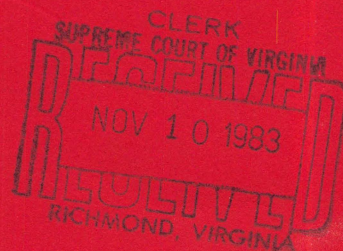


231 Va 239



IN THE
SUPREME COURT OF VIRGINIA

Record No. 821916

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA,

Appellant,

v.

JACK A. DENNISON and
EVELYN I. DENNISON,

Appellees.

APPENDIX

Gerald L. Baliles
Attorney General of Virginia

Walter A. McFarlane
Deputy Attorney General

James F. Hayes
Assistant Attorney General
101 North Eighth Street
Richmond, Virginia 23219

H. Ronnie Montgomery, Esq.
Montgomery and Kinser
Main Street
P. O. Box 66
Jonesville, Virginia 24263

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STATE HIGHWAY AND TRANSPORTATION)
COMMISSIONER OF VIRGINIA)
Petitioner)
v.)
JACK A. DENNISON)
Box 164)
Weber City, VA 24251)
and)
EVELYN I. DENNISON)
Box 164)
Weber City, VA 24251)
Respondents)

PETITION

Filed 7/10/79

To the Honorable Judge of the Circuit Court of Scott County:

Your Petitioner, the State Highway and Transportation Commissioner of Virginia, files this petition in accordance with Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article 7 of the Code of Virginia (1950), as amended, and such general laws as are applicable for the purpose of condemning the land hereinafter described and alleges as follows:

1. H. Ronnie Montgomery is duly authorized agent and attorney for the State Highway and Transportation Commissioner of Virginia, for the purpose of instituting this condemnation proceeding as is shown by a signed declaration hereto attached, marked Exhibit A, and asked to be read as a part of this petition, and H. Ronnie Montgomery is authorized to file this proceeding in the name of and on behalf of the State Highway and Transportation Commissioner of Virginia.

2. The real estate which is affected in this proceeding lies in Estillville Magisterial District, in Scott County, Virginia, and is further described as follows:

BEING as shown on Sheet 3 of the plans for Route No.

23, State Highway Project 0023-084-116, RW - 201, and lying on both sides of and adjacent to the center line of proposed Connection Route 727 from the lands of the Commonwealth (existing east right of way line of present Connection Route 727) at approximate station 8+73 to the lands of the Commonwealth (in existing west right of way line of present Route 23) at approximate station 9+40 and containing 0.08 acres, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain outlet ditch left of approximate station 9+16 containing 0.01 acre, more or less.

This property is also shown on a plan or plans on file in the Central Office of the State Highway and Transportation Department, Richmond, Virginia, identified as Route 23, Project 0023-084-116, RW - 201, Sheet No. 3 and 3 A, a copy of which plans are hereto attached, marked Exhibit B, and prayed to be read as a part of this petition.

3. The right and property taken and intended to be compensated for in this proceeding is the fee simple interest to the land shown within red lines on the aforesaid plans along with such easements as are needed, all of which is described and set forth in Exhibit B and described in detail in Paragraph 2 of this petition.

4. The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenance and repair of a Highway System known as Route 23, in Scott County, Virginia, all of which is properly declared in Exhibit A attached hereto.

5. This project is for the improvement of a section of arterial network Route 23 between Virginia-Tennessee State Line and 0.178 mile north Tennessee State Line and will include right to construct, reconstruct, repair and prove, alter and maintain the said route in accordance with the attached plans marked Exhibit B. It also includes the right to utilize the land in the future for: 1. construction, reconstruction, alteration, improvement, repair and maintenance of the said route, 2. for all other highway purposes, and 3. in accordance with all the rights and incidents normally required in the property buy (fee simple, easements, etc.).

6. Your Petitioner has made a bona fide but ineffectual effort to purchase said real estate and easement from the owner thereof and has been unable to do so because of the inability to agree upon the purchase price. In attempting to purchase said property, Petitioner has complied with § 25-248 of the Code and, to the extent applicable, has complied with § 33.1-89 of the Code.

7. On or about the _____ day of November, 1978, Petitioner caused to be recorded in the office of the Clerk of the Court in Deed Book 302, at page 185, Certificate No. C-29112 as provided by Title 33.1, Chapter 1, Article 7 of the Code.

8. Thereupon pursuant to the provision of the aforesaid Title 33.1, Chapter 1, Article 7 of the Code, title to the land described in Paragraph 2 vested in the Commonwealth of Virginia.

9. Your Petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained by this proceeding are Jack A. Dennison and Evelyn I. Dennison, his wife, subject to the following encumbrances of record: 1. a Deed of Trust from Jack A. Dennison and Evelyn I. Dennison to Ford C. Quillen, Trustee, to secure payment of one note in the amount of \$55,000.00, drawn in the name of Bank of Virginia of Weber City. Payable in monthly installments of \$711.69, Deed dated March 12, 1974, and recorded in Deed Book 279, Page 176. 2. Right of way easement for pole line conveyed to Appalachian Electric and Power Company, in a Deed from A. H. Carr and Mary Carr, dated August 29, 1945, recorded in Deed Book 125, Page 92. 3. Right of way easement for Route 23, Project 428-BR1 from Virginia-Tennessee State Line to Intersection Route 58, conveyed to Commonwealth of Virginia, in Deed from A. H. Carr and Mary K. Carr, dated February 5, 1942, recorded in Deed Book 114, page 351, as disclosed by title examination of the above described land.

WHEREFORE, your Petitioner respectfully prays to this Honorable Court that, in accordance with the provisions of Title 25, Chapter 1.1 of the Code, commissioners may be summoned and appointed to ascertain and report the value of the land taken (including easements and including the easement for the relocation of utilities if such relocation is required) and damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue, by reason of the taking; that this Court be directed to confirm the vesting of title in the Common-

wealth as aforesaid and take all such other steps to carry out the intents of Title 25, Chapter 1.1 and Title 33.1, Chapter 1, Article 7 of the Code as may be necessary; and that your Petitioner may have such other further and general relief as the nature of the case may require.

And your Petitioner will ever pray, etc.

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

By Counsel:


H. Ronnie Montgomery

MONTGOMERY, SANDERSON & KINSER
Attorneys at Law
P. O. Box 366
Jonesville, VA 24263

COMMONWEALTH OF VIRGINIA)

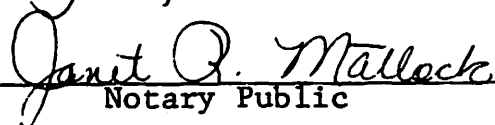
County of Lee)

To-wit:

This day H. Ronnie Montgomery personally appeared before me, the undersigned, a Notary Public in and for the County of Lee, Commonwealth of Virginia, in my jurisdiction aforesaid, and being first duly sworn, says that he is attorney for the State Highway and Transportation Commissioner of Virginia, and as such is duly authorized to execute the above Petition, and that the matters and things stated therein are true to the best of his knowledge and belief.

Given under my hand this 9th day of July, 1979.

My Commission expires: May 22, 1982.


Notary Public

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA
Petitioners

V.

JACK A. DENNISON
Box 164
Weber City, VA 24251

and

EVELYN I. DENNISON
Box 164
Weber City, VA 24251

Respondents

NOTICE OF PETITIONER TO
APPOINT COMMISSIONERS
AND RESPOND TO PETITION

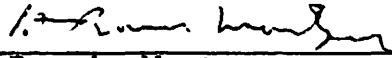
You are hereby notified that the State Highway and Transportation Commissioner of Virginia will, on the 24th day of October, 1979, at 9:30 a.m. o'clock, or as soon thereafter as the same may be heard, move and petition the Judge of the Circuit Court of Scott County, Virginia, at Gate City, Virginia, for the appointment of commissioners to ascertain the just compensation for certain lands or interest therein, which the State Highway and Transportation Commissioner of Virginia proposes to condemn for Highway Route No. 23, Project 0023-084-116, RW - 201, as is shown by plat and blueprint attached to the petition filed in the above styled cause, and to award damages, if any, resulting to the adjacent or remaining property of the owners, beyond the enhancement in value, if any, to such property, by reason of the taking. The ownership, location and description of the land and property which is proposed to be condemned, and the particular nature of the construction and location of said proposed highway will fully appear by reference to the attached petition and to those exhibits heretofore filed in this cause.

00006

Notice is hereby given that grounds of defense shall be filed to the Petition, in writing, within twenty-one days from the date upon which this notice was duly served and it shall include valuations of the land and interest to be taken and appraisal of any damages which may result to the residue by reason of the taking.

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

By Counsel:


H. Ronnie Montgomery

Montgomery & Ludwig
Attorneys at Law
P. O. Box 366
Jonesville, VA 24263

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

PETITIONER

VS.

ANSWER

Filed 7/23/79

JACK A. DENNISON, ET AL

DEFENDANTS

TO THE HONORABLE M. M. LONG, JR., JUDGE OF THE THIRTIETH JUDICIAL
CIRCUIT:

The defendants for answer to petition filed against them
in the above-styled matter or to so much as they are advised
they should answer say as follows:

Respondents say that the offer of \$13,600.00 represented by
Certificate No. C-29112 recorded in the Clerk's Office of Scott
County, Virginia in Deed Book 308 at page 185 for the land taken
and damage to the residue belonging to the defendants is
wholly and grossly inadequate to compensate them for the land
taken and the damage to the residue. Respondents ask that
commissioners be appointed by the Court as provided by law to
ascertain the value of the land taken and the damage to the
residue in this cause.

RESPECTFULLY SUBMITTED:

JACK A. DENNISON and EVELYN I. DENNISON, Defendants

BY C O U N S E L

00008

QUILLEN AND CARTER, p.d.

BY:

Ford C. Quillen

GATE CITY, VIRGINIA

CERTIFICATE

This is to certify that I, Ford C. Quillen, counsel of record for the defendants in the above-styled cause, have this day forwarded to H. Ronnie Montgomery, Esq., Attorney at Law, Jonesville, Virginia, a copy of the foregoing answer filed in the above-styled cause.

Given under my hand, this the 19th day of July, 1979.

Ford C. Quillen

ATTORNEY

PETITION

Filed 12/15/80

TO THE HONORABLE JUDGE OF THE 30th JUDICIAL CIRCUIT
OF THE COMMONWEALTH OF VIRGINIA

Your Petitioners would respectfully represent, aver and show
unto the Honorable Court as follows:

1.

Your Petitioners are the owners of the real estate sought to be
acquired by the State Highway Commissioner of Virginia in this proceeding.
The said Commissioner of the Department of Highways and Transportation
having filed with the Clerk of this Court on the 7th day of November,
1978, a Certificate of Deposit No. C-29112 in the amount of \$13,600.00,
which certificate is recorded in the Clerk's Office of Scott County, Vi
rginia, in Deed Book 308 at page 185.

Petitioners desire to be permitted to withdraw the sum
represented by the aforesaid certificate or so much thereof as the Court
will permit them to withdraw, pursuant to the provisions of Section 33.1-124
of the Code of Virginia of 1950 as amended.

Your Petitioners further represent to the Court that the
Petitioners each own a one-half undivided interest to and in said lands and
that the amount directed by the Court be paid to Petitioners should be paid
to the Petitioners jointly.

LAW OFFICES
OF
ORD C. QUILLEN
ATE CITY, VIRGINIA

00010

WHEREFORE, your Petitions pray that the Commissioner of the Department of Highways and Transportation of the Commonwealth of Virginia be made a party hereto and be required to show cause if any he can whether should not be disbursed to your Petitioners from the aforesaid sum represented with said Certificate of Deposit such amount as the Court shall deem proper. And your Petitioners shall every pray, etc.

RESPECTFULLY SUBMITTED,

JACK DENNISON

and EVELYN DENNISON

BY: COUNESL

LAW OFFICES OF FORD C. QUILLEN

BY:

Ford C. Quillen
FORD C. QUILLEN

I hereby accept service of the within petition and waive Notice of Hearing upon the same as provided by Section 33.1 - 124 of the Code of Virginia of 1950 as amended this the 15th day of December, 1980.

H. R. Montgomery
ATTORNEY FOR THE COMMISSIONER OF THE DEPARTMENT
OF HIGHWAYS AND TRANSPORTATION OF THE COMMONWEALTH
OF VIRGINIA

JACK DENNISON
and
EVELYN DENNISON

PETITIONER

VS

ORDER

Filed 12/17/80

STATE HIGHWAY AND
TRANSPORTATION COMMISSIONER
OF VIRGINIA

DEFENDANT

This cause came on this day to be heard upon the petition filed herein pursuant to Section 33.1-124 of the Code of Virginia of 1950 as ammended, and it further appearing unto the Court that counsel for the Commissioner of the Department of Highways and Transportation of the Commonwealth of Virginia has accepted service of said petition and waived the 21 days notice. And it further appearing unto the Court that the Commissioner of the Department of Highways and Transporation has filed with the Clerk of this Court on the 7th day of November, 1978, Certificate No. C-29112 of the Code of of 1950 as ammended in the amount of \$13,600.00, which certificate is recorded in the Clerk's Office of Scott County, Virginia, in Deed Book 308 at page 185.

It further appearing unto the Court the Petitioners are the owners of the tract or parcel of land being acquired by the Commonwealth of Virginia in equal portions.

It further appearing unto the Court that the petitioners are entitled to have paid over to them the funds represented by the aforesaid certificate. The Court doth hereby order that the Commissioner of Department of Highways and Transportation of the Commonwealth of Virginia deposit the sum of \$13,600.00 with the Clerk of this Court as provided by law.

Said funds will be paid to the Petitioner, Jack Dennison and Evelyn Dennison, by the Clerk of this Court.

It is further ordered that the Clerk of this Court should forward forthwith a certified copy of this Order to the Commissioner of the Department of Highways and Transportation of the Commonwealth of Virginia at Richmond, Virginia.

ENTER this Order this the 17th day of December, 1980.

S. W. Coleman, Jr.
JUDGE

WE ASK FOR THIS ORDER:

LAW OFFICES OF FORD C. QUILLEN

BY:

Ford C. Quillen
GATE CITY, VIRGINIA

SEEN:

COUNSEL FOR COMMISSIONER OF THE DEPARTMENT
OF HIGHWAYS AND TRANSPORTATION OF THE
COMMONWEALTH OF VIRGINIA

BY:

H. R. ...

20842
pg 116

VIRGINIA: IN THE CIRCUIT COURT OF SCOTT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA
Petitioner

VS.

Filed 3/24/82

JACK A. DENNISON, ET ALS.
Respondent

ORDER SUMMONING COMMISSIONERS

It appearing to the Court that the said State Highway Commissioner of Virginia has duly filed his petition in this Court seeking to condemn the land, or interest therein, described in said petition; that due and proper notice as required by law has been given to the defendants; that said parties hereto have submitted the names of six (6) free holders from which list the Court shall select the names of nine (9) persons to be summoned as Commissioners as provided by Section 25-46.20 of the Code of Virginia (1950), as amended.

Now, therefore, upon the motion of the petitioner, nine (9) disinterested freeholders who are residents of Scott County, Virginia, and whose names are as follows, to-wit: 1. Johnny Roberts, 2. Jerry McMurray, 3. Burl Jennings, 4. Vernon Cox, 5. E. T. Farmer, 6. Mila T. Vaughn, 7. Carl Peterson, 8. Wayne Bishop and 9. John Duncan
ALTERNATE COMMISSIONERS: 1. Emory D. Scott, 2. W. E. Darnell
McConnell

are hereby summoned to appear before this Court on the 31 day
of March, 19 82, at 9:30, and at such further
time or times as their presence may be required.

ENTER this Order this 24 day of March, 1982.

J. W. Coleman
JUDGE

H. RONNIE
MONTGOMERY
ATTORNEY AT LAW

BOX 366
JONESVILLE, VA.
24263

STATE HIGHWAY AND TRANSPORTATION)
COMMISSIONER OF VIRGINIA)

Petitioner)

V.)

JACK A. DENNISON, ET AL)

Respondent)

ORDER APPOINTING
COMMISSIONERS

Filed 3/31/82

It appearing to the court that Johnny Roberts, Jerry
McMurray, Burl Jennings, Vernon Cox, E. T. Farmer, Milo T.
Vaughn, Carl Peterson, Wayne Bishop and John Duncan

Alternate Commissioners; Emory D. Scott and W. E. (Darnell)
McConnell

have been heretofore summoned for service as commissioners herein,
and that four of said person, to-wit:
Jerry McMurray, Burl Jennings, Carl Peterson and Wayne Bishop

were struck as provided by Section 25-46.20 of the Code of
Virginia (1950), as amended:

NOW, THEREFORE, the court doth adjudge, order and decree
that Johnny Roberts, Vernon Cox, E. T. Farmer, Milo T. Vaughn
and John Duncan

be and they hereby are appointed commissioners herein, any three
or more of whom may act, whose duty it shall be to go upon and

view the land which is the subject matter of this proceeding, and fix the value of the land taken and damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of the taking.

Said commissioners shall view the land described in the petition with the landowner and with the State Highway and Transportation Commissioner, or any representative of either party, and none other.

ENTER

3/31/82

J. Robert Stump
Judge

*given
MS*

INSTRUCTION NO. 1

The Court instructs the commissioners that the State Highway and Transportation Commissioner of Virginia is empowered by statute to condemn the lands, and any and all interest and estates therein, described in the petition filed in this case, and the commissioners have no right to change the location of the highway nor the plans for such construction, for which the lands are being taken, nor to question the necessity for the amount of land being taken.

*given
MS*

INSTRUCTION NO. 2

The Court instructs the commissioners that they are to determine two questions in this proceeding; first, the just compensation for the lands or interest therein being taken; second, the damages, if any, to the remaining lands of the owner, beyond the enhancement in value, if any, to such residue, by reason of the taking.

*given
JRS*

INSTRUCTION NO. 3

The Court instructs the Commissioners that when private property is taken under the exercise of the power of eminent domain the law requires that just compensation be paid to the landowner. Just compensation means the fair market value of the land taken. Fair market value is defined as the price which one, under no compulsion, is willing to take for the property which he has for sale, and which another, under no compulsion, being desirous and able to buy, is willing to pay for that property.

*given
JRS*

INSTRUCTION NO. 4

In determining the fair market value of the property at the time of the taking, the commissioners may consider its adaptability and suitability for any legitimate purpose, but they should award only the fair market value of the land as it stands at the time of the taking in view of all the purposes to which it is reasonably and naturally adapted, and not its prospective or speculative value based upon future expenditures and improvements.

given
JRS

INSTRUCTION NO. 5

The commissioners must determine the fair market value of the land or interest therein and not what it may be worth to the landowners or State Highway and Transportation Commissioner personally. The use to which the land is to be put by the Commissioner does not affect its fair market value at the time of the taking.

given
JRS

INSTRUCTION NO. 6

The commissioners are instructed that if they believe from their view of the land and from the evidence before them that there is any enhancement in the fair market value of the owner's remaining property by reason of the construction or improvement contemplated or made by the State Highway and Transportation Commissioner, then the commissioners must offset the amount of such enhanced value against the damages, if any, resulting to such remaining property of the owner by reason of such construction and improvement; provided, that such enhancement in value shall not be offset against the value of the land taken.

given
MS

INSTRUCTION NO. 7

The commissioners are instructed that in determining whether there is any damage to the remaining lands of the owner by reason of the taking of the lands or interest therein described in the petition, the test is the difference in the fair market value immediately before and immediately after the taking, considering every circumstance, present and future, which affects its value. Remote and speculative profits and advantages, however, are not to be considered. While the commissioners may give consideration to individual items of damage, those items are not to be separately valued or added together in determining the damages to the residue.

given
MS

INSTRUCTION NO. 8

The commissioners are instructed that the burden is upon the owner of the property condemned to prove by a preponderance of the evidence that there has been damage to the residue of his property. On the other hand, the burden of proof to establish any enhancement in the market value to the remaining property by reason of the construction or improvement is upon the State Highway Commissioner.

given
MS

INSTRUCTION NO. 9

The Court instructs the commissioners that any loss of business, or profits from the business conducted on the land subject to this proceeding, is not compensable in this proceeding as an item of damage in assessing damages to the residue. You should be concerned only with its over-all change in fair market value as a result of the taking, and not with individual items of damage.

given
MS

INSTRUCTION NO. 10

The Court instructs the commissioners that in determining your award you cannot consider any expense or annoyance to the owner by reason of having to attend and defend these condemnation proceedings. Neither are you to consider any annoyance, inconvenience, or loss of business caused by dirt, noise or temporary obstruction of access caused by the actual carrying on of the construction work.

INSTRUCTION NO. 11

The commissioners are instructed to consider the value opinions offered as testimony by experts as well as facts and circumstances upon which those opinions are based. In determining whether the facts and circumstances fairly support the value opinions of experts, the commissioners may consider knowledge acquired on the view. The view, however, shall not be considered by the commissioners as the sole evidence in the case.

Further, this instruction should not be considered as permitting the commissioners to take arbitrary action and return an award not related to the value of the property. Your award must bear a reasonable relationship to the testimonial evidence presented.

INSTRUCTION NO. 12

The Court instructs the commissioners that it is not necessary that all agree upon the report to be made to the Court, but a majority of you have the right to reach a conclusion and file your report setting forth that conclusion. If a minority desires to do so, they may file a minority report.

The commissioners should not make an award by what is termed the "quotient method"; that is, a method whereby each commissioner indicates on a slip of paper or otherwise the amount which he thinks should be awarded, and all the commissioners agree in advance to make the award the amount obtained by dividing the total of such sums by the number of commissioners. An award made in this illegal manner is not valid.

given
MS

INSTRUCTION NO. 13

You are instructed that the landowner has a duty to minimize any damages resulting from this project. Thus, the reasonable costs of adjusting the residue to the new conditions and the inconvenience, if any, to the landowner in the future operation of his property caused by the project should be considered in ascertaining damages to the residue if expenditure of such costs will, minimize damages which would otherwise occur.

given
MS

INSTRUCTION NO. 14

The Court instructs the commissioners that the owner of land abutting a public highway is only entitled to reasonable access to his property. His rights of access are subordinate to the right of the State to control traffic over its highways. If you find that the landowners in this case will have reasonable access to the property after the construction of this project, you shall not make any awards for residue damages that might result from a change in access.

given
MS

INSTRUCTION NO. 15

The commissioners are instructed that the right to just compensation became vested in the owners of the lands, herein being condemned, as of the date of the taking by the State Highway and Transportation Commissioner. The time of the taking of the lands, or interest therein, subject to this condemnation proceeding was November 7, 1978, and just compensation for such lands, and damage, if any, to the remaining lands of the owner is to be determined as of that date.

STATE HIGHWAY AND TRANSPORTATION)
COMMISSIONER OF VIRGINIA)
Petitioner)

VS.)

JACK A. DENNISON, ET AL.)

