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IN THE

SUPREME COURT OF VIRGINIA

Record No. 791385

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

Appellant,

v.

CALVIN T. CANTRELL AND
EDITH C. CANTRELL

Appellees.

APPENDIX

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PETITION

Filed: March 2, 1978

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

1. John W. McClintock, Jr., Attorney at Law, is the duly authorized agent and attorney for the State Highway and Transportation Commissioner of Virginia, for the purpose of instituting this condemnation proceeding, as is shown by a signed declaration hereto attached, marked "Exhibit A", and asked to be read as a part of this Petition, and John W. McClintock, Jr., Attorney at Law, is authorized to file this proceeding in the name of and on behalf of the State Highway and Transportation Commissioner of Virginia.

2. The right and property acquired and intended to be compensated for in this proceeding is the fee simple interest to the land shown within red lines on the attached plans along with any and all easements as are needed, all of which is described and set forth in "Exhibit B", and described in detail in Paragraph 4 of this petition.

3. The aforesaid property is necessary for the construction, reconstruction, alternation, maintenance and repair of a portion or portions of a public highway embraced in the Virginia Highway System, known as Route 19, in Tazewell County, Virginia.

4. The land, or interest therein, taken lies in Maiden Spring Magisterial District of Tazewell County, and is described as follows:

"Being as shown on Sheet 17 of the plans for Route 19, State Highway Project 6019-092-108, RW-201, and lying on both sides of the office revised northbound lane centerline and adjacent to the south existing right of way line of present Route 19, from the lands of Stella G. Rasnick, et al, at approximate Station 321+ 80 to the lands of Stella G. Rasnick, et al, at approximate Station 327+17 and containing 1.30 acres, more or less, land."

This project is for the improvement of a section of primary highway system Route 19 between Russell-Tazewell County Line and 0.561 Mi. E. Int. Rte. 460 (Claypool Hill) and will include right to construct, reconstruct, repair, improve, alter and maintain the said Route 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.)

5. Your petitioner has made a bona fide but ineffectual effort to purchase said property from the owners hereof but has been unable to do so because of the inability to agree upon the purchase price therefor.

6. Your petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained in this proceeding are those named hereinabove, and that there are no encumbrances of record, and it will not be necessary for a Special Commissioner to ascertain liens to be appointed in this proceeding, as disclosed by title examination of the above-described land.

7. That on or about the 17th day of November, 1977, your petitioner caused to be recorded in the office of the Clerk of this Court in Deed Book 437, page 859, Certificate No. C-28055, as provided by Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia, 1950, as amended.

8. Thereupon, pursuant to the provisions of the aforesaid Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia, title to the property described in paragraph 4 of this petition vested in the Commonwealth of Virginia.

WHEREFORE, your petitioner respectfully prays unto this Honorable Court in accordance with the provisions of Title 25. Chapter 1.1 and Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia of 1950, as amended, that Commissioners may be appointed and summoned to ascertain and report what will be a just compensation for the property herein proposed to be condemned, including the easement for the relocation of utilities, if any such relocation is required; and to determine a just compensation for damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of the taking; that pursuant to the provisions of Title 25, Chapter 1.1 and Chapter 1 of Title 33.1 of the Code of Virginia of 1950,

as amended, any and all defendants hereto shall be required to file in writing in this cause any grounds of defense which they have hereto; that this Court be directed to confirm the vesting of title in the Commonwealth of Virginia as aforesaid and take all such other steps to carry out the intents of Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia, 1950, as amended, as may be necessary; that your petitioner may have such other further and general relief as the nature of this case may require.

EXCEPTIONS TO REPORT OF COMMISSIONERS

Filed: April 16, 1979

The Petitioner would respectfully set forth the following Exceptions to the Report of Commissioners made on April 9, 1979:

1. The Respondents' expert witness based his opinion of the fair market value of the property being condemned upon its potential use for commercial purposes. The attorney for the Petitioner attempted to cross examine this expert relative to the economic effect of this potential use on the remaining property of the Respondents, and the improvements thereon, in an effort to establish tht a commercial use of the property acquired was not its highest and best use considering the Respondents' property as a whole. The Court erred in sustaining Respondents' objection to this cross examination.

2. The Court erred in granting instructions, over the Petitioner's objection, which permitted the Commissioners to return an award for damage to the residue of Respondents' property.

3. The Court erred in refusing Instruction 1 offered by the Petitioner.

The errors of the Court as above set out had, or could reasonably have had, a substantial effect on the award of the Commissioners as set out in their report.

ORDER OVERRULING EXCEPTIONS TO
AND CONFIRMING COMMISSIONERS' REPORT

Filed: June 19, 1979

This day came the Petitioner, the State Highway and Transportation Commissioner of Virginia, by his attorney, and came also the Respondents, Calvin T. Cantrell and Edith C. Cantrell, by their attorney, and it appearing to the Court that the report of the Commissioners hereinbefore appointed with the certificate of the Clerk of this Court administering the oath to the said Commissioners, was on the 9th day of April, 1979, duly returned to and filed by the Court herein; that exceptions to the said report were duly and timely filed by the State Highway and Transportation Commissioner of Virginia, the Petitioner herein; that on June 8, 1979, the Court heard the arguments of counsel for the parties hereto on the said exceptions; and that the Court after considering the matter, overruled the said exceptions;

And it appearing to the Court that the said Commissioners ascertained that the value of the land taken herein was $19,500.00, and that the damages to the residue, beyond the enhancement in value to the residue by reason of the taking, was $7,000.00, and that the said report should be confirmed; therefore, the Court doth overrule the exceptions to said report and doth APPROVE, RATIFY and CONFIRM said report in all particulars, and doth CONFIRM unto the Commonwealth of Virginia, the fee simple title to the following property lying and being in Maiden Spring Magisterial District of Tazewell County, Virginia, to-wit:

Parcel 037 - Being as shown on Sheet 17 of the plans for Route 19, State Highway Project 6019-092-108, RW-201, and lying on both sides of the office revised northbound lane centerline and adjacent to the south existing right of way line of present Route 19, from the lands of Stella G. Rasnick, et al, at approximate Station 321+80 to the lands of Stella G. Rasnick, et al, at approximate Station 327+17 and containing 1.30 acres, more or less, land.

And, further, it appearing to the Court that the State Highway and Transportation Commissioner of Virginia has heretofore caused to be recorded in the Clerk's Office of this Court Certificate No. C-28055 for $7,532.00; that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of §§33.1-119 and 33.1-122 of the Code of Virginia of 1950, as amended; and, that none of the funds represented by the said Certificate of Deposit were withdrawn and paid to the Respondents as is permitted and provided for in §33.1-124 of the Code of Virginia of 1950, as amended;

NOW, THEREFORE, the Court doth ADJUDGE, ORDER and DECREE that the State Highway and Transportation Commissioner of Virginia pay to the Clerk of this Court on behalf of Calvin T. Cantrell and Edith C. Cantrell, who are the respondent landowners in this action, the sum of $26,500.00, with interest at the rate of six percent (6%) per annum on the sum of $18,968.00, this being the excess of the award of the Commissioners as aforesaid over the amount represented by the aforesaid Certificate of Deposit, from the 17th day of November, 1977, the date on which the above-mentioned Certificate was duly recorded in said Clerk's Office, to the date upon which the principal sum is paid into Court; and the Court doth further ORDER and DECREE that the

Commonwealth of Virginia be relieved from any liability by virtue of the recordation of the Certificate aforesaid; and that the proceedings herein be recorded and indexed as provided by §25-46.27 of the Code of Virginia of 1950, as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where said Certificate of Deposit No. C-28055 is spread.

The Court does further ORDER and DIRECT that the Clerk of this Court upon receiving the aforesaid sums of money shall deliver the same to Calvin T. Cantrell, Edith C. Cantrell and Jack P. Chambers, their attorney, without further order of this Court.

The Court doth further ORDER and DIRECT that the costs herein, including $20.00, each to the Commissioners appointed herein who served, namely, Donald Horton, M. H. Lowe, Jr., David L. Hankins, Carolyn McGuire, and W. C. Baugh, and $10.00 to Harold McGlothlin, Beverly Horne and Tom Metcalf, Jr., who were summoned and appeared but did not serve herein, together with mileage as provided for in § 25-46.22 of the Code of Virginia of 1950, as amended, shall be paid by the State Highway and Transportation Commissioner of Virginia, unless such costs have heretofore been paid by him; and the same shall be charged and taxed by the Clerk of ths Court as part of the costs herein, as provided by law.

And the Court doth further ORDER and DIRECT that the Clerk of this Court forthwith deliver to the attorney for the Petitioner a certified copy of this order without awaiting the elapse of 21 days from the date of entry hereof.

And it is further ORDERED and DIRECTED that the transcript of the testimony introduced and proceedings had upon the trial of this action before this Court shall become a part of the record in this cause, in accordance with the provisions of Rule 5:9 of the Rules of the Supreme Court of Virginia, provided such transcript is filed in the office of the Clerk of this Court within sixty (60) days after entry of this order.

And nothing further remaining to be done in this cause, the same is hereby stricken from the docket.

NOTICE OF APPEAL

Filed: July 6, 1979

Take notice that the petitioner seeks an appeal to the Supreme Court of Virginia of the final Order Overruling Exceptions to and Confirming Commissioner's Report entered herein on the 19th day of June, 1979. The transcript of testimony is to be hereafter filed.

INSTRUCTION 1

The Court instructs the Commissioners that you are to determine two questions in this proceeding; first, the just compensation for the property being taken; second, the damages, if any, to the remaining lands of the owners, beyond the enhancement in value, if any, to such residue, by reason of the taking, or the construction.

The Court instructs you that just compensation as used in these instructions means the fair market value of the property 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.

You must determine the fair market value of the property being condemned, not what the property may be worth to the owners or to the State Highway Commissioner of Virginia. The use to which the property is to be put by the State Highway Commissioner does not affect its fair market value at the time of the taking, November 17, 1977.

In determining the fair market value of the property at the time of the taking, you may consider its adaptability and suitability for any legitimate purpose, but you should award only the fair market value of the property 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.

You are instructed that in determining whether there is any damage to the remaining property of the owners by reason of the taking of the property described in the petition, or the construction of the highway, the test is the difference in the value immediately before and after the taking, considering every circumstance, present and future, which affects its value. Remote and speculative profits and advantages, however, are not to be considered.

You are instructed that if you believe from your view of the property and from the evidence before you that there is any enhancement in the market value of the owners' remaining property by reason of the construction or improvement contemplated or made by the State Highway Commissioner of Virginia, that you must offset the amount of such enhanced value against the damages, if any, resulting to such remaining property of the owners by reason of such construction; provided such enhancement in value shall not be offset against the value of the property taken.

You are instructed that the burden is upon the owners of the property condemned to prove by a preponderance of the evidence that there has been damage to the residue of their property. On the other hand, the burden of proof to establish any enhancement in the market value to the remaining property by reason of the construction or improvement is upon the State Highway Commissioner.

The Court instructs you that you are the sole judge of the weight of the evidence and the credibility of the witnesses, and you have a right to discard or accept the testimony or any

part thereof or any witness which you regard proper to discard or accept, when considered in connection with the whole evidence in the cause, but you have no right arbitrarily to disregard the credible testimony of a witness. And in ascertaining the preponderance of the evidence and the credibility of witnesses, you may take into consideration the demeanor of the witness on the witness stand; his apparent candor or fairness; his bias, if any; his intelligence; his interest, or lack of it, in the outcome of the case; his opportunity, or lack of it, for knowing the truth and for having observed the facts to which he testified; and from all these and taking into consideration all the facts and circumstances of the case, you are to determine the credibility of the witnesses and the preponderance of the evidence.

The Court instructs you that it is not necessary that all agree upon the report to be made to the Court, but a majority of you have the right to reach a conclusion and file your report setting forth that conclusion. If a minority desires to do so, they may file a minority report.

ASSIGNMENT OF ERROR

The court erred in preventing counsel for the Commissioner from cross-examining the Landowners' witnesses regarding how the commercial use of the property taken would affect the remainder of the property.

The following matter came on to be heard on this the 9th day of April, 1979, before the Honorable Robert L. Powell, Judge of the Circuit Court of Tazewell County, Virginia, and a commission of five.

The Court Reporter was duly sworn.

THE COURT: Is the Highway Department ready to proceed?

MR. ALTIZER: Yes, we are, Your Honor.

THE COURT: Are the landowners ready to proceed?

MR. COMBS: Yes, Your Honor.

THE COURT: Are you ready to proceed?

MR. ALTIZER: Yes, sir.

THE COURT: Have the commissioners brought out.

The commission was sworn voir dire.

THE COURT: Lady and gentlemen, you are called in here today as commissioners to hear what we call a condemnation case. The State Highway and Transportation Commissioner seeks land for the improvement of U. S. Route 19 West of Claypool Hill, right in the vicinity of the State Police Headquarters, approximately half a mile West of the intersection there with Route 460. The property belongs to Calvin E. Cantrell and Edith C. Cantrell. The Highway Department is being represented by Mr. Altizer and Mr. Hart, who sit over to your right. The property

owners are being represented by Mr. Fred Combs and Mr. Jack Chambers who sit over to your left. I will ask you these questions. Are all of you residents of Tazewell County?

(Affirmative response.)

THE COURT: Do all of you own a freehold interest in real estate here in Tazewell County?

(Affirmative response.)

THE COURT: Are any of you related by blood or marriage to the landowners?

(Negative response.)

THE COURT: Are any of you employees or agents of the Commonwealth or the State Highway Department?

(Negative response.)

THE COURT: Do you have any interest, direct or indirect, in the land that is involved in this case?

(Negative response.)

THE COURT: Have you made or have you been requested to make an appraisal of the property involved in the case?

(Negative response.)

THE COURT: Have you formed or expressed any opinion with regard to the issues involved in the case?

(Negative response.)

THE COURT: Are you sensible of any bias or

prejudice in this type of case, the Highway taking property?

(Negative response.)

THE COURT: Do you know of any reason why you cannot make a fair and impartial award for compensation and damages, if any, according to the law and the evidence in the case?

(Negative response.)

THE COURT: Does any member of your family have any interest, direct or indirect, involved in the land in this take?

(Negative response.)

THE COURT: Are you associated in any business ventures with owners of the land?

(Negative response.)

THE COURT: Do you have any contracts with the Virginia Highway Department?

(Negative response.)

THE COURT: Are you related to or do you have any business connection or association with any of the lawyers in this case or any members of their law firms?

(Negative response.)

THE COURT: Do you own any property or have any interest in lands through which the State Highway Com-

missioner has acquired land for highway purposes or is taking or threatening to take for condemnation?

(Negative response.)

THE COURT: Before you were notified of your appointment here, did anyone aside from the Clerk or the Sheriff or someone associated with the Court ask you whether or not you would be able to serve on this commission?

(Negative response.)

THE COURT: Has the case been discussed with you in anyway or have you heard any mention of the case?

(Negative response.)

THE COURT: I will repeat this question. Does any one of you know of any reason why you cannot make a fair and impartial award upon the evidence and the law that will be presented to you in the case?

(Negative response.)

THE COURT: Does the Highway Department have any questions they would like to ask the commissioners?

MR. ALTIZER: No, Your Honor.

THE COURT: The landowner?

