

P.D.
No. *5* December Sessions, 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.

Sylvester Glass and
Marie Glass, husband and wife,

Filed - 10-11-62

PETITION FOR APPOINTMENT
OF VIEWERS

D E C R E E

GERARD HARRY ISAACSON

ATTORNEY AT LAW

ROOMS 306-307-308 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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PETITION FOR APPOINTMENT OF VIEWERS

TO THE HONORABLE THE JUDGES OF THE ABOVE NAMED COURT:

The Petition of Sylvester Glass and Marie Glass, husband and wife,
by their Attorney, G. Harry Isaacson, Esq., respectfully represents:

1.

The Petitioners are Sylvester Glass and Marie Glass, husband and
wife, 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 that certain piece or parcel
of land, with the buildings and improvements thereon erected, situate in the
Township of Allegheny, County of Cambria and State of Pennsylvania, bounded
and described as follows:

Beginning at centre of cross roads leading from
Ebensburg to Loretto and road leading from Kaylor's
Station to Carrolltown; thence South by road to Kaylor's
Station and land of Sarah Cain two hundred eighty-five
(285) feet to a post; thence North East three hundred
forty-five (345) feet by land of Ann and Mary McMullen
to centre of road; thence West by same road to place of
beginning two hundred seventy-seven (277) feet. Con-
taining one acre.

Being the same premises title to which became vested
in Sylvester Glass and Marie Glass, his wife, by deed of
The School District of Allegheny Township, Cambria County,
Pennsylvania, a municipal corporation of the State of Penn-
sylvania, dated the 15th day of February, 1922, and recorded
in the office for the recording of deeds, etc., in and for Cambria
County, Pa., in Deed Book Volume 340 at Page 426.

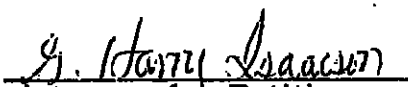
4.

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, 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.



Attorney for Petitioners

COMMONWEALTH OF PENNSYLVANIA:

SS.

COUNTY OF CAMBRIA

:

Before me, a Notary Public in and for said County and State, personally appeared Sylvester Glass and Marie Glass, husband and wife, 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.

Sylvester J. Glass
Marie Glass

Sworn to and subscribed before

me this 1st day of October , 1962.

Elizabeth S. Allison
Notary Public

Ebensburg Borough, Cambria County, Pa.

My commission expires: April 25, 1965

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D E C R E E

AND NOW, this 11th day of October, 1962, upon consideration of the
within Petition, the Court appoints L. H. Wendelker, Esq.
John L. Elder and Theodore W. Hunt
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.

STIPULATION

It is stipulated by and between counsel that five photographs of the premises taken by the Commonwealth be used in evidence in this case, with leave to the Commonwealth to withdraw them after they are used.

It is also stipulated between counsel for the petitioners and counsel for the defendant that the photographs marked Petitioner's Exhibits 1, 2, 3 and 4 be offered in evidence without objection, with leave on the part of the petitioners to withdraw them after they have served their purpose.

SYLVESTER GLASS, Called, Sworn.

DIRECT EXAMINATION

BY MR. ISAACSON:

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

A. Sylvester Glass, R.D. 1, Ebensburg.

Q. Do you live in Allegheny Township, Mr. Glass?

A. That's right.

Q. Do you own -- do you and your wife own property there?

A. Yes.

Q. From whom did you obtain the parcel of ground upon which the property is situate?

A. Allegheny Township School Board.

Q. And what year was that?

A. That would have been the latter part of 1921.

BY MR. ISAACSON: We offer in evidence, by reference, deed of the School District of Allegheny Township, Cambria County, Pennsylvania, a municipal corporation of the State of Pennsylvania, to Sylvester Glass and Marie Glass, said deed being dated February 15, 1922 and recorded in the office of the Recorder of Deeds in and for Cambria County, in Deed

Book Vol. 340, at page 426, said deed showing the ownership of a parcel of ground containing approximately one acre.

Q. Where is this parcel of ground situate, Mr. Glass?

A. You mean the place?

Q. Yes.

A. In Allegheny Township on the intersection of Route 53 and the legislative route.

Q. No. 11031?

A. Yes.

Q. Where does the legislative route go to?

A. Munster.

Q. From Route 53 to Munster?

A. Route 53 to Munster.

Q. Did you build a house on this parcel of land?

A. I did.

Q. And when did you build this house?

A. In 1922.

Q. Do you have a garage on this parcel of land?

A. Not then.

Q. When did you build a garage on this parcel of land?

A. I built a one-car garage -- well, I made a two car garage in 1946, I think.

Q. What type of a garage was that?

A. That was a frame building, wood.

Q. A frame garage?

A. Yes.

Q. What kind of a floor?

A. Wood floor.

Q. What kind of covering?

A. I have asphalt siding, brick; it wasn't brick, just imitation brick asphalt siding, and paper roof.

Q. And how far was the garage from Route 53?

A. I would say about ten or twelve feet.

Q. Do you have any sort of covering over the ground, a roadway? Did you build a roadway?

A. I had a road, driveway into the garage.

Q. What was that made of?

A. Shale; cinder, shale and stone.

Q. And was the driveway level, hilly or what?

A. No, it was more level.

Q. It was level?

A. It was more level, yes.

Q. Is that garage still on that parcel of land?

A. I had to tear it down.

Q. Why did you take it down?

A. I was ordered to by the state.

Q. And at that time, that they ordered you to take it down, or have it removed, is that it?

A. Yes.

Q. Did they offer to pay you anything for the removal of that garage?

A. They did.

Q. And how much was it?

A. The right-of-way man was in the garage. Do you want me to give you his figure?

Q. No, no, just what he offered to remove it?

A. Eighty dollars for tearing it down.

Q. I show you Petitioner's Exhibit No. 5 and ask you to state what it is? Is that the writing that the representative of the State Highway Department gave to you at the time when you tore the garage down?

A. He gave it to me before the garage was torn down.

Q. Did it state on there that he would pay you the sum of eighty dollars?

A. Eighty dollars.

Q. Do you have a house built on this parcel of land?

A. I do.

Q. And when did you build that?

A. 1922.

Q. Did you remodel at any time after 1922?

A. I have.

Q. When was that?

A. It was about five years ago.

Q. And did you keep it in good repair?

A. Good repair.

Q. Was it in good repair at the time of the condemnation on April 14th, 1961?

A. It was.

Q. Was the house in good condition at that time?

A. Yes, sir, in good condition.

Q. Can you tell us how many rooms you have on the first floor of the house?

A. I have a living room, a dining room, kitchen and a powder room they call it, and another little room there, dinette.

Q. Do you have a modern kitchen?

A. Yes.

Q. How many rooms do you have on the second floor?

A. I have four bedrooms and a bath room and a square hall in the center.

Q. Do you have a third floor?

A. I have a third floor.

Q. Is it completed?

A. It isn't finished.

Q. Do you have a floor on it?

A. Yes.

Q. Do you have a basement?

A. I have.

Q. Does it have a floor on it?

A. A cement floor.

Q. What kind of heat do you have in the house?

A. Hot water heat.

Q. Is there any porches to the house, front porch?

A. A front porth, yes, a wooden porch, and in the rear there's a cement block wall with cement slab and steps with an iron railing on it.

