

Rat Microfilmed

RQ #3

June 1954

SPANGLER

BOROUGH

BAER

TOWNSHIP

Frank McCombie

Frank McCombie

N. 2nd Street

Concrete bridge

Stevens Run

Sanitized
Sitz-zon line

Proposed
N. 1st St

Change
2466

2466

Radius of curve
2396

Old drift (scored in)

J. Q. Stog

Rock Dump

Present
0.6719 Ac

0.6719 Ac

Radius of curve
2396

Radius of curve
2396

Radius of curve
2396

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Radius of curve
2396

Radius of curve
2396

- D. 15.00'
- A. 24.05'
- R. 333.06'
- T. 117.35'
- L. 227.57'

mill

L. Hammond

Blacksmith shop

Moss Creek

Sketch showing proposed change in

SPANGLER-MOSS CREEK ROAD

February 29, 1924. Scale 1" = 50'

Chas. E. Schlicher, Engr.

No. 3, June Sessions, 1924.
In the Court of Quarter Sessions of Cambria County, Pennsylvania.

In Re Petition of Supervisors of Barr Township for approval of a Change in Part of Township Road from Spangler to Marsteller.

ANSWER OF SUPERVISORS.

Filed 11 May 1925
11:00 A.M.

LAW OFFICES OF
J. HARRISON WESTOVER
FIRST NATIONAL BANK BUILDING
SPANGLER, PENNSYLVANIA

In Re Petition of Supervisors of Barr Township for Approval of a change in part of Township Road from Spangler to Marstellar.

In the Court of Quarter Sessions of Cambria County, Pennsylvania.
No. 3 June Sessions 1924.
R.D. Vol 6, Page 125.

The Supervisors of the Township of Barr, by their Attorney, J. Harrison Westover, make the following answer to the petition for rule filed by Larry Hammond.

1. The Supervisors of the Township of Barr admit the allegations set forth in paragraph one of said petition with the exception of averment that the said Larry Hammond is the Owner of any real estate abutting on the Township Road leading from Spangler to Marstellar. The Supervisors of the Township of Barr are informed and believe that the said Larry Hammond is not the Owner of real estate abutting on said Township Road and demand proof thereof.
2. Paragraph two is admitted.
3. Paragraph three is admitted.
4. Paragraph four is admitted.
5. Paragraph five is admitted.
6. Paragraph six is admitted.
7. Paragraph seven is admitted.
8. Paragraph eight is denied. In answer thereto, the Supervisors aver that the change in the location of the road will greatly benefit the travelling public, and will cause no loss or damage to Larry Hammond.
9. In answer to paragraph nine of said petition the Supervisors aver that the proposed change in the location of part of the Township Road leading from Spangler to Marstellar was agreed to between the Township of Barr and the Borough of Spangler and until the Township of Barr and the Borough of Spangler complete the alteration as shown on the map filed in this matter, the road will remain in its present location. It is therefore idle to contend that the Supervisors desire to alter a Township Road so

that the same would terminate on a hillside.

10. In answer to paragraph ten, the Supervisors aver that they have agreed with the property Owners affected in compliance with the Act of Assembly.
11. In answer to paragraph eleven, the Supervisors aver that they were not required to give notice to Larry Hammond or any other resident of Barr Township of the presentation of their petition.
12. The Supervisors further aver that the proposed change or alteration is one that will do no damage to any property owner. It is a slight alteration and not a vacation of a road in such a manner as to deprive Larry Hammond of access to what he terms as his property. It is a shifting of a road a few feet South in order to avoid a dangerous curve in the present road and the land intervening between the road in its present location and the proposed road is owned by the Township of Barr and will be used by Larry Hammond to gain access to his present residence. So far as the Township of Barr is concerned, the whole land between the residence of Larry Hammond and the Southern Side of the proposed road may be treated by Larry Hammond as a Township Road.
13. The proposed alteration is a public necessity. No one, to the knowledge of the Supervisors of the Township of Barr stands in opposition to this change excepting Larry Hammond, the petitioner.
14. The petition of the Supervisors was framed to conform with the Act of Assembly approved July 11, 1917 P.L. 777, which act only provides for a moderate change or alteration of a Township Road so as to eliminate dangerous curves to conform to present day methods of travel where the cost does not exceed \$300.00. There is no power given under this act to vacate and supply any considerable portion of a public highway and to do so would require that the proceedings be instituted under the Act of June 13, 1836, P.L. 551, by having viewers appointed to pass upon the matter. There can be no vacation of any Township Road only by proceeding under the Act of 1836 wherein it must be established that the

same has become useless, inconvenient and burthensome.

