

No. 3

IN RE: PETITION FOR ANNEXATION OF A PART OF
SUSQUEHANNA TOWNSHIP, PENNSYLVANIA,
TO THE CONTIGUOUS BOROUGH OF HASTINGS,
CAMBRIA COUNTY, PENNSYLVANIA.

IN THE COURT OF QUARTER SESSIONS OF
CAMBRIA COUNTY, PENNSYLVANIA

CLERK OF COURTS: \$6.50

FILED: November 28, 1966

PETITION

1. Your petitioners are a majority of the freeholders of a portion of Susquehanna Township, Cambria County, Pennsylvania, bounded and described as follows:

Beginning at a point on Spangler Street at corner of First Avenue of the Borough of Hastings; thence along Spangler Street South 38 degrees 34 minutes West a distance of six hundred eighty four (684) feet to a point; thence continuing along said street by a curve to the left a distance of two hundred thirty two (232) feet to a point on line of land of Hiram Fritz Estate, of which this was a part; thence along said last mentioned land North 76 degrees 49 minutes West a distance of two hundred fifty one (251) feet to a stake in stones; thence continuing through said land North 24 degrees 00 minutes East a distance of eight hundred six (806) feet to a stake on line of land of Luke Dillon; thence along said last mentioned land South 86 degrees 23 minutes East a distance of four hundred forty one (441) feet, more or less, to a point at corner of First Avenue and Spangler Street, the place of beginning, containing six (6) acres, more or less, according to survey made by I. J. Pfeister, Engineer, on June 17, 1952.

2. Your petitioners desire that this part of the Township of Susquehanna be annexed to the Borough of Hastings, Cambria County, Pennsylvania.

3. Your petitioners desire that the Borough of Hastings pass an ordinance approving the annexation of the above described part of Susquehanna Township to the Borough of Hastings, Pennsylvania.

4. The petitioners herewith deposit with the Borough of Hastings the sum of One Hundred Fifty (\$150.00) Dollars, to be used as the compensation for a Board of Commissioners, if they are found to be necessary, and which sum shall be returned to petitioners, if found unnecessary.

THEREFORE, your petitioners request the Borough of Hastings pursuant to the Act of July 20, 1953, P.L. 550, Section 1:

1. To pass an ordinance approving the annexation.
2. To certify the ordinance and petition to the Court of Quarter Sessions of Cambria County, Pennsylvania, for hearing.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 4th day of January, 1966.

/s/ Harold Huber
/s/ Jane Huber
/s/ Guy Henry Weakland
/s/ Virginia Weakland
/s/ Dino J. Ferretti
/s/ Minnie Ferretti (SEAL)
/s/

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CAMBRIA) SS.

Dino J. Ferretti being duly sworn according to law, deposes and says that the averments of this petition are true to his personal knowledge, information and belief.

/s/ Dino J. Ferretti

Sworn to and subscribed before me this 4th day of January 1966.

/s/ John P. Lantzy, Notary Public

ORDINANCE NO. 206

An Ordinance annexing a parcel of land in the Township of Susquehanna, County of Cambria and State of Pennsylvania, containing 7 acres, more or less, to the Borough of Hastings.

WHEREAS, certain Susquehanna Township Freeholders have petitioned the Council of the Borough of Hastings to annex a parcel of land in the Township of Susquehanna, Cambria County, Pa., to the Borough of Hastings, and

WHEREAS, a copy of said petition has been filed with the Supervisors of Susquehanna Township, and a deposit of \$150.00 has been made with the Borough of Hastings, and

WHEREAS, the members of the Borough of Hastings Council deem that the annexation of said territory will be mutually advantageous to both the Borough of Hastings and to the Township of Susquehanna.

NOW, THEREFORE, be it enacted and ordained by the Council of the Borough of Hastings, Cambria County, Pennsylvania, that the following described real estate be and the same is hereby removed from the Township of Susquehanna, Cambria County, Pennsylvania, and the same shall hereby become a part of the Borough of Hastings, Cambria County, Pennsylvania:

Beginning at a point on Spangler Street at corner of First Avenue of the Borough of Hastings; thence along Spangler Street South 38 degrees 34 minutes West a distance of six hundred eighty four (684) feet to a point; thence continuing along said street by a curve to the left a distance of two hundred thirty two (232) feet to a point on line of land of Hiram Fritz Estate, of which this was a part; thence along said last mentioned land North 76 degrees 49 minutes West a distance of two hundred fifty one (251) feet to a stake in stones; thence continuing through said land North 24 degrees 00 minutes East a distance of eight hundred six (806) feet to a stake on line of land of Luke Dillon; thence along said last mentioned land South 86 degrees 23 minutes East a distance of

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four hundred forty one (441) feet, more or less, to a point at corner of First Avenue and Spangler Street, the place of beginning, containing six (6) acres, more or less, according to survey made by I. J. Pfeister, Engineer, on June 17, 1952.

The Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the Court of Quarter Sessions of Cambria County, Pennsylvania, together with the original petition of the Susquehanna Township Freeholders.

Any Ordinance or part of an ordinance inconsistent herewith, is hereby repealed.

Enacted and Ordained this 3rd day of November, 1966.

BOROUGH OF HASTINGS

ATTEST: George B. Chigas, Secretary

/s/ Michael Skitka, President of Council

Approved this 3rd day of November, 1966.

/s/ J. W. McMurray, Burgess

Map attached.

ORDER

AND NOW, this 17th day of January, 1967, the within petition and proceedings having been considered and the Court, being satisfied of the legality of the proceedings, and the propriety of the annexation, does hereby affirm the annexation of the land herein described, situate in Susquehanna Township, Cambria County, Pennsylvania, to the Borough of Hastings, of the same County and State.

BY THE COURT: McWilliams, J.

March 2, 1967: Record of Hearing filed.

Entered in error, transferred to Misc. 33-A December Session, 1966

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No. 4

COMMISSIONERS' REPORT

TO THE HONORABLE, THE JUDGES OF ABOVE NAMED COURT:

The report of GEORGE LEIDEN, EDWIN GATES and MARTIN C. KIRSCH, Commissioners appointed by the Court, is as follows:

1. By Decree dated the 20th day of June, 1966, your Honorable Court appointed George Leiden, a resident of Chest Township, Edwin Gates, a resident of White Township, and Martin C. Kirsch, a Registered Engineer, to inquire into the prayer of the Petition of causing the North-South boundary lines of the Townships of Chest and White to be ascertained and established.
2. Pursuant to said Decree, your Commissioners held a public meeting, after giving a public notice as directed by Decree of Court, at 7:30 P.M., E.D.S.T. on Monday, August 29, 1966, in the Beaver Valley School House in White Township, Cambria County, Pennsylvania.
3. That on the appointed day for said public meeting, your Commissioners met, prepared to explain the nature of the meeting and to receive any suggestions or complaints of the residents of said Chest and White Townships, with regard to fixing the North-South boundary lines between said Townships as hereinafter set forth.
4. That having been duly sworn, your Commissioners went over the proposed line and the line as it presently exists, measured them and took their courses, heard the statements of the persons affected by any change and made a careful and diligent inquiry as to the propriety of making the change prayed for.
5. After careful consideration as aforesaid, your Commissioners find the convenience of the inhabitants of Chest and White Townships will be promoted by the alteration of said North-South boundary line as prayed for and, therefore, report to the Court that, in the opinion of your Commissioners, the line should be altered and we recommend the alteration as prayed for as follows:

Description for the North-South Line Between Chest and White Townships.

BEGINNING at Monument No. 1 (also marked Monument No. 11 on the Clearfield Township line) being the corner of Chest and White Townships on the Clearfield Township line, the location for which is as follows:

BEGINNING at a set stone being the Northeast corner of Patton Borough and a corner of Elder Township; thence South fifty-three degrees twenty-one Minutes East (S 53° 21' E) sixteen hundred fifty-five and eighty-two one-hundredths (1655.82') feet to a point in the center line of the old channel of Chest Creek, which point is the corner of Chest and Clearfield Townships on the Elder Township line; thence by the division line between Chest and Clearfield Townships South eighty-three degrees forty-five minutes East (S 83° 45' E) sixteen thousand seventy-three and fifty-one one hundredths (16,073.51') feet; thence North six degrees fifteen minutes East (N 6° 15' E) the following twenty-two (22) distances: Ten hundred fifty-one and ninety-four one-hundredths (1051.94') feet to Monument No. 2 located approximately forty-five (45') feet South of Legislative Route 11084; thence twelve hundred forty and nineteen one-hundredths (1240.19') feet crossing said legislative Route No. 11084 and through Prince Gallitzin State Park lands to Monument No. 3, located on the South side of Beaver Dam Run arm of Glendale Lake; thence twenty-one hundred fifteen and twenty-five one-hundredths (2115.25') feet crossing said Beaver Dam Run arm of Glendale Lake and continuing through Prince Gallitzin State Park lands to Monument No. 4; thence sixteen hundred thirty-three and nine one-hundredths (1633.09') feet crossing one hundred twenty (120') feet west of the Northeast iron pin corner of the Paradise Point Development lands (formerly Edward Warfield land) and continuing through said Park lands to Monument No. 5 located near the South edge of a pine plantation; thence fourteen hundred nine and ninety-nine one-hundredths (1409.99') feet continuing through the said Park land and the pine plantation to Monument No. 6 located on the southern bank of Killbuck Run arm of Glendale Lake; thence eight hundred eighty-two and forty-seven one hundredths (882.47') feet crossing said Killbuck arm of Glendale Lake to Monument No. 7 located at the edge of a woods line; thence twenty-five hundred twenty and ninety-one one-hundredths (2520.91') feet partly by the eastern edge of the paving of Legislative Route 11052 and crossing said Legislative Route and Township Route No. 558 to Monument No. 8 in State Game Lands; thence fifteen hundred seventy-one (1571.00') feet continuing through said State Game lands and crossing Crooked Run to Monument No. 9; thence fourteen hundred ninety-four and seventy-nine one-hundredths (1494.79') feet still by said State Game Lands to Monument No. 10; thence eleven hundred eighty-six and ninety one-hundredths (1186.90') feet partly by said State Game Lands and partly by Prince Gallitzin State Park lands to Monument No. 11 located on South bank of Wyerough Run arm of Glendale Lake; thence eight hundred seventy-two and seventy-two one-hundredths (872.72') feet crossing said arm of Glendale Lake to Monument No. 12; thence fifteen hundred fourteen and fifty-one one-hundredths (1514.51') feet by said Park Lands crossing a small run and paralleling said Run on the Easterly side to Monument No. 13 located near the source of said small run; thence sixteen hundred fifty-four and ninety-six one-hundredths (1654.96') feet through said Park Lands and crossing Township Route 569 to Monument No. 14 located approximately fifty (50') feet North of said Township road in Rhody lands; thence through the said Rhody lands, the following four (4) distances: Sixteen hundred four and fifty-four one-hundredths (1604.54') feet to Monument No. 15, fifteen hundred and twenty-one one-hundredths (1500.21') feet to Monument No. 16, thirteen hundred forty-eight and five one-hundredths (1348.05') feet to Monument No. 17, and sixteen hundred forty-six and ninety-three one-hundredths (1646.93') feet crossing Dutch Run to Monument No. 18; thence eighteen hundred sixty-four and

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eighty one-hundredths (1864.80') feet crossing property line to Kutruff lands and crossing a strip mine to Monument No. 19 located on an old fence and tree line; thence five hundred ninety and forty-seven one hundredths (590.47') feet through the said Kutruff land and crossing Legislative Route No. 11063 to Monument No. 20 located approximately fifty (50') feet North of said Legislative Route in Kutruff land; thence sixteen hundred twenty-seven and ninety-two one -hundredths (1627.92') feet partly by Kutruff land, partly by Gates land and crossing a strip mine to Monument No. 21 immediately North of the Kutruff-Rhody line; thence twelve hundred thirteen and seventeen one-hundredths (1213.17') feet crossing a branch of Witmer Run to Monument No. 22; thence twelve hundred one and eighty-six one hundredths (1201.86') feet to terminal monument No. 23, to the line accepted locally, as the East-West boundary between Cambria and Clearfield Counties.

The total length of the line is 31,746.67 feet.

6. That a diligent search was made of the records of Cambria County to determine the existence of any description of existing lines and since no records could be located, it is believed that said records have been either lost or destroyed.

7. That should your Honorable Court adopt the alteration of said North-South boundary line as proposed by your Commissioners, there will be no change in the present assessment of properties as a result of said alteration.

8. That said proposed North-South line is a straight line, having no change in course.

9. That the said proposed line has been marked by Monuments, as indicated on the attached map.

WHEREFORE, your Commissioners respectfully request your Honorable Court to confirm nisi the above report and, in the event that no exceptions are taken within 30 days after the filing of the same, to confirm said report absolutely, and that a Decree be entered fixing said North-South boundary lines between Chest and White Townships, as recommended.

Respectfully submitted:

September 26, 1966.

Martin C. Kirsch
George Leiden
Edwin Gates

ORDER

AND NOW, this 27th day of September, 1965, the above report of the Commissioners is confirmed nisi. Notice of the filing of this report and of the right to file exceptions shall be posted on the building used by Chest and White Townships as the usual meeting place.

/s/ McDonald, J.

DECREE

AND NOW, October 29, 1966, thirty days having elapsed and no exceptions having been filed to the report of George Leiden, a resident of Clearfield Township, Edwin Gates, a resident of White Township, and Martin C. Kirsch, a Registered Engineer, recommending the alteration of the North-South boundary lines between Chest and White Townships, it is hereby ORDERED AND DECREED that the said North-South boundary lines between Chest and White Townships be altered and the same are altered as recommended by the Commissioners.

By the Court: McDonald, J.

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COMMISSIONERS' REPORT (Clearfield and Chest)

TO THE HONORABLE, THE JUDGES OF ABOVE NAMED COURT:

The report of GEORGE LEIDEN, PATRICK MARRA and MARTIN C. KIRSCH, Commissioners appointed by the Court, is as follows:

1. By Decree dated the 20th day of June, 1966, your Honorable Court appointed George Leiden, a resident of Chest Township, Patrick Marra, a resident of Clearfield Township, and Martin C. Kirsch, a Registered Engineer, to inquire into the prayer of the Petition of causing the East-West boundary lines of the Townships of Chest and Clearfield to be ascertained and established

2. Pursuant to said Decree, your Commissioners held a public meeting, after giving public notice as directed by Decree of Court, at 7:30 P.M., E.D.S.T. on Monday, August 29, 1966, in the Beaver Valley School House in White Township, Cambria County, Pennsylvania.

3. That on the appointed day for said public meeting, your Commissioners met, prepared to explain the nature of the meeting and to receive any suggestions or complaints of the residents of said Clearfield and Chest Townships, with regard to fixing the East-West boundary lines between said Townships as hereinafter set forth.

4. That having been duly sworn, your Commissioners went over the proposed line and the line as it presently exists, measured them and took their courses, heard the statements of the persons affected by any change and made a careful and diligent inquiry as to the propriety of making the change prayed for.

5. After careful consideration as aforesaid, your Commissioners find the convenience of the inhabitants of said Clearfield and Chest Townships will be promoted by the alteration of said East-West boundary line as prayed for and, therefore, report to the Court that, in the opinion of your Commissioners, the line should be altered and we recommend the alteration as prayed for as follows:

Description for the East-West Boundary line between Clearfield and Chest Townships, as shown on the attached map, is as follows:

BEGINNING at a point on the Elder Township line in the center line of the old channel of Chest Creek, which point is South fifty-three degrees twenty-one minutes East (S 53° 21' E), sixteen hundred fifty-five and eighty-two one-hundredths (1655.82') feet from a set stone, the North-east corner of Patton Borough, and a corner of Elder Township; thence South eighty-three degrees forty-five minutes East (S 83° 45' E), the following eleven (11) distances: Twenty (20') feet to Monument No. 1; thence fourteen hundred eighty-one and thirty-seven one-hundredths (1481.37') feet partly through lands of Mary Resko and partly through lands of Clearfield Bituminous Coal Corporation to Monument No. 2; thence fifteen hundred thirty-six and one one-hundredth (1536.01') feet partly through the said Clearfield Bituminous Coal Corporation land and partly through Williams land and crossing a vacated township road to Monument No. 3 on the easterly bank of said vacated township road; thence twenty-one hundred thirty-three and twenty hundredths (2133.20') feet passing through the Bender farm dwelling and crossing township route 524 to Monument No. 4 located immediately East of said township road; thence nine-hundred ninety-seven and twenty-nine one-hundredths (997.29') feet crossing a small run to Monument No. 5 located near a woods-field line on the P. L. Holtz lands; thence ten hundred forty-one and thirty one-hundredths (1041.30') feet to Monument No. 6 (flush with ground) located immediately West of P. L. Holtz summer kitchen; thence fifteen hundred fifty and six-tenths (1550.6') feet passing through the said P. L. Holtz summer kitchen to Monument No. 7 located approximately one-hundred (100') feet West of Warfield farm lane; thence nineteen-hundred ninety-six and sixty-two one hundredths (1996.62') feet crossing the said Warfield farm lane and passing through a large white pine tree to Monument No. 8 (flush with ground) located on the Nagle land; thence twelve-hundred sixty and eighty-eight one-hundredths (1260.88') feet crossing legislative route No. 11052 to Monument No. 9 located on the Eastern berm of the said legislative route; thence seventeen-hundred eighty-two (1782.00') feet passing through the Robert Miller lot (part of Kline and Moody lot development) to Monument No. 10 located immediately West of legislative route No. 11084; thence twenty-two hundred seventy-four and twenty-three one-hundredths (2274.23') feet crossing the said legislative Route No. 11084 and continuing through the Kline and Moody lot development to Monument No. 11 and also marked Monument No. 1, being the corner of Chest Township and White Township on the Clearfield Township line.

The total length of the line is 16,073.50 feet.

6. That a diligent search was made of the records of Cambria County to determine the existence of any description of existing lines and since no records could be located, it is believed that said records have been either lost or destroyed.

7. That should your Honorable Court adopt the alteration of said East-West boundary line as proposed by your Commissioners, there will be no change in the present assessment of properties as a result of said alteration.

8. That said proposed East-West line is a straight line, having no change in course.

9. That the said proposed line has been marked by Monuments, as indicated on the attached map.

WHEREFORE, your Commissioners respectfully request that your Honorable Court confirm nisi the above report and, in the event that no exceptions are taken within 30 days after the filing of the same, to confirm said report absolutely, and that a Decree be entered fixing said East-West boundary lines between Clearfield and Chest Townships, as recommended.

Respectfully submitted:

Martin C. Kirsch
George Leiden
Patrick Marra

September 26, 1966

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ORDER

AND NOW, this 27th day of September, 1966, the above report of the Commissioners is confirmed nisi. Notice of the filing of this report and of the right to file exceptions shall be posted on the building used by Chest and Clearfield Townships as their usual meeting place.

/s/ McDonald, J.

COMMISSIONERS' REPORT (White Twp. and Clearfield Twp.)

TO THE HONORABLE, THE JUDGES OF ABOVE NAMED COURT:

The report of EDWIN GATES, PATRICK MARRA and MARTIN C. KIRSCH, Commissioners appointed by the Court, is as follows:

1. By Decree dated the 20th day of June, 1966, your Honorable Court appointed Edwin Gates, a resident of White Township, Patrick Marra, a resident of Clearfield Township, and Martin C. Kirsch, a Registered Engineer, to inquire into the prayer of the Petition of causing the East-West boundary lines of the Townships of White and Clearfield to be ascertained and established.
2. Pursuant to said Decree, your Commissioners held a public meeting, after giving public notice as directed by Decree of Court, at 7:30 P.M., E.D.S.T., on Monday, August 29, 1966, in the Beaver Valley School House in White Township, Cambria County, Pennsylvania.
3. That on the appointed day for said public meeting, your Commissioners met, prepared to explain the nature of the meeting and to receive any suggestions or complaints of the residents of said Clearfield and White Townships, with regard to fixing the East-West boundary lines between said Townships as hereinafter set forth.
4. That having been duly sworn, your Commissioners went over the proposed line and the line as it presently exists, measured them and took their courses, heard the statements of the persons affected by any change and made a careful and diligent inquiry as to the propriety of making the change prayed for.
5. After careful consideration as aforesaid, your Commissioners find the convenience of the inhabitants of said Clearfield and White Townships will be promoted by the alteration of said East-West boundary line as prayed for, and, therefore, report to the Court that, in the opinion of your Commissioners, the line should be altered and we recommend the alteration as prayed for as follows:

Description of the East-West Boundary Line Between Clearfield Township and White Township:

BEGINNING at Monument No. 11 (also marked as Not to describe the North-South line between Chest and White Townships) being the corner of Chest and White Townships on the Clearfield Township line. The location for said Monument No. 11 is as follows:

BEGINNING at a set stone, being the Northeast corner of Patton Borough and a corner of Elder Township; thence South fifty-three degrees twenty-one minutes East (S 53° 21' E) sixteen hundred fifty-five and eighty-two one-hundredths (1655.82') feet to a point in the center line of the old channel of Chest Creek, which point is the corner of Chest and Clearfield Townships on the Elder Township line; thence by the division line between Chest and Clearfield Townships South eighty-three degrees forty-five minutes East (S 83° 45' E) sixteen thousand seventy-three and fifty-one one-hundredths (16,073.51') feet; thence South eighty-three degrees and forty-five minutes East (S 83° 45' E) the following sixteen (16) distances: fourteen hundred forty-nine and twenty-eight one-hundredths (1449.28') feet to Monument No. 12 located on the Eastern edge of a brush ravine in land of R. Holtz; thence twenty hundred eighty-two and sixty-four one-hundredths (2082.64') feet partly by R. Holtz land and partly by Cretin land to Monument No. 13 in Cretin land; thence thirteen hundred forty-seven and one one-hundredth (1347.01') feet partly through Cretin land and through State Game Lands, crossing Burgoon Run to Monument No. 14 on or near the line between the State Game lands and Hammond land; thence eleven hundred twenty-one and ninety-seven one hundredths (1121.97') feet through Hammond land to Monument No. 15 located on the Western bank of Legislative Route 11053; thence eleven hundred and forty-two one-hundredths (1100.42') feet crossing said Legislative Route and partly by State Game lands and partly by McGough lands to Monument No. 16 in McGough lands; thence ten hundred ninety and seventy-eight one-hundredths (1090.78') feet to Monument No. 17 in McGough lands; thence fifteen hundred nineteen and thirty-two one-hundredths (1519.32') feet to monument No. 18 in McGough lands; thence seventeen hundred sixty-six and thirty-one one-hundredths (1766.31') feet passing North of McGough's barn and immediately North of a cottage, passing through a small dam and crossing Slate Lick Run and Highway Route No. 136 to Monument No. 19 located on the East bank of said highway; thence fifteen hundred forty-four and fifteen one-hundredths (1544.15') feet through Joseph McGough's lot development to Monument No. 20; thence ten hundred sixty-six and eleven one-hundredths (1066.11') feet crossing a proposed street, an unnamed run, and a farm lane leading to Mike Matish dwelling to Monument No. 21, located on the East bank of said farm lane in McGough lands; thence twenty-three hundred twenty-three and forty-one one-hundredths (2323.41') feet partly by McGough's land and partly by Storm's land to Monument No. 22 on woods line in Storm's land; thence twenty-hundred forty-one and twenty one-hundredths (2041.20') feet passing through Storm's land and crossing Township Route No. 512 to Monument No. 23 located on the eastern bank of said road; thence eleven hundred fifty-nine and ninety-six one-hundredths (1159.96') feet crossing the State Game Lands line to Monument No. 24 in said State Game lands; thence eleven hundred sixty and seventeen one-hundredths (1160.17') feet crossing a strip mine road and continuing through the State Game Lands to Monument No. 25 located on the Western edge of a strip mine; thence fifteen hundred twenty-three and fifty-eight one-hundredths (1523.58') feet passing over the said strip mine

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and continuing through State Game lands to Monument No. 26 located on the West bank of Clearfield Creek; thence forty-five (45') feet to a point in the center line of Clearfield Creek, said point being the common corner of White-Clearfield-Read and Dean Townships.

The total length of the line is 22,341.31 feet.

6. That a diligent search was made of the records of Cambria County to determine the existence of any description of existing lines and since no records could be located, it is believed that the said records have been either lost or destroyed.

7. That should your Honorable Court adopt the alteration of said East-West boundary line as proposed by your Commissioners, there will be no change in the present assessment of properties as a result of said alteration.

8. That said proposed East-West line is a straight line, having no change in course.

9. That the said proposed line has been marked by Monuments, as indicated on the attached map.

WHEREFORE, your Commissioners respectfully request your Honorable Court to confirm Nisi the above report and, in the event that no exceptions are taken within 30 days after the filing of the same, to confirm said report absolutely, and that a Decree be entered fixing said East-West boundary lines between Clearfield and White Townships, as recommended.

Respectfully submitted,

Martin C. Kirsch
Patrick Marra
Edwin Gates

September 26, 1966

ORDER

AND NOW, this 27th day of September, 1966, the above report of the Commissioners is confirmed nisi. Notice of the filing of this report and of the right to file exceptions shall be posted on the building used by Clearfield and White Townships as their usual meeting place.

/s/ McDonald, J.

DECREE (Clearfield and Chest)

AND NOW, October 29, 1966, thirty days having elapsed and no exceptions having been filed to the report of George Leiden, a resident of Clearfield Township, Patrick Marra, a resident of Clearfield Township and Martin C. Kirsch, a Registered Engineer, recommending the alteration of the East-West boundary lines between Clearfield and Chest Townships, it is hereby ORDERED AND DECREED that the said East-West boundary lines between Clearfield and Chest Townships be altered and the same are altered as recommended by the Commissioners.

BY THE COURT: McDonald, J.

DECREE (Clearfield and White)

AND NOW, October 29, 1966, thirty days having elapsed and no exceptions having been filed to the report of Edwin Gates, a resident of White Township, Patrick Marra, a resident of Clearfield Township, and Martin C. Kirsch, a registered engineer, recommending the alteration of the East-West Boundary lines between Clearfield and White Townships, it is hereby ORDERED AND DECREED that the said East-West boundary lines between Clearfield and White Townships be altered and the same are altered as recommended by the Commissioners.

BY THE COURT: McDonald, J.



One of the witnesses on behalf of the Petitioners, Mr. Jacob Salem, testified that he was also one of the petitioners in the proceeding whereby Gillen Lane was made a part of the Township road system.

While the Board is of the opinion that discussion of the question of necessity for this road is hardly necessary, it is mindful that the statute requires a finding of necessity and does, therefore, so find.

As was previously stated, the only access which the owners of property abutting on the so-called Davis Street have to other public thoroughfares is Davis Street to Gillen Lane and from Gillen Lane to such other thoroughfares.

This is not only the only means of access for their personal vehicles, but it is also the only access for emergency vehicles such as fire equipment, ambulance and police vehicles. All deliveries of a commercial nature must be made via the same route. The same route must be used by the owners of property along Davis Street in their every day pursuits, such as going to work, going shopping, going to church, etc.

It is extremely doubtful that anybody could argue with the necessity for this road.

The principal difficulty lies in the contention of the Supervisors that the road does not conform to the requirements laid down in Ordinance No. 6, and that, consequently, they, the Supervisors, are not required to accept this road as a part of the Township road system and thereby maintain it.

The Board is of the opinion that the Supervisors are attempting to give retrospective effect to the Ordinance.

It must be noted that the plan of lots was prepared in 1922 and that said plan was placed of record in 1940.

The Ordinance was not adopted until 1960, subsequent to the enactment by the Legislature of amendments to the Second Class Township Code in 1956 and 1957.

If the Board were to adopt the Supervisors contention, it would be necessary to say that the Amendments to the Second Class Township Code and Ordinance No. 6, had a retroactive effect.

We do not believe that the Statute, or the Ordinance adopted in pursuance thereof, should be given such an effect in the absence of a specific directive by the Legislature.

We agree that the statute was meant to apply to future plans of lots prepared by developers, and probably applies also to plans of lots prepared prior to the enactment of the Amendments but in which no public roads had been laid out, dedicated and opened.

Where, as here, the road had been laid-out and used by the public for many years prior to the enactment of the Ordinance, it is the Board's opinion that the Ordinance is of no effect.

There was testimony elicited at the hearing that this road, Davis Street, had been opened and used by the public for more than 18 years, which would, of course, mean that the road had been used by the public for approximately 12 or 13 years prior to the enactment of Ordinance No. 6.

Our attention has been called to Lank vs. Hughes, 402 Pa. 284, 167 A. 2d 268 (1961), as a case decided by our Supreme Court supporting the contentions of the Petitioners.

We also are aware of a later decision of the Supreme Court of Pennsylvania in Appeal of Kress 410 Pa. 565, 189 A 2d 848 (1963), which apparently reaches an opposite conclusion.

We wish to point out, however, that both of these cases involved proceedings under Section 1140.1 of the Second Class Township Code, whereas the present proceeding has been taken pursuant to the General Road Law of 1836.

We do not believe, therefore, that we are bound by the decision of the Court in either of the above instances.

It is our understanding that our duty is to determine the necessity for such a road as was requested in the Petition and to determine the most feasible course therefore.

We have, as was stated previously, found a necessity for the road and recommend to the Court that the Township Supervisors be directed to accept the road as laid-out herein.

The Court's attention is called to the case of In Re: Opening of Two Public Roads In Upper Providence Township, 2d.&c. 2d, 290 (1955), which upholds the Board's position.

We wish to acknowledge, with gratitude, the co-operation of the parties and their counsel; our duties were considerable lightened by their consideration and thoughtfulness.

The hearing in this matter, while more or less informally conducted, was outstanding with
Continued on next page

SESSIONS, 19

respect to the candor and sincerity of the witnesses, and the courteous and gentlemanly advocacy of counsel.

Counsel for the petitioners, at the request of the Board, submitted, on several occasions, short briefs or memoranda in support of his position. These were most helpful.

While counsel for the respondent chose not to submit a written statement in support of his position, his suggestions and attitude were very beneficial.

It is the Board's recommendation, based upon the view, the evidence presented, and the law, that Davis Street be made a part of the public highway system of Jackson Township according to the following description:

Beginning at a point in the centerline of a Township Road, known as Gillen Lane, and corner of Lot #38 on the hereinafter mentioned Plan of Lots and on the Northerly side of Davis Street; thence along the Northerly side of Davis Street North 60° 06' East 791.49 feet to a point at corner of Lots #43 and #44; thence across Davis Street South 29° 54' East 50.0 feet to a point at corner of Lots #11 and #12 on the Southerly side of Davis Street; thence along the Southerly side of Davis Street; along the Southerly side of Davis Street South 60° 06' West 857.0 feet to a point in the centerline of a Township Road, known as Gillen Lane; thence by the centerline of said Gillen Lane North 22° 45' East 82.41 feet to a point, the place of beginning.

Being marked, known and numbered as the Westerly most portion of Davis Street, as the same appears on the plan of lots of Cyrus W. Davis, prepared by S. E. Dickey and Company, on December 6, 1922, and recorded in Cambria County in Plat Book Vol. 3, page 127.

Being shown colored in yellow on the print attached.
Respectfully submitted this 29th day of April, 1966.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

/s/ T. L. Locher

/s/ Owen Heeney

4-29-66: Viewers' Notice filed.

VIEWERS' NOTICE

You are hereby notified that the Board of View appointed in the above matter will meet upon the premises for the purpose of viewing the same On Monday, November 22, 1965, at 10:00 o'clock, A.M., e.s.t.

All persons interested may appear at the view, if they so desire.

A hearing in the above matter will be heard on the same date, Monday, November 22, 1965, at 1:30 o'clock, P.M., e.s.t., in Courtroom No. 4, Cambria County Courthouse, Ebensburg, Pennsylvania.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

And Now, this 2nd day of November, 1965, I hereby accept service of the above Notice.

/s/ John W. Taylor

Solicitor of Jackson Township

And Now, this 1st day of November, 1965, I hereby accept service of the above Notice.

/s/ Thomas A. Young

April 29, 1966: Map filed.

EXCEPTIONS TO VIEWER'S REPORT

And now, this 27th day of May, 1966, exceptions to the Viewer's Report in the above Entitled case are filed by the Supervisors of Jackson Township, Cambria County, Pennsylvania as follows;

Continued on next page

TRANSFERRED FROM PAGE 428

- 1 -

The petition describes and designates the road other than by the termini.

- 2 -

The petition describes the road so that the Viewers were without discretion as to its location.

- 3 -

The Viewers were not sworn for this particular case in the form and manner prescribed by law.

- 4 -

The Viewers' Report does not set forth that the Viewers were duly sworn or affirmed before entering upon their duties, nor does said report set forth the manner in which the oath was administered to the Viewers.

- 5 -

The termini of the road as set forth in the Viewers' Report does not correspond with the, termini of the road as set forth in the petition for viewers.

- 6 -

There has been no compliance with the provisions of Ordinance No. 6 of the Township of Jackson, Cambria County, Pennsylvania, and Section 1140 et seq. of the Second Class Township Code (53 P.S. 66140 et seq.) which set forth the requirements to be met before the roads are taken over as public roads in Jackson Township.

TOWNSHIP OF JACKSON

by John W. Taylor

Attorney for Jackson Township

STATE OF PENNSYLVANIA I

: SS.:

COUNTY OF CAMBRIA I

Before me, the undersigned officer, personally appeared JOHN W. TAYLOR, attorney for the Supervisors of Jackson Township, who being duly sworn according to lay, deposes and says that the facts set forth in the foregoing Exceptions are true and correct to the best of his knowledge, information, and belief.

/s/ John W. Taylor

Sworn to and subscribed before me this 27th day of May, 1966.

/s/ Judith A. Shank

Notary Public

Ebensburg, Cambria Co. Pa.

My. Comm. Exp. Dec. 16, 1968

ACCEPTANCE OF SERVICE

AND NOW, this 31st day of May, 1966, I hereby accept service on behalf of the petitioners of a copy of the Exceptions to Viewers' Report.

/s/ Thomas A. Young

Attorney for Petitioners

August 31, 1966: Brief in Support of Viewers' Report filed by Thomas A. Young, Esquire.

January 20, 1967: Opinion and Order filed.

ORDER

Exceptants' Exceptions 2, 3, 4, 5, and 6 are sustained, and the Report of the Viewers and all
CONTINUED ON NEXT PAGE

No. 2 Continued

proceedings subsequent to filing of the Petition are set aside. County to pay costs of view.
January 19, 1967.

BY THE COURT: McWilliams, J.

CONCURRED IN:

/s/ Griffith, P.J.

/s/ McDonald, J.

January 20, 1967: Certified copy of Opinion and Order sent to Thomas Young and John Taylor.

7. Dr. G. Howard Sloan, the condemnee, is the only person claiming any interest in the property effected by the condemnation.

8. There are no other claimants to any interest or estate in the Porperty condemned.

9. There were no written requests for findings of fact or conclusions of law submitted to the Board of View.

10. Other matters which the Board of View wishes to call to the attention of the Court are as follows:

(a) That all members of the Board of View were duly sworn upon their initial appointment to the Board of View.

(b) That all witnesses at the hearing were duly sworn prior to giving their testimony.

(c) The owner estimated the value of the property prior to condemnation at \$35,000.00, and the value after condemnation at \$20,000.00, thus estimating his damages at \$15,000.00. The owner's witness estimated the damages at about \$12,000.00.

(d) The condemnor's witness estimated the total value of the property prior to condemnation at \$29,100.00 and the value after condemnation at \$25,800.00, thus estimating the damages to the owner at \$3,300.00.

(e) The owner had previously sold one of the vacant lots to the rear for \$350.00. He also sold one of the front lots with a dwelling thereon and estimated the value of the land alone at about \$1,000.00.

(f) The condemnee presented four photos of the road and the premises effected and same are attached hereto.

(g) At least ten days before the filing of this Report, the Board of View will mail a copy of this Report to all parties or their attorney of record, with notice of the date of the intended filinf of this report, and that the report shall become final unless an appeal therefrom is filed within thirty days from the date the report is filed.

All of which is respectfully submitted:

BOARD OF VIEW:

FRANCIS J. NITCH

Chairman

OWEN HEENEY

ROBERT S. MAYER



JUNE

SESSIONS, 19 64

TRANSFERRED FROM PAGE 331

NO. 4 CONTINUED

property were compensated and the present petitioners were unaware of this fact.

III. OPINION

By virtue of the above stipulations the Board of View is of the unanimous opinion that the petitioners did not suffer a "Taking" of any portion of their property at the hands of the Department of Highways, Commonwealth of Pennsylvania, and hence have not sustained any loss or damage, so as to entitle them to any compensation whatever from the Department of Highways, Commonwealth of Pennsylvania in any manner connected with the condemnation or acquisition of property incidental to the construction of Legislative Route No. 52, or as a result of the actual construction of Legislative Route No. 52.

5.00 C O N C L U S I O N

The Board of View report that after a full and impratial consideration of the stipulation entered into by the respective counsel for the Petitioners and the Defendant, no damages have been sustained by the present owners and occupants of said property at the hands of the Department of Highways, Commonwealth of Pennsylvania.

BERNARD J. GREENWOOD & ALICE A. GREENWOOD.....NO COMPENSATION

Respectfully submitted,

Robert E. Shahade

Robert Mayer

Theodore Hunt

BY /s/ Robert E. Shahade, Chairman
Board of View

July 14, 1964: Two (2) Copies of Viewers' Notice FILED 1.00

July 14, 1964: Two (2) Copies of Notice of Hearing FILED 1.00

July 14, 1964: Two (2) Copies of Notice of Exhibit FILED 1.00

July 14, 1964: Two (2) Copies of Notice of Filing Report FILED 1.00

July 14, 1964: Two (2) Copies of Schedule of Award FILED 1.00

July 14, 1964: Viewers Report confirmed NISI 3.00

NOW, August 14, 1964, the within report confirmed absolutely. 3.00

By the Court:

/s/ McDonald, J.



Transferred from Page 303

NO. 3 CONTINUED.

Chambers, Park Building, 423 Main Street, Johnstown, Pennsylvania, as the time and place for hearing on the above mentioned Petition.

Due notice of this hearing was given to Attorney Robert D. Gleason on behalf of the Petitioners, and to Attorney Robert L. Blough, on behalf of the Defendant, as shown by acceptance of service of notice on behalf of both Attorneys, which are hereto attached and made a part hereof. Thereafter, this hearing was continued, at the request of the Petitioners. The hearing was then rescheduled for Wednesday, February 26, 1964, at 10:00 A. M. E.S.T., in the Judges Chambers aforesaid, as shown by the acceptance of service of said notice, by the Attorney for the Petitioners and the Attorney for the Defendant, which is hereto attached and made a part hereof.

The hearing was held on February 26, 1964, at the time stipulated and was attended by Robert D. Gleason, Esquire, Attorney for Petitioners, Charles George, one of the Petitioners, and John George, on behalf of the Petitioners; by Robert L. Blough, Esquire, Attorney for the Defendant, William L. Huber, Right of Way Agent for District 9, Department of Highways, and David Swindel, Registered Surveyor for the Department of Highways, on behalf of the Defendant.

Due notice was given to Attorney Robert D. Gleason and to Attorney Robert L. Blough of the Exhibiting of the Schedule of Award as determined by your Board of View, with acceptance of service of said notice from both attorneys being attached hereto and made a part hereof.

Likewise, due notice of the filing of this report was given to Attorney Robert D. Gleason, representing the Petitioners, and to Attorney Robert L. Blough, representing the Defendant. Acceptance of said notices as executed by both attorneys are hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this Report.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that the Plaintiffs filed a petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on July 29, 1963 requesting that Viewers be appointed in the above matter.