Q. Do you have any side walks??

A. I have a sidewalk on legislative route about twelve feet in.

Q. Was this sidewalk present before the taking?

A. Oh, yes.

Q. And where did it lead from?

A. From the side door around to the back porch.

Q. To the back porch?

A. And on out to the -- about twelve feet out from the house.

Q. Is that on the side, in the rear?

A. In the rear.

Q. Is that concrete?

A. Concrete.

Q. Did you have a walk in the front of your house?

A. I did have.

Q. And what kind of a walk was that?

A. Cement.

Q. Do you have any steps?

A. I had steps down the front.

Q. Now, are those steps still there?

A. No.

Q. Was part of that walk removed?

A. It was.

Q. Is the walk still in the rear of the house?

A. It is still there.

Q. Any part of it removed?

A. None removed.

Q. Do you have your own water?

A. I have.

Q. Do you have a well?

A. I have.

Q. What kind of a pump do you have?

A. I have got an electric pump.

Q. Does it just furnish water to your house?

A. Furnishes water for my house and my sister-in-law's.

Q. And who is your sister-in-law?

A. Florence Seymour.

Q. Where does she live?

A. Right across the street.

Q. That is across legislative route 110317

A. Yes.

Q. Do you have a sewage system?

A. I have.

Q. What does that consist of?

A. Two septic tanks.

Q. What are they built of?

A. One cement and one steel.

Q. Do you have any other buildings on the property?

A. I have a little house, I call it, down toward the woods
a little bit.

Q. Is that a tool house?

A. That's a tool house.

Q. Now, do you have --was your property landscaped prior
to the taking?

A. It was, the upper end and all around.

Q. Did you have lawns?

I had lawns.

Q. Grass lawns all around?

A. Grass lawn.

Q. Did you have trees and shrubbery?

A. I had trees and shrubbery.

Q. As a result of the taking were any trees or shrubbery removed?

A. One maple tree removed and two catalpa trees in front of the house.

Q. And any shrubbery?

A. No.

Q. Any part of the lawn removed?

A. The front.

Q. And the side?

A. Well, there wasn't too much on the side. There was some maple trees on the side.

Q. Now, I show you what is marked for the purpose of identification as Petitioner's Exhibit No. 1, and ask you to state what it represents and at what period of time?

A. You mean when?

Q. Yes, what is on that photograph and as of when?

A. You mean the front yard and all that stuff?

Q. Is this before the taking?

A. This is before the taking, yes.

Q. And what does it show?

A. Well, it shows the road.

Q. Route 53?

A. Route 53 and Legislative Route 11031, the front yard, my front walk, my steps, my two catalpa trees, one maple tree.

Q. Those are the trees that are missing?

A. These two here and this one.

Q. Two catalpa trees and a maple tree?

A. Part of this was taken from the edge of the bank to those trees right along this legislative route.

Q. Does this show your house as it was prior to the taking?

A. Yes.

Q. Now, I show you what is marked for identification as Petitioner's Exhibit No. 2 and ask you to state what it represents, or what it shows?

A. Here was my little/^{old}garage, my driveway to the old garage.

Q. It shows the driveway and your old garage, the foundation to your old garage?

A. Yes, the front of it, and the garage extended back here twenty feet, eighteen feet wide, twenty feet long.

Q. How large was your garage?

A. Eighteen by twenty.

Q. Was that a two car garage?

A. Two car garage.

Q. What else does it show?

A. Now they came in here with the fill; it's all filled down here now.

Q. What does it show on there? This shows your lawn?

A. This all my lawn here, clear to here.

Q. Does it show Route 53?

A. Shows Route 53.

Q. And it shows your house?

A. It shows my house, side entrance.

Q. That is the eastern side of your house?

A. That's the eastern side.

Q. Now, I show you Petitioner's, what is marked Petitioner's Exhibit No. 3 and ask you to state what it represents or shows?

A. Well, this is 53.

Q. It shows Route 53?

A. Yes, and Legislative Route 11031, my trees.

Q. On what side?

A. On the west side of the house. This tree is gone.

Q. The first tree, maple tree on the photograph, is gone?

A. Right. This ground has gone up to these trees.

Q. All of your land up to the trees has been taken since?

A. That's right.

Q. And it has been taken as a result of the condemnation proceeding?

A. Yes. That's my corner. That's my front corner of my front porch, that's the house, back here is my little playhouse back here.

Q. You have a playhouse besides the tool house?

A. No, not any more.

Q. Was that there before?

A. I took it out of there. It was no good.

Q. I show you what has been marked for the purpose of identification as Petitioner's Exhibit No. 4 and ask you to state what it shows or represents?

A. Well, this is my

Q. Is this before the taking?

A. This is before the taking.

Q. That's the photograph of it?

A. That's my lawn.

Q. On what side?

A. On the east side. This is my driveway into my garage, old garage, rather; this is where the garage was. This is the hole down here where it was never filled up, but that was before the taking.

Q. Does this also show Route 53?

A. Route 53 east, and this is part of the garage.

Q. Is this, or does this show part of the land of the Bovins?

A. It shows part of the land of the Bovins.

BY MR. ISAACSON: These photographs have been admitted into evidence by stipulation.

Q. Now, Mr. Glass, how far, approximately, is your property from Loretto Borough?

A. About a mile, about a mile from the upper end of town, from the monument.

Q. From the monument to your house?

A. Yes.

Q. And how far is it from your house to the Borough of Ebensburg, Pennsylvania?

A. On the board out there it's four miles, but it's five miles

Q. You think it's five miles?

A. About five miles.

Q. Do you have any fire service? In case of fire do you have any service?

A. We have the Loretto Fire Company, Volunteer Fire Company, the Ebensburg Fire Company that you can get out there in five minutes, and they have been out there in five minutes to fires.

Q. You have your own water there?

A. I have my own water, well.

Q. Has it ever gone dry?

A. Never has gone dry.

Q. Although two families use it?

A. Two families.

Q. And you have your own sewage system?

A. I have my own sewage system.

Q. Do you have electric light there?

A. I have electric light.

Q. Who furnishes your electric light?

A. Penn-Elec.

Q. Do they furnish electric light to all the other houses around there?

A. They do.

Q. Do you have the same facilities as Ebensburg and Loretto?

A. That is right.

Q. You don't farm your land, do you?

A. I have a little garden, that's all.

Q. Now, as a result of the condemnation proceeding was any of the front of your land taken?

A. It was.

Q. Was any of the land along the side of your house taken?

A. On the west side, yes.

Q. That is along Legislative Route 11031?

A. Yes.

Q. And as a result of this taking it was necessary to remove your garage, is that correct?

A. That's right.

Q. Did the taking by the Commonwealth go through the garage?

A. Partly.

Q. Can you tell me how far your house is from the new required legal right-of-way line?

A. That's the line on the outside, as far as they can take, as far as they can go.

Q. As far as they have taken?

A. I've got about eleven foot frontage left.

Q. In other words, there's about eleven feet left there?

A. Yes, eleven foot, five, something like that.

Q. Do you know how many feet they took from your house?

A. Not exactly. You can step into it as you go down through my lawn. I guess they own that that far, I don't know.

BY MR. ISAACSON: Can we stipulate that a width of 14 feet was taken for a distance of 87 feet from the Legislative Route 11031, and then it jumped out and the state took a width of 24 feet for a distance of 90 feet

on a curve to the right, and then took a width of 36 feet to the property line?

