

COMMONWEALTH OF PENNSYLVANIA, :: IN THE COURT OF QUARTER SESSIONS  
Plaintiff ::  
vs. :: OF  
:: CAMBRIA COUNTY, PENNSYLVANIA  
PAUL F. BOVIN, JOHN BOVIN, ::  
and GERTRUDE BOVIN, ::  
Defendants :: No. 4 December Sessions, 1962,  
R. D.

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

On October 11, 1962, the Court, after consideration of a petition presented for that purpose of Paul F. Bovin, John Bovin, and Gertrude Bovin, appointed Leopold J. Wendekier, John L. Elder and Raymond M. Niebauer as a Board of Viewers to assess the damages and benefits, if any, caused by the condemnation by the Commonwealth of Pennsylvania, Department of Highways of a portion of certain real estate owned by the petitioners in Allegheny Township, Cambria County, Pennsylvania, for the purpose of improving a portion of Route No. 53, said real estate being more particularly described in the Notice of View, a copy of which is hereto attached, respectfully makes the following

#### REPORT

In pursuance of their appointment, the Board caused notice to be served upon all interested parties that the Board would meet upon the premises on Friday, November 9, 1962, at 9:00 o'clock, A.M., e.s.t., for the purpose of viewing the premises and hearing such parties as desired to be heard. Such notices were duly served by personal service and by posting upon the premises more than ten (10) days prior to the date of said meeting.

On the day appointed, the Board, having previously been duly sworn, proceeded to view the premises. In attendance were Mr. Paul F. Bovin, one of the owners, G. Harry Isaacson, Esq., counsel for the landowners, Mr. Howard E. Breneman, District Right-of-Way Engineer, Mr. Jess Fridman, Highway Department employee, Mr. Paul D. Washington, Highway Department appraiser, and Edward F. Peduzzi, Esq., counsel for the Department.

A meeting for the purpose of hearing the testimony of witnesses was scheduled for Monday, December 17, 1962, at 9:30 o'clock, A.M., e.s.t., in Courtroom No. 4, Cambria County Courthouse, Ebensburg, Pennsylvania. At the request of counsel for the condemnor and for good cause shown, the meeting was re-scheduled for Tuesday, December 18, 1962, at the same place and time.

The meeting was held as scheduled and was attended by Mr. Paul F. Bovin, one of the landowners, G. Harry Isaacson, Esq., counsel for the landowners, Mr. Wallace E. Williams, Howard E. Breneman, District Right-of-Way Engineer for the Highway Department, Mr. Jess M. Fridman, Highway Department employee, Mr. Paul D. Washington and Edward F. Peduzzi, Esq., counsel for the Highway Department.

Those who testified for the benefit of the Board were Mr. Paul F. Bovin, Mr. Williams, Mr. Washington and Mr. Breneman. All the witnesses were sworn prior to testifying.

From the evidence submitted to it, and from an examination and view of the premises, as well as of 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 property owners. The portion condemned has an area of 0.462 acres, and is entirely situate in Allegheny Township, Cambria County, Pennsylvania.
2. There is erected on this land a seven-room, 2-story frame dwelling, and separate frame outbuildings.
3. The owners have been financially injured by the condemnation of said real estate.

#### CONCLUSIONS OF LAW

1. The parties are properly in Court and this Court has jurisdiction of the matter at hand.

2. Paul F. Bovin , John Bovin and Gertrude Bovin are the owners of the property affected by the condemnation and are the persons entitled to compensation for damages arising by virtue of the condemnation.

3. The property owners are entitled to detention damages because of the failure of the Commonwealth to sustain its burden of showing that the property owners' demand for payment was excessive or unreasonable.

#### CONCLUSION AND DISCUSSION

The Board of View appointed by the Court for that purpose reports that, after a full and impartial consideration of all the 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 of the property herein involved by the improvement and relocation of a portion of Route No. 53 are as follows:

Paul F. Bovin, John Bovin and Gertrude Bovin. . . . .	\$5,000.00
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It is the opinion of the viewers that a review of the testimony is unnecessary because of the fact that this matter was reported by an official court stenographer. Reference to the notes of testimony attached hereto would indicate that this is a routine condemnation proceeding in which the property owners alleged damages in the amount of \$9,000.00.

Their expert witness, Mr. Wallace E. Williams, a Johnstown realtor for many years, stated that, in his opinion, the damages suffered by property owners by virtue of the condemnation was \$7,500.00.

Mr. Howard E. Breneman, District Right-of-Way Engineer for the Pennsylvania Department of Highways, testified that the property was condemned on April 14, 1961, that an offer of settlement was made on June 13, 1961, and a partial settlement offered

on June 20, 1961. Both offers were refused. He also stated that approximately 0.462 acres of this property had been condemned.

The expert witness for the Commonwealth, Mr. Paul D. Washington, a Cresson realtor, testified that, in his opinion, the damages suffered by the property owners were \$3,280.00.

At the conclusion of the testimony, counsel for the property owners requested detention damages. The Board feels that it is not able at this time to rule on the question of whether detention damages should be paid, inasmuch as no evidence was presented by either side which would permit the Board to finally determine this question.

Ordinarily, detention damages, not to exceed the legal rate of interest, may be awarded for delay in payment of the damages due. However, the Legislature has seen fit to modify this rule by permitting a condemnor to pay up to 75% of the damages as determined by an appraiser to avoid payment of excessive detention damages. In this instance, the offer was refused.

Likewise, no detention damages can be paid if the property owners' demand for compensation is clearly unreasonable. "An exorbitant and unreasonable demand by an owner as the price for property condemned can be sufficient to warrant the jury in denying him damages for delay in payment for the value of the property taken." *Springer v. County of Allegheny*, 401 Pa. 557, 165 A. 2d 383 (1960).

There being no evidence adduced at the hearing relative to the reasonableness or unreasonableness of the property owners' demand, the Board is of the opinion that detention damages should be awarded at this time and has included such damages in its award.

There being no further testimony or evidence offered, the hearing was concluded.

The power of eminent domain is the power to take property for public use without the owner's consent, City of Philadelphia

v. Philadelphia Suburban Water Company, 309 Pa. 130, 163 Atl. 297 (1933); Briegel v. Briegel, 307 Pa. 93, 160 Atl. 581 (1932).

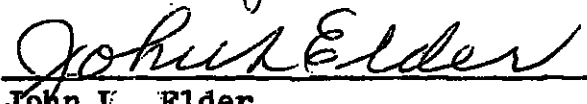
Section 10 of Article 1 of the Constitution of Pennsylvania guarantees that private property should not be taken or applied to public use without authority of law and without just compensation being first made or secured.

The owner of the land at the time of the taking is the person entitled to damages for condemnation, Petition of Lakewood Memorial Gardens, 381 Pa. 46, 112 A. 2d 135 (1953); Petition of Butler County Commissioners, 141 Pa. Super. 597, 15 A. 2d 504 (1940).

Respectfully submitted this 22nd day of January, 1963.

BOARD OF VIEW

  
Leopold J. Wendekier, Chairman

  
John L. Elder

  
Raymond M. Niebauer

COMMONWEALTH OF PENNSYLVANIA, :: IN THE COURT OF QUARTER SESSIONS  
 Plaintiff ::  
 vs. :: OF  
 :: CAMBRIA COUNTY, PENNSYLVANIA  
 ::  
 PAUL F. BOVIN, JOHN BOVIN, ::  
 and GERTRUDE BOVIN, ::  
 Defendants :: No. 4 December Sessions, 1962,  
 R. D.

SCHEDULE OF AWARD

From the evidence submitted and the view of the premises affected by the condemnation by the Commonwealth of Pennsylvania, the Board of View finds the damages sustained by the owners in this proceeding as follows:

Paul F. Bovin, John Bovin, and  
 Gertrude Bovin. . . . . \$5,000.00

The award above set forth includes damages for delay in payment.

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

BOARD OF VIEW

Leopold J. Wendekier  
 Leopold J. Wendekier, Chairman

John L. Elder  
 John L. Elder

Raymond M. Niebauer  
 Raymond M. Niebauer

COMMONWEALTH OF PENNSYLVANIA :: IN THE COURT OF QUARTER SESSIONS  
::  
:: OF  
vs. ::  
:: CAMBRIA COUNTY, PENNSYLVANIA  
::  
PAUL F. BOVIN, JOHN BOVIN, ::  
and GERTRUDE BOVIN :: No. 4 December Sessions, 1962, R.D.

VIEWERS' NOTICE

We, the undersigned Viewers appointed by the above Court to view and inspect the land and premises owned by Paul F. Bovin, John Bovin, and Gertrude Bovin, of R. D. #1, (Allegheny Township), Ebensburg, 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 or property of said owners by reason of the condemnation by the Commonwealth of Pennsylvania Department of Highways, of a portion of said real estate of Paul F. Bovin, John Bovin, and Gertrude Bovin, do hereby give notice that they will meet upon the premises on Friday, November 9, 1962, at 9:00 o'clock A.M., e.s.t., when and where all persons interested may appear if they so desire.

The premises to be viewed are:

ALL those certain pieces or parcels of land, with the buildings and improvements erected thereon, situate in Allegheny Township, Cambria County, Pennsylvania, bounded and described as follows:

No. 1. Beginning at a post corner in the middle of the road leading from Ebensburg to Loretto; thence by land, now or formerly, of John Bannan North  $10^{\circ} 15'$  East 789 feet to a corner in the middle of the road leading to Bucks Mill; thence along said road South  $75^{\circ} 15'$  East 742 feet to a corner in the middle of the public road; thence by land, now or formerly, of Joseph A. McMullen South  $20^{\circ} 30'$  West 440 feet to a post corner; thence by said land, now or formerly, of John A. McMullen South  $86^{\circ}$  East 536 feet to a corner in the middle of the road; thence along said road South  $2\frac{1}{2}^{\circ}$  West 313 feet to a corner in the middle of the road leading from Loretto to Ebensburg; thence along said road North  $87^{\circ}$  West 536 feet; thence along said road North  $77\frac{1}{2}^{\circ}$  West 840 feet to the place of beginning. Containing 18 acres and 17 perches according to survey and draft made by J. A. Shoemaker.

No. 2. Beginning at a corner of land formerly of Michael Bovin on Township Road; thence West 32 perches to a post on said land formerly of Michael Bovin; thence North  $26 \frac{5}{8}$

perches to the center of road; thence East along the center of road 32 perches to the center of road running South between land, now or formerly, of Jos. A. McMullens and land, now or formerly, of Annie and Mary McMullen; thence South in center of said road 21 1/5 perches to the place of beginning. Containing 4 acres and 126 perches.

No. 3. Beginning at a post at the intersection of the Ebensburg and Loretto Road with the road leading from Ebensburg Junction to Bucks Mills; thence by said Bucks Mills Road and land, now or formerly, of Joseph McMullen Estate, North 5° 45' East 813 feet to a post; thence by land of said Estate South 85° East, 760 feet to a post in line of right of way of the Cambria and Clearfield Branch of the Pennsylvania Railroad; thence by said right-of-way the following eight courses and distances: South 8° West 129 feet to a post; North 82° 15' West 40 feet to a post; South 12° 30' West 130 feet to a post; South 18° 30' West, 140 feet to a post; South 25° 30' West, 120 feet to a post; South 33° 45' West, 133 feet to a post; South 40° West, 130 feet to a post and South 41° 30' West 130 feet to center of Ebensburg and Loretto Road; thence along center of said road, North 82° 30' West, 424 feet to a point of intersection of roads; the place of beginning, containing 12 acres and 13 perches.