MR. COMBS: No, Your Honor.

THE COURT: All right. You may strike one each.

THE CLERK: Mr. Horn and Mr. Metcalfe, if you

will stand aside, please.

Mr. Horn and Mr. Metcalfe withdrew from the Courtroom.

The commission of five was duly sworn.

THE COURT: Do you wish to make opening statements or present some evidence here?

MR. ALTIZER: No, sir. We waive opening statement.

MR. COMBS: I think we should just let them have the map.

MR. ALTIZER: Judge, we would like to hand out these maps to the commissioners.

MR. ALTIZER: I would like to apologize for the quality on reproducing. They did not come out very well, but they do show the property involved here.

THE COURT: Let all the witnesses who will testify in this case be sworn.

The witnesses were duly sworn.

THE COURT: Do you want the witnesses excluded from the Courtroom?

MR. HART: I would think so, Your Honor, yes.

THE COURT: All right. Let the witnesses then retire.

MR. HART: I don't know that we need to exclude them before the view.

THE COURT: I was going to ask if you wish to put your engineer on or someone to describe this map to the commissioners before they take their view.

MR. CHAMBERS: I don't know as there's any value and I see no reason to exclude them now.

MR. HART: I don't, either. We can do that. Frankly, we had planned to put him on after we've got back, but it might save a little time if we would go on the view, because I think there will be some explanation down there on the site.

THE COURT: All right, then. You all may just have a seat.

The witnesses resumed their seats.

THE COURT: Lady and gentlemen, we will take a recess now to take a view of the property. Do not discuss the property with anyone other than the attorneys. Be careful what kind of discussion you have about the property while you are down there to find out about it. The Sheriff will provide transportation for you. After you have come back, you will hear evidence and we will proceed with the case. So you may retire now to take a view.

The commission withdrew from the Courtroom at 10:20 o'clock a.m. on April 9th, 1979, to view the property in question.

The commission returned to the Courtroom at 11:40 o'clock a.m. on April 9th, 1979.

THE COURT: All right. You may proceed.

MR. ALTIZER: Your Honor, the State Highway Commissioner would like to call as its first witness Mr. Bob Canter.

ROBERT L. CANTER

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALTIZER:

Q. Would you state your name, please.

A. Robert L. Canter.

Q. Mr. Canter, by whom are you employed?

A. The Virginia Department of Highways and Transportation.

Q. And how are you employed?

A. I am employed in the Right of Way Division as a right of way agent.

Q. Briefly, what are your responsibilities in that position?

A. To acquire right of way for proposed projects for the Department.

Q. Mr. Canter, in this particular proceeding,

what highway project is of concern to us today?

A. The project between the Russell and Tazewell County line and a short distance beyond the intersection of 460 and 19 at Claypool Hill. The project ties into the existing four lane section.

Q. Briefly, this is expanding Route 19 between Claypool Hill and the Russell County line from two lanes to four lanes, is that correct?

A. Yes, sir.

Q. Are you familiar with that project?

A. Yes, sir, I am.

Q. Have you been working regarding that project for the State Highway Department?

A. Yes, sir.

Q. Are you familiar with Mr. Calvin Cantrell and Edith Cantrell's property?

A. Yes, sir, I am.

Q. Could you describe for the Court the location of that property?

A. This property is located on the South side of present Route 19, approximately one mile West of Claypool Hill intersection.

Q. Okay. I think all the commissioners have been on the property with us this morning. Could you give

a brief, narrative description of the existing property?

A. The property lies, as I say, on the South side below the existing grade of Route 19. The proposed two-lane sections will be located approximately eighty feet off the present Route 19.

Q. Mr. Canter, before we get into that, what I would like to get from you is how many acres are involved in the property that the highway is acquiring from Mr. Cantrell and compare that with how many existing acres he had of all of the property at that location.

A. The present landowner owns approximately five point seventy-two acres.

Q. Okay. How much of that is being acquired or has been acquired by the State Department of Highways and Transportation?

A. One point three acres has been acquired for the necessary project.

Q. Mr. Cantrell, what is the road frontage in terms of feet of the existing property as it now lies adjacent to the highway, fronting the highway, from the West to the East property line? Do you know how many feet that is?

A. Canter.

Q. I'm sorry. Did I call you Mr. Cantrell or

Mr. Cannon?

A. Approximately five hundred forty feet.

Q. Okay. And how does that compare with the road frontage after this acquisition? How much road frontage will be on the remaining property?

A. Approximately the same.

Q. Okay. Now, I think you have in your hands a map that has been distributed to all the commissioners and the Court?

A. Yes, sir.

Q. Okay. Could you briefly, just for the commissioners and the Court, give a description of the dimensions of this particular property that had been acquired by the State Department of Highways? I think you just testified it was five hundred forty feet along the existing right of way line.

A. The proposed take in depth ranges from approximately ninety-five feet on the East side to approximately one hundred ten feet on the West property line, and, of course, across the entire front.

Q. And I take it that the back line on this map, which will be the proposed right of way line, that is approximately the same footage as the existing frontage?

A. Yes, sir.

Q And that is one point three acres?

A One point three acres has been acquired.

Q Mr. Canter, could you, for the commissioners, explain how this property - - the topography of the property in relation to the highway as it now lies adjacent to the highway? Are there existing cuts and fills on this property?

A Yes, sir. The maximum fill, if we start from the Eastern property line, is approximately twenty feet and this is approximately in front of the location of the dwelling. And then there is a maximum cut of approximately eighteen feet on the Western edge or end of the property.

Q So you are saying that the present fill in front of the Cantrell residence is approximately twenty feet, is that correct?

A That is correct.

Q Okay. Do you have the information as to how far it is from the front of the Cantrell residence to the present toe of the fill, the foot of the fill, in feet?

A Approximately two hundred feet. Two hundred and ten or fifteen feet from the existing right of way.

Q From the existing right of way?

A To the front edge of the dwelling.

Q. Okay. And how far will it be after the highway is completed from the front of Mr. Cantrell's residence to the new right of way line?

A. Approximately one hundred ten feet.

Q. Okay. And how far will it be from the front of Mr. Cantrell's residence to the foot or toe; I'm not sure whether you call it the foot or the toe; of the fill?

A. The toe.

Q. The toe of the fill. How far will it be from Mr. Cantrell's residence to the toe of the fill?

A. Approximately a hundred and forty-five feet.

Q. Mr. Canter, will the new fill be higher or lower as compared to the present fill?

A. It will be lower.

Q. So there will be less of a fill in front of Mr. Cantrell's home after the construction is completed than there is now, is that correct?

A. That is correct.

Q. Okay. Let's get to the cut on the West end of the property. You have already testified it's presently a maximum of eighteen feet, is that correct?

A. Yes, sir.

Q. And that eighteen feet, how is that

determined? What measurement is from what to what?

A. From the existing. We go from the existing cut to the finished cut, and due to the terrain of this property, the cut is less, or it descends to the South, less than it is to the North.

Q. All right. Are you saying after this new lane is constructed, the cut on the West end of Mr. Cantrell's property will be less than the cut that is now existing?

A. That is true, due to the terrain, the present terrain.

Q. Could you explain how the terrain lies which would make this so?

A. The terrain of this property rises from the South to the North.

Q. Okay. That is coming toward the highway?

A. Right.

Q. And this is on the West end of the property that we are talking about?

A. Yes, sir.

Q. Okay. Mr. Canter, is there an existing entrance into Mr. Cantrell's property?

A. Yes, sir, at the Eastern edge of this property.

Q Will that entrance be retained after the construction of the highway?

A Yes, sir. This entrance will be restored.

Q Do you know what the grades are, the existing grade?

A Yes, sir. The present or existing percent is approximately ten percent. After construction approximately eight percent.

Q So the entrance where it is presently located will be retained and it will be a better entrance than he presently has?

MR. CHAMBERS: Your Honor, we object to Mr. Altizer repeating Mr. Canter's testimony and leading him.

THE COURT: Don't lead him.

Q Mr. Canter, will the new entrance be better or worse than the present entrance?

MR. CHAMBERS: We object, Your Honor.

THE COURT: I sustain the objection.

Q Would you repeat what the grade for the new entrance will be?

MR. CHAMBERS: We object, Your Honor. It's repetitious.

MR. ALTIZER: Okay.

THE COURT: I sustain the objection.

Q Mr. Canter, will there by any new entrances to Mr. Cantrell's property as a result of this construction?

A Yes, sir, there will be, in addition to the existing, one entrance provided to the West of his dwelling.

Q And this is an entrance that is not presently in existence, is that correct? This will be an additional entrance for him?

A Yes, sir, that is true.

Q And where will that be located? Where will that entrance be located?

A It will be located fifty to seventy-five feet to the West of Mr. Cantrell's dwelling.

Q And I think that was pointed out to the commission on the property this morning, is that not correct?

A Yes, sir. This was pointed out by the location of a short stake, unpainted, in the neighborhood of where a pine tree has been cut.

THE COURT: One of the commissioners would like for the witness to clarify the width of the entrances that will be provided.

Q Okay. Mr. Canter, what is the width of the present entrance into the Cantrell property?

A. The existing entrance is approximately ten feet in width. The proposed entrance will be approximately twelve feet in width. It is a standard entrance.

Q. You are saying the new entrance will be twelve feet, as opposed to - -

A. Yes, sir.

Q. Okay. And how wide will the additional entrance be on the West end of the property?

A. It will be the same width as the proposed. It is a standard twelve feet.

COMMISSIONER: I would like to get that clear and I think most of the commission would. That twelve feet will be both entrances, the West and East, will be twelve foot wide from the highway into the Cantrell property?

Q. Mr. Cantrell, is that correct?

THE COURT: Mr. Canter.

Q. Mr. Canter.

A. That is correct. Both of them will be the same width.

COMMISSIONER: Thank you, sir.

Q. Mr. Canter, one further question. Where would the elevation be of the new lane as compared to the existing lane?

A. The proposed two lanes will be within a

foot or two of the existing elevation of the old Route 19, or present Route 19.

Q Is that higher or lower?

A The new lane will be approximately a foot and a half lower.

MR. ALTIZER: That's all the questions we have, Your Honor.

THE COURT: It's 12:00 o'clock now. Let's take a break for lunch, then you can begin your cross examination right after lunch.

THE COURT: Members of the commission, do not discuss this case while you are out with anyone or permit anyone to discuss it with you. Come back at 1:00 o'clock and we will resume.

The Court recessed at 12:01 o'clock p.m. on April 9th, 1979.

The Court reconvened at 1:10 o'clock p.m. on April 9th, 1979.

THE COURT: Are you ready to proceed?

MR. COMBS: Yes, sir.

MR. ALTIZER: Yes, sir.

The commission entered the Courtroom.

ROBERT L. CANTER

having been previously sworn, was recalled and testified

as follows:

DIRECT EXAMINATION

BY MR. ALTIZER:

Q. Mr. Canter, when was this property acquired by the State Highway Commission?

A. November 17th, 1977.

Q. Mr. Canter, I would like to ask a couple of questions to clear up something that you testified to earlier this morning with regard to the cuts and fills, the existing cut and the existing fill on the property, with what the cut and fill will be on the new highway. Now, would you tell the Court and commission what the existing fill and cuts are in terms of the footage from the centerline of the highway down to the toe of the fill and from the centerline of the highway to the top of the cut?

A. Beginning at the Western end of this property, as we viewed it this morning, you noticed that we are higher than the existing road there, and the cut sections are elevations I gave you this morning. With relation to cuts, that pertains to the finished grade elevations or cuts and fills, we were approximately twenty-five foot above on top of the knoll. That elevation would be a twenty-five foot cut as it stands now. But with relation to the new road, it will be an eighteen

foot cut, as I referred to. Then as you come East in the fill section, I gave you a fill of twenty feet. There will be a grade of twenty feet, a finished grade elevation. That fill as it is now, or down to the depths of it, in relation to the existing, it might be three or four feet. It could be twenty-two feet down in the sag, where you saw the drain pipe under the existing road.

Q Okay. Mr. Canter, you are saying it could be three or four feet difference or up to twenty-two. I take it you do not have a correct exact measurement of what the fill is now?

A That's true, yes, sir.

Q You are just giving your estimate?

A Yes, sir.

Q But the twenty feet fill finished construction and the eighteen foot cut, those are precise figures, is that correct?

A Yes, sir, they are.

Q Okay. And they are both less than the existing cuts and fills on the property now, is that correct?

A That's true.

MR. CHAMBERS: We object, Your Honor.

MR. ALTIZER: I believe that's all the questions

we have.

MR. COMBS: I've just got a couple of questions for Mr. Canter.

CROSS EXAMINATION

BY MR. COMBS:

Q The home in which the Cantrells live is located - - Let's say if this were the existing road, their home is located at a relative distance back at a lower elevation than the existing roadway, is that correct?

A Yes, sir.

Q And from what you said on the site this morning, you said that from the centerline of the existing highway you are coming over eighty feet to the centerline of the new highway, is that correct?

A Yes, sir.

Q And this will be a foot, possibly two feet, lower than this grade we have right here, than this elevation?

A Yes, sir.

Q A foot to two feet, I think you said?

A Yes, sir.

Q Now, I understand your testimony to be that the maximum fill you will have will be twenty feet, a twenty foot fill?

A. Yes, sir.

Q. The sight from the house in which the Cantrells live, that will be because this out in this direction, somewhat closer to their house. This is going to mean now they are looking at less of a grade, less of an elevation, up to this road. It will be a little bit greater an elevation there. Their view will be cut slightly. It will be cut some by moving the highway over, is that correct?

MR. HART: Your Honor, I think that's a question - - I don't understand the question, frankly, and it seems to me he's asking for something the commission can decide.

THE COURT: He is on cross examination. If he can answer, let him answer.

A. If I understand the question, is with relation, maybe, to the entrance?

A. No. In other words, you are moving another highway over here approximately eighty feet closer to their residence. Their residence stays stationery and is still at the same elevation. The line of sight up is going to be - - In other words, their line of sight now from their house would be this, say, at this elevation, whereas, when you move this road over and granted, dropping it a foot or two, their line of sight is going to be more like this.

It's going to be a greater angle.

A. Not necessarily.

MR. ALTIZER: Your Honor, I think this would probably call for some sort of mathematical calculation. I think it would depend upon how far the new road will be below. I just don't think Mr. Canter can testify to that. I think it's going to take some kind of mathematical computation to determine the angle in a situation like that, and I just don't think he's capable of testifying to that.

MR. COMBS: Your Honor --

THE COURT: He may be. If he can answer it, he can answer it, and if he can't, he can say so.

A. Mr. Combs, as I understand, the question is would the angle of sight increase because you are moving the road eighty foot closer?

Q. Yes.

A. And you are lowering the road. You would have to compute the angle, which we don't show on our plans what angle that would be. And the foot and a half lower and that distance, how that would change the angle.

Q. From the centerof the road, how far will it be over to the guardrail?

A. From the centerline of the proposed road?

Q. The centerline of the proposed road over to the guardrail.

A. Approximately twenty-two feet.

Q. All right then. Beyond the guardrail, there will be, I suppose - - will it come a foot or two beyond that guardrail, then slope?

A. Yes.

Q. And you are testifying from the toe or bottom of this slope up to the elevation of the road is going to be twenty feet, is that correct?