BY HOWARD E. BRENEMAN: The first description I don't agree with. I don't know where you get figures like that. Start again.

BY MR. ISAACSON: An average width of 14 feet for a distance of 87 feet, that's on Legislative Route 11031.

BY HOWARD E. BRENEMAN: We only have ten feet here. I wouldn't go along with that average. It won't work out.

(Off the record discussion between counsel for plaintiffs and Howard E. Breneman takes place).

BY MR. ISAACSON: We can stipulate then that the Commonwealth took an average width of 14 feet for a distance of 87 feet, commencing at the intersection of Route 11031 with Route 53, and this is along Route 53 -- an average width of 12 feet rather than 14; then after 87 feet the Commonwealth took an additional width totaling all together 24 feet for a distance of 95 feet on a curve to the right, and then from that point on took a width of 36 feet to the property line. The approximate frontage of Glass on Route 53 is 235 feet.

It is also stipulated between counsel for the petitioners and counsel for the defendant that the drop from the old center line of Legislative Route 11031 to the new center line of the highway at the intersection with Route 53 is 2.3 feet, plus or minus, and that this decreases until it comes to the rear driveway of the Glass property, at which point there is approximately a 10 inch drop from the center line.

Q. You have testified -- how far distant is your house from the new legal right-of-way at the intersection of Routes 11031 and 53?

A. Ten feet.

Q. How many trees have been taken by the Commonwealth?

A. One maple tree and two catalpas.

Q. Do you now have a means of access to your house from Route 53?

A. I have not, not in front.

Q. What is the drop in front of your house by the new grade of the highway?

A. Well, where my front steps used to be on the old road I have got about, measuring from the top of the bank on the slope it's about seven and a half feet, eight feet. That's the slope now, down to the ditch.

Q. Do you know what the horizontal drop would be, or vertical drop it would be?

A. The vertical, I don't know. It would be less.

Q. You wouldn't know that?

A. No.

Q. Now, at the western end of your lot has the highway been raised there?

A. The western side?

Q. Yes.

A. Lowered.

Q. How about the eastern side?

A. It varies. It's a grade down there; it's raised.

Q. Is there a ten foot fill there?

A. Down at the end, down toward the railroad it's a ten foot fill, yes. But it has been filled up. I got that filled up.

Q. But has there been --all along there has it been raised?

A. All along there it's about a five foot fill, five foot bank.

Q. Do you have any access by means of the front of your -- front door of your house?

A. I have no access to the front of my house. The frontage is gone. They took my front away from me. That was the beauty spot of my property. I have no entrance to my front at all. The only entrance I have is to the side and rear.

Q. You could come to the front if you walked around from the rear to the front?

A. Yes, either side of the house.

Q. But you could not enter the front door or front porch of your house from Route 53?

A. No.

Q. Could you enter it from the side, Legislative Route 11031?

A. No. You have to walk back on the legislative route and walk up past the trees and then around the front.

Q. So actually the only entrance, means of ingress and egress to your house now is the rear entrance?

A. Rear entrance and the side.

Q. And the side entrance?

A. Entrance to the garage.

Q. That/^{side}is from

A. The eastern side.

Q. That side is not on Legislative Route 11031?

A. No.

Q. So the only way you could get to your side entrance is by coming up from your garage?

A. That's right, or come in past the back and around the walk, on the walk.

Q. How far is it now from your porch, front porch, to the state line?

A. I think it's about eleven feet, five inches.

Q. Do you have any troubles with drainage at this time?

A. Outside of water in front of my property.

Q. Well, what happens there?

A. The water goes right over my driveway, right off that elevation

Q. That's the new driveway?

A. It's the new -- the elevated road I mean, and runs across my driveway, right down through over my lawn and below my driveway, that I had below my driveway, to the new garage, clear down to the old garage. The state put a pipe in in front of my house down two or three feet, covered it over, and brings it into the pipe right out on my lawn.

Q. At what point does it come out on your lawn?

A. It comes out on the state lawn and then runs over to me.

Q. It comes out on the state right-of-way?

A. That's right.

Q. And how far below your house is that pipe?

A. Oh, that's across the eastern side of my yard, and across my driveway to my new garage, which is two cars wide, and down across my lawn, which is, I would say -- well, the lawn itself -- my driveway is 55 feet down to where my old garage stood.

Q. And then it runs over the other ground too, does it?

A. Yes, it runs over the other ground too.

Q. How much ground do you have below that?

A. There's at least that much down below.

Q. You mean fifty five feet?

A. Yes, more than that.

Q. Now, at what point does this pipe come in, how far below your house does the pipe come in? Can you give me that figure?

A. I can give you that here somewhere.

Q. I believe you said that the water comes down off the highway in front of your house, down past your house, and goes over your lawn?

A. Right.

Q. And then the pipe comes out -- a pipe also comes out,

the highway department pipe for drainage purposes comes out just between your house and your new garage, and then that also brings water, plus the water that comes off the highway, down over your lawn, all the way down to the end of your line, is that correct?

A. Could I correct that?

Q. Yes, sure.

A. You said the pipe comes out between the house and the garage. It don't. It comes out below the driveway to the garage.

Q. Below the driveway to your garage?

A. Yes.

Q. And about how far below your house is that?

A. I never measured that, but I would say it's twenty five, it's twenty to twenty five feet below the new driveway. That's where the pipe comes out onto my lawn.

Q. As a result of this water coming from the highway and from this drain pipe

A. Yes.

Q. Are you having difficulty with drainage, difficulty as far as your lawn and property is concerned?

A. Yes, I will have; yes, I will have if there isn't pipe put in I will have.

Q. How can you eliminate that?

A. By putting terra cotta pipe in.

Q. Have you had any one estimate the cost of placing terra cotta pipe in in order to eliminate this water problem?

A. I have.

Q. And that is one of the elements you have considered in the depreciation of your property?

A. That's right.

Q. Now, have you had any one give you an estimate as to

the cost of moving your house?

A. I have.

Q. And how far back would they move your house?

A. Twenty feet.

Q. You have an estimate from a construction company?

A. I have.

Q. And have you taken that into consideration in estimating the cost of the depreciation in your property value?

A. Yes.

Q. Are you familiar with the value, market value of land and properties in the immediate vicinity or neighborhood of your property?

A. I am.

Q. Do you know what land, of the land that's being sold by Albert Biter?

A. I have heard about it, yes.

Q. Is that in close proximity to your property?

A. It is.

Q. About how far away from your property is it?

A. About three quarters of a mile.

Q. Have you heard about other sales of property?

A. Yes.

Q. Do you have an opinion as to the value of your property?

A. I have.

Q. Prior to the taking?

A. I have.

Q. By the Commonwealth of Pennsylvania on April 14, 1961?

A. Yes.

BY MR. PEDUZZI: He has not demonstrated any familiarity with sales of property in the vicinity.

BY MR. ISAACSON: He wouldn't have to. He being the

owner wouldn't have to be cognizant of the value of other property. He can testify as to the value of his own property.

BY MR. PEDUZZI: I don't know about that, Harry. I have a pretty recent Supreme Court opinion, 298 Pa. 406, that says an owner-- in general an owner is competent to testify to the value of his property, but he is subject to the current rules and occupies no especial position as a witness. An owner's testimony is incompetent where he admits he has no familiarity of the market value of the land in the direct neighborhood. That's right in that decision.