BOARD OF VIEW

*Leopold J. Wendekier*  
Leopold J. Wendekier, Chairman

*John L. Elder*  
John L. Elder

*Raymond M. Niebauer*  
Raymond M. Niebauer

COMMONWEALTH OF PENNSYLVANIA    :: IN THE COURT OF QUARTER SESSIONS  
  ::  
  ::: OF  
  ::  
  ::: CAMBRIA COUNTY, PENNSYLVANIA  
  ::  
  ::: No. 4 December Sessions, 1962

vs.

PAUL F. BOVIN, JOHN BOVIN,  
and GERTRUDE BOVIN

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 the property of the above owners, 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, 9:30 o'clock, A.M., e.s.t., on Monday, December 17, 1962, in Courtroom No. 4, Cambria County Courthouse, Ebensburg, Pennsylvania.

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

BOARD OF VIEW

By Leopold J. Wendler  
Chairman

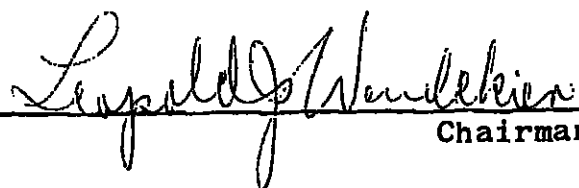
COMMONWEALTH OF PENNSYLVANIA,	::	IN THE COURT OF QUARTER SESSIONS
Plaintiff	::	
	::	OF
vs.	::	
	::	CAMBRIA COUNTY, PENNSYLVANIA
	::	
PAUL F. BOVIN, JOHN BOVIN,	::	
and GERTRUDE BOVIN,	::	
Defendants	::	No. 4 December Sessions, 1962, R. D.

VIEWERS' NOTICE

The Board of View appointed by the Court to determine the damages and benefits, if any, caused by the condemnation by the above named plaintiff of certain real estate of the defendants hereby gives notice that the Board, after due deliberation, and considering all the evidence placed before it after a view of the premises, has prepared a Schedule of Award which will be exhibited to all interested parties on Monday, January 21, 1963, at 1:30 o'clock, P.M., e.s.t., in Courtroom No. 4, Cambria County Court-house, Ebensburg, Pennsylvania.

The Board will hear any and all objections to the award at that time.

BOARD OF VIEW

  
 Chairman

COMMONWEALTH OF PENNSYLVANIA, :: IN THE COURT OF QUARTER SESSIONS  
Plaintiff ::  
vs. :: OF  
PAUL F. BOVIN, JOHN BOVIN, :: CAMBRIA COUNTY, PENNSYLVANIA  
and GERTRUDE BOVIN, ::  
Defendants :: No. 4 December Sessions, 1962,  
R. D.

VIEWERS' NOTICE

The Board of View appointed by the Court to determine the damages and benefits, if any, caused by the condemnation by the above named plaintiff of certain real estate of the defendants hereby gives notice that the Board will file its Report with the Prothonotary of said Court on Tuesday, January 22, 1963. The Report will thereupon become a part of the record in this proceeding.

BOARD OF VIEW

Luzolij Wandeleien  
Chairman

COMMONWEALTH OF PENNSYLVANIA

VS.

PAUL F. BOVIN, JOHN BOVIN AND  
GERTRUDE BOVIN

: IN THE COURT OF QUARTER SESSIONS  
: OF CAMBRIA COUNTY, PA.

:  
: NO. 4 DECEMBER SESSIONS, 1962,  
: ROAD DOCKET

:  
: CONDEMNATION

Court Room No. 4  
Court House  
Ebensburg, Pennsylvania  
December 17, 1962.

BEFORE THE BOARD OF VIEWERS,

LEOPOLE J. WENDEKIER, ESQ.,  
Chairman  
JOHN L. ELDER  
Member  
RAYMOND M. NIEBAUER  
Member

APPEARANCES:

EDWARD J. PEDUZZI, ESQ., appeared for the Commonwealth  
of Pennsylvania, Plaintiff.

G. HARRY ISAACSON, ESQ. appeared for the Defendants,  
Claimants.

PAUL F. BOVIN, Called, Sworn.

DIRECT EXAMINATION BY MR. ISAACSON:

Q. Will you state your name and address, please?

A. My name is Paul F. Bovin, R.D. 1, Ebensburg, Pennsylvania, Box 277.

Q. Mr. Bovin, do you live in Allegheny Township?

A. I do.

Q. Are you the owner of real estate in Allegheny Township?

A. Yes, sir.

Q. Do you own real estate there together with your brother, John Bovin, and your sister, Gertrude Bovin?

A. I do.

Q. And was this real estate purchased by you and your brother and sister, or did you inherit it?

A. We inherited it.

Q. Who did you inherit it from?

A. From my father.

Q. And is this the real estate that you are in court here today in regard to?

A. That's right.

Q. And how many acres are there?

A. Thirty five, more or less.

Q. You own other land near there also, do you not?

A. Yes, sir, my sister and I own twenty acres.

Q. Which is adjoining this thirty five acres?

A. No, sir.

Q. Does your brother own any land?

A. My brother and his wife own approximately sixty five acres.

Q. Is that adjoining to this land?

A. It is.

Q. Now, on April 14th, 1961, was a portion of this land

taken by the Commonwealth of Pennsylvania?

A. Yes sir.

Q. For the purpose of a highway?

A. Yes, sir.

Q. What all is located upon this thirty five acre tract of land?

A. You mean buildings?

Q. Buildings.

A. Well, we have our house, we have a large garage, a silo, a large barn, a large chicken house, a brooder house, a milk house, and a granary.

Q. And what have you been using this land for primarily up to this point?

A. We have been using it for crop land.

Q. For farming?

A. Part of it, that's right.

Q. Is this good farming land?

A. It's the best, one of the best in the county.

Q. Do you have any trees on this land?

A. We have very little woodland, very little woodland, other than what trees were taken by the state there in front of the house, shrubbery and fruit trees. Other than that, very little.

Q. Did you have any ornamental trees taken?

A. Pine trees.

Q. Do you know approximately how many trees were taken by the state?

A. On the east corner there was a large pine, there were three oak and maple trees that measured approximately twelve to, ten to twelve inches in diameter, I would say, and on the west side of the house sixty seven pine and an apple tree and a cherry tree.

Q. And they were all removed by the state?

A. That's right.

Q. Now, where is this property situated?

A. It's situated about a mile west of Loretto.

Q. On what route?

A. Route 53.

Q. Is it near any legislative route?

A. Yes, it is.

Q. What legislative route is it near?

A. I don't know what number, what they call it.

Q. Is there a township road there?

A. Yes, a township road, and the state on the opposite side.

Q. Is that 11031 on the opposite side?

A. I'm not sure.

BY MR. ISAACSON: That's what it is. I think we can stipulate to that.

A. I couldn't say. I'm not sure.

Q. That highway goes to where?

A. To Munster, out to Route 22.

Q. And the township road goes to where?

A. Well, it leads off to Route 53 and also down to Bradley Junction, the Old Carrolltown Road.

Q. Now, does this township road intersect your land?

A. It does.

Q. Is that near your house?

A. That's right.

Q. Now, all these buildings that you testified to, are they all near each other?

A. They are.

Q. How far, approximately, was the house from the highway prior to the taking?

A. From the center of the road to the house was around

twenty six feet, from the porch.

Q. How far from the edge of the highway?

A. From the edge of the highway it . . . . .

Q. The edge of the right-of-way, let us say.

A. Now or then?

Q. Then.

A. Well, it was about eighteen, seventeen.

Q. Seventeen or eighteen feet?

A. Seventeen, I guess.

Q. Now how far is the house since the taking, how far is the house from the edge of the highway?

A. Fifteen feet.

Q. From the edge of the roadway?

A. From the edge of the roadway.

Q. But how far is it from the edge of the right-of-way?

How far is your house now . . . . .

A. Within a foot.

Q. Within one foot?

A. Within one foot.

Q. Is this hilly ground or sloping ground or what?

A. It is -- some of it is rolling ground and some of it is level. The one part of the twelve acre field that there's some property damage, it's practically level, other than about three quarters of an acre of it.

Q. Which side?

A. That's next to the bridge, the east end of the house.

Q. East end of the house is practically level?

A. There's twelve acres and some perches in that field.

And the other land, four acres that's farmed, and there's seventeen or eighteen acres that we use for grazing, and due to the government allowing an allotment now for wheat we put out

we have to spend money in fertilizing and top dressing it and keeping it ground up for pasture land, grazing land. It has been good grazing land. In fact we have never had to feed our cattle during the summer because that pasture land was always sufficient. And our other crop land is, as I said before, is the best, one of the best farms in the county, that's including the county home.

Q. Now, prior to the taking was the -- was it level or hilly ground between the highway and the house?

A. It was level.

Q. And what was the ground like on the east end, was that -- did that adjoin or abut the highway?

A. It butted right on the highway before.

Q. And was it -- was there a hill or anything or was it straight across from the highway?

A. It was straight across.

Q. And down below what was it like, on the west side?

A. On the west side it was -- from the beginning of the house at the intersection there it was level, the lawn was level with the road, or the shoulder, and farther west there was a slight bank on the extreme west end.

Q. Now, do you have any trees, did you have any trees directly in front of the house?

A. We did. We had a pine tree here on the corner and a maple tree here and a maple tree here and a maple tree back here.

Q. When you say a maple tree, you will have to differentiate, where is here?

A. Well, on the south side of the house on the front, right next to the highway, right along the highway.

Q. And where were the other maple trees?

A. Three maple trees right across, alongside of the highway, in front of the house.

Q. Are those trees there now or have they been removed?

A. They have been removed along with pines on the west side of the house have been removed.

Q. Were they near the house also, the pines?

A. They were. This is a fruit tree here.

Q. What kind of a fruit tree?

A. It's a cherry tree -- or a pear tree, rather.

Q. That has been removed?

A. Yes.

Q. Are there any other fruit trees?

A. Well, there was an apple tree there.

Q. Was there a cherry tree?

A. No. I may have said cherry tree, but I meant to say pear tree.

Q. Now, did the land on the west side of the house adjoin the highway?

A. That's right.

Q. And was it comparatively level across from the highway to the land, or was it a slight . . . . .

A. More so than what it is now, more so now, on the extreme west end where they ended their work on the road. There was a bank there but not so much as there is now.

Q. Now, what is the age of the house that was on the property?

A. The house was around sixty three years old, a plank house, well constructed, and has been well taken care of.

Q. It has been kept in good repair?

A. Yes, sir.

Q. And how many rooms are there on the first floor?

A. There are three rooms and an annex and a pantry and a sun porch.

Q. Are they fairly good sized rooms?

A. Yes, sir, they are, they're large rooms.

Q. How many rooms are there on the second floor?

A. Well, there are three bedrooms and a bathroom on the second floor.

Q. Do you have anything on the third floor?

A. Well, there's an attic, attic space. It isn't finished or anything.

Q. Is the floor finished?

A. Oh, yes, the floor is finished.

Q. Do you have a basement?

A. Yes, sir.

Q. How large is the basement?

A. Underneath the whole house; the basement is underneath the entire house.

Q. Is it completed?

A. Yes, sir.

Q. Are there rooms in the basement or just one big room?

A. Rooms.

Q. What do you use those rooms for?

A. One we use for washing, the other for canned goods, a cupboard there that we had built for canned goods, and the other part is for the furnace, for the coal bin.