II. FINDINGS OF FACT

(1) That Charles George and Anna George, husband and wife, are the owners of premises described as follows:

ALL that certain piece or parcel of land situate in the Township of Lower Yoder, County of Cambria and State of Pennsylvania, bounded and described as follows:

BEGINNING on the eastern side of Harold Street, or Haws Pike, at the northwestern corner of Lot No. 19 on the plan of Oakhurst Terrace; thence along the eastern side of Harold Street, or Haws Pike, South eight degrees forty minutes East four hundred seventeen and five one-hundredths feet to a post on the northern side of Hoffman Avenue; thence by the northern side of Hoffman Avenue North forty-eight degrees twenty-three minutes East two hundred thirty-three feet, more or less, to the western line of West Howard Street; thence along the western line of West Howard Street by a curve to the left with a radius of fifty feet, forty-three and thirty-four one-hundredths feet; thence still along the western line of West Howard Street North one degree seventeen minutes West two hundred nineteen and seventy-five one-hundredths feet to the southeastern corner of Lot No. 8 on the Plan of Oakhurst Terrace; thence by the southern line of said Lot No. 8 in a westerly direction one hundred thirty-four and twenty one one-hundredths feet to the southwestern corner of said Lot No. 8; thence across the Morrellville Coal Company tramway in a westerly direction forty five feet, more or less, to the southwestern corner of Lot No. 20 on the plan of Oakhurst Terrace; thence by the southern line of said Lot No. 20 in a westerly direction seventy feet to the eastern side of Harold Street and place of beginning.

AND BEING (1) Lots Nos. 9, 10, 11, 12, 13, 14, 15, 16, 18, and 19 on the Plan of Oakhurst Terrace as laid out for the Elizabeth Felix Estate in Lower Yoder Township and recorded in the office of the Recorder of Deeds in Cambria County in Plat Book 3 at page 2, (2) Lot No. 17 on the Plan of Oakhurst Terrace, and (3) a portion of the Morrellville Coal Company Tramway lying between Lots Nos. 9, 10, 11, 12, 13, 14, and 15 on the east and Lots Nos. 16, 17, 18, and 19 on the west.

(2) That some time in May, 1962, employees of the Department of Highways, Commonwealth of Pennsylvania, accompanied by State Police entered onto the above premises with heavy equipment and

CONTINUED ON NEXT PAGE.

No. 3 CONTINUED.

did some excavation from the front to the rear of said property in order to expedite the run-off of surface water from Legislative Route 525.

(3) The highway adjacent to the Petitioner's property was built as a result of a Commonwealth Condemnation which took place on November 24, 1926.

(4) That the blue prints drawn in connection with the aforesaid condemnation of November 24, 1926, clearly show a natural water flow from the area to be covered by the projected highway and thence running from the front to the rear of the Petitioners' property. However, the blueprint does not show the exact path of the water course, nor its extent of depth.

(5) That Petitioners' property has been taken, to an undetermined extent, by a maintenance of a ditch to facilitate the run off of water.

(6) That Petitioners' property has been impaired in value and living desirability in that stagnate waters accumulating there have created an odor and otherwise, by attracting pests and rodents, detrimental to the health and welfare of the occupants and adjacent owners.

(7) That Petitioners failed to submit any evidence whatever dealing with the extent of damage suffered by them as a result of the water course across their property, other than the facts set forth above as being injurious to their general health and welfare.

(8) That the Petitioners' property is very level, with an elevation of only one (1) foot, so that drainage is very poor, without aid, such as excavation of a trough.

(9) That evidence concerning the existence of non-existence of a drainage pipe underneath the Petitioners' property running from the highway aforesaid to the rear of said property is inconclusive.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, had deducted therefore the facts set forth above, has carefully examined the law applicable, and is of the opinion that the Petitioners have set forth a grievance, but have not clearly shown, by their evidence any real or monetary damage.

The Petition alleges that the Department of Highways of the Commonwealth of Pennsylvania has at various times excavated a ditch to facilitate drainage from Legislative Route 525, adjacent to Petitioners' property, and has maintained existing drainage facilities on their property, so that taking, with injury and damage to the remainder of the Petitioners' property has resulted. The Petition recites that Petitioners and the Department of Highways have been unable to agree upon an amount of compensation,

In view of the fact that evidence concerning the existence of non-existence of a drainage ditch underneath the surface of the petitioners' property, leading from Legislative Route 525 to the rear of their property is conflicting and inconclusive, the Board of View cannot, in conscience, agree that there has been an initial taking by the Power of Eminent Domain. For this reason it is unnecessary to quote the matter of the Commonwealth of Pennsylvania relating to the legal exercises of the Power of Eminent Domain.

Further, as our Findings show, there has been absolutely no evidence offered by the Petitioners as to the amount of monetary damage, if any, as a result of the alleged taking by the Department of Highways. However, because the Petitioners do show that they have suffered a detriment to their property as a result of stagnate waters with a result of pests and rodents, injurious to their general health and welfare, thereby detracting from the value of their property, albeit to an undetermined extent, the Board of View does herewith fix damage to their property at One (\$1.00) Dollar in favor of the Petitioners and against the Defendant. This amount has been fixed in order to prevent the uninterrupted and peaceful continuance of the Department of Highways in maintaining and facilitating the run-off of water from Legislative Route 525 and thereby maintaining safer driving conditions for the motoring public and adjacent property owners. The Board of View, although without authority to so order, does suggest to the Petitioners that relief be sought from the Department of Public Health and Welfare, of the Commonwealth of Pennsylvania, as we do believe that situation has been shown here which should be of vital concern to this Department as they are concerned with the health and welfare of the inhabitants in the area of the above district.

CONTINUED ON PAGE 437

NO. 3 CONTINUED.

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence submitted to them and acting according to their best judgement; they have estimated and determined the damages sustained by the owners and occupants of the said property by the Commonwealth of Pennsylvania..

CHARLES GEORGE AND ANNA GEORGE.....\$1.00

The Board of View have taken into consideration all of the evidence submitted pertaining to the accrual of benefits to the premises and assess damages against the COMMONWEALTH OF PENNSYLVANIA.
Respectfully submitted,

Robert E. Shahade, Esquire

T. L. Locher

Robert Mayer

By /s/ Robert E. Shahade

Chairman, Board of View.

VIEWERS' NOTICE FILED
NOTICE OF HEARING FILED
NOTICE OF CONTINUED HEARING FILED
NOTICE OF HEARING FILED
NOTICE OF EXHIBIT FILED
SCHEDULE OF AWARD FILED

VIEWERS REPORT CONFIRMED NISI-March 30, 1964. Stephen D. Oblackovich, Clerk of Courts.

NOW, May 1, 1964: The within report confirmed absolutely.

By the Court: McDonald, Judge.

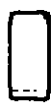
SATISFACTION

TO THE CLERK OF COURTS:

Please mark the Board of View Award in the amount of \$1.00 in favor of Charles George and Anna George, the owners of premises located in the Township of Lower Yoder, County of Cambria and Commonwealth of Pennsylvania, and more particularly described in the papers files to this number and term, satisfied of record upon payment of your costs only.

/s/ Robert Davis Gleason

Attorney for Owners and Petitioners



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-2-

That they properly advertised the portions of road affected.

-3-

They properly filed the said Report with the Peittion and Releases necessary. However, your Petitioner, in the Final Decree inadvertently inserted an old description, although for all intents and purposes the same is correct, it does not correspond with the map which was filed and is attached to the Report.

We, therefore, ask leave of your Honorable Court to file nunc pro tunc a corrected Decree to reflect the proper description.

SMORTO & CREANY

By: Eugene A. Creany

STATE OF PENNSYLVANIA }
COUNTY OF CAMBRIA } SS.

EUGENE A. CREANY, the within named Petitioner, being duly sworn according the law, deposes and says that the facts contained in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

/s/ Eugene A. Creany

Sworn to and subscribed before me this 10th day of
December, 1964.

/s/ Rose Ann Youra, Notary Public

My commission expires: 11/1/65

FINAL DECREE

AND NOW, this 11th day of December, 1964, it appearing that the Report having been filed previously to the above captioned number and term on the 25th day of May, 1964, and the Final Decree having been executed on the 26th day of June, 1964, and further that no citizen or freeholder of the Township did within the aforementioned period of thirty days, file any exception to the Report of the Supervisors, and it further being in the interest of all persons that a corrected description be supplied, it is hereby ordered and decreed nunc pro tunc that the portions of the proposed road in the Village of Bakerton, West Carroll Township, bearing description as follows; be, and the same are declared to be part of the road system of West Carroll Township:

No. 1:

Beginning at a point on the Southerly side of the right-away of the Pennsylvania Railroad, said point being approximatel- 16 feet North of the Western point of the highway underpass on the survey prepared for the Board of Supervisors by William R. Kelly, Registered Engineer, April 12, 1958, and revised July 20, 1962; thence North 41 degrees 00 minutes West 227 feet to a stake; thence continuing North 49 degrees 20 minutes West 140 feet to a stake; thence continuing North 56 degrees 20 minutes West 267 Feet to a stake; thence North 23 degrees 28 minutes East 17 feet to a stake; thence by a curve 2 degrees 30 minutes to the right for a distance of 268 feet to a stake; thence South 49 degrees 20 minutes East a distance of 120 feet; thence by curve to the right 2 degrees 30 minutes for a distance of 250 feet to a stake on the West side of the Township Road to Carrolltown; thence along the Township Road, South 43 degrees 00 minutes West a distance of 16 feet to the point and place of beginning being a portion of the right-away system of the Pennsylvania Railroad containing 0.46 acres.

No. 2:

All that certain piece, parcel or lot of land being the Southern portion of Lot No. 115 outlined in red in a map prepared for the Board of Supervisors by William R. Kelly, Registered Engineer, April 12, 1958 and amended July 20, 1962, being described as follows:

Beginning at a point on the South West corner of Lot No. 114, thence along line of Lot No. 114 a distance of 18 feet to a point designated as the Northern portion of Bradley Street; ~~thence along Bradley Street~~; thence along Bradley Street South 64 degrees 15 minutes East a distance of 50 feet to a point and corner of Lot No. 116.

CONTINUED ON NEXT PAGE

Thence along line of Lot no. 116 South 25.45 degrees West 42 feet to a stake; thence through Lot No. 115 South 38 degrees 35 minutes East 55.44 feet to the point and place of beginning.

No. 3:

Beginning at the South East corner of Lot of Land indicated as M. E. Church as the survey above indicates South 11 degrees 00 minutes West 890 feet to a point on lot of land of William Stephenson; thence along line of land of William Stephenson North 57.20 degrees West a distance of 46.20 feet to a stake; thence continuing North 71.10 degrees West a distance of 65 feet; thence continuing North 62 degrees 30 minutes West a distance of 121 feet to a stake; thence North 15 degrees 10 minutes East 68 feet to a stake and corner of land of William Edmiston; thence along line of the said William Edmiston South 58 degrees 45 minutes East a distance of 40.50 feet; thence South 70 degrees 03 minutes East a distance of 38.50 feet to a stake of South West Corner of land of M. E. Church; thence along land of M. E. Church South 71 degrees 30 minutes East a distance of 146.0 feet to a stake and point of beginning.

No. 4:

Beginning at a point on the Northerly side of the right-away line of the Pennsylvania Railroad, being the South East corner of Lot No. 63 on the hereinabove described parcel of land North 42 degrees 10 minutes West a distance of 150 feet to a stake; thence North 31 degrees 00 minutes East 136.00 feet to a stake on line of land of George Smeed; thence South 0 degrees 40 minutes West a distance of 191.0 feet to the stake and point of beginning being a rectangular piece of land designated as Sterling Coal Company Lot No. 63.

AND the same is hereby confirmed as a Township Road and declared to be part of the public road and highway system of the said Township of West Carroll.

By the Court: McWilliams, J.

Two (2) Certified Copies given to Smorto & Creany.



Continued from page 280

#2

VIEWERS' REPORT Filed: January 28, 1963

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

Donald J. LETIZIA, Esquire, T. L. LOCHER and OWEN HEENEY, three members of the permanent Board of Viewers of Cambria County, Pennsylvania, appointed to view the premises of JOHN A. BOMBA and THOMAS BOMBA, to assess damages to their property arising from the improvement and changes to Legislative Route No. 11012-5, in the 17th Ward of the City of Johnstown and Township of Stonycreek, Cambria County, Pennsylvania, and return the proceedings according to law, respectfully report:

Pursuant to their appointment on October 1, 1962, the Board of View set October 31, 1962, at 10:30 a.m., e.d.s.t., as the time to view and inspect the premises owned by John A. Bomba and Thomas Bomba. Due notice thereof was given to the Commonwealth of Pennsylvania, Department of Highways, as shown by acceptance of Service of notice hereto attached and made a part hereof. Notice was likewise given to the Attorney for Petitioners, Dino S. Persio, Esquire, as shown by acceptance of service of notice hereto attached and made a part hereof. The Board of View thereafter set Wednesday, December 19, 1962, at 9:30 a.m., e.s.t., at the Judges Chambers, Park Building, Johnstown, Pennsylvania, as the time and place for hearing. Due notice thereof was given to Dino S. Persio, Attorney for Petitioners, as shown by acceptance of service of notice attached hereto and made a part hereof. Notice was likewise given to Edward F. Peduzzi, Esquire, Attorney for Commonwealth of Pennsylvania, as shown by acceptance of service of notice hereto attached and made a part hereof. The hearing was held at the time and place appointed and was attended there at by Dino S. Persio, Attorney for Petitioners, John A. Bomba and Thomas Bomba, owners, and Wallace E. Williams, real estate appraiser. The Commonwealth of Pennsylvania was represented by Edward F. Peduzzi, Esquire, T. Elmer Mock, right-of-way agent, and John J. Mock, real estate appraiser. The Petitioners were thereupon examined upon the merits of the case and a full hearing was held thereon.

Due notice of the filing of this report was given to the Petitioners by their attorney, Dino S. Persio, as shown by acceptance of service of notice thereto attached and made a part hereof. Due notice was likewise given to the Commonwealth of Pennsylvania through its attorney, Edward F. Peduzzi, as shown by acceptance of service of notice hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this report.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that John A. Bomba and Thomas Bomba filed a Petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on October 1, 1962, setting forth that they labored under inconvenience for want of an assessment of damages.

II. FINDINGS OF FACT

- (1) That John A. Bomba and Thomas Bomba are the owners of the premises involved herein.
- (2) That on May 15, 1961, the Commonwealth of Pennsylvania condemned a portion of the Petitioners property as shown on the map attached hereto, marked "Exhibit A" and colored in red.
- (3) That Thomas Bomba testified that after the condemnation by the Department of Highways the property owned by the Petitioners suffered a loss amounting to \$21,000.
- (4) That Wallace E. Williams, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Department of Highways amounted to \$13,600.
- (5) That T. Elmer Mock, right of way agent for the Department of Highways, testified that the total acreage taken was 7.48 acres fronting 950 feet on Solomon Street.
- (6) That John J. Mock, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania amounted to \$1,624.

III. OPINION

#2

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioners have presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to herein and that in the construction, reconstruction, and improvements to State Highway Route No. 11012-5, in the 17th Ward of the City of Johnstown and the Township of Stonycreek, Cambria County, Pennsylvania, said property has sustained serious loss and damage and that compensation for such damage has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioners.

The power of eminent domain is the power to take property for public use without the owners' consent. Briegel v. Briegel, 2160 A 581, 307, Pa. (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P.S. Const., Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity.

United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa.,

154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com.,

#2 145 A. 2d 541, 395, Pa. 65 (1958).

350

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

JOHN A BOMBA AND THOMAS BOMBA	\$6,500.00
Detention Damages	575.00
Total	\$7,075.00

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

Respectfully submitted,

Donald J. Letizia, Esquire, Chairman

T. L. Locher

Owen Heeney

ORDER

300
AND NOW, this thirty-first day of January, 1963, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Sections 303, 304.

BY THE COURT:
/s/Shettig, Judge

[illegible]

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of counsel for the plaintiffs and counsel for the defendant the View was started about 8:30 A. M. instead of 10:00 A. M. In attendance at the view were R. Thomas Strayer, Esq. Counsel for the Plaintiffs, Clair H. Costlow and Mary Costlow, husband and wife, plaintiffs, Robert L. Blough, Esq. Counsel for the Defendant, and William Huber, an Engineer for the Defendant, together with all members of the Board of View.

A hearing for the purpose of taking testimony was scheduled for March 26, 1964, at 10:00 o'clock a.m. at the Judges' Chambers, Park Building, 423 Main Street, Johnstown, Penna. Said hearing was held as scheduled and in accordance with the Notices given therein, copies of Notice to counsel for the Plaintiffs and counsel for the Defendant, together with their acceptance of service thereof are attached hereto. The Plaintiffs and their counsel, namely Robert L. Blough, Esq. appeared for the Defendant, who was accompanied by two witnesses, namely Edward Frye and Joseph Bell. William Huber, an engineer for the Defendant appeared at the hearing also but did not testify. All witnesses were duly sworn prior to testifying.

Notice of Exhibit of Award were served upon counsel for the Plaintiffs and counsel for the Defendant, etc. Copies of said notice and acceptance of service thereof are hereto attached.

Notice of Filing this Report were served upon counsel for the Plaintiffs and counsel for the Defendant. Copies of said notice and acceptance of service thereof are attached hereto.

FACTS

1. R. Thomas Strayer, Esq. counsel for the plaintiffs, and Robert L. Blough, Esq. counsel for the defendant, stipulated to the following matters:

- (a) That the condemnation of Sept. 27, 1963, was a complete taking of the real estate herein involved.
- (b) That Clair H. Costlow and Mary Costlow, husband and wife, are the owners of said real estate.
- (c) That the real estate involved is marked in red on the map attached hereto.
- (d) That the area of said real estate is .67 acres.
- (e) That the Salix State Bank has a mortgage on said real estate, which mortgage is recorded in Cambria County, Pa. in Mortgage Book Vol. 339 Page 131.
- (f) That Item 9 of the Plaintiffs' Petition should be amended to read "unable to agree" instead of "able to agree".

2. The real estate condemned by the Commonwealth of Pennsylvania, Department of Highway and the premises in question is described as follows:

All that certain piece or parcel of land situate in the Township of Adams, County of Cambria and State of Pennsylvania, bounded and described as follows, to wit:

Beginning at a stake at the Northwestern corner of the land formerly owned by Charles Dorphus Costlow, which stake is a common corner of the land herein described and land previously conveyed to Grace D. Costlow; thence, North 31 degs. 00 min. East a distance of 160.4 feet, more or less to a point; thence through land of which this is a part South 31 degs/ East a distance of 258.3 feet, more or less to a stake; thence South 28 degs. 00 min. West a distance of 58.32 feet to a point at line of land thereto fore conveyed to Grace D. Costlow; thence by line of land heretofore conveyed to Grace D. Costlow North 80 degs. West a distance of 279 feet, more or less to the point and place of beginning.

3. That erected on the said real estate/land was a one (1) story brick dwelling approximately 45.8 feet by 28 feet in size, with an attached one (1) car garage and patio. That said building is approximately 95% completed. That said building was erected between May and November, 1961. The building has a central heating plant and contains copper tubing. The entire basement of the building is concreted and has one room in said basement which is equipped and used as a Beauty Parlor by Mary Costlow, one of the plaintiffs. That Mrs. Costlow operated a Beauty Parlor business therein. The real estate also contained a Pond which was approximately 50 feet by 30 feet in size, and also a number of trees which were approximately 6 inches to 18 inches in diameter. A stream of water ran along and through part of the real estate. Said stream having been stocked with fish in the past.

4. Clair H. Costlow and Mary Costlow both testified that the value of said real estate was \$28,000.00.

5. Edward Frye, real estate expert for the Defendant stated that the value of said real estate was \$18,020.00.

6. Joseph Bell, real estate expert for the Defendant stated that the value of said real estate was \$18,750.00.

7. Testimony by both the witnesses for the Plaintiffs and Defendant was to the effect that there were no buildings in the immediate area comparable to the Plaintiffs Premises.

8. Pictures of the interior and exterior of the building were presented at the hearing, which were examined and returned to counsel for the plaintiffs.

9. The Defendant offered pictures of other building in the area, on direct examination. Same was objected to by the plaintiffs, and the objection was sustained by the Board of View.

10. The Defendant offered to submit on direct examination Average Values of Property in the area. Same was objected to by the plaintiffs, and the objection was sustained by the Board of View.

11. The Defendant offered to submit on direct examination specific values of other property in the area. Same was objected to by the Plaintiffs, and the objections was sustained by the Board of View.

OPINION

The power of eminent domain is the power to take property for public use without the owner's consent. *Briegel vs. Briegel* 307 Pa. 93. (1932). Eminent Domain is an inherited attribute of the sovereign power and the provision for compensation is not part of the power, but a limitation of its use by constitution P. S. Const. Art. 1 Sect. 10.

The Constitution contains various sections relating to eminent domain, Article 1, Sect. 10 provided that private property shall not be taken or applied to public use without authority of law and without just compensation being first made or secured. Article 16 Sect. 3, provides that the exercise of the right of eminent domain shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State. Article 16 also provides that municipal and other corporations and individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right of appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owners were under no compulsion to sell and a purchases under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably given substantial weight in bargaining for the property, such as location, improvement, production, quality and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. *United States vs. 15.3 acres of land in the City of Scranton*, Comm. of Pa. 154 F. Suppl. 770. While the value of the land should not be based upon speculation, everything which gives the land intrinsic value shall be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

Market value should be ascertained from the general selling prices in the vicinity, and not from particular sales, and if there have been no sales from which the general selling price may be ascertained, the market value maybe ascertained from the knowledge and judgement may give a fair, honest and impartial opinion of value.

It is proper to exclude a question as to particular property, where the property is not similiar to that involved in the proceedings. *Drexler Vs. Braddock* 238 Pa. 376. In the present case both plaintiffs & defendant testified that there was no real estate in the immediate area comparable to the premises in question. It appears to us that pictures of certain other particular property which are not similiar to that involved in the proceedings fall under the same rule and should not be introduced into evidence on direct examination.

Average value should be distinguished from general value. The word average is any medial estimate derived from a comparison of diverse specific cases, and could be general average, gross average, lowest average, partial average or particular average. The word to us that average value testimony does not fall in the same class as general values.

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The owner of property appropriated under the power of eminent domain is entitled to receive by way of compensation the difference between the market value of his property before the exercise of the power and as unaffected by it, and its market value immediately after the appropriation and as affected thereby. In this case there is a complete taking of the entire real estate in question.

CONCLUSION

The Board of View after viewing the premises and after a full and impartial consideration of the testimony and evidence submitted to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by the Commonwealth of Pennsylvania, Department of Highways to be \$22,500.00, payable to:

Salix State Bank, Mortgagee,-----\$ 0.00

Salix State Bank has informed the Board of View that their mortgage

has been paid in full, by the owners.

Clair H. Costlow and Mary Costlow, husband and wife, owners of the

premises-----\$ 22,500.00

The Board of View has taken into consideration any benefits accruing to the premises and assess damages against the Commonwealth of Pennsylvania, Department of Highways in the above amount.

Respectfully Submitted:

BOARD OF VIEW

/s/ Francis J. Nitch, Chairman

/s/ T. L. Locher

/s/ Owen Heeney

SCHEDULE OF AWARD

From the evidence submitted and the view of the premises effected by the condemnation by the Commonwealth of Pennsylvania, Department of Highways, the Board of View finds the damages sustained by the owners and/or mortgagee in this proceedings as follows:

Clair H. Costlow and Mary Costlow
husband and wife, Owners

Salix State Bank, Mortgagee

The sum of \$22,500.00 to be paid as follows:

Having been informed by the Salix
State Bank that their mortgage recorded in

Cambria County, Pa. in Mortgage Book Vol. 339

Page 131 has been paid in full, the entire
amount of the Award shall be paid to the

owners, namely, Clair H. Costlow and Mary
Costlow, husband and wife.

The award above set forth does not include damages for delay in payment inasmuch as there has been no showing that such damages are due.

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

BOARD OF VIEW

/s/ Francis J. Nitch, Chairman

/s/ T. L. Locher

/s/ Owen Heeney

APRIL 17, 1964: Notice of Filing Report to R. Thomas Strayer, filed
Notice of Filing Report to Robert L. Blough, filed
Notice of Exhibit to R. Thomas Strayer, filed
Notice of Exhibit to Robert L. Blough, filed
Viewers' Notice to Robert L. Blough, filed
Viewers' Notice to R. Thomas Strayer, filed
Viewers' Notice to R. Thomas Strayer, filed
Viewers' Notice to Robert L. Blough, filed
Map filed

CONTINUED ON PAGE 452

No. 3

May 11, 1964: Appeal from report of viewers filed by Commonwealth of Pennsylvania, Department of Highways. Robert L. Blough, Attorney.

ORDER

AND NOW, this 11th day of May, 1964, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Sections 303, 304.

By the Court:

McDonald, Judge

May 11, 1964: In compliance with the above order, I Stephen D. Oblackovich, Clerk of Courts do herewith transmit all documents; namely, Petition and Order for Appointment of Board of View and Report of Board of View to Joseph G. Dolan, Prothonotary, Court of Common Pleas.

Stephen D. Oblackovich, Clerk of Courts

May 11, 1964: Received all papers in the enclosed case.

Joseph C. Dolan, Prothonotary

Transferred from Page 284.

NO. 4 CONTINUED.

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

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.

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NO. 4 CONTINUED.

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); Petition of Lakewood Memorial Gardens, 381 Pa. 46, 112 A. 2d 135 (1953).

Respectfully submitted this 22nd day of January, 1963.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Raymond M. Niebauer

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 that 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

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Raymond M. Niebauer

VIEWS' NOTICE FILED.

VIEWS' NOTICE OF HEARING FILED.

MAP FILED.

TESTIMONY FILED.

Now, March 25, 1963, the above Viewers' proceedings are hereby settled, discontinued and ended and the above named property owners hereby acknowledge receipt of the sum of Five Thousand (\$5,000.00) dollars in full of damages.

G. Harry Lawson
Attorney for Plaintiffs
Edward F. Fleming
Attorney for Pa. Dept. of Highways

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No. 5 CONTINUED.

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 has been condemned.

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Continued from Page 456

No. 5 CONTINUED.

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. 180, 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

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Theodore W. Hunt

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

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Theodore W. Hunt

VIEWERS' NOTICE FILED. *g/*

VIEWERS' NOTICE OF HEARING FILED. *A/*

MAP FILED. *B/*

TESTIMONY FILED. *B/*

Now, March 25, 1963, the above viewers proceedings are hereby settled, discontinued & ended & the above named property owners hereby acknowledge receipt of the sum of \$3900 in full of damages. D. Harry Isaacson, Attorney for Plaintiffs, Edward J. Reddy, Attorney for Pa Dept of Highways

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NO. 6 CONTINUED.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 11:-- 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 Mrs. Florence Seymour, the owner, G. Harry Isaacson, Esq., her counsel, 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 1:45 o'clock P. 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 Mrs. Florence Seymour, the landowner, G. Harry Isaacson, Esq., her counsel, Mr. Wallace 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 Mrs. Seymour, 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 owner. The portion condemned has an area of 0.10 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 a separate frame garage.

3. The owner has 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. Florence Seymour is the owner of the property affected by the condemnation and is the person entitled to compensation for damages arising by virtue of the condemnation.

3. The property owner is entitled to detention damages because of the failure of the Commonwealth to sustain its burden of showing that the property owner's 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 re-location of a portion of Route No. 53 are as follows:

Florence Seymour \$3,200.00

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 owner alleged damages in the amount of \$6,500.00.

Her 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 \$5,300.00.

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 0.10 acres of this property had been condemned.

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NO. 6 CONTINUED.

The expert witness for the Commonwealth, Mr. Paul D. Washington, a Cresson realtor, testified that, in his opinion, the damages suffered by the property owner were \$2,412.00.

At the conclusion of the testimony, counsel for the property owner 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 owner's 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).

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:

Florence Seymour. \$3,200.00.

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
/s/ Keopld Wendekier
/s/ T. L. Locher
/s/ Robert G. Mayer

VIEWERS' NOTICE FILED.

VIEWERS' NOTICE OF HEARING.

MAP FILED.

TESTIMONY FILED.

ORDER

NOW this 20th day of February, 1963, AN APPEAL HAVING BEEN FILED, the Clerk of Courts of the Court of Quarter Sessions of Cambria County is hereby instructed to transfer all papers on file to No. 6 December Sessions, 1962, Road Docket, to the Prothonotary of the Court of Common Pleas of Cambria County, Pennsylvania.

By the Court: McDonald, J. /s/

In compliance with the above order all papers were transferred to the Prothonotary on February 20th, 1963.

THOMAS W. NELSON
CLERK OF COURTS

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No. 1 CONTINUED.

consists of a portion of the land of the property owner. The portion condemned has an area of 525 square feet, and is entirely situate in Chest Township, Cambria County, Pennsylvania.

2. There was erected on this land a one-room, one-story frame building of an approximate size of 21' x 32'.

3. The owner has 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. The St. Lawrence Grange No. 1168 of the Patrons of Husbandry is the owner of the property affected by the condemnation and is the organization entitled to compensation for damages arising by virtue of the condemnation.

3. The property owner is not entitled to detention damages because, in the opinion of the Board, delay in payment was caused by the property owner's excessive demands.

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 of a portion of State Highway Route 11054 are as follows:

St. Lawrence Grange No. 1168 of the
Patrons of Husbandry.....\$1,500.00

The first witness on behalf of the property owner was Mr. Herman Leiden, one of the officers of the Grange. Mr. Leiden testified that he was a life-long resident of Chest Township and had been a member of the Grange for 40 years, as well as being Secretary of the Chest Township Board of Supervisors for a like period. He testified, in detail, as to the construction of the building which had been erected on the property condemned by the Department of Highways, as well as to the use to which the building had been put.

Counsel for the Department of Highways objected to Mr. Leiden's qualifications to give an opinion as to the value of the real estate owned by the Grange immediately prior to and immediately after the taking. This objection was overruled by the Board because the Board was of the opinion that a property owner is always competent to testify as to the value of his property and, since the property owner in this instance was an association, the officers must necessarily speak for it.

Mr. Leiden was thereupon asked to give his opinion as to the market value of this real estate immediately prior to the taking by the Commonwealth, and the value immediately after the taking. It was this witness's opinion that the real estate had a value of \$2,500.00 immediately prior to the taking, and as unaffected thereby, and had no value immediately after the taking. Counsel for the Department of Highways cross-examined this witness extensively concerning the type of construction in the building erected on the premises.

Counsel for the property owner then called upon Mr. George Leiden, also an officer of the property owner and a lifelong resident of Chest Township. The witness testified that he had been a member of the Grange for 39 years and had been custodian of the building for 38 years. He stated that, were he to be asked any questions regarding the type of construction of the building, that this would serve to corroborate the testimony of the prior witness.

Counsel for the Department of Highways reiterated his objection to the testimony of this witness as to market value of the property, which objections the Board overruled for the reasons set forth above. In the opinion of this witness, the market value of the condemned property immediately prior to the taking, and as unaffected thereby, was \$2,500.00, and the value immediately after the taking was nothing. There was no cross-examination of this witness.

The next witness was Mr. Frank Ropp who testified that, while he was now a resident of Patton Borough, he had lived in Chest Township until 1942, and had been a member of the Grange for more than 30 years. He stated that his testimony would serve to corroborate that of the two prior witnesses.

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NO. 1 CONTINUED

At this point, counsel for the Commonwealth objected to this witness's qualifications to give an opinion as to the market value of the property and, once again, the Board overruled the objection on the basis that the property owner in this case could speak only through its officers. Mr. Ropp testified that it was his opinion that the market value of the condemned property immediately prior to the taking and, as unaffected thereby, was \$2,500.00, and that the property had no value subsequent to the taking. At this point, counsel for the property owner rested but asked for the privilege of calling two other witnesses who had failed to appear at this time.

Counsel for the Commonwealth called as his first witness Mr. Harris Frank Thompson of Patton. Mr. Thompson testified that he had submitted a bid to the Department of Highways for the building upon the property for the purpose of demolishing the building and recouping whatever salvage value the component parts of the building might have. Mr. Thompson testified that the building was in fair condition at the time of demolition and that he was able to salvage 60% or 65% of the materials used therein. He testified, in considerable detail, as to the type of construction and materials used in this building.

Upon cross-examination, the witness stated that it was his opinion that the property was in fair to good shape. Upon redirect examination, counsel for the Commonwealth asked the witness whether he had not stated that much of the materials were not salvagable and could be used only for firewood.

Counsel for the property owner objected upon the basis that the Commonwealth was cross-examining its own witness. The objection was sustained whereupon counsel for the Commonwealth plead surprise. This witness was dismissed with the right to the Commonwealth to recall him after establishing a basis for the plea of surprise.

Mr. William L. Huber, Right-of-Way Agent for the Department of Highways was called as the Commonwealth's next witness. This witness testified that, on or about May 13, 1964, he called Mr. Thompson regarding the demolition of the building and had specifically asked about the condition of the building and the materials salvaged therefrom. He stated that Mr. Thompson had told something different than his testimony at this hearing. He attempted to state specifically what the prior witness said during the telephone conversation on May 13, 1964, but counsel for the property owner at this point interposed an objection that such testimony violates the rule against hearsay evidence. This objection was sustained by the Board and the witness was thereupon turned over for cross-examination. The cross-examination elicited from this witness that this alleged telephone conversation took place on or about May 13, 1964.

Harris Frank Thompson was then recalled as a witness. He testified that much of the sheathing and inside wainscoting splintered during the salvage operation and was used for firewood. He stated that he had given a considerable quantity of this lumber to a person who lived nearby, that many of the heavier timber had to have the ends cut off so as to be marketable. He stated that the vestibule at the front of the building had not been shingled or painted nor had the coal shed at the rear of the building been shingled or painted.

Upon cross-examination, the witness said that he had been in a hurry to complete the demolition for two reasons: first, the work was done in the late Fall when it was quite cold and, two, there was a time limit placed upon the demolition.

The next witness called by the Commonwealth was Mr. Paul D. Washington, a Cresson Realtor who testified as an expert witness on behalf of the Department of Highways. Counsel for the property owner stated that he would waive any objections to having this witness testify but he was not admitting the witness's qualifications. Mr. Washington stated that he appraised the building and the real estate on January 3, 1963. He testified, in considerable detail, as to the type of construction of the building and the materials used therein. He stated that, in arriving at his opinion as to market value of this property, he considered the age of the building, the location of the property, the condition of the building, the use to which the property had been put, other sales in the area, and the area in general. It is his opinion that the market value of this property immediately prior to the taking and, as unaffected by it, was \$1,072.00, and that the value immediately subsequent to the taking was

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NO. 1 CONTINUED-

\$22.00. In his opinion, the damages suffered by the property owner was, therefore, \$1,050.00.

Upon cross-examination, this witness admitted that he had not been inside the building when he appraised it on January 3, 1963. However, on re-direct examination, he stated that, by looking through the windows, he was able to see enough of the interior to give a fair estimate as to the value of the property.

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

From the evidence presented to it, the Board is of the opinion that any delay in payment in this matter was caused by the unreasonable demands of the property owner. The Board is assuming that the Commonwealth offered, by way of settlement, a figure comparable to that testified to by its real estate expert. The Board also assumes that the amount demanded by the property owner was reasonably near the figure quoted by the officers of the Grange as damages suffered by it.

Since the Board is of the opinion, and so finds, that the damages suffered by the property owner is \$1,500.00 and its demand probably was \$1,000.00 greater than that amount, any delay in payment is due purely to their unreasonable demand. We, therefore, find that the property owner is not entitled to detention damages.

Likewise, no detention damages can be paid if the property owner's 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).

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. 93, 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 (1935); Petition of Butler County Commissioners, 141 Pa. Super. 597, 15 A. 2d 504 (1940).

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all consideration that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, Pennsylvania, 154 Fed. Supp. (1957); Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible. Schuck v. West Side Belt Railway Company, 283 Pa. 152, 123 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383 Pa. 573, 131 A. 2d 341 (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A. 2d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who, by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890), and subsequent cases.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assesses the damages as above awarded against the Commonwealth of Pennsylvania Department of Highways.

Respectfully submitted this 9th day of June, 1964.

BOARD OF VIEW

/s/ John L. Elder, Chairman
/s/ Leopold J. Wendekier
/s/ Raymond M. Niebauer

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NO. 1 CONTINUED-

SCHEDULE OF AWARD

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

St. Lawrence Grange No. 1168,
Patrons of Husbandry.....\$1,500.00

The award above set forth does not include 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 Department of Highways.

/s/ John L. Elder, Chairman
/s/ Leopold J. Wendekier
/s/ Raymond M. Niebauer

VIEWERS' NOTICE

We, the undersigned Viewers appointed by the above Court to view and inspect the land and premises owned by the St. Lawrence Grange No. 1168, Patrons of Husbandry, of R.D., (Chest Township), Patton, 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 owner by reason of the condemnation by the Commonwealth of Pennsylvania Department of Highways, of a portion of said real estate of the St. Lawrence Grange No. 1168, Patrons of Husbandry, do hereby give notice that they will meet upon the premises on Friday, May 15, 1964, at 10:00 o'clock, A.M., e.d.s.t., when and where all persons interested may appear if they so desire.

The premises to be viewed are:

ALL that certain land situate in Chest Township, Cambria County, Pennsylvania, bounded and described as follows:

Beginning at a post on public road; thence in a southerly direction 60 feet to a post; thence in a southeasterly direction 32 feet to a post; thence by public road 32 feet to a post and place of beginning.

/s/ John L. Elder, Chairman
/s/ Leopold J. Wendekier
/s/ Raymond M. Niebauer

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 owner, more particularly described in the Notice of View, has set, as the time and place for a hearing where all interested parties may appear and be heard, 10:00 o'clock, A.M. e.d.s.t. on Thursday, May 28, 1964, in the basement of the St. Lawrence Church, Village of St. Lawrence, Chest Township, Pa.

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

/s/ John L. Elder

AND NOW, this 16th day of May, 1964, I hereby accept service of the above notice.

/s/ Robert L. Blough

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 owner, more particularly described in the Notice of View, has set, as the time and place for a hearing where all interested parties may appear and be heard, 10:00 o'clock, A.M. E.D.S.T., on Thursday, May 28, 1964, in the basement of the St. Lawrence Church, Village of St. Lawrence, Chest Township, Pa.

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

/s/ John L. Elder

AND NOW, this 18th day of May, 1964, I hereby accept service of the above notice.

/s/ Englehart, Larimer, Englehart
by Paul D. Larimer

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NO. 1 CONTINUED-

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 defendant 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, June 8, 1964, at 1:30 P.M., e.d.s.t., in Courtroom No. 4, Cambria County Courthouse, Ebensburg, Pa.

/s/ John L. Elder, Chairman

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 Defendant hereby gives notice that the Board will file its Report with the Clerk of Courts on Tuesday, June 9, 1964. The Report will thereupon become a part of the record in this proceeding.

/s/ John L. Elder, Chairman

June 9, 1964: Viewers' Report confirmed Nisi.

July 10, 1964: Viewers' Report confirmed Absolutely.

ORDER

AND NOW, July 10, 1964, no exceptions having been filed, the within report is CONFIRMED ABSOLUTELY.

By the Court: Griffith, P.J.

Payment of award in the sum of \$1600 received this 14th day of December 1964 and other action is hereby marked discontinued

*14th day of December 1964 and other
Englishhart, James L. Englishhart
Paul R. Lamm*

attorney for Petitioner

*Robert F. Blough
attorney for Commonwealth Highway Department*

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No. 3 CONTINUED.

the place of beginning, containing 11.01 acres.

