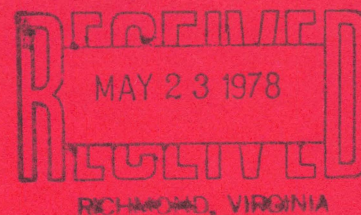


220 VA 235

CLERK
SUPREME COURT OF VIRGINIA



In the
SUPREME COURT OF VIRGINIA
At Richmond

Record No. 771779

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA,

Appellant,

v.

CALVIN PERCY ALLMOND AND ORETHA
ELEY ALLMOND,

Appellee.

APPENDIX

Marshall Coleman
Attorney General

Walter A. McFarlane
Deputy Attorney General

Valentine W. Southall, Jr.
Assistant Attorney General
1401 East Broad Street
Richmond, Virginia 23219

Rodham T. Delk, Esq.
DELK AND BARLOW
229 Main Street
Smithfield, Virginia 23430

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VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

V. At Law No. 3020

PETITION

CALVIN PERCY ALLMOND
P. O. Box 441
Smithfield, Virginia

ORETHA ELEY ALLMOND
P. O. Box 441
Smithfield, Virginia

and 0.012 acres, more or less,
of land in the Town of Smithfield,
Isle of Wight County, Virginia.

To the Honorable Judges of the Circuit Court
of Isle of Wight County, Virginia:

Your petitioner, the State Highway 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. Delk and Barlow are the duly authorized agents and attorneys for the State Highway 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 they are authorized to file this proceeding in the name of and on behalf of the State Highway Commissioner of Virginia.

2. The real estate which is affected in this proceeding lies in the Town of Smithfield, in Isle of Wight County, Virginia, and is further described as follows:

Being as shown on Sheet 3 of the plans for Route 258, State Highway Project 0258-046-107, RW-201, and lying on the south (right) side of the office revised centerline and adjacent to the existing south right of way line of present Route 258, from the lands of Benjamin Jones opposite approximate Station 1657+20 to the lands of F. M. Griffis and Thomas Perry Griffis opposite approximate Station 1657+39, and containing 0.012 acre, more or less, land;

AND WHEREAS, the Continental Telephone Company of Virginia was the owner of an easement and right of way for the construction, operation and maintenance of telephone line facilities, together with the necessary attachments and appurtenances thereto, along and contiguous to said Route 258; and

WHEREAS, said easement and right of way is embraced in whole or in part within the lands taken by the Commonwealth in fee hereunder for said project, making necessary the relocation of the said telephone company's facilities;

NOW, THEREFORE, under the provisions of Section 33.1-96, 1950 Code of Virginia, the State Highway Commissioner of Virginia has also directed to be taken, in order that same may then be conveyed to the Continental Telephone Company of Virginia, its successors and assigns, an easement and right of way for the construction, operation and maintenance of telephone line facilities, including any and all necessary attachments and appurtenances thereto, along and contiguous to the proposed south right of way line of said Route and Project, from opposite approximate Station 1657+20 to opposite approximate Station 1657+59, the estimated fair value of which is included in the amount above specified.

AND WHEREAS, the Virginia Electric and Power Company was the owner of an easement and right of way for the construction, operation and maintenance of power line facilities, together with the necessary attachments and appurtenances thereto, along and contiguous to said Route 258; and

WHEREAS, said easement and right of way is embraced in whole or in part within the lands taken by the Commonwealth in fee hereunder for said project, making necessary the relocation of the said power company's facilities;

NOW THEREFORE, under the provisions of Section 33.1-96, 1950 Code of Virginia, the State Highway Commissioner of Virginia has also directed to be taken, in order that same may then be conveyed to the Virginia Electric and Power Company, its successors and assigns, an easement and right of way for the construction, operation and maintenance of power line facilities, including any and all necessary attachments and appurtenances thereto, along and contiguous to the proposed south right of way line of said Route and Project, from opposite approximate Station 1657+20 to opposite approximate Station 1657+59, the estimated fair value of which is included in the amount above specified.

This property is also shown on a plan or plans on file in the Central Office of the State Highway Department, Richmond, Virginia, identified as Route 258, Project 0258-046-107, RW-201, Sheet Nos. 3 and 3A, a copy of the said plans being 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 title to the land shown within red lines and to the utility easement shown within yellow lines on the aforesaid plans, 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 part of the Highway System of Virginia, know as Route 258, Project 0258-046-107,RW-201, in the Town of Smithfield, Isle of Wight County, Virginia, all of which is properly declared in Exhibit A attached hereto.

5. The work to be accomplished on the aforesaid project is the construction of a new bridge over Cypress Creek in the said Town.

6. Your petitioner has made a bona fide but ineffectual effort to purchase said real estate and easements from the owners thereof and has been unable to do so because of inability to agree on the purchase price.

7. On or about the 20th., day of April, 1973, petitioner caused to be recorded in the Office of the Clerk of this court in Deed Book 218, at page 447, Certificate No. C-22786 as provided by Title 33.1, Chapter 1, Article 7 of the Code of Virginia (1950), as amended.

8. Thereupon pursuant to the provision of the aforesaid Title 33.1, Chapter 1, Article 7 of the Code of Virginia (1950), as amended, 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 in this proceeding are, as disclosed by a title examination of the above described land, Calvin Percy Allmond and Oretha Eley Allmond, landowners, American National Bank, Suffolk, Virginia, lien holder by virtue of a deed of trust dated July 2, 1969, and recorded in the Clerk's Office aforesaid in Deed Book 198, at page 106, and Garnett Oil Company, Inc., Suffolk, Virginia, as it interests may appear by virtue of a certain agreement dated July 2, 1969, and recorded in the Clerk's Office aforesaid in Deed Book 198, at page 109. There are unpaid and outstanding taxes on the said property for the Town of Smithfield and County of Isle of Wight for the years 1970 thru 1973, aggregating \$103.78 plus interest and other charges. The appointment of a special commissioner does not appear to be necessary.

WHEREFORE, your petitioner respectfully prays to this Honorable Court in accordance with the provisions of Title 25, Chapter 1.1 of the Code of Virginia (1950), as amended, that commissioners may be summoned and appointed to ascertain

and report the value of the land and easements 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; that the Court confirm the vesting of title in the Commonwealth 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 of Virginia (1950), as amended, 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 COMMISSIONER OF VIRGINIA

By

William T. Delk
Counsel

Rodham T. Delk, p.q.
Delk and Barlow
229 Main Street
Smithfield, Virginia 23430

COMMONWEALTH OF VIRGINIA
COUNTY OF ISLE OF WIGHT, to-wit:

This day Rodham T. Delk personally appeared before me, the undersigned, a Notary Public in and for the County of Isle of Wight, Commonwealth of Virginia, in my County aforesaid, and being first duly sworn, says that he is attorney for the State Highway 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 14th, day of October, 1975.

My commission expires: April 27, 1977 7/11/77

Joyce E. Yelts
Notary Public

Filed in the Clerk's Office the 16 day of October, 19 75

Writ Tax \$.....

Fee

Deposit

Total Paid \$ 25.00

Teste:

W. E. Laine Jr. Clerk
Richard P. Hill D. C.

5

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY COMMISSIONER OF VIRGINIA

V. At Law No. 3020

NOTICE OF PETITIONER
TO APPOINT COMMISSIONERS

CALVIN PERCY ALLMOND
Post Office Box 441
Smithfield, Virginia

ORETHA ELEY ALLMOND
Post Office Box 441
Smithfield, Virginia

and 0.012 acres, more or less,
of land in Isle of Wight County,
Virginia.

You are hereby notified that the State Highway Commissioner of Virginia will on the 10th., day of December, 1975, at 9:00 o'clock a.m., or as soon thereafter as the same may be heard, move and petition Hon. George F. Whitley, Jr., Judge of the Circuit Court of Isle of Wight County, Virginia, at his offices at 117 South Church Street, Smithfield, Virginia, 23430, for the appointment of commissioners to ascertain what will be just compensation for certain lands or interest therein, which the State Highway Commissioner of Virginia proposes to condemn for Highway Route No. 258, Project 0258-045-107, RW-201, as is shown by the plat and blueprint attached to the petition filed in this cause, and to award damages, if any, resulting to the adjacent or remaining property of the owners, beyond the enhancement of 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 the said proposed highway will fully appear by reference to the petition and exhibits filed in this cause.

Notice is further hereby given that grounds of defense shall be filed, in writing, within twenty-one (21) 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 COMMISSIONER OF VIRGINIA

Rodham T. Delk, p.q.
Delk and Barlow
229 Main Street
Smithfield, Virginia, 23430

By

Rodham T. Delk
Counsel

VIRGINIA IN THE CLERK'S OFFICE
THE COUNTY OF ISLE OF WIGHT.

RECEIVED AND FILED
OCT 16 1975
J. G. Downer, Jr.
Clerk

By J. R. Whitley, Jr.

Not finding Cabren Percy Almond at
usual place of abode nor any member of the
family of the said Cabren Percy Almond
over the age of sixteen years I executed the
within Notice by posting a true copy of
same on the front door of the residence of the
said Cabren Percy Almond in the
County of Isle of Wight this 21st day of

Oct 1975

B. J. Cox Sheriff

By D. M. Holland

Not finding Ortha Elin Almond at
usual place of abode nor any member of the
family of the said Ortha Elin Almond
over the age of sixteen years I executed the
within Notice by posting a true copy of
same on the front door of the residence of the
said Ortha Elin Almond in the
County of Isle of Wight this 21st day of

Oct 1975

B. J. Cox Sheriff

By D. M. Holland

V I R G I N I A:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

vs. At Law No. 3020

CALVIN PERCY ALLMOND

and

ORETHA ELEY ALLMOND

and

0.012 acres, more or less,
of land in the Town of
Smithfield, Isle of Wight
County, Virginia

GROUND S OF DEFENSE

Comes now your defendants, Calvin Percy Allmond and
Oretha Eley Allmond, by counsel, who state the following as
their Grounds of Defense to the Petition filed against them
in the captioned case:

(1) The defendants admit the allegations of paragraph
1. of the Petition;

(2) The defendants do not have sufficient information
to admit or deny the allegations of paragraph 2. of the Peti-
tion and call for strict proof thereof;

(3) The defendants do not have sufficient information
to admit or deny the allegations of paragraph 3. of the Peti-
tion and call for strict proof thereof;

(4) The defendants deny the allegations of paragraph
4. of the Petition;

L. WOODROW CROOK, JR.
Attorney-at-Law
SMITHFIELD, VIRGINIA

(5) The defendants deny the allegations of paragraph 5. of said Petition;

(6) The defendants deny the allegations of paragraph 6. of the Petition;

(7) The defendants do not have sufficient information to admit or deny the allegations of paragraph 7. of the Petition and call for strict proof thereof;

(8) The defendants deny the allegations of paragraph 8. of the Petition;

(9) The defendants admit the allegations of paragraph 9. of said Petition in that the Petitioners are the landowners of the property described in said Petition;

(10) The defendants affirmatively allege that the Commissioner for the Department of Highways entered upon and took possession of the property under the provisions of Sections 33.1-119 through 33.1-121 of the Code of Virginia more than two (2) years prior to the filing of it's Petition herein and did not complete the construction of the highway project after reasonable time but the completion of same was more than sixty (60) days before the filing of the Petition herein and consequently the defendants hereby petition the Circuit Court of the County of Isle of Wight, Virginia, wherein said property lies for the appointment of commissioners to determine just compensation for the property taken and damages done.

And your Petitioner will ever pray, etc.

CALVIN PERCY ALLMOND

ORETHA ELEY ALLMOND

By  Counsel

H. WOODROW CROOK, JR.
Attorney-at-Law
SEATTLE, VIRGINIA

H. Woodrow Crook, Jr.
 Attorney at Law
 107 Institute Street
 Smithfield, Virginia

I hereby certify that a true copy of the foregoing
 Grounds of Defense was served upon Rodham T. Delk of Delk
 and Barlow, agent and counsel of record for the Petitioner
 by mailing a copy to him at his office in Smithfield, Vir-
 ginia 23430 this 4th day of November, 1975.

H. Woodrow Crook, Jr.

H. WOODROW CROOK, JR.
 Attorney-at-Law
 SMITHFIELD, VIRGINIA

-3-

VIRGINIA IN THE CLERK'S OFFICE OF
 THE COUNTY OF ISLE OF WIGHT.

Nov 5 1975
 RECEIVED AND FILED

E. E. Deane Jr. CLERK

Kathryn P. Stills DC

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

VS. At Law No. 3020

REPORT OF COMMISSIONERS

CALVIN PERCY ALLMOND
ORETHA ELEY ALLMOND

and 0.012 acres, more or less, of
land in the Town of Smithfield,
Isle of Wight County, Virginia

To the Honorable Judges of the
Circuit Court of Isle of Wight County, Virginia:

We, the undersigned Commissioners appointed by the
above named Court on March 30, 1977, to fix the value of the
land and easements 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 30, 1977, we were duly sworn and went
upon the said land and easements in the custody of the
Sheriff of Isle of Wight County, Virginia, or one of his
deputies, to view the same as directed by the order of said
Court, the said land being briefly described as follows, to-
wit:

Being as shown on Sheet 3 of the plans for Route 258,
State Highway Project 0258-046-104, RW-201, and lying
on the south (right) side of the office revised centerline
and adjacent to the existing south right of way line of
present Route 258, from the lands of Benjamin Jones
opposite approximate Station 1657+20 to the lands of F.
M. Griffis and Thomas Perry Griffis opposite approximate
Station 1657+59, and containing 0.012 acre, more or
less, land;

TOGETHER WITH an easement and right of way to the
Continental Telephone Company of Virginia, its successors
and assigns, for the construction, operation and maintenance
of telephone line facilities, including any and all
necessary attachments and appurtenances thereto, along
and contiguous to the proposed south right of way line
of said Route and Project, from opposite approximate
Station 1657+20 to opposite approximate Station 1657+59;

AND TOGETHER WITH an easement and right of way to the
Virginia Electric and Power Company, its successors and

assigns, for the construction, operation and maintenance of power line facilities, including any and all necessary attachments and appurtenances thereto, along and contiguous to the proposed south right of way line of said Route and Project, from opposite approximate Station 1657+20 to opposite approximate Station 1657+59.

Being a portion of the land acquired by Calvin Percy Allmond and Oretta Eley Allmond by deed from Benjamin Jones and Pauline Jones dated July 2, 1969, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia, in Deed Book 198, at page 103.

Upon a view of the property and upon such evidence as was before us, we did fix the value of the aforesaid land and easements taken by the State Highway and Transportation Commissioner at \$ 161.00, and we do further fix the damages which may accrue to the residue, beyond the enhancement in value to such residue, by reason of the taking, at \$ 7500.00.

Given under our hands this 30th, day of March, 1977.

Shenton C. Blount
Barth H. C. Edwards
Edith R. Jones
J. A. Chutkan
R. J. E. [Signature]
 Commissioners

INSTRUCTION NO. 1

The court instructs the commissioners that the State Highway 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.

3-30-77
Given
G. L. M. Jr.

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.

3-30-77
Given
G L M Jr

INSTRUCTION NO. 3

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 Commissioner. The time of the taking of the lands, or interest therein, subject to this condemnation proceeding was April 20, 1973, 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.

3-30-77

Given
G. J. M. H.

INSTRUCTION NO. 4

The Court instructs the commissioners that just compensation as used in these instructions means the fair market value of the land taken. Fair market value is defined as the price which a knowledgeable person or party, under no compulsion, is willing to take for the property which he has for sale, and which another knowledgeable person or party, under no compulsion, being desirous and able to buy, is willing to pay for that property.

3-30-77

Given
42mDr

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 Commissioner personally. The use to which the land is to be put does not affect its fair market value at the time of the taking.

3-30-77
Given
Y. Z. M. Jr.

INSTRUCTION NO. 6

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 stood at the time of the taking in view of all of the purposes to which it was reasonably and naturally adapted, and not its prospective or speculative value based upon future expenditures and improvements.

3-30-77
Given
by J. J. Jr.

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 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.

3-30-77
Given
by J. J. J.

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.

3-30-77

Given
G. L. G. Jr.

INSTRUCTION NO. 9

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 market value of the owner's remaining property by reason of the construction or improvement contemplated or made by the State Highway 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 such enhancement in value shall not be offset against the value of the land taken.

3-30-77
Given
L. L. M. H.

INSTRUCTION NO. 10

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.

3-30-77

Given

4/20/77

INSTRUCTION NO. 11

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.

3-30-77
Given
H. Z. [Signature]

INSTRUCTION NO. 12

The Court instructs the commissioners that they are not bound by the opinions of the expert witnesses as to the value of land or damages, nor by the apparent weight of evidence, but you may base your findings upon facts obtained by your own view of the property. This does not mean, however, that you are to be turned loose to take arbitrary action and render an award not related to the value or to the evidence.

Your award must bear a reasonable relationship to the view, the testimonial evidence and exhibits presented by the parties.

3-30-77
Given
L. Z. [Signature]

INSTRUCTION NO. 13

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.

3-30-77
Given
LJW

INSTRUCTION NO. 14

The commissioners are instructed that their verdict must not be based in whole or in part upon surmise, conjecture or sympathy for either of the parties, but must be based solely upon the evidence and the instructions of the Court.

3-30-77
Given
L. J. R. Jr.

INSTRUCTION

No. 14a

The court instructs the commissioners that in fixing a just compensation for the land taken and for damage to the residue of the defendants' land, the commissioners are not limited to the use which the landowners are actually making of the land, but the landowners are entitled to have commissioners consider the value of the land or property for any purpose for which it is reasonably available, and the landowners are entitled to be compensated for the land taken and for the damage to the residue of the land on the basis of the most valuable purpose for which said land is susceptible of being used.

3-30-77
~~Given~~ Refused
L. J. R. Jr.

27

INSTRUCTION

No.

15

In arriving at the damages to the residue of the tract, the Commissioners should consider the reasonable costs, if any, of adjusting the residue of the property to the new conditions, and the inconvenience, if any, to which the landowners will be subjected in the future operation of their property caused by the taking and the new construction.

3-30-77
Given
L. Z. Jr.

INSTRUCTION

No. 15a

The commissioners may consider, if any, the expense of moving the storage tanks, building and gas pumps occasioned by the taking of the said land.

3-30-77
Refused
H Z mjr

INSTRUCTION No. 156

The commissioners may taken into consideration the prices paid by the plaintiff for other property in the neighborhood and similarly situated in ascertaining the value of the defendants' lot at the time of the taking if the purchase of similar land was voluntary and not by way of compromise.

3-30-77
Refused
J. L. M. Jr.

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

VS. At Law No. 3020

CALVIN PERCY ALLMOND and
ORETHA ELEY ALLMOND,

and 0.012 acre, more or less, of
land in the Town of Smithfield,
Isle of Wight County, Virginia

EXCEPTIONS OF PETITIONER
TO THE REPORT OF THE COMMISSIONERS

To the Honorable Judges of the
Circuit Court of Isle of Wight County, Virginia:

The petitioner herein, State Highway and Transportation
Commissioner of Virginia, by counsel, respectfully takes
exception to the Report of the Commissioners filed herein on
March 30, 1977, and files these, his written exceptions to
such Report, to-wit:

1. The landowners were permitted, over objection,
to introduce inadmissible and prejudicial evidence as to the
costs of curing damage to the residue of their land without
laying any foundation therefor and without showing any amount
of damage resulting from the taking of a portion of their
land by the condemnor.

2. The commissioners disregarded the instructions
of the Court not to use the view as the sole evidence and not
to turn themselves loose and make an arbitrary award not
related to or measured by the evidence.

3. The commissioners disregarded the duty upon the
landowners to minimize their damages and not to maximize
them.

4. The commissioners disregarded the instruction
of the Court not to base their award in whole or in part upon

surmise, conjecture, or sympathy for the landowners or for the petitioner.

5. The award for damages exceeds the total value of the landowners' property before the take even though only approximately 6.26% of the landowners' land was taken.

6. The award of the commissioners for damages was palpably excessive.

7. The award of the commissioners for damages bears no reasonable relation to the testimonial evidence and is so grossly excessive as to show prejudice or corruption on the part of the commissioners.

8. The commissioners obviously took arbitrary and capricious action and returned an award not related to the value of the property involved.

9. The award of the commissioners was arrived at through misconception of the principles of law which should have governed them in their action and decision.

10. The commissioners in fixing their award either were guided by erroneous principles of law or evidence, or completely disregarded the instructions of the Court on the law and disregarded the evidence adduced.

11. The commissioners completely ignored the Instruction Number 7 granted by the Court wherein they were told that in determining whether or not any damage to the remaining lands of the landowners by reason of the taking of the land and easement in this proceeding is the difference in the value immediately before and immediately after the taking, considering every circumstance, present and future, which affects its value.

12. The award of the commissioners was arrived at by them through misconception of the principles of law which should have governed them in their action.

WHEREFORE, the petitioner respectfully prays that the Court set aside the award of the commissioners in this case and grant a new trial or order a remittitur of an appropriate portion of the damages as fixed by the commissioners.

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

By



His Attorney

Rodham T. Delk
Delk and Barlow
229 Main Street
Smithfield, Virginia, 23430

Attorney for Petitioner

CERTIFICATE

I hereby certify that a signed copy of the foregoing Exceptions to the Report of the Commissioners in this case was delivered to H. Woodrow Crook, Jr., Esquire, 107 Institute Street, Smithfield, Virginia, 23430, counsel for the defendant landowners, this the 8th, day of April, 1977.


Attorney for State Highway
and Transportation Commissioner
of Virginia

*Filed
April 8, 1977
George F. Whitley Jr.*

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

VS. At Law No. 3020

CALVIN PERCY ALLMOND and
ORETHA ELEY ALLMOND

and 0.012 acre, more or less,
of land in the Town of Smithfield,
Isle of Wight County, Virginia

ADDITIONAL EXCEPTION OF PETITIONER TO
THE REPORT OF THE COMMISSIONERS

To the Honorable Judges of the Circuit
Court of Isle of Wight County, Virginia:

The petitioner herein, State Highway and Transportation
Commissioner of Virginia, by counsel, in further support of his
exceptions to the Report of the Commissioners filed herein, files
this additional ground for such exceptions, to-wit:

Exception 13: The award of the Commissioners is
contrary to the law and the evidence and is without evidence to
support it.

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

By 
His Attorney

Rodham T. Delk
Delk and Barlow
229 Main Street,
Smithfield, Virginia, 23430

CERTIFICATE

I hereby certify that a signed copy of the foregoing
additional Exception to the Report of the Commissioners in this case
was delivered to H. Woodrow Crook, Jr., Esq., 107 Institute Street,

Smithfield, Virginia, 23430, counsel for the defendant landowners,
this the 11th., day of April, 1977.



Attorney for State Highway and
Transportation Commissioner of Virginia

VIRGINIA: IN THE CLERK'S OFFICE OF
THE COUNTY OF ISLE OF WIGHT.

April 11 1977
RECEIVED AND FILED

W. E. Laine Jr.
Kathryn P. Wells, Sec.

Commonwealth of Virginia

35

JAMES C. GOODWIN, JUDGE
441 MARKET STREET
P. O. BOX 1604
SUFFOLK, VIRGINIA 23434



GEORGE F. WHITLEY, JR., JUDGE
117 S. CHURCH STREET
P. O. BOX 307
SMITHFIELD, VIRGINIA 23430

FIFTH JUDICIAL CIRCUIT

COUNTIES OF SOUTHAMPTON, AND ISLE OF WIGHT
CITY OF SUFFOLK

July 11, 1977

State Highway Commissioner v. Allmond

Mr. Rodham T. Delk
Attorney at Law
229 Main Street
Smithfield, Virginia 23430

Mr. H. Woodrow Crook, Jr.
Attorney at Law
107 Institute Street
Smithfield, Virginia 23430

Dear Sirs:

I have read the transcript and examined the authorities cited, and have decided to overrule the exceptions to the Commissioners Report and will enter an order confirming the Report.

In my opinion there is ample evidence upon which the Commissioners could have based an award for damages to the residue. One element not mentioned in the testimonial evidence but plainly visible on the view is the change of grade. The road is now substantially above the lot where formerly the road and lot were at near the same level.

It is extremely difficult, however, to relate damages to the value of the property. The only testimony directly related to the value of the residue is that of Mr. Copeland and Mr. Clark as to the building, and that of Mr. Copeland as to the square foot land value he used. Mr. Clark said that the building as it stood was worth \$4,500.00 to \$4,700.00. Mr. Copeland used 30 cents a square foot as the value of the land taken. Applying this to the 8013 square feet of residue would give a value of \$2,403.90. Thus from the testimonial evidence, the highest value of the residue would be \$7,103.90. Yet the Commissioners found damages of \$7,500.00.

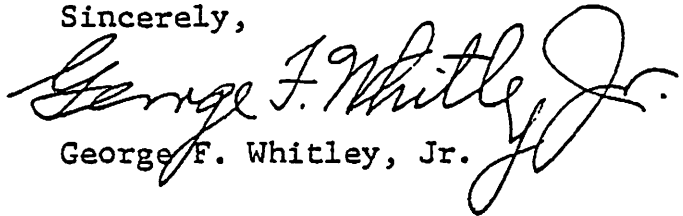
State Highway Commissioner v. Allmond

July 7, 1977

Page 2

While I was very much surprised at the amount of the damages awarded, I cannot say that the commissioners disregarded the instructions of the court or that the amount awarded is arbitrary or shocks the conscious.

Sincerely,

A handwritten signature in cursive script that reads "George F. Whitley, Jr." The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

George F. Whitley, Jr.

GFWjr:few

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

VS. At Law No. 3020

CALVIN PERCY ALLMOND and
ORETHA ELEY ALLMOND

and 0.012 acres, more or less, of
land in the Town of Smithfield,
Isle of Wight County, Virginia.

ORDER OVERRULING EXCEPTIONS TO AND
CONFIRMING COMMISSIONERS' REPORT

This day came the State Highway and Transportation Commissioner of Virginia, by his attorney, and came also the landowners, Calvin Percy Allmond and Oretha Eley Allmond, by their attorney, and it appearing to the Court that the report of the commissioners hereinbefore appointed with the certificate of the Clerk of this Court administering the oath to the said Commissioners, was on March 30, 1977, duly returned to and filed by the Court herein; that exceptions to the said report were duly and timely filed by the State Highway and Transportation Commissioner of Virginia, the petitioner herein; that on May 17, 1977, the Court heard the arguments of counsel for the parties hereto on the said exceptions; that the Court took the matter under advisement; and that thereafter the Court filed an opinion overruling the said exceptions; the Court doth so find:

And it appearing to the Court that the said commissioners ascertained that the value of the land taken herein was \$161.00, that there were damages to the residue, beyond the enhancement in value to the residue by reason of the taking, in the amount of \$7,500.00, and that the said report should be confirmed; therefore, the Court doth overrule the exceptions to the said report and 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:

Being as shown on Sheet 3 of the plans for Route 258, State Highway Project 0258-046-104, RW-201, and lying on the south (right) side of the office revised centerline and adjacent to the existing south right of way line of present Route 258, from the lands of Benjamin Jones opposite approximate Station 1657+20 to the lands of F. M. Griffis and Thomas Perry Griffis opposite approximate Station 1657+59, and containing 0.012 acre, more or less, land;

TOGETHER WITH an easement and right of way to the Continental Telephone Company of Virginia, its successors and assigns, for the construction, operation and maintenance of telephone line facilities, including any and all necessary attachments and appurtenances thereto, along and contiguous to the proposed south right of way line of said Route and Project, from opposite approximate Station 1657+20 to opposite approximate Station 1657+59;

AND TOGETHER WITH an easement and right of way to the Virginia Electric and Power Company, its successors and assigns, for the construction, operation and maintenance of power line facilities, including any and all necessary attachments and appurtenances thereto, along and contiguous to the proposed south right of way line of said Route and Project, from opposite approximate Station 1657+20 to opposite approximate Station 1657+59.

Being a portion of the land acquired by Calvin Percy Allmond and Oretha Eley Allmond by deed from Benjamin Jones and Pauline Jones dated July 2, 1969, and recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia, in Deed Book 198, at page 103.

And it appearing to the Court that the State Highway and Transportation Commissioner of Virginia has heretofore caused to be recorded in the Clerk's Office of this Court Certificate No. C-22786 for \$134.00; that the title to the aforesaid real estate thereby vested in the Commonwealth of Virginia, in accordance with the provisions of Section 33.1-119 and 33.1-122 of the Code of Virginia 1950, as amended; and, that none of the funds represented by the said certificate of deposit were withdrawn and paid to the landowners as is permitted and provided for in Section 33.1-124 of the 1950 Code of Virginia, as amended;

NOW, THEREFORE, 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

Calvin Percy Allmond and Oretha Eley Allmond, who are the defendant landowners in this action the sum of \$7,661.00, with interest at the rate prescribed by statute from April 20, 1973, the date on which the above mentioned Certificate No. C-22786 was duly recorded in the said Clerk's Office, on the sum of \$7,527.00, this being the excess of the amount of the award of the commissioners as aforesaid over the amount of the said certificate of deposit, to the date upon which the said principal sum is paid into Court; and the Court doth further ORDER and DECREE 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 pages where the said Certificate of Deposit is spread.

The Court doth further ORDER and DIRECT that the costs herein, including \$20.00 each to the commissioners appointed herein who served, namely, J. D. Christian, Ralph T. Griffin, Edith R. Tynes, Burdette Edwards, and Clinton Blount, and \$10.00 each to the commissioners summoned herein and who appeared but did not serve, namely, V. A. Bell, Ray Parker Barlow and Woodrow Odom, Sr., plus mileage as provided for in Section 25-46.22 of the said Code, shall be paid by the State Highway and Transportation Commissioner of Virginia, unless such costs have heretofore been paid by him; 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 the Court doth further order and direct that the Clerk of this Court forthwith deliver to the attorney for the petitioner a certified copy of this order without awaiting the elapse of twenty-one (21) days from the date of entry hereof.

And this action or cause is continued pending the

further order of the Court.

And it is further ORDERED that the stenographic transcript of the testimony introduced and proceedings had upon the trial of this action heretofore filed herein shall become, and hereby are made, a part of the record in this case, pursuant to Rule 5:9(a) of the Rules of the Supreme Court of Virginia.

Enter: Aug 31, 1977

George F. Whitley Jr.
Judge

I ask for this order:

H. Gordon Cook
Attorney for Landowners

Seen, objected to and exceptions noted:

William F. Felt
Attorney for State Highway and
Transportation Commissioner of
Virginia

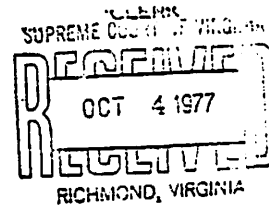
VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

VS. At Law No. 3020

CALVIN PERCY ALLMOND and
ORETHA ELEY ALLMOND

and 0.012 acres, more or less, of
land in the Town of Smithfield,
Isle of Wight County, Virginia



NOTICE OF APPEAL

The State Highway and Transportation Commissioner of Virginia, Petitioner, hereby gives notice, pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia, of its appeal to the Supreme Court of Virginia from the Order Overruling Exceptions To And Confirming Commissioners' Report entered in this action on August 31, 1977.

The stenographer's transcript of the testimony in this action has previously been filed with the papers in this action and has been made a part of the record herein pursuant to the aforesaid order entered August 31, 1977.

VIRGINIA: IN THE CLERK'S OFFICE
THE COUNTY OF ISLE OF WIGHT.

Sept. 9, 1977
RECEIVED AND FILED

H. E. Crook, Jr.
Sharon T. Jones, D.C.

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

By Rodham T. Delk
Counsel

Rodham T. Delk
Delk and Barlow
229 Main Street
Smithfield, Virginia 23430

CERTIFICATE

I hereby certify that a signed copy of the foregoing Notice of Appeal was mailed to H. Woodrow Crook, Jr., Esquire, 107 Institute Street, Smithfield, Virginia, 23430, Counsel for Calvin Percy Allmond and Oretha Eley Allmond, this 8th day of September, 1977.

DELK AND BARLOW
ATTORNEYS AT LAW
SMITHFIELD,
VIRGINIA

Rodham T. Delk

1 hands and be sworn.

2
3 (Whereupon, the witnesses were
4 duly sworn.)
5

6 THE SHERIFF: Witnesses come this way, please.
7

8 (Whereupon, the witnesses were
9 excluded from the courtroom.)
10

11 THE COURT: All right, sir.

12 MR. DELK: May it please the Court, on
13 behalf of the petitioner, the State Highway Commissioner
14 I offer into evidence two Plan Sheets which were
15 filed originally at the beginning of the proceeding,
16 but I wish now to introduce them and have them then
17 made a part of the record.

18 THE COURT: All right.

19 MR. DELK: These are Plan Sheets 3 and 4
20 respectfully, and I -- no, it's 3 and 3-A, if Your
21 Honor please, and I ask that they be designated as
22 Plaintiff's Exhibits 1 and 2.

23 THE COURT: All right. They are so marked
24 and designated in evidence.
25

1 (Whereupon, the foregoing Plan
2 Sheets 3 and 3-A were received
3 in evidence and marked for
4 identification as Plaintiff's
5 Exhibit Numbers 1 and 2.)

6 MR. DELK: May it please the Court, and
7 madam of the commission and gentlemen of the commission.
8 You all know me; I am Rodham Delk, of course, from
9 Smithfield, and I represent the State Highway
10 Commission in these proceedings. Mr. Crook and Mr.
11 Marks, Mr. Woodrow Crook, Jr. and Mr. John Marks of
12 Smithfield appear here and are representing the
13 defendants or the landowners in the case, Mr. and Mrs.
14 Allmond, whom I think most of you probably know also.

15 The purpose of this proceeding, as the
16 Court has acquainted you, is to acquire for highway
17 purposes and specifically for the improvement of the
18 right-of-way of Highway 10 or South Church Street
19 in Smithfield a portion of the property of Mr. and
20 Mrs. Allmond.

21 The particular property that is involved
22 or the taking -- we will be referring to it as the
23 property taken -- consists of zero point, rather .012
24 of an acre.

25 Incidentally, pads have been supplied to
you with pencils in case you care to make any notes

1 during the proceeding.

2 We expect the evidence to show you that
3 this, when boiled down to different figures, will be
4 536 square feet of property. We expect the evidence
5 further to show to you that of this 536 square feet
6 or .012 of an acre, that included within that area was
7 a permanent construction easement which was imposed
8 on the property and that the property acquired was
9 taken subject to that permanent construction easement.