Q. What kind of heat do you have in this place?

A. We have hot air.

Q. Do you have your own water or city water?

A. We have our own water.

Q. Do you have a well upon the premises?

A. Yes, sir.

Q. Do you have a pump?

A. We have an electric pump.

Q. Does this well adequately supply your house with water?

A. Yes, sir.

Q. Does it also supply the barn?

A. Everything.

Q. Enough/<sup>water</sup>for the cattle to drink?

A. Yes, sir.

Q. How many cattle do you have, approximately?

A. Twenty two head.

Q. And how many chickens do you usually have?

A. Anywhere from four hundred to five hundred.

Q. And how many pigs or sows do you have?

A. How many what?

Q. How many pigs?

A. Well, we don't have any.

Q. Do you have any horses?

A. Not now.

Q. Do you use machinery on your farm?

A. Yes, sir, the latest type of equipment.

Q. Now, the barn, is this of frame construction?

A. Yes, sir.

Q. And what is the size of the barn, if you know?

A. Forty four by fifty -- fifty by forty four and approximately forty eight to fifty feet high.

Q. What do you use the basement of this barn for?

A. For the cattle.

Q. Do you keep the cattle in there?

A. Yes, sir.

Q. What do you use the first floor for?

A. Well, for -- part of it for granary and the storage of crops.

Q. Now, do you have a third floor, or I mean a second floor?

A. There's the mows, from the barn floor up as high as the roof, and as far as the barn floor, there's an overhead there,

in which we -- we used to put grain, that's grain that's hauled in from the field. Now we use it for straw or hay or anything at all, baled hay or baled straw.

Q. Is the basement concrete?

A. Yes, sir.

Q. You say you keep cattle there?

A. Yes, sir.

Q. Do you have drinking cups for them?

A. Yes.

Q. Stanchions?

A. Yes, sir.

Q. Do you have box stalls?

A. There are two sections there, sixteen by sixteen, that we keep young cattle in and we have two small box stalls for fresh cows.

Q. Where do you store your farm machinery?

A. We have a regular machine shed and part of it is stored right in the one side of the bottom part there.

Q. Is the machine shed right near the barn?

A. Part of it, yes.

Q. Do you have a milkhouse?

A. Yes, sir.

Q. Where is the milkhouse located?

A. It's right next to the barn.

Q. How large is the milkhouse?

A. It's about thirteen and a half by thirteen and a half, ten feet high. It's concrete block constructed.

Q. Hot and cold water?

A. Yes, sir.

Q. Electricity?

A. Yes, sir.

Q. Drains?

A. Right.

Q. How old is the milkhouse?

A. The milkhouse is -- I can't say exactly for sure, I don't say more than nine years old.

Q. And how old is the barn, approximately?

A. The barn? It's the second barn. We had one burn in July of 1929. We had another barn erected in the fall, that summer when the harvest was on, and then in February that barn burned down. The barn up there now is, let's see, 1930, I believe, so it would be about thirty two years old.

Q. Now, do you have a silo?

A. Yes, sir.

Q. What is the size of the silo?

A. Twelve by thirty, thirty two.

Q. Is that near the barn?

A. Yes, sir, right alongside of the barn. It's a Marietta silo, it's concrete slab, as good as the day it was put up.

Q. Do you have a brooder house?

A. I have a brooder house, also a chicken house.

Q. Can you give us the construction of the brooder house?

A. Well, it's a, counting two stories, the first floor is where we keep the brooder and the peeps, and down underneath there's more or less of a little storage place.

Q. Is it frame or concrete?

A. Well, it's a concrete, the base of it is concrete, and the rest of it is frame.

Q. Can you give us the size of it?

A. It's about twelve by fifteen, I would say.

Q. And the length?

A. Well, it's about fifteen feet one way and twelve feet the other way. The exact dimensions of it I don't know.

Q. Do you have a poultry house? How many poultry houses

do you have?

A. Well, we have one, an "L" shaped building.

Q. Where is that situate?

A. It's right close to the barn.

Q. Of what construction is it, concrete?

A. It's a concrete wall and frame constructed.

Q. Can you give us the dimensions of that?

A. Not exactly.

Q. Is it over a hundred feet long?

A. Yes, it's, I would say a hundred and twenty eight feet, something like that.

Q. Now, your garage, is that of frame construction?

A. Yes, sir.

Q. Covered with asbestos shingles?

A. Yes, sir.

Q. Is it cemented inside?

A. Yes, sir.

Q. Sliding doors?

A. Yes, sir. The doors, ~~onttrackd~~. The doors are on track.

Q. Is it a one or two car garage?

A. A two car garage and tractor and also in the south end of the garage there's a room there that we use for -- we have a deep freeze there and a place where we handle eggs and pack eggs.

Q. And how far is the garage from the house, rear of the house?

A. Well, it's not more than ten or twelve feet. It isn't quite that much.

Q. And how far is the chicken house from the house?

A. The brooder house, I would say, is about seventy five feet.

Q. And how far is the barn from the house?

A. The barn from the house is about three hundred feet.

Q. Would it be possible to move the house back?

A. No, no. The insurance company won't permit it.

Q. Besides, you<sup>would</sup> have to eliminate the grass and some of the buildings?

A. That's right.

Q. How long has your family lived on this farm?

A. All of our lives.

Q. Your father lived there before? You children were born there, is that correct?

A. That's right, we were born there.

Q. Now, since the taking, what is the condition of the eastern part of the land, that is, the land beginning at the railroad right-of-way running to the township road? Is that depressed or is it raised or is it level or what?

A. It's raised ten feet, ten feet fill put in there.

Q. And is there a drop then from the highway down to your land of about ten feet?

A. That's right.

Q. And at the railroad, at the railroad boundary line?

A. That's right.

Q. Now, does this drop get less and less as you get closer to the township road?

A. Yes.

Q. Until it finally becomes level?

A. Level.

Q. And on the other side of the house, that is the side, the western side, what is the condition of the roadway to the land? Is it higher or lower or what?

A. Well, from the house, the house sets up, there's a bank there and as it leads on westward there's a hill, grade, the road is raised.

Q. Is the western boundary -- starting at the western boundary; is that higher, that is, the roadway higher than the land

A. It is, yes.

Q. Do you have any idea about how much?

A. Oh, I'd say four feet.

Q. Is that as the road runs toward the house?

A. It won't level off -- it doesn't level off.

Q. It doesn't level off?

A. No.

Q. Now, in front of your house was the grade of the roadway raised or lowered?

A. It was lowered.

Q. About how, or what is the depth of the, or the approximate depth of the roadway, the bottom of the roadway, or right-of-way, rather, let us say, the edge of the right-of-way, from your ground right in front of your house?

A. Well, right in front of where we had our front entrance there I would say it is approximately two feet, nine inches there, and on the eastern part, right next to the township road, where the lawn started, I would say it's around three feet, it starts at three feet and tapers out.

Q. About three feet drop?

A. It's about two feet, nine inches from the front door.

Q. You say that the right-of-way is within one foot of the front of your house?

A. Yes, sir.

Q. Is there a slope there or immediate drop?

A. There's a slope, a slope that I was told beforehand that would have started approximately seven feet from the porch, but the slope starts at two and a half feet.

Q. And does it drop quickly or how?

A. It drops quickly on the berm, or the shoulder.

Q. Do you have an access to the front door of your house any more?

A. No, sir.

Q. What is the access to your house since the taking?

A. The side entrance from the township road.

Q. Was there a drop in the township road?

A. Yes, sir, from the garage they cut back sixty one feet and there's a slope from the garage on out to the highway, and there's approximately a three foot cut there.

Q. A three foot cut?

A. It runs on out to zero there by the garage, center of the garage.

Q. Now, I show you Petitioner's Exhibit No. 1 and ask you to state what it is, or what it represents?

A. That represents our home and the trees there before the construction of the new highway was completed..

Q. Before the taking?

A. Yes.

Q. Were these shade trees?

A. Yes, sir.

Q. Did they give you a lot of shade?

A. Yes, sir.

Q. Do you have any shade at the present time?

A. Not only shade but protection, they gave us protection which we don't have today.

Q. When you say protection, what do you mean?

A. Safety, protected the automobiles from coming into the house. Those trees have been hit by cars and they protect us, but today we have no protection.

Q. Do you have any shade today?

A. No, no, shade and the sunporch, we don't have the comfort

Q. Is it warm or cold?

A. Well, it's hot, like a bake oven in the summer time; and the west side of the house here, due to this ditch, the only entrance we have to get the coal, we cannot get in there now.

We haven't any entrance at all. They did not provide us with an entrance to get coal in there.

Q. And is that the way you put your coal in there before?

A. That's right.

Q. You could drive right off the highway to the window where you put the coal in, into the basement?

A. That's correct.

Q. But now you cannot do that any more?

A. No, sir. Another thing, since we have this picture, the garage is north here and they cut back sixty one feet and the road, the township road, slopes down to the new highway, and right where the township road and the new road meet there was average water gutters, where the old road they had a wing there, a concrete wing, and it made it level to come out, in fact both ends of the road was level, and the water gathers back of the garage in place of it running east it gathers and it runs west, and it's like a creek there when it rains. In a heavy rain there's an awful amount of water and it washes this shoulder, this black shale, cinder or whatever they have, off the shoulder back on the lawn on the west side of the house, and eventually it is going to be cutting a gutter through there.

Q. You mean through your land?

A. It will cut a gutter right here in front and it is cutting gutters in this shoulder, washing this stuff out on the lawn. And the snow, these trees kept the snow plows from cutting back, yet at the same time the snow was pushed in to the porch, now there's nothing there to keep them from going back. There's only two and a half feet there.

Q. Do you have any difficulty with the snow there at the present time?

A. It's pushed up against the porch. Then there's just enough of a shoulder here, that two foot, that when the thaw

comes the water is going to run into the cellar, and I think that the one corner of the wall from that weight that they had cracking the road, the vibration, I think it cracked one corner of the wall and water is seeping in there now.

Q. That is your basement wall?

A. Yes.

Q. Has it cracked any . . . . .

A. And the plaster in there.

Q. It has cracked the plaster?

A. The vibration, yes.

Q. Has it cracked any other parts of the house as a result of this?

A. Well, not to my knowledge. I know there's a crack in the basement there.

BY MR. PEDUZZI: I am going to object to that testimony for the simple reason he doesn't know. He thinks it has. There is no absolute proof that has happened.

BY MR. ISAACSON: If the Board please, this is the testimony of this witness, who had knowledge before the taking and has knowledge of the condition of the house after the taking, so it would be pertinent and relevant.

BY MR. PEDUZZI: Whether or not that is the cause . . . . .

BY THE CHAIRMAN: I don't think he can state or conjecture what the cause was, but he knows it was in good shape before and it isn't now, and it is for the Viewers.

