there any roadway leading to that 16 acre parcel through this other land of Jefferson Lake? In other words what the State has taken or Parcel C.

A. There is no roadway that you would call a roadway, that you could drive a car down . . .

* * * * *

Walter A. Hash, Jr.

WALTER A. HASH, JR., having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Gordon:

Q. Mr. Hash, give us your name and address for the record will you?

A. I'm Walter A. Hash, Jr. I live at 1501 Oxford Road, City.

Q. What is your occupation?

A. Real Estate Appraisor and Salesman.

Q. How long have you been in that business?

A. Since 1947.

Q. And how long in the Charlottesville-Albemarle area?

A. Since January 1, 1957.

page 70 } Q. Would you state your qualifications?

A. I have High School, Business College, Accounting I and II. I have worked for the State Department of Taxation from about June 1947 to January 1, '57 and was employed by the City of Charlottesville for . . .

Tremblay: Excuse me, I hate to interrupt but Mr. Shell is in here, I didn't recall that he was . . .

Court: He's entitled to be present as a representative of the Highway Department.

Tremblay: They had another man in here this morning . .

Court: They did not. He's the same man that has been there all along.

Tremblay: I thought they had another man, I'm sorry.

A. I was employed by the City of Charlottesville from January 1, 1957 till June 1961 and since that time I've been engaged in real estate sales and private appraisals.

Q. When you were employed by the City, what were your duties?

A. Real Estate Assessor.

Q. Have you ever appraised land in the county?

A. Yes sir.

Q. How many parcels would you say? Well who have you appraised for Mr. Hash?

A. Well now I've appraised for the last year—I appraise for numerous insurance companies and individ-

page 71 } uals—last year I appraised 178 separate parcels of real estate in 1969.

Walter A. Hash, Jr.

Q. Have you done any appraisals for banks?

A. Yes sir. I do all the appraising for First Federal. I do appraising for Virginia National Bank, the Pilot Life Insurance Company, Jefferson Standard Life Insurance Company, Southwestern Life and numerous individuals.

Q. Are you familiar with the subject property?

A. Yes.

Q. How long have you known it?

A. Since—my first time over there was about, approximately 1964—on the property.

Q. What about access to this property—I'm talking about before 64 was put down now?

A. The access to the property prior to—is a 20 foot right of way from Route 53 and a 30 foot right of way from Carlton Road in the city.

Q. Are you familiar with the old quarry road?

A. Yes sir.

Q. Have you walked that road?

A. Yes sir.

Q. Will you state the condition—do you know the condition of it in '67—did you walk it then? Do you know its condition in '67, the date of the take?

A. Not at that moment.

Q. Have you made a study of this property?

page 72 } A. Yes sir.

Q. What in your opinion is its highest and best use?

A. For one—for an individual to build one house.

Q. Now have you formed an opinion as to the value of the land before the take and if you have, state and how—what it was and how you arrived at your conclusions?

A. Well prior . . . will you repeat that question.

Q. I said have you formed an opinion as to the value of the property prior to the take and if so, state what the value was and what you based your opinion on?

A. Well the value before the take of the subject property of 107.36 acres of $100,800.

Q. $100,800?

A. Yes sir.

Q. How much does that work out in acreage?

A. $940.

Q. Now how did you arrive at that Mr. Hash?

A. I was taking all the sales that I could find—I mean I have studied all the sales from the south side of the City from 29 south around the now existing road to and up

Rivanna River to Rio Road and properties in the immediate vicinity of the subject. A list of these I would like to discuss at this point. In—by Deed recorded June 25, 1968, the Thomas Jefferson Memorial Foundation purchased from Paul W. Perry and wife, property known as Tufton

page 73 } containing 808.98 acres. It adjoins the Thomas Jefferson Memorial Foundation on Monticello on the east. There were also improvements on this property and the consideration was $300,000. The average price of this land was $370—that's June 25, 1968. In 1967, Robert H. Foreman and wife purchased 53 acres from Mary O. Clark that is .8 of a mile southeast of the entrance to Monticello on the south side of 53 and also for a consideration of $34,500. Now I have been over this property because I appraised it for a loan not long ago. There is a main house, three bedrooms and two and a half baths—the house had hot water heat. There is a cabin in the yard rented to a University student. There is a barn. It's an older house but it has a lot of charm and this—average cost per acre for this 53 acres was $660. Now in 1965 Stanley Woodward and wife in Deed Book 404, page 337 and Deed Book 413, page 27, purchased two tracts of land at 223.02 acres—the grantor was William W. Stevens and others in a consideration of $178,092.66. This property is unimproved—for an average per acres of $800.

Smith: What was the total acreage Mr. Hash?
A. 223.02.
Smith: Were they two separate . . .
A. Right, two parcels.
Smith: Purchased about a year apart?
A. No, they were both—one is Deed Book 404 and the other is 413—see they are in '65.

page 74 } Q. Where is that land?
A. That is right across from Simeon, at Simeon or at what was known as Sunnyfields.
Q. On a public road?
A. A long road frontage.
Q. What is the topography of it?
A. Almost level. This is 53 and this is State Route 795 and it's this parcel 1 and parcel 2 on this.
Q. Now where is that in relation to Jefferson Lakes?
A. That's over the mountain approximately a mile.
Q. All right, go ahead and tell the Commissioners the other comparables?

Walter A. Hash, Jr.

A. It's not over—I don't believe it's over a mile—certainly no more than a mile and two tenths. In Deed Book 413, page 72, the North Corporation from Citizen's Bank and Trust Company, executors of Lee L. Bailey Estate, three parcels of land containing 71.88 acres—consideration $31,000. Now this property fronted on Fifth Street, S. W., was on the back by Moore's Creek and it was located partly in the city and partly in the county.

Q. What was the price per acre on that?

A. $430.

Smith: I beg your pardon?

A. $430 per acre—71.88 acres.

Tremblay: Would you give us that Deed Book page 75 } reference again please sir?

A. Deed Book 413, page 72.

Tremblay: All three parcels on that Deed . . .

A. Yes sir. By Deed Book 403, page 577, Deed Book 414, page 383, Deed Book 424, page 120, Deed Book 438, page 317, all those deeds Doctor Hurt purchased from A. M. Rolkin River Bend and Pantops farm containing 731.3 acres for $750,000—that was $1,025 per acre. He paid $225,000 for the River Bend and for Pantops—664.4 acres—total consideration was $525.000.

Q. How does that property compare with the subject property Mr. Hash?

A. Well this is out on 250 east of town, beautiful land. This Pantops Farm contains 664.4 acres—consideration $525,000 average price per acre was $790 with numerous improvements on it. Well now our subject property—this is Route 53 and our subject property is off of State Route 53, right in this area, surrounded by—across is the Moore's Creek Disposal Plant and the Livestock Market, numerous cheap houses. In 1966 in February—February 24th by Deed recorded February 24, 1966 in Deed Book 415, page 320 and 415, page 322, Piedmont Development Corporation purchased from Virginia National Bank, Trustee under will of Robert W. Wayland and others, three tracts of land containing 146.69 acres—consideration $120,000. And the County has those buildings appraised on this property right now for taxes for $15,860. And that property . . .

page 76 } Smith: Objection to any testimony concerning the taxes . . .

Walter A. Hash, Jr.

A. Well I just want . . .

Court: Just a moment, he's talking to me now Mr. Hash. What is the objection?

Smith: I believe he is testifying to what real estate taxes are, appraisals on it and I believe that's inadmissible.

Court: Objection is sustained. Gentlemen, you won't consider what the buildings are appraised for. He may give his opinion as to the value if he wishes.

A. This property is located just off of Rio Road, it adjoins the City Meadow's Creek Disposal Plant. There is a State Road, dirt road running into it off of Rio Road. The land is mostly open. The surroundings are similar to the subject property. In my opinion this property is the most comparable of all the sales of tracts of land surrounding the city.

Q. What was that property per acre?

A. That property per acre allowing a token value of $10,000 for the buildings on it, would average out $750 per acre.

Q. And you allowed $10,000 for the buildings?

A. Yes sir.

Q. Now show the Commissioners exactly where that is—where is the subject property?

A. Here this is 53, that is the Lakeside sub-division.

page 77 } Q. Now where is the Wayland property?

A. Right here, in the bend of the river. Now that property went to record February 24, 1966. The date of our taking was 7-27-67,—July 27, 1967. So I took this—that's 17 months later—so I gave this property in comparison—I say that the properties are similar—I gave that $750 value per acre, a one and a half percent gross per month for 17 months.

Q. That's the Wayland property?

A. That's the Wayland property. And that would bring up the value of the land out there at the date of taking to $941.75 so I rounded that off to $940 per acre for the subject. Now the value of the land taken was 32.97 acres at $940 per acre for a total $30,991.80.

Q. Now Mr. Hash you've seen these maps—you notice the residue is divided into parcels A, B, and C?

A. Yes sir.

Q. Did you allow any damage to parcel A of the residue?

A. No. I did allow damages to parcel C. . . .

Walter A. Hash, Jr.

Q. I'm talking about parcel A now?
A. No.
Q. You didn't allow any damage to that?
A. No.
Q. Why did you not?
A. Well I didn't think there is damage.
Q. Did you allow any damage to parcel B?
page 78 } A. No sir.
Q. Didn't think there was any damage to that?
A. No sir.
Q. How about parcel C?
A. I took that parcel C and multiplied that 49.50 acres—52 acres at $940 per acre and gave it an 80 percent, depreciation rate or damage rate of 80 percent—that comes out to $37,239.04.
Q. Mr. Hash, did you walk along the take side of Moore's Creek?
A. Yes sir.
Q. Did you observe any signs of flooding?
A. Yes sir.
Q. How much land was effected by—well what did you notice in way of flooding?
A. Well I walked this land from up here where this little bridge abutment is down and there is a lot of—in the upper end and in the lower end particularly there is a lot of old lumber, debris over a large area in there.
Q. Can you tell the Commissioners actually how much—how many acres show those signs?
A. Only an estimate—12 to 15 acres.
Q. Since you have been in Charlottesville which I believe you stated was 1957, have you been engaged in any land developments?
page 79 } A. I worked for a developer, yes sir.
Q. Would you characterize this land as suitable for development in 1967?
A. Well this land was with a 20 foot right of way and due to the grade and due to the fact that there had been no history of Lakeside and no history of Sunnyfields, no history of Oakhill, therefore I say no.
Q. Lakeside is on Route 20, is that correct?
A. Yes sir.
Q. Sunnyfields—where is Sunnyfields?
A. That is this portion of land that is about a mile east of, southeast of the subject. It's about a mile and a half from

the subject property and about a mile from the entrance to Monticello.