10 In other words, as the Plan Sheet -- and I'll
11 show you that in a minute -- shows across a part of
12 this property there already existed a permanent
13 construction easement. On the same piece of property
14 that already existed, and a utility easement, and
15 there is being acquired also in the proceedings --
16 bear with me just a minute. There's also being
17 acquired a telephone and an electric easement on the
18 property to replace the existing telephone and electric
19 easements, which were already on the property and
20 were within the area of the take.

21 Now as the petitioner in the matter says,
22 and for the Plan Sheets which have been introduced
23 in the record, specifically referring to Plan Sheet I,
24 it shows, we expect the evidence to disclose to you
25 that, as shown on this Plan Sheet, the area that is

1 taken in this matter is enclosed in red. The red line
2 is the area that is being acquired in fee simple in
3 this case. The area that's outlined in yellow is the
4 area that is being acquired for the utility easement
5 to replace the existing utility easement.

6 Now you will be given -- taken, rather, in
7 the company of the Sheriff, transported to the scene
8 of the property so that you may go upon it and look
9 at it, not that you all aren't already familiar with
10 it, but this is -- part of the proceedings require
11 that you go view the property, look at it. And these
12 areas, the areas in red and the area in yellow you
13 will find have been either staked out on the ground
14 or clearly marked on the surface of the highway, and
15 that there will be a witness there who will testify
16 exactly as to these markings and answer questions you
17 may have, if you have any, as to the property being
18 taken and its location and shape and so forth.

19 We will also expect the evidence to be
20 presented to you to show what is the value of this
21 property being acquired. And you will be told that
22 there are two things for you to consider. We expect
23 the Court to instruct you that you must determine the
24 value of the property being taken and also the damages,
25 if any, to the remainder of the property, which is

1 offset, if you will, by any enhancement in value.

2 And this evidence will be presented to you
3 during the proceedings. And, having viewed the
4 premises and having seen the property, we would then
5 expect you to bring in an award in keeping with the
6 testimony of the witnesses as to the value of the
7 property and the damage, if any, to the remainder of
8 the property offset by any enhancement of the property
9 by reason of the taking.

10 With that, gentlemen, we will then proceed
11 as far as I am concerned.

12 THE COURT: Do you want to say anything
13 about it, Mr. Crook?

14 MR. CROOK: Yes, sir; I will be very brief,
15 Your Honor.

16 Madam Commissioner and Mr. Commissioners,
17 I am Woodrow Crook and I represent Mr. Calvin Allmond
18 in the case, as Mr. Delk has pointed out to you. This,
19 as some of you may know and have served on condemnation
20 proceeding cases before, involves a taking of land
21 by right of eminent domain by the Highway Department
22 against Mr. Allmond and his wife, Mrs. Allmond.

23 The property is business commercial property
24 located on South Church Street in the Town of
25 Smithfield in the County of Isle of Wight. The

1 property is not a large tract of land in the case.
2 It's a narrow lot, some 39 feet in width with over
3 200 feet in depth. The property to be taken is on
4 the street or road.

5 As Mr. Delk pointed out, there are two main
6 issues. One is the value of the property taken, and
7 the second one, and this is the one that is the most
8 important to the defendants in the case, but the
9 damages to the remainder of the property.

10 Now he has shown you on this diagram the
11 portion in red which is being taken by the Highway
12 Department or the Commonwealth and the portion in
13 yellow for easements or for utilities. And that means
14 telephone poles and electric power transmission or
15 distribution poles within the area marked in yellow.
16 And you will also see within that area the gas pumps
17 themselves, the change in the driveway or the access
18 to the property.

19 Mr. Allmond's evidence in this case will be
20 that the taking of this property and the changing of
21 the driveway is causing damage to him in that he is
22 being limited in the use of his pumps. His pumps
23 will have to be moved, the building moved slightly
24 and the storage tanks moved in order to afford the
25 storage tanks in front in the use of the gas pumps in

1 his business. We will contend that they are extensive
2 to the residue of the property.

3 When you hear the evidence in the case you
4 will hear the evidence of the condemnor, the taker,
5 the Commonwealth. And they will testify primarily
6 as to the value of the land being taken, which, being
7 a small amount of land is not going to be a great
8 value. And, of course, the real issue is going to be
9 the damages to the remainder.

10 You, as commissioners, serve like a jury in
11 that you listen to the witnesses and decide on their
12 credibility. However, you are commissioners, not a
13 jury. You will view the property and you may, based
14 upon your view of the property, your knowledge of
15 land as freeholders, landowners of Isle of Wight
16 County, you may determine from your view of the
17 property damages that you ascertained to the property
18 regardless of what the testimony of the witnesses may be.
19 So you are not limited just to the testimony of the
20 witnesses. You also may, from your view, make
21 decisions in the case as to the damages.

22 I don't think that the testimony will be
23 extensive. It's unfortunate that we are so late
24 getting started. I was not aware the case started
25 at 9:00 and assumed that it was at ten, and I so

1 advised Mr. Allmond. That's why we were late getting
2 here. And then various matters had to be resolved
3 in chambers prior to the actual hearing so we are
4 very late getting started.

5 But I would ask you when you look at the
6 property, you make your view, that you be looking at
7 these gas pumps and the proximity of the red to those
8 gas pumps and the new driveway, how it is so situated
9 as opposed to the way it was before, the access of
10 those pumps and what it's going to take to be able
11 to continue to use them for servicing the customers
12 with gas.

13 Observe these things very carefully because
14 your view will be first then you'll come back and
15 hear the testimony of the witnesses, and you will have
16 to recall from your view what the actual situation
17 out there was. And so the view is very important.
18 I ask you not to take it lightly. Try to be as
19 discernible as possible to the details of the taking
20 involved, even the location of the electric line
21 poles on the property affected.

22 And then after you have heard all the
23 evidence -- and I would ask you to keep an open mind
24 because the Commonwealth goes first before the
25 defendant is able to put on his evidence. I ask that

1 you keep your mind open until you have heard all the
2 evidence and then make your decision for the
3 defendants as to the value of the property taken.
4 This is their only opportunity to be compensated for
5 the land that's taken. They don't have any choice
6 in the matter under the rights of eminent domain.

7 Thank you.

8 THE COURT: All right. We are going to
9 go out. Do you want to say something else?

10 Have you got plats for everyone?

11 MR. CROOK: In looking at this, Your Honor,
12 it's basically the same as on the plat, but there
13 are one or two things --

14 MR. DELK: I will call Mr. Reynolds and have
15 him testify and then go to the view.

16 MR. CROOK: Your Honor, I object to this
17 by Mr. Delk. We have the plats in the record of
18 which we are all going by. Now we have a sketch
19 drawing. I don't know if it's the same as the plats
20 that have been put into the record as exhibits. I
21 think it's highly irregular by him now to try and get
22 in testimony before we go to the site.

23 THE COURT: What he wants to do is give
24 them something to follow at the site.

25 MR. DELK: That is all.

1 THE COURT: It's a very simple site. I
2 don't think we need it.

3 MR. CROOK: It's a very simple site. It is
4 not complicated at all. In fact, the work has been
5 done, the road has been expanded. There is no need
6 to have them at some point to try and get --

7 MR. DELK: Your Honor, we have frequently
8 done this. In nine out of ten cases we try this is
9 exactly what we do. We are simply trying to show the
10 commissioners clearly what the situation is, and we
11 can have the witness testify and explain everything
12 on this and then they can carry them with them as
13 far as we are concerned and have the benefit at the
14 view.

15 THE COURT: What is this copied from, the
16 other one, Mr. Delk?

17 MR. DELK: It shows everything that the
18 plat would show except the other plat has so many
19 other drawings and marks and all on it that this
20 simply shows the Allmond property without those other
21 adjacent owners.

22 MR. CROOK: There are some additional items
23 on here, Your Honor, that are not on the plat. I
24 am not surprised.

25 THE COURT: Well, maybe we better get the

1 witness in and let him do it. We frequently do have
2 a separate plat that each one of them can have a copy
3 of so they can follow it, but Mr. Crook wouldn't want
4 it in if he's got some question about it. But the
5 witness can come in and identify it if that would
6 suit you better.

7 MR. CROOK: Your Honor, I don't see the
8 point. As you have stated it's a very simple piece
9 of property here with the tanks and the building on
10 it. We have the plan right here that has been made
11 an exhibit. Why do we need another sketch at this
12 point prior to the view?

13 MR. DELK: It is perfectly obvious, if Your
14 Honor please, to have the benefit of the plat to
15 better understand the view.

16 THE COURT: I never have been able to
17 understand these plats that the Highway Department
18 makes. A simple plat might help, but I don't think
19 it makes a lot of difference in this particular case.

20 Suppose we just go on out there and look at
21 it. It's a simple place this time.

22 MR. DELK: That's what I say. The point,
23 if Your Honor please, because we are going to
24 introduce it anyhow.

25 THE COURT: All right. Now we are going

1 to take a look at the property. Now I am wondering --
2 and you understand that you'll be instructed on the
3 view. It is an important part for you to consider
4 along with the other evidence and you'll get an
5 instruction on that part. But we do want you to look
6 it over carefully.

7 Now someone from the Highway Department
8 will point out the marks on the plan and you may ask
9 him questions, but we don't want to have a trial out
10 there because the reporter won't be there, and we
11 don't want to have witnesses testifying, just the
12 one that is going to point out the various points.
13 And counsel for each party will go and I am going to
14 ride out there with you, too.

15 Now it's about 11:30. We'll be there where
16 we could go by Dairy Queen or somewhere close by and
17 get something to eat. Think it would be better to
18 get a quick lunch?

19 MR. DELK: It would certainly save time
20 in my opinion, sir.

21 MR. CROOK: Well, that's the first thing
22 we have agreed on this morning.

23 THE COURT: I think maybe we'll go on by
24 and take a look and then there's some quick places
25 up there and maybe we can get through in the middle

1 part of the afternoon, where if we come back out here
2 and go thirty or forty minutes and go back in it will
3 be 5:00. Does that suit you commissioners?

4 A COMMISSIONER: Fine.

5 THE COURT: You are the ones doing the
6 work so --

7 MR. DELK: May I suggest to the Court that
8 when the view is over you could tell the commissioners
9 what time they are expected to be here.

10 THE COURT: All right. That's right, we
11 can see how the time runs.

12 MR. DELK: May we approach the bench just
13 one minute, Mr. Crook?

14
15 (Whereupon, there was an off-the-
16 record discussion at the bench out of the
17 hearing of the court reporter and the
18 commissioners.)

19
20 (Whereupon, a view of the property
21 was taken and there was a recess in the
22 hearing for lunch at 11:25 a.m.)
23
24
25

1 AFTERNOON SESSION

2 (Resumed at 12:50 p.m.)

3
4 THE COURT: All right. Have you got your
5 first witness?

6 MR. DELK: Yes, sir, I am ready.
7 Mr. Reynolds.

8
9 PALMER REYNOLDS,
10 called as a witness on behalf of the plaintiff,
11 having been first duly sworn, was examined and
12 testified as follows:

13
14 DIRECT EXAMINATION

15
16 BY MR. DELK:

17 Q Will you state your name and your address,
18 Mr. Reynolds?

19 A Palmer Reynolds, 151 Robin Lane, Suffolk,
20 Virginia.

21 Q And, Mr. Reynolds, are you familiar with
22 the Plan Sheets, specifically 3 and 3-A, which have been intro-
23 duced in evidence in this case as Petitioner's Exhibits 1 and 2?

24 A Yes, I am.

25 Q What are you -- where are you employed at

1 this time, sir?

2 A I am employed at the Portsmouth Redevelopment
3 and Housing Authority in Portsmouth.

4 Q Prior to that employment where were you
5 employed?

6 A The Virginia Department of Highways in
7 Suffolk, Virginia.

8 Q Are you familiar with then the project in
9 which this particular Allmond property is on which it's located,
10 sir?

11 A Yes, sir.

12 Q And you are familiar, as you have testified,
13 then with the Plan Sheets that have been introduced. Is that
14 right, sir?

15 A Yes, I am.

16 Q Mr. Reynolds, have you made a sketch or
17 used in the nature of a map showing the area that is being
18 acquired in this instance and virtually the same things that
19 are shown on the plat, sir?

20 A Yes, sir; I have made a plat similar to
21 what's on the Plan Sheet, just to a different scale.

22 Q To a different scale. All right, sir.

23 Is this the sketch you're talking about?

24 MR. CROOK: Your Honor, I object to this
25 sketch.

1 MR. DELK: I haven't offered it or anything
2 yet, if Your Honor please.

3 MR. CROOK: He's asking for testimony
4 concerning the sketch and naturally it follows that
5 the sketch is being offered into evidence and will be
6 offered in evidence. The testimony will already be
7 in whether it's offered or not. And I object to it
8 for the same reasons I stated earlier.

9 We would have to show that the sketch is
10 drawn by an engineer or surveyor correct to scale
11 and shows exactly what's on the ground, and Mr.
12 Reynolds is not qualified to do that I don't believe.
13 At least it certainly hasn't been shown.

14 THE COURT: Let's see.

15 MR. CROOK: We have a plat in the record
16 as it is.

17 THE COURT: Well, as I understand it he's
18 offering -- he's getting ready to have a plat here
19 that each one of them can use.

20 What was this taken from, Mr. Reynolds?

21 THE WITNESS: From the Highway Plans, Your
22 Honor.

23 THE COURT: Is it a copy of it or is it --

24 THE WITNESS: The only difference in that
25 and what's on the Highway Plans is it shows a tank

1 in back and a shed.

2 THE COURT: What about the scale?

3 THE WITNESS: It's a larger scale than
4 what's on the Plan Sheet.

5 THE COURT: Well, is it drawn to scale?
6 I mean is it drawn to scale or is it just a rough
7 sketch?

8 THE WITNESS: No, sir, it's drawn to scale.

9 THE COURT: Does it show anything on it
10 that's not on the plat, on the official plat, the
11 one that was filed today?

12 THE WITNESS: No, sir, other than, like I
13 said, the large tank on back of the property in back
14 of the shed. It shows the dimensions. In scaling
15 I think these dimensions here, they are just scaled
16 off of the plans written in here where they are not
17 written on the Plan Sheet itself.

18 THE COURT: How do you know all that?

19 THE WITNESS: Because when it was -- we had
20 it prepared by the Drafting Section at the Right-of-
21 Way Section. They scale it off. We have a section
22 agent and two technicians that go --

23 MR. CROOK: Your Honor, he's testifying to
24 things he does not know himself. However, this is
25 not his handiwork; this is the Highway sketch. They

1 have witnesses that can establish the things he's
2 saying now in front of the commissioners. Those
3 witnesses should be here. He shouldn't be saying
4 these things.

5 THE WITNESS: I have checked everything
6 on here against the Plan Sheet.

7 MR. CROOK: The shed that's been super-
8 imposed is not on the plat. My client says that the
9 shed is totally on his property. This is not showing
10 it as being totally on his property.

11 THE COURT: What purpose are you introducing
12 this for, Mr. Delk?

13 MR. DELK: I haven't introduced it. The
14 ball's just been taken away from me as though it was
15 his witness.

16 MR. CROOK: Your Honor --

17 MR. DELK: I haven't done a thing yet.

18 MR. CROOK: Mr. Delk brought this up before
19 we went out to look at the property. I objected to
20 it coming in at that time. It was not proper. The
21 plats, exhibits, were in the record for the Highway
22 representative to use in pointing out the features
23 to the commissioners. And the Court ruled in my
24 favor on that and said, "All right, we would not
25 admit the sketch."

1 We got out there and Mr. Delk offered it
2 to Mr. Reynolds three times. Mr. Reynolds declined
3 it twice. The third time I grabbed it and tore it
4 up. He got another one and wanted it to point out
5 to the commissioners using that sketch for whatever
6 ulterior motives --

7 MR. DELK: If Your Honor please, may I
8 be heard on this?

9 THE COURT: Let's let the commissioners go.

10 MR. DELK: I want to be heard on this in
11 the presence of the commissioners. You've let him
12 be heard in their presence. Mr. Crook isn't
13 correctly stating this as he knows. None of it
14 transpired like he said.

15 In the first place, it was never offered in
16 the beginning. I asked could I offer it. It's been
17 done in every Highway case that I have tried in ten
18 years, and I guess I have tried as many in this whole
19 circuit as has been tried by any lawyer. Never has
20 it once been rejected; generally it's invited. But
21 it's a misstatement by Mr. Crook to say I offered it
22 at any time and he refused it.

23 It is his data that he prepared or had
24 prepared under his supervision, sir. And to lead
25 this in front of these commissioners with Mr. Crook

1 with a purpose in mind, referred to me having
2 ulterior motives when, obviously, the ulterior motive
3 is on the part of Mr. Crook with the idea of prejudice
4 before these commissioners. It's just utterly
5 despicable.

6 THE COURT: Wait a minute, gentlemen.
7 Counsel can be fussing with each other all they want,
8 but I don't think you are having any impression on
9 the commissioners. Now I'll hear you further on
10 whether to admit this plat or not, but I take it
11 you'd rather me hear you without the commissioners in
12 here.

13 MR. DELK: I want to go further with some
14 evidence and then we'll get to it, if Your Honor
15 please.

16 MR. CROOK: The evidence is the testimony
17 about this.

18 MR. DELK: Mr. Crook doesn't know what my
19 evidence is going to be, if Your Honor please, and
20 I am not going to let him run my case.

21
22 DIRECT EXAMINATION (CONTINUED)

23 BY MR. DELK:

24 Q Mr. Reynolds, how old are you, sir?

25 THE COURT: Go ahead.

1 THE WITNESS: Thirty-six.

2 BY MR. DELK:

3 Q What education have you had, sir?

4 A Oh, I had high school, post-graduate at
5 Augusta Military Academy and Randolph-Macon for a year.

6 Q How long were you in the employ of the
7 Virginia Department of Highways?

8 A Approximately ten years.

9 Q In what capacity?

10 A As a technician preparing these plans, or
11 to begin with, then I was a negotiator and an appraiser.

12 Q Have you had experience then in the
13 preparation of plats showing the properties involved in Highway
14 proceedings?

15 A Yes, I have.

16 Q And you were a technician for how long
17 doing that?

18 A Three-and-a-half years.

19 Q Have you had drafting experience, sir?

20 A With the Highway Department.

21 Q With the Highway Department.

22 A Yes, sir.

23 Q Did you perform that type of work in the
24 Highway Department?

25 A Yes, I did.

1 Q You were then, I believe you said, a
2 negotiator?

3 A Yes, sir.

4 Q What were the duties of a negotiator with
5 reference to the preparation and/or the interpretation of plats?

6 A They were prepared for you. You were to
7 check them to make sure it was to scale and all the information
8 and data that was included was agreeable with the plans and
9 records in the Courthouse.

10 Q How many years' experience did you have
11 doing that, sir?

12 A Approximately four, four-and-a-half.

13 Q And after that what was your next line of
14 work and experience?

15 A Well, simultaneously with that I appraised
16 and negotiated and then I sort of left negotiations. I never
17 did get away from negotiations completely. Second, we appraised
18 and someone would negotiate. Primarily, Mr. Copeland did that
19 on larger projects. On secondaries -- I appraised and
20 negotiated on other secondaries.

21 Q Have you interpreted this plat, Plaintiff's
22 Exhibit Number 1, with reference to the dimensions of the
23 property shown thereon and on all the details shown on that
24 plat with reference to the Allmond property?

25 A Yes, I have.

1 Q And you have studied that?

2 A Yes, I have.

3 Q In your experience then as a technician
4 and as in this capacity you have said -- did you have experience
5 in interpreting such plats?

6 A Yes, I have.

7 Q Can you tell me what is the scale of the
8 plat that is introduced in evidence?

9 A It's on a twenty-five, one to twenty-five.

10 Q All right, sir. And you have testified --
11 well, what is the dimension of the property as shown on the
12 plat, the width?

13 A The width on the road frontage is 39 feet
14 of frontage.

15 Q How could you tell that?

16 A That's on the evidence submitted to the
17 Court.

18 Q In the plat?

19 A Yes, sir.

20 Q All right, sir.

21 MR. CROOK: Your Honor, I think the Court
22 should determine the purpose of this. We have the
23 plat in the record that was submitted as an exhibit
24 by the plaintiff. What's the purpose of this sketch?

25 MR. DELK: I haven't gotten to the sketch,

1 if Your Honor please. Mr. Crook won't let me get
2 away from it. I am talking about Mr. Reynolds'
3 qualifications if he will sit down and let me finish
4 the case.

5 THE COURT: We can save some time here,
6 gentlemen. What do you want to do with it, Mr. Delk,
7 let the commissioners see it?

8 MR. DELK: Both of them, if Your Honor
9 please. I simply want to present a complete and
10 accurate picture of the entire matter to aid in the
11 determination by the commissioners of what the
12 property is like and so forth.

13 THE COURT: Well, they can -- of course,
14 they can look at the original plat, but it would be
15 helpful to them to have a small individual plat that
16 they can follow and follow the evidence.

17 Now the only thing that I am concerned
18 about, I haven't had any question about the propriety
19 of letting them do that, but Mr. Crook seems to be
20 worried that the plat they are going to have is not
21 the same or in some material respect is different
22 from the official plat.

23 Now that -- so I take it that's what you
24 are getting ready to do now is show that it isn't.

25 MR. DELK: In one case.

1 BY MR. DELK:

2 Q Does the Plan Sheet 3, Petitioner's Number
3 1, does it show --

4 MR. CROOK: Your Honor, I object to Mr.
5 Delk -- I object. I would like to have the Court
6 determine the admissibility of this evidence concerning
7 this sketch before it comes before the commissioners
8 any further.

9 THE COURT: All right. We'll ask the
10 commissioners to go out a minute.

11
12 (Whereupon, the commissioners
13 left the courtroom.)

14
15 THE COURT: All right, sir. Now go ahead.

16
17 BY MR. DELK:

18 Q Does the Plan Sheet 3, Petitioner's Exhibit
19 Number 1, show the perimeter boundaries of the landowners'
20 property?

21 A Yes, it does.

22 Q From back to -- from all the way from the
23 highway frontage to its rear property line?

24 A Yes, sir.

25 Q Does it show the location of Little Creek,

1 which is one of the boundaries of the petitioner's property
2 on the Plan Sheet, sir?

3 A I would like to look at it if I could. As
4 I recollect it does, but I would like to look at it before I
5 answer. It doesn't actually show it on this Plan Sheet. It's
6 a back property line, but it doesn't show the creek boundaries
7 itself.

8 Q All right. Does it show all of the
9 buildings that are on -- other structures on the landowners'
10 property?

11 THE COURT: Have you got one to look at?

12 THE WITNESS: No, sir, it shows the front
13 portion. The back portion, as I said, again had
14 the large storage tank on it and the shed on the
15 back corner are not shown on the Plan Sheet.

16
17 BY MR. DELK:

18 Q Not shown on the Plan Sheet.

19 A No, sir.

20 Q Are they there?

21 A Yes, they are there.

22 Q Were they there for the commissioners to
23 see on the view?

24 A Yes, sir.

25 Q All right, sir. Now then have you prepared

1 a sketch that shows the dimensions of the landowners' property,
2 the perimeter boundaries of it?

3 A Yes, I have.

4 Q Is that made to scale or not, sir?

5 A Yes, it's made to scale.

6 Q Does it show all of the structures and
7 buildings and so forth that are on the landowners' property?

8 A Yes, it does.

9 Q What does it show in the way of those
10 structures or improvements both above and below-ground that
11 are not shown on the Plan Sheet 3, Petitioner's Exhibit 1?

12 A It shows the fuel tank in front beside the
13 main building. There's a fuel tank there which is not shown
14 on the Plans; a sign and a fuel pump and then on the back a
15 large storage tank and the shed, I believe, are the only
16 differences between this sketch and the Plan Sheet. The Plan
17 Sheet shows the major building, gas pumps in front and the
18 storage tank below the ground in back. And that's basically
19 all it shows on the one that's in evidence at this time.

20 THE COURT: Does it go all the way back to
21 here?

22 THE WITNESS: Yes, sir. The major difference
23 in these two sketches, this is on a 30-scale and that's
24 on a 25-scale, just a little bit larger.

25 THE COURT: What are these numbers up here,

1 20 and 25?

2 THE WITNESS: This is the width of the
3 utility easement, Station 20 and 25.

4 THE COURT: I see. So that doesn't
5 designate anything on the plat. That's just --

6 THE WITNESS: Just the width of the VEPCO
7 easement itself.

8 THE COURT: So when we look back here, of
9 course, now this is the area --

10 MR. DELK: The Court is now pointing to
11 Petitioner's Exhibit 1.

12 THE COURT: When we look back on Petitioner's
13 Exhibit 1 the fuel tank would be back of that line
14 called "8-Foot TC Sewer Line"?

15 THE WITNESS: Yes, sir.

16 THE COURT: Back --

17 THE WITNESS: Back in this portion here.

18 THE COURT: Now there is -- I notice that
19 there is a notation here "Gas Tanks." What does
20 that mean?

21 THE WITNESS: It's two gas pumps which is
22 the pumps up here in the island.

23 THE COURT: That's all part of the ledger?

24 THE WITNESS: Yes, sir, describing what is
25 shown on the exhibit itself.

1 THE COURT: Now Mr. Crook had some question
2 about whether that shed wasn't all the way on the
3 property where this -- what do you call this plat?
4 Isn't that the one, the one that's not in evidence,
5 shows it part of the way off?

6 THE WITNESS: Yes, sir. Well, like I say,
7 when we do this we come right on off the existing
8 building to locate them with the steel tape.

9 THE COURT: That's not shown at all?

10 THE WITNESS: No, sir. The back portion,
11 the large tank and this one and these tanks that are
12 up here beside are not shown on the exhibit.

13 THE COURT: Are they there?

14 THE WITNESS: Yes, sir, they're there.
15 They were there at the time of the acquisition when
16 we made an offer; the below-ground tank I am sure.
17 Now I didn't pay attention to see whether that sign
18 was there this morning or not. It may or may not be
19 there.

20 THE COURT: All right. Do you want to ask
21 him some questions, Mr. Crook? Are you finished with
22 him?

23 MR. DELK: Just a moment. I am going to,
24 of course, examine him in the presence of the
25 commissioners as to now with reference to that and

1 then at the proper time when I deem necessary --

2 THE COURT: All he's talking about now is
3 you had some question, Mr. Crook. What was your
4 question now?

5 MR. CROOK: Well, I hate to belabor the
6 thing.

7
8 CROSS-EXAMINATION

9
10 BY MR. CROOK:

11 Q Mr. Reynolds, you aren't an engineer?

12 A No, sir.

13 Q You are not a surveyor?

14 A No, sir.

15 Q When you say that you have drawn this sketch
16 to scale what do you mean?

17 A I have drawn it by scale.

18 Q What scale?

19 A One inch to thirty.

20 Q What's one inch to thirty?

21 A One inch equals thirty feet.

22 Q One inch on your sketch equals thirty feet
23 on the ground?

24 A Yes, sir.

25 Q Did you measure it on the ground?

1 A I have measured the acquisition part. Taking
2 the location of the main building we scaled back and measured
3 all the improvements on the building -- excuse me, on the
4 property.

5 Q But you have not gone out there, surveyed
6 these lines and measured it on the ground?

7 A No, sir. That's of the records in the
8 Courthouse. I picked that up in the Courthouse.

9 Q When you say "to scale" you're assuming
10 one inch to your sketch is twenty-five feet on the ground?

11 A No, sir, not assuming. The size of the
12 property is gotten from the Courthouse. That's not an
13 assumption. I have taken it from the records and put it on
14 paper.

15 Q The size you got from the Courthouse?

16 A Yes, sir, the Courthouse records.

17 Q You have items on your sketch. Did you
18 trace this from the plat or map that's in the record?

19 A No, sir.

20 Q All right. You start out drawing this on
21 your sketch here. You're not an engineer, you are not a
22 surveyor. You can't go out there and shoot the lines and know
23 that's where the line is, can you?

24 A It's been some years since I done it, but
25 I am sure I could do it. I surveyed three or four years during

1 college. It isn't the hardest thing to do.

2 Q Three or four years during college.

3 A I am not a qualified surveyor.

4 Q Was that at Randolph-Macon?

5 A No, between high school --

6 Q No, because I heard a year at Randolph-
7 Macon.

8 A I meant between high school and college;
9 in between in the summertime I worked for a survey party.

10 Q So you yourself are not qualified to
11 determine where those boundary lines are?

12 A No, sir.

13 Q And not being qualified to determine where
14 the boundary lines are you are not qualified to determine
15 where the existing buildings are?

16 A The pins we have located --

17 Q Did you locate the pins?

18 A No, sir, this Plan Sheet here showed me.
19 I took it off the survey center line, which does locate it on
20 the Plan Sheet.

21 Q What's the purpose of this sketch?

22 A This sketch?

23 Q Yes.

24 A So when the appraiser looks at this,
25 everything that's shown on the property aboveground and below-

1 ground, all the appraisers will be aware of what's on the
2 property. We have had some outside appraiser come in and miss
3 the septic tanks and they are not aware -- they don't think of
4 it. We had problems when it got to the review. So we set out
5 to draw sketches so everything of value would be brought in
6 on each as the property --

7 Q So what you are saying is you added things
8 on the sketch that are not in the exhibit that's drawn by
9 qualified surveyors and engineers?

10 A Correct.

11 THE COURT: What have you added, the fuel
12 tanks and the shed?

13 THE WITNESS: The shed and the underground
14 tanks in the island and the sign, which are shown
15 here. I believe the air pump is not shown.

16

17 BY MR. CROOK:

18 Q That's right, a sign at the front of the
19 building, fuel pumps and fuel tanks and you have added any
20 number of things on here that's not in the plat that's in the
21 record.

22 A Yes, sir, when the surveyor went by and
23 picked up the physical or aboveground items. Something could
24 have been put there after the survey was made.

25 MR. CROOK: Your Honor, I am not knocking

1 Mr. Reynolds. I know Mr. Reynolds. I know he is a
2 fine employee of the Highway Department and does a
3 good job, but he is not a surveyor or not an engineer.
4 He can't draw a plat or map that is correct in the
5 metes and bounds and the distances on the ground and
6 the locations of the items thereon.

7 They have the plat in the record that they
8 have to go by. That is admissible; that is drawn by
9 qualified personnel. I have stipulated that, but I
10 object to this sketch that was brought in.

11 THE COURT: Well, what does --

12 MR. DELK: If Your Honor please, on that
13 the man has testified here as to his qualifications,
14 three-and-a-half years as a technician preparing
15 sketches under supervision, drafting, drawing plans.
16 As far as being a graduate of an engineer hasn't
17 got anything to do with his ability as a draftsman.
18 He hasn't been given an opportunity to testify.

19 A scale's a scale regardless of whether
20 it's -- if it's drawn to scale it's drawn to scale.
21 He's qualified to determine the plat and he has so
22 testified. He can certainly prepare the plat to
23 show his testimony. He hasn't even testified to
24 what it is yet.

25 THE COURT: Well, in looking at the plat it

appears to me that the plat we are talking about is being offered, is a copy of the plat that's in evidence, Plaintiff's Exhibit 1, but with a different scale and with some additional property on it. But the essential buildings are there; the dimensions are there which are exactly the same as on the plat that's in the evidence.

I don't see where the landowner is going to be hurt if you've got some additional things on there that would tend to increase the damages, I would think, from making those be moved. And usually in these cases the smaller plats or the handier plats are just used so that the commissioners can follow the evidence better and have individual plats to look at so that they can understand more what the witness is talking about.

Are you all through with what you all were going to say about this?

MR. DELK: At this point

MR. CROOK: I would repeat that the witness has, in response to me on two occasions, when asked if it was a copy of the plat in the record, repeatedly said no, it was not, that he drew it himself and he drew it to scale.

THE COURT: What is a copy? I mean it's

1 copied from it but it's not a copy.

2 MR. DELK: If Your Honor please, if I may
3 use an example of it, you may take a color print with
4 an Instamatic 110 camera and get it in a certain size.
5 You may have it blown up to an 8 x 10. It is
6 identically the same thing, but except it's showing
7 the larger scale, that's all. This is the same thing
8 as this one is on. One inch equals thirty feet.
9 One on one inch equals thirty-five, sir.

10 THE COURT: I am going to overrule the
11 objection and receive it for purposes which it is to
12 enable -- he's offering it to enable the commissioners
13 to follow it, and if there are any discrepancies on
14 it that the defendant wants to show, I mean landowner,
15 of course, they are free to do it. But I don't think
16 that they are going to find any material discrepancies.
17 If there are we will have to face that when we get
18 to it.

19 MR. CROOK: Your Honor, the landowner is
20 certainly not prepared with engineers and surveyors
21 to present evidence in rebuttal of this sketch when
22 there was a plat drawn by qualified personnel in the
23 record as an exhibit upon which they were relying
24 and they assumed that the plaintiff would be held to.

25 And consequentially, I would certainly

1 object to the Court's decision, and I respectfully
2 note my exception to the Court's decision.

3 THE COURT: All right, sir. Bring the
4 commissioners back.

5
6 (Whereupon, the commissioners
7 returned to the courtroom and resumed their
8 seats in the jury box.)

9
10 REDIRECT EXAMINATION

11
12 BY MR. DELK:

13 Q Mr. Reynolds, referring again to the
14 Petitioner's Exhibit Number 1, Plan Sheet 3, will you inform
15 the commissioners as to the width of the landowners' property
16 as it existed at the time of the taking in this instance on
17 Route 10?

18 A It was 39 foot of frontage on the existing
19 highway prior to the acquisition.

20 Q And to save time, is that shown on the plat
21 in Petitioner's Exhibit 1?

22 A It's shown on the front of the plat in
23 parentheses.

24 Q With reference to the particular plat what
25 is the -- does the red line, the land area encompassed in red,

1 what does that denote?

2 A That denotes the area of acquisition, the
3 part being acquired for improvement for the highway itself.

4 Q Was that marked on the ground at the time
5 of the view this morning by the commission?

6 A Yes, sir. The front was etched in the
7 concrete by X-marks and orange paint and the stakes were showing
8 the back part of the acquisition. The front was on the
9 pavement which you couldn't stake; it was marked by X-marks
10 on the pavement.

11 Q In the presence of the commissioners did
12 you walk to each mark and show them the corners you were
13 indicating?

14 A Yes, I did.

15 Q All right, sir. There's an area shown in
16 yellow in this instance on this Petitioner's Exhibit 1. What
17 does that denote?

18 A That's the area of the utilities, the
19 power company and the telephone company, which was an existing
20 easement 15 feet back from the existing right-of-way. And when
21 we acquired the additional right-of-way we had to shift that
22 back. So we moved that back and it's denoting a 15-foot
23 area across the width of the property for telephone and power
24 lines.

