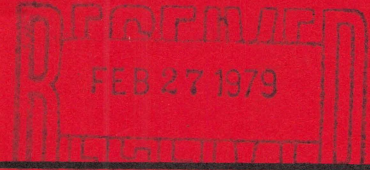


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CHECK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 781589

EXXON CORPORATION,

Appellant,

v.

M & Q HOLDING CORPORATION,

Appellee.

APPENDIX

WALKLEY E. JOHNSON, JR.
CRENSHAW, WARE & JOHNSON
1640 Virginia National Bank Building
Norfolk, Virginia 23510

Counsel for Appellant.

RICHARD G. BRYDGES
BRYDGES, HUDGINS, EGE, BURT
& O'BRIEN
1369 Laskin Road
Virginia Beach, Virginia 23451

Counsel for Appellee.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

CITY OF VIRGINIA BEACH,
a Municipal corporation,

Petitioner,

v.

LAW NO. _____

M & Q HOLDING CORPORATION,
a Virginia corporation

Serve: Myrtice W. Marrow,
Registered Agent
2212 N. Lakeside Drive
Virginia Beach, Virginia 23454

and

0.238 acre, more or less, land;
a temporary construction easement
and a permanent utility easement;
located in Lynnhaven Borough, in
the City of Virginia Beach,
Virginia;

Defendant.

PETITION FOR CONDEMNATION

To: The HONORABLE JUDGES of the COURT Aforesaid:

Your petitioner, City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia, files this petition in accordance with Section 2.01 of the Charter of the City of Virginia Beach, Title 15.1, Chapter 18, Article 7; Title 33.1, Chapter 1, Article 7, and Title 25, Chapter 1.1, of the Code of Virginia, 1950, as amended, and such general laws as are applicable

for the purpose of condemning the hereinafter described property, and represents as follows:

1. That Kellam, Pickrell and Lawler have been appointed the agents and attorneys for the City of Virginia Beach and have been duly authorized to institute these condemnation proceedings and to conduct the same in the name and on behalf of the City of Virginia Beach.

2. The real property/^{and easements} which ^{are} ~~is~~ to be taken in this proceeding lies in the City of Virginia Beach, Virginia, and ^{are} ~~is~~ described as follows:

The fee simple title of that certain strip of land containing 0.238 acre (10,354.50 sq. ft.), more or less, shown on that certain plat entitled "Plat Showing Property Owned by M & Q Holding Corp., Lynnhaven Borough, Virginia Beach, Virginia Designated as Parcel 105 Project No. U000-134-103, R/W 201", dated July 9, 1974, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 111, at page 46, a copy of which is attached hereto as Exhibit "A", said property being more particularly described as follows:

BEING as shown on Sheet 21 of the plans to be used for Great Neck Road, Project U000-134-103, R/W 201 and lying on the east (right) side of survey centerline and adjacent to the east side of present Great Neck Road from the lands of First Colonial Road (opposite) approximate Station 151+95.14 to the lands of Phillips Petroleum Company (opposite) approximate Station 153+99.57 and containing 0.238 acre (10,354.5 sq. ft.), more or less, land.

TOGETHER WITH the temporary right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work from Station 151+95 to Station 153+99 and containing 0.038 acre (1,650 sq. ft.), more or less, land. Said easement will terminate when the City grades the property adjacent to the land to be acquired in fee simple so that there no longer exists the necessity for maintenance, or until such time as all construction has terminated and the City accepts the work as being completed.

AND TOGETHER WITH a perpetual easement 15 feet in width immediately north of and adjacent to the land taken in fee simple, for the purpose of relocating existing utilities, which easement shall be subject to the terms and conditions contained in agreements of record under which such existing utilities were installed.

3. The plans above referred to are on file in the Real Estate Office, Department of Community Services, City Hall, Virginia Beach, Virginia, 23456. A copy of the plat of the property owned by the defendants which is affected by this proceeding is attached hereto marked "Exhibit A" and is prayed to be read as a part of this petition. The property taken in fee simple is ^{temporary construction} and the utility easement in YELLOW outlined in RED and the easement(s) in GREEN on the plat aforesaid and are more particularly described in Paragraph 2 above.

4. The property to be taken is necessary for the construction, reconstruction, alteration, maintenance and repair of a public street or highway in the City of Virginia Beach, Virginia, known as the Great Neck Road

Project , the project number being

U000-134-103, R/W201.

More specifically, this project is for the improvement of a section of said street or highway, and will include the right to construct, reconstruct, repair, improve, alter and maintain the same in accordance with the plans referred to above. The rights hereby acquired include the right to utilize the land in the future (1) for construction, reconstruction, alteration, improvement, repair and maintenance of said street or highway; (2) for all other street, highway and public municipal purposes, and (3) in accordance with all the rights and incidents normally acquired in the property as owner of the fee simple title thereof, with respect to the portion of said property acquired in fee simple.

5. Your petitioner has Made a bona fide but ineffectual effort to acquire said property by purchase from the owner(s) thereof, but has been unable to do so because the offer is unacceptable to the owner.

6. 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: (a) M & Q Holding Corporation, a Virginia corporation; (b) the Holder of the note secured by deed of trust dated November 1, 1967 recorded in Deed Book 1032, at page 726; (c) Exxon Corporation (formerly Humble Oil & Refining Company, by lease dated June 26, 1967, and recorded in Deed Book 1016, at page 85.

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 taken and damages, if any, which may accrue to the remaining property of the owner(s) beyond the enhancement in value, if any, to such other property by reason of the taking and use; that the Court direct that all other steps be taken 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 the petitioner may have such other, further and general relief as the nature of its case may require.