Q. Were those sub-divisions at that time, the time of the take.

A. Yes sir.

Q. Have they shown any development at all?

A. A lot of problems.

Q. Well after that were there any lots sold over those—had they developed to any degree?

A. Yes some but the property is being very slow.

Q. Are you familiar with the sub-division ordinance in 1967?

A. Yes.

page 80 } Q. What were the requirements as to roads?

A. 50 foot right of way.

Q. Anything about drainage ditches?

A. Well I have to qualify this to this extent, that under certain grades you had to put in curbs—curbing under certain conditions.

Q. Mr. Hash, you seem to be very familiar with this market, if 64 hadn't come in there would there have been any activity in the market for this real estate?

Smith: Objection to that Your Honor. It's purely hypothetical . . .

Court: How was the question phrased?

Q. I asked him if 64 hadn't come through there, would there have been any activity in the real estate market on what I will say the south side of town?

Court: You may ask him the question, if he can.

Q. Okay, go ahead.

A. Well we . . .

Smith: Exception.

A. We live in a fluctionary period. I don't think it would be anything to compare with activities we are having now in regard to land, interest in land along the new road.

Q. Well now prior to the time 64—now I'm talking about prior to July 1967 to the time before it was known that 64 was going there—was real estate moving on that

page 81 } side of town?

Walter A. Hash, Jr.

A. No sir, no.

You may examine.

CROSS EXAMINATION

By Mr. Tremblay:

Q. Mr. Hash, you talked about the highest and best use of this land, what did I understand you to say?

A. I said that I thought that the highest and best use of this property would be one for one house if someone were looking for a secluded spot.

Q. And is the highest and best use of the Wayland property one house?

A. No sir.

Q. You said that that was the most comparable, why is it that this is only one house and the Wayland is different—what would you say the highest and best use is of the Wayland property?

A. I have to qualify this—I believe it's zoned agricultural at this time

Q. Well do you know what the zoning was in the county in 1967?

Haugh: Your Honor can we stipulate to that?

Tremblay: I'm asking if he knows what he is talking about Your Honor.

Court: All right.

page 82 } A. I can't tell you what the date of—when the zoning ordinance was adopted.

Q. You don't know whether the Monticello—this Jefferson Lake Land was zoned as agricultural or was not zoned or was zoned some other way in 1967, is that correct?

A. No sir.

Q. Now let's look at the comparison between the Wayland property and this property that you say is the most comparable, are the two pieces that you have looked at that are the most comparable. Does the Wayland property have access to utilities near by to the city—utilities, that is sewer and water?

A. It's adjacent to the city.

Q. Isn't it true that the water is more than 3,000 feet away, city water is more than 3,000 feet away?

A. No sir.

Q. Well how close . . .

Walter A. Hash, Jr.

A. It's in Rio Road.
Q. It's in Rio Road?
A. Yes.
Q. How far is Rio Road away from this property?
A. I was out there yesterday—I would say approximately 2,000 feet from Rio Road to the back corner.
Q. You didn't measure it?
A. No sir.
Q. Now is there sewer facility near by?
page 83 } A. Has the same sewer facilities.
Q. Now let's look at the neighborhood to approach into the Wayland property—that is the approach into the Wayland property, the neighborhood—what type of a neighborhood do you have to get into the property?
A. You have to the Wayland property there is a dirt road that runs in as a county road.
Q. Unimproved?
A. Unimproved. Now you can drive down to the property line. Then there is a road running . . .
Q. I'm asking you sir, what is the approach? Isn't it true that there are a bunch of shacks, an unattractive approach into that property compared to the approach off of Route 53 into the Jefferson Lake property?
A. Prior to the taking of this property somewhat.
Q. Do you have any improved access into this property, into the Wayland property?

Hasn't he answered that question Mr. Tremblay?
Tremblay: No sir,—well he said he had found there are two approaches there Your Honor. Is there any improved access into the property?
A. There is a road but I don't find the number on it running down to the Meadow Creek Disposal Plant and whether they have a right to use that road, I can't—whether it's a public road all the way out—I believe it is but I'm not positive.

page 84 } Q. Do you know the width of the access road into the Wayland property?
A. Not exactly.
Q. Isn't it true that it's less than 50 feet?
A. I can't answer that question.
Q. Now let's look at the Stevenson, Stanley Woodward

sales. You lumped it all into one sale Mr. Hash—do your notes show the statistics for each sale?

A. Mr. Tremblay, I have both of these—no, right at this moment, I can't tell you how much it was.

Q. Let me refresh your memory and see if this is right. Isn't it true sir, that the first sale in 1965 was January 15, 1965 and that was an acreage of 63.38 acres?

A. That was the first sale, yes sir.

Q. And that was $58,092.66 and that was at that cost—that was $916 per acre?

Court: Do you have the figures Mr. Hash?
A. I don't deny that.
Court: Do you know?
A. Sir?
Court: Do you know?
A. I have leafed through these, no . . .
Court: You don't have the separate figures?
A. No sir.
Court: All right, Mr. Tremblay, he doesn't . . .

page 85 } Q. Well let me ask you this . .

Court: You may prove it when it comes—he says he doesn't know.

Q. I'm going to ask him a different question Your Honor.

Court: All right.

Q. Do you know what the consideration was for that 63.38 acres?

Court: He has already answered that he doesn't know the separate considerations.
Tremblay: Oh, I thought he said he did.
Court: He said he had them lumped and he doesn't have the division.

Q. All right, now let me ask you Mr. Hash, the Sunnyfields property that you are speaking of is up there near that little store where you make a sharp bend, just right in front of Collins' is that correct?

A. Yes.

Walter A. Hash, Jr.

Q. And I think you testified that that's about a mile and a half beyond the entrance to Monticello?

A. No, I said approximately a mile and a half from the subject.

Q. A mile and a half from the entrance to Jefferson Lake?

A. Right.

page 86 } Q. Now does that have any public utilities available?

A. No.

Q. Now did you take that into consideration that the Jefferson Lake property does have public utilities available when you arrived at the price of the Jefferson Lake property per acre in contrast of the Sunnyfields' property?

A. I didn't. I didn't use the Sunnyfields in my summation of the—I merely mentioned it to show that I was aware of the sale.

Q. You said sir, that you added a factor of one and a half percent per month, increase of the Wayland property . . .

A. Right.

Q. Would that figure also pertain of one and a half percent increase per month to the Sunnyfield property in valuation?

A. No sir.

Q. Why not?

A. Well it was common knowledge . . .

Q. I'm speaking now looking back from the date of the take?

A. Right. When Mr. Woodward bought that land for $800 an acre . . .

Q. I'm asking you . . .

Court: You're asking him why and he is going to give you his answer.

page 87 } A. Your Honor he bought that land for a total of $800 an acre. He was the only man in the United States that would have paid that price in my opinion.

Q. Did you have anything to do with the sale of that?

A. No sir, I know all about it.

Q. Now you talked about the Wayland—I mean the Bailey estate property to the North Corporation?

A. Yes sir.

Q. And I believe you had that—if you will check your notes there—I don't have it in front of me—that was something in the order of $400—a little over $400 an acre?

A. $430.

Walter A. Hash, Jr.

Q. Isn't it true, sir, that that property was sold at auction?
A. Yes sir.
Q. Do you know whether that was a force sale or not?
A. It was to liquidate his estate.

Tremblay: Your Honor I would ask the court to instruct the Commissioners since this was not an ordinary course sale, that is not an indication of a fair market value and ask for an instruction that that be disregarded.
Court: The request is refused.
Tremblay: Exception Your Honor.

Q. Now the Bailey—again we are talking about the Bailey estate property of the North Corporation, is the
page 88 } general neighborhood of that property as good as the neighborhood of the Jefferson Lake property?
A. No.
Q. You talked about the M. O. Clark?
A. Yes.
Q. Robert Foreman property?
A. Yes.
Q. I believe you came up—that was the 53 acres for $34,500?
A. Yes sir.
Q. Does that property have any utilities available?
A. No sir.
Q. Normally when you speak about purchases of land around Charlottesville, isn't it true that large tracts of land generally bring less per acre than small tracts of land?
A. Yes sir.
Q. In your determination of the damages on this property —excuse me. let's go back to the value of the take. I didn't hear you attribute anything to the value of the house that was on the take, the value of the horse ring, the value of the water line that was leading to the house that was taken, value of the shed, did you attribute any value to the—to that take, taking of those items?
A. No sir.
Q. Did you attribute any value to the take of
page 89 } what they call the Quarry Road as access to this property?

Court: Can you answer it?

Walter A. Hash, Jr.

A. I'm sorry I didn't understand . .

Q. Did you attribute any value to the take of what they call the Quarry Road when you came up with . . .

A. No.

Q. Did you consider that that Quarry Road had any value to this property?

A. I considered the part that—it had some value, yes.

Q. But you didn't give it any. Did you go look this property over prior to the take? That is you said you were on the property but immediately say somewhere near to the take did you look this property over?

A. No, I looked at the property in '64 and about 1965, about that time.

Q. You didn't look at it from '65 till the date of the take, I believe in July 1967?

A. No sir.

Q. At the time that you looked at it, do you recall if the take part was wooded, the part that was taken was it wooded?

A. I can't answer that question.

Q. In developing land is it better to have an intervale parcel of land that is one parcel of land, sizeable parcel of land as in this case was before the take 115 acres
page 90 } of is it preferable to have separate parcels of land such as the way this was left after the take?

A. Well the way his property was situated before the take, then I don't think it's suitable for development.

Q. Why isn't it suitable for development?

A. The access road, the grade of the road, there had been no successful development of a sub-division south of the city prior to the take of this land and therefore, I don't think it would have been feasible to . . .

Q. Do you know of any other parcels of land of this acreage or close to this acreage that were located in the proximity or the proximity to the city such as this piece of land in 1967 just immediately prior to the take? Were there others?

A. Prior . . .

Q. Immediately prior to the take, were there other pieces of property, in the immediate proximity to Charlottesville such as this is—if there were some, let me know what they are?

A. Well we have some properties prior to this take, yes

sir. Number 1, I personally had rather have the Wayland property than to have your property.