NO. 2- BEGINNING at a rock corner of land of Jennie Buck; thence by the same North 2 degrees east 13 perches to a post on Public Road; thence by the same North 69 degrees east 33 perches to post corner of land now or late of George Moyer; thence by the same south 16 degrees east 14 perches to stone, corner of lands now or late of George Moyer; thence by the same South 70 degrees west 15.2 perches to post; thence by the same south 80 degrees west 22.2 perches to rock corner land now or late of Jennie Buck, and the place of beginning, containing 3 acres and 6 perches.

NO. 3- BEGINNING at corner of Lot No. 20 on the South side of Public Road; thence along said Road south 89 degrees 20 minutes east 104 feet to corner of land now or late of F. M. Shaffer Ice Company; thence along said land south 40 degrees west 300 feet, more or less, to a street; thence along said street, 104 feet to corner of Lot No. 20; thence along line of Lot No. 20 to public road, and the place of beginning. The above described lots being Lots Nos. 21 and 22 on the Plan of Lots laid out by Lewis W. Buck.

(2) That on May 15, 1961, the Commonwealth of Pennsylvania condemned approximately 1.25 acres of the property owned by the Petitioners as shown on the map attached hereto, marked Exhibit "A" and colored in red and green.

(3) That Albert E. Kuhne, Jr., owner, testified that the loss suffered because of the taking by the Commonwealth of Pennsylvania was \$30,000 to \$32,000.

(4) That Meade Cauffiel, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$31,085.

(5) That Howard E. Breneman is District Right-Of-Way Engineer for the Department of Highways.

(6) That Howard E. Breneman testified that approximately 9.12 acres was taken for the service road, and .262 acres was taken for the channel change.

(7) That Donald J. Sharpe, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$9,568.

(8) That John J. Mock, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$5,545.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioners have presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to herein and that in the construction, re-construction, and improvements to Legislative Route No. 11012, Section 5, in the Township of Stonycreek, County of Cambria, and State of Pennsylvania, and said property has sustained serious loss and damages and that compensation for such damages has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioners.

The power of eminent domain is the power to take property for public use without the owner's consent. Briegel v. Briegel, 2160 A. 581, 307, Pa. 93 (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Art. 1, Sec. 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, CONTINUED ON NEXT PAGE.

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No. 3 CONTINUED.

provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

The Petitioner testified that the fair market value of the property prior to the taking by the Commonwealth of Pennsylvania, was \$60,000.00; that the value of the property after the taking was \$28,000.00 to \$30,000.00; therefore, the loss suffered by the Petitioner because of the taking by the Commonwealth of Pennsylvania was \$30,000.00 to \$32,000.00.

Meade Cauffiel, real estate appraiser, testified that the market value of the Petitioners property prior to the taking was \$53,085; that the fair market value of the property immediately after the taking was \$22,000; therefore, making a loss to the petitioners because of the taking by the Commonwealth of Pennsylvania of \$31,085.

Donald J. Sharpe, real estate appraiser called by the Commonwealth of Pennsylvania, testified that the market value of the Petitioners property prior to the taking by the Commonwealth of Pennsylvania, was \$33,252.50; that the fair market value of the property immediately after the taking was \$23,684.50, thereby making the loss as a result of the taking by the Commonwealth of Pennsylvania of \$9,568.

John J. Mock, real estate appraiser called by the Commonwealth of Pennsylvania testified that the market value of the Petitioners property prior to the taking by the Commonwealth of Pennsylvania, was \$31,183.40; that the market value of the property immediately after the taking was \$25,738.40; thereby making the loss as a result of the taking by the Commonwealth of Pennsylvania of \$5,445.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weight the credibility of the valuation witnesses; testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a just sum between the Plaintiff's and Defendant's figures. Harmony Realty Company v. Com., 145 A. 2d 541, 395, Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property.

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No. 3 CONTINUED.

erty by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

ALBERT E. KUHNE, JR. and
THELMA JANE KUHNE, Husband and wife---\$12,000.00

Respectfully submitted,

/s/ Donald J. Letizia, Chaiman
/s/ T. L. Locher
/s/ Robert G. Mayer

NOTICE, SCHEDULE OF AWARD, NOTICE OF EXHIBIT, NOTICE OF HEARING, VIEWERS' NOTICE, NOTICE OF CONTINUED VIEW, MAP FILED.

August 6, 1962: Viewers' Report CONFIRMED NISI.

September 7, 1962: THE WITHIN REPORT CONFIRMED ABSOLUTE.

By the Court: /s/ McDonald, Judge.

Now, November 13, 1962, the above viewers proceedings are hereby settled, discontinued and ended and the property owners hereby acknowledge receipt of the sum of twelve thousand (\$12,000.00) dollars.

Benjamin Hinchman

Benjamin Hinchman III

Atty. for Albert and Thelma Jane, Kuhne

Eugene Creany for Arnold Smorto

Eugene Creany

Atty. for Department of Highways

No. 2 CONTINUED.

tached and made a part hereof. Notice was likewise given to the Commonwealth of Pennsylvania by its attorney, Edward F. Peduzzi, as shown by acceptance of service of notice attached hereto and made a part hereof. The Board of View thereafter set Wednesday, July 11, 1962, at the Judges Chambers, Room 204, Park Building, Johnstown, Pennsylvania, as the time and place for hearing. Due notice thereof was given to Andrew J. Gleason, Attorney for Petitioners, as shown by acceptance of service of notice attached hereto and made a part hereof. Notice was likewise given to Edward F. Peduzzi, Esquire, Attorney for Commonwealth of Pennsylvania, as shown by acceptance of service of notice attached hereto and made a part hereof. The hearing was held at the time and place appointed and was attended thereat by Andrew J. Gleason, Esquire, Attorney for Petitioners, Erma May Davis, Owner and Charles N. Glass, Real Estate Appraiser. The Commonwealth of Pennsylvania was represented by Edward F. Peduzzi, Esquire, Howard E. Breneman, District Right of Way Engineer, and John J. Mock, real estate appraiser. The Petitioner was thereupon examined upon the merits of the case and a full hearing was held thereon.

Due notice of the filing of this Report was given to the Petitioners through their attorney, Andrew J. Gleason, as shown by acceptance of service of notice hereto attached and made a part hereof. Due notice was likewise given to the Commonwealth of Pennsylvania through its attorney, Edward F. Peduzzi, as shown by acceptance of service of notice attached and made a part hereof.

The original papers are attached hereto and made a part hereof.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that the Petitioners, Clyde Davis and Erma May Davis, husband and wife, filed a Petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on March 30, 1962, setting forth that they labored under inconvenience for want of an assessment of damages.

II. FINDINGS OF FACT

(1) That Clyde Davis and Erma May Davis, husband and wife, are the owners of parcels of ground situate in the Township of Richland, County of Cambria, and State of Pennsylvania, bounded and described as follows:

PARCEL NO. 1 - BEGINNING at a stake on the Westerly boundary line of Scalp Level Pike (Pa. Route No. 58) corner of land of Ross Weaver, et ux, South $74^{\circ} 58'$ West, a distance of 130 feet to a stake on the line dividing Lots Nos. 3 and 21 on the hereinafter mentioned Plan of Lots; thence, along the said dividing line North $15^{\circ} 02'$ West, a distance of 65 feet to a stake, common corner of Lots No. 3, 4, 20 and 21 on the said hereinafter mentioned Plan of Lots; thence along the line dividing Lots No. 3 and 4 on the hereinafter mentioned Plan of Lots, North $74^{\circ} 58'$ East, a distance of 130 feet to a stake on the Westerly boundary line of the said Route 58; thence along said boundary line South $15^{\circ} 02'$ East, a distance of 65 feet to a stake, the place of beginning.

BEING marked, known and designated on the Plan of Lots situate in Richland Township, as laid out for Abram C. Weaver Estate by Fetterman Engineering Company on April 24, 1946, as Lot No. 3.

PARCEL NO. 2 - BEGINNING at a stake on the westerly boundary line of Scalp Level Pike (Pa. Route No. 58) corner of land now of Alonzo Weaver et ux; thence along the line of land of Alonzo Weaver et ux South $74^{\circ} 58'$ West, a distance of 130 feet to a stake on the line dividing Lots No. 2 and 22 on the hereinafter mentioned Plan of Lots; thence along said dividing line, North $15^{\circ} 02'$ West, a distance of 65 feet to a stake at the common corner of Lots Nos. 2, 3, 21 and 22 on the hereinafter mentioned plan of lots; thence along the line dividing Lots No. 2 and 3 on the hereinafter mentioned Plan of Lots North $74^{\circ} 58'$ East, a distance of 130 feet to a stake on the westerly boundary line of said Pennsylvania State Route No. 56; thence along said boundary line, South $15^{\circ} 02'$ East, a distance

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No. 2 CONTINUED.

of 65 feet to a stake, the place of beginning. Being marked, known and designated on the Plan of Lots situate in Richland Township, Cambria County, Pennsylvania, as laid out for Abram C. Weaver Estate by Fetterman Engineer Co., on April 24, 1946, as Lot No. 2.

(2) That on May 15, 1961, the Commonwealth of Pennsylvania condemned approximately .07 acres of the Petitioners property as shown on the map attached herto, marked "Exhibit A", and colored in red.

(3) That the property owned by the Petitioners was used as a motel.

(4) That Erma May Davis testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$40,000.

(5) That Charles N. Glass, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$35,000.

(6) That Howard E. Breneman, district Right-of-Way Engineer, testified that the Commonwealth of Pennsylvania, Department of Highway, condemned a parcel of ground 22 feet in width comprising approximately .07 acres of ground.

(7) That the Commonwealth of Pennsylvania testified that a partial payment to the Petitioners was made on February 2, 1962, which partial payment amounted to \$7,500.

(8) That John J. Mock, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$9,666.55.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioners have presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to herein and that in the construction, reconstruction, and improvements to State Highway Route No. 222, Section 9, in the Township of Richland, County of Cambria, and State of Pennsylvania, said property has sustained serious loss and damage and that compensation for such damage has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioner.

The power of eminent domain is the power to take property for public use without the owner's consent. Briegel v. Briegel, 2160 A. 581, 307, Pa. 93, (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of in incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise. When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any pro-

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No. 2 CONTINUED.

spective use may be considered.

The Petitioner testified that the fair market value of the property prior to the taking by the Commonwealth of Pennsylvania was \$60,000; that the value of the property after the taking was \$20,000; therefore, the loss suffered by the Petitioners was \$40,000.

Charles N. Glass, real estate appraiser, testified that the market value of the property prior to the taking by the Commonwealth of Pennsylvania was \$50,000; that the fair market value immediately after the taking was \$5,000; therefore, making a loss to the property owner because of the taking by the Commonwealth of Pennsylvania of \$35,000.

John J. Mock, real estate appraiser, testified that the market value of the Davis property before the taking was \$46,153.75; that the market value immediately after the taking was \$36,487.20; thereby making the loss as a result of the taking by the Commonwealth of Pennsylvania of \$9,666.55.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com. 145 A. 2d 541, 395, Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the property by the Commonwealth of Pennsylvania, as follows:

CLYDE DAVIS and ERMA MAY DAVIS,
Husband and wife-----\$15,000.00
Detention Damages----- 937.50

Respectfully submitted,

/s/ Donald J. Letizia, Chairman

/s/ T. L. Locher

/s/ Robert G. Mayer

August 6, 1962: Viewers' Report CONFIRMED NISI.

September 7, 1962: THE WITHIN REPORT CONFIRMED ABSOLUTE.

By the Court: /s/ McDonald, Judge.

Now, October 4, 1962, the above viewers proceedings are hereby settled, discontinued and ended and the property owners hereby acknowledge receipt of the sum of fifteen thousand nine hundred thirty-seven dollars and fifty cents (\$15,937.50)

Gleason & Frimmermacker
by Robert Davis Gleason
Attys for Property Owner

Edward F. Redding
Atty for Dept of Highways

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No. 1 CONTINUED.

Donald J. Letizia, Esquire, T. L. Locher and Robert G. Mayer, three members of the permanent Board of Viewers of Cambria County, Pennsylvania, appointed to view the premises of MARY PAVLOVICH, Widow, to assess damages to her property arising from the improvement and changes to State Highway Route No. A-1591-B, in the Township of Richland, County of Cambria, and State of Pennsylvania, and return the proceedings according to law, respectfully report:

Pursuant to their appointment on March 15, 1962, the Board of View set March 29, 1962, at 10:30 a.m., e.s.t., as the time to view and inspect the premises owned by MARY PAVLOVICH, Widow. Due notice thereof was given to Andrew J. Gleason, Esquire, Attorney for Petitioner, as shown by acceptance of service of notice hereto attached and made a part hereof. Notice was likewise given to the Commonwealth of Pennsylvania, through its attorney, Arnold D. Smorto, Esquire, as shown by acceptance of service of notice hereto attached and made a part hereof. The Board of View thereafter set April 5, 1962, at 3:00 P. m., e.s.t., at the Judges Chambers, Park Building, Johnstown, Pennsylvania, as the time and place for hearing. A continuance was requested by the Commonwealth of Pennsylvania and the hearing was thereafter set for May 11, 1962, at 1:30 p.m., e.d.s.t., at the Judges Chambers, Park Building, Johnstown, Pennsylvania. A continuance was requested by the Attorney for Petitioner, Andrew J. Gleason and the hearing was thereafter set for June 21, 1962. Due notice thereof was given to Andrew J. Gleason, Esq., attorney for Petitioner, as shown by acceptance of service of notice attached hereto and made a part hereof. Notice was likewise given to Arnold D. Smorto, Esquire, Attorney for Commonwealth of Pennsylvania, as shown by acceptance of service of notice attached hereto and made a part hereof. The hearing was held at the time and place appointed, and at the request of Andrew J. Gleason, Attorney for Petitioner, the hearing was continued. The Board of View thereafter set July 6, 1962, at 9:00 a.m., e.d.s.t., at the Judges Chambers, Park Building, Johnstown, Pennsylvania, as the time and place for hearing. Due notice thereof was given to Andrew J. Gleason, Attorney for Petitioner, as shown by acceptance of service of notice attached hereto and made a part hereof. Notice was likewise given to Arnold D. Smorto, Esquire, Attorney for Commonwealth of Pennsylvania. The hearing was held at the time and place appointed and was attended thereat by Andrew J. Gleason, Attorney for Petitioner, Mary Pavlovich, Owner and Charles N. Glass, real estate appraiser. The Commonwealth of Pennsylvania was represented by Arnold D. Smorto, Esquire, Howard E. Breneman, District Right of Way Engineer, John J. Mock and Donald J. Sharpe, real estate appraisers. The Petitioner was thereupon examined upon the merits of the case and a full hearing was held thereon.

Due notice of the filing of this Report was given to the Petitioner through her attorney, Andrew J. Gleason, as shown by acceptance of service of notice hereto attached and made a part hereof. Due notice thereof was also given to the Commonwealth of Pennsylvania through its attorney, Arnold D. Smorto, as shown by acceptance of service of notice hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this Report.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that the Petitioner, Mary Pavlovich, filed a Petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on March 15, 1962, setting forth that she labored under inconvenience for want of an assessment of damages.

II. FINDINGS OF FACT

(1) Mary Pavlovich is the owner of a parcel of ground situate in the Township of Richland, County of Cambria, and State of Pennsylvania, bounded and described as follows:

BEGINNING at a stake on the southerly side of the State Highway, same being a common corner of said State Highway and said Township Road; thence along said Township Road, South 38° 30' East 417.54 feet to a stake; thence South 51° 30' West 510.79 feet to a stake; thence North 6° 7' West 591.64 feet to a stake at the southerly side of said State Road; thence along said State Road the following courses and distances: South 85° 38' East 89.78 feet to a

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No. 1 CONTINUED.

stake; North 60° 30' East 130.17 feet to the place of beginning.

(2) That the Commonwealth of Pennsylvania, on December 1, 1959, condemned approximately 2,400 square feet along the front of the property owned by Mary Pavlovich, as shown on the Map attached hereto, marked "Exhibit A" and colored in red.

(3) That Mary Pavlovich testified that the loss suffered by her because of the taking by the Commonwealth of Pennsylvania amounted to \$3,500.

(4) That Charles N. Glass, real estate appraiser, testified that the loss suffered by the Petitioner because of the taking by the Commonwealth of Pennsylvania was \$2,750.

(5) That Howard E. Breneman is District Right-of-Way Engineer for the Department of Highways, Commonwealth of Pennsylvania.

(6) That Howard E. Breneman testified that approximately 2,400 square feet was taken by the Commonwealth of Pennsylvania.

(7) That Donald J. Sharpe, real estate appraiser, testified that the loss suffered by the Petitioner because of the taking by the Commonwealth of Pennsylvania was \$1,255.

(8) That John J. Mock, real estate appraiser, testified that the loss suffered by the Petitioner because of the taking by the Commonwealth of Pennsylvania was \$768.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioner has presented a meritorious case.

The Petitioner alleges that she is the owner of the property referred to herein and that in the construction, reconstruction, and improvements to State Highway Route No. A-1591-B, in the Township of Richland, County of Cambria, and State of Pennsylvania, said property has sustained serious loss and damage and that compensation for such damage has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioner.

The power of eminent domain is the power to take property for public use without the owner's consent. Briegel v. Briegel, 2160 A. 581; 307, Pa. 93, (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Article 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market Value should be determined on the basis of what price the property would bring if the owner under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

In arriving at a just determination of the fair market value of the property the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation

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No. 1 CONTINUED.

witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Company v. Com., 145 A. 2d 541, 395 Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

MARY PAVLOVICH, Widow-----\$1,500.00

Respectfully submitted,

/s/ Donald J. Letizia, Chairman

/s/ T. L. Locher

/s/ Robert G. Mayer

MAP FILED.

NOTICE FILED

NOTICE OF CONTINUED HEARING FILED.

SCHEDULE OF AWARD FILED.

July 30, 1962: Viewers' Report Confirmed NISI.

September 4, 1962: The within Report CONFIRMED ABSOLUTE. nd 3-

By the Court: Shettig, Judge.

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No. 13 CONTINUED.

the place of beginning, of description of parcel hereby conveyed; thence South 20° 36' East 210.00 feet to a point on the North line of a proposed street 40 feet in width; thence by the North line of said proposed street South 69° 24' West 244.17 feet to a stake in the East right of way line of Pennsylvania State Highway Route No. 56 which thoroughfare is 80 feet in width; thence by the East right of way line of Pennsylvania State Highway Route No. 56 North 18° 08' West 210.28 feet to a point; thence North 69° 24' East 235.17 feet to a point, the place of beginning. Containing 1.16 acres.

(2) That on May 15, 1961, the Commonwealth of Pennsylvania condemned a portion of the above described property as shown on the map attached hereto, marked "Exhibit A" and colored in red.

(3) That Elmer L. Hoffman operated a farm equipment parts and service building in the property referred to above.

(4) That because of the condemnation a parcel of ground 22 feet in width along the entire front of the Hoffman property abutting on the highway was taken resulting in a complete taking of a building 22' by 90'.

(5) That Elmer L. Hoffman testified that the loss suffered because of the taking by the Commonwealth of Pennsylvania was \$175,000.

(6) That Charles N. Glass, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania totaled \$144,680.

(7) That Charles N. Glass considered the building known as the "barn" a total destruction in arriving at an estimate of the loss suffered by the Petitioners.

(8) That Donald J. Sharpe, real estate appraiser, testified that the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania totaled \$44,817.75.

(9) That Donald J. Sharpe considered the building known as the "barn" a total destruction in arriving at an estimate of the loss suffered by the Petitioners.

(10) That it was agreed upon by and between the Petitioners and the Commonwealth of Pennsylvania that the sum of \$2,100 was a fair price for the demolition of the building on Left of Station 110+75; that the sum of \$6,390.00 was a fair price for the installation of a new front, as reflected in a letter dated March 21, 1962, and forwarded to Attorney Andrew J. Gleason by Fred J. Hogan, District Engineer.

(11) That parcel No. 1 and parcel No. 2 are contiguous, upon which are located buildings used in conduct of the Petitioners' business.

(12) That Parcel No. 3 is directly across the highway from Nos. 1 and 2 and the only access from Parcel No. 3 hereafter will be by means of a service road.

(13) That the Commonwealth of Pennsylvania, Department of Highways, made a partial payment to the Petitioners on February 2, 1962, amounting to \$33,000.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, had deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioners have presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to herein and that in the construction, re-construction, and improvements to State Highway Routes Nos. 1022-1 and 222-9, in the Township of Richland, County of Cambria, and State of Pennsylvania, said property has sustained serious loss and damage and that compensation for such damage has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioners.

The power of eminent domain is the power to take property for public use without the owners' consent. Briegel v. Briegel, 2160 A. 581, 307, Pa. (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Art. 1, Section 10.

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No. 13 CONTINUED.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

The Petitioner, Elmer L. Hoffman, testified that the fair market value of the property prior to the taking by the Commonwealth of Pennsylvania was \$250,000; that the value of the property after the taking was \$75,000; therefore, the loss suffered by the Petitioners because of the taking by the Commonwealth of Pennsylvania was \$175,000.

Charles N. Glass, real estate expert, testified that the market value of the property prior to the taking was \$225,000; that the fair market value of the property immediately after the taking was \$80,320.00; therefore, making a loss to the property owner because of the taking by Commonwealth of Pennsylvania of \$144,608.

Donald J. Sharpe, real estate expert called by the Commonwealth of Pennsylvania, testified that the fair market value of the property before the taking was \$109,860; that the market value of the property immediately after the taking was \$65,042.25; thereby making a loss as a result of the taking by the Commonwealth of Pennsylvania of \$44,817.75.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com., 145 A. 2d 541, 395, Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

ELMER L. HOFFMAN and LAURA HOFFMAN,
husband and Wife,

\$92,490.00

Respectfully submitted, /s/ Donald J. Letizia, Chairman

/s/ T. L. Locher, Member

/s/ Robert G. Mayer, Member

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No. 13 CONTINUED.

MAPS FILED. 1.00

NOTICE & SCHEDULE OF AWARD TO ARNOLD D. SMORTO, ESQ., FILED. 1.00

NOTICE & SCHEDULE OF AWARD TO GLEASON & KRUMENACKER, ESQS., FILED. 1.00

NOTICE OF HEARING & NOTICE OF CONTINUED HEARING TO SMORTO & GLEASON, ESQS., FILED. 1.00

AUGUST 9, 1962: APPEAL FROM REPORT OF VIEWERS FILED.

ORDER OF COURT

AND NOW, this 8 day of August, 1962, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Section 303, 304.

By the Court: /s/ McDonald, Judge.

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NO. 4 CONTINUED.

3⁵⁰ OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable and is of the opinion that the Petitioner has presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to herein and that in the construction, re-construction and improvements to State Highway Route No. 222 in the Township of Richland, County Cambria, and State of Pennsylvania, said property has sustained serious loss and damage and that compensation for such damages has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioners.

The power of eminent domain is the power to take property for public use without the owner's consent. Briegel v. Briegel, 2160 A. 581, 307 Pa. 93, (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Artl. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all consideration that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonable be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 acres of Land in the City of Scranton, Com of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

One of the petitioners testified that the fair market value of the property prior to the taking was \$140,000. That the market value of the property after the taking was \$90,000; making a loss of \$50,000 because of the taking by the Commonwealth of Pennsylvania.

Charles N. Glass, real estate expert called by the Petitioners, testified that the fair market value of the property prior to the taking was \$130,000, and immediately after the taking the market value was \$95,000; making a loss to the Petitioners because of the taking by the Commonwealth of Pennsylvania of \$35,000.

Dell Comiskey, real estate expert called by the Commonwealth of Pennsylvania, testified that the fair market value of the property before the taking was \$44,000, and immediately after the taking the market value of the property was \$41,200; making a loss of \$2,800 to the Petitioners because of the taking by the Commonwealth of Pennsylvania.

That John J. Mock, real estate expert called by the Commonwealth of Pennsylvania, testified that before the taking the fair market value of the property was \$92,295.34, and after the taking the market value of the property was \$89,305.34, thereby making a loss to the Petitioners because of the taking by the Commonwealth of Pennsylvania of \$2,990.

NO. 4 CONTINUED.

In arriving at a just determination of the fair market value the board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weight the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board of View is not required to take arbitrarily the Plaintiff's or Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com., 145 A. 2d 541, 395, Pa. 65 (1958).

The Board has taken into consideration the leasehold interests entered into by and between the Petitioners and Silver Drive In Theatre, Inc. on July 1, 1956. Cancelled checks showing payments made under the terms of the lease were submitted in evidence at the hearing. The Board has attempted to place a present worth on the leasehold agreement which has twenty three years and four months remaining. Under the terms of the lease the monthly rental totaled \$150.00 per month. The Board has taken into consideration the Inwood Coefficient Method of determining the present worth of the leasehold interest and also has taken into consideration the Hoskold Method. These are formula used in attempting to determine the present worth of a lease.

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

JOHN McKOOL and CATHERINE A. McKOOL,
Husband and Wife-----\$24,844.40

Respectfully submitted,

/s/ Donald J. Letizia, Chairman
/s/ Theodore Hunt
/s/ Robert G. Mayer

NOTICE FILED.

SCHEDULE OF AWARD FILED.

NOTICE OF EXHIBIT FILED.

NOTICE OF HEARING FILED.

NOTICE OF CONTINUED HEARING FILED.

NOTICE OF HEARING FILED.

VIEWERS' NOTICE FILED.

May 23, 1962: Appeal from Report of Viewers filed by Eugene Creany, Esq.

ORDER

AND NOW, this 23 day of May, 1962, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P.L. 1242, Article III, Sections 303, 304.

By the Court:

/s/ McDonald, Judge.

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No. 8 CONTINUED.

cribed 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 Wednesday, February 21, 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 sworn, proceeded to view the premises. In attendance were Mr. and Mrs. Eugene A. Shaffer, the owners, Earl F. Glock, Esq., their counsel, Mr. Jess Fridman, Highway Department employee, Mr. T. Elmer Mock, also a Highway Department employee and Edward F. Peduzzi, Esq., counsel for the Department.

A meeting for the purpose of hearing the testimony of witnesses was scheduled for Tuesday, February 27, 1962, at 1:30 o'clock P. M., e.s.t., in the Judges' Chambers, Park Building, Johnstown, Pennsylvania. At the request of counsel for the condemnor and for good cause shown, the meeting was re-scheduled for Tuesday, March 27, at the same place and time.

The meeting was held as scheduled and was attended by Mr. and Mrs. Eugene A. Shaffer, the land-owners, Earl F. Glock, Esq., their counsel, Mr. Wallace E. Williams, Howard E. Breneman, District Right of Way Engineer for the Highway Department, Mr. Jess M. Fridman, Highway Department employee, Mr. John J. Mock, and Edward F. Peduzzi, Esq., counsel for the Highway Department.

Those who testified for the benefit of the Board were Mr. and Mrs. Shaffer, Mr. Williams, Mr. Mock, 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 all of the land of the property owner. The portion condemned has an area of 0.94 acres, and is entirely situate in Richland Township, Cambria County, Pennsylvania.

2. There was erected on this land a six-room, 1½ story frame dwelling, and a separate concrete block workshop and garage.

3. The owner has been financially injured by the condemnation of said real estate.

CONCLUSIONS OF LAW

The following questions of law were presented to the Board for its determination:

At the conclusion of the direct examination of the property owner, counsel for the Highway Department proceeded with his cross-examination of the witness.

At the conclusion of the cross-examination, counsel for the Highway Department objected to any testimony regarding possible future use of the second building erected upon the premises as a woodworking shop.

During its view of the premises, the Board noted that the building was used partially as a garage and partly as a woodworking shop. The building has a concrete floor in the garage portion of the building and a wooden floor in the woodworking shop. Storage lofts were erected in the building and a variety of woodworking equipment was present upon the premises. It therefore appeared to the Board as though the possible future use as a shop was, in fact, a present use of the building as a shop. Consequently, the Board overruled counsel's objection.

Counsel thereupon objected to any testimony by this witness as to the value of the property condemned. The basis for his objection was that the witness had stated that he was personally familiar with other sales in the area.

However, the witness did state that he was familiar with construction and construction costs, both at the present time and in the past. Therefore, the Board was of the opinion that, because of this familiarity and for the further reason that he was the owner of the property, his testimony regarding the market value of the property condemned was admissible. This objection was consequently overruled.

Counsel for the Highway Department thereupon objected to any testimony by this witness regarding the possible future use of the second portion of his property which he had purchased in 1957. Inasmuch as this answer was elicited upon cross examination, the Board was of the opinion that the objection was not well taken and consequently overruled this objection likewise.

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No. 8 CONTINUED.

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 Legislative Route No. 1022 are as follows:

Eugene A. Shaffer and Jean E. Shaffer. \$22,500.00

The award above set forth includes damage for detention from the date of condemnation on May 15, 1961, to the present date.

Counsel for the property owner called as his first witness, Mr. Eugene A. Shaffer, one of the owners. Mr. Shaffer testified that he had now moved from the condemned premises and resides at 514 Francis Street, having formerly lived at 626 Francis Street, which is the property in question.

He stated that he purchased the portion of his property on which the buildings are situated in 1947 and purchased a second portion which abuts upon Maken Drive in 1957. He stated that there were no mortgages or other liens against this property and that he had the house erected thereon built himself.

In his testimony regarding the construction of this building, Mr. Shaffer stated that it was of cement block and grain construction with fir joists; the framing was of white pine, the floors on the first floor and all the trim are of oak and there are yellow pine floors upstairs. The house contains six rooms and bath with a copper water system. There is a three-wire electric service into the house and it is serviced by all utilities including natural gas, water, electricity and telephone. The roof is of asphalt shingle and there is a full basement under the house, the floor of which is concrete. Part of the basement is used for a garage. All walls are plastered and the building is heated by a hand-fired coal furnace, the heating system being of hot water system.

Mr. Shaffer stated that the other building located on these premises is a concrete, block building, part of which is used for a garage and part of which is used for a woodworking shop. The witness testified that he was familiar with construction and construction costs. That, in his opinion, this property was well maintained.

He further testified that, since December of 1960, the area has been zoned commercial. He also stated that, in designing the shop and garage, he had designed it with the intention of converting it into a house when he retires.

Mr. Shaffer said that the lot is level at the front, which abuts on Francis Street with a natural grade back towards Maken Drive. The lot demensions in Mr. Shaffer's words had 254 feet frontage on Francis Street, 100 feet frontage on Legislative Route No. 11001 and 182 feet frontage on Maken Drive. It consisted in all of approximately one acre.

Inasmuch as the entire property was taken, it was only necessary that the witness testify as to the market value of the property as of the date of condemnation, which was May 15, 1961. In Mr. Shaffer's opinion, the market value of the subject property was \$30,900.00.

On cross examination, Mr. Shaffer admitted that the property is not connected to a city sewerage system, but instead used a septic tank. He testified that, at the present time, the house has only two bedrooms, although there were four bedrooms when he first occupied the building. One of these bedrooms has since been changed to a dining room and another bedroom has been converted into a den.

He testified that he could not, off, hand, name any comparable sales in the area but that he nevertheless felt that he was familiar enough with construction costs to set a market value upon his own property.

On re-direct examination, he stated that there was no drainage problem on this lot, inasmuch as there was a gradual slope from Francis Street back to Maken Drive. On cross-examination, he stated that he had moved from the condemned property on February 23, 1962, and actually had completely vacated the condemned premises on February 25, 1962.

Mrs. Jean E. Shaffer, wife of Eugene A. Shaffer, was then called as a witness by counsel for the property owners. She stated that, were she asked the same questions, her answers would

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No. 8 CONTINUED.

be the same. In addition, Mrs. Shaffer testified that she had planted many flowers and maintained a vegetable garden upon the premises.

Counsel for the Highway Department did not cross examine but renewed his objections regarding her opinion as to the market value because of her lack of familiarity of market values in the area. Of course, the Board, in following its ruling on the objections made in connection with her husband's testimony, also overruled this objection.

Mr. Wallace W. Williams, a real estate broker and appraiser in the Johnstown area for the past twenty three years, was then called as an expert witness on behalf of the property owners. Mr. Williams was qualified by counsel for the property owners and stated that, in arriving at his opinion of the market value of the subject property, he had considered the size, shape, location and topography of the ground and miscellaneous other items such as shrubbery, driveways, etc.

He said that he had made a general comparison with other properties in the area and said that, in reality, this property consisted of two pieces of land and was actually larger than present improvements would require. He stated that the land has been put to residential use by the property owner who has thereby removed most of the commercial value of the property.

He stated that, if the property were sold to another person, there would be little, if any, commercial value to the property. He further stated that the property was used properly as a residential property.

Mr. Williams said that the neighborhood shows an upward economic trend due largely to the rapid growth of population in this area. This growth, in his opinion, had increased land value in Richland Township considerably.

He stated that, at the time of his inspection, the property had frontage on Francis Street and on Legislative Route No. 11001; no other street being open at the time of his inspection. It was Mr. William's opinion that the market value of the condemned property was \$23,500.00 and, inasmuch as this was a complete taking, that was the loss sustained by the property owners.

Upon cross-examination, Mr. Williams admitted that commercial zoning has an adverse effect upon residential property erected within the commercial area. However, in this instance, the owner controlled both pieces and this would have not too great an effect upon the market value.

Mr. Williams also stated that he was aware that there was no sewerage system to which this property was connected and he had considered this item in arriving at his opinion of market value. This concluded the property owner's case and they thereupon rested.

Counsel for the Highway Department called as his first witness, Mr. Howard E. Breneman, District Right of Way Engineer for the Pennsylvania Department of Highways. Mr. Breneman testified that the date of condemnation was May 15, 1961, and that the area taken was consisted of 0.94 acres which was a complete taking of the property.

He testified that, on August 31, 1961, an offer was first made to the property owners in settlement of their claim and that the offer was renewed on November 16, 1961, at which time a partial payment was offered to the property owners. However, the offers were refused.

As an expert witness, counsel for the Highway Department called upon Mr. John J. Mock. Counsel qualified Mr. Mock as an expert witness. This witness testified that he had made a full field view of the land and buildings and he had considered the size, shape, location and topography of the land, the highest and best use to which the land could be put, the zoning in the area and the present use and adaptibility of the property, as well as comparable sales in the area. In his opinion, the market value of the subject property as of May 15, 1961, was \$20,164.00.

He thereupon testified as to several comparable sales in the area within four or five blocks of the subject property. However, these properties had erected upon them only one building. On cross-examination, Mr. Mock admitted that the properties involved in the sales, which he had used as a comparison, had no commercial prospects nor were they zoned commercially.

He testified also that the nearest grade school was within one block of the property, the nearest high school was within two blocks of the property and the nearest motel was within two blocks of the property.

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
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No. 8 CONTINUED.

(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).

When the entirety of a tract of land is taken, the owner is entitled to compensation equivalent to its market value, rather than its value to the owner for his particular purposes, Kinter v. U. S., 156 F. 2d 5, 172 A. L. R. 232 (1946).

This computation is to be made without reference to the identity of the owner or the actual state of his business, Finn v. Providence Gas and Water Company, 99 Pa. 631 (1882). Whether land should be considered as one tract or several tracts depends upon the use of the property by the owner, Gibson v. Fifth Avenue and High Street Bridge Company, 192 Pa. 55, 43 Atl. 339 (1899.)

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser were under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, Pennsylvania, 154 Fed. Supp. (1957); Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible, Schuck v. West Side Belt Railway Company, 283 Pa. 152, 128 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383 Pa. 573, 131 A. 2d 341 (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A. 2d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who, by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890) and subsequent cases.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assesses the damages as above awarded against the Commonwealth of Pennsylvania, Department of Highways.

Respectfully submitted this _____ day of April, 1962.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman
/s/ Telford L. Locher
/s/ Theodore W. Hunt

SCHEDULE OF AWARD.

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

Eugene A. Shaffer and Jean E. Shaffer. \$22,500.00

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 Department of Highways.

BOARD OF VIEW

/S/ Leopold J. Wendekier, Chairman
/S/ T. L. Locher
/S/ Theodore W. Hunt

VIEWERS' NOTICE filed; VIEWERS' NOTICE OF HEARING filed; MAP filed.

ORDER

Now, May 23, 1962, no exceptions having been filed or appeal taken, the within Report is CONFIRMED ABSOLUTELY.

By the Court: /s/ McDonald, Judge.

Now July 23rd 1962, the above Viewers Proceedings are hereby settled, discontinued and ended and the Property Owners hereby acknowledged Receipt of the sum of Twenty Two Thousand Five Hundred and no/100 (\$22,500) dollars. Eugene A. Shaffer and Jean E. Shaffer. Atty for Viewers: Edward J. Pedery. Atty for Dept of Highways: Carl F. Glick. Attorney for Eugene and Jean? Shaffer. Plaintiff.

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No. 7 CONTINUED.

County, Pennsylvania, for the purpose of improving a portion of Legislative Route No. 1022, 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 Tuesday, February 20, 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 Eugene A. Shaffer, the executor of the Estate of the owners, Earl Glock, Esq., his counsel, Mr. Jess Fridman, Highway Department employee, Mr. T. Elmer Mock, also a Department employee, and Edward F. Peduzzi, Esq., counsel for the Department.

A meeting for the purpose of hearing the testimony of witnesses was scheduled for Wednesday, February 28, 1962, at 1:30 o'clock A. M., e.s.t., in the Judges' Chambers, Park Building, Johnstown, Pennsylvania. At the request of counsel for the Highway Department, and for good cause shown, the meeting was continued until Wednesday, March 28, 1962, at the same hour and in the same place.

The meeting was held as scheduled and was attended by Mr. and Mrs. Eugene A. Shaffer, Earl F. Glock, his counsel, Mr. Wallace E. Williams, Mr. Howard E. Breneman, District Right of Way Engineer for the Highway Department, Mr. John J. Mock, Mr. Jess Fridman, and Edward F. Peduzzi, Esq., counsel for the Highway Department.

Those who testified for the benefit of the Board were Mr. Shaffer, Mr. Williams, Mr. Mock, Mr. Fridman 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 the major portion of the land of the Ralph D. Shaffer Estate. The portion condemned has an area of 0.61 acres, or about 60% of the total area of 1.03 acres, and is entirely situate in Richland Township, Cambria County, Pennsylvania.

2. A two-story brick-cased dwelling with concrete block two-car garage was located upon the condemned premises. In addition thereto, a number of fruit and shade trees were taken.

3. The balance of the premises remaining to the landowner is an irregular area of 0.42 acres.

4. The owner has been financially injured by the condemnation of said portion of this real estate.

CONCLUSIONS OF LAW

The following questions of law were presented to the Board for its determination:

At the conclusion of the direct examination of Eugene A. Shaffer, executor of the estate of Ralph D. Shaffer, deceased, counsel for the Department of Highways objected to any testimony of the witness relative to the fair market value of the property.

His basis for the objection was that there had been no showing by the land owner that this witness was familiar with market values in the area in which the condemned property was located. Because in qualifying this witness, it had been determined that he was a cabinet maker by avocation and had assisted in construction work before, it was of the opinion that he was competent to testify as to market value.

In addition thereto, he was the personal representative of the decedent and of such, stood in the place of a land owner who should be competent to testify as to the market value of his own property. Consequently, the objection was overruled.

During the direct examination of John J. Mock, the expert witness on behalf of the Department of Highways, counsel for the property objected to testimony regarding the sale of a property at 737 Scalp Avenue. The basis for this objection was that the property was too remote from that in question but the witness stated that the property was approximately 1 to 1½ miles from the subject property

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No. 7 CONTINUED.

and consequently, the Board overruled this objection and permitted the witness to testify.