25 Q And is that being acquired, that easement

1 being acquired in this proceeding?

2 A No, sir. As I said, we -- it's there
3 when we go out to acquire the property so rather than the
4 appraiser considering it being hampered with an easement he
5 appraises the front portion of the property at full fee value
6 and at the same time the engineer would get permission to
7 shift it back to have the same easement, shift it back to the
8 new right-of-way.

9 Q Is there not an easement for utilities
10 being acquired in this proceeding as shown in the lines in
11 yellow on the plat?

12 A Yes, sir, it's being -- all right.

13 Q All right, sir. Now pointing again to
14 this plat, Petitioner's Exhibit 1, I see a dimension, a figure
15 30 written in there. What does that mean, sir?

16 A That's the width of the proposed instrument --
17 excuse me, entrance to be put into the property.

18 Q All right, sir. And has that entrance been
19 installed?

20 A Yes, sir, it's in place and it was witnessed
21 by the commission this morning.

22 Q All right, sir. Now I am pointing again
23 here to the same exhibit and to an oblong area circled in the
24 way of a black ink here that is adjacent to but in the street
25 side of the red area. And I'll ask you to tell me what that

1 means on this plat.

2 A That's a median strip or grassed island
3 between the property and the highway to keep traffic from
4 driving up into it or people from, you know, straying into
5 the property so to speak. It's a boundary like a curb.

6 Q Was that there at the time of the
7 acquisition in the instance?

8 A Yes, it was.

9 Q What was the date of the acquisition in
10 this case, Mr. Reynolds?

11 A April the 20th, 1973.

12 Q Was that island that you are mentioning
13 there in existence and in place on that date?

14 A Yes, it was.

15 Q Does it overlap any -- strike that. Does
16 that island go beyond the property lines of the landowners in
17 either direction as shown on there?

18 A Yes, sir, it overlaps on the west -- on
19 the east boundary line between the Texaco Station and the
20 property.

21 Q Is there a distance between the northern
22 end, if you will, or western end of that line of that barrier
23 island and the prolongation of the property line of the
24 landowners?

25 A Yes, sir. There is an opening of

1 approximately six feet between the end of the island and the
2 west property line of the subject property.

3 Q Is that island that's there in place at
4 this time?

5 A No, sir. That was taken out completely
6 and replaced with that 30-foot entrance to the property.

7 Q Has that entrance --

8 THE COURT: Mr. Delk, I wonder if the
9 commissioners are following that.

10 MR. DELK: Let's come up here. Thank you,
11 Judge.

12
13 BY MR. DELK:

14 Q There is the island we're talking about,
15 right?

16 A Yes, sir.

17 Q What was the curb height of that island
18 at the time?

19 A For recollection it's about four-tenths
20 of a foot; about, say, half-a-foot in height.

21 Q But that has been taken out. Has the
22 entrance been installed in lieu of it?

23 A Yes, sir. We have a 30-foot entrance,
24 as you see, down here between these arrows going into the
25 property.

1 Q Was that shown to the commissioners on the
2 scene this morning?

3 A Yes, it was.

4 Q Now then this 30-foot figure, the one I
5 previously referred to there is the width of the entrance. Is
6 that right?

7 A Yes, sir.

8 Q All right. Now back of the red line then
9 what is the next item shown on the plat? And I am referring
10 to an oblong area with two smaller circles in it.

11 A That's the concrete island that holds the
12 two gasoline pumps.

13 Q Were they there at the time of the
14 acquisition?

15 A Yes, sir.

16 Q Were they there for the view this morning?

17 A Yes, sir.

18 Q All right, sir. Now the next thing I
19 see -- what does this next figure on this plat, which is 021,
20 show?

21 A That's for the highway identification of the
22 parcel. Mr. Allmond's property was located on the plan; they
23 had parcel numbers. His was numbered as Parcel 21 on the
24 Highway Plans on the exhibit in the record.

25 Q Back of that -- when I say "back of it",

1 going towards the rear of the property in a southerly direction,
2 I then see an area that's marked off with lines. And will you
3 tell what that is and describe all of the figures that are shown
4 on that particular --

5 A All right, sir. As it is shown in writing
6 here 10 in front of the service station in frontage, the front
7 width of the part of this is 21 feet. It would go back down
8 the eastern side 28 feet, across the back 31 feet, up the
9 western side 14 feet and then breaking back into the east 10
10 feet and back towards the highway in a northerly direction
11 14 feet. And these are the dimensions measured by the surveyors
12 of the size of the building and the shape of the building.

13 Q Is that what you would call then an
14 L-shape building possibly?

15 A Yes, sir, it could be considered L-shaped.

16 Q The back part is wider than the front part.
17 Is that right?

18 A Yes, sir. It's 10 feet; there's a 14 by
19 31 section and a 14 by 21 section.

20 Q All right, sir. I see a figure here that
21 is shown as "A" at the northeast corner of the structure, and
22 will you tell what that is?

23 A That's the distance off of the survey
24 center line.

25 Q How much is that?

1 A Sixty-five feet.

2 Q That was off of the survey center line of
3 the highway?

4 A Yes, sir.

5 Q And the one that's at the northwest corner
6 of the front section, what is that?

7 A That's 63.3 feet off of the same line.
8 The building was not parallel on the highway. It was two feet
9 closer on the western side than it was on the eastern side.

10 Q All right. Will you point out then to the
11 commissioners what was, as shown on the plat, the right-of-way
12 line as it existed on October 20, on August the --

13 A April the 20th.

14 Q -- April 20th, 1973, the date of the
15 acquisition?

16 A Yes, sir. This front red line was the
17 existing right-of-way prior to the acquisition, this front
18 line right here in red.

19 Q Where is that marked as such showing the
20 existing right-of-way on the plat? Pointing out, is it not it,
21 sir?

22 A Yes, sir, this is it right here.

23 Q And it says "Existing Right-of-Way", sir?

24 A Yes, sir, this line going across like so.

25 Q Will you point out where the line you

1 referred to as the survey center line is then, sir, on the plat?

2 A The line coming down here.

3 Q Is that the dark line that has the circles
4 on it?

5 A Yes, sir.

6 Q And also is written to the north side of
7 it "South Church Street"?

8 A Yes, sir, this is the center line I'm
9 referring to.

10 Q All right, sir. Now I see an arrow pointing
11 on this plat to the red area, the southern part of the red
12 area beginning with the letters PRO something. What is that,
13 sir? Right here, sir.

14 A The proposed standard. It's kind of
15 concreted pavement they are going to replace in this area right
16 here. It's part of the engineer's design as to what will be
17 taken out and what will be put back as far as the road
18 construction is concerned.

19 Q Does that refer to the entrance that was
20 installed, sir, at the point within the 30 feet?

21 A Yes, sir, I believe. Like I say, I would
22 have to have the standard book to look at. As I recollect, the
23 point of entrance on both properties would be the 30-foot
24 commercial entrance.

25 Q Behind that then I show you some other

1 figures and -- on the western side of the property that are
2 in blocks. Will you explain what they mean?

3 A Yes, sir. These are where the VEPCO
4 easement itself and the C & P Telephone Company easement was
5 taken off of the revised survey center line, which again is
6 this broken black line here where it crosses Station 20, and
7 it's 25 feet back from this. There are three survey lines on
8 this thing. I am trying not to confuse you all but I get
9 confused myself. Where the property is at right angles at
10 the survey center line back 25 feet to where it starts -- as
11 you can see here in the same place it's 40 feet back, giving
12 you a 15-foot utility easement, and you have the same on
13 Station 59 on the far side of the property.

14 Q How wide then is the utility easement?

15 A It's the width of the property, 39 feet
16 wide.

17 Q The depth is what?

18 A The depth -- you want the entire depth
19 back or the width of the easement itself?

20 Q The width of the easement itself.

21 A It's 15 feet wide; it starts at 25 feet
22 back off of the center line itself.

23 Q Can you say whether or not there was an
24 existing easement at the time of the take on the property for
25 the utility lines?

1 A Yes, sir, there was an existing easement
2 in place prior to the highway construction and prior to our
3 beginning of this property, trying to acquire this property.

4 Q All right. Now then the next thing that
5 I see is an area somewhat rectangular in shape that is south of
6 the building you previously described. What is that, sir?

7 A These denote -- the broken lines denote
8 that there are two tanks below-ground. There are two circular
9 pieces, caps, where they fill the tanks themselves, but it
10 denotes underground tanks.

11 Q Did you point that out to the commissioners?

12 A Yes, sir. Mr. Crook, I believe, pointed
13 the filler --

14 Q Where they fill the tanks the filler tank
15 caps were.

16 All right, sir. Now what is this line here
17 that comes behind those, the location of those plans? What
18 is that, sir?

19 A An eight-inch sewer line that comes across
20 behind the property.

21 Q I see, sir. Now then, next behind that you
22 have -- I want you to give all these writings in there and
23 say exactly what they say and mean, sir.

24 A Existing standard CG-2, island -- pump island,
25 which refers to the gasoline pump island up in front. -- excuse

1 me, the existing standard CG-2 is the curbing and guttering
2 up in front.

3 Q Which you previously earlier described
4 has been removed?

5 A Yes, sir.

6 Q Go ahead.

7 A The next one is the island which refers to
8 the inside of that concrete -- again, the standard CG-2 is the
9 type of construction. That hole at the center part is grass
10 and they refer to it as an island on the plans.

11 Q That's what you described as having been
12 removed?

13 A Yes, sir.

14 Q Go ahead.

15 A The pump island, which, of course, is where
16 the gasoline pumps are located we saw out there. They say two
17 gasoline pumps located within this island and two underground
18 gasoline tanks.

19 Q That you have described the location of?

20 A Yes, sir.

21 Q All right, go ahead.

22 A There is a 155-foot 15-inch pipe required
23 at the side covering, a type of ground cover. The drainage pipe
24 would go under here to build the curb and gutter drainage pipe
25 underneath the --

1 Q That's in the acquisition area running from
2 the west to the east side of the property?

3 A Yes, sir.

4 Q All right, sir. Now go ahead, sir. What
5 else is shown in there?

6 A We have the property owners' names, Calvin
7 Percy Allmond and Oretha Eley Allmond. The deed was purchased
8 and the property was recorded in Deed Book 198, Page 103.

9 Q Now back of that I see a line that runs
10 from north to south -- I mean from west to east -- on the
11 property with a dimension on it. What does that line denote
12 and what is the dimension?

13 A This denotes the back property line of the
14 property, and the figure is 45 feet, indicating the width of
15 the back of the property is 45 feet, which was 39 on front. It's
16 not a perfect rectangle; it opens up as it goes back. It is
17 six feet wider in the back than it is in the front.

18 Q And within the right-of-way line I notice
19 a line written on the eastern boundary of the landowners'
20 property the word "VEPCO" and so forth. What does that mean?

21 A That's VEPCO Pole Number 19, which is there.
22 It has been moved back; it was there before they moved it back
23 behind the proposed right-of-way. But it refers to the proposed
24 utility pole there prior to any acquisition or any road on the
25 road where the pole itself was located at the time.

1 Q And are you pointing to that?

2 A Yes, sir.

3 Q Is that at the northeast corner of the
4 acquisition then?

5 A Yes, sir.

6 Q Is that at the north right-of-way line and
7 the northeast corner of the landowners' property at the time of
8 the acquisition?

9 A Yes, sir, it is.

10 Q And did you point -- was that pole visible
11 this morning for the commissioners to see --

12 A Yes.

13 Q -- as we located?

14 A Yes, sir. The pole had been, again, moved
15 right behind the new right-of-way line, which was staked, I
16 think, one foot behind it. I didn't scale it, but that's where
17 they normally put them, one foot behind the right-of-way, and
18 it was in place at this point.

19 Q All right, sir. You may go back.

20 What is the project number of this project?

21 A It's Project 258046107RW201.

22 Q And you have stated the names of the owners.
23 Is that right?

24 A Yes, sir, I have.

25 Q What is the parcel number?

1 A Parcel 21.

2 Q What is the whole area involved?

3 A The whole area is .196 acre or 8,549 square
4 feet in the total area of the property prior to any acquisition.

5 Q Is that the area of the Allmond property
6 in toto --

7 A Yes, sir.

8 Q -- prior to any acquisition?

9 A Yes, sir.

10 Q Would you state that figure again as being
11 the entire area of the property before anything is acquired?

12 A It's .196 acre or --

13 Q Slow down, sir.

14 A .196 acre or 8,549 square feet.

15 Q Now what is the area in red on the plat you
16 have just been testifying to that is acquired in this proceeding
17 in fee simple?

18 A The acquisition area is .012, twelve-
19 thousandths of an acre, or 536 square feet within the area of
20 acquisition being acquired for the proposed construction.

21 Q What is the size, sir, of the residue of
22 the landowners' land after taking off therefrom the 536 square
23 feet acquired in this case?

24 A The residue would be .184 acre or 8,013
25 square feet. After the fee taking and the red area shown in

1 red it would be 8,013 square feet.

2 Q Have you calculated the area of the existing
3 easement that was in the red area, I would call it, acquired
4 in this proceeding?

5 A Yes, sir. The existing easement was .004
6 or four-thousandths of an acre or 195 square feet.

7 Q Do you have the area that is acquired in
8 the new easement area, sir?

9 A Now the easement area that I just gave you
10 was the existing highway, not utility easement.

11 Q Excuse me. What was that existing easement
12 that was in there then?

13 A It was the existing drainage easement for
14 any time they have a problem cleaning out they could come back,
15 clean out the ditch and rework that area. If they did rework
16 it they would have to leave it in the same condition as it was
17 before.

18 Q That was not the utility easement?

19 A No, sir, that was not the utility easement.

20 Q If you will step down here show the
21 commissioners where that existing easement on the landowners'
22 property was at the time of the acquisition.

23 A It's this line coming right across here.

24 Q And you're pointing to a line that is
25 entirely within the red area. Is that correct?

1 A Yes, sir.

2 Q And that was an existing easement for
3 construction purposes. Is that right, sir?

4 A For construction --

5 Q Maintenance.

6 A -- and maintenance. It was a drainage
7 problem periodically in there with high water. This was a
8 continuing easement to use if and when they needed to get it
9 flowing properly.

10 Q So the property being acquired was subject
11 to that easement all the time. Is that right, sir?

12 A Yes, sir.

13 Q All right, sir. Now, sir, on this plat,
14 Petitioner's Exhibit 1, you pointed out the underground tanks.
15 Is there another structure on the property that is south of
16 those underground tanks, sir?

17 A State that again.

18 Q Is there another structure on the property?

19 A Yes, sir.

20 Q Was it there April 20th, 1973?

21 A Yes, sir.

22 Q And what was it, the first thing that you
23 encountered?

24 A Now let me see if you and I are talking
25 about -- are you talking about this area in here?

1 Q Behind the underground tanks that you have
2 pointed out to the commissioners and talked about with the
3 filler caps. To the south of that is there any other tank or
4 structure?

5 A Yes, sir. There was a large fuel tank,
6 storage tank aboveground.

7 Q Was it on -- can you describe the type of
8 support? Was it on a cradle?

9 A Yes, sir, it was in a cradle; it was
10 cradling. It was just an oval type, two cradles set down, one
11 in front and one in back settled down in there.

12 Q Did the commissioners see that this morning
13 on the view?

14 A Yes, sir, they did.

15 Q Now is there any other structure on the
16 property?

17 A Yes, sir. In the back left-hand corner
18 there is a shed, a 30 by 20 shed, approximately 30 by 20 shed.

19 Q But was it there April 20, 1973?

20 A Yes, sir, it was.

21 Q And did the commissioners see the shed --

22 A Yes, sir, they did.

23 Q -- today, sir? Is that shed in any way
24 involved in the take in this matter?

25 A No, sir.

1 Q It sits at the total back of the property
2 on this end. Is that right?

3 A Yes, sir.

4 Q All right, sir. Now going back to the
5 sheet again, here at the building that is shown on the Plan
6 Sheet nearest the building, the main building on the property
7 which you described in detail being somewhat L-shaped, are
8 there any fuel tanks located with close proximity to that
9 building?

10 A Yes, sir. To the front of the building it
11 was a fuel tank and fuel pump. So as you look at the building
12 to the right-hand side --

13 Q To the right-hand side. That would be on
14 the western side, northwest corner of the building?

15 A Inside the L-shaped cubby there.

16 Q Was that there at the time of the acquisition?

17 A Yes, sir, it was.

18 Q Did you locate it yourself personally at
19 the time?

20 A Yes, sir.

21 Q Is there any other fuel tank or pump, or
22 are you referring to both?

23 A I was referring to both at the same time.
24 There is a fuel tank and there was a fuel pump there at the
25 time.

1 Q Were there any signs located that you saw
2 on the property on April 20, 1973, the date of the acquisition?

3 A Yes, sir. To the right approximately
4 parallel with the front of the building there was a sign.

5 Q Is that sign shown on this Plan Sheet here then?

6 A No, sir. None of what we have just
7 discussed is shown on the Plan Sheet or located on the Plan Sheet.

8 Q Was it located or is it located in the
9 area either of the easement or of the fee taking in this case?

10 A No, sir, it's not within the --

11 Q Outside of both of them?

12 A Yes, sir.

13 Q And the fuel tanks you referred to, are
14 they outside the area taken?

15 A All three, the sign, the tanks and the pumps
16 are outside the take area.

17 Q What is the depth of the easement in yellow
18 here from north to south, which is the utility easement which
19 appears -- the pump island that you referred to, what is the
20 depth of that?

21 A Fifteen foot in depth.

22 Q All right. Now what is the depth from
23 back -- from front to back of the -- along the eastern line of
24 the landowners' property, along the eastern line of the property
25 from front to back what was the overall depth?

1 A Two hundred four feet.

2 Q Two hundred four feet deep on the western
3 boundary. What was the depth from north to south?

4 A Two hundred and four feet.

5 Q Mr. Reynolds, then you have described this
6 from the plat. Is that correct, sir?

7 A Yes, sir, from the plat in the record.

8 Q Have you made a sketch to scale, sir, of
9 that same area but in a larger scale, sir?

10 A Yes, sir.

11 Q What is the scale of Petitioner's Exhibit
12 Number 1 and the area shown?

13 A One inch to twenty-five feet; one inch equals
14 twenty-five feet.

15 Q And your sketch is what scale, sir?

16 A I have gone on record stating it was one
17 to thirty, but I scaled it in between. It's one to forty.

18 Q One to forty?

19 A Yes, sir.

20 Q So is that just simply a larger area?

21 A Yes, sir, it's larger where you can locate
22 and work with it a little bit better. The other scale was --

23 Q Smaller.

24 A The other one was smaller. This was easier
25 to work with when I did it separately.

1 Q Is everything shown according to scale in
2 the same representative locations and everything on your sketch
3 made to a larger scale as is shown on Petitioner's Exhibit 1?

4 A Yes, sir. As I explained earlier, every-
5 thing is located from -- the main building is located from the
6 survey center line. We took steel tapes at right angles off
7 of the building to locate these items.

8 Q Have you shown anything on this sketch
9 prepared for you that is not or was not on the landowners' land
10 at the time of the taking in this case, April 20, 1973?

11 A No, sir. Everything that was there is
12 located on this plat.

13 Q On the one that you prepared?

14 A Yes, sir.

15 Q Is there anything on the one that you
16 prepared, again, that is not shown on the Plan Sheet,
17 Petitioner's Exhibit 1?

18 A Yes, sir, as we referred to the large fuel
19 tank and the cradles out back, the frame shed on the back left
20 corner of the property. The fuel tank and the fuel pump and
21 the sign in the little alcove on the right-hand side of the
22 property were not shown on the exhibit.

23 Q But were all of them there April 20, 1973?

24 A Yes, sir.

25 Q Were they there for the commissioners to

1 see today?

2 A I noticed that the fuel pump was there.
3 The underground tank, I couldn't say whether it was still there
4 or not.

5 Q You could see the filler caps?

6 A The ones in front, right. I didn't take
7 note of it this morning.

8 Q All right, sir. But it was there April
9 20, 1973?

10 A Yes, sir.

11 Q All right, sir. And the existing plans
12 at any part of the building shown thereon which you described
13 nearest the highway frontage, is there an air pump located
14 there on the Plan Sheet, Petitioner's Exhibit 1?

15 A No, sir.

16 Q Was there an air pump adjacent to that
17 location, adjacent to that building as of April 20, 1973?

18 A Yes, sir, there was.

19 Q Do you know whether it was there this
20 morning or not?

21 A Again now, Mr. Delk, I didn't take note
22 of it.

23 Q But was it there April 20, 1973?

24 A Yes, sir, it was there.

25 Q And was it encompassed within the main

1 structure or as an addition to it?

2 A It was approximately a two by six addition
3 to the side of the building.

4 Q Have you shown that on your plan that you
5 have -- sketch that you have prepared?

6 A Yes, sir, it's on the sketch that I have
7 in my hand.

8 Q All right, sir.

9 MR. DELK: Now, if Your Honor please, I
10 offer the sketch prepared by Mr. Reynolds as
11 Petitioner's Exhibit Number 3.

12 MR. CROOK: Your Honor, I renew my objections
13 to this sketch for the reasons previously stated.

14 THE COURT: I overrule the objection and
15 receive it.

16 MR. DELK: May I --

17 MR. CROOK: I respectfully note my objections
18 and respectfully submit my exceptions.

19

20 (Whereupon, the foregoing sketch
21 was received in evidence and
22 marked for identification as
Plaintiff's Exhibit Number 3.)

23

24 MR. DELK: We want to show you this same
sketch.

25 A COMMISSIONER: We need one more.

1 MR. DELK: You had two, one of which you
2 destroyed. May I have one of those for the
3 commissioners then?

4 MR. CROOK: I guess you can since you took
5 it.

6 MR. DELK: I gave you three and you tore
7 up some of them.

8
9 BY MR. DELK:

10 Q Hurriedly again would you stand up here
11 and point out to the commissioners then beginning with the
12 existing island here that has been removed?

13 A As you can see, the oval piece right in
14 front under the writing "Route 10" is the existing concrete
15 curb and guttering. This has been removed, as Mr. Delk has
16 said. The area outlined in red is 15 feet on the eastern property
17 line, 12.5 on the western property line, and confronted within
18 it you see a line just behind, 39 feet, which is that existing
19 drainage easement going across there; and back behind the fee
20 acquisition in red you see outlined in yellow a 15-foot standard
21 utility easement for the Continental Telephone Company and
22 VEPCO outlined in yellow. Do you want me to go right on back?

23 Q Right on back. The next thing is the
24 building.

25 A Right. Beyond that you see a building, an

1 L-shaped building, and off to the front portion to the right
2 you see the fuel pumps; the little square right beside the
3 little circular sign; behind that a fuel tank, a rectangular
4 fuel tank; then to the left side of the building you see a
5 two by six addition for the air pump; off to your right it
6 would be -- excuse me.

7 MR. DELK: It's to your right is where that
8 is shown.

9 A COMMISSIONER: Oh, oh, oh.

10 MR. DELK: It is that marked "Air Pump."

11 A COMMISSIONER: I see.

12

13 BY MR. DELK:

14 Q Behind that is what?

15 A The underground gasoline tank. The broken
16 rectangular line shows the circles indicating the filler point.

17 Q Okay.

18 A That fuel tank, 17.5 by 10 cradled above-
19 ground as described earlier. Back of that is the 20 foot by
20 30 foot shed which is on the back of the property.

21 Q All right, sir. Now, Mr. Reynolds, can
22 you scale for me both off of this Petitioner's Exhibit 1 and
23 off of Petitioner's Exhibit Number 3 -- let me hold this for
24 you. Here's your scale. Will you scale for me the distance
25 from the eastern edge of the building to the eastern property

1 line of the landowner?

2 A It would be the front corner -- using the
3 line coming across the front of the building would be approximately
4 seven-and-a-half feet from the property line.

5 Q All right, sir. And can you tell then from
6 your sketch the distance between the structure with the air
7 pump to the eastern boundary line of the property?

8 A Now the sketch and the Plan Sheet are going
9 to differ at this point.

10 Q I understand that, sir.

11 A I mean even the location that I have on my
12 plat does not show the exact same difference that I have here.
13 Now I can scale it from here and add the width of it.

14 Q Either way. Give it so we'll know what
15 the distance is.

16 A I was saying approximately seven-and-a-half.
17 This is two feet wide so five-and-a-half feet.

18 Q Five-and-a-half feet from the air pump
19 location from the eastern property line?

20 A Yes, sir, taken from the exhibit and adding
21 two feet to the exhibit that's in the record.

22 Q All right, sir. And I believe you testified,
23 sir, that where the existing island was at the time of the
24 acquisition, which was a raised area with grass in it, to the
25 western property line, if extended out to that island, would

1 be six feet?

2 A Yes, sir. Well, let me look at it while
3 I've got the scale in my hand and just scale it. As I said,
4 approximately six feet, five-and-a-half to six feet by scale.

5 Q At the time of the view this morning was
6 there a tank truck, tank wagon, delivery wagon sitting on
7 the property, sir?

8 A Yes, sir, it was.

9 Q And did you have occasion to measure the
10 width of it, sir?

11 A Yes, sir, I did.

12 Q What was the width of that?

13 A Slightly over eight feet in width.

14 Q As a matter of mathematics would it be
15 possible for the truck then to have entered the premises as it
16 existed prior to the construction of the island in place and
17 so forth without running over the island on the landowners'
18 property?

19 A No, sir, not legally.

20 Q All right, sir. In other words, it's a
21 wider distance between the pump island and the western property
22 line?

23 A Yes, sir, it is.

24 Q Mr. Reynolds, how many times do you reckon
25 you'd say you have been on the subject property?

1 A Actually been on it or been by it?

2 Q Well, been on it, been by it or --

3 A Probably during the time of the
4 negotiations I was probably on it somewhere in the neighborhood
5 of three to six or seven times.

6 Q Do you know of your own knowledge or from
7 the records whether or not there was any right-of-way into
8 this property independent of being on the property itself?

9 A You mean by this agreement from the
10 neighbors on either side?

11 Q Yes.

12 A To my knowledge, Mr. Delk, I am not aware
13 of any agreements.

14 Q How, as a matter of practicality, was there
15 access to this property then?

16 A They came in on the entrance on the
17 adjacent property which had been to the east and exited on the
18 entrance on the property to the west.

19 Q That was the way they got in and out of the
20 property anyhow.

21 A Yes, sir.

22 Q Who owned the property on the east?

23 A On the west -- east was a Mr. Benjamin Jones.

24 Q On the east or west are you talking about?

25 A Excuse me, on the west Mr. Benjamin Jones.

1 Q I see. And on the east?

2 A Mr. Griffis' Texaco Station.

3 Q That was a station itself, sir?

4 A Yes, sir.

5 Q Could you describe from your own knowledge
6 what was the situation with reference to flooding of the
7 property?

8 A Yes, sir. In the past the grade of the
9 road had been raised some ten or so years back. It was because
10 it was -- under high tide and bad weather it was under several
11 inches of water. They have raised it several times. Both of
12 the properties on that side of the road were underwater in
13 extremely high tide. It is higher than normally would come
14 up above the property.

15 Q Have you seen that to your own knowledge?

16 A Yes, sir. I have lived in the area since
17 '52 and quite frequently I have seen it. I've had it when I
18 had to turn around and go back because I couldn't get through
19 the road in the old condition before they graded it and raised
20 it somewhat.

21 MR. DELK: May I approach the bench with
22 Mr. Crook, if Your Honor please?

23 (Whereupon, there was an off-the-
24 record discussion at the bench out of the
25 hearing of the court reporter and the commissioners.)

1 BY MR. DELK:

2 Q Mr. Reynolds, again, how old are you, sir?

3 A Thirty-six.

4 Q And what is your present employment, sir?

5 A I am a Real Estate Coordinator with the
6 Portsmouth Redevelopment and Housing Authority.

7 Q Prior to -- how long have you been so engaged?

8 A Since January, '75.

9 Q Prior to that what was your employment, sir?

10 A Virginia Department of Highways.

11 Q In what capacity?

12 A As a Right-of-Way Agent appraising and
13 negotiating for --

14 Q For how long, sir?

15 A Six years.

16 Q Prior to that what was your employment?

17 A Prior to coming to the Highway?

18 Q No, sir, prior to that six-year period.

19 A I was a technician working under the
20 department preparing sketches for appraisers to make appraisals
21 from of Highway acquisitions.

22 Q And how long did you do that work?

23 A From the four years -- four-and-a-half years.

24 Q Is that the type of sketch you are referring
25 to you did such as you have just testified to in this instance?

1 A Yes, sir, it is exactly what I did.

2 Q And did you have any experience at all, sir,
3 at any time in any way with the doing of surveying?

4 A In my latter years of high school and my
5 post-graduate years of Augusta Military Academy in the summer
6 I worked. Two of those I was with a survey party.

7 Q How long and where were you at college?

8 A Randolph-Macon College for a year.

9 Q I see. And your total employment then in
10 this type of highway work was how long, sir?

11 A Ten years.

12 MR. DELK: I see, sir. All right, sir,
13 I have no further questions at this time. Answer
14 Mr. Crook.

15

16 RECROSS EXAMINATION

17

18 BY MR. CROOK:

19 Q Mr. Reynolds, you say that you are now with
20 the Portsmouth Housing Authority --

21 A Yes, sir.

22 Q -- as a Real Estate Coordinator?

23 A Yes, sir.

24 Q What is a Real Estate Coordinator?

25 A Well, when we are requested to acquire

1 property I contact the appraisers to have these appraisals made.
2 When they come back in I factually review them to make sure
3 they are correct. I send the field reviewer to get the final
4 evaluation of value. When they come back I send it to the
5 approved processor, the Federal Government. When it comes
6 back I call the owner to negotiate for these. And if it comes
7 to court I do as I am doing today.

8 Q So it's not for the Highway Department,
9 it's for the City of Portsmouth?

10 A Yes, sir.

11 Q That is what your occupation and expertise
12 is as a Right-of-Way or Land Acquisition Agent?

13 A Yes, sir.

14 Q You are not a surveyor.

15 A No, sir.

16 Q You are not an engineer.

17 A No, sir.

18 Q And you are not an attorney at law.

19 A Certainly not.

20 Q Good. All right. You have pointed out to
21 the commissioners various things on this plat that's in the
22 record. Are you pointing these things out from your own know-
23 ledge or from the map?

24 A From the map and the standard and whatnot,
25 the book of standards that goes with it, but from what is there,

1 not from my knowledge. When you -- are you talking about
2 curbing and guttering, such as that?

3 Q Yes.

4 A Location, yes, sir, from that.

5 Q Now you have a sketch that each commissioner
6 has been handed a copy of that you made. Is that correct?

7 A I supervised it and made and checked it.

8 Q You didn't make it?

9 A I didn't draw it. I checked it.

10 Q I thought you said you made it.

11 A Sir, I said I supervised the individuals
12 that were drawing it. I checked behind every measurement and
13 location. I checked it. I didn't put the pencil on the paper.

14 Q You didn't make the map in the record as
15 Exhibit Number 1?

16 A No, sir.

17 Q And you didn't make that sketch that the
18 jury has?

19 A When you say "make it" I didn't actually
20 make it. I checked, but in essence have done it because I
21 checked everything. But I didn't actually put the lines on
22 the paper.

23 Q Is the sketch made from what's out there on
24 the ground or from the plat that's in the record?

25 A Portions of both. What wasn't shown on the

1 plans was located on here for purposes of appraisal.

2 Q For purposes of appraisal. I think you
3 pointed out your sketch on the east side where you have the
4 air pump as shown as two feet, that that really is not the
5 scale as far as the boundary line is concerned.

6 A I noticed there was a difference between
7 this and the one that was in the record. So, therefore, I
8 didn't use this.

9 Q That's when you noticed when you testified?

10 A I know we had some difference so I thought
11 that would be the proper place to take it.

12 Q When you put the ruler on the plat, Exhibit
13 Number 1, you came out with about, approximately, to use your
14 term, seven-and-a-half feet?

15 A Yes, sir.

16 Q And your sketch doesn't show seven-and-a-
17 half feet.

18 A No, sir, it shows a little bit closer than
19 that. That's why I did use that so there would be no question.

20 Q All right, sir. So the sketch is not the
21 same as the plat as to the distance of the building and the
22 boundary line?

23 A No, sir, not in this instance.

24 Q There are other situations where it's not
25 the same as the plat because you have added such things as a

1 sign, a fuel pump and a fuel tank at the northern end of the
2 property. Is that right?

3 A Yes, sir. Then they were located at right
4 angles to the building. They may not be exact.

5 Q They may not be in the exact place on this
6 sketch that they are on the ground because they were not
7 established by a surveyor or an engineer.

8 A They are there but may not be exact.

9 Q Now have you gotten everything out there
10 on the ground and added it to your sketch?

11 A Again, Mr. Crook, I say to my knowledge
12 at the time.

13 Q Everything germane or relevant to an
14 appraisal.

15 A Improvements that, if taken away from the
16 property they have usage there other than the land. I didn't
17 show grass, stumps, things of that nature. The buildings,
18 tanks, sheds, whatnot, what was there below and aboveground,
19 I tried to show it all.

20 Q And what's there now?

21 A I don't know whether this tank has been
22 removed. I didn't notice the fuel pump on the front corner of
23 the building. I didn't take note of that this morning.

24 Q You didn't?

25 A No, sir, I didn't.

1 Q When was it there?

2 A It was there at the time the sketch was
3 prepared.

4 Q When was the sketch prepared?

5 A Prior to the appraisal. Probably three to
6 six months prior to the offer being made to Mr. Allmond.

7 Q Four years ago?

8 A No, not four years ago. This plat may have
9 been made four years ago.

10 Q Exhibit Number 1?

11 A Yes, sir. That's made quite frequently
12 way ahead of time and it's altered.

13 Q But your sketch was made how long ago?

14 A Six months prior to the appraisal. I would
15 have to go to the file to find out exactly the date it was made.

16 Q All right. You were out there today. You
17 pointed out on the ground to the jury, commissioners, where
18 the items were on the plat?

19 A Yes, sir.

20 Q Okay. Now are there any structures out
21 there on that property that's not shown on your sketch?

22 A I don't believe so, Mr. Crook, but again
23 there, I drew what was there at the time the sketch was made
24 and I didn't know of any.

25 Q You've got your sketch in front of you.

1 A You're asking me was there anything other
2 than what I am showing. I am not aware because I didn't look
3 this morning.