A. That is correct. In different areas.

Q. Right. But you are saying at the maximum point, at the low point?

A. Yes, sir.

Q. Now, also as I recall your direct testimony, you said that the frontage is approximately the same. Now, is it approximately less or is it going to be approximately more once the highway is put in, from the right of way taken?

A. It would be a few feet less due to the Eastern property line on an angle.

Q. Stand up in front of the commission, so they can see what you are speaking of. Now, we have established that the existing frontage is five hundred

fifty feet; excuse me; five hundred forty feet. And I think you are saying because of the angle of the Eastern property line that it's going to end up that he is going to have less than that with this right of way?

A. That is true. It would be the difference in this angle here. If you came down straight; if this property line were perpendicular to the main line; it would be the same. But the property line is to the West.

MR. COMBS: That's all the questions we have.

The witness withdrew and resumed his seat at the table with counsel.

JOSEPH GALLIHER

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALTIZER:

Q. Would you state your name, please?

A. Joe Galliher.

Q. You do pronounce that Galliher?

A. Galliher.

Q. Mr. Galliher, by whom are you employed?

A. The Virginia Department of Highways.

Q. In what capacity are you employed with the Virginia Department of Highways?

A. In the Right of Way Department, acting as an appraiser for the department.

Q. What are your responsibilities in that position?

A. To place values on property necessary for right of way acquisition for construction.

Q. Mr. Galliher, will you state to the Court and the commission your experience and training in the field of appraising real estate.

A. Well, I have been in the department about fourteen years. I've worked in the twelve counties of the Bristol District from Lee County to Wythe County, and Buchanan to Grayson County. I've worked in Fredericksburg District. I've taken two courses given at the University of Virginia at Charlottesville on appraising. And I have attended numerous courses given by the department.

Q. Mr. Galliher, did you appraise property that belonged to Mr. Calvin Cantrell and his wife, Edith Cantrell?

A. Yes, I did.

Q. What was the date of that appraisal?

A. November 17th, 1977.

Q. What was your method of appraising this real estate?

A. Well, our standard procedure is to go into the area and seek out all possible land sales that we can find to use as a basis, an indicator, of value in the area. We are required to make up a brochure listing all of these sales, along with sketches, pictures, values, descriptions of the property, and they are kept on file and used as a basis for our appraisal.

Q. How many sales are in that brochure?

A. I believe there is thirty-two; thirty-two properties that we collected information on.

Q. Then those sales are used as the basis of determining fair market value for this piece of property we are here today on, is that correct?

A. Yes, sir, that is correct.

Q. Before we actually get into the figures on the appraisal, Mr. Galliher, I would like to ask you a few questions about this property. The entire tract or parcel of land that belongs to Mr. Cantrell and his wife, Edith Cantrell, how big a parcel is that property?

A. The total property contains five point seventy-two acres.

Q. And how much of that property is being acquired by the highway?

A. One point three acres.

Q And that leaves - -

A It has a residue of four point forty-two.

Q Are there any improvements on the residue?

A Yes, sir. There is a one-story brick dwelling with a well and septic system. There is a building to the rear, which I termed the dairy. It is a two-story type structure. It has a block foundation with entry to the rear used as a dairy. Then on top of that is a frame structure which has entry from the back yard. I think it is used as a storage building. Then there is a storage building with an attached overhanging shed to the right rear of the dwelling and a frame barn to the extreme right rear of the dwelling.

Q Are those all of the improvements that are on the property?

A Yes, sir.

Q Are there any improvements on the property that was acquired by the highway?

A No, sir. The portion of land necessary for the right of way is vacant land.

Q Mr. Galliher, what is the existing road frontage on this particular tract of property?

A The road frontage is five hundred forty feet along Route 19.

Q. Approximately what will be the road frontage now that the one point three acres has been acquired by the Highway Department?

A. I haven't scaled it here, but it would be just a matter of a few feet less, because of the tapering lines, the side property lines of the property. But for all practical purposes, it's still around five hundred and forty feet. It would be a small change.

Q. So it would be a few feet less?

A. Yes, sir.

Q. Mr. Galliher, would you please give a description of the property in terms of its topography and how the property lies with relation to the highway?

A. Well, the property along the frontage near the entry has a deep depression approximately thirty feet - - twenty-five or thirty feet below the existing road. Then along the frontage toward the Western end of the property, it rises into the rock up and then the center portion of the property is generally rolling where Mr. Cantrell's house is located, then the property drops to the rear where the barn is located on the right rear portion of the property.

Q. The proposed right of way line, how does that compare with the cuts and fills, with the existing

cuts and fills, on the existing right of way line?

A. Well, the toe of the fill, or the new lane?

Q. Yes.

A. Well, the fills will change a little bit. The fills and cuts will change a little bit due partly to the change in elevation of the centerline of the new lane. The centerline of the new lane will be slightly lower than the existing lane in front of the dwelling. This is approximately a foot and a half. As you move on down 19 to the West, this will increase to about three feet lower than the existing lane. This will cause, on the Western end of the property, the cut along the front of the property to be somewhat less, approximately eight to ten feet less, than it is now. In front of the dwelling, the fill will be approximately a foot and a half less due to this change in the centerline elevation.

Q. Mr. Galliher, what means of entrance does Mr. Cantrell have presently onto the property?

A. He has a gravel driveway which is located on a forty foot right of way which is jointly used by he and his neighbor. This entry was, I think, granted and came off of the Rasnick property, or this entrance was retained by the Rasnicks and is jointly used by Mr. Cantrell and, I think, Mr. Nichols.

Q Do you know what the grade of that existing entrance is?

A The grade of the existing entrance is a ten percent grade.

Q Okay. Would you explain to the commission what a ten percent grade is.

A Well, a ten percent grade is based on a distance of a hundred feet. If you would take a tape measure and stretch it one hundred feet, then at the end of that one hundred foot distance, reach an elevation or raise an elevation of ten feet, then that slope would be a ten percent grade.

Q Okay. Does that mean that the property - - does that mean if you had a hundred feet, from one end of the hundred feet to the other end of the hundred feet, that would rise at a rate of ten feet over that one hundred feet? Is that what you are saying?

A Yes, sir. That's right. In other words, it would be a triangle with a flat plane, then ten feet on the end and back to the zero point of the triangle, and that would give you a ten percent grade.

Q Now, is Mr. Cantrell's a negative or a positive grade?

A This is a minus ten percent grade on the

existing entrance, which means you are leaving a level plane and dropping downhill.

Q So negative means you are going downhill?

A Yes, sir.

Q It is ten percent. What would the entrance be of the new right of way entrance coming into Mr. Cantrell's property?

A The new entrance is an eight point six percent, which is less grade than the existing entrance. This is caused by the change in elevation of the new lane.

Q Okay. Now, will this new entrance be located in the same place as the existing entrance into Mr. Cantrell's property?

A Yes, it is. The entrance will be replaced in its exact location.

Q Do you have any information as to width of the present entrance in to Mr. Cantrell's property?

A No, sir. I would just have to estimate the width. That's somewhere around eighteen feet.

Q And do you know what the entrance will be that the highway is putting in for him?

A Yes, sir. Our entrances for residential dwellings like that are a standard twelve foot width.

Q Are there any other, any additional entrances

into Mr. Cantrell's property at this time?

A. No, sir. That is the only entrance at the present time.

Q. Is the highway contemplating putting in any additional entrances into his property?

A. Yes, sir. They have shown another entrance to be constructed to the right of the dwelling. This will be on the other side of the fence there adjacent to the dwelling and would give access to that fenced field next to the dwelling.

Q. And what would the grade be on that particular entrance?

A. This would be a minus thirteen point eight percent. In other words, minus meaning that it will be sloping downhill from the road.

Q. And what would the width of that entrance be?

A. It will also be a standard twelve-foot width.

Q. Mr. Galliher, you have already testified as to your method of appraising this property and the fact that you did appraise this property on November 17th, 1977. Using this preparative method of appraising, did you, in fact, determine a fair market value of the property on

that date?

A. Yes, sir, I did.

Q. Could you relate to the commission what that appraisal was?

A. The one point three acres, I placed a value of seven thousand twenty dollars for one point three acres. Also, there is fencing along the property frontage, a wire-type fencing, that I made an allowance of five hundred and twelve dollars to replace that fencing after construction. This gives a sum total of seventy-five hundred thirty-two dollars for the property involved.

Q. Mr. Galliher, the seven thousand twenty dollars for the one point three acres, could you translate that into a dollar per acre value for the commission?

A. Yes, sir. This represents fifty-four hundred dollars per acre.

Q. Mr. Galliher, what possible purposes could this property be used for?

A. Well, I consider that the highest and best use, which is the way that we are required to appraise the properties, is to give these landowners the benefit of any doubt and appraise the highest and best use. In my opinion, the property could be best used for residential usage. There seems to be a tendency in the area there

for property from Claypool Hill West is primarily residential. Around the Claypool Hill intersection, there is quite a bit of commercial usage, but the predominant use is for residential purposes down on this area.

Q. Okay. Mr. Galliher, what effect would the residence of Mr. Cantrell be in regard to the use of this property?

A. Well, the residence would determine partially the use of it. If you would consider the use other than as a commercial establishment, then anything placed on the property in front of the residence would have a detrimental effect, in my opinion, on the residence. Therefore, I feel the proper use for this property is for residential purposes. Another reason here I have chosen this usage is the sales in that area would indicate residential usage. The amount of the sale and the use of the properties that's been sold down there.

Q. Mr. Galliher, is there any damage to the residue?

A. No, sir. I do not feel that the property has suffered monetarily in any manner as a result of the construction. The nearest right of way line to this dwelling is a hundred and ten feet and the foot of the fill will be approximately one hundred forty-five foot away from the

dwelling. This far exceeds a distance that most dwellings in any of the new or higher class subdivisions - - it's farther back than most of these new dwellings.

MR. ALTIZER: No further questions.

CROSS EXAMINATION

BY MR. CHAMBERS:

Q Mr. Galliher, whenever someone wants to get on Mr. Cantrell's property, if they would want to now, the only reasonable access would be from the East end, is that right?

A Yes, sir. That would be the best access.

Q Would it be fair to say that Mr. Cantrell would have a lot of privacy on the Western portion of his property the way it is situated now?

A I suppose he would.

Q Now, you say the State Highway Department is going to construct a new access road from Route 19-460. I take it that anybody that wants to can use that access road right up to Mr. Cantrell's property line on the West side, is that right?

A No, sir. We are not building any access road. The only thing on the West end of the property, it is giving him a private entry to that tract of land.

Q Look at your plans. I notice a road coming

perpendicularly from the Eastbound lane to Route 19-460, and I may not have used the proper nomenclature when I said access, but it appears to me you are giving him access to the new road at that point. Correct me if I am wrong.

A. I don't follow you. There is just the two entries into the property.

MR. ALTIZER: It may be useful to give the commission a copy of this map. I think there are two copies in the Court's file. It may be pointed out on that map whatever - -

Q. From testimony, I gather that this property is rather secluded here now from the encroachments of people coming off of 19-460, is that correct?

A. Yes, sir.

Q. And there is one really satisfactory entrance or access or whatever you want to call it right here at the East end, is that correct?

A. That is correct, sir.

Q. Now, you say that the State Highway Department is going to build what I call an access road from the Eastbound lane of 19-460 over to his property lines after this is done, is that right?

A. Yes, sir.

Q. And anybody that wants to can use this road

up to his property line?

A. Well, up to the right of way line, yes, sir.

Q. Well, up to his property. To what right of way line?

A. This new right of way line.

Q. Isn't it his property line?

A. Yes.

Q. So they can use it right up to his property line then and drive up there anytime of night or day?

A. (No response.)

Q. This is not a limited access highway, is that right?

A. No, sir, it's not.

Q. Okay. So there will be two ways that people can get off of new Route 19-460 onto Mr. Cantrell's property?

A. This new entry is for Mr. Cantrell's use, just as are all entries. He can fence it; put a gate across it. If he would like, this entry could be eliminated if he doesn't want it.

Q. It can be eliminated?

A. Oh, yes, sir. That would cause no difficulty whatsoever.

Q. Purely at his request?

A. Yes, sir, I'm sure it would be eliminated.

Q. Now, you testified you improved the grade of his existing entrance by two percent approximately?

A. Yes, sir.

Q. And that this is at the cost of moving the road eighty feet closer, though, aren't you?

A. That is correct.

Q. That happens to be a by-product of moving the road closer to him, doesn't it?

A. Yes, sir, that is true.

Q. In your search for sales of residential property, or sales of acreage in the Claypool Hill area; and by the area, I will try to use a radius of a couple of miles maybe from Claypool Hill; did your search reveal any sales of less than seven thousand dollars an acre?

A. Yes, sir. I can specify some here, if you would like. There is the property I gave consideration to sold by Mr. Willie Askew; I was involved there; to St. Benedicts. This joins the Community College property. It is an eleven point eight acre tract. It sold for forty-two hundred ten dollars per acre.

Q. Is that where the mental health center is?

A. Yes, sir.

Q. Do you know the circumstances of that sale?

A. Well, the sale was verified with the St. Benedict's Corporation and as I understand it, it was an arms length sale.

Q. Did you make any inquiry of the last tenant who had an interest in that property as to the circumstances surrounding that sale?

A. Like I say, we contacted- -

Q. You contacted the buyers?

A. Yes, sir.

Q. Just the buyers?

A. Yes, sir.

Q. Did you contact the sellers?

A. No, sir. We contact one or the other to check.

Q. How can you tell it's a fair and arms length transaction unless you talk to both people?

A. Well, we make a practice of contacting either that we can get in touch with, and this was done. It was stated this was an arms length transaction, so we had to accept it as that.

Q. How much road frontage was involved?

A. Somewhere around a hundred feet.

Q. As a matter of fact, it was about ninety feet, wasn't it?

A. Ninety. Yes, sir, that's correct. Now, you asked for other sales. I have a sale from John Baylor to John Ratliff, fifteen point eleven acres at thirty-three hundred thirteen dollars an acre. This property is located West of the Wardell intersection on the righthand side down there. Some of Mr. Baylor's property. Also, I have another sale - -

Q. How many acres was that?

A. Fifteen point eleven.

Q. Was it improved any?

A. No, sir. Vacant land.

Q. Pretty near a hillside, isn't it?

A. It's steep land.

Q. Okay.

A. Adjustments were made in my appraisal to compensation for the steepness of the property. Also, there was another property there Mr. Baylor sold to Charles E. Davis. This was an eight-acre tract. It sold for fifty-nine hundred thirty-eight dollars. This piece of property lies on - - it's visible from Route 19. It is adjacent to this property that I was just talking about. It fronts on Route 770. 770 leaves the old Wardell Ham House and goes under 19 and sort of makes a loop in there and there is a modern residence on the property at the

present time. That piece of property was considered.

Q Is that the one where the house is on top of a knoll?

A On top of a knoll. It's a beautiful residential site there.

Q It has the appearance of the exterior being made of wood?

A Yes, sir, that's right.

Q How much did the fellow pay for that house site?

A This property sold at the rate of fifty-nine hundred and thirty-eight dollars per acre. Forty-seven thousand and five hundred for the eight acres.

Q There is no other houses that have been built on there, are there?

A No, sir. It's a single site.

Q All right. Was there any road frontage on U. S. Route 19?