A. I take it that that is what caused it, because the vibration was . . . . .

BY THE CHAIRMAN:

Q. That is merely your opinion. Now, you can testify as to what it was like before and what it was like after, but don't tell us what you think caused it.

A. All right.

BY MR. ISAACSON:

Q. I now show you Petitioner's Exhibit No. 2 and ask you to state what it represents?

A. Well, it shows the east side of the house and the garage and also the front of the house next to the main highway.

Q. Was this prior to the taking?

A. That is correct.

Q. Does it show part of the township road?

A. Yes, sir, right here.

Q. And it also shows the shrubbery and the trees?

A. That's right.

Q. I show you Petitioner's Exhibit No. 3 and ask you to state what it represents?

A. Well, this shows the west side of the house. with the lawn part back here, and also the north -- not the north but the south side of the house along the highway here.

Q. And does it show the highway also?

A. Oh, yes.

Q. Is that Route 53?

A. That's right.

Q. And it shows the trees on the western end of the house?

A. Yes.

Q. I now show you Petitioner's Exhibit No. 4 and ask you to state what it is.

A. Well, it's the extreme west side, that's the lawn part and right ahead the pine trees that's in back of the west side of the house, and of course these on the extreme right, they have been taken out of there.

Q. This picture ~~shows~~ the premises you have described prior to the taking, is that correct?

A. That's right.

Q. It also shows the position of the highway with relation

to the land, your land?

A. That's right.

Q. The western side of your house?

A. Yes.

Q. Now, is this the land you say is now flooded by water?

A. On the west side of the house, in place of the water going on down the road it takes off, it takes off right . . . .

Q. At about what point does it take off?

A. Right where the ditch tapers out.

Q. Where in relation to the house?

A. Right at the edge of the ditch it takes off into the land.

Q. And where is that ditch in relation to the house?

A. That ditch is about twelve to fourteen feet away from the house, west of the house.

Q. Does the water come down over this land?

A. Yes, sir, it does.

Q. How far does it go?

A. Well, there's a dam of water there, it lays right in there until it soaks through.

Q. And does it permeate, soak through any other part of the land? That is, to the right of the highway, facing Ebensburg? How far does it go onto your land?

A. It depends on the amount of the rainfall. In the heavy rainfall this whole part in here looks like a dam. After the rain eventually it will absorb in the ground, but there are pools of water there for an hour or two hours after a rain.

Q. Does it stay there longer?

A. Well, I wont say more than two hours, two and a half hours.

Q. Now, I show you Petitioner's Exhibit No. 5 and ask you to state what it represents?

to state what it represents?

A. Well, this is the west -- or east side of the house.

Q. Prior to the taking?

A. That's right. That's this field here that they have . . . . more eastward toward the railroad company they put the fill in.

Q. Does it show the barn?

A. And this was a grain field here, and this is an oats field here, and the contractor himself could tell you what kind of an oats field it was, what kind of a field of oats we had here.

Q. Does it show the barn?

A. Yes, it does.

Q. The silo?

A. Yes.

Q. The garage?

A. Yes.

Q. And the house?

A. Yes, sir.

Q. And the trees?

A. The trees, the house, the garage, the silo and the barn.

Q. Does it show the township road?

A. The starting of it, the entrance.

Q. Does it also show some of Route 53?

A. Well, the starting, the entrance to it, just the hill in there.

Q. Now, I show you Petitioner's Exhibit No. 6 and ask to you/state what it represents?

A. Well, this is a field.

Q. On what side of the house?

A. That's on the east side of the house, across the house, or across from the township road.

Q. And does it also show Route 53?

A. That's right, it does.

Q. Does it show the entrance into the township road?

A. Yes, sir, it does.

Q. And does it show the relationship between your ground and the township road as to height or depth of one as to the other? Is that correct?

A. Yes, sir, it does.

Q. Now, how far is your property located from the Borough of Loretto?

A. I would say approximately one mile.

Q. What is located in Loretto?

A. What is located there?

Q. Any industries, institutions of any type or kind?

A. Well, St. Francis College has been growing in the past few years, in fact growing very much.

Q. As a result of that growth has it done anything in relation to the property and land in Allegheny Township near where you reside?

A. Very much so.

Q. What has it done?

A. Why, it has increased.

Q. The value of land?

A. Yes, sir, it has.

Q. Have many parts of farms been sold as lots?

A. Yes, sir.

Q. Would it have been possible for you to have sold this land adjoining the highway as lots?

A. Yes, sir, I think that was very possible.

BY MR. PEDUZZI: I object to that as conjecture.

BY THE CHAIRMAN: Sustained.

BY MR. ISAACSON:

Q. Do you know of any farms near yours where lots have

been sold?

A. Yes, sir.

Q. Whose property?

A. Alvin Biter's farm.

Q. How far is that from your farm?

A. Well, there's just one farm separating us from that farm, and it's about three quarters of a mile or little less.

Q. And have any lots been sold there prior to April 14th, 1961, any land been sold there, any lots been sold there?

A. There has been lots sold there by Biter, yes, five or six.

Q. Are you acquainted with the price that was paid for those lots?

A. Pretty well so.

Q. Was any land sold on the other side of Loretto?

A. Yes, sir, there was a parcel of ground sold to the Franciscan Fathers from Mrs. Parrish, approximately sixteen acres.

Q. And are you acquainted with the price that was paid for it?

A. Yes, sir, I am.

Q. Are you fairly well acquainted with the prices of property in and around Allegheny Township?

A. I am pretty well acquainted, yes, sir.

Q. Are you acquainted with the value of lands near your land?

A. Yes, sir.

Q. Do you believe that you know the value of your own property?

A. I believe I am.

Q. Now, prior to the taking by the state of a portion of your land for the purpose of relocating the highway and for a change of grade, would it have been possible for you to have sold parcels of land on the west side, or east side of the highway

to persons?

A. I think it would have been very possible.

Q. And could you have sold land on the west side of your highway, or west side of your house, in the form of lots?

A. Well, . . . . .

BY MR. PEDUZZI: I object to this testimony as to possibility of selling the lots, or something like that. I don't think he has ever contemplated selling lots.

BY MR. ISAACSON: It's for the highest and best use.

BY MR. PEDUZZI: I know, but this lot business, unless it's laid out in lots and recorded or something like that, I object to it.

BY MR. ISAACSON: It could be sold and it's the highest and best use. It was not laid out for lots and we don't say so. We're not trying to show the value of each lot or we're not parceling it out, but we are just asking him if he considered that as one of the elements of value of his property, and that is entirely proper. If there is any question I can show you many cases.

BY THE CHAIRMAN: He apparently because of the proximity of this Biter place had it in mind, is that what you're saying?

BY MR. ISAACSON: That's right.

BY THE CHAIRMAN: I think we'll let him go ahead.

BY MR. ISAACSON: Can this be stipulated: That the map, that the map of the Department of Highways of the Commonwealth of Pennsylvania shows that the Commonwealth of Pennsylvania took from the Bovins 15 feet, beginning at Station 265 plus 50, to Station 267 plus 65 for a distance of 215 feet?

BY MR. PEDUZZI: You mean 15 feet in width for a distance of what?

BY MR. ISAACSON: 215 feet.

BY MR. HOWARD E. BRENNEMAN: I won't accept that without detailing it.

BY MR. ISAACSON: This is a calculation I had an engineer make. Mr. Morgan, who worked on this map for the State Highway Department. I see nothing wrong with stipulating and that would save a lot of time if that's what you want to do. I will bring Mr. Morgan, I will subpoena him and bring him over to testify to it if that's what you want.

BY MR. HOWARD E. BRENNAMAN: We will go ahead with it.

BY MR. ISAACSON: That is 215 feet; at the width of 10 feet was taken from Station 267 plus 65 to Station 268 plus 15, for a distance of 50 feet; that a width of 15 feet was taken from Station 268 plus 15 to the edge of the township right-of-way for a distance of approximately 8 feet; that a width of 15 feet was taken from station 268 plus 57 to Station 269 plus 50, for a distance of 98 feet; and a width of 25 feet was taken from Station 269 plus 50 to Station 270 plus 50, or for a distance of 100 feet; and that a width of 35 feet was taken from Station 270 plus 50 to the railroad right-of-way, for an approximate distance of 192 feet.

BY MR. PEDUZZI: If that's what the map shows, that's it.

BY MR. ISAACSON: Are you willing to stipulate that?

BY MR. PEDUZZI: We're willing to stipulate that's what the map shows if that's what it shows.

BY MR. ISAACSON: Well, we will offer in evidence as Petitioner's Exhibit No. 7, what purports to be a map of the Department of Highways of the Commonwealth of Penn-

sylvania, showing the land taken from the Michael Bovin Estate, to-wit, John Bovin, Paul Bovin and Gertrude Bovin, and also shows the drops at the various stations along the highway, and it also shows the width of the highway, the width of the right-of-way before the taking and the width of the right-of-way after, and all those pertinent facts.

Q. Mr. Bovin, you stated that you knew the values of real estate in and around your farm in Allegheny Township, is that correct?

A. Yes, sir.

Q. On April 14th, 1961, prior to April 14th, 1961, the date of the taking by the Commonwealth of Pennsylvania of a certain portion of your land, do you have an opinion as to the fair market value of your 35 acres of land with the improvements thereon at that time?

A. Yes, sir, I believe I have.

Q. What is that opinion?

A. I would say \$20,000.00.

Q. Now, Mr. Bovin, do you have an opinion as to the fair market value of your -- that is your land and the land of your brother and sister, together with the improvements thereon, after the taking by the Commonwealth of Pennsylvania on April 14th, 1961?

A. I would say no more than \$11,000.00.

Q. And you then estimate your damages at the difference between the two?

A. I would.

Q. And that would be \$9,000.00?

A. Yes, sir. The house is practically gone.

CROSS EXAMINATION

BY MR. PEDUZZI:

Q. Mr. Bovin, let's clear up this matter of title. You said that you inherited the land, is that correct? A. That's right.

Q. From whom?

A. My father, Michael Bovin.

Q. And who are the present owners?

A. My brother John and my sister Gertrude.

Q. John, your sister, and then you, of course, the four of you?

A. Three of us, John Paul and Gertrude and myself.

Q. Now, that was from the will of your father, Michael Bovin?

A. That's right.

Q. Is Gertrude still living?

A. Yes, sir, she is. She wasn't able to come up today, she took ill yesterday.

Q. Did the will devise the land to you, to the three of you in equal parts?

A. Yes, sir.

BY MR. ISAACSON: I should have put that into evidence. I will put that into evidence. IF YOU will allow I will offer in evidence at this time the last will and testament of Michael J. Bovin, dated December 19, 1935, showing the disposition of the property and effects which would include the 35 acres of land, with the improvements thereon, that are now in the name of Paul Bovin, John Bovin and Gertrude Bovin; and also the decree showing that the will was probated, or showing that Michael Bovin died, showing that the will was probated on September 19, 1944. Is there any objection?

BY MR. PEDUZZI: No.

BY MR. ISAACSON:

Q. What was the date of your father's death?

A. I was in the service. I am quite sure it was September 15, 1944.

BY MR. PEDUZZI:

Q. The will also provides for the payment of \$1,000.00 to your sister, Gertrude, is that correct?

A. Yes.

Q. And if it is not paid it should be a charge on the land, do you recall that?

A. No, I don't.

Q. Well, of course, the will is in evidence.

A. Yes.

BY MR. ISAACSON: We will substitute a photocopy for the will. I offer in evidence Petitioner's Exhibit No. 8, being the last will and testament of Michael Bovin, dated December 19, 1935.

