

No. R. D. 2 Dec. 1960

Filed - Apr. 27, 1961

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

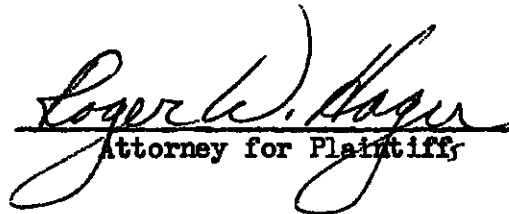
IN THE COURT OF QUARTER SESSIONS
OF
CAMBRIA COUNTY, PENNSYLVANIA

No. 2 December Sessions, 1960,
Road Dkt.

P R A E C I P E

TO THE CLERK OF COURTS:

Please mark the award in the above captioned case paid and
satisfied.



Attorney for Plaintiff

No. L. D. 2, Dec. 1960

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY,
PENNSYLVANIA

No. Term, 1960

MARVIN L. ESHELMAN et ux

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA.

Filed - Nov 1, 1960

PETITION FOR APPOINTMENT
OF BOARD OF VIEWERS

Law Offices
ROGER W. HAGER
417 LINCOLN STREET
JOHNSTOWN, PENNSYLVANIA

*Now, Nov 1, 1960 CAMBRIA COUNTY COMMISSIONERS
HEREBY WAIVE ISSUANCE OF RULE UNDER RULE 301 1/2,
RULES OF CAMBRIA COUNTY COURT
Marvin L. Eshelman
Cheryl Eshelman*

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

IN THE COURT OF QUARTER SESSIONS
OF CAMBRIA COUNTY, PENNSYLVANIA

vs.

No.

Term, 1960

THE STATE HIGHWAY DEPARTMENT OF
THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR APPOINTMENT OF
BOARD OF VIEWERS

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Marvin L. Eshelman and Carolyn E. Eshelman,
husband and wife, respectfully represent:

1. That Marvin L. Eshelman and Carolyn E. Eshelman are
the owners of the hereinafter described adjoining tracts of
ground situate, lying and being in the Borough of Geistown,
County of Cambria and State of Pennsylvania, more particularly
bounded and described as follows:

No. 1. Starting at a point on the northerly side of Belmont Street,
which is the Easterly corner of Plot No. 23, as shown on the
Suburban Realty Company Plan of Lots, Purparts Hilltop Section, as
made by the Fetterman Engineering Company and dated November 6,
1929, and of record in the office of the Recorder of Deeds in and
for Cambria County in Plat Book Volume 3 at page 69; thence North
80 degrees 18 minutes West along Belmont Street a distance of 100
feet, thence by an arc curving to the left whose radius is 212
feet a distance of 14.19 feet along said street to a point and
corner of said piece of ground, thence North 26 degrees no minutes
West a distance of 236 feet to a point and corner of said piece
of ground, thence North 70 degrees 10 minutes East a distance of
206.91 feet, more or less, to a corner of said piece of ground on
Park Way, thence along Park Way South 47 degrees 02 minutes East
a distance of 342.69 feet, more or less, to a corner of said
piece of ground at the intersection of Belmont Street and Park Way,
thence along Belmont Street South 64 degrees no minutes West a
distance of 112.0 feet, more or less, to a stake, thence by an
arc curving to the right, whose radius is 212 feet a distance of
132.09 feet to the point of beginning.

No. 2 Starting at a point 240.45 feet northeast of a post in
common with Lots No. 22 and 23 on the northerly side of Belmont
Street, thence North 26 degrees 0 minutes West 216.96 feet to a
point in common with lands of Zitella Wertz, thence North 70
degrees 10 minutes East a distance of 60.35 feet to a point, thence
South 26 degrees 0 minutes East a distance of 236 feet to a
point on Belmont Street, thence in a Northwesterly direction on a
curved line with a radius of 212 feet a distance of 65.55 feet
along Belmont Street to the point of beginning.

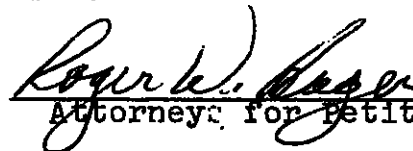
2. That the State Highway Department, Commonwealth of Pennsylvania, is vested with the power to acquire real estate by eminent domain.