CITY OF VIRGINIA BEACH,

By 

KELLAM, PICKRELL AND LAWLER, p.q.
(James M. Pickrell)
1020 First & Merchants Bank Building
Norfolk, Virginia 23510

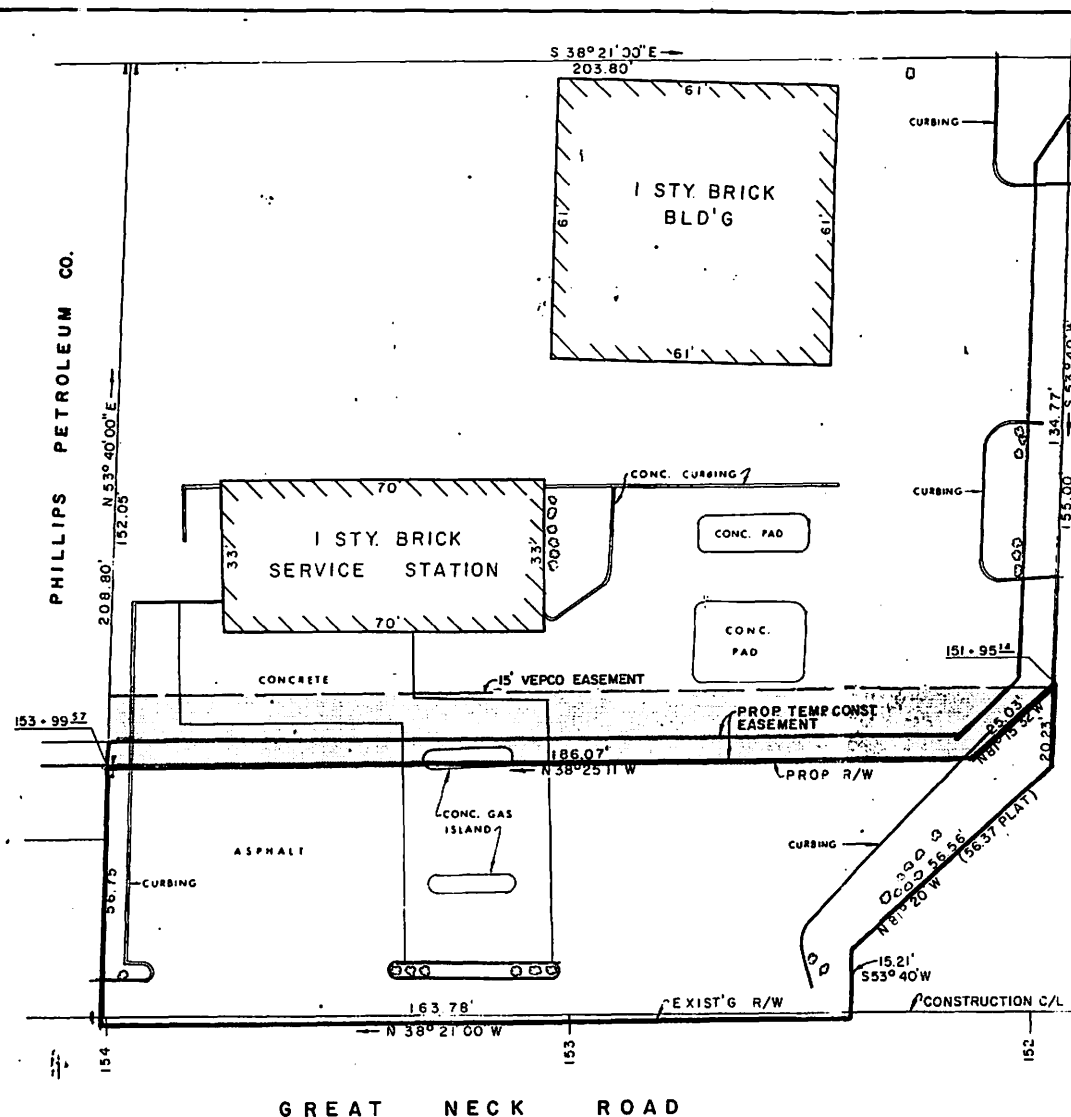
STATE OF VIRGINIA,
CITY OF NORFOLK, to-wit:

This day JAMES M. PICKRELL personally appeared before the undersigned, a Notary Public in and for the City of Norfolk, State of Virginia, in my City aforesaid, and being first duly sworn, said that he is attorney for the City of Virginia Beach in this proceeding and is duly authorized to execute the above petition, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

GIVEN under my hand this *18th* day of *December*, 19 *75*.
My commission expires: *December 2, 1976*.

Marthame Bedwin

NOTARY PUBLIC



TAKE AREA 0.238 AC OR 10,354.50 SQ FT
 RESIDUE 0.707 AC OR 30,792.61 SQ FT
 TOTAL AREA 0.945 AC OR 41,147.11 SQ FT
 TEMP CONST EASE AREA 0.038 AC OR 1,650.00 SQ FT

APPROVED: _____ DATE _____
 DIRECTOR OF COMMUNITY SERVICES

NOTE: THIS PLAT BASED ON V.D.H. PLANS.
 2. REFERENCE DB.1032 PG.724,
 DB.1016 PG.91

PLAT SHOWING PROPERTY OWNED BY
M&Q HOLDING CORP.
 LYNNHAVEN BOROUGH
 VIRGINIA BEACH, VIRGINIA
 DESIGNATED AS PARCEL 105 PROJECT NO. U000-134-103, R/W 201

SCALE 1" = 25'

JULY 9, 1974

BALDWIN AND GREGG LTD.
 ENGINEERS SURVEYORS-PLANNERS
 PORTSMOUTH, VIRGINIA



ROBERT S. WAHAB, JR.
PHILIP L. RUSSO
AUSTIN E. OWEN
HENRY L. LAM
GEORGE W. VAKOS
RESIDENT JUDGES
CIRCUIT COURT
CITY OF VIRGINIA BEACH
PRINCESS ANNE
VIRGINIA BEACH, VIRGINIA 23456

SECOND JUDICIAL CIRCUIT

N. WESCOTT JACOB
RESIDENT JUDGE
CIRCUIT COURTS
ACCOMACK COUNTY
NORTHAMPTON COUNTY
ONANCOCK, VIRGINIA 23417

August 7, 1978

Richard G. Brydges, Esquire
Post Office Box 625
Virginia Beach, Virginia 23451

Walkley E. Johnson, Jr., Esquire
1640 Virginia National Bank Building
One Commercial Place
Norfolk, Virginia 23510

Re: City of Virginia Beach
v.
M & Q Holding Corporation, et al
At Law No. 2564-C

Gentlemen:

I have now concluded my study of the evidence and the legal briefs presented subsequent to your arguments. It was stipulated by counsel that the sum of \$118,500.00 in the condemnation proceedings entitled, "City of Virginia Beach v. M & Q Holding Corporation", Court No. L-2564-C was accepted from the condemnor by both the Lessors and the Lessee in this action. However, no agreement has been reached as to a division of such proceeds.

I have concluded, and in my humble opinion do herewith inform you that such monies should be divided as follows:

To the Lessors (Land) \$59,389.00 plus removal cost
7,000.00 equals \$66,389.00

To the Lessee (Building) \$59,111.00 less removal
cost 7,000.00 equals
\$52,111.00

This division is contrary to the positions urged by both the Lessors and Lessee. The Lessors argue that upon abandonment of the station, then the Lessee gave up its right to the condemnation proceeds. Evidence of both sides indicates that the building is of no further use due to zoning and space

requirements (see Exhibit Exxon 2). The Lessors also argue that in addition to the cost of removal, that the building was outmoded; hence, the Lessee should receive nothing for same.