BY THE CHAIRMAN: Yes, but this gentleman has testified that he is familiar with sales, he says that he has heard of these sales from the Biter tract and other property values in the area. I think he is competent to testify as to his own property.

BY MR. ISAACSON:

Q. And what in your opinion was the fair market value of your property prior to the taking by the Commonwealth of Pennsylvania on April 14th, 1961?

A. Prior to the taking?

Q. Yes.

A. I would say \$15,500.00.

Q. And what in your opinion is the fair market value of your property since the taking by the Commonwealth on April 14th, 1961?

A. I would say \$8,500.00.

Q. So in your opinion then the damages which you have suffered is the difference between \$15,500.00 and \$8,500.00, or \$7,000.00?

A. That's right.

CROSS EXAMINATION

BY MR. PEDUZZI:

Q. Mr. Glass, you agreed to remove the garage from your property, is that correct?

A. That is right.

Q. With the Highway Department for the sum of eighty dollars?

A. That's right.

Q. Which is to be added onto the damage claim, is that what your agreement is?

BY MR. ISAACSON: That isn't the cost of the garage. That's only the work.

BY MR. PEDUZZI: Cost of removal. I just wanted to make that clear.

Q. Now, Mr. Glass, as far as the location of the highway to your house, the front, that wasn't moved southward, was it, the highway itself, the paved portion of the highway?

A. No, I don't think.

Q. That was still in the same position it was before?

A. It was widened, though, widened out.

Q. About how much, do you know?

A. Well, whatever the highway is now.

Q. About a foot more on your side?

A. Oh, maybe a foot, maybe better than that.

Q. I am talking about the paved portion of the highway.

A. I never measured that part.

Q. Also it was lowered, the highway was lowered, the paved portion of the highway?

A. On the one side, my side.

Q. On your side, and how about Route 11031? That was lowered?

A. That was lowered too, right in the intersection.

Q. Now, you testified that you have no access to the front of your house. What do you mean by that?

A. I have no steps. I can't walk up that bank.

Q. Can't you put steps in?

A. Well, in seven and a half feet drop?

Q. Well, you had steps before, is that correct?

A. I had two steps, but there was only about a two foot drop.

Q. So you would have to put steps in for seven and a half feet?

A. Yes.

Q. Which would be on Commonwealth property, of course?

A. That's right.

Q. But you could still do it, Mr. Glass?

A. Well, yes, but that would be expensive, quite expensive, and I have no frontage. What I mean, I have no frontage to my house at all. The beauty was taken away from it, as you can see the way it was before. Right now it don't look anything like that. The beauty was taken away from the front of my property. In other words, I just got the house, that's all.

Q. You have the house?

A. Yes, the front of the property, the beauty of it is gone.

Q. Well you have the house, you testified you have a well, you have sewage

A. Yes.

Q. All those were not disturbed by this relocation or reconstruction, is that correct?

A. They're not disturbed.

Q. And there is really nothing to prevent you from building steps up to your place if you wanted to?

A. No, but not on my property.

Q. Now, you testified as to some drainage you had, a pipe line laid into your property. Is that on the Commonwealth's right-of-way or is that within your property?

A. Across my driveway would be, yes.

Q. Across your driveway?

A. Yes, that's the end where I come off the highway and my driveway.

Q. But it is underneath your driveway?

A. It's underneath, but the water from the top of the road, there's an elevated roadway, slopes this way toward my ground, and the water from the front of my house, at this bank, runs down across my driveway and down across my lawn, that's the water I'm talking about. And what's underneath comes out down on the lawn too through the pipe.

Q. That comes out on the Commonwealth's right-of-way though, is that right?

A. Yes, but still it runs onto me, still runs onto my ground.

Q. Where does it run on your ground?

A. Right off the Commonwealth.

Q. That's the east side of your property?

A. That's the east side of the property.

Q. Down toward the railroad?

A. That's right.

Q. So you figure that because of this construction of the highway the Commonwealth has taken at least approximately half the value of your property away from you?

A. Yes.

Q. One half of the value?

A. Yes.

Q. In other words, you would have sold it for -- would you sell your property now for seven thousand dollars?

A. No.

Q. You wouldn't?

A. No. It's my home.

Q. Now, Mr. Glass, was there an offer made to you for settlement?

A. Yes.

Q. Was there any partial offer made to you for settlement?

A. Yes.

Q. When was the offer made?

A. I think it was made about June.

Q. June of what year?

A. 1961.

Q. Would June 13th be about right?

A. June 13th, around there sometime, yes.

Q. And you refused the Commonwealth's offer, is that correct?

A. Yes.

Q. Then there was a partial offer made to you since that time?

A. Since that time?

Q. After the original offer was made?

A. Yes.

Q. Did they offer to pay you partially?

A. Yes, seventy five per cent.

Q. And you refused that?

A. Yes.

Q. That was on June 20th, 1961?

A. Something like that, yes.

Q. I guess that's all.

RE-DIRECT EXAMINATION

BY MR. ISAACSON:

Q. One minute, Mr. Glass. The way I understand it, your house is now elevated on all sides above Route 11031 and above Route 53, so it sits there like an island?

A. Like an island, up the bank.

Q. Do you contemplate moving your house back? Have you been thinking about that?

A. I have been.

Q. Is that why

A. I don't like it where it is.

Q. Is that why you received an estimate from a mover?

A. That's right.

Q. And you have that estimate?

A. Yes.

Q. And have you taken that in consideration in considering the value of your property as of this time?

A. That's right.

WALLACE E. WILLIAMS, Called, Sworn.

BY MR. ISAACSON: For the purpose of expediting this, will the Commonwealth once again accept Mr. Williams' qualifications?

BY MR. PEDUZZI: Yes.

DIRECT EXAMINATION

BY MR. ISAACSON:

Q. Now, Mr. Williams, will you state your name and address?

A. Wallace E. Williams, 312 Palliser Street, Home Address, and Business Address 722 Franklin Street, Johnstown, Pennsylvania.

Q. What is your occupation, Mr. Williams?

A. Real estate broker and appraiser.

Q. How long have you been a real estate appraiser and broker?

A. Approximately, between twenty two and twenty four years.

Q. Are you familiar with the values of property in the neighborhood or vicinity of the Glass property in Allegheny Township?

A. Yes.

Q. Were you requested to make an appraisal of this property?

A. I was.

Q. And acting upon that request did you view this property?

A. I did.

Q. And how many times have you viewed the property?

A. Three times.

Q. And the last time you viewed the property was what date?

A. Exterior inspection, yesterday.

Q. Did you collect any information concerning sales of property in this locality?

A. Yes.

Q. Did you talk to anybody concerning sales that were made by them or that they were involved in?

A. Yes.

Q. So you have made a check as to the accuracy of the information which you obtained?

A. Yes.

Q. In valuing the Glass property what factors did you take into consideration?

A. Well, I took into consideration the things in my opinion that would be in the bundle of rights in ownership. They would be actually what the property consisted of as to land and improved with buildings, the comparability, if it is possible to resolve it, with real estate that has been sold in the area, and the factors that we generally apply to the ownership, the things that one interested in buying a property would look into before making a purchase. Of course those things too that an owner would look into before making a sale.