3. Pursuant to the powers conferred upon it by law, the Commonwealth of Pennsylvania, condemned part of the herein before described tract of ground belonging to the petitioners by approval of Sheet No. 13 of the Right of Way Plan for Route No. A1591B Section 3 of Cambria County by the Governor of the Commonwealth of Pennsylvania on December 1, 1959.

4. That the petitioners and the State Highway Department of the Commonwealth of Pennsylvania have been unable to agree upon the compensation to be made for the property condemned and appropriated.

WHEREFORE your Petitioners therefore Pray your Honorable Court to appoint three (3) viewers from the Board of Viewers of Cambria County to assess the damages to which your Petitioners are entitled by reason of the appropriation of part of the petitioners land and report the same to Your Honorable Court sec. leg.

AND your Petitioners will ever pray, etc.


Attorneys for Petitioners

COMMONWEALTH OF PENNSYLVANIA

I

SS:

COUNTY OF CAMBRIA

I

Marvin L. Eshelman and Carolyn E. Eshelman,
husband and wife, being first duly sworn according to law,
depose and say that the statements and facts contained in the
above Petition are true and correct upon their personal knowledge,
information and belief.

Marvin L. Eshelman
Marvin L. Eshelman

Carolyn E. Eshelman
Carolyn E. Eshelman

Sworn to and subscribed
before me this 25 day of
October, 1960.

Janis P. Glass
Notary Public

Notary Public, Johnstown, Cambria Co.
Commission Expires July 2, 1963

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband and
wife,

vs.

THE STATE HIGHWAY DEPARTMENT OF
THE COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF QUARTER SESSIONS
OF CAMBERIA COUNTY, PENNSYLVANIA

No.

Term, 1960

D E C R E E

AND NOW, the 1 day of November, 1960, upon considera-
tion of the foregoing Petition and upon motion of Roger W. Hager,
Esquire, for Petitioners, the Court appoints:

Leopold J. Wendebier Esq.
John L. Elder
Theodore Hunt

as a Board of Viewers to assess the damages caused by the taking
of the property as described in the foregoing Petition and do
direct that said Board of Viewers shall hold its first meeting
as required by the Acts of Assembly and Rules of Court in such
case made and provided, after evidence is given and report filed,
give due notice of filing of the report, as required by law, the
cost thereof to be taxes as part of the cost of said proceeding,
and do further direct that said Board of Viewers shall report to
the Court in accordance with the existing laws and rules of
Court.

BY THE COURT.

McDonald

X.J.

IN THE COURT OF
QUARTER SESSIONS OF
CAMBRIA COUNTY, PENNSYLVANIA

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

Filed - Dec 29, 1960

REPORT OF VIEWERS

*And now, 1 March 1961, no
exceptions having been filed
the within report is hereby
confirmed absolutely.*

*By the Court
Griffith
P.J.*

LEOPOLD J. WENDEKIER
Attorney-At-Law
PATTON, PENNSYLVANIA

MARVIN L. ESHELMAN and
CAROLEYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

:: IN THE COURT OF QUARTER SESSIONS
:: OF
:: CAMBRIA COUNTY, PENNSYLVANIA
::
::
::
::
::
:: No. 2 December Sessions, 1960,
:: Road Dkt.
::

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

The Board of View appointed by your Honorable Court to assess damages and benefits, if any, caused by the condemnation by the above respondent of certain real estate situate in Geistown Borough, Cambria County, Pennsylvania, for the purpose of relocating and improving a portion of Route No. A-1591-B, respectfully makes the following

REPORT

In pursuance of their appointment, the Board of View caused notice to be served upon all interested parties and their respective counsel that the Board would meet upon the premises at 3:00 o'clock P. M., E. S. T., on Wednesday, November 30, 1960, for the purpose of viewing the premises and hearing such parties as desired to be heard. Such notices were duly served by personal notice and by posting upon the premises more than ten (10) days prior to the date of said meeting.