With this argument I cannot agree. The building does, or did prior to condemnation have a value, and the lessee's right to such value was incorporated within paragraphs (5) and (11) of the lease (Exhibit Exxon 1). The Lessee therefore has a right to such value, reduced by the cost of removal, a cost which will now have to be born by the Lessors.

The Lessee argues that the court is limited to considering only those rights existing on November 13, 1975, the "date of take" as is set forth in the condemnation proceeding. Further they say that the value of the building and the future rights of the lessee in and to the leased land, for the balance of the original term of the lease, plus those additional years permissible at lessee's option, entitle them to the sum of \$98,000.00, more or less.

The lease contained a clause (11) that allowed the Lessee, in the event such property, or a portion thereof were the subject of condemnation, to terminate such lease without further liability for rent.

The evidence presented showed that although the "date of take" was November 13, 1975; that actual construction of the road did not directly involve the subject property until June of 1976. The Lessee continued to occupy such property and conduct its business thereon until said latter date. At that time, pursuant to their contractual rights, the Lessee gave notice, withdrew from the said lease and premises; also terminating the payment of rent to the Lessors.

Stated in the alternative, the Lessee argues that exercising their option to terminate the lease cannot and should not be considered, since the rights of the parties was fixed as of the "date of take". Their view is that they should have the benefit of the leasehold, (presently converted into money by such condemnation) yet be freed of any adverse clause of the lease, such as the requirement to pay rent.

Such position I consider to be totally unfair and wrong. Hence, the division of funds as I have set forth in the second paragraph of this opinion letter, I submit to be proper.

Please present me with a decree in keeping with my ruling, noting such exceptions as either may desire, and incorporate this letter by reference in the language of such decree.

Richard G. Brydges, Esquire
Walkley E. Johnson, Jr., Esqui e
August 7, 1978
Page 3

Respectfully, Sirs, I am
Your Humble and Obedient
Servant, Sirs,


Henry L. Lam

p1

RECEIVED
AUG 8 1978
BROCKMAN, WARE & JOHNSON

THIS 22 DAY OF Aug 1978

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
CITY OF VIRGINIA BEACH,

A Copy Teste: John V. Tamm

By

Petitioner,

v.

AT LAW NO: 2564-C

M & Q HOLDING CORPORATION, et al,

Defendants.

ORDER

This cause came on to be heard upon the application of the defendants, M & Q Holding Corporation and Exxon Corporation, for a division of the condemnation award of \$118,500 heretofore deposited with the Clerk of Court and upon the evidence heard ore tenus before the Court on June 30, 1978, and upon the written briefs and oral argument of counsel.

And it appearing to the Court, as stated in its letter opinion of August 7, 1978, that the lessor, M & Q Holding Corporation, is entitled to a share amounting to \$66,389, representing the value of the land plus the cost of removing the improvements in the amount of \$7,000; that the lessee, Exxon Corporation, is entitled to a share amounting to \$52,111, representing the value of its improvements, less the removal costs of \$7,000; that the lessee, Exxon Corporation, is entitled to nothing for its leasehold estate in the land; that the lessor, M & Q Holding Corporation, has heretofore received a partial distribution of \$10,000 which should be deducted from its share of \$66,389; and that there remains on deposit with the Clerk, in an interest bearing account, the principal sum of \$108,500; it is so ADJUDGED

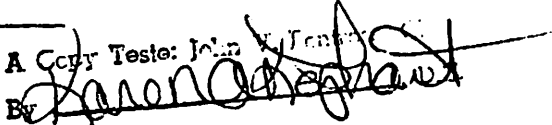
WHEREUPON it is ORDERED that M & Q Holding Corporation recover from the fund on deposit with the Clerk the sum of \$56,389, together with any interest accrued thereon, and that Exxon Corporation recover from said fund the sum of \$52,111, together with accrued interest; provided, however, that upon the posting of bond in the amount of \$ ⁵⁰⁰ in accordance with Section 8-477 of the Code of Virginia, the execution of this Order shall be suspended for a period of thirty (30) days from the date of entry to allow either party the opportunity to file a notice of appeal and if such notice should be filed, execution is hereby further suspended until such time as the petition for appeal, if timely filed, shall have been acted upon by the Supreme Court of Virginia, and

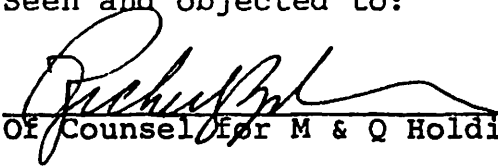
It is further ORDERED that the transcript of the evidence be, and it is hereby, made a part of the record.

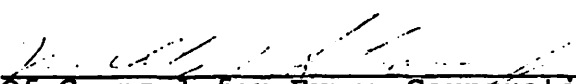
The defendants, M & Q Holding Corporation and Exxon Corporation, have duly noted their objections and exceptions to the foregoing.

Enter:

Seen and objected to:

A Copy Teste: John E. Jones
By 


Of Counsel for M & Q Holding Corporation


Of Counsel for Exxon Corporation

ASSIGNMENT OF ERROR

The Court erred in failing to award to Exxon Corporation the value of its leasehold estate in the land acquired by the City of Virginia Beach in these condemnation proceedings.

ASSIGNMENT OF CROSS-ERROR

The Court erred in ruling that M & Q Holding Corporation was entitled to share in the condemnation award only to the extent of \$66,389.00 and in allocating the remaining \$52,111.00 to Exxon Corp.



1 Q Does Exxon maintain a file on this
2 particular site?

3 A Yes, sir, they do.

4 Q The lease indicates that the property
5 was leased to Humble Oil and Refining Company back in
6 1968. Is Exxon the successor to Humble Oil and Refining
7 Company?

8 A Yes, sir, it is.

9 Q What was on this site at the time it was
10 leased by Exxon?

11 A According to my files, there was a small
12 frame store and dwelling on the property which we demolished.

13 Q What improvements, if any, did Exxon make
14 to the site?

15 A We constructed a three-bay, ranch-style
16 brick station on the property with two pump islands and
17 paving, shrubbery, curb and gutter and other improvements
18 necessary to operate a service station.

19 Q And at the time of the filing of the
20 condemnation certificate on November 13, 1975, were these
21 improvements still on the property?

22 A Yes, sir, they were.

23 Q Now, could you tell us for the four or
24 five-year period prior to the taking of the property what
25 had been the trend in gallonage pumped at this station?