Q. I'm asking you sir . .

A. I'm telling you . .

Q. You mentioned that . .

page 91 } Court: That was one property that was available he's telling you.

Q. All right.

A. I had rather have the Wayland property. Doctor Hurt bought 100 acres out at Fry Springs, the Livers' for $74,000. I had rather have that property than to have your property. These sales that I have listed in my—as comparables—Mr. Foreman's property is almost the same topography. His 53 acres is almost the same topography as this property. It's above the road almost the same slope as your property is below the road and he bought that just in '67 for $660.

Q. That's further away from the city?

A. Yes it is.

Court: Now Mr. Tremblay, we can't go into all the properties around Charlottesville. He has given you several examples and I'm not going to let this examination go further.

Q. All right, I'll change to the subject. Now you have testified that there were no damages to the parcel A, the 16 acre tract—you didn't attribute any damage to that?

A. Right.

Q. Did you take into consideration sir, that there wasn't any access to that parcel over Jefferson Lake land after the take? You can look at that map here and see what I mean. Plaintiff's Exhibit 7—what I'm talking is that there wasn't any access to this land over Jefferson Lake land after the take.

page 92 } A. I understand . . .

Q. Did you attribute any amount of damage or did you consider that?

A. No.

Q. You did not consider that. Do you consider that that was a damage to the property?

Court: He's answered the question Mr. Tremblay . . .

Tremblay: Well he said he didn't consider it . . .

Court: Well he said that there was no damage, of course

he's answered your question. Don't take the time Mr. Tremblay—you're just wasting a lot of time with your arguments you might say. We are not interested in those at this time. You will have plenty of time to argue the case. Let's get the facts please.

Tremblay: I'm trying to . . .

Court: No, you're trying to argue the case and I will instruct you not to do it.

Q. You did not give any damages to parcel B?

A. No.

Q. And parcel B is the 8 and a half acre tract?

A. Yes.

Q. Was the character of the access changed to that parcel after the take from the availability of access that there was to that parcel before the take?

A. Yes.

page 93 } Q. Is it as useable—is that 8 and a half acres useable land as it is after the take?

A. Not in the manner it was being used, no.

Q. You talked about the flooding plain down at Parcel C. Did you go on to that parcel C, have you ever been on parcel C?

A. Yes.

Q. Have you walked on parcel C after the take?

A. Yes sir.

Q. And you estimated that there was flooding of twelve to fifteen acres?

A. Yes sir.

Q. And that was a pure estimate—you didn't make any measurements?

A. I estimated it to be, true.

That's all, your witness.

Court: All right, gentlemen, anything further?

Haugh: Yes, just a couple of questions.

REDIRECT EXAMINATION

By Mr. Gordon:

Q. Did you make a complete appraisal in 1964 of this property for Mr. Dettor?

A. Yes.

Q. Did you consider the timber on it at that time?

page 94 } A. No sir.
Q. You didn't consider the timber then?
A. No sir.
Q. Why not?
A. We were just—at that time were not aware of—there was no timber mentioned at the time I was appraising the property of being of value, any timber value on it.
Q. Did your man value or absorb the value of the fences in that old house?
A. Yes sir.
Q. You considered that when you—in your land value?
A. Yes sir.
That's all.

RECROSS EXAMINATION

By Mr. Tremblay:
Q. Mr. Hash, I understood you to say that you got the $940 for the valuation of Jefferson Lake by comparing it to the Wayland property and upgrading that for one and a half percent?
A. That's true.
Q. Well now you just told Mr. Gordon that you considered the value of the buildings? You didn't consider the value of those buildings did you? You just compared it to the Wayland property, isn't that what you did?
A. Well Mr. Tremblay . . .

page 95 } Haugh: I don't believe that's what he said. He said it was absorbed in the land cost. That's a little different . . .
Court: Go ahead.
A. I will admit that there is no building value expressed in this appraisal.

Q. All right, that's fine. That's all.

Haugh: That's all. We rest Your Honor.
Court: All right, proceed Mr. Tremblay.

A. E. EDWARDS, having been duly sworn, testified as follows:

A. E. Edwards

DIRECT EXAMINATION

By Mr. Smith:

Q. Now will you give your name and address Mr. Edwards?

A. A. E. Edwards, Jefferson Lake, Route 53.

Q. As a matter of fact you don't live at Jefferson Lake now, do you?

A. No, we are in the process of moving.

Q. How long did you live adjoining the Jefferson Lake property?

A. About 28 years.

Q. About 28 years.

* * * * *

page 103 }

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Q. Perhaps if you came up here you could point out to the Commissioners—have you ever seen any portion
page 104 } of this property flooded Mr. Edwards?

A. Yes I have.

Q. When was this to the best of your memory?

A. Oh, about 14 or 15 years ago.

Q. All right can you mark—just point out to the Commissioners the area that you can recall flooding?

A. That's down in—near Moore's Creek, this portion right here. Now I have seen it—this house and this creek—in other words right in here I think and the area that was flooded is from this abutment, right here down to maybe there. How deep it was, I don't know but at that particular time we had some hard rain and that's why I went down and looked at it.

Q. Do you have an estimate of the amount of land that was under water?

A. Oh, I would say it was maybe four acres.

Q. Four acres. Now you say you have lived there for 28 years?

A. The house was built in '32—and I had interest in this Jefferson Lake ahead of that so maybe 35 years.

Q. And that was the only time that you recall ever seeing it flooded?

A. This last—you mean since I owned it?

Q. Yes.
A. It didn't seem to be much flood then. Now the way it was flooded for you to go up 53, you would have
page 105 } to go around the Sanitorium to get through it.

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page 106 }

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Court: Do you have an opinion of the value of the land as a whole before the take?
A. Yes—well as a whole I don't know Judge. It's my own opinion of course . . .

Q. Do you have a . . .
A. We had a lot of thoughts about this and that and . . .
Q. Do you have an opinion of the value per acre?
A. Yes I thought at that time, prior to the take of $1500 an acre.

Haugh: If it please the court I am going to object to this on the same objection . . .
Court: All right—$1500 an acre, if that's the way it's valued—that's his opinion as to the value per acre.

Q. The large parcel which is north of U. S. 64 now, do you have any opinion of the value of that after the take?
A. Well after they took away the access to it, it depends on any improvements you might make to it to give it value . . .

page 107 } Court: Mr. Edwards please answer the question, do you have an opinion as to the value after the take?
A. Well Judge it's hard to say—it has value but I don't know what it would be, so I would say no.

Q. With respect to the 16 acre parcel which is south of U. S. 64, does Jefferson Lake have any access to that parcel now?
A. No.
Q. Do you have any opinion of the value of that parcel?

A. Well I thought it was at least the value of the larger portion.

Q. I'm speaking of after the take?

A. Oh, that puts it in the same category, you can't get to it.

Q. What about parcel B which is the 8 and a half acre parcel?

A. That comes under the same thing.

Q. So you have no opinion of the value of any of those three parcels now?

A. Not now.

No further questions.

Haugh: I have no questions Your Honor.

Court: All right.

WILLIAM T. DETTOR, JR., having been duly sworn, testified as follows:

page 108 } DIRECT EXAMINATION

By Mr. Tremblay:

Q. You are William T. Dettor, Jr.?

A. Yes I am.

Q. What is your address?

A. Jefferson Lake, Route 6.

Q. How long have you held an interest in the Jefferson Lake, the property—the subject property that we are talking about today?

A. Oh, I'm not real sure on that sir. It was definitely some years prior to the take of this property by . . .

Q. What interest do you own in the property at the present time?

A. I own one, two, three parcels . . .

Q. No, what percent of interest do you own . . .

A. In Jefferson Lake?

Q. In Jefferson Lake . . .

A. I own 75 percent.

Q. And how long have you owned the 75 percent?

A. I'm not sure about that but there again it was prior to—a number of years prior to the take. It was given to me by my father many years prior to the take, sometime—I'm not real sure—it's in the record book when I got possession of the property.

Q. You heard the testimony about the entry
page 109 } way into this property—come on up here please

William T. Dettor, Jr.

if you will. I show you here Plaintiff's Exhibit number 7, a plat, do you own property on the west side of the entrance road here?

A. Yes I do.

Q. And Mr. Edwards owns property on this side?

A. That's correct.

Q. Did you determine before the take what access width it would take to get into the property if you wanted to develop the property? Did you find out what that would be?

A. I understand it's approximately 50 feet.

Q. Were you prepared to use some of your property to widen that access to 50 feet?

Haugh: If it please the court Your Honor, I would like to be heard out of the presence of the Commissioners—I think he's taking an *inconsistant* stand Your Honor.

Court: Gentlemen will you retire to your room please?

(Commissioners retired to jury room)

Haugh: If it please Your Honor the evidence that has been presented and really the question and argument so far by opposing counsel are to the effect that they cannot get through to parcel A or to parcel B, the 16 acre parcel and I don't think that's true because they own the controlling land around it but if they are going to take the position that they can't get through to that . . .

Court: Absolutely, you are exactly right.

page 110 } Tremblay: Your Honor may I talk about that point . . .

Court: Yes sir.

Tremblay: I'd like to point out some differences. Now we didn't say they couldn't get through to this 16 acre parcel. It's obvious there's a road . . .

Court: You're taking that position in your question . . .

Tremblay: No, you can't get through on Jefferson Lake property but this is an entirely different purpose Your Honor—you understand that what I am asking him is not to replace an access that is fading away from him—I'm asking him about widening of an existing road so that it could be used as an access through the property if they wanted to develop it—that is entirely different from saying are you willing now to replace an access that has been taken away from you.

Court: Do they own all the land, adjoining the 20 foot right of way?

William T. Dettor, Jr.

Tremblay: Well Your Honor it shows on this plat—that's the best way I can show it to you . . .

Court: Let me see the map.

Tremblay: Jefferson Lake owns the triangle, that part here and Mr. Dettor own this property here and this property here and then Mr. Edwards owns . . .

Court: Mr. Dettor owns this?

Haugh: Yes sir, he owns this and Mr. Edwards owns this.

page 111 } Tremblay: He owns this and this, and then Mr. Edwards owns this.

Haugh: Our only position is Your Honor if they're going to say they own adjoining land and could widen this so they could sub-divide it then they have also got to admit that they could get through to this . . .

Tremblay: I don't think that the two are not mutually consistent Your Honor . . .