BY MR. PEDUZZI:

Q. These pictures that you offered in evidence, Mr. Bovin . . . . .

BY MR. ISAACSON: Excuse me. I didn't offer them in evidence. I now offer into evidence Petitioner's Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7 and 8, and any other exhibits that we may have produced into evidence.

BY MR. PEDUZZI: No objection.

Q. These pictures that you offered into evidence were all pictures of your property that were taken prior to the condemnation, is that right?

A. Yes, sir.

Q. Now, I am referring to Petitioner's Exhibit No. 2, which is a picture of your property showing the corner of the township road and the highway as it stood prior to the reconstruction. You testified, I believe, that at that particular corner

there is now an accumulation of water, am I correct?

A. That is correct. There is a basin there where the two roads meet; there's a basin there.

Q. Is there a grade?

A. Yes, sir.

Q. Is there a change of grade?

A. There's a slope, sixty one feet back on down towards the highway.

Q. You also testified that water runs in front of your house?

A. That's right.

Q. Didn't the water run in front of your house before, from the looks of the picture?

A. No, sir, not to the extent, because the shoulder is sloped and that brings the water from the garage, all that water from the garage, and the water that gathers in the shoulder all runs into the ditch there. The shoulder is sloped.

Q. Where was the water drained from the township road prior to the taking?

A. It went on out to the middle of the road where it was more level. It mostly went down the road.

Q. But there was some water going in front of your place even before the construction?

A. Very little, very little.

Q. But there was some?

A. Very little if any, if any.

Q. You also testified that you have difficulty getting coal into your house?

A. Yes, sir.

Q. I show you Petitioner's Exhibit No. 1. Will you tell me where the coal . . . . .

A. Well, the only entrance we have for coal is this first

Q. window on the west side of the house, where the location of the furnace and coal bins is.

Q. Is there a ditch there which would prohibit you from taking the coal in now?

A. Yes, sir, there is.

Q. Is your house situate on a higher level than before?

A. Yes, sir, it is.

Q. But you still can get coal in there?

A. No, sir, not that way.

Q. Where . . . . .

A. Not unless you go down the road more and come in where the pines are and back and if the lawn is wet you can't get back there without tearing the lawn up, or your coal truck has a tendency to slide down because there's a slope here, on account of the slop on the west side of the house. It is difficult.

Q. You had to go over the lawn before, though?

A. Yes, sir, but it was level from the road back on the lawn.

Q. But you still had to go on your lawn even if it was level?

A. Oh, yes.

Q. Now, from your pictures here, Mr. Bovin, your house was very close to the highway before, was it not?

A. That's right.

Q. Now you testified that since the reconstruction you have -- from the center of the road to the porch -- what is that, twenty six feet? Is that since the reconstruction or prior to the reconstruction?

A. It's since. I would say from the porch to the edge of the road it's fifteen feet, eleven feet nearer than the twenty six.

Q. Has the highway department moved the center line of

the highway at all in reconstructing this highway?

A. Not much, if any.

Q. And from the edge of the right-of-way before the reconstruction to your house, how far was it, to the porch, let us say, as it is shown on Exhibit No. 1?

A. Well, . . . . .

Q. How far was your porch from the edge of the highway, do you know?

A. From the edge of the highway, it was approximately seventeen feet.

Q. Seventeen or eighteen feet?

A. Yes.

Q. How far is it from the edge of the highway now?

A. Fifteen feet.

Q. It makes not too much substantial difference from the edge of the house to the edge of the highway before than from the edge of the highway after construction, is that right? There's a little difference.

A. There is a little difference. There's a picture since the trees are out of there. I made a protest about those trees being taken out.

Q. That's right, but I wasn't asking you that, but I was asking you about the position of the house before and after. There is a very little difference from the edge of the highway as it is presently there from the edge of the highway to your house before and after the reconstruction, is there?

A. That's the front of the house. It cuts back on both sides of the house.

Q. Well, the right-of-way does, but I am talking about the edge of the highway. There's very little difference?

A. The right-of-way cuts back on both sides of the house.

Q. I understand that, but I am talking about the edge of

the paved highway.

A. Than what it was before?

from

Q. Yes, /what it is now, there is very little difference?

A. Not too much.

Q. So you testified that you have no access to the front of the house; you mean to say that you can't park your car in front there when you want to?

A. No, I will go even go as much as to say I can't even step out on my own property; I'll be stepping on state property.

Q. But you have seventeen feet from the edge of the highway to your house?

A. Yes.

Q. I don't think there's any prohibition about parking your car on that highway right-of-way, Mr. Bovin, is that correct?

A. Well, . . . .

Q. Nobody is stopping you, is there?

A. Well, I don't know. The state cops could stop you.

Q. You testified that you have barns and brooders, milk-house, poultry house; has the use of those buildings been affected at all by the change of the highway?

A. Yes, I say the buildings are no good without a good home.

Q. But in and of themselves they haven't been affected and you can use them the same as before, can't you?

A. Yes.

Q. Now, prior to the taking did you use the field on the east side of the house going towards Loretto for cultivation purposes?

A. Yes, sir.

Q. And that's all you have ever used that field for, is that correct?

A. That, s correct.

Q. And how far did you cultivate that field in relation

to the roadway?

A. Right out to the road.

Q. Right out to the road?

A. I cut hay right out to the road.

Q. As far as the west of the house, Mr. Bovin, there was always a slope downward from the road, is not that correct, as your Exhibit No. 4 shows? Your land always sloped down from the road

A. Well, not as much as it does. Before it was more level because I was able to use the power mower on any part of it. Today I can't.

Q. It did slope at that time?

A. Very little, very little, only on the extreme west side. Very little.

Q. Well, according to your picture there is quite a definite slope from the road?

A. It wasn't too much of a slope.

Q. Did you have any accumulation of water there before at all?

A. No, the water -- not that you could notice.

Q. You didn't have any?

A. The water didn't gather then like it does now.

Q. Mr. Bovin, did the highway department ever extend an offer to you in settlement of this?

A. Yes, they did.

Q. Did they ever extend any partial payment to you in settlement of this claim?

A. Well, they approached me and asked me if I cared to take a partial payment.

Q. Did you take a partial payment?

A. No.

Q. When was the date the partial payment was offered?

A. Well, it was -- I would say it was during the month of

Q. Of what year?

A. Of 1961, because I was out in the garden. I was hoeing corn. It was in July or June; latter part of June.

Q. Well, would you say June 20th, 1961 was about right?

A. Around there, yes.

Q. And you refused the partial offer?

A. Yes, sir, I refused.

RE-DIRECT EXAMINATION

BY MR. ISAACSON:

Q. Mr. Bovin, have you always been willing to negotiate with the Department of Highways in regard to settling this claim that you have?

A. Yes, sir.

Q. Now, when Mr. Peduzzi was questioning you, you said that it was fifteen feet from the edge of the highway to the house, at this time, is that correct?

A. Yes.

Q. Now, is there a berm between the edge of the highway and your house?

A. Yes. There's supposed to be an eight foot berm, where there's a twelve and a half foot berm or shoulder.

Q. There's a twelve and a half foot berm and this is also part of the highway, is that not correct?

A. It's twelve and a half in place of being an eight foot berm or shoulder, whatever you call it. It's a twelve and a half foot berm.

Q. How close to your house does this berm come?

A. I would say the slope starts two and a half feet, so I would say three feet, three feet from the house.

Q. And what is the drop at that particular point from the highway to your house?

A. To our front entrance I would say two feet nine inches, or approximately three feet.

Q. If the state took the entire right-of-way, which they have the right to do, because it belongs to them since they took it from you, how far would their right-of-way, edge of their right-of-way be from your front door, that is, the front door of your house?

A. I would say approximately a foot.

Q. Now, in order to sell that, sell any of the ground on the eastern side of your house, would you have to put in a fill?

A. Yes, I would.

BY MR. PEDUZZI: I object to that, maybe you would and maybe you would not. It depends on what purpose . . . .

BY MR. ISAACSON:

Q. If you sold it for a lot?

A. Yes, I would.

BY MR. PEDUZZI: I still object to that kind of testimony.

WALLACE E. WILLIAMS, Called, Sworn.

BY MR. ISAACSON: Can we dispense with the qualifications of the appraisers in the interest of saving time?

BY MR. PEDUZZI: Oh, yes, Mr. Williams is qualified.

BY THE CHAIRMAN: Let the record show the qualifications of this witness have been admitted, and also Mr. Washington's qualifications.

#### DIRECT EXAMINATION

BY MR. ISAACSON:

Q. Will you state your name and address, please?

A. Wallace E. Williams, Johnstown.

Q. What is your occupation?

A. I live in Southmont, a suburb of Johnstown, and have a place of business at 722 Franklin Street, and my occupation is real estate broker and appraiser.

Q. As an appraiser were you requested to come and view the

property of the Bovins?

A. I was.

Q. In Allegheny Township?

A. Right.

Q. Are you familiar with the property involved in this action?

A. I am.

Q. What is the use to which this property is presently put?

A. It's present use is a farm.

Q. Is that the highest and best use that can be made of this property?

A. For the entire property, if the entire property had to be put to one use, yes.

Q. If you could separate the uses?

A. No.

Q. Could the front part of the property, eastern end of the property adjoining the highway be used for the sale of lots?

A. From the township road easterly to the railroad there is every reason to draw a firm conclusion that that land has value as building plots.

Q. Is that the highest and best use that could be made of this land?

A. Not necessarily so, because it's on a main connecting link between the Borough of Loretto and Ebensburg Borough, and exploring it with all possibilities of use one should not deny the cross-roads characteristic of this property and the built in possibility of considering it for commercial purposes.

Q. If we consider it for commercial purposes would the value of it be greater?

BY MR. PEDUZZI: I would object to this line of testimony, consideration -- that's conjectural.

BY MR. ISAACSON: Oh, no, it isn't.

BY THE CHAIRMAN: Well, in a sense you might say that, but as a qualified real estate appraiser this witness is permitted to consider the highest and best use to which this land could be put, and if/his opinion he feels that, if the uses could be separated, it could be used advantageously or part of it could be used advantageously for lots or commercial purposes, I think he should be permitted to testify, if that's what you are saying.

Q. Is it?

A. I'm not saying it is separated, but I say . . . .

Q. You say if it could be separated?

A. I say that in the appraisal, if you will permit me and my attorney does not object, that an appraiser is confronted with the responsibility of considering the whole bundle of rights, and in this bundle of rights if there is not an unreasonable possibility that a property within a foreseeable future could command some thinking on the subject it must be acknowledged as existing. I do not say that the property at the time of the taking should be put to commercial use, but I say that the owner should not be denied some consideration on that score.

BY THE CHAIRMAN: Objection overruled.

BY MR. ISAACSON:

Q. Now, Mr. Williams, are you familiar with values, that is the valuation of land and property in Allegheny Township, Cambria County, Pennsylvania?

A. I am.

Q. I presume you have done appraisal work throughout this area?

A. I have.

Q. And have you for quite some time?

A. I have.

Q. And have you also made, or done any research as to com-

parable values?