4 Q You pointed out to the jury, commissioners,
5 where everything was but you didn't point out to them --

6 A If it was something obvious I certainly
7 would have pointed it out.

8 Q Well, tell me where the electricity and
9 telephone poles are on your sketch.

10 A The telephone poles definitely are not
11 located on my sketch.

12 Q Why not?

13 A Because they are subject to be moved and
14 it doesn't add value to the real estate.

15 Q Subject to be moved. Is there anything on
16 the sketch not subject to be moved?

17 A It doesn't sway the evaluation of the
18 appraisal. It's within the easement within the pole.

19 Q You mean you intentionally left the pole
20 off?

21 A No, I didn't intentionally -- I didn't see
22 where it added or subtracted value from the property. We want
23 the appraiser to be sure not to omit value to the property.

24 Q But an electricity pole doesn't have anything
25 to do with the damages to the property or the appraisal of the

1 property or anything else?

2 A This particular pole doesn't have to cross
3 the property to bring power.

4 Q Where is the pole?

5 A The pole would be in the eastern right
6 corner.

7 Q Well now, you've got two fingers. Show
8 the jury, the commissioners, where the pole is.

9 A If I can show them there it's there.

10 Q Show them.

11 A It would be there as they are looking at
12 their sketch, the front right-hand corner in front of the
13 existing right-of-way line.

14 Q Is that where it is now?

15 A No, it's back behind the proposed right-
16 of-way line, one foot back.

17 Q Behind the red line?

18 A Yes, sir.

19 Q South of the red line?

20 A South of the red line.

21 Q How far from the fuel tank pumps, fuel
22 pumps, gas pumps?

23 A I can scale it. Again, I didn't tape it
24 off. I can scale it from this plat here if you would like.

25 Q Go ahead.

1 A Do you want the island or the pump itself?

2 Q The closest point of the island.

3 A All right. Fifteen feet.

4 Q Is that pole there now to stay or is it
5 going to be moved?

6 A Mr. Crook, I can't say what VEPCO will do.
7 As far as I know they are not going to move it.

8 Q Aren't you acquiring the easement for that
9 pole in this proceeding?

10 A Yes, sir, and they can. They put the pole
11 one foot behind the right-of-way and have a 15-foot
12 easement. And I have never known them to move it, but I am not
13 going to sit here and say they are not. They could move it over
14 on the Griffis property.

15 Q Don't you think the pole is in the way for
16 the use of the fuel gas tanks?

17 A Which fuel gas tanks are you referring to?

18 Q The island sitting here as opposed to where
19 it was.

20 A Well, you couldn't pump on that side of the
21 island because there is not enough room to keep from being in
22 the right-of-way. You would be in the right-of-way if you pump
23 on that side of the island. Therefore, I feel the pole would
24 not be in the way.

25 Q How about going in and out of the property?

1 A No, sir. It's not the extreme side of
2 the property. The property has a 30-foot entrance right
3 in the center of it.

4 Q Let's look at this Exhibit Number 1, and
5 I don't know if the people down here can see it or not, but --
6 hold it up.

7 A Fold it.

8 Q Yes.

9 A That ought to be easier.

10 Q All right. The prior islands that were
11 existing that are shown on here, those are correct, aren't they?

12 A Yes, sir.

13 Q All right. And you have the plat showing
14 an island in front of Mr. Allmond's property here?

15 A That's correct.

16 Q And then there's an island in front of
17 Mr. Jones' property?

18 A That's correct.

19 Q And there is an island in front of what was
20 Mr. Griffis' Tire --

21 A He's in the center.

22 Q He had an entrance on both sides and could
23 stay within the confines of his own property getting in and out?

24 A Yes, sir.

25 Q Mr. Jones and Mr. Allmond had a space

1 between the island of their common boundary line of what
2 distance?

3 A You want the distance from here to here?

4 Q Between the islands, that's right.

5 A Again, I am going to use the scale distance
6 because I -- 30 feet. It was a 30-foot opening there.

7 Q A 30-foot opening there between these
8 islands?

9 A Yes, sir.

10 Q Do you know when those islands were put
11 there?

12 A The last highway improvement it was done,
13 I am sure it was put there. Whether it was ten, twelve,
14 fifteen years ago I don't know.

15 Q You don't know?

16 A I would have to look in the record to answer
17 the question correctly.

18 Q And you do not know whether a person going
19 to and from Mr. Allmond's property at Mr. Jones' crossed over
20 on Mr. Allmond's property going through there?

21 A You're asking me to my knowledge?

22 Q Yes, sir.

23 A I do know how they got in. They used this
24 entrance between the two properties and went across -- Mr.
25 Jones' property, is it--

1 Q Yes.

2 A -- to get into Mr. Allmond's property.

3 Q And going into Mr. Jones' they also went
4 in Mr. Allmond's?

5 A No, sir, Mr. Jones didn't use it. His
6 residence was over here because he had no need to use it because
7 he would be right in his front yard.

8 Q How about the opening between Mr. Griffis'
9 property and Mr. Allmond's property, do they go through there,
10 too?

11 A To get to Mr. Allmond's property?

12 Q Yes, sir.

13 A They usually exited and entered it the
14 direction they were going.

15 Q So they came in the west side on the pumps
16 and came out on the east side through the opening between the
17 island?

18 A That's correct.

19 Q All right now, the islands are gone and
20 you have put a driveway into Mr. Allmond's property directly
21 into his pumps.

22 A It's 30 feet like he -- again, Mr. Crook,
23 what we had before, if there's an agreement between the
24 adjacent landowners I don't know of it, but he has no interest
25 legalized.

1 Q I am not asking of the legality with his
2 adjoining property because, as you said you are not an
3 attorney and you would --

4 MR. DELK: Your Honor, I am going to object
5 to the side comments of Mr. Crook. He will have a
6 chance to argue.

7 THE COURT: All right. He's going to ask
8 about the evidence.

9 MR. DELK: Let him confine it to the
10 evidence on direct rather than bring in new evidence.

11
12 BY MR. CROOK:

13 Q The entrance coming into the pumps --

14 A Yes, sir.

15 Q -- is 30 feet in width?

16 A As I said, 39 feet -- a 30-foot entrance
17 into the center portion of the property. So it would be 30
18 feet coming directly into the pumps.

19 Q Now on the Ben Jones side of the property,
20 that side of the driveway, is there any entrance to get into
21 the property?

22 A No, sir, it's a curb and sidewalk there now.

23 Q A curb and sidewalk. A curb and gutters
24 and sidewalk?

25 A (Witness nodding head affirmatively.)

1 Q From the line -- let's see, 30 feet. What's
2 the distance there? Four-and-a-half feet according to your --
3 no, not that much.

4 A Three-and-a-half to four feet approximately
5 from here to there.

6 Q All right. So with the way the driveway
7 is constructed and with the curb and gutters running in front
8 of Mr. Jones' you can't come into Mr. Allmond's property the
9 way you could before this was done?

10 A No, sir.

11 Q You've got to come into these pumps,
12 straight into his pumps.

13 A Yes, sir, the access is in the approximate
14 center of the property.

15 Q How about on the Griffis property to the
16 east, what is over there?

17 A What is over on the Griffis property?

18 Q Yes.

19 A Put two 30-foot entrances, the same
20 as Mr. Allmond's property except it is larger property and they
21 put two access points to it with an island in between.

22 Q Who owns that property?

23 A Now again, as of the time we purchased it --
24 I would have to guess because I haven't checked the record,
25 but the Griffis brothers owned it at the time we were

1 negotiating.

2 Q Is that business still there?

3 A No, sir, they are relocated.

4 Q Relocated.

5 A (Witness nodding head affirmatively.)

6 Q Did you handle the right-of-way acquisition
7 for the Griffis property?

8 A Yes, sir, I did.

9 Q Was there any condemnation in that --

10 MR. DELK: If Your Honor please, I am going
11 to object. Mr. Crook knows it's objectionable.

12 MR. CROOK: At this point I don't.

13 MR. DELK: Well, you will find out I am
14 sure.

15 THE COURT: Well, is this on cross? I
16 mean --

17 MR. DELK: This is about somebody else's
18 property, if Your Honor please.

19 THE COURT: That's what I mean. Examine
20 him on what he had before.

21 MR. DELK: No, sir.

22 THE COURT: Your cross would be confined
23 to what he testified to before. Now you are going to
24 get into negotiations with Mr. Griffis?

25 MR. CROOK: Possibly.

1 THE COURT: Well, I'll sustain the
2 objection.

3 MR. CROOK: Well, note my exception to the
4 Court's ruling.

5

6 BY MR. CROOK:

7 Q You were the Right-of-Way Agent for this
8 project, were you not?

9 A Yes, sir, I was.

10 Q And as Right-of-Way Agent did you attempt
11 to acquire the right-of-way from Mr. Allmond and the adjoining
12 property?

13 MR. DELK: If Your Honor please, I am
14 going to object to that. Any of this testimony is
15 not admissible, if Your Honor please. We are dealing
16 with the landowners' property itself, sir. And the
17 negotiations with him or anybody else is not
18 admissible.

19 THE COURT: I can't see the relevance. I'll
20 sustain the objection.

21 MR. CROOK: Is that because I am exceeding
22 the bounds of cross-examination, Your Honor?

23 THE COURT: Well, I don't know. That's
24 part of it, but I don't know what you're leading to
25 or what relevance it has to the value of his. Now

1 I really don't know what the purpose of it is. If
2 it's something that's not going to be material well
3 we ought not to get into it.

4 MR. CROOK: Well, Your Honor, it can be
5 material.

6 MR. DELK: If Your Honor please, I think
7 we are getting on very thin ice here, sir, in the
8 presence of the commission. I don't want to disclose
9 something to cause a mistrial, sir.

10 THE COURT: Let's ask the commissioners to
11 go out if Mr. Crook wants to follow this line.

12
13 (Whereupon, the commissioners
14 left the courtroom.)

15
16 THE COURT: What are you seeking to show,
17 Mr. Crook? That's what --

18 MR. CROOK: Your Honor, I wanted to inquire
19 as to the, to begin with, the similarity of the
20 properties, of the Griffis property which was a
21 service station and tire business located next to
22 Mr. Allmond's property. It was somewhat larger but
23 it was located in the same place and subject to the
24 same conditions, and I wanted to inquire as to that.
25 That's what I was getting into at that point.

1 THE COURT: Well, then if he did say what
2 were you going to do, go into, settle for?

3 MR. CROOK: He was the Right-of-Way agent.
4 He was going to acquire the acquisition of the
5 Griffis property, which I understand was voluntary.
6 I will ask if it was voluntary and if it was
7 voluntary the value --

8 MR. DELK: If Your Honor please, that
9 would be highly objectionable. That doesn't have
10 anything to do with it. Anything that's acquired on
11 the project itself when it obviously is under threat
12 of condemnation, if not under condemnation itself
13 it can't be introduced in evidence, sir.

14 THE COURT: I think that --

15 MR. DELK: It is highly prejudicial, sir,
16 and it's not permissible.

17 THE COURT: I think per se it's not an
18 arm's length transaction.

19 MR. CROOK: Well, Your Honor, if there was
20 no condemnation filed on Griffis and it was voluntary
21 it wouldn't --

22 MR. DELK: No, sir.

23 MR. CROOK: Well, I cite Collins versus
24 Pulaski County, 201 Virginia 164, decided 1959. That's
25 under Section 25-46.21 of the Virginia Code concerning

1 the damages in a litigation. In that case it says,
2 "Evidence of the sum paid by a condemnor for similar
3 land is not admissible, because not a fair indication
4 of market value, unless it is proved that such
5 purchase of similar land was voluntary and not by
6 way of compromise."

7 THE COURT: You've got a right -- you
8 mean in any acquisition without condemnation would
9 you assume that it was voluntary and not as a result
10 of compromise, or how are you going to arrive at that?

11 MR. CROOK: Well, Your Honor, in this
12 case which occurred in 1973 the certificates were
13 filed in accordance with the Statute as in Mr.
14 Allmond's property. Now no condemnation proceeding
15 was instituted until late in 1975, but once that
16 certificate was filed and a deposit made, well, then
17 he was in a situation where he was under threat of
18 condemnation. That's one situation.

19 But now Mr. Griffis -- and I may be wrong.
20 If so, Mr. Delk can point it out. There was no
21 threat of condemnation, no certificate recorded, no
22 deposit made.

23 MR. DELK: I beg your pardon. There was
24 a threat of condemnation. I can say to the Court Mr.
25 Reynolds didn't have anything to do with the settlement

1 with Mr. Griffis. The record itself -- I don't want
2 to say something untruthful. I would have to check.
3 I am under the impression that the certificate was
4 filed and there was an agreement after the
5 certificate. There was no condemnation case.

6 MR. CROOK: I may have missed it, but I
7 checked at the Clerk's office and I couldn't find
8 anything under Griffis' Tire Company or either of
9 the Griffises or under the property of Mr. Jones.

10 MR. DELK: Even if the certificate had
11 not been filed -- I don't know if it was or not, but
12 I know Mr. Reynolds did not make any negotiations
13 because it was negotiated otherwise. But even if
14 it was not, the whole acquisition, if Your Honor
15 please, was in connection with the project, and from
16 the very time that the project was undertaken all
17 the landowners were notified. Every one of them had
18 a notice that their property was in the project and
19 that they would have an opportunity to inspect the
20 plans and so forth, and the negotiations were gone
21 into and none of this is admissible in the case.

22 If you go back -- I haven't read the case
23 to remember the point in the thing, but in respect --
24 and this is done many times. Property is acquired
25 by the Commonwealth where it is contemplated that at

1 some future time there will be possibly a
2 construction. And if that came at a time when there
3 hadn't been any notice whatsoever to the landowners
4 or publicly of the existence of the property and
5 the plans, they have a public hearing on the plans
6 where the landowners may come in and discuss them
7 and so forth, then I would say possibly there would
8 be an acquisition at the time when this wasn't under
9 a threat of condemnation; certainly not under
10 condemnation, but so long at any time after there
11 has been an advertised public hearing. And there
12 are public hearings held in every highway project
13 showing the location of the lines and what is going
14 to be acquired and so forth. And from that very
15 moment on the property is under threat of
16 condemnation.

17 Frequently, sir, and you know this of
18 your own knowledge -- not frequently, but rather
19 infrequently I should possibly say, the right-of-way
20 lines are changed as a result of the public hearing
21 one way or the other. And a perfect example would
22 be, if Your Honor please, the Franklin By-pass would
23 be an indication of it. There was a change also
24 made in the Holland By-pass. I think it was a minor
25 degree, but it was a major degree in the Franklin

1 By-pass after the public hearing after it had been
2 advertised as such.

3 But as to say properties located in the
4 project were not under threat of condemnation that
5 is not the case because the properties are under the
6 threat of condemnation. And the negotiations
7 obviously would be prejudicial if you could see what
8 the negotiations were with one landowner. The facts
9 are not the same or anything else. It would be
10 highly prejudicial to let any testimony come in as
11 to that.

12 THE COURT: All right. I am going to
13 sustain the objection. I can't imagine a case where
14 the Highway is taking or threatening to take and
15 going to take and shows the plans of the property
16 such as the adjacent property here and having a
17 situation of a willing seller and a willing buyer,
18 which is what the standard is. So I am going to
19 sustain the objection.

20 How long are you going to be, Mr. Crook?
21 I think maybe it would be a good idea to take a
22 recess.

23 MR. CROOK: All right, sir. I would note
24 my exception to the Court's ruling.

25 THE COURT: Yes.

1 MR. CROOK: And the problem about exceeding
2 the bounds of cross-examination by bringing in new
3 matters, I would call Mr. Reynolds as my own witness
4 for that purpose.

5 THE COURT: That would be the same in any
6 event. I mean I base the ruling on that for both
7 purposes. So you will have your exception as to
8 both.

9 MR. CROOK: And I note my exception to the
10 Court's ruling on the basis that this was a voluntary
11 transaction between the Griffis property adjacent to
12 the Calvin Allmond property.

13 THE COURT: Are you going to be much
14 longer?

15 MR. CROOK: Not with Mr. Reynolds if I
16 can't get into the Griffis property.

17 THE COURT: Let's let them come back.

18 MR. CROOK: Before you do that, following
19 the Griffis property I was going to inquire about
20 Ben Jones' property on the other side concerning
21 Mr. Reynolds negotiating in that situation for the
22 voluntary conveyance of that property to the Highway
23 Department and the amount paid for this property.
24 I am sure Mr. Delk would object to that as well.

25 MR. DELK: I would, sure. In any event,

1 I want to say this. I made today what appears to be
2 an inaccurate statement. Mr. Reynolds, if Your Honor
3 please, I said, did not negotiate the settlement;
4 he did not. He did negotiate with Griffis to a
5 point. Obviously, he wouldn't be negotiating. It
6 wasn't a threat of condemnation. So the same with
7 Ben Jones.

8 THE COURT: Well, I'll make the same ruling
9 in each case. Mr. Delk, Mr. Crook wants to make sure
10 that he would get the same ruling if he called Mr.
11 Reynolds as his witness.

12 MR. DELK: Yes, sir.

13 THE COURT: So we don't want to have to
14 call Mr. Reynolds back so he's covered both ways
15 on his exception.

16 MR. DELK: Yes, sir.

17 THE COURT: All right. We'll call the
18 commissioners back.

19
20 (Whereupon, the commissioners
21 returned to the courtroom and resumed their
22 seats in the jury box.)

23
24 THE COURT: All right, Mr. Crook.

25 MR. CROOK: Your Honor, since I can't

1 pursue the course of questioning that I was on I
2 would have no further questions for Mr. Reynolds at
3 this point.

4 THE COURT: All right now, we better take
5 a recess, ladies and gentlemen, for ten minutes.

6
7 (Witness excused.)

8
9 (Whereupon, there was a brief
10 recess in the hearing.)

11
12 THE COURT: All right, Mr. Delk, are you
13 ready to proceed?

14 MR. DELK: Yes, sir. All right, sir.
15 Mr. Copeland.

16
17 R. S. COPELAND,
18 called as a witness on behalf of the plaintiff,
19 having been first duly sworn, was examined and
20 testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. DELK:

25 Q Will you state your name, your age and

1 address, please, sir?

2 A R. S. Copeland; I am thirty years old and
3 I live at 1676 Cotton Farm Lane, Suffolk, Virginia.

4 Q Where is that located in Suffolk, Mr.
5 Copeland?

6 A It's located between Chuckatuck and Crittenden.

7 Q How long have you lived in that area?

8 A Just about all my life.

9 Q With whom are you employed, sir?

10 A The Virginia Department of Highways and
11 Transportation.

12 Q How long have you been employed by them?

13 A Approximately nine-and-a-half years.

14 Q Well, Mr. Copeland, in what capacity are
15 you employed, sir?

16 A I am a District Right-of-Way Reviewer,
17 appraisal reviewer.

18 Q What education have you had, Mr. Copeland?

19 A I attended Frederick College and then later
20 Old Dominion. I completed Courses 1 and 2 given by the American
21 Institute of Real Estate Appraisers; Course 1 at Old Dominion
22 University and Course 2 at the University of Virginia. I have
23 participated in numerous appraisal seminars both as a student
24 and also an instructor.

25 Q Did you attend high school in this area?

1 A Yes, sir, Chuckatuck High School.

2 Q And you have attended this advanced study
3 both as a student and as an instructor in appraising. Is that
4 right, sir?

5 A Yes, sir.

6 Q How long have you been engaged as an
7 appraiser?

8 A Approximately nine years.

9 Q What experience have you had in making
10 appraisals, Mr. Copeland?

11 A I have appraised in the Counties of
12 Nansemond, Isle of Wight, Accomack, Northampton, Greenwell,
13 James City, Southampton, Surrey, Sussex and York; in the Cities
14 of Norfolk, Suffolk, Hampton, Newport News, Emporia, Portsmouth,
15 Chesapeake, Virginia Beach, Franklin and Williamsburg. I
16 qualified as an expert witness in the Circuit Courts of
17 Northampton, Virginia Beach, Southampton, Isle of Wight, York,
18 James City, Newport News and Suffolk, and the Corporation Court
19 of the City of Norfolk.

20 I have had appraisal experience appraising
21 residential properties, multi-family, rural, industrial,
22 commercial, as well as special-purpose property such as
23 shopping centers, schools, theaters, churches and so forth
24 with the emphasis being on commercial property.

25 Q In the cases in which you have qualified

1 as an expert witness and testified as such in the Courts you
2 have named, what types of properties did you -- were the
3 subject of the cases that you testified in those instances?

4 A Basically all types of properties such as
5 I just mentioned.

6 Q Have you had any experience appraising
7 for anyone other than the State Highway Department?

8 A Yes, sir, I have.

9 Q What have you done?

10 A I worked for a short time -- I worked for
11 a short time as a Real Estate Appraiser for the City of
12 Suffolk. I have also done fee appraisal work.

13 Q When you say "fee appraisal work" what do
14 you mean by that? Explain to the commissioners what that is.

15 A I took on appraisal jobs for a set fee to
16 make individual appraisals for individual property owners,
17 companies, real estate companies and so forth.

18 Q At that time were you employed by any
19 Governmental authority?

20 A I was employed by the City of Suffolk.

21 Q And when you were employed by the City of
22 Suffolk then were you permitted to make appraisals in private
23 employment by individuals or corporations or similar parties?

24 A Yes, sir, I was.

25 Q As an appraiser while you were employed

1 with the State Highway Department as you are now are you
2 permitted to make appraisals for any other party or person
3 or privately otherwise?

4 A No, sir, I am not. My appraising is
5 restricted to the Highway Department.

6 Q Is that a restriction that's imposed by the
7 Department or --

8 A By the Department.

9 Q By the Department.

10 A Yes, sir.

11 Q That's where -- all right, sir.

12 MR. DELK: We tender Mr. Copeland then,
13 if Your Honor please, as an expert witness.

14 THE COURT: Yes, sir. Yes, I think he is
15 qualified.

16

17 BY MR. DELK:

18 Q Mr. Copeland, are you familiar then with
19 the property which is the subject matter of this proceeding
20 owned by Mr. and Mrs. Allmond?

21 A Yes, sir, I am.

22 Q Are you familiar with the Plan Sheet,
23 specifically Plan Sheet 3, Petitioner's Exhibit Number 1, in
24 the case here?

25 A Yes, sir, I am.

1 Q Have you been present in court then during
2 this instance by the rulings during the testimony to these
3 plats?

4 A Yes, sir, I have.

5 Q And have you personally gone over the
6 Petitioner's Exhibit 1 in here?

7 A Yes, sir, I have.

8 Q Have you had occasion to examine the
9 Petitioner's Exhibit Number 3?

10 A Which one would that be?

11 Q The sketch that was testified to by Mr.
12 Reynolds.

13 A Yes, sir, I have.

14 Q It's the exhibit over here.

15 MR. DELK: Here's the one that's not
16 colored, Woody. I don't have any extra colored ones.

17
18 BY MR. DELK:

19 Q In the case of the subject property will
20 you then tell us -- first, what is the date of the take in
21 this case?

22 A April the 20th, 1973.

23 Q As of what date then are the property
24 values and/or damages, if any, to be determined, sir?

25 A April the 20th, 1973.

1 Q Now have you been upon and described the --
2 I mean reviewed and studied the landscape and so forth of the
3 subject property, its terrain?

4 A Yes, sir, I have.

5 Q Would you describe the property briefly, sir?

6 A The subject property is an approximately
7 rectangular-shaped lot fronting 39 feet on Route 10 and
8 approximately 204 feet in depth. The highest and best use is
9 in a commercial area. However, due to its size is very limited
10 to what can be done with the property. The property is also
11 limited to periodic flooding.

12 Q Limited to or limited due?

13 A Limited to periodic flooding.

14 Q I see, sir.

15 A From the high tide and so forth.

16 Q All right, sir.

17 A Across the front of the property there is
18 an existing encumbrance which is a five-foot wide construction
19 easement which was previously acquired by the Highway Department.
20 However, for the purposes of this appraisal I made no deduction
21 for this encumbrance but paid full fee value for that area
22 incumbent.

23 Q What do you mean by that, sir?

24 A For all intents and purposes the property
25 is incumbent for five feet across the front, but due to the

1 fact that I felt construction in this area would be limited I
2 made no deduction and paid full value for that area to be
3 acquired.

4 Q When you say "paid" does that mean you
5 fixed its full value without deducting anything because of
6 that easement?

7 A No deduction.

8 Q Go ahead, sir. What other items did you
9 find?

10 A Located on the property was a one-story
11 frame store and office, which at the time of my inspection was
12 in a very depreciated condition. The interior finish was
13 minimal as well as the construction of the exterior. The
14 building, at the time of the acquisition, was only approximately
15 fourteen years old; however, the depreciation well-exceeded
16 its normal life. Also, in the rear there was a frame shed
17 which was passed in usable condition.

18 Q I interrupted you when you were speaking
19 about that existing five-foot easement. Were there other
20 easements on the property, sir, and what were they for?

21 A Yes, sir, there was an existing standard
22 utility easement across the front. Again, I made no deduction
23 for the area which was encumbered by this due to the fact that
24 we were acquiring another easement to replace in kind what
25 already existed.

1 Q What was that utility easement, what type
2 of utility was it?

3 A A standard transmission line across for
4 residential purposes and commercial purposes.

5 Q For electricity, telephone, what?

6 A Electrical service.

7 Q I see, sir. Was there a telephone easement
8 across it?

9 A Yes, sir, I am sure there was.

10 Q I see. Any other easements that you know
11 of on the property, sir?

12 A No, sir, I do not.

13 Q In the area of the take?

14 A No, sir.

15 Q Were you cognizant of the sewer easement
16 as shown on the plan across the rear of the property? It
17 doesn't affect the take.

18 A I was cognizant of it but I placed no
19 effect on the value of it.

20 Q What else did you find on the property?
21 Go right ahead, sir.

22 A Also located on the property were gasoline
23 pumps in front of the property which were located on an island;
24 fuel pump, sign, underground gas tanks, air pump, fuel storage
25 tank and so forth.

1 Q What access was there to the property on
2 the property itself from the highway?

3 A One of the greatest limits to this property
4 was its very limited access to the highway. There was an
5 existing curbing directly in front of the property with the
6 exception of just a six-foot opening next to the Jones property.
7 At the time that I made my inspection people who were entering
8 and exiting this property did so by means of passing on the
9 adjacent owners' properties.

10 Q Now you said, I believe, the highest and
11 best use of the property was for -- was commercial.

12 A Yes, sir. That was due to its location
13 strictly.

14 Q I see, sir. Now in making your appraisal
15 how did you approach the matter and what did you find, sir?

16 A I approached it from a market approach on
17 land. I found commercial sales in the area that had taken
18 place and compared these properties directly to the subject
19 property. I might point out that the subject property only
20 had 39 feet of frontage, and again, this is very limited. In
21 fact, it's not sufficient to carry on much of a commercial
22 enterprise. However, I made no deduction for this fact in my
23 appraisal.

24 Q What was the area of the land that is
25 involved in the take, Mr. Copeland?

1 A Only 196-thousandths of an acre or 8,549
2 square feet.

3 Q My question --

4 MR. DELK: Would you read the question,
5 Miss Stenographer?

6
7 (Whereupon, the following question
8 was read by the court reporter.)

9
10 "QUESTION: What was the area of the land
11 that is involved in the take, Mr. Copeland?"

12
13 BY MR. DELK:

14 Q By that I mean what is the area of the
15 land then taken in the proceeding.

16 A Eight thousand five hundred and forty-nine
17 square feet are in the acquisition.

18 Q What is the total area of the property of
19 the landowners?

20 A I am sorry. The total property is 8,549
21 square feet. The acquisition is only 536 square feet.

22 Q Are you straightened out now, Mr. Copeland?

23 A Yes, sir, it was my mistake.

24 Q So that what is taken as stated in a fraction
25 is zero what?

1 A Point two.

2 Q .012?

3 A Twelve-thousandths of an acre in the
4 acquisition.

5 Q That is how much? It is 536 --

6 A Square feet.

7 Q -- square feet?

8 A Yes, sir.

9 Q And the total area of the landowners'
10 property is how much, sir?

11 A Eight thousand five hundred and forty-nine
12 square feet.

13 Q Within the 536 square feet that are taken
14 what is the -- are there any buildings within the area?

15 A No, sir, there are not.

16 Q Are there any improvements on the property
17 at all within the area taken?

18 A No, sir, there are not.

19 Q Now what is the -- you've given the width
20 of the property as 39 feet.

21 A Yes, sir.

22 Q What is the depth then again of the area
23 that's taken in fee on both the western and eastern edges?

24 A On the west side twelve-and-a-half feet;
25 on the east side fifteen feet.

1 Q And those figures that you then have given
2 would equally give you the 536 square feet that you talked about?

3 A Yes, sir, they would.

4 Q I see, sir. Do you know what the area of
5 the easement that's taken is? Encompassed within the yellow
6 line on the plat.

7 A The utility easement?

8 Q Yes, sir. If you know, sir.

9 A It's 0.014 or fourteen-thousandths of an
10 acre.

11 Q That was zero --

12 A One four. Fourteen-thousandths of an acre.

13 Q I see, sir. Now you were talking about how
14 you valued the property from the market approach. Would you
15 go forward with that now, sir?

16 A Yes, sir.

17 Q Explain.

18 A The closest and most comparable sales I
19 could find, which were also commercial in nature, were located
20 farther up the road. The first sale I utilized was Smithfield
21 Properties by the Green Beret Holding Corporation to T. A.
22 Phillips, Jr. and others. This is on the corner of Route 10
23 and Smithfield Boulevard.

24 Q Is there any building located on that at
25 this time that you know of?

1 A At this time?

2 Q Yes. I was just wanting as far as from a
3 landmark standpoint.

4 A Right at this time I don't think so.

5 Q You are not familiar with it?

6 A No, sir.

7 Q But it's at the corner of Smithfield
8 Boulevard and Route 10, South Church Street?

9 A Yes, sir.

10 Q Go ahead, sir.

11 A And this property sold for \$11,500. It
12 contained 39,415 square feet or 29 cents a square foot. It
13 sold on June 14, 1969. Making adjustments for time, corner
14 influence and so forth you had an adjusted square foot price
15 of 29 cents.

16 On my second sale it was Smithfield Properties
17 by J. S. Livesay, Jr. to First Federal Savings and Loan
18 Associates of Newport News. This was located on Route 10
19 approximately a hundred feet north of Smithfield Boulevard.
20 It sold for \$12,000 for 40,000 square feet. This was 30 cents
21 a square foot and was dated on March 30th, 1972. Making
22 adjustments for time it was updated to 31 cents a square foot.

23 The third sale was Smithfield Properties
24 by the Green Beret Holding Corporation to Ralph R. Wilkerson
25 and Betty W. Wilkerson, located on Route 10 approximately

1 600 feet north of Smithfield Boulevard. The consideration for
2 this property was \$10,000 for 40,000 square feet or a price
3 per square foot of 25 cents. This was dated on April 29, 1971.
4 After making adjustments for time it was updated to 28 cents
5 a square foot.

6 My fourth comparable was Smithfield
7 Properties by the Green Beret Holding Corporation to Little's
8 Supermarket, Incorporated. This was on the east side of
9 Route 10 approximately 700 feet north of Smithfield Boulevard.
10 This sold for eighty-five hundred dollars. It contained
11 39,304 square feet or a price per square foot of 21.6 cents.
12 This took place on February 11, 1970. After making adjustments
13 for time it was indicated a value of 25 cents.

14 My final sale was Smithfield Properties by
15 the Green Beret Holding Corporation to Robert T. Little, Jr.
16 The location was on the east side of Route 10 adjacent to the
17 Colonial Funeral Home. The consideration was \$8,000 for
18 34,728 square feet, giving a price per square foot of 23 cents.
19 This took place on February 11, 1970. And after making
20 adjustments for time it indicated 27 cents.

21 So to recap, the sales I used, after
22 adjustments one was 29 cents, one was 31 cents, the other was
23 28, the next was 25 and the next was 27. Making no deductions
24 to the subject property for the periodic flooding, for the
25 limited frontage and the general topography of the property,

1 I correlated to 30 cents a square foot for the subject property.

2 Q You have used sales, Mr. Copeland, from
3 and early of 1969 and the appraisal date is as of April 20,
4 1973. Is that right?

5 A Yes, sir, it is.

6 Q So within the period then that you are
7 talking about were there any commercial sales within any
8 nearer -- anywhere in this area to this particular property?

9 A No, sir, there were not.

10 Q These were the closest?

11 A These were the most comparable.

12 Q Would commercial sales generate a higher
13 appraised value than residential sales, sir?

14 A In most instances they would.

15 Q And is that true in this case, sir?

16 A In the Smithfield area, yes, sir.

17 Q And can you then give any reason why you
18 particularly went for the commercial sales?

19 A Due to the location; it was close to the
20 bridge. There was commercial development in the area. For that
21 reason I went with the commercial values.

22 Q Would this then denote a higher value for
23 the landowners' property or a lower value, sir?

24 A A higher value.

25 Q And then your appraisal would be for its

1 highest value, appraisal value?

2 A Yes, sir.

3 Q All right, sir. You mentioned making
4 adjustments. What type of adjustments do you make to the
5 sales? You started with a '69 sale.

6 A Well, the 1969 sale, you would actually
7 adjust it for time, whatever the inflation factor appears to be.

8 Q Bring it to a date nearer the date of
9 taking or to the date of taking?

10 A Yes, sir, you would. You'd also make
11 corner adjustments if its necessary. For instance, if a service
12 station is on a corner its much more beneficial to that type
13 business because they have traffic coming from more directions.
14 If a property is high as compared to property that is low an
15 adjustment is normally made and so forth.

16 Q These are the types of adjustments, all of
17 which you correlate to this value you have testified to here?

18 A Yes, sir, I do.

19 Q All right, sir. Now, Mr. Copeland, what
20 then is the fair market value of the land taken, 536 square feet?
21 What is the fair market value of that land as of April 20, 1973,
22 the date it was taken?

23 A One hundred and sixty-one dollars; 536 square
24 feet at 30 cents, \$161.

25 Q Now the property was used as a service

1 station. Is that correct, sir? It had gasoline pumps and so
2 forth?

3 A It had pumps on it.

4 Q Is there any change in it? Were you at
5 the view this morning, sir?

6 A Yes, sir, I was.

7 Q Have there been any changes particularly
8 in the property, sir?

9 A Not that I could really ascertain.

10 Q What about right-of-ways into the property,
11 have you got any comment on that, sir? What did you find, what
12 do you know from your investigation and your appraisal?

