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

Record No. 770641

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

Appellant

v.

THOMAS A. CARTER and
MARY CARTER

Appellees

APPENDIX

ANTHONY F. TROY
Attorney General of Virginia
1101 East Broad Street
Richmond, Virginia 23219

JOHN S. MORRIS, III
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Counsel for Appellant

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IN THE CIRCUIT COURT OF SMYTH COUNTY, VIRGINIA

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Petitioner vs. THOMAS A. CARTER and MARY CARTER Route 3, Box 133 Saltville, Virginia, 24370, Defendants	)	PETITION

TO THE HONORABLE J. AUBREY MATTHEWS, JUDGE:

Your Petitioner, State Highway Commissioner of Virginia, files this Petition in accordance with Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article VII of the Code of Virginia (1950), as amended, and such general laws as are applicable for the purposes of condemning the land hereinafter described alleges as follows:

(1) John S. Bundy is the duly authorized agent and attorney for the State Highway Commissioner of Virginia, for the purposes of instituting this condemnation proceeding as is shown by a signed declaration hereto attached, marked Exhibit A, and asked to be read as a part of this Petition and John S. Bundy is authorized to file this proceeding in the name and on behalf of the State Highway Commissioner of Virginia.

(2) Real estate which is affected in this proceeding lies in the North Fork Magisterial District of Smyth County, Virginia, and is further described as follows:

> Being as shown on Sheet No. 6 of the plans for Route 42, State Highway Project 0042-086-103, RW-201, and lying on the north (left) side of and adjacent to the existing north right-of-way line of present Route 42 from the lands of John Q. Brickey opposite approximate survey centerline Station 184+95 to the lands of John Q. Brickey opposite approximate survey centerline Station 187+00 and containing 0.08 acre, more or less, land.

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This property is also shown on the plans on file in the central office of the State Highway Department, Richmond, Virginia, identified as Project No. 0042-086-103, RW-201, a copy of which plan is being hereto attached, marked Exhibit B and prayed to be read as a part of this Petition.

(3) The right and property taken and intended to be compensated for in this proceeding is the fee simple ownership to the land shown within red lines on the aforesaid plans along with such easements as are needed, all of which is described and set forth in Exhibit B and described in detail in Paragraph 2 of this Petition.

(4) The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenance and repair of State Highway System known as Route 42, Smyth County, Virginia, all of which property is declared in Exhibit A attached hereto.

(5) This project is for the improvement of a section of State Route 42 between 0.042 miles north of the intersection of Route 91 and 2.944 miles north of the intersection of Route 91 and will include the right to construct, reconstruct, repair, improve, alter and maintain the said Route 42 in accordance with the attached plans marked Exhibit B. It also includes the right to utilize the land in the future (1) for construction, reconstruction, alteration, improvement, repair and maintenance of the said Route, (2) for all other Highway purposes, and (3) in accordance with all the rights and incidents normally acquired in the property by fee simple, easements, etc.

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

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0 EAST MAIN STREET
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24210

(7) On or about the 29th day of May, 1974, the Petitioner caused to be recorded in the office of the Clerk of your honor's Court in Deed Book 262, page 228, Certificate No. C-24641, as provided by Title 33.1, Chapter 1, Article VII, Code of Virginia (1950) as amended.

(8) Thereupon pursuant to the provision of the aforesaid Title 33.1, Chapter 1, Article VII of the Code of Virginia (1950) as amended, title to the land described in Paragraph 2 is vested in the Commonwealth of Virginia.

(9) Your Petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained by this proceeding are Thomas A. Carter and Mary Carter, his wife, as disclosed by a title examination of the above-described land.

WHEREFORE, your Petitioner respectfully prays to this honorable Court in accordance with provision of Title 25, Chapter 1.1 of the Code of Virginia (1950), as amended, that the Commissioners may be summoned and appointed to ascertain and report the value of the land taken (including easements and including the easement for the relocation of utilities if such relocation is required) and damages, if any, which may accrue on the residue beyond the enhancement and value, if any, to such residue, by the reason of the taking; that this Court be directed to confirm the vested title in the Commonwealth as aforesaid and take all such other steps to carry out the intents of Title 25, Chapter 1.1, and Title 33.1, Chapter 1, Article VII of the Code of Virginia (1950), as amended, as may be necessary; and that your Petitioner may have such other and general relief as the nature of this cause may require.

STATE HIGHWAY COMMISSIONER
OF VIRGINIA
By Counsel

E. ELLIOTT & BUNDY
EAST MAIN STREET
INGDON, VIRGINIA
24210

Counsel:

WHITE, ELLIOTT & BUNDY
160 East Main Street
Abingdon, Virginia 24210

By John S. Bundy

STATE OF VIRGINIA

COUNTY OF WASHINGTON

This day John S. Bundy personally appeared before me, the undersigned, a Notary Public in and for Washington County, State of Virginia, in my County aforesaid and being first duly sworn, says that he is attorney for the State Highway Commissioner in Virginia and as such is duly authorized to execute the above Petition, and that the matters and things stated herein are true to the best of his knowledge and belief.

Given under my hand this 24 day of March, 1976.

Betty Lewis
Notary Public whose commission expires on August 4 1976.

Received and filed, this the 25 day of May, 1976
Deputy Clerk

WHITE, ELLIOTT & BUNDY
160 EAST MAIN STREET
ABINGDON, VIRGINIA
24210

RHB 1005 Exhibit A

#043

RW-36
Revised 1972

The State Highway Commissioner of Virginia declares that it is necessary for the construction, reconstruction, alteration, maintenance, and repair of a section of road embraced in the Public Highways of the State, Route 42, Project 0042-086-103, RW-201, in Smyth County, to acquire certain land, or interest therein, pursuant to Title 33.1, Chapter 1, Article 7 and Title 25, Chapter 1.1, Code of Virginia (1950), as amended, owned in whole, or in part, by Thomas A. Carter and Mary Carter, his wife, tenants by the entirety with right of survivorship as at Common Law, and more particularly described in Certificate No. C-24641 of the Commonwealth of Virginia, recorded in the Office of the Clerk of the Circuit Court of said County in Deed Book _____, page _____, to which reference is hereby made, a bona fide but ineffectual effort to acquire same by purchase having previously been made.

The State Highway Commissioner hereby appoints White, Elliot & Bundy _____, his attorney in this matter, and authorizes him to institute condemnation proceedings as provided in Title 33.1, Chapter 1, Article 7 and Title 25, Chapter 1.1, of the Code of Virginia (1950), as amended, in the name of and on behalf of the State Highway Commissioner, and as his attorney to make oath to the petition, all in accord with the statutes in this State in such cases made and provided.

Deputy State Highway Commissioner of Virginia

Dated at Richmond, Virginia.

May 31, 1974

IN THE CIRCUIT COURT OF SMYTH COUNTY, VIRGINIA

STATE HIGHWAY COMMISSIONER, Plaintiff vs. THOMAS A. CARTER, et al, Defendants	)	EXCEPTIONS TO COMMISSIONERS' REPORT

Now comes the State Highway Commissioner by Counsel and files his exceptions to the report of the Commissioners within ten days on grounds as follows:

1. The Court committed error in allowing the testimony of Garland Medley in that his testimony pertained to changing the drive way on subject property and re-locating the drive way for an entrance at the other end of the landowner's property. This testimony was speculative in that all witnesses admitted that the drive way as now exists after construction was on the same grade and the same entrance as the landowner had before construction of the project.

2. The Court erred in allowing the landowner to testify that he had estimates on relocating his drive way which estimate entailed moving the drive way, closing the entrance to a double garage and rebuilding a garage at the other end of the residence located on the subject's property. This testimony was speculative and improper as the entrance as now in existance on the landowner's property is substantially the same as before construction and at the present time required no renovation, excavation or changes in the landowner's property.