Counsel for the land owner further objected that the witness should not be permitted to testify as to the actual consideration given in this transaction. Inasmuch as expert witnesses are permitted to compare sales in the general vicinity, the Board was of the opinion that it should be given the benefit of the knowledge thus learned by the expert witness. Consequently, this objection likewise was overruled.

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 Legislative Route No. 1022 are as follows:

Eugene A. Shaffer, executor of the Estate, of

Ralph D. Shaffer. \$21,750.00

The award above set forth includes damages for detention from the date of condemnation on May 15, 1961, to the present date.

Upon the opening of this hearing, counsel for the land owner produced a certified copy of the Last Will and Testament of Ralph D. Shaffer in which Eugene A. Shaffer is named as executor and in which Eugene Shaffer is also given the right to deal with real estate of Ralph D. Shaffer.

Counsel also produced a short certificate from the Register of Wills of Cambria County certifying that Eugene Shaffer is acting in the capacity of executor of Ralph D. Shaffer, deceased.

Mr. Shaffer testified that, although he had never lived in the subject property himself, his parents had lived there and he was quite familiar with the property. He stated that the property had a frontage of 133.32 feet on Francis Street as well as fronting on Route 56 and Legislative Route 11001. He stated that the house was brick-cased eleven-room house with an attached two car garage. All floors are pine and the trim is oak.

He stated that the lot is level with Route No. 56 but slopes rather sharply from the house towards Francis Street. He also testified that this property is located in an area which is zoned commercial, being adjacent to a Motel. He stated that the residue of the property would have no access from the new highway but from Francis Street only.

In this witnesses' opinion, the market value of this property, prior to the taking, was \$30,500.00, and the market value of the residue subsequent to the condemnation was \$500.00. Thus, in his opinion, the damages suffered amounted to \$30,000.00.

On cross-examination, Mr. Shaffer stated that the property was kept in good repair and that a partial settlement had been offered by the Department of Highways, but refused as being inadequate.

Counsel for the land owner then called upon Wallace W. Williams, a Johnstown Realtor, as his expert witness. Counsel for the Department of Highways admitted his qualifications and Mr. Williams was permitted to testify without objection.

Mr. Williams stated that, because of the population increase in Richland Township, there was a lively market for real estate in that area. He testified that the land along Route 56 especially was very valuable because there was greater commercial growth along that Route than in any area in the greater Johnstown area.

He considered in making his evaluation of this property, the size, shape, topography and location of the land, as well as access to the portion of the land remaining subsequent to the condemnation. In Mr. Williams' opinion, he considered this condemnation as a taking of the entire tract because the remaining portion would have very little, if any, value if anything, a Negative value.

It was his opinion that the property owner's loss by reason of the condemnation was \$26,750.00. On cross-examination, Mr. Williams stated that his figure reflected only commercial value, and that no specific uses for the property were considered.

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No. 7 CONTINUED.

On re-direct examination, Mr. Williams stated that, in establishing his opinion of market value of this property, he considered that it was accessible from three traffic arteries: Route 56, Legislative Route 11001, and Francis Street.

At the conclusion of Mr. Williams' testimony, the counsel for the property owner rested his case.

Mr. Peduzzi, counsel for the Department of Highways, called as his first witness, Mr. Howard E. Breneman, District Right Of Way Engineer. Mr. Breneman testified that the date of condemnation was May 15, 1961, that the total area in the subject property was 1.03 acres, that the area taken by the condemnation was 0.61 acres and the residue left to the property owner subsequent to the condemnation was 0.42 acres.

Mr. Breneman stated that an offer of partial payment was made to Mr. Shaffer on November 16, 1961, but was refused by Mr. Shaffer of being inadequate.

On cross-examination, Mr. Breneman testified that, during the testimony at this hearing, he heard the highest price yet asked for the property; that is \$30,000.00.

He further stated that Mr. Jess Fridman, a Right of Way Agent for the Department of Highways, had certified under date of November 16, 1961, that the executor of the Estate of Ralph D. Shaffer had demanded \$27,500.00 in full settlement.

The property owner apparently disagreed with this statement and counsel for the executor requested that he be permitted to rebut Mr. Breneman's assertion. He was asked to wait until the Department of Highways had concluded its case and he would then be permitted to rebut, in whatever way he could, Mr. Breneman's testimony.

Counsel for the Department of Highways then called upon his expert witness, Mr. John J. Mock, who was qualified by Mr. Peduzzi. Mr. Mock stated that he was shown the land and building by Mr. Shaffer and that he considered the location and use of the land, the size, shape and topography of the lot and comparable sales in the area.

In his opinion, the market value immediately prior to the condemnation was \$24,046.95.

Immediately following the condemnation, the market value of this property was, in this witnesses' opinion, \$4,573.75. In discussing the comparable sales, Mr. Mock testified that a property at 737 Scalp Avenue, which is approximately 1 to 1½ miles from the subject property, was sold in June of 1961 for the sum of \$35,000.00.

On cross examination, Mr. Mock stated that he did not know whether the seller was under any compulsion to sell and admitted that he had not considered commercial utility of the subject property in arriving at its market value.

It was his opinion that the highest and best use to which the property could be put was that to which it had been put; that is, it was used as a dwelling. It was Mr. Mock's opinion that the property could, with conversion, be put to commercial use.

Mr. Eugene A. Shaffer was then called in rebuttal by counsel for the land owner and stated flatly that he had never offered to settle the claim against the Department of Highways for \$27,500.00.

Mr. Jess M. Fridman then testified on behalf of the Department of Highways and stated that he was a Highway Department Right of Way Agent. He said further that, on November 16, 1961, he had personally negotiated with Mr. Shaffer and Mr. Shaffer had refused an offer of partial payment at that time and had demanded \$27,500.00

At this point, the Board informed both counsel that it was his opinion that this was entirely irrelevant and that it would consider no more such testimony.

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 (1955); *Petition of Butler County Commissioners*, 141 Pa. Super. 597, 15A. 2d 504 (1940).

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No. 7 CONTINUED.

When only part of a tract is taken, the measure of compensation is the difference between the market value of the entire tract immediately before the taking, and unaffected by it, and the value of the remaining portion immediately thereafter, Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957); Mazur v. Commonwealth of Pennsylvania, 390 Pa. 148, 134 A. 2d 669 (1957); Broughler v. Commonwealth of Pennsylvania, 388 Pa. 573, 131 A. 2d 341 (1957).

However, consequential damages may also be considered, if the condemnor is liable therefor, including change of grade of a road or street, impairment of access, interference with light, and deprivation of view, Stone v. Delaware, L. & W. R. Co., 257 Pa. 456, 101 Atl. 813 (1917); Rafferty v. City of Pittsburgh, 256 Pa. 82, 100 Atl. 533 (1917); Lafean V. York County, 20 Pa. Super. 573 (1902).

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, Pennsylvania, 154 Fed. Supp. (1957); Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible, Schuck v. West Side Belt Railway Company, 283, Pa. 152, 123 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383 Pa. 573, 131 A. 2d 341 (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A. 2 d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890), and subsequent cases.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assesses the damages as above awarded against the Commonwealth of Pennsylvania, Department of Highways.

Respectfully submitted this ____ day of April, 1962.

BOARD OF VIEW
/s/ Leopold J. Wendekier, Chairman
/s/ Telford L. Locher
/s/ Theodore W. Hunt

SCHEDULE OF AWARD

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

Eugene A. Shaffer, Executor of the Estate of Ralph D. Shaffer.....\$21,750.00

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 Department of Highways.

BOARD OF VIEW
/s/ Leopold J. Wendekier, Chairman
/s/ Telford L. Locher
/s/ Theodore W. Hunt

VIEWERS' NOTICE FILED.
VIEWERS' NOTICE OF HEARING FILED.
MAPS FILED.

ORDER

NOW, this 16th of May, 1962, AN APPEAL HAVING BEEN FILED, the CLERK OF COURTS OF THE COURT OF QUARTER SESSIONS of CAMBERIA COUNTY is hereby instructed to transfer all papers on File to No. 7 March Term, 1962 to the Prothonotary. All papers pertaining to this particular file have been transferred to the Prothonotary this 16th day of May, 1962 Entered to Common Pleas No. 813 June Term, 1962 James T. Fagan, Clerk of Courts

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NO. 4 CONTINUED.

Benedict, West Carroll Township, Cambria County, Pennsylvania, described as follows:

NO. 1 Beginning at a point, the said point being South 82 degrees 53 minutes East 16½ feet from the North-east corner of Lot No. 140, the said point being in the center of the road intended to be herewith laid out; thence South 82 degrees 53 minutes East 16 1/2 feet to a point on land of Mrs. Bernadette Dougherty; thence along line of land of Mrs. Bernadette Dougherty South 7 degrees 07 minutes West 687 feet to a stake; thence continuing South 16 degrees 35 minutes West 125 feet along line of land of Gust Anderson; thence South 28 degrees 25 minutes East a distance of 137 feet to a stake on right of way line of present Highway Route #219; thence North a distance of 32 feet; thence along old location of Route #219 North 28 degrees 25 minutes West 137 feet to a point; thence continuing in a Northerly direction North 16 degrees 35 minutes East 125 feet to a point on line of land of Sam Marian; thence continuing North 7 degrees 07 minutes East 687 feet to a point being the Northeast corner of land of Mary Tonelli, being Lot No. 140; thence through the portion of road proposes to be laid out, known as Lower Jackman Road, South 82 degrees 53 minutes East a distance of 16 1/2 feet to the point and place of beginning; a print of the survey of the road proposed to be laid out is hereto attached, marked Exhibit "A" and made a part hereof.

NO. 2 Beginning at a pin on the Northerly line of the Township Road #533, being 440 feet from the center line intersection of Township Road #534; thence along Township Road #533 a distance of 16 1/2 feet to a point and corner of land of R. W. Scollon; thence along line of land of R. W. Scollon North 12 degrees 40 minutes West 108 feet to a point; thence continuing North 71 degrees 26 minutes East a distance of 190 feet to a point on line of land of Leroy Lawrence; thence continuing across existing right of way of railroad crossing North 29 degrees 00 minutes East 126 feet to a point on line of land of Edward Bogus; thence along line of New York Central right of way the following courses and distances: North 76 degrees 15 minutes East 180 feet to a point; thence North 60 degrees 31 minutes East a distance of 750 feet; thence through land of which the proposed road is a part North 29 degrees 29 minutes West 16 1/2 feet to a point on corner of land of Mrs Mae Stoltz; thence along line of land of Petitioners South 60 degrees 31 minutes West a distance of 750 feet to corner of Lot No. 133; thence along Southerly line of land of Edward Bogus and R. W. Scollon the following courses and distances: South 76 degrees 15 minutes West a distance of 180 feet to a point; thence across existing right of way railroad crossing South 29 degrees 00 minutes West a distance of 126 feet; thence South 71 degrees 26 minutes

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NO. 4 CONTINUED.

West 190 feet to a point on the Easterly line of land of Howard Bowersox; thence along line of land of Howard Bowersox South 12 degrees 40 minutes East 108 feet to a stake on the Northern side of Township Road #533; thence along said Township Road #533 North 71 degrees 26 minutes East a distance of 16 1/2 feet to a point and place of beginning; being center line of road proposed to be laid out; a pring of the survey of the roads intended to be herewith laid out is hereto attached, marked Exhibit "A" and made a part hereof.

NO. 3 Beginning at a point in the center of the proposed roadway, the said beginning point being South 57 degrees 45 minutes East a distance of 16 1/2 feet from the North-eastern corner of Steve Marralle lot on right of way line of Route #219; thence continuing along right of way line of Route #219 South 57 degrees 45 minutes East 16 1/2 feet to Northwestern corner of lot of land of C. E. Lauver; thence along property lines of C. E. Lauver, Anthony Travato and Cambria County South 32 degrees 15 minutes West a distance of 480 feet to an alley; thence along said alley North 57 degrees 45 minutes West a distance of 33 feet to a point, said point being the Southeast corner of lot of William Pavlock; thence along the property lines of William Pavlock; ~~Frank Paparo and Steve Marralle~~ North 32 degrees 15 minutes East a distance of 480 feet to a point on right of way line of Route #219; thence along right of way line of Route #219 South 57 degrees 45 minutes East a distance of 16 1/2 feet to the point and place of beginning. A print of the survey of the road proposed to be laid out is hereto attached, marked Exhibit "A" and Made a part hereof.

be and the same is hereby confirmed as a Township road and declared to be a part of the public road and highway system of the said Township of West Carroll.

By the Court: /s/ McDonald, Judge.

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No. 9 CONTINUED.

On the day appointed, the Board, having previously been duly sworn, proceeded to view the premises. In attendance were John V. Nagle, one of the owners, Charles G. Hasson, Esq., his counsel, Mr. Jess Fridman, Highway Department employee, and Edward F. Peduzzi, Esq., counsel for the Department.

A Meeting for the purpose of hearing the testimony of witnesses was scheduled for Friday, March 16, 1962, at 10:30 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 John V. Nagle, the landowner, Charles G. Hasson, his counsel, Mr. Howard E. Breneman, District Right of Way Engineer for the Highway Department, 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. Nagle, 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 minor portion of the land of the property owner. The portion condemned has an area of 5,600 square feet, or about one-eighth of an acre, and is entirely situate in Cambria Township, Cambria County, Pennsylvania.

2. The area taken was formerly, and had been for a considerable length of time, separated by the right of way of Route 22; the bulk of the property owned by the claimants was unaffected by the improvement of said Route 22.

3. The owner has been financially injured by the condemnation of said real estate.

CONCLUSIONS OF LAW

The following questions of law were presented to the Board for its determination:

At the conclusion of the Petitioner's testimony, counsel for the condemnor objected to any testimony regarding damages to the portion of the claimant's property South of the right of way of U. S. Route No. 22. The basis for the objection was two-fold:

a. Counsel for the condemnor objected that the property owner was attempting to establish separate items of damage contrary to prior rulings of our Supreme Court; and

b. Counsel was also of the opinion that this was not a item to be considered by the viewers as a part of their award.

At the time, the Board deferred ruling upon these objections, pending consultation and further testimony. It is the Board's opinion that the testimony was competent for the purpose of showing damages to ^{the} remaining portion of the property owners' land, if the entire tract were to be considered as a whole.

However, both the property owner and the condemnor were apparently of the opinion that two separate tracts were involved, inasmuch as the original right of way of U. S. Route No. 22 had divided the property and in the prior conveyances of this property mention was made of the fact of the right of way. Bearing this in mind, the Board feels that the objection was well taken.

At the conclusion of the testimony of the property owner on re-cross examination, the counsel for the Highway Department objected to any testimony of the property owner relative to the value of the condemned property because the property owner admitted, in response to questions by counsel for the Highway Department, that, in establishing his value, he had considered denial of access to the Southerly portion of his property and also considered possible future use, in addition to present use.

Once again, the Board deferred ruling upon the objection and feels that it took the correct position in permitting the testimony to stand. Any item which tends to assist the viewers in their determination of the damages should be admitted if it is otherwise competent. The Board is of the opinion that possible future use should not be considered.

Nevertheless, it was of the opinion that the denial of access to the Southerly portion of the property owners' land was a valid item for the property owner to consider in arriving at his estimate of the value of the land.

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No. 9CONTINUED.

During cross-examination of Mr. Howard E. Breneman, District Right of Way Engineer for the Highway Department, counsel for the Highway Department objected to questions regarding accessibility of the land of the property owner South of the right of way of U. S. Route No. 22 from the Westbound Lane of the improved U. S. Route No. 22.

Once again, the Board deferred ruling on the objection. The Board is of the opinion that the testimony regarding accessibility would be relevant only if all the property were considered as a unit, but inasmuch as both counsel preferred to treat it as two separate units, the objection should possibly have been sustained.

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 U. S. Route No. 22 (Traffic Route No. 314) are as follows:

John V. Nagle and Grace V. Nagle \$400.00

The award above set forth includes damages for detention from the date of condemnation on May 5, 1958, to the present date.

Counsel for the property owner called as his only witness, Mr. John V. Nagle, one of the property owners. Mr. Nagle testified that he is a resident of the Village of Alverda, which is located in Pine Township, Indiana County, Pennsylvania, and is the operator of a market in that community, owns the Water Company there, and grows pine trees.

He testified that he acquired the land in question in 1956 from Viola Yahnert Richardson and that, subsequently, he brought an Action to Quiet Title entered to No. 528 March Term, 1956. The property owner stated that he bought this land for future development and that he considered it an unusual piece of land because of the piece across the road, referring, of course, to U. S. Route No. 22.

The blueprint submitted later by the property owner shows the property as one whole tract with the right of way of U. S. Route 22 separating the Northwest corner from the balance of the property. The drawing submitted by the property owner was prepared by J. C. Davidson, Registered Engineer.

Mr. Nagle stated that, after he purchased the land, he cleaned up the property and built a house partly on this tract and partly on another tract subsequently acquired. He said that he was holding the property on the South side of the right of way of the original right of way of Route No. 22 for the purpose of placing a business on it.

In response to questioning regarding sales in the vicinity, the property owner stated that he knew that the Holtz property had been purchased, subsequent to the improvement of the highway, by a trucking firm. This consisted of 1½ lots frontage, but to a considerable depth. The price of the property was \$16,500.00. The James Black Cadillac Pontiac Agency purchased a property having 200 foot frontage, although not quite as great a depth as the Holtz property for \$14,000.00.

He also testified that the improvement of U. S. Route 22 has denied him ready access to the property lying South of the right of way of said route.

In explanation, he stated that there were no crossovers opposite his frontage and that cars attempting to approach his property from the Westbound lane of U. S. Route No. 22, had to proceed down the Westbound lane for a considerable distance and then come back on the Eastbound Lane. In his opinion, the value of the property taken was \$5,000.00, and since all of it was taken, that was his loss.

On cross-examination, he admitted that the Holtz and Black properties were sold after the improvement to the highway and that the original right of way of U. S. Route No. 22 had cut across the Northwest corner of his lot at the time that he purchased it.

Because the improvement was an extension of the highway by a construction of two additional lanes, the new right of way took the entire triangle which had existed prior to the improvement.

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No. 9 CONTINUED.

Mr. Nagle also stated that, at the time of the taking, the triangular piece taken was completely unimproved. He stated that in 1959, he sold the farm house which had been erected on the tract purchased by him in 1956, plus a 70 foot by 100 foot piece of land for \$7,500.00, and that in 1960, he sold six acres, more or less, to another purchaser for \$3,600.00.

On re-direct examination, Mr. Nagle stated that, according to his drawing, the property taken had dimensions of 99.26 feet on one side, 142.48 feet on the other side, and 175.10 feet on the third side. The property taken, Mr. Nagle said, adjoins the Ebensburg Airport on its West side.

On re-cross examination, Mr. Nagle admitted that, in establishing a value on the property taken, he had considered possible future use, as well as denial of ready access to the portion of his land lying to the South of the right of way.

Counsel for the Highway Department then called upon Mr. Howard E. Breneman, District Right of Way Engineer. Mr. Breneman testified that this property had been condemned on May 5, 1958 and that on August 13, 1959, an offer had been made to the property owner that had been rejected.

Mr. Breneman testified that 5,600 square feet had been condemned and that this was 1/8 of an acre or the entire area lying to the North of the old right of way of U. S. Route No. 22. He also testified that this was not a limited access highway on this particular straight of way.

On cross examination by Mr. Hasson, Mr. Breneman stated that there was no crossover from the West lane to the Nagle property adjacent to the South portion of the Nagle property. He stated that the nearest crossover to the West of the Nagle property was approximately 1,000 feet West of the triangle that had been condemned^{and} that the nearest crossover to the East was approximately 1,500 feet distant.

Counsel for the Highway Department then called upon Mr. Paul D. Washington, a Cresson Realtor, as an expert witness. This witness' qualifications were admitted by the property owner and he was permitted to testify. He stated that he had appraised the land on February 16, 1962, and was quite familiar with land in the vicinity.

In arriving at his opinion of value, he considered the size, location, shape, use, topography of the land and comparable sales in the area.

In his testimony regarding comparable sales, Mr. Washington stated that, in 1955, prior to the condemnation, one acre of land had been sold for \$4,000.00. This land had a frontage of 100 feet on U. S. Highway No. 22.

Mr. Washington also stated that, in 1956, 0.9 of an acre of vacant land, having a 50 foot frontage on the North side of U. S. Route 22, had been sold for \$3,000.00. Subsequent to the condemnation, a sale of three acres, more or less, having 200 feet frontage on the North side of U. S. Route 22, had been sold for \$6,000.00 and in 1960, 3.17 acres of vacant land having a frontage of 167.63 feet on the North side of U. S. Route 22, had been sold for \$1,500.00.

In his opinion, the value of the land condemned was \$150.00.

On cross-examination, Mr. Hasson asked Mr. Washington if he knew that the property known as the Airport had been offered for sale by Ebensburg Borough for the sum of \$90,000.00. Mr. Washington replied that he did not know the figure.

On re-direct examination, Mr. Washington stated that he did not know the frontage of the Airport property but was informed by Mr. Breneman that the Airport property fronted 5,500 feet on the new U. S. Route No. 22 and had a depth of 200 feet.

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. 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 (1955); Petition of Butler County Commissioners, 141 Pa. Super. 597, 15 A. 2d 504 (1940).

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No. 9 CONTINUED.

When the entirety of a tract of land is taken, the owner is entitled to compensation equivalent to its market value, rather than its value to the owner for this particular purposes, Kinter v. U. S., 156 F. 2d 5, 172 A. L. R. 232 (1946).

This computation is to be made without reference to the identity of the owner or the actual state of his business, Finn v. Providence Gas and Water Company, 99 Pa. 631 (1882). Whether land should be considered as one tract or several tracts depends upon the use of the property by the owner, Gibson v. Fifth Avenue and High Street Bridge Company, 192 Pa. 55, 43 Atl. 339 (1899).

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, Pennsylvania, 154 Fed. Supp. (1957); Ward vs. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible, Schuck v. West Side Belt Railway Company, 283, Pa. 152 128 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383 Pa. 573, 131 A. 2d 341 (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A 2d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who, by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890), and subsequent cases.

It is true that property not taken may be damaged and the condemnor will be held liable therefore. The measure of damages in such case is the difference in the value of the property immediately before and immediately after the taking of the property directly affected, considering only such injuries as are actual and unavoidable and those advantages which are special to the property involved, P. L. E. Eminent Domain, Section 65.

In this matter, both the property owner and the condemnor elected to treat the condemnation as one in which an entire tract was taken. Consequently, the question of damages to other land of the property owner cannot be considered.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assesses the damages as above awarded against the Commonwealth of Pennsylvania, Department of Highways.

Respectfully submitted this ____ day of April, 1962.

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Raymond M. Niebauer

SCHEDULE OF AWARD

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

John V. Nagle and Grace V. Nagle. \$400.00

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, Department of Highways.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Raymond M. Niebauer

Viewers' Notice and Viewers' Notice for Hearing filed.

Map filed.

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No. 9 - Continued.

O R D E R

AND NOW, this 2nd day of May, 1962, at 10:40 o'clock, A.M. D.S.T. it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions, to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P.L. 1242, Article 111, Sections 303 and 304.

By the Court:

Griffith, Pres. Judge

EXTRACT FROM THE RECORD CERTIFIED

THIS 3rd DAY OF MAY, A.D., 1962

Joseph C. Dolan, Prothonotary

May 3, 1962: All papers pertaining to this case have been transferred to the Office of the Prothonotary in compliance with the above Order of the Court.

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No. 3 CONTINUED.

Pennsylvania was represented by Edward F. Peduzzi, Esquire, Frank G. Freyvogel, Dell Comiskey and Howard Brenneman. At the conclusion of hearing the Plaintiff requested an additional hearing for the purpose of taking more testimony. The Board thereafter set September 13, 1961, at the Cambria County Courthouse, Courtroom No. 4, Ebensburg, Pennsylvania, as the time and place for the purpose of taking additional testimony. Ferdinand F. Bionaz, Attorney for Plaintiff, requested that the hearing be continued and the Board thereafter set November 13, 1961, as the time and place for taking additional testimony. At the request of the Attorney for the Petitioner this hearing was then continued until November 20, 1961, at 1:30 p.m. E.S.T. at the Cambria County Courthouse, Courtroom No. 4, Ebensburg, Pennsylvania, as the time and place for taking of additional testimony. The hearing was held at the time and place appointed and the Petitioner introduced additional testimony.

Due notice of the filing of this report was given to the Plaintiff through his attorney, Ferdinand F. Bionaz, as shown by acceptance of service of notice hereto attached and made a part hereof. Due notice was likewise given to the Defendant, through its attorney, Edward F. Peduzzi, as shown by acceptance of service hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this Report.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that the Plaintiff filed a Petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on May 4, 1961, requesting that Viewers be appointed in the above captioned matter.

II. FINDINGS OF FACT

(1) That MIKE C. BUCKUS is the owner of the premises described as follows:

All that certain piece or parcel of land situate, lying and being in the Township of Jackson, County of Cambria, and State of Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a public road which was formerly known as the William Penn Highway (the new William Penn Highway having been relocated) and on the line of Steele Shaw, formerly Davis Bros. Heirs; thence along line of land of Steele Shaw, formerly Davis Bros. Heirs, north 4 degrees 15 minutes east 3930, feet to a post in line of land of Heisley Coal Company, formerly Webster Griffith; thence along land of Heisley Coal Company, formerly Webster Griffith, South 86 degrees east 200 feet to a post in line of land of Heisley Coal Company, formerly Webster Griffith, thence along land of which the part hereby conveyed was formerly a part, now owned by Roy Dean, South 9 degrees 55 minutes east 3551.2 feet, to a point to the center of road (formerly William Penn Highway); thence along said road the three following courses and distances: South 88 degrees 55 minutes West 546.6 feet to a point; north 89 degrees 58 minutes West 300 feet to a point; south 74 degrees 5 minutes west 242.12 feet to a point, the place of beginning; containing 51.77 acres.

(2) That on June 14, 1961, the Commonwealth of Pennsylvania adopted a resolution condemning a portion of said property for the purpose of relocating the William Penn Highway in Cambria County, Pennsylvania.

(3) That Mike C. Buckus testified that after the condemning by the Commonwealth of Pennsylvania he suffered a loss amounting to \$35,000.

(4) That Howard Brenneman, engineer for the Department of Highways, testified that the Department took footage along the entire parcel of property owned by Mike C. Buckus, which taking amounted to 1.88 acres and further that there was a change in grade as a result of the taking.

(5) That Frank G. Freyvogel, real estate broker and appraiser, testified that the loss suffered by Mike C. Buckus, because of the taking by the Commonwealth of Pennsylvania amounted to \$9,200.

(6) That Frank G. Freyvogel did not take into consideration the water problem; he stated he assumed that Mr. Buckus would have sufficient water supply.

(7) That Dell Comiskey testified that the loss suffered by Mike C. Buckus, because of the taking by the Commonwealth of Pennsylvania, amounted to \$10,200.

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No. 3 CONTINUED.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioner has presented a meritorious case.

The Petition alleges that MIKE C. BUCKUS is the owner of the property referred to above and that in the condemning by the Commonwealth of Pennsylvania, said property has sustained serious loss and damages and that the compensation for such damages has not been fixed or agreed upon between the Plaintiff and Defendant.

The power of eminent domain is the power to take property for public use without the owner's consent. Briegel v. Briegel, 2160 A. 581, 307, Pa. 93 (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State." Article 16 also provides that municipal and other corporations and individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right of appeal from any preliminary assessment of damages against any corporation or individuals made by Viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably given substantial weight in bargaining for the property, such as location, improvements, productive quality and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence submitted to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owner and occupants of the said property by reason of the condemning of the property by the Commonwealth of Pennsylvania.

MIKE C. BUCKUS \$17,000.00

The Board of View have taken into consideration any benefits accruing to the premises and assess damages against the COMMONWEALTH OF PENNSYLVANIA.

Respectfully submitted,

s/ Donald J. Letizia, Esquire

s/ Raymond Niebauer

s/ John L. Elder

"PETITIONERS EXHIBITS" filed.

"COMMONWEALTH'S EXHIBITS" filed.

Notice to View filed.

Schedule of Award filed.

Notice of Exhibit filed.

Notice of Hearing filed.

Viewers' Notice filed.

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No. 3 CONTINUED.

January 24, 1962: Appeal from Report of Viewers filed by Edward Peduzzi, Esq.

3rd ORDER

AND NOW, this 24th day of January, 1962, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Sections 303, 304.

By the Court: /s/ McDonald, Judge.

January 25, 1962: Original Petition and Decree and Viewers' report certified to the Prothonotary's Office to No. 615 March Term, 1962 - this date.

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No. 3 CONTINUED.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, had deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioner has presented a meritorious case.

The Petitioner alleges that it is the owner of the property referred to herein and that in the construction, re-construction, and improvements to State Highway Route No. 222 in the Township of Richland, County of Cambria, and State of Pennsylvania, said property has sustained serious loss and damage and that compensation for such damages has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioner.

The power of eminent domain is the power to take property for public use without the owners' consent. Briegel v. Briegel, 2160 A. 581, 307, Pa. 93, (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P. S. Const. Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain must make compensation for property taken and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which give the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

The Petitioner testified that the fair market value of the property prior to the taking by the Commonwealth of Pennsylvania, was \$170,000; that the value of the property after the taking was \$90,000; therefore, the loss suffered by the petitioner because of the taking by the Commonwealth of Pennsylvania was \$80,000. Charles N. Glass, real estate expert, testified that the market value of the Silver Drive In Theatre, Inc. property prior to the taking was \$155,000; that the fair market value immediately after the taking was \$110,000; therefore, making a loss to the property owner because of the taking by the Commonwealth of Pennsylvania was \$45,000.

Dell Comiskey, real estate appraiser, called by the Commonwealth of Pennsylvania, testified that the market value of the Silver Drive In Theatre, Inc. property, prior to the taking by the Commonwealth of Pennsylvania was \$115,700; that the market value of the property immediately after the taking was \$110,200 thereby making the loss as a result of the taking by the Commonwealth of Pennsylvania of \$5,500.

John J. Mock, real estate expert, called by the Commonwealth of Pennsylvania, testified that the market value of the Silver Drive In Theatre, Inc. property before the taking was \$109,596.12; that the market value immediately after the taking by the Commonwealth of Pennsylvania, was \$108,079.72; thereby making the loss as a result of the taking by the Commonwealth of Pennsylvania of \$1,516.40.

In arriving at a just determination of the fair market value the Board has, as criteria,

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NO. 3 CONTINUED.

the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weight the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com. 145 A. 2d 541, 395 Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

SILVER DRIVE IN THEATRE, INC.-----\$7,500.00

Respectfully submitted,

/s/ Donald J. Letizia, Chairman

/s/ Theodore Hunt

/s/ Robert G. Mayer

NOTICE FILED.

SCHEDULE OF AWARD FILED.

NOTICE OF EXHIBIT FILED.

NOTICE OF HEARING FILED.

NOTICE OF CONTINUED HEARING FILED.

NOTICE OF HEARING FILED.

VIEWERS' NOTICE FILED.

MAP FILED.

ORDER

AND NOW, this 31st day of May, 1962, it appearing to the Court that the foregoing appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Sections 303, 304.

By the Court: /s/ Griffith, P. J.

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NO. 4 CONTINUED.

the petitioner in Jackson Township, Cambria County, Pennsylvania, for the purpose of relocating and improving a portion of U. S. Route No. 22 (Traffic Route No. 314), 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 Wednesday, December 28, 1960, 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 Cordilla Watson, the owner, William D. Shettig, esq., her counsel, Mr. Howard E. Breneman, District Right of Way Engineer for the Department of Highways, Mr. Jess Friedman, Department employee, Mr. T. Elmer Mock, also a Department employee, and Edward F. Peduzzi, Esq., counsel for the Department.

A Meeting for the purpose of hearing the testimony of witnesses was scheduled for Friday, January 13, 1961, at 10:00 o'clock A. M. e.s.t., in Courtroom No. 4, Cambria County Courthouse Ebsburg, Pennsylvania. At the request of counsel for the Highway Department, and for good cause shown, the meeting was continued until Thursday, January 26, 1961, at the same hour and in the same place. Once, again, it became necessary to continue the meeting, which was then re-scheduled for Wednesday, March 29, 1961, at 9:30 o'clock, A. M., e.s.t., at the same place. This meeting also was continued for good cause shown until Thursday, April 27, 1961, at 1:30 o'clock P. M. e.s.t., at the same place.

The meeting was held as scheduled and was attended by the landowner, William D. Shettig, her counsel, Mr. Karl W. Byers, Mr. James I. Mackall, Mr. Howard E. Breneman, Mr. T. Elmer Mock, Mr. Dell Comiskey, and Edward F. Peduzzi, Esq., counsel for the Highway Department.

Those who testified for the benefit of the Board were Mrs. Watson, Mr. Byers, Mr. Mackall, Mr. Comiskey and Mr. Breneman. All the witnesses were either sworn, or affirmed, 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 the major portion of the land of the property owner. The portion condemned has an area of 19,475 square feet, or about 75% of the total area of 25,600 square feet, and is entirely situate in Jackson Township, Cambria County, Pennsylvania.

2. A two-story frame and concrete block two car garage and woodworking shop was located upon the condemned premises. In addition thereto, a number of fruit and shade trees were taken, as well as the area used by the landowner as a garden.

3. The balance of the premises remaining to the landowner is a triangular area of approximately 6,125 square feet having erected thereon a two story frame dwelling.

4. The owner has been financially injured by the condemnation of said portion of her real estate.

CONCLUSIONS OF LAW

The following questions of law were presented to the Board for its determination:

Following his cross-examination of the witness, Karl W. Byers, as to the qualifications of the witness, counsel for the Department objected to the witness' qualifications and requested that the Board disqualify the witness as incompetent to render an opinion as to market value. The Board then permitted the landowner's counsel to examine the witness further so as to establish his qualifications.

During the examination and cross-examination of the witness, it was developed that, while he was not in the real estate business and had appraised only a few properties for resale, this witness had done considerable appraisal work in connection with the writing of fire insurance and

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NO. 4 CONTINUED

bonds. In addition thereto, the witness had been engaged in the insurance business in the vicinity of the Watson property for 8 years or more, and had lived in this general area for almost his entire life.

The Board, therefore, overruled the objection to this witness' qualifications and permitted him to testify relative to the market value of the Watson property. See P.L.E., Eminent Domain, sec. 92.

In the course of his cross-examination of this witness on the merits, counsel for the Department asked if the witness knew what the assessed valuation of this property was. An objection by counsel for the landowner was sustained on the basis of the language in Berger v. Public Parking Authority of Pittsburgh, 380 Pa. 19, 109 A. 2d 709 (1955).

The expert witness for the Department admitted, during direct examination on the merits, that he had not examined the Watson property subsequent to the relocation of Route No. 22, but that his opinion regarding the market value of the Watson property after the improvements had been made was based upon a study of maps and other data furnished to him.

Counsel for the landowner immediately objected and requested that the testimony of this witness be stricken and that he be forbidden to testify further.

This objection was overruled because, in the Board's opinion, this did not completely disqualify the witness, although it did affect his credibility.

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 U. S. Route No. 22 (Traffic Route No. 314) are as follows:

Cordilla Watson \$13,570.00

The award above set forth includes damages for detention from the date of condemnation on May 5, 1958, to the present date.

Mrs. Cordilla Watson, the landowner, testified in her own behalf. She described the property prior to its condemnation and subsequent thereto. It was during the examination of this witness that counsel for the owner introduced into evidence, without objection, the various exhibits appended hereto.

The Exhibits 1 and 2 are photocopies of the face of the deeds for the properties. Exhibits 3 to 11, inclusive, are photographs of the property made in the Spring of 1958, and showing the property prior to the relocation and improvement of Route No. 22. Exhibits 12 to 17 inclusive are photographs taken about August, 1960, showing the effects of the fill used to get the desired grade in the road.

Exhibits 18, 21 and 22 were duplications and were withdrawn by counsel for the landowner. The pictures offered as Exhibits 19, 20, 23, 24, 25 and 26 were taken about January, 1961, and are Winter views of the premises.

This witness identified the photographs offered into evidence and described the scenes shown. She also testified as to living conditions prior to the condemnation and afterward. Mrs. Watson did not, however, give any opinion as the market value of her property, although, as the owner, she was competent to give such an opinion.

Counsel for the owner called as his next witness, Mr. Karl W. Byers, a general insurance agent in the Mundy's Corner area of Jackson Township, which is the general locality of the condemned property.

After the Board had overruled the Department's objection to Mr. Byers' qualifications as an expert witness, counsel for the landowner examined Mr. Byers upon the merits.

The witness testified that he had thoroughly examined the property and the structures erected thereon and that, in his opinion, the market value of the property prior to the condemnation and unaffected thereby was \$23,652.00. The market value after the condemnation and as affected thereby was, in Mr. Byers' opinion, \$2,260.00.

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No. 4 CONTINUED.

Mr. Byers stated that he had reduced his "after" figure by \$2,000.00 because the septic tank servicing the house was covered, at least partially, by the fill used in constructing the road.

Upon cross-examination, this witness admitted that his figures were based upon replacement cost, alone, without any allowance for depreciation.

At this point, the Board instructed the witnesses to the meaning of "market value" in condemnation proceedings and admonished him to state his figures in the light of the definition of "market value" given by him. Mr. Byers then stated that his "before" figure, taking into account depreciation of the buildings would have to be revised to \$19,062.00, but that his "after" figure would remain the same.

Counsel for the Department then resumed his cross-examination of Mr. Byers who admitted that there was not too great a demand for real estate in this area at the time of condemnation because of an economic recession. He stated further that, although this area, generally, was receding from an economic standpoint, many new houses had been built in certain areas around Mundy's Corner.

James I. Mackall was then called by counsel of the landowner and qualified as an expert witness.

Mr. Mackall testified that he also had made a thorough examination of the property and the buildings erected thereon. It was his opinion that the market value of this property prior to condemnation was \$19,000.00. His "after" figure was \$2,500.00.

Upon cross-examination, Mr. Mackall stated that his reason for placing such a low value on the property after the condemnation, and as affected by it, was that there was hardly enough land left for the Watsons to function as a family. He said that in its present condition it had very little value.

He also testified that the houses built by him in the Vinco area of Jackson Township were sold at prices ranging from \$11,000.00 to \$17,000.00.

There was no re-direct examination and the landowner rested her case.

Counsel for the Department then called Mr. Dell Comiskey, a Johnstown realtor for 41 years and qualified him as an expert witness.

Mr. Comiskey testified that he had made a thorough examination of the property in May of 1958 at the request of the Department. In his opinion, the market value of the Watson property at that time was \$15,200.00. In giving his "after" figure of \$4,700.00, the witness stated that he had not gone back to see the property after the condemnation.

The Board thereupon permitted counsel for the landowner to cross-examine so as to determine how the witness was able to place an "after" value upon the property.

The witness stated that it is customary for appraisers to thoroughly examine the property prior to condemnation, but to rely upon maps, photographs and other data upon which to base their opinion as to market value after condemnation.

The Board overruled an objection by counsel for the landowner as to the competency of such testimony and advised counsel that, while this would undoubtedly affect the credibility of the witness, it did not completely disqualify his testimony.

Mr. Howard E. Breneman, District Right of Way Engineer for the Department of Highways, was then called for the purpose of establishing the date of the condemnation and the size and purpose of the taking.

Mr. Breneman also testified, both on direct and cross-examination, that the right of way line touches the northwest corner of the porch at the rear of the house and is within 16 feet of the front or northeast corner of the house.