By agreement of counsel, and with the consent of the Board, this meeting was continued until Thursday, December 15, 1960, at 2:00 o'clock P. M., E. S. T., and held as scheduled, whereupon the Board proceeded with the view of the premises. In attendance were Marvin L. Eshelman, one of the owners, Howard E. Breneman, district right-of-way engineer, and Jess Fridman, both of whom represented the Pennsylvania Department of Highways.

A meeting for the purpose of hearing the testimony of witnesses was scheduled for Thursday, December 22, 1960, at 2:00 o'clock P. M., E. S. T., in the Judges' Chambers, 409 U. S. National Bank Building, Johnstown, Pennsylvania. By agreement of the parties and their counsel, the place of this meeting was changed to the offices of Smorto and Creany, Attorneys at Law, Prave Building, Ebensburg, Pennsylvania, at the same hour.

This meeting was attended by Marvin L. Eshelman, one of the owners, Roger W. Hager, Esq., his counsel, A. E. Hower, real estate broker, Del. Comiskey, real estate broker, Paul D. Washington, real estate broker, Howard E. Breneman, district right-of-way engineer for the Pennsylvania Department of Highways, Jess Fridman, right-of-way employee of the Department, and Arnold D. Smorto, Esq., counsel for the Department.

Those persons who testified before the Board were Mr. Eshelman, Mr. Hower, Mr. Comiskey, Mr. Washington, and Mr. Breneman.

The witnesses were sworn, or affirmed, and testified for the benefit of the Board upon the matter before it.

From the evidence submitted to it, and from an examination and view of the premises and the locality, generally, the Board finds the following

FACTS

1. The premises condemned by the Commonwealth of Pennsylvania Department of Highways consists of a portion of the land of the owners, Marvin L. Eshelman and Carolyn E. Eshelman, husband and wife. The portion condemned has an area of 20,250 square feet, or slightly less than one-half acre, and is situate in Geistown Borough, Cambria County, Pennsylvania.

2. There were no buildings located upon the condemned land, although there were a number of fruit trees and shade trees growing upon the premises in question. In addition thereto, there was a flower garden and lawn on a portion of the condemned area.

3. The owners have been financially injured by the condemnation of said portion of their real estate.

4. The owners have received a benefit by the relocation and improvement of Route No. A-1591-B.

CONCLUSIONS OF LAW

No questions of law were raised in this proceeding for the Board's consideration.

CONCLUSION AND DISCUSSION

The Board of View reports that, after a full and impartial consideration of all the testimony and evidence submitted, and after a careful view of the premises, acting at all times according to the viewers' best judgment, it has estimated and determined that the damages sustained by the owners and occupants of said property by reason of the condemnation of a portion of the real estate for the purpose of relocating and improving a portion of Route No. A-1591-B are as follows:

Marvin L. Eshelman and Carolyn E. Eshelman---\$4,770.00

The award above set forth includes damages for detention from the date of the condemnation on December 1, 1959, to the present date.

One of the owners, Marvin L. Eshelman, appeared before the Board and testified in his own behalf. His testimony was confined, largely, to a description of the premises before and after the condemnation. He stated that because he was unfamiliar with real estate appraisal methods and real estate values, generally, that he had retained Mr. E. A. Hower to appraise his property and was willing to accept Mr. Hower's estimate of the

damages.

Mr. E. A. Hower, a realtor since 1913, was called to testify as to his estimate of the damages to the Eshelman property by reason of the condemnation. In his considered opinion, taking into account all relevant factors, the damages suffered by the property owners were \$5,845.00.

The district right-of-way engineer of the Department of Highways, Mr. Howard E. Breneman, was called for the purpose of establishing the date of the condemnation and the size and purpose of the taking.

The first real estate expert called on behalf of the Department of Highways was Mr. Dell Comiskey, a real estate broker in this area since 1920. In his opinion, Mr. and Mrs. Eshelman's property was damaged by the condemnation to the extent of \$3,000.00. Mr. Paul D. Washington, the other expert called on behalf of the Department, estimated the damages to the Eshelman property at \$4,060.00.

The Board found all of these gentlemen to be well qualified and is pleased to note that their testimony was of great assistance to it. This is, the Board is pleased to note, in contrast to the testimony offered by expert witnesses at many other views.