The Act of June 27, 1913 P.L. 633 being the only act under which Larry Hammond would have any apparent standing, if it is established that he is a property Owner, is not applicable to the present situation. It provides that "wherever viewers are appointed to vacate any public road, street or highway in this Commonwealth and the vacation of the same takes no land from the Owner or Owners of land abutting thereon, if, in the opinion of the viewers so appointed the vacation of said road, street or highway damages the property of the abutting Owner, they may award damages to such Owner or Owners as though land had been actually taken and such damages shall be paid as is now provided by existing laws where land is actually taken for the opening, vacating and laying out of roads, streets and highways". This Act contemplates damages to an abutting property Owner when the vacation of a Township Road under the Act of 1836 deprives the Owner in a clear cut manner of the Township Highway.

It contemplates an actual damage by a vacation such as would deprive the Owner of the road and not a slight change or alteration that does not deprive the Owner of the Road but places the same a few feet away from its former course. Such a change or alteration is not a vacation of the old road in a strict sense and as originally contemplated by the Act of 1836. It is difficult to see how Larry Hammond would be damaged in the slightest degree by the proposed change or alteration, especially since the Township is the Owner of the intervening land, and same can be used by Larry Hammond at will to gain access to the premises now occupied by him and the Court may alter its decree accordingly.

J. Abraham Westman

State of Pennsylvania

County of Cambria

SS.

I.J. Pfeister, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct.

W. J. Pfeister

Sworn and subscribed to before me this 9th day of May 1925.

J. M. Patton

NOTARY PUBLIC
My Commission Expires March 6, 1927

No. 3, June Sessions, 1924.

IN THE COURT OF QUARTER
SESSIONS OF CAM. CO. PA.

In Re Petition of Super-
visors of Barr Township for
Approval of Change in Part
of Twp. Road from Spangler
to Marsteller

PETITION FOR RULE TO
STRIKE OFF

Filed 6 October 1924

Joseph Gray

Attorney for Petitioner.

Barnesboro

BERNARD PA.

THE ARTHUR H. CRIST Co., Cooperstown, N. Y.

In Re Petition of Supervisors : IN THE COURT OF QUARTER SESSIONS
of Barr Township for Approval : OF CAMBRIA COUNTY, PENNSYLVANIA
of a Change in Part of Town- : No. 3, June Sessions, 1924.
ship Road from Spangler to :
Marsteller. : R. D. Vol. 6, Page 125.

PETITION FOR RULE

TO THE HONORABLE THE JUDGES OF THE SAID COURT:-

The petition of Larry Hammond respectfully represents:

1. That he is an inhabitant of the township of Barr, county of Cambria, State of Pennsylvania, and resides with his family in his dwelling-house which abuts upon the public road leading from the borough of Spangler to the village of Marsteller, in said township.

2. That builded upon the same plat of ground as the dwelling-house are a workshop or factory (about fifty feet from said house); a blacksmith shop (about thirty-five feet from the factory); a lumber storage building (a few feet to the rear of the blacksmith shop); another dwelling-house occupied by a family; and various smaller outbuildings.

3. That your petitioner has resided on these premises for more than thirty years, and here he has followed his occupation and business of wagon-making, repair-shop and mill-worker for the twenty-eight years last past.

4. That the said public road leading from the borough of Spangler to the village of Marsteller, now in use, passes directly in front of the dwelling-house, factory, blacksmith shop and storage building aforementioned.

5. That said road has been used by the traveling public for more than half a century.

6. That on 23 June, 1924, W. J. Pfiester, Frank Stiles, and W. A. Krumenacker, the supervisors of the township of Barr, presented their petition to the Court of Quarter Sessions of Cambria County asking approval of said court for a change or alteration in the public road leading from the borough of Spangler to the village of Marsteller.

7. That upon consideration of the petition of said supervisors the following order was made: "the Court hereby authorize the change of the public road leading from Spangler to Marsteller as shown by the map or draft hereto attached; which map or draft is hereby approved and after said change the said road in its old location between the points of change is hereby vacated."

8. That the said order of court, which is dated 23 June, 1924, if effectuated would deprive your petitioner and the public of a means of travel to and from his dwelling and place of business, causing him great loss and damage in his property rights, business and occupation.