13 A Yes, sir. This was one of the first things
14 that I looked for when I began making my appraisal. When I
15 went there there was access to the property through the
16 adjacent properties. And one of the first things I did was
17 try to obtain a copy of any agreements with the adjacent owners
18 to pass over their properties. The only information I could
19 obtain was one that was originally made between Ben Jones and
20 the adjacent Griffis property to cross over the Griffis property
21 to get into this property. And with further investigation and
22 checking this through Mr. Delk it was determined that this
23 agreement could be cancelled at any time.

24 MR. CROOK: Your Honor, I object to that.

25 He said he determined that from Mr. Delk. He is

1 talking from hearsay at this point. He's not qualified
2 to determine the legal efficiency of any agreement.

3 THE COURT: I sustain the objection
4

5 BY MR. DELK:

6 Q Is the agreement you referred to of record,
7 Mr. Copeland?

8 A Yes, sir.

9 Q And is it recorded in this Clerk's office,
10 sir?

11 A Yes, sir, it is.

12 MR. DELK: If Your Honor please, at the
13 proper moment I am going to ask the Court to permit
14 me to introduce then a certified copy of that, which
15 I will obtain from the Clerk's office.

16 THE COURT: All right.
17

18 BY MR. DELK:

19 Q All right. Go ahead then about the -- did
20 you find any -- what other right-of-ways did you find that were
21 being used? What right-of-ways were being used to get into
22 this property?

23 A Through the adjacent property, but I found
24 no right-of-ways.

25 Q All right, sir. And do you know -- the

1 subject property was prior owned by Mr. Jones; is that correct?

2 A Yes, sir, it was.

3 Q And you've described the island. Well
4 now, Mr. Copeland, your value then for the land then taken is
5 \$161?

6 A Yes, sir.

7 Q What damages, if any, beyond enhancement,
8 offset by enhancement and value due to construction have you
9 found in connection with this property?

10 A I found no damages.

11 Q Why?

12 A In determining the value of a property it
13 must be based on market value, and market value is a price
14 which a willing and knowledgeable buyer would buy and a willing
15 seller would sell, neither being under abnormal pressure. And
16 I think the key to this in determining the value of this
17 property is a knowledgeable buyer. I don't feel that a
18 knowledgeable person would go there to buy this property with
19 only 39 feet of frontage and 33 feet of this frontage being
20 encumbered by a curb being subject to having to go over
21 adjacent properties. It's just not an agreeable situation
22 where someone would try to run a service station.

23 Q And that was as of the time of the take in
24 this instance?

25 A Yes, sir.

1 Q All right, sir. Well now, has there been
2 any enhancement? If there were any damages did you find any
3 enhancement by reason of construction that would have offset
4 any such damages?

5 A If there's any change at all to the property
6 the fact now is that he can enter his property through a 30-
7 foot entrance. He can come directly into it without encumbering
8 on other people. If anything, this is a benefit to his property.

9 Q Does that constitute any enhancement in
10 value then?

11 A It would be a definite enhancement to the
12 property, yes, sir.

13 Q All right, sir. Now, sir, if you found no
14 damages then to this property by reason of the take --

15 A No, sir, I did not.

16 Q -- how would you compare its -- the value
17 of the residue before the take with the value of the residue
18 after the take? Is there any difference?

19 A Under normal circumstances there would be
20 an enhancement. In this case I say it's very little difference
21 due to the limited frontage to begin with. There's just only
22 so much you can do with 39 feet of frontage.

23 Q Are you saying then there was no difference
24 in value --

25 A No.

1 Q -- to the residue before -- no diminution
2 in value as of the residue as it existed before the take and
3 as it existed after?

4 A Right.

5 Q If anything, it is enhanced?

6 A If anything, it is enhanced, but it would
7 be hard to determine due to the limited amount to begin with.

8 Q Mr. Copeland, as an experienced appraiser
9 are you familiar with cost experience in determining appraisals?

10 A Yes, sir, I am.

11 Q What is meant by the cost of cure? and apply
12 that as to curing damage.

13 A Cost of cure is a method of curing damage
14 when damages do, in fact, exist. However, before damage can
15 be cured it must exist and it must be known. Cost of cure
16 can't exceed in dollars the exact sum of the damage.

17 Q By way of an example can you give me any
18 example that would explain that using a hypothetical case
19 possibly?

20 A Yes, sir, I could. A good example would be
21 if you had a residential lot and there was a home sitting on
22 it that was very depreciated and worth \$5,000. It was determined
23 through market study that the dwelling itself was worth \$5,000.
24 By acquisition in front of the home the road was coming within
25 ten feet of the house, and it was determined that it had been

1 damaged ten percent. In that case the damage would be \$500.

2 You could also look at it that it could be
3 cured by moving the house back. It's possible that to move a
4 house it would cost \$5,000, which would be equivalent to the
5 value of the house and greatly exceed the damage to begin with.
6 A cure can only take place -- it's only feasible to cure a
7 situation when it can be done for a lesser cost than the
8 damage itself.

9 Q So that are you saying that if there is no
10 damage then the cost of cure does not apply?

11 A Can't be applied.

12 Q Because there is no damage to cure.

13 A A damage has to be shown before it can be
14 cured.

15 Q What other things do you have as to the
16 value and damages, Mr. Copeland?

17 A I think that's about it.

18 MR. DELK: All right. No further questions.

19 Answer Mr. Crook.

20

21 CROSS-EXAMINATION

22

23 BY MR. CROOK:

24 Q Mr. Copeland, how old are you?

25 A Thirty years old.

1 Q And how long have you been an appraiser
2 for the Highway Department?

3 A About nine-and-a-half years.

4 Q Since you were twenty?

5 A I beg your pardon.

6 Q You say since you were twenty?

7 A Well, I lack a couple days of being thirty-
8 one so --

9 Q So all of your experience basically has
10 been with the Highway Department in appraising for the Highway
11 Department?

12 A Not all of my experience, no.

13 Q Would you say 99 percent of it?

14 A No, I wouldn't.

15 Q When you appraise for the Highway Department
16 what do you appraise?

17 A Well, when I appraise? I appraise right-
18 of-ways to be acquired, total properties, parcel properties.

19 Q To be acquired by the Highway Department?

20 A Yes, sir, when I appraise for the Highway
21 Department.

22 Q Road expansion, road improvement?

23 A Generally, yes, sir.

24 Q In this situation you looked at some --
25 you call them comparable sales?

1 A Yes, sir.

2 Q You have listed some properties that were
3 sold on Highway 10 south of Smithfield just out of the town
4 limits in the rural area of Isle of Wight County, which is a
5 growing commercial area?

6 A Yes, sir, a very good commercial area, in
7 fact.

8 Q A very good commercial area. And these lots
9 that were being sold out there were large lots, 40,000 square
10 feet. Is that right?

11 A Some of them were, yes, sir.

12 Q Is that because that's open land out
13 there being subdivided for the first time?

14 A It's because that's the way they were
15 subdivided and sold.

16 Q Are you familiar with the properties within
17 the old Town of Smithfield?

18 A Yes, sir, I am.

19 Q Are you familiar with the size of the lots
20 in the old Town of Smithfield?

21 A They are generally small.

22 Q Do you have any sales of comparable lots
23 within the old Town of Smithfield to compare this with?

24 A No, I do not.

25 Q The property in the old town doesn't sell?

1 A Right in this area it doesn't sell very
2 readily.

3 Q Readily?

4 A No, sir.

5 Q But property was purchased on each side
6 of this property, wasn't it?

7 A I beg your pardon.

8 Q Property was purchased on each side of
9 this property?

10 A By whom?

11 Q The Highway Department.

12 A Yes, sir, it was.

13 Q Did you do these appraisals?

14 A Yes, sir.

15 Q That would be the Griffis' commercial
16 property there?

17 MR. DELK: If Your Honor please, Mr. Crook
18 knows there has been an objection to this; the Court
19 has sustained it. I don't want to sit here and let
20 any error creep into this, but I am objecting to this
21 line of questioning as I did previously.

22 THE COURT: He just asked a question. He
23 wasn't going to --

24 MR. CROOK: Well, I'd ask all I could get
25 away with, Your Honor. I'll find out.

1 BY MR. CROOK:

2 Q But you did appraise the Griffis property
3 to the east of this property and adjacent to it?

4 A Yes, I did.

5 Q And you appraised the property to the south
6 of it, Mr. Ben Jones' property?

7 A Yes, sir, I did.

8 Q And those properties were --

9 MR. DELK: Now, if Your Honor please, I
10 am going to object to any further questioning along
11 that line, and I am going to ask the Court to instruct
12 Mr. Crook to refrain from any further questioning
13 along that line to save further objections.

14 THE COURT: I think he's asked all the
15 questions I was going to let him ask. So I'll
16 sustain the objection figuring that you're going
17 farther, but I don't know how much farther.

18
19 BY MR. CROOK:

20 Q Is there any more property in or outside of
21 the Town of Smithfield of which you are aware that is any more
22 comparable to this property than those two properties adjacent
23 to it?

24 A I don't know of any properties anywhere in
25 Smithfield directly comparable to this property due to its size

1 and own characteristics.

2 Q You haven't responded to my question, as
3 you are well aware.

4 A I responded the best I could.

5 Q Let me try again. Are there any properties
6 in Smithfield or out of Smithfield any more comparable to this
7 property than those two properties adjacent to it?

8 A They would be very comparable, yes, as far
9 as comparability goes in Smithfield.

10 Q What is the zoning of this property?

11 A The zoning of the property would be commercial

12 Q You are aware it is zoned commercial?

13 A To my knowledge at that time it was zoned
14 commercial.

15 Q What is the use of the property?

16 A At the time of the inspection it was used
17 primarily to deliver oil; from tanks in the rear to local
18 houses, I would assume.

19 Q All right. So it has a large storage tank
20 for oil, fuel oil, in the rear on the property?

21 A That's correct.

22 Q There is a kerosene tank in the front and
23 it has gas tanks, pumps, in the front?

24 A Yes, sir, it does.

25 Q So would you classify that as a gas service

1 station and fuel oil supply and distribution --

2 A I wouldn't really classify it in that
3 category, but it does have such things on the property.

4 Q Now in your area of expertise in making
5 real estate appraisals you have to be very cognizant of the
6 use, don't you?

7 A Yes, sir.

8 Q And you are very much aware of what a
9 non-conforming use is, I suppose?

10 A Yes.

11 Q If you have fuel storage tanks in a
12 commercial area you have what is called a non-conforming use.
13 Is that correct?

14 A It would depend entirely upon the zoning
15 and the different classifications of commercial zoning in most
16 areas.

17 Q Well, you appraised this property, didn't
18 you?

19 A Yes, I did.

20 Q And you know the zoning is commercial?

21 A Yes.

22 Q Business?

23 A Business.

24 Q And it has fuel storage tanks on it --

25 A Yes.

1 Q -- which is not business?

2 A I beg your pardon.

3 Q Fuel storage tanks are not -- are required
4 in industrial zoning, are they not?

5 A At that time I think that was allowed
6 under commercial zoning for the Town of Smithfield, though I
7 wouldn't be sure.

8 Q You're not telling these commissioners and
9 this Court that you can have fuel storage in a commercial zone
10 or business zone? It is a non-conforming use in a business
11 use, is it not?

12 A In the Town of Smithfield it's non-conforming,
13 yes.

14 Q All right. Now what happens to a non-
15 conforming use when you stop that use? If you have an
16 industrial use and a business use and you stop using it for
17 industrial purposes what happens to that use or the right to
18 that use?

19 A It would depend entirely upon the officials
20 that govern it. I --

21 Q Don't you lose --

22 A I can't say what would happen.

23 Q You lose the right to the non-conforming
24 use when you terminate that use, do you not?

25 A Again, I am not in the position to say what

1 would happen in that circumstance. That would be entirely up
2 to the zoning officials and planners and so forth.

3 Q What's the difference between the value of
4 industrial property as opposed to the value of commercial
5 property in the Town of Smithfield?

6 A I really don't know what the value of
7 industrial property in the Town of Smithfield is.

8 Q Do you know of any industrial property in
9 the Town of Smithfield?

10 A There is industrial property, but I couldn't
11 tell you the value.

12 Q Where is some industrial property?

13 A I think you'd have to say that the Packing
14 Plant would be industrial.

15 Q Do you know of any fuel storage tanks?

16 A Directly in the Town of Smithfield?

17 Q Yes.

18 A Not right offhand.

19 Q Have you appraised any property which had
20 fuel storage tanks on it, industrial property?

21 A Yes, sir, I have.

22 Q Where?

23 A Virginia Beach.

24 Q But not in Smithfield?

25 A Not in Smithfield.

1 Q Not around Smithfield?

2 A No.

3 Q Do you know whether the industrial property
4 is of a higher premium in the Town of Smithfield than business
5 property, commercial property?

6 A I really couldn't say. I am not familiar
7 with industrial property in the Town of Smithfield.

8 Q If you have an industrial use on a business
9 property which could be sold and then the industrial use
10 continued, that probably would sell as industrial property as
11 opposed to business property, wouldn't it?

12 A In talking about industrial properties we
13 generally talk about acreage. In this property we are talking
14 about a 39-foot lot. I hardly think someone would buy it for
15 industrial purposes.

16 Q This is part of a larger lot, Mr. Copeland,
17 you are well aware?

18 A No, I am not aware.

19 Q You are not aware that there are fuel
20 storage tanks?

21 A We're talking about a 39-foot lot; it's
22 part of a larger lot. All I am aware of is just 39 feet of
23 frontage.

24 Q Thirty-nine feet of frontage. Did you base
25 your appraisal on the frontage?

1 A I think it's definitely a governing factor
2 in the situation when the man didn't have entrance to his
3 property.

4 Q When he didn't have entrance to the
5 property?

6 A He did not.

7 Q You said when you made the appraisal
8 vehicles were going in and out by crossing the adjoining
9 property. The adjoining property was Mr. Ben Jones' property,
10 the man that sold the property to Mr. Allmond, and yet you
11 say he didn't have a way in and out of the property?

12 MR. DELK: I am going to ask Mr. Crook to
13 stay away from the witness and don't badger him as
14 if he is going to attack him.

15 THE COURT: We won't let him attack him.

16 MR. CROOK: He's bigger than I am, Mr.

17 Delk.

18 MR. DELK: That's all right, sir. I think
19 he is perfectly able to take care of himself.

20 MR. CROOK: I do, too. I don't -- I think
21 that was uncalled for. I don't think Mr. Copeland
22 appreciated that.

23 THE COURT: Go ahead.

24 BY MR. CROOK:

25 Q Mr. Copeland, I was asking you -- you said

1 there was not access, yet when you made the appraisal vehicles
2 were going in and out and crossing the adjoining property.

3 A I also pointed out my appraisal was based
4 on market value. This was the price which a willing and
5 knowledgeable buyer would buy. The right to pass on these
6 adjacent properties is something that could be readily transferred.

7 Q Let's back up. You're talking about what
8 a willing and knowledgeable buyer would buy. Now you've got
9 the Town of Smithfield with a high-density population, particularly
10 in the old town. You have a number of commercial establishments
11 and residential establishments; you've got a piece of property
12 on which is located fuel storage tanks, both below and above-
13 ground. There's a service station that's close to the
14 population; it's in the center of the population. There is
15 limited industrial property on which you could locate such fuel
16 storage tanks.

17 Now doesn't that make that property
18 desirable and such that a knowledgeable person would want to
19 buy it?

20 A It wouldn't be desirable if he didn't have
21 ready access to the property, no.

22 Q If he didn't have ready access. All right.
23 He's coming across adjoining property owned by Mr. Jones who
24 sold this property. So apparently, Mr. Jones is acquiescent
25 in the use of his property for access to this property, right?

1 A Again, it could be a matter of personality.

2 Q But because of this island out front you
3 are saying he didn't have access when you saw vehicles going
4 in and out across the adjoining property. You even said there
5 was an enhancement of the value because you moved that island
6 and brought the road right up next to his tanks.

7 A It gave him an entrance to the property.

8 Q It gave him an entrance to the property
9 and enhanced it. Then you and Mr. Delk did a little speculating
10 in a situation.

11 I'll give you a situation. Suppose you
12 have a five-acre parcel of land, very choice property for
13 residential purposes in a low-density area, and you locate it,
14 oh, three-tenths of a mile from a hard-surface road. You've
15 got privacy, you don't have a highway running right down your
16 front yard or anything else, but you've got to go across some-
17 body else's property to get to it, by permission or whatever,
18 but you've got to go across somebody else's property to get to
19 your property.

20 So the Highway Department comes along and
21 they condemn right up to your front door. You've got a big
22 major highway going right by your front door, giving them good
23 access to a public road.

24 Have you enhanced the value of that property?

25 A It gets back to what type of access they

1 had, was it written legal permission.

2 Q What difference does that make?

3 A It would make a whole lot to me if I went
4 to buy a piece of property.

5 Q And you have access.

6 A I wouldn't want access that someone could
7 cut off.

8 Q You wouldn't know if they could cut it off
9 or not.

10 A I wouldn't want to take the chance.

11 Q Do you know what prescriptive use is?

12 A Yes.

13 Q What's prescriptive use?

14 A Prescriptive use is the right to use
15 something over a period of time.

16 Q Well, you have used it over a period of
17 time. Also, an easement by oral permission. You can have an
18 easement by permission, can you not?

19 A Again, you are getting into legal matters
20 that I am not familiar with.

21 Q That's right. Did you talk to Mr. Allmond
22 about what his legal rights were as to his easement across the
23 adjoining property?

24 A I asked him for whatever information he
25 could furnish me, easements --

1 Q About easements?

2 A Easements, gallonage, anything he'd give me.

3 Q Did you discuss with him changing his
4 access from across Mr. Jones' property? Did you discuss that
5 with Mr. Allmond?

6 A I was open to any questions he'd give me.
7 Actually, I got very little information.

8 Q But you stated that the vehicles went in
9 from across Mr. Jones' property.

10 A Strictly from observation.

11 Q From observation. And yet the Highway
12 Department has put in curbs and gutters across there cutting
13 off that access.

14 A We're giving him now direct access to
15 his property.

16 Q Right into his pumps.

17 A Right into his property.

18 Q What?

19 A Right into his property. So his trucks
20 can come directly in; they can utilize his property.

21 Q Before they could come and utilize the
22 pumps. They can't utilize them where they are sitting now,
23 can they?

24 A I guess they could utilize them now if they
25 could before.

1 Q Isn't it necessary now to move those pumps
2 back from the highway in order to effectively utilize them,
3 both sides of them?

4 A I think they can be just as effectively
5 used now as they could before.

6 Q You went out there and looked this morning
7 and you say that?

8 A I beg your pardon.

9 Q Both sides of them I am talking about.

10 A Oh, both sides can't be utilized.

11 Q They've got to be moved back in order for
12 both sides to be utilized.

13 A Perhaps one side is all that's needed.

14 Q Perhaps?

15 A Perhaps. As I said, I am not --

16 Q Is that how you make appraisals, with
17 speculation like that?

18 A If I can't get any information, if I
19 can't get any cooperation I have very little choice.

20 Q So you made this appraisal based on
21 speculation perhaps because you didn't get the cooperation from
22 Mr. Allmond that you wanted. Is that right?

23 A It was very evident what existed, what type
24 business was actually there.

25 Q What type business existed?

1 A Very little.

2 Q Very little business. A little man
3 conducting a little business.

4 MR. DELK: Now, if Your Honor please, I am
5 objecting to this editorializing and these
6 extemperaneous remarks. Mr. Crook is not testifying.
7 Let him be sworn --

8 MR. CROOK: I am on cross and I have not
9 exceeded --

10 MR. DELK: Cross-examination involves
11 questions and not statements or argument.

12 THE COURT: There was one remark that might
13 have been not questioning. All right. Go ahead,
14 Mr. Crook.

15
16 BY MR. CROOK:

17 Q Mr. Copeland, in making your appraisals
18 on lots which are small, very small lots, as you will find in
19 your old towns and the old parts of cities the lots are small.
20 Do you make your decision on so much a square foot or so much
21 a front foot?

22 A Generally, so much a square foot in areas
23 that are very small.

24 Q Generally. Why do you say "generally"?

25 A Well, you can do it a number of ways. You

1 can do it by front foot, square foot, acreage. You can just
2 about take your pick and it makes very little difference in
3 the end result because you are comparing it with comparable
4 properties and making the necessary adjustments that are needed.
5 In any increment you desire you can make the necessary adjust-
6 ments and it should come up with the same indicated value.

7 Q Isn't there a greater desirability for
8 property in low-density areas as opposed to high-density areas?

9 A Yes, sir, generally.

10 Q And when you have a town with generally
11 less density on small lots you have a high-density area?

12 A But you also run into situations where
13 the comparable areas were in a growing and increasing area,
14 and the subject property is in a declining area.

15 Q But you can't tell us about any comparables
16 or any areas within the town or very close to the town where
17 property could be obtained or property has been sold for the
18 location of fuel storage tanks?

19 A No, I can't.

20 Q You're not aware of these transactions that
21 have occurred in and around the Town of Smithfield?

22 A Around the town. They could; perhaps
23 some have taken place, but I used the sales that were most
24 comparable, the closest.

25 Q But they did not involve industrial use.

1 A No, they weren't industrial. They were
2 commercial in a growing commercial area.

3 Q And there is a great deal more commercial
4 area than there is industrial area. Right?

5 A Is there a great -- I beg your pardon.

6 Q A great deal more business commercial area
7 than there is industrial area.

8 A I really couldn't say.

9 Q You can't say and you're a professional
10 appraiser?

11 A In an area where you have industrial you
12 generally have quite a bit of acreage, quite often several
13 hundred acres. For commercial you generally have small strips.
14 So it could very easily be more industrial area than it is
15 commercial area if you look at it in that respect.

16 Q But can you find industrial area in towns
17 for the location of storage of fuel?

18 A Not generally right in town.

19 Q All right. And so your appraisal on behalf
20 of the Highway Department, who employs you, is \$161 for Mr.
21 Allmond?

22 A Yes, it is.

23 MR. CROOK: That is all.
24
25

1 REDIRECT EXAMINATION

2 BY MR. DELK:

3 Q Mr. Copeland, I believe Mr. Crook asked
4 you about sales within the old Town of Smithfield. He means
5 the old corporate limits, I am taking it, which would be
6 within the area of the two bridges on Highway 10 and so forth.

7 Were there any sales of commercial properties
8 in the town in those limits within a period of five years prior
9 to April 20, 1973?

10 A No, sir, not that I could obtain.

11 Q So when you speak of comparable sales then
12 aren't you talking about sales of properties that would
13 generate a comparable sales price then?

14 A Yes, sir.

15 Q And you're not necessarily comparing --

16 MR. CROOK: Your Honor, is Mr. Delk
17 answering or telling the witness what to say?

18 MR. DELK: I am doing the same --

19 MR. CROOK: I object.

20 THE COURT: Okay.

21

22 BY MR. DELK:

23 Q What do you do in making a comparison?

24 A Try to find the most comparable sales in
25 the nearest time frame, make the necessary adjustments --

1 Q What does it mean? Time frame means what?

2 A The most comparable properties that have
3 sold in the nearest area and the most recent.

4 Q And you did not find any in the old town?

5 A No, sir.

6 Q There weren't any?

7 A No, sir.

8 Q When you were there you saw the fuel
9 storage tanks. Is that right?

10 A Yes, sir, I did.

11 Q And aren't they shown on the exhibit as
12 being to the rear of the building?

13 A Yes, sir, they are.

14 Q And they are far removed from the take,
15 are they not?

16 A We are not affecting it in any way I can
17 see.

18 Q They were still there this morning on the
19 view, were they not?

20 A Still there.

21 Q So nothing has been done to disturb them?

22 A No, sir.

23 Q All right, sir. You asked also in attempting
24 to evaluate the property here, something about you asked Mr.
25 Allmond, the landowner, for gallonage figures?

1 A Yes, sir.

2 MR. CROOK: I vouch that the witness did
3 not say that. I'd ask that that be found --

4 THE COURT: Rather than do that ask him
5 if he said that.

6

7 BY MR. DELK:

8 Q Did Mr. Crook ask you or did you say in
9 answer to him that you asked Mr. Allmond for gallonage figures
10 and he didn't give them to you? Did you say that?

11 A I did say that.

12 Q And that's in what you testified to --

13 MR. CROOK: I object to that; that's not
14 in the record. He said that he didn't get the
15 cooperation from Mr. Allmond that he wanted. He
16 didn't say anything about gallonage.

17 MR. DELK: May we ask the reporter to
18 read --

19 MR. CROOK: He remembers.

20 THE WITNESS: I think I can repeat what I
21 said. He asked me what question. I said I got no
22 cooperation concerning easements to the property
23 or gallonage.

24 MR. DELK: Or gallonage.

25 MR. CROOK: I will except to that, Your

1 Honor.

2

3 BY MR. DELK:

4 Q And what did you mean when you said that?

5 A Just that. I had very little cooperation
6 in the effort to establish a value to this property.

7 Q Were you talking about the gallonage of the
8 tidal waters that flood the property, or are we talking about
9 the gallonage of liquids other than -- what kind of gallonage
10 are you talking about?

11 A Gasoline sales for the front of the property.

12 Q Yes, sir. Were you given any figures?

13 A No, sir, I was not.

14 MR. DELK: All right, sir.

15 THE COURT: All right. Is that all, Mr.

16 Crook?

17 MR. DELK: One more question before I
18 release you.

19 BY MR. DELK:

20 Q You say you lived in the area, in
21 Chuckatuck all your life?

22 A Yes, sir.

23 Q Did you ever play football in Smithfield?

24 A Yes.

25 Q Did you ever go to Smithfield for anything?

1 A Quite a few times.

2 Q Since you have been a grown man have you
3 ever been to Smithfield much?

4 A Quite frequently.

5 Q How would you drive into Smithfield?

6 A Come in through the old road over the bridge.

7 Q How long have you been knowing this
8 property then?

9 A Just about all my life.

10 Q So you were familiar with it even --

11 MR. CROOK: Your Honor, I object to Mr.

12 Delk --

13

14 BY MR. DELK:

15 Q Were you familiar?

16 A Yes, sir.

17 THE COURT: That's pretty obvious if he
18 lived here.

19 MR. DELK: All right, sir. No further
20 questions then.

21

22 RE CROSS EXAMINATION

23 BY MR. CROOK:

24 Q Well now, Mr. Copeland, you don't say you
25 lived here. You haven't lived here.

1 A Not directly in the town.

2 Q Have you ever stopped at that store and
3 bought gas?

4 A No, sir, I have not.

5 Q Have you ever had any dealings with that
6 business at all prior to this?

7 A No, sir.

8 Q When you say that you didn't get the
9 cooperation from Mr. Allmond that you wanted did you go to the
10 hospital and see Mr. Allmond?

11 A At that time Mr. Allmond wasn't in the
12 hospital.

13 Q At what time?

14 A At the time of my appraisal.

15 Q When was that?

16 A It was made -- well, actually several
17 different times; originally in 1972 and it was later updated
18 in '73. The information was unsuccessfully tried to be obtained
19 through attorneys.

20 Q Through attorneys. Did you talk with Mr.
21 Allmond himself more than one time?

22 A More than once; I think only twice.

23 Q Twice.

24 A Both times on the property. No, I take
25 that back. A third time he came into our office.

1 Q This was in '72?

2 A No, it was later than that.

3 Q 'Seventy-three?

4 A After approximately '74 he came in our
5 office in Suffolk.

6 Q Are you aware of the times he has been
7 in the hospital in three or four years?

8 A No, sir.

9 MR. DELK: If Your Honor please, I am
10 going to object to any more questions along that line.

11 THE COURT: It bears on his cooperation
12 and I think we've gotten to the point of cross, if
13 he was not available --

14 MR. CROOK: We will have Mr. Allmond explain
15 that when he is on the stand, Your Honor.

16
17 BY MR. CROOK:

18 Q And again you say the most comparable sales,
19 but you don't have any sales of similar-type businesses, fuel
20 storage supply or even gas pump businesses.

21 A I don't think there are any similar-type
22 sales in the Town of Smithfield.

23 Q You gave appraisals outside the town, did
24 you not?

25 A I did.

1 Q And there have been sales outside the town
2 close to the town of land for the location of storage tanks,
3 fuel storage tanks, have there not?

4 A I couldn't say directly in that area.

5 Q Did you look for any?

6 A I looked for commercial properties in
7 that area, the most comparable properties.

8 Q And you didn't find any of this type of
9 business, the gas pumps and the fuel storage tanks?

10 A I went with the highest and best use of
11 commercial. I made comparables; I found comparables that were
12 commercial, 30 cents a square foot, which was extremely
13 generous. And I imagine any property you're talking about would
14 have sold on an acreage basis and been considerably less
15 anyway.

16 Q And you call these the most comparable
17 sales?

18 A These are the most comparable sales to
19 this property.

20 MR. CROOK: That is all.

21 THE COURT: All right, thank you.

22

23 REDIRECT EXAMINATION (CONTINUED)

24 BY MR. DELK:

25 Q Mr. Copeland, you say of the comparable

1 sales that you outlined here there were five in number. Your
2 first sale was at the corner of Smithfield --

3 THE COURT: Haven't we been over this?

4 MR. DELK: No, sir, not this part.

5
6 BY MR. DELK:

7 Q It was at the corner of Smithfield Boulevard
8 and South Church Street; is that right?

9 A Yes, sir.

10 Q Were all of the other sales beginning with
11 that one coming north on South Church Street towards the
12 subject property?

13 A Yes, sir.

14 Q Are you aware that the southern boundary
15 line of the Town of Smithfield is Smithfield Boulevard and
16 Henningstall (phonics) Avenue?

17 A Yes, sir.

18 Q And then wouldn't all of your comparable
19 sales have been located within the Town of Smithfield?

20 A Yes, sir, they would.

21 MR. DELK: That is all.

22 THE COURT: All right. Step down Mr.
23 Copeland.

24
25 (Witness excused.)

1 THE COURT: Is that the case, Mr. Delk?

2 MR. DELK: That's the case, if Your Honor
3 please, for the petitioner.

4 THE COURT: Let's see, we have been going
5 how long here? I guess we better take a -- are you
6 getting ready to go ahead?

7 MR. CROOK: If you want to take five
8 minutes.

9 THE COURT: Let's take a five-minute recess.

10

11 (Whereupon, there was a brief
12 recess in the hearing.)

13

14 THE COURT: Are you ready to proceed, Mr.
15 Crook?

16 MR. CROOK: Yes, sir, Your Honor. I'd
17 call Mr. Allmond to the stand.

18

19 CALVIN PERCY ALLMOND,
20 a defendant, having been first duly sworn,
21 was examined and testified as follows:

22

DIRECT EXAMINATION

23

24 BY MR. CROOK:

25

Q State your name, please.

1 A My name is Calvin Allmond. I live at 205
2 Washington Street, Smithfield.

3 MR. DELK: Before we -- Mr. Crook, may I
4 interrupt? I'll either do it now or later. I
5 reserved the right to introduce a certified copy of
6 the document. Do you want me to do it at this point
7 or wait until you --

8 MR. CROOK: At this point I have called
9 Mr. Allmond as a witness for the defense. I assumed
10 the plaintiff had rested his case.

11 THE COURT: Well, I understood he had sent
12 for some document.

13 MR. DELK: And I had reserved the right
14 I could submit it. All I want to do is tender this
15 as Petitioner's --

16 THE COURT: All right, I'll permit you to
17 do it later, but let's go ahead. We've got Mr.
18 Allmond up here.

19 MR. DELK: All right, sir.

20
21 BY MR. CROOK:

22 Q Now, Mr. Allmond, you live in the Town of
23 Smithfield, and you conduct what kind of business?

24 A I conduct a fuel oil business and a service
25 station up until the Highway Department came through.

1 Q All right. I hand you this Plaintiff's
2 Exhibit Number 1, the map. Is this your property on the map
3 that is shown as being your property and your wife's property?

4 A Yes, sir.

5 Q All right. And the property that's being
6 taken by the Highway Department in red and the easement in yellow?

7 A Yes.

8 Q Now, Mr. Allmond, when did you acquire that
9 property?

10 A I believe it was 1968 or '69.

11 Q Where had you been located prior to that?

12 A Well, we were operating from home. I
13 lived out about 15 miles out of town, and they call it Orbit
14 (phonics) area, on 637, Route 637.

15 Q Is that a rural area?

16 A Yes.

17 Q Why did you locate in the Town of Smithfield?

18 A Well, best I can estimate it, approximately
19 75 percent of my business was within about a two-mile radius
20 of Smithfield, and we were running the little store down there
21 selling gas and other little products; and my wife was running
22 that and taking care of the business as secretary during the
23 same time. And we would have to be there mornings by seven
24 and leave at nights about 10:00, and it was a little too much
25 on my wife to have to travel that far so we rented a house.

1 No, first of all we rented the building for one year then we
2 bought the building. And then, I believe, just following that
3 we rented a house and moved to Smithfield, and I sold the
4 house that I had and evolved it into the business that I had.

5 Q All right. Who did you buy your property
6 from where your business was located?

7 A Mr. Ben Jones.

8 Q And what kind of business had been
9 operated there before you bought it?

10 A The same as I had. He sold gas and oil and
11 a number of other products.

12 Q All right. All the storage tanks were
13 located on this property at that time?

14 A The large storage tank wasn't located until
15 after I had came and been there a little while, but the other
16 tanks were there; the tanks and pumps, they were already
17 installed.

18 Q Now the large one, you mean the aboveground
19 storage tank?

20 A That's right.

21 Q And the ones that were underground were
22 already there?

23 A They were already there.

24 Q And you've been operating that business
25 there since when?

1 A 'Sixty-eight or '69. My memory now isn't
2 quite as good as it was. I had quite a bit of sickness. I
3 would have to have some things on paper to remember exactly
4 the year that far back.

5 Q Who operated the business before you?

6 A Mr. Ben Jones.

7 Q Do you recall if the island was out there
8 at that time when you acquired the property?

9 A When you say "island" I may not understand.
10 You mean the gas pumps?

11 Q No, the curbing, this curbing here that's --

12 A No, we didn't have a street along there
13 before that time and it was no curbing there at all. We had
14 water just ran down the road when it rained.

15 Q You mean guttering, there was no guttering
16 there?

17 A No, no guttering there. That was put there
18 when they put the new highway in.

19 Q All right. How did you get in and out of
20 your property there?

21 A Well, when I started operating the place
22 it was a driveway on each side. Now when I first started there
23 I didn't know anything about whose driveway it was. I didn't
24 know where the property line -- see, I was renting when I first
25 went there. And then after I went there I'd say awhile about

1 a year I bought the place. I had a surveyor by the name
2 of Mr. Brinkley, and he surveyed it. And I found my property
3 on one side was in part of the driveway and on the other side
4 I don't believe it was quite in the driveway, but the property
5 the way it ran, it ran in a left direction toward Mr. Griffis'
6 property on the outside of that building back there.