In making its award, the Board has taken into consideration any benefits accruing to the property by the relocation and improvement of Route No. A-1591-B, and the Board hereby assesses the damages as above awarded against the Commonwealth of Pennsylvania Department of Highways.

Respectfully submitted this 29th day of December, 1960.

BOARD OF VIEW

Leopold J. Wendekier
Leopold J. Wendekier, Chairman

John L. Elder
John L. Elder

Theodore W. Hunt
Theodore W. Hunt

MARVIN L. ESHELMAN and	::	IN THE COURT OF QUARTER SESSIONS
CAROLYN E. ESHELMAN, husband	::	OF
and wife,	::	CAMBRIA COUNTY, PENNSYLVANIA
	::	
vs.	::	
	::	
THE STATE HIGHWAY DEPARTMENT	::	No. 2 December Term, 1960, R. D.
OF THE COMMONWEALTH OF	::	
PENNSYLVANIA	::	

VIEWERS' NOTICE

We, the undersigned Viewers appointed by the above Court to view and inspect the land and premises owned by Marvin L. Eshelman and Carolyn E. Eshelman, husband and wife, of 324 Belmont Street, Geistown Borough, Cambria County, Pennsylvania, and to determine and estimate the damages or benefits that have resulted or that may seem likely to result to the land and property of the owners by reason of the condemnation by the above named defendant of certain real estate of Marvin L. Eshelman and Carolyn E. Eshelman, husband and wife, do hereby give notice that they will meet upon the premises on Wednesday, November 30, 1960, at 3:00 o'clock P.M., E. S. T., when and where all persons interested may appear if they so desire.

The premises to be viewed are:

ALL that certain realty situate in Geistown Borough, Cambria County, Pennsylvania, bounded and described as follows:

No. 1. Starting at a point on the northerly side of Belmont Street which is the Easterly corner of Plot No. 23, as shown on the Suburban Realty Company Plan of Lots, Purparts Hilltop Section, as made by the Fetterman Engineering Company and dated November 6, 1929, and of record in the Office of the Recorder of Deeds in and for Cambria County in Plat Book Volume 3, at page 69; thence North 80 degrees 18 minutes West along Belmont Street a distance of 100 feet, thence by an arc curving to the left whose radius is 212 feet a distance of 14.19 feet along said street to a point and corner of said piece of ground, thence North 26 degrees no minutes West a distance of 236 feet to a point and corner of said piece of ground, thence North 70 degrees 10 minutes East a distance of 206.91 feet, more or less, to a corner of said piece of ground on Park Way, thence along Park Way, South 47 degrees 02 minutes East a distance of 342.69 feet, more or less, to a corner of said piece of ground

at the intersection of Belmont Street and Park Way, thence along Belmont Street South 64 degrees no minutes West a distance of 112.0 feet, more or less, to a stake, thence by an arc curving to the right, whose radius is 212 feet a distance of 132.09 feet to the point of beginning.

No. 2. Starting at a point 240.45 feet northeast of a post in common with Lots No. 22 and 23 on the northerly side of Belmont Street, thence North 26 degrees 0 minutes West 216.96 feet to a point in common with lands of Zitella Wertz, thence North 70 degrees 10 minutes East a distance of 60.35 feet to a point, thence South 26 degrees 0 minutes East a distance of 236 feet to a point on Belmont Street, thence in a Northwesterly direction on a curved line with a radius of 212 feet a distance of 65.55 feet along Belmont Street to the point of beginning.

Loyd M. Wendell
John Elder
Theodore W. Hunt

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

IN THE COURT OF QUARTER SESSIONS
OF
CAMBRIA COUNTY, PENNSYLVANIA

No. 2 December Term, 1960, R. D.

VIEWERS' NOTICE OF HEARING

The Board of View appointed by the Court to view the premises and make a determination of the damages, if any, to property of the above owner, more particularly described in the Notice of View, has set, as the time and place for a hearing where all interested parties may appear and be heard, 2:00 o'clock, P. M., E. S. T., on Thursday, December 22, 1960, in the Judges' Chambers, 409 U. S. Bank Building, Johnstown, Pennsylvania.

All parties should be present with their witnesses to present evidence for the assistance of the Board at that time.