A No, sir. It doesn't front on 19. The frontage is on Route 770, as I stated. Now, the last property that I considered here was the Rasnicks sold a piece of property through a Special Commissioner to Jack Randall Keen and Randall Donald Burke. This property is located within sight of the Cantrell property, right

on the West end of their property. There is a little road that turns off right beside of the Roisch's house, and the property is located adjacent to the Roisch's down there. It is a 7.7 acre tract that sold for thirty-four thousand nine hundred sixty dollars, or forty-five hundred dollars per acre. Now, this piece of property very favorably compares with the Cantrell property and the terrain, especially along the frontage. There is a depression on the lefthand of the property. It comes to road grade and entry in to it is practically identical to the Cantrells, except rather than being downgrade entry it is a slight upgrade entry. The terrain of the property favorably compares with the Cantrells.

Q When was that sale?

A This was in July of 1975.

Q Almost three years prior to the take here?

A Yes. That's correct. And on sales that have a year or two lapse like that, they are corrected, and added to, to bring them up to present day market value as of the date of the evaluation.

Q How much road frontage was on that tract?

A Two hundred fifty-eight point four feet.

Q Do you know the circumstances of that sale?

A There again, we checked with the purchasers

and with Mrs. Roisch and we were assured that this was a market value arm's length transaction.

Q You say, we?

A Mr. Jack Barrow and myself.

Q Mrs. Rasnick is an invalid?

A Yes.

Q And that's the only upkeep she has, is from the sale of her property?

A Well, I'm not acquainted with all of her financial aspects, but we talked to Mrs. Roisch, who is her daughter, and obtained this information.

Q You did learn that her mother was bedfast?

A Yes.

Q And had been for many years?

A Yes, I'm aware of that.

Q And has no hope of ever being otherwise?

A Yes.

Q And that was her only income, the sale of property like this?

A Like I say, I don't know.

Q Was some property sold on the North side of the road within a quarter of a mile or a half a mile of the subject property in this case near where an apartment building was built by somebody?

A. I can't place the one you are referring to. Are you talking about the property that Underground Energy purchased?

A. No. Property East of where Underground Energy bought.

A. Yes, sir, there was a lot. I know what you are speaking of now.

Q. Have you got that sale?

A. I am not sure. This was sold after I completed my work and Mr. Barrow has put it in the brochure. I am not that familiar with it.

Q. Do you have it in the brochure? It was a sale from John A. and Katherine M. Warren.

A. Sold to - -

Q. Jason Shortt and Nancy.

A. No, sir, I don't believe I have that.

Q. It was sold on July 28th, 1977, shortly before the take in this case.

A. No, sir, I don't have that.

Q. Two hundred foot front on Highway 19 averaging about two hundred forty feet deep. One point fifteen acres.

A. This is getting considerably closer to Claypool Hill, too, isn't it?

Q. Perhaps a quarter of a mile. Does that make a lot of difference? Does that make as much difference as going to the Community College from there?

A. Well, I feel that the Claypool Hill intersection is definitely a different usage.

Q. You testified on direct examination; I believe I can quote verbatim; that you; by you, I mean the Highway Department, not you personally; seek out all comparable, possible comparable, sales. Now, here is one sale that wasn't sought out, isn't that right?

A. I don't see it listed here. Like I said, I worked there for a period of time. And Mr. Barrow, he was aware of the sale and told me about it. There were some conditions there; we didn't put it in the brochure, and I'm not sure what the situation was. I remember him mentioning it. As a matter of fact, we came through there the other day and he mentioned it.

Q. Let me suggest one of the conditions might have been it was a seventeen thousand four hundred dollar per acre tract.

MR. HART: We object to that until they put in some evidence of it, Your Honor.

MR. CHAMBERS: We will have the evidence.

THE COURT: If you vouch you can tie it in.

A. No, sir. Like I say, the values of these sales were used as a basis and whether it's high or whether it's low is of no consequence to us. We have to use what is there.

Q. I don't want to argue with you, Mr. Galliher, but if there is a reason, you know, this commission should know why this sale wasn't considered and I want to elicit that from you if it's at all possible, because it is fairly close to the property which has been taken and it did command a price of over seventeen thousand dollars an acre and I simply want to find out from you why you didn't consider it. I'm sure you have good reasons for it.

A. I have no knowledge of why it wasn't put in here, frankly, to tell you the truth.

Q. Now, you mentioned a sale, or you mentioned a moment ago trying to help me find out where Underground Energy Corporation is?

A. Yes, sir.

Q. Where is that property?

A. It is directly across from where the Ponderosa used to set and where it is placed at the present time.

Q. How much property was involved in that sale?

A. This property was sold by John T. Stevenson

to Underground Energy Corporation for fifty thousand dollars, involving two point seven acres, which gives a value of eighteen thousand, five hundred and nineteen dollars per acre. On this sale, I can give you very explicit reasons for not using this particular sale.

Q Let me ask you a preliminary question or two before you do, then I will certainly elicit your reasons. Did you ascertain from the purchaser in this case that the recited consideration was the actual consideration?

A Yes, sir. The consideration was checked. John T. Stevenson gave us the amount of the sale.

Q You checked with the seller then?

A Yes.

Q Did you check with the buyer?

A No, sir.

Q How do you determine whether you check with the buyer or with the seller? Is it just who you can find the easiest?

A Well, whoever we can locate related to the sale, yes, sir.

Q Once you have checked with one, do you ever check with the other side of the trade?

A We have no reason for doubting people's word.

Q. Okay. Now, was it necessary to do anything to this land to make it adaptable for any kind of human use, either commercial or residential?

A. There was some grading done on the property.

Q. Do you know how much that grading cost?

A. No, sir, I don't know.

Q. Would that have anything to do with the final value of the property. Would that have an effect in your mind on why somebody would pay you more or less than fifty thousand dollars for it?

A. Let me have your question again, please.

Q. Well, would it make a difference to you when somebody is paying fifty thousand dollars for a piece of property whether they have to excavate it, grade it, haul in dirt to fill it, drain it, ditch it or do something like that?

A. Yes, sir. It would have an effect on the value of the property, on the cost of the property, without a doubt. But consider that Underground Energy purchased the restaurant and the fact that they could not move it in either direction up Route 19, and the only place they could move it was directly across the road and that they were under stress if they were going to move it to purchase this property. They had to pay anything that was asked to get

this property in order to place the restaurant on it.

Q How much did they pay for the restaurant?

A I don't know.

Q What kind of stress is that going to put on them if you don't know what they paid them for the restaurant? Do you know whether they paid two thousand or five thousand or what for that restaurant?

A No, sir, I don't know. But the whole thing is, if they were going to buy the restaurant and going to move it, this was the only location they could move it to.

Q All right. Are you telling this commission that Underground Energy bought the Ponderosa Restaurant for whatever they paid for it not knowing that they could move it across the road onto this piece of land? Are you telling this commission here that you know that Underground Energy Corporation bought that restaurant not knowing that they could move it across the road?

A No, sir. I am sure they were aware that they could move it across the road.

Q They had already bought the property, hadn't they?

A I'm sure they had, yes, sir.

Q Then they weren't under any stress to find a piece of property to move that restaurant to. They

1 didn't have to buy the restaurant, did they?

2 A. No, sir. But if they thought it was a good

3 investment, they would buy property paying extra for it

4 in order to put the restaurant on it.

5 Q. All right. But they weren't under any kind

6 of stress about finding a place to move the restaurant

7 that they had bought; and by, they, I mean Underground

8 Energy Corporation?

9 A. No, sir. If they wanted to speculate on

10 the purchase of the restaurant, the piece of land that

11 they purchased was the only one that they could place it

12 on.

13 Q. But they didn't have to purchase it, did

14 they?

15 A. No, sir.

16 Q. And they didn't have to lose the restaurant

17 because they weren't going to purchase it. They didn't

18 have a restaurant at that time?

19 A. I'm sure they coordinated the whole thing,

20 Mr. Chambers.

21 Q. Is that the only reason that you would not

22 consider the Underground Energy sale?

23 A. That is the primary reason that they paid

24 more in market value to obtain the piece of property and

25

speculation on moving the restaurant.

Q Well, what is market value for that piece of property?

A Market value is value determined by the preponderance of sales and uses in the area.

Q Isn't there a better definition than that of market value, Mr. Galliher? Isn't the price of property established by a willing seller?

A And a willing buyer.

Q And a willing buyer.

A Yes, sir.

Q And in that case, in the Underground Energy property?

A Mr. Chambers, one high sale doesn't make the market. The preponderance of sales makes the market.

Q I'm asking you what the market value on the Underground Energy property was? Wasn't it established in that very sale?

A No, sir.

Q It wasn't?

A No, sir.

Q What kept it from being established in that sale?

A Because the preponderance of the sales in

the area were for residential purposes in the vicinity of five thousand dollars per acre.

Q. No matter what somebody else paid for property?

A. No matter what these people paid for that particular property.

Q. Do I understand your testimony to be based on a market value which is established by something other than a price established by a willing buyer purchasing from a willing seller, neither of whom is under a compulsion to enter into the transaction?

A. That is exactly what my value is based on. The four sales that I listed were considered in my appraisal. These sales were arm's length transactions between willing sellers and willing buyers and fit all of the requirements as market value sales. I had four of these sales that I based my appraisal on, rather than just one sale under unusual conditions.

Q. What was unusual about the sale of the property from Katherine McGlothlin Warren and her husband to Jason Shortt and York Lindsey?

A. Let me look here. There are some sales here that haven't been indexed. I might have that sale. Katherine M. and John A. Warren to Jason Shortt and York

Lindsay, North side, nineteen thousand feet West of 19-460 intersection at Claypool Hill; one point fifteen acres at seventeen thousand, three hundred ninety-one dollars an acre. Yes, sir, I do have that sale. It's been put in since I worked on the project.

Q Tell us, if you know, what is peculiar about it as far as you are concerned.

A I'm not familiar with that one. I didn't verify the sale or talk with the purchaser or owner.

Q Is that the closest sale in point of time?

A This sale was in July of '77.

Q Is that the closest one in point of time to November of '77?

A I don't know. I don't remember the dates on these others. Let's see. The Charles Davis sale that I used was in '75 and was brought up to compensate for time. The St. Benedict sale was a recent sale. I think it was in '76. It was in June of '76.

Q Wasn't it a special purpose sale for special use?

A Yes, sir.

Q Wasn't that purchased by the Cumberland Plateau Mental Health Planning Commission, or something like that, for the establishment of a mental health center?

A Yes, sir.

Q Do you call that sale to be worthy of comparison with sales between people interested in residential and commercial property by and large up and down the highway?

A Well, the thing that struck me about it, Mr. Chambers, was the amount, because usually a concern like this has to pay outrageous sums for property they purchase. A State and Federal agency, usually, such as this, has to pay above market price to obtain a location.

Q Why would that be?

A It seems that the public thinks they've got money to throw away.

Q Why would they pay it? You can establish market value, can't you?

A I don't know. It just seems to happen. I can't say why, but it does seem to happen.

Q All right. Let me ask you about one other sale, moving a little farther away from the Community College, it looked like. I asked you about a sale to Jason Shortt by G. W. Dalton and somebody else on the East side of Claypool Hill, approximately a mile or so, or a half mile, maybe. A lot, approximately three quarters of an acre on the South side of Route 19-460, that required

right much filling before this area was useable. I believe the seller was a gentleman by the name of Dalton and the buyer was a fellow by the name of Shortt?

A. Seventy-nine hundreths of an acre?

Q. That sounds right, yes, sir.

A. It sold for twenty-one thousand dollars.

Q. Three quarters of an acre for twenty-one thousand?

A. Yes.

Q. When was that sale?

A. This was in October of '77.

Q. That's right nigh onto about the same time that the State took the Cantrell property?

A. That's pretty close.

Q. All right. Did you all consider that sale?

A. No, sir. I didn't consider that sale.

Q. What was wrong with it?

A. I didn't feel that it compared with the property in the area we were working down there and the subject property.

Q. Did you know about it?

A. Yes, sir.

Q. Why did you know about it and not know about the one in July of '76 near the subject property?

A. Well, I was aware of this other sale, the one you are talking about.

Q. You were?

A. But there again, I just don't think it's a good comparison.

Q. You never did tell us why you don't think it compares.

Q. I think it's influenced by the commercial use of the property there around Claypool Hill. I don't think that the property compares with the residential uses down there in the area where the Cantrell property is located.

Q. What makes you think it is influenced by this mysterious force of Claypool Hill, other than its price?

A. Well, there has been considerable speculation and investment of apparent excess funds there in the Claypool Hill area for business ventures. There was supposedly a Piggly-Wiggly or some market coming in up there and there has been a lot of finagling of property there in the Claypool Hill area, and I don't think that this would apply to the area we are working with there where the Cantrell property is located.

Q. Were these not willing sellers and willing

buyers involved, for instance, in the Warren and Jason Shortt sale?

A So far as I know, they probably were.

Q But you say even though they are willing sellers and willing buyers, something taints these transactions?

A I think they are influenced by possible commercial uses.

Q Did you check with them and ask them that?

A Mr. Barrow did. I didn't verify these particular sales. As I said, he did most of the sales work in the area.

Q He's not with us today, is he?

A No, sir.

MR. CHAMBERS: We don't have anything further, Your Honor.

REDIRECT EXAMINATION

BY MR. ALTIZER:

Q Mr. Galliher, do you have some pictures that were taken of this property?

A Yes, sir, I do.

Q Did you take these pictures?

A Yes, I did.

Q When were these pictures taken?

A. In January of '77.

Q. Do those pictures accurately depict the property at the time that they were taken?

A. Yes, sir, they do.

MR. ALTIZER: We would like to offer these.

MR. CHAMBERS: May I see them?

Q. Let's take them one by one. Would you explain this picture?

A. This is a picture taken from the Cantrell entrance looking Westward. It shows the edge of the cut adjacent to the existing Route 19 and a sloping hillside and I don't believe the right of way stakes were in place at the time, but this is the Western end of the property as you are looking down toward the Rasnick property.

Q. That's looking West?

A. Looking West.

MR. ALTIZER: I would like to move to introduce this, Your Honor.

MR. COMBS: Your Honor, the only thing I would have to say about it is somebody has marked with an ink pen on it. I don't know why. They might have been trying to establish the property line, but I don't think it's an accurate location of it based on my observation of the property. But I would like for it to be introduced with-

out any reference to that line.

THE COURT: All right.

WITNESS: The mark is purely accidental by myself. It doesn't relate to the right of way or anything whatsoever.

Q Mr. Galliher, look at this picture and explain it to the commission.

A This was taken from property in the same location. The entry to the property in it faces to the Northwest and depicts the fill bank of existing Route 19 along the property frontage.

MR. ALTIZER: I would like to introduce this.

THE COURT: That will be Highway Commissioner Exhibit No. 2 then.

Q Mr. Galliher, I think you have already testified your brochure includes thirty-two sales?

A Yes, sir.

Q And of those thirty-two sales, is it accurate to say some of those sales are considered and others are not?

A Yes.

MR. CHAMBERS: We object, Your Honor, to the question saying, is it accurate to say. We think that - -

THE COURT: I sustain the objection.

Q Mr. Galliher, were all thirty-two of those sales used?

A No, sir. Not all of the particular sales could be favorably compared to the property.