Respondent)

REPORT OF COMMISSIONERS

Filed 3/31/83

TO: THE HONORABLE

J. Robert Stump

JUDGE OF THE SAID COURT

We the undersigned commissioners appointed by the above named court on MARCH 31, 1982, to fix the value of the land taken herein and damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue, by reason of the taking, do hereby certify that on MARCH 31, 1982, we were duly sworn and went upon said land in the custody of the Sheriff of SCOTT (~~city~~/county), Virginia, or one of his deputies, to view the same as directed by the order of said court, said land being briefly described as follows, to-wit:

Being as shown on Sheet 3 of the plans for Route 23, State Highway Project 0023-084-116, RW-201, and lying on both sides of and adjacent to the centerline of proposed Connection Route 727 from the lands of the Commonwealth (existing east right of way line of present Connection Route 727) at approximate Station 8+73 to the lands of the Commonwealth (existing west right of way line of present Route 23) at approximate Station 9+40 and containing 0.08 acre, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain outlet ditch left of approximate Station 9+16 containing 0.01 acre, more or less.

00026

Upon a view of the property and upon such evidence as was before us, we did fix the value of the aforesaid land taken by the State Highway and Transportation Commissioner ~~the taking~~ in the amount of \$ 35,000⁰⁰, and the damages which may accrue to the residue, beyond the enhancement in value to such residue, by reason of the taking, at \$ 37,000⁰⁰, which equals a total of \$ ~~72,000⁰⁰~~
72,000⁰⁰

Given under our hands this 31st day of March, 1982.

Carl J. Farmer
John E. Newman
Johnny Roberts
Thomas J. [unclear]

COMMISSIONERS

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

Petitioner

V.

JACK A. DENNISON, ET AL

Respondent

EXCEPTIONS TO REPORT
OF COMMISSIONERS

Filed 5/9/82

The State Highway and Transportation Commissioner of
Virginia excepts^{to} the report of commissioners for the following
reasons:

Exception No. 1: The Commissioner excepts to the
Judge's ruling wherein the Court did not strike Jerry McMurray /
who is the landowners personal insurance agent and the Commis-
sioner further excepts to the fact that the court did not strike
for cause Mr. McMurray and also Mr. Burl Jennings who was the
defendant's personal contractor and actually built three additions
to the landowners property that was involved in the condemnation.
Said buildings being added to just prior to the time of the
taking.

Exception No. 2: The Commissioner excepts to the
Court's ruling concerning testimony of George Howard dealing
with Mr. Howard's statement concerning access to the landowners
property.

Exception No. 3: The Commissioner excepts to land-
owners expert witness testimony of Jerry Deskins concerning his
testimony and appraisals being based upon sales according^{to}/Deskins
own testimony in 1979, 1980 and 1981, all after the date of the
taking.

Exception No. 4: The Commissioner excepts/^{to}the fact that the Court would not allow the State Highway appraiser to testify to the damage to the entire property at this location since the property was shown with both lots on the plans and the certificate filed in this case refers to the plans.

RESPECTFULLY SUBMITTED,



H. Ronnie Montgomery
Counsel for Petitioner

CERTIFICATE

I, H. Ronnie Montgomery, Counsel for Petitioner, do hereby affirm that I have this day mailed a true and correct copy of the foregoing Exceptions to Report of Commissioners to Ford Quillen, Attorney at Law, Gate City, VA 24251, this 6th day of April, 1982.



Attorney

Gentlemen:

The court has considered the trial transcript and oral argument of counsel in regard to the exceptions to the commissioners' award, and finds as follows.

Even though Commissioner McMurray was a friend of and sold insurance (unrelated to the property in question) to the landowner, he testified that he could be impartial. There is no conclusive presumption that such a close relationship would exclude him per se as a juror. C & O Railway v. Smith, 103 Va. 326. The court in its discretion accepted him as competent. He was then excluded from the trial by the Highway. There is no prejudice to it.

Evidence by the landowner's witness, George Howard, that a six-inch curb over which landowners would be forced to drive would decrease the value of the remaining property, was properly admitted to show inconvenience of the land in the future operation of his property as affecting the value of damages to the residue. Long v. Shirley, 177 Va. 401, 415. When counsel for the Highway cross-examined on this issue, he waived his right to object further. The six-inch curb was part of the admitted court exhibits (plans and specifications) introduced by the Highway, and properly subject to examination. Also instruction number 14 (offered by the Highway) cured the defect, if any.

Evidence offered by the Highway appraiser, Willis Blevins, as to an adjacent lot owned by landowners was properly disallowed because it was not relevant, too remote, and not part of the taking, plans or pleadings.

An apparent issue of first impression in Virginia is raised by testimony of the landowner's appraiser, Jerry Deskins, when he valued the property in question based on comparable sales after the day of taking.

But Deskins also based his opinion on comparable sale figures before the date of taking (transcript pages 76, 77, 78, 89 and 90), his examination of the property (transcript pages 74, 79), and personal knowledge of other sales (transcript page 90), which renders this unique issue moot.

The court will address this issue. "Evidence of comparable sales, to be admissible, must be of sales made under comparable conditions in point of time and circumstances." May v. Dewey, 201 Va. 621. In that case the Supreme Court of Virginia held, "the admission of evidence of sales after the taking and after the project had been completed and conditions materially changed did not reflect a fair market value of the property when taken."

In the case before the court the agreed day of taking was November 7, 1978. There was testimony of comparable sales in 1975, 1978, 1979, 1980 and 1981. The trial occurred on March 31, 1982, at which time there had been no construction

on the project affecting the property in question and thus no material change.

The appraisers for both parties related their opinions as to the fair market value of the property to the day of taking, either up (the Highway: by an inflation factor of 10% per year), or down (the landowners: by deflation factors of 10 to 12% per year), depending on the particular day of the comparable sale.

Good common sense dictates that if the Highway (or any party) can increase the value of comparable sales at a reasonable rate before the day of taking, then likewise the landowner (or any party) can decrease the value of comparable sales at a reasonable rate after the day of taking, so long as the project has not been completed, there has been no material change and the fair market value opinion relates to and is comparable to the day of taking.

Also the Highway appraiser, Blevins, based his opinion on a comparable sale of the Billings' property, which was in fact only an offering dated June, 1978 (before the date of taking), and the landowners' appraiser, Deskins, based his opinion on the same comparable finalized sale of the Billings' property dated February, 1981 (after the date of taking). These facts further confirm the old addage that "what is good for the goose is good for the gander."

Furthermore, counsel for the Highway cross-examined Deskins on the comparable sales after the day of taking, and therefore waived his right to object further on this issue.

The court overrules the exceptions to the commissioners' award. Counsel shall prepare an order for entry reflecting the above.

Sincerely,

J. Robert Stump
Judge

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

Petitioner

v.

JACK A. DENNISON, ET AL

Defendant

ORDER CONFIRMING
'COMMISSIONERS' REPORT

Filed 7/26/82

This day came the State Highway and Transportation Commissioner, by his attorney, and it appearing to the Court that the report of the commissioners hereinbefore appointed with the certificate of the Judge of this Court administering the oath to the said commissioners, was on the 31st day of March, 1982, duly returned and filed by the Court herein, and that Exceptions to Report of Commissioners have been filed by Counsel for Petitioner, and was argued by counsel; the exceptions of the Report of Commissioners having been overruled by the Court. Further, an appeal is contemplated and the transcript of the hearing shall be made a part of the record in this order pursuant to Rule 5:9 (a) Supreme Court Rules, if an appeal is taken.

And, it appearing to the Court that the said commissioners ascertained that the value of the land taken herein was \$35,000.00 and that the damages to the residue, beyond the enhancement in value to the residue by reason of the taking, was \$37,000.00, and it appearing that the said report should be confirmed; therefore, the Court doth approve, ratify and confirm said report in all particulars, and doth confirm unto the Commonwealth of Virginia the fee simple title to the following property:

That land, or interest therein, lies in Estillville Magisterial District of Scott County, and is described as follows:

Being as shown on Sheet 3 of the plans for Route 23, State Highway Project 0023-084-116, RW-201, and lying on both sides of and adjacent to the centerline of proposed Connection Route 727 from the lands of the Commonwealth (existing east right of way line of present Connection Route 727) at approximate Station 8+73 to the lands of the Commonwealth (existing west right of way line of present Route 23) at approximate Station 9+40 and containing 0.08 acres, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain outlet ditch left of approximate Station 9+16 containing 0.01 acre, more or less.

And further, it appearing to the Court that the State Highway and Transportation Commissioner has heretofore caused to be recorded in the Clerk's Office of this Court Certificate No. C-29112 for \$13,600.00, and that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of Sections 33.1-119 and 33.1-122 of the Code of Virginia (1950), as amended, the Court doth Adjudge, Order and Decree that the State Highway and Transportation Commissioner of Virginia pay to the Clerk of this Court on behalf of Jack A. Dennison and Evelyn I. Dennison,

the sum of \$58,400.00, with interest at the rate of six per cent per annum on the sum of \$58,400.00, this being the excess of the award over the amount represented by the aforesaid Certificate of Deposit, from the 7th day of November, 1978, the date on which the above mentioned certificate was duly recorded in the Clerk's Office, to July 1, 1981, and interest eight per cent per annum on the sum of \$58,400 from July 1, 1981 to the date upon which the principal sum is paid into Court; and the Court doth further order that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the certificate aforesaid; and that the proceedings herein be recorded and indexed as provided by Section 25-46.27 of the Code of Virginia (1950), as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where Certificate of Deposit No. C-29112 is spread.

And the Court doth further order and direct that the costs herein, including \$20.00 each to the Commissioners appointed herein, namely: Johnny Roberts, Vernon Cox, E. T. Farmer, Milo T. Vaughn and John Duncan and the sum of \$10.00 to Jerry McMurray, Burl Jennings, Carl Peterson and Wayne Bishop who were summoned and appeared but did not serve herein, shall

be paid by the State Highway and Transportation Commissioner of Virginia, and the same shall be charged and taxed by the Clerk of this Court as part of the costs herein, as provided by law.

And nothing further remaining to be done in this cause, the same is hereby stricken from the docket of this court.

Enter this Order this 26th day of July, 1982.

J. Robert Stump
J. ROBERT STUMP, JUDGE

WE ASK FOR THIS ORDER:

LAW OFFICES OF FORD C. QUILLEN, p.d.
Gate City, VA

BY Ford C. Quillen
FORD C. QUILLEN

SEEN AND OBJECTED TO:

BY: H. Ronnie Montgomery
H. RONNIE MONTGOMERY

H. RONNIE
MONTGOMERY
ATTORNEY AT LAW

BOX 366
JONESVILLE, VA.
24263

00037

1
2 VIRGINIA,

3 IN THE CIRCUIT COURT OF SCOTT COUNTY

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7 STATE HIGHWAY AND TRANSPORTATION
8 COMMISSIONER OF VIRGINIA,

PETITIONER,

9 v.

10 JACK A. DENNISON, ET AL.,

RESPONDENTS.

11
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13
14 APPEARANCES:

15 H. RONNIE MONTGOMERY, ESQ., Jonesville, Virginia

16 Attorney for Petitioner.

17 FORD C. QUILLEN, ESQ., Gate City, Virginia

18 Attorney for Respondents.

19
20
21 BEFORE THE HONORABLE J. ROBERT STUMP, JUDGE

22 March 31, 1982

23
24 Circuit Court Room
25 Court House
Gate City, Virginia

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Voir dire	3			
Opening Statement Behalf Petitioner	16			
Opening Statement Behalf Respondents	17			
<u>Evidence Behalf Petitioner</u>				
Willis Blevins	21	34	48	
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Jack Dennison	90			
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<hr/>				
Exhibit Highway Maps	Property taken			16
Exhibit Picture Gulf Service Station	Building on lot taken			93

1 This cause came on to be heard on this 31st day
2 of March, 1982, before the Honorable J. Robert Stump, Judge,
3 holding the Circuit Court of Scott County, Virginia, sitting
4 at Gate City, Virginia, and Commissioners, when the following
5 were all of the proceedings had and evidence introduced, to-
6 wit:

7 The Court Reporter was sworn to make a true and
8 accurate record of all proceedings.
9

10 THE COURT: Is the State Highway ready?

11 MR. MONTGOMERY: We are ready, Your Honor.

12 THE COURT: Is the landowner ready?

13 MR. QUILLEN: Yes, Your Honor.

14 THE COURT: Call around the Commissioners.
15

16 The Clerk called the following Commissioners to
17 the jury box: Johnny Roberts. Jerry McMurray. Burl Jennings.
18 Vernon Cox. E. T. Farmer. Milo T. Vaughn. Carl Peterson.
19 Wayne Bishop. John Duncan. The panel was duly sworn to
20 answer the voir dire.

21 BY THE COURT:

22 Gentlemen of the Commission this is a case today
23 of State Highway and Transportation Commissioner of Virginia
24 v. Jack A. Dennison and Evelyn I. Dennison. This is a con-
25 demnation proceeding brought by the State Highway Department
to obtain lands for the highway against the landowners, Mr.

1 and Mrs. Dennison. Are all of you gentlemen residents of
2 Scott County, Virginia?

3 A. (All affirmative answers.)

4 Q. Do all of you own a freehold interest in land
5 in Scott County, Virginia?

6 A. (All affirmative answers.)

7 Q. Are any of you stockholders or employees of
8 the State Highway Transportation Department?

9 A. (All negative answers.)

10 Q. Do any of you have any interest, direct or
11 indirect, in the outcome of this case?

12 A. (All negative answers.)

13 Q. Have any of you made or been requested to make
14 an appraisal of the property involved in this case?

15 A. (All negative answers.)

16 Q. Owned by Jack Dennison and his wife? Have
17 any of you formed or expressed any opinion with regard to
18 any of the issues involved in this case?

19 A. (All negative answers.)

20 Q. Have any of you gone on the land involved
21 either with the landowner or with the State Highway employees
22 in regard to making a determination as to the value of the
23 property?

24 A. (All negative answers.)
25

1 Q. Are any of you sensible of any bias or pre-
2 judice that you might have in this case?

3 A. (All negative answers.)
4

5 Q. Do any of you know of any reason why you
6 could not make a fair and impartial award of compensation
7 and damages, if any, according to the law and evidence in
8 this case?

9 A. (All negative answers.)

10 THE COURT: Does the State Highway have questions?
11

12 BY MR. MONTGOMERY:

13 Q. Gentlemen, my name is Ronnie Montgomery and
14 I represent the Highway Department. I want to ask you a few
15 questions here to find out what you do and what you know
16 about this case. How many of you consider yourselves
17 personal friends of Mr. Dennison? Let's start over here?

18 A. Yes, I do.

19 Q. What is your name?

20 A. Jerry McMurray.

21 Q. What is your occupation, Jerry?

22 A. Insurance Agent.

23 Q. With Nationwide?

24 A. Yes, sir.

25 Q. Does Mr. Dennison have insurance with you?

A. Yes, sir.

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Q. Did you know you were going to be on this commission?

A. No.

Q. Did Mr. Dennison mention it to you?

A. No.

Q. Have you been represented by Mr. Ford Quillen or any member of his firm?

A. No.

Q. This property involves the Scott County Tobacco Company near the State Line. Have you discussed with anybody what the road may or may not do to that property?

A. No.

Q. Do you serve on any boards, committees, or civic organizations, or go to church with Mr. Dennison?

A. No.

Q. Do you consider yourself a personal friend as well as insurance agent of Mr. Dennison?

A. I do.

Q. How long have you known him?

A. Twenty-five years.

Q. Do you live near each other?

A. Probably five miles.

Q. Do you think your personal relationship as well as the fact you have a business relationship with Mr. Dennison

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would keep you from in any way or embarrass you and keep you from making an unbiased decision and award what you felt was fair and just in this case, if anything?

A. I believe I could be impartial.

Q. Now, Mr. Roberts, you consider yourself a personal friend of Mr. Dennison?

A. Yes, I do.

Q. Are you in business in Weber City or have you been?

A. No.

Q. Did Mr. Dennison ever mention anything to you about this?

A. No.

Q. Has Mr. Quillen or any member of his firm ever represented you?

A. No. I knew his father.

Q. As far as doing legal business for you, have they ever done any legal business for you?

A. No, sir.

Q. Have you discussed this property down there with anybody?

A. No, sir.

Q. Do you go to church or belong to any organization with Mr. Dennison? Do you all get together on a social basis?

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A. I have.

THE COURT: The Commissioner will have
to speak up so that we can get it on the record.

Q. What is your name, sir?

A. Burl Jennings.

Q. Mr. Jennings, where do you live?

A. Weber City.

Q. Do you consider yourself a personal friend of
Mr. Dennison?

A. I do.

Q. Is he a close personal friend?

A. A good friend.

Q. Would the fact that you are a good friend
cause you any embarrassment about awarding money or not
awarding any money for the property taken by highway and
located near the State Line?

A. No.

Q. Have you ever worked for Mr. Dennison or worked
with him?

A. I have done some work for him.

Q. What type of work have you done for Mr.
Dennison?

A. Construction work.

Q. What type of construction work do you do?

A. Building.

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Q. Did you work on that building down there?

A. I built all of his additions but I did not build the original building.

Q. Had you heard this case discussed? The case has been going on for four and a half or five years. Had it been mentioned to you there would be some type of proceeding about this land?

A. No, sir.

Q. I take it you are not in business now either directly or indirectly and not doing anything for Mr. Dennison now?

A. No, sir.

Q. And you are Mr. Vernon Cox?

A. That's right.

Q. Do you consider yourself a close personal friend of Mr. Dennison?

A. Yes, sir.

Q. What has been your relationship with him?

A. Well, I have done some work for him, carpenter work.

Q. On this building down there, the Scott County Tobacco Center?

A. Yes.

Q. Did you work with Mr. Jennings on these additions?

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A. I might have worked down there two or three days with Burl.

Q. Any other business relationship?

A. I did some minor repair work on his home.

Q. Do you think the fact you have done some work for him would that in any way embarrass or prevent you from reaching an unbiased decision on the value of the land taken?

A. Whatever I think is fair.

Q. Do you know Ford Quillen?

A. I know him.

Q. Does he or his firm represent you at this time?

A. No.

Q. Have you ever used his firm to do any legal work for you?

A. No.

Q. And what is your name, sir?

A. E. T. Farmer.

Q. How long have you known Mr. Dennison?

A. Around twenty years.

Q. Do you consider yourself a close personal friend of Mr. Dennison?

A. Just a casual friend.

Q. What do you do, Mr. Farmer?

A. Furniture retailer.

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Q. Have you ever been in business with Mr. Dennison?

A. No, sir.

Q. Did you realize you were going to be put on this commission before you got the notice?

A. No, sir.

Q. Do you know Ford Quillen?

A. Yes, I know him.

Q. Do you consider him your attorney?

A. Not my attorney but he is a good friend.

Q. You are Milo Vaughn?

A. Yes, sir.

Q. Where do you live, Mr. Vaughn?

A. Route 1, Duffield, Virginia.

Q. Are you a close personal friend of Mr. Dennison?

A. I know him.

Q. Do you work with him?

A. Years ago I did.

Q. Where did you work together?

A. At Rogersville, Tennessee, at the steam plant.

Q. What did you do there?

A. I was a rigger.

Q. What is a rigger?

A. A steel worker.

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Q. Would the fact you worked with Mr. Dennison cause you any embarrassment about sitting on this commission and making an unbiased decision?

A. No.

Q. You are Wayne Bishop?

A. Yes.

Q. Where do you live, Mr. Bishop?

A. Duffield.

Q. And what do you do?

A. I am assistant plant manager at Norris.

Q. Do you know Mr. Dennison?

A. No, sir.

Q. Have you ever used Mr. Quillen or his firm for legal work?

A. No, sir.

Q. Mr. Peterson, where do you live?

A. Duffield.

Q. Do you know Mr. Dennison?

A. No, sir.

Q. What do you do?

A. I work at Tennessee Eastman.

Q. Have you ever had Mr. Ford Quillen or his firm do any legal work for you?

A. His father started it but Ford finished it up. It was estate settlement.

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Q. And you are Mr. Duncan?

A. Yes, sir.

Q. Do you know or are you a personal friend of Mr. Dennison?

A. I know him.

Q. How do you know Mr. Dennison?

A. I used to eat at the restaurant.

Q. And is that the only way you knew him?

A. Yes, sir.

Q. What do you do?

A. I am retired but I used to work at LENIWISCO. I was a security guard when I got laid off.

Q. When was that?

A. Two years ago this past September.

Q. Did you have some type of case with LENIWISCO? Some grievance proceeding?

A. No, sir.

Q. Has Mr. Ford Quillen or any member of his firm done any legal work for you?

A. I used his father as my lawyer.

THE COURT: Mr. Quillen?

MR. QUILLEN: We have no questions, Your Honor.

THE COURT: Any Motions?

MR. MONTGOMER: Yes, Your Honor.

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THE COURT: Approach the bench.

MR. MONTGOMERY; The fact Mr. McMurray does business with Mr. Dennison we think he should be stricken for cause, Your Honor.

MR. QUILLEN: There is nothing about the fact he has insurance with Mr. McMurray that would make any difference I don't think he should be stricken for cause. The building is not being taken.

THE COURT: Does he carry insurance on the building?

MR. QUILLEN: We might ask him that.

THE COURT: Go ahead.

MR. MONTGOMERY: Mr. McMurray, do you carry insurance on this building down there?

MR. McMURRAY: I don't have any of his business insurance at all. No, sir.

THE COURT: That takes care of it. I will overrule your motion.

MR. MONTGOMERY: Judge, let me approach the bench again. Mr. Jennings said he did all the work on the additions to the building. It has been added onto three times.

THE COURT: It is my understand there are no buildings involved in the taking or damage to the residue. Is that going to be part of the evidence?

MR. QUILLEN: There will be no value put on the

1 buildings. The building was constructed after the taking
2 and it is chiefly a warehouse building.

3 THE COURT: They really should not enter into
4 the evaluation one way or the other.

5 MR. MONTGOMERY: That is not the point. He did
6 substantial work for him on this building there.

7 MR. QUILLEN: He stated he no longer had any
8 relationship whatsoever and you have asked him if he could
9 be impartial and he said that he could.

10 THE COURT: Did he say he could be impartial even
11 though he had worked for Mr. Dennison? I didn't make a note
12 of that. I don't remember that particular one but I know
13 he asked several of them the question.

14 COURT REPORTER: He said he would not be embarrassed
15 because of friendship.

16 THE COURT: I will overrule the motion. Proceed
17 with the strikes.

18 (Commissioners stricken from panel were Jerry
19 McMurray, Burl Jennings, Carl Peterson, and Wayne Bishop)
20 Commissioners were duly sworn by the Clerk.

21 THE COURT: Is counsel ready with opening state-
22 ment?

23 MR. MONTGOMERY: Yes, Your Honor.

24 MR. QUILLEN: Judge, we are going to object to
25

1 the use of this map. This lot is 174 feet. Their own
2 figures are inaccurate as to what they are taking.

3 MR. MONTGOMERY: How is that?

4 MR. QUILLEN: You are taking a portion of 174 foot
5 lot and you have down there 280 feet. These lots were
6 acquired at different times.