A. I have.

Q. And on the basis of -- have you examined the property?

A. I have.

Q. On more than one occasion?

A. Three or four occasions -- four.

Q. When was the last time that you looked at the property?

A. Yesterday.

Q. And as a result of your examination and your experience and the fact that you have knowledge of comparable property values, are you able to give us an opinion as to the fair market value of this property prior to April 14, 1961?

A. I am.

Q. And what was that value?

A. \$16,800.00.

Q. And are you able to give us an opinion as to the value of the property of the Bovins after the taking on April 14, 1961?

A. I am.

Q. And what is your opinion of the value, of the fair market value of the property of the Bovins, the property in question at this hearing, as of April 14th, or immediately after April 14th, 1961?

A. \$9,300.00.

Q. And you would estimate the damages then to be the difference between the fair market value prior and the fair market value afterwards or how much?

A. \$7,500.00.

#### CROSS EXAMINATION

BY MR. PEDUZZI:

Q. Did you see the property prior to the time it was taken?

A. No, not specifically. I have passed the property many

times, in passing I noticed the area, the deep cut, narrow iron bridge and such, but specifically examine the property, no.

Q. In your consideration of the value after the taking what did you consider as to the real effect of the reconstruction? You say it would be worth \$9,300.00, approximately; actually about one half of what it was worth before.

A. No, a half would be -- that is something I hadn't figured out, but that would be eighty some hundred dollars, and to the average person, even myself, one thousand dollars is important money.

Q. That is true, a thousand dollars is important money, that is what I am driving at, but half of that would be about eighty four hundred, but you say the value is ninety three hundred, which is about a thousand dollars difference, or nine hundred. You say the property sustained that much damage?

A. In my opinion that would be the minimum damage that they have sustained.

Q. Now, Mr. Williams, they still have complete use of the house?

A. No.

Q. They still have complete use of the barns and other buildings as before?

A. The use of the barn?

Q. Yes, and all the other buildings on the property? There was no change in the use of those, was there?

A. The farm buildings, including the house, basically from farming standpoint, there has been no change in it.

Q. Do you know how much of an area was taken? Have you computed that?

A. It is very difficult to compute exact footage from the maps given to me by the state to look at, and it seemed that

there is reluctance on the part of anybody in a responsible position to quote the exact footage, and I have had to calculate that, yes. I have calculated it, but it is subject to error.

Q. Well, yes, but you did that calculating of the area that was actually taken?

A. Yes.

Q. That's all.

RE\_DIRECT EXAMINATION

BY MR. ISAACSON:

Q. Could the land on the eastern end of the house be used in its present condition for lots, as lots to be sold for residential purposes, or would something have to be done before they could be so sold?

A. There is part that could be used.

Q. Well, the other part?

A. Well, in my opinion it could not.

Q. For what reason?

A. Because of the cut, not a cut but actually it's a -- the construction of the highway has changed the grade, it has changed the width, provided drainage problems, and you just can't sell land when you have severed by changing elevations.

Q. And there is a difference in the elevation between the land now and the highway?

A. Yes.

Q. Now, did you take into consideration the fact that the highway department took fifteen feet up to a certain point/<sup>and</sup>just before the house they came out and took only ten feet, would that make any difference as far as the house itself is concerned?

A. I would say if this particular print which was delivered to me as a copy of the documents furnished by the state were exhibited to prospective purchasers for this property, I don't

think they would accept the legal interpretations from either the owner or real estate salesman, that this property does not have a severance of that front porch.

Q. In other words, do you think that this is merely a camouflage on the part . . . . .

A. I think it's a subterfuge.

Q. By the department . . . . .

BY MR. PEDUZZI: Oh, this is objected to.

BY THE CHAIRMAN: Sustained. That's merely a matter of opinion.

BY MR. ISAACSON: Well, I'm asking for an opinion.

BY MR. PEDUZZI: He has no foundation for that opinion.

BY MR. PEDUZZI: We have no further cross-examination.

BY MR. ISAACSON: That's our case.

HOWARD E. BRENEMAN, Called, Sworn.

DIRECT EXAMINATION

BY MR. PEDUZZI:

May be dispense with his qualifications relative to employment and all that? .

BY MR. ISAACSON: Yes.

BY MR. PEDUZZI:

Q. Mr. Breneman, you are familiar with the Bovin property as has been testified to at this hearing?

A. I am.

Q. Now, Mr. Breneman, there has been offered in evidence a map prepared by the highway department showing this property, and is the area shown on red on that map the area taken for the construction of the highway?

A. That is the area condemned. It is not all occupied by construction.

Q. That is the area condemned, is that correct? A. That is

correct.

Q. That establishes a legal right-of-way of the Pennsylvania Department of Highways, though, on this property, is that correct?

A. The limits of the area marked there as required right-of-way now or legal right-of-way along the front of this property.

Q. What is the area actually taken as shown by the red?

A. The area taken amounts to .0426 acres, which is  $\frac{426}{1000}$  of an acre.

Q. And when was the date of condemnation, Howard?

A. The date of condemnation was April 14th, 1961.

Q. What is the distance from the edge of the right-of-way as shown on the map to the front porch of the Bovin house?

A. Two feet between the right-of-way and the front porch as shown on the plans.

Q. That's the right-of-way as it exists now?

A. That is right.

#### CROSS EXAMINATION

BY MR. ISAACSON:

Q. Now, <sup>if</sup> fifteen feet would have been taken in front of the -- right straight through from the western boundary of the Bovin property to the township road/<sup>you</sup>would have had to take part of the house, is that not correct?

A. If the right-of-way had not been broken in front of the house, the right-of-way would have gone through the porch, not the house proper.

Q. What is the drop in front of the house?

A. The specified drop in front of the house, you can take your depth to almost any portion of the right-of-way. If you want to take it from the paved road-way, the center line, or if you want to take it from the edge of the road . . . . .

Q. From the edge of the right-of-way?

A. At the edge of the right-of-way there is no drop.

Q. What is the drop to the edge of the berm?

A. That is a little less than three feet immediately in front of the house, from the original ground to the elevation in the lowest depth of the shoulder at the ditch line.

Q. Is three feet?

A. Is less than three feet.

Q. Well, almost three feet.

BY THE CHAIRMAN: I think Mr. Bovin testified it was two feet, nine inches, and anybody being that precise must have measured it.

A. We have no section immediately in front of the ~~house~~ that we can come down and pinpoint.

BY MR. ISAACSON:

Q. As a matter of fact, the drop in front of the house from the old center line grade to the new center line grade, that is the center line is two point nine-tenths of a foot, is that not correct? That's the centerline, not the edge.

A. That is correct.

Q. And then doesn't the roadway slant toward the house?

A. I will have to refer to this map. The highway in front of the house slopes away from the house, from the building.

Q. The center line?

A. Yes.

Q. Is up or down?

A. The side of the Bovin property is on the high side of an elevated curve, therefore all the slope on the paved part is away from this property.

Q. How about the shoulder?

A. Well, the shoulder naturally there slopes off toward the property to contain the water in the ditch line.

Q. So that that would be a little more than two feet,

two feet, nine inches?

A. Not necessarily, Mr. Isaacson.

Q. Well, if we say around three feet, that would be correct?

A. I would say a little less than three feet at that point; up toward the township road it's about, around three feet, and the old ground becomes less as you go west.

Q. Now, did you put in a ten foot fill at the eastern end of the Bovin land?

A. That section on the plan at 272 plus, where that pipe was put there, from the edge of the shoulder to old ground there is a ten foot fill.

Q. So the land adjoining would be depressed ten feet from the highway?

A. Well, with a ten foot fill, that means that your old ground is lower.

Q. And was the highway raised on the western boundary line?

A. The western boundary line, there was a cut started from the house which tapered out to the western limit of work. There was no change of grade. In fact when you go west there is a fill along the Bovin property.

Q. That's what I thought, there's a fill there, there's a slight fill?

A. Yes.

Q. So that it is raised from the property line?

A. For example, at Station 267 there's a fill of one foot at the shoulder line.

Q. That is at 270, and what is the fill at 265 plus 50, which is the beginning of the Bovin property?

A. Three and one-half feet to old ground.

Q. That gradually comes to level, doesn't it?

A. Back towards the house, yes.

Q. It comes back to level/<sup>construction as</sup> as you go toward the house, it

decreases?

A. At 267 plus 25 is where the cut and the fill coincide.

PAUL D. WASHINGTON, Called, Sworn.

BY MR. ISAACSON: Qualifications admitted.

DIRECT EXAMINATION

BY MR. PEDUZZI:

Q. You are a resident of Loretto, or Cresson, rather, is that correct?

A. Yes, sir.

Q. Now, Mr. Washington, have you examined the Bovin property in Allegheny Township?

A. I did.

Q. Did you go on the property prior to the taking by the Department of Highways?

A. I did.

Q. And did you go on the property after the taking by the Department of Highways?

A. I did.

Q. Now, Mr. Washington, did you make an appraisalment of the fair market value of this property immediately prior to the taking?

A. Yes, sir, I did.

Q. In making the appraisalment of this property immediately prior to the taking what elements did you consider?

A. I considered the location of the property, the topography, the size, sales of other properties, I considered the physical condition, the road frontage, change of grade, and I considered the proximity to shopping centers, proximity to schools and proximity to churches, public transportation. Then I also considered the fact that there is a lack of fire protection in the immediate area and the lack of public water supply and lack of

public sewage system, and also I considered the lack of public lighting, it's situated in a more or less rural area, and I also considered some uses which it might be put to other than its present use.

Q. Other than its present use?

A. Yes.

Q. Including possibly commercial uses?

A. Yes, sir, and possible potential, not as an actuality, but a potential use as a subdivision.

Q. Did you also take into consideration the trees that existed on the property prior to the taking?

A. Yes, sir, I considered the trees and shrubs as part of the land.

Q. Did you also examine the drainage from the highway onto the land as it now stands and as it stood before?

A. Yes, as best I could. Of course it wasn't raining at the time I was there, so there was no actual drainage at the time.

Q. Now, you say you took into consideration other sales. Can you tell me what other sales that you considered in the vicinity there?

A. Do you want the name of the buyer and seller and consideration and the land area?

A. No, just what land, what sales of land you considered in forming your opinion, Paul?

A. Well, as I understand you want just the name of the buyer and seller?

Q. That is correct.

A. Do you want the date of the sale?

Q. Yes, if you have it?

A. Yes. Alvin Biter has a subdivision on Route 53 across from the Carmelite Monastery.

Q. Which is how far from this property?

A. I didn't measure it but I would estimate about a half mile. He sold 0.54 acres to Germanus McConnell on August 2, 1955. Now, from the same plot Alvin Biter sold to William Bangle two lots, numbered 6 and 7, containing .205 acre on December 3rd, 1959; and from the same plot of lots Alvin Biter sold to E. Minimum one lot containing .204 acre on December 5th, 1959; and from the same plot Alvin Biter sold to Frank Byrne 0.536 acre on October 10th, 1956; and Alvin Biter sold another lot from the same plot to R. Sheehan, and that consisted of a parcel sold as 0.397 acre, and that was on June 16th, 1956; then Alvin Biter sold to, if I recall, I just have the initial, Veronica Davidson, 0.925 acre on June 14th, 1956.