Q Why are some sales used and others not?

A Well, some are used because they more closely compare to the property than others. For example, if you've got a group of sales of commercial property, which is what we are dealing with at Claypool Hill. If I were appraising property at Claypool Hill, I would use the commercial sales. And if I am appraising residential property, I get sales that as closely compare to the residential property as I can.

Q Okay. The Cantrell property, what did you consider to be the highest and best use for that property?

A I felt the property could be best used for what it is being used for, as a residence.

Q These pieces of property that Mr. Chambers has made reference to, are they residential, or are they commercial?

A I think there is some degree of speculation on these properties for commercial usage.

Q So if you are comparing commercial and residential, that's like comparing apple and orange, is

that correct?

MR. CHAMBERS: We object to leading questions, Your Honor.

THE COURT: Sustained.

Q What other factors are used by you as an appraiser in comparing the property?

A Well, of course, your terrain, which the one piece of property there near the Roisch's just within sight of this property very favorably compares in terrain and size and frontage and so forth. It doesn't have quite the frontage that - - In relation to the acreage, it has plenty of frontage. This is all given consideraton. The property that Mr. Baylor sold to Charles Davis has favorable terrain. It compares very well to this particular piece of property.

Q Is location a factor?

A Location is definitely a factor and the location of the property in a residential area, predominantly residential area, as compared to a predominantly commercial area, is given definite consideration.

Q Is time a factor?

A Yes, sir. All sales that have any time lapse, such as the '76 sales and so forth, they are adjusted according to information given us, given me in

particular, by some of the lending institutions in the area. I contacted some of the banks, different individuals that loan money, and determined that fifteen percent per year was a fair factor to use in this area, in the area of the properties that we were dealing with.

Q All right. Could you explain that fifteen percent?

A Well, really it's an inflation increase per year. We correct ourselves in the event that they are greater than one year old to reflect this inflation increase in the area. In particular, I contacted Mr. Clyde Barrett and Mr. Clark Gobble, Clinch Valley Bank, and some of the real estate developers and so forth in the area. Mr. Jim Frank Taylor. Mr. A. B. Jewell. And this fifteen percent was the concensus of opinion of these individuals.

Q Mr. Galliher, some of the sales you relied on; you testified as the date of sales '74, '75, '76; were adjustments, in fact, made for the time differential between those sales the position by the Highway Department in November of 1977?

A That is correct.

Q And was that upward or downward?

A Up.

Q So an adjustment was made to value this property for more based on the fact that it was later in time, is that correct?

A Yes, sir.

MR. ALTIZER: I think that's all the questions I have.

RECROSS EXAMINATION

BY MR. CHAMBERS:

Q Mr. Altizer opened up an interesting avenue of inquiry, Mr. Galliher, concerning size. Do you compare sizes?

A Yes.

Q Lots were not mentioned from your sales brochure and weren't included as a part of your consideration. Tell the commissioners which was the nearest in size to the property under consideration today? Was it the eight acres down on Indian Creek or was it the twelve acres that was sold to the Cumberland Plateau Mental Health Commission or whatever it is?

A Well, you have two sales. One with eight acres and one with seven point seven.

Q And one with twelve or thirteen?

A One - - Let's see what that was here. One had fifteen point eleven acres.

Q There are seven, fifteen and eight.

A Point seventy-seven. You might say two-eights.

Q You don't have a sale under two acres, do you?

A The subject is five point seven two acres.

Q I thought it was one point three.

A That's the take.

Q Well, are you taking anything besides one point three acres?

A The subject property as a whole has five point seventy-two acres.

Q Are you telling this commission that you are valuing that whole property as a take?

A No, sir. We are not taking the whole property. We are obtaining one point three acres.

Q That's what's really been transferred from the landowners to the State, isn't it? One point three acres?

A One point three acres was transferred to the State.

Q Where have you found something under two acres? You say sizes are a reasonable standard for comparison, or one of the reasonable standards for com-

parison. Where have you found anything under two acres?

A. I am sure there are some sales there for less than two acres, but in my appraisal, I appraised the whole property, the whole five point seventy-two acres, at fifty-four hundred dollars per acre and the strip off of the front of it at fifty-four hundred dollars per acre. Now, when we obtain this one point three acres, Mr. Cantrell will still have around five hundred forty feet of frontage coming onto Route 19.

Q. You are saying if you take it a little bit at a time it doesn't hurt as much?

A. No, sir, I didn't make any such statement.

Q. Is time another fair standard for comparison; that is, sales nearest in time to the date on which the State takes the landowner's property? Would they normally be thought to have greater value in your considerations, other factors being equal, of course?

A. Yes, sir. The most recent sales were definitely the best sales, if all factors are equal.

Q. Now, the sales that we pointed out, which are the closest in time?

A. One sale or two sales there at Claypool Hill are the closest in time. But I think other factors outweigh that.

Q One on October 14th and one on July 28th?

A Yes, sir.

Q Then I believe also the Underground Energy Corporation sale in July of - -

A I don't remember the date.

Q All of them were within four months of when the State took the land we are concerned with here, and your nearest is what, a year and a half or two years?

A A year and a half.

Q Road frontage. How much road frontage each property has. Is that another fair and reasonable standard for comparison, other things being equal, of course?

A Yes, sir, that is correct.

Q We have gotten five hundred and forty feet of road frontage. How much road frontage on 19 does the - - I can't think of the man's name, but he's got the eight-acre house site.

A Charles Davis.

Q How much road frontage has he got on 19?

A Well, one reason I used the sales I did is only one entry at the present time off of Route 19 gives access to this property. It's eighteen or twenty feet above grade in a rock cut or twenty-some feet below grade in a fill. The only entry to the property is the width of

the driveway coming into the property.

Q. But it is all right on Route 19, isn't it?

A. It's right on Route 19.

Q. You could level the frontage?

A. Yes, sir, you could if you could afford it.

Q. Do you know how much that would cost?

A. I would say it would cost thousands.

Q. Know before you guess, now. Do you know?

A. No, sir, I don't know.

Q. The fifteen percent factor that you mentioned in redirect examination, is that valid today?

A. I checked it as of the date of the last appraisal I did up here and it was at that time. Today, I couldn't say.

Q. When was the last appraisal you did up here, approximately?

A. I think the last one I did was the R. B. Shortt property where Mr. Shortt has the two or three trailers on up toward Claypool Hill. And I don't remember the date.

MR. CHAMBERS: I believe that's all, Mr. Galliher.

The witness withdrew and resumed his seat at the table with counsel.

MR. ALTIZER: Your Honor, we would like to recall

Mr. Canter, please.

ROBERT L. CANTER

having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY MR. ALTIZER:

Q Mr. Canter, just a couple of short questions. Some question has come by Mr. Chambers in regard to the additional entrance that will be provided to Mr. Cantrell's property. Now, is that an entrance that is an additional entrance for him?

A Yes, sir, it is.

Q Is that for his benefit?

A Yes, sir.

Q Can that entrance be done away with if he does not want that entrance?

A Yes, sir, upon his request.

Q So that is specifically put in there for him?

A Yes, sir.

MR. ALTIZER: That's all.

CROSS EXAMINATION

BY MR. COMBS:

Q Did Mr. Cantrell ever request that entrance?

A. I wasn't present on the field inspection. I don't know.

MR. COMBS: Thank you.

The witness withdrew and resumed his seat at the table with counsel.

MR. ALTIZER: We rest, Your Honor.

THE COURT: All right. The Highway Commissioner rests. We will take about a ten minute break here.

The Court recessed at 2:30 o'clock p.m. on April 9th, 1979.

The Court reconvened at 2:45 o'clock p.m. on April 9th, 1979.

YORK LINDSEY

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q. State your name to the Court and commission, please.

A. York Lindsey.

Q. What is your residence, Mr. Lindsey?

A. 1103 East Front Street, Richlands, Virginia.

Q. How are you employed?

A. I am employed by Fields Real Estate Company

in Richlands.

Q How long have you been so employed?

A Three years.

Q What is your educational background?

A I graduated from Ferrum College in 1976. I have been to real estate school in Roanoke and then I attended two courses under the American Institute of Real Estate Appraisers.

Q Where did you attend these courses?

A University of Georgia.

Q I believe you are originally from the Richlands area, is that correct?

A That's right. I've lived there twenty-five or twenty-four years.

Q State whether or not you have kept up with the real estate transactions in the Richlands-Claypool Hill area.

A I have kept up with them. I have bought and sold property there.

Q For how long?

A For the last four or five years.

Q Before you got into real estate?

A Before I got into the real estate business, I had been buying and selling some property.

Q Alone or with partners or just how?

A Both. Mostly partners.

Q Do you have any licenses or anything of that nature?

A I have got a real estate salesman's license and I am working on the designation of RN with American Real Estate Appraisers.

Q What does that mean?

A You have to have field experience of so many years; three years; to get the designation.

Q The classwork that you have taken is toward that?

A I have taken classwork.

Q Was it a matter of time?

A A matter of time.

Q Have you had opportunity to appraise property located West of Claypool Hill belonging to Mr. and Mrs. Calvin Cantrell?

A I have.

Q Would you tell the commission what you did with reference to making this appraisal?

A I appraised the property as of November 17th, 1977.

Q For purposes of clarification, I want to

ask, did you actually go on the properties that date or is that when you are basing your appraisal?

A. No, that's when I'm basing my appraisal. I inspect the property three times while doing the appraisal.

Q. Just generally describe what you found with reference to the property and what was being taken.

A. The property being taken was one point three acres, according to the map that I used given to me by the Cantrells. Approximately five hundred and thirty-four point forty-five feet of road frontage. And approximately a hundred feet deep on the East end by approximately one twenty feet on the West end in depth and five hundred thirty feet at the rear.

Q. Now, generally describe what you found the property to be and what you say is the highest and best use of the property.

Q. After inspection of the property, I felt like the highest and best use would be for commercial use.

Q. And upon what do you base this?

A. I base that upon comparable sales in the area.

Q. Why do you think this property would be suitable for that, for commercial?

A. Well, your road front has a tremendous impact on that. And your area; you are in a good area at a crossover. Lots of traffic crossing over. The property is the type of property where you have got to be improved. It is a cut and fill type situation. I felt like it was a good situation, for you could make a cut and fill. You wouldn't have to haul away or haul in.

Q. All right. Now, you say you compared this to some other commercial properties, is that right?

A. Yes.

Q. First, let me ask you what you feel the fair market value of this property was as of the date of the take?

A. My evaluation, I felt like the site evaluation was nineteen thousand five hundred dollars. I also did a damage figure.

Q. First, limit yourself to the value of the property itself.

A. Okay.

Q. You are saying nineteen five for the one point three acres being taken?

A. Right.

Q. Now, tell the commission, if you would, please, what factors you took into account in reaching or

arriving at this figure.

A. I basically used three sales. One of them was about a mile East of Claypool Hill that sold from G. W. and Freia Dalton and Nelson T. and Ethel M. Barker to Jason Shortt, which was a sale price of twenty-one thousand dollars on 10/14/77. Broken down price per acre of twenty-six thousand, five hundred dollars.

Q. Did you make any other breakdowns?

A. Seventy-nine hundreths of an acre at two hundred and twenty-five foot of frontage. Average depths of a hundred and fifty-two feet. That was ninety-three dollars thirty cents a front foot. This property was severely below the road and took several loads of dirt to be filled.

Q. For the purpose of the commission, would you tell them what use is being made of the property at the present time?

A. It is being used by Mr. Shortt. He is selling portable outbuildings and used cars on the lot.

Q. And it was after the sale took place that the fill was made?

A. Right. He filled the property himself.

Q. Did he purchase property at this site, with which he could fill in that particular property?

A. No. He had to haul the dirt from Claypool Hill, approximately a mile and a half away from this property.

Q. Now, did you give any consideration to the location of the property belonging to Jason Shortt being located on the Tazewell side of Claypool Hill as compared to the Russell County side of Claypool Hill?

A. Yes, I did.

Q. Would you explain that to the commission?

A. I felt like the property bought by Mr. Shortt was a better property for reason of traffic count, approximately seventy-five hundred on that end and six thousand where the subject property is. That was a '77 figure. And I also felt like he had better visibility. I adjusted for that.

Q. In other words, this would have been a downward adjustment for the Cantrell property?

A. Right. Plus the depth.

Q. Okay. Meaning there was less depth involved in the Cantrell property.

MR. HART: Your Honor, Mr. Chambers has been objecting all morning to leading and I am going to object this afternoon to him leading, if I may.

THE COURT: I sustain the objection.

Q Any other factors that you considered in this particular property in comparing it with the Cantrell property?

A I didn't make any adjustments for time because this was 10/14/77 and the other was 11/11/77.

Q All right. Now, the other comparable sales that you used?

A The second one is dated July 28th, 1977, approximately half a mile West of Claypool Hill on the North side of U. S. Highway 11. The sale price was twenty thousand dollars. The grantor is John A. and Katherine M. Warren. The grantee was Jason Shortt and York Lindsey. Seventeen lots. It had a road frontage of two hundred foot; about two hundred and fifty feet in depth. It was one point one five acres. Dollar per front foot was a hundred dollars. The price per acre was seventeen thousand, four hundred dollars.

Q Who is the York Lindsey that is the grantee in that particular sale?

A York Lindsey, here.

Q Would you describe the location of your tract with reference to that apartment building just West - -

A The property is to the West of that between that property - - I believe the neighbor on the other end

is Fred Blankenship.

Q. Are there any improvements on the Blankenship property?

A. Right. There is a house there.

Q. Now, would you describe the property that you purchased?

A. Okay. I don't know how familiar the commission is with the property. But I took one picture if anybody would want to see it. It was on an uphill grade. There would have to be several yards of dirt moved.

Q. Is this the picture that you took of your property?

A. Right.

Q. From where did you take that picture?

A. From where?

Q. Yes, where were you standing?

A. At the edge of the road.

Q. Okay. And the property is located on which side of the highway?

A. On the North side of the highway.

Q. Does this picture accurately depict the property that you purchased there?

A. Right. It's got a bank in front and a pretty steep grade going up.

MR. COMBS: Your Honor, I would move for the introduction of the picture.

THE COURT: That will be Landowners Exhibit No. 1.

Q There has been some testimony today about a factor to relate the increase in the value of the property and it's been testified that by the Commonwealth they used a factor of an increase of approximately fifteen percent per year. With reference to this property, would you have any comment as to using a factor of that sort?

A Yes. I've got a contract to sell the property - -

MR. HART: We object, Your Honor, to what kind of contract he may have unless it was prior to the take.

THE COURT: I sustain the objection.

Q And the other comparable sales that you considered?

A My third comparable sale was two miles West of Claypool Hill on the North side of U. S. Highway 19. Sale price, fifty thousand dollars. The grantor was John T. and Carolyn M. Stevenson. Grantee was Underground Energy Corporation. Lot size, two point seven acres; approximately six hundred fifty-six feet of frontage and approximately one hundred sixty feet in depth. Price per front foot, seventy-six dollars, twenty cents. Price

per acre, eighteen thousand five hundred dollars.

Q Would you tell the commission what has been done to that property?

A The property is being excavated. They have come in and blasted some of the rock. It was a cut and fill type situation where none of the materials had to be taken away from the property. I also have a picture of that, if anybody would want to see that.