Haugh: Well they are, it's . . .

Court: Well let me tell you something. I'm going to instruct the Commissioners if necessary that they can consider whether they have been denied access to—the man who owns 75 percent of this owns this too . . .

Tremblay: Yes sir, I'm not arguing that that's not so Your Honor and I'm not saying—all I'm saying is and all my questions have been . . .

Court: Your questions have implied that they couldn't get to this land . . .

Tremblay: Over Jefferson Lake land and what they have got to now do is—if Mr. Dettor can get to it, he's got to lose land but he's got to give up some of his land and I think that that ought to be given some valuation on it. They haven't given any valuation—we are not saying that they are land locked for all time. Certainly Mr. Dettor can—they can negotiate and get some of his land but that isn't

page 112 } the same thing as widening here Your Honor.

Haugh: Well they would have to negotiate to get into here. It's not over the same . . .

Tremblay: There's nothing that has been taken away from them you see—there's nothing that has been taken away here —this is just their land and I'm asking . . .

Court: You may testify—you have already explained that Mr. Dettor—I don't know that it's been testified but Mr. Edwards is the other owner of the land there, is he?

Tremblay: This man here . . .

Court: Of all the . . .

William T. Dettor, Jr.

Haugh: Of Jefferson Lake . . .
Tremblay: Yes sir.
Gordon: Mr. Dettor owns 75 percent and Mr. Edwards own 25 percent . . .
Court: Well that's all you can bring in, whether he is willing to do it or not, he can change his mind the next minute —you may argue that point but I'm not going to let you give his opinion . . .
Tremblay: Well I'm just going to ask him about the ownership—well it shows on here.
Court: It shows on the plat.
Tremblay: Well I'll ask him about the ownership at that time, at the time of the take—the ownership of the land on either side of that road . . .
page 113 } Court: Well yes you may, certainly. All right, call the Commissioners please.

(Commissioners returned to the courtroom)

Q. At the time of the take Mr. Dettor, did Jefferson Lake own this little triangle here at the head of Route 53?
A. That's correct.
Q. Did you own all the property that is to the west of the entrance road down to the Jefferson Lake property as shown here?
A. That's correct, yes sir.
Q. Did Mr. Edwards to your knowledge own this piece of property that is to the east of the entrance road?
A. That's correct.
Q. And did you own any property—did you own this piece of property in here at the time of the take?
A. That's correct.

Court: Let me ask you something else, let me see the plat a minute.
Tremblay: The last question I asked him Your Honor was did he own this property right here.
Court: That's the property we went over this morning?
Tremblay: Yes sir, I just asked him and he said yes. Mr. Dettor that was the property where the gate—where you opened up the gate this morning and went up on to the 16 acres—that's the road and you own the property
page 114 } over which that road now travels, is that correct, in your own name?
A. That's correct.

William T. Dettor, Jr.

Q. And that's separate and apart from the Jefferson Lake property?
A. That's right, that's correct.

Court: All right.

Q. Do you recall the quarry's road access prior to the take?
A. Yes I do.
Q. Was that a passable road to get in from Route 53 into the old house that's been described here?
A. Yes it was.
Q. Was there anyone living in the old house at the time of the take?
A. Yes it was.
Q. Was that rented by Jefferson Lake?
A. Yes it was.
Q. And what was the rent per month that you all were getting on that?
A. $20 a month with the idea that the tenants did all the repair work. We did no repairs.
Q. Would you describe the improvements that are on the take and if you can give an opinion as to the value of the improvements, if it's within your knowledge, give an opinion as to the value of the improvements?
page 115 } A. There was a very old house there that at one time I believe had been a tavern. It was a two story dwelling with a basement. I valued that at $5,000. There was a riding ring that we had built for our—as a training ring . . .
Q. What were the dimensions of the ring?
A. It was 200 by 80.
Q. What was it built of?
A. It had a two rail fence and it was graded level. We had a bulldozer come in there and grade it level.
Q. What was the value of the ring at the time of the take?
A. $2,000.
Q. How did you base that value?
A. Well I had—I figured the cost of the bulldozer to come in and I had to hire a man to put the fence and rail—I had to buy the rail and I had to seed the grass.
Q. Was this a comparable ring to the one that you have on top of the hill at the present time?
A. That's right. I had to replace the one with that one.

William T. Dettor, Jr.

Q. All right, now were there other improvements down there?

A. We had the land cleared to the right of the riding ring which we had jumps put up for an outside course which was also used in training for our horses.

page 116 } Q. How many such jumps did you have?

A. 12.

Q. What was the valuation of each of the jumps?

A. Oh, $25 a piece.

Q. Were they made out of wood?

A. Yes.

Q. These V things are made out of boards?

A. That's correct.

Q. Did you have any other improvements down there on the take?

A. Not that I know of.

Q. Was there water to the house?

A. That's correct.

Q. What sort of line was there to the house?

A. To the best of my knowledge it was a one inch line.

Q. And was that city water?

A. City water.

Q. Was that line taken away by the take?

A. That's correct.

Q. Were there other sheds or buildings . . .

A. There were several—there was an old stable that was used down there and there was also some chicken poultry sheds.

Q. Were there any merchantable trees on the take?

A. Yes there was.

page 117 } Q. Do you have an opinion as to the value of the trees that were on the take?

A. $6,000.

Q. What happened to the trees?

A. They were burned up by the State.

Q. What is your opinion as to the value of the Jefferson Lake property immediately prior to the take?

A. $2500 an acre.

Q. How do you base your opinion?

A. Well I had had offers . . .

Haugh: Objection Your Honor.

Court: Objection sustained.

A. That was my opinion which I think I'm—what I felt it was worth if I had to replace it.

William T. Dettor, Jr.

Q. What effect did the take have on parcel C, that is the big parcel that's north of 64 right of way?

A. You are referring now to the 16 acres . . .

Q. No, I'm referring to the parcel that is north—this parcel is bordered by Moore's Creek and 64 right of way?

A. Well it completely land locked it so we couldn't get in there without building a bridge. I felt that it tremendously destroyed the value of the property.

Q. Have you made any investigation of what it would cost to improve the access road—well first let me ask you what is the access into, if any, that parcel C, large parcel?

page 118 } A. I understand that there is an access in it from Linden Street which I was not aware of until just recently but I understand there is which there was an old road going up I think to Monticello that could be used. But on the other hand there is no bridge there—to put a bridge in there I understand would be quite expensive.

Q. Is the road improved up to the bridge abutment?

A. No it is not.

Q. What is the width of these?

A. I don't know that.

Q. What in your opinion is the value of that large parcel that's north of the highway at the present time after the take?

A. $200 an acre.

Q. Did the take have any effect on parcel A, that is the parcel that your ring is on up there in back of your house—did the take have any effect on the value of that property?

A. Well it made the property close to a highway which destroyed the value of building any type of houses up there—they would be so close to the highway.

Q. Did you have a means of providing an access to that property over Jefferson Lake property at the time—before the take?

A. No, it did not.

Q. I'm talking about before the take?

A. Before the take we could get to the property

page 119 } from the Jefferson Lake property, that's correct.

Q. Could you get there after the take?

A. No, not without going through somebody else's property.

Q. And it's possible to go through your own property?

A. That's correct.

Q. What damages if any then—did the effect have on that property?

A. Well it knocked out the access. It made it close to the road, the highway coming in there made it not as attractive for development of residential sites.

Q. Did you attribute any evaluation to all this parcel being as one parcel prior to the take?

A. I considered the whole thing as one parcel and by dividing it up I felt it lost quite a bit of value.

Q. Let's look at parcel B, the 8 and a half acre parcel that is where that entrance road hits the extreme southern point of it—was there any damage done to that parcel by virtue of the take?

A. I can't foresee any access to that road—it completely destroyed any use of that property as far as I am personally concerned or can foresee.

Q. In your opinion prior to the take what was the highest and best use of the property?

A. Residential development.

page 120 } Your witness.

CROSS EXAMINATION

By Mr. Haugh:

Q. Is the nature of the timber on the property presently there about the same as was on the property in the take?

A. No, we have thinned the timber out now as to what it was then.

Q. What happened to the ring that you had on the take? Was that destroyed?

A. The road went through the middle of it.

Q. I mean it was destroyed?

A. That's correct.

Q. You haven't utilized any of the fence?

A. No.

That's all we have.

Court: All right, call the next witness.

JAMES A. NUNNALLY, having been duly sworn, testified as follows:

James A. Nunnally

DIRECT EXAMINATION

By Mr. *Trembaly:*

Q. Would you please state your full name and address?

A. James A. Nunnally. I live on Penn Park Road, just off of Rio Road.

Q. Would you give your qualifications and
page 121 } training and experience in the real estate field?

A. I'm a graduate in Accounting and Business Administration. I've attended courses at the American Institute of Real Estate Appraisors, the Society of Real Estate Appraisors, I've attended appraisal classes at the Virginia Association of Assessing Officers from 1963 to '68—I've also instructed classes at the University of Virginia for the Virginia Association for Real Estate Appraisors and Assessors. I was employed by Chesterfield County in 1959 through '63 as a Real Estate Appraisor for tax purposes, in 1963 through 1968 for the City of Charlottesville as Deputy Tax Assessor. At present I am associated with Carroll Wright in the Wright-Nunnally partnership. I have appraised properties in Chesterfield County and Albemarle County Augusta, Rockingham, Hopewell and Charlottesville and Waynesboro, and Staunton and Harrisonburg. Among my present clients are the Central National Bank, First Mortgage Corporation, Virginia Telephone and Telegraph Company, Humble Oil, Charlottesville Savings and Loan, Veteran's Administration, Federal Post Office Department, O'Neill Mortgage and Realty Company, and the University of Virginia. I'm qualified in the courts of the City of Charlottesville, the Circuit Court of Chesterfield and Albemarle County. And I am also a member of the International Association of Assessing Officers and the Virginia Association of Assessing Officers.

Q. Approximately how many tracts of land
page 122 } have you appraised in Albemarle County?

A. I couldn't tell you that at this point without going back and counting them.

Q. Well can you give us an approximation?

A. A couple of hundred or so.

Q. Were you employed to make an appraisal of the property known as Jefferson Lake?

A. Yes I was.

Q. When you were employed to make an appraisal of that property what was the acreage that you thought was in that parcel?