Board of View

by Leopold J. Wender
Chairman

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

:: IN THE COURT OF QUARTER SESSIONS
:: OF
:: CAMBRIA COUNTY, PENNSYLVANIA
::
::
:: No. 2 December Sessions, 1960,
:: Road Dkt.
::

SCHEDULE OF AWARD

From the evidence submitted to it and the view of the premises affected by the condemnation by the above respondent of a portion of certain real estate, the Board of View finds the damages sustained by the owners and occupants in this proceeding as follows:

Marvin L. Eshelman and Carolyn E. Eshelman---\$4,770.00

The award above set forth includes damages for delay in payment from the date of the condemnation on December 1, 1959, to the present date.

The Board of View has taken into consideration any benefits accruing to the property affected and hereby assess the damages as above awarded against the Commonwealth of Pennsylvania Department of Highways.

BOARD OF VIEW

Leopold J. Wendekier
Leopold J. Wendekier, Chairman

John L. Elder
John L. Elder

Theodore W. Hunt
Theodore W. Hunt

MARVIN L. ESHELMAN and
CAROLYN E. ESHELMAN, husband
and wife,

vs.

THE STATE HIGHWAY DEPARTMENT
OF THE COMMONWEALTH OF
PENNSYLVANIA

IN THE COURT OF QUARTER SESSIONS
OF
CAMBRIA COUNTY, PENNSYLVANIA

No. 2 December Term, 1960, R. O.

VIEWERS' NOTICE

We, the undersigned Viewers appointed by the above Court to view and inspect the land and premises owned by Marvin L. Eshelman and Carolyn E. Eshelman, husband and wife, of 324 Belmont Street, Geistown Borough, Cambria County, Pennsylvania, and to determine and estimate the damages or benefits that have resulted or that may seem likely to result to the land and property of the owners by reason of the condemnation by the above named defendant of certain real estate of Marvin L. Eshelman and Carolyn E. Eshelman, husband and wife, do hereby give notice that they will meet upon the premises on Wednesday, November 30, 1960, at 2:00 o'clock P.M., E. S. T., when and where all persons interested may appear if they so desire.

The premises to be viewed are:

All that certain realty situate in Geistown Borough, Cambria County, Pennsylvania, bounded and described as follows:

No. 1. Starting at a point on the northerly side of Belmont Street which is the Easterly corner of Plot No. 28, as shown on the Suburban Realty Company Plan of Lots, Purparts Hilltop Section, as made by the Fetterman Engineering Company and dated November 8, 1929, and of record in the office of the Recorder of Deeds in and for Cambria County in Plat Book Volume 3, at page 69; thence North 80 degrees 18 Minutes West along Belmont Street a distance of 100 feet, thence by an arc curving to the left whose radius is 212 feet a distance of 14.19 feet along said street to a point and corner of said piece of ground, thence North 26 degrees no minutes West a distance of 236 feet to a point and corner of said piece of ground, thence North 70 degrees 10 minutes East a distance of 206.91 feet, more or less, to a corner of said piece of ground on Park Way, thence along Park Way South 47 degrees 02 minutes East a distance of 342.69 feet, more or less, to a corner of said piece of ground

at the intersection of Belmont Street and Park Way, thence along Belmont Street South 64 degrees no minutes West a distance of 112.0 feet, more or less, to a stake, thence by an arc curving to the right, whose radius is 212 feet a distance of 182.09 feet to the point of beginning.

No. 2. Starting at a point 240.45 feet northeast of a post in common with Lots No. 22 and 29 on the northerly side of Belmont Street, thence North 26 degrees 0 minutes West 216.96 feet to a point in common with lands of Zitella Nertz, thence North 70 degrees 10 minutes East a distance of 60.88 feet to a point, thence South 26 degrees 0 minutes East a distance of 236 feet to a point on Belmont Street, thence in a Northwesterly direction on a curved line with a radius of 212 feet a distance of 65.55 feet along Belmont Street to the point of beginning.

/s/ Leopold J. Wendekier

John L. Elder

/s/ ~~Raymond M. Wiesauer~~

Theodore W. Hunt

/s/ ~~T. L. Lacher~~