Q. Did you also take into consideration any sales of acreage of farms in the area?

A. Yes, I did. I considered properties in Loretto Borough. Do you want those?

Q. No, I don't think you need to specify those properties. You did take into consideration properties in Loretto Borough?

A. Yes, sir, I did.

Q. In arriving -- oh, excuse me, did you take any pictures of this property subsequent to, after the reconstruction?

A. Yes, sir, I took two photographs, at various angles, of the subject property on November 2nd, 1962.

Q. November 2nd, you took them yourself?

A. Yes, sir, I did.

Q. Let me see them, Paul.

A. (Photographs are handed first to Mr. Isaacson)

BY MR. ISAACSON: No objection.

BY MR. PEDUZZI:

Q. I show you what is marked Commonwealth's Exhibit No. 1, Paul, and ask you what that is?

A. This is a photo taken facing north, that would be on the

northwest corner of the intersection.

Q. That shows the house, is that correct?

A. Shows the dwelling and the highway in front, together with a slight slope up to the house, together with some trees.

Q. Then I show you Commonwealth's Exhibit No. 2 and ask you to state what that is?

A. This was -- this shows, Exhibit No. 2 shows the dwelling and a portion of the highway looking east. Of course this would be showing the western view of the house, but the photograph was taken facing east.

BY MR. PEDUZZI: We offer these photographs in evidence.

BY MR. ISAACSON: No objection.

BY MR. PEDUZZI:

Q. Now, Paul, since you have examined the property did you examine the house too?

A. Yes, sir.

Q. Were you inside the dwelling?

A. Yes, sir.

Q. Did you examine the other buildings on the property?

A. Yes, sir.

Q. Since you have considered all those elements, what would you say in your opinion was the fair market value of that property immediately prior to the date of condemnation, April 14th, 1961?

A. \$19,758.00.

Q. Now, have you formed an opinion as to the value of the property after the taking and as affected by the taking?

A. I have.

Q. And what is your opinion?

A. \$16,478.00.

Q. So that your damages are what?

A. \$3,280.00.

CROSS EXAMINATION

BY MR. ISAACSON:

Q. Did you find any comparable sales in the Borough of Loretto?

A. Yes, sir. You mean dwellings?

Q. Yes.

A. Yes, I did.

Q. What ones were comparable, outside of the ones you gave, the Biter sales?

A. Well, that was just land, the Biter sales, no dwellings, only land. I considered the sale of a dwelling, two and a half story frame building, together with a lot, to the west side of St. Marys Street in the Borough of Loretto, and that was sold by Mrs. Marlett to Ferdinand Bionaz.

Q. What was her first name?

A. I can't recall offhand. September 10th, 1956.

Q. September 10th, 1956?

A. Yes.

Q. Isn't that rather far removed?

A. No, not too far.

Q. Did you have to make any adjustments in order to make a comparable sale?

A. Why, I would say it would be, would compare approximately and favorably with the Bovin dwelling.

Q. Of the Bovin house?

A. Yes.

Q. Did they have any barns?

A. No.

Q. Did it have a garage?

A. I'm not sure about the garage, but there was no barn.

Q. Any silo?

A. No.

Q. What was the acreage of the land involved?

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A. Well, that was one lot. That would be on the plan of lots of Loretto Borough.

Q. Well, it was quite different in many respects, wasn't it?

A. Yes.

Q. It would take a tremendous adjustment in order to make it comparable value?

A. You asked me whether I considered that as a sale.

Q. Do you have any other sales?

A. Yes, I do.

Q. Any comparable sales, not just sales but comparable sales?

A. Well, what I considered principally in connection with the Bovin property was farm sales.

Q. Did you consider the sale by Mrs. Parrish to the Franciscan Fathers of sixteen acres of ground for the price of ten thousand dollars?

A. Yes, sir, I did.

Q. And that is in Allegheny Township also?

A. Yes, sir.

Q. And that sale was for approximately six or seven hundred dollars an acre, was it not?

A. Yes, sir.

Q. There was sixteen acres at ten thousand dollars, and there was no property on the ground?

A. No, sir. But I also considered it was purchased for a special purpose.

Q. Did you also consider that the ground was not as tillable as this ground?

A. Yes, I did.

Q. You considered the Biter sales?

A. I did.

Q. And the Biter farm is just one farm removed from the

Bovin farm?

A. That is correct.

Q. And it's on the same side of the highway?

A. That is correct.

Q. And it is also west of Loretto?

A. That is correct.

Q. And it's on Route 53?

A. That's right.

Q. And those sales were for between one thousand and twelve hundred and fifty dollars for lots directly on the highway?

A. Yes, sir.

Q. And those were lots of a hundred or a hundred and fifty feet by a hundred and fifty or two hundred feet?

A. Well, the lots were approximately about a half acre, and the price ran from the price that I gave you, from five to six hundred dollars, then two lots a little more.

Q. Well, those five or six hundred dollar lots were in the rear, though; they didn't front on the highway, isn't that correct?

A. Well, I don't have the plan.

Q. Well, didn't you check them?

A. I checked the deeds, and I did check the plan at the time but I don't have it with me, so I don't recall whether they were in the front or rear, but it seems to me they were all on the front, all face on the highway as I recall.

Q. Are you sure?

A. Some plots are larger than others.

Q. Now, the Davidson sale was for eleven hundred dollars, was it not?

A. That is correct.

Q. And that sale was made, that deed was made July 12th, 1956?

A. I have the date here June 14th, 1956. That might have

been recorded July 12th.

Q. It was recorded July 14th, 1956, and dated July 12th, 1956.

A. That may be.

Q. Now that piece of ground was two hundred by two hundred seventeen point sixty one, by a hundred and seventy five by two hundred fifteen feet? Is that not correct?

A. Well, all I have is 0.925 acre.

Q. That was on the highway?

A. As I recall, yes.

Q. Now, wasn't there a sale from Frank J. Burns and Mary E. Burns on October 9th, 1956, for six hundred and fifty dollars for a parcel of ground not on the highway?

A. Well, as I recall that is on the highway. It runs up to the highway. It slopes downward . . . . .

Q. It's on a hill?

A. It's not a level lot, that is correct.

Q. And that would not compare favorably with the ground of the Bovins on the eastern end of their house prior to the taking?

A. No, not that particular lot, I agree with you there.

Q. How about the William F. Bangle sale on December 1st, 1959 for a thousand and fifty dollars? Wasn't that in the rear and not facing the highway?

A. Well, I really don't know. I couldn't say.

Q. And wasn't that a sale of a parcel of ground a hundred feet by a hundred eighty six and two-hundredths of a foot, eighty nine point eighty nine feet by two hundred seventeen point thirty four feet?

A. I have it as lots No. 6 and 7, each containing point two hundred five acres.

BY MR. PEDUZZI: If the board please, I think we are getting far afield. I think Mr. Washington testified he con-

sidered those as one of the many elements in reaching his appraisal, and I don't see any purpose in this type of cross-examination.

BY MR. ISAACSON: The purpose of this cross-examination is to show whether or not Mr. Washington placed the proper value upon this property, and to show what he took into consideration in placing this value, to show what the value of lots were that he took into consideration, whether they were comparable or not, and it all goes to his opinion.

BY THE CHAIRMAN: Well, Mr. Isaacson, in the direct examination of Mr. Bovin, I believe you stated that, or you had the witness state that the east field could possibly be used for lots because the Alvin Biter property had been subdivided, and they were only about three quarters of a mile separated, and Mr. Washington is testifying now that he did consider sales from the Biter property in arriving at his opinion of market value now. I have no quarrel with your cross-examination. It's perfectly proper. But if you want to pursue it in great detail, all right.

BY MR. ISAACSON: No, we will not pursue it any further. I have no inclination to pursue comparable sales any farther.

Q. Now, Mr. Washington, did you take into consideration the fact that the Bovin property, eastern end of the Bovin property could be subdivided into residential lots, and did you take that into consideration as one of the elements in making your opinion as to the fair market value of the property prior to the sale?

A. Yes, sir. As I said in my direct testimony, I considered it as a potential subdivision, but not as an actuality.

Q. Did you not also consider the western portion of the land below the house?

A. Yes, but it wouldn't have the same appeal as the other because of the slope. It could be subdivided.

Q. Could not also the land adjoining the township road be subdivided?

A. Yes, sir.

Q. And did you take that into consideration in forming your opinion as to value?

A. Yes.

Q. Now, since the taking there was a ten foot fill put in at the eastern end of the land, is that not correct?

A. I believe that is correct.

Q. So that now the highway does not adjoin on the level?

A. That is correct.

Q. That is, the parcel of land of the Bovins?

A. That is correct.

Q. And in order to correct this it would be necessary to place a fill in there, is that not correct, in order to sell any land there in the form of lots? Wouldn't that be necessary for the Bovins to go to the expense of filling in that land?

A. Well, it could be sold because they still have an entrance from the township road.

Q. But how about the ones on the eastern end?

A. Well, they could still go in from the township road from the highway, go back onto the land.

Q. But there wouldn't be any entrance from Route 53?

A. No, they couldn't cross, that is correct.

Q. It would necessitate that a highway or road be built or street be built in the rear?

A. Yes, in the event they would want to subdivide it.

Q. That would be required?

A. Yes.

Q. That would be rather expensive, would it not?

A. I don't know, but I rather think.

Q. Now, did you take into consideration the drainage?

A. Yes, sir.

Q. Before and after the taking?

A. Yes, sir, I did.

Q. Did you know that the water was pouring in on the lower end, or the western end of the Bovin lot?

A. No.

Q. After the building of the highway?

A. No, I didn't actually see the water so I don't know, but I understand there is drainage provided for that on the plan.

Q. There was or was not?

A. There was.

Q. There was drainage provided?

A. Yes.

Q. But you heard today from Mr. Bovin that the water does pour in over his land and that it does not drain off?

A. Yes, I did.

Q. Would that make a difference in your estimate of damage?

A. No.

Q. Would it make any difference in the estimate of your damages the fact that water, there's a pool of water at the front of the property on the township road, and that it remains there constantly?

A. No, sir.

Q. Did you take that into consideration?

A. No, because I didn't see it.

Q. And that wouldn't make any difference in your estimate of value?

A. No, sir.

Q. Did you take into consideration the fact that the Bovins do not have a front entrance to their property any longer?

A. Yes, sir, I did consider that.

Q. Did you take into consideration the fact that they now

only have ingress and egress from the rear of their house?

A. Well, as I see it they still have ingress and egress on the front, but not as much. The space has been curtailed.

Q. They have two feet?

A. Yes.

Q. How would they get up there from the highway, which is approximately three feet below?

A. Well, that's . . . .

Q. It would be rather difficult?

A. Well, it would be more or less restricted.

Q. Wouldn't it be hazardous?

BY MR. PEDUZZI: That's conjecture.

BY MR. ISAACSON: Oh, no, that isn't conjecture.

BY MR. PEDUZZI: That's an opinion too . . . .

BY MR. ISAACSON: I'm asking the witness on cross-examination.

Q. Would that be hazardous?

A. Well, to some extent.

Q. Well, when you say to some extent . . . . .

A. Well, sometimes the traffic is heavier than other times.

Q. Well, you mean any one wanting to come in the front entrance would have to wait until the traffic had died down?

A. They would have to be cautious.

Q. Then the only means of ingress and egress really is from the rear, is that not right; Mr. Washington, at the present time?