3. The Court erred in advising the Commission that the Highway Department could make any changes in grade or access on the property that was acquired by the State Highway Commissioner.

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Bundy & Jones
Attorneys at Law
Norton, Virginia 24273
Jenkins, Virginia 24276

4. The Court erred in allowing testimony of the landowner's witnesses as to possible changes in access to the landowner's property.

5. The Court erred in allowing testimony of H. B. Eller based on estimates obtained from Garland Medley and others in regard to relocation of the drive way and rebuilding the garage. This testimony was hearsay and improper.

6. State Highway Commissioner assigns as error the Court's refusal to rule that appraisals should be based on the plans filed as exhibits herein and that all testimony in regard to land values and damages should be based on those plans and not on future construction, reconstruction, renovation, or maintenance by the Virginia Department of Highways. To allow appraisals to be given in Court based on possible and remote future changes in grade, or access, are purely speculative in nature and are inadmissible.

7. The State Highway Commissioner assigns as error that the Court refused to allow the State Highway Commissioner to inform the Commissioners that the appraisals are based on the plans filed in this proceeding and that any further change in grade or access after completion of construction of the project would require further negotiation or contact with the landowner in that the Commission is only to access damages based on the present construction in relation to the landowner's property and that any estimate as to future expenditures is improper and that damages are to be accessed in relation to the plans filed as exhibit B in this proceeding.

8. The State Highway Commissioner further assigns as error that the only proper method of appraisals in a condemnation suit is to make appraisals based upon the plans filed as exhibits and any

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Attorneys at Law
Ingleside, Virginia 23[illegible]
Hanson, Virginia 23[illegible]

appraisals which take speculative future expenditures such as change in drive way or change in access to a garage are improper and should not be allowed. In this proceeding it was agreed by all parties concerned that the access to the landowner's property is substantially the same or better now than before construction of this project, and that all testimony by the landowner was based on future excavations or change in access by the Virginia Department of Highways which changes cannot take place without further negotiations with the landowner.

Respectfully submitted:

John S. Bundy
Counsel for State Highway
Commissioner

CERTIFICATE

I hereby certify that I have this day mailed a true copy of the above answer to Mr. G. C. Jennings, Marion, Virginia 24354, attorney for defendant.

John S. Bundy

Received and filed, this the 7
day of Sept., 1976
Deputy Clerk

White, Elliott,
Bundy & Jones
ATTORNEYS AT LAW
Pulaski, Virginia 24301
Lebanon, Virginia 24266

IN THE CIRCUIT COURT OF SMYTH COUNTY, VIRGINIA

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Plaintiff	)	
vs.	)	ORDER OVERRULING EXCEPTIONS AND CONFIRMING COMMISSIONER'S REPORT
THOMAS A. CARTER, et al Defendants	)	

This day came the parties by their respective counsel.

It appearing to the Court that the Report of the Commissioner's hereinbefore filed with the Certificate of the Judge of this Court administering the oath to said Commissioners was on the 27th day of August, 1974 duly returned and filed by the Court herein; and that written exceptions to the Commissioner's Report having been timely filed by the State Highway Commissioner herein; and arguments of counsel in regard to written exceptions filed by the State Highway Commissioner; and

The Court, based upon the arguments of counsel and written exceptions filed herein does ORDER and ADJUDGE as follows:

1. That after a mature consideration of all matters filed herein the Court is of the Opinion that no good cause has been shown against said Report of the Commissioners and the same is hereby ratified, approved and confirmed, and exceptions to said Report are hereby overruled.

2. It further appears to the Court that the Commissioners heretofore appointed, ascertained the value of the property taken by the State Highway Commissioner to be $400.00 and that said Commissioners further fixed damages occurring with residue, beyond any enhancement and value at $6,800.00, and

Copy to all Counsel 1-14-77

WHITE, ELLIOTT,
SUNDY & JONES
ATTORNEYS AT LAW
GIDON, VIRGINIA 24210
ASON, VIRGINIA 24264

the Court does heretofore confirm to the Commonwealth of Virginia, fee simple title of the following land and property located in the North Fork Magisterial District of Smyth County, Virginia, and described as follows, to-wit:

> Being as shown on Sheet No. 6 of the plans for Route 42, State Highway Project 0042-086-103, RW-201, and lying on the north (left) side of and adjacent to the existing north right of way line of present Route 42 from the lands of John Q. Brickey opposite approximate survey centerline Station 184+95 to the lands of John Q. Brickey opposite approximate survey centerline Station 187+00 and containing 0.08 acre, more or less, land.

It further appears to the Court that on the 29th of May, 1974, the State Highway Commissioner of Virginia caused to be recorded in the Clerk's Office of Your Honor's Court in Deed Book 262, page 228 Certificate No. C-24641 in the amount of $1,830.00 and Title to the aforesaid real estate and interest therein as aforesaid was vested in the Commonwealth of Virginia in accordance with the provision of the statutes of such case made and provided.

It is further ORDERED that the State Highway Commissioner of Virginia pay to the Clerk of Your Honor's Court on behalf of Thomas A. Carter and Mary Carter, his wife, the sum of $7,200.00 with interest at a rate of 6% per annum on the sum of $5,370.00, this being the excess of the Award over the amount represented by the aforesaid Certificate of Deposit from the 29th day of May, 1974, the date on which the above mentioned Certificate was duly recorded in the Clerk's Office, to the date uponwhich the principal sum is paid in the Court.

The Court does further ORDER that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the Certificate as aforesaid, and the proceedings

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BANON, VIRGINIA 24266

herein be recorded and indexed as provided by §25-46.27 of the Code of Virginia (1950) as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where the Certificate of Deposit No. C-24641 is spread.

It is further ORDERED that the necessary costs of this proceeding be taxed by the Clerk of this Court, and paid by the State Highway Commissioner.

It is further ORDERED that the interest of the State and the Parties of the property taken shall terminate, and all liens in the way of Deeds of Trust, Judgments or otherwise shall be transferred to the funds so paid into Court.

Nothing further remaining to be done, this action is ORDERED dismissed from the Docket of this Court.

TO ALL OF WHICH, COUNSEL FOR PLAINTIFF EXCEPTS.

Thereupon, Counsel for the State Highway Commissioner indicated desire to Petition the Supreme Court of Appeals of Virginia for writ of error, it is, therefore ORDERED that execution be withheld for a period of thirty days, and longer, if Plaintiff's Petition for writ of error is granted, or until other action by the Supreme Court of Appeals of Virginia is ordered.

Counsel for Plaintiff has indicated that the transcript of this proceeding will be ordered from the Court Reporter, and ~~that additional time is granted in order that~~ the accurate transcript of this proceeding ~~may be~~ is made a part of the record.

Requested:

G. C. Jennings

G. C. Jennings,
Counsel for Defendant

WHITE, ELLIOTT,
BUNDY & JONES
ITORNEYS AT LAW
NOINON, VIRGINIA 24210
IANON, VIRGINIA 24216

Seen and objected to:

John S. Bundy
Counsel for
State Highway Commissioner of Virginia

ENTERED, this 14th day
of January, 1977.

Judge

Recorded in C. Law
Order Book No. 23
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WHITE, ELLIOTT,
BUNDY & JONES
ATTORNEYS AT LAW
GINIA, VIRGINIA 24210
ANON, VIRGINIA 24236

IN THE CIRCUIT COURT OF SMYTH COUNTY, VIRGINIA

STATE HIGHWAY COMMISSIONER OF VIRGINIA,	)	
Plaintiff	)	
vs.	)	At Law
THOMAS A. CARTER and MARY CARTER,	)	
Defendants	)	

NOTICE OF APPEAL

TO THE CLERK OF THE AFORESAID COURT:

Plaintiff, State Highway Commissioner of Virginia, by counsel, hereby gives Notice of Appeal from the Final Order entered in this case on January 7, 1977.