7 THE COURT: Of course this could be explained to
8 the Commissioners.

9 MR. QUILLEN: Judge, let's take this up in chambers.

10 MR. MONTGOMERY: I will withdraw that one and we
11 can use this map.

12 MR. QUILLEN: O. K. I have copy of that.

13 THE COURT: Proceed.

14 The following opening statement was made to the
15 Commissioners by Mr. Montgomery:

16 Gentlemen, I want to show you a map of what is
17 involved. This is the property owned by Mr. Dennison. This
18 is the road coming to Gate City, Route 23. What is involved
19 is eight-hundredths (.08) of an acre, a piece of land the
20 State is using to make a cross-over to get into the back over
21 here, what is in red here. This that is in green is one-
22 hundredths (.01) of an acre and Mr. Denninson still owns it.
23 The State is taking this part here to use as a cross-over.
24 You can take this down there with you. We will further
25

1 explain this when we put on evidence. Also when you go
2 down there it has been marked off by flags and tape which
3 indicate these pieces of land and you can look at it.
4 The date involved in this is November 7, 1978. That is
5 when the Highway Department filed a Certificate and paid
6 Mr. Dennison an amount of money. The evidence will be from
7 the Highway Department that they valued the property at
8 \$75,000.00 an acre in November 1978. The State filed a
9 Certificate for \$13,600.00 and Mr. Dennison drew that down.
10 What you will be mainly involved with today is to determine
11 whether that is the exact amount or he is due more or less.
12 The testimony from both sides will be based on whether he
13 will get more or less or the same.
14

15 After Mr. Quillen makes an opening statement we
16 will go down and look at the property and come back and hear
17 the testimony from both sides.

18 The following opening statement was made on behalf
19 respondent by Mr. Quillen:

20 What this is the State Highway Department condemning
21 land down there to connect with the project coming from
22 Tennessee over there. They call their road 137 or something
23 like that, we call it U. S. 23, you can see the construction
24 coming over into Scott County. Of all the people who are
25 having to give up land down there by reason of this constructio

1 Mr. Dennison is by far giving up the biggest piece of land.
2 Now what this is all about I think everybody considers the
3 State Line property to be the most expensive property in
4 Scott County. Because of the volume of traffic on U.S. 23
5 that land is very valuable. I think we can show you by the
6 evidence today just how valuable that property is, and what
7 we think is a fair price for Mr. Dennison.
8

9 Right here is the boundary lines of the property
10 and it runs from here to here (Referring to map previously
11 referred to by Mr. Montgomery.) This is going toward the
12 Tennessee side. And they are taking all of this property
13 here out of this lot right here.

14 Roy Robinson, a Gulf Distributor in Big Stone,
15 bought this property in June 1973. The lot runs 190 feet
16 on the back and 174 feet on the front. They bought that
17 lot for \$28,000.00 in 1973. In less than a year Mr. Dennison
18 negotiated a sale from Mr. Robinson and he bought this lot
19 in 1974, this lot here, for \$50,000.00. In other words
20 this lot had gone up in value in less than a year from
21 \$28,000.00 to \$50,000.00, an increase there in less than
22 a year of 78%. The evidence will be Mr. Dennison has bought
23 1/3 interest in another lot down here, the Neeley lot. He
24 paid \$30,000.00 here last year for a 1/3 interest in a lot.
25

MR. MONTGOMERY: Your Honor, I am not sure it

1 is evidence - what he paid last year.

2 MR. QUILLEN: This is right on the same
3 route....

4 MR. MONTGOMERY: It doesn't matter where
5 it is. This is confined to November 1978.

6 THE COURT: Confine your opening to what
7 you intend to prove as evidence. Anything
8 after the date of taking I don't think would
9 be admissible.

10 We will show the land in this area here is very
11 valuable today. You have a place there prior to this sale
12 here which they have been working on for 2 1/2 years and
13 which was nothing but a mountain top and this was on U. S.
14 23 back down on this side, and they paid \$92,000.00 for
15 that property. You will see the Black Diamond Property
16 on the other side...
17

18 MR. MONTGOMERY: Your Honor, that property
19 certainly wasn't sold in 1978. It has been a
20 year or two.

21 THE COURT: Stick to the evidence that
22 you intend to present. Anything after the date
23 of taking of course is inadmissible.

24 Our evidence will be this lot here is very suitable for
25 development as high commercial property, high volume business

1 property. The Highway Department came back and took this
2 property. They are taking here 66 feet of this thing and
3 they are taking 80 some feet of the back. They in fact are
4 taking about 36 percent of the lot. They have in fact by
5 what they are taking destroyed the high commercial property
6 value. You have 16,000 cars a day traveling down U. S. 23.
7 The evidence will be Mr. Dennison had to give up what he was
8 going to use the property for. Mr. Dennison is entitled
9 to get paid for the best property in Scott County. He thinks
10 he has been damaged in the sum of \$35,000.00. We will offer Mr
11 George Howard and Mr. Jerry Deskins who deal in real estate
12 and know the value of this property taken. You will have
13 no access from here over to here (referring to map). This
14 is the big take of all the property taken down there and he
15 is entitled to an award in the neighborhood of what we will
16 be talking about.
17

18 THE COURT: At this time the Commissioners will
19 go with the Sheriff who will take you to a vehicle and he
20 will take you onto the scene and you will take a view of the
21 property at this time. So if you will go with the Sheriff,
22 he will show you where to go. You will return here after-
23 wards and have evidence in the case presented.
24

25 (Commissioners departed at 10:30 a. m. to view
the property, and returned to open court room at 11:00 a. m.)

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1 The trial was continued.

2 All witnesses were called, sworn, and excluded
3 under the rule.

4 MR. MONTGOMERY: Your Honor, I submit the
5 two maps as Petitioner's Exhibit No. 1.

6 THE COURT: The Highway Maps of the property
7 in question will be admitted into evidence as
8 Exhibit No. 1, without objection.

9 Call your first witness.

10
11 WILLIS E. BLEVINS

12 a witness called on behalf of Petitioner, after first being
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MONTGOMERY:

16 Q. For the record state your name?

17 A. Willis E. Blevins.

18 Q. And what is your occupation?

19 A. I am employed by the Virginia Department of
20 Highways and Transportation as a Real Estate Appraiser.

21 Q. How long have you worked for the Highway
22 Department?

23 A. Twenty years.

24 Q. How long have you been a Real Estate Appraiser
25 in that Section?

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A. Since July of 1969.

Q. What department did you work in before '69?

A. I was in construction engineering.

Q. Have you had occasion since 1969 to work on highway projects throughout the State of Virginia?

A. Yes, sir, I have.

Q. Did you have occasion to inspect a piece of land owned by Mr. Dennison down here on 23, U. S. 23?

A. Yes, sir, I did.

Q. How did you go about appraising that property, Mr. Blevins?

A. First of all I determined the land value by searching the area to find recent sales that were sold in order to find sales that were comparable to the subject property. And also by inspection of the buildings to determine the construction cost and the value of those, and then by adding the two together to come up with the total value of the property.

Q. You made a survey of sales of real estate in that area up to that time you made the appraisal?

A. That is correct.

Q. How many pieces of property did you use in your basis of comparison to arrive at a figure?

A. I was able to find several sales. However, in my appraisal I considered four of these to be the most

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1 comparable.

2 Q. And what time are we talking about? When
3 was this?

4 A. In '78.

5 Q. What month? Do you remember? Spring, summer
6 or fall?

7 A. When I appraised the property?

8 Q. Yes?

9 A. My first contact was in May.

10 Q. And what four pieces of property did you
11 determine that had been sold that you considered to be com-
12 parable to this property?

13 A. The four that I used which were considered to
14 be comparable to the property was the property known as the
15 Bantam-Chef, located this side of Weber City. A Mr. Frank
16 B. Smith sold it to the Bantam-Chef and this sale was in
17 December 1975 for \$21,000.00 for one-half acre.

18 The next sale I considered - this sale was located
19 over on the Tennessee side in Lynn Garden. Mr. R. C. Ewing
20 sold to McDonalds' Corporation, and this is where the
21 McDonalds Restaurant is located, in April of 1978. Eighty-
22 seven one-hundredths (.87) of an acre for \$82,500.00.

23 Another sale also in the Lynn Garden Area where
24 the Jiffy Market is where Mr. Lawrence Wheatley sold to the
25

1 Jiffy Food Markets, Incorporated, seven-tenths (.7) of an
2 acre for \$85,000.00. This was in January of 1978.

3 Q. January of '78?

4 A. Yes, sir. At the time also a piece of property
5 I considered was right across from the subject property,
6 Good Will Industries had an offering to sell, this was only
7 an offering but I did look at it because I could not find
8 anything else, and they were offering two and seventeen-
9 hundredths of an acre (2.17) for \$150,000.00. Of course
10 now this is across the creek but it did have access by
11 concrete bridge.
12

13 Those are the four sales I used and by using these
14 sales and considering the differences in these and the sub-
15 ject property I arrived at a value of \$75,000.00 per acre
16 for this land.

17 Q. Well, state whether or not you adjusted these
18 sales for inflation. I know that Bantam-Chef was in December
19 of 1975?

20 A. Yes, I did consider the time of these sales.

21 Q. We are talking about what date the taking of
22 this property?

23 A. Date of taking was November 1978.

24 Q. And all of these four sales you considered
25 were before that?

A. Yes, sir.

1 Q. You did adjust the Bantam-Chef property for
2 inflation from December 1975 to November 1978?

3 A. Yes, sir, I did.

4 Q. What did you determine the adjusted price for
5 in 1978, for the Bantam-Chef Property, adjusted for inflation?
6

7 A. It was adjusted \$10,000.00 because we used
8 the 10 percent annual.

9 Q. In other words it would have been \$31,000.00
10 for one-half acre, or \$62,000.00 per acre?

11 A. Yes, sir.

12 Q. How about the Lynn Garden Property, McDonalds,
13 in April of 1978 there?

14 A. That also was adjusted \$1,500.00 for the time
15 period of two months. The other sale in Lynn Garden was
16 of course adjusted \$6,000.00 and the offering since it was
17 a current offering was not.

18 Q. Now this Good Will Offering, is that directly
19 across the street, or U. S. 23 there where the G. M. C.
20 Place is, I believe it is G. M. C. or Don's Motors?

21 A. There is an automobile dealership of some
22 kind in there, yes, sir.

23 Q. And they were offering 2.17 af an acre for
24 \$150,000.00?

25 A. Yes, \$150,000.00 or \$69,000.00 per acre.

1 Q. Would you describe Mr. Dennisons' property
2 there, what he owns at that location?
3

4 A. It consists of a lot which fronts along
5 U. S. 23 for 288 feet and is approximately 60 foot in depth.

6 MR. QUILLEN: Your Honor, that is com-
7 pletely inaccurate. The lot they are taking
8 is....

9 THE COURT: I think I understand your
10 objection.

11 MR. QUILLEN: There is only one lot
12 involved.

13 THE COURT: I will sustain the objection.
14 You might restrict your questioning only to
15 the lot that is affected by the taking and the
16 damage to the residue.

17 MR. MONTGOMERY: Your Honor, Mr. Dennison
18 owns a lot and then he bought this lot in
19 question right adjacent. I mean he uses them
20 as one entity.

21 THE COURT: That is not really relevant
22 to this particular case. There is only one
23 lot involved. Isn't that correct?

24 MR. MONTGOMERY: Your Honor, it is tied
25 in so you can't hardly really separate it.
There was a little building on it before he

1 bought this second lot and since then he has
2 put on three additions.

3 THE COURT: What if he owned 5 acres
4 that was adjacent to the property? Would you
5 consider that as a part of the taking in this
6 case?

7 MR. MONTGOMERY: You would consider
8 damage to the residue for the whole 5 acres,
9 certainly. If there are 5 acres or 500 acres,
10 we are not concerned with property he owns in
11 Dungannon, we are concerned with what he owns
12 right there at the Scott County Tobacco
13 building.

14 MR. QUILLEN: Your Honor, the Highway
15 Department is limited to the property they are
16 taking and we are limited to the damage to the
17 residue of the lot they are taking. The Court
18 does not allow us to get damages to the residue
19 of adjoining property Mr. Dennison may own.
20 We are not allowed because he owns 3 or 4 lots
21 next to it, we are limited to the lot that is
22 taken and if we tried to do that, the Court
23 would throw us out. But here this may has
24 testified that the lot
25

1 MR. MONTGOMERY: We can divide it up.
2 You haven't even give us a chance to divide
3 it up.
4

5 MR. QUILLEN: Let me finish if I can.
6 He has testified to the Commission that the lot
7 that was taken was 190 feet back and 174 feet
8 in front. This man here is talking about a
9 lot 270 some feet which has nothing to do with
10 this taking. His evidence has to be related
11 to what was taken. We are limited to the damages
12 of the value of property taken and the damages
13 to the remainder of that lot. If they don't
14 have their act together any better than that,
15 Judge, that is not admissible.

16 MR. MONTGOMERY: I don't think you need
17 to comment...

18 THE COURT: Don't comment. I am going
19 to restrict the evidence to the lot that a
20 portion has been taken and damages, if any,
21 to the residue of that particular one lot and
22 any evidence as to any other property will not
23 be admissible. That is my ruling.

24 MR. MONTGOMERY: Your Honor, we will
25 need a minute to divide up the appraisal on

1 these two lots. If we could have just a few
2 minutes to confer.

3 THE COURT: Any objections?

4 MR. QUILLEN: The condemning was back
5 in 1978 and if they don't know what they are
6 condemning, Judge, they....

7 MR. MONTGOMERY: We know what we are con-
8 demning and so does Mr. Quillen.

9 THE COURT: I will give you a minute to
10 confer with your witness. Of course subject
11 to the cross examination of Mr. Quillen. Go
12 ahead.

13 MR. MONTGOMERY: May we confer out of
14 chambers?

15 THE COURT: We will take a 5 minute recess.

16 SHORT RECESS.

17 The following proceedings were had in chambers,
18 all counsel being present:

19 THE COURT: Proceed.

20 MR. MONTGOMERY: Judge, I want to bring up this
21 point again. Our appraiser considered this property, granted
22 Mr. Dennison bought it at two different times, but he is
23 using it as an integral unit of property. He has built -
24 all the buildings are adjacent - they go across the property
25

1 lines you know where the two lots were. One building was
2 down here on the North and he kept adding onto it over to and
3 continuing on across this last piece of property. Our Appraiser
4 made his appraisal he considered it as one piece of property
5 although we did file just on this piece of land we are taking
6 coming off the piece of property that was bought last by Mr.
7 Dennison. But the appraisal was based on and it is all
8 adjacent and it is used as a wholesale tobacco warehouse.
9 Really without it our appraisal we don't hardly have any
10 testimony. We think since it is used as one unit of business
11 and apparently was bought for that purpose, at least that is
12 what he is using it for now, you should allow testimony on
13 both lots.
14

15 MR. QUILLEN: Judge, I think it would be glaring
16 error. They have condemned a piece of property purchased by
17 Mr. Dennison in 1974. I don't know what all other property
18 Mr. Dennison owns but the piece of property the Highway
19 Department condemned in their Petition a portion of the lot
20 he purchased in 1974. That lot is in itself 190 feet on the
21 rear, 60 feet wide, and 174 feet frontage. Of that lot they
22 are taking about one-third of that lot. I think the Court
23 always limits I mean the taking is the taking of this particular
24 lot which we purchased in 1974. That is what this lawsuit is
25 about. Obviously the Court and I think properly so would

limit us to any damage to the residue/ to the remainder of the portion of property which they are taking and not to any other property we had acquired eight years, six years, or ten years before. That would be glaring error there. I think we are limited very much to the property which they are taking.

THE COURT: I don't have the pleadings here in chambers with me. What do the pleadings say? Are they talking about lots or just one lot?

MR. MONTGOMERY: The pleadings just talk about this one lot, a part of which is being taken by the Highway.

THE COURT: Can you rise any higher than the pleadings, Mr. Montgomery? I mean how far can you go? That is the problem.

MR. QUILLEN: The Highway Department would never want that and they would be the first ones here to object. If I were trying to include everything in, they would be the first ones here to say "Hold on, you cannot go on my farm over here that...."

MR. MONTGOMERY: We are not talking about that.

MR. QUILLEN: They would be the first ones to say we are limited here to this particular tract we are condemning. They would be the first ones in the world to come forward because they don't want to get damages to the residue on property which they were not condemning.

1 THE COURT: I can see possible error here being
2 committed if I allow you to go into this second lot and
3 for this reason that we are going to confuse the Commissioners
4 by testimony concerning another tract of land which is really
5 not subject to the litigation or to the pleadings involved.
6 If we went the other way the Commissioners might say there
7 is more damage to the residue and this could go to the
8 benefit of the landowner. I am not about to allow that.
9 In other words look what it has damaged No. 2 over here,
10 the fact you have taken a third of the first lot has damaged
11 Lot No. 2. Of course there is no case in regard to Lot 2.
12 I think it is irrelevant and I am going to stick with my
13 previous ruling to restrict it only to the pleadings in the
14 first lot partially taken.
15

16 MR. MONTGOMERY: We except, Your Honor.

17 The following proceedings were had in open court,
18 the Commissioners and all counsel being present:

19 The witness, Willis Blevins, resumed the stand
20 and Mr. Montgomery continued Direct Examination:

21 Q. Mr. Blevins, what did you value the damage
22 to the lot down there, what is it a 190 foot lot by 174?

23 A. Total damage \$6,925.00.

24 Q. And how about the damage to the residue?

25 A. That is the damage to the residue. The value

1 of the take? Is that what you want?

2 Q. Yes, the value of the take?

3 A. I placed a value on the property being taken,
4 the land and the easement, \$6,675.00. And the damage to
5 the residue of \$6,925.00.

6 Q. That makes a total of what?

7 A. Total \$13,600.00.

8 Q. During the course of your appraisal you were
9 on this property several times?

10 A. Yes, sir, I was.

11 Q. Are you familiar with where the corners are,
12 that 174 foot by 190 foot, the quarter acre lot?

13 A. Yes, sir.

14 Q. Did you observe whether or not before Mr.
15 Dennison bought this property his building was a couple of
16 feet over on the quarter acre lot?

17 A. Yes, from my observation and the information
18 I had it appeared his building was on this quarter acre lot.

19 Q. That was before he bought it?

20 A. Yes, sir.

21 Q. He encroached about how much in your estim-
22 ation?

23 A. As I recall probably two or three feet

24 MR. MONTGOMERY: That's all. You may ask him.
25

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CROSS EXAMINATIONBY MR. QUILLEN:

Q. Mr. Blevins, did you ever get a survey made? The property he bought from Mr. Robinson, did you ever get that surveyed?

A. No, sir.

Q. Are you trying to say Mr. Dennison's first building was over on this lot?

A. From the plans I had, yes, sir, and from looking at it on the ground.

Q. And you never had a survey made to verify anything you are saying?

A. No, sir, I didn't have a survey made.

Q. Mr. Blevins, why would you make a statement like that without really knowing what you are talking about?

A. I said from my observation and from my plans.

Q. Have you ever bought and sold real estate in Scott County, Virginia?

A. No, sir, I haven't.

Q. You have never put any of your money out to buy any property down there on the State Line?

A. No, sir, I haven't.

Q. It is a very high commercial area down there, isn't it?

A. Yes, sir.

1 Q. In fact every lot as you come across 23 there
2 at the State Line has a business just about, doesn't it?

3 A. It is a very well developed area.

4 Q. In fact there is very little land left down
5 there, is there?

6 A. No, sir.

7 Q. In fact they are tearing out a mountain, as
8 you go by the Oakwood they are tearing out a mountain to
9 get space on there on 23, aren't they?

10 A. Yes, sir.

11 Q. And on the other side of the road there across
12 from Oakwood they are tearing up that in order to get some
13 space on U. S. 23? Is that true?

14 A. Yes, sir.

15 Q. And you go on down there to where Black
16 Diamond is they are tearing out more to get space, aren't
17 they?

18 A. Yes, sir.

19 Q. It is very valuable land, isn't it?

20 A. Yes, sir.

21 Q. It is the most valuable in Scott County?

22 A. I don't know about that.

23 Q. You talked about the McDonald lot. Did you
24 go over and talk to any of the McDonald People about that
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lot there where McDonalds is?

A. Yes, sir. I talked to the people who sold the lot to McDonalds.

Q. How many months were they in there drilling and tearing the rock out of that particular lot?

A. I don't know.

Q. How much money did they have to spend on the McDonald lot to make it suitable to put a building there?

A. I don't know how much they spent.

Q. A million, a half million?

MR. MONTGOMERY: Your Honor, that is irrelevant. It doesn't matter. It is what it sold for. If it cost 25 million dollars to develop it, it still brought what he testified

THE COURT: I sustain the objection.

Q. You don't know how much it took to get that lot a suitable business lot, do you?

A. No, sir, I don't know how much was spent there.

Q. How much would it cost there to clear off a lot of Mr. Dennisons that you all are taking?

MR. MONTGOMERY: Judge, I think that is immaterial and irrelevant.

THE COURT: I sustain the objection.

MR. QUILLEN: Surely the value of a lot is what it is going to cost in preparation

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to have it where it is useable.

THE COURT: You have already got a lot that is useable now and that is what we are talking about here today.

MR. QUILLEN: McDonald's lot wasn't and he admitted it wasn't.

THE COURT: Certainly you can go into what the lot looked like before it had a McDonalds put on it.

Q. You are aware of the fact that they had to drill and blast there to get the McDonald Lot cleared up, aren't you?

A. No, sir.

Q. You never came by and saw that?

A. I came by but I am not aware of what they did to develop the lot. It was just a vacant lot. When I found the sale it was vacant and it didn't have nothing on it.

Q. To determine the value of what the property is don't you have to know what it is going to cost to get the property developed so

MR. MONTGOMERY: Your Honor, I object to that because the sales price takes in the value of developing a piece of property. If a piece of property is level it is going to bring more than if it is a hole or a hill. You don't

1 pay as much for a cliff as you would for a
2 quarter of an acre of level land on U.S. 23.
3

4 THE COURT: I agree.

5 MR. MONTGOMERY: The sales price takes
6 that into consideration.

7 THE COURT: I sustain the objection. At
8 the same time you might ask him as to the com-
9 parison between the McDonald Lot undeveloped
10 and the lot in question that has been condemned.

11 Q. Can you compare the McDonald lot in the con-
12 dition you saw it when it was sold and Mr. Dennison's lot
13 and tell us the difference in development in those lots?

14 A. The McDonald lot had about a 20 percent slope
15 on it from the road toward the rear.

16 Q. Do you know whether there was rock underneath
17 that slope?

18 A. No, sir, I don't.

19 Q. Well, before you value property....

20 MR. MONTGOMERY: Your Honor, if he wants
21 to ask this witness questions I don't object
22 object to him questioning the witness, but he
23 has a tendency to testify on cross examination.
24 He throws in an awful lot of hypotheticals.