He stated that an offer was made to the landowners on September 17, 1958, at which time documents were drawn which would have permitted the Commonwealth to pay the landowner 75% of the amount agreed upon. However, the offer was rejected and no payment has been made as yet.

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

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NO. 4 CONTINUED.

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 (1955); Petition of Butler County Commissioners, 141 Pa. super. 597, 15 A. 2d 504 (1940).

When only part of a tract is taken, the measure of compensation is the difference between the market value of the entire tract immediately before the taking, and unaffected by it, and the value of the remaining portion immediately thereafter, Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957); Mazur v. Commonwealth of Pennsylvania, 390 Pa. 148, 134 A. 2d 669 (1957); Broughler v. Commonwealth of Pennsylvania, 388 Pa. 573, 131 A. 2d 341 (1957).

However, consequential damages may also be considered, if the condemnor is liable therefor, including change of grade of a road or street; impairment of access, interference with light, and deprivation of view, Stone v. Delaware, L. & W. R. Co., 257 Pa. 456, 101 Atl. 813 (1917); Rafferty v. City of Pittsburgh, 256 Pa. 82, 100 Atl. 533 (1917); Lafean v. York County, 20 Pa. Super. 573 (1902).

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, -Pennsylvania, 154 Fed. Supp. (1957); Ward v. Commonwealth of Pennsylvania 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible, Schuck v. West Side Belt Railway Company, 283, Pa. 152, 128 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383, Pa. 573, 131 A. 2d 341, (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A. 2d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who, by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890) and subsequent cases.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assess the damages as above awarded against the Commonwealth of Pennsylvania, Department of Highways.

Respectfully submitted this 16th day of May, 1961.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Elder

/s/ Theodore W. Hunt

Copies of Deeds filed.

Photographs filed (18)

'Viewers' Notice filed.

Viewers' Notice of Hearing filed. (5)

Schedule of Award filed.

Viewers' Notice filed. (2)

May 16, 1961: Viewers' Report CONFIRMED NISI by James T. Fagan, Clerk of Courts.

June 23, 1961: THE WITHIN REPORT CONFIRMED ABSOLUTELY.

BY THE COURT: /s/ McDonald, J.

Had River, Oct. 27, 1961, Riverbank from top of the canyon to the bottom. The river is 41.5 m. long and is 1.5 m. wide at the mouth.

Witness: Barbara Jackson

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NO. 3 CONTINUED

attached and made a part hereof. The Board of View thereafter met on the premises on May 29, 1964, and viewed said premises in the company of Attorney Robert L. Blough, representing the Department of Highways, Mr. William Huber, Right of Way Agent for the Department of Highways, Mr. Paul Washington, Real Estate Broker and Insurance Agent, serving as an appraiser for the Department of Highways, and Attorney Gilbert E. Caroff, representing the Petitioner herein.

Thereafter the Board of View set Tuesday, June 23, 1964, at 2:00 P.M. E.D.S.T. in the Judges' Chambers, Park Building, 423 Main Street, Johnstown, Pennsylvania, as the time and place for hearing. Due notice of this hearing was given to Attorney Gilbert E. Caroff, representing the Petitioner, and to Attorney Robert L. Blough on behalf of the Defendant, as shown by acceptances of service of said notice hereto attached and made a part hereof. This hearing was then continued to Thursday, June 25, 1964, at 2:00 P.M., E.D.S.T., at the same location, at the request of both counsel. Notices of the continuance of said hearing were duly forwarded to both counsel, who noted their acceptance of service of said notice and returned same to the Board for inclusion with this Report. Said notices are hereto attached and made a part of this report.

The hearing was held at the time and place appointed, and was attended by Robert E. Blough, Esquire, Attorney for the Defendant, William Huber, Right of Way Agent for District 9, Paul Washington, a Fee Appraiser for the Defendant, Meade Cauffiel, President of Defendant Corporation, and by Attorney Gilbert E. Caroff, Esq., representing the Petitioner, at which time witnesses were duly sworn and testimony taken.

Due notice was given to Attorney Robert L. Blough and to Attorney Gilbert E. Caroff, representing the parties in this action of the Exhibiting of the Schedule of Award determined by the Board of View, with acceptance of service of said notice from both attorneys being attached and made a part hereof.

Likewise, due notice of the filing of this Report was given to the respective counsel for the parties in this action, as shown by acceptance of service of said notice, hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this Report.

The Board of View further reports as follows:

1. SERVICE OF PROCESS

The original papers and docket entries show that the Plaintiff filed a petition with the Court of Quarter Sessions of Cambria County, Pa., on May 4, 1964, requesting that Viewers be appointed in the above captioned matter.

II. FINDINGS OF FACT

1. That Cauffiel Bros., Inc., a Pennsylvania Corporation, is the owner of the premises described as follows:

ALL that certain tract, piece or parcel of land situate in Jackson Township, Cambria County, Pa., bounded and described as follows:

BEGINNING at a post corner of land of William Byers; thence by land of William Byers, North 84° east 62 perches to a post; thence by land of Emanuel Smith, north 22° east 80 perches to a post; thence by same south 68° east 58 perches to a post on line of land of John Gray, north 5° east 48 perches to a post; thence by same, north 80° 14 perches; thence by same north 68° east 24 perches; thence by same, north 22° east 53 perches to laurel on line of land of William Russell; thence by land of William Russell north 68° west 76 perches to a post, corner of land of Thomas Davis and Timothy R. Davis; thence by land of Thomas Davis and Timothy R. Davis, south 22° west 18 perches; thence by same south 86° west 120 perches to a stone pile on line of land of the heirs of E. A. Vickroy, deceased; thence by said land of William Byers and the place of beginning; containing 143 acres and 92 perches, more or less. The said J. A. Long by sundry deeds conveyed various tracts of land, parts of the original tract of 143 acres and 92 perches, and there remained un-conveyed the 62 acres, more or less, as assessed.

Excepting and reserving, however, out of the above tract a piece of land heretofore conveyed by the Commissioners of Cambria County to Woodrow and Roy Burkhart, fronting 100 feet on the northerly side of State Highway Route No. 22 and extending back of that width on a course north 1° 16' east 352.70 feet.

2. Mr. Mead Cauffiel, President of the plaintiff corporation appeared and testified that their corporation acquired the above property on July 13, 1936, and that as a result of sales of portions of said property, said property comprised 4.9 acres immediately prior to the condemnation by the defendant. A plan of lots marked as Petitioner's Exhibit #1 was introduced, showing that petitioner owned 4.9 acres after the taking by the defendant. He testified further that the condemnation by the Department of Highways created a slope from the highway as constructed, to the petitioner's property, so that access to its property was available only from one side; that the rear of the property was also affected in storms, that there was no longer any access to the

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NO. 3 CONTINUED -

roadway leading to the Bell Farm or the Carney Farm. In storms, according to Mr. Cauffiel, the ground is now soft and mushy filled with sediment and that by the virtue of the cumulative effect of all of these factors, .3 acres was actually taken by the defendant, and an additional 3/4 of an acre is unusable due to the detrimental waste of the water forced to back up as a result of the high slope. He testified further that he has been in the Real Estate Business for 44 years, has bought and sold property in Jackson Township from this property tract and adjacent thereto, and that in his opinion the Fair Market Value of the Petitioner's property was \$600.00 per acre immediately before the taking, and that after the condemnation and construction of Route No. 22, said property was worth \$725.00 less than prior to said taking. On cross examination Mr. Cauffiel was confronted with a copy of a deed given by Cauffiel Bros. Inc., the Petitioner, to Regis George and wife, dated November 19, 1954 (long prior to condemnation) whereby the westerly portion of lot C and the southeasterly portion of lot B on the Cauffiel Bros. plan were conveyed. A photo copy of this deed was offered in evidence as a Commonwealth Exhibit #2, and is hereby attached and made a part of this report. On further cross examination Mr. Cauffiel admitted that the road leading to the Bell and Carney Farms did not lead to any other portion of the property, and that the Bell's and Carney's also had the right of way to use this road in order to cross the Cauffiel property. He admitted further that most of the drainage complained of is on the right side of the property on both sides of Russell Run, and that the bed of Russell Run is in the 3/4 acres allegedly "taken". It was also brought out that Mr. Cauffiel did not have Commonwealth Exhibit measured and computed by an engineer and said that according to his calculation there was more than .078 of an acre, actually .3 acres. As to the 3/4 of an acre now practically unusable, Mr. Cauffiel said he computed this by walking along the borders of said unusable portion. He testified further, on cross examination, that the best use of this property prior to the taking was for timber and for cottage and home sites but that Regis George, aforesaid, bought his property for business reasons, which included some frontage on Route 22.

William Huber, Right of Way Agent for District 9 of the Department of Highways testified that according to engineered computations by District 9, the land actually taken by condemnation amounted to .078 acres. Mr. Huber testified further that a culvert was built after a detailed study of the topography and water run-off which in this case indicates that a 48 inch pipe was ample. The .078 acres taken is marked in Yellow on Commonwealth Exhibit #1 hereto attached and made a part hereof.

On cross examination Mr. Huber admitted that his Department considered the contour and topography of petitioner's land, but not the sediment contained therein. He also said that even before the taking one could not see neighboring farms due to the heavily wooded condition of this land.

Paul Washington, Real Estate Broker, Insurance Agent, and in this instance employed as a Fee Appraiser for the Department of Highways, was qualified by admission of both counsel.

He testified that he appraised the petitioner's property, considering the location, topography, conditions, the fact that there were no buildings or utilities and no highway frontage. He stated that the topography and contour was hilly, sloping down to a valley from both sides, very rough and approximately 1,000 feet from the highway. The best use for this land was for the growth of timber, and he said that Russell Run goes down to a point before going to the highway, and that the bed is about 10 feet wide (not actually measured) with the only access to petitioner's property from the "old" Route No. 22. He felt that there were no special benefits to the property by virtue of the improvement and that the property prior to taking amounted to 4.4 acres and after the taking amounted to 4.322 acres, resulting in a taking of .078. The Fair Market Value of the entire property before taking was in his opinion \$220.00, and the Fair Market Value immediately after the taking was \$172.00 resulting in a loss of \$48.00.

On cross examination Mr. Washington testified that he made his appraisal on May 22, 1964, and that he had not entered on the property prior to the taking by the Department. On further cross examination he testified that although he does consider comparable sales in taking his appraisal, he was not sure that there were any comparable sales in the vicinity of the petitioner's property. He did admit, however, that the taking by the defendant did affect

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NO. 3 CONTINUED --

the whole property of the petitioner, and that there are utilities, but no sewage on old Route No. 22 adjacent to the petitioner's property but not on the property itself. He admitted also that he was unable to state whether you could look down, across petitioner's property, to the neighbor's property, but he did state that you cannot do so now because of the built up highway.

3. The Department of Highways, defendant herein, pursuant to the power granted to it by law, and as authorized, did on May 5, 1958, adopt a resolution and file plans condemning .078 acres of the Petitioner's property for the purpose of constructing the limited access highway now known as Route No. 22, as is shown on Commonwealth Exhibit , hereto attached and made a part hereof.

III. OPINION

The Board of View has carefully examined the evidence submitted by both parties in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioner has proven a "taking" of a portion of its property, for which the parties have been unable to fix appropriate compensation therefor.

We believe that the Petitioner has sustained loss and damage, as a result of the proper exercise of the Power of eminent domain by the Defendant. See Briegel vs. Briegel, 216 At. 581, 307 Pa. 93 (1932). Eminent Domain is an inherited attribute of sovereignty, as set forth in P.S. Constitution, Article I, Section 10, which limits this Power by providing for the payment of appropriate compensation. Inasmuch as in this case, the power of condemnation was exercised under due authority of law, in order to subject same to public use, for the general wellbeing of the state, we find that Eminent Domain was properly asserted in this case, and that, therefore, the only issue confronting us is the assessment of a fair and adequate payment for the loss and damage suffered by the Petitioner.

In this case, we believe that the consideration of the market value of the Petitioner's property as applied to the loss suffered by the Petitioner, compels us to award payment to the Petitioner by the Defendant as follows:

5.00 CONCLUSION

We, the Board of View constituted to hear and adjudge this case, find that after a full and impartial consideration of the testimony and evidence submitted to us, and acting according to our best judgment, have estimated and determined the damages sustained by the owner and occupant of the said property by reason of condemning of said property by the Department of Highways, Commonwealth of Pennsylvania, as follows:

CAUFFIEL BROS. INC.....\$350.00

In fixing the above award we have taken into consideration any benefits accruing to the premises, as well as loss and damage suffered thereto, and hereby assess said damages against the Commonwealth of Pennsylvania.

Respectfully submitted.

/s/ Robert E. Shahade
Robert Mayer
Theodore Hunt
By: Robert E. Shahade
Chairman, Board of View

July 14, 1964: SCHEDULE OF AWARD FILED. 1⁰⁰
July 14, 1964: VIEWERS' NOTICE FILED. 1⁰⁰
July 14, 1964: NOTICE OF HEARING FILED. 1⁰⁰
July 14, 1964: NOTICE OF CONTINUED HEARING FILED. 1⁰⁰
July 14, 1964: NOTICE OF EXHIBIT FILED. 1⁰⁰
July 14, 1964: NOTICE OF FILING REPORT FILED. 1⁰⁰
July 14, 1964: VIEWER'S REPORT CONFIRMED NISI. 3⁰⁰

NOW, August 14, 1964, the within report confirmed absolutely. 3⁰⁰

By the Court:

/s/ McDonald, J.

Received \$350⁰⁰ 9-14-64 as payment of award.
Gilbert E. Caff
attorney for Petitioner

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No. 7 CONTINUED

CLERK OF COURTS: \$ 4.00

R. 4⁰⁰ APR 18 1961 AUDITED

STIPULATION OF SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

STIPULATION OF SETTLEMENT

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Carl Montag and Valetta Montag, husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Carl Montag and Valetta Montag, husband and wife, the sum of \$3,450.00 as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highway in 1950, and Carl Montag and Valetta Montag, husband and wife, have agreed to accept the said sum in full settlement for said damages, including interest and/or detention damages.

2. That Carl Montag and Valetta Montag, husband and wife, upon the payment of the said sum of \$3,450.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or, if necessary, secure or consent to the securing of an order of court dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

EDWARD F. PEDUZZI

/s/ Edward F. Peduzzi

Attorney for department Of Highways

EDWARD J. HARKINS

GERALD K. GIBSON

by /s/ Gerald K. Gibson

Attorneys for Carl Montag and

Valetta Montag

Bill of Costs on Appeal filed by Edward J. Harkins, Esq., - February 20, 1961

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal were incurred in the above stated case:

1. Share of Printing Brief and Record \$ 37.21
2. Filing Appeal in Supreme Court.... \$ 12.00
- Total..... \$ 49.21

/s/ Edward J. Harkins,

Attorney for Appellants

Clerk of Courts: \$ 1.00

R. 1⁰⁰ MAR 9 1961 AUDITED
2-20-61

Now, February 20, 1961, the above named proceedings are settled, discontinued & ended & above named property owners hereby acknowledge receipt of the sum of \$3450.00 in full of damages.

Edward F. Peduzzi
Atty for Dept of Highways
Gerald K. Gibson
Atty for Plaintiff

No. 9 CONTINUED

JANUARY 23, 1961: STIPULATION OF SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

R. 4⁰⁰ 3-8-61 1961 AUDITED

CLERK OF COURTS= \$ 4.00

STIPULATION OF SETTLEMENT

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Clyde Edwin Keiper and Kathryn Margaret Keiper, husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Clyde Edwin Keiper and Kathryn Margaret Keiper, husband and wife, the sum of \$1,200.00 as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highway in 1950, and Clyde Edwin Keiper and Kathryn Margaret Keiper, husband and wife, have agreed to accept the said sum in full settlement for said damages, including interest and/or detention damages.

2. That Clyde Edwin Keiper and Kathryn Margaret Keiper, husband and wife, upon the payment of the said sum of \$1,200.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or, if necessary, secure or consent to the securing of an order of court dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

EDWARD F. PEDUZZI

/s/ Edward F. Peduzzi

Attorney for Department of Highways

EDWARD J. HARKINS

GERALD K. GIBSON

by /s/ Gerald K. Gibson

Attorneys for Clyde Edwin Keiper and

Kathryn Margaret Keiper

Bill of Costs on Appeal filed by Edward Harkins, Esq., -February 20, 1961

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal were incurred in the above stated case:

1. Share of printing Brief and Record \$ 37.21

2. Filing Appeal in Supreme Court.....\$ 12.00

Total.....\$ 49.21

/s/ Edward Harkins, Attorney for Appellants

Clerk of Courts: \$ 1.00

R. 1⁰⁰ 2-20-61 MAR 9 1961 AUDITED

Now, February 20, 1961, the above viewers proceedings are hereby settled, discontinued & ended & the above named property owners hereby acknowledge receipt of the sum of \$1,200 in full of damages

*Edward F. Peduzzi
atty for Dept of Highways
Gerald K. Gibson
atty for Plaintiff*

Pages 529 & 531
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No. 10 Continued

Bill of Costs on Appeal filed by Edward Harkins, Esq., -February 20, 1961

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal were incurred in the above stated case:

- | | |
|--|----------|
| 1. Share of printing Brief and Record | \$ 37.21 |
| 2. Filing appeal in Supreme Court..... | \$ 12.00 |
| Total..... | \$ 49.21 |

/s/ Edward Harkins, Attorney for Appellants

Clerk of Courts: \$ 1.00

P. 1⁰⁰ MAR 9 1961 AUDITED
2-20-61

No. 3 CONTINUED.

met on the premises above described, the property of aforesaid owner on the 17th day of May 1960 at 9:30 o'clock A. M. E.D.S.T. The Viewers all being present the property was examined and all elements of damages were explored and carefully examined.

Notices of hearing were prepared and served on the interested parties as is evidenced by copies of acceptance of Service of same for hearing to be held in Court Room No. 4 in the Court House, Ebensburg, Pa. on Friday, July 1, 1960, at 9:30 o'clock A. M. E.D.S.T. with all interest parties were present, Attorney C. Randolph of the firm of Myers, Taylor and Peduzzi represented the Owner of the premises in question. Attorney Arnold Smorto represented the State Highway Department of the Commonwealth of Pennsylvania. Frank B. Freybogel and Donald Sharp testified as to the value of the land before and after the improvement to the Highway Route 22 in Jackson Township for the Department of Highways and Mr. Martin Ragley and William Lindrose presented testimony for the Petitioner.

On July 6, 1960 the Viewers met in conference and discussed the matter of damages to the property in question and took into consideration the testimony offered by witnesses for the Department of Highways and for the petitioner, we are prepared to fix the damages and have estimated and determined and assessed benefits and damages as follows.

Name	Benefits	Damages
STEVE SZEKERESH,	NONE	\$11,000.00

IN WITNESS WHEREOF, we hereunto set our hand seal this 19th day of July, A. D. 1960.

/s/ John L. Elder
/s/ Raymond Niebauer
/s/ Theodore Hunt
VIEWERS

Copy of APPEAL FROM AWARD OF BOARD OF VIEWERS filed by Randolph Myers, Attorney for Steve Szekeresh. August 5, 1960.

APPEAL TAKEN-PROTHONOTARY'S OFFICE.

NO. 4

Ruth M. Powers. Due notice thereof was given to Attorney Eugene A. Creany, Attorney for the petitioner, as shown by acceptance of service of notice hereto attached and made a part hereof.

Notice was likewise given to the Department of Highways, Commonwealth of Pennsylvania, as shown by acceptance of service of notice hereto attached and made a part thereof. The Board of View thereafter met on the premises on September 5, 1963, and viewed the premises in the company of Attorney Eugene A. Creany, representing the petitioner, Attorney Robert L. Blough, representing the Department of Highways, and with other officials of the Department of Highways.

Thereafter the Board of View set October 2, 1963, at 10:00 A.M., E.D.S.T., in the Judges Chambers, Park Building, 423 Main Street, Johnstown, Pennsylvania, as the time and place for hearing. Due notice of this hearing was given to Attorney Eugene A. Creany on behalf of the petitioner, and to Attorney Robert L. Blough on behalf of the Defendant, as shown by acceptance of service of notice hereto attached and made a part hereof. Thereafter this hearing was continued, at the request of the petitioner. The hearing was then rescheduled for Wednesday, October 16, 1963, at 10:00 A.M., E.D.S.T., in the Judges Chambers, Park Building, 423 Main Street, Johnstown, Pennsylvania, as shown by notices given to Attorney Eugene A. Creany on behalf of the petitioner and Attorney Robert L. Blough on behalf of the Defendant with acceptance of service of said notices hereto attached and made a part hereof.

The hearing was held at the time and place appointed and was attended by Eugene A. Creany, Esquire, Attorney for Plaintiff, Ruth M. Powers, the Plaintiff, Robert L. Blough, Esquire, Attorney for the Defendant, William L. Huber, Right of Way Agent for District 9, Department of Highways, William F. Young, Field Engineer and Registered Surveyor, and Edwin P. Frye, Real Estate Broker, all on behalf of the Defendant.

Due notice was given to Attorney Eugene A. Creany and to Attorney Robert L. Blough, of the Exhibiting of the Schedule of Award determined by your Board of View, with acceptance of service of said notice from both attorneys being attached hereto and made a part hereof.

Likewise, due notice of the filing of this report was given to the Plaintiff through her Attorney Eugene A. Creany, Esquire, as shown by acceptance of service of said notice hereto attached and made a part hereof; due notice was likewise given to the Defendant through its Attorney Robert L. Blough, as shown by acceptance of service hereto attached and made a part hereof.

The original papers are attached hereto and made a part of this Report.

The Board of View further reports as follows:

1. SERVICE OF PROCESS

The original papers and docket entries show that the Plaintiff filed a petition with the Court of Quarter Sessions of Cambria County, Pennsylvania, on August 13, 1963, requesting that Viewers be appointed in the above captioned matter.

II. FINDINGS OF FACT

(1) That RUTH M. POWERS is the owner of the premises described as follows:

All that certain piece or parcel of land situate in the Township of Clearfield, Cambria County Pennsylvania, bounded and described as follows:

BEGINNING at a point on Legislative Route 11084 leading to Flinton at corner of land of A. X. Baker; thence by said Legislative Route 11084 South 56o30' West 144.84 feet to an iron pin in the center of Legislative Route 11052 North 63o28' West 961 feet to an iron pin in the center of the intersection of said Legislative Route 11050 and Legislative Route 11052; thence by Legislative Route 11052 the following two courses and distances: North 17o07' East 207.73 feet to an iron pin in the center of said Legislative Route 11052, and North 30o30' East 311.71 feet to an iron pin in the center of said Legislative Route 11052 and line of land of Gerald Tomlinson; thence partly by line of land of Gerald Tomlinson; and partly by line of land of A. X. Baker South 43o 00' East 1116.5 feet to a point on Legislative Route 11084 and place of beginning; containing 7.692 Acres according to a survey by W. J. Battista Registered Engineer, on April 25, 1959.

(2) That on October 6, 1960, the Commonwealth of Pennsylvania condemned a portion of said property for the purpose of improving a Legislative Routes 11084 and 11052.

(3) That RUTH M. POWERS testified that after the condemnation by the Commonwealth of Pennsylvania she suffered a loss amounting to \$10,000.

(4) William C. Huber, Right of Way Agent for the Department of Highways testified that access to the Legislative Routes mentioned above was hazardous, and that the condemnation by the

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NO. 4

Department of Highways reduced the hazard. He stated further that in his opinion the condemnation benefited the Plaintiff's property. When questioned as to what percentage of grade existed before and after the condemnation, he did not know.

(5) William F. Young Jr., a Field Engineer for the New Enterprize Stone and Lime Company and a Registered Surveyor, testified that it would be feasible to relocate the 14 foot cut made by the Department. According to him the land in question could be restored to a degree almost equal to the condition existing before the condemnation by excavating 2100 cubic yards of earth and dumping them in the waste area located toward the rear and center of Plaintiff's property. He testified that the grade of the highway from the intersection and along Route 11052 was calculated at between 7 and 8 percent, by reference to Highway Department plans; and that the grade after the condemnation should be 1 per cent. He did not however verify this, and he testified further that the recommended grading did not restore the land to the same condition existing before condemnation.

(6) Edwin P. Frye, a Real Estate Broker testified on behalf of the Department of Highways, Defendant, that .39 acres were taken from the original 7.133 acres of land owned by the Plaintiff, and that the fair market value of the original acreage owned by the Plaintiff was worth \$7232.00 before the condemnation, and the property immediately after condemnation was worth only \$5147.00, a resultant loss of \$2085.00 to the Plaintiff. Fair market value was defined as the price the property could be expected to bring in the open market. He disagreed with Mr. Young's statement that recommended grading would not make the property as commercially valuable as before the condemnation. However, he did agree that the "cut" made by the Highway Department had destroyed some commercial accessibility and value. His statement of loss was based on the demand of over 400 feet of frontage, which would require excavating back a distance of 60 to 80 feet from the road way.

(7) Both parties agreed that the Plaintiff owned frontage along the road leading to Glendale Park for two miles on one side of the road and for one mile on both sides of the road.

III. OPINION

The Board of View has carefully examined the evidence offered in this case, has deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioner has presented a meritorious case.

The Petition alleges that RUTH M. POWERS is the owner of the property referred to above and that in the condemning by the Commonwealth of Pennsylvania, said property has sustained serious loss and damages and that the compensation for such damages has not been fixed or agreed upon between the Plaintiff and Defendant.

The power of eminent domain is the power to take property for public use without the owner's consent. *Briegel v. Briegel*, 2160 A. 581, 307, P. 93 (1932). Eminent Domain is an inherited attribute of sovereignty and the provisions for compensation is not part of the power, but a limitation on its use by the Constitution, P.S. Const. Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general weel being of the State." Article 16 also provides that municipal and other corporations and individuals invested with the power of

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SEPTEMBER

SESSIONS, 19 63

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NO. 4

eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right of appeal from any preliminary assessment of damages against any corporation of individuals made by Viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably given substantial weight in bargaining for the property, such as location, improvements, productive quality and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence submitted to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owner and occupants of the said property by reason of the condemning of the property by the Commonwealth of Pennsylvania.

RUTH M. POWERS.....\$3,500.00

The Board of View have taken into consideration any benefits accruing to the premises and assess damages against the COMMONWEALTH OF PENNSYLVANIA.

Respectfully submitted,

/s/Robert E. Shahade, Esquire

/s/Robert Mayer

/s/Owen Heeney

DEFENDANTS EXHIBIT NO. 1
(Photograph)

DEFENDANTS EXHIBIT NO. 2

Sketch showing proposed grading to relieve slope condition on the Ruth M. Powers property.

DEFENDANTS EXHIBIT NO. 3

Prints of Right-of-way plan for Route 11052, Section No. 3.

Exhibit No. 1, Petitioners (photograph).

Exhibit No. 2, Petitioners (photograph).

Exhibit No. 3, Petitioners (photograph).

Exhibit No. 4, Petitioners (photograph).

Exhibit No. 5, Petitioners (photograph).

Exhibit No. 6, Petitioners (photograph).

NOTICE OF FILING REPORT

NOTICE is hereby given that the undersigned Viewers will file their report in the above matter in the Court of Common Pleas, of Cambria County, Pennsylvania, on Monday, November 18, 1963.

You will have thirty (30) days from said date within which to file exceptions to our Report, if you so desire. If no exceptions are filed thereto within said thirty (30) days our Report will be confirmed absolutely by the Court.

Robert E. Shahade

Owen Heeney

Robert Mayer

By: /s/Robert E. Shahade, Chairman, Board of View

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NO. 4

AND NOW, this 7th day of November, 1963, I hereby accept service of the above Notice.

/s/Robert L. Blough, Attorney for Defendant.

NOTICE OF FILING REPORT SIGNED BY EUGENE A. CREANY, ESQ. FILED.

SCHEDULE OF AWARD SIGNED BY EUGENE A. CREANY, ESQ. FILED.

SCHEDULE OF AWARD SIGNED BY ROBERT L. BLOUGH, ESQ. FILED.

NOTICE OF EXHIBIT SIGNED BY EUGENE A. CREANY, ESQ. FILED.

NOTICE OF EXHIBIT SIGNED BY ROBERT L. BLOUGH, ESQ. FILED.

NOTICE OF HEARING SIGNED BY EUGENE A. CREANY, ESQ. FILED.

NOTICE OF HEARING SIGNED BY ROBERT L. BLOUGH, ESQ. FILED.

NOTICE OF CONTINUED HEARING SIGNED BY EUGENE A. CREANY, ESQ. FILED.

NOTICE OF CONTINUED HEARING SIGNED BY ROBERT L. BLOUGH, ESQ. FILED.

NOTICE OF HEARING SIGNED BY EUGENE A. CREANY, ESQ. FILED.

NOTICE OF HEARING SIGNED BY ROBERT L. BLOUGH, ESQ. FILED.

VIEWERS' NOTICE SIGNED BY WILLIAM R. MOSOLINO, ASSISTANT ATTORNEY GENERAL FILED.

VIEWERS' NOTICE SIGNED BY EUGENE A. CREANY, ESQ. FILED.

3⁰² ORDER

AND NOW, this 20th day of December, 1963, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article III, Sections 303, 304.

By the Court:
/s/McDonald, J.

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No. 4 CONTINUED:

REPORT

That in pursuance of their appointment the Board of View caused notice to be served upon the owners and occupants of land affected in the above proceeding, as well as counsel of record for said owners and occupants, and upon counsel for the Commonwealth of Pennsylvania, Department of Highways that they would meet upon the premises on Friday, June 3, 1960, at 9:30 o'clock A. M., e.d.s.t., for the purpose of viewing the premises and of 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.

The Board of View proceeded with the view at the appointed time and place. In attendance were John Buckus and Elizabeth Mary Buckus, his wife, who are the owners of the premises, G. Harry Isaacson, Esq., counsel for the owners, Arnold D. Smorto, Esq., counsel for the Commonwealth of Pennsylvania, Department of Highways, and Mr. Elmer T. Mock, of the Commonwealth of Pennsylvania, Department of Highways.

At the view, a Stipulation prepared by Arnold D. Smorto, Esq., counsel for the Commonwealth of Pennsylvania, Department of Highways, and G. Harry Isaacson, Esq., counsel for the owners, was presented to the Board of View. It was stipulated by the parties that the owners be awarded the sum of Eleven Thousand Five Hundred (\$11,500.00) Dollars for all damages by reason of the taking, and, in addition thereto, the Department of Highways would complete the fill of the driveway and completely cover the surface of the driveway, as well as construct a ditch through its right of way to provide proper drainage of the owners lot. A copy of said Stipulation is attached hereto.

In accordance with the directions given by the owners in a Release to the Commonwealth of Pennsylvania, Department of Highways, said damages are to be made payable to G. Harry Isaacson, Esq., and John and Elizabeth Mary Buckus, and mailed to G. Harry Isaacson, Esq., ^{as} Maonic Building, Ebensburg, Pennsylvania. An executed copy of said Release is attached hereto.

Because of the settlement reached by virtue of the Stipulation entered into by counsel for the parties, it was not necessary for the Board of View to hold another meeting to take testimony of witnesses. The Board of View reports that because of the aforesaid Stipulation, it finds the total damages, including interest for detention, to be Eleven Thousand Five Hundred (\$11,500.00) Dollars.

/s/ John L. Elder

/s/ Raymond Niebauer

/s/ Leopold J. Wendekier

Board of View

June 6, 1960.

Viewers' Notice filed.

STIPULATION

In re: John Buckus and Elizabeth Mary Buckus

vs.

Commonwealth of Pennsylvania

Department of Highways

In the Court of Quarter Sessions

of Cambria County, Pennsylvania

No. 4 June Term, 1960

Road Docket

It is hereby stipulated by G. Harry Isaacson, Counsel for the said owners and Arnold D. Smorto, Counsel for the Commonwealth of Pennsylvania, Department of Highways, that the Viewers make the following findings and awards:

1. The Owners be awarded the sum of Eleven Thousand Five Hundred and no/100 (\$11,500.00) Dollars for all damages by reason of the taking.

2. In addition thereto, the Department of Highways will do the following:

(a) Complete the fill of the driveway and black top that portion of the driveway which had been previously black topped by the Owners

and will cover the remainder of the driveway with selected mater-

ials as per contract with Frank Mashuda and Associates.

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No. 4 CONTINUED:

(b) The Department of Highways will construct through its right of way a ditch leading from the driveway of adjoining John Cupco property along the entire front of Owners' property with sufficient sloping thereon as to provide proper drainage.

/s/ Arnold Smorto

Counsel for the Commonwealth of
Pennsylvania, Department of Highways.

/s/ G. Harry Isaacson

Counsel for John Buckus and
Elizabeth Mary Buckus

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

AND NOW, TO WIT, this eighth day of June, 1960, it is stipulated by and between Arnold D. Smorto, Esq., Counsel for the Commonwealth of Pennsylvania, Department of Highways, and G. Harry Isaacson, Esq., Counsel for John Buckus and Elizabeth Mary Buckus, his wife, owners of the premises, that they do hereby for their clients waive the right to file exceptions, or to file any appeal to the Court of Common Pleas of the County of Cambria and demand trial by jury or to file any appeal to the Superior Court or the Supreme Court from the Report of the Board of Viewers dated June 6, 1960, and filed on the same day in the Office of the Clerk of Court of the Court of Quarter Sessions of Cambria County, Pennsylvania, in accordance with any right granted to them by the common or statutory law of the Commonwealth of Pennsylvania, and the Court of Quarter Sessions of Cambria County, Pennsylvania is hereby directed to enter a Decree confirming absolutely the said Viewer's Report. It is the intention of the parties hereto, that the Board of Viewers' Report be considered as a final Judgment from which all exceptions and appeals are waived.

/s/ Arnold Smorto

Attorney for the Commonwealth of Pennsylvania
Department of Highways

/s/ G. Harry Isaacson

Attorney for John Buckus and
Elizabeth Mary Buckus, his wife

O R D E R

NOW, JUNE 9, 1960, the parties having consented to waive the right to file exceptions or an appeal to the within report, the 30 days period having been waived, the within Report of VIEWERS IS CONFIRMED ABSOLUTELY.

BY THE COURT: /s/ McDonald, Judge.

Certified Copy to: Arnold Smorto, Atty. for Department of Highways
Department of Highways, c/o Mr. Fred Hogan, Hollidaysburg, Pa.

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No. 4 CONTINUED:

at a point of intersection of Jones Street in the Borough of Lilly and through the Township of Washington to a point on the Western line of property of Marion Giblock.

That the Board of Viewers, namely Donald J. Letizia, Esq., John L. Elder, and Raymond Niebauer, met on the premises on November 11, 1958 and made a View of said road. No report having been filed on said View the Petitioners on April 22nd requested the Court to appoint a new Board of Viewers on the said Petition. On Apr. 22nd., the following Viewers were appointed by said Court: John L. Elder, Raymond Niebauer and Theodore Hunt.

That the above appointed Viewers are duly sworn as Members of the Permanent Board of Viewers of Cambria County as shown by the records for said Court.

That due public Notice of the time and place of View was given by Posting Ten (10) Notices at the points of beginning and ending of said highway and along the route of same and by personal service to the Supervisors of Washington Township, Council of the Borough of Lilly and the Cambria County Commissioners.

That the View was held according to said Notices on Tuesday May 17th., 1960, at 1:30 o'clock P. M. D.S.T. meeting at the place of beginning at point in the Borough of Lilly at the intersection of Jones Street; that the Supervisors of the Township of Washington and Council of Lilly Borough being represented and other interested persons were present.

That having gone over the proposed road all the Viewers agree there is a necessity for a Public road and we hereby lay out said road as follows:

BEGINNING at a point in the Borough of Lilly at the intersection of Jones Street; thence South Sixty four degrees East, three hundred sixty one feet to a point; thence South Seventy seven degrees East ninety five feet to a point; thence across the Bear Rock Run South sixty five degrees East eight hundred forty two feet to a point on the Lilly Borough Washington Township Line; thence through the properties of W. H. Piper and Company and Hughes Coal Company, the following courses and distances; South sixty five degrees fifteen minutes East six hundred feet to a point; South sixty four degrees five minutes East twelve hundred feet 60 to a point; South fifty six degrees forty nine minutes East two hundred forty nine feet to a point; South sixty four degrees East five hundred seventy eight feet to a point; North eighty one degrees forty five minutes East four hundred seven feet to a point; North seventy eight degrees thirty five minutes East ten hundred ninety four feet to a point; thence through the properties of Lilly Coal, the following courses and distances: South eighty nine degrees East eight hundred fifty four feet to a point; South sixty nine degrees East three hundred twenty seven feet to a point; South fifty seven degrees East two hundred five feet to a point; South sixty five degrees East five hundred seventeen feet to a point; South forty five degrees East three hundred feet to a point on the Western Line of the property of Marion Giblock, as shown on attached survey of John L. Elder, Registered Engineer.

All damages were released by abutting property owners, excepting to the property owned by Mary Salko and Charles Salko, who signed a Joinder which is hereto attached and made a part of this report.

WITNESS Our hands this 3rd day of June, 1960.

/s/ John L. Elder
/s/ Raymond Niebauer
/s/ Theodore Hunt,

VIEWERS

Viewers' bill filed; Joinder of Property Owners to Petition for a Public Road as Aforesaid filed; Notice to View filed; Map filed-June 6, 1960

No. 4 CONTINUED

ORDER

AND NOW, July 26, 1960, no exceptions having been filed, the within report is
CONFIRMED ABSOLUTELY..

BY THE COURT: /s/ Griffith, P. J.

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Continued from Page 147

No. 2 CONTINUED

The above award set forth includes damages for delay in payment from the date of the injury in this proceeding to the date of filing of the report.

The Board of View have taken into consideration any benefits accruing to the property affected and hereby assess the damages as above awarded.

/s/ Donald J. Letizia, Chairman

/s/ Theodore Hunt

/s/ John L. Elder

ACCEPTANCE OF SERVICE

AND NOW, this 1st day of March, 1960, I hereby accept service of the above notice.

/s/ Norman Krumenacker

ACCEPTANCE OF SERVICE

AND NOW, this 1st day of March, 1960, I hereby accept service of the above notice.

/s/ Arnold D. Smorto

NOTICE of filing of Viewers' Report filed. Acceptance of Service by Arnold D. Smorto and Andrew J. Gleason, filed.

VIEWERS' REPORT

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

DONALD J. LETIZIA, ESQUIRE, JOHN L. ELDER, and THEODORE HUNT, three members of the permanent Board of Viewers of Cambria County, Pennsylvania, appointed to view the premises of Anthony (Tony) Stefanon and Armenia Stefanon, to assess damages to their property arising from the improvements to State Highway Route No. 22, in the Township of Cambria, Cambria County, Pennsylvania, and return the proceedings according to law, respectfully report:

Pursuant to their appointment on October 15, 1959, the Board of View set Thrusday, November 19, 1959, at 10:00 A. M., E.S.T., as the time to view and inspect the premises owned by Anthony (Tony) Stefanon and Armenia Stefanon, his wife. Due notice thereof was given to Gleason & Krumenacker, Attorneys for the Petitioners, as shown by acceptance of Service of Notice hereto attached and made a part hereof. Notice was likewise given to the Commonwealth of Pennsylvania, through its assistant Attorney General, Robert W. Cunliffe, as shown by Acceptance of Service hereto attached and made a part hereof. The Board of View thereafter set Friday, January 15, 1960, at 10:00 A. M., in Court Room No. 4, Cambria County Court House, Ebensburg, Pennsylvania, as the time and place for hearing. Due notice thereof was given to Gleason & Krumenacker, Attorneys for the Petitioners, as shown by Acceptance of Service hereto attached and made a part hereof. Notice was likewise given to the Commonwealth of Pennsylvania through its Attorney, Arnold D. Smorto, as shown by Acceptance of Service hereto attached and made a part hereof. At the request of Counsel for the Commonwealth of Pennsylvania, the hearing was continued to Wednesday, February 3, 1960. The hearing was held at the time and place appointed and was attended by the Board of View and by Andrew J. Gleason, Esquire, Attorney for the Petitioners, and the Petitioner, Anthony (Tony) Stefanon and Frank M. Genovese and Charles N. Glass, Real estate appraisers. The Commonwealth of Pennsylvania was represented by Arnold D. Smorto, Esq., Howard E. Breneman, District Right-of-Way engineer of the Department of Highways, and Gerald P. Sheedy and Paul Washington, Real estate appraisers. The Petitioner was thereupon examined upon the merits of the case and a full hearing was held thereon.