That it appears from the record herein that the Court has ordered that the transcript of this proceeding be made a part of the record.

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

By s/ John S. Bundy
John S. Bundy
Of Counsel

Counsel:

WHITE, ELLIOTT, BUNDY & JONES
160 East Main Street
Abingdon, Virginia 24210

CERTIFICATE

The foregoing was served upon the defendants this 2nd day of February, 1977, by mailing a true copy thereof to their counsel of record.

s/ John S. Bundy
John S. Bundy

ASSIGNMENTS OF ERROR

1. The Court erred in allowing the commissioners to include possible damage to the Landowner caused by future changes in grade or access on the condemned property within their valuation of the damages to the residue in the current condemnation proceeding.

2. The Court erred in admitting the testimony of Garland Medley that pertained to changing and relocating the driveway on the Landowner's property.

3. The Court erred in allowing Thomas Carter to testify that his estimated damages were based on the costs of relocating his driveway and reconstructing his garage in the event that the highway was changed in such a manner as to change his access.

4. The Court erred in allowing testimony of the Landowner's witnesses as to possible changes in access to the Landowner's property.

INSTRUCTION NO. 1

The Court instructs the Commissioners that in fixing a just compensation for the land taken and for damage to the residue of the defendant's land, the commissioners are not limited to the use which the landowners are actually making of the land, but the landowners are entitled to have commissioners consider the value of the land or property for any purpose for which it is reasonably available and the landowners are entitled to be compensated for the land taken and for the damage to the residue of their land on the basis of the most valuable purpose for which said land is susceptible of being used.

INSTRUCTION NO. 2

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

Just compensation is to be ascertained as of the time the Commonwealth acquired the property, which in this case is the 20th day of May, 1974.

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

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

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

INSTRUCTION NO. 3

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

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

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

The Commissioners should consider all uses to which the property may be reasonably adapted with respect to its surroundings and natural advantages, or disadvantages, and shall determine its fair market value at the time of the taking in the light of such uses. The Commissioners should consider these uses with relation to the existing business, residential, or other demands of the community, or such as may be reasonably expected in the immediate future. The uses to which the land is adaptable must be so reasonably probable as to have an effect on the market value of the land at the time of taking. Purely imaginative or speculative value or uses should not be considered.

INSTRUCTION NO. 4

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

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

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

The Commissioners should consider every circumstance present or in the reasonably near future which affects the value of the residue.

INSTRUCTION NO. 8

The Court instructs the Commissioners that they should take into consideration the fact that the Highway Commissioner is entitled to occupy the entire right of way acquired.

INSTRUCTION NO. 9

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

INSTRUCTION NO. 1

The Court instructs the commissioners that they are to determine two questions in this proceeding: first, the just compensation for the lands or interest therein being taken; second, the damages, if any, to the remaining lands of the owner, ~~beyond the enhancement in value, if any, to such residue~~, by reason of the taking.

INSTRUCTION NO. 2

The Court instructs the commissioners that just compensation as used in these instructions means the fair market value of the land taken. Fair market value is defined as the price which one, under no compulsion, is willing to take for the property which he has for sale, and which another, under no compulsion, being desirous and able to buy, is willing to pay for that property.

INSTRUCTION NO. 3

The Court instructs the Commissioners that they are not bound by the opinions of expert witnesses as to the value of the land or damages, or by the apparent weight of the evidence, that you are to base your findings upon the facts presented to you and upon your view of the property, but you are not turned loose to take arbitrary action and render an award not related to the values or to the evidence.

INSTRUCTION NO. 4

The Court instructs the Commissioners that in ascertaining the fair market value of the land taken for highway purposes, you are not to assign a value to each tree, shrub, building or other improvement and add these items or amounts to obtain a total value; but you are to consider the land taken as a whole and determine its market value as a whole on the basis of a price it will bring when offered for sale by one who desires, but is not obligated to sell and is bought by one who desires, but is under no necessity to buy.

INSTRUCTION NO. 5

The commissioners are instructed that the right to just compensation became vested in the owners of the lands, herein being condemned, as of the date of the taking by the State Highway Commissioner. The time of the taking of the lands, or interest therein, subject to this condemnation proceeding was 20 May 1974 _____, and just compensation for such lands, and damage, if any, to the remaining lands of the owner is to be determined as of that date.

INSTRUCTION NO. 6

In determining the fair market value of the property at the time of the taking, the commissioners may consider its adaptability and suitability for any legitimate purpose, but they should award only the fair market value of the land as it stands at the time of the taking in view of all of the purposes to which it is reasonably and naturally adapted, and not its prospective or speculative value based upon future expenditures and improvements.

1 This matter came on to be heard on Friday, August
2 27th, 1976, before The Honorable J. Aubrey Matthews, Judge
3 of the Circuit Court of Smyth County, Virginia, and a panel
4 of five Commissioners.
5 Mrs. Jo Crewey, Court Reporter, was duly sworn in
6 the manner prescribed by law.

BILL HEDRICK,

7 having first been duly sworn, testified as follows:
8 DIRECT EXAMINATION:
9 BY: JOHN S. BUNDY:
10 Q. Would you state your name, please?
11 A. Bill Hedrick.
12 Q. Mr. Hedrick, did you have occasion to appraise
13 the property owned by Thomas A., and Mary Carter,
14 located on State Route 42, in Smyth County?
15 A. Yes sir.
16 Q. What date did you make that appraisal, please,
17 sir?
18 A. May 29th, 1974.
19 Q. Your Honor, again this is the date of the taking
20 by the State Highway Commission.
21 THE COURT: May 29th, 1974. Members of the Commission, this
22 is the date you will use in determining your
23 values.
24 BY: JOHN S. BUNDY:
25 Q. Mr. Hedrick, how did you make this appraisal,
please, sir?
A. I used the lineal foot method in arriving at the

value of the land and the cost approach to arrive at the value of improvements.

Q. Where was the land that you used to compare this property with, please, sir?

A. The land for comparison was located at Pleasant Heights Subdivision, South of Saltville.

Q. Would you go forward and give us that appraisal, please, sir?

A. There was a one-story brick dwelling on this property, containing 2,043 sq. ft. Let me give you the land value first. I appraised the value of the land at $4,700.00 per acre. This particular site contained .66 acre, for an indicated value of $3,100.00 for the site. I appraised the dwelling located on the property at $43,843.00, and other improvements on the property, a well; a paved driveway, septic system, I appraised at $3,632.00, making a total appraised value of the property of $50,575.00. The area to be taken was eight-hundreths (.08) of an acre at $4,700.00 per acre, amounted to $380.00. I appraised for 66 yards of pavement for the driveway, at $3.00 a yard, which amounted to $200.00 - a rounded figure..... there were several pieces of shrubs and seeded lawn and the .08 acre in the take; also two light posts, and I placed a lump sum value of $200.00 on the land taken.

Q. What was the total for the property taken?

1 A. The total take was $830.00.

2 Q. What is the location of the house to the new
3 right-of-way at its closest point?

4 A. At the West end of the dwelling, approximately
5 40 feet; at the East end, approximately 75.

6 Q. Do you have a picture of this property?

7 A. Yes sir, I do.

8 THE COURT: Petitioner's Exhibit #1.

9 (Thereupon, Petitioner's Exhibit #1 was marked for identification and filed).

10 BY: JOHN S. BUNDY:

11 Q. Is this a picture of the property you took back
12 when you were making the appraisal?

13 G. C. JENNINGS: Your Honor, we object to that as not
14 being a picture of his property.

15 THE COURT: Well, the Commissioners have seen the
16 property. They know exactly what it looks like.

17 BY: JOHN S. BUNDY:

18 Q. What was the...was there any change in road grade
19 at this particular location?

20 A. Yes sir. The elevation of the road on the center-
21 line was raised from 1-1/2 feet at the West
22 property line to approximately 2 feet at the
23 East property line.