James A. Nunnally

A. At the time I was employed I thought it was 115 acres, that was assuming that the deed that was recorded was correct.

Q. And did you later find out that there was a different acreage involved or . . .

A. Later there was a plat made that showed a difference in acreage by Mr. Blue.

Q. What was the difference in acreage?

A. I think it was around 8 acres.

Q. Were you ever able to resolve the difference between the 115 acres and Mr. Blue's plat which I believe is a little over a 107?

A. No.

page 123 } Q. Did you make an appraisal of the property of the market value of the property immediately prior to the take?

A. Yes I have.

Q. What was the valuation which you put on the entire property immediately prior to the take?

A. I placed a value of $164,540 as a whole before the take.

Q. Would you repeat the amount please?

A. $164,540.

Q. Now would you please break that down and explain your answer?

A. Well the property was improved with an old two story frame dwelling and it had a riding ring, fencing and so forth and this is broken down—in my opinion the two story dwelling had a nominal value of $2,500, and the fencing and so forth was $1,000. And in my opinion I thought the land was worth $1500 an acre, based on Mr. Blue's plat of 107.36 acres gives you $161,040 on the land, adding the land and improvements together gives you $164,540.

Q. Were there utilities available to this land?

A. Yes there were.

Q. What were they?

A. Water and sewerage.

Q. From where?

A. From off of Linden Street and the sewerage treatment plant behind the land. There was a water line—

page 124 } in fact the house was serviced by a small water line from the city.

Q. Have you been all over this property in your appraisal?

A. Yes I have.

Q. Would you describe the neighborhood of this property,

James A. Nunnally

that is the characteristic of the neighborhood of the property?

A. Well I think the neighborhood of the property speaks for itself. It's a unique location with the Thomas Jefferson Memorial Foundation on one side and the *cemetary* on the other side, giving you a buffer zone to each side where the property is situated in the middle for future development purposes.

Q. Did you make an investigation of this property with regard to the highest and best use that could be made of that property immediately before the take?

A. Yes. In my opinion I think the highest and best use would be for a plan development.

Q. Explain what you mean by a plan development?

A. Well I think in a plan development would be the various types of uses such two family dwellings, tri-plexes which would be three family dwellings and also single family dwellings.

Q. Where would these dwellings in your plan of development have been put?

A. This would be determined under a plan development where we would need a buffer zone, say coming off of Linden Street. You would put your low type housing on that sector and then bring it up as you come on back out to 53.

page 125

Q. You mean coming off of Linden Street should be done in the lower part of the property?

A. Right, back up to Moore's Creek.

Q. And what sort of housing would you have had in the area of the take and the area of the 16 acre tract and the area next to the 8 1/2 acre tract?

A. Well there would probably be multiple use of all of that, duplex, single family or tri-plex.

Q. Did you consider the entrance way in arriving at your determination of the value of this property?

A. What do you mean—I don't understand . . .

Q. Did you consider the type of access that was available in 1967 immediately before the take in arriving at this figure that you came to of I believe $161,040 as the value of the 107.36 acres?

A. This property had access off of State Route 53 but also had access off of an unopened section of Linden Street.

Q. Was the access available immediately before the take wide enough to satisfy City and County requirements?

A. The actual access was not but the property owners

owned the adjacent property each side of the access which made it available for them to develop the property if they so desired.

Q. Now what was the value of the residue immediately after the take? Wait a minute, let me go back—what was the evaluation of the take first?

page 126 } A. In my opinion I placed—the improvements —all of the improvements were taken on the property which in my opinion I placed a value of $3,500. The land taken is broken down in two sections, a small tract down on Moore's Creek according to Mr. Blue's plat was .10 of an acre and the actual take for the right of way of Interstate 64 was 32.87 acres by Mr. Blue's plat and I placed a value of $49,455 on the actual take of land. The total take between land and improvements gives you $52,950.

Q. Now what was the value of the residue outside of the take just before the take?

A. Well this would be simple mathematics, it's just subtracting the value of the take from the value before which gives you a value of $111,585.

Q. And that was the value you placed before the take now on the 16 acre tract, the 8 1/2 acre tract and the 49.52 acre tract?

A. Correct.

Q. Before the take. Now what was your—what value did you place on these pieces of property that is called parcel A, B, and C immediately after the take?

A. Well parcel A I placed a value of $22,555 . . .

Q. That's the 16 acre parcel?

A. That's the 16 acre parcel which is located here.

Q. How did you arrive at—I believe you had

page 127 } a difference there of some $3,000 immediately before the take—how did you arrive at the loss of the $3,000?

A. Well this property—essentially it's dead locked at this point but by the owners of the Jefferson Lake Corporation owning the adjacent properties to it, this property has actually lost its access on the whole from the way you got into it and I felt that the owners would lose some additional land in order to get actual access to this property that they would not have had to have done before. And taking into consideration the loss of the land, I placed $2,000 on the purchase price of the right of way between Mr. Dettor's house and the cottage which is on lot F which you would have had to pull the land out of in order to get to that property.

James A. Nunnally

Q. Who owns that property over which you would have to place the access?

A. Mr. Dettor.

Q. I see that you have something a little over $6,000 loss on parcel B. Would you explain that?

A. Well parcel B contains 8 1/2 acres which is located right in here where the pond was and before the take the whole tract could be utilized as a whole. After the take the Highway has made this an odd shape lot to where approximately half of the area of that particular lot is unuseable to the owners at this time from approximately this point. There's no way that you could develop this part

page 128 } back up in this area here and make feasible for development. So in my opinion I felt that this property was worth $750 an acre after the take which placed a value of $6,375 on the property after the take.

Q. All right, sir, now we go to parcel C which you have said was $74,280 immediately before the take and after the take you have it at $49,052 would you explain the loss and the valuation of that?

A. Parcel C contains 49.52 acres—I placed a value of $100 an acre on that parcel after the take because it had been cut off from the whole and all of its access had been cut off except the Linden Street access. And before the take they could develop this parcel along with the other off the 53 access—the improvement cost would not be as great as it would be coming from the other direction. In order to develop this parcel now you would have to put in a bridge across Moore's Creek and do approximately—roughly I would say 400 feet on either side of ground improvements of fill to put your road into it. This cost is considerable and would effect the value of this parcel to a prudent investor that would buy it and I felt that this cost by investigation through contractors and various sources that would cost in excess of $1400 an acre to put this bridge in. So therefore I felt that the property was only worth $100 an acre.

Q. Did you determine what the minimum cost of putting those improvements in would be—that is the total

page 129 } cost of putting in those improvements?

A. Well based on contractors that do this type of work and from the data and information that I could gather on it, the minimum cost would run somewhere in the neighborhood of $60,000 to $70,000.

Q. All right, sir. Would you tell the Commissioners and court what in your opinion the effect of having the highway go through the property is on the property?

James A. Nunnally

A. Well I think it's plain to see that the Highway came through a large tract of land which was 107 acres and it's divided into three parcels of land now, which is limited to its use and limited to development stages at this point as far as a plan development could be done.

Q. Did you look into sales made prior to the take in the surrounding area—land sales in the surrounding area?

A. Yes I studied the market activity in the area.

Q. Have you determined if there were any sales of similar or comparable properties prior to July 27, 1967 in the area?

A. There were a number of sales in the area but none of these sales were actually comparable to the subject. There is a wide range of adjustments that would have to be done to these properties to compare them to the subject—location, size, utilities, various other factors.

page 130 } Q. Are you familiar with the Wayland to Piedmont Development Corporation sale that took place February 3, 1966?

A. Yes sir.

Q. That was 146.69 acre tract?

A. Well that was a purchase of two tracts added into one from the Wayland estate. One of the tracts consisted of 13 acres and the other tract consisted of 133.

Q. And what was the total of the purchase price for that property?

A. The total purchase price for those two tracts was $120,000. It was broken down—the 133.69 acres was $107,000 and the 13 acres was $13,000.

Q. Were there any improvements on the property . . .

A. Yes there was a home that was on it originally—the original home that was on it, a real old home—it was in very poor condition, has a barn, couple of miscellaneous out buildings—they were rented at the time for around $40 a month.

Q. What was the valuation of that property per acre?

A. The sale price of the two individual tracts but the 13 acres tract indicated $1,000 an acre and the 133.69 acre tract indicated $800 an acre, combining the two together indicated $818 an acre.

Q. Were there any utilities adjacent to this property?

A. The utilities were available to the property but it was at a considerable cost of getting it to the property.

page 131 } Q. Would you describe the distance, what you would have to do in order to get the utilities to the property?

James A. Nunnally

A. Well the property was located off of Rio Road. It has two access to it, one 20 foot road going into it which is the Penn Park Road that I live on and then another road which is 768 which comes off of Doctor Greisbach I believe—the animal doctor. The 20 foot road that I live on was on the right of way owned by the city at that particular time of the sale. The other road was a narrow State road that was not maintained. It was unsurfaced. That road ran approximately 2,500 feet back then it went into a right of way that went into the property which was another approximately 2,500 feet. The area coming in on Penn Park Road is approximately 2,000 feet in . . .

Q. From where?

A. Off of Rio Road. The property itself had no frontage on any road.

Q. Do you know whether there are utilities in Rio Road?

A. Now there are utilities in Rio Road. The city water main line runs in Rio Road. There is an 18 inch main line running in Rio Road now—in fact the property itself has utilities to it now. I put the utilities into that particular property.

Q. Were there utilities in Rio Road in 1966 when this property was purchased?

page 132 } A. I could not say for sure if that line was actually in at that time but it was planned or in construction of the line at that particular time.

Q. Do I understand that the closest distance you could travel to get utilities to the property would be 2,000 feet to the property back to Rio Road?

A. Right.

Q. All right, sir . . .

A. That is for water only.

Q. Water only?

A. Yes sir, if you had sewer . . .

Q. I was going to ask you . . .

A. Approximately 500 or 600 feet across the city line to the treatment plant.

Q. Is there access . . .

A. Well you would have to get your access from the City of Charlottesville, who owns the land that the treatment plant is on.

Q. I see. The treatment plant adjoins the land?

A. Right.

Q. Would you describe the neighborhood that that property is located in, that is with respect to the approach and the neighborhood that the property is located in?

James A. Nunnally

A. Well on Rio Road of course you have very nice houses. As you pull off of Rio Road on to the Main State Route 768, there is very poor housing along there. There page 133 } are old frame houses that range from maybe 18 to 20 feet across the front with a gable roof in it and 40 feet deep. They would sell in the neighborhood of $6,000 or $7,000 a piece.