25 THE COURT: Well, don't testify.

1 MR. QUILLEN: I will try not to, Judge.

2 MR. MONTGOMERY: This is not closing
3 argument yet.
4

5 Q. Being as good a real estate man as you are with
6 the Highway Department would you do a little core drilling
7 on the land before you would ever buy a lot?

8 A. No, it could have been developed for many
9 different things. McDonalds happened to want to do that much
10 grading before they developed it. Rock would have been
11 perfectly suitable for the development of a commercial
12 establishment.

13 Q. Wouldn't you like to know how much that is
14 going to cost you to get that thing graded out.

15 MR. MONTGOMERY: Your Honor, it doesn't
16 matter. I have objected to this and he has
17 sustained it twice. And I object to it again,
18 Your Honor.

19 MR. QUILLEN: He has admitted there was
20 a lot with 20 percent grade and he doesn't know
21 whether it has rock on it and he is trying to
22 say that is comparable to Mr. Dennison's property
23 which has no rock on it and is flat.

24 THE COURT: I think you can certainly
25 bring that out but I am going to restrict you

1 from questioning him as to developmental costs.

2 MR. QUILLEN: A real estate man buying
3 lots without knowing what it is going to cost
4 to get it in shape, Judge, maybe I am wrong.

5 THE COURT: That may be true but it is
6 not relevant to this case.

7 MR. QUILLEN: He has used it as comparable
8 property himself.

9 THE COURT: That is without being developed
10 and this property here I don't know what it was
11 like before it began. I don't know whether it
12 was comparable or not.

13 Q. Let's talk about this property here. Did you
14 go down there and check the deeds where Mr. Dennison bought
15 the property?
16

17 A. I don't recall if I read the deed or not.

18 Q. You mean you would appraise property for the
19 Highway Department and never look at the deed by which the
20 person whose property is taken bought the property?

21 A. I had an abstract of the property. Yes, sir,
22 I had the deed.

23 Q. Well, let me ask you a question. This is the
24 deed right here where Mr. Dennison bought the property?

25 A. I suppose it is.

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Q. Well, what did he pay for the property?

A. According to this he paid \$50,000.00.

Q. Isn't that important - how can you come as a representative of the Highway Department and not even know what the man paid for the property when he bought it?

A. I knew what he paid for it.

Q. What did he pay for it?

A. He paid \$50,000.00 for it.

MR. QUILLEN: We would like to introduce this deed into evidence, Your Honor.

THE COURT: Any objections?

MR. MONTGOMERY: No, Your Honor.

THE COURT: This will be...

MR. MONTGOMERY: Make it our exhibit, Judge.

MR. QUILLEN: We want it. Make it our exhibit, Judge.

THE COURT: This will be Defendants' Exhibit No. 1.

Q. What date did he buy this property?

A. March 12, 1974.

Q. Who owned the property before he did?

A. R. G. Robinson.

Q. What did Roy pay for the property when he bought it?

1 MR. MONTGOMERY: Your Honor, I object
2 to that. I don't think it matters really.
3 It is a little remote.
4

5 THE COURT: Yes, it is.

6 Q. Do you know what date he bought it?

7 A. Who?

8 Q. Roy Robinson?

9 A. No, sir.

10 Q. Well, you used a figure that property inflates
11 10 percent? Is that correct?

12 A. Yes, sir.

13 Q. If Mr. Dennison bought the property for
14 \$50,000.00 in March of 1974, it would inflate to March 1975
15 10 percent? Would that be your figures?

16 A. I do not consider what Mr. Dennison paid for
17 the property to be a market value.

18 Q. Why didn't you?

19 A. Because one sale does not make the market
20 when I have all these other sales in the area.

21 Q. Did you go talk to him?

22 A. As far as he is concerned but it doesn't make
23 the market.

24 Q. Are you trying to say Mr. Dennison lived in
25 Scott County and bought from a gentleman in Big Stone Gap

1 that this was not an open sale?

2 A. NO, I am not saying it wasn't an open sale, I
3 am saying it was not representative of the market.

4 Q. You don't think that is atypical?

5 A. No, not at all.

6 Q. You will concede he paid \$50,000.00 for the
7 property?

8 A. Yes, I sure will.

9 Q. Well, let's assume that the \$50,000.00 is a fair
10 price and if you inflate thsy 10 percent, and that is your
11 figure now, that means at the end of the first year that
12 property would be worth \$55,000.00, wouldn't it?

13 MR. MONTGOMERY: Your Honor.....

14 MR. QUILLEN: Judge, can I ask him using his
15 figures?

16 THE COURT: Well, let's see what the objection
17 is going to be first.

18 MR. MONTGOMERY: I think he is tring to
19 make Mr. Willis his own witness. HE has appraisers
20 himself, Mr. Deskins and that other fellow, I
21 can't think of his name right off, and they can
22 show this. I think instead of cross examining
23 him he is trying to introduce testimony himself.

24 THE COURT: If I recall correctly Mr. Blevins
25

1 himself used the figure 10 percent inflation
2 on the other properties that he compared. I
3 am going to allow this examination.

4 Q. Mr. Dennison did pay, let's just do a little
5 figuring here, you don't like what he paid, but he paid
6 \$50,000.00 for the lot in '74 and you put 10 percent on
7 that it would be worth \$55,000.00 in one year, wouldn't it?

8 A. Yes, sir.

9 Q. And you put 10 percent on it the next year it
10 would be worth \$60,250.00, wouldn't it? And if you put 10
11 per cent the next year \$66,250.00 would it not?

12 A. Yes, sir.

13 Q. And you put another 10 percent on it, it would
14 be worth \$72,100.00 in 1977, wouldn't it?

15 A. Yes, sir.

16 Q. And then it would be worth - when the property
17 was taken by the Highway Department, it would be worth
18 almost \$80,000.00, wouldn't it?

19 A. Yes, sir.

20 Q. And you are taking down there a third of this
21 property? Just about?

22 A. About. Yes, sir.

23 Q. Well, don't you think a third of \$80,000.00,
24 it looks like to me using your own figures there of 10 percent
25

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1 that he would be entitled,

2 MR. MONTGOMERY: Your Honor, I want to
3 point out that is Mr. Quillen's assumption and
4 not the witness' assumption. He has already
5 said that one sale does not make a market.

6 THE COURT: You can point that out in
7 your argument or on redirect.

8 Q. He would be entitled to \$26,000.00 for the
9 land you have taken down there, wouldn't he?

10 A. Not in my opinion, no, sir.

11 Q. If you think that property in Scott County
12 inflated 10 percent, you used that figure yourself, and
13 we will assume Mr. DENNison bought this on open sale, how
14 can you get around those figures? If the property there
15 is worth \$80,000.00, he would be entitled for the property
16 the one-third you have taken down there of about \$28,000.00?
17 How can you explain that if it is not a fair principle?

18 A. The object is to determine what a typical
19 purchaser could buy property for. And I cannot see a
20 typical purchaser if he wanted to buy property on 23 would
21 pay that price for it ehrrn he can go elsewhere and get
22 it muvh cheaper.

23 Q. What did Bill Click and that bunch pay for a
24 mountain down there.
25

1 A. I have it. It will take me awhile to look
2 it up.

3 Q. They paid \$100,000.00 for that mountain down
4 there?

5 A. I had several sales along there.

6 Q. Are you saying Mr. Dennison's property is
7 comparable to the Click Property there next to the Oakwood?

8 A. I am not familiar with the Click PROPERTY you
9 are talking about. I am saying Mr. Dennison's property is
10 comparable to the sales that I gave you.

11 Q. Did you ever go talk to FRank Smith?

12 A. Yes, sir. I did.

13 Q. He sold his property to the Bantam-Chef,
14 didn't he?

15 A. Yes, he did.

16 Q. Didn't he sell it to himself?

17 A. He has an interest in it.

18 Q. In fact the Bantam-Chef is a Frank Smith
19 corporation, isn't it?

20 A. I allowed for that.

21 Q. And that was one of the sales you used?

22 A. Yes, sir.

23 Q. Really that was not an open sale, that was a
24 man sold it to himself, wasn't it?
25

A. He had an interest in the property, yes, sir.

1 Q. Well, did he have an interest in the Bantam-
2 Chef?

3 A. Yes, sir, he did. That is what I said.

4 Q. And when a man sells property to himself, is
5 that an open sale? Is that what you all use in the Highway
6 DEpartment to tell whether it is a good sale or not?

7 A. You use what you have. What you can come up
8 with.

9 Q. You won't use \$50,000.00 of Mr. Dennison's
10 money but you will use somebody when they sell it to them-
11 selves?

12 A. The Bantam_Chef sale was more typical.

13 Q. The Bantam-CHEf property is in Weber city, isn't
14 it? It is not on the strip down there at the State Line,
15 is it?
16

17 A. No, sir. It is in Weber City. You have several
18 sales between there and the property that indicates much
19 lower value.

20 Q. Are you saying that the property in Weber City
21 is worth as much as the property on the strip down there at
22 the State Line?

23 MR. MONTGOMERY: Your HONOR; broad
24 generalizations like that really is not
25 appropriate.

THE COURT: I will overrule the objection.

1 Q. If we would use your 10 percent the property
2 would be worth \$80,000.00 assuming Mr. Dennison paid a sales
3 price of \$50,000.00 for it?

4 A. By your figures.

5 Q. Sure.

6 MR. QUILLEN: I have no further questions.
7

8 REDIRECT EXAMINATION

9 BY MR. MONTGOMERY:

10 Q. Mr Blevins, do you think the fact Mr. Dennison
11 already had a lot adjacent to this and had a going business
12 there caused him to pay more or less for this quarter acre
13 lot than some complete stranger?

14 A. Certainly the property would be worth more to
15 him than anyone else.

16 MR. MONTGOMERY: Thank you.

17 (Witness stands aside.)

18 THE COURT: Gentlemen, it is 12:15 and we will
19 take lunch break and return here at 1:15.

20 Commissioners, while you are out for lunch do not
21 discuss the case with anyone or allow anyone to discuss the
22 case with you or in your presence.

23 Return here at 1:15.
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WEDNESDAY AFTERNOON SESSION

(March 31, 1982)

The Hearing was continued.

MR. MONTGOMERY: Your HONOR, we rest.

The following evidence was introduced on behalf
of the Respondents:

GEORGE HOWARD

a witness introduced on behalf of the respondents, after first
being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUILLEN:

Q. State your name, please?

A. George E. Howard.

Q. Where do you live, Mr. Howard?

A. Gate CITY, Virginia.

Q. How long have you lived in Scott County?

A. All of my life.

Q. What is your business or profession at this time?

A. I am a Virginia Real Estate Broker and a
Tennessee Real Estate BROKER.

Q. Do you own real estate in Scott County, Virginia?

A. Yes, sir.

Q. Do you own real estate on U. S. 23?

A. Yes, sir.

1 Q. Have you bought and sold real estate in Scott
2 County, Virginia?

3 A. Yes, sir.

4 Q. Are you familiar with real estate on U. S. 23
5 near the State line?

6 A. Yes, sir.

7 Q. Do you know where Mr. Jack Dennison's property
8 is located down there?

9 A. Yes, sir.

10 Q. Have you gone on the property that at one time
11 had a Gulf Station on it, a lot some 190 feet by 174 feet,
12 are you familiar with that lot in there?

13 A. Yes, sir. The old Gulf service station prop-
14 erty over there.

15 Q. For the purposes of testifying here in Court
16 did you go on that property and make an appraisal concerning
17 the land taken by the Highway Department and any damages to
18 the remaining portion of that particular lot?

19 A. Yes, sir.

20 Q. How long have you been familiar with that
21 particular property, Mr. HOWARD?

22 A. Ever since I can remember.

23 Q. Go ahead and describe briefly to the Commission-
24 ers the value and the best use of the property on the State
25

1
2 Line area down there?

3 A. Mr. Dennison's property 174 foot frontage on
4 U. S. 23 and 61 foot depth. To date this appraisal would
5 be the 11-7-78 I believe it is.

6 MR. MONTGOMERY: Did you say 11-7-78?

7 WITNESS: I believe that is right, sir.

8 MR. QUILLEN: That is the date the
9 property was taken.

10 MR. MONTGOMERY: He said that was the
11 date of his appraisal. Did you appraise it
12 the same date?

13 WITNESS: As of the same date, yes, sir.

14 Q. Go ahead?

15 A. I went on the property at the time of the
16 taking on 11-7-78. There was no income from the property.
17 It was improved with what I call 1950 Model Gulf Service
18 Station. The building has been demolished for a couple or
19 three years maybe. I gave the improvements absolutely no
20 value.

21 Q. All right, sir?

22 A. It is a level lot between the old highway and
23 the new highway. I gave it a value of \$95,700.00 as on
24 11-7-78.

25 Q. Do you know when Mr. DENNison bought this

1 property and what he paid for the property?

2 A. Yes, sir. I went to the records of Scott County
3 and I found he bought that property in 1974.

4 Q. What was his purchase price for the property?

5 A. \$50,000.00, sir.

6 Q. When you determined on November 7, 1978, that the
7 property was worth \$95,000.00, how did you determine it was
8 worth \$95,000.00 at the time of taking?

9 A. I compared that with sales which I considered
10 comparable property in the area before and after the appraisal
11 date. I also took the price Mr. Dennison paid for the prop-
12 erty and added an inflation factor to it and brought it up
13 to date as a check.

14 Q. When you put an inflation factor and increased
15 the value from that date to the date that you are using
16 11-7-78, what inflation factor did you use?

17 A. I used 12 percent.

18 Q. If this property had inflated 12 percent as you
19 stated from the date of purchase when it was purchased for
20 \$50,000.00 what would be that figure?

21 A. My figures show and as I say I used this as a
22 check.

23 Q. Right?

24 A. As a check only back against the value I had
25

1 given the property totaled \$88,116.00.

2 Q. That is what the property that was purchased
3 for \$50,000.00 back in March of 1974 would be worth on
4 11-7-78 if inflated at 12 percent?

5 A. Yes, sir.

6 Q. For real estate purposes would 12 percent have
7 been a recognized figure of inflation during that period
8 of time?

9 A. Your question is a little bit too broad there.
10 Real estate in general over all yes, but for Mr. Dennison'
11 property no, I think it is a low figure. I consider the
12 property in that area along that highway some of the best
13 property in Scott County. It has a long history of being
14 retail sales, high volume market type deals down through
15 there and I feel it would go up faster than that. Good
16 properties go up faster and the lower properties less.

17 Q. In regard to this particular tract of property
18 do you know the predecessor what this property was bought at
19 and what that price was prior to this?

20 MR. MONTGOMERY: Your HONOR, we objected
21 to that awhile ago.

22 MR. QUILLEN: Judge, this particular
23 piece of property the history on it would be
24 relevant to his figures.
25

1 THE COURT: I think you have already
2 made your point. It might become remote and
3 irrelevant and I will sustain the objection.
4

5 Q. I don't want to trespass on the Court but can
6 I ask this question. What was the percentage of inflation,
7 Mr. Howard, between the sale made prior to this on this
8 particular piece of property?

9 MR. MONTGOMERY: I object to that, Your
10 Honor.

11 THE COURT: You are talking about when?

12 MR. QUILLEN: I think we are talking about
13 nine months before Mr. Dennison bought it and
14 that certainly is pretty close to when he bought
15 the property.

16 MR. MONTGOMERY: Of course what he is getting
17 at really with inflation rates you can take an
18 abstract assumption and prove anything with an
19 inflation rate. I don't think what somebody
20 paid for it 9 months before is going because
21 it may have been stolen. You base an inflation
22 rate on something and....

23 MR. QUILLEN: Mr. Howard said in his
24 opinion this property inflates at a faster
25 rate than 12 percent. I think we are entitled

1 to show what this property has inflated with
2 in its sales history, Your Honor. We are not
3 talking about some other property, we are talking
4 about the property this suit is all about.
5

6 THE COURT: I think that would be too
7 remote to go back beyond the date of purchase
8 by Mr. Dennison for several reasons I can think of.
9 I don't think it would be proper so I will sustain
10 the objection.

11 Q. Mr. Howard, I think you just testified you used
12 12 percent which you state is a low figure, you would come
13 up the property would be worth \$80,116.00 for that particular
14 tract?

15 A. Yes, sir.

16 Q. What value did you put on the tract as of 11-7-78?

17 A. The figure is \$95,700.00 and that is the tract
18 as a whole.

19 Q. As a whole?

20 A. Yes, sir.

21 Q. Did you determine - did you take these maps
22 the Highway Department has filed here as part of their petition
23 and determine how much land they were taking?

24 A. Yes, sir.

25 Q. Did you put a value on the land that they were

1 taking from Mr. Dennison?

2 A. Yes, sir. My figures and on a piece of property
3 and this is strictly - on a piece of property like this I
4 think you have to get back to a front footage basis. My
5 front footage basis as it comes off this map is 62 feet they
6 are taking.

7 MR. MONTGOMERY: Your Honor, I will ask
8 the Court to rule on this, I think he can
9 testify as to front footage but I think he has
10 to lay a foundation. I mean just to haul off
11 and give some figure on front footage - I
12 believe it has to be a comparable land some-
13 where in the area to base it on.

14 THE COURT: Just lay your foundation
15 first.

16 Q. You are figuring on 62 foot frontage?

17 A. Yes, sir.

18 Q. Did you make any calculation for the front
19 footage basis?

20 A. Yes, sir, I did.

21 Q. Are there some comparable sales that you used
22 on the front footage basis?

23 A. There were several sales, I think something
24 like six, and I eliminated them back to about three.
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Q. Which ones are you using?

A. I used the Erwin to McDONALDs Corporation over on Lynn Garden Drive.

Q. What did that property sell for a front foot?

A. It sold for \$486.59 for a front foot.

Q. Can you describe that property and tell the Commissioners the difference in that property and Mr. Dennison's property?

A. Yes, sir. Depth wise it is a better piece of property. Location wise I don't think it is a very good comparison to be honest with you. Mr. Dennison's property is on the Virginia side. He has certain tax advantages and different products and so forth which makes his piece of property more valuable. Also his is a level lot and the way I remember the McDonald piece of property there was a considerable amount of grade work that had to be done, including blasting and drilling rock and so forth.

Q. What are the other ones you used?

A. I used the Starnes Heirs to Bill Click.

MR. MONTGOMERY: What was the date of that sale may I ask you?

WITNESS: McDONALDs?

MR. MONTGOMERY: No, Starnes sale?

WITNESS: October 4, 1978.

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Q. What did you find out about that one?

A. On U.S. 23 it fronts 192 feet on the same side as Mr. Dennison's property. I don't like the property as comparison because there was ~~18~~ acres, but there was considerable grade work to be done. I went ahead and run it on a front footage basis and \$500.00 per frpnt foot.

Q. What other one did you use?

A. The other one did you use? It was the NEELEY Heirs deeded to Scott County Tobacco Company, dated June 16, 1981.

MR. MONTGOMERY: I object to that one.

Q. Did you discount that one back down?

MR. MONTGOMERY: I don't think you can back into it either, trying to do indirectly what you can't do directly. I object.

THE COURT: I think there is some case law just on point here. I don't know whether you all can cite me any but it seems like there is some that won't allow apprasial after the date of taking.

MR. QUILLEN: I will not go into any values

Q. Is this property located down there - I will not go into that.

THE COURT: All right.

1 Q. What value did you put on this property here
2 then - this property taken? What the Highway is taking
3 here from Mr. Dennison? What value did you put on what
4 the Highway is actually taking?

5 A. Sir, in my opinion on Mr. Dennison's property
6 it is worth \$550.00 a front foot and they took 62 foot of
7 Mr. Dennison's property and 62 foot by \$550.00 a front foot
8 comes out to \$34,100.00.

9 Q. What is the best and most advantageous use
10 of this particular property?

11 A. High volume commercial business of some sort,
12 commercial property.

13 Q. Now how much damage do you consider to the
14 remaining portion of this property after the take?

15 A. After eliminating the 62 front foot Mr.
16 Dennison will then have a piece of property 112 foot by 61
17 and I think that comes out to about 6832 feet. Really he
18 has got a place to put three 2000 foot houses. I doubt if
19 you could walk around it after he builds that. In my opinion
20 I dropped the highest and best use of this property from
21 high volume commercial to low volume commercial.

22 Q. Would you explain to the Commissioners what
23 you consider high volume commercial and what you consider
24 low volume?
25

1 A. Minute Market, I don't think we have enough
2 need for a fast food, but a Minute Market, service station,
3 and this sort of thing.
4

5 Q. As an example of what?

6 A. As high volume use of the property.

7 Q. That would be the best use of the property?

8 A. Yes, sir.

9 Q. Now give me an example of what you dropped
10 it down to? What are you talking about there?

11 A. Small used car lot, tomb stone sales, or
12 something of that nature.

13 Q. I take it from what you say when this lot was in
14 its entirety was 198 feet by 174 at that point in time you
15 thought its best use was high volume commercial establishment
16 and by reason of the taking it has decreased the size now
17 and you have re-classified the best use of the property?

18 A. Yes, sir.

19 Q. How much do you think that the remaining
20 property has been hurt or damaged by reason of this taking?

21 A. It knocked it down from \$550.00 a running
22 front foot down to \$350.00 a front foot, based on 112 feet
23 which gives the remaining property that he has got about
24 \$39,200.00, and he would have damages then of \$22,400.00
25

Q. Damages to the residue of \$22,400.00?

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A. Yes, sir.

Q As you go down U. S 23 down near the State Line is property very scarce there in that area?

A. Yes, sir.

Q. Is there presently constrction going on to make areas out of the mountain side there?

A. Yes, sir. It is a continual history of grading and trying to make level property on H. S.23. The reason for it is the traffic count. In 1978 at the time Mr. DENNISON's property was being taken the traffic count on U. S. 23 at the State Line according to the State Highway was 17,695 every 24 hours average.

Q. Historically for some reason is the property on the side where this property is located more valuable than the property on the other side?

A. Yes, sir.

MR. MONTGOMERY: Your Honor, I think there would have to be some showing that is true. It may very well be true but there has not been any foundation laid for it.

MR. QUILLEN: He is an expert.

THE COURT: It is true he is an expert but I am sure you are going to lay some foundation for that question too.

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1 Q. Which property is the more valuable, this
2 side here or the other side?

3 A. The property on the West hand side of U. S. 23
4 historically, and I think that can be proved by just riding
5 through. You see more business in that section on the
6 right hand side than you do on the left hand side, or the
7 East side. It is beyond me the reason for it. We know the
8 people in Scott County in this area here work in Kingsport,
9 they do their shopping over there and so forth, but why one
10 side has a higher value and is a better location than the
11 other side I cannot answer you why but it is true.
12

13 Q. Now was there access to this property here
14 prior to the Highway Department coming in?

15 A. Yes, sir, excellent access on both the North
16 and South bound lanes.

17 Q. In regards to the South bound lane....

18 MR. MONTGOMERY: Your Honor, I object
19 to anything else about access because access
20 is not an element of damage.

21 THE COURT: I would certainly think that
22 would go to the value of the property. I
23 think that would be a proper consideration
24 to determine the value.
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MR. MONTGOMERY: He would have the same

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access really now as he has got.