24 Q. Alright, sir, did you find any damage to the
25 residue?

A. Yes sir, due to the irregular shape of the property line along the front of the property, I placed a

1 thousand dollar value.

2 Q. Do you know how far the house sets back from the

3 road?

4 A. Approximately 32 feet.

5 Q. And I believe at this particular location, you are

6 acquiring .08 acres, is that correct?

7 A. That is correct.

8 Q. That's all.

9 CROSS EXAMINATION:

BY: G. C. JENNINGS:

10 Q. Mr. Hedrick, as to the driveway, do you know

11 why there was an angle to the road?

12 JOHN S. BUNDY: Your Honor, I'm going to object to this

13 line of questioning.

14 G. C. JENNINGS: I just asked him if he knows.

15 THE COURT: Well, gentlemen, whether he knows or

16 doesn't know, the Highway Department has a right

17 to condemn this property. I don't know why they

18 did it the way they did it and I think it is

19 immaterial, so your objection is sustained.

BY: G. C. JENNINGS:

20 Q. Mr. Hedrick, from the point in the driveway to

21 the garage door, do you know how far that would be

22 from the take line as it presently is?

23 A. Approximately 40 feet.

24 Q. Alright, sir, now did you check to see what the

25 drop would be, assuming a level area as the take

up to the driveway - what would be the grade?

A. I don't know the feet.

Q. Well, if the Highway were to occupy all the way to their right-of-way line, do you know what the grade would be going into the driveway?

A. It would be the same as it is now.

Q. If they occupied all the way over?

A. What do you mean by "occupied"?

Q. Well, I mean if they moved the road over to where their right-of-way line is.

A. You would have a vertical wall.

Q. You would have a vertical wall?

A. If you cut back to the right-of-way line.

Q. Alright, now you understand that the Highway Department has a right to occupy this property all the way to that line, is that not correct?

A. The Highway Department owns the property back to the right-of-way line, but in the event there would be any additional grade work or construction done other than what has been done, the land owner would be re-contacted and an additional compensation would be made.

Q. Well, why would you do that....isn't that the reason that the property goes out into the yard... isn't that the reason it does go into an angle that if you ever have to widen it in the future, you would not have to go back again?

A. No sir, the right-of-way was bought for this particular project.

1 Q. Well, so far as this particular project goes,
2 if, for any reason, the Highway Department should
3 decide to add, say, three feet to either side of
4 the road, it would not be necessary to come back
5 to the land owner, would it?
6 A. In the event they....
7 Q. ....they already own it, don't they?
8 A. In the event that should be done, they would
9 re-contact the land owner.
10 Q. Well, let me ask you this: Is it not true that
11 the Highway Department requires that a person
12 enter a private driveway, and for that matter,
13 a commercial driveway, from a relatively level
14 area, that is in order that the scraper can go
15 along in a flat area and keep the snow and so
16 forth cleared away from this area...they would
17 not allow the driveway to tie into the paved
18 portion without a flat area, would they?
19 A. Do you mean tie right into the edge of the road?
20 Q. Right.
21 A. No sir, I wouldn't think they would.
22 Q. And it does require that an area, even though....
23 A. ...you're talking about along the shoulder.
24 Q. ...along the shoulder...the shoulder of the road
25 must be below the level of the paved portion of
the road, is that true?
A. Not necessarily below, but even with.
Q. Even with or below it, depending on the drainage?

1 A. Yes.
2 Q. Now, you value the property at $50,575.00..was
3 that before or after the take?
4 A. That was before the take.
5 Q. And, in your opinion, the difference between the
6 fair market value before and after would only be
7 ...after the take..would be $49,575.00?
8 A. No sir, the value after the take would be
9 $48, 725.00.
10 Q. Okay, so you feel that there is only $1,000.00
11 damage to this property?
12 A. Yes sir, in my opinion, approximately that.
13 Q. Are you saying that there is any enhancement?
14 A. No sir, I can see no enhancement.
15 Q. Now, if it were shown that if the Highway Depart-
16 ment should occupy up to the proposed or where
17 the State....
18 THE COURT: ....now, Mr. Jennings, let's forget
19 about that. The Court has instructed the
20 Commissioners that the Highway owns it and they
21 are entitled to occupy it for whatever purpose
22 they see fit...so, forget about that.
23 BY: G. C. JENNINGS:
24 Q. Did you take into consideration, in making your
25 appraisal any changes that might have to be made
26 if, in fact, the Highway Department did occupy....
27 JOHN S. BUNDY: ....Your Honor, I'm going to object to
28 this line of questioning unless they can show for

1 some reason that.....

2 THE COURT: .....objection sustained, gentlemen.

3 The Court has instructed the Commission as to

4 the law on that point.

5 G. C. JENNINGS: Well, we note our exception.

6 THE COURT: You may.

7 G. C. JENNINGS: That's all.

8 THE COURT: You may proceed, Mr. Bundy.

9 JOHN S. BUNDY: That's all we have, Your Honor.

10 THE COURT: Alright, you may proceed, Mr. Jennings.

JOE T. GOLLEHON,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION:

13 BY: G. C. JENNINGS:

14 Q. Would you please state your name?

A. Joe T. Gollehon.

15 Q. Where do you live, Mr. Gollehon?

16 A. In Chilhowie.

17 Q. What is your occupation?

18 A. Certified Land Surveyor.

19 Q. And are you a Certified Land Surveyor in the

20 State of Virginia?

21 A. Yes sir.

22 Q. Are you licensed in the State?

23 A. Yes sir.

24 Q. Mr. Gollehon, do ...did you go upon the property

25 of Mr. and Mrs. Carter at Broadford, for the

purpose of making a survey of the driveway and

1 entrance to the property?

2 A. Yes sir, I did a physical survey as well as a

3 profile survey.

4 JOHN S. BUNDY: Your Honor, may I see the Court and

5 Counsel in Chambers, please?

6 THE COURT: Sheriff, take the jury to their room.

7 (Thereupon, the Commissioners retired to their room and the following proceedings were had out of their

8 presence).

9 JOHN S. BUNDY: If it please the Court, Your Honor,

10 this exhibit....it looks to me like Counsel for

11 the Defendant is trying to base some line of

12 testimony as to specialties.....

13 THE COURT: ....wait a minute, Mr. Bundy. You're

14 way off base as far as I'm concerned. I don't know what you're talking about...this exhibit, or

15 anything else. No exhibit has been introduced.

16 JOHN S. BUNDY: The exhibit that was handed to me by

17 Counsel with reference to the survey of the

18 driveway. I don't see what reference it has to

19 the driveway there now or that immediately

20 preceding it...I don't see what any relevancy of a survey would have on the driveway. I see no

21 purpose for it being introduced. The driveway is

22 there; the entrance is there, and it is in the

23 same location it was before.

24 THE COURT: Alright.

25 G. C. JENNINGS: Your Honor, we intend to connect this up

1 and show the relevancy of it.

2 THE COURT: Well, show the Court before I introduce

3 it, sir. Now, is this on the assumption that

4 it is going back from road level to the edge...

5 is that what you've done?

6 G. C. JENNINGS: That is...Your Honor, ...

THE COURT: ....that's all I want to know.

7 G. C. JENNINGS: Well, wait just a second. I may have

8 misunderstood you. Do you mean...you're talking

9 about to the edge of the take?

10 THE COURT: Yes.

11 G. C. JENNINGS: That is correct.

12 THE COURT: Alright.

13 G. C. JENNINGS: We intend to show...we intend to ask the

Court to ...for an instruction that the

14 Commission can consider the fact that the Highway

15 is entitled to occupy the....