Q Is this the picture that you took?

A Right.

MR. COMBS: I move the introduction of that picture.

THE COURT: Number 2. Landowner's No. 2.

Q. Did you determine the cost of the excavating of that site?

A Yes. I verified that with Tom Brewster.

Q What is his position?

A He is secretary for Underground Energy.

Q What was that?

A The price to excavate was approximately thirty-five thousand dollars.

Q And did you determine the purchase price of the building, the Ponderosa restaurant, that was moved on the property?

A. Right.

Q. What was that?

A. I wasn't exactly sure, but it was real close to sixty-eight hundred dollars and the price to move was thirty-two thousand dollars.

Q. Now, you stated previously that you also have considered the question of whether or not there is any damage to the remaining four point some acres that belong to Mr. and Mrs. Cantrell?

A. Right.

Q. Would you state for the commission, please, what, in your opinion, the amount of the damages to the residue is.

A. I came up with a figure of five thousand dollars.

Q. And upon what do you base this? How did you arrive at that figure?

A. Well, I considered what I thought was the damage to the house and on a resale of the property I felt like it would definitely hurt the resale by that much, that figure. I based that on my prior experience in the real estate business.

Q. What, in your opinion, will it do by establishing this new lane where they are establishing it?

A. What will it do to their house? Well, as I am sure everybody understands, it's going to bring the road a lot closer to their property which, I feel, would definitely hurt it, by the noise. It's going to put their house below the road, farther below the road. I think this is going to hurt their view. Another thing I considered, which I really wasn't sure on, was I could foresee some type of a water problem that they are going to have unless the State, you know, cures that.

Q. Any other factors than those, or anything else you considered?

A. I think it was basically going to put them down in a hole more than they are with the elevation of the road.

MR. COMBS: You may ask.

WITNESS: Also, I felt like that the driveway could be placed on a steeper grade.

MR. COMBS: All right. You may ask.

CROSS EXAMINATION

BY MR. HART:

Q. You say the driveway is going to be on a steeper grade?

A. I felt like it would be.

Q. Did you have the plans, the highway plans,

available when you made your appraisal?

A. I had a copy of - - I've got a map - - the only map that I had, which showed the take. A map like this.

Q. Do you know who prepared that map?

A. It's a copy of one of the State Highway Department's maps.

Q. Who gave it to you?

A. I got it from another appraiser. He had a copy.

Q. From the Highway appraiser?

A. No. He was another appraiser.

Q. The other appraiser for the defendant?

A. Right.

Q. You got it from him?

A. Right.

Q. When did you go on this property?

A. I went on it Monday. I went on it Tuesday and I went on it Thursday.

Q. Of what week?

A. Last week.

Q. Is that the first time you had been on it?

A. I might have walked on it a time or two.

Q. That was the first time you went on it for

the purposes of making an appraisal?

A Right. Yes, sir.

Q And this take was back in November of 1977?

A Right.

Q And you just got on the property last week?

A Right.

Q And what you have testified about is a result of what you've come up with in the last week, is that right?

A Yes, sir.

Q York, you said you had been to the University of Georgia for two courses?

A Right.

Q How long were those?

A A total of three weeks.

Q A week or two course or ten days?

A A week. And another course was a week.

Q What were these courses dealing with?

A The first course was basic principles of real estate appraisal and the other one was on appraisal of single family residences.

Q And you went to school in Roanoke?

A Right.

Q How long were you down there?

A. A total of three weeks.

Q. Was that taking courses in appraisal?

A. No. This was real estate courses. They weren't appraisal courses. Real estate sales.

Q. So the only real schooling you have had dealing with appraisals is the two courses at the University of Georgia?

A. Right.

Q. And only one week was devoted to real estate appraisals?

A. No. Both of them were real estate appraisal courses. The basic course was two weeks.

Q. And the one week course?

A. Was on single family residences.

Q. But you have appraised this as commercial property?

A. Right.

Q. Now, what you have said, this take was a hundred feet in depth on the East end, I believe, and a hundred and twenty feet on the West end. If the highway maps indicate it is some less distance, you wouldn't argue with that, would you?

A. No, I wouldn't. There is one thing I remeasured.

Q. Did you measure those distances off on the map?

A. Right.

Q. That you got?

A. Right.

Q. And that's a copy of the map?

A. Also off of another map which I have of the property.

Q. All right. I can't find it in my notes, but my memory is your testimony previously is about ninety feet or ninety-five feet on the East and a hundred and ten feet on the West. You wouldn't argue with that, would you?

A. Yes, if that map is correct, I would. I've got a ruler and it shows exactly two inches and it comes out to a hundred foot on the scale on the East end.

Q. So you think the highway right of way engineer or agent is wrong?

A. No. I'm saying, according to the map and the scale I used to get that, that's what I came up with.

Q. That's what you came up with?

A. Right. I got the road frontage from this map that Mr. Cantrell gave me.

Q. I believe you said in your opinion the

highest and best use of this property was for commercial property?

A. Right.

Q. How many commercial establishments do you know of once you get West of Claypool Hill, West of Mullins Motel?

A. Well, most of them have been taken by the Highway Department.

Q. There was the old Blue Bonnet, wasn't there?

A. Yes.

Q. That closed, didn't it?

A. Well, right.

Q. So that wasn't taken by the Highway Department. That closed.

A. Right.

Q. And there was the Ponderosa?

A. Right.

Q. And there was a junk yard down there which, I guess, was commercial?

A. Right.

Q. Then as you go on down, you get to Sam Baylor's store and Helton's store, don't you?

A. Archie Helton's store.

Q. Can you think of any more?

A. A Kayo station was there. The State took it. There was a machine shop right where you turn in to go to S&S Machinery. There was a food and recreation place down there at the college they took.

Q. Down past the stores that we are talking about?

A. Right. That's about it.

Q. And there is a motorcycle place on down across from the college. We know about that. But from the top of Claypool Hill down to Wardell, that has not grown commercially like the area from the top of Claypool Hill back toward Tazewell. Isn't that fair, John York?

A. I don't think so. My opinion on that would be that land has not been able to be bought.

Q. You just think the land this way has been unavailable?

A. I think the land is more valuable on the other side of Claypool Hill.

Q. Even with the car count that you are talking about?

A. Right. And I feel like, you know, that's got to be one of your basic opinions on that, the reason it is more valuable.

Q. That's a judgment call, is that not right?

A. Yes. The traffic count is fifteen hundred more, so I would think the land is a little more valuable.

Q. I thought you said it was fifteen hundred - -

A. Fifteen hundred more.

Q. Coming East, didn't you say that?

A. Going from Claypool Hill to Tazewell, it's fifteen hundred more. Where the subject property is, it's a little over six thousand and it's seventy-five hundred going from Claypool Hill to Tazewell.

Q. Doesn't more traffic make it more desirable?

A. You're right. I was saying that, yes. But I made adjustments for that.

Q. You think the property from Claypool Hill East toward Tazewell is more valuable?

A. Right.

Q. For commercial property?

A. Right.

Q. Do we agree there hasn't been a lot of commercial development from Claypool Hill West to where we are talking about?

A. Well, I don't think there is substantially more on one end than there is the other.

Q. Let me ask you this, John York. Right here where Mr. Cantrell's property is, isn't that primarily a

residential area?

A. Well, there is a big three acre site that has just been prepared right across the road that's going to be leased or sold within the near future.

Q. Do you have any connection with that three acre tract?

A. I don't own it.

Q. Do you have any connection with it?

A. No. But I, you know, I just know who owns it. That's all.

Q. But the area to the North, on the North side of the road where Taylor lives and all that area. That's all residential, isn't it?

A. Right.

Q. And, of course, where Mr. Cantrell lives, there are several houses along in there then as you go back on the South side of the road and it's all residential, isn't it?

A. Yes.

Q. Pretty much. That's what it's being used for now?

A. I agree. I think the same thing had happened on the other side of Claypool Hill.

Q. That's what it was used for back in November

of '77, isn't it, residential?

A. Right.

Q. Let me ask you this. If this property were developed - - Well, did you value the whole property, John York? Did you put a value on all of the five point three acres?

A. I was just asked to do an appraisal on that one piece of property, not the whole property.

Q. Did you put a value on the house?

A. No, sir.

Q. And the other improvements?

A. No, sir.

Q. You didn't look at those?

A. No, sir. I was not asked to.

Q. You weren't asked to. And in the short time you had to do this, you didn't do it?

A. Right.

Q. Well, let me ask you, if the front was sold off of this property for the use you want to put it to for commercial property, what would that do to the value of Mr. Cantrell's house setting on the back side of the property?

A. Well, some people live right - - they like to be at their own business. If he had his own business - -

it depends on the individual.

Q We are not talking about him putting in a business. We are talking about selling it for a business. What would that do to the fair market value of the house?

A I think it could hurt it.

Q It would damage it right much, wouldn't it, depending on what business you would put in front of it.

A It just depends on what you use it for.

Q What do you think that site would be suitable for in the way of commercial development?

A A self-service gas station or something. If anybody can afford that.

Q What do you mean, if anybody can afford it?

A Afford the gas.

Q Anything else you can think of?

A A car lot.

Q Let's talk about a car lot and self-service gas. Would that damage the value of the residence if it was sold for the purpose of, say, putting a used car lot on it?

A I think it would damage it some.

Q Well, John York, in considering the use you are going to make of this property, don't you have to consider the value of the residence as a part of the

property and what you do with the front affects the back?

A. I agree. I just appraise the amount that is being taken and what the highest and best use for it would be.

Q. So you are saying; I forgot what kind of a dollar mark you put on it; but nineteen thousand five hundred; if you sold that for nineteen thousand five hundred, you might destroy a fifty thousand dollar house setting behind it.

A. I think it could hurt it.

Q. Or damage it considerably?

A. Right. But I think you've got to look at the fact, you know, did they want to sell the property.

Q. I think you do. But you also have to look at what the best use of this property is.

A. I agree. But I just appraised that one piece of property. I didn't appraise the rest of it.

Q. Don't you have to look at what the best use of this subject property is as it sets?

A. Right. If I was buying that piece of property, that would be my main priority. That's the kind of value I would put on it. If Mr. Cantrell had this piece of property to sell and I've got one point three acres, I wouldn't buy it to put my house on. I would

go in and cut it down and put a business on it. Cut it down and resell it.

Q. You would have to put a business on it to justify the kind of value you would put on it, wouldn't you?

A. Right.

Q. And if you put a business on it, you are going to damage the rest of the property.

MR. CHAMBERS: Your Honor, we think this is improper. Mr. Hart has gone into this a good deal here. I think it ought to be cleared up now, that the damage to the residue is not related to what use is made of the property. It's the taking of the property that damages the residue.

MR. HART: Your Honor, we are talking about what is the best use; the highest and best use; for this particular property, the property that we are taking.

MR. CHAMBERS: Well, let's take it up outside of the hearing of the commission then. I would like to have this matter cleared up.

MR. HART: It would suit me all right.

THE COURT: Let's let the commissioners stand aside for just a moment.

The commissioners withdrew from the Courtroom at 3:22 o'clock p.m. on April 9th, 1979.

MR. CHAMBERS: May it please Your Honor, Mr. Hart has gone to great length here to question Mr. Lindsey about what effect the utilization of the front part of the property would have on the value of the back part of the property, and unless I'm badly mistaken, it is completely irrelevant in this case. There are two elements of damages, of course. One is the value of the land taken, reasonably adapted to its highest and best use. That is an element of damage which the commission has to consider. The other element is an element of damage which is called damages and which is really the diminution in value of the residue, if any, as a result of the taking itself regardless of what use may be put to that which is taken. And we respectfully request the Court to somehow, if it can be done now, clear this matter up in the minds of the commission, because Mr. Hart very adriotly tried to offset, and I think perhaps has succeeded in the minds of the commission, to offset the possible diminution in value of the rear property from a particular use of the front property which is not a part of this case at all.

MR. HART: If Your Honor please, I think what we are going to try to get at is what is the highest and best use of this property and, as Mr. Lindsey has admitted, or I think he has admitted, it is setting in a residential

area where residences are on the subject property and on the adjoining property. I believe he testified on the South side of the road it is mostly residential. The top side of the hill and the North side of the hill is residential, except for a possible vacant lot that he seems to know something about that has been bulldozed off. And I think he has admitted that it is pretty much residential in this whole area. What I am trying to do is show the highest and best use of this property is exactly what it is being used for, and that is Mr. Cantrell's front yard.

THE COURT: I think the position that a specific industry or business might be put on the property would be completely speculative.

MR. CHAMBERS: Or its effect on the residue.

MR. HART: Of course, this witness is on cross examination. I didn't ask him for any specifics. He said he was in the real estate business. I asked him what type of commercial use he would have in mind for this property and he replied.

MR. CHAMBERS: My objection is, Mr. Hart is asking him, saying, well, John York, wouldn't you have to take into consideration, consideration implied there of the value of what is being taken. The fact that you are damaging what you have got left, if you develop it for

a commercial purpose, and that's not in this case. That's not the law and never has been the law. And I think it's wrong to let it stay injected. It's been injected in the case and it's wrong to let it stay. You have asked that question. You have said to John York Lindsey, don't you have to consider that you are damaging the rear property because you have allowed a commercial use on the front, in effect.

MR. HART: My point is, you wouldn't sell it for commercial use, Your Honor.

THE COURT: That is in effect what the witness has testified to.

MR. CHAMBERS: As a result of his questions. And as I understand it, his questions are improper.

THE COURT: Certainly he has some latitude in cross examination here. I don't think that the Highway Commissioner can be cut off from making some inquiry as to why or what his basis is for classifying this property as commercial property.

MR. CHAMBERS: Your Honor, we are not trying to cut them off. What we are saying is, Mr. Hart has asked questions; and we can get the Court Reporter to read the questions back; in which he elicits an answer from Mr. Lindsey here to the effect that you must consider that the

real property is being damaged, diminished in value, because of a commercial use of the front property. Now, that is the answer that he has elicited and I think that's a true answer. There's nothing wrong with the quality of the answer. That's not a part of the case and that's what I'm objecting to, the Court allowing that to stay in as part of the record. I think the jury ought to be instructed that; and I think they ought to be instructed now; that the fact that the front property may be developed commercially is not to be considered by the commission as a diminution or diminishing in value of what is to be awarded in this case, even though commercial development might, in fact, if it ever happened, cause a decline in value of the real property. That's the evil of what Mr. Hart is doing.

MR. HART: Your Honor, what I think the issue in any condemnation case is fair market value and that's what the willing seller, under no compulsion, would sell to a willing buyer under no compulsion to buy. And my only point is a willing seller would not sell this property for something that is not only going to destroy his own property but the whole neighborhood.

MR. CHAMBERS: That's not the criteria for measuring damages or value in this case or any other case,

what a willing seller, what Calvin Cantrell, would sell this property for.

MR. HART: We are talking about fair market value of the property.

MR. CHAMBERS: You are talking about the value of a one point three acre tract.

MR. HART: It's highest and best use.

MR. CHAMBERS: What's its highest and best use according to this witness?

MR. HART: That's what I was questioning him about.

MR. CHAMBERS: No, you weren't. Your question was, wasn't he going to have to diminish the value of the rear property. And that's what I'm objecting to and saying that's wrong.