Q. By reason of the construction of the plans, Mr. Howard, would cars coming South to Kingsport have access directly into Mr. Dennison's property?

A. No, sir.

Q. Why is that?

A. The reason those plans the way they were explained to me I understand there is a curb and gutter where now they are entering the subject property and they will not be able to enter. It is going to bring on major trouble for him I believe.

Q. Have you examined the plans there from the Highway Department?

A. Yes, sir. As far as that one area is concerned, yes, sir. I understand there will be no crossing over coming out of Tennessee to get to Mr. Dennison's lot but even when they make the turn I understand there will be a curb and gutter installed and they cannot enter his property the way they are entering it now.

Q. Does that decrease the value of his remaining property?

A. Yes, sir.

MR. QUILLEN: Your witness.

CROSS EXAMINATIONBY MR. MONTGOMERY:

Q. The only thing you will have will be a curb up there and two parking places that you won't be able to turn right into?

A. Yes, sir. And you will find very few people that want to drive over a six inch curb to get into a parking place at any business.

Q. You will be able to come across there just exactly like you are now? There will just be a curb between the alley so to speak and his property where there is no curb now? There won't be a curb on 23?

A. No, sir, they will be able to go on his property that you all own it now. You still have to go back on Old W. S. 23 and cut back to the right and then cut back to the right again to get into his property.

Q. Just like they are coming in there now except for approximately two or three parking places is what is going to be in effect taken?

A. No, sir. They can go into his property on the front and cut to the right and go out through his property, or they can go on through by cutting to the right or left on the Old Road, and they can circle around and come back through his property.

1 Q. That is just on this particular little piece
2 of property we are talking about not all of his property?
3

4 A. On that Southern end of it I guess you could
5 say that. Of course he has got no entrance on the Northern
6 part of his property from the Tennessee side.

7 Q. He would still have the same on the North
8 that he has now?

9 A. Yes, sir he would.

10 Q. Let me see if I understand you, George. On
11 this damage to the residue of \$22,400.00, to get that
12 straight as to how you arrived at that? You are talking
13 about - let's go back to the start of your testimony - you
14 said \$486.00 a foot. That is the McDONALDS Property, what
15 it sold for?

16 A. Yes, sir.

17 Q. And you figured the Dennison property at
18 \$550.00 a front foot?

19 A. Yes, sir.

20 Q. And that gave you 434,100.00 for what they
21 were taking?

22 A. The 62 foot, yes, sir.

23 Q. Now what was that other damage, the \$22,000.00,
24 how did you figure that?

25 A. I valued the whole property, this is running

1 straight on the front footage basis, I valued his property
2 as it sets down there now in his name that it would be
3 worth \$550.00 a front foot.

4 Q. You are talking about all his property that
5 set down there, are you talking about both lots or just one
6 lot?

7 A. I am talking about the subject property 174
8 foot by 61 foot, the property he bought off Gulf Oil COMPANY.

9 Q. When you say all of his property I mean he
10 does own another adjacent piece?

11 A. Yes, sir.

12 Q. I just wanted to make sure you weren't throwing
13 that in with it too. The \$94,000.00?

14 A. The \$94,700.00 is my value on it at \$550.00
15 a front foot.

16 Q. Did you figure out that \$94,000.00, or wasn't
17 it \$95,000.00, or \$95,700.00, did you figure out what that
18 would be on an acre?

19 A. No, sir. I did not.

20 Q. You didn't convert it to acreage, you converted
21 it to front footage?

22 A. No, I run it the way I assumed anybody would
23 buy this piece of property today, or would trade on property
24 historically along U. S. 23, on a front footage basis.
25

1 Q. Go ahead?

2 A. Sir, the whole thing, the whole piece of
3 property \$95,700.00 or \$550.00 a front foot. The State
4 Highway, the piece of property that is being taken is I
5 believe 39 percent I figured of the property. I simply
6 multiplied the 62 foot, running foot that they are takin,
7 by the \$550.00 a running foot, which comes up to \$34,100.00.

8 Q. All right, sir?

9 A. Now as far as damage to the residue he has
10 got a piece of property lefy over over there, a small piece
11 of property, a piece of property that I feel the highest
12 and best use has been lowered on it. Therefore, he has got
13 damages. My estimate of the damages is it damaged him
14 \$200.00 a front foot. He has got 112 front feet left which
15 is valued at \$350.00 a front foot, his property left over
16 is \$39,200.00 or he has a damage of \$22,400.00.

17 Q. What did you subtract from what to get that
18 \$22,000.00? That is what is confusing me?

19 A. I took the value of 112 foot at \$550.00 a
20 front foot, that was the old value.

21 Q. That is the \$95,700.00?

22 A. No, sir, that is 112 feet. This is what is
23 left over and I run it at the prices it would have been
24 worth if the whole thing was together.
25

1 Q. Well, give me a total figure what it would
2 have been worth at that point?

3 A. This particylar section of his property is
4 worth \$550.00 a front foot if he has got the 174 feet.

5 Q. Right? Before the highway took anything?

6 A. Yes, sir.

7 Q. How much is that? Let's total it?

8 A. That is \$95,700.00.

9 Q. And you damaged him \$200.00 a front foot which
10 would be what?

11 A. \$22,400.00, sir.

12 Q. 112 by \$200.00 is that how you arrived at that?

13 A. Well, you can do it that way, yes, sir.

14 Q. In other words you are saying it was worth
15 \$550.00 a front foot and it is now worth \$350.00?

16 A. Yes, sir.

17 Q. So if you multiplied \$350.00 a front foot by
18 112 feet that would bring you up to what figure?

19 A. He would have \$39,200.00 worth of property
20 left over over there. That is my apprasial of what the
21 market value of the remainder is right now.

22 Q. So you are saying the highway all together has
23 damaged him \$56,500.00?

24 A. Yes, sir.
25

1 Q. You said the highest and best use was commer
2 cial - something like a service station?

3 A High volume commercial.

4 q. that is what it was used for before? It was
5 a service station before Mr. Dennison bought it, was't it?
6 I believe it had been closed down for awhile or at least
7 the Gulf Distributor in Big Stone who owned or the Gulf
8 people in Big Stone didn't elect to keep it and run it as
9 a service station, did they?

10 A. I am sure and I agree that the improvements
11 on this particular piece of property were useless and I
12 gave them no value.

13 Q. APParently it wasn't the type of lot where
14 a modern service station could have gone in there or the
15 Gulf people would have kept it, wouldn't they?

16 A. Not necessarily, sir. I can't make any
17 comments on what plans Gulf had or what they didn't do.

18 Q. Well, they owned it and they sold it?

19 A. Yes, sir.

20 Q. Do you consider what Mr. Dennison is doing
21 with it now the highest and best use?

22 A. Are you talking about the cigarettes, sir?
23 No, sir. I feel that Mr. Dennison is not making the highest
24 and best use of this piece of property because that is not
25

1 the highest and best use of the property. The property
2 that is left, yes, he is doing the best he can do out of
3 it. As a whole, no, he would not be. If he had more, if
4 he had the other 62 foot on there, I am sure he could make
5 a higher and best use. It would have a higher and best use.

6 Q. Than what he is doing with it now?

7 A. Yes, sir.

8 Q. By that do you mean somrthing that would make
9 more money?

10 A. Yes, sir.

11 Q. And what would that be?

12 A. If he had the whole piece of property, the
13 174 foot, I think probably a Minute Market running volume
14 cigarettes and probably beer.

15 Q. Do you think that would be more profitable
16 than what he is using it for now?

17 A. A warehouse? Yes, sir. I think he is limited
18 in what he can do with it besides his business could be set
19 up here anywhere on a lot around \$1000.00 an acre.

20 Q. But he elected to put it down there though?

21 A. That is the size of it. He might as well do
22 that with it as to rent to a used car lot for \$100.00 a
23 month. I wouldn't think the piece of property with a sewer
24 system in there would hold probably 35 or 40 cars the best
25

1 you could do with it.

2 MR. MONTGOMERY: Thank you, Mr. Howard.

3 MR. QUILLEN: Judge, he got into this
4 Gulf and what they did with it. Can I ask
5 a question about that?

6 THE COURT: I thought that was highly
7 speculative anyway.

8 MR. QUILLEN: Mr. Montgomery asked.

9 THE COURT: I don't think anybody in the
10 court room knows what Gulf intended to do
11 with it or why they sold it, or whatever.

12 MR. MONTGOMERY: I will withdraw the
13 question.

14 THE COURT: There was no objection and
15 I guess you have the right to cross examine.
16 You go ahead and ask your question and I will
17 rule on it.

18 REDIRECT EXAMINATION

19 BY MR. QUILLEN:

20 Q. Do you know how long Mr. Robinson who was
21 the Gulf Distributor in Big Stone Gap owned the property?

22 A. No, sir.

23 Q. You don't know when he bought it from the
24 Colliers?
25

1 A. Oh, yes, sir. He had it for nine months.

2 Q. How much profit did he sell it for in the
3 nine months he had it?

4 MR. MONTGOMERY: Your Honor, I am going
5 to object to that. We have been through that a few times.

6 MR. QUILLEN: Well, I want to get it
7 in one more time.

8 THE COURT: I have already ruled on
9 that question and sustained the objection.

10 MR. QUILLEN: That is all.

11
12 (Witness stands aside.)

13
14 JERRY DESKINS

15 a witness called on behalf of the respondents, after first
16 being duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. QUILLEN:

19 Q. State your name please to the Court and the
20 Commissioners?

21 A. Jerry Deskins.

22 Q. Mr. Deskins, what is your business or occup-
23 ation?

24 A. I am self-employed in the real estate and
25 insurance business.

1 Q. How long have you been in the real estate
2 business here in Scott County?

3 A. Since 1970.

4 Q. What are your qualifications in regards to
5 that profession?

6 A. I hold a license as real estate broker in this
7 state and insurance broker.

8 Q. Have you bought and sold real estate yourself
9 in Scott County?

10 A. Yes, I have.

11 Q. Have you bought and sold real estate on behalf
12 of other people in Scott County?

13 A. I have.

14 Q. Have you bought and sold real estate in the
15 section we commonly call the state line in Scott County,
16 Virginia?

17 A. I have.

18 Q. Can you give the Commissioners in the fifteen
19 years you have been in business how many pieces of real
20 estate you have been involved in here in Scott County?

21 A. Of my own or for other people?

22 Q. For other people or anything else? In your
23 duties as a real estate broker?

24 A. I would say in excess of five hundred.
25

1 Q. Do you feel like you are familiar with the
2 value of real estate here in Scott County?

3 A. I do.

4 Q. Did you at the request of Mr. Dennison go
5 down and make an examination of the property he has on U.
6 S. 23 which has been taken by the Highway Department?

7 A. I have.

8 Q. How big a lot is it that has been taken down
9 there, Mr. Deskins?

10 A. The lot is 174 feet on the front and 190 feet
11 on the back.

12 Q. Where is that lot located on U.S. 23?

13 A. It is located on the Southwest side of U. S.
14 23 just before you cross the State Line.

15 Q. In Scott County, Virginia, along U. S. 23
16 is that the most valuable real estate in your opinion?

17 A. It is some of the higher priced real estate
18 but I wouldn't say it is the only place there is valuable
19 real estate but it is one of the most valued areas.

20 Q. What is the highest and best use of real estate
21 in that area?

22 A. I would say 85 to 90 percent is used for
23 commercial purposes.

24 Q. Is that due to the heavy traffic count on
25 U. S. 23?

1 A. I would say the highway has a bearing on its
2 being commercial.

3 Q. Did you have an opportunity to examine what
4 the highway is actually taking of the property of Mr.
5 Dennison's and how much property is left there? Did you
6 have a chance to examine that?

7 A. I have.

8 Q. Did you make an appraisal as to what you
9 think the value of the total property was, and also give
10 a value for what the amount taken is, as well as the damage
11 to the remaining portion is?

12 A. I Have the figures that represent the portion
13 being taken in my opinion.

14 Q. O. K. What value do you put on what the
15 highway is taking from Mr. Dennison?

16 A. Well, I consider the part they are taking
17 there to be, and this is based on yesterday afternoon's
18 measurements between the stakes they have placed,,....

19 MR. MONTGOMERY: I don't mind your going
20 cut there and measuring it but the value you
21 are getting ready to testify I want it to be
22 as of 1978 and not yesterday.

23 Q. Can you give the value of what was taken as
24 of November 7, 1978?
25

1 A. My figures that I came up with represents
2 property that has been sold in '79, '80, and '81 sales in
3 the proximity of that particular property.

4 MR. MONTGOMERY: I want to object to
5 anything in '79, '80, and '81 that has been
6 sold.

7 THE COURT: I am going to rule that you
8 can't compare property after the taking.

9 Q. The Court has ruled we cannot use comparative
10 sales after November 7, 1978. Do you feel like you would be
11 in position based on your being a real estate broker give
12 an opinion as to what the property is worth as of November
13 7, 1978, regardless of those comparable sales - just from
14 your own experience?

15 THE COURT: Counsel, please approach the
16 bench. I am on unsound ground and I don't
17 know of any case law that says you can't use
18 a sale after the date of taking. It seems to
19 me to be reasonable that if you could inflate
20 property within five years before the date of
21 taking that you could deflate it within five
22 years afterwards. Do you all have any case
23 law one way or the other that would help me?

24 MR. MONTGOMERY: I may be able to find
25

1 out in this Manual I have, Judge.

2 MR. QUILLEN: I was under the impression
3 that they would be comparable either right
4 before or after.

5 THE COURT: Let's take a few minutes to
6 look into this.

7 Commissioners, you all might take a five
8 minute break while we look at some law. You
9 might go back to your chambers and relax a
10 little bit.

11 (Short recess.)

12 Q. Mr. Deskins, you have made some determinations
13 as to what you think the value of the property taken was,
14 the Highway department was, and what the value of the residue
15 was as of November 7, 1973, let me ask you this first, are
16 you basing this on comparable sales that you are aware of
17 that happened pretty near around the same time this was taken?
18

19 A They represent sales equal to or past that time.
20 I have one that I could but didn't put down that was three
21 years prior.

22 Q. Now when you have a sale that is prior to it
23 to get the value on 1978 you put an inflation factor in it
24 to bring it up to date? Is that right?

25 A. I can do that and I have one in 1975 that is

1 actually higher than the 1981 is.

2 Q. And if you use a sale that is say a year or
3 so beyond you go back and deflate it?

4 A. Yes, sir.

5 Q. Based on what you say are comparable sales
6 there have you got an opinion then as to what the value of
7 the property taken by the Highway Department of Mr. Jack
8 Dennison's?

9 MR. MONTGOMERY: Your Honor, for the
10 record I want to object because he is using
11 his comparable sales based on as he said
12 earlier '79, '80, and '81, and I think his
13 testimony needs to be limited to comparable
14 sales before or on or before the date of the
15 taking.

16 THE COURT: Well I am going to allow it.
17 I think he needs to be more specific, Mr, Quillen
18 as to what he is basing his fair market opinion
19 value on. At the same time I think I will
20 allow the evidence of the comparable sales
21 after the date of taking if he has in fact
22 deflated the rate of inflation and increase
23 down so that he will give his opinion effective
24 November 7, 1978.
25

1 Q. Go ahead. The sale you were talking about
2 prior to 1978, which sale would you be using as a comparable
3 sale there?

4 A. Property in Weber City about two miles from
5 Mr. Dennison's property.

6 Q. Which property?

7 A. The theater property.

8 Q. The property you are using after, which prop-
9 erty are you talking about there?

10 A. The Fugate property which was June 1981.

11 Q. All right, sir?

12 A. The Billings Property which the sale date was
13 1981 but the option was 1979.

14 MR. QUILLEN: We direct the Court's
15 attention to the fact they used the Billings
16 property as one of their comparable sales.

17 THE COURT: The Court is aware of it.

18 Q. The fact these sales were not made at the same
19 time as this taking you have accounted for that by either
20 deflating whatever that price was?

21 A. I deflated those prices 10 percent each year.
22 I based that on the average price per front foot of these
23 properties based on their selling price. T He Billings
24 property was 453 front feet at a sale price of \$125,000.00
25

1 which was an average front foot price of \$275.72.

2 Q. And that is off the highway too, isn't it,
3 the Billings property?

4 A. It is adjacent to U. S. 23 but is divided by a
5 branch with bridge access.

6 Q. What are some of the others?

7 A. The Riggs property has a front footage of
8 129.39 feet, sold for \$135,000.00 which is an average front
9 foot price of \$1043.00. The total of those three properties
10 represents an average of \$639.54 per front footage. I
11 deflated that 20 percent off and that comes up with an
12 average of \$511.63 average per front foot in 1978.

13 Q. All right. Go ahead?

14 A. I visited the Dennison property yesterday
15 afternoon at 3:00 o'clock, pulled the tape myself.

16 Q. All right?

17 A. \$639.54 by 77 feet equals front footage re-
18 presenting \$49,244.58 present value, minus the difference
19 of 20 percent which would represent \$511.63 which would
20 represent 1978 value of \$39,395.66 which I would say was
21 the value at the time of taking.

22 Q. You placed a value on the part the highway
23 Department is taken on a front foot basis and that value
24 would be \$39,395.66?
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A. That is correct.

Q. How much of Mr. Dennison' remaining property by reason of taking this away from it, how much has it been damaged?

A. The loss to the residue is exactly the same as the take and so I added another \$39,395.66 which was a total value of \$78,791.32.

Q. And you think what is left has been damaged about the amount they took, has been decreased in value, which gives a total loss of \$78,791.32?

A. That is correct.

Q. Now you got that on 77 feet, how do you get the 77 feet?

A. I measured from the stake on the property line of the Kayo Service Station and the property that is being taken.

MR. QUILLEN: I Think that is all.

CROSS EXAMINATION

BY MR. MONTGOMERY:

Q. Mr. Deskins, all of your apprasials except that last one mentioned there is really after the date of this taking?

A. Possibly with the exception of the Billings

1 property. I am not sure whether that was '78 or '79 but
2 I am sure the price was set out in the option.

3 Q. You are saying the damage to what is left of
4 the lot there is also \$39,395.00?

5 A. That is correct.

6 Q. What value do you place on what is actually
7 left? Do you put anything on the lot or do you just damage
8 it completely out?

9 A. Damaged it completely out.

10 Q. Well, you appraised it?

11 A. I didn't see anything and as far as I am
12 concerned there is no land left. There is nothing but a
13 branch in there and I don't know of what use it is.

14 Q. You didn't see that land over there where
15 the service building is?

16 A. It is about 20 feet at its widest point.

17 Q. Well the side the building is on? The North
18 side of the lot? Are you trying to tell me and the Comm-
19 issioners - I believe you or Mr. Howard one said they took
20 39 percent of this lot?

21 A. That was Mr. Howard.

22 Q. Assuming what Mr. Howard said is correct,
23 this Gulf Station lot, are you saying what is left of that
24 lot is not worth anything? Is that what you are telling
25

1 the Commissioners?

2 A. I am certainly saying it is worth something.

3 Q. Pardon?

4 A. It is worth \$39,365.66.

5 Q. The part Mr. Dennison is keeping?

6 A. Certainly, it is worth two times \$39,365.66
7 and one-third is gone.

8 Q. One-third is gone and in your opinion it was
9 worth \$78,791.33?

10 A. The total value. One-third \$39,365.66?

11 Q. O. K. And then that much damage to the residue?

12 A. Loss on residue taken in 1978....

13 Q. No, what is left of the \$39,000.00? What he
14 kept?

15 A. I would say since he doesn't have the use of it
16 any more it would be equal to what he lost. It depreciated
17 the two-thirds he has left by that amount.

18 Q. In other words the two-thirds that he kept is
19 worth \$78,791.00 in your opinion?

20 A. Half of that would be in damages.

21 Q. In other words as I understand you the lot,
22 assuming there would be no road going through there, it is
23 your testimony that the value of that lot would be one hundred
24 and fifty some thousand dollars?

25 A. \$156,000.00.

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Q. Just taking the road away from it?

A. Assuming somebody wanted to buy it at present days prices.

Q. What acreage is involved in that lot? You have the dimensions there?

A. One-fourth or .25 of an acre.

Q. ON an acre basis you are saying this land would be worth 4 times \$156,000.00 an acre? An acre of land there would be worth \$600,000.00?

A. That is shown by computation.

Q. I am not talking about computation, can you say that or not? Are you talking in probabilities and not possibilities?

A. If you will let me give you an example, and use a true sales price average on these same tracts that I have discussed which represents \$135,000, \$90,000.00, and \$125,000.00 sales which is \$350,000.00 for an average of \$116,000.00 for a location, not saying one would be bigger, lesser, or anything than the other. You have to pay a hundred and some thousand dollars for a location along that area regardless of what kind of land it is and that is no just that one particular place. The average figure we are talking about is \$116,000.00. That is just for a location on that side.

1 Q. I see but that is not what I asked you though.
2 If you figure it out on an acre basis...

3 A. We would be talking about property worth approx-
4 imately four hundred and some thousand dollars.

5 Q. Four times \$156,000.00 would be \$624,000.00?

6 A. That is reasonable.

7 Q. You just don't look at a piece of property and
8 say you will pay so much a front foot, you look at the prop-
9 erty on an acre basis, front footage basis, location basis,
10 and use a lot of different variables, you don't just use one
11 method, do you?

12 A. You have to take into consideration on that
13 kind of location how much a foot represents in value to you.
14 If you can't use it at all, even 20 feet means everything,
15 and in that case over there you have to have it if you have
16 anything.

17 Q. This piece of property - you went down there a
18 couple days ago and appraised it, didn't you?

19 A. Yes, sir.

20 Q. It is going to be used the same as he is using
21 it, isn't it?

22 A. The residue? What he has got left?

23 Q. Yes?

24 A. What he has got left he can use it like he is
25

1 using it. He is not going to be able to use what the road
2 is taking.

3 Q. How was he using what the road took there for
4 the last few years, if you know?

5 A. I guess he had been using it for his parking.

6 Q. It has been used as a driveway really, hasn't
7 it, or an alley?

8 A. And his parking.

9 Q. You are talking about those three locations,
10 the Fugate property bringing \$30,000.00 for 50 feet I believe,
11 what acreage was involved in that?

12 A. It was 1/3 interest not partitioned and in
13 my opinion it will end up in lawsuit. One-third interest
14 in the lot represented \$30,000.00 and he only got 1/3 of
15 it.

16 Q. Well, one heir buying out the other heirs?

17 A. It wasn't partitioned.

18 Q. You really can't say that brought \$600.00 a
19 foot because you have to figure every piece of dirt you
20 pick up you own a third of it? You would really base your
21 front footage on 150 instead of 50, wouldn't you?