9. That the petition of the said supervisors of the township of Barr is inaccurate, partial, incomplete and misleading in that it fails to disclose the location of the Hammond dwelling-house, although said house is in full view from the road; in that it does not show any grade for the proposed road; in that the proposed road does not join or connect with any other road but terminates on a hillside, at the line of division between the borough of Spangler and the township of Barr.

10. That the said supervisors have not complied with the act of assembly requiring that they agree with the property owners affected by such change of road as to damages.

11. That your petitioner had no knowledge of the presentation of said petition of the supervisors of Barr township prior to 30 September, 1924.

O R D E R

And, now, Oct. 6, 1924, the within petition read and considered, the Court on motion of Joseph Gray, attorney for petitioner, grants a rule on W. J. Pfiester, Frank Stiles, and W. A. Krumenacker, the supervisors of the township of Barr, county of Cambria, State of Pennsylvania, to show cause why the petition and order of court dated 23 June, 1924, entered to No. 3, June Sessions, 1924, in Road Docket Vol. 6, at Page 125, should not be stricken off and set aside, *returnable first Monday Nov. 1924.*

By the Court
M

No. 3, June Sessions, 1924.

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA
COUNTY, PENNSYLVANIA

IN RE PETITION OF SUPER-
VISORS OF BARR TOWNSHIP
FOR APPROVAL OF A CHANGE
IN PART OF TOWNSHIP ROAD
FROM SPANGLER TO MARSTELLAR.

EXCEPTIONS

Filed 5 May 1925

Joseph Gray

Attorney for Exceptants.....

Barnesboro, Pa.

In Re Petition of Supervisors : IN THE COURT OF QUARTER SESSIONS
of Barr Township for Approval : OF CAMBRIA COUNTY, PENNSYLVANIA
of a Change in Part of Town- :
ship Road from Spangler to : No. 3, June Sessions, 1924.
Marstellar. : R. D. Vol. 6. Page 125.

EXCEPTIONS

Larry Hammond and Jane Hammond, his wife, by their attorney, Joseph Gray, come into court and except to the order of the court made in the above entitled cause, for the following reasons.

1. The exceptants are inhabitants of the Township of Barr, County of Cambria, State of Pennsylvania, and owners of a parcel of land which abuts upon the public road leading from the Borough of Spangler to the village of Marstellar in said Township.

2. That builded upon the parcel of land, abutting on the public road, as aforesaid, are the dwelling-house of the exceptants; a factory or workshop (about fifty feet from said house); a blacksmith shop (about thirty-five feet from the factory); a lumber storage building (a few feet to the rear of the blacksmith shop); another dwelling occupied by a family; and various smaller outbuildings.

3. The exceptants have resided on these premises for more than thirty years, and here Larry Hammond has followed his occupation and business of wagon-making, repair-shop and mill-worker for the twenty-eight years last past.

4. That the road sought to be vacated has been in use for more than half a century.

5. That the vacation of the road would deprive the exceptants and the public of a means of travel to and from his dwelling and place of business, causing exceptants great loss and damage in their property rights, business and occupation.

6. That the said road has not become useless, inconvenient, or burdensome.

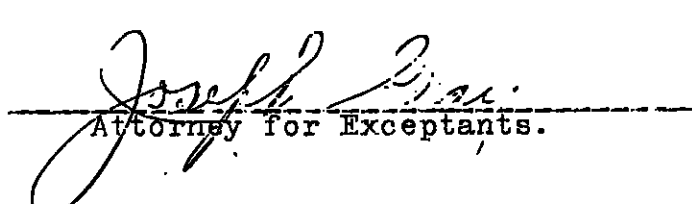
7. That the petition of the supervisors of the Township of Barr is inaccurate, partial, and incomplete.

8. That the exceptants had no notice of the proposed change, alteration, or vacation of said road, as required by the law of the Commonwealth of Pennsylvania.

9. That the supervisors of said Township have not agreed with the exceptants, who are property owners affected by such change of road, as to damages, as required by the act of assembly.

10. That no estimate or computation has been made of the costs and expenses of making the change or alteration in said road, and that the costs and expenses to the Township of Barr for making said change or alteration will exceed three hundred dollars.

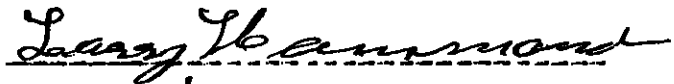
11. That the road as changed or altered terminates on a hillside, does not connect with any other public road, and thus leaves no continuous public road leading from the Borough of Spangler to the village of Marstellar.


Attorney for Exceptants.