Q. Did you see the topography of this land?

A. I did.

Q. Did you see the change in the topography as a result of the new construction and relocation?

A. Actually, I did not specifically recall the property prior to the improvements and did not see the property for the specific purpose of the appraisal before the work was in progress, but I have seen photographs, which I have been told represent the actual conditions on the ground prior to the time that the changes occurred.

Q. And you did see the property as the new work was in

progress?

A. I did.

Q. Then you saw it after the work was completed?

A. I have seen the property of recent date, yes.

Q. And did you take into consideration the improvements on the property?

A. Yes.

Q. And of the land equivalent to this land selling for in the neighborhood?

A. Yes.

Q. And the best and highest use of this land?

A. I tried to consider the uses to which the land could be put.

Q. And the location of the property?

A. Right. I have.

Q. And based on all these factors that you have described do you have an opinion as to the value of this property, that is the fair market value of this property, prior to the condemnation proceedings of April 14th, 1961?

A. I did.

Q. And what in your opinion was the fair market value of this property, the Glass property, prior to the condemnation proceedings of April 14th, 1961?

A- \$15,400.00.

Q. Do you have an opinion as to the fair market value of this property since the taking by the Commonwealth of April 14, 1961?

A. I do.

Q. In your opinion, what is, or what was the fair market value of this property after the taking by the Commonwealth on April 14th, 1961?

A. \$9,600.00.

Q. And the difference in value, before and after, is how much?

A. \$5,800.00.

CROSS-EXAMINATION

BY MR. PEDUZZI:

Q. What did you consider as the best and highest use for this property?

A. As improved, the value is attached significantly as a home.

Q. A dwelling?

A. A home.

Q. And would there be any benefits at all derived from the improved highway?

A. I would think so.

Q. Did you consider that too?

A. Yes.

Q. You said you considered sales of property in the locality, are they comparable to this property?

A. There wasn't a property sold as far as I could ascertain from the records in Ebensburg that is comparable to this property. There are differences that would be difficult to resolve on a specific basis. The sales had to be taken as the general tone of the market and resolved in that particular manner.

Q. Well, what is the general tone of the market in Allegheny Township?

A. The general tone of the market in the vicinity of this property is relatively active.

Q. Relatively active?

A. Yes.

Q. Have there been recent sales there?

A. Yes, there have been sales. There have been sales, numerous sales, one group I looked at were around fifty four in number, that extended over a period of approximately three years.

Q. Is that mostly College Heights?

A. There was property that was attached to the college and property that was not attached to the college. There were properties that were located along Route 53, and there were properties generally in the area within a radius of real estate activity that they would not be significantly attached to one particular reason why they were sold.

Q. Well, in comparison with other parts of the county, would you say the real estate activity in Allegheny Township was relatively low or high?

A. I would say that it's a little higher than normal for the general section which you might classify as the northern part of Cambria County.

Q. A little higher, you say?

A. A little higher. You have had some promotions taking place in the northern part of the county, and naturally you have interest at the present time in St. Francis College. I would say that it has even taken on national significance because of their basketball team.

BY MR. ISAACSON: Petitioners Rest.

HOWARD E. BRENNEMAN, Called, Sworn.

DIRECT EXAMINATION

BY MR. PEDUZZI:

Q. What was the date of condemnation of this property?

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

Q. Have you computed the acreage that was taken?

A. The acreage here I have not. They have it in square feet, which amounts to 5540 square feet.

Q. 5540 square feet?

A. 5540 square feet, which is about 0.14 of an acre, a little over one-tenth acre.

Q. We have already stipulated as to the frontage that was taken?

A. Yes.

Q. Was there an offer made to Mr. Glass for settlement?

A. There was.

Q. When was that made?

A. That was June 13th, 1961.

Q. And was there an offer made to him of partial settlement?

A. The partial was made the following week, June 20th, and both of them were refused.

CROSS EXAMINATION

BY MR. ISAACSON:

Q. There was a drop in the grade, was there not, in the front part of Mr. Glass' property, that is on Route 53?

A. Yes. I will be glad to detail that for you if you care.

Q. All right.

A. Immediately in front of the house there was a cut of 2.4, that is 2.4 feet; at Station 269 plus 50, which is just about where his new driveway goes into the new garage, there's a cut of one foot; at the side of the old garage, at the old location, the fill to old ground line based on the shoulder elevation amounts to 4 feet; and next to the railroad right-of-way line the fill above old ground amounts to 5 feet.

Q. At the old garage it is 4 feet above fill?

A. There was four feet of fill from the shoulder line to natural ground.

Q. Oh, I see. That's all.

PAUL D. WASHINGTON, Called, Sworn.

DIRECT EXAMINATION

BY MR. PEDUZZI:

Q. Your name is Paul D. Washington?

A. Yes.

BY MR. ISAACSON: Qualifications admitted.

BY MR. PEDUZZI:

Q. Mr. Washington, have you examined the Sylvester Glass property?

A. Yes, sir, I have.

Q. Did you examine that property prior to condemnation?

A. I did.

Q. And did you examine the buildings, the house and any other buildings on that property at the time?

A. Yes, sir.

Q. And did you examine the property after the condemnation, after the construction?

A. I did.

Q. Now, Mr. Washington, in making your appraisal of this property, in addition to the physical examination that you made of it what other elements did you take into consideration?

A. I took into consideration the location, the topography, proximity to schools and churches, transportation, stores, and I considered that it's in a semi-rural area where there's a lack of adequate fire protection, lack of police protection, and I took into consideration other sales in the area.

Q. And the other sales in the vicinity of this property, is that correct?

A. Yes, sir, that is correct.

Q. And did you take into consideration the trees and shrubbery that were removed from the property?

A. I did.

Q. And also the accessibility to and from the property as it stands now?

A. Yes, sir.

Q. Well, Mr. Washington, having taken all those elements

into consideration, what is your opinion as to the fair market value of this property immediately prior to the condemnation?

A. \$11,545.00.

Q. And then have you made, or formed an opinion as to the fair market value of this property immediately after the condemnation and as affected by it?

A. I have.

Q. And what is that figure?

A. \$8,522.00.

Q. So that you have arrived at the total damages to this property of \$3,023.00, is that correct?

A. That is correct.

Q. What would you say as to the real estate activity in this township as compared with other areas in the county?

A. Well, I am thoroughly familiar with the township because the area isn't too far removed from Cresson, where I reside, and I would say that it is no more active, and perhaps it might be a little less active than other sections of the county. Now I know of some sales, the fact is I have appraised during the years several properties in Allegheny Township, so I feel that I am generally familiar with what is going on, and there isn't anything there which would create any particular real estate activity except like in around the college. Now, they have been building some homes, I understand, for use for their faculty, and aside from that I don't know of many transactions. I mean that is in the township as a whole, except scattered transactions. So I would say it is not any more active than any other similar township in the county.

Q. The valuation of real estate usually depends on demand, is that right?

A. Yes. The selling price is usually definitely affected by the demand.

CROSS EXAMINATION

BY MR. ISAACSON:

Q. Did you say there hasn't been a demand for real estate in Allegheny Township?

A. No, I said there hadn't been any.

Q. Did you examine the real estate transactions?

A. Yes, I am examining them all the time.

Q. Did you look at the development, Lake Development Corporation?

A. Yes.

Q. Have there been many sales there?

A. Yes. That has no effect on the subject property. It is too far removed.

Q. Would you say that ninety eight sales in Allegheny Township in the year 1960 to March, 1961, is not/^{much}activity, Mr. Washington?