Due notice of filing this Report was given to the Petitioners through their Attorneys, Gleason & Krumenacker, as shown by Acceptance of Service hereto attached and made a part hereof. Due notice was likewise given to the Commonwealth of Pennsylvania through its attorney, Arnold D. Smorto, as shown by acceptance of Service hereto attached and made a part hereof.

The original papers are attabhed hereto and made a part of this Report.

The Board of View further reports as follows:

I. SERVICE OF PROCESS

The original papers and docket entries show that Anthony (Tony) Stefanon and Armenia Stefanon filed a Petition with the Court of Quarter Sessions on October 19, 1959, setting forth
CONTINUED ON NEXT PAGE.

No. 2 CONTINUED.

that they labored under inconvenience for want of an assessment of damages.

II. FINDINGS OF FACT

(1) That Anthony (Tony) Stefanon and Armenia Stefanon, are the owners of a parcel of ground situate in Cambria Township, Cambria County, Pennsylvania. (N. T. 3, the Record).

(2) That on May 5, 1958, the Commonwealth of Pennsylvania condemned a portion of land situate in the Township of Cambria, Cambria County, Pennsylvania, a portion of which fronted seventy (70) feet along the entire frontage of the Stefanon property. (N. T. 4, 38 and the Record).

(3) That Frank M. Genovese and Charles N. Glass and Gerald P. Sheedy are all expert real estate appraisers. (N. T. 23)

(4) That Howard E. Breneman is District Right-Of-Way engineer for the Department of Highways, Commonwealth of Pennsylvania. (N.T. 33)

(5) That the Petitioners operated a tavern known as "Penn Gables" in a building, the front part of which, was entirely on the right-of-way condemned by the Commonwealth of Pennsylvania. (NT. 3, 4, 5, 9, 10 Petitioners Exhibits Nos. 1 and 2)

(6) That the Petitioners had an apartment located on the second floor of the building which was located entirely on the right-of-way condemned by the Commonwealth of Pennsylvania. (N.T. 6, 7, 8, 9, 10, and Petitioners Exhibit No. 5)

(7) That the back portion of the building owned by the Petitioners was used as a dance hall and for parties. (N.T. 6, 7, 8)

(8) That the Petitioners had a tool house and a garage that had to be torn down because the said tool house and garage was located on the right-of-way condemned by the Commonwealth of Pennsylvania. (N.T. 8, 9)

(9) That the Petitioners owned a dwelling 75 feet to the rear of the premises on which the tavern was operated and that it was necessary, after the taking by the Commonwealth, to move the tavern back to a point where there was only several feet separating the tavern from the dwelling referred to above. (N.T. 9)

(10) That the Petitioners own a white frame house adjacent to the Tavern property which house, prior to the taking was 110 feet from the old highway. (N.T. 10 Exhibit 12)

(11) That the Petitioners were forced to move the white frame dwelling house back a distance of 70 feet so that now the said house is only 41 feet from the highway, where prior to the taking it was 110 feet from the highway. (N.T. 46)

(12) That the Petitioners owned and operated a golf driving range located along Route 22, consisting of a club house and a driving range. (N. T. 12, Exhibits Nos. 12, 13, 14, 15 and 16)

(13) That the club house referred to above was located entirely within the right of way condemned by the Commonwealth of Pennsylvania. (N.T. 12, 13, 14)

(14) That after the taking by the Commonwealth of Pennsylvania, there was no longer any parking area available to be used by the Petitioners. (N.T. 15)

(15) That Frank M. Genovese testified that the loss suffered by the Petitioners because of the taking of a portion of their property by the Commonwealth of Pennsylvania was \$120,000. (N.T. 23, 24, 25)

(16) That Charles N. Glass, testified that the loss suffered by the Petitioners because of the taking of a portion of their property by the Commonwealth of Pennsylvania was \$116,500. (N.T. 28, 29, 30)

(17) That Frank M. Genovese and Charles N. Glass took into consideration the location, size, topography, shape and the highest and best use to which this land could be put in arriving at their market value before and after the taking. (N.T. 27, 28)

(18) That the portion of land of the Petitioners which was condemned and taken by the Commonwealth of Pennsylvania was a strip of land 70 feet in width along the full frontage, shaded in blue on the map entered as evidence. (N.T. 34)

(19) That because of the taking of a portion of the Petitioners land by the Commonwealth of Pennsylvania, there has been a slight change in grade. (N.T. 38)

CONTINUED ON NEXT PAGE.

No. 2 CONTINUED.

(20) That Gerald P. Sheedy testified that the loss suffered by the Petitioners because of the taking of their property by the Commonwealth of Pennsylvania was \$52,000. (N.T. 40 and 41)

(21) That Gerald P. Sheedy did not take into account any income figures on arriving at the market value of the golf driving range, both before and after the taking by the Commonwealth of Pennsylvania. (N.T. 41, 42).

(22) That the Commonwealth of Pennsylvania advanced the sum of \$39,000.00 to the Petitioners, Anthony (Tony) Stefanon and Armenia Stefanon, his wife, which amount was used to help the Petitioners relocate their Property.

(23) That Attilio Stefanon and Rose Stefanon, his wife, were the owners of the white frame house referred to in this report, on May 5, 1958; that Attilio Stefanon and Rose Stefanon, his wife, conveyed the premises to the Petitioners herein prior to the date of the hearing, and that Attilio Stefanon and Rose Stefanon, his wife, have renounced all property damage claims in this matter in favor of the Petitioners. (Petitioners Exhibit No. 19)

III. OPINION

The Board of View has carefully examined the evidence offered in this case, had deducted therefrom certain facts, has carefully examined the law applicable, and is of the opinion that the Petitioners have presented a meritorious case.

The Petitioners allege that they are the owners of the property referred to above and that in the construction, reconstruction and improvements to State Highway Route No. 22, in the Township of Cambria, Cambria County, Pennsylvania, said property has sustained serious loss and damage and that the compensation for such damages has not been fixed or agreed upon between the Commonwealth of Pennsylvania and the Petitioners.

The Power of eminent domain is the power to take property for public use without the owner's consent. Briegel vs. Briegel, 160 A. 581, 307, Pa. 93 (1932). Eminent domain is an inherited attribute of sovereignty and the provision for compensation is not part of the power, but a limitation on its use by the Constitution. P. S. Const. Art. 1, Section 10.

The Constitution contains three sections relating to eminent domain, Article 1, Section 10, provides that private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured. Article 16, Section 3, provides that "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State." Article 16 also provides that municipal and other corporations and individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individuals made by viewers or otherwise.

Generally, just compensation must be made for the taking of all kinds of property, and of any kind of right or interest in property which has a market value. In the case of highways, only that which has been condemned for highway improvements may be determined to have been "taken" by the Commonwealth within the statutes provided for the recovery of damages. The character of the structure to be put upon the surface of land taken under the power of eminent domain and the use to which such structure is to be devoted are circumstances to be taken into account in determining the compensation to which the owner is entitled.

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No. 2 CONTINUED.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably given substantial weight in bargaining for the property, such as location, improvements, productive quality and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States vs. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957). While the value of land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

This is probably the most valuable land along the entire section taken for highway purposes on this project. It had the advantage of being just outside the Borough limits of Ebensburg. There was a two way accessible highway, and while the general rule is that the flow of traffic is not an element of damages, particularly so if there is little damage to land or no damage, there are no cases on point regarding a non-accessible road where the damages to the land itself is considered as is the case here. No matter what Mr. Breneman may have said, to my way of thinking this is a non-accessible highway. A person driving from Mundys Corner to Ebensburg can only cross the new highway at the places set out for such turns. Here we had a business, the greater part of which had to be transient. There is nothing to indicate that the building of this improved road will bring more traffic and we have a situation where the new construction will cut off most of the transient traffic.

The tavern business was conducted in two structures which had been joined together prior to the taking. Mr. Stefanon testified that the value of the property before the taking was \$155,000 and the value of the property immediately after the taking was \$35,000, therefore, the loss which resulted was \$120,000.

Mr. Genovese testified that the value of the property, before the taking was \$145,000 and the value immediately after the taking was \$25,000, which resulted in his opinion, in the loss amounting to \$120,000. Mr. Genovese further testified that the value of the Attilio Stefanon house was \$10,000 after the taking. That the golf driving range was valued at \$5,000 after the taking and that the remainder of the property was worth \$10,000 immediately after the taking. On direct and cross examination, Mr. Genovese testified under oath, that in arriving at the figure referred to above, he took into consideration location of the property, size of the property, topography of the property, shape of the property, and the highest and best use to which the property could be put.

Mr. Glass testified that the value of the property prior to the taking was \$141,000 and that the value of the property immediately after the taking was \$24,500. Mr. Glass arrived at his \$24,500 figure as follows: He testified that the golf range was worth \$5,000 after the taking; the Attilio Stefanon house was worth \$7,000 after the taking; that the back portion of the building in which the tavern was operated was worth \$3,500 after the taking and the rest of the land involved was worth \$8,000. Mr. Glass testified that in arriving at his figures he took into consideration the size, location, topography, shape, and the highest and best use to which the property could be put. On cross examination neither Mr. Genovese nor Mr. Glass changed their opinions in any way. Both Mr. Glass and Mr. Genovese made excellent witnesses and their testimony is credible.

When only part of a tract of land is taken, the measure of compensation is the difference between the market value of the entire tract immediately before the taking and the value of the remaining portion immediately thereafter, Ward vs. Com., 136 A. 2d 309, 390 Pa. 526 (1957); Mazur vs. Com., 134 A. 2d 669, 300 Pa. 148 (1957); Braughler vs. Com., 131 A 2d 341, 388, Pa. 573 (1957). The Commonwealth made much of the fact that the remaining land could be used for building lots. However, there was no testimony tending to show that it would be feasible to have the remaining tract laid out in building lots of that there was a market for building lots in this area.

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No. 2 CONTINUED.

The costs of removing or rebuilding improvements affected by the taking should not be allowed as a distinct item of damages, but may be considered in fixing the value of the property before and after the taking. Petition of Butler Water Company, 13 A 2d 72, 338, Pa. 282 (1940).

The Commonwealth called Mr. Sheedy as a witness and their entire case must rest or fall on the testimony given by Mr. Sheedy. Mr. Sheedy testified that the value of the property before the taking was \$112,400 and that the value of the property immediately after the taking was \$60,400 or a loss of \$52,000. On cross examination, Mr. Sheedy testified that at no time had he entered the white frame house, and that he had placed a value on the property at \$12,500, as being the value before the taking and the value immediately after the taking. Here we have a property supposedly worth \$12,500 before the taking, which house was 110 feet from the edge of a two lane highway and after the taking the house had to be moved back, involving of necessity some cost, with the end result being that the house is now only 41 feet from the edge of a four lane highway and Mr. Sheedy testified that no loss resulted. Mr. Sheedy testified that in his opinion, the golf driving range completely furnished had a value of \$18,900 before the taking and that Mr. Stefanon realized as salvage \$2,700, therefore, his loss on the golf driving range amounted to \$16,200. Mr. Sheedy, in answer to the question as to what the highest and best use the golf driving range could be put to, did not give a definite answer; however, he said that the land could be put to one of several commercial uses.

Mr. Sheedy testified that the tavern before the taking had a value of \$40,000 and immediately after the taking the tavern property had a value of \$10,000, suffering a loss, therefore, of \$30,000. Mr. Sheedy testified that after the taking the building that remained could not be used as a tavern, there was no parking facilities in the front of the building, there was no water, no light, no heat, and the only thing in the building that remained was a dance hall on the first floor, some apartments on the second floor, and an attic on the third floor. Mr. Sheedy testified that he did not get any data on the cost of moving the building and the fact that the remaining portion of the building had to be moved to the rear of the property line so that it was almost flush with the house in the rear had no bearing as far as Mr. Sheedy was concerned.

The jury is not required to take arbitrarily the Plaintiff or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. vs. Com., 145 A 2d 541, 395, Pa. 65 (1958).

It is the opinion of the Board of View that there was a Tavern business located in a building consisting of two parts and that after the taking by the Commonwealth of Pennsylvania, that portion of the building in which the bar, the kitchen, the dining room, the mens' room, and a four room apartment upstairs was entirely eliminated. This was the heart of the entire operation of the business. Immediately after the taking the heart of the business is cut away, there is no parking facilities available in front of the building which remained. The apartment in which the proprietor, the Stefanons, lived was entirely valueless. It was necessary to move the remaining portion of the building, add a section to it for sufficient space, reconstruct space above the old dance hall into an apartment. It was also necessary to build a parking area. The value of the house remaining on the property was also lowered. So then, we had remaining a building that was totally inadequate for any purpose, a house whose value was diminished by making it too close to the road. It was necessary to keep in mind not only the highest and best use was the business as a tavern, but this was practically the only use.

A land owner has a prima facie right to damages for delay in payment, Fidelity-Philadelphia Trust Co. vs. Com., 42 A 2d 585, 352, Pa. 143, (1945). This compensation like all other charges for unlawfully withholding money is measured by an interest rate recoverable as damages. This rate will be the normal commercial rate during the period of detention. If no evidence is given as to that rate, the presumption is that the legal rate was in effect. Whitcomb vs City of Philadelphia, 107 A 2d 765, 264, Pa. 277 (1919).

The Board of View in determining detention damages in this case, took into consideration the fact that the Commonwealth of Pennsylvania had advanced to the Petitioners the sum of \$39,000 immediately after the taking.

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No. 2 CONTINUED.

CONCLUSION

The Board of View reports that after a full and impartial consideration of all the testimony and evidence submitted to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of said property by reason of the construction, reconstruction and improvements to State Highway Route No. 22, in Cambria Township, Cambria County, Pennsylvania, as follows:

ANTHONY (TONY) STEFANON and ARMENIA STEFANON, his wife . \$ 99,800.00

ANTHONY (TONY) STEFANON and ARMENIA STEFANON, his wife;
(Detention Damges) 3,648.00

The Award of Damages set forth includes damages for delay in payment of damages from the date of the injury sustained in this proceeding to the date of filing this report. The Board of View have taken into consideration any benefits accruing to the premises and assess damages against the Commonwealth of Pennsylvania.

Respectfully submitted,

/s/ Donald J. Letizia, Esq.
Chairman

/s/ Theodore Hunt/

/s/ John L. Elder

BOARD OF VIEW.

Testimony filed: March 7, 1960.

APPEAL - VIEWERS' REPORT - SEE CASE IN PROTHONOTARY'S OFFICE.

No. 2 continued....

of Cambria and State of Pennsylvania and own a tract of land in Richland Township, more particularly described as follows:

BEGINNING at a fallen Chestnut tree in the southerly line of lands now or formerly of Ira Berkebile; thence along said southerly line South 61 degrees 23 minutes East 1543.34 feet to a point in a public road; thence along the northwesterly and northerly lines of lands now or formerly of Caspar Shaffer South 40 degrees 02 minutes West 1126.92 Feet to the stump of a chestnut tree; thence North 72 degrees 50 minutes West 328.36 feet to the stump of a poplar tree; thence along the north-easterly lines of lands now or formerly of William Crist and lands now or formerly of Salem F. Shank North 26 degrees 08 minutes West 571.29 feet to stones; thence along the northerly lines of said lands of Salem F. Shank and lands now or formerly of lines of said lands of Salem F. Shank and lands now or formerly of William Storck South 85 degrees 15 minutes West 646.55 feet to stones; thence along the southeasterly line of lands now or formerly of Jacob Noon North 29 degrees East 1195.67 feet to the place of beginning; containing 34.5 acres of land being part of lands warranted by said Commonwealth in the name of John Noon.

BEING the same parcel or piece of land which August Schneider and Mildred Schneider, husband and wife, and Russell F. Wallace and Bette J. Wallace, husband and wife, by their deed dated the 24th day of September, 1956, and recorded in the Office of the Recorder of Deeds in Deed Book Volume 683, page 180, conveyed to Russell F. Wallace and Bette J. Wallace, husband and wife.

Said land is immediately adjacent to the road hereinafter referred to.

2. On May 1, 1959, an Ordinance was presented to the Supervisors of Richland Township to vacate a portion of a public road or highway in the Township of Richland, County of Cambria and State of Pennsylvania.

3. Prior to the said meeting a ten (10) day written notice was given by the said Supervisors to the complainants. The said complainants did appear at the said hearing and protested the vacating of the said road. Nevertheless, subsequent to the said hearing, the said Ordinance was passed.

4. Said Ordinance states:

"That the Township desires to vacate the portion of a public road or highway in the Township of Richland, County of Cambria and State of Pennsylvania, said road

BEGINNING at a point on State Highway Route No. 11091 leading from State Highway Route No. 53 to the Johnstown Cambria County Airport at a point between the line of land of Johnstown Cambria County Airport and land of William H. Fyock, et. ux.; thence along said center line of said township road South 28 degrees 51 minutes 10 seconds West a distance of 1406.42 feet to a line of land of Donald Adams, et. ux. Said road being bounded on both sides for the entire length as above set forth by land of the Johnstown-Cambria County Airport Authority."

5. The Ordinance was subsequently filed in the Clerk of Courts Office on July 6, 1959, but the said Supervisors failed to attach a plan setting out the location of the portion of the of the road, which was to be vacated in accordance with the Act of Assembly.

6. Russell F. Wallace and Bette J. Wallace aver that by vacating the said road they are being deprived of the use of their property in that

- (a) They do not have proper means of ingress and egress to their said property.
- (b) They have turned a valuable piece of land into an isolated lot.
- (c) That by vacating the said highway they have caused irreparable harm to the use of the said property.
- (d) That by vacating the said highway they have caused considerable damage to the property, which belongs to the said complainants.

7. Russell F. Wallace and Bette J. Wallace aver that the Ordinance is illegal, improper and an abuse of power and discretion in exercise of the power of eminent domain, in view of the object to be attained and under all the circumstances, the vacation is unnecessary, unreasonable and arbitrary, capricious, oppressive and contrary to the

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No. 2 continued,...

public interest.

8. The vacation of the said highway under all the circumstances has no substantial relation to the public necessity, and is a confiscation in violation of the Fourteenth Amendment to the Constitution of the United States and of Article 1 Section 10 of the Constitution of Pennsylvania.

WHEREFORE, Russell F. Wallace and Bette J. Wallace appeal from said Ordinance and pray your Honorable Court to declare the Ordinance to be illegal, void and of no effect.

/s/ Harold Kaminsky

Attorney for Plaintiff

STATE OF PENNSYLVANIA }
COUNTY OF CAMBERIA }

SS:

RUSSELL F. WALLACE AND BETTE J. WALLACE, being duly sworn according to law, depose and say that the facts set forth in the foregoing complaint are true and correct to the best of their knowledge, information and belief.

/s/ Russell F. Wallace

Russell F. Wallace

/s/ Bette J. Wallace

Bette J. Wallace

Sworn and subscribed before me

this 23rd day of July, 1959.

/s/ Mrs. JoAnn Brewer

NOTARY PUBLIC

MY COMM. EXPIRES: MRS. JOANN BREWER, NOTARY PUBLIC

JOHNSTOWN CAMBERIA COUNTY PENNA.

MY COMMISSION EXPIRES NOVEMBER 7, 1961

August 10, 1959: Answer of Richland Township filed by Marlin B. Stephens, Esq.

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No. 2 Continued.

December 29, 1960: Report of Viewers filed by Leopold J. Wendekier, Esq.

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

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

REPORT

In pursuance of their appointment, the Board of View caused notice to be served upon all interested parties and their respective counsel that the Board would meet upon the premises at 3:00 P. M., E. S. T., on Wednesday, November 30, 1960, for the purpose of viewing the premises and hearing such parties as desired to be heard. Such notices were duly served by personal notice and by posting upon the premises more than ten (10) days prior to the date of said meeting.

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

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

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

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

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

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

FACTS

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

2. There were not buildings located upon the condemned land, although there were a number of fruit trees and shade trees growing upon the premises inquestion. In addition thereto, there was a flower garden and lawn on a portion of the condemned area.

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

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

CONCLUSIONS OF LAW

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

CONCLUSION AND DISCUSSION

The Board of View reports that, after a full and impartial consideration of all the testimony and evidence submitted, and after a careful view of the premises, acting at all times according to the viewers' best judgment, it has estimated and determined that the damages sustained by the owners and occupants of said property by reason of the condemnation of a portion of the real estate for the

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Continued from Page 553

No. 2 Continued.

purpose of relocating and improving a portion of Route No. A-1591-B are as follows:

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

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

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

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

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

The first real estate expert called on behalf of the Department of Highways was Mr. Dell Comiskey, a real estate broker in this area since 1920. In his opinion, Mr. and Mrs. Eshelman's property was damaged by the condemnation to the extent of \$3000.00. Mr. Paul D. Washington, the other expert called on behalf of the Department, estimated the damages to the Eshelman property at \$4,060.00.

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

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

Respectfully submitted this 29th day of December, 1960.

BOARD OF VIEW

/s/ Leopold J. Wendekier, Chairman

/s/ John L. Eldern

/s/ Theodore W. Hunt

ORDER

AND NOW, 1 March, 1961, no exceptions having been filed the within report if hereby CONFIRMED ABSOLUTELY.

By the Court:

/s/ Griffith, P. J.

Certified copy of above order mailed to Arnold Smorto, Esq., Atty. for Department of Highways - March 1, 1961

PRAECIPE

filed - April 27, 1961

TO THE CLERK OF COURTS:

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

/s/ Roger W. Hager, Attorney for
Plaintiff

Pages

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NO. 7
15

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Carl Montag and Valetta Montag, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated.

The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court: /s/ McDonald, J.

THE SUPREME COURT OF PENNSYLVANIA)
WESTERN DISTRICT) SS

CERTIORARI

TO COMMONWEALTH OF PENNSYLVANIA

TO THE JUDGES of the Court of Quarter Sessions for the County of Cambria:

GREETINGS: We being willing for certain causes to be certified of the matter of the appeal of CARL MONTAG and VALETTA MONTAG from the Order of your said Court at No. 7 June Sessions, 1955; In the matter of the change of location and lines of the highway known as State Highway Route 222, In the Township of Stinycreek, Cambria County, Pennsylvania before you, or some of you, depending, DO COMMAND YOU that the record and proceedings aforesaid, with all things touching the same, before the Justices of the Supreme Court of Pennsylvania, at Pittsburgh, in and for the Western District, on the last Monday of September, 1959, so full and entire as in your Court before you they remain, you certify and send together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

WITNESS: HON. CHARLES ALVIN JONES, Doctor of Laws, Chief Justice of the Supreme Court, the 23rd day of April, in the year of our Lord one thousand nine hundred and fifty nine.

Patrick N. Balsinger, Prothonotary

April 27, 1959: Notice of Appeal and Acceptance of Service filed. CERTIFICATE OF AMOUNT IN CONTROVERSY FILED.

O R D E R

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is less than \$5000.00.

Alton A. McDonald, Judge

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed:

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

September 11, 1959: All papers and documents mailed to Patrick Bolsinger, Prothonotary, Supreme Court, this date.

November 5, 1959: Bill in account with Lillian Baumgardner, Agent for Mahlon Baumgardner, deceased viewer filed in the amount of \$16.00.

November 5, 1959: Approved by the Court:

McDonald, Judge.

June 16, 1960: Exemplification filed.

June 16, 1960: Remittitur filed.

June 3rd, 1960-

Pursuant to stipulation filed, Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

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NO. 8

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Zelpha Penrod for the appointment of Viewers should not be dismissed, is dismissed.

The rule to show cause why the County of Cambria Should not be joined as an additional defendant in this proceeding is made absolute and it is hereby ordered and directed that the County of Cambria be joined as an additional defendant.

By the Court: /s/ McDonald, J.

ORDER

AND NOW, this 17 day of June, 1959, it appearing that on May 31, 1955, the Court appointed Raymond Niebauer and William B. Kelly and Mahlon Baumgardner as viewers in the above captioned proceedings, to report to the Court, their findings as to damages suffered by Zelpha Penrod, by reason of appropriation and injury to property, in the change of lines and location of State Highway Route No. 222.

It further appearing that the duties of the aforesaid viewers were delayed by reason of litigation in the above captioned case.

It further appearing that in the interim, Mahlon Baumgardner, one of the aforesaid viewers, has died.

IT IS HEREBY DIRECTED, that Donald J. Letizia, Esq., be appointed as a viewer in the above captioned case and the newly constituted Board of Viewers directed to proceed with the view and make their report in writing to the Court of Quarter Sessions, on or before the first Monday of September, 1959.

The viewers above, are hereby directed to give at least ten days notice in writing to the Secretary of Highways and the property owner of the day and hour of which they will view the premises hereunder consideration.

By the Court: Griffith, J.

ORDER

AND NOW, this 14 day of September, 1959, it appearing that on May 31st, 1955, the Court appointed Raymond Niebauer, William Kelly, Esq., and Mahlon Baumgardner as viewers in the above captioned proceeding to report to the Court their findings as to damages suffered by Zelpha Penrod, by reason of appropriation and injury to property, in the change of lines and location of State Highway Route No. 222; and that on the 17th day of June, 1959, Donald J. Letizia, Esq., was appointed to the Board of Viewers in place of Mahlon Baumgardner, deceased. It further appearing that William Kelly, Esq., will be unable to serve, therefore it is hereby ordered and directed that John L. Elder be appointed as a viewer in the above captioned case and the newly constituted Board of Viewers directed to proceed with the view and make its report in writing to the Court of Quarter Sessions on or before the first Monday in December, 1959.

The viewers are directed to give at least ten days notice in writing to the Secretary of Highways, the Cambria County Commissioners, and the property owner of the day and hour on which they will view the premises hereunder consideration.

By the Court: McDonald, J.

Copy to: Donald J. Letizia, Raymond Niebauer, and John L. Elder; September 15, 1959

November 5, 1959: Bill in account with Lillian Baumgardner, agent for Mahlon Baumgardner, deceased viewer filed, in the amount of \$12.00.

11/5/59 Approved by the Court
McDonald, J.

ORDER

AND NOW, December 4, 1959, the within view is hereby continued to the 1st Monday of January, 1960.

By the Court: Griffith, Judge

December 28, 1959: Viewer's report filed.

Viewer's bill given to County Controller this date.

January 12, 1960: Supplement Report filed by Viewers.

ORDER

AND NOW, this 22nd day of January, 1960, it appearing that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, P.L. 1242, Article III, Sections 303, 304.

By the Court: Griffith, Pres. Judge

Extract from the record Certified this 22nd day of January, A. D. 1960
Joseph C. Dolan, Prothonotary

January 23, 1960: All proceedings documents transmitted to and received by the Office of the Prothonotary.

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NO. 9

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Clyde Edwin Keiper and Kathryn Margaret Keiper, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated.

The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court:

/s/ McDonald, J.

CERTIORARI

filed April 27, 1959

THE SUPREME COURT OF PENNSYLVANIA)
WESTERN DISTRICT) SS

THE COMMONWEALTH OF PENNSYLVANIA

TO THE JUDGES of the Court of Quarter Sessions for the County of Cambria;

GREETINGS: We being willing for certain causes to be certified of the matter of the appeal of CLYDE E. KEIPER AND KATHRYN MARGARET KEIPER (otherwise Clyde Edwin Keiper and Kathryn Margaret Keiper) from the Order of your said Court at NO. 9 June Sessions, 1955; IN THE MATTER OF A CHANGE OF LOCATION AND LOCATION AND LINES OF THE HIGHWAY ROUTE 222, IN THE TOWNSHIP OF STINYCREEK, COUNTY OF CAMBRIA, AND STATE OF PENNSYLVANIA

before you, or some of you, depending, DO COMMAND YOU that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, At Pittsburgh, in and for the Western District, on the last Monday of September, 1959, so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the State ought.

WITNESS HON. CHARLES ALVIN JONES, Doctor of Laws, Chief Justice of our said Supreme Court, the 23rd day of April, 1959.

Patrick N. Bolsinger, Prothonotary.

Notice of appeal and acceptance of service filed. April 27, 1959

Certificate of amount in Controversy filed. April 27, 1959

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is less than \$5000.00.

/s/ Alton A. McDonald, Judge.

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed.

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

September 11, 1959: All papers and documents mailed to Patrick Bolsinger, Prothonotary, Supreme Court, this date.

November 5, 1959: Bill in account with Lillian Baumgardner, Agent for Mahlon Baumgardner, deceased viewer, in the amount of \$44.20 filed.

11/5/59 Approved by the Court-
McDonald, Judge.

June 16, 1960: Remittitur filed.

June 3, 1960, Pursuant to stipulation filed-Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

TO PAGE 528

TRANSFERRED FROM PAGE 18

NO. 10

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Thomas Richard Smith and Doris Marie Smith, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated.

The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court:
/s/ McDonald, J.

April 27, 1959: Certiorari from the Supreme Court filed.

April 27, 1959: Notice of appeal and acceptance of service filed.

April 27, 1959: Certificate of amount in Controversy filed.

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is less than \$5000.00.

/s/ Alton A. McDonald, J.

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed.

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A MCDONALD, J (SEAL)

September 11, 1959: All papers and documents mailed to Patrick Bolsinger, Prothonotary Supreme Court, this date.

November 5, 1959: Bill in account with Lillian Baumgardner, agent for Mahlon Baumgardner, deceased viewer, filed in the amount of \$28.00.

11/5/59: Approved by the Court-
McDonald, Judge.

June 16, 1960: Remittitur filed.

June 3, 1960-Pursuant to stipulation filed-Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

JANUARY 23, 1961: STIPULATION OF SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

R. 4⁰⁰ APR 14 1961 AUDITED

CLERK OF COURTS= \$ 4.00

STIPULATION OF SETTLEMENT

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Thomas Richard Smith and Doris Marie Smith, husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Thomas Richard Smith and Doris Marie Smith, husband and wife, the sum of \$1,200.00 as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highway in 1950, and Thomas Richard Smith and Doris Marie Smith, husband and wife, have agreed to accept the said sum in full settlement for said damages, including interest and/or detention damages.

2. That Thomas Richard Smith and Doris Marie Smith, husband and wife, upon the payment of the said sum of \$1,200.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or if necessary, secure or consent to the securing of an order of court dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

EDWARD F. PEDUZZI
/s/ Edward F. Peduzzi
Attorney for Department of Highways

EDWARD J. HARKINS
GERALD K. GIBSON
/s/ Gerald K. Gibson
Attorneys for Thomas Richard Smith
and Doris Marie Smith

Now Feb. 20, 1961, the above-viewer proceedings are hereby settled, discontinued & ended & the above named property owners hereby acknowledge receipt of the sum of \$1,200 in full of damages.
Edward F. Peduzzi
Atty for Dept of Highways
Gerald K. Gibson Atty for Plaintiffs

Transferred to Page 530.

TRANSFERRED FROM PAGE 19

NO. 11

February 6, 1959: Brief on behalf of Petitioners filed by Gerald K. Gibson, Esq.

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Charles Wissinger and Alda M. Wissinger, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated.

The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court: /s/ McDonald, J.

April 27, 1959: Certiorari from Supreme Court filed.

April 27, 1959: Notice of Appeal and Acceptance of Service filed.

April 27, 1959: Certificate of Amount in Controversy filed.

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is greater than \$5000.00.

By the Court: /s/ Alton A. McDonald, Judge.

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed.

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

September 11, 1959: All papers and documents mailed to Patrick Bolsinger, Prothonotary Supreme Court, this date.

June 16, 1960: Remittitur filed.

June 3, 1960: Pursuant to stipulation filed, Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

JANUARY 23, 1961: STIPULATION OF SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

E. 4⁰⁰ APR 14 1961 AUDITED
3-6-61

CLERK OF COURTS= \$4.00

STIPULATION OF SETTLEMENT

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Charles Wissinger and Alda M. Wissinger, husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Charles Wissinger and Alda M. Wissinger, husband and wife, the sum of \$7,800.00., as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highways in 1950, and Charles Wissinger and Alda M. Wissinger, husband and wife, have agreed to accept the said sum in full settlement of said damages, including interest and/or detention damages.

2. That Charles Wissinger and Alda M. Wissinger, husband and wife, upon the payment of the said sum of \$7,800.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or, if necessary, secure or consent to the securing of an order of court dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

EDWARD F. PEDUZZI

/s/ Edward F. Peduzzi

Attorney for Department of Highways

EDWARD J. HARKINS

GERALD K. GIBSON

by /s/ Gerald K. Gibson

Attorneys for Charles Wissinger and

Alda M. Wissinger

Now, Feb 20, 1961, the above viewers proceedings are hereby settled, discontinued and ended & the above money property awarded hereby acknowledged receipt of the sum of \$7,800 in full of damages.

*Edward F. Peduzzi
Atty for Dept of Highways
Gerald K. Gibson, Atty for Plaintiff*

Bill of Costs on Appeal filed by Edward Harkins, Esq., -February 20, 1961

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal were incurred in the above stated case:

1. Share of printing Brief and Record \$37.21

2. Filing Appeal in Supreme Court.... \$12.00

Total \$ 49.21

/s/ Edward Harkins, Attorney for Appellants

Clerk of Courts - \$ 1.00 *E. 1⁰⁰* 2-20-61

TRANSFERRED FROM PAGE 20

NO. 12

February 6, 1959: Brief on behalf of Petitioners filed by Gerald K. Gibson, Esq.

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions 1955, Road Wocket, the rule to show cause why the petition of Frederick E. Griffith for the appointment of Viewers should not be dismissed, is dismissed.

The rule to show cause why the County of Cambria should not be joined as an additional defendant in this proceeding is made absolute and it is hereby ordered and directed that the County of Cambria be joined as an additional defendant.

By the Court: /s/ McDonald, J.

ORDER

AND NOW, this 17 day of June, 1959, it appearing that on May 31, 1955, the Court appointed John L. Elder, and William B. Kelly and Mahlon Baumgardner as viewers in the above captioned proceedings, to report to the Court, their findings as to damages suffered by Frederick E. Griffith, by reason of appropriation and injury to property, in the change of lines and location of State Highway Route No. 222.

It further appearing that the duties of the aforesaid viewers were delayed by reason of litigation in the above captioned case.

It further appearing that in the interim, Mahlon Baumgardner, one of the aforesaid viewers, has died.

IT IS HEREBY DIRECTED, that Donald J. Letizia, Esq., be appointed as a viewer in the above captioned case and the newly constituted Board of Viewers directed to proceed with the view and make their report in writing to the Court of Quarter Sessions, on or before the first Monday of September, 1959.

The viewers above, are hereby directed to give at least ten days notice in writing to the Secretary of Highways and the property owner of the day and hour of which they will view the premises hereunder consideration.

By the Court: Griffith, Judge.

ORDER

AND NOW, this 14 day of September, 1959, it appearing that on May 31st, 1955, the Court appointed John L. Elder, Mahlon Baumgardner, and William Kelly, Esq., as viewers in the above captioned proceeding to report to the Court their findings as to damages suffered by Frederick E. Griffith, by reason of appropriation and injury to property, in the change of lines and location of State Highway Route No. 222; and that on the 17th day of June, 1959, Donald J. Letizia, Esq., was appointed in place of Mahlon Baumgardner, deceased.

It further appearing that William Kelly will be unable to serve; now therefore it is ordered and decreed that Raymond Niebauer be appointed as a viewer in the above captioned case and the newly constituted Board of Viewers directed to proceed with the view and make its report in writing to the Court of Quarter Sessions on or before the first Monday in December, 1959.

The viewers are directed to give at least ten days notice in writing to the Secretary of Highways, the Cambria County Commissioners, and the property owner of the day and hour on which they will view the premises hereunder consideration.

By the Court: McDonald, J.

September 15, 1959, copy to: Donald J. Letizia, Raymond Niebauer, and John L. Elder.

ORDER

AND NOW, December 4, 1959, the within view is continued to the 1st. Monday of January, 1960.

By the Court: Griffith, Judge

January 4, 1960: Report of Viewers filed by John L. Elder.

ORDER

AND NOW, this 22nd day of January, 1960, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article 111, Sections 303, 304.

By the Court: Griffith, Pres. Judge

Extract from the record certified this 22nd day of January, A. D. 1960.
/s/ Joseph C. Dolan, Prothonotary

January 23, 1960: All proceedings documents transmitted to and received by the Office of the Prothonotary.

JUNE

SESSIONS, 19 55

TRANSFERRED FROM PAGE 21

NO. 13

February 6, 1959: Brief on behalf of Petitioners filed by Gerald K. Gibson, Esq.

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Melvin R. Strong and Edna Mae Strong, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated. The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court: /s/ McDonald, J.

April 27, 1959: Certiorari from Supreme Court filed.

April 27, 1959: Notice of Appeal and Acceptance of service filed.

April 27, 1959: Certificate of amount in controversy filed.

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is greater than \$5000.00.

By the Court: /s/ Alton A. McDonald, Judge.

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed.

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

September 11, 1959: All papers mailed to Patrick Bolsinger, Prothonotary Supreme Court, this date.

June 16, 1960: Remittitur filed.

June 3, 1960-Order reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

JANUARY 23, 1961: STIPULATION OF SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

L. 4⁰⁰ 5-6-61

STIPULATION OF SETTLEMENT

Clerk of Courts - 4⁰⁰ APR 14 1961 AUDITED

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Melvin R. Strong and Edna Mae Strong, husband wife, as follows:

1. That the Department of Highways has agreed to pay to Melvin R. Strong and Edna Mae Strong, husband and wife, the sum of \$8,800.00 as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highway in 1950, and Melvin R. Strong and Edna Mae Strong, husband and wife, have agreed to accept the said sum in full settlement for said damages, including interest and/or detention damages.

2. That Melvin R. Strong and Edna Mae Strong, husband and wife, upon the payment of the said sum of \$8,800.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or, if necessary, secure or consent to the securing of an order of court, dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

Now, Feb 20, 1961, the above viewers proceedings are hereby settled, discontinued and ended - the above named property owners hereby acknowledge receipt of the sum of \$8,800 in full of damages.

EDWARD F. PEDUZZI

/s/ Edward F. Peduzzi

Attorney for Department of Highways

EDWARD J. HARKINS

GERALD K. GIBSON

by /s/ Gerald K. Gibson

Attorneys for Melvin R. Strong and Edna Mae Strong

Bill of Costs on Appeal filed by Edward Harkins, Esq. - February 20, 1961

BILL OF COSTS ON APPEAL

I hereby certify that the following costs on appeal were incurred in the above stated case:

1. Share of printing Brief and Record \$37.21
2. Filing appeal in Supreme Court.....\$12.00

Total.....\$49.21

/s/ Edward Harkins, Attorney for Appellants

Clerk of Courts: \$ 1.00 L. 1⁰⁰ 2-20-61 MAR 9 1961 AUDITED

TRANSFERRED FROM PAGE 22

No. 14

ORDER

NOW, March 13, 1959, in accordance with the Opinion of this Court entered to No. 6 June Sessions, 1955, Road Docket, the rule to show cause why the petition of Melvin C. Strong and Eileen N. Strong, husband and wife, for the appointment of Viewers should not be dismissed is made absolute and said petition is dismissed and the Order thereon vacated. The rule to show cause why the County of Cambria should not be joined as an additional defendant is hereby dismissed.