CAMBRIA COUNTY, :
STATE OF PENNSYLVANIA : SS:

Larry Hammond, being by me first duly sworn according to law, deposes and says that the matters of fact set forth in the foregoing exceptions are correct and true.

Sworn to and subscribed :
before me this 4th day of :
May, A. D. 1925. :



IN THE COURT OF QUARTER SESSIONS
OF CAMBRIA COUNTY, PENNSYLVANIA.

No. 3 June Sessions, 1924.
Road Docket.

IN RE PETITION OF SUPERVISORS OF
THE TOWNSHIP OF BARR FOR APPROVAL
OF A CHANGE OF ROAD SITUATED IN
BARR TOWNSHIP, CAMBRIA COUNTY,
AND SAID ROAD LEADING FROM
SPANGLER TO MARSTELLAR.

OPINION OF THE COURT.

Filed 3 August 1925
11:45 A.M.

H. A. ENGLEHART
OFFICIAL STENOGRAPHER
FOR THE
FORTY-SEVENTH JUDICIAL DISTRICT
PENNSYLVANIA

IN RE PETITION OF SUPERVISORS OF THE TOWNSHIP OF BARR
FOR APPROVAL OF A CHANGE OF ROAD SITUATED IN BARR TOWNSHIP,
CAMBRIA COUNTY, AND SAID ROAD LEADING FROM SPANGLER TO MARSTELLAR.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNA.

No. 3 June Sessions, 1924. Road Docket.

ARGUED before HON. John E. Evans, P.J., and McCann, J.

OPINION by Evans, P.J.

--:Opinion of the Court:--

On the 23rd of June, 1924, the Supervisors of Barr Township presented a petition to the Court setting forth that it was deemed advisable to change or alter a part of the Township road leading from the Borough of Spangler to the Village of Marsteller, in Barr Township, accompanying said petition with a map showing the proposed alteration of a portion of said road and showing the old road to have run along the property of Larry Hammond, and the proposed new road being carried around away from the buildings upon the Hammond property. The petition further set up an accurate description of the proposed change and that the damages had been agreed upon with Frank McCombie and did not exceed the sum of Three Hundred Dollars. No mention whatever is made in the petition of any offer to settle damages with Larry Hammond. The damages settled with McCombie arose out of the taking of his property for the proposed change in road. The petition of the supervisors was received and a decree entered by the Court authorizing the alteration or change in the road as prayed for.

On the 6th day of October, 1924, Larry Hammond presented his petition praying the Court to strike off the said order authorizing the change of the said road and setting up that he was the owner of property through which the road had previously

run and that there was located there a dwelling house, work shop, blacksmith shop, and some other buildings where business had been conducted for a long period of time and that the new road as laid out was carried entirely away from his buildings and place of business so that the public didn't pass by him, and that no damages had been settled with him by reason of the vacation of said road nor had any attempt been made to settle the same.

On the 5th day of May, 1925, exceptions were also filed raising the same questions.

An answer to the petition was filed by the Supervisors in which they denied that Larry Hammond was the owner of the real estate referred to in his petition.

Depositions were taken from which it appeared that it was uncertain as to whether or not Larry Hammond was the owner of the land in question. It did appear, however, that he was a citizen of Barr Township and it further appeared that with whoever was the owner of the particular land in question there had been no settlement of damages for the vacation of this part of the road.

The answer filed by the Supervisors sets up that the proceeding which they instituted was had under the provisions of the Act of July 11, 1917, P. L. 777 Section One. This Act was passed the same year as the Township Code and three days prior to the Township Code and contains practically the same provisions as are found in Section 685 and 686 of the Act of July 14, 1917, P. L. 840, which is the Township Code. The Township Code specifically repealed the Act of May 5, 1911, P. L. 123, in as far as it related to Townships and this is the particular act which the Act of July 11, 1917, amended. It is evident that the Legislature intended that the Township Code should have effect and that the Act referred to by the Supervisors

is in
was an oversight, and ~~has no~~ effect only as to County Roads. There is no question but what the Township Road Code of July 14, 1917, authorizes a proceeding such as instituted by the Supervisors of Barr Township and the jurisdictional requirement is that they may "change or alter any part of any public road under their supervision within this Commonwealth" if they "can agree with the property owners affected by such change as to damages." Section 686 of the Act limits the total amount of costs, expenses and damages to Three Hundred Dollars for such a proceeding.