16 THE COURT: I don't differ with that. Alright,

17 Mr. Jennings....

18 G. C. JENNINGS: .....and then to show, Your Honor, if

19 in fact that occurs, then they can consider the

20 reasonable cost in adjusting the residence to the

then conditions.

21 THE COURT: I'm not going to let that go in. I

22 don't know whether it will or won't, but I'm going

23 to instruct them. So, your objection to this

24 exhibit, marked Land Owner's Exhibit #1, is granted.

25 G. C. JENNINGS: We would like the record to show, Your

1 Honor.....

2 THE COURT: Well, we'll let you do that, but we don't

3 want to do it at this stage. Hand it up and let

4 it be marked so the record can be kept straight,

5 and you may note your exception to the Court's

6 ruling. Land Owner's Exhibit #1, Mr. Clerk, so

7 there won't be any .....

8 (Thereupon, Land Owner's Exhibit #1 was marked for identification and filed).

9 THE COURT: Alright, let the Commissioners come back.

10 (Thereupon, the Commissioners returned to open

11 Court and the following proceedings were had).

12 BY: G. C. JENNINGS:

13 Q. In looking at this property, how far is it from

14 the door of Mr. Carter's present driveway, or his

15 garage, to the edge of the take, that is, in the

16 take itself, the new take line?

A. The new take line now?

17 Q. Yes.

18 A. We find it to be about 48 feet right in the middle

19 of the driveway.

20 Q. Did you make a survey as to...or make a calling

21 as to the grade from the road to the garage door,

22 and what percent grade is...did you find that to

23 be?

24 A. Well, assuming 100 foot elevation out in the center

25 of the existing pavement in 42, it goes back for

the first 20 feet and there is a very small percent

of grade. From that point, it changes quite abruptly and from that point there to the garage door, its a 13.35 percent grade.

Q. Now, that would be from the center of the road, is that correct?

A. No, that's from over at the edge of the road where the pavement comes out and turns up to the driveway.

Q. Now, what would be the percentage of grade from the point of the take, going across the driveway, in the middle of the driveway, what would be the percent of grade from there to the garage door?

A. Well, it is pretty much the same thing.

Q. And that would be approximately...

A. ...approximately 13 percent.

Q. Did you make a measurement from the rear lot line to...of the Carter residence...to the road at the take?

A. From the rear of his property?

Q. Yes.

A. No, I did not from the rear of his property. All we did was measure here from the center of the road back to the carport.

Q. Mr. Collehon, in your opinion as to the value of this property, has it in any way been damaged by the relocation of the property line?

JOHN S. BUNDY: Your Honor, I'm going to object to that. He is not qualified as an expert to testify to

1 this.

2 THE COURT: Objection sustained.

3 BY: G. C. JENNINGS:

4 Q. Are you a land owner in Smyth County?

5 A. Not at the present time, no sir.

6 Q. Were you a land owner in 1974 - in May of 1974?

7 A. No sir.

8 Q. Alright, sir. I have no further questions at this time.

9 JOHN S. BUNDY: No questions, Your Honor.

10 H. B. ELLER,

11 having first been duly sworn, testified as follows:

12 DIRECT EXAMINATION:

13 BY: G. C. JENNINGS:

14 Q. Your name is Mr. H. B. Eller?

15 A. Yes sir.

16 THE COURT: His qualifications in the former case will apply in this case.

17 BY: G. C. JENNINGS:

18 Q. Mr. Eller, did you go upon the land of Mr. and Mrs. Al Carter for the purpose of making an

19 appraisal of this property?

20 A. Yes sir, I did on August 11th and August 18th,

21 1976.

22 Q. And would you go forward and tell the Court....

23 THE COURT: ....Mr. Eller, you have been in the

24 courtroom. You understand that the value in

25 connection with this property is of May 29th,

1974?

A. Yes sir.

JOHN S. BUNDY: Your Honor, I hate to interrupt again, but may I take a matter up with the Court?

THE COURT: Well, if you hate to, you don't have to, Mr. Bundy.

JOHN S. BUNDY: Well, I realize that, but I need to for just one second.

THE COURT: Alright, let the Commission go into their room.

(Thereupon, the Commissioners retired to their room and the following proceedings were had).

JOHN S. BUNDY: Your Honor, I would request that before this witness testifies that if any testimony is involved with Mr. Gollehon's survey and things of that nature, that he be instructed not to testify on that.

THE COURT: I don't know that he's even seen the survey. The Court has ruled on that. The Highway had the right to use it all, Mr. Bundy, but I'm not going on what they may or may not do.

JOHN S. BUNDY: Yes sir. There is...it's my understanding that there will be testimony about building a garage.

THE COURT: You may note your exception. I will rule on it as it comes up.

JOHN S. BUNDY: Alright. Thank you, Your Honor.

(Thereupon, the Commissioners returned to open

1 Court and the following proceedings were had).
2 BY: G. C. JENNINGS:
3 Q. Mr. Eller, what method did you use in making your
4 appraisal of this property?
5 A. I made just a judgment decision on the value of
6 the take, based on experience.
7 Q. Alright, sir, and what, in your opinion, was the
8 value of the take of this property?
9 A. Since this section came off of the front of this
10 lot; cut down the front yard, I felt like the
11 damage was the total value of the lot that the
12 house is setting on - the total lot, $1,500.00.
13 Q. Alright, sir, I believe the evidence shows that
14 included in this take was 66 yards of pavement.
15 What would be the fair market value on this date -
16 the 29th day of May, '74, of some 66 yards of
17 pavement?
18 A. Well, I just figured the total value across there
19 on the take, the pavement and all - $1,500.00.
20 Q. Okay, based on this, did you consider the size of
21 the lot and how much was being taken and how much
22 remained on both ends?
23 A. Yes, since this lot is wider than it is deep, I
24 felt like when you're cutting part of the front
25 off there you're cutting down on its value because
you're cutting the depth of the lot.
Q. Did you make an appraisal or estimate as to the
damage to the residue, if any?

A. Yes sir, and the way I arrived at that, one of the first things we do when we show property is to show the property line and when you show a prospective buyer that the property line is 40 feet from the garage, the Western end of the garage is 40 feet from the Highway property line, for most intelligent buyers, it would raise the question in their mind as to what effect it would have on the property, and based on that and looking at the situation where if the Highway were to occupy the entire property back to the property line, you could see where a change would have to be made in the driveway, the entrance to the garage, so it would be too steep to enter should that change be necessary and the buyer would use that information to beat the price of the property.

JOHN S. BUNDY: Your Honor, I'm going to object because any testimony along this line would be purely speculative.

THE COURT: Objection over-ruled, Mr. Bundy, I have instructed the Commission that the Highway owns this in fee simple and they can do what they want to with it.

JOHN S. BUNDY: Yes sir. For the purpose of the record, we would state that the project has been completed and the access is there as shown and is as it was before, and....

THE COURT: ....the ruling is the same, Mr. Bundy.

1 You may note your exception.

2 JOHN S. BUNDY: We except.

3 BY: G. C. JENNINGS:

4 Q. Mr. Eller, based on your estimate, were any other
5 factors considered as an element of damage to the
residue?

6 A. Well, I considered what it would cost to correct
7 this situation should it occur.

8 Q. Alright, sir, would you just go forward?

9 A. Based on bids in 1974, that's where I got my
10 figures....

11 JOHN S. BUNDY: Your Honor, I would object to that
unless he is the person who obtained the bid.

12 THE COURT: Overruled, Mr. Bundy.

13 ELLER: The bid from Sugar Grove Asphalt Company in 1974,
14 July 30, to remove the gravel and present driveway,
15 black-top, reseed and move the shrubbry; put in a
16 new driveway at a new location on the end of the
17 garage, was $1568.00. To rectify...close up the
18 two entrances, present entrances, to the garage
19 and put two new ones on the West end, the bid was
$4700.00.