MR. HART: My point is, Mr. Chambers, you would not develop it for commercial or sell it for commercial because of the damage you would do to the rest of your property and the whole neighborhood.

MR. CHAMBERS: He wants to put a bridle on the landowner here saying he can't have the value because that isn't what he would do with it. And that's what I keep saying is not the law.

THE COURT: I think the landowner is right here, Mr. Hart. The fact that there may be a business put on

there, I don't believe is a part of the element of damages. He has testified that he classifies this property as commercial and because of the take the back part of the property is damaged to the extent of five thousand dollars. Now, the fact that he may put a building on there, he may put a big apartment building and block him off completely and destroy the back part of the property, but I don't believe that is the proper approach to the thing. And I'm going to have to rule for the landowner here.

MR. HART: My point is, what is the highest and best use of this property and that's all I was trying to point out.

THE COURT: The fact he might put an obnoxious building on there might discourage a sale on it. I think this is what you are aiming at.

MR. HART: No, sir. What I am aiming at is the highest and best use of this property is what the highway witness testified. It is residential. It doesn't make any sense to talk about commercial development. Not this particular piece of property.

THE COURT: You might be able to argue some of those things, but I believe you've gone far enough.

MR. HART: All right. I was about through anyway.

MR. CHAMBERS: If it can be done; I think it is in

the minds of the commissioners now, because, as I recall Mr. Hart's questions and the answers he elicited; as I say, I think they were honest answers; but if you are going to have to visit Calvin Cantrell and his wife here with some diminishment in value because if you allow them the highest and best use of their front property, then you are going to have to diminish the value of the back property. I think that was the net effect of this exchange that took place between counsel for the Highway and the landowner and I don't think can be adequately handled in an instruction at the end of the case. I believe it could be handled now without any prejudice to either side.

MR. HART: Your Honor, that was not the point of the question.

THE COURT: To try to erase the thing now might point up something to the commission. If you wish to take care of it by instruction, I would allow that, but I believe now if you start to explain and try to erase it from the minds of the commission - - certainly these questions, you would point those things up.

MR. CHAMBERS: I believe they've been pointed up pretty dangerously, Judge, and I wouldn't suggest it unless I thought there was a real danger in allowing it to stay. I'm fully cognizant you make matters worse sometimes

whenever you try to erase that, but I believe the Court could handle it very nicely by saying simply, lady and gentlemen of the commission, we stopped because of a matter thathad to be argued here before the Court and I want to instruct you that if commercial use is an adaptable use for the front property, that is not to be considered as in anyway diminishing the value of the rear property. That's what Mr. Hart was getting to and did get to.

THE COURT: I think you had better do that by way of instruction.

MR. CHAMBERS: All right, sir.

THE COURT: It gets ticklish from the landowners' standpoint for the Highway Commissioner to try to erase this from the minds of the jury by pointing out certain questions. But I would ask you not to go any further into that line of questioning.

THE COURT: I will state to the commission the objection to the question at the time they were excused was sustained.

The commission returned to the Courtroom at 3:35 o'clock p.m. on April 9th, 1979.

THE COURT: Members of the commission, the objection which was raised to the line of questioning going on at the time you were excused was sustained. So I will ask you

to disregard that part of the evidence.

CROSS EXAMINATION CONTINUED

BY MR. HART:

Q. Mr. Lindsey, I believe you also talked about damages to the residue?

A. Right.

Q. But you did not value the residue, did you?

A. No, sir.

Q. Either before or after the take?

A. No, I did not appraise the residue.

Q. So you didn't make any appraisal of the residue?

A. No, sir.

MR. HART: Your Honor, I move to strike the evidence regarding damages from this witness.

MR. COMBS: Your Honor, he has - -

MR. HART: I think the rule is the value of the residue before the take and the value immediately after. If he hasn't made an appraisal of the worth of the residue immediately before and immediately after, I don't think he can testify as to damages.

MR. CHAMBERS: Damages to the residue is a pretty subjective sort of term. This gentleman has looked at the property and has stated in his opinion the taking of the

one point three acres in front of the house will affect adversely the resale or a sale, a subsequent sale, of the house itself by as much as five thousand dollars. Now, I think the commission can give that whatever weight they want to. They were down there. They saw the take. They saw the house. If they think it's not damaged, moving the road over closer is not damage, they can discount this figure.

THE COURT: You can argue the case later, but I think I will sustain the objection to that evidence about any damage to the residue, because the witness has testified that he didn't make an appraisal of that. So I will sustain that motion and ask you to disregard the evidence of damage sustained to the residue by this witness.

MR. HART: All right, sir. We have no further questions.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Mr. Lindsey, I will ask you to step up here if you would, please, and I will ask you if you recognize this map?

A Yes, sir.

Q And is this the map from which your copy was made?

A. Right.

Q. There has been some testimony about some variation in the distances and I believe that your testimony of the frontage on the highway was what, do you recall?

A. Five thirty-four point forty-five.

Q. Okay. The Commonwealth has indicated that is five hundred forty feet. Do you have any problem with that?

A. No. What I took it from was a map I received from the Cantrells on the road frontage. I figured it was more accurate.

Q. I will ask you if you recognize this map?

A. Right.

THE COURT: Mr. Lindsey, can you stand around to the side so all of the members of the commission may see?

Q. And just for identification purposes, this is the Calvin Cantrell land, Steelsburg, Virginia, and it shows a five point seventy-two acre tract; Calvin Cantrell. And it shows Route 19-460. I believe it's only Route 19 at that point, though, is that correct?

MR. HART: Your Honor, this is a new map. I haven't seen this. We would like to look at it. I don't know what this is.

THE COURT: You haven't developed who prepared that map.

MR. HART: Are you going to use that in evidence?

Counsel conferred out of hearing.

Q There has also been some testimony about the distance of the line of the Eastern boundary of the property.

Q The scale is one inch to fifty feet. It comes out exactly two inches. It looks to me like that's a hundred feet. That's the best I can see.

Q If you would measure that perpendicular to the right of way, what would you come up with?

A Right at a hundred feet.

Q All right. Now, for reference purposes, you were going from the red line right at the highway, going straight down perpendicular to the right of way line, is that correct?

A Right.

Q Now, if you went from the bottom here back up to the property line here, what would that be?

A Almost a hundred feet. Maybe a foot or two less than a hundred feet.

Q Okay. How do you account for the difference in that?

A I don't see anyway to measure it other than on the take, you know.

Q Now, would you measure off so the property line on the Eastern end - - excuse me, the Western end?

A A hundred and twelve and a half foot.

MR. COMBS: Okay. Thank you. You may be seated.

Q Now, Mr. Hart has asked you about when you went on the property in question, but when were you determining the value of the property? What was the date that you were considering the value of the property? This past week or when?

A November 11th, 1977.

Q The date of the take?

A Right.

MR. COMBS: That's all.

MR. HART: We have no further questions.

THE COURT: You may stand aside.

The witness withdrew.

ROGER C. WALL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q State your name, please.

A Roger C. Wall.

Q Where do you live, Mr. Wall?

A. Richlands, Virginia.

Q. How are you employed?

A. I'm employed by Hargroves and Associates. Their home office is in Abingdon. We have a brokerage office in Richlands and also in Lebanon.

Q. What is your capacity with Hargroves and Associates?

A. Well, I'm the broker in charge of the Richlands office and also I do in house appraisal work in all three of the offices and do fee appraisals out of all three offices.

Q. How long have you been associated with Hargroves and Associates?

A. About five years.

Q. Prior to that, how were you employed?

A. I was associated with John Tate, Realtor, in Marion, Virginia.

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

A. Licensed; about fifteen years.

Q. Have you had any particular training in real estate, or more specifically, appraisal work?

A. Yes. I had classes at East Tennessee State, Virginia Highlands Community and Ohio State in appraisal,

and I'm an associate member of the Society of Real Estate Appraisers.

Q. How about in the area of real estate?

A. The Society of Real Estate Appraisers is land appraisal, not antiques or other type of appraisals. Just strictly real estate appraisals.

Q. And how long have you been engaged in the making of real estate appraisals?

A. Approximately fifteen years for fees.

Q. Did you do any appraisal prior to that, not for fees?

A. Yes. In house work, you know, in securing listings in real estate and so on, you do a market analysis, which is not really an appraisal, but just an analysis of the sales price as it related to the market. This type of work was done prior to the time I started charging fees for appraisal work.

Q. Now, does your appraisal work include - - state whether or not your appraisal work includes raw land as opposed to residential properties, or just what does it entail?

A. The appraisal work that I have done in the past included residential, commercial, farms, industrial sites, commercial sites, including commercial buildings.

Q. Did you have an opportunity to make an appraisal of the property owned by Mr. and Mrs. Calvin Cantrell?

A. Yes, sir.

Q. And when did you make that appraisal, or when did you view the property?

A. I viewed the property the latter part of last week. I don't remember. It was last Thursday.

Q. Would you describe to the commission what you found, how you found the property to lay, its topography and what was being taken and so forth?

A. Okay. The subject property is approximately one mile West of Claypool Hill. You all viewed the property. The property lays on the South side of U. S. 19 and is approximately one hundred feet deep and approximately five hundred fifty feet long, with five hundred and fifty feet or road frontage along U. S. Route 19. The Western part of it is above the present road grade. The Eastern section of it, of course, lays below road grade. The Western section is approximately twenty feet above grade. The Eastern section is approximately fifteen feet below grade.

Q. Did you make an appraisal of this property with reference to the value of the property on the date of

the take? Now, what was the date of the take?

A. The date of the take; November 17th, 1977.

Q. And did you make an appraisal of the property based on that particular date?

A. Yes, sir, I did.

Q. And what was - - Well, let me ask you. What was your appraisal with reference to the property?

A. The appraisal I made was in reference to the strip of land that was on the South side of the highway approximately one hundred and ten feet deep and five hundred and fifty feet long. I appraised it as a fair market value as of the date of the take.

Q. What was your appraisal?

A. Thirty thousand dollars for the take.

Q. Would you state to the commission, please, how you arrived at that particular figure?

A. Well, I compared it with other pieces of property, similar property, that sold prior to the take, and by comparing it with similar pieces of property, I arrived at the value of thirty thousand dollars.

Q. Did you make an appraisal of the property with regard to its value prior to the take and its value after the take to come up with a figure of the dimunition in value of the property as a result of the take?

A. Are you asking me did I appraise the damage to the residue? Is that what you are saying?

Q. Yes, sir. In other words, determine the value of the property prior to the take and the value of the property after the take?

MR. ALTIZER: Your Honor, he's leading the witness. I think he can ask him whether he has determined if there was any damage and how he determined that damage.

THE COURT: Don't lead the witness, but go ahead with your answer. He can talk about estimating the damages to the residue.

A. I did make an estimate of the damage to the residue. The basic damage to the residue will be caused by the fact that the road frontage has been taken on the lot that is on the Eastern part of the take.

MR. HART: It seems to me, in line with the Court's former ruling, he ought to say what he did before he can start giving figures. Maybe that's what Mr. Combs was getting at.

THE COURT: I don't know whether he wanted him to or whether he didn't.

MR. HART: Maybe we objected when we shouldn't have, but I would like to find out how he arrived at his damage before he gives his figures.

THE COURT: He's subject to cross examination. Go ahead with your answer.

WITNESS: I was explaining how the property was damaged or how I feel that it was damaged. The Eastern part of the take is damaged from the standpoint that prior to the take there was an excellent commercial site without damaging the single family residence that is on the property. After the take, the house itself is going to be in the property that will have to be sold if it is going to be used as a commercial site. Presently, before the road goes in, there would be a commercial site without moving the house or without damaging the house. After the take, this commercial site along the Eastern part will not be there without moving the house or damaging the house. This was the damage to the residue.

Q What, in your opinion, was the highest and best use for this property?

A This is definitely a commercial site.

Q And upon what do you base that?

A Well, subject properties that have sold and the highest and best use that other people place on similar pieces of property in the general area. The primary intersection of 460 and 19 is just one mile East of the subject property. And all of the recent sales of property

and utilization of property in this area have been for commercial use. So this would indicate that the subject property is for commercial use.

MR. COMBS: You may answer questions by Mr. Hart.

CROSS EXAMINATION

BY MR. HART:

Q. Mr. Wall, how long have you lived in Richlands?

A. I've been associated with this office since it opened in early 1976.

Q. Have you lived down there in this area? Did you move to Richlands?

A. Yes.

Q. At that time?

A. I just recently moved to Richlands.

Q. So you have lived there approximately a year or a little over before the day of this take?

A. I have been working in this area since 1975 when we opened our Lebanon office.

Q. Did you live in Lebanon for sometime?

A. No. I've lived in Marion, Virginia for the last fifteen years until just recently.

Q. When did you move to Richlands?

A. In December of this past year.

Q. December of '78?

A. Yes.

Q. So you just came over here to work in the Richlands office in '76 and '77?

A. Yes, sir.

Q. I was a little confused. You state on this, commercial site East of the property. Is that on the East end, on the East end of the property?

A. Yes. The East end if the end that is closest to the intersection here at Claypool Hill.

Q. There is a driveway that goes in. You saw that, didn't you?

A. Yes.

Q. That goes into the house?

A. Yes.

Q. Are you talking about just West of the driveway?

A. Just West of the driveway.

Q. In the sinkhole?

A. Right.

Q. I take it you would have to fill the sinkhole?

A. Yes, sir. Of course, the owners has sufficient fill material that is part of the proposed

take just West of this area.

Q. That's a rock cliff, isn't it?

A. Yes, sir. That entire area between Claypool Hill - - Well, all the way into Lebanon. Virtually all of that land is rocky.

Q. So what you say is by the Highway take he is losing the valuable commercial site? Is that right?

A. The one that is in front of the existing single family residence.

Q. And that is part of the take?

A. Yes, sir.

Q. And somehow that's damaged the residue, because to get another commercial site, he's got to use his residence for the commercial site? Is that what you are telling me?

A. Well, the road frontage, of course, is the most valuable part of a piece of commercial property. He is still going to have road frontage, but the road frontage on that side is going to be damaged by the fact that now in the middle of the commercial site he has a sizeable single family residence that something would have to be done. The residence in the middle of this site ends up being a detriment to the site.

Q. So he shouldn't have his house where he

has got his house, is that right?

A. Would you repeat the question?

Q. He shouldn't have his house where it is?

A. Well, the house was there long before the State Highway proposed to take the property. The fact is there was a commercial site there before the take without moving the house.

Q. What is the value of this house? Did you make an appraisal of that?

A. Approximately sixty thousand dollars.

Q. Did you appraise the other improvements on the property?

A. The other buildings would not be affected by the take, so I did not do an appraisal.

Q. Did you do an appraisal on them?

A. On the other buildings?

Q. Yes.

A. No, sir, I didn't.

Q. The other improvements on the property?

A. No, I didn't.

Q. Did you make an appraisal of the whole five point three acres?

A. No, this was not involved in the take.

Q. Did you make any appraisal of the residue

after the take?

A. Yes. I appraised the residue as it would be affected by the take.

Q. I didn't ask you that. What is the residue worth immediately before the take? Did you make an appraisal of that?

A. No, sir, I didn't.

Q. You didn't?

A. No, sir.

MR. HART: Your Honor, I make the same motion. I move to strike any evidence from this witness as to damage to the residue because he testified he didn't make an appraisal of the residue before the take.