A. Yes, that's quite a bit of activity, but the sales that you have reference to are largely in the Cresson Lake Manor Development, around the dam. That has a peculiar, you might say lure, to the purchaser for cottage sites.

Q. Aren't there any other sales besides the Lake Manor Development Corporation sales?

A. Yes, but that's quite a number there that you just mentioned.

Q. They're not all Lake Manor?

A. No, not all.

Q. There are only probably a little more than half Lake Manor, the rest are Allegheny Township; would you not consider that a lot of sales for a township in Cambria County in a year, a little over a year?

A. Yes, but down in White Township there has been a lot more.

Q. That's where they have the new dam?

A. That's right.

Q. That's a lot of activity, though, isn't it?

A. Yes.

Q. Well, isn't this a lot of activity?

A. Well, I would say not necessarily. I would say in Richland Township you have much more activity.

Q. How about Gallitzin Township?

A. Gallitzin Township, not so much.

Q. How about Munster Township?

A. Not so much in Munster.

Q. How about Cambria Township?

A. Yes.

Q. As much as that?

A. Very active, yes.

Q. So this is also one of the active centers, is it not, of the county?

A. Well, I would say it is active in spots.

Q. But Allegheny Township is not a very large township, is it?

A. Well, I don't know how many square miles.

Q. And from Lake Manor to the location of the Glass property can't be any more than three or four miles, if that?

A. I would say approximately five.

Q. Isn't it about six miles from the Glass place to Cresson?

A. That's approximately correct.

Q. And how far is it from Cresson to Lake Manor?

A. I would say about a mile or a little better.

Q. It's more than that, Mr. Washington.

A. Well, it wouldn't be much over a mile.

Q. It's at least two to two and a half miles?

A. Well, I never measured it.

Q. Isn't that in close proximity to the Glass property?

A. No, well no it isn't real close, where it would have any particular effect.

Q. How about Loretto, isn't that close to the Glass property?

A. Yes.

Q. Hasn't there been a lot of activity in Loretto?

A. Yes, there has.

Q. And isn't the college expanding at great rate?

A. Yes, it has.

Q. Haven't they been getting new business and even a new post office in Loretto?

A. It has.

Q. Haven't they been selling a lot of land in and around Loretto for the purpose of building homes?

A. You mean the college has been selling it?

Q. Every one has been selling, and they have been buying, isn't that true?

A. Well, there has been activity around the college, I agree with that.

Q. So that there has been an expanding economy around the Borough of Loretto and Allegheny Township in the district where the Glasses live?

A. Well, around the college, yes.

Q. How far is the Glass property from the monument in Loretto?

A. Well, I'd say approximately about a mile to a mile and a half.

Q. Well, would you say eight-tenths of a mile would be incorrect?

A. No, I wouldn't.

Q. And isn't there a subdivision of lots by Albert J. Biter within a half mile of the Glass property?

A. Yes, sir.

Q. And hasn't there been activity in that subdivision?

A. Yes, sir.

Q. And haven't they been erecting new homes in that subdivision?

A. Yes, sir.

Q. And hasn't building expansion been going out in the direction of Ebensburg from Loretto?

A. Yes, what there has been.

Q. In the direction of Ebensburg?

A. Yes.

Q. And how far is the Glass property from the county seat of Ebensburg?

A. Well, I didn't measure it, but I would say four or five miles.

Q. But it's very close, about four or five miles?

A. Yes.

Q. And Ebensburg is the heart of the county, is it not?

A. That is correct.

Q. Now, Mr. Washington, you say there is a lack of adequate fire protection?

A. That is correct.

Q. Doesn't Loretto have a volunteer fire company?

A. Yes, sir, they do.

Q. And that is about a mile distant from the Glass property?

A. A little more than a mile.

Q. And in any locality in a borough aren't there properties that are situated right in the borough a mile away from a fire station?

A. Well, yes. I don't think in Loretto Borough.

Q. But in other boroughs?

A. Yes, there would be.

Q. And in the cities aren't properties situate more, much

more than a mile, from a fire station?

A. That's right.

Q. So this is very close to a fire station?

A. My reference to the fire protection there is the fact that there are no hydrants. The nearest hydrant is -- would be slightly east of the Carmelite Monastery. That's the nearest hydrant. That would be three fourths of a mile.

Q. But there is adequate water around this locality at the intersection of Route 53 and Legislative Route 11031?

A. There may be, but there may not be sufficient pressure to push the quantity of water that might be required in the event of fire.

Q. Is not the Ebensburg Borough Fire Company very handy also?

A. Yes, they answer calls in that direction, but there are no hydrants in the vicinity to which they could attach.

Q. Don't they have police protection in the Borough of Loretto?

A. Yes, but I don't think it extends that far.

Q. Do they have constables there?

A. I'm not sure what they have.

Q. Isn't the state police located very close, in the Borough of Ebensburg, Pennsylvania State Police?

A. That's right.

Q. So that there is a lot of police protection, probably more than you have in the ordinary community. Did you examine the shrubbery and trees prior to the taking?

A. Yes, sir.

Q. Did you examine the general appearance of this property prior to the taking?

A. I did.

Q. And you examined it afterwards?

A. Yes, sir.

Q. Didn't this taking make quite a difference in the beauty

of that house?

A. It did make a difference.

Q. A considerable difference, isn't that right Mr. Washington?

A. I wouldn't say considerable, but it did make a difference.

Q. Did you take into consideration the fact that this water was draining off the roadway and coming down through this pipe onto the land of the Glasses and thereby making it difficult to improve those lands without spending some money to take care of this drainage?

A. No, I didn't know about that until Mr. Glass told us.

Q. Would that have made any difference in your estimate?

A. I don't think so.

Q. The mere fact the water is coming in and it is going to be costly to lay pipe to take care of it would make no difference in your estimate?

A. I don't think.

Q. Would the question of fill make any difference in your estimate?

A. No.

Q. That wouldn't make any difference either, the fact that it might cost money to fill some of this property as a result of the Bill that was placed on the new highway?

A. No.

Q. Did you take into consideration the cost of moving this property back from the highway so it would have some of its original beauty and accessibility?

A. No, I did not.

Q. Would that make any difference in your estimate?

A. No.

Q. Don't you consider it expensive to move a property back?

A. Well, there is expense involved, but I didn't consider it.

Q. Did you take into consideration the fact that the Glasses means of egress and ingress had been quite changed and handicapped?

A. Yes, I did consider that.

Q. Isn't it rather unusual to have a house without a front entrance?

A. Yes, that is unusual.

Q. Did you take that into consideration?

A. Yes, I did.

Q. And taking, even taking all those things into consideration, and did you take into consideration the fact that the grade in front of the house was now much lower?

A. Yes sir, I did.

Q. And did you take into consideration the fact that the grade on Legislative Route 11031 was much lower now?

A. I did.

Q. And that the house was placed apparently on an island?

A. I didn't consider that.

Q. You didn't take that into consideration?

A. No, not that the house was placed on an island.

Q. And you didn't take into consideration the loss of the use of any of the land? That is for the purpose of a residence? Severance damage?

A. Oh, yes, definitely I considered severance damage.

Q. Taking all those things into consideration you found that the damages amounted to only \$3,023.00?

A. Yes, sir.

Q. That's all.

BY MR. PEDUZZI: Commonwealth Rests.