22 A. I multiplied it by 3 and used \$90,000.00.

23 Q. About how many acres involved in that Jones
24 property? What size was that?
25

1 A. The Billings property?

2 Q. Yes?

3 A. Approximately two point something.

4 Q. Over two acres?

5 A. Something over two acres.

6 Q. And it brought \$125,000.00? Did it have a
7 narrow front?

8 A. No, it has 453 feet.

9 Q. In your opinion is there any difference in the
10 value of property on one side of the road or the other? The
11 Riggs property is on the opposite side of the road?

12 A. The Billings property is on the opposite side
13 of the road. There is a difference. You have a creek
14 channel along in front of the Billings property.

15 Q. But not the Riggs?

16 A. No, the Riggs has access right off the road
17 without bridges. In that area through there anything on the
18 North side or opposite side from this property does a little
19 less volume of business than the ones on this side. The
20 traffic is easier to stop going that way.

21 Q. They do if they are going to?

22 A. Coming back they have done and stopped wherever
23 they are going to stop and coming back they are going to go
24 home. Generally the right hand side coming North on 23 does
25

1 a lesser volume than the left side does.

2 MR. MONTGOMERY: I believe that is all, Your Honor.

3 THE COURT: Let me ask you a couple questions if
4 I might.

5
6 BY THE COURT:

7 Q. You mentioned, Mr. Deskins, the billings
8 offerings? When was that offering made? Do you have records
9 of that?

10 A. I have the date of the urchase and so forth
11 but they had that option for I believe two years before
12 they purchased it.

13 Q. What was the date of purchase?

14 A. The 25th day of February, 1981.

15 Q. And you believe it was two years prior to that
16 the offering was made?

17 A. They had an option on it and paid rent on it
18 for over a year I recall as a personal item. I don't have
19 an option here in front of me but they had had that for
20 sometime.

21 Q. Was the offering the same as the final purchase
22 price? I just wanted to know if the offering were the same
23 as the final purchase price?

24 MR. MONTGOMERY: That is what I was
25 getting at, Judge. There is no evidence of

1 the fact. What our man said was that it was
2 offered for sale the summer of '78 for
3 \$150,000.00.

4 MR. QUILLEN: That is what it sold for.

5 MR. Montgomery: Actually it sold for
6 \$125,000.00 you say?

7 THE COURT: It wasn't the same then?

8 It was different. It was less than the offering.

9 A. The option was \$150,000.00 and I have the
10 deed here which says \$125,000.00.

11 THE COURT: You have the deed with you?

12 A. Yes, sir The deed says \$125,000.00

13 MR. QUILLEN: I think they got credit
14 for what they had paid?

15 A. That is correct. They paid \$2500.00 or some-
16 thing, or some figure they got credit for toward the purchase
17 price. That is just a personal knowledge thing.

18 THE COURT: Do you know that of your
19 own personal knowledge?

20 A. I have heard it in direct conversation with
21 people that were involved.

22 Q. So the offering price was the same as the
23 final sales price on the Billings property?

24 A. That is true because the credits would have
25

1 Q. Now let me ask you one other question. Have
2 you based your fair market value only on the comparable sales
3 after November 1978?

4 A. I had at the time I came in. The one I adjusted
5 for here would represent a different figure and it would
6 be \$49.00 higher per front foot than the one I justified on
7 the sales that took place after '78. The one I justified on
8 was 1975, the sale took place in 1975. That front footage
9 value was \$560.00 on 1978 adjustment. IT was \$431.00...

10 Q. You are saying, let me try to get you in a
11 general way at this point, you are saying it would have been
12 more based on the 1975 sale per front foot?

13 A. \$41.00 per front foot.

14 THE COURT: I just wanted to clarify that.

15 Are there any other questions?

16 BY MR. MONTGOMERY:

17 Q. Actually your testimony when you came here
18 today was based entirely upon figures that were after 1978?

19 A I had figures here that represented 1978 and
20 on up. I had figures also that represented 1978 back.

21 Q. And you used one of them after you got here
22 because of the discussion? You used that one you just told
23 us about?

24 A. I can give you another one if you would like
25

1 another one.

2 Q. Well what piece of property was that one you
3 just told us about?

4 A. A. L. Peters Farm.

5 Q. And when was that sale?

6 A. 1975.

7 Q. And how much did it bring?

8 A. \$60,000.00 and had 139.49 front feet.

9 Q. And what was the size of the lot?

10 A. There was acreage involved. It involved more
11 than 5 acres.

12 Q. It brought how much?

13 A. \$60,000.00. I have others if you want them.
14 I can give them to you from personal knowledge.

15 Q. I am not asking you any more questions, Mr.
16 Deskins. If Mr. Quillen wishes to intrduce any more evidence,
17 that will be fine.

18 MR. QUILLEN: I have no further questions.

19 (Witness stands aside.)
20

21 JACK DENNISON

22 one of the respondents, after first having been duly sworn,
23 was rxamined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. QUILLEN:

1 Q. State your name, please?

2 A. Jack Dennison.

3 Q. Mr. Dennison, how long have you lived here
4 in Scott County?

5 A. I was born and raised here but I have been in
6 out a number of times through the years. I guess I can say
7 I have lived all my life in Scott County with the exception
8 possibly 15 years.

9 Q. How long have you been back here in business
10 in Scott County?

11 A. Since 1962.

12 Q. You started back with Jack's Restaurant?

13 A. Yes sir.

14 Q. And now I think you are in the tobacco whole-
15 sale business?

16 A. Yes, sir.

17 Q. How much did you pay for the Gulf lot, this
18 lot down there?

19 A. I paid \$50,000.00 for it.

20 Q. Was this an open negotiated sale?

21 A. I was bidding against a very wealthy man.

22 Q. Who did you buy the property from?

23 A. I bought it from the Gulf Oil Distributors,
24 Robinson, and I don't recall the name of his partner.
25

1 Q. Were you in business or anything with them?

2 A. No way, shape, form or fashion.

3 Q. They didn't even live in Scott County, did
4 they?

5 A. No, sir.

6 Q. Where did they live?

7 A. I think Mr. Robinson lived in Big Stone, and
8 I bekieve his partner lives in Middlesboro but I am not
9 sure of that.

10 Q. Do you know how long they had owned this
11 property before they sold it to you?

12 A. Well, they had had it under lease but they
13 had only owned it a few months.

14 Q. And you bought it back from them?

15 A, I bought it from them.

16 Q. Do you remember what date you bought it?

17 A. No, not for sure I don't.

18 Q. If the deed said March 1974, would that be
19 the correct date?

20 A. Your father made the deed for me.

21 Q. What are the dimensions of this lot?

22 A. The lot is about 62 feet between the two
23 highway right of ways, 174 foot on the new U. S. 23 and
24 190 feet on the old U. S. 23.
25

1 Q. Now when you bought that did you have any
2 building of yours on it?

3 A. I would like to show those pictures of what
4 I actually bought.

5 Q. Do these pictures depict the building at the
6 time you bought it?

7 A. Yes, that was at the time I bought the property.
8 This was after I closed it up.

9 Q. Would you put anything at all on the building
10 itself at the time you purchased the property?

11 A. I thought it was a liability rather than an asset.

12 MR. MONTGOMERY: Judge, this picture of
13 the Gulf Station I don't feel there is any
14 relevancy. I object to them.

15 THE COURT: Mr. Dennison just testified
16 he put no value whatsoever on the building.

17 MR. QUILLEN: Could we show the jury
18 why he was justified in doing that?

19 MR. MONTGOMERY: We are not saying it
20 was worth anything and that is not an issue.

21 THE COURT: Since there is no issue
22 about it, it seems to me it would be irrelevant.

23 MR. QUILLEN: Well, just to show the
24 veracity of my client, Your Honor.
25

1 THE COURT: Is the building on the prop-
2 erty now?

3 MR. QUILLEN: Oh, no.

4 THE COURT: Was the building on the
5 property as of the date of taking? Was the
6 building there in November 1978?

7 WITNESS: Yes, it was.

8 THE COURT: I will allow the introduction
9 of one of these pictures

10 Q. Mr. Dennison, for what purpose did you buy
11 this particular property?

12 A. For what purpose did I buy it?

13 Q. Yes, sir?

14 A. For developing retail sales on the property.
15 Investment.

16 Q. WERE you negotiating at that time or later on
17 did you start negotiating?

18 A. Yes, I did.

19 Q. What type of business were you going to put
20 in there?

21 A. I was negotiating with the people that own the
22 self-serve markets in Coeburn to put them a building on the
23 property.
24

25 MR. MONTGOMERY: Your Honor, it really
is irrelevant and speculative. It could have

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been used for anything.

MR. QUILLEN: It goes to the best use of the property.

THE COURT: I think it does go to the best use even though you can't go into future development of properties. I think it would be admissible.

Q. What killed that deal, Mr. Dennison?

A. Well, the people were pushing me to give them a date when I could get them a building on it, and the man from the Highway Department in Tennessee was over there and looking at it and he told.....

MR. MONTGOMERY: I object to what the man from Tennessee said.

THE COURT: Sustained.

A. Well that was my first knowledge that the State was going to take my property.

THE COURT: You can't testify as to what somebody said.

A. Well I investigated it then.

Q. Were you notified at some point in time that the Highway Department was going to take your property?

A. Sometime later.

Q. You received notification from the Tennessee

1 Highway Department first?

2 A. They were the ones that first give me the
3 knowledge that it was going to be taken.

4 Q. When you were advised that it was going to
5 be taken, what happened to this deal you had with these
6 people out of Coeburn?

7 A. When I went to the Highway Department here
8 in Moccasin Gap and saw the plans I realized there was no,
9 well, they were taking where I was going to put the building.
10 I had to get back with the man - I almost lost a very big
11 account over the thing - they thought I was lying to him.

12 Q. Then that deal fell through?

13 A. That deal fell through.

14 Q. What did you then finally have to do with the
15 building?

16 A. My intentions were to use my investment off
17 that to put a warehouse building, and I had actually checked
18 on the property even prior to Goodwill getting the property
19 they had over there, and when I got it run down Goodwill
20 gad just purchased from some people in Bristol, and the
21 people in Bristol had purchased it from a man in Kentucky.
22 I was trying to get a location over there for a warehouse
23 building and save this highway frontage for retail sales.

24 Q. And then after you were advised by the
25

1 Highway Department that they were going to take 1/3 then that
2 deal fell through?

3 A. The only thing I knew to do then I couldn't
4 go with my original plans all I could do was see what I could
5 add on to my own property because the other deal was gone
6 and since I couldn't use this to do that over there I just
7 expanded on what I could and forgot about it.

8 Q, Do you have an opinion, Mr. Dennison, as to
9 what the value of the property is that they are actually taking?

10 A. Well, I look at it on a long term basis. I
11 know that might not be the way you look at the thing but when
12 I am spending my money I have to look at what it is worth
13 ten or twenty years from today. I figured about \$35,000.00
14 for the land itself and at least \$40,000.00 in damages of
15 what I couldn't get out by not being able to do what I intended
16 to do.

17 Q. Is that your opinion as of the date they took
18 this property which was November 7, 1978?

19 A. That is exactly right.

20 MR. QUILLEN: Your witness.

21 MR. MONTGOMERY: I have no questions.

22 (Witness stands aside)

23 MR. QUILLEN: Your Honor, we rest.

24 THE COURT: Any rebuttal for the Highway?

25 MR. MONTGOMERY: No, Your Honor.

1 THE COURT: At this time, members of the
2 commission, you may return to the jury room. The
3 lawyers and myself need to discuss instructions
4 to you, the law of the case, and we will call you
5 when we need you again.
6

7 THE COURT: Instructions Nos. 1 thru 15 will
8 be given without objections from either side.
9

10 Do you want to argue the case?

11 MR. QUILLEN: We will waive our argument, Your
12 Honor.

13 MR. MONTGOMERY: Judge, let me confer with
14 my people first,

15 (Short conference.)

16 MR. MONTGOMERY: We will waive closing argument.
17

18 The Commissioners returned to open court room
19 and the Court read Instructions 1 thru 15 inclusive, to the
20 Commission.

21 REPORTER'S NOTE: The Instructions as read to
22 the Commission by the Court are contained in the
23 Court File and by this reference are made a part
24 of this Transcript.
25

1 THE COURT: I understand from counsel that they
2 have each waived their arguments to the Commissioners on
3 the basis they feel like you have already heard the evidence
4 and can make a decision based on the evidence and the view
5 that you have taken. So at this time the case will be
6 submitted to you gentlemen for your consideration and del-
7 iberations.

8 We have had prepared a Report of Commissioners
9 which should be signed by each and every one of the Comm-
10 issioners once you have made a final conclusion. There
11 are three blank spaces for which you must fill out which
12 involves the taking, award for the taking, if any; award
13 for the damage to the residue, if any; and a total sum which
14 would be the total of those other two figures. We request
15 that you fill in all three blanks in whatever means and
16 form you gentlemen so decide.

17 Now at this time you may be excused to the jury
18 room and please knock on the door when you are ready to
19 return.
20

21 (Commissioners retired to enter upon their
22 deliberations at 3:20 P. M)

23 The Commission returned into open court at 4:15
24 P.M. and the following proceedings were had:
25

1 THE COURT: The Commission's award is for
2 the taking the award is \$35,000.00, and the damages to
3 the residue is \$37,000.00, which equals a total of
4 \$72,000.00.

5 Is that your award so say all of you Commissioners?

6 THE COMMISSION: Yes.

7 THE COURT: Does either side want the Commissioners
8 poled individually?

9 MR. QUILLEN: No, Your Honor.

10 MR. MONTGOMERY: No, Your Honor.

11 THE COURT: There is no minority report. All
12 of the Commissioners have signed the report.

13 (The Commission was excused.)
14
15
16
17

18 AND THESE WERE ALL THE PROCEEDINGS HAD
19 AND EVIDENCE INTRODUCED IB TRIAL OF THIS CASE.

20 THE COURT: Mr. Montgomery, do you desire to
21 file any written motions?

22 MR. MONTGOMERY: Judge, let me have ten days
23 to confer with the Attorney Generals Office.

24 THE COURT: I will allow the Highway Department
25 ten days within which to determine whether or not they desire
to file a written motion setting aside the Commidssion's award.

1
2
3
4
5 I herby certify that I did take down,
6 record, and transcribe the proceedings of
7 this condemnation hearing faithfully and
8 accurately to the best of my ability.

9
10 Edna M. Davidson
11 Court Reporter
12
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25

Telephone poles are the property of International Telephone Co. - Memphis, Tenn.

Power poles (Va. Side) are the property of R.E.P. Co. - Kingsport, Va.

Power poles (Tenn. Side) are the property of Kingsport Power Co. - Kingsport, Tenn.

Electric Cable is the property of American Cable - Kingsport, Tenn.

Power Lines (Va. Side) are the property of Western Gap Sanitation District - War City, Va.

1. SURVEY U.S. 23
 P.I. Sta. 1293+98.36
 Δ = 25°20'00" R.I.
 D = 2'00"
 L = 200'
 B = 2'00"
 T = 743.98'
 C = 72.06'
 L.T. = 133.36'
 S.T. = 66.63'
 Δ = 21°28'00"
 R = 286.473'
 L = 106.667'
 C = 0.040%

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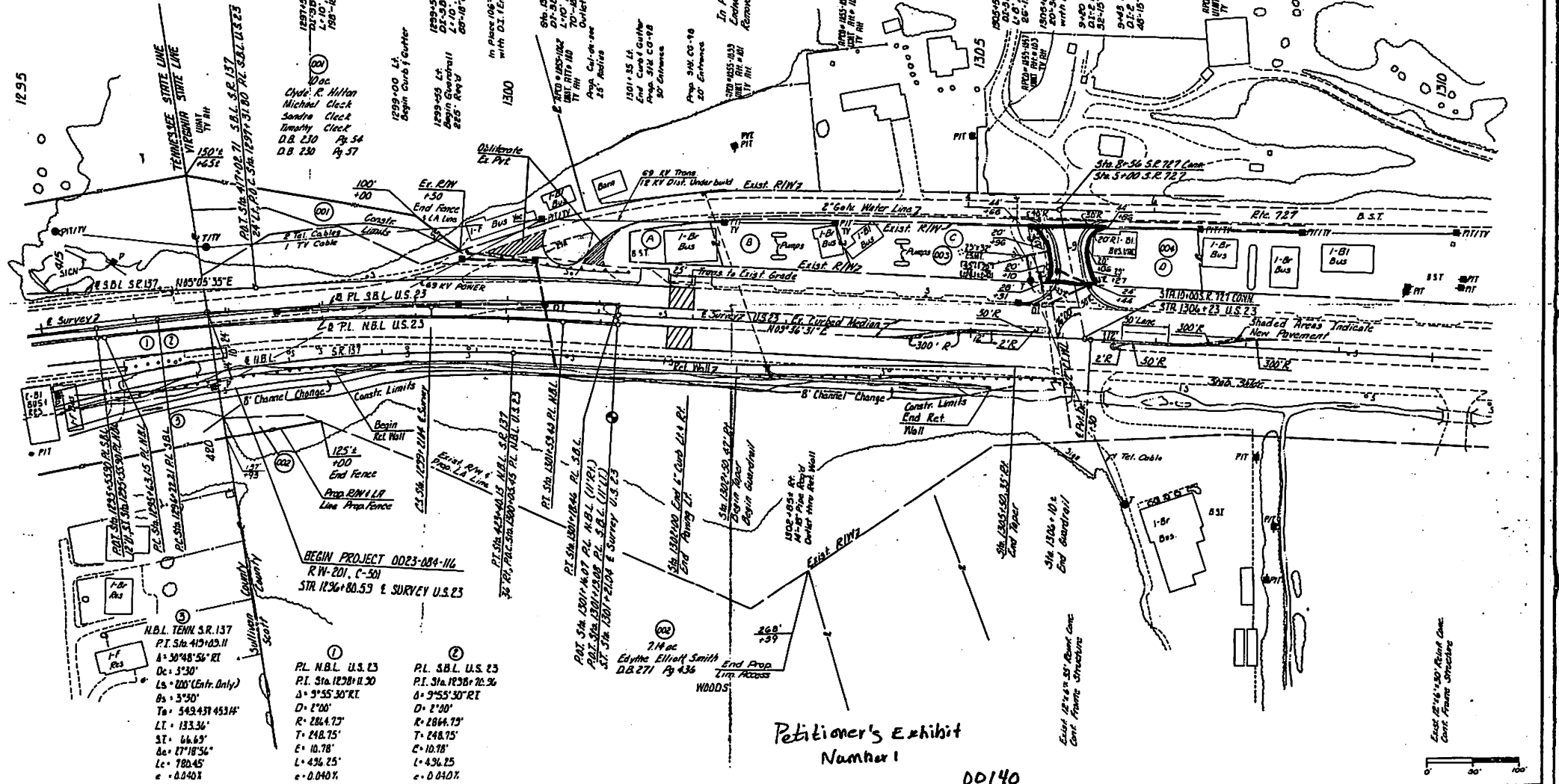
6. SURVEY U.S. 23
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NUMBER	DATE	STATE	FEDERAL AID	PROJECT	ROUTE	STATION	POST
2-9-78	3-14-78	VA			23	0023-084-116	
8-10-78						RW-201, C-501	3

RW PLANS



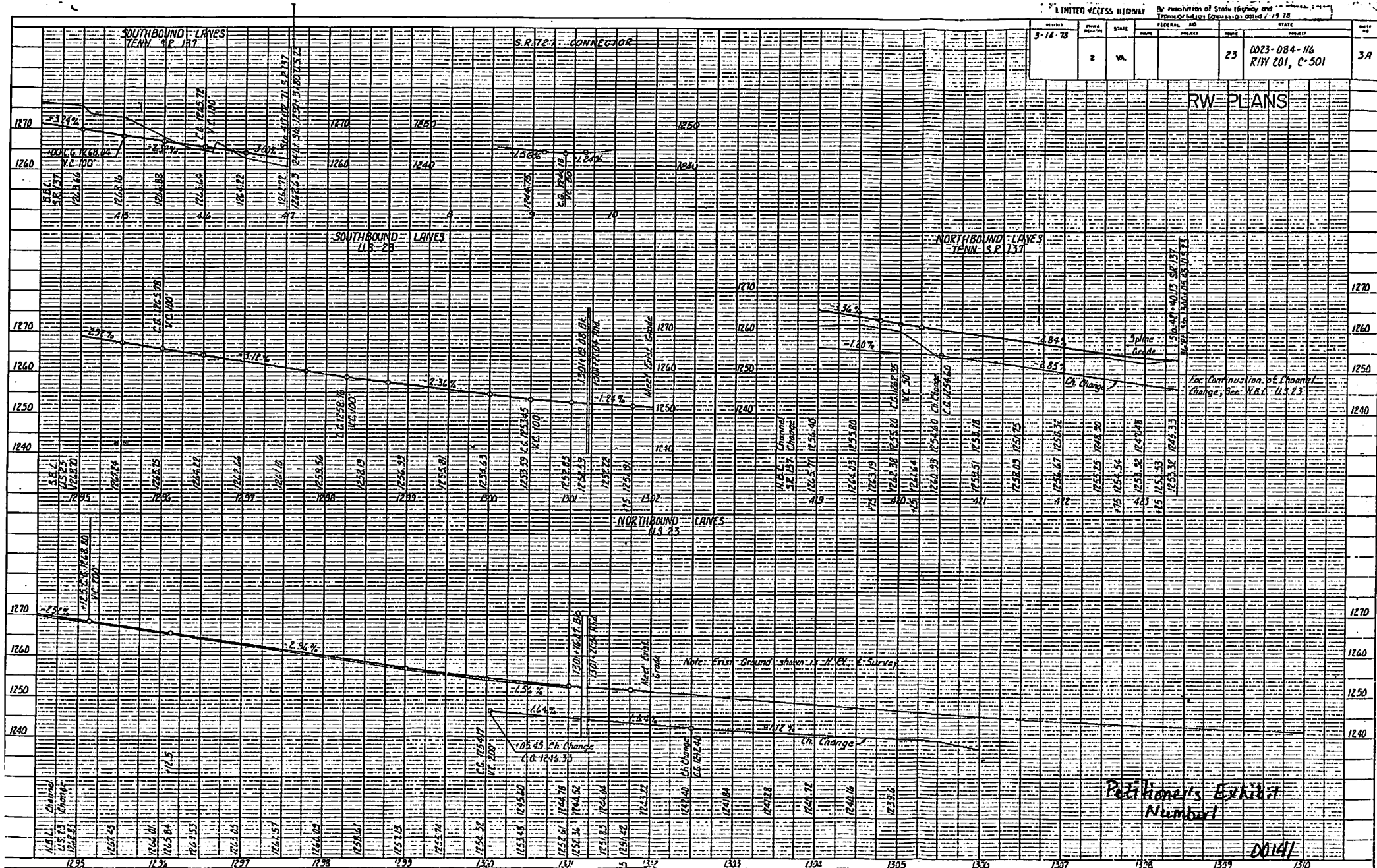
Petitioner's Exhibit
 Number 1

00140

PLAN NO.	PROJECT	FILE NO.	DATE
			3

DATE	PROJECT	STATE	FEDERAL AID	STATE AID	PROJECT	SHEET NO.
3-16-78		VA			23	0023-084-116 R/W 201, C-501

RW PLANS



Petitioner's Exhibit
Number

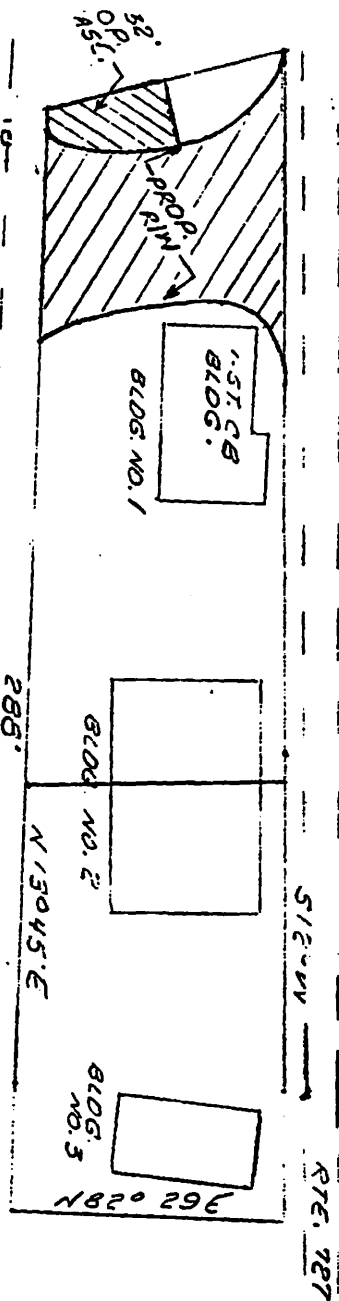
00141



R/W REQ'D:

WHOLE : 0.41 AC.±
 TAKE 0.08
 RESIDUE : 0.33

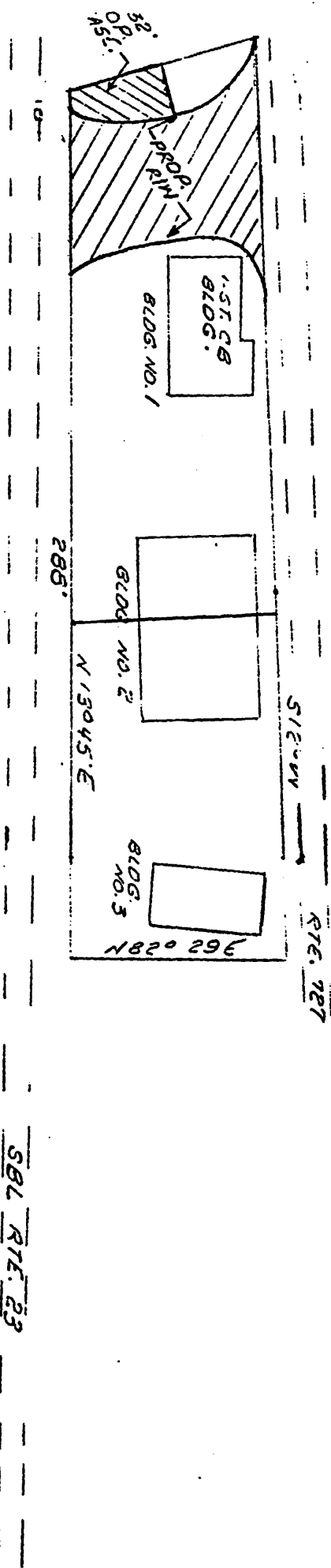
EASE. REQ'D: 0.01 AC.±



0023-084-116, RW 201
 PARCEL 004
 JACK A. DENNISON

SBL RTE. 23
 GATE CITY →

0023-084-116, RW 201
 PARCEL 004
 JACK A. DENNISON



R/W REQ'D:

WHOLE : 0.41 AC.
 TAKE 0.08
 RESIDUE : 0.33

EASE. REQ'D: 0.01 AC.

Defendants Exh 1
MS

BOOK 279 PAGE 173

This DEED, made and entered into this the 12th day of March, 1974, by and between ROY C. ROBERTSON and DOROTHY H. ROBERTSON, his wife, S. A. MARS JR., and SUELLA A. MARS, his wife, parties of the first part; and JACK A. DENNISON and EVELYN I. DENNISON, his wife, parties of the second part.

W I T N E S S E T H:

That for and in consideration of the sum of FIFTY THOUSAND (\$50,000.00) DOLLARS, cash in hand paid by the parties of the second part unto the parties of the first part, at and before the sealing and delivery of this deed, the receipt of which is hereby acknowledged, the parties of the first part do hereby grant, bargain, sell and convey unto the parties of the second part, share and share alike, with covenants of general warranty, the following described tract or parcel of land, together with the improvements thereon, situate, lying and being in Estillville Magisterial District, Scott County, Virginia, and being more particularly bounded and described as follows, to-wit:

00143

BEGINNING at a point located on the west side of the present location of new U. S. Highway No. 23; thence Northwest 81 00 W 62 feet to a stake which is located on the east side of old U. S. Highway No. 23; thence S 12 00 W 190.71 feet to a stake; thence N 82 29 E 60 feet to a stake, which is located on the western side of new U. S. Highway No. 23; thence along the right of way of new U. S. Highway No. 23 N 13 45 E 174 feet to the point of BEGINNING.

And being the same property conveyed unto the parties of the first part by deed from A. H. Carr, et ux, dated June 21, 1973, and recorded in the Clerk's Office of Scott County,

BOOK 279 PAGE 174

The above description is from survey dated July 18, 1969 by Carter and Associates, Kingsport, Tennessee, which survey is entitled: "GULF OIL COMPANY PROP., STATE LINE COMMUNITY; SCALE 1 inch equals 20 FEET".

TO HAVE AND TO HOLD unto the parties of the second part and their heirs and assigns forever in fee simple.

The aforesaid grantors covenant that they have the right to convey said land to the aforesaid grantees; that the said grantees shall have quiet possession of said land, free from all encumbrances; that they have done no act to encumber said land, and that they will execute such further assurances of title as may be requisite.

WITNESS the following signatures and seals, the day
and year first above written:

Roy C. Robertson (SEAL)
ROY C. ROBERTSON

Dorothy H. Robertson (SEAL)
DOROTHY H. ROBERTSON

S. A. Mars Jr. (SEAL)
S. A. MARS, JR.

Suella A. Mars (SEAL)
SUELLA A. MARS

STATE OF VIRGINIA

COUNTY OF SCOTT, to-wit:

I, *Ford C. Quillen*, a Notary Public of and
for the county and state aforesaid, do hereby certify that ROY
CO. ROBERTSON and DOROTHY H. ROBERTSON, his wife, and S. A.
MARS JR. and SUELLA A. MARS, his wife, whose names are signed to
the foregoing writing, bearing date on the 12th day of March,
1974, have acknowledged the same before me in my county and state
aforesaid.

F. CARTER
AT LAW
VIRGINIA

0014.5



Def. Ex 2

DEFENDANT'S EXHIBIT
NUMBER 2

00146

1
2 Route 5, Box 106
3 Gate City, VA 24251
4 May 29, 1982

5 Mr. Harry Penley, Clerk
6 Circuit Court of Scott County
7 Gate City, Virginia 24251

8 IN RE: STATE HIGHWAY AND TRANSPORTATION COMMISSION
9 vs. JACK A. DENNISON, ET AL

10 Dear Mr. Penley:

11 Enclosed herewith please find original transcript of
12 hearing in the above-styled case, which I shall
13 appreciate your marking filed.

14 Thank you.

15 Sincerely,

16 
17 Court Reporter

18 Enc.

19 cc ✓ Mr. Ronnie Montgomery

20 Mr. Ford C. Quillen
21
22
23
24
25

Ruth D. Ford

RUTH P. FORD
Rt. 5, Box 106
GATE CITY, VA 24251

nty, Va.
rddivision
'660

00147

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF SCOTT COUNTY:

3
4 STATE HIGHWAY AND TRANSPORTATION COMMISSION
5 OF VIRGINIA

PETITIONER

6
7 VS.

8
9
10 JACK A. DENNISON, ET AL

11 RESPONDENTS

12
13
14
15 BEFORE THE HONORABLE ROBERT J. STUMP, JUDGE

16 MAY 25, 1982

17
18
19
20
21
22 OFFICE OF THE JUDGE
23 COURTHOUSE
24 GATE CITY, VIRGINIA

DEPOSITIONS

STATEMENTS

HEARINGS

25
Ruth P. Ford

COURT REPORTING
ROUTE 5, Box 106
GATE CITY, VIRGINIA 24251

00148

1 APPEARANCES: H. RONNIE MONTGOMER, ESQ., Jonesville,
2 Virginia, Counsel for Petitioner
3 FORD C. QUILLEN, ESQ., Gate City,
4 Virginia, Counsel for Respondents
5
6
7

8 This cause came on to be heard on this the 25th day of
9 May, 1982 at 3:00 p.m., before the Honorable Robert J.
10 Stump, Judge, holding the Circuit Court of Scott County,
11 sitting at Gate City, Virginia, when the following were
12 all the proceedings had and evidence introduced, to-wit:

13 THEREUPON, the Court Reporter was sworn to make
14 a true and accurate record of all proceedings.

15 THE COURT: Did you file a motion, Mr. Montgomery?

16 MR. MONTGOMERY: Yes, sir.

17 THE COURT: Okay.

18 MR. MONTGOMERY: Judge, we filed an exception
19 to the Report of the Commissioners, and I stated four reasons,
20 and I will argue them in the order set out in my motion.
21 Exception 1, we except to the Court's ruling of the fact
22 that he did not strike Jerry McMurray and Mr. Burl Jennings.
23 Now, Mr. McMurray was the personal insurance agent for the
24 respondent, Jack Dennison, and I think it is just asking too
25 much of a Commissioner, who, he didn't have the insurance on

1 building down there, but he is Mr. Dennison's personal
2 insurance agent. The Court wouldn't let one of mine or
3 Mr. Quillen's present clients serve on a jury or a State's
4 insurance agent for the Highway Commission, I just think
5 that by not striking Mr. McMurray that it is just fundamen-
6 tal unfairness that prejudices the whole case, and basically
7 the same ruling is for Mr. Jennings. He is the contractor
8 that built three additions to the building, and the additions
9 were built on the land that is involved. I think maybe the
10 reasons for Mr. McMurray are somewhat stronger because he is
11 still continuing; he is the personal insurance agent and
12 has a continuing business relationship and it just seems
13 inconceivable that a guy in Mr. McMurray's position could
14 come in there, and if the evidence was that there should be
15 no award, that he would vote for no award because he has
16 business relationship and wants to keep Mr. Dennison's
17 insurance business, and it is just inconceivable that he
18 could really be fair. He may say that he could. I know
19 he said that he could be fair, but I think it is just too
20 much to ask of a Commissioner, and we felt that he should
21 be struck for cause. That is basically the underlying
22 reason. There is a case that speaks somewhat to the point
23 in 103 Va. 326, Chesapeake & Ohio Railroad Company v.
24 Smith. It talks about juror disqualifications, concerning
25 friendship and a physician and patient relationship.

1 In that the Court said (this is a Supreme Court of Virginia
2 case) the fact that jurors in a civil case are friends of
3 the plaintiff and the fact that he is their family physician
4 does not per se disqualify him from sitting in the case.
5 The trial Court must determine from all the facts before
6 it whether or not a juror is competent and the absence of
7 other evidence, and that is where we feel that there is more
8 evidence, other evidence here, a continuing business
9 relationship, his personal insurance agent, that is just
10 a little too fundamental to require, or keep a man from
11 being fair and honest about this. And the Court goes on
12 to say: "In the absence of other evidence, his statement
13 on the voir dire that the relation would not influence
14 his verdict is sufficient to warrant his acceptance."
15 Now this is a case that is just talking about juror
16 disqualifications. It doesn't deal with condemnation,
17 I don't believe, and it doesn't deal with a commission,
18 but it deals with a jury and I think it's analogous as I
19 believe too that one of my present clients or one of
20 Mr. Quillen's present clients, you know they are routinely
21 disqualified in civil cases that I am involved in, and
22 now I think if it was one that I had represented or Mr.
23 Quillen had represented a few years ago and the relationship
24 was over, such as a doctor or patient relationship, you know
25 it not an ongoing business relationship like an insurance

1 agent is. You have insurance in effect all of the time.
2 Eventhough it is not involving this property, he testified
3 that he was his personal insurance agent, such as I take it,
4 homeowners and his car and so on, and I just think it is
5 inconceivable that he really could not award anything, or
6 not tilt or lean, toward the landowner in this case.

7 The second exception concerning Mr. Howard,
8 George Howard's statement concerning access to the land.
9 Mr. Howard made, I can't remember the exact statement as
10 we don't have all of the transcript typed up because of
11 Mrs. Davidson's broken wrist, but George made some state-
12 ment about when you turned in there, you couldn't drive
13 over a six inch high curb or something there, and there
14 was an instruction that was submitted in this case dealing
15 with the access to property is not to be taken into con-
16 sideration about when you award damages. I don't have
17 the particular instruction before me, but I am positive
18 it is in the Court file, Judge, and I call your attention
19 to that.

20 Exception No. Three where we excepted to the
21 landowner's expert witness, Jerry Deskins' testimony,
22 concerning appraisals that were based on sales according
23 to Mr. Deskins' testimony in 1979, '80 and '81. The
24 date of the take in this case was November '78, I believe.

25 THE COURT: What was your Number Two, your

1 argument as to Number Two, I really didn't follow that.
2 Are you going back to that?

3 MR. MONTGOMERY: No, I was just going to say,
4 Mr. Howard, and I don't have his exact statement, but he
5 testified as Mr. Quillen's witness, he made some off the
6 cuff statement about, it was unresponsive, wasn't really in
7 response to a question, but he said that, you know I asked
8 him about this strip of land that was taken, you know it
9 was going to be a driveway and in fact they are using
10 the land now for a driveway, very similar purpose of what
11 it will be; there may be more traffic later on, but he made
12 some statement about there would be a curb put up. There
13 was evidence that there would be a curb put up at the
14 south end of this property line after the take to where you
15 couldn't get from this alley or driveway on to the property
16 of Mr. Howard's and there is an instruction that was
17 given that evidence of that is incompetent evidence and
18 access is not to be taken into consideration, and I think
19 that statement prejudiced the whole trial, because he
20 said, "you know you can't drive over a six inch curb
21 to get into it, when you turn right off the road there
22 would be a curb there." And he based a lot of his
23 testimony of the damage to the residue upon access, further
24 limiting access after the take. I can find that statement.
25 There is an instruction in the file, Judge, that was given.

1 I just don't know the number.

2 THE COURT: Okay.

3 MR. MONTGOMERY: Mr. Deskins' testimony, we think,
4 is terrible, because it is all based one, two and three
5 years after the take, and State Highway case v. Dewey,
6 in 201 Va. 621, states that it erred to permit testimony
7 of sales two years later, and then there is a case, I
8 believe it is State Highway v. Crockett, 203 Va. 796 that
9 states that sales that are remote in time and place should
10 not be allowed where they are, you know, a couple of years
11 or so after the taking, and all of Mr. Deskins' testimony
12 was based on sales that took place after the date of take.
13 I think it would have been one thing if he had had, say
14 five sales before the take and one after; or if all of
15 those had been just a few months after the take, but here
16 most of them were two years and some were three years
17 after the take, and he tried to back into it by devaluing
18 it, but there is no law that I can find that says you can
19 do that, although I understood the Court's ruling, but it
20 just doesn't seem to be the proper way to base the testi-
21 mony , and we object to all of his testimony, and we
22 think that that just corrupted the entire evidence when
23 his testimony went in, because it was all based on sales
24 in '79, '80 and '81.

25 Number Four Exception is the fact the State's

1 appraiser was not allowed to testify to the other small
2 tract of land that was adjacent. It was not in the pleadings,
3 I will admit, Judge, but I believe Mr. Quillen or somebody,
4 used the analogy that you know if you are just taking an
5 acre out of a 160 acre farm, I think you still would con-
6 sider the value of the whole piece of property, and this
7 property was all an integral one unit. Mr. Dennison owned
8 a plot of land there that had a building on it. He bought
9 a second plot right adjacent, and he made three additions
10 onto the original building, which was on the first piece
11 of land he owned, which was not the land in the take as
12 the Court ruled it, you know, but it is all just a small
13 tract of land; it is commercial land, and it is right there
14 on the highway, and the building, you can go down there and
15 you can look at the building and you can see four additions,
16 you know, as they were built; they are all connected, but
17 it is just such an integral part. We think that this case
18 is one that an exception should be made to because when
19 you value, you know, a third of the piece of land that
20 was involved or that was bought, if you pro-rate it out
21 to the entire, both pieces of land there that is used
22 as one business, then it becomes something like, you know,
23 much less percentage, and the value to the damage to
24 the residue would be looked at in a different light,
25 and we think that the State's appraiser made all of his

1 appraisals on both of the lots which are, you know,
2 essentially used as one lot, although they were acquired
3 at two different times. Now, we think that the fact that
4 they were acquired at two different times would not be,
5 you know, keep us from testifying from the damage to
6 both lots. I think that is about it as far as I know.

7 MR. QUILLEN: Judge, the first thing I would
8 like to note is Mr. Montgomery has not made any exception
9 to the amount of the award or the award made by the
10 Commission in this case. The amount was less than what
11 Mr. Dennison testified too, as well as to what Mr. Deskins
12 testified, and was a little bit more than what Mr. Howard
13 had testified to. I just want to bring to the attention
14 of the Court, first, that there is no exception on the
15 part of Mr. Montgomery as to the award, and I obviously
16 think that would be correct because the Commission's
17 award cannot be upset unless the Court would find some
18 great undue influence or some bias or something like that,
19 corruption, on the part of the Commission, which obviously
20 is not true.

21 In regards to the points that he has raised,
22 we think all of them are completely not meritorious. Mr.
23 McMurray and Mr. Jennings, who he pointed to, they did not
24 even sit on this Commission, if it please the Court.
25 They were stricken, but I would like to bring to the Court's

1 attention, and this is a case at 206 Va. 57.

2 THE COURT: Wait a minute. Did we strike McMurray
3 and Jennings?

4 MR. QUILLEN: He struck. Mr. Montgomery struck,
5 and they didn't even sit on this Commission, Your Honor.

6 THE COURT: Who struck whom?

7 MR. MONTGOMERY: I struck Mr. McMurray.

8 MR. QUILLEN: And Mr. Jennings both, didn't you?

9 MR. MONTGOMERY: Yes.

10 MR. QUILLEN: So they were not even commissioners
11 on the case.

12 Judge, I would call to the Court's attention,
13 if I can, this is Deal v. Nix. This is a case, and in that
14 particular case, Mr. Montgomery cited a jury case, and I
15 would just cite here. Obviously Mr. McMurray who had
16 insurance was disqualified from serving on any case
17 because he had insurance of some type whether car, home-
18 owners, or whatever he had, the Court in Mr. McMurray's
19 case did ask him whether or not he had insurance on this
20 particular property involved, which if the Court will
21 remember, he said he did not., but what this would mean
22 would be that Mr. McMurray couldn't sit on any case at
23 all which he had insurance on, and that might disqualify
24 him from three thousand different people. I don't know
25 how many people he has insurance on, but Judge, if I can

1 bring your attention to Section 6 of this case here. This
2 was an allegation, Judge, and I will just read here. "The
3 defendant first says that the jury was not selected properly.
4 Here the defendant alleges that the Court erred in not
5 disqualifying James E. Vick as a prospective juror because
6 he was dealing with the plaintiff at the time of the trial.
7 Upon questioning by the Court, Mr. Vick stated that his
8 business relations with the plaintiff would not in anywise
9 influence him in the decision of the case. Vick was
10 stricken from the jury list by one of the parties."
11 Then it goes to the next paragraph: "Plaintiff also says
12 that the Court erred in refusing to ask prospective jurors
13 whether any of them were related by blood or marriage to
14 the persons who were drivers for the plaintiff who had
15 been summoned to be witnesses. The Court said in this case
16 said the Court's action with respect to both of these
17 matters involved, it is in the exercise of judicial
18 discretion. The record shows that the Court chose the
19 jury in a careful manner according to customary practices,
20 and we find no reason to say that it abused the discretion
21 vested in it."

22 So, obviously, Judge, this is a matter of
23 judicial discretion. The Court did make the inquiries
24 as to whether or not there was any property involved,
25 and Mr. McMurray said "no", and then in regards to voir
dire, Your Honor,...

1 MR. MONTGOMERY; What was that case?

2 MR. QUILLEN: This is 208 Va. 57.

3 Also, Judge, I think in regards to this matter, on Page 6
4 of the transcript, it is presented to the Court, which
5 Edna has typed up all the voir dire in this thing, there
6 was this question: "Do you think your personal relation-
7 ship, as well as the fact that you have a business relation-
8 ship with Mr. Dennison, would keep you from in any way
9 embarrass you and keep you from making an unbiased decision
10 and award as to what you felt was wise and just in this
11 case, if any?" Mr. McMurray stated: "I believe I can
12 be impartial." So, he was asked that question and he did
13 give the answer that he could be impartial. So that in-
14 quiry was made. The Court on its own made an inquiry,
15 if you will remember, back in chambers, Judge, and this is
16 in the record, on page 14: The Court stated - I was making
17 the argument there - but there is nothing about the fact
18 that he has insurance with Mr. McMurray that would make
19 any difference, and I was arguing the issue, and I said
20 the building has not been taken, and the Court then made
21 the inquiry: "Does he carry insurance on the building?"
22 And he goes ahead and asks that question, and Mr. McMurray
23 says: "I don't have any business insurance at all."
24 So, that was looked into by the Court, and he was asked
25 on the initial deal by the Court if he knew any reason why

1 he couldn't serve on the case, as well as he was asked
2 again in voir dire, and he said that he could be impartial.
3 So, obviously, Judge, I think this is a matter of judicial
4 discretion, and obviously I think the Court had made
5 adequate inquiry and he said that he could be impartial,
6 so, obviously, according to that case and everything else,
7 this is certainly in compliance with Virginia law.

8 Mr. Burl Jennings, basically would be, I guess
9 the same argument to some extent. Mr. Burl Jennings'
10 evidence was at the time of this hearing he was employed
11 at Holston Defense. He had no relationship at all with
12 Mr. Dennison. He had worked as a contractor on some of
13 the buildings down there. That was three or four years
14 ago, and he was asked also the fact could he be impartial
15 and the fact that he had known Mr. Dennison as a friend of
16 his would that in any way influence him, and he said
17 "no" too.