Q. How would you compare the neighborhood where the Wayland property is located in contrast to the neighborhood where the Jefferson Lake property is located?

A. At the time of take the Jefferson Lake property was a much better neighborhood, for development purposes.

Q. In your opinion of the Wayland property that we are talking of, is that comparable property to the Jefferson Lake property at the time of the take?

A. There again like I said before I don't think any of the sales that I found are actually comparable properties to the subject. I think that they do indicate range of values that a value can be based on but I don't think they are actually comparables to the subject because there are too many adjustments that have to be made between these properties.

Q. Would you give an example of what you're speaking of, the properties that you are speaking of?

A. Well for example you have very few large tracts of land that were sold in that immediate area or of this capacity that you can develop a comparison by. In that immediate area you had George Rex purchased—I mean sold property to K. M. Dunning which was located on 53 directly across from— maybe a couple of hundred yards down from the page 134 } entrance of Jefferson Lake property. It fronted a 100 feet, it was only 1.07 acres, sale price was $7,500, indicated price was $7,900 per acre. There again you are talking in a range between one acre and 107 acres. There's no comparison. Then we have other small tracts which is 1. acre which Sally Thomas sold to D. W. Tucker which had no access. That sold for $1,500 an acre or indicated price per acre of $1,375 an acre. George Cason off of the old State Route 742 that went to the old City dump coming on up 64 sold 2.8 acres for $4,500 which indicated $1,607. These properties range from $700 an acre to $7,000 an acre—they vary in sizes. Some have access to utilities, others do not have access to utilities. The locations are different—in trying to make adjustments to it, it's hard to adjust these properties to the subject property. The only one that was sold that was similar in condition to this but the access was bad was—in

size—on that side of town was 72.153 acres to the University Inn, Incorporated . . .

Haugh: I object to this Your Honor. May I be heard out of the presence of the Commissioners—I know the date on this one . .

Court: Was after the take?

Haugh: It was a residue of a parcel cut off from 64 . . .

Nunnally: Cut off from 64 . . .

Tremblay: The take was made in 1967 Your Honor—I mean that purchase he is speaking of.

page 135 } Nunnally: The date of the purchase was 5-26-67 . . .

Haugh: It's a cut off of a parcel from 64 . . .

Court: It was?

Haugh: Yes sir.

Court: Objection sustained.

Nunnally: 64 never touched the property.

Haugh: You're talking about Ben Minor Miller's property?

Nunnally: I'm talking about University Heights . . .

Haugh: All right, that's his—Ben Minor Miller bought that, is that what you're talking about?

Court: All right, gentlemen, maybe we had better ask you to retire.

(Commissioners retired to jury room)

Haugh: Do you have a tax map showing this property?

A. I don't have a tax map here, no.

Haugh: Maybe I have a copy. This is Ben Minor Miller's property, this is the property his corporation purchased here. It's right here next to the intersection.

Nunnally: Interstate 64 never touched this piece of property that he bought.

Haugh: He took some up in here didn't he?

Nunnally: No

Haugh: It was purchased after 64 was committed through there by Ben Minor Miller to add to his presently owned property?

Nunnally: I can't say that it was purchased—

page 136 } I don't know because I don't know the date that 64 was committed at this point and I don't know the date of the takes in this particular area. I know that the property doesn't touch any part of 64 right of way.

James A. Nunnally

The property did not have any frontage located on any of 29 except for a right of way to get to the property.

Haugh: Was there a plat of the property of record? Did you check it?

Nunnally: No but I conferred with the owners who purchased it.

Haugh: All right, what did they say? Did they say that they knew where 64 had been committed when they bought this to add to their holdings to there?

Nunnally: They didn't tell me that at that time.

Haugh: Did you ask them?

Nunnally: No

Court: Objection sustained, call the Commissioners please.

Tremblay: Your Honor we except to the court's ruling. There is no evidence before this take that 64 was going through there prior to the time we are speaking of which is May 26, 1967, therefore we except. Excuse me, I would also like to vouch for the record what the evidence would have shown because the exception doesn't mean anything without it.

Court: All right. All right, you may vouch for the record.

page 137 } Q. All right, would you go on and testify with regard to the E. G. Watkins' property to University, Inc.?

A. Well the date of the sale was 5-26, '67. The size of the property was 72.153 acres, sale price was $72,153 and indicated price was $1,000 an acre.

Q. Were there any utilities to the property?

A. No.

Q. Where was the approach to the property?

A. Off of old 29 that came on to the Southern Railroad, 50 foot right of way that went up under the railroad.

Q. Was there any frontage on the highway to the property?

A. No.

Q. How much useable land was there in the property, do you know?

A. According to the owners they had a loss of about 10 acres.

Q. What was the loss due to?

A. It reduces the useable land from 72 acres to 62 acres.

Q. From what cause did they have a reduction in the useable acreage?

James A. Nunnally

A. It was a large hollow that went through the land that made it unuseable.
Q. All right, sir.

page 138 } Court: Let me ask you a question Mr. Nunnally. Isn't that land within a very short distance of an interchange on Route 64?
A. Has no access for use as an interchange.
Court: Of course, but it is very close to an interchange, is it not?
A. Yes it is.
Court: All right.

Q. Do you know whether or not it was close to—was there any interchange in being on the date that you speak of . . .

Court: It doesn't make any difference—the court takes judicial notice that the road was planned and this piece was taken within two or three months after that—64 was committed at that time, there's no question about it. What was the date of take in this case?
Tremblay: July 27th . . .
Court: Just a few months later.

(Commissioners returned to the courtroom)

Court: All right, proceed.

Q. Do you have any other examples . . .
A. Two other parcels that sold within a mile of the subject, southeast of the subject along Route 53 which was . . .

Haugh: What was the date of these please?
A. The date of the first parcel was 1-15-'65, was from W. W. Stevenson to Stanley Woodward. It contained 63.38 acres, sale price was $58,092.66, indicated price was $916 per acre.

page 139 } Q. Were there utilities to that property?
A. No.
Q. All right, go ahead.
A. No public utilities to the property. The second one was 12-20-65 from W. W. Stevenson to Stanley Woodward which is 159.64 acres at $120,000 indicating $751 per acre.

James A. Nunnally

This parcel had an old barn on it and also had no utilities available to it.

Q. Where is the approach to that property from?

A. This property had right much—had a large road frontage on State 53 and 795 I believe it is, State Route 795 where they come into the fork there.

Q. What value do you place on the availability of utilities that are adjacent to a property as it was in Jefferson Lake and where there are no adjacent utilities such as this property that you speak of?

A. Investigating with investors who buy this type of property in large tracts to develop if you have utilities to it, it's normal that the price of the land would double, if you have the availability of city water or county water and sewer to the property.

Q. Are there any other examples that you feel would be helpful to the Commissioners and the court?

A. No.

Q. Would you summarize your damages . . .

page 140 } Court: He's already done it. There is no necessity for summarizing it.

Q. He never gave a total figure Your Honor.

Court: I think he did.

Q. I don't think he ever gave a total figure . . .

Court: Oh, well he may show what the total . . .

A. In my opinion I feel that the property, the total take involved was $52,955 and the damage was $77,703, giving you a total of take and damages of $130,658.00.

Court: All right.

Q. What valuation did you place on this property per acre?

Court: He's already given us that. We're not going . . .

Q. I don't recall asking him that Your Honor. Did I ask you that?

A. $1500 an acre.

Q. All right, your witness,

James A. Nunnally

CROSS EXAMINATION

By Mr. Haugh:

Q. Mr. Nunnally, are you trying to tell us that the lay of the land at Sunnyfields is as bad as the lay of the subject premises?

A. No I said . . .

Q. It is better, isn't it. The lay of the land at
page 141 } Sunnyfields is much superior to the lay of the subject?

A. Yeah, you could . . .

Q. Now did you go out and visit this property . . .

Smith: Please let him finish his answer.

Court: Let him finish his answer, certainly.

Tremblay: He didn't have a chance to finish his answer.

Q. You said it was superior, Sunnyfields didn't you?

A. Well when you go to the lay of the land, the lay of the land is superior but there is other factors involved other than just the lay of the land.

Q. Well I'm asking you about the lay of the land. Now this Dunning purchase, just what was that purchase, not the amount, just describe the property in that purchase that you mentioned?

A. This was a tract of land that was—fronted across . . .

Q. It wasn't a tract, it was a small . . .

A. It was a small parcel—1.7 acres.

Q. What was on it?

A. It was vacant.

Q. And saw it purchased for business or residential?

A. I do not know what it was purchased for at that particular time.

Q. You don't know what Dunning—what use Dunning made of it?

A. No.

Q. And you're not trying then to even compare
page 142 } that with an acreage tract?

A. No.

Q. Now what amount this second one that you mentioned, D. W.—what was it, Tucker?

A. Tucker, right.

Q. Where is that situated?

A. That's situated off of Franklin Street with a right of way of approximately 400 or 500 feet . . .

James A. Nunnally

Q. And is that improved land?
A. Vacant land.
Q. That was on the other side of Moore's Creek?
A. On the other side of Moore's Creek.
Q. What was that zoned?
A. At that time it was not zoned.
Q. On the other side of Moore's Creek?
A. Right. The other side of Moore's Creek is in the county.
Q. I'm talking about where this Tucker—where is it located, city or county?
A. County.
Q. All right, where is it in relation to the subject?
A. It backs up to the subject. I have a tax map here I believe.
Q. What side of Moore's Creek is it on? It's on the city side of Moore's Creek isn't it?
page 143 } A. No. Moore's Creek at that point was not in the city. The boundary line struck Franklin Street at that time.
Q. City side of Moore's Creek but in the county?
A. Right.
Q. Okay.
A. This property lies in behind the stockyard.
Q. All right. When did you inspect the property that was actually taken in this proceeding?
A. We inspected the property approximately a year ago in the beginning.
Q. Right, but it had already been taken by then hadn't it?
A. Yes.
Q. The landscape had been completely changed so that you have never appraised in its original state, this property?
A. No but I'm very familiar with it in its original state.
Q. Were you familiar with the old house?
A. Yes.
Q. Personal knowledge. Have you been in and appraised this house?
A. I haven't appraised that house, no.
Q. Have you been inside?
A. No, I haven't actually been inside as the fact of going in and sitting down and being there.
page 144 } Q. Now Mr. Nunnally, going back to July 1967, and prior thereto, was there any demand in this area for development purposes that you are talking about?
A. I think in 1967 at the time of the take, it was a large

demand for 50 to 100 acre tracts of land to be developed into sub-divisions for housing because the City of Charlottesville had run out of vacant lots to put housing on.