1 A The station opened August 19th, 1968, and ✓
2 for the five-year period from 1971 to 1975 we had a
3 7 percent average increase in gallonage per year or a
4 total of 27.7 percent for the period.

5 We also had an 11.4 percent increase for
6 the first five months of 1975 over '74 which in June -- or
7 the month after that of '75 the highway was began.

8 Q And in June of '75, did the Highway work
9 begin as to this particular piece of property?

10 A In June of '75 the Highway Department began
11 their relocation and installation of utility lines and
12 sewer was installed in front of this location at that time.

13 Q Now, at the time of the taking on
14 November 13, 1975, what was the plan for the continued
15 use of this station?

16 A The plan was to continue it in operation
17 as is with no plans to do otherwise.

18 Q All right. Now, the gentleman who was
19 operating this station at the time of the taking, has he
20 relocated?

21 A Yes, sir. He leased a station across
22 Great Neck Road on the opposite corner and it was a
23 competitive station. He leased it from the property owner
24 and converted it to Exxon. ***

25 Q And is that a similar station to the

1 subject property?

2 A Similar. He added two additional bays
3 so it became a four-bay service station instead of a
4 three-bay, but he did that himself.

5 MR. JOHNSON: Thank you. Answer
6 Mr. Brydges, if you will, Mr. Sipler.

7
8 CROSS-EXAMINATION



10 BY MR. BRYDGES: ✓

11 Q Mr. Sipler, the building that you had
12 there, do you have a picture of it?

13 A Yes, sir, I do.

14 Q Can you tell us approximately when that
15 one was taken?

16 A No, sir. I don't know. It doesn't have
17 a date on it. It has the Exxon -- or the Esso oval so
18 it was prior to --

19 Q It was soon after it that you located
20 there, I would assume?

21 A I would think so, yes, sir.

22 Q Do you mind if we introduce this if you
23 can get it back when we conclude?

24 A That's fine.

25 MR. BRYDGES: We introduce that as

1 Marrow-M & Q Exhibit Number 1.

2
3 BY MR. BRYDGES:

4 Q Now, this gentleman, Mr. Frost, I believe
5 it was, who operated your facility there moved across
6 the way right across the street?

7 THE COURT: Excuse me. I just wanted to
8 make reference to it. I wanted to keep it
9 separate.

10 This will be Marrow Exhibit A.

11 (Received and marked in evidence by the
12 court as Marrow Exhibit A.)
13

14 BY MR. BRYDGES:

15 Q He moved his location directly across
16 the street to what would be the northwest corner?

17 A That's correct.

18 Q And he is selling Exxon products as he
19 had before?

20 A That's correct.

21 Q I would assume with essentially the same
22 clientele that Exxon, the station that is under discussion,
23 had before?

24 A I would think.

25 Q And the gallonage that Exxon is selling

1 would be similar to or better than they had at the station
2 across on Mr. Marrow's property?

3 A The construction had been almost
4 continuous since the condemnation. I'm sure that has
5 affected his business.

6 Q You don't know what he's pumping there
7 now, do you?

8 A Yes, sir, I do.

9 Q Can you tell us approximately what it is?

10 A Well, in 1977 he had 483,000 gallons.

11 Q Is that good?

12 A I'd say that's good, yes, sir.

13 Q And then since that time, you have opened
14 another more modern station up about what, two or three
15 blocks to the south?

16 A Yes, sir.

17 Q And can you describe that operation to
18 the court? I'm sure the court may be familiar with the
19 site, but you can describe it to us if you will.

20 A We are on the northeast corner of that
21 location also -- the new First Colonial and Great Neck.
22 We constructed at that location a self-service facility
23 with a canopy and very little in the way of building
24 improvements, a customer service area.

25 Q Is that the current trend in filling

1 station operations? Are you getting somewhat away from
2 the old ranch house type and into the self-service island?

3 A Mr. Brydges, we have built both.

4 Q Did you seem to feel that this particular
5 style would be more advantageous to this Great Neck Road
6 area than the type that you had on the Marrow property?

7 A We built it at a time where we were
8 studying and making -- experimenting with self-service.
9 We were building new stations, many of them self-service,
10 to test and to see whether this was the trend with the
11 motoring public.

12 Q You have indicated that you had planned
13 to remain at this site forty years, the two 20-year terms
14 of the lease? Am I correct in that?

15 A The second 20-year term was actually --
16 the lease is a 20-year lease with ten -- 20 one-year
17 renewals. So the total term is 20 years with the second
18 20 with one-year renewal option.

19 Q That's speculative on your part. Many
20 things could have transpired that would have dissuaded
21 you from that?

22 A My opinion is that we would have continued
23 it.

24 Q The property as it now stands, Mr. Sipler,
25 the taking of the two islands --

1 MR. BRYDGES: If I can refer for a
2 moment, your Honor, to Marrow Exhibit Number 1,
3 the photograph.

4
5 BY MR. BRYDGES:

6 Q If you will step down here just a moment,
7 Mr. Sipler, if you don't mind and point out to the court
8 what was taken off of the front of that station. It's
9 hard to see, I think.

10 A You can tell from the plat.

11 (Handed to the witness.)

12 MR. BRYDGES: Can you follow on there?

13 THE COURT: I see this second island
14 where you have -- this is the one -- isn't that
15 right in here? (Indicating)

16 THE WITNESS: It's right at the beginning
17 of that island.

18 THE COURT: Okay.

19 MR. BRYDGES: All right.

20
21 BY MR. BRYDGES:

22 Q Mr. Sipler, you can take your seat again,
23 if you will.

24 A (The witness complied.)

25 Q What effect, if any, did the taking of

1 that property -- and you're familiar with it, I'm sure,
2 from having the other station there. What effect, if any,
3 did it have on the remaining position of where your station
4 was, particularly with having in mind the elevation of
5 the property?

6 A In our opinion it made the station as it
7 was constructed inoperable.

8 Q Did they cut the road lower than your
9 station?

10 A Yes, sir.

11 Q Do you know what the elevation is now in
12 order to get up to where the station property was?

13 A I've seen it, Mr. Brydges. It appears to
14 be three feet or three and a half feet, something in that
15 range.

16 Q It has been indicated by Mr. Johnson that
17 the property is in better shape than it was or more
18 valuable to the Marrows than it was before. Do you have
19 anything personally to base that on?

20 A It's my own personal feeling that what
21 was remaining of our lease portion combined with the
22 remaining portion that the Marrows owned that we did not
23 lease, constitutes a site at least as valuable as we had.