MR. CHAMBERS: We don't think there is any evidence to be stricken, Your Honor. He's never testified to a dollar value.

MR. HART: He testified as to damage. He didn't put a dollar value on it. But I move to strike any evidence he has given as to the damage to the residue.

MR. CHAMBERS: May it please the Court, if he had testified to a dollar value, I would be in a position to agree with Mr. Hart, as much as he might be surprised.

MR. HART: I would be surprised.

MR. CHAMBERS: There has been no evidence of dollar

value of damage. And I don't think the fact that the gentleman didn't appraise the residue immediately before and after the take disqualifies him from reciting those factors which he thinks are proper consideration of damages.

THE COURT: I would have to strike the evidence as to his testimony about damage to the residue. He says he hasn't appraised the residue. I will sustain the objection and ask the commission to disregard the testimony about damage to the residue.

MR. CHAMBERS: We except.

Q Mr. Wall, you testified that the one point three acres is worth, in your estimation, thirty thousand dollars?

A Yes, sir.

Q How did you base that value?

A Well, approximately one mile on the other side of the primary intersection at Claypool Hill there was a tract or land that transferred - -

Q That was G. W. Dalton - -

A To Jason Shortt. And there was approximately seventy-five hundreths of an acre and it sold for twenty-one thousand dollars approximately one month prior to the take.

Q. Did you make any study of the use of land both East and West of Claypool Hill?

A. I'm not sure I know what you mean.

Q. Let me ask it to you another way. Isn't it true that the land on the South side of the highway, particularly coming East toward Tazewell from Claypool Hill, has been primarily developed over the last several years for commercial purposes?

A. Yes, sir, basically because of the availability of it.

Q. Has there been any similar development that you can point to for land from Claypool Hill West?

A. No, sir, because of the lack of availability. And I speak in respect to this as a broker. I have a number of clients who would be interested in property along U. S. 19 and I have personally done extensive work contacting owners along the highway attempting to get property listed and it is not possible to get listings in that area simply because the owners are not interested in selling.

Q. Mr. Wall, isn't it true from the Cantrell property back toward the top of Claypool Hill, particularly on the South side of the hill, that is all residential now?

A. Well, I think you could classify the offices of the State Police as commercial.

Q. You have got State Police offices. That would be one.

Q. And, until the take, there was a service station; a grocery store. They have both been since the taking of land - -

Q. Where was the grocery store?

A. There was a grocery store in the service station across from - -

Q. Mental Health?

A. Whatever is in that building. It's not Cumberland Plateau. The Sheltered Workshop. There was a service station directly across the street until the property was taken by the State.

Q. All right, sir. Aside from those, the State Police and the service station-grocery store, most of it is residential, isn't it?

A. Well, once you leave the site where the service station and grocery store used to be, the land does not lay suitable for residential or commercial without extensive improvement to the land.

Q. Down in that Steelsburg area, it's all residential, isn't it?

A. You have apartment houses up on the North side.

Q. And that is residential?

A. Yes, sir. Apartments are.

Q. All right, sir. On the North side, down toward where Taylor lives and Shortt lives, along there it's all residential, isn't it?

A. The present use is residential.

Q. The present use of all of this property is pretty much residential.

A. Well, on the North side there, you've got the Sheltered Workshop and a machine shop. Both of those would be classified as commercial.

Q. As you go on down, you get to the Ponderosa, and as you go on down you get to Archie Helton's store?

A. Yes.

Q. But can't you agree it's primarily residential?

A. It's present use is not its highest and best use.

Q. It's present use is primarily residential?

A. It's primarily residential.

Q. And that was true in November of '77?

A. Yes. All of those houses have been along there for a number of years. The houses were put in on

those sites before the property turned commercial. Most commercial property along the highways that have become commercial were once residential.

Q There are some fairly new houses, particularly on the North side of the road, aren't there? Expensive houses.

A In the Steelsburg community, there is.

Q And, of course, there is Mr. Cantrell's house, which I think is relatively new. A very nice home.

A Yes.

Q and the house next door to it?

A Yes.

Q All residential.

A Both of these are single family residences.

Q And that has been the way this property in this area has been used primarily until not only November of '77, but until today?

A Yes. The present use of that property is single family residences.

Q I take it all of the comparables you have used to come up with this thirty thousand dollar figure were commercial sales?

A Yes, sir.

MR. HART: All right. I think that's all.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Now, you have testified that you feel the highest and best use is commercial?

A Yes, sir.

Q Now, the property that is being taken, the frontage that is being taken here, this is what you testified to as being commercial. But also all of this back in here, do you feel that is commercial property, also?

A Yes.

Q Okay. You have based your estimation of the value upon the premise that the property is suitable for commercial use?

A Yes, sir, the highest and best use of this property based on recent sales of similar property; all of them were purchased for commercial sites; would indicate the highest and best use for this site would be as a commercial piece of property.

Q And if your conclusion had been that it was suited for residential, how much difference would that make in your appraisal?

A Very little in dollar value, simply because in Cedar Land Farms, which is a subdivision located here at Claypool Hill, the current price of a single family

residential site in that area for a twenty-five by a hundred and twenty-five foot lot is fifteen hundred dollars.

MR. HART: Your Honor, I would like for him to refer to the values as of November of '77. That may be what he is doing.

Q I would caution you to refer - -

THE COURT: Values have to be related to then.

Q Were you familiar with residential values as of November, 1977?

A Yes, our office was open here and I was operating the brokerage office in Richlands.

Q So you say that the difference in the value - - you say there would be little difference.

MR. HART: I object to him leading his witness, Your Honor.

A There would be very little difference based on prices in 1977 for residential lots. If you take a lot that is twenty-five by a hundred and twenty-five and you get the value per lot and you multiply this per acre, you are going to come up with residential property in that same area is selling very, very expensively as compared with other parts of Southwest Virginia.

MR. COMBS: I believe that's all.

RECROSS EXAMINATION

BY MR. HART:

Q. Mr. Wall, is it true you did not do a market study and did not value this property as residential property and you can't do so today, can you?

A. No, sir, because to ascertain market value, when you compare it with other pieces of similar property, this is what you are doing. You are doing a market analysis. And my appraisal reflects what the market is saying. And the market is saying that properties along U. S. 19 are commercial sites. I do not have a comparable where a piece of land was purchased and used as a residential site.

Q. So you can't testify as to what this property would be worth for residential purposes here today, because you haven't done a study?

A. Correct.

MR. HART: All right. I think that's all.

The witness withdrew.

CALVIN CANTRELL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHAMBERS:

Q. I believe you are Calvin Cantrell?

A. Right.

Q. You and your wife, Edith, here, are the landowners involved in this taking by the State Highway Department?

A. Yes.

Q. How long have you owned the property, Mr. Cantrell?

A. About eleven years, approximately.

Q. You and your wife built your house?

A. (Affirmative nod of head.)

Q. And have lived there since you have owned the property and built the house?

A. Yes. We've owned the property ten years.

Q. Do you own other property around anywhere?

A. No. Me and my brother own some up at Pounding Mill.

Q. Do you have an estimate of the fair market value of the one point three acres which the Highway Commissioner has taken?

A. Well, I feel I ought to have twenty thousand for it.

Q. That's your best estimate?

A. Yes. That's my feeling on it.

Q. Do you sort of stay abreast of how property trades on the market?

A. No, I don't keep up with it.

Q. What is your occupation?

A. Coal miner.

Q. You don't have much chance then to be out at sales?

A. No.

Q. Do you feel like there has been any damage to the property which is left; that is, the four point seventy-two acres which results from the cutting off of the front one point three acres?

A. Yes, sir, I do.

Q. Let me ask you this question. Do you feel like there might be any value added to the property which you have left because the road is coming closer?

A. No.

Q. What would you feel like the value of your entire property is, the whole thing?

A. Before the take?

Q. Before the take. The whole five point seventy-two acres with the outbuildings, the house and all the improvements?

A. I would have to have one hundred thousand

dollars.

Q Do you feel like a hundred thousand is the fair market value?

A (Affirmative nod of head.)

Q If you take the value of the entire property and subtract what you estimate as the fair market value of the property taken by the State, that would leave you eighty thousand dollars. Do you feel like your remaining property is worth eighty thousand dollars?

A No, I don't. I don't feel like it would be after they take that off.

Q What do you feel like would be the reasonable value of the property which you have left?

A Well, I figure around seventy-three thousand.

Q Seventy-three thousand?

A Yes.

Q By these figures, you have come up with twenty thousand dollars for what the State has taken and somewhere in the neighborhood of seven thousand dollars for the diminished value of what you have left, is that right?

A Yes.

MR. CHAMBERS: You may ask him.

CROSS EXAMINATION

BY MR.HART:

Q I believe you testified, Mr. Cantrell, that you are not familiar with real estate values in Claypool Hill or Tazewell County?

A No, I don't.

Q You are originally from Tazewell County?

A No, I'm originally from Buchanan.

Q And you are in the coal business, I believe you said?

A Right.

Q So you don't buy, sell and trade in houses and lots and vacant land?

A No. I've bought a couple of lots, but I've never sold any of them yet.

Q So you just don't think you are familiar with the market?

A No, sir.

MR. HART: I believe that's all.

The witness withdrew and resumed his seat at the table with counsel.

EDITH CANTRELL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHAMBERS:

Q You are Edith Cantrell and wife of Calvin Cantrell?

A Yes, I am.

Q Mrs. Cantrell, it's getting along toward the short end of the day and I will try to make this as quick as I can. Do you have an opinion as to the fair market value of your entire property, not considering the State is taking any of it, but considering the whole five point seventy-two acres?

A A hundred thousand.

Q You feel like that is the fair market value of it?

A (Affirmative nod of head.)

Q Do you have an idea as to the fair market value of the portion which the State has taken of one point three acres?

A Well, to me, I wouldn't put a price on it that way, other than I think we ought to have twenty, twenty-two or twenty-three thousand. Something like that. Probably, it's a good price for what the State would take, but it's going to bring all the fumes from the highway - -

MR. HART: We object to that.

Q You can't tell about that. Do you feel like the front property that has been taken is worth twenty, twenty-two or twenty-three thousand dollars?

A I think so.

Q If you subtracted that amount from the hundred thousand as a whole, that would leave you either seventy-seven or seventy-eight or eighty thousand dollars, depending on which figure you subtract. Do you think with the road that much closer; the one point three acres - -

MR. HART: I object to him leading his witness. He can ask her what it's worth.

THE COURT: Don't lead the witness.

Q State, Mrs. Cantrell, how, if any, much closer the road will be after the road is built.

A Well, they are taking a hundred foot in front of the house deep.

Q So the right of way will be a hundred feet closer to you?

A Yes. Mr. Canter told us that the day he brought the map. That's right in front of the house. A little farther on the other end, on the West end.

Q All right. Considering then the fact you lose one point three acres and the hundred feet of your front property, and that the road right of way is a

hundred feet closer to you, do you think that your remaining property is still then worth either eighty thousand, seventy-nine thousand or seventy-eight thousand dollars?

A. Well, I hope it would be.

Q. You hope it would be. Do you have any idea about what it would be?

A. No.

MR. CHAMBERS: Okay. That's all. You may ask.

CROSS EXAMINATION

BY MR. HART:

Q. Mrs. Cantrell, I take it you are also not familiar with real estate values in Tazewell County? You don't buy or sell land?

A. No, sir.

Q. Or deal in real estate, do you?

A. No, sir.

Q. And you have made no market studies or studies of what other people have paid, is that right?

A. That's right.

MR. HART: I think that's all.

The witness withdrew and resumed her seat at the table with counsel.

MR. COMBS: We rest, Your Honor.

THE COURT: Is there any rebuttal evidence?

MR. HART: Could we have just a minute? I don't think so.

THE COURT: Take about a minute.

MR. HART: We're through.

THE COURT: Ladies and gentlemen, this is all the evidence you will hear. You may retire to your room while we consider instructions.

The Court, counsel and the reporter withdrew to the Court's chambers.

MR. HART: We object to any instruction on damages to the residue for the reason that there is no competent evidence before the commission as to any such damages. The highway appraiser testified that he found none and the only evidence in the record is that of the landowner and the landowner's wife, both of whom admit on cross examination that they know nothing of real estate values in Tazewell County and don't deal in real estate.

THE COURT: I always understood that the property owner is a competent witness in his own behalf and the weight of his testimony is for the commission or jury to determine.

MR. HART: Your Honor, I think he is competent to testify in his own behalf and tell the commission what he

wants and I think that's exactly what both Mr. and Mrs. Cantrell did. But on cross examination, both of them admit that they do not buy and sell land and just don't know anything about real estate values. I was frankly a little surprised that Mr. Cantrell didn't qualify himself at least somewhat, but he didn't, and I think very honestly. He said he just didn't know. I think any award based on his testimony should be set aside since the man says he doesn't know.

MR. CHAMBERS: I believe he said that he wasn't very familiar with property values, but he knows what his ideas are about moving the road a hundred feet closer to his front door and taking twenty percent of his property. I don't believe you have to be an expert to know that.

THE COURT: I think I would have to overrule your objection to that, because I think the property owner can testify. He has some idea about the values of his own property.

MR. HART: We except, Your Honor, to the ruling of the Court.

Instruction No. 1 was granted without objection.

Instruction No. 2 was withdrawn.

THE COURT: I will mark this as 2 and refuse this as offered.

MR. ALTIZER: We except.

The Court, counsel and the reporter returned to the Courtroom.

THE COURT: Members of commission, the attorneys have decided they will submit this case to you without argument, but I want to read to you this instruction, then you may retire to your room to consider your award.

The Court read the instruction marked granted to the members of the commission.

THE COURT: Now you may take these instructions and the report and retire to your room to consider your award. There are two blanks left in the report and a place for all of you to sign the report once you agree upon it. After you have done that, let the Sheriff know and he will bring you back out here.

The commission withdrew from the Courtroom at 5:00 o'clock p.m. on April 9th, 1979.

THE COURT: All right. Bring them in, Sheriff.

The commission returned to the Courtroom at 5:20 o'clock p.m. on April 9th, 1979.

THE COURT: Lady and gentlemen, have you arrived at your award?

COMMISSIONER: We have, Your Honor.

THE COURT: After viewing the said property and hearing

the evidence produced before us, we fix the value of the land taken by the State Highway and Transportation Commission at nineteen thousand five hundred dollars and we further fix the damages, which may accrue to the residue beyond the enhancement in value to such residue by reason of the taking at seven thousand dollars. Is that your award?

(Affirmative response.)

THE COURT: So say you all?

(Affirmative response.)

THE COURT: All right. Thank you for your consideration of this case today. In due course of time, we will see that you are paid. I have enjoyed seeing you today and look forward to seeing you again. Thank you for your services.

The commission withdrew from the Courtroom at 5:25 o'clock p.m. on April 9th, 1979.

MR. HART: Judge, may we have some time to lodge any motions we might have?

THE COURT: How much time do you want? Ten days?

MR. HART: Yes, sir.

THE COURT: All right. I won't be up here. Well, file yours in ten days and the landowner may have a like time to respond, if they see fit. Perhaps we can argue

this in the early part of May.

MR. HART: All right, sir.

THESE WERE ALL OF THE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE HEARING OF THIS MATTER ON THIS DATE.