BY MR. ISAACSON: At this time I would like to request in all cases that I have had before this Board, I would like to request detention damages. The mere fact that

the state has made an offer, and the mere fact that they have stated that they would give part of their offer to the parties concerned, is not sufficient to avoid detention damages. The only thing that would be sufficient in this case or in the Bovin case, is unusual delay upon the part of the parties whose lands have been taken, condemnees, or the asking of an excessively high price for the taking.

BY MR. PEDUZZI: Of course I disagree with that.

BY THE CHAIRMAN: I think we are all agreed that the law is that no detention damages can be given where the demand of the property owner is so excessive that the condemning body couldn't possibly in good conscience meet it. Otherwise, they must give detention damages. I think we are all agreed on the law. I think we have to base it upon the facts.

BY MR. PEDUZZI: Of course the fact that a percentage of the offer was refused is also to be considered too.

BY THE CHAIRMAN: Oh, yes, it's all going to be considered.

BY MR. PEDUZZI: It's unfair to the Commonwealth where the party refuses to take part of the money at the time it is offered.

BY MR. ISAACSON: Well, they have that money and they're still using it.

BY MR. PEDUZZI: Yes, but the only reason they still have it is because the property owner wouldn't take it.

TESTIMONY CLOSED

STENOGRAPHER'S CERTIFICATE

I hereby certify that the proceedings and evidence had upon the hearing of 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.

SYLVESTER GLASS AND MARIE GLASS
HUSBAND AND WIFE.

TESTIMONY TAKEN BEFORE BOARD
OF VIEWERS

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

No. 5 December Sessions, 1962, R.D.

IN THE COURT OF
QUARTER SESSIONS OF
CAMBRIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

vs.

SYLVESTER GLASS and MARIE
GLASS, husband and wife,
Defendants

Filed & Confirmed Nisi
Jan 22, 1963

VIEWERS' REPORT

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

COMMONWEALTH OF PENNSYLVANIA, :: IN THE COURT OF QUARTER SESSIONS
 Plaintiff ::
 vs. :: OF
 :: CAMBRIA COUNTY, PENNSYLVANIA
 SYLVESTER GLASS and MARIE ::
 GLASS, husband and wife, ::
 Defendants :: No. 5 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 by Sylvester Glass and Marie Glass, husband and wife, appointed Leopold J. Wendekier, John L. Elder and Theodore W. Hunt 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 10:00 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. Sylvester Glass, 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.

The meeting was held as scheduled and was attended by Mr. Sylvester Glass, 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, Highway Department appraiser, and Edward F. Peduzzi, Esq., counsel for the Highway Department.

Those who testified for the benefit of the Board were Mr. Sylvester Glass, 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 land of the property owners. The portion condemned has an area of 0.14 acres, and is entirely situate in Allegheny Township, Cambria County, Pennsylvania.
2. There was erected on this land a ten-room, 2-story frame dwelling, and separate frame garage.
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. Sylvester Glass and Marie Glass, husband and wife, 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 owner of the property herein involved by the improvement and relocation of a portion of Route No. 53 are as follows:

Sylvester Glass and Marie Glass,
husband and wife, \$3,900.00

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 \$7,000.00.

Their expert witness, Mr. Wallace E. Williams, a Johnstown realtor for many years, stated that, in his opinion, the damages suffered by property owner by virtue of the condemnation was \$5,800.00.

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 0.14 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 \$3,023.00.

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


Theodore W. Hunt

COMMONWEALTH OF PENNSYLVANIA, :: IN THE COURT OF QUARTER SESSIONS
 Plaintiff ::
 vs. :: OF
 :: CAMBRIA COUNTY, PENNSYLVANIA
 SYLVESTER GLASS and MARIE ::
 GLASS, husband and wife, ::
 Defendants :: No. 5 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:

Sylvester Glass and Marie Glass,
 husband and wife. \$3,900.00

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

Theodore W. Hunt
 Theodore W. Hunt

COMMONWEALTH OF PENNSYLVANIA :: IN THE COURT OF QUARTER SESSIONS
 ::
 :: OF
 vs. ::
 :: CAMBRIA COUNTY, PENNSYLVANIA
 ::
 SYVESTER GLASS and MARIE GLASS, husband and wife :: No. 5 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 Sylvester Glass and Marie Glass, husband and wife, 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 Sylvester Glass and Marie Glass, husband and wife, do hereby give notice that they will meet upon the premises on Friday, November 9, 1962, at 10:00 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 that certain piece or parcel of land, with the buildings and improvements thereon erected, situate in the Allegheny Township, Cambria County, Pennsylvania, bounded and described as follows:

Beginning at centre of crossroads leading from Ebensburg to Loretto and road leading from Kaylor's Station to Carrolltown; thence South by road to Kaylor's Station and land of Sarah Cain 285 feet to a post; thence North East 345 feet by land of Ann and Mary McMullen to centre of road; thence West by same road to place of beginning 277 feet. Containing 1 acre.

BOARD OF VIEW

Leopold J. Wendekier
 Leopold J. Wendekier, Chairman

John L. Elder
 John L. Elder

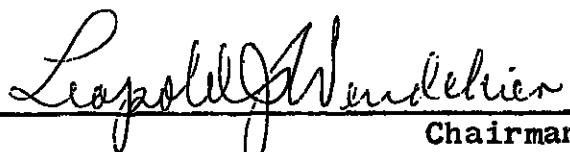
Theodore W. Hunt
 Theodore W. Hunt

COMMONWEALTH OF PENNSYLVANIA,	::	IN THE COURT OF QUARTER SESSIONS
Plaintiff	::	
	::	OF
vs.	::	
	::	CAMBRIA COUNTY, PENNSYLVANIA
SYLVESTER GLASS and MARIE	::	
GLASS, husband and wife,	::	
Defendants	::	No. 5 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


Leopold W. Mandelkier
Chairman

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF QUARTER SESSIONS
: OF CAMBRIA COUNTY, PA.
: VS. : NO. 5 DECEMBER SESSIONS, 1962,
: ROAD DOCKET
: SYLVESTER GLASS AND MARIE
GLASS, HUSBAND AND WIFE : CONDEMNATION

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

BEFORE THE BOARD OF VIEWERS,

LEOPOLD J. WENDEKIER,
Chairman

JOHN L. ELDER,
Member

THEODORE W. HUNT,
Member

APPEARANCES:

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

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

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 14, 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 executed.

Witness _____ (Seal)

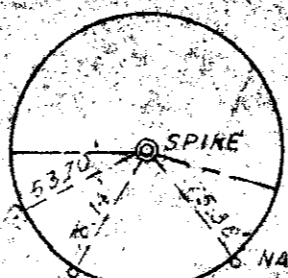
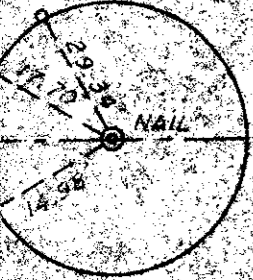
Witness _____ (Seal)

Witness _____ (Seal)

(Seal)

B.M. Elev. 2051.15 Bent Spike in
Base of 10' Pear 37' L. of
Sta. 267+14

TACK AND POST FROM END



8" CASTALPA
NAIL IN FR. GARAGE
NAIL IN 2 1/2" STY. FR. HO.