By the Court: /s/ McDonald, Judge.

April 27, 1959: Certiorari from Supreme Court filed.

April 27, 1959: Notice of Appeal and Acceptance of Service filed.

April 27, 1959: Certificate of amount in Controversy filed.

I hereby certify that the value of the property and the amount in controversy in the above case tried before me is less than \$5000.00.

By the Court: /s/ Alton A. McDonald, Judge.

August 24, 1959, EXCEPTION TO OPINION AND ORDER, filed.

To all of which counsel for petitioner excepts and prays that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

ALTON A. McDONALD, J. (SEAL)

September 11, 1959: All papers and documents mailed to Patrick Bolsinger, Prnthonotary, Supreme Court this date.

June 16, 1960: Remittitur filed.

June 3, 1960: Pursuant to stipulation filed, Order Reversed and record remanded for further proceedings consonant with this opinion.

BOK, J.

JANUARY 23, 1961: STIPULATION OF A SETTLEMENT FILED BY EDWARD F. PEDUZZI, ESQ.

R. 4⁰⁰ APR 14 1961 AUDITED
5-6-61

STIPULATION OF SETTLEMENT CLERK OF COURTS: \$4.00

AND NOW, January 23, 1961, it is hereby stipulated and agreed by and between counsel for the Department of Highways of the Commonwealth of Pennsylvania and counsel for Melvin C. Strong and Eileen N. Strong, husband and wife, as follows:

1. That the Department of Highways has agreed to pay to Melvin C. Strong and Eileen N. Strong, husband and wife, the sum of \$3,100.00 as damages for the taking of their property as a result of the change in the existing lines and location of the aforesaid highway in 1950, and Melvin C. Strong and Eileen N. Strong, husband and wife, have agreed to accept the said sum in full settlement for said damages, including interest and/or detention damages.

2. That Melvin C. Strong and Eileen N. Strong, husband and wife, upon the payment of the said sum of \$3,100.00 to them by the Department of Highways, will cause the record in the above captioned proceedings to be marked settled, discontinued and ended, and/or, if necessary, secure or consent to the securing of an order of court dismissing the viewers heretofore appointed in the above captioned proceedings and the termination thereof, and they will not thereafter present any further or additional claims or demands for damages, in law, equity or otherwise.

Now, Feb 20, 1961, the above viewers proceedings are hereby settled, discontinued & ended & the above named property owners hereby acknowledge receipt of the sum of \$3100 in full of damages.

EDWARD F. PEDUZZI
/s/ Edward F. Peduzzi
Attorney for Department of Highways

EDWARD J. HARKINS
GERALD K. GIBSON

by /s/ Gerald K. Gibson
Attorneys for Melvin C. Strong and
Eileen N. Strong

Bill of Costs on Appeal filed by Edward Harkins, Esq. - February 20, 1961

BILL OF COSTS ON APPEAL I hereby certify that the following costs on appeal were incurred in the above stated case:

1. Share of printing Brief and Record \$37.21
2. Filing of Appeal in Supreme Court..\$12.00

\$49.21

/s/ Edward J. Harkins
Attorney for Appellants

Clerk of Courts: \$ 1.00 R. 1-2-20 MAR 9 1961/AUDITED

No. 1 Continued.

January 5, 1960: Amended petition filed by Spence, Custer, Saylor & Wolfe, Esqs.

IN RE: AMENDED PETITION OF GEORGE W. GRIFFITH
AND THOMAS F. GRIFFITH FOR THE APPOINTMENT OF
VIEWERS TO ASSESS DAMAGES ARISING FROM THE
CONSTRUCTION OF EBENSBURG BY-PASS TO STATE
HIGHWAY U. S. ROUTE 22 IN CAMBRIA TOWNSHIP, A
LIMITED ACCESS HIGHWAY.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The amended petition of George W. Griffith and Thomas F. Griffith respectfully represents:

3. That Paragraph 3 of the original petition is amended to add the following described tracts of land:

6. BEGINNING at a post in township road and land now or formerly of heirs of James Myers, deceased; thence along land of said heirs of James Myers, deceased, North 84° $7'$ West 1733 feet to post and stones; thence along same South 5° West 1002 feet to post; thence along land of party of the second part hereto North 84° West 1303 feet to post; thence along land of estate of Thomas Griffith deceased, the following five courses and distances: North 28° $30'$ East 798 feet to post; thence partly by old road North 47° $40'$ East 839 feet to post and stones; thence North 47° West 1472 feet to post; thence North 31° West 461 feet to post and stones; thence North 33° West 324 feet to post in line of land now or formerly of Miriam Young; thence along land of said Miriam Young South 86° $30'$ East 1140 feet to post in line of land now or formerly of Festus Tibbott; thence along land of said Festus Tibbott, South 87° $15'$ East 1281 feet to post; thence along lands of the estate of Thomas Griffith, deceased, and now or formerly of John A. Jones partly in line of township road, South 29° East 2440 feet to post in said township road and the place of beginning. Containing 126 acres and 61 perches, more or less.

7. BEGINNING at a post at a corner of land now or formerly of Marian Young and Webster Griffith, thence South 33° East 324 feet to stones, thence South 31° East 461 feet to a post, thence South 47° East 1472 feet to stones, thence South along an old road 47° $40'$ West 839 feet to a post, thence South 28° $30'$ West 798 feet to a post, all of which courses are along lands of Webster Griffith, thence by another tract of Webster Griffith North 86° $20'$ West 1310 feet to a post, thence along land now or formerly of George McKay, William Lloyd Estate, et al, North 4° $45'$ East 2652 feet to stones, thence by land now or formerly of William Lloyd's Estate North 5° $15'$ East 810 feet to a post, thence by land now or formerly of Bert Bender South 86° $45'$ East 326 feet to a post, thence by land of Marian Young South 3° $45'$ West 239 feet to stones, thence by same

CONTINUED ON NEXT PAGE.

Continued from Page 567.

No. 1 Continued

South 33° East 400 feet to the place of beginning.
Containing 103 acres and 18 perches.

8. BEGINNING At a beech on the corner of land now or formerly belonging to the estate of E. Roberts, deceased, and land now or formerly of John McBride; thence along land of said John McBride North $2\frac{3}{4}^{\circ}$ East 110 perches to a beech, thence along land of the estate of Thomas Griffith, deceased, and land now or formerly of L. J. Driggs South $89\frac{1}{2}^{\circ}$ East 156 perches to a post; thence along land now or formerly of James Myers, deceased, South $2\frac{1}{2}^{\circ}$ West 75 perches to a hemlock; thence along land of the estate of said Thomas Griffith, deceased, North $87\frac{1}{2}^{\circ}$ West 18 perches to a beech; thence along same land South $2\frac{1}{2}^{\circ}$ West 35 perches to a post; thence along land belonging to the estate of E. Roberts, deceased, North 88° West 138 perches to a beech and the place of beginning. Containing 103 acres and 50 perches, more or less.

/s/ George W. Griffith

/s/ Thomas F. Griffith

STATE OF PENNSYLVANIA

SS

COUNTY OF CAMBRIA

Before me, the subscriber, a Notary Public in and for said County and State, personally appeared George W. Griffith and Thomas F. Griffith, who being duly sworn according to law, depose and say that they are the petitioners named in the foregoing amended petition and that the statements therein set forth are true and correct.

/s/ George W. Griffith

/s/ Thomas F. Griffith

Sworn and subscribed to before
me this 4th day of January, 1960

/s/ Verna Williams

Notary public

My Comm. expires; July 24, 1961

DECREE

And now, January 4th, 1960, the within amended petition is hereby approved and ordered filed.

BY THE COURT:

/s/ McDonald, J.

January 7, 1960: Three (3) certified copies of the above Amended Petition mailed to Leopold Wendekier, Chairman of the Board of Viewers.

February 23, 1960: Viewers' Report filed. --by Leopold Wendekier.
Viewers' Notice filed.

SCHEDULE OF AWARD

From the evidence submitted and from the view of the premises affected by the
CONTINUED ONNEXT PAGE.

Transferred from Page 568

No. 1 CONTINUED.

appropriation by the Department of Highways of the Commonwealth of Pennsylvania of a seventy (70) foot right-of-way, the Board of View find that the owners and occupants of the premises have sustained the following damages:

George Griffith and Thomas Griffith	\$38,500.00
Delay in payment from May 5, 1958	4,000.00
Total Damages	\$42,500.00

The award above set forth includes damages for delay in payment from the date of the injury in this proceeding to the date of filing of the report.

The Board of View have considered the benefits, if any there be, accruing to the property affected and hereby assess the damages, as above awarded, against the Commonwealth of Pennsylvania Department of Highways.

BOARD OF VIEW

/S/ Leopold J. Wendekier

/S/ Raymond Niebauer

/S/ John L. Elder

VIEWERS' REPORT

The undersigned Board of View, appointed by your Honorable Court to assess damages and benefits, if any, caused by the appropriation of a right of way in Cambria Township for the purpose of constructing and maintaining a limited-access highway, respectfully,

REPORT

That in pursuance of their appointment the Board of View caused notice to be served upon the owners and occupants of land affected in the above proceeding, as well as counsel of record for said owners and occupants, and upon counsel for the Commonwealth of Pennsylvania, Department of Highways that they would meet upon the premises on Friday, November 27, 1959, at 9:30 o'clock A. M., e.s.t., for the purposes of viewing the premises and of hearing such parties as desired to be heard. Such notices were duly served by person service and by posting upon the premises more than ten (10) days prior to the date of said meeting.

At the request of counsel for the Department of Highways, and for good cause shown, the view as above scheduled was continued until Friday, December 4, 1959, at 9:30 o'clock A. M. e.s.t. and all parties were so notified. The Board of View proceeded with the view at the appointed time and place. In attendance were George W. Griffith and Thomas F. Griffith, the owners, Robert G. Rose, Esq., their counsel, Mr. William E. Williams and Mr. Frank N. Genovese, appraisers for the owners, Arnold D. Smorto, Esq., counsel for the Department of Highways, Mr. Elmer T. Mock and Mr. R. D. Wicker of the Department of Highways, and Mr. Paul D. Washington, appraiser for the Department.

A meeting for the purpose of taking the testimony of witnesses was held in the Cambria County Courthouse in Courtroom No. 4 on January 6, 1960, at 10:00 o'clock A. M., e.s.t. All the above named persons attended this meeting except Mr. Mock and Mr. Wicker. In addition thereto, Mr. Howard E. Breneman, for the Department of Highways, and Mr. Dell Comiskey, realtor, also appeared.

Evidence was presented for the benefit of the Board of View by the parties and their witnesses. However, the Board feels constrained, at this time, to state that a great deal of the evidence presented was inconclusive and of little assistance to the Board. It appeared that the parties were withholding their "ammunition" pending an appeal to the Courts, thereby indicating their lack of confidence in the Board of View. Having been thus deprived of the valuable assistance which could have been given to them, the Board of View proceeded to a determination of the damages largely upon the basis of its own determination.

From the evidence submitted to them and from examination of the premises and locality in question, the Board of View find the following

FACTS

L. The premises appropriated by the Commonwealth of Pennsylvania Department of Highways

CONTINUED ON NEXT PAGE.

No. 1 CONTINUED.

for a right-of-way for a limited access highway is approximately 11 acres.

2. In addition thereto, the right-of-way has severed from the balance of the premises approximately 29 acres of land lying to the North of the right-of-way.

3. The widening of Legislative Route No. 11026 will result in an appropriation of additional land, the exact amount of which has not been calculated.

4. As a result of these appropriations, the marketability of the premises affected thereby has been substantially reduced.

5. The cattle underpass proposed by the Department of Highways to reduce the loss of the owners by the appropriation is impractical and would not serve to reduce the damages suffered by the owners.

6. The owners of the premises have been financially injured by the appropriation.

CONCULSIONS OF LAW

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

CONCLUSION

The Board of View reports that after a full and impartial consideration of all the testimony and evidence submitted to them and after a careful view of the premises, and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of said property by reason of the appropriation of a seventy (70) foot right-of-way for a limited-access highway as follows:

George W. Griffith and Thomas Griffith --\$38,500.00

Delay in payment from May 5, 1958----- 4,000.00

Total damages-----\$42,500.00

The award above set forth includes damages for delay in payment from the date of the injury in this proceeding to the date of filing of the report.

The Board of View have considered the benefits, if any there be, accruing to the property affected and hereby assess the damages, as above awarded, against the Commonwealth of Pennsylvania Department of Highways.

/s/ Leopold J. Wendekier

/s/ Raymond Niebauer

/s/ John L. Elder

Board of View

February 23, 1960.

August 1, 1960: Testimony Lodged.

August 16, 1960: Testimony filed.

Appeal from Viewers' Report taken in Prothonotary's Office.

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No. 2

the meeting if it was held at the Court House when that place was suggested. The persons representing the State Highway were satisfied that were satisfied to take their testimony there and June 22, at 10 o'clock A. M. Eastern Standard Eastern Daylight Time as the time. In pursuance of said agreement by all interested parties we met at that time in the home aforesaid. All witnesses for the owners and petitioners were called and sworn and testified for them. The State Highway Department was next called but only one witness was called while the second one was not present because of illness but an offer in writing was about to be presented and the Attorney for the owners and petitioners objected for the fact that he had no opportunity to cross examine the witness. He has the only other witness for the State Highway Department. Mr. Myers then made a motion to continue the case until he became improved so as to take testimony from him. We fixed the Court Room # 4 as the place and the time was indeterminate but not too long and that she obtain another witness if he was unable to testify. Notices to all parties that he was able to testify were prepared and sent to all parties that the continued hearing be conducted on Friday the fifteenth day of July 1955 at ten o'clock Eastern Standard Daylight Time at the Court House in Court Room Number 4 in Ebensburg, Cambria County aforesaid. Pursuant thereto the viewers met and that time and place and proceeded to hear further testimony. The witness was ill and confined to his home was shown by the State Highway Department and they produced no witness in his place. It was unfortunate that the State Highway Department thus produced but one witness. His statement as to damages was admitted over the protest of the Attorney for the petitioners. It was more by a few dollars testified by their only witness. The attorney was not permitted to cross examine the witness even though his amount of damages became known to all the parties. The petitioners were denied that right but due to the fact that his written statement of damages was ten dollars higher we felt that the petitioners were not hurt by this this admission of the written statement. The Viewers allowed the exception of the attorney for the petitioners. Under circumstances no harm was done to the petitions for testimony was called for and there was none. The proceeding have been prolonged to a length that a further continuance would be detrimental to the issue and a further continuance would not be countenanced for the reason that they did not procure another witness to take his place ample time having intervened since the first hearing. The time of the Exhibit of Schedule of Damages was agreed upon by all parties interested to be at the same place on the 27 day of July 1955 at 10 o'clock Eastern Standard Daylight Time. The viewers met in Ebensburg on the twentieth day of July 1955 for the purpose of estimating and determining the amount of damages the owners sustained by reason of the construction, reconstruction and improvements of State Highway No. 36. Many situations were taken into consideration before we arrived at an amount of damages. We had viewed the premises and inspected the grounds affected thereby as well as the effects caused by the improvements.

That having viewed said premises and making a careful inspection of same and hearing all evidence and testimony concerning said construction, re-construction and improvements concerning said property and real estate of the petitioners and owners and taking into consideration all the elements and benefits accruing therefrom as well as all matters before us, we have estimated and determined the quantity and quality of land taken occupied and injured by the highway as well as all other damages, having regard to and making just allowances for the damages that have resulted or which may seem likely to result to the owners of land aforesaid, we have estimated and determined the amount of damages and prepared a schedule thereof. It was agreed by the parties hereto that the time and place of said Exhibit of Schedule. At such meeting for the purpose of presenting our Schedule of Damages, all parties in interest were asked if they had further testimony to offer. There was none. That after hearing all exceptions and testimony offered and giving all matters before us due consideration, we are of the opinion that the said land of Anna Ethel Litzinger Graft and Josephine Litzinger Hughes affected by the said construction, re-construction, and improvements have been damaged; therefore we assess no benefits and damages in the amount of twenty-four hundred (\$2400.00) Dollars.

We are of the opinion that said damages in the sum of Twenty four Hundred (\$2400.00) dollars should be paid the Anna Ethel Litzinger Graft and Josephine Litzinger Hughes the owners by the State Highway Dept. of the Commonwealth of Pa. as their interest may appear.

Witness our hands this thirtieth day of July A. D., 1955.

Mahlon Baumgardner, John L. Elder, Raymond Niebauer,
Viewers.

30 July, 1955.

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ORDER OF COURT

NOW, to wit, August 31, 1955, it is ordered and directed and decreed that Joseph C. Wess, Clerk of Courts, transfer the following case: In re appointment of Viewers to View the premises of Anna Ethel Litzinger Graft and Josephine Litzinger Hughes in Chest Springs Borough, No. 2 June Sessions, Road Docket, from the office of the Clerk Of Courts to the Office of the Clerk of Common Pleas, Joseph C. Dolan, Prothonotary, there being an appeal in the above stated case. filed in the office of the Prothonotary.

By the Court,
Griffith, J.

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hearing and was accompanied by the Petitioners and Dell Comiskey, a real estate appraiser. Robert L. Blough, Esq., appeared for the Respondent and was accompanied by William Huber of the Pa. Dept. of Highways and Edwin P. Frye, a real estate appraiser. All witnesses were duly sworn prior to giving their testimony.

Notice of Exhibit of Award was served upon counsel for the Petitioners and counsel for the Respondent. Copies of said notice of exhibit and acceptance of service thereof are attached hereto. Copies of said notices were mailed the Petitioners and the Pa. Dept. of Highways, Highway-Right-Of-Way sections in Hollidaysburg and Harrisburg, Pa.

Notice of filing this Report was served upon counsel for the Petitioners and counsel for the Respondent. Copies of said Notice of Filing Report and acceptance of service thereof are hereto attached. Copies of said notices were mailed to the Petitioners and the Pa. Dept. of Highways, Highway Right-of-Way section in Hollidaysburg and Harrisburg, Pa.

FACTS

1. Eugene A. Creany, Esq., counsel for the Petitioners and Robert L. Blough, Esq., counsel for the Respondent, stipulated to the following:

(a) That the real estate taken by the condemnation was 1595 square feet.

(b) That the real estate remaining after condemnation was 13,887 square feet.

2. That the real estate owned by the Petitioners prior to the condemnation consisted of ALL those certain parcels of land situate in the Village of Ruthford (Croyle Twp.) Cambria County, Pa., bounded and described as follows:

(a) Beginning for the same at a stake at the South-West corner of said lot, which is South 51 degrees. 35 min. East, one hundred and seven (107) feet from a set stone, the South East corner of Lot No. 23; thence by the East line of Lot No. 24½ North 38 degrees 25 min. East one hundred fourteen and four hundredths feet to a street line; thence by said street line South 43 degrees 34 min. East fifty and five tenths feet; thence South 38 degrees 25 min. West one hundred and seven (107) feet to a corner on street line; thence along street 51 degrees 35 min. West fifty (50) feet to the place of beginning; being an unnamed/unnumbered lot adjoining Lot No. 24½ on the Logan Coal Company plan of lots of Ruthford, Pa.

Being the same tract or parcel of land title to which vested in Bernard A. Link and Vivian Link, husband and wife, by deed of Rev. W. T. Hale and Bessie J. Hale, husband and wife, the said deed being dated the 27th day of March 1946 and recorded in Cambria County, Pa., in Deed Book Vol. 557 at page 127.

(b) Beginning at a post on the South side of Hill Street and at the Northeast corner of Lot No. 31; thence with the South side of said street South 27 degrees .03 min. East 27.72 feet to a post and South 46 degrees 22 min. East 62.39 feet to a post at the Northwest corner of lands of the party of the second part, being the same plot of land which Logan Coal Company deeded to the Allegheny Conference of the United Brethren Church and is recorded in Cambria County, Pa. in Deed Book Vol. 342, Page 517; thence with said lands South 38 degrees 52 min. West 99.96 feet to a post on the North boundary of the right-of-way of Route 869 and 16.50 min. North of its centerline; thence with said boundary North 46 degrees 31 min. West 107.00 feet to a post in line of Lot No. 31; thence with said lot North 48 degrees 52 min. East 109.53 feet to the place of beginning, and containing 0.228 acres.

Being the same plot or parcel of land, title to which vested Bernard and Vivian Link by deed of Johnstown Coal and Coke Co., a Pennsylvania Corporation, said deed being dated the first day of July 1957 and recorded in Cambria County, Pa., in Deed Book Vol. 725 at Page 311.

Photo copies of the above real estate were offered in evidence in lieu of the originals and are attached hereto.

3. The following photos were introduced into evidence at the hearing by the Petitioners:

Exhibit 1: Showing Church on the premises prior to the remodeling and conversion of same into a dwelling.

Exhibit 2: Showing a view of the premises after conversion into a dwelling and prior to the relocation and elevation of the road in front of the dwelling.

Exhibit 3: Showing side view of dwelling, lot and road level prior to elevation for improved road.

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Exhibit 4: Taken from rear of dwelling, showing residence/dwelling, garage and highway in front and street in rear of the premises.

Exhibit 5: Showing road improvement and elevation in progress.

Exhibit 6: Photo showing rise in road bed above petitioners' land.

Exhibit 7: Photo taken in front of Petitioners' dwelling showing rise of road bed over Petitioners' ground level in front of dwelling, after road improvement by the Respondent.

Exhibit 8: Another photo taken in front of Petitioners' dwelling showing rise in road bed over petitioners' ground level after road improvement by Respondent.

Exhibit 9: Photo showing side view of elevation of road bed in relation to Petitioners' ground level.

Exhibit 10: Another photo showing elevation of road improvement in relation to Petitioners' ground level.

Exhibit 11: Photo showing ditch dug by Respondent on East side of Petitioners' property to carry off regular and additional flow of water caused by the road elevation and improvement. Said ditch ended in the rear of Petitioners' land.

Exhibit 12: Photo showing the relative level of Petitioners' land in front of dwelling and the roadway prior to elevation of road bed by the Respondent.

4. The new elevation of the improved or elevated highway runs from zero to 4 feet. It is about 1½ feet elevation at the Petitioners' driveway. In front of the dwelling it is between 3 and 3½ feet, in elevation. Prior to road elevation improvement work the Petitioners' land in front of the dwelling and the highway were about level.

5. That about 50% more water flows over Petitioners' land since the road improvement work. That Petitioners now have water laying in front of the dwelling at times and as much as 6 inches of water in their cellar at times. Such condition only occurred once prior to road improvement, and that time it was caused by the creek being closed up/clogged up. Water now runs down the ditch constructed by the Respondent on the east side of Petitioners' real estate, and ends at the rear of Petitioners' land, with no outlet except to flow over the rear of the Petitioners' land. More ground, etc., is now being deposited at the rear of Petitioners' land and some removal of ground and silt is now necessary. The water from the said ditch is not the only water which flows into the rear of the Petitioners' land, there being a steep bank immediately to the rear of Petitioners' land and adjoining same.

6. Since road elevation and improvement work has been done, the snow plows push some snow onto the bank now existing in front of the dwelling, and as a result thereof, some of it falls within a few feet of the Petitioners' front door. Prior to the improvement and elevation of the highway, the ground in front of the dwelling and the road bed were almost level.

7. Vivian Link, one of the petitioners, testified that prior to new construction of highway she was able to walk from their front door directly to the highway to enter their car; however, since the construction, she finds it necessary to walk to their driveway in order to reach the highway, because of the bank now existing in front of their front door.

8. The area condemned extends along the front of Petitioners' land and is about 10 feet wide and has an area of about 1595 square feet. Due to the angle, the condemned area is about 2½ to 4 feet from the Petitioners' dwelling in front thereof.

9. The paved portion of the highway is now only two feet closer to the Petitioners' house.

10. Petitioners testified that in their opinion the value of their property prior to condemnation/road improvement was \$9,000.00, that value since improvement of road is \$3,000.00, resulting in damages in the sum of \$6,000.00.

11. Del Comiskey, real estate appraiser, who testified for the Petitioners, gave the value prior to condemnation as \$8,750.00 and value after condemnation as \$3,250.00, resulting in damages in the amount of \$5,500.00.

12. Edwin P. Frye, real estate appraiser, who testified for the Respondent, gave the value of real estate prior to condemnation as \$6,483.00 and value after condemnation at \$4,883.51, resulting in damages of \$1,599.49.

13. That there is no comparable real estate in the vicinity of Ruthford, Croyle Twp., Cambria County, Pennsylvania.

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No. 6

December 6, 1957: Petition for rule to show cause filed.

ORDER:- AND NOW, this 6th day of December, 1957, upon consideration of the foregoing petition and on motion of Edward F. Peduzzi, Attorney for the Department of Highways, a rule is granted upon the Commissioners of Cambria County to show cause why the County of Cambria Should not be joined as an additional defendant in all of the above captioned proceedings.

Rule returnable the 10th day of December, 1957.

By the Court, S/ Griffith, J.

January 16, 1958: Answer of Cambria County to Petition for rule to show cause filed, by Wm. Shettig.

July 17, 1958: Brief on behalf of the Pennsylvania Department of Highways, Petitioner filed by Edward Peduzzi, Esq.

February 6, 1959: Breif on behalf of Petitioners filed. by Gerald K. Gibson, Esq.

March 13, 1959: Opinion of the Court filed.

ORDER

15⁰⁰ NOW, March 13, 1959, the rule to show cause why the petition of Roy B. Griffith and Catherine Marie Griffith, husband and wife, for the appointment of Viewers should not be dismissed, is hereby dismissed.

The rule to show cause why the County of Cambria should not be joined as an additional defendant in this proceeding is made absolute and it is hereby ordered and directed that the County of Cambria be joined as an additional defendant.

By the Court: /s/ McDonald, J.

September 14, 1959: Notice to view filed by F. W. Claflin. Board of Viewers to meet on September 23, 1959.

December 30, 1959: Report of Viewers filed. Copy to: County Controller and County Commissioners.

December 30, 1959: Bill for view filed.

O R D E R

AND NOW, this 22nd day of January, 1960, it appearing to the Court that the foregoing Appeal is in proper and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P. L. 1242, Article 111, Section 303 and 304.

By the Court:

Griffith, Pres. Judge

Extract from the record
certified this 22nd day of
January, A.D., 1960.

/s/ Joseph C. Dolan, Prothonotary

January 23, 1960: All proceeding documents transmitted to and received by the office of the Prothonotary.

NO. 2 CONTINUED --

OPINION

The power of eminent domain is the power to take property for public use without the owners' consent. Briegel vs. Briegel, 307 Pa. 93 (1932). Eminent Domain is an inherited attribute of the sovereign power and the provision for compensation is not part of the power but a limitation of its use by constitution, P.S. Const., Art. 1, Sec. 10.

The Constitution contains various sections relating to eminent domain, Article 1, Sec. 10, provides that private property shall not be taken or applied to public use without authority of law and without just compensation being first made or secured. Art. 16, Sec. 3, provides that the exercise of the right of eminent domain shall never be abridged or so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State. Article 16 also provides that municipal and other corporations and individuals invested with the power of eminent domain must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right of appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owners are entitled to compensation equal to its market value. Market value should be ascertained from the general selling prices in the vicinity, and not from particular sales, and if there have been no sales from which the general selling price may be ascertained, the market value may be ascertained from the knowledge and judgment of men acquainted with the property, who by their experience and judgment may give a fair, honest and impartial opinion of value.

The Owner of property appropriated under the power of Eminent Domain is entitled to receive by way of compensation the difference between the market value of his property before the exercise of the power and as unaffected by it, and its market value immediately after the appropriation and as affected thereby. In this case there is a partial taking.

CONCLUSION

The Board of View after viewing the premises and after a full and impartial consideration of the testimony and evidence submitted to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemnation of the property by the Commonwealth of Pennsylvania, Department of Highways, to be \$3,000.00, payable to:

Bernard A. Link and Vivian Link, husband and wife, Owners of the premises - \$3,000.00.

The Board of View have taken into consideration any benefits accruing to the premises and assess damages against the Commonwealth of Pennsylvania, Dept. of Highways, in the above amount.

Respectfully submitted:

BOARD OF VIEW

/s/ Francis J. Nitch, Chairman

/s/ T. L. Locher

/s/ Owen Heeney

July 17, 1964: SCHEDULE OF AWARD FILED.
 July 17, 1964: VIEWERS' NOTICE (3 Copies) FILED.
 July 17, 1964: NOTICE OF HEARING (2 Copies) FILED.
 July 17, 1964: NOTICE OF EXHIBIT (2 Copies) FILED.
 July 17, 1964: NOTICE OF FILING REPORT (2 Copies) FILED.
 July 17, 1964: EXHIBITS FILED.
 July 17, 1964: VIEWERS' REPORT CONFIRMED NISI.

July 24, 1964: Appeal from Report of Viewers Filed by Robert L. Blough, Esquire.

APPEAL

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW, July 24, 1964, the Commonwealth of Pennsylvania, Department of Highways, does hereby appeal from the Viewers' Report in the above-entitled case filed July 13, 1964, to No. R. D. 2, June Sessions, 1964, in accordance with the provisions of Act No. 6, Special Session, dated June 22, 1964, Article V, Section 516:

1. The property involved in this action and the interest of the condemned therein is as follows: Bernard A. Link and Vivian Link, h/w, owners. Properties are located in the Village of Ruthford (Croyle Twp.), Cambria County, Pennsylvania, as bounded, described and recorded in said County in Deed Book 557, Cat page 127, and Deed Book 725 at page 331.

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2. Jury trial is demanded.

/s/ Robert L. Blough, Attorney for Commonwealth

ORDER

AND NOW, this 24th day of July, 1964, it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P.L. 1242, Article III, Sections 303, 304, as amended by Act of Legislation No. 6, Special Session, dated June 22, 1964.

BY THE COURT: /s/ McDonald, J.

July 24, 1964: Petition for Appoint. of Board of View and Report of Board of View certified over to the Court of Common Pleas.

Petition to the above proceedings requesting that a Board of Viewers be appointed to determine whether or not a bridge spanning the west branch of the Susquehanna River in the Borough of Barnesboro is a necessity and whether or not said Borough was financially able to construct said bridge solely.

3. In pursuance of said Petition this Honorable Court appointed to the Board of Viewers John L. Elder, Raymond Niebauer and Robert G. Mayer, members of the Standing Board of Viewers of Cambria County.

4. In pursuance of said appointment the Board of Viewers fixed a view of the premises on the 11th day of July, 1957, in the Council Chambers of the Borough of Barnesboro as the time and place for taking testimony. As a result of said testimony the Board of Viewers filed, on the 23rd day of July, 1957, their report recommending that said bridge is a necessity to facilitate the flow of traffic between the various portions of the Borough of Barnesboro and further recommending that, due to the financial condition of the Borough of Barnesboro the cost of said construction should be distributed among the municipal corporations which would benefit from this bridge. Among the municipal corporations which would benefit from the construction of this bridge are the Borough of Barnesboro, Township of Susquehanna and Township of Barr. In addition, the residents of Cambria County will benefit, as a whole, from this construction. The Board of Viewers pointed out in their report that the Township of Barr and Susquehanna have either refused or neglected to take any interest in said construction and have not appropriated any money towards the cost of construction.

5. The Report of the Board of Viewers further reveals that the County of Cambria refuses to accept this bridge as a county bridge and refuses to accept the entire cost of construction as well as any future maintenance costs, but in lieu thereof is willing to appropriate the sum of Ten Thousand (\$10,000.00) Dollars as a contribution towards the cost of construction.

6. Your Petitioners, by Resolution dated the 29th day of April, 1957, in connection with Section 1-2650 of the County Code hereinafter set forth, have appropriated the sum of Ten Thousand (\$10,000.00) to the Borough of Barnesboro to be used in construction said bridge as the Borough of Barnesboro shall see fit, providing that the County of Cambria is not taxed with any further costs to be either applied toward the construction or future maintenance of said bridge.

7. The appropriate section of the County Code referred to above is herein set forth:

"Procedure for Taking Over Bridge by County;
Aid to Political Subdivisions in Construction
and Maintenance of Bridge

(a) Whenever the construction of any new bridge, or of any bridge to replace any existing bridge, over a stream, or over or under a railroad, and forming part of any road in any city, borough, town or township, or between any two or more such political subdivisions is necessary, and requires more expense than it is reasonable that such political subdivision, or any two of them jointly, should bear, the court of quarter sessions shall, upon representation of the proper authorities of any such political subdivision, or on petition of any of the inhabitants thereof, order a view in like manner and with like powers duties and procedure as provided for in the case of public roads. If on the report of the county that such bridge is necessary, and would be too expensive for such political subdivision or adjoining political subdivision to bear, it may, at the discretion of the county commissioners, be entered on record as a county bridge. Such bridge shall thereupon be erected, maintained and kept in repair in the same manner as other county bridges constructed under the provisions of subdivision (a) of this article.

(b) If the county commissioners refuse to have such bridge entered on record as a county bridge, the county may pay the entire cost or any part of the cost of constructing such bridge including damages. Such bridge shall thereupon be a municipal or township bridge to be maintained and kept in repair by such political subdivision. The county commissioners may, at their discretion, furnish such political subdivision the whole or any part of the money necessary to maintain such municipal or township bridge.

(c) Where the cost to the county will not exceed one thousand five hundred dollars (\$1500), the county commissioners may furnish such aid in the construction of such bridge without the following the procedure herein stipulated."

WHEREFORE, your Petitioners pray your Honorable Court for an Order authorizing and directing them as County Commissioners to deliver to the proper officers of the Borough of Barnesboro a check of Cambria County in the amount of \$10,000.00 to be used in the construction of the aforesaid bridge.

And they will ever pray, etc.

S/ Pat Farrell

S/ Thomas A. Owens

S/ Hiram F. Ribblett

STATE OF PENNSYLVANIA
COUNTY OF CAMBRIA

Pat Farrell, Thomas A. Owens, and Hiram F. Ribblett, being duly sworn according to law, depose and say that they are the County Commissioners of Cambria County and that the matters set forth in the foregoing Petition are true and correct as they verily believe.

Sworn to and subscribed before
me this 19th day of August,
1957 .

S/ Joseph C. Dolan,
Prothonotary

S/ Pat Farrell
S/ Thomas A. Owens
S/ Hiram F. Ribblett

ORDER

AND NOW, this 20th day of August, 1957, upon motion of William D. Shettig, Solicitor for Cambria County, and upon consideration of the foregoing Petition, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

That the Commissioners of Cambria County be and they are hereby authorized and directed to pay to the Borough Council of the Borough of Barnesboro the sum of Ten Thousand (\$10,000.00) Dollars, to be used in defraying the cost of construction of a bridge spanning the west branch of the Susquehanna River linking Philadelphia Avenue and Maple Avenue, and further, that the County of Cambria shall not be visited with any future costs either towards construction or maintenance.

By the Courts
S/ McKenrick, P. J.
S/ Griffith, J.
S/ McDonald, J.

REPORT OF THE BOARD OF VIEWERS

TO THE HONORABLE THE JUDGES OF THE ABOVE NAMED COURT:

John L. Elder, Raymond Niebauer and Robert G. Mayer, members of the Standing Board of Viewers of Cambria County, respectfully report as follows:

1. Your Viewers were appointed by your Honorable Court on the 14th day of June, 1957, to act on a Petition presented by the Borough Council of the Borough of Barnesboro concerning a bridge spanning the West Branch of the Susquehanna River, situate in the said Borough of Barnesboro at a point linking Philadelphia Avenue, Park Avenue and Maple Avenue.

2. In pursuance of said appointment your Board of Viewers fixed the 11th day of July, 1957 for a View. This View was attended by George T. Atkins, President of the Borough Council of Barnesboro, Robert McCormick, Sr., Thomas Paterno, member of the Council, Hiram F. Ribblett, County Commissioner of Cambria County, Vasil Fisanick, Esquire, Solicitor for the Borough of Barnesboro, and William D. Shettig, Esquire, Solicitor for the Commissioners of Cambria County.

3. In furtherance of said appointment your Board of Viewers fixed the 16th day of July, 1957, at 9:00 o'clock, A. M., E.D.S.T. in the Borough Building Council Chambers of the Borough of Barnesboro, as the time and place to take testimony on said bridge.

4. Your Board of Viewers was attended at said meeting by Harold P. Dixon, Secretary of the Borough Council of the Borough of Barnesboro, George T. Atkins, President of the Borough Council, Robert McCormick, Jr., President of the School Board and a member of the Northern Cambria Joint School Board, Robert McCormick, Sr., James Sherwin, J. Dean Whited, Frank Luddini and Hiram F. Ribblett, County Commissioner of Cambria County.

5. Testimony was presented on behalf of the Borough of Barnesboro to the effect that in the year 1951 said Borough entered into a contract with the Department of Forests and Waters for a flood control project for the Borough of Barnesboro. A part of the said flood control project was the removal of the bridge on Maple Avenue. Said bridge would not be replaced at its original location, but in order to facilitate the flow of traffic between the main portion of the Borough of Barnesboro and that portion known as West Branch it is necessary for the Borough Council to erect another bridge. Due to the flood control project and the location of the High School football field it is impossible to replace the bridge on Maple Avenue, and it is necessary to move the bridge to a location approximately one (1) block north of Maple Avenue at a point connecting Park Avenue and Philadelphia Avenue.

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No. 1

6. Another reason for the change of location of said bridge was the excessive property damage to privately owned residences and property. Since the new bridge location is on land on both sides of the Susquehanna River which is owned by the Borough of Barnesboro there will be no property damage.

7. Testimony revealed that the flood control project will not be completed until such time as this bridge is erected.

8. Testimony further revealed that the Borough of Barnesboro has purchased a used bridge span at a cost of \$9,800.00 and that the steel to be used in the erection of the abutments of the new bridge will cost \$12,000.00, the lumber, \$3,100.00 and excavation, \$1,200.00. In addition, the testimony shows that the Borough Engineer, William R. Kelly, estimated that the cost of material and labor necessary in order to erect said bridge will be in excess of \$39,960.00.

9. The testimony further revealed that the labor will be performed by Borough employees and that no outside bridge contractor or outside labor will be employed other than a Supervisor of Bridge Construction.

10. The testimony revealed that the bridge is a necessity in order to facilitate the flow of traffic between the main portions of the Borough of Barnesboro and other portions of said Borough known as the West Branch Section, Steele Corner and No. 3 Section, as well as to facilitate the flow of traffic with portions of Barr Township and Susquehanna Township adjacent to the Borough limits.

11. The testimony further revealed that approximately one fifth of the residents of the Borough of Barnesboro live in the West Branch section; that from 200 to 300 families live in the Barr Township section; and that approximately 100 families live in the Steele Corner section. Borough Council officials further testified as to the number of complaints rendered to Council by residents of the Borough of Barnesboro and adjacent areas because of the lack of a bridge. The testimony showed that there are two existing bridges which may be used by the people who live on the West Side. The bridge located at 22nd Street, which is on the north end of Barnesboro, is a one lane bridge, and another bridge located adjacent to the Wa Wall Hall is also a one lane bridge and has very poor approaches.

12. The testimony further revealed that from the center portion of the Borough of Barnesboro by the 22nd Street bridge it is 1 1/2 miles to the football stadium, and by way of the Wa Wall Hall it is 1 2/10 miles; whereas in reality, the distance on a straight line and via the proposed bridge is only several blocks.

13. The testimony revealed that the financial condition of the Borough of Barnesboro is such that it only has \$10,607.59 in the Bridge Fund with which to erect and maintain the proposed bridge, which will cost in excess of \$75,000.00. It is impossible for the Borough of Barnesboro solely to pay the cost of construction.