Q. Now Mr. Nunnally, are you telling us that down on Moore's Creek, by Hogwollow, disposal plant that there was a demand for that kind of property in 1967 for development of residential purposes?

A. Yes . . .

Q. All right, now can you give me any—it has not been ruled out by the court—any example of large purchases for development purposes over in that area on Monticello Mountain?

A. Yes—on Monticello Mountain?

Q. Right.

A. Not on Monticello Mountain, no but your first question was down at Hogwollow and on Linden Street.

Q. I'm asking you about in this area, adjoining Moore's Creek and up on that side? Was there any demand that was evidenced by the market activity?

A. Let me explain myself . . .

Court: Answer the question and then explain yourself.

page 145 } A. No market activity had taken place in that particular area near the subject for the simple reason that there was not any land available in that area other than this tract and a few others that wasn't owned by the State Government or the Thomas Jefferson Memorial Foundation or the *cemetary.*

Q. What about Sunnyfields?

A. Well Sunnyfields was to be developed but it had problems with water and therefore, the plat was vacated.

Q. Thank you. Were there any other developments in that area that you can think of that would show market activity to evidence demand?

A. No.

Q. All right. Now going back prior to July 1967, there's nothing that the Judge has ruled out, do you have any illustrations or examples of acreage tracts of land selling in that area for $1500 an acre?

A. Selling?

Q. Right.

Smith: I think that he has already answered that there weren't any sales.

James A. Nunnally

A. There were some tracts located in the city that sold for $1500 an acre. . . .

Q. The other side of Moore's Creek, in that area, any sale for $1500 an acre or acreage tracts?

A. On acreage tracts?

Q. Yes.

page 146 } A. All right. C. T. O'Neill and Carroll Wright purchased from R. A. Saunders . . .

Q. Where is that?

A. Adjacent to the subject on this side of Moore's Creek . . .

Q. And how much land?

A. That was 7.46 acres . . .

Q. I'm talking about an acreage tract and that . . .

Tremblay: Your Honor he's asking him the question—he wants it specified exactly an acreage tract . . .

Haugh: I know this property. This was zoned business in the city, this 7 acre parcel, isn't that right?

A. Yeah.

Court: Oh, well—is it in the city?

Haugh: Yes it was in the city and zoned business.

Court: All right.

Q. Isn't that right?

A. Yes.

Q. Not 7 acres—I'm asking you about acreage tracts, around 50 to 100 acres on the other side of Moore's Creek in the county?

A. There was no . . .

* * * * *

page 147 }

* * * * *

Q. Do you know whether or not the access road to that sub-division was approved in '67 to sub-divide that property for subject?

A. The access road?

Q. Yes.

A. You mean coming off of 53?

Q. Yes, any of it.

A. Well Linden Street would meet the approval. You can

sub-divide any road that was dedicated prior to 1950, you can sub-divide it. That street was dedicated.

Q. So you could do that right then too?

* * * * *

Q. All right, now what about the other road?

A. The other road would have to meet State specifications at that particular time and it would have to be developed to the minimum standards of the State, at that particular time 55 feet.

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RANDOLPH D. WADE, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Smith:

Q. Mr. Wade would you please state your name
page 149 } and address and give the Commissioners your occupation?

A. My name is Randolph D. Wade. I live on 206 Carrsbrook Drive in Albemarle County. I am a builder and developer and deal in real estate.

Q. Can you tell the Commissioners some of the developments that you have participated in in the Charlottesville area?

A. Yes I have been in the building business since 1960. I worked with Leroy Bruton until 1965 and we developed Johnson Village in the City. Since that time I have worked in Westmoreland sub-division, Frederick Circle and I'm now working in Canterberry Hills sub-division. I have of course done building in other areas around the country.

Q. Are you familiar with the property known as the Jefferson Lake, adjoining Monticello?

A. Yes I am.

Q. Have you been requested to make an appraisal of that property for purposes of this case?

A. Yes I have.

Randolph D. Wade

Q. In making your appraisal have you studied any comparable sales of property that you felt were similar?

A. Yes I have.

Q. Would you describe for the Commissioners some of the sales please?

A. All right, one of the properties that I have studied and used as a comparable consideration is the land
page 150 } that Nick Sakell bought from Sidney Craig November 8, 1961. This is a tract of land comprising of approximately 17 acres that lies southeast of the city. This piece of land was sold in '61 to Mr. Sakell for $1323 an acre or $22,500 for the total parcel. Would you like for me to cite others . . .

Q. Yes, if you have any others please do.

A. One other parcel that was transferred in May 1967 was purchased by the University Inn, Incorporated . . .

Haugh: Objection to this again . . .

Court: Objection sustained.

Q. You can't discuss that one.

A. All right, one other is in February of '66 from Larcer Wayland to the Piedmont Development Corporation which Mr. O'Neill is one of the principals lying northeast of the city. This was a tract of 146.69 acres for a sales price of $120,000 or $818 an acre. While these are not comparable perhaps in the terms of being comparable to each other, I think they have a relationship to this sale and therefore can aid in a conclusion.

Q. Mr. Wade is making your appraisal did you determine what the highest and best use of the Jefferson Lake property was in July of 1967?

A. Yes. I think the highest and best use of the land at that time would be for single family or possibly two family residential use.

page 151 } Q. Did you determine a value for the property?

A. Yes I did.

Q. Would you give us that value?

A. In my opinion the value of the land in 1967 was $1750 an acre.

Q. Did you determine this from the basis of these sales that you have mentioned?

A. Yes I used that and then I went back and sort of used

what we might call a reverse procedure to attempt to verify it. Would you want me . . .

Q. Would you describe that?

A. I would say, my experience today indicates that sub-division land, residential sub-division land is probably—the market value is in the $3,000 to $4,000 an acre range. For purposes of trying to work back to 1967 for this piece of land in question, I took the low side of this figure because I think there are several reasons why it should have been on the low side. One is terrain and the other is the lack of enhancement because of the Livestock Market and the city sewerage treatment plant and I think it would have been costly and probably have deterrent market effect because of its access. Using the low side figure of $3,000-I think also our records would indicate that perhaps land in the last three years has risen on an average of about 10 percent per year and you work that back down and you get a value in '67 of approximately $22,000. I also decreased . . .

page 152 } Tremblay: What was that figure?

A. $2200 an acre, excuse me. I also thought because of some of the land being subject to flooding that this should further be decreased by 10 percent. So subtracting $220 per acre for that and I also felt like it should be decreased another 10 percent because of the access and the cost of obtaining additional land to get a satisfactory access and to develop this piece of land to get to the bulk of your land, decreased it another 10 percent—in mathematics that comes down to $1760 an acre.

Q. Have you examined the land since the Highway took the portion in the middle?

A. Yes I have.

Q. Do you have any opinion with respect to the parcel north of the highway as to its value or use at the present?

A. Yes, I think it has very limited use at the present time without considerable expenditure because of access. I think it probably is out of the question to consider it for residential use at this time because the size of the land and its value after you have done the improvement required to make it useable, make it no longer economically feasible to consider for residential use.

Q. Have you got in a mind a value for it or not?

A. No, I don't. I think really for the use that I see of it, it has almost no value.

Randolph D. Wade

page 153 } Q. All right, how about the 16 acre parcel on the south side, by the highway . . .

A. Right.

Q. Do you have that in mind?

A. Yes.

Q. Do you have any idea as to the value of that property now?

A. No, I would not like to give a value on it because I think it would have to be—you would have to determine it on your specific plan of use. You've got access problems here and you've just got to justify what you would use it for and what your access needs would be before you could determine this.

Q. All right, what about the small parcel which is approximately 8 1/2 acres south of the highway?

A. I think that piece of land possibly has some use for let's say a cottage type of development. You're talking about the parcel that goes around behind the Monticello Memorial Park?

Q. Yes.

A. That possibly has consideration for cottage type of development but I believe that's probably it, other than considering it as a part of the total piece of land as essentially a home site.

Q. Do you have any value for it?

A. No, I wouldn't like to put a value on it.

page 154 } No further questions Mr. Wade.

CROSS EXAMINATION

By Mr. Gordon:

Q. Mr. Wade, I can't figure out how you got the $1750 an acre. You said you did it by a reverse process. What figure did you start with when you reduced it down?

A. Well verifying my figure I began with $3,000 an acre . . .

Q. Now where did you get the $3,000 an acre?

A. I considered that to be the current market value of . . .

Q. Market value at what time?

Court: This time.

Q. Today?

A. Right.

Q. We aren't considering it today. We are considering it as of 1967?

Randolph D. Wade

A. Right, I said I used this as a testing of the value that I arrived.

Q. Well now the $3,000 that you placed on that, what land were you considering worth $3,000? Were you considering that land worth $3,000 and then reducing it because of certain defects?

page 155 } A. No, I was considering typical sub-division land of which I would consider this as of 1967 prior to the take.

Q. But this isn't typical sub-division land, is it?

A. Not now, no it is not.

Q. Not in '67 either was it?

A. I would say yes.

Q. Over looking the stockyard and the sewerage plant and adjoining the *cemetary* and subject to flooding and access at the end, is that typical sub-division land?

A. It is worthy of consideration for sub-division land. These factors can nearly always be true.

Q. How many appraisals have you made Mr. Wade?

A. Of this type, none.

Q. This is your first time around?

A. Right.

Q. Now are you familiar with the sale of Birdwood Farm?

A. Yes, vaguely I would say.

Q. If I told you that it sold on January 20, 1967 for $1,063,000 which worked out at $2,000 an acre—now that was in '67, January . . .

Smith: I will object to that. It sounds like counsel is testifying, not asking questions.

Court: Yes sir.

Q. I'm asking him if he was familiar with . . .

Court: Well you shouldn't tell him what the sale price is. You should ask him if he is familiar with the sale.

page 156 } Q. Are you familiar with the sales price per acre of Birdwood?