A. Well, the means of egress and ingress is there if they care to use it.

Q. Is it possible to use it?

A. Yes.

Q. You still maintain it is possible to use it?

A. Yes, I do.

Q. With a three foot drop and the fact that it is two feet

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from the -- that there's only two feet of land between the building, the doorway and the right-of-way?

A. Yes, it could still be used.

Q. Did you take into consideration the fact that it is now very difficult to put coal into the cellar of this house?

A. I didn't know that until today, but according to the photograph it seems to me that there's still means whereby the truck could get in and out.

Q. Have you examined it to see the grade at that particular point?

A. Yes. The grade don't seem to be too great at that point.

Q. If it were stated that a truck had been -- had attempted to get in there and could not get in, would you then believe that would be true?

A. Well, depending on the season of the year.

Q. Could it get in there in the winter time?

A. No, he would have difficulty, but at my own home with the snow as deep as it is the truck couldn't get in there.

Q. But your own home is not on the same angle as this home, is it?

A. Yes, it is.

Q. From the highway?

A. Not from the highway, but from the street it's a little steeper grade than this.

Q. You still think that at certain times of the year they would have no difficulty in putting it in?

A. I would say in dry weather they shouldn't have any difficulty.

Q. Did you take into consideration the fact that there was a two foot ditch in front of that parcel of ground?

A. Well, it may be there. It don't show on these photographs. It may be there.

Q. Well, if it was there it would make it extremely difficult, would it not?

A. Well, it would make it more difficult.

Q. In your estimate as to the various elements of damage, did you take into consideration the cost of moving the house to another location?

A. No, sir, I did not.

Q. Could that house be moved back?

A. I don't know.

Q. Do you believe it could with the proximity of the other buildings?

A. No, the other buildings are too close. In other words, it could be moved back but the other buildings would have to be moved back also.

Q. Or else it would have to be moved across the township road, is that not correct?

A. It could be.

Q. That would be rather expensive?

A. Well, I don't know the cost, but I would assume it would be expensive.

Q. Did you take into consideration the fact that the western part of the land of the Bovins was now inaccessible to the highway because of the grade?

A. No. You mean going to the west?

Q. Going west, so it would make it more difficult to sell?

A. No, I didn't consider that.

Q. And you didn't take into consideration, I assume, the cost of filling required to make the land conform to or be available for use at the new grade?

A. No, sir, I did not.

Q. Did you take into consideration any other severance elements?

A. I considered the change of grade and encroachment of the highway to the dwelling.

Q. Did you take into consideration the fact that for a distance of fifty feet the highway, the right-of-way was extended five feet in order to miss the house?

A. Yes, sir, I did.

Q. That's all.

BY MR. PEDUZZI: Commonwealth Rests.

TESTIMONY CLOSED

STENOGRAPHER'S CERTIFICATE

I hereby certify that the proceedings and evidence had upon the hearing in the above matter are fully and accurately contained in the notes taken by me and that this copy is a true and correct transcript of the same.

  
Official Stenographer

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

COMMONWEALTH OF PENNSYLVANIA

VS.

PAUL F. BOVIN, JOHN BOVIN AND  
GERTRUDE BOVIN

TESTIMONY TAKEN BEFORE BOARD OF  
VIEWERS

CLAIR W. LUTHER  
OFFICIAL STENOGRAPHER  
FOR THE  
FORTY-SEVENTH JUDICIAL DISTRICT  
EBENSBURG, PENNSYLVANIA

No. 4 December Sessions, 1962 R.D.

IN THE COURT OF  
QUARTER SESSIONS OF  
CAMBRIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
Plaintiff

vs.

PAUL F. BOVIN, JOHN BOVIN,  
and GERTRUDE BOVIN,  
Defendants

*Filed and Confirmed  
Nisi - Jan 22, 1963*

VIEWERS' REPORT

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

*E.D.*  
No. 4 December Term, 1962

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA  
COUNTY, PENNSYLVANIA

In the Matter of Route  
No. 53, Section No. 17,  
In the Township of Allegheny  
Cambria County, Pennsylvania  
Commonwealth of Pennsylvania  
Vs.  
Paul F. Bovin,  
John Bovin  
and  
Gertrude Bovin

*Filed - 10-11-62*

PETITION FOR APPOINTMENT  
OF VIEWERS

D E C R E E

GERARD HARRY ISAACSON  
ATTORNEY AT LAW  
ROOMS 806-807-808 MASONIC BUILDING  
EBENSBURG, PA.

In the Matter of Route  
No. 53, Section No. 17,  
In the Township of Allegheny,  
Cambria County, Pennsylvania

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IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA  
COUNTY, PENNSYLVANIA

No. December Sessions, 1962

PETITION FOR APPOINTMENT OF VIEWERS

TO THE HONORABLE THE JUDGES OF THE ABOVE NAMED COURT:

The Petition of Paul F. Bovin, John Bovin and Gertrude Bovin by  
their Attorney, G. Harry Isaacson, Esq., respectfully represents:

1.

The Petitioners are Paul F. Bovin, John Bovin and Gertrude Bovin  
who reside at R. D. #1, (Allegheny Township), Ebensburg, Cambria County,  
Pennsylvania.

2.

The Respondent is the Commonwealth of Pennsylvania, acting  
through the Secretary of Highways of the Department of Highways.

3.

The Petitioners are the owners of all those certain pieces or parcels  
of land, with the buildings and improvements erected thereon, situate in the  
Township of Allegheny, County of Cambria and State of Pennsylvania, bounded  
and described as follows:

No. 1. Beginning at a post corner in the middle of the  
road leading from Ebensburg to Loretto, thence by land  
now or formerly of John Bannan North 10° and 15' East  
789 feet to a corner in the middle of the road leading to  
Bucks Mill, thence along said road South 75° and 15' East  
742 feet to a corner in the middle of the public road,  
thence by land now or formerly of Joseph A. McMullen  
South 2° and 30' West 440 feet to a post corner, thence by  
said land now or formerly of Joseph A. McMullen South  
86° E. 536 feet to a corner in the middle of the road,  
thence along said road South 2 1/2° West 313 feet to a  
corner in the middle of the road leading from Loretto to  
Ebensburg, thence along said road North 87° West 536 feet,  
thence along said road North 77 1/2° West 840 feet to the  
place of beginning. Containing 18 acres and 17 perches  
according to survey and draft made by J. A. Shoemaker.

No. 2. Beginning at a corner of land formerly of Michael Bovin on Township Road, thence West 32 perches to a post on said land formerly of Michael Bovin; thence North  $26 \frac{5}{8}$  perches to the center of road; thence East along the center of road 32 perches to the center of road running South between land now or formerly of Jos. A. McMullens and land now or formerly of Annie and Mary McMullen; thence South in center of said road  $21 \frac{1}{5}$  perches to the place of beginning. Containing 4 acres and 126 perches.

No. 3. Beginning at a post at the intersection of the Ebensburg and Loretto Road with the road leading from Ebensburg Junction to Bucks Mills; thence by said Bucks Mills Road and land now or formerly of Joseph McMullen Estate, North  $5^{\circ} 45'$  East 813 feet to a post; thence by land of said Estate South  $85^{\circ}$  East, 760 feet to a post in line of right of way of the Cambria and Clearfield Branch of the Pennsylvania Railroad; thence by said right-of-way the following eight courses and distances; South  $8^{\circ}$  West 129 feet to a post; North  $82^{\circ} 15'$  West 40 feet to a post; South  $12^{\circ} 30'$  West 130 feet to a post; South  $18^{\circ} 30'$  West, 140 feet to a post; South  $25^{\circ} 30'$  West, 120 feet to a post; South  $33^{\circ} 45'$  West, 133 feet to a post; South  $40^{\circ}$  West, 130 feet to a post and South  $41^{\circ} 30'$  West 130 feet to center of Ebensburg and Loretto Road; thence along center of said road, North  $82^{\circ} 30'$  West, 424 feet to a point of intersection of roads; the place of beginning, containing 12 acres and 13 perches.

Excepting and reserving all the coal and mineral rights with the right and privilege to mine and remove the same.

Being the same pieces or parcels of land title to which became vested in Paul F. Bovin, John Bovin and Gertrude Bovin by the Last Will and Testament of Michael J. Bovin, deceased, dated December 19, 1935, duly admitted to probate by the Register of Wills of Cambria County, Pennsylvania, on the 19th day of September, 1944, and recorded on the same day in the office of the said Register of Wills in Will Book Vol. 22 at Page 623.

4.

That the Department of Highways of the Commonwealth of Pennsylvania has taken and occupied a portion of the aforescribed premises of the Petitioners and caused injury and damage to the remainder thereof in connection with the improvement and the Right Of Way Plan for Route No. 53,

GERARD HARRY ISAACSON  
ATTORNEY AT LAW  
EBENSBURG, PA.

Section No. 17, in Cambria County, Pennsylvania, which Plan was approved by the Governor of Pennsylvania on April 14, 1961.

5.

That the Respondent has not agreed with the Petitioners as to the amount of damages, nor made any payment to them thereof.

WHEREFORE, your Petitioners pray your Honorable Court to appoint a Board of Viewers in the manner prescribed by law to assess the damages to which your Petitioners are entitled by reason of the appropriation, and report the same to your Honorable Court sec. leg.

G. Harry Isaacson  
Attorney for Petitioners

COMMONWEALTH OF PENNSYLVANIA:

SS.

COUNTY OF CAMBRIA :

Before me, a Notary Public in and for said County and State, personally appeared Paul F. Bovin, John Bovin and Gertrude Bovin, the above named Petitioners, who, being duly sworn according to law, depose and say that the facts set forth in the foregoing Petition are true and correct to the best of their knowledge, information and belief.

Paul F. Bovin

John Bovin

Gertrude Bovin

Sworn to and subscribed  
before me this 5th day  
of October, 1962.

Elizabeth S. Allison  
Notary Public

My commission expires: April 25, 1965

In the Matter of Route  
No. 53, Section No. 17,  
In the Township of Allegheny,  
Cambria County, Pennsylvania

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

| No. December Sessions, 1962

D E C R E E

AND NOW, this 11<sup>th</sup> day of October, 1962, upon consideration of the  
within Petition, the Court appoints S. J. Wandekies, Esq.

John L. Elders and Raymond Niebauer

as a Board of View to assess the damages sustained by Petitioners as a result  
of the condemnation and taking of said property by the Commonwealth of  
Pennsylvania, Department of Highways in connection with the improvement of  
Route No. 53, Section No. 17, in the Township of Allegheny, Cambria County,  
Pennsylvania, and further orders that the said Board of View shall perform  
its duties in accordance with the Acts of Assembly and Rules of Court in such  
case made and provided.

BY THE COURT

Shettig

J.

This print is made from sheet No. 3, of Right-of-way  
plan for Route No. 53 Section No. 17, Cambria  
County, approved by the Governor on APRIL 18, 1961  
which I we have examined and had explained to me us this  
day of \_\_\_\_\_, 19\_\_\_\_, and is to be attached to  
the release herewith execute<sup>d</sup>.

Witness \_\_\_\_\_ (Seal)

Witness \_\_\_\_\_ (Seal)

Witness \_\_\_\_\_ (Seal)