14. The testimony also revealed that notice of the Viewers and Hearing of the Board of Viewers was given to Barr Township, Susquehanna Township and Spangler Borough. These political subdivisions adjacent to the Borough of Barnesboro, whose residents would be served by the new bridge, did not show sufficient interest to attend the hearings, nor did they make any effort to give a financial contribution toward the cost of construction of said bridge.

15. The testimony of Walter C. Daryman, Manager of the Phillips Jones Corporation showed that the corporation employed 225 employees and that since the bridge on Maple Avenue has been removed it has greatly handicapped his employees in transportation to work and in a parking area while at work. A large number of employees live on the west side of the Susquehanna River. Mr. Daryman further testified that in his opinion the Phillips Jones Corporation is the largest industry in the Borough of Barnesboro and that his corporation would not consider any expansion program until the bridge situation is remedied.

16. The testimony of Hiram F. Ribblett, a member of the Board of Commissioners of Cambria County, revealed that the County Commissioners, acting under the discretion granted them in Section 1-2650 of the County Code, have refused to accept the proposed bridge as a county bridge and have refused to accept the entire cost of construction and have refused to accept

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No. 1 Continued

East, a distance of 468.8 feet to a post; thence South $16^{\circ} 44'$ East a distance of 361 feet to a post; thence South $6^{\circ} 00'$ West a distance of 82.5 feet to a post; thence by lands of John Trimbath and Mary Beam, South $6^{\circ} 29'$ West a distance of 545.8 feet to a post; thence still by same, South $10^{\circ} 42'$ East a distance of 345.2 feet to a post; thence by lands of Anthony Kohler, North $44^{\circ} 47'$ West a distance of 1551 feet to a post at lands of Cambria Iron Company and D. W. Wagner; thence by land of D. W. Wagner, North $48^{\circ} 55'$ East a distance of 705 feet to a Sugar; thence by land of Cambria Iron Company, North $57^{\circ} 06'$ East a distance of 104 feet to place of beginning, containing 20.571 acres.

Permanent Right of Way -- 1 Acre plus slopes and channel changes.

That we were duly sworn or affirmed as Members of the Permanent Board of Viewers of Cambria County, Pennsylvania, as shown by the records of the aforesaid Court; that due public notice of the time and place of the meeting of the Viewers was given by the posting of ten hand bills upon the real estate and premises of Mrs. Helen Sekerak Vance, et al at least ten days upon said condemned premises and upon Edward Peduzzi, Attorney for the Pennsylvania Department of Highways, Marlin B. Stephens, Attorney for the owner, Mrs. Helen Sekerak Vance, owner of the said premises, Joseph C. Wess, Clerk of Courts of Cambria County, County Commissioners, and Joseph C. Dolan, Prothonotary of Cambria County.

Pursuant to Notice to View, we met upon the premises and land of Mrs. Helen Sekerak Vance, et al on the 18th day of April, 1956, at 10 o'clock A. M., E.S.T. and proceeded with the duties of our appointment. All of the Viewers were present. Counsel for the Pennsylvania Department of Highways, Mr. Edward Peduzzi, counsel for the owner, Mr. Marlin B. Stephens, and the owner Mrs. Helen Sekerak Vance were also present. We made a careful view and inspection of the premises going over the ground taken and affected by the right-of-way and the land adjacent to it.

Notices for a hearing to be held at the Judges Chambers, U. S. Bank Bldg., at 10 O'clock A. M. D. S. T. on Thursday, May 24, 1956 (this meeting was held in the Council Room in the Johnstown City Hall) were sent out. At this hearing testimony was heard on the part of the owner and the Pennsylvania Department of Highway and expert witnesses. Before the closing of the hearing it was again agreed that the Viewers would present their Schedule of Damages at the office of Gray & Claflin, 606 Swank Bldg., Johnstown, Pa., on June 6, 1956, at 4:30 P. M. D.S.T.

The Viewers met in conference May 28, 1956 and went over all the testimony offered at the hearing. The following subjects were discussed:

- (1) General location of the property.
- (2) Present value of the property and probable future development.
- (3) Value of trees cut and their value at maturity.
- (4) Affect of slope on existing spring.
- (5) Condition of new ramp and future maintenance of same.
- (6) Affect on property by channel changes.

After taking into consideration the matters above briefed the Viewers hereby assess total damages to Mrs. Helen Sekerak Vance in the amount of one thousand three hundred fifty dollars (\$1350.00) and the Viewers assess no benefits.

Witness our hands and seals this seventh day of June, 1956.

/s/ Fred Claflin, Chairman

/s/ Robert Mayer

/s/ Theodore Hunt

Viewers.

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No. 1 Continued

the entire cost of construction and have refused to accept any future maintenance costs, but, in lieu thereof, the County Commissioners are willing to appropriate the sum of Ten Thousand (\$10,000.00) Dollars as a contribution toward the cost of construction of said bridge, and the Commissioners did, by Resolution dated the 29th day of April, 1957, appropriate said sum. The testimony further revealed that the Borough Council members were cognizant of the position of the County Commissioners in this regard.

FINDINGS

1. That the erection of the bridge in the Borough of Barnesboro at a point linking Philadelphia Avenue and Park Avenue is a necessity in order to facilitate the flow of traffic between the main portions of the Barnesboro business district and the West Branch district, as well as the Susquehanna and Barr Township districts.

2. That the cost of construction of said bridge would be in an amount exceeding \$75,000.00.

3. That the Borough of Barnesboro's financial condition presently will not allow it to pay the entire cost of construction of said bridge.

4. That since the erection of a new bridge will benefit not only residents of the Borough of Barnesboro, but also residents of Barr Township and Susquehanna Township, it is proper and fitting that Barr Township and Susquehanna Township should join in the cost of construction and future maintenance of said bridge.

5. That it is evident that Barr Township and Susquehanna Township do not intend to contribute anything toward the cost of construction of the proposed bridge, even though a large number of their inhabitants would thereby benefit.

6. That the residents of the Borough of Barnesboro will benefit by it.

7. That the County Commissioners, by Section 1-2650 of the County Code, were granted discretionary powers and have refused to accept the bridge as a county bridge and, further, have refused to accept entire construction cost and have refused to accept any future maintenance cost, but, in lieu thereof, have agreed to contribute the sum of Ten Thousand (\$10,000.00) Dollars toward the construction cost.

CONCLUSION

It is, therefore, the opinion of your Board of Viewers, as a result of the View on the premises and the testimony submitted, that the bridge linking Philadelphia Avenue to Park Avenue is a necessity and that the cost cannot be borne solely by the Borough of Barnesboro, and that said bridge should have been accepted by the County of Cambria as a county bridge and erected with county funds and thereafter maintained with county funds, but that the County of Cambria has refused to accept said bridge and has refused to pay the entire cost of construction and maintenance of said bridge, but, in lieu of the fact, it has agreed to contribute the sum of Ten Thousand (\$10,000.00) Dollars toward the cost of construction, and it is therefore the opinion of your Board of Viewers that in compliance with the Act of Assembly approved the 9th day of August, 1955, P. L. 323, Section 1-2650 the County be authorized to contribute to the Borough of Barnesboro the sum of Ten Thousand (\$10,000.00) Dollars toward the construction of said bridge in compliance with any provisions which the Court deems necessary.

BOARD OF VIEWERS

S/ John L. Elder

S/ Raymond Niebauer

S/ Robert G. Mayer

August 28, 1957, the within report is CONFIRMED ABSOLUTELY.

By the Court: S/ McKenrick, P. J.

Mr. Glass testified that the Mihalicks lived in a quality house which was situated upon a tract of approximately nine-tenths (9/10) of an acre prior to the condemnation. He stated that, in his opinion, this was one of the better houses in the neighborhood. He also testified that, in his considered opinion, the value of the property, prior to the taking, was \$41,300.00, and after the taking, the value was reduced to \$36,800.00, thus making the damages suffered by the property owners, \$4,500.00.

Upon cross-examination, Mr. Glass admitted that he had not appraised the property before the taking, whereupon counsel for the Commonwealth objected to his testimony. The objection was overruled by reason of the fact that the witness had previously testified that he had visited the property on several occasions prior to the taking but did not make a formal appraisal. He also stated that he did not consider in his estimate of damages, traffic noise and vibration as had been testified to by the property owners. Upon the conclusion of Mr. Glass' testimony, the counsel for the property owners rested.

The first witness called on behalf of the Commonwealth was Mr. Howard E. Breneman, District Right-of-Way Engineer, who stated that the property was condemned on December 1, 1959 and that the area condemned was 1615 feet including a slope easement of 265 feet. Mr. Breneman testified that the center line of the highway was exactly the same at the Southern end of the property as it had been prior to the improvement and was ten feet further away from the house at its Northern end.

He testified that the condemnation area tapers from two feet to fourteen feet, with about four feet for a slope easement. According to Mr. Breneman's calculations, the house was situated 57 feet from the old right-of-way line and was now 47 feet from the right-of-way line.

On cross-examination by counsel for the property owners, Mr. Breneman stated that the highway had been widened and that instead of a five foot shoulder as previously, there was now a eight foot shoulder. The slope prior to the improvement was $1\frac{1}{2}$ to 1 and is now $1\frac{1}{2}$ to 1.

Upon re-direct examination, Mr. Breneman testified that the elevation of the road was raised 1.7 feet at the Southern end of the Mihalick lot and 6 inches at the Northern end.

The next witness called by counsel for the Commonwealth was Mr. Paul D. Washington, a Cresson Realtor, whose qualifications were admitted and accepted by counsel for the property owners. Mr. Washington stated that he had first appraised the property on May 19, 1960, prior to any physical work on the property. He has re-visited the property since that time.

In his opinion, the market value of the property, prior to the improvements, was \$79,761.00, and afterwards, \$77,421.00; thus Mr. Washington attributed damages to the property owners of \$2,340.00, which he rounded off in even figures to \$2,350.00.

Upon cross-examination, he admitted that, in his estimate of value, he had considered a house which was known as the Danner Street house, which, in reality, was a garage with an apartment over it. Mr. Washington admitted that there was a change in appearance in the lot and that the house was now closer to Belmont Street, but how much closer, he could not say.

Mr. Dell Comiskey, a Johnstown Realtor, was called as a witness on behalf of the Commonwealth and his qualifications likewise were admitted by counsel for the property owners. Mr. Comiskey stated that he had first appraised the property on February 6, 1960, and that as a result of his appraisal, it was his opinion that the market value of this property prior to the taking was \$64,300.00 and that, after the taking, the value had been reduced to \$63,105.00; thus, in Mr. Comiskey's opinion, the damages suffered by the property owners was \$1,280.00.

Upon cross-examination, he stated that he realized that grading was now a problem

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and that the house was now closer to the road but that he had allowed for trees taken and that he had allowed thirty cents per square foot for damages. Upon the conclusion of Mr. Comiskey's testimony, the Commonwealth rested.

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

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.

Likewise, not detention damages can be paid if the property owner's 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).

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 (1935); Petition of Butler County Commissioners, 141 Pa. Super. 597, 15 A. 2d 504 (1940).

Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for property, United States v. 15.3 Acres of Land in the City of Scranton, Pennsylvania, 154 Fed. Supp. (1957); Ward v. Commonwealth of Pennsylvania, 390 Pa. 526, 136 A. 2d 309 (1957).

The basis for recovery of compensation being its market value, any relevant and material evidence of such value is admissible. Schuck v. West Side Belt Railway Company, 283 Pa. 152, 123 Atl. 832 (1925). However, the burden is upon the landowner to establish the market value in proceedings before a Board of View or the Court, Broughler v. Commonwealth of Pennsylvania, 383 Pa. 573, 131 A. 2d 341 (1957); Hereda v. Lower Burrell Township, 159 Pa. Super. 262, 48 A. 2d 83 (1946).

Market value may be ascertained from the knowledge and judgment of men acquainted with the property, who, by their experience and judgment, may give a fair, honest and impartial opinion as to value, Curtin v. Nittany Valley Railroad Company, 135 Pa. 20, 19 Atl. 740 (1890), and subsequent cases.

From the evidence presented to it, the Board is of the opinion that any delay in payment in this matter was caused by the unreasonable demands of the property. The Board is assuming that the Commonwealth offered, by way of settlement, a figure comparable to that testified to by its real estate experts. The Board also assumes that the amount demanded by the property owners was reasonably near the figure quoted by their real estate expert as damages suffered by them.

Since the Board is of the opinion, and so finds, that the damages suffered by the property owners if \$2,350.00 and their demand is almost double that amount, that any delay in payment is due purely to their unreasonable demand. We, therefore, find that the property owners are not entitled to detention damages.

In making its award, the Board has applied the foregoing principles of law to the evidence presented and has considered all other relevant factors. The Board has also considered the benefits, if any, accruing to the property and hereby assesses the damages as above awarded

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against the Commonwealth of Pennsylvania Department of Highways.

Respectfully submitted this 29th day of April, 1963.

BOARD OF VIEW

Leopold J. Wendekier, Chairman

T. L. Locher

Robert G. Mayer

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:

George J. Mihalick and Annie T. Mihalick,
husband and wife \$2,350.00

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, Chairman

T. L. Locher

Robert G. Mayer

VIEWERS' NOTICE

We, the undersigned Viewers appointed by the above Court to view and inspect the land and premises owned by George J. Mihalick and Annie T. Mihalick, husband and wife, of 300 Belmont Street, Johnstown, 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 George J. Mihalick and Annie T. Mihalick, do hereby give notice that they will meet upon the premises on Friday, March 15, 1963, 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 that certain tract of land situate in Geistown Borough, Cambria County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake at the Southeast corner of Atlas Court and Danner Street; thence by said Danner Street S. 63 degree 59' East, 253.18 feet to Belmont Street (formerly Arbutus Park Road); thence by same S. 21 degree 35' W., 66.2 feet to the point of a curve having a radius of 230 feet, said point of curve being at the intersection of the Southerly side of South Court (now vacated) with Belmont Street; thence continuing by said Belmont Street in a Southerly direction on a curve to the right, an arc distance of 85 feet, more or less; thence through lots #16, 17 and 18 N. 63 degree 59' W. 250 feet, more or less, to a stake in the Easterly side of Atlas Court; thence by same N. 26 degree 01' E., 150 feet to the place of beginning and being lot #15 South Court now vacated and the Northerly portion of Lots #16, 17 and 18 as shown on the 'Suburban Realty Plan of Lots, Arbutus Park Woodland Section.

BOARD OF VIEW

Leopold J. Wendekier, Chairman

T. L. Locher

Robert G. Mayer

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, 10:00 o'clock, A.M. e.s.t., on Friday, April 5, 1963, in the Judges' Chambers, Park Building, Johnstown, 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

Leopold J. Wendekier /s/
Chairman

And now, July 22, 1963 the above view proceedings are hereby settled, discontinued & ended, and the property owner hereby acknowledges receipt of the sum of \$2,350.00 as payment in full for damages sustained by the property owner by reason of the condemnation by the Commonwealth of Pennsylvania Department of Highways of a portion of said real estate of George J. Mihalick and Annie T. Mihalick, husband and wife, of 300 Belmont Street, Johnstown, 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 George J. Mihalick and Annie T. Mihalick, do hereby give notice that they will meet upon the premises on Friday, March 15, 1963, at 9:00 o'clock, A.M., e.s.t., when and where all persons interested may appear if they so desire.

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No. 1 Continued:

November 26, 1956: Motion for Continuance of View filed by Samuel R. DiFrancesco.

ORDER OF COURT

NOW, th 26 day of November, 1956, the within Motion having been read and considered, the above entitled scheduled view is hereby continued and shall be held after the 1st of January, 1957, at a time mutually agreeable to the parties to the above proceedings, said time to be fixed by the Court and the respective parties.

By the Court, McDonald, Judge.

FEBRUARY 18, 1957 --NOTICE TO VIEW FILED.

June 28, 1957: Report of viewers filed.

We, the undersigned Viewers, appointed by the above named Court to View and Assess the premises of Henrietta Heading, being Lot No. 27 as shown on Plan of Lots laid out July 8, 1926 for Conrad Nees estate by O. P. Thomas R. P. E. & L. S. approved by the City Planning Commission July 9, 1926 as Lot No. 27 and to estimate and determine the damages that have resulted to this lot by reason of the change in location and lines of a highway known as State Highway Route No. 222 in the Borough of Geistown, Cambria County, Pennsylvania, and as shown on blueprint attached herewith.

That we were duly sworn or affirmed according to law as Members of the Permanent Board of Viewers of Cambria County, Penna., as shown by the records of the aforesaid Court; that due public notice of the time and place of the meeting of said Viewers was given by the posting of the hand bills upon the premises at least ten (10) days before the time of the View and by the acceptance of services of same by Joseph C. Wess, Clerk of Courts of Cambria County, Atty. Samuel Di Francesco, Atty. Edward J. Harkins, and Mr. Breneman for the Pennsylvania Department of Highways.

Pursuant to said Notice to View, the Viewers met upon the premises of the land appropriated by the Pennsylvania Department of Highways for relocation and construction of portion of Route 222, Section No. 6 in Cambria County at 10:00 A. M. E.S.T., March 6, 1957, as per order of the Court for the purpose of performing the duties of our appointment. All of the Viewers were present, together with Atty. Edward J. Harkins, counsel for Henrietta Heading, Atty. Samuel R. DiFrancesco, counsel for Pennsylvania Department of Highways, and a representative for the District Engineer's Office of the State Highway Department, Hollidaysburg, Pennsylvania.

Notices for a hearing to be held at the office of F. W. Claflin, R. P. E., 212 Tioga Street, Westmont, Johnstown, Pennsylvania at 10:00 A. M. D. S. T. May 31, 1957, were sent out and acceptance of service of these notices was made by parties concerned.

At the hearing were: Atty. Edward J. Harkins, counsel for Henrietta Heading, Mrs. Henrietta Heading, Atty. Arnold J. Smorto, counsel for the Department of Highways, Mr. Breneman, representative, District Engineer's Office, Pennsylvania Department of Highways, Mr. Keim, representative, Pennsylvania Department of Highways and Mr. Dell Cominsky, real estate appraiser.

After a thorough study of the testimony given at the hearing by the various witnesses, the Viewers based their assessment of damages on the following conditions:

FIRST: Location, topography, and size of lot taken.

SECOND: Market value of lot in 1951.

THIRD: Development of surrounding property in 1951.

FOURTH: Value of small portion of lot not covered by Route 222 and slopes.

After taking into consideration the matters above briefed, the Viewers hereby assess a total damage to lot being marked and known on the Meadowbrook Plan of Lots laid out July 8, 1926, for Conrad Nees estate by O. P. Thomas, R. P. E. & L. S. approved by the City Planning Commission July 9, 1926, as Lot No. 27, of eight hundred seventy five (\$875.00) Dollars.

Witness our hands and seals this eleventh day of June, 1957.

S/ Fred W. Claflin, Chairman

S/ Theodore Hunt

S/ Robert Mayer, Viewers.

ORDER

Now, July 31, 1957, no exceptions having been filed within the time limited by law, the report of viewers is hereby APPROVED ABSOLUTELY.

By the Court: S/ McKenrick, P. J.

Certified copy to: Arnold Smorto, Atty. for Dept. of Highways, Harkins and Wharton, Attys. for Henrietta Heading, and District Engineer's Office, State Highway Department, Hollidaysburg, Pa.

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OCTOBER 16, 1957:-

The undersigned counsel of record for Henrietta Heading acknowledged to have received from Arnold Smorto, counsel for the Commonwealth of Pennsylvania, Treasurer's Check #075352 of the Commonwealth of Pennsylvania in the amount of \$875.00 payable to the order of Henrietta Heading.

By: *Robert J. Wharton*
Harkins and Wharton, Attys. at Law
Counsel for Henrietta Heading.

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petitioned the Supervisors of Croyle Township for such a road as hereinafter described; and

WHEREAS, the abutting property owners have signed a Release of Damages for the laying-out, opening and accepting of such road; and

WHEREAS, the abutting property owners have waived the right to receive ten(10) days notice of the intention of the Supervisors to adopt an Ordinance accepting, opening and laying-out of the said road; and

WHEREAS, because of the congested traffic there is only 16 feet of right-of-way available for such road;

NOW, THEREFORE, BE IT ORDAINED, and it is hereby ordained by the Supervisors of Croyle Township that the following described road be and the same is hereby accepted, layed-out and opened as follows:

BEGINNING at a point on the southwest side of Beaver Branch of the Pennsylvania Railroad at Sidman, Croyle Township, Cambria County, Pa., thence along the right-of-way of the said Beaver Branch South 52°06' East 720 feet to a dead end on the property line of Elmer Fresh, being a road having a width of 16 feet.

MOTION made by John T. Plummer, and seconded by Raymond E. Baumgardner, that this Ordinance for laying-out, opening and accepting the above road is adopted.

ADOPTED this 29th day of October, 1963.

CROYLE TOWNSHIP SUPERVISORS

By /s/Forest Croyle, Chairman

ATTEST:

/s/Michael Kishloch, Secretary.

EXHIBIT B

PETITION AND RELEASE OF DAMAGES

We, the undersigned, citizens and property owners of the Township of Croyle, Cambria County, Pennsylvania, respectfully petition the Board of Supervisors of Croyle Township to lay-out, open and accept the following described road which abuts along side of our respective properties:

BEGINNING at a point on the southwest side of the Beaver Branch of the Pennsylvania Railroad at Sidman, Croyle Township, Cambria County, Pennsylvania; thence along the right-of-way of the said Beaver Branch South 52°06' East 720 feet to a dead end on the property line of Elmer Fresh, being a road having a width of 16 feet.

In consideration of the opening of the said road, we, the undersigned, do hereby remise, release and discharge the Township of Croyle of and from all and all manner of actions or cause of actions in law or in equity, especially from a claim for damages arising out of the laying-out, opening and accepting of the above described road, and we release the Township for ourselves, our heirs, executors, administrators, successors and assigns, and we further hereby waive our right to receive a ten (10) days' notice of the intention of the Supervisors to adopt an ordinance for the purpose of laying-out, opening and accepting the above road.

/s/Charles L. Whissinger, Sidman, Pa.	/s/Elmer Fresch, Sidman, Pa.
/s/Harold Sauter, Sidman, Pa.	/s/Sara Sauter, Sidman, Pa.
/s/Elsie Fye, Sidman, Pa.	/s/Laurine Myers, Sidman, Pa.
/s/Frank Myers, Sidman, Pa.	/s/Rella Kauffman, Sidman, Pa.
/s/John Kauffman, Sidman, Pa.	/s/Angeline Fresch, Sidman, Pa.

EXHIBIT C

DECREE

NOW, the 22nd day of November, 1963, upon consideration of the foregoing Petition, the Clerk of the Court of Quarter Sessions of Cambria County, Pennsylvania, is hereby directed to file the within report and the exhibits attached hereto.

By the Court: /s/Shettig, J.

FINAL DECREE

NOW, the 23rd day of December at 1:15 P.M., 1963, it appearing that the said Petition having been filed on the 22nd day of November, 1963, and that no citizen or freeholder of the Township did within thirty (30) days from the filing of this report of the Supervisors file exceptions to the report or a petition for a review, IT IS ORDERED AND DIRECTED that the said portion of a proposed road in Croyle Township, Cambria County, Pennsylvania, described as follows: "BEGINNING at a point on the southwest side of the Beaver Branch of the Pennsylvania Railroad at Sidman, Croyle Township, Cambria County, Pennsylvania; thence along the right-of-way of the said Beaver Branch South 52°06' East 720 feet to a dead end on the property line of Elmer Fresh, being a road having a width of 16 feet," be and is hereby confirmed as a Township road and declared to be a part of the public road and highway system of the said Township of Croyle.

BY THE COURT: /s/Shettig, J.

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of Cambria County, Pennsylvania, as is shown by the Records of the aforesaid Clerk; that due public notice of the time and place of the view and the meeting of viewers was given by posting of ten hand-bills at the points of beginning and ending of said highway and along the route of same and by personal service of service on George L. Reade, Esq., Solicitor for the supervisors of Jackson Township who passed resolution approving the laying out of said route and also representing all the abutting owners on said route and have on a separate released the supervisors of said Jackson Township and on John Taylor, Esquire solicitor for the Borough of Nanty Glo through resolution have approved to said laying out of said road and made a part of this report and acknowledge to have received copy of said notice to view at least ten days before the date of the view.

In pursuance of said Notices of a View all the Viewers met at the point of beginning in said borough together with others on the twenty-eighth day of January (Jan. 28, 1955) at 10 o'clock. Due to the condition of the road in question and a very heavy snow had fallen since the date of placing the notices we continued indefinitely the day of the view due to extreme winter weather to a undetermined date.

On Friday 11, 1955, at 10 o'clock in the morning after due notice to the parties at interest all of the Viewers met on the proposed extension of street in the borough of Nanty Glo with John Taylor Esq., with a number of Councilmen and with George Reade, Esquire and all the abutting property owners and several supervisors. The snow having melted the course of the road could be seen. It was a private road used by these owners and others for at least thirty years or more to two coal mines in use on the Kelly farm. The private road was in fairly good condition. We drove over the proposed road but change the course of a rather severe curve and had but two courses. We saw the necessity of the road since it was used so long as a private road and both the Members of Council as well as the Supervisors of Jackson saw the need of a public highway and its rather expensive use. All of the Viewers agree that there is necessity for a public highway and we hereway lay out the same in accordance with the petitioners and agreement of the Borough of Nanty Glo and the Supervisors of Jackson Township as follows:

Beginning at a point on the western terminus of White Street in the Borough of Nanty Glo, thence South $77^{\circ} 30'$ West 440 feet to a point, said point being 39 feet East of the Nanty Glo Borough line; thence North 84° West 39 feet to the Nanty Glo Borough line and Jackson Township line; thence through the lands of abutting property owners in Jackson Township North 84° West 961 feet to coal tipple and land of John Kelly, the point of ending. Michael Lanik wanted damages and wanted his lawyer to help in showing his damages that according to the viewers were exorbiant. We fixed Thursday March 17 at 7 o'clock in the municipal Building, Nanty Glo, as the time and place for the taking of testimony for Michael Lanik. We met according to the agreement and there was a large assemblage there. Mr. Lanik and his father together with Edward Peduzzi, Esq., and several disinterested witnesses called on his part and the Borough Councilmen produced their testimony in chatge of John Taylor, Esq. We heard all testimony offered and advised them by agreement of Counsel of both parties and in their presence decided to make an Exhibit of Schedule on March 25, 1955, at 7 o'clock in the evening and the Municipal Building as the place of Exhibit.

Three viewers met after the hearing, and we discussed all the testimony and having been on the ground and the amount of land taken. There was wide difference as to the damages as testified and having taken in consideration all the elements and matters pertinent thereto were discussed and all the elements and matters pertinent thereto wer discussed and all this was taken into consideration in determining and estimating the amount of damages.

That having viewed said premises and making an inspection of same and hearing all evidence and testimony concerning said real estate and taken into consideration all the elements of damages and benefits accruing to the laying out of said Public Highway and further that the land along said highway opens his land to the sale of lots as well as to all damages and having due regard to and making just allowances for his land taken by virtue of the highway that it crosses same on both sides of his farm, which may result or seem likely to result of the road or highway and its owner, we estimated and determined the amount of:

Pursuant to said understanding of the time and place we met on Friday March 25, 1955, at the Municipal Building, Nanty Glo where the authorities of the Borough with their Counsel appeared and a witness but neither the owner of the land Michael Lanik, nor his Counsel, Edward Peduzzi, Esq. after waiting for awhile we exhibited the Schedule of Damages. An opportunity was entered for the taking of further. We then proceeded to Exhibit the Schedule of Damages. That hearing all exceptions and testi-

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mony offered and giving all matters before us due consideration, we are of the opinion that said road as affecting the land of Michael Lanik affected by said laying out a highway or public road and the land taken has been damaged, therefore, we assess the benefits and damages in the amount of Fifty (\$50.00) Dollars.

That we are of the opinion that the above damages referred to said land be paid to Michael Lanik by the Borough of Nanty Glo as his interest may appear.

Witness our hands this second day of April A. D., 1955.

Mahlon Baumgardner

John Elder

Raymond Niebauer

And Now, 16 September, 1955, the order heretofore entered confirming the within report absolutely on the 17 June, 1955, is hereby vacated.

The following order is hereby entered nunc pro tunc as of 17 June, 1955:

"And Now, 17 June, 1955, the within report is hereby approved."

/s/ Griffith, J.

ORDER

And Now, 16 Sept., 1955 no exceptions having been filed the within report and condemnation is hereby confirmed absolute.

/s/ Griffith, J.

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abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals invested with the power of eminent domain, must make compensation for property taken, and prohibits the General Assembly from depriving any person of the right to appeal from any preliminary assessment of damages against any corporation or individual made by viewers or otherwise.

When a tract of land is taken, the owner is entitled to compensation equal to its market value. Market value should be determined on the basis of what price the property would bring if the owner were under no compulsion to sell and a purchaser under no compulsion to buy, taking into account all considerations that might be brought forward and reasonably be given substantial weight in bargaining for the property, such as location, improvements, productive quality, and the uses to which it may reasonably be put, taking in the light of sales of other property in the vicinity. United States v. 15.3 Acres of Land in the City of Scranton, Com. of Pa., 154 F. Supp. 770 (1957).

While the value of the land should not be based upon speculation, everything which gives the land intrinsic value should be considered and it is not to be limited to a particular use, and any use to which the property is adapted or any prospective use may be considered.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Com., 145 A. 2d 541, 395, Pa. 65 (1958).

CONCLUSION

Since no evidence was presented at either hearing scheduled by the Board of Viewers relative to the owner of record of the property in question, and since it is not the duty of the Board of Viewers to determine title, the Board of Viewers has ascertained what the damages should be and is directing that said damages be paid to Joseph C. Dolan, Prothonotary, in Trust for the owner of the real estate and the owner of the improvements erected thereon.

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners or alleged owners of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, as follows:

To: Joseph C. Dolan, Prothonotary, for

(a) Owner of Real Estate	\$1,500.00
(b) Owner of Improvements Erected Thereon	500.00

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

Respectfully submitted.
/s/Donald J. Letizia, Chairman
/s/T. L. Locher

/s/Theodore Hunt

¹⁰⁰
Exceptions to and Appeal from Report of Board of View filed by Reginald L. Pawlowski, Esq., April 22nd, 1963.

ORDER

³⁰⁰
AND NOW, this 22nd April, 1963 at 10:40 o'clock, A.M. it appearing to the Court that the foregoing Appeal is in proper form and within the time limit, the proceedings are hereby directed to be certified from the Court of Quarter Sessions to the Court of Common Pleas for trial of the issues therein, in accordance with the provisions of the Act of June 1, 1945, P.L. 1242,
CONTINUED ON NEXT PAGE

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Article 111, Sections 303 and 304.

BY THE COURT:
/s/Shettig, Judge

~~1022~~
~~1022~~ Viewers Notice filed.
~~1022~~ Notice of Hearing filed.
Testimony filed.

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NO. 1 adapted or any prospective use may be considered.

In arriving at a just determination of the fair market value the Board has, as criteria, the customarily widely disparate opinions of the real estate experts who testified for their respective sides. It is the province of the Board to weigh the credibility of the valuation witnesses' testimony and to determine what the land taken was fairly worth at the time of the condemnation. The Board has a right to, and did, bring to bear, in appraising the expert testimony, what they had perceived with respect to the property at the time they formally viewed it.

The Board of View is not required to take arbitrarily the Plaintiff's or the Defendant's figures in arriving at a just sum in condemnation cases, but may exercise deliberation, in awarding a sum between the Plaintiff's and Defendant's figures. Harmony Realty Co. v. Comm., 145 A. 2d 541, 395, Pa. 65 (1958).

CONCLUSION

The Board of View reports that after a full and impartial consideration of the testimony and evidence offered to them and acting according to their best judgment, they have estimated and determined the damages sustained by the owners and occupants of the said property by reason of the condemning of the said property by the Commonwealth of Pennsylvania, Department of Highways, as follows:

JOSEPH JAMES CAUFFIEL -- \$2,354.00

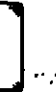
The Board of Viewers have taken into consideration any benefits accruing to the property affected and hereby assess damages as above awarded against the Commonwealth of Pennsylvania, Department of Highways.

Respectfully submitted,

/s/Donald J. Letizia, Chairman
/s/T. L. Locher
/s/Theodore Hunt

100
Viewers Notice filed. 100
Notice of Hearing filed.
Map filed. 100
Testimony filed. 100
Exhibit filed. 100
Memorandum filed! 100

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NO. 8 STATE OF PENNSYLVANIA ()
COUNTY OF CAMBRIA ()

Personally appeared before me, a Notary Public, in and for said County and State, FOREST CROYLE, JOHN T. PLUMMER and RAY BAUMGARDNER, Supervisors of the Township of Croyle, Cambria County, Pennsylvania, who being duly sworn according to law, depose and say that the facts set forth in the foregoing report are true and correct to the best of their knowledge and information and belief.

/s/Forest Croyle
/s/John T. Plummer
/s/Raymond E. Baumgardner

SWORN and subscribed before me
this 15th day of November, 1963.

/s/Frances M. Bartko,
My Commission Expires Oct. 2, 1967.

MAP FILED --- EXHIBIT A

AN ORDINANCE ACCEPTING LAYING-OUT AND OPENING
ROAD SOUTH OF ROUTE 11095 OTHERWISE KNOWN AS
ROUTE 760

WHEREAS, the abutting property owners are in need of a public road along their land and have petitioned the Supervisors of Croyle Township for such a road as hereinafter described; and

WHEREAS, the abutting property owners have signed a Release of Damages for the laying-out, opening and accepting of such road; and

WHEREAS, the abutting property owners have waived the right to receive ten (10) days notice of the intention of the Supervisors to adopt an Ordinance accepting, opening and laying-out of the said road:

NOW, THEREFORE, BE IT ORDAINED, and it is hereby ordained by the Supervisors of Croyle Township that the following described road be and the same is hereby accepted, layed-out and opened, as follows:

BEGINNING at the intersection of the within road with the southerly side of Legislative Route 11095, otherwise known as Route 760; thence between the property of Andrew Yanich and Curtis Weaver, South 31o59' East 900 feet to a point; having a width of 50 feet; thence through the property of Michael Mindish, South 72o00' East, 230 feet to a point, having a width of 33 feet; thence South 82o40' East 240 feet to a dead end, having a width of 33 feet, which is in accordance with the map plan and drawing hereto attached, made part hereof and to be filed with the Clerk of Courts of Cambria County, Pennsylvania

MOTION made by Forest Croyle, and seconded by John T. Plummer, that this Ordinance for the laying-out, opening and accepting the above road is adopted.

ADOPTED this 29th day of October, 1963.

CROYLE TOWNSHIP SUPERVISORS
By /s/Forest Croyle, Chairman

ATTEST:
/s/Michael Kishlock, Secretary

EXHIBIT B

PETITION AND RELEASE OF DAMAGES

We, the undersigned, citizens and property owners of the Township of Croyle, Cambria County, Pennsylvania, respectfully petition the Board of Supervisors of Croyle Township to lay-out, open and accept the following described road which abuts along side of our respective properties:

BEGINNING at the intersection of the within road with the southerly side of Legislative Route 11095, otherwise known as Route 760; thence between the property of Andrew Yanich and Curtis Weaver, South 31o59' East 900 feet to a point; having a width of 50 feet; thence through the property of Michael Mindish, South 72o00' East, 230 feet to a point, having a width of 33 feet; thence South 82o40' East 240 feet to a dead end, having a width of 33 feet, which is in accordance with the map, plan and drawing hereto attached, made part hereof and to be filed with the Clerk of Courts of Cambria County, Pennsylvania.

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In consideration of the opening of the said road, we the undersigned, do hereby remise, release and discharge the Township of Croyle of and from all and all manner of actions or cause of actions in law or in equity, especially from a claim for damages arising out of the laying-out, opening and accepting of the above described road, and we release the Township for ourselves, our heirs, executors, administrators, successors and assigns, and we further hereby waive our right to receive a ten days' notice of the intention of the Supervisors to adopt an ordinance for the purpose of laying-out, opening and accepting the above road.

/s/Michael Mindish
 /s/Leone Mindish
 /s/Lula Neff
 /s/Andy Yanich
 /s/Lester Bastin
 /s/Mrs. Lester Bastin

EXHIBIT C

RELEASE

WE, the undersigned, JOSEPH P. ROBERTS, JAMES T. FAGAN and HIRAM F. RIBBLETT, Commissioners of the County of Cambria, in consideration of the opening of the road described below, by the Supervisors of the Township of Croyle, in accordance with the Resolution enacted by the said Board of County Commissioners, hereby, for and on behalf of the County of Cambria, release, remise and discharge the Township of Croyle of and from all matter of actions, suits, payments, accounts, reckonings, claims and demands whatsoever for or by reason thereof, or of any other act, matter, cause or thing whatever, from the beginning of the world to the day of the date of these presents, said properties being described as follows:

"BEGINNING at a point on the southwest side of the Beaver Branch of the Pennsylvania Railroad at Sidman, Croyle Township, Cambria County, Pennsylvania; thence along the right-of-way of the said Beaver Branch South 52°06' East 720 feet to a dead end on the property line of Elmer Fresh, being a road having a width of 16 feet."

"BEGINNING at the intersection of the within road with the southerly side of Legislative Route 11095, otherwise known as Route 760; thence between the property of Andrew Yanich and Curtis Weaver, South, 31°59' East 900 feet to a point; having a width of 50 feet; thence through the property of Michael Mindish, South 72°00' East, 230 feet to a point, having a width of 33 feet; thence South 82°40' East 240 feet to a dead end, having a width of 33 feet, which is in accordance with the map, plan and drawing hereto attached, made part hereof and to be filed with the Clerk of Courts of Cambria County, Pennsylvania."

IN WITNESS WHEREOF, WE, have hereunto set our hands and seals this 24th day of October, 1963.

COUNTY COMMISSIONERS
 CAMBRIA COUNTY, PENNSYLVANIA
 /S/ Joseph P. Roberts (SEAL)
 /S/ James F. Fagan (SEAL)
 /S/ Hiram F. Ribblett (SEAL)

ATTEST:
 /s/Morris A. Springer, Clerk.

EXHIBIT DDECREE

NOW, the 22nd day of November, 1963, upon consideration of the foregoing Petition, the Clerk of the Court of Quarter Sessions of Cambria County, Pennsylvania, is hereby directed to file the within report and the exhibits attached hereto.

By the Court: /s/Shettig, Judge.

FINAL DECREE

NOW, the 23rd day of December, 1963 at 1:15 P.M. it appearing that the said Petition having been filed on the 22nd day of November, 1963, and that no citizen or freeholder of the Township did within thirty (30) days from the filing of this report of the Supervisors file exceptions to the report or a petition for a review, IT IS ORDERED AND DIRECTED that the said portion of a proposed road in Croyle Township, Cambria County, Pennsylvania, described as follows: "BEGINNING at the intersection of the within road with the southerly side of Legislative Route 11095, otherwise known as Route 760; thence between the property of Andrew Yanich and Curtis Weaver, South, 31°59' East 900 feet to a point; having a width of 50 feet; thence through the property of Michael Mindish, South 72°40' East 240 feet to a dead end, having a width of 33 feet, which is in accordance with the map, plan and drawing hereto attached, made part hereof and to be filed with the Clerk of Courts of Cambria County, Pennsylvania, "be and is hereby confirmed as a Township road and declared to be a part of the public road and highway system of the said Township of Croyle.

BY THE COURT: /s/Shettig, J.