20 JOHN S. BUNDY: Your Honor, we object to that.

21 THE COURT: Your objection to that is sustained,
22 Mr. Bundy. Disregard that.

23 G. C. JENNINGS: To change the garage?

24 THE COURT: Yes.

25 BY: G. C. JENNINGS:

1 Q. What, then, would be the total....well, let's put
2 it this way: The difference between the fair
3 market....
4 THE COURT: ....the fair market value before and
5 after....now, Mr. Jennings, you're getting down to
6 the law.
G. C. JENNINGS:
7 Q. Would you state, whether or not in your opinion
8 the fair market value before and after the take,
9 that a willing buyer would be willing to pay and
10 what a willing seller would be willing to sell
11 before the property line was changed over, that is,
12 and immediately after it was changed over?
THE COURT: The difference in those two prices.
13 ELLER: The difference is $6,268.00.
14 BY: G. C. JENNINGS:
15 Q. And based upon your experience in the real estate
16 business, is that your figure based upon what
17 would be...well, let me put it this way: Let me
18 back up and start again. Is there any enhancement
19 in value?
20 A. I think not.
Q. What is the total....
21 A. ....$6,268.00 is the total and that includes the
22 take and damage.
23 Q. Alright, sir, can you break those down?
24 A. $1500.00 for the take, $4700.00 for the damage.
25 Q. You may ask him.

1 CROSS EXAMINATION:

2 BY: JOHN S. BUNDY:

3 Q. Mr. Eller, the Highway is acquiring .08 acre, is
4 that correct?

5 A. Yes sir.

6 Q. And when you described it, you said in your
7 opinion it was worth $1500.00 - am I correct in
8 saying you decided it was that much because of the
9 irregular shape of the lot and things of this
10 nature, is that why?

11 A. No sir, it came off the front of that lot and
12 decreased the depth of it.

13 Q. Well, wouldn't that go to damage rather than the
14 value of the land?

15 A. I don't believe so - that's the value of the lot.

16 Q. Well, how much is the lot worth?

17 A. Well, I'd say the lot is 200 feet wide and the
18 remaining depth on the East is 175.08; and on the
19 left 122.5 feet....that location over there, that
20 lot ought to be worth $3,000.00 now, and I'd say
21 prior to this, it would be close to $4500.00, or
22 more.

23 Q. So, it's got...well, I'll get off that.

24 A. You can't figure it on an acreage basis because
25 that last one hundred feet...the last hundred of
an acre on the back of this lot is not worth what
the first is.

Q. I understand that. At present, there is the same

1 access - practically the same access to the
2 property that existed prior to this, is that
3 correct?
4 A. As far as I know.
5 Q. And you said you had $1568.00...
6 A. No, $1500.00 for the value of the take and
7 $40.....No, $1568...I don't know where I got the
8 $68....
9 Q. ...you said $1568 was for the value...
10 A. ...value of the take.
11 Q. ...value of the driveway, is that correct?
12 A. No, wait a minute. $1568.00 is the price for
13 replacing the driveway, and then $4700.00 for the
14 other.
15 Q. You mean there was something else?
16 A. Rearranging the garage - entrance.
17 Q. Your Honor, I would respectfully ask.....
18 A. .....that would give you $6268.00, and then the
19 value of the take, I beg your pardon, would be on
20 top of that....$1500.00.
21 Q. We respectfully ask that the figure he just
22 mentioned be disallowed.
23 THE COURT: Disregard that. Now, this is just on
24 the difference in the fair market value before and
25 after. Now, that's all we want, gentlemen, none
of this other stuff.
JOHN S. BUNDY: So, Mr. Eller, what you're testifying
to would be that $1500.00 is the take and

1 $1568.00 for the driveway and the other matters are
2 excluded from your testimony, is that correct?
3 G. C. JENNINGS: We object to this, Your Honor.
4 THE COURT: Overruled, Mr. Jennings.
5 JOHN S. BUNDY: Wouldn't that be right, Mr. Eller?
6 A. If you don't allow it, that's it.
7 JOHN S. BUNDY: That would be three thousand six....
8 THE COURT: ....Mr. Eller, forget about doing any
9 work on the house - changing anything connected
10 with the house and listen to the Court. The
11 damage is the difference in the fair market value
12 immediately before and immediately after the take.
13 Now, that's the damage.
14 JOHN S. BUNDY: So, in light of the Court's ruling,
15 that would be fifteen hundred....
16 THE COURT: ....wait a minute. Let him answer that
17 question, Mr. Bundy.
18 JOHN S. BUNDY: I apologize to the Court.
19 ELLER: I'd say $1500.00 for the value of the take and
20 $1568.00 for the damage.
21 JOHN S. BUNDY: Thank you.
22 GARLAND C. MEDLEY,
23 having been duly sworn, testified as follows:
24 DIRECT EXAMINATION:
25 BY: G. C. JENNINGS:
Q. Your name,please?
A. Garland C. Medley.
Q. Mr. Medley, where do you live?

1 A. Sugar Grove.
2 Q. What business are you in?
3 A. Grading and Asphalt work.
4 Q. Are you the owner of Sugar Grove Asphalt Service of Sugar Grove?
5 A. Part.
6 Q. Mr. Medley, on the 30th of July, 1974, did you
7 go to the residance of Mr. Thomas A. Carter at
8 Route 3, Saltville, in the Broadford Section, for
9 the purpose of making an estimate on the driveway?
10 A. Yes sir, I gave a...what it was for was to relocate;
11 take out the old driveway, top soil it back and
12 seed it; move the shrubbry and put a new one in at
the other end of the house.
13 JOHN S. BUNDY: Your Honor, again, I would object.
14 THE COURT: Overruled, Mr. Bundy.
15 G. C. JENNINGS: Mr. Medley, what was the estimate to
16 relocate that driveway and put a new one in to make
17 an entrance at the other end of the house?
18 A. I believe it was $1568.00.
19 Q. And is this your estimate?
20 A. Yes sir.
21 Q. We'd like to offer this.
22 JOHN S. BUNDY: Your Honor, we object to this.
23 THE COURT: Alright, gentlemen, there's no question
24 that he has testifield to $1568.00. I'm not going
25 to let this go in, Mr. Jennings because of some
writing. I'll mark it refused and that the infor-

1 mation other than that has been presented.

2 G. C. JENNINGS:

3 Q. Now, Mr. Medley, the Highway Department has
4 testified that 66 yards of pavement was in the
5 take involved in Mr. Carter's driveway. That's
6 what actually was taken. As of the 29th day of
7 May, 1974, what would be the value in place, of
8 66 yards of pavement, that is asphalt driveway?

8 A. You're talking about a complete pavement.

9 Q Complete job.

10 A. Base material, grading and pavement.

11 Q. Well, I think I can be more specific than that.
12 Did you do this job?

13 A. Yes sir.

14 Q. Did you pave the driveway?

15 A. Yes sir.

16 Q. Do you recall when that was done?

17 A. I believe it was probably around three years ago.
18 I would have to look back on the books and see for
19 sure when it was.

20 Q. What would be the value of 66 yards of pavement as
21 it was there so located and used?

22 A. It would be your base material, pavement and
23 grading, around $4.50 a square yard.

24 Q. And the estimate you gave - the $1568.00 - was to
25 relocate; take out this driveway, and to pave...
grass over that, and reseed it?

A. ...and grading, base and pavement for a driveway

1 into the other location.

2 Q. Alright, and this was done, I believe you said, in

3 1974?