We find that the Act of June 27, 1913, P. L. 633 Section 1, provides for damages to land owners where there is a vacation of the road and no land is taken. This Act was not repealed by the Township Code and is in force and effect. The contention of Counsel for the supervisors that ~~xxx~~ this act has no application because it refers to assessment of damages by viewers is not well taken. The Act clearly indicates that damages may be awarded to persons injured in the vacation of a road and Section 685 of the Township Code of July 14, 1917, clearly indicates that the damages referred to are damages which may be awarded in road proceedings as is indicated clearly by the conclusion of this section which signifies that the proceedings may be had "without the formality of a view", so that the proceedings are to be considered similar to those in which viewers are appointed except that viewers may be disposed with.

This matter of agreeing upon damages is absolutely essential to the right of the Supervisors to have a proceeding of this character and it being apparent that the damages were not agreed upon, so that jurisdictional requirement was not met, the proceedings are absolutely void and of no effect and it is therefore our duty to set them aside.

We therefore enter the following decree:

And now, ^{Aug 3}~~July 13~~, 1925, after due consideration the petition of Larry Hammond to strike off the decree entered by this Court in the above stated proceedings on June 23, 1924, and to set aside the proceedings, is granted and the exceptions filed to said proceedings sustained.

BY THE COURT:

Evans

And now, July 13, 1925, counsel for the supervisors except to the above order and decree of the Court, and pray that an exception be noted him and bill sealed; all of which is, the day and year aforesaid, accordingly done.

JOHN E. EVANS, P. J. (SEAL)

In the Court of Quarter
Sessions for the County of
Cambria.

No. 3 June Sessions, 1924
Petition of the Supervisors
of the Township of Barr for
approval of a change in part
of Township Road leading from
Spangler to Marsteller.

Filed 23 June 1924.

LAW OFFICES OF
J. HARRISON WESTOVER
FIRST NATIONAL BANK BUILDING
SPANGLER, PENNSYLVANIA

201
In the Court of Quarter Sessions for the County of Cambria.

To the Honorable, the Judges of said Court:

The petition of the undersigned Supervisors of the Township of Barr respectfully represents.

1. That a public road has been long since laid out from the Borough of Spangler to the village of Marsteller in the Township of Barr, Cambria County, Pennsylvania.

2. That it is the desire of your petitioners, *and they deem it advisable* to change or alter a part of this Township Road so as to eliminate a curve that now exists in same that is dangerous to the travelling public.

3. That your petitioners attach to this petition a map or draft which is made a part of this petition showing the present location of the part of said road that your petitioners desire to have changed, and also the location of the Road when changed to its new location.

4. That at a point opposite the building designated as "blacksmith shop" on said map or draft there exists a curve which is dangerous to the travelling public for the reason that the curve is a sharp one, on a steep grade and the view on said curve is obstructed by said "blacksmith shop".

5. That the costs and expenses of changing said road including damages for the land taken for the new road shall not exceed the sum of three hundred dollars.

6. That the point at which said change in the public road shall begin is approximately six hundred twenty nine feet northwest from the middle of the concrete bridge over Brown's Run as shown on the map or draft attached hereto and that point of ending of said change shall be the line separating the Borough of Spangler from the Township of Barr.

7. That your petitioners, who have the supervision of said Township Road, have agreed with Frank McConchie, the owner of the property affected by such change as to damages, for the land taken for the road when changed. And have obligated themselves to pay the damages agreed upon being the sum of one dollar.

Your petitioners therefore pray that they be authorized to change said Public Road so as to eliminate said curve and that the proposed change of the road as shown by the attached map or draft be approved and that after said change is made, the old location of the road be vacated and your petitioners will ever pray; etc.

W. J. Pfister
Frank Stiles
W. A. Krumenacker

State of Pennsylvania)
County of Cambria.) SS

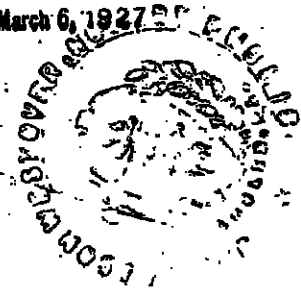
W. J. Pfister being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

W. J. Pfister

Sworn and subscribed to before me this 5th day of May 1924.

Arthur Weston

NOTARY PUBLIC
My Commission Expires March 6, 1927



DECREE

And now *June 23* 1924, upon consideration of the foregoing petition the Court hereby authorized the change of the public road leading from Spangler to Marsteller as shown by the map or draft hereto attached; which map or draft is hereby approved, and after said change the said road in its old location between the points of change is hereby vacated.

By the Court