24 Q Certainly too small for a filling station,
25 isn't it?

1 A No, sir, not the combination of the two
2 properties. It involves about three-quarters of an acre,
3 as I remember.

4 Q But that would necessitate, would it not,
5 taking some of the structures that they have leased?

6 A Yes, sir, it would.

7 Q Because the place where your station is
8 is certainly not big enough any longer for a station?

9 A No, sir.

10 Q In order to utilize it as a filling
11 station site, they would have to demolish the buildings
12 now that they have under rental agreements or operating
13 agreements?

14 A That would be my belief, yes, sir.

15 Q And the station that you had there that
16 still sits there, the shell of it, you didn't remove that?

17 A No, sir.

18 Q You had the right, I believe, under the
19 lease to take your existing building?

20 A Improvements, yes, sir.

21 Q And whatever you took I assume was just
22 the things that you could use in another location?

23 A That's correct. With the exception of
24 tanks which we do not use again.

25 Q And the little ranch house building. Do

1 you have any idea what value that is, if any?

2 A I'm not sure which building you mean.

3 Q The little one that you built there in
4 1967 or whenever you started.

5 A Our brick ranch style building?

6 Q What value does that have?

7 A We don't like to think that it's that
8 small. I have what it would cost to build at the time of
9 take.

10 Q What is it worth right now if somebody
11 went up there and bid on it? Really not worth taking
12 away, is it?

13 A That would be, I guess, up to someone
14 that would bid on it.

15 Q You didn't take it when you left?

16 A No, sir, we did not.

17 Q Don't want it?

18 A No, sir.

19 Q Do you know what it would cost to get it
20 out of there?

21 A Three thousand, something like that. ✓

22 MR. BRYDGES: All right. I think that's
23 all, Mr. Sipler. ***

24 MR. JOHNSON: That's all. Thank you,
25 Mr. Sipler.

1 value, there was \$2,500.00 worth of asphalt that was
2 contributing to the building behind the leased area.

3 Q All right. Now, the figures that you have
4 given us for the value of these improvements, tell us how,
5 if at all, they differ from the appraisal that you originally
6 made for the City of Virginia Beach in appraising this
7 property.

8 A The figures that I quoted, sir, were taken
9 originally from my original report that I submitted to the
10 Virginia Department of Highways through the City of Virginia
11 Beach as of 8/30/1976.

12 Q And at the time you made that appraisal,
13 you were not employed by Exxon?

14 A No, sir. ***

15 Q All right. Now, you mentioned the figure ✓
16 of \$35,142.00 as Exxon's leasehold estate in the land.
17 Would you tell the court how you arrived at that figure?

18 A Yes, sir. To determine the leasehold
19 interest, your Honor, I had to consider what normal market
20 rent would be comparable for a twenty-two thousand plus
21 site in the marketplace. In examining similar types of
22 ground leases it was my opinion that the property on the
23 market today would rent for \$775.00 a month as a ground
24 lease.

25 Now, with a base rent of \$450.00 per month, ✓

C. E. Sears - Direct

42

1 that gives me a difference in market rent compared to the
2 contract rent of \$325.00 per month.

3 Now, we have approximately a term of
4 169 months. Now, to make this clear, we had to consider
5 what would the normal investor require, what capitalization
6 rate, what rate of return would be required for this type
7 of investment and we considered the normal market at the
8 time of the taking to be ten percent per year.

9 Now, we take this income from a natural
10 tenant which is permanent a guaranteed income stream and
11 we considered that with \$325.00 per month of leasehold
12 interest and discounting that over the period of the
13 remaining original lease which was twelve years, would
14 indicate that the leasehold interest capitalized at ten
15 percent would be worth \$29,407.00, like an annuity, your
16 Honor.

17 Now, the lease also called for an option
18 of an additional twenty years which would begin at the end
19 of the 169-month term. Now, the reason I'm using months
20 is because that's the way this rent is paid.

21 The new rate by agreement in the original
22 document, according to my interpretation, would be a rent
23 to the owners of the property of \$550.00 per month. And
24 using the same \$775.00 a month market rent would indicate
25 a leasehold interest of \$225.00 per month.

1 Now, valuing this annuity and only ✓
2 starting with twelve years down the road would indicate
3 capitalizing the \$225.00 per month for the remaining option
4 period would be a value of \$5,735.00.

5 In other words, if I was going to buy
6 the value of the leasehold interest, I would only be willing
7 to pay \$35,142.00 to get the right to command that income
8 stream as of the date of the taking. That is composed of
9 the existing lease of the leasehold interest of \$29,407.00
10 and the value of the option for \$5,735.00. ✓

11 Q All right. ***
12 Mr. Sears, between the three
13 items, the value of the building, the value of the
14 improvements other than the building and the leasehold
15 estate and the land, you got a total figure of \$112,420.00?

16 A Yes, sir.

17 Q Now, what did you subtract from that
18 figure to reach your estimate of the damage to Exxon of
19 \$98,180.00?

20 A Well, I have a copy of the contract
21 totalling \$2,490.00 of which Exxon was paid to remove certain
22 items from this property such as underground tanks. I
23 have an item that I think the property owner is entitled
24 to since Exxon vacated the property, left a building that
25 had no contributing value to his estate, and the separation
of grade between the existing new Great Neck Road and the

1 the residue of the leased parcel as well as the non-leased
2 parcel?

3 A Yes, sir.

4 MR. JOHNSON: I think that's all,
5 Mr. Sears.

6
7 CROSS-EXAMINATION

8
9 BY MR. BRYDGES:

10 Q Just a few questions, Mr. Sears.

11 A Yes, sir.

12 Q You based most of your figures, I assume, ✓
13 on the assumption that the Exxon lease would run its
14 full course?

15 A Well, I assume that Exxon, if they wanted
16 to break that lease, would be responsible for the first
17 twenty years.

18 Q Well, the lease was \$450.00 a month and it
19 was for a term -- what was the first term? Do you recall
20 from your figures?

21 A Twenty years, I believe, sir.

22 Q And the basis of the figure that you gave
23 to the court that the value of the building is \$80,850.00
24 I assume was based on the overall projection that they would
25 remain there; is that correct?

1 A That was the replacement cost of that
2 building. The depreciated value of the building was
3 \$52,855.00.

4 Q And that's the building that cost
5 \$49,000.00 to build six or seven years ago?

6 A That's right, sir.

7 Q And this is the facility -- and I hand you
8 a photograph of the building as it looked after the some
9 sixty feet was taken off of the front of the Marrow
10 property?