7 At first Mr. Jones had started to sell me
8 the whole piece as far back as his land went, back to the
9 water, then he decided to sell me a shorter piece. He said,
10 "All right. I'll sell you to include this building." That
11 was about four or five feet past the building. That old shed
12 there wasn't any good; it was just there.

13 And the way that little map there shows,
14 it shows the line going to the right standing in front of the
15 building, but my line goes to the left. Now, for example,
16 right here. That line there comes right by the corner of that
17 building. It clears that building by less than a foot and goes
18 in that direction and this side here goes in this direction.

19 Q All right. Hold this so the commissioners
20 can see what you're talking about.

21 A All right. This line on this side next
22 to Ben Jones' property goes in a left direction, goes in an
23 angle, and also inside here goes in a left direction into an
24 angle. It gets a little wider in the back than it is in the
25 front. But this map here shows this side coming in and that's

1 definitely wrong. And it cuts right into about four-fifths
2 of the building. I don't think we hardly bought no land
3 ending up like that.

4 Q Where is your driveway to get to the rear
5 of your property?

6 A Right here. Now there's a driveway on
7 both sides but we don't use the driveway on this side because
8 the sewerage pipes are there and the water pipes are there,
9 and Mr. Jones don't allow no one to go through there with an
10 automobile. In other words, there's no other way to go. In
11 other words, we always used this side. This is where the
12 trucks brought gas in, drove in and back out; they been doing
13 this as long as I been there.

14 Q Coming right here?

15 A Yes, sir. And as you get down the driveway
16 gets much wider; it goes in a left direction.

17 Q Is the driveway wide enough on this side
18 for trucks to get back here?

19 A After you get along about midway of the
20 building it's plenty wide on my own property, but starting
21 out it's very narrow but it widens as you get on down.

22 Q Now with the gas pumps there how did you,
23 prior to the taking, how did your vehicles get to the gas
24 pumps and leave?

25 A Well, it was a driveway over on this side,

1 a real wide driveway that furnished a driveway for the parking
2 place in front of Mr. Jones' house. He rented part of it out;
3 he had four or five different tenants there. It went to the
4 driveway and we used it for the station and we came out on the
5 other side, on the other side of that pole that was there.

6 Q All right now. Can you do that now?

7 A Can't do anything now. I guess you all can
8 see today I can't even drive into my place hardly.

9 Q Now what do you have to do in order to be
10 able to use your gas pumps effectively now?

11 A Well, the only way that I could use them
12 is use the driveway to Mr. Griffis' side. A person would have
13 to drive in and back out in order to get out of there.

14 Q Can the vehicles use the pumps in the
15 position they are in now as a result of the taking --

16 A No, sir.

17 Q -- from the outside?

18 A It's almost impossible to use them now.

19 Q So what are you going to have to do with
20 your pumps?

21 A The only thing I could see they could be
22 moved back a reasonable distance and something could be worked
23 out there whereby I could use them.

24 Q How far back are you going to have to move
25 them?

1 A It seems like 10 or 15 feet would be a
2 reasonable distance in order that I have room on both sides.

3 Q All right. Well, can you do that with
4 the building located where it is?

5 A No, sir. It's not 15 feet between the
6 building and the tanks. It seems like it would have to be a
7 process of everything being moved back because the building is
8 almost on the tank in the back. The feeder to the tank is on
9 the further end of the tank, and if the tank was moved, the
10 building was moved back five feet or more it would be on top of
11 part of the tank. And at the present time I have aplenty room
12 for a truck to bring my oil in and back out and I still have
13 room to drive in and load and turn around with a small truck
14 to load the oil up there, but if it was anything moved back any
15 closer I wouldn't have that much room.

16 Q All right. Have you had estimates made as
17 to the cost of moving these tanks, the building and the storage
18 tank in the rear and the gas pumps in the front?

19 A Yes, I have.

20 Q Now, Mr. Allmond, have you attempted to
21 locate property where you might relocate your fuel oil business
22 and service station business?

23 A Yes, sir. If I remember correctly, the
24 papers that was served concerning between me and the Highway
25 Department was served in November the year before last, I

1 believe, October or November. And I had been in the process
2 of trying to find land at least three or four months prior to
3 that time and even since that time. It's almost impossible for
4 me or anyone else to find land. People don't even want to
5 talk about selling no land, not on the main highways, and
6 anything concerning a service station you don't want to get
7 on a back road. I believe he testified the corner lots are
8 good spots. I prefer it doing this than going through that
9 process.

10 MR. DELK: If Your Honor please, I am
11 going to object on further testimony of any attempt
12 to replace the property. I don't think that's
13 germane to the issue here as to what is the fair
14 market value of the land.

15 MR. CROOK: It goes to the scarcity.

16 THE COURT: I think it has a bearing on
17 whether or not there is available some property, and
18 I think the commissioners can give it whatever weight
19 they think it deserves. I overrule the objection.
20

21 BY MR. CROOK:

22 Q Now before you were interrupted, Mr.
23 Allmond, you were saying that you have looked for land to
24 possibly relocate your business on. Is that correct?

25 A Yes, sir, I have.

1 Q And have you had any success at all?

2 A I haven't found anyone that even wanted to
3 talk about selling any land.

4 Q Why is that?

5 A I really don't know. Most people who have
6 property, I guess, feel it's the most valuable thing and they
7 just don't want to be involved with no bulk tanks and that
8 type of thing around.

9 Q Bulk tanks. Are you referring to fuel
10 storage?

11 A Yes, sir.

12 Q What kind of zoning will you have to have
13 for fuel storage?

14 A I don't understand. I can't be very clear.
15 It would either have to be business or industrial.

16 Q Business for the gas and industrial for
17 your storage tank?

18 A Yes, sir.

19 Q All right, Mr. Allmond, Mr. Copeland
20 testified that you were uncooperative with the Highway Depart-
21 ment concerning this matter. Would you explain your side of
22 that as to why or how it happens that you were uncooperative
23 with him?

24 A I don't remember the exact date, but I
25 had -- I have two parts to my place there, the little business

1 I have; I have equally in size and I ran one side. And I
2 decided that we would try to expand our business there. We
3 painted up the outside and then I began to paint up the inside,
4 and in a few days this gentleman came along from the Highway
5 Department and told me that they was going to take X-number of
6 feet of land.

7 And later after about a year, I guess, or
8 a little better I went over to the Highway Department to seek
9 some information for Attorney Ashe, if I am allowed to call
10 his name. He was my attorney at that time; I had changed.
11 And I talked with two gentlemen at the Highway Department and
12 I told them that I wanted a map of my place that I might be
13 able to take it to my attorney. It seems like changing
14 attorneys or something some things got lost.

15 And the gentlemen was asking me some things
16 concerning the place there in Smithfield, and I told them that
17 I had an attorney and I couldn't make no deals, couldn't discuss
18 it. I told him he would have to discuss it with my attorney
19 and that's the only thing that I know he called not cooperating.
20 I wasn't intelligent enough dealing with that subject ending
21 up in law talking by myself. That's why I wouldn't tell him
22 anything. The times when he came out there to my place, if
23 I remember him correctly, I think I answered whatever questions
24 he asked me.

25 Q Now, Mr. Allmond, have you been conducting

1 your business since 1972, both fuel oil and gas?

2 A Yes, sir. Not -- I ended up in 1973, I
3 believe it was March or April of 1973, there about that time.

4 Q What happened to you then?

5 A Well, they were on their way pretty good
6 there, fixing the bridge and making the road straight along
7 by my place, and I didn't have no room to do anything with it.

8 Q Well, have you been there at the place of
9 business all this time?

10 A Well, I been using the grounds. If you
11 will allow me to explain, I been sick right much since that
12 time.

13 MR. DELK: If Your Honor please, may we
14 approach the bench to probably save a moment, and
15 I don't want to have to ask for excusing of the
16 commissioners, but I think it's important.

17 THE COURT: All right.

18
19 (Whereupon, there was an off-the-
20 record discussion at the bench out of the
21 hearing of the court reporter and the
22 commissioners.)

23
24 BY MR. CROOK:

25 Q Do you recall the question, Mr. Allmond?

1 A No, I don't believe I do.

2 Q I was asking you about whether you had been
3 there at your place of business all this time. Now Mr. Copeland
4 had mentioned about you not being cooperative with them.

5 A After we were out, the early part of 1973,
6 still if I am allowed to say, my wife got sick at that time
7 and went to the hospital. She was sick for a long time and
8 I was already sick.

9 Q What was wrong -- well, all right. Had
10 you been in the hospital, too?

11 A I had been in the hospital. I think I had been in
12 the hospital every year since 1970 and up to sometimes five times per year.

13 Q What were you in the hospital for?

14 A I have a kidney ailment.

15 Q Have you had a transplant?

16 A Yes, I have.

17 Q How much time have you spent in the
18 hospital in the last -- since this thing started in '73?

19 MR. DELK: This is the very thing we
20 conferred on. What is the use of conferring if you
21 are going to violate --

22 THE COURT: Maybe that had some bearing on
23 him not seeing Mr. Copeland, but we don't need to go
24 into the details.

25 MR. CROOK: That's right. Mr. Copeland is

1 the one that sat up there and said Mr. Allmond wasn't
2 cooperative after Mr. Allmond has been in the hospital
3 off and on. I know; I have been trying to represent
4 him for the last year-and-a-half.

5 THE COURT: Well, he's been in there and
6 he's mentioned Mr. Copeland.

7
8 BY MR. CROOK:

9 Q Also, you mentioned Mr. Ashe was your
10 attorney. And Mr. Ashe was your attorney in the case, was he
11 not?

12 A Yes, until he died.

13 Q What happened to Mr. Ashe?

14 A Mr. Ashe died.

15 Q You had to get another attorney; is that
16 right?

17 A That's right.

18 Q Who had to find out something about the
19 case, too. Now in addition to spending so much time in the
20 hospital are you not also impaired in your ability to get about?

21 A Yes, I am. I have been in this condition
22 since February before last.

23 Q Okay. Has this had any effect --

24 MR. DELK: If Your Honor please, this is
25 the same type of objection, and Mr. Crook knows it

1 just as well as I am standing here, sir.

2 THE COURT: Well, I think we've gone
3 enough into the explanation of any --

4 MR. DELK: That is exactly so.

5 THE COURT: -- of any non-cooperation if
6 that's what you want to show. Let's go on to some-
7 thing else, Mr. Crook, unless it's got some other
8 bearing.

9 MR. CROOK: Well, all right. Well, one
10 other point in that regard.

11

12 BY MR. CROOK:

13 Q Since your illness and your hospital
14 confinements and your condition that you are now in you have
15 not been operating the gas business, have you?

16 A No, and the reason why, I had a small
17 business. I wasn't able to hire anybody to run the small
18 store during the time of my sickness, and, therefore, we had
19 to close, not reopen it again. And the fuel oil business we
20 have tried to just hold on until my health got better. Now
21 it is getting better.

22 Q All right. And had you planned to use the
23 gas pumps for gas service again?

24 A By all means we hope to.

25 MR. CROOK: Answer Mr. Delk, please.

1 CROSS-EXAMINATION

2 BY MR. DELK:

3 Q You spoke about Mr. Ashe who represented
4 you. Were you cognizant of the fact that Mr. Ashe was also
5 requested as your attorney to furnish information and did not
6 do it, sir?

7 A I didn't --

8 MR. CROOK: Well, I have to object to that.
9 Mr. Ashe is deceased and Mr. Allmond can't defend
10 Mr. Ashe in this proceeding.

11 MR. DELK: Well, he either knows it or he
12 doesn't.

13 THE COURT: If he doesn't know anything
14 about it, I mean I don't think the jury can take it
15 that --

16 MR. CROOK: Your Honor, we can't call Mr.
17 Ashe in to rebut something Mr. Delk is going to say.
18 Mr. Ashe was a fine attorney who unfortunately is now
19 deceased, and I am sure he represented Mr. Allmond
20 adequately while he was living. But I don't know
21 whether Mr. Delk is going into any correspondence
22 he had with Mr. Ashe.

23 THE COURT: Well, he wants to find out
24 from Mr. Allmond what he knew for this approach.

25

1 BY MR. DELK:

2 Q I just said were you aware, did you know
3 that your attorney, Mr. Ashe, had been requested to furnish
4 information about your gallonage and so forth.

5 MR. CROOK: I think he could hear without
6 him raising his voice.

7 MR. DELK: He said he couldn't hear. I
8 am repeating it louder.

9 THE COURT: Did you know about a request
10 for gallonage from anybody?

11 THE WITNESS: Your Honor, Attorney Ashe,
12 he and a representative from the Highway Department
13 met over in Norfolk at Attorney Ashe's office. I
14 don't know how long ago it was; it's been a long
15 time. I don't know if Mr. Delk was there, but anyway,
16 a representative from the Highway --

17 THE COURT: Were you there?

18 THE WITNESS: Yes, sir. And we finally
19 concluded they asked about gallonage. Mr. Ashe at
20 that time really didn't ask me to go get the gallonage
21 and I worked on the representation of my attorney.
22 A short time later Mr. Ashe died and I had to go get
23 another attorney. His papers were turned over to
24 another attorney. The other attorney -- finally I
25 had to send back and get them. We didn't ever really

1 get together on anything. This is some of what
2 happened.

3

4 BY MR. DELK:

5 Q And the other attorney was Mr. Cuffey. Is
6 that right?

7 A Yes, sir.

8 Q And do you know whether or not he was
9 requested to furnish information as to gallonage and so forth?

10 A He didn't furnish anything.

11 Q He didn't know about it?

12 A If he did he didn't say anything to me.

13 MR. CROOK: Your Honor, I object to Mr.
14 Delk making it apparent to the jury that I am Mr.
15 Allmond's third choice as an attorney to represent
16 him in the matter.

17 MR. DELK: I didn't make it. He's the one
18 that referred to it; he's the one that said it.

19

20 BY MR. DELK:

21 Q But you have been using the property since
22 as a fuel oil business you said?

23 A Well, I do use it. I keep my trucks there
24 and I use it for transferring oil from one truck to the other,
25 and I can't do it out on nobody else's property and I have to

1 do it on mine. Sometimes I may have more fuel oil than I do
2 kerosene and I have to get rid of one on the other truck and
3 go load up with that truck.

4 Q Mr. Allmond, I believe you said you bought
5 your property from Mr. and Mrs. Jones sometime in, you said,
6 '68 or '69?

7 A Yes, sir, that's right.

8 Q I show you a document here from Benjamin
9 Jones and Pauline Jones, his wife, to Calvin Percy Allmond and
10 Oretha Eley Allmond, his wife, dated July 2, 1969, in conveying
11 a piece of property shown as Lot A on the property of Benjamin
12 and Pauline Jones shown on a plat of the property of Benjamin
13 and Pauline Jones, which is recorded in Deed Book 198 at Page
14 103 in the Clerk's office of this County, this being a
15 certified copy of the deed and plat. And I ask you if that's
16 not the deed whereby you acquired the property.

17 A To the best of my knowledge it is.

18 Q All right, sir. And this property, you
19 looked at the plat attached to it, did you not, sir?

20 A I didn't understand the plat.

21 Q Well, sir, does it not say that this
22 property is Lot A of the property of Ben and Pauline Jones
23 conveyed to Calvin P. Allmond by a survey made by Roy Brinkley
24 dated June 2, 1969 described by a survey? This has the plat
25 attached to the record with it. You heard testimony that

1 your lot is 39 feet wide?

2 A The front is.

3 Q And does that not show it as 39 feet?

4 Isn't that 39 feet on the front?

5 A That's what it says there.

6 Q And this is the street and highway, is it not?

7 A Yes, sir.

8 Q And does it not show 45 feet on the back
9 as was testified here?

10 A That's what it shows.

11 Q Does it show it's 204 feet deep on each
12 side?

13 A But the only difference, instead of running
14 in a left direction facing from the road you had it running in
15 a right direction. That's far wrong.

16 Q Doesn't this plat show exactly -- that is
17 exactly why I got the plat. Doesn't it show this is your road,
18 that it runs in a left direction from the road instead of a
19 right direction?

20 A That's what it shows there.

21 Q Well, isn't that the plat you acquired the
22 property by?

23 A Well --

24 Q Answer that, sir. Isn't this the plat
25 whereby you acquired the property?

1 A I don't know whether that's the right one
2 or not. I can't say as far as the drawing there, but I do
3 know when Mr. Brinkley surveyed it it went to a left direction
4 and it went around the back of that building.

5 Q Doesn't this show that the plat was made
6 by Mr. Brinkley?

7 A Where did he sign that?

8 Q It says, "Property of Ben and Pauline Jones
9 being conveyed to Calvin P. Allmond." It's got Roy Brinkley,
10 CLS on it, and it's incorporated in the deed.

11 A Brinkley at the bottom there?

12 Q Yes, sir.

13 A I didn't see it.

14 MR. DELK: Well, if Your Honor please, I
15 am going to tender this as Petitioner's Exhibit
16 Number 4.

17 THE COURT: All right. Petitioner's
18 Exhibit Number 4 in evidence.

19
20 (Whereupon, the foregoing deed
21 with a plat attached was received
22 in evidence and marked for
identification as Plaintiff's
Exhibit Number 4.)

23 BY MR. DELK:

24 Q Are you familiar with an affidavit made
25 by Mr. Ben Jones and Mrs. Pauline Jones dated August 7, 1969,

1 and recorded in the Clerk's office of this Court in Deed Book
2 198, Page 571?

3 A What does it refer to?

4 Q It refers to the property in question.

5 Would you care to read it, sir?

6 A I'm not acquainted with that whatsoever.

7 Q You are not, sir? But it does say that
8 Mr. and Mrs. Jones were saying they were granted permission by
9 Mr. Griffis, by Perry Griffis and Mrs. Griffis to use part of
10 their driveway?

11 A The best I understand it.

12 MR. DELK: I would tender that as
13 Petitioner's Exhibit Number 5, if Your Honor please.

14 THE COURT: All right, sir.

15

16 (Whereupon, the foregoing affidavit
17 was received in evidence and
18 marked for identification as
Plaintiff's Exhibit Number 5.)

19 BY MR. DELK:

20 Q One further question with reference to
21 that then, Mr. Allmond. The only right-of-way that you had
22 the right to enter on this property other than to go through
23 from the highway directly into it would be by permission from
24 the other landowners then on either side?

25 A Sir, I had no permission from other

1 landowners. That question has never arisen during the time I
2 was there and up until at this point.

3 Q But you --

4 A That question was only made public by you.
5 You are the only one I heard make that public.

6 Q But you did not own any of the property
7 except 39 feet on the highway. Is that right, sir?

8 A Thirty-nine feet, and like I said, the
9 driveway went into my property line and went into an angle
10 towards Mr. Griffis' and the driveway got wider as it went
11 along, not closed up.

12 Q But you didn't own any property outside
13 the confines of your 39-foot strip widening back to 45 feet
14 at the back, did you?

15 A Well, the pole that we talked about there
16 at the road, it's a couple of feet inside the line, and the
17 line is --

18 Q I don't think you answered my question,
19 sir. I'll restate it. You didn't own any property on either
20 side of your property other than 39 feet facing on the highway
21 widening to 45 feet at the back, did you, sir?

22 A Sir, I owned some property at first before
23 they changed the right-of-way. Each side of the right-of-way
24 took quite a bit of my property before they changed it. They
25 changed it and closed it up. I had no way then.

1 Q All you had was 39 feet.

2 A I admit the 39 foot.

3 MR. DELK: Yes, sir, that is all I want.

4

5 REDIRECT EXAMINATION

6

7 BY MR. CROOK:

8 Q But you have had access across not only
9 your property but the adjoining property, Mr. Jones', in and
10 out of your property?

11 A Yes, sir. I have had access and it hasn't
12 been no problem.

13 Q And you have had access across Mr. Griffis
14 property?

15 A Certainly, I have.

16 THE COURT: All right. Thank you, sir.

17 If you'll step down.

18 MR. CROOK: One other thing.

19 REDIRECT EXAMINATION (CONTINUED)

20 BY MR. CROOK:

21 Q You started to respond to Mr. Delk telling
22 him about the telephone pole. What was that?

23 A The telephone pole was inside of my line
24 a little ways and it's almost in front of the driveway that
25 I had been using. And what I was saying, that part of my

1 property included the old driveway that was there, a real small
2 part on one side and right much on the side of Mr. Jones,
3 Mr. Ben Jones, and you couldn't completely say that I was using
4 the other man's property altogether, but it hadn't been no
5 question until a question was made known to me by the opposing
6 attorney. That is the first time I had heard anything concerning
7 that.

8 Q You hadn't had any problems with either
9 of the adjoining landowners about your access?

10 A Not at all.

11 Q And how many years did you operate?

12 A I believe we started in '68 if I am not
13 mistaken.

14 MR. CROOK: All right.

15

16 RECROSS EXAMINATION

17

18 BY MR. DELK:

19 Q You haven't had any problems yet with any
20 adjoining landowners, have you, Mr. Allmond?

21 A Not at all.

22 MR. DELK: All right. That is all.

23

24 (Witness excused.)

25

1 HORACE DANIEL BUTLER,
2 called as a witness on behalf of the defendants,
3 having been first duly sworn, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION

7
8 BY MR. CROOK:

9 Q State your name, please.

10 A Horace Daniel Butler.

11 Q And your position, Mr. Butler?

12 A Manager, Garnett Oil.

13 Q Do you know Mr. Calvin Allmond?

14 A Yes, sir.

15 Q How long have you been dealing with Mr.

16 Allmond?

17 A Ever since he's been in the service station
18 business.

19 Q All right, sir. He also is in the oil
20 distribution business?

21 A Right, yes, sir.

22 Q Are you familiar with his place of business
23 in the Town of Smithfield?

24 A Yes, sir.

25 Q Do you have the records from Garnett Oil

1 Company showing the gallons of gas that he has purchased from
2 you for resale through his pumps at that place of business?

3 A Yes, sir, all except 1969. And I've got
4 the ledger sheets showing the ticket numbers and the amount
5 of gasoline purchased.

6 Q All right. Did you make copies --

7 MR. DELK: Your Honor, I want to object
8 at this time to any further questioning on that
9 point, sir. I would like to state my reasons for it
10 in the absence of the commission.

11 THE COURT: All right, sir. We'll ask the
12 commissioners to go out.

13

14 (Whereupon, the commissioners
15 left the courtroom.)

16

17 MR. CROOK: Do you want the witness to
18 stay or leave?

19 THE COURT: Do you want the witness to step
20 down, Mr. Delk?

21 MR. DELK: I don't know. I don't care
22 about the witness.

23 MR. CROOK: I care about you, Mr. Butler.

24 THE WITNESS: Thank you.

25 MR. DELK: I don't care. There's been no

1 cooperation. We never got anything from him since
2 we have been -- if the witness is going to testify,
3 if Your Honor please, to figures of the gasoline that
4 was handled or the fuel handled by Mr. Allmond, and
5 if he's going to testify to the figures all the way
6 through, and if this is to show a change in the
7 business, and I definitely would object to any of
8 the figures because under the law as has been
9 propounded in the Fonticello Mineral Springs case:

10 "Any loss of business or profits from a
11 business conducted on the land that is subject to
12 the proceeding is not compensable in the condemnation
13 proceeding as an item of damage in the assessment
14 of damages to the residue."

15 Now the Court has to give that instruction.
16 It goes on to say, "You should be concerned only
17 with its overall change in market value as a result
18 of the taking and not with the individual items of
19 damage."

20 THE COURT: That's right.

21 MR. DELK: And if this witness is to come
22 here to testify that there's been a change in
23 gallonage or anything like that and as an indication
24 of what the damages would be, then this would be
25 objectionable, and unfortunately unless the Court

1 rules on it in advance it might be that it would be
2 indelibly imprinted on the ears of the jury before
3 he could be stopped even. Now these figures have
4 been requested many, many times, sir, and have never
5 been produced, sir.

6 THE COURT: Well, what figures are you going
7 to use, Mr. Crook? I thought maybe you were just
8 going to show that he had a substantial business
9 there.

10 MR. CROOK: Yes, sir, that's what I wanted
11 to show. I wanted to show he was in the business of
12 operating gas pumps, selling gas from these pumps
13 up until --

14 MR. DELK: We testified that he was in
15 the business. I'll stipulate that.

16 MR. CROOK: I would like Mr. Garnett to
17 put the records in to show it, but we're not going
18 after loss of profits.

19 THE COURT: What are you going to do, say
20 he had a substantial business there --

21 MR. CROOK: Yes, sir.

22 THE COURT: -- at the time? Well, now
23 he is still buying oil?

24 MR. CROOK: He is buying oil but he hasn't
25 been operating the gas pumps.

1 MR. DELK: That's what we are talking about.

2 MR. CROOK: You went out there; you could
3 see the gas pumps weren't operating. They haven't
4 been operating for some time. He testified to his
5 illness as the reason he was not able. But we want
6 to show he was operating them through his illness
7 from 1969 through 1972.

8 MR. DELK: I would stipulate he's in
9 business. If he limits the testimony to those two
10 figures to 1972 then that's -- I mean I have no
11 objection to that. As long as he doesn't go beyond
12 1972, but that's it.

13 THE COURT: But whenever he quit?

14 MR. CROOK: Yes, sir.

15 THE COURT: Yes. That's what you want to
16 do.

17 MR. CROOK: Right.

18 MR. DELK: But they can't be considered
19 as an element of damage.

20 MR. CROOK: They are not offered as an
21 element of damage.

22 THE COURT: But he was in business.

23 MR. DELK: I would stipulate that he was
24 in business.

25 THE COURT: And he wants some idea of the

1 volume but not of the monetary --

2 MR. DELK: Well now, is it understood then
3 that the Court is not going to permit him to testify
4 beyond his 1972 figures?

5 THE COURT: As I understand it I don't have
6 to rule on it because that's all Mr. Crook's going
7 to offer.

8 MR. CROOK: That is all we are going to
9 offer in the way of figures. That's the only thing
10 I was going to ask Mr. Butler.

11 MR. DELK: With that then --

12 THE COURT: All right. We'll bring them
13 back in.

14 MR. CROOK: I wanted to give Mr. Delk his
15 gallonage.

16
17 (Whereupon, the commissioners
18 returned to the courtroom and resumed
19 their seats in the jury box.)

20
21 DIRECT EXAMINATION (CONTINUED)

22
23 BY MR. CROOK:

24 Q Mr. Butler, you have copies of your records
25 there showing --

1 A Yes, I've got the original and also
2 photostats. Do you want the photostats or the original?

3 MR. CROOK: Would it be all right if we
4 put the copies in so he doesn't have to leave his
5 records here?

6 MR. DELK: I thought he was going to
7 testify. I didn't know about any --

8 THE COURT: He was going to testify about --

9 THE WITNESS: I've got the amounts written
10 down that he bought.

11 MR. CROOK: All right.

12 THE COURT: I think that is all we really
13 need is his volume.

14

15 BY MR. CROOK:

16 Q All right, Mr. Butler, he purchased gas
17 from you for resale at that establishment, you testified?

18 A Yes, sir.

19 Q Could you give us some idea of the amount
20 of gallons of gas that he purchased from you for the dates --

21 A In 1969 he bought --

22 THE COURT: What years are you going to
23 get?

24 MR. CROOK: Well, '69 through '72 is what
25 I said and Mr. Delk agreed to.

1 THE COURT: All right.

2 THE WITNESS: In 1969 he bought 16,000
3 gallons of gas, in 1970 he bought 13,000 and '71 --

4 MR. DELK: How much?

5 THE WITNESS: Thirteen thousand, and in
6 '71 he bought 11,599; 1972 he bought 6,600.

7

8 BY MR. CROOK:

9 Q Now we have a decline in the gallonage that
10 he purchased from '69 through '72?

11 A Yes, sir.

12 Q And the decline was as a result of his --

13 MR. DELK: Now, if Your Honor please --

14 THE COURT: Does he know?

15

16 BY MR. CROOK:

17 Q Do you know the cause, the reason for the
18 decline?

19 A Well, the only thing that I -- now this
20 is hearsay.

21 THE COURT: Well, I sustain the objection.

22 MR. DELK: I object.

23 MR. CROOK: Okay.

24 BY MR. CROOK:

25 Q But he or his business has continued to

1 purchase oil from you?

2 A Yes, sir.

3 Q Since 1972 as well as before?

4 A Right.

5 Q To the present time?

6 A Yes, sir.

7 MR. CROOK: Okay. Thank you, Mr. Butler.

8 Answer Mr. Delk, please.

9 MR. DELK: I have no questions, sir.

10 THE COURT: Thank you, sir.

11 MR. CROOK: Thank you, sir.

12 THE COURT: Mr. Butler is free to go back
13 to Suffolk, isn't he?

14 MR. DELK: Yes, sir.

15 MR. CROOK: I hope so, Your Honor.

16

17 (Witness excused.)

18

19 WILLIAM F. BLAIR,

20

21 called as a witness on behalf of the defendants,

22

23 having been first duly sworn, was examined and

24

25 testified as follows:

26

DIRECT EXAMINATION

27

28 BY MR. CROOK:

29

Q State your name, please.

1 A William F. Blair.

2 Q And what is your position, Mr. Blair?

3 A Vice President with Oil Equipment Sales
4 and Service.

5 Q And where is that located?

6 A Chesapeake, Virginia.

7 Q Did you have occasion to view the property
8 of Mr. and Mrs. Calvin Allmond in the Town of Smithfield, the
9 subject of this suit?

10 A Yes, sir.

11 Q And what did you view the property for,
12 why did you look at the property?

13 A For the purpose of relocating some equipment.

14 Q All right. Would you tell us what you
15 observed and your estimate of the moving of the equipment, the
16 cost?

17 MR. DELK: If Your Honor please, I feel
18 that under the law that this would not be proper
19 testimony, and I would object to any of it then.

20 THE COURT: But on the ground that it is
21 not the valid basis for the --

22 MR. DELK: Surely. It can't be taken as
23 an element anyway.

24 THE COURT: Mr. Crook.

25 MR. CROOK: It most certainly can be. Mr.

1 Allmond has testified it's necessary to move the
2 gas pumps back in order to utilize them. Even the
3 witness for the Highway Department admitted they
4 would have to be moved back to use the pumps on both
5 sides as they are designed to be used. Mr. Allmond
6 testified that as a result of moving the pumps it
7 would cause the necessity to move the building and
8 move the storage tank.

9 Mr. Blair is here to testify as to the cost
10 involved in moving these gas pumps and, of course,
11 in moving the storage tank. And it is admissible
12 and it is material. Mr. Copeland's head is shaking
13 to the contrary. It most certainly is.

14 MR. DELK: This is not permissible, if
15 Your Honor please, for the very reason in the first
16 place, like I said in another condemnation case,
17 just because you lose the key to your house you don't
18 burn the house down and just because there's been
19 some slight change it doesn't mean that you've got
20 to go and spend moneys that are all out of proportion
21 to the values concerned, and, of course, this comes
22 in as a cost of cure. There's been no cost shown.

23 So that it's totally and wholly inappropriate
24 and it can't be considered by itself without other
25 evidence as to what it is to be connected with. It

1 would just be improper and the Court would have to
2 instruct the commissioners to disregard it.

3 MR. CROOK: Your Honor, there is damage
4 to the residue. Mr. Delk --

5 MR. DELK: That's what we are talking about.

6 MR. CROOK: Mr. Delk has tried enough to
7 know what damage is and this is damage.

8 MR. DELK: That's exactly why I am objecting.

9 THE COURT: It may very well not be and
10 in many cases it wouldn't be the proper measure.
11 But it might have a bearing on the -- I'll overrule
12 the objection, but I think it's going to probably
13 require some further instruction.

14 MR. DELK: I am going to save the point,
15 if Your Honor please.

16
17 DIRECT EXAMINATION (CONTINUED)

18
19 BY MR. CROOK:

20 Q All right, Mr. Blair, would you tell us
21 of your estimate, please?

22 A All right, sir. My estimate comprises of
23 relocating the 10,000-gallon storage tank, excavating and
24 relocating a one 3,000 and one 4,000-gallon underground tank, furnishing
25 and installing a new pump island and running the necessary

1 suction and fill lines, and it's understood that others will
2 provide what other electrical is required for this particular
3 installation. And my estimate for this work is fifty-six
4 hundred and fifty-six dollars.

5 Q All right. Are you talking about
6 excavating and removing the two storage tanks that are in the
7 ground and also moving the storage tank that's aboveground?

8 A That's correct.

9 Q All right. Now when you move the two that
10 are in the ground does that necessitate moving the one that's
11 aboveground?

12 A Yes, sir.

13 Q And then, of course, the moving of the
14 island?

15 A That's correct.

16 Q And this is moving it back about how many
17 feet?

18 A Approximately 15 feet.

19 Q All right. And your business is Oil
20 Equipment Sales and Service, which includes this type of work?

21 A Yes, sir.

22 Q How long have you been engaged in that
23 business, Mr. Blair?

24 A Seventeen years.

25 MR. CROOK: All right. Would you answer

1 Mr. Delk, please?

2 MR. DELK: Without waiving my objection,
3 if Your Honor please, may I cross-examine?

4 CROSS-EXAMINATION

5 BY MR. DELK:

6 Q Mr. Blair, you have been in this business
7 17 years?

8 A Yes.

9 Q I take it you deal with service stations
10 and oil distribution businesses. Is that right?

11 A That's correct, sir.

12 Q You are familiar then with oil distribution
13 properties and gas stations where they have pumps and so forth?

14 A Yes.

15 Q Do you own any such stations yourself?

16 A No, sir.

17 Q Have you ever owned any such stations?

18 A No, sir.

19 Q But you have been dealing with this type
20 of business?

21 A As far as the installation and furnishing
22 equipment, yes, sir.

23 Q Are you cognizant of the fact that the
24 property in this instance as shown by the official records here
25 is 39 feet wide?

1 A Yes, sir.

2 Q And did you take this into account on this?

3 A That was primarily the reason for the
4 large storage tank having to be relocated, that's correct.

5 Q Stating to you a hypothetical case purely,
6 sir, assuming that a --

7 MR. CROOK: Your Honor, I want to object
8 to any hypothetical cases. I don't see the point of
9 it.

10 THE COURT: Well, let's see what the
11 question is first. He's on cross.

12 MR. CROOK: Well, he's testified to the
13 cost to move these items. Now he shouldn't be
14 required to indulge in any hypothetical situations.