P.I. STA. 269+54.20
ANGLE=196° 16'

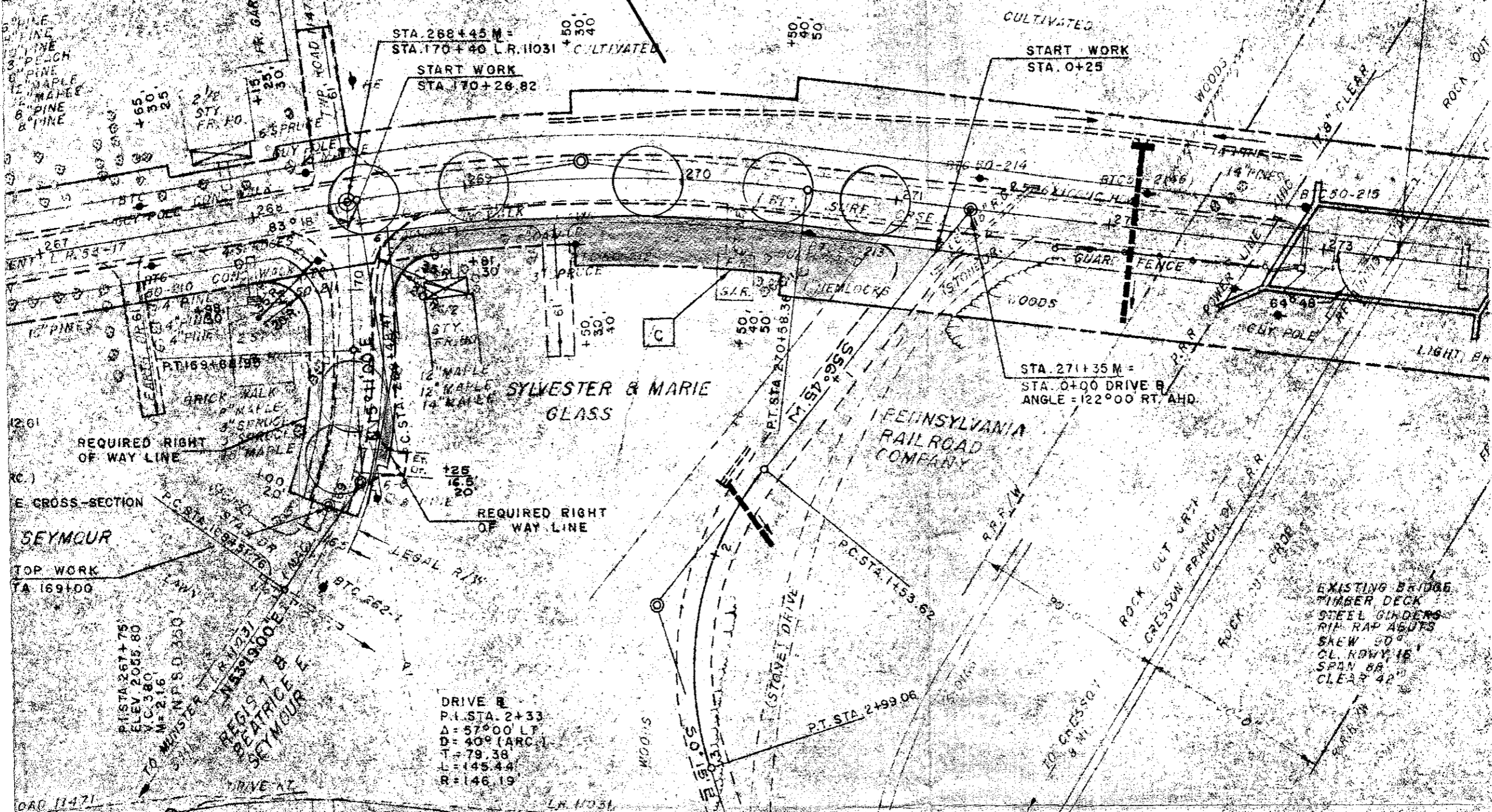
P.I. STA. 269+54.20
Δ=16°16' RT
D=7°45'
T=105.73'
L=209.89'
R=739.87'
Superel. 1" Per. Ft.
Runout Sta. 265+88.47 To Sta. 268+48.47 - 260 Ft.
Sta. 270+58.36 To Sta. 272+58.36 - 200 Ft.

OT STA. 264+99.29
ANGLE 180°

EST. EXO.

MICHAEL BOVIN EST
JOHN BOVIN EXC.

STA. 273+33.65
TRACKS



REQUIRED RIGHT OF WAY LINE

SEYMOUR

TOP WORK
TA 169+00

DRIVE AC

DRIVE F

DRIVE G

DRIVE H

DRIVE I

DRIVE J

DRIVE K

DRIVE L

DRIVE M

DRIVE N

DRIVE O

DRIVE P

DRIVE Q

DRIVE R

DRIVE S

DRIVE T

DRIVE U

DRIVE V

DRIVE W

DRIVE X

DRIVE Y

DRIVE Z

DRIVE AA

DRIVE AB

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DRIVE AK

DRIVE AL

DRIVE AM

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DRIVE AO

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DRIVE BA

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DRIVE BH

DRIVE BI

DRIVE BJ

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DRIVE BL

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DRIVE BO

DRIVE BP

DRIVE BQ

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DRIVE BS

DRIVE BT

DRIVE BU

DRIVE BV

DRIVE BW

DRIVE BX

DRIVE BY

DRIVE BZ

DRIVE CA

DRIVE CB

DRIVE CC

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DRIVE CM

DRIVE CN

DRIVE CO

DRIVE CP

DRIVE CQ

DRIVE CR

DRIVE CS

DRIVE CT

DRIVE CU

DRIVE CV

DRIVE CW

DRIVE CX

DRIVE CY

DRIVE CZ

DRIVE DA

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DRIVE DC

DRIVE DD

DRIVE DE

DRIVE DF

DRIVE DG

DRIVE DH

DRIVE DI

DRIVE DJ

DRIVE DK

DRIVE DL

DRIVE DM

DRIVE DN

DRIVE DO

DRIVE DP

DRIVE DQ

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DRIVE DS

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DRIVE DX

DRIVE DY

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DRIVE EA

DRIVE EB

DRIVE EC

DRIVE ED

DRIVE EE

DRIVE EF

DRIVE EG

DRIVE EH

DRIVE EI

DRIVE EJ

DRIVE EK

DRIVE EL

DRIVE EM

DRIVE EN

DRIVE EO

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DRIVE ER

DRIVE ES

DRIVE ET

DRIVE EU

DRIVE EV

DRIVE EW

DRIVE EX

DRIVE EY

DRIVE EZ

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DRIVE FE

DRIVE FF

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DRIVE FH

DRIVE FI

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DRIVE HJ

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DRIVE HR

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DRIVE HT

DRIVE HU

DRIVE HV

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DRIVE HX

DRIVE HY

DRIVE HZ

DRIVE IA

DRIVE IB

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DRIVE IE

DRIVE IF

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DRIVE IH

DRIVE II

DRIVE IJ

DRIVE IK

DRIVE IL

DRIVE IM

DRIVE IN

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DRIVE IP

DRIVE IQ

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DRIVE IS

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DRIVE IU

DRIVE IV

DRIVE IW

DRIVE IX

DRIVE IY

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DRIVE JA

DRIVE JB

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DRIVE JD

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DRIVE JF

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DRIVE JH

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