11 (Shown to the witness for examination.)

12 A Yes, sir.

13 Q Is that a fair portrayal of what it looks
14 like right now?

15 A Yes, sir. It's very similar.

16 Q And you tell us that that's the building
17 that you estimate is worth fifty-some thousand dollars?

18 A Prior to the take, yes, sir.

19 Q What is the difference in it prior to the
20 taking and the way it exists right there?

21 A Well, it was a functional -- it had the
22 utility to the land prior to the take. It was a going
23 service station, still operating even after the acquisition
24 was made.

25 Q But that little piece of building there

1 isn't worth anything, is it?

2 A No, sir, it isn't worth a thing. It's
3 going to cost money to remove it from the site.

4 Q You estimated conservatively, probably,
5 it will be \$11,750.00 to get it out of there and grade
6 the land so it's used for anything?

7 A I can't say if it's conservative or not.
8 I have a contract price for that.

9 Q But anywhere within four or five thousand
10 dollars of that would probably be fair, wouldn't it?

11 A Fifteen thousand wouldn't be too high. ✓

12 MR. JOHNSON: *** He has a contract price.

13 You generally take the lowest contract.

14 THE COURT: You either make an objection
15 or you don't.

16 MR. JOHNSON: I object.

17 THE COURT: Overruled.

18
19 BY MR. BRYDGES;

20 Q A \$15,000.00 price wouldn't be excessive
21 to do that, would it?

22 A I would think it would be.

23 Q Did you only get the one contract price?

24 A That's right, sir.

25 Q You're telling -- do you know anything ✓

1 about the other operation that -- there are two Exxon
2 stations right there in the area now, are there not, one
3 across the street pumping Exxon products?

4 A Yes, sir.

5 Q There is one about a block or two down
6 the road, brand new, pumping Exxon products?

7 A Yes, sir.

8 Q And this station, as you say, that the
9 Exhibit that I have just given to his Honor is worthless?

10 A That's right, sir.

11 Q And yet you tell us after taking
12 approximately a hundred and eighty feet by fifty feet of
13 Mr. and Mrs. Marrow's land that they ought to have a better
14 piece of property than they had before and \$98,000.00 of
15 this money ought to go to Exxon? Is that what you are
16 saying to us?

17 A I'm quoting to you from my original
18 report. The only difference in my report as to what I
19 made originally would be I did not even analyze the
20 leasehold interest. I was interested in the total
21 acquisition and not interested in the leasehold. That was
22 between the parties and I had nothing to do with that.

23 I would say this, that the residue
24 property has been enhanced in value as an overall property
25 after the take compared to what it was prior to the take;

1 and many instances, Mr. Brydges -- and I have presented
2 properties to the City of Virginia Beach for service
3 station use and I have had to dedicate fifty feet off
4 front and received nothing for it in order to get a usable
5 site to develop and I'm saying to you, sir, that the
6 property owner now has the leasehold interest returned to
7 him instead of having to wait for the forty-year period
8 and, therefore, he is entitled to the top dollar.

9 Q But he can't lease it for anything. Didn't
10 your studies indicate that it was restrictive for a filling
11 station?

12 A No, sir. I'm talking about the entire
13 residue property.

14 Q Let me show you a photograph and I think
15 the court may already have one. It shows pretty much the
16 whole corner there of what they had before the take.

17 (Shown to the witness for examination.)

18 A Yes, sir.

19 Q And it's a fair statement to say, is it
20 not --

21 MR. BRYDGES: I'd like that marked as
22 a defendant's exhibit, please.

23 THE COURT: Give me a minute.

24 The other photograph that you presented
25 me I marked Marrow Exhibit B. This is Marrow

1 Exhibit C.

2 (Received and marked in evidence by the
3 court as Marrow Exhibits B and C, respectively.)

4 MR. JOHNSON: I haven't seen that, your
5 Honor.

6 (Handed to counsel for examination.)

7 THE COURT: Do you have any objection?

8 MR. JOHNSON: No, sir.

9 MR. BRYDGES: Are you ready, your Honor?

10 THE COURT: Yes, sir.

11
12 BY MR. BRYDGES:

13 Q What I'm really getting at, I suppose, is
14 we've got a landowner here who has had the city take
15 180 feet -- I think that's about the length that they took
16 off the front of the property?

17 A According to my records, the taking was
18 163.78 feet.

19 Q Length. How deep?

20 A 56.75.

21 Q So a hundred and sixty or seventy feet
22 by 67.5, or whatever it is, is property that the Marrows
23 no longer have?

24 A That's right, sir.

25 Q And they no longer have a viable filling

1 station site unless they go ahead and destroy some of their
2 other properties?

3 A That's correct.

4 Q And you say that when a landowner takes
5 and leases a hundred and sixty, seventy feet on the front
6 and sixty-some feet deep with a filling station there that
7 doesn't have any value and that Exxon doesn't even want
8 to take with them that Exxon ought to get \$98,000.00 and
9 the other people have got a better piece of property, is
10 that --

11 A I'm giving you my opinion of the leasehold
12 interest, \$98,180.00, yes, sir.

13 MR. BRYDGES: Thank you, Mr. Sears.

14 THE WITNESS: All right, sir.

15 MR. JOHNSON: Just one second, if you
16 will.

17 MR. BRYDGES: One other question, Mr. Sears.

18
19 BY MR. BRYDGES:

20 Q The Firestone sale that you are talking
21 about --

22 A Yes, sir.

23 Q -- I assume was to tell us sometimes
24 people can sell these buildings and they're worth a great
25 deal of money?

1 A Yes, sir.

2 Q But this one is not worth anything?

3 A No, sir. This building has no contributing
4 value to the residue in my opinion. ✓



6 REDIRECT EXAMINATION

7
8 BY MR. JOHNSON:

9 Q Mr. Sears, in view of Mr. Brydges'
10 cross-examination, would you give us your appraisal of the
11 actual land taken at the time of the take as of November
12 13, 1975?

13 A Yes, sir. The value of the take -- total
14 value of the land taken, we took 10,355 square feet and then
15 we took a temporary construction easement which is vacated
16 after construction 1,650 square feet which I considered
17 to be a total value of land at the time of \$27,126.00.

18 Q That was the figures you used when you were
19 employed by the City of Virginia Beach?

20 A By the City of Virginia Beach. I quoted
21 from the report, sir.

22 MR. JOHNSON: Thank you, Mr. Sears.

23 THE WITNESS: All right, sir.
24
25

1 square foot and my valuation was based on \$4.25 per square
2 foot on the site.