A. Let's say I had an impression of what I thought . . .

Q. What was it? What was your impression?

A. My impression was that it was about $2500 an acre.

Q. Now how do you base, comparing that land—$2500 an acre?

A. Right, that's what I was under the impression.

Randolph D. Wade

Q. How can you compare that land with $2500 to this land of $1750, only $800 difference?

A. Well I considered that that land certainly was more valuable and certainly worth $800 and perhaps more. It may have been that-the University I believe was the eventual buyer and got a very good purchase and I think they did.

That's all.

REDIRECT EXAMINATION

By Mr. Smith:

Q. Mr. Wade, would you be kind enough to point out some of the more desirable features of the Jefferson Lake property for purposes of sub-dividing it . . .

Court: I don't think that's proper rebuttal Mr. Smith.

Gordon: Let me ask him a question if I may please . . .

Court: No sir, not unless it's something . . .

page 157 } Smith: Your Honor I was under the impression that Mr. Gordon discussed a number of improper . . .

Court: All right, go ahead, go ahead.

Q. Would you point out some more desirable features of this property for the purposes of sub-dividing it as of the date of taking?

A. Yes, the land has perhaps a unique ascetic consideration. This of course to some people would have no value, to others it would have great value and this would be up to each individual developers thinking as to what this was worth. And I refer to it rather quaint location. It's surrounding property such as the Thomas Jefferson Memorial Foundation and in a fairly historical area. I think this is marketable. Now this is a subject to many people's opinion, to me these are things you consider when you consider land for developing. The other of course is the fact that it had sewer and water it would appear would have been available going through the proper channels and development.

I have no further questions.

Court: All right, Mr. Gordon what was your question?

Aubrey Huffman

RECROSS EXAMINATION

By Mr. Gordon:

Q. Where is that Sakell property?

A. It's in between Harris Street and Azalea Road—Drive.

page 158 } Q. It's in the city then?

A. It is now but I don't believe it was at that time.

That's all.

Tremblay: No further questions.

AUBREY HUFFMAN, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Tremblay:

Q. Would you please state your full name and address?

A. Aubrey Huffman, Rose Hill Drive, Charlottesville.

Q. What sort of training have you had?

A. I've been a professional engineer for 19 years. I'm a graduate of the University of Virginia.

Q. And have you been in the—been following your profession as an engineer?

A. Yes.

Q. Do you do construction work?

A. Yes, I have done it. I am no longer in the construction business.

Q. Are you familiar with bridge construction?

A. Yes.

Q. Are you familiar with the Jefferson Lake property?

A. Yes.

Q. Do you know where Linden Street leads

page 159 } into Moore's Creek where there are some old abutments?

A. Yes.

Q. Have you been down there to look at that particular piece of property down there?

A. Yes.

Q. Did you make an estimate of what it would cost to construct a bridge over that—first of all did you find out what type of bridge would be required across Moore's Creek in order to develop the area of property that belongs to

Aubrey Huffman

Jefferson Lake which is on this plat right here which comprises according to this plat of a little over 49 acres?

A. Yes.

Q. Did you look at the entrance road leading from Linden Street to Moore's Creek?

A. Yes.

Q. What width is the right of way?

A. 30 feet.

Q. What width would be required if that property were going to be developed, the 49 plus acreage?

A. You would have to have a minimum of 30 feet of pavement plus shoulders.

Q. Would that require additional property on either side of that or from one side to the other?

A. Yes.

page 160 } Q. What sort of a bridge would it be necessary to construct over Moore's Creek? Would you describe it?

A. It would be the normal State Highway Department two lane concrete bridge, approximately 24 feet in width and about 120 feet in length.

Q. How many spans would there be in that bridge and . . .

A. Approximately four, roughly 20 to 25 feet per span.

Q. Have you made a study of what such a bridge would cost, what the cost of such bridge would be?

A. Yes.

Q. Have you consulted anyone else with respect to the cost of such a bridge?

A. Yes.

Q. Who have you consulted?

A. I have consulted with the contractors in this neighborhood who would build those bridges, A. P. Torrence and Company and Faulkner Construction Company.

Q. And what would be the—I'm speaking of the four spans of the bridge—what would be the cost of the construction of the bridge?

A. As nearly as we can tell without making any depth study of it, it would be somewhere in the neighborhood of $70,000.

Q. Could that cost be affected by the condition of the river bed?

page 161 } A. Oh, yes.

Q. Would you please explain to the Commissioners and the court what you are talking about there?

A. Well we could have subterranean problems such as abut-

ments or foundation, stuff like that which would not be evident to the naked eye. It could only be found out by subsurface investigation and in the event it weren't a normal type construction it would be an increase cost.

Q. The price that you gave, $70,000, what condition of a river bed do you—assuming . . .

A. I would assume normal construction, nothing special.

Q. Now what would it cost to construct the street from Nassau Street, the intersection down to the bridge itself?

A. On that side I estimated it would be approximately $9,000.

Q. What length is that? What distance between the bridge and Nassau Street?

A. A little over 600 feet.

Q. In order to make the bridge useable would you need any kind of a ramp on the south side of the bridge, that is the side on the other side of Moore's Creek?

A. Yes, I think you would need somewhere in the neighborhood of 400 to 500 feet of elevated road. Well you would need some to that extent yes.

Q. And what would be the width that would be necessary?

page 162 } A. It would also be a 30 foot road.

Q. What do you estimate the cost of that to be?

A. Approximately $6,000.

Q. In your opinion what would be the total cost of the road from Nassau Street to the bridge, the bridge and then the portion beyond the bridge to the south?

A. It would be somewhere in the neighborhood of $85,000.

Q. Have you made an investigation as to what the bridge cost that was formally on Route 20?

A. Yes.

Court: What was that? What was the question?

Q. I asked him if he had made a study or found out what the cost of the bridge that was formally on Route 20—there was a little bridge there that was taken down.

Court: I don't think that's material.

Q. Now I was going to ask him the next question Your Honor, would this bridge that would be put here similar?

Aubrey Huffman

Court: I don't think what this would cost is material. He's estimated what this would be.

Q. All right, I withdraw that question.

Court: No reason to have two estimates.
Your witness.

page 163 } CROSS EXAMINATION

By Mr. Haugh:

Q. Mr. Huffman did I understand you to say that your figures were based on widening of Linden Street to the bridge to 50 foot, to meet sub-division requirements?
A. That would be the reason, yes.
Q. Now are you aware that since that is a public street that it does not have to be 50 feet wide because the sub-division requirements will not apply?
A. That's probably true, yes.
All right, I have no further questions.

Court: How high would this bridge be?
A. I don't know—it would probably be at least as high as the one built on Route 20. I would imagine it would have to be at least that high which—I didn't run a difference in elevation there but I would assume that it would have to be elevated above the present ground at least 6 to 8 feet.
Court: All right.

REDIRECT EXAMINATION

By Mr. Tremblay:
Q. Mr. Huffman, in the estimates that you just gave me a little while ago on the cost of the approach street to the bridge and then beyond the bridge, weren't those based on the improved roadway being 30 feet in width?
page 164 } A. Right, the pavement.
Q. Yeah, and you didn't make any estimate of what it would cost to purchase any easement on either side of that road?
A. No.
Q. This is just for the construction of the roadway, bed and the surfacing?
A. That's correct.

Aubrey Huffman

Thank you very much.

RECROSS EXAMINATION

By Mr. Haugh:
Q. The bridge, your testimony was that the bridge was not to accommodate the 50 feet right of way, just about 30?

Tremblay: He testified 24 feet width Mr. . . .
A. 24 feet. The roadway on the bridge would be 24 feet.

Q. All right, and what about leading up to the . . .
A. You have 30 feet of pavement.
Q. All right, that's all.

Tremblay: I have no further questions.
Court: All right.
Tremblay: We rest Your Honor.
Court: All right, any rebuttal testimony?
Haugh: We rest Your Honor.
page 165 } Court: All right, do you have the instructions?
Haugh: Yes, Your Honor.

(Commissioners retired to the jury room for the court and counsel to consider the instructions)

The Following objections and exceptions were made by Mr. Smith to the instructions:
Smith: The defendants object to the refusal by the court to give the Commissioners instruction number 3, parts E, F and D on the following grounds: With respect to the part D, the refused instruction stated that the owners were entitled to such necessary cost as they must reasonably incur in order to adjust the residue of the property to the new situation caused by the taking. This has direct reference to the loss of access to parcel in the need for the construction of a bridge from Linden Street over to Parcel C. There is no question that the land owners should be entitled to cost for adjusting their property for this new situation and there was no comparable instruction given.
With respect to 3(E), the defendants object to the court's refusal to give this instruction as it made completely clear that where a limited access highway exist there is no right of abuting land owners to cross it and further, that an element of damages is loss of access between various portions

page 166 } of a single parcel of land which is divided because of the construction of the highway. No instruction given to the Commissioners by the court stated that loss of access between the various parcels could be considered as an element of damages.

With respect to paragraph F, the defendants except to the court's refusal to present to the Commissioners this instruction on the grounds that it states and instructs the Commissioners that unity of ownership is necessary. The Commissioners not having this instruction are free to consider the corporate defendants access to the 16.5 acre parcel across the land of one of the stockholders and adjoining land owner.

(Commissioners returned to the Courtroom.)

Instructions were given to the Commissioners.

Closing arguments were given by Mr. Gordon, Mr. Tremblay and Mr. Haugh.

Mr. Haugh objected to the statement made in Mr. Tremblay's closing argument—"Now we know the 16 acres that we are going to have to get a piece of—get a right of way to get to it other than Jefferson Lake land. And Mr. Dettor owns that in his own name. Now I don't believe that the State can say to a person just because he owns land, when they cut off his access that he had over the Jefferson Lake land in this case, that he must give up some of his own land to provide access. Naturally there will have to be some giving up of some land . . .

page 167 } Haugh: Objection.
Court: Objection is overruled.
Haugh: Exception.

The Commissioners retired to the jury room to consider their verdict.

The Commissioners returned with the following verdict:

"Upon a view of the part aforesaid and of the adjacent or remaining property of such owner; and upon such evidence as was before us, we are of the opinion and do ascertain that for the fee simple title to the part so taken by the State Highway Commissioner (including the easement taken) $31,700 and will be a just compensation, and that damages, if any, to the residue beyond the enhancement in value to such residue, are $30,710."

Signed: William C. Smith, M. Y. Southerland, Jr., W. B. Townsend, Samuel B. Wells, and Harry Garth.

Court adjourned.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk

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