4 A That estimate was made in '74.

5 Q. You may ask him.

6 JOHN S. BUNDY: No questions.

7 THOMAS A. CARTER,

having been duly sworn, testified as follows:

8 DIRECT EXAMINATION:

9 BY: G. C. JENNINGS:

10 Q. Would you please state your name?

11 A. Thomas A. Carter.

12 Q. Mr. Carter, are you and your wife the sole owners

13 of this property which we viewed earlier today?

14 A. Yes sir.

15 Q. How long have you owned this property?

16 A. Since '69.

17 Q. And have you lived there since 1969?

18 A. Right.

19 Q. Mr. Carter, I believe the Highway Department has

20 taken .08 acres off the front of your property.

21 What do you consider a fair market value of the

22 .08 acres?

23 A. Due to the fact that I don't own much land and

24 due to the fact that it is located on the most

25 valuable land I do own, when I started on this,

there was a bank about 10 or 12 feet high and many

hours with a bulldozer were spent grading this down

1 the way I wanted it. Also, I spent a lot of time
2 and went to a lot of expense to fix It the way I
3 wanted it. I realize I don't have a choice, but
4 if I did, I wouldn't take ten times what the State
5 has offered for it, so, I would say the property
6 should be worth $2,000.00.
Q. The value of the take?
7 A. The value of the take.
8 Q Now, do you consider that you have been damaged
9 in any way beyond enhancement...first of all, in
10 your opinion, is there any enhancement because of
11 the Highway coming through there?
12 A. I know of none. May I speak from the picture?
13 Q. Yes.
A. This was taken at a distance back away from my
14 property. This culbert is partially on...if You'll
15 notice my father-in-law's property...it's not even
16 mine.
17 Q. What about the trees that are right in the middle
18 of the photograph, is that on your property?
19 A. This tree is not even on my property.
20 Q. Do you consider that because of the location of
21 the new property line there in front of your house,
that your property has been damaged?
22 A. Well, I definitely do because the first thing I
23 would consider if I wanted to sell my property,
24 that anyone in their right mind would definitely
25 stop and consider the fact of the results of the

take. I feel sure that the State will use up to their property line; that I could not get into my driveway; if I couldn't get in my driveway, I would have to move my garage doors, and.....

JOHN S. BUNDY: ....Your Honor, I object to all this.

THE COURT: Overruled, Mr. Bundy. This is the land owner and the Commission saw where the take comes to and the Court saw, and the Highway owns it and I have stated that numerous times and that is the law in this case.

JOHN S. BUNDY: Your Honor, I would object to any reference to changes in buildings or anything of this nature and that's what....

THE COURT: ....Mr. Jennings, if you'll ask the witness what, in his opinion, is the value of the remainder of his property immediately after the take as compared with the value of it immediately before the take - the residue - that's the figure we're talking about and get that figure and then...

G. C. JENNINGS:

Q. Mr. Carter, would you give us your opinion as to the difference between the fair market value before the...

A. ...okay, before the take, I think a fair value - market value - would have been $50,000.00, for the home. After the take, I feel it would be $43,282.00.

Q. Alright, sir, let me ask you how you arrived at

1 that figure?

2 A. I had an estimate as to what it would cost to move

3 the driveway and the garage doors .. ..

4 JOHN S. BUNDY: ....Your Honor, here again I'm going to

5 object to any testimony about moving the garage

6 doors and things of that nature.

7 THE COURT: That's correct, Mr. Bundy. This is

8 his figure. Now, we're not changing your structure

9 at all, Mr. Carter, this is not what we're doing.

10 We're talking about the value immediately before

11 and after. The fair market value.

12 G. C. JENNINGS: I'd like to note our....

13 THE COURT: ...you may note it, Mr. Jennings...

14 G. C. JENNINGS: ...EXCEPTIONS to the ruling. In the

15 photograph, I believe beyond the tree...this is

16 the middle of the photograph, it shows several

17 shrubs. Were those shrubs in the take?

18 A. Yes, I don't remember how many - approximately -

19 I don't know if it was two or three.

20 Q. Alright, sir, did you have two light poles in the

21 take?

22 A. Yes, they are still there.

23 Q. They are in the take?

24 A. Yes.

25 Q. And ...well, do you feel, given this figure of the

difference $50,000 before and $43,282, do you feel

that's how much you have been damaged because of

the Highway and where they located the property

1 line?

2 A. Yes, I do. I feel that the value of it, as far

3 as the take, as I said, is $2,000.00. The damages:

4 $6,718.00.

5 Q. Now, you do not own any other property around your

6 house other than what is shown there?

7 A. No sir, none other than the lot.

8 Q. Alright, sir, answer Mr. Bundy's questions.

9 JOHN S. BUNDY: No questions.

10 THE COURT: Alright, next witness, Mr. Jennings.

11 G. C. JENNINGS: That's all we have, Your Honor. I

12 have another witness I'd like to have vouch the

13 record.

14 THE COURT: Alright, for the record, we have the

15 identical Commission in this case as the former

16 case. The lawyers are the same. Mr. Carter was

17 in the courtroom when the Court read the instructions

18 or the law in the prior case. Gentlemen, the law

19 is the same and I'm not going to read them to you

20 unless Counsel wants. You will have than to take

21 to your room.

22 JOHN S. BUNDY: That's fine.

23 THE COURT: You gentlemen may now present your views.

24 (Thereupon, closing arguments were presented by

25 John S. Bundy, Esq., and by G. C. Jennings, Esq., to which

there were no objections.)

THE COURT: Alright, you have the award and the

instructions and each of you gentlemen will sign

1 the award.

2 (Thereupon the Commission retired to their room at

3 4:00 P.M., to consider of their award).

4 G. C. JENNINGS: Alright, Mr. Gollehon, will you come back around.

5 BY: G. C. JENNINGS:

6 Q. Mr. Gollehon, I would like for you to refer to the

7 Exhibit which was rejected, did you make this

8 drawing?

9 A. Yes, me and my staff made it.

10 Q. When was that made?

11 A. It was made, originally it was made sometime back, this was made on August 16th, 1976.

12 Q. I believe prior to that time, perhaps in 1974, you

13 had made another drawing for Mr. Carter to show

14 the elevation?

15 A. Yes sir, around 1975, I believe.

16 Q. At sometime after the take?

17 A. Yes.

18 Q. Now, if we assume that the Highway Department can

19 occupy right up to the property line as presently located, what will be the elevation, grade, from

20 that property line to the garage of Mr. Carter's

21 house?

22 A. Little better than an 18-1/2 percent grade.

23 THE COURT: Now, wait a minute, Mr. Jennings. I

24 disagree with you on that - the way you asked that

25 question. If they occupy it in the present condition

1 the grade would be identically the same.

2 G. C. JENNINGS: I don't recall exactly how I asked it,
3 but I asked him what the grade would be if they
4 occupied up to the property line.

5 THE COURT: Right.

6 G. C. JENNINGS: Okay. You are assuming in your answer,
7 I take it, the road level would be brought over to
8 the property line...the road as presently located,
9 if it were brought over to the property, then you
10 would have an 18-1/2 percent grade?

11 GOLLEHON: Right.

12 Q. And if you have an 18 percent grade, from your
13 experience as a surveyor, would you be able to
14 get into your driveway with an 18 percent grade?

15 A. It would be highly unlikely because you have no
16 momentum to get a start up a grade like that. It's
17 the usual thing just to sit there and spin it out
18 and that would be something that we wouldn't
19 recommend at all.

20 Q. And if it were an 18 percent grade, as a surveyor
21 would you recommend that, if it were feasible, to
22 relocate an entrance and to have an end-loading,
23 rather than a side-loading garage, that that be
24 done?