3 I achieved a market value of the site of
4 \$97,000.00 and based my fair market rent on my economic
5 rent at \$9,700.00 a year based on a ten percent return and
6 this was the basis of my valuation of the leasehold interest,
7 the tenant's interest in the property. ***

8 Q So you found your economic rent -- ✓

9 A Yes.

10 Q -- from the marketplace?

11 A Yes, sir.

12 Q Then what did you do?

13 A The lease terms must be considered and
14 the contract rent is set for the 20-year term on an annual
15 basis of \$5,400.00. The remaining term of twelve years of
16 the lease and also the option periods -- the remaining
17 twenty years of options were considered. The tenant has a
18 rental advantage. In other words, the economic rent being
19 greater than the contract rent indicates an advantage to
20 a tenant, and over the term it's a \$4,300.00 per year rental
21 advantage in utilizing a ten percent rate and tables --
22 annual tables -- a factor has been applied for this
23 12-year factor and it indicates a value of \$29,299.00 as
24 the leasehold value for the twelve years and the next step
25 would be to consider the twenty years of options, and the ✓

lease did indicate a step-up amount so the rental differential narrowed the rental advantage is \$100.00 a year for the twenty years of option, and this amount comes to \$8,409.00. And the total of these two, \$29,299.00 and \$8,409.00 indicates a total of \$37,708.00 as the total lessee's interest in the land.

Q All right. So your total estimate of the damage to the lessee would be combined -- combining this figure of the leasehold estate in the land and the damage to the improvements; is that correct?

A Yes, sir. The taking of the improvements and the damage. The improvements totals \$53,726.00, the land \$37,708.00 and the total of \$91,434.00 as a total lessee's interest in the site.

MR. BRYDGES: ~~Ninety-one~~ what?

THE WITNESS: \$91,434.00.

MR. JOHNSON: Thank you. Answer

Mr. Brydges, if you will.

CROSS-EXAMINATION

BY MR. BRYDGES:

Q Mr. Economidis, your assessment of the value -- net value of the improvements as of the take was \$53,726.00?

ROBERT F. RIPLEY, called as a witness on behalf of M & Q Holding Corporation, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYDGES:

Q Mr. Ripley, may we have your full name for the record, please?

A Robert F. Ripley.

Q And what is your occupation, sir?

A Real estate broker and appraiser.

Q And for how many years, Mr. Ripley?

A Thirty-four years in the real estate business and about twenty-two years appraising and testifying.

Q And where is your business located?

A At 1515 North Military Highway.

Q Can you give us some of the clients for whom you have done appraisal work in this area?

A Most of the attorneys and trust department of the banks, service station -- oil companies when they are buying service stations.

Q Particularly along that line, what experience have you had in that kind of work?

A Well, I've been connected with oil business

all my life, both in tankers as well as in buying and selling real estate and service stations to oil companies.

Q Excuse me?

A Just recently I've done eleven stations in a case with Crown Oil for the operators in the various cities: Richmond, Norfolk, Newport News, Williamsburg and other places.

Q Are you familiar, then, with the retail sales of petroleum products in this particular area?

A Yes, sir.

Q And specifically in the area of Great Neck Road and First Colonial Road?

A Well, no more there than any other place.

Q Generally throughout the area?

A (Nodding head affirmatively.)

MR. BRYDGES: We offer Mr. Ripley as an expert in the field, your Honor.

MR. JOHNSON: No objection, your Honor.

THE COURT: All right. Let the record show that Mr. Ripley is qualified as an expert in the field of real estate appraisal.

BY MR. BRYDGES:

Q Did you have occasion to examine the premises under consideration here today?

A Yes, sir.

Q And you did so at the request of Mr. and Mrs. Marrow and M & Q Holding Company and myself?

A Yes, sir.

Q Can you tell us if you made a study of those particular properties?

A Yes, sir. I've been into the properties and looked at them, looked at the -- what the road had done to the property and what was left.

Q Can you give us your best judgment of what damage has been done to the property belonging to the Marrow family here?

A Well, the Exxon station that was there has been completely destroyed so far as operating a station and getting any income from it.

Q Is the remaining site that this filling station occupied sufficient size for a filling station?

A The remaining site is also encumbered by two other buildings -- or one building. That building is a restaurant and they have other things there. So the site itself would have -- you would have to maneuver around it -- those buildings in order to make this site another good service station site.

Q Can you tell us approximately the amount of footage that was taken off of that corner?

A They took 10,354.50 square feet from the corner and they had a construction easement of 1650 square feet and left the residue of a total of 30,792 square feet.

Exxon occupied approximately 23,000 square feet of the total of the corner. The total corner was 41,147 square feet. They occupied fifty-six percent of it.

Q Is there any value in your judgment, Mr. Ripley, to the remaining structure there?

A No.

(Photograph shown to opposing counsel for examination.)

BY MR. BRYDGES:

Q I hand you a series of three photographs. The first one at the top of the double photograph page showing the building that is -- the store, I believe, occupies and the bottom one also?

A Right.

Q And the third photograph showing -- giving some picture as to the amount of elevation that the former filling station now has since the take?

A Yes, that's correct.

Q Is that the accurate portrayal of what exists there at the present time?

A Yes.

THE COURT: Did you show them to Mr. Johnson?

MR. JOHNSON: Yes, your Honor. I've seen them.

MR. BRYDGES: You can mark those, your Honor, any way you want to.

THE COURT: All right. The three pictures that counsel just made reference to will be marked as one exhibit, Marrow Exhibit D.

(Received and marked in evidence by the court as Marrow Exhibit D.)

BY MR. BRYDGES:

Q Mr. Ripley, after having made an evaluation and a study of that property, have you been able to reach any conclusion as to the value of the leasehold interest there?

A The leasehold interest. Well, there is something to this before we get into that.

Q Well, that's what I want you --

A The Exxon quit and left and so they didn't choose to continue to keep their twenty-year lease, therefore, they left it at the end of nine years.

MR. JOHNSON: I have to object to this kind of hearsay testimony. The testimony has

been that they didn't leave until after the
take, that the service station was in
operation up through the time of the take for
another year. Now, what conclusions of law
he's drawing, I don't know, but I certainly
have to object.

MR. BRYDGES: I think he should be allowed
to explain that.

THE WITNESS: I'm not a lawyer.

THE COURT: I realize that. I guess he's
taking a factual situation at this time. Exxon
is not there on the corner. We know that much,
so I guess he has a right to explain why.

MR. JOHNSON: All right, sir.

THE COURT: You take a position that he
got pushed off.

You may take the position that he
left.