18 So, Judge, basically, we think that is obviously
19 just the mere fact that Mr. McMurray had insurance with
20 Mr. Dennison would in no way disqualify him, and I think
21 sufficient inquiry was made, and I just don't see what -
22 this is in judicial discretion. The procedure that was
23 followed in the selection of commissioners was a list
24 obtained from both parties which was according to statute,
25 and so we have complied with the statutory requirements as

1 to how the commissioners would be selected, and we think
2 this argument is really without merit. And then also
3 the fact, of course the argument here is a strange argument
4 here because the fact is that Mr. McMurray was not a
5 commissioner on this thing, and certainly, it can't be
6 said that he influenced this award here, or did in any
7 way affect this award. All Mr. Montgomery is saying he
8 had to use one of his strikes, but this case here that I
9 cited to you, Judge, said that the fact that they had a
10 business relationship, and once he answered that he would
11 be impartial, the Court said here that this is obviously
12 a matter of judicial discretion and they think the Court
13 had fulfilled their need, so I think we are covered here
14 by the Deel v. Nix case.

15 THE COURT: Does the transcript disclose that
16 there was a motion on Jennings?

17 MR. QUILLEN: I don't believe so. I believe
18 there was on - there may have been; there was one on
19 McMurray, Judge, on Page 13. I don't know if you made...

20 THE COURT: I made a note at the trial that
21 there weren't any motions on Jennings, and Cox; so,
22 apparently, there was a motion on McMurray, but we did
23 go into in chambers.

24 MR. QUILLEN: I think he brought Mr. McMurray
25 in chambers.

1 MR. MONTGOMERY: This thing was up there at
2 the bench.

3 THE COURT: I believe it was. I don't believe
4 you brought him back here in chambers. I think. I can't
5 recall.

6 MR. QUILLEN: Judge, that is our position on the
7 first point.

8 The second point, Mr. George Howard's dealings,
9 or George Howard, dealing with Mr. Howard's statement con-
10 cerning access to the landowner's property.
11 Every land condemnation case I have had, which basically
12 were with, in the past which over the years go back to
13 Senator Long and now with Ronnie over these last several
14 years, and the ones we have had on behalf of utilities,
15 Judge, basically what you deal with in these cases is
16 basically the plat and everything as stated by the taking
17 party, and of course, here is the plat and specifications
18 of what was being taken. Judge Cridlin has always required
19 us to go - the evidence was always limited to what was
20 said and done according to these plats and specifications.
21 We were never allowed to go outside of them, and we had
22 that, on this particular case as shown here, there was a
23 six foot curb being placed here on this particular
24 property, which divided the residue of the property not
25 taken, Judge, from, what we have here, Judge, is about
one-third of the property was being taken. This was on the

1 I guess you would call the southern end going towards
2 Kingsport, and the one-third was taken was taken in red
3 and right here was, there was going to be a, according to
4 the plans and specifications, there was going to be a
5 six foot curb as shown on the plans and specifications.
6 I think, Mr. Montgomery, he is not in anyway denying that
7 the plans did call for a six inch curb. Well, obviously,
8 that curb is not - see, of course, obviously before the
9 construction and before the take, Mr. Dennison had access
10 to go back and forth between the entire property, Judge,
11 because there wasn't an obstruction, but there was going
12 to be a six inch obstruction that would transverse across
13 all of his property there, dividing what he had remaining
14 and what was taken; that is going to be the six inch curb.
15 Before the taking, he had the access all the way across
16 all of the property, and I think Mr. Howard's testimony
17 really was the fact that he was going to be, because of
18 the six inch curb here, that he no longer could get
19 back - that would separate the access back to the property
20 the Highway Department was taking in his regular property,
21 and I think that was just one of the factors he used in
22 determining damages to the remaining portion of this
23 property, but the Court gave an instruction offered by
24 Mr. Montgomery, which I didn't like, but I think it
25 certainly - I don't see how he can feel like he was

1 prejudiced at all.

2 THE COURT: What instruction was that?

3 MR. QUILLEN: This is Instruction No. 14. This is
4 about as good an instruction as the Highway Department can
5 get, and what he said, Judge, was: "The Court instructs
6 the commissioners that the owner of land abutting a public
7 highway is only entitled to reasonable access to his
8 property and his rights of access are subordinate to the
9 right of the State to control traffic over its highways,
10 and if you find the landowner in this case will have
11 reasonable access to the property, after a construction
12 of this project, you should not make any awards for residue
13 for damages that might result from a change in access."
14 Well, obviously, I don't know whether the commission said
15 this is now an unreasonable, we have an unreasonable
16 access, in my opinion I would think if you have to drive
17 over a six foot, six inch curb, you have lost reasonable
18 access to your property, but certainly, who are we to say,
19 Judge, that the Court certainly properly instructed the
20 jury on this matter, and I think it is a right hard
21 instruction on the part of the defendant; they said if
22 we have reasonable access after the construction, then
23 they can't make any award, but, obviously, I think certainly
24 we are entitled to the opinion that a six inch curb would
25 make impossible for the average person to drive across,

1 and if Mr. Howard put that in his damages, I think he
2 certainly was reasonable. I think it is certainly a
3 proper element.

4 THE COURT: Was he your witness?

5 MR. QUILLEN: Our appraiser, yes, Your Honor.
6 But I don't think there is any question..

7 THE COURT: Was there any objection at the time
8 to that point?

9 MR. QUILLEN: Any objection to that point?

10 MR. MONTGOMERY: Judge, I am not sure.

11 THE COURT: Seems like that was on cross-examin-
12 ation that it was brought out.

13 MR. MONTGOMERY: Yes, I believe it was.

14 THE COURT: You brought it out, didn't you?
15 Or maybe he blurted it out in answer to your questions.

16 MR. MONTGOMERY: It wasn't really responsive
17 to my question.

18 THE COURT: Well, it was toward the end of Mr.
19 Howard's testimony. We don't have a transcript yet, do we?

20 MR. QUILLEN: No. It may have been, maybe Mr.
21 Montgomery said, "what do you base your damages to the
22 residue on?" And he started giving a number of things,
23 one of which was the fact that Mr. Dennison would no longer
24 have access back, I mean the property was going to be
25 changed, and the fact that that access was changed.

1 THE COURT: Now is that six inch curb in the
2 plat and specifications?

3 THE COURT: Yes, right there it is, Judge. See
4 right there where that marker is. I don't think Ronnie
5 and them ever denied there was going to be a six inch
6 curb there.

7 MR. MONTGOMERY: No, but there is access from
8 the back of the property. It is just cut off from the..

9 THE COURT: Makes it a little bit less convenient.

10 MR. MONTGOMERY: Yes.

11 MR. QUILLEN: But see, Mr. Howard said in his
12 opinion that that wasn't reasonable. Judge, to move the
13 thing along a little bit, in response to this, we think
14 that the Court properly instructed the commission on that
15 matter, and this instruction, although I didn't particularly
16 like it, the Court gave it, and whether the commissioners
17 applied anything there; obviously, Mr. Howard he could be
18 cross-examined as to what he based his things on. He said
19 that he thought that the six inch curbing damaged the
20 remaining portion of the property, in my opinion, I don't
21 see how you can reach any other conclusion, but I wasn't
22 on the commission and certainly, he was cross-examined
23 by Mr. Montgomery and I think, whether the commission did
24 anything on that, I don't know. They must have thought
25 he was damaged - they didn't award what Mr. Howard said

1 anyway.

2 The next point, Judge, deals with before and after.
3 I think it appears, if you will remember on before and
4 after that even the State's witnesses in this case used
5 one of the after sales, which was - this was the property
6 that later on was sold. There was an option on it, and
7 the actual sale was consummated later. That sale was
8 property that was across from this property, which was
9 the Don Billings property. I think that particular
10 comparable sale was used by both the Highway Department
11 and by us. I think it was used by Mr. Howard and Mr.
12 Deskins. I think it is clear - I have researched, Judge,
13 and the Court do admit before and after sales, and the only
14 time the Court might not admit an after sale would be when
15 there has been a substantial change in the way the property
16 is by reason by the construction, or something like that.
17 In other words, an after sale would be admissible if
18 you can prove, if the evidence is that it is comparable.
19 There is a case Tremlay, State Highway Commission. I
20 looked at this case and this case happened up in Charlottes-
21 ville and the facts in that case do not say as to when
22 the taking was and when the after sale was, but I called
23 research people, Judge, on this point, and the taking on
24 this case was 5/27/67. I think the highway department
25 used a sale here that was made June 25, 1968, which was a

1 year after. All the cases I have, and I will file this
2 with the Court.

3 MR. MONTGOMERY: What is the cite on that?

4 MR. QUILLEN: The Tremlay case is 212 Va. 166. All
5 the cases that I have heard, Judge, is that the Court is
6 to determine whether or not the sales there has been any
7 substantial change, whether it is comparable property.
8 Judge, here is a recent case, 213 Va. 734, it is the
9 McGlothlin v. State Highway Commission case. I guess
10 it came out of Tazewell County.

11 THE COURT: What was it?

12 MR. QUILLEN: 213 Va. 734, and this really got
13 on the question of whether this witness was qualified,
14 and it really came with one of the questions about whether
15 the Court in this thing didn't let him testify because
16 he didn't make an appraisal, if it please the Court, at
17 the very date, or near the date that the property was
18 taken. Here is what the Court said in this case, and I
19 think it is dicta for what we are talking about here.
20 "The evidence shows that the witnesses made their
21 appraisals within two weeks of the hearing before trial
22 commissioners in December 1971. The witnesses testified
23 they were familiar with the property, both before and
24 after the date of the taking. They are also familiar with
25 property values in the vicinity before, on and after the

1 date of the taking by the commissioner." So see, they
2 show that the commissioners, the expert witnesses in this
3 case were familiar with property values in the vicinity
4 before, on and after the date of the taking. "They were
5 aware that the physical characteristics of the property
6 had been completely changed by the construction. They
7 testified that their opinions of the value of the land
8 taken was formed so as to represent the value of the land
9 on the date of taking." That is what Mr. Deskins did.
10 If you will remember the highway testimony, they appre-
11 ciated in value of property that they used in prior sales
12 and obviously to get the date of sale, if it is after,
13 you have to depreciate the property, which Mr. Deskins
14 did, so his evidence was given, and what value he put
15 on the property was all as of the date of taking, and I
16 think that is one of the keys, he had taken eventhough
17 the sale was later in time, and this Court held that it
18 was error not to allow that testimony to come in, that
19 expert witness to testify. Although that is not a point,
20 that is certainly good dicta of the fact that the appraiser
21 used comparable sales before and after.

22 MR. MONTGOMERY: That is the one where the guy made,
23 the appraiser didn't actually make his appraisal until
24 a few weeks before the trial.

25 MR. QUILLEN: The case, yes.

1 MR. QUILLEN: But they do keep talking about in there,
2 before and after. Really the most comparable sales used in
3 this case really were the ones that Mr. Deskins used. One
4 was a lot, one of the others that was made after the sale
5 which he testified to, was one that his property was really
6 two pieces of property up on the same side of the road that
7 the property taken was, and the other one was right across
8 from it. One was the Billings property and one was the
9 property in which Mr. Dennison himself had purchased a
10 one-third undivided interest in it, and this property was
11 right next, right up from this property, two parcels up;
12 so of all the comparable sales offered, and Mr. Deskins was
13 certainly aware, because he had been involved in the one
14 right up from there, and on the Billings matter, the
15 Billings case was also used by the Highway Department,
16 so I can see...

17 THE COURT: Well, the Highway Department also
18 took sales a year or two before the day of taking, and-
19 or more. I can't recall now and inflated the price
20 and isn't it reasonable to believe that you can take a
21 couple of years after the day of taking and deflate the
22 price as your witnesses testified to.

23 MR. QUILLEN: I asked A. L. Philpott when I was up
24 in Richmond what his Courts allowed and he said his Courts
25 allowed after and before.

1 MR. MONTGOMERY: What case is that - what book
2 is that in?

3 MR. QUILLEN: Philpott on Eminent Domain. You
4 know because this question had come up.

5 THE COURT: He is quite an authority.

6 MR. QUILLEN: I asked that, and he said his courts
7 did, but you have to, you know the opinion that you speak of,
8 when the man testifies, his opinion has to say on the day of
9 taking what is your opinion. You have to somehow..

10 THE COURT: If you inflate or deflate, depending
11 on whether it was before or after the taking, right?

12 MR. QUILLEN: Right, and there are a lot of things
13 you would use as factors for comparable sales. I would
14 like for the Court to note here, the construction on this
15 highway, nothing on this highway here had been done as far
16 as the highway's project, would you all not concede that,
17 Ronnie? Right now there is more being done than any time,
18 but none of this property in here or the comparable sales
19 had been affected by reason of construction at the time
20 of these testimonies or these other comparable sales.

21 THE COURT: That came out, maybe in argument or
22 somewhere; I don't remember where.

23 MR. MONTGOMERY: Hadn't been any highway work,
24 you know.

25 MR. QUILLEN: There had been no changes down there

1 to affect the other property of comparable sales.

2 Judge, the only other point that Mr. Montgomery
3 makes is one that I think we have alluded to a little bit
4 before, and that is, if you will look at the plans on the
5 take, and this basically is, on the map, this is a take of
6 a portion of the property purchased by Mr. Dennison at 274
7 page 173. This is the plans, and the plans here show
8 that the right of way here was a lot owned by Mr. Dennison,
9 that I think the dimensions were something like, and these
10 kinda escape from my memory, maybe 190 on the back and
11 160 or something like that on the front. Of course, the
12 highway department has taken about one-third of the
13 property here; and so basically this is..

14 THE COURT: Were the plans introduced into the
15 evidence, yes, they were.

16 MR. QUILLEN: Yes, they were.

17 THE COURT: As Exhibit what? I can't read it.

18 MR. QUILLEN: Whatever number it is , probably One.

19 MR. QUILLEN: And this shows in red here; so, Judge,
20 they were taking this here , and the Court, I think rightly
21 so, because I don't see how it could be otherwise, limited
22 the evidence on my part as well as on their part to the
23 plans and specifications as shown by their exhibit. I
24 know I have had cases with Judge Cridlin time and time
25 again, and he said, "was that on the plans?" And he

1 would never let us go into things unless they were on the
2 plans.

3 THE COURT: Well, what bothers me is how far you go
4 outside the plans and specs and the pleadings really, and
5 how far do you go to present evidence.

6 MR. QUILLEN: We have never gone outside of them.
7 Your Honor, we have tried them for years.

8 THE COURT: If you left the door open, you have got
9 to go -I mean a man could have owned 150 lots on down
10 through there. Would you have had testimony as to all those
11 and I think the answer would be "no".

12 MR. QUILLEN: And of course, we limited our testimony,
13 Judge, to the take, which our people put a value on the take
14 and our people put a value on the damages to the residue.
15 One thing I think, I don't think Mr. Montgomery was not
16 cognizant of the fact, but seems like the highway appraiser
17 certainly was, was the fact that four years prior to this,
18 in a true arm length sale, our client had paid \$50,000.00
19 for this property and they were really taking almost one-
20 third of it and they were also damaging the remaining
21 two-thirds, that was in our opinion; so, of course, if we
22 got into the testimony of inflating what \$50,000.00 - I
23 think if you inflated that on a 10% rate, and which, the
24 Highway Department's own witnesses, they were using 10%,
25 you get up to about \$80,000.00 there in four years when

1 the property was taken. So, I don't think there is anything
2 and of course, our evidence will show about, we have two
3 different appraisals there, but they were hitting about
4 \$37,000.00 or something like that on the take and
5 about \$37,000.00 on the...

6 THE COURT: That is true. Willis Blevins testified
7 for the Highway Department, and he adjusted for inflation
8 increase of 10% on every property that he compared to the
9 subject property. Of course, this was before the day of
10 taking.

11 MR. QUILLEN: So, really, in conclusion, Judge,
12 we do not see any error. Mr. Montgomery is not impinging
13 any of the integrity of any of the other commissioners;
14 in fact, I don't know who ended up with three and who
15 ended up with two, but I don't think that really matters
16 too much.

17 THE COURT: As I recall, the Highway ended up
18 with three and the landowner ended up with two.

19 MR. MONTGOMERY: Not true.

20 THE COURT: Not true?

21 MR. MONTGOMERY: No.

22 MR. QUILLEN: Well, I don't think you all that means
23 that much because we had a case a week later and Tucker
24 and I were getting the commissioners and I ended up with
25 his and he ended up with mine.

1 MR. QUILLEN: Who ended up, Mr. Vaughn and Mr. Duncan.
2 I don't know who the five were that ended up, and of course
3 they reach the majority of the report anyway.

4 THE COURT: There were no exceptions?

5 MR. MONTGOMERY: I am sure Ford is right. Ford's
6 people were in the majority. Let's see, Johnny Roberts
7 is your man.

8 MR. QUILLEN: Right.

9 MR. MONTGOMERY: E. T. Farmer was your fellow?

10 MR. QUILLEN: Right.

11 MR. MONTGOMERY: Mr. Cox was your man?

12 MR. QUILLEN: I think so, Vernon Cox.

13 MR. MONTGOMERY: Milo Vaughn?

14 MR. QUILLEN: That is yours.

15 MR. MONTGOMERY: John Duncan?

16 MR. QUILLEN: That is yours. Of course, I think
17 that is probably immaterial, and Mr. Montgomery is not in
18 any way impinging the integrity of the Commissioners.

19 MR. MONTGOMERY: No. Just a little bit of rebuttal,
20 Judge, I am ready to quit here, but the fact that Mr.
21 McMurray is an agent and it is a continuing relationship,
22 I think is more than doctor-patient, or lawyer, attorney-
23 client on a case by case method. You may, you know,
24 represent somebody today and next year he goes down the
25 street, but here Mr. Dennison still had his insurance,

1 his personal insurance with this fellow, and I just think
2 it is asking too much of a person, although he didn't
3 sit, I grant you, but I think he should have been stricken
4 for cause, and one other fact about the piece of property
5 that was across the road that Willis Blevins, the state's
6 appraiser used, that that property was under option and
7 before the day of the take, and he used the option price
8 as I understand, and that the other properties were not.
9 You know, they were sales that were made one, two and
10 three years later, and I think if you start trying to
11 deflate them, although in theory, I understand
12 what you are saying - it may be the same as trying to
13 inflate them, but economic situations change and businesses
14 become good and better and worse at certain points, and I
15 think two or three years is too remote in time, and just
16 to use the deflation factor, a year after the date of take
17 business at one spot down the road may become just hot, and
18 just to say that a sale then because it brought three times
19 an acre what it would have brought at the day of the take
20 and you just deflate it, doesn't take into consideration,
21 or may not; it may or may not, take into consideration
22 the economic conditions that change after the day of
23 the take.

24 THE COURT: Well, can't you argue the same thing
25 in reverse; I mean, in other words, the day of the taking,

1 I understand was November 7, 1978, is that right?

2 MR. MONTGOMERY: I think that is right.

3 THE COURT: And I mean the Highway, your witnesses
4 testified as to properties in 1975 and some in '78 also,
5 but '75 to '78 would be three years. Seems like there
6 were some in '74 too.

7 MR. QUILLEN: Judge, I don't want to interject
8 too much, but..

9 THE COURT: Go ahead.

10 MR. QUILLEN: Obviously, I think it is up to the
11 Court to decide whether or not he would allow this as a
12 comparable sale, but even some of those sales there which
13 the Court allowed for the Highway Department, what was
14 the Bantam Chef property, well, Judge, the Bantam Chef
15 property is down here just as you start going into Gate
16 City. Well, that property..

17 THE COURT: How many miles is that away?

18 MR. QUILLEN: That is probably a mile and a half
19 away from this property here, but the Court saw fit to
20 let that in. Of course, I got the right to cross-examine
21 and I can show in my interest where I don't think this
22 is comparable, but Mr. Deskins was really dealing with
23 150 to 200 feet, or maybe about 250 feet of this real
24 property on property that is on the same side of the
25 road and property that was right across from it, and

1 obviously if you start talking about comparable sales,
2 although Mr. Deskins might have been two years or
3 something after, these were probably the most comparable
4 sales used at the trial; much more than say the
5 Bantam Chef down here and I don't know what else. I think
6 both sides used MacDonalds; I think MacDonalds property
7 which is located over in Tennessee, they used MacDonalds and
8 Mr. George Howard used MacDonalds. I think we put ours
9 on the square footage basis and you all used yours on a
10 whole tract. So, I mean that property is probably a good
11 three-quarters of a mile away. So I think the Court
12 examined it and obviously this property was the closest,
13 and if any property was comparable, this was as good as
14 you could get.

15 THE COURT: Well, I will tell you, my intent
16 what I intend to do is try to use my common sense
17 and if I recall we suspended for awhile to look at the
18 law, and neither me, nor either one of you, could come
19 up with some law to help us, and we even called attorneys
20 around the area with no success at finding out any
21 particular case on point, and I went on my common sense and
22 I figured that what was good for the goose was good for
23 the gander. If the Highway could adjust up for
24 inflation, that the landowner could adjust down for
25 deflation at the same rate.

1 MR. QUILLEN: Obviously, Judge, this Tremlay
2 case, the one that we checked on the court record for
3 the Highway used one after - this was back in 1971, I
4 think really has been the practice for years.

5 MR. MONTGOMERY: Well, now is that the one where
6 they..

7 MR. QUILLEN: This is the one in Charlottesville.

8 MR. MONTGOMERY: I am not familiar with that case.

9 MR. QUILLEN: The only one that I have heard
10 that they really knocked out was because there had been
11 a substantial change in the condition - suppose the
12 Highway Department, Judge, came down and constructed a
13 brand new road through there and maybe enhanced very
14 much the value of that property, and then you came back
15 and used the sale that was made four years later where
16 the property had been enhanced by value - there had been
17 a substantial change, then I think you are really talking
18 about a ..

19 THE COURT: A change, that is true.

20 MR. QUILLEN: A change, but I think you have
21 to show - it would just be completely illogical to, the
22 criteria basically is one of judicial determination,
23 as to whether or not it qualifies, with in mind also that
24 each party has the right to cross-examine and to try to -
25 like in that case that the Bantam Chef case, I was trying
to show that they really were selling, an individual

1 to a corporation which they were always saying, Jack
2 Smith, I mean Fred Smith, owned the corporation, that Jack
3 Smith owned the corporation they were selling to; sold
4 the property to his own corporation. They did an arms
5 length sale. Mr. Montgomery was obviously there and had
6 the same opportunity, and he did, cross examine our men.

7 THE COURT: Any more argument?

8 MR. MONTGOMERY: That is all, Judge, I will hush
9 if Ford would...

10 MR. QUILLEN: I will hush, Judge.

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16 AND THESE WERE ALL THE PROCEEDINGS HAD
17 AND EVIDENCE INTRODUCED AT THE HEARING
18 IN THE ABOVE-CAPTIONED CASE.
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I hereby certify that I did take down,
record, and transcribe the proceedings of
this hearing faithfully and accurately
to the best of my ability.


Court Reporter

Ruth Powers Ford
Court Reporter - Scott County, Va.
Rt. 6, Village Center Sub-division
Kingsport, Tennessee 37660

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