15 THE COURT: Well, he's a --

16
17 BY MR. DELK:

18 Q All right. If this --

19 MR. CROOK: Is the Court overruling --

20 THE COURT: Apparently, he's withdrawing
21 the question.

22 MR. DELK: I withdraw the question.

23 BY MR. DELK:

24 Q If on this lot 39 feet wide in 1969 the total
25 gasoline gallonage pumped was 16,000 for the whole area, sir --

1 MR. CROOK: Your Honor, I object to this
2 line of questioning. I'd like to have this matter
3 heard not before the commissioners.

4 THE COURT: I think maybe we are getting
5 into a matter of argument. All this man is testifying
6 to is what it would cost to move it.

7 MR. DELK: And whether it would be feasible
8 or not, I think he should be examined.

9 THE COURT: I think he might question him
10 on the feasibility of it.

11 MR. DELK: That is all I want to know.

12 THE COURT: All right, overrule the
13 objection if you limit it to that.

14 MR. DELK: That is all I am asking.

15 MR. CROOK: The witness is not qualified
16 to testify on the feasibility of it because he does
17 not know of existing property available in the
18 community in this town for the location of storage
19 fuel tanks, which can have a great bearing on whether
20 or not it would be feasible to make the move on this
21 property. If there is no other property available
22 it would certainly be feasible; if there was other
23 property available at a reasonable price it might
24 not be. All this is too speculative.

25 THE COURT: Do you know anything about the

1 feasibility of it?

2 THE WITNESS: In what regards now?

3 THE COURT: Well, you just testified that --

4 THE WITNESS: I am not in the marketing
5 business of petroleum products, no. My end is
6 strictly in the construction and installation of
7 equipment.

8 THE COURT: You don't have anything to do
9 with -- well, he'd just be talking as a layman then.
10 I sustain --

11 MR. CROOK: Yes, sir.

12 THE COURT: I sustain --

13 MR. DELK: If he's been in business
14 seventeen years --

15 MR. CROOK: The Court has ruled. He shouldn't
16 make comments --

17 MR. DELK: I am going to make it until the
18 Court -- I want to state my objection to the ruling,
19 which is simply this man comes here with seventeen
20 years' experience --

21 MR. CROOK: Your Honor, he is making
22 comments about Mr. Blair, the witness, which are
23 uncalled for. The Court has ruled against him.

24 THE COURT: I sustain the objection. Let's
25 go ahead.

1 MR. CROOK: I would like to ask the Court
2 to --

3 MR. DELK: Save the point.

4 MR. CROOK: I would like to ask the Court
5 to remind Mr. Delk to be courteous in the courtroom
6 to all people, including me.

7 THE COURT: I am sure you gentlemen want
8 to be as courteous as you can in the heat of battle.
9 So let's proceed.

10

11 CROSS-EXAMINATION (CONTINUED)

12

13 BY MR. DELK:

14 Q How old is the equipment in question, Mr.
15 Blair?

16 A I would say the pumps are probably somewhere
17 in the neighborhood of twelve to fifteen years. The underground
18 storage tanks I have no way of knowing. The 10,000-gallon
19 aboveground tank is probably eight to nine years old.

20 MR. DELK: All right, sir, no further
21 questions.

22 THE COURT: All right.

23 MR. CROOK: Thank you, Mr. Blair. May he
24 be excused, Your Honor?

25 THE COURT: Yes, sir.

(Witness excused.)

RAYMOND B. CLARK,
called as a witness on behalf of the defendants,
having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. CROOK:

Q State your name, please.

A Raymond B. Clark.

Q And where do you live, Mr. Clark?

A Smithfield.

Q And what do you do?

A Self-employed contractor.

Q Contractor?

A (Witness nodding head affirmatively.)

Q General construction?

A Not general.

Q What type of construction?

A Plumbing, wiring, building.

Q Plumbing, wiring and what?

A And building.

Q And building. Do you know Mr. and Mrs.

1 Allmond?

2 A Yes, I do.

3 Q Are you familiar with their property
4 located in the Town of Smithfield in which they operate the
5 fuel oil and gas service business?

6 A Yes, I am.

7 Q Have you had occasion to look at the
8 building of Mr. Allmond's at his request?

9 A Yes, I have.

10 Q And for what purpose did you examine the
11 building?

12 A Well, I examined it for what he told me he
13 wanted to check it for, moving it back approximately ten feet.

14 Q Moving it back approximately ten feet?

15 A Yeah.

16 Q All right, sir. And did you give Mr.
17 Allmond an estimate of what it would cost to do that?

18 A Yes, I did.

19 MR. DELK: If Your Honor please, I make
20 the same objection to this line of questioning as
21 I did the other.

22 THE COURT: All right, sir. I'll overrule.

23 MR. DELK: Save the point, sir. I would
24 object to these as such. If he testifies to it I
25 can't do anything about that but --

1 THE COURT: What are they, his notes?

2 MR. CROOK: Yes, sir, they are his notes
3 from his estimate.

4
5 BY MR. CROOK:

6 Q Mr. Clark, would you tell us what your
7 estimate is in order to move the building back ten feet?

8 A To move the building back ten feet I told
9 Mr. Allmond that it would cost \$8,400.

10 Q And what does that consist of?

11 MR. DELK: Now, if Your Honor please, I
12 think to get into it he can't add it all up. I
13 think if that's it, that's it, sir.

14 THE COURT: Well, isn't that what you want
15 really?

16 MR. CROOK: That's what I want really is
17 that.

18
19 BY MR. CROOK:

20 Q Is that the total cost, Mr. Clark, in order
21 to do this work?

22 A That's what I figured it in giving him,
23 but I'll tell you what I was going to do, to get it up to the
24 qualifications, the Building Code.

25 Q The Building Code?

1 A Yes.

2 Q That would require more cost?

3 A Yes, sir.

4 Q Why?

5 A I am saying eighty-four hundred dollars
6 to meet the Building Code.

7 Q Eighty-four hundred dollars would do it?

8 A Right.

9 MR. CROOK: Answer Mr. Delk.

10

11 CROSS-EXAMINATION

12

13 BY MR. DELK:

14 Q Would that then put the building in
15 identically the same condition, no better than what it is now?

16 A No, it would have to be better than what
17 it is now. It would have to come up to the Building Code.

18 Q Would your figure be less then if it was
19 just like it is now?

20 A Put it like it is now?

21 Q Yes, sir.

22 A Well, to move it there you couldn't; we
23 have to move it like it is now, Mr. Delk. You have to come up
24 to the Building Code; it's not to the Building Code.

25 Q Your estimate includes the improvements?

1 A Right.

2 Q What would be your estimate not to improve
3 it?

4 A Well, I didn't get to the figure on that.

5 Q So you are not qualified to say what it
6 would be then if it was left just like it is?

7 MR. CROOK: Your Honor, I object to the
8 way that's phrased.

9
10 BY MR. DELK:

11 Q Well, you haven't figured anything like
12 that?

13 A I didn't set up a figure just to move it
14 like it is.

15 THE COURT: Do you know what the house is
16 worth like it is now -- you are a bidder -- just
17 like it stands as a house?

18 THE WITNESS: Around in my opinion about
19 like it stands now like it is just before you move
20 it it ought to be forty-five, forty-seven hundred
21 dollars.

22 THE COURT: Any further questions?

23 MR. DELK: No further questions.

24 MR. CROOK: Yes, sir. I am going to have
25 to explain that.

REDIRECT EXAMINATION

BY MR. CROOK:

Q Mr. Clark, when you say the building is worth forty-five to forty-seven hundred dollars, in order to continue to operate a business there and to move a building back ten feet the value of it would be a great deal more than forty-five or forty-seven hundred dollars, wouldn't it?

A Oh, yes, sir, yes, sir.

MR. DELK: If Your Honor please, I am objecting to that point.

THE COURT: What we are talking about is a building as it stands.

MR. DELK: That's right, sir.

THE COURT: Go ahead, Mr. Crook. I don't want to interrupt you.

BY MR. CROOK:

Q All right, Mr. Clark. The eighty-four hundred dollars is the cost to move the building back ten feet, and you say it has to comply with the Building Code. Now what would have to be done to it different from what it is now just to comply with the Building Code?

A Well, we have to rewire it, Mr. Crook. We have to rewire it, put a new foundation up enough to the

1 qualifications; the bathroom facilities and everything's got
2 to be replaced to the Building Code.

3 Q All right now --

4 MR. DELK: If Your Honor please, I renew
5 my objection strenuously to all this. Certainly you
6 can't itemize everything and bring in something to
7 get an improved and entirely different type of
8 building or anything else. That is highly
9 prejudicial and improper. I object to the testimony.

10 THE COURT: It wouldn't be a part of the
11 damages I don't think, but it is something they can
12 consider, but I don't think -- well, go ahead.

13 MR. DELK: He said what it's worth, forty-
14 five, forty-seven hundred dollars.

15

16 BY MR. CROOK:

17 Q Mr. Clark, would it be less expensive to
18 tear the building down and construct another building ten feet
19 further back from the pumps, or would it be cheaper to move
20 this building back ten feet?

21 A It would be cheaper to move this building
22 back ten feet and then tear it and rebuild it than to tear it
23 and rebuild.

24 Q So you could not tear this building down
25 and replace it ten feet back for the price of forty-five hundred

1 to forty-seven hundred dollars?

2 A No, sir.

3 Q All right. Eight thousand four hundred
4 dollars would be the minimum figure to move it back ten feet?

5 A Yes, sir.

6 Q And that includes everything?

7 A (Witness nodding head affirmatively.)

8 MR. CROOK: Thank you, Mr. Clark.

9 THE COURT: All right, you may step down.
10 That's the case, Mr. Crook?

11 MR. CROOK: May Mr. Clark be excused?

12 THE COURT: Yes.

13

14 (Witness excused.)

15

16 MR. CROOK: Yes, that's the case.

17 THE COURT: We can let all the witnesses
18 go and you gentlemen come on back here with me a
19 few minutes and see if we can finish. Commissioners,
20 it ought not take us more than ten or fifteen minutes.

21 MR. DELK: If Your Honor please, I would
22 have one small item of a rebuttal witness on that
23 testimony then.

24 THE COURT: All right then.

25 MR. DELK: Mr. Copeland, take the stand.

1 R. S. COPELAND,
2 called as a rebuttal witness on behalf of the
3 plaintiff, having been previously duly sworn,
4 was examined and testified as follows:

5
6 DIRECT EXAMINATION (REBUTTAL)

7
8 BY MR. DELK:

9 Q Mr. Copeland, you have previously testified
10 as an appraiser. Have you had occasion to place a value on
11 this building for your overall appraisal?

12 A Yes, sir, I have.

13 Q All right. What then would be the reasonable
14 fair market value as it stands or stood April 20, 1973 of the
15 subject building?

16 A Two thousand six hundred and four dollars.

17 MR. DELK: No further questions.

18 THE COURT: Do you want to ask him anything?

19 MR. CROOK: Yes, sir.

20 THE COURT: Go ahead.

21
22 CROSS-EXAMINATION (REBUTTAL)

23
24 BY MR. CROOK:

25 Q You said what, \$2,000?

1 A Two thousand six hundred and four.

2 Q Two thousand six hundred dollars is the
3 value you placed on that building for what?

4 A Market value for the building itself.

5 Q If someone wanted to come up and buy the
6 building by itself?

7 A As determined by the cost approach to value,
8 which is reproducing the building and depreciation.

9 Q The cost approach of reproducing the
10 building --

11 A Reproduce and depreciate.

12 Q What it would cost to reproduce it?

13 A And then depreciate it. Cost plus
14 reproduction less depreciation.

15 Q No one is going to come along and offer to
16 pay you twenty-six hundred dollars for the building itself.

17 A That's true.

18 Q And that's what you say a knowledgeable
19 buyer would pay for it?

20 A The cost of the building would pay for
21 the new -- the market approach was for the land.

22 Q Now reproduction of that building would
23 require a great deal more than simply putting up the same
24 building, would it not?

25 A No, it would not. Reproduction is

1 reproducing what is exactly there.

2 Q Are you familiar with the Building Code?

3 A I can't speculate on what would be nice
4 to have.

5 Q Are you familiar with the Building Code?

6 A I am reproducing what was there. I am
7 not aware of -- a nice service station --

8 MR. DELK: If Your Honor please, I object
9 to any further testimony of what he's aware of.
10 What he has testified to is his cost, reproduction cost
11 new and his depreciation and it would come to twenty-
12 six hundred four dollars. That's all that should be
13 called upon in the examination at this time.

14 MR. CROOK: Your Honor, I think the jury's
15 entitled to be aware of the fact that you can't
16 reproduce it now because of the Building Code, and
17 that increases the cost a great deal. When you
18 replace the building you can't put up the same
19 building any more. That building was built long
20 before the Building Codes were ever adopted. We have
21 that plan and I don't know what has to be done. I
22 don't know how familiar this witness is, but maybe
23 he is aware of the reproduction cost in compliance
24 with the Building Code.

25 THE COURT: Well, are you, sir?

1 THE WITNESS: I am familiar with reproduction
2 costs, which is the reproduction of what exists.
3 You are talking about replacement. Reproduction costs
4 and replacement costs are entirely two different
5 terminologies involved.

6

7 BY MR. CROOK:

8 Q You are saying reproduction cost if you
9 could go with reproduction?

10 A It's reproducing what was there. I can
11 only appraise what exists. I can't speculate on what may be
12 nice to have; perhaps a nice cinderblock station might be nice.

13 Q We are not talking about what would be
14 nice.

15 A That's exactly what you're talking about.
16 I am talking about what is there, reproducing it as it is.

17 Q It can't be done.

18 A It can be done.

19 Q Not under the existing laws and not
20 under the Building Code.

21 A For means of valuation if someone came to
22 buy it they would buy exactly what's there.

23 Q What good is the valuation if you can't do
24 it?

25 A I just did it.

1 Q You did it on paper but you can't do it
2 out there on the ground. You can't reproduce that building
3 as it is because of the Building Code.

4 A I went there to appraise the property as
5 it existed and that's exactly what I did.

6 THE COURT: All right. Are you through
7 with him?

8 MR. CROOK: Yes, sir, very much so.

9 THE COURT: All right.

10 MR. DELK: That's the case.

11 (Witness excused.)

12 (Whereupon, there was a brief
13 recess in the hearing while the Court and
14 counsel went over the instructions.)

15
16 THE COURT: Are both sides ready to proceed?

17 MR. DELK: Yes, sir.

18 MR. CROOK: Yes, sir, Your Honor.

19
20 (Whereupon, the instructions were
21 read to the commissioners by the Court.)

22
23 THE COURT: Gentlemen, you may argue.

24 MR. DELK: May it please the Court,
25 commissioners, Mrs. Tines and all you gentlemen here.

1 It is a little unusual experience, I might say, in
2 this type of proceeding to have a lady on the
3 commission. We generally have all men, but we are
4 glad to have a woman with us today. I am sorry it's
5 been as long as it has today. We thought it would
6 be short, but we all, I am sure, have done the best
7 we could to get it over with in as much of a hurry
8 as possible.

9 I just want to take a few minutes here to
10 go over the evidence with you, as I am sure you
11 already understand, but just so that you will clearly
12 have it in mind. In the first place we are confronted
13 with this taking for highway purposes. All of you
14 have traveled over the project, saw it under construc-
15 tion, seen it completed and enjoyed the facility
16 reasonably with the improvements that have been made.

17 In Mr. Allmond's case it was necessary to
18 acquire .012 of an acre, twelve one-thousandths,
19 536 square feet, in other words, is all of the land
20 that was taken; 536 square feet. Bear in mind that
21 you saw the area taken, 39 feet by twelve-and-a-half
22 on one end and what did I figure the other one was,
23 14 feet, something like that, but 536 feet; 15 feet
24 on the other side. Now the whole area of the whole
25 land that was involved, and it's shown on your

1 report here, was 8,549 feet. So less than oh, ten
2 percent, hardly just a skimpion of the piece has
3 been taken across the front there.

4 Bear in mind also, gentlemen and Mrs. Tines,
5 that there across this land that was taken, which we
6 say that you must pay Mr. and Mrs. Allmond for, it
7 was already in existence a five-foot construction
8 easement that could be used at any time and had
9 already been acquired even before Mr. and Mrs.
10 Allmond had the property. So that then effectively
11 they are only really taking ten feet on one side and
12 seven-and-five-tenths feet on the other.

13 But the key to that five-foot-strip ease-
14 ment is they had the deed to it but they really
15 couldn't use it because of the construction easement.
16 But our witness, Mr. Copeland, didn't diminish the
17 value of that area taken as shown in red a bit
18 because of the fact that that easement was there.

19 Now there was also in the area taken that's
20 in red on the plat here and on the large map and
21 the area that's before you -- excuse me, Mr. Griffin.
22 Thank you, sir. That's in red on the plat. There
23 were utility easements in that area, and because
24 they have to be moved to provide for the construction
25 then the State Highway Commission is acquiring this

1 easement, 15 feet wide here back of -- shown in
2 yellow and pointed out to you on the ground, in order
3 that that pole may be located there and that the
4 utility could still go across. But that's an
5 easement, and that is in there really just replacing
6 the one that already existed and was across the
7 area which we are taking and going to pay for.

8 Now another thing I want to caution you
9 about for you to remember, according to the testimony
10 here that in the beginning, it was clearly shown here,
11 at the time of the taking there was no entry to this
12 property virtually except if you could get over six
13 foot of it between the end of this island that was
14 in there. And I am sure that Mr. Edwards and Mrs.
15 Tines especially remember in the area, and you
16 gentlemen have all seen that. I don't know how they
17 put, after the Ash Wednesday storm, built these
18 islands there that way.

19 So that was taken before all this occurred
20 and you couldn't get in the property there, and then
21 as it is now Mr. Allmond entered his property over
22 the land of others from either side. And he says
23 that they got along all right with the owners. He
24 is getting along all right now as far as I am concerned.
25 But the Highway Department has now come along and

1 given him a 30-foot easement and paved, put the entry
2 in there and everything, which really enhanced the
3 value, according to our appraisal witness, more than
4 it was any damage. There was none he found in
5 damages and so that would be an enhancement if there
6 had been damages to offset, but since there were no
7 damages you can't offset it against anything. So
8 he still has the right-of-way.

9 Now I'll give you the picture as it was,
10 the take as it was April 20, 1973, which is the
11 cardinal state. Not today, ladies and gentlemen,
12 Mrs. Tines and gentlemen of the commission, but what
13 it was. Everything the Court has told you, you must
14 view it as of April 20, 1973, what was the condition
15 and what was it worth at that time, what was the
16 situation, how was the property being used then and
17 so forth. Everything's keyed to that.

18 Mr. Copeland comes here with nine years'
19 experience. Truly he's a young man, but this is a
20 young man's world. I am getting a little old for
21 this kind of thing maybe, but he's a young man with
22 a great deal of experience. He has spent one-third
23 of his life virtually in doing the very thing he's
24 doing here, studying properties and appraising them.
25 And goodness gracious, he's testified apparently all

1 over and appraised property all over Tidewater,
2 Virginia, on the Eastern Shore, clear through this
3 whole district and has been qualified as an expert
4 appraisal witness in too many courts -- I didn't
5 even try to enumerate them -- but everywhere as an
6 expert witness in the courts of this area and has
7 testified. And he lived in the area and he knows the
8 area; he grew up in it. He used to play football,
9 when Chuckatuck played at Smithfield and so forth,
10 has seen the property, been knowing it all the time.

11 And he went out and couldn't find any
12 property in the old town, if you will; as we knew
13 it before, the town limits. He couldn't find any
14 property sold within five years. This is what you
15 have to look at, any property -- we've got commercial
16 sales but that would not give Mr. Allmond enough for
17 his property. You've only got 536 square feet. There
18 was nothing in the way of commercial sales in the
19 area that would give him a high value which he had,
20 which was valued as commercial property.

21 Where could he get it? He goes down and
22 compares it to what is very high-priced land out
23 there where the building and loan is built, where
24 Mr. Little's funeral home is and where Mr. Wilkinson's
25 got his home repair place out there. And those

1 places -- and he said these sales, taking in the
2 point of time and making the necessary adjustments
3 by the fact that probably this being low, repeatedly
4 flooded -- you all know how that area down there
5 day after day after day, time after time throughout
6 the years was so flooded that you couldn't, if you
7 had a hundred-foot frontage there, you still couldn't
8 sell gasoline or anything else; you couldn't do it.
9 You certainly can't sell gasoline walking around in
10 hip boots or something. So you have to discount it
11 because it is subject to that flooding.

12 And this thing, then you had a value, of
13 course, the location. Making the necessary adjust-
14 ments it still comes up -- he said 30 cents a square
15 foot, and he gave him a value based on that of this
16 little piece of land taken, 536 square feet, of
17 \$161.

18 Well, you can't just run away with what
19 the other land sold for right out there in the higher
20 area. Not one of those pieces they gave as much as
21 30 cents. Adding a little to them you come up with
22 30 cents. One sells for 31 cents a square foot.
23 He came up with \$161. And I say to you gentlemen
24 that I feel that Mr. Copeland was very fair in his
25 value. He is sworn as a witness to tell the truth.

1 There is nothing in here -- he doesn't know Mr.
2 Allmond. He's not trying to take anything away from
3 Mr. Allmond's property down there that he has been
4 using or anything. He has got to come here and tell
5 what he sees. He gave you the types of sales he was
6 basing it on.

7 It was a little place to start with. It
8 is a little bit littler now because 536 square feet
9 have been taken off, just not very much larger than
10 a good-sized rug. Anyway, he was giving him \$161.

11 Is there any damage to the residue?
12 Gentlemen, you know there's no damage to the residue
13 there. He has the same access as long as the
14 neighbors are willing to drive across as they have
15 been doing and all been doing before. Besides, he's
16 got a sidewalk there in front of his house, too.
17 He's got a paved entry he can come into the place.
18 The fact that the highway is there hasn't stopped
19 anybody from using the thing at all, not at all.
20 So there is no damage to the residue.

21 You're not supposed to give him, improve
22 it better than what he's got to begin with. We're
23 sorry it wasn't any better. That's Mr. Allmond's
24 property; it's valuable to him, but you can't give
25 him anything. You're pledged to give it what its

1 value is and give it what the damages are. You can
2 do it. You saw it; you've known it through the years;
3 you've heard the testimony.

4 There is no testimony from anyone as to
5 value. He's the only one that said what the property
6 is worth to start with now or any other time. He
7 is the only one that said it so it must prove he
8 was right.

9 Concerning the damages, I am saying to
10 you, Mrs. Tines, members of the commission, there's
11 no damage to the residue worse than it was in the
12 beginning. If anything there has been some enhance-
13 ment, some improvement that would offset any damages
14 it was. So all I say your award can be is \$161 for
15 the land taken, no damage to the residue and I ask
16 you to bring in your verdict accordingly.

17 THE COURT: All right, sir.

18 MR. CROOK: I've got twelve minutes on
19 that, Your Honor.

20 THE COURT: You've got fifteen.

21 MR. CROOK: Five thirty-three to five-
22 forty-five.

23 THE COURT: I thought it was ten. Well,
24 go ahead.

25 MR. CROOK: I'll run over a minute or two.

1 The jury hopes not.

2 MR. DELK: How much did I use?

3 MR. CROOK: Twelve minutes.

4 MR. DELK: It wasn't any such thing. I
5 was watching the clock.

6 MR. CROOK: I come to you as the biggest
7 liar in the courtroom, having accused Mr. Delk of
8 using twelve whole minutes.

9 I am here representing Mr. Allmond and, of
10 course, I have fought with Mr. Delk off and on during
11 the day and laughed with him at times, I suppose. I
12 can't recall, but I think somewhere along the way
13 I might have.

14 But this is a very serious thing to Mr.
15 Allmond. This is his place of business; this is
16 the only place he has; this is his livelihood. A
17 great deal of land is not being taken in this
18 situation, and this is what they have argued from
19 the beginning, it's such a small amount of land.
20 It's not a great deal of land, but it is the land
21 between his business and the street, and there's
22 nothing that affects your business any more than that
23 strip of land, whether it's two feet wide or fifteen
24 feet wide between your business and the street.

25 Mr. Allmond bought this business in 1969,

and at that time they had, or sometime thereafter they put in these little islands alongside of the road, where you could get in and out between the island. And Mr. Allmond bought from the adjoining property, Mr. Jones', and he came into his gas pumps through the opening and his customers came in through the opening and went out across Mr. Griffis'. Whether they were going east or west there was plenty of access for the pumps to go in and out.

Now he doesn't have -- didn't have a big business, but it was his only business and this is where, as I say, he earned his living.

Now the Highway Department says well, he didn't have any easement across Mr. Jones' property. If Mr. Jones lets Mr. Allmond go across his property, that easement, that doesn't mean that Mr. Jones can't cut him off, but everybody doesn't cut off everybody else just because it's not in writing and recorded in the Courthouse. And he hasn't had any problem with Mr. Griffis going across their property. It worked out fine. in front of his property, but in order to use the access to the pumps they were coming this way and out, coming this way and out. Now they have stopped that with this new construction.

In front of Mr. Jones' they have put curbs

1 and gutters. In front of Mr. Allmond's they have
2 put a drive in 30 feet wide, which comes right in
3 on his pumps. And you all saw it out there this
4 morning coming right in on them. It is not feasible
5 for his gas business to have those pumps where they
6 are with that driveway the way it is. You've got to
7 have room to come in and come around the pumps and
8 come back out.

9 In order to do that and in order to use
10 both sides of the pumps -- which even their witness
11 admitted you can't use them -- you've got to move
12 the pumps back, and because of the proximity of the
13 pumps to the building in moving the pumps back ten
14 feet the building needs to go back ten feet and the
15 storage tank in the rear needs to go back ten feet.

16 Now there has been a lot of argument about
17 those damages; the argument being that the damages
18 shouldn't be more than the value of the property.
19 Instruction Number 15 that the Court read: "In
20 arriving at the damage to the residue of the tract
21 the commissioners should consider the reasonable
22 cost, if any, of adjusting the residue of the
23 property to the new conditions and the inconvenience,
24 if any, to which the landowners will be subjected
25 in the future operation of their property caused by

1 the taking and the new construction."

2 And that's what this case is all about.
3 It's not what five hundred and thirty-some square
4 feet is worth. It's what this is causing Mr. Allmond
5 to have to do, and in order to do it he has to be
6 paid compensation by the people that caused it -- in
7 this case it's the State Highway Department, but the
8 people that caused it in order to accomplish the
9 moval of these structures to be able to use the
10 business as he used it before.

11 That is all he's asking for. He is not
12 asking to be put in a better position. What he wants
13 is for what they have done to him. What they have
14 done is the damage to his business and property as
15 you have heard all day long.

16 Now Mr. Copeland, of course, has made his
17 appraisal. Mr. Copeland, who is an employee of the
18 Highway Department and very capable, made his
19 appraisal based on comparable sales of commercial
20 property. Of course, commercial property was not
21 really comparable to this property, but it was sales
22 in the vicinity of Smithfield on Highway 10, South
23 Church Street.

24 But Mr. Allmond has testified -- and I
25 tried to get this out of Mr. Copeland on cross-

1 examination -- these are storage tanks, fuel storage
2 tanks. In order to have fuel storage tanks -- and,
3 of course, he'd like to be as he is, in town. He
4 testified he had moved to town. This is where the
5 people are; this is where his customers are; this is
6 where his business is. He wants his storage tanks
7 here. He doesn't want to go to Orbit (phonics) to get a piece
8 of property to put the storage tanks on. He lives
9 in town; his business is in town; this is where he
10 wants it.

11 There aren't many pieces of property in
12 Smithfield to locate the storage tanks. If these
13 weren't there you couldn't put them there because
14 it's business property, zoned business. As long as
15 they are there they can stay there. So he's got his
16 business, he's got his tanks, but he is deprived of
17 his gas business. He is also hurt in his access to
18 his property.

19 Now what is the measure of these damages?
20 Now Mr. Allmond is not a wealthy person and, as I
21 say, it is not a big business. It's a small store
22 building, two gas tanks and one island and then a
23 storage tank in the rear. In order to be able to
24 conduct his business as he did before he has to move
25 the island ten feet to the rear, the building ten

1 feet and the storage tank in the back ten feet.
2 The witness has testified that it would cost \$5,660
3 to move the gas tanks in the front and the storage
4 tank in the rear. Now that's what it would cost to
5 move them.

6 Mr. Clark, the contractor, testified it
7 would cost \$8,400 to move the building, but he
8 pointed out this is to make it comply with the Code.
9 He has to comply with the Code when he moves the
10 building back. This is the point.

11 Now it was argued that the building is
12 not worth that much. The building may not be worth
13 that much as it is, but in order to continue to use
14 the building it's got to be moved back ten feet
15 because -- in order to move the pumps back ten feet.
16 And that's what it's going to cost to do it. That's
17 not an inflated figure.

18 Any building, any structure, any new
19 construction has to comply with the Building Code,
20 and that's not Mr. Allmond's fault, that's not the
21 Highway Department's fault but that's the fact;
22 that's the situation now today.

23 Now that is the damage that he is seeking
24 in this case. He simply can't operate as he did before.
25 He wants to be compensated. He wants to move his

1 pumps back, the building and the storage tank.

2 Now it's a narrow piece of property. It
3 is located in the flood area. The business has
4 operated in that flood area for many years, as you
5 all know, and they have done quite well. Mr.
6 Allmond has made his living there for some time.
7 He's entitled to continue to do so.

8 The Highway Department has not taken all
9 his land although they may have effectively done so.
10 They have simply damaged it, and as the evidence that
11 we have presented to you today is that he has been
12 damaged to that extent, those costs. We are not
13 asking you to consider loss of profits or anything
14 of that nature. We are simply asking you to consider
15 these costs that are occasioned by the taking.

16 And this is his only opportunity to
17 recover these costs. He has to rely upon you
18 citizens and landowners of the county who are familiar
19 with this property, who have looked at the property.
20 As the instructions say, you can rely on what you
21 observed out there as well as what you heard, but
22 you don't have to go by any particular thing that
23 you have heard. You can go by your view and
24 determine the value and determine the damages.

25 Take it into consideration the testimony

1 on value and the testimony on damages. They say
2 that the value of that property taken is only \$161.
3 Well, you've seen it. A hundred and sixty-one dollars.
4 We are not arguing the value of the piece of
5 property. We are talking about damages he incurred
6 as a result of the taking. He's entitled to those
7 damages, not just the appraiser's estimate of the
8 value of the piece of that property but also to the
9 damages.

10 And it's up to you to determine what those
11 damages are. The majority of you have to make that
12 determination. That's at least three out of five.
13 You don't have to all agree. And we ask that the
14 majority of you, and hopefully all of you, will
15 find in favor of Mr. Allmond in the amount of damages
16 that we have shown in our evidence; and we employ
17 you to do so.

18 Thank you.

19 THE COURT: Mr. Delk, you've got five
20 minutes. I'll give you five minutes.

21 MR. DELK: Me?

22 THE COURT: Yes.

23 MR. DELK: Judge, I don't want to argue,
24 but I started at twenty-two of; I was through at
25 quarter of.

1 THE COURT: I think you started at 4:20
2 and were through before ten of.

3 MR. DELK: We were looking at it. It was
4 quarter of. When Mr. Crook went up there it was
5 quarter of.

6 MR. CROOK: I only talked ten minutes, but
7 Mr. Delk has four more.

8 MR. DELK: Four?

9 THE COURT: Well, we are wasting our time
10 talking. Go ahead.

11 MR. CROOK: That's two of his minutes.

12 MR. DELK: The issues before you, Mrs.
13 Tines and members of the commission, are what is the
14 value of the property, what are the damages, if any,
15 of the residue. Mr. Crook agrees with the value.
16 He says the value is \$161. You saw it. Did he come
17 in and give you any difference? Did anybody put a
18 value on it? Who put a value on it? Mr. Copeland,
19 \$161. Nobody else says any different whatsoever so
20 they obviously are agreeing that \$161 is the value
21 of the property taken. April 20, 1973 is the
22 valuation date.

23 And on the question of the damages, the
24 Court, in the Number 7 Instruction, said that "In
25 determining whether there is any damage to the

1 remaining land of the owners by reason of the taking
2 of the land or interest therein described in the
3 petition the test is the difference in the value
4 immediately before --" that is, just before April
5 20, 1973, "-- and immediately after that --" right
6 after April 20, 1973, "-- considering every
7 circumstance, present and future, which affects its
8 value. Remote, speculative profits or damages are
9 not to be considered."

10 You can't consider any loss of profits,
11 the Court is telling you, in this Instruction 10.
12 And another instruction here is that you can't
13 consider any expense or annoyance in coming here and
14 defending it, nor can you consider any of the dirt
15 or noise or temporary obstructions due to the
16 construction that went on down there.

17 All right. That's the key, what Mr. Crook
18 says. This is Mr. Allmond's own little business.
19 He wants to run the gas station. He says he wants to
20 go into business again. At least one of you know the
21 situation there in the conduct of a gasoline station
22 and know how much -- how difficult it would be to conduct
23 one on a lot between two other properties, not even
24 at a corner, only 39 feet across, when you couldn't
25 even get two cars in it at one time to save your soul,

1 much less have anything else there.

2 MR. CROOK: Your Honor, I am going to have
3 to object. Now the argument is supposed to be geared
4 to the evidence and not any particular or peculiar
5 knowledge that a commissioner may have not related
6 to the evidence of the view.

7 THE COURT: You have to relate it to what
8 the view is.

9 MR. DELK: What view? I can't help what
10 the view showed you. It was there; it's you who
11 have been knowing it all the time so I can't help
12 you.

13 His best year was 1969, long before they
14 even thought of taking it. There were only 16,000
15 gallons pumped in the whole year. It fell down to
16 13,000 in the next year, to 11,599 and ended up in
17 1972 before this thing ever started with only
18 sixty-six hundred gallons of gasoline. That isn't
19 even -- well, less than a hundred ten, twelve
20 gallons a week all week long. They say that's a
21 profitable business? It is not our fault. The
22 highway didn't have anything in the world to do with
23 those reductions in gallons. They all occurred long
24 before this so that didn't come in. That's not
25 anything you can hang your hat on.

1 Now he says it's not feasible for this
2 entry to have access to the gas pumps, what has
3 been given. Well, it would be, Mrs. Tines and
4 gentlemen of the commission, if you would think about
5 if you move it back you still have got Mr. Griffis'
6 building sitting up here, you've got Ben Jones'
7 sitting here and you've got these things sitting be-
8 tween it. Who in the world is going to come in and
9 make a u-turn? They wouldn't be any worse off by
10 far if they left them just like they are.