25 A. Yes sir.

Q. Okay. Mr. Bundy will have some questions.

JOHN S. BUNDY: I have no questions of this witness,
Your Honor. I would also like to add some facts to

1 the record along this particular line.
2 G. C. JENNINGS: Mr. Medley.
3 Q. You are the same Mr. Medley who previously testified?
4 A. Yes sir.
5 Q. Mr. Medley, I don't believe I asked you before, how long have you been in the asphalt paving business?
6 A. For myself or...
7 Q. ...altogether.
8 A. Well, I started in 1946, taking out seven years
9 that I worked for another company.
10 Q. If we assume that a driveway would require an
11 18 percent grade as Mr. Collehon just testified to, that is, the present road at the present grade be
12 moved over to the edge of the property line and
13 there was an 18 percent grade from that property
14 line to the carport or garage door, would you be
15 able, or would you advise constructing a driveway
16 with an 18 percent grade coming off the road?
17 A Well, if you were, say you were setting on an 18
18 percent grade, unless you had some way to taper the
19 bottom out why you couldn't even get in and out. Your bumper would hit the road backing out if you
20 was setting on that elevation, or scrape going in.
21 Q. Would you state whether or not you would recommend
22 that if an 18 percent grade were required there as
23 stated, the driveway be changed?
24 A. I would recommend it.
25 Q. Would it be feasible to move the garage doors and

1 make this an end-loading garage rather than a
2 side-loading garage?
3 A. It would have to be changed.
4 Q. I realize it would have to be changed, but is it
5 possible to change it?
6 A. I don't know. I'm not in the...you mean the
7 driveway?
8 Q. Right, the driveway itself. You're not in the
9 construction business as far as the garage, but
10 is it possible to change the driveway itself to
11 make it an end-loading garage?
12 A. You would have to relocate the driveway.
13 Q. Alright, and your estimate that was introduced
14 here is based on that?
15 A. Based on that.
16 Q. And do you consider that to be the cost of this
17 as of May 29th, I believe it is, 1974, rather
18 than the present cost?
19 A. Well the present cost now would be at least 25
20 percent difference because of...
21 Q. Twenty-five percent more or less?
22 A. It would be more. Your petroleum products took
23 such a jump and asphalt products took the same
24 thing - increased.
25 Q. And the estimate you gave was to tear up the old
driveway and put the new driveway in to load from
the end of the house and to reseed that whole
area where the old driveway was located?

A. To take out the old pavement, fill it back with top soil and reseed it.

Q. And after that was done, would that be a comparable driveway to what he had?

A. It would be a comparison if the elevation wasn't lowered like the grade was going back to the road.

Q. Alright, sir.

CROSS EXAMINATION:

BY: JOHN S. BUNDY:

Q. Mr. Medley, have you seen one of these sketches that's been introduced?

A. I seen the survey sketch - I didn't see that.

Q. You didn't see this. Would it be possible, this being the North arrow and the West side of the property, East side of the property, would it not be possible to have a driveway that would be further down toward the East side of the property and come back and connect into this driveway going to the garage?

A. You mean this present location?

Q. Yes sir, say starting here, have a driveway that comes up and connects in above the State Highway. Would that have very little grade on it at all?

A. You're talking about coming in from the East or West?

Q. From the Eastern portion of the road?

A. I would think that would be rather steep on an angle - it's possible that you could, but I'd have

to look at the property to see.

Q. Would it be possible from the other paved driveway to have a driveway come over to connect with this one where the driveway.....

A. ...that again, I don't know. It's been awhile since we paved that and I don't know exactly how the ground lays, but that would throw it in an "S"....

Q. ...yes sir, there would be a curved driveway.

A. And I don't know what radius you would have to have to get in there.

Q. Well, if you have approximately 43 feet from the State right-of-way to the corner of the house on this side, would you think that could be done without any problem?

A. Like I say, I'd have to look at it and measure it.

Q. Alright, I believe that's all.

CARROL SHORES,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: G. C. JENNINGS:

Q. Would you please state your name?

A. Carrol Shores.

Q. Where do you live, Mr. Shores?

A. Chilhowie.

Q. What business are you in?

A. Building contractor.

Q. Mr. Shores, have you...how long have you been a

1 building contractor?
2 A. Twelve years.
3 Q. Did you make an estimate for Mr. and Mrs. Thomas
4 Carter?
5 A. Yes, I did.
6 Q. Was this at their home in the Broadford section,
Route 3, Saltville, Virginia?
7 A. Yes sir.
8 Q. Would you just tell the Court the nature of the
9 estimate that you gave - what it was for?
10 A. It was to relocate his garage, you know, to move
11 his doors around to the end and change his walkway
12 around from his house.
13 Q. And, basically, it was to change it from a side-
loading garage to the...
14 A. ...to the end.
15 Q. To an end-loading garage, and what would that
16 require - just generally?
17 A. Well, it was two years ago when I did my estimate
18 and, really, right off hand I can't remember really
19 what we talked about there. I know what the
20 estimate was, but....
21 Q. ...was this estimate June 3rd, 1975?
A. It was '74, I think.
22 JOHN S. BUNDY: I have no objection to this being
23 introduced other than the objections that have
24 been stated heretofore.
25 THE COURT: You mean you have no objection to him

1 putting it in the record?

2 JOHN S. BUNDY: No sir, I do not.

3 BY: G. C. JENNINGS:

4 Q. Your estimated showed $5,150.00?

5 A. Yes sir.

6 THE COURT: Do you want that filed or just his testimony? The testimony is sufficient.

7 G. C. JENNINGS: I suppose. At any rate, you gave Mr.

8 and Mrs. Carter a written estimate of this cost?

9 A. Yes sir.

10 Q. This was for both labor and material?

11 A. Yes sir.

12 Q. And now, would there be any difference in the cost of labor and materials....

13 A. ...I don't think so, really.

14 Q. Well, let me finish the question. Could it - the

15 date of the take of this property was the 29th of

16 May, I believe, 1974 ....

17 JOHN S. BUNDY: ...again, I object to this. Everything

18 is in reference to the date of the take and the

19 estimate has been given as of that date and anything else about that is irrelevant.

20

21 G. C. JENNINGS: Well, that's what I'm trying to do is relate it up. Was there any substantial change in

22 the cost of labor and material from May 29th, 1974,

23 to June 3rd, 1973?

24 A. Yes, it would be higher.

25 Q. Now, what in your opinion would the estimate have

1 been....

2 THE COURT: I thought you said you made this in

3 '74?

4 SHORES: I did.

5 G. C. JENNINGS: Okay, that's all the questions I have.

6 JOHN S. BUNDY: No questions. Your Honor, I would like

7 to state the basis for my objections in the

8 testimony about the driveway and the damage

9 testimony was based on the relocation of the

10 driveway and the Highway's position is as follows:

11 That this proceeding is based on the plans that

12 were filed as Exhibit B, and if there are any

13 changes in that plan with regard to access, grade

14 change, that under the normal State maintenance

15 of the Highway it would require further negotiations

16 with the individual land owner and that the plans

17 show and the pictures introduced here show the

18 access that Mr. Carter will have and that if that

19 access is changed at all by the State Highway

20 Commission, it would require further negotiations

21 with him and that any testimony along relocating

22 the driveway or building additional areas to the

23 garage is irrelevant and immaterial to this pro-

24 ceeding.

25 THE COURT: Gentlemen, you all can put whatever you

26 want to in the record now. Just let the record

27 show that the Court and the Commission are gone, and

28 you lawyers can put whatever you like in the record.

(Thereupon, the Jury Commissioners returned to open court at 4:45 P.M.)

THE COURT: Gentlemen, have you arrived at your award?

(All answer affirmatively).

CLERK: $400.00 for the take; $6800.00, damage, signed by the five Commissioners respectively.

THE COURT: Alright, let it be filed.

THESE WERE ALL THE PROCEEDINGS HAD IN THIS MATTER ON THIS DATE