11 Getting back into the business, forget
12 the entrance. They are worried about getting into
13 the business rather than fighting with us over these
14 kind of things. So he would be much worse off if he
15 attempted to move it. So Mr. Crook can't compensate
16 him, so he said, in any loss of business, if there is
17 a loss of business. And he agrees with the value.

18 And I want to call your attention
19 especially, Mrs. Tines and members of the commission,
20 to Instruction 14 where the Court says that "You
21 are instructed that your verdict, your award, must be
22 based in whole or in part -- must not be based in whole
23 or in part --" you can't pay attention to that -- on
24 surmise, guesswork, conjecture, speculation maybe,
25 sympathy, feelings for either of the parties -- but must be based

1 solely upon the evidence and the instructions of
2 the Court. "

3 Now I am sorry Mr. Allmond has to come
4 here today to try this case. I didn't want to have
5 to come either, but -- and I am sorry Mr. Allmond's
6 health is not what it might be as good as ours, but
7 the taking for the highway didn't have anything to do
8 with that, gentlemen and Mrs. Tines. We all know
9 that. We are sorry, but we can't give away public
10 funds just because we might be sympathetic to Mr.
11 Allmond and his condition. We have to look at what
12 the facts are, based upon the evidence, your view
13 and the instructions of the Court.

14 We have \$161 worth of value. We have no
15 damages. The building is only worth twenty-six
16 hundred four dollars. One of them said forty-five.
17 What are you going to do, because you've got a piece
18 of glass that looks like a diamond you are going to
19 get a diamond to replace it? No, the only thing to
20 do is put the samekind of building, the same way, if
21 you've got to move it. You can't do any better than
22 that so you are not going to spend a fortune to do
23 something like that. So I say to you that the
24 burden has been satisified, that there is no damage
25 to the residue here.

1 And I am sorry that Mr. Allmond's condition
2 is in--but you can't let yourself simply run away
3 with it. And I ask you to bring in your award as
4 being the value of the land \$161, which everybody
5 agrees to, for the land taken and no damages to the
6 residue. And thank you for your time.

7 THE COURT: All right, ladies and gentlemen,
8 you may go back to your room now and begin your
9 deliberations. We have here a form of your report.
10 And you may fill in -- after you have reached your
11 decision you may fill in the blanks for the value of
12 the land and for the damages, if any, to the residue.

13 All right, you may go.

14
15 (Whereupon, the commissioners
16 retired to the jury room at 6:04 p.m.)

17
18 EXCEPTIONS TO THE INSTRUCTIONS

19
20 MR. DELK: Petitioner excepted to the
21 granting of Instruction 15 offered by the landowner,
22 and for the ground of exception I stated to the
23 Court at the time, now says that the said instruction
24 is contrary to the law and is without any evidence
25 upon which it can be based and turns the jury loose

1 in the face of other instructions to the contrary
2 to bring in an excess award for damages. The
3 instruction practically invites the commission to
4 find an award for damages and bear for the landowners,
5 based on the evidence offered by two witnesses for the
6 defendants or landowners as to what it would cost to
7 move the existing fuel pumps and underground tanks
8 and the overhead storage tank and also the building,
9 which is of such poor value that to move it and to
10 expend the cost that would be involved in the moving
11 thereof would make such cost amount to three to four
12 times the value of the building itself.

13 The Court, in granting the instruction,
14 expressed some reserve as to believing that it has
15 been covered by other instructions, but, in fact,
16 did grant it with admonition to the counsel for the
17 parties to stress the words "reasonable costs" and
18 not the remainder of the instruction.

19 MR. CROOK: I object to the Court's ruling
20 and note my exception on the Court's refusal to grant
21 Instruction 14-A. This instruction was taken from
22 Instructions for Virginia and West Virginia, Abbott
23 and Solomon, Volume 2, 2nd Edition, Eminent Domain
24 Section 52-53. And the reason that I object to the
25 refusal of the Court to grant this instruction is

1 because evidence was presented that a gas business
2 was operated, the retail sale of gas prior to the
3 condemnation, but was not being operated at the time
4 of the condemnation, and evidence was presented to
5 that effect.

6 This is a use reasonably available for
7 the property, the most valuable purpose for which
8 the land was susceptible of being used at the time
9 of the taking.

10 I object to the Court's refusal to give
11 Instruction 15-A and note my exception. This
12 instruction was also taken from Instructions for
13 Virginia and West Virginia, Abbott and Solomon,
14 Section 52-108, which cited Richmond versus Williams
15 in 114 Virginia 698, 77 SE 492.

16 And this instruction was that the commissioners
17 could consider the expense of moving the storage
18 tanks, building and gas pumps occasioned by the
19 taking of the land in question. It is my contention
20 that that was a proper instruction to be considered
21 by the commissioners.

22 I object to the refusal of the Court to
23 give Instruction Number 15-B. This is the instruction
24 that the commissioners could consider prices paid
25 by the plaintiff for other property in the

1 neighborhood similarly situated such as the Griffis
2 property adjoining the subject property on the east
3 and the Jones property adjoining the defendants'
4 property on the west.

5 Since those properties were purchased by
6 the Highway Department and the purchases were
7 voluntary no condemnation proceedings had been
8 instituted in either case, but the commissioners
9 could properly consider those prices to determine
10 the market value of the property in question.

11 My authority for this instruction is
12 Virginia Code Section 25-46.21 and the case of
13 Collins versus Pulaski County, 201 Virginia 164,
14 110 SE 2nd 184.

15
16 (Whereupon, the commissioners
17 returned to the courtroom and resumed
18 their seats in the jury box.)

19 Resumed at 6:40 p.m.

20
21 THE CLERK: Have the commissioners reached
22 a decision?

23 A COMMISSIONER: Yes, we have.

24 THE CLERK: The commissioners' decision,
25 it says in part, "We did fix the value of the

1 aforesaid land and easement taken by the State
2 Highway and Transportation Commissioner at \$161,
3 and we do further fix the damages which may accrue
4 to the residue beyond enhancement in value of such
5 residue and by reason of the taking at \$7,500.
6 Given under our hands this 30th day of March, 1977"
7 and signed by the five commissioners.

8 Is this your decision?

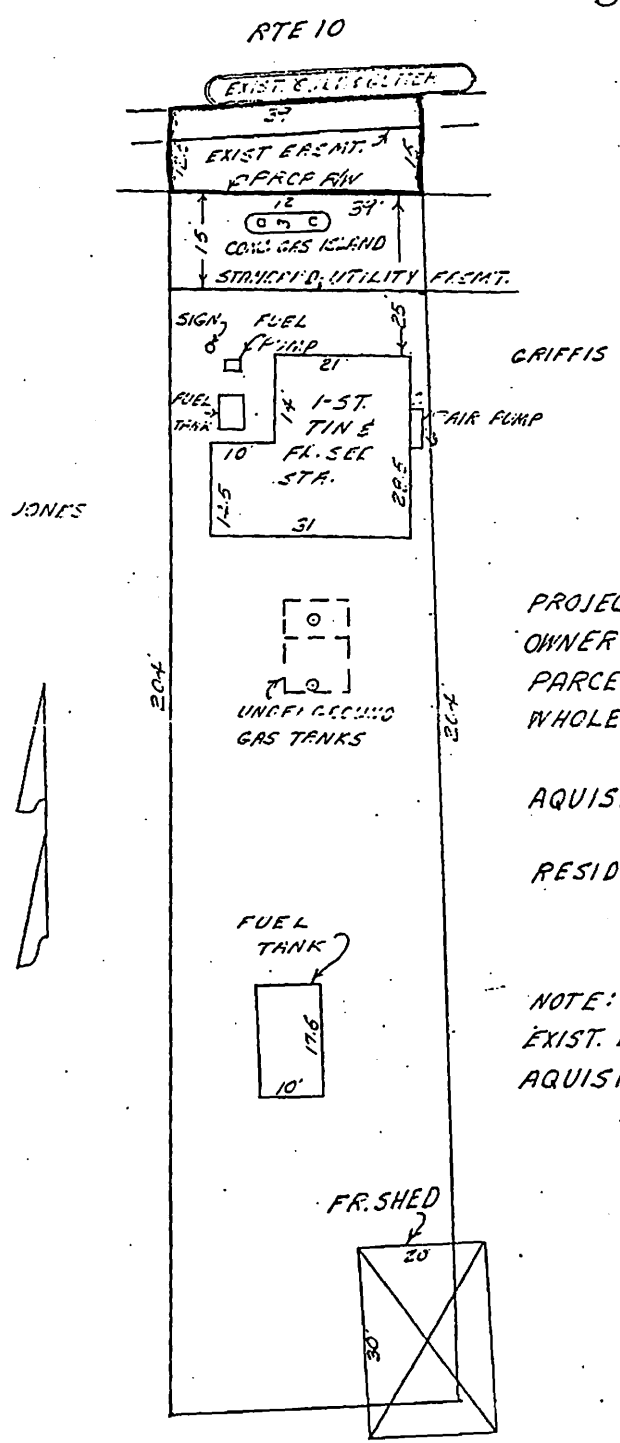
9 A COMMISSIONER: Yes.

10 THE COURT: Thank you very much, members
11 of the commission. That concludes your work for
12 today. Sorry to keep you so late.

13
14 (Whereupon, the hearing was
15 adjourned at 6:42 p.m.)

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neg. com. & *Almond*
 3-30-77
lyl mjr.



PROJECT 0255-046-107, RMC
 OWNER CALVIN PERCY ALLMOND
 PARCEL 021
 WHOLE AREA 0.176 AC OR
 8549 \square
 AQUISITION 0.012 AC OR
 536 \square
 RESIDUE 0.184 AC OR
 8013 \square

NOTE:
 EXIST. EASMT. IN
 AQUISITION = 0.004 AC
 OR 195 \square

PROJECT: ROUTE 1
SHEET: 1 OF 2
DATE: 10/1/66
BY: J. J. BROWN
CHECKED: J. J. BROWN
APPROVED: J. J. BROWN

NOTE: LEVELS ARE BASED ON U.S.C. & G.S. DATUM

AM. 3 Miles N. West 24° E. M.
43 LT. STA. 1654+31
Elev. 7.22

| REVISED | NO. FROM PREVIOUS | DATE | FEDERAL AID | STATE |
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| | 2 | 10/1/66 | | 250 |
| | | | | 0258-046-107-501, PE-1A R/W-201, B-604 |

DESIGN FEATURES RELATING TO CONSTRUCTION, OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

INCIDENTAL SUMMARY

| SHEET NO. | STATION | STATION | STANDARD CONC. CURB BUTTER CO-8 | ENTRANCE BUTTER CO-8D | R/W MOVEMENT STD. RM. 1 | EXIST. CONC. TYP. BE. REMOVED | DEMOLITION OF PAVEMENT | CURB CO-2 | CONCRETE OLD ROAD | 5' FWA CEMENT CONCRETE SIDE WALK 6 | VALLEY BUTTER STD CO-8 (MOD) | SPECIAL DESIGN | |
|-----------|---------|---------|---------------------------------|-----------------------|-------------------------|-------------------------------|------------------------|-----------|-------------------|------------------------------------|------------------------------|----------------|-------|
| 3 | 1654+00 | 1653+00 | 165.82 | 228.75 | 0 | 289.00 | 105.56 | 45 | 71 | 1.0 | 750.76 | 28.66 | 28.19 |

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| 1653 | 1652 | 1651 | 1650 | 1649 | 1648 | 1647 | 1646 | 1645 | 1644 | 1643 | 1642 | 1641 | 1640 | 1639 | 1638 | 1637 | 1636 | 1635 | 1634 | 1633 | 1632 | 1631 | 1630 | 1629 | 1628 | 1627 | 1626 | 1625 | 1624 | 1623 | 1622 | 1621 | 1620 | 1619 | 1618 | 1617 | 1616 | 1615 | 1614 | 1613 | 1612 | 1611 | 1610 | 1609 | 1608 | 1607 | 1606 | 1605 | 1604 | 1603 | 1602 | 1601 | 1600 | 1599 | 1598 | 1597 | 1596 | 1595 | 1594 | 1593 | 1592 | 1591 | 1590 | 1589 | 1588 | 1587 | 1586 | 1585 | 1584 | 1583 | 1582 | 1581 | 1580 | 1579 | 1578 | 1577 | 1576 | 1575 | 1574 | 1573 | 1572 | 1571 | 1570 | 1569 | 1568 | 1567 | 1566 | 1565 | 1564 | 1563 | 1562 | 1561 | 1560 | 1559 | 1558 | 1557 | 1556 | 1555 | 1554 | 1553 | 1552 | 1551 | 1550 | 1549 | 1548 | 1547 | 1546 | 1545 | 1544 | 1543 | 1542 | 1541 | 1540 | 1539 | 1538 | 1537 | 1536 | 1535 | 1534 | 1533 | 1532 | 1531 | 1530 | 1529 | 1528 | 1527 | 1526 | 1525 | 1524 | 1523 | 1522 | 1521 | 1520 | 1519 | 1518 | 1517 | 1516 | 1515 | 1514 | 1513 | 1512 | 1511 | 1510 | 1509 | 1508 | 1507 | 1506 | 1505 | 1504 | 1503 | 1502 | 1501 | 1500 | 1499 | 1498 | 1497 | 1496 | 1495 | 1494 | 1493 | 1492 | 1491 | 1490 | 1489 | 1488 | 1487 | 1486 | 1485 | 1484 | 1483 | 1482 | 1481 | 1480 | 1479 | 1478 | 1477 | 1476 | 1475 | 1474 | 1473 | 1472 | 1471 | 1470 | 1469 | 1468 | 1467 | 1466 | 1465 | 1464 | 1463 | 1462 | 1461 | 1460 | 1459 | 1458 | 1457 | 1456 | 1455 | 1454 | 1453 | 1452 | 1451 | 1450 | 1449 | 1448 | 1447 | 1446 | 1445 | 1444 | 1443 | 1442 | 1441 | 1440 | 1439 | 1438 | 1437 | 1436 | 1435 | 1434 | 1433 | 1432 | 1431 | 1430 | 1429 | 1428 | 1427 | 1426 | 1425 | 1424 | 1423 | 1422 | 1421 | 1420 | 1419 | 1418 | 1417 | 1416 | 1415 | 1414 | 1413 | 1412 | 1411 | 1410 | 1409 | 1408 | 1407 | 1406 | 1405 | 1404 | 1403 | 1402 | 1401 | 1400 | 1399 | 1398 | 1397 | 1396 | 1395 | 1394 | 1393 | 1392 | 1391 | 1390 | 1389 | 1388 | 1387 | 1386 | 1385 | 1384 | 1383 | 1382 | 1381 | 1380 | 1379 | 1378 | 1377 | 1376 | 1375 | 1374 | 1373 | 1372 | 1371 | 1370 | 1369 | 1368 | 1367 | 1366 | 1365 | 1364 | 1363 | 1362 | 1361 | 1360 | 1359 | 1358 | 1357 | 1356 | 1355 | 1354 | 1353 | 1352 | 1351 | 1350 | 1349 | 1348 | 1347 | 1346 | 1345 | 1344 | 1343 | 1342 | 1341 | 1340 | 1339 | 1338 | 1337 | 1336 | 1335 | 1334 | 1333 | 1332 | 1331 | 1330 | 1329 | 1328 | 1327 | 1326 | 1325 | 1324 | 1323 | 1322 | 1321 | 1320 | 1319 | 1318 | 1317 | 1316 | 1315 | 1314 | 1313 | 1312 | 1311 | 1310 | 1309 | 1308 | 1307 | 1306 | 1305 | 1304 | 1303 | 1302 | 1301 | 1300 | 1299 | 1298 | 1297 | 1296 | 1295 | 1294 | 1293 | 1292 | 1291 | 1290 | 1289 | 1288 | 1287 | 1286 | 1285 | 1284 | 1283 | 1282 | 1281 | 1280 | 1279 | 1278 | 1277 | 1276 | 1275 | 1274 | 1273 | 1272 | 1271 | 1270 | 1269 | 1268 | 1267 | 1266 | 1265 | 1264 | 1263 | 1262 | 1261 | 1260 | 1259 | 1258 | 1257 | 1256 | 1255 | 1254 | 1253 | 1252 | 1251 | 1250 | 1249 | 1248 | 1247 | 1246 | 1245 | 1244 | 1243 | 1242 | 1241 | 1240 | 1239 | 1238 | 1237 | 1236 | 1235 | 1234 | 1233 | 1232 | 1231 | 1230 | 1229 | 1228 | 1227 | 1226 | 1225 | 1224 | 1223 | 1222 | 1221 | 1220 | 1219 | 1218 | 1217 | 1216 | 1215 | 1214 | 1213 | 1212 | 1211 | 1210 | 1209 | 1208 | 1207 | 1206 | 1205 | 1204 | 1203 | 1202 | 1201 | 1200 | 1199 | 1198 | 1197 | 1196 | 1195 | 1194 | 1193 | 1192 | 1191 | 1190 | 1189 | 1188 | 1187 | 1186 | 1185 | 1184 | 1183 | 1182 | 1181 | 1180 | 1179 | 1178 | 1177 | 1176 | 1175 | 1174 | 1173 | 1172 | 1171 | 1170 | 1169 | 1168 | 1167 | 1166 | 1165 | 1164 | 1163 | 1162 | 1161 | 1160 | 1159 | 1158 | 1157 | 1156 | 1155 | 1154 | 1153 | 1152 | 1151 | 1150 | 1149 | 1148 | 1147 | 1146 | 1145 | 1144 | 1143 | 1142 | 1141 | 1140 | 1139 | 1138 | 1137 | 1136 | 1135 | 1134 | 1133 | 1132 | 1131 | 1130 | 1129 | 1128 | 1127 | 1126 | 1125 | 1124 | 1123 | 1122 | 1121 | 1120 | 1119 | 1118 | 1117 | 1116 | 1115 | 1114 | 1113 | 1112 | 1111 | 1110 | 1109 | 1108 | 1107 | 1106 | 1105 | 1104 | 1103 | 1102 | 1101 | 1100 | 1099 | 1098 | 1097 | 1096 | 1095 | 1094 | 1093 | 1092 | 1091 | 1090 | 1089 | 1088 | 1087 | 1086 | 1085 | 1084 | 1083 | 1082 | 1081 | 1080 | 1079 | 1078 | 1077 | 1076 | 1075 | 1074 | 1073 | 1072 | 1071 | 1070 | 1069 | 1068 | 1067 | 1066 | 1065 | 1064 | 1063 | 1062 | 1061 | 1060 | 1059 | 1058 | 1057 | 1056 | 1055 | 1054 | 1053 | 1052 | 1051 | 1050 | 1049 | 1048 | 1047 | 1046 | 1045 | 1044 | 1043 | 1042 | 1041 | 1040 | 1039 | 1038 | 1037 | 1036 | 1035 | 1034 | 1033 | 1032 | 1031 | 1030 | 1029 | 1028 | 1027 | 1026 | 1025 | 1024 | 1023 | 1022 | 1021 | 1020 | 1019 | 1018 | 1017 | 1016 | 1015 | 1014 | 1013 | 1012 | 1011 | 1010 | 1009 | 1008 | 1007 | 1006 | 1005 | 1004 | 1003 | 1002 | 1001 | 1000 | 999 | 998 | 997 | 996 | 995 | 994 | 993 | 992 | 991 | 990 | 989 | 988 | 987 | 986 | 985 | 984 | 983 | 982 | 981 | 980 | 979 | 978 | 977 | 976 | 975 | 974 | 973 | 972 | 971 | 970 | 969 | 968 | 967 | 966 | 965 | 964 | 963 | 962 | 961 | 960 | 959 | 958 | 957 | 956 | 955 | 954 | 953 | 952 | 951 | 950 | 949 | 948 | 947 | 946 | 945 | 944 | 943 | 942 | 941 | 940 | 939 | 938 | 937 | 936 | 935 | 934 | 933 | 932 | 931 | 930 | 929 | 928 | 927 | 926 | 925 | 924 | 923 | 922 | 921 | 920 | 919 | 918 | 917 | 916 | 915 | 914 | 913 | 912 | 911 | 910 | 909 | 908 | 907 | 906 | 905 | 904 | 903 | 902 | 901 | 900 | 899 | 898 | 897 | 896 | 895 | 894 | 893 | 892 | 891 | 890 | 889 | 888 | 887 | 886 | 885 | 884 | 883 | 882 | 881 | 880 | 879 | 878 | 877 | 876 | 875 | 874 | 873 | 872 | 871 | 870 | 869 | 868 | 867 | 866 | 865 | 864 | 863 | 862 | 861 | 860 | 859 | 858 | 857 | 856 | 855 | 854 | 853 | 852 | 851 | 850 | 849 | 848 | 847 | 846 | 845 | 844 | 843 | 842 | 841 | 840 | 839 | 838 | 837 | 836 | 835 | 834 | 833 | 832 | 831 | 830 | 829 | 828 | 827 | 826 | 825 | 824 | 823 | 822 | 821 | 820 | 819 | 818 | 817 | 816 | 815 | 814 | 813 | 812 | 811 | 810 | 809 | 808 | 807 | 806 | 805 | 804 | 803 | 802 | 801 | 800 | 799 | 798 | 797 | 796 | 795 | 794 | 793 | 792 | 791 | 790 | 789 | 788 | 787 | 786 | 785 | 784 | 783 | 782 | 781 | 780 | 779 | 778 | 777 | 776 | 775 | 774 | 773 | 772 | 771 | 770 | 769 | 768 | 767 | 766 | 765 | 764 | 763 | 762 | 761 | 760 | 759 | 758 | 757 | 756 | 755 | 754 | 753 | 752 | 751 | 750 | 749 | 748 | 747 | 746 | 745 | 744 | 743 | 742 | 741 | 740 | 739 | 738 | 737 | 736 | 735 | 734 | 733 | 732 | 731 | 730 | 729 | 728 | 727 | 726 | 725 | 724 | 723 | 722 | 721 | 720 | 719 | 718 | 717 | 716 | 715 | 714 | 713 | 712 | 711 | 710 | 709 | 708 | 707 | 706 | 705 | 704 | 703 | 702 | 701 | 700 | 699 | 698 | 697 | 696 | 695 | 694 | 693 | 692 | 691 | 690 | 689 | 688 | 687 | 686 | 685 | 684 | 683 | 682 | 681 | 680 | 679 | 678 | 677 | 676 | 675 | 674 | 673 | 672 | 671 | 670 | 669 | 668 | 667 | 666 | 665 | 664 | 663 | 662 | 661 | 660 | 659 | 658 | 657 | 656 | 655 | 654 | 653 | 652 | 651 | 650 | 649 | 648 | 647 | 646 | 645 | 644 | 643 | 642 | 641 | 640 | 639 | 638 | 637 | 636 | 635 | 634 | 633 | 632 | 631 | 630 | 629 | 628 | 627 | 626 | 625 | 624 | 623 | 622 | 621 | 620 | 619 | 618 | 617 | 616 | 615 | 614 | 613 | 612 | 611 | 610 | 609 | 608 | 607 | 606 | 605 | 604 | 603 | 602 | 601 | 600 | 599 | 598 | 597 | 596 | 595 | 594 | 593 | 592 | 591 | 590 | 589 | 588 | 587 | 586 | 585 | 584 | 583 | 582 | 581 | 580 | 579 | 578 | 577 | 576 | 575 | 574 | 573 | 572 | 571 | 570 | 569 | 568 | 567 | 566 | 565 | 564 | 563 | 562 | 561 | 560 | 559 | 558 | 557 | 556 | 555 | 554 | 553 | 552 | 551 | 550 | 549 | 548 | 547 | 546 | 545 | 544 | 543 | 542 | 541 | 540 | 539 | 538 | 537 | 536 | 535 | 534 | 533 | 532 | 531 | 530 | 529 | 528 | 527 | 526 | 525 | 524 | 523 | 522 | 521 | 520 | 519 | 518 | 517 | 516 | 515 | 514 | 513 | 512 | 511 | 510 | 509 | 508 | 507 | 506 | 505 | 504 | 503 | 502 | 501 | 500 | 499 | 498 | 497 | 496 | 495 | 494 | 493 | 492 | 491 | 490 | 489 | 488 | 487 | 486 | 485 | 484 | 483 | 482 | 481 | 480 | 479 | 478 | 477 | 476 | 475 | 474 | 473 | 472 | 471 | 470 | 469 | 468 | 467 | 466 | 465 | 464 | 463 | 462 | 461 | 460 | 459 | 458 | 457 | 456 | 455 | 454 | 453 | 452 | 451 | 450 | 449 | 448 | 447 | 446 | 445 | 444 | 443 | 442 | 441 | 440 | 439 | 438 | 437 | 436 | 435 | 434 | 433 | 432 | 431 | 430 | 429 | 428 | 427 | 426 | 425 | 424 | 423 | 422 | 421 | 420 | 419 | 418 | 417 | 416 | 415 | 414 | 413 | 412 | 411 | 410 | 409 | 408 | 407 | 406 | 405 | 404 | 403 | 402 | 401 | 400 | 399 | 398 | 397 | 396 | 395 | 394 | 393 | 392 | 391 | 390 | 389 | 388 | 387 | 386 | 385 | 384 | 383 | 382 | 381 | 380 | 379 | 378 | 377 | 376 | 375 | 374 | 373 | 372 | 371 | 370 | 369 | 368 | 367 | 366 | 365 | 364 | 363 | 362 | 361 | 360 | 359 | 358 | 357 | 356 | 355 | 354 | 353 | 352 | 351 | 350 | 349 | 348 | 347 | 346 | 345 | 344 | 343 | 342 | 341 | 340 | 339 | 338 | 337 | 336 | 335 | 334 | 333 | 332 | 331 | 330 | 329 | 328 | 327 | 326 | 325 | 324 | 323 | 322 | 321 | 320 | 319 | 318 | 317 | 316 | 315 | 314 | 313 | 312 | 311 | 310 | 309 | 308 | 307 | 306 | 305 | 304 | 303 | 302 | 301 | 300 | 299 | 298 | 297 | 296 | 295 | 294 | 293 | 292 | 291 | 290 | 289 | 288 | 287 | 286 | 285 | 284 | 283 | 282 | 281 | 280 | 279 | 278 | 277 | 276 | 275 | 274 | 273 | 272 | 271 | 270 | 269 | 268 | 267 | 266 | 265 | 264 | 263 | 262 | 261 | 260 | 259 | 258 | 257 | 256 | 255 | 254 | 253 | 252 | 251 | 250 | 249 | 248 | 247 | 246 | 245 | 244 | 243 | 242 | 241 | 240 | 239 | 238 | 237 | 236 | 235 | 234 | 233 | 232 | 231 | 230 | 229 | 228 | 227 | 226 | 225 | 224 | 223 | 222 | 221 | 220 | 219 | 218 | 217 | 216 | 215 | 214 | 213 | 212 | 211 | 210 | 209 | 208 | 207 | 206 | 205 | 204 | 203 | 202 | 201 | 200 | 199 | 198 | 197 | 196 | 195 | 194 | 193 | 192 | 191 | 190 | 189 | 188</ |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-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Deed Book 198
Page 103

Jones, Benjamin and Pauline
to - Deed - #595
Calvin Percy Allmond and Oretta Eley Allmond
State Tax (a) \$6.60

Verified and was paid
To the Treasurer of
this 17 day of July 1969
Total (P. 17, H. 1969, 1)

THIS DEED, made this 2nd day of July, 1969, by and
between BENJAMIN JONES and PAULINE JONES, his wife, of Isle of
Wight County, Virginia, parties of the first part, and CALVIN
PERCY ALLMOND and ORETHA ELEY ALLMOND, his wife, of Isle of Wight
County, Virginia, parties of the second part:

WITNESSETH: That for and in consideration of the sum of
Ten (\$10.00) Dollars, and other good, legal and valuable consider-
ations, receipt whereof is hereby acknowledged, the said parties of
the first part hereby grant and convey unto the said parties of the
second part, Calvin Percy Allmond and Oretta Eley Allmond, his wife,
as tenants by the entireties with right of survivorship as at common
law, in fee simple, with GENERAL WARRANTY, the following described
property, to-wit:

TT Latched #1
Hug Con J. Calhoun
P. Allmond
3-30-77
JMA

[illegible]

5000

beginning at an iron pin on the south side of V. 3. Route 10, or Church Street Extended, said iron pin being located 39 feet west of the northeast corner of the land of Ben Jones also known as Benjamin Jones; thence South 84 degrees 40 minutes East 39 feet along the south side of V. 3. Route 10 or Church Street Extended; thence South 6 degrees 40 minutes West 204 feet to an iron pin; thence North 84 degrees 40 minutes West 45 feet to an iron pin; thence North 8 degrees 30 minutes East 204 feet to the point of beginning. Plaintiff's reference to said point which is attached to this deed and made a part thereof, is hereby made.

This is a part of the said property conveyed to Benjamin Sons by Julia H. Gray, widow by deed dated November 26, 1941, and duly recorded in the Clerk's Office of the Circuit Court of said County, Virginia, in Book 119 at page 347.

The said parties of the first part covenant that they have the right to convey the said land to the said grantees; that they have done no act to encumber the said land; that the said grantees shall have quiet possession of the said land, free of all liens or encumbrances; and that they, the said parties of the first part, will execute such further assurances of the said land as may be required.

המחלקה לבריאות הציבור

Richard L. Jones (S24)

Br. Pauline Jones (Sister)

CONFIDENTIAL

STATE OF VERMONT
COUNTY OF SUFFOLK, ss: JOHN W. LAMONT, Justice of the Peace, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of said County.

I, E. C. Ferguson, Jr., a Notary Public in and for the city aforesaid, in the State of Virginia, do certify that Benjamin Jones and Pauline Jones, his wife, whose names are signed to the foregoing writing dated July 2, 1969, have acknowledged the same before me, in my City aforesaid.

Given under my hand this 7th day of July, 1969.

My commission expires November 24, 1972.

The undersigned Clerk of the District Court of the County of Washoe State of Nevada, this 25th day of July 1906, at Clark in said County, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same appears from the records of said Court.

[illegible]

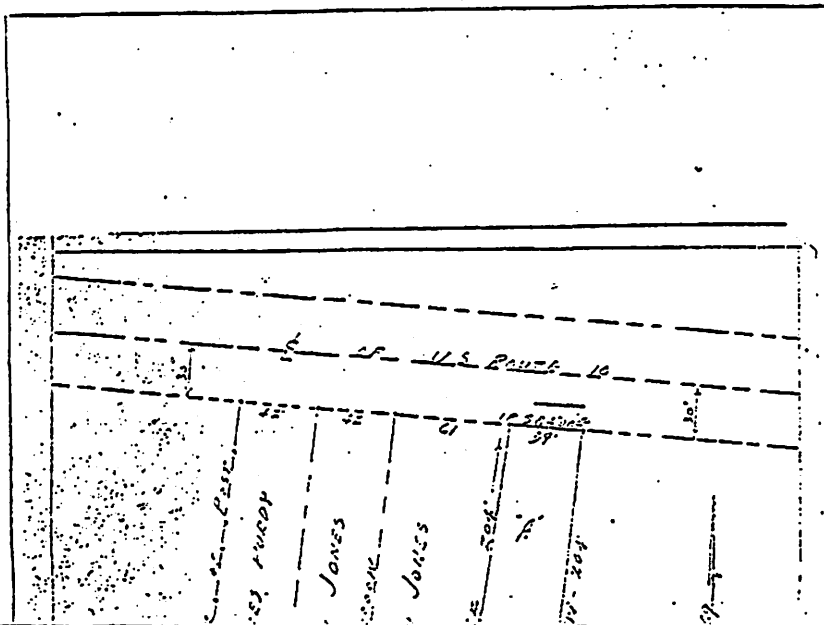
100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085 1086 1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1

2025

W. E. Little, Jr., Clerk

Wm. B. E. Smith, D.D.

100 100 100



Lot A THE PROPERTY OF
 BEN & PAULINE JONES
 BEING CONVEYED TO
 CALVIN P. ALMOND
 SMITHFIELD, VIRGINIA
 SCALE 1" = 50' JUNE 17, 1964
 ROY BRINKLEY C.L.S.

THE COUNTY OF THE CLYDE COURT OF THE COUNTY OF TALE OF
 100' x 100' 100' x 100' 100' x 100' 100' x 100'

A COPY.
 TESTED: W. E. LINDA, Jr. Clerk
 BY: [Signature] D.C.

11 Exhibit 5
Hug. Comm. v. Calvin Patton
83-30-77
H. J. McGr.

198 571

Benjamin Jones, et ux
TO: #778
F. M. Griffis, et al
No State Tax

Validated Mailed
8/10/69
Date of Signing
8/10/69
John L. ...

KNOW ALL MEN BY THESE PRESENTS: That we, BENJAMIN JONES and PAULINE JONES, husband and wife, respectively, hereby acknowledge that we have for a number of years used a portion of the property of F. M. Griffis and Perry Griffis situate on the Western side of South Church Street, in the Town of Smithfield, Isle of Wight County, Virginia, as a portion of the driveway from the said South Church Street into the property of the undersigned which adjoined the property of the said F. M. Griffis and Perry Griffis on the North thereof and which was used by us as a gasoline service station and formerly also for a store and ice dispensing station, such use of the portion of the property of the said F. M. Griffis and Perry Griffis by the undersigned and the tenants of and on our property and the customers of the businesses conducted on our property having been with the express permission and consent of the said F. M. Griffis and Perry Griffis, such permission and consent having been given and granted at our request.

Given under our hands and seals this the 7th., day of August, 1969.

Benjamin Jones (SEAL)
Pauline Jones (SEAL)

STATE OF VIRGINIA,
COUNTY OF ISLE OF WIGHT, to-wit:

I, James E. Toltz, a Notary Public in and for the County of Isle of Wight, State of Virginia, do hereby certify that Benjamin Jones and Pauline Jones, whose names are signed to the writing hereto annexed, bearing date on the 7th., day of August, 1969, have acknowledged the same before me in my County aforesaid.

Given under my hand this the 11th day of August, 1969.

James E. Toltz
Notary Public

My commission expires 11/10/73
VIRGINIA: Clerk's Office of the Circuit Court of the County of Isle of Wight, September 9, 1969, at 3:10 o'clock P.M., this affidavit was received and with the certificate annexed, admitted to record.
TESTE: Ruth E. Holland, CLERK. BY: William C. ..., D. C.
#####

A COPY.
TESTE: [Signature]