BY MR. BRYDGES:

Q Go head, Mr. Ripley.

A My understanding was that they left this
site.

Q All right, sir.

A Broke the lease.

Q And based upon that, tell us what your findings are.

A And based on that -- I calculated based on their leaving, they have their nine years and they have eleven years more to go with income to the owner which the owner was denied.

Q And that income being \$450.00 a month?

A That income was less than that. The income was \$417.50 a month because Exxon paid their proportionate share of the taxes.

Q That would be the difference in the two figures. And did you, assuming that they vacated the premises when they had more time to run on the lease, calculate the value of the leasehold and tell us how you went about doing that.

MR. JOHNSON: I have to object to this testimony because there has been absolutely no evidence on the record that we left until after the date of the take. Now, he said we left, but there has been absolutely no probative evidence that we did leave until after the date of take. If his appraisal is based on a presumption --

THE COURT: Let me proffer this situation to you. You have given a statement of the value

1 of the leasehold to your people.

2 MR. JOHNSON: Yes, sir.

3 THE COURT: And if that's predicated on
4 their exercising their lease option through a
5 term --

6 MR. JOHNSON: Well, after twenty years
7 they had --

8 THE COURT: Well, regardless of whether
9 twenty, thirty, forty one or what, you have
10 still given a value of the leasehold to your
11 lessee based upon its exercising its lease
12 agreement to the end of it for the twenty years,
13 correct?

14 MR. JOHNSON: Yes.

15 THE COURT: That takes one year additional.
16 I take it he's going to take the position that
17 when you left it you abandoned it, you gave up
18 any interest you had in it, so you have nothing
19 left. Now, I imagine that's what he's going to
20 come up with, but it seems to me that that's a
21 plausible view of the thing.

22 MR. JOHNSON: If there is any evidence of
23 that, your Honor.

24 THE COURT: I think the evidence is
25 de facto.

1 MR. BRYDGES: The evidence is clear, it
2 seems to me, your Honor.

3 THE COURT: The gentleman that first
4 testified, Mr. Sipler, said that Esso is no
5 longer there.

6 MR. JOHNSON: Yes, sir, after the date of
7 take because they were forced off by reason of
8 the take.

9 THE COURT: You're saying you're entitled
10 to something throughout the end because of what?
11 Because you were forced out? That's your view of
12 it. The other person did take the view, well, I
13 had the right to the income for the rest of that
14 time and I lost it. Why? Because you left. Now,
15 isn't that one of the issues for the court to
16 decide who's been hurt the most and to what
17 extent?

18 MR. JOHNSON: The issue before the court
19 is the appraisal of the tenant's interest in
20 the improvements and the leasehold estate in the
21 land.

22 THE COURT: Mr. Johnson, let me
23 respectfully suggest to you, this is what I like
24 so much about appraisers, how they approach each
25 problem so totally different. It seems to me it's

1 on which side of the bed you're on how you look
2 at things.

3 The only question at this point is does
4 he have a basis for answering the question which
5 Mr. Brydges has propounded to him. The de facto
6 situation is that you people, Exxon, have gone.
7 Now, the lease -- and I'll read it. Let's see
8 what section it was.

9 "If the demised premises or any part thereof
10 shall be taken by or pursuant to governmental
11 authority or through exercise of the right of
12 eminent domain, or if a part only of said premises
13 is taken and the balance of said premises in the
14 opinion of Lessee is not suitable for the operation
15 of a drive-in gasoline service station, this lease,
16 at the option of Lessee, shall terminate without
17 further liability on the part of Lessee, or the
18 rent hereunder shall be reduced in proportion to
19 the reduction in the area of the premises" --

20 MR. BRYDGES: That's my point. He had a
21 choice.

22 THE COURT: I haven't finished.

23 -- "but nothing herein shall be deemed a
24 waiver of the sole right of Lessee to any award for
25 damages to it or to its leasehold interest caused

1 by such taking, whether made separately or as part
2 of general award."

3 So they had the option to remain if they
4 wanted to struggle it out under those conditions or
5 they had the option to leave. Now, as I said,
6 getting back to de facto, it's obvious they have gone.

7 MR. JOHNSON: Your Honor --

8 THE COURT: Now, the issue is who suffers
9 most by a result of their leaving, the landlord
10 or the leasehold people?

11 MR. BRYDGES: That's my point exactly,
12 because --

13 THE COURT: He's objected to it. Let me
14 explain it to him. I recognize why he objects.
15 I know why you are trying to show it.

16 MR. BRYDGES: My point being, your Honor,
17 that according to the Exxon testimony this is a
18 super corner with plenty of room to build an
19 Exxon station if they part with their other store;
20 and if it's that super, they could have negotiated
21 and not opted to leave.

22 THE COURT: We haven't quite gotten down
23 that road. What I'm stating is not what the
24 evidence will result in showing, is whether it's
25 admissible; and over Mr. Johnson's objection, I've

1 admitted it.

2 MR. JOHNSON: Note my exception.

3 THE COURT: Mine goes to the admissibility
4 and not the weight of the value.

5 MR. JOHNSON: On the date of taking is
6 the date at which value should be determined.

7
8 BY MR. BRYDGES:

9 Q Do you remember where we left off here?

10 A I was in the process of going through the --

11 Q All right.

12 A -- income to the owner.

13 Q If you would do that for me, I'd appreciate
14 it, Mr. Ripley.

15 THE COURT: I do want to raise one further
16 note there. Although the date of taking was in
17 1975, there is evidence that for at least one
18 year after this station was in operation without
19 any physical damage being done by reason of the
20 condemnation. In other words, the proceeding --
21 I think I'm correct -- it's almost a year
22 thereafter before some roadwork was done in front
23 of the station. I don't want to come to any
24 conclusion of the value of the date of take
25 because you-all stayed there for another year.

1 MR. JOHNSON: I don't think it was a year.

2 A period of time.

3 THE COURT: A period of time in which they
4 weren't disturbed in the use of the premises.

5 MR. JOHNSON: Not physically.

6
7 BY MR. BRYDGES:

8 Q Go ahead, Mr. Ripley.

9 A The owner had a lease with Esso or Exxon
10 that called for \$450.00 a month and they were to pay the
11 proportionate share of taxes. Exxon occupied fifty-six
12 percent of the property and, therefore, their tax was
13 \$32.41 a month. So we subtract the tax that they would
14 have gotten from the fifty-four hundred dollars with the
15 net residue to the lessor of \$5,011.08. It was a
16 twenty-year lease. I can't anticipate that it was going to
17 be renewed because I don't know what's going to happen
18 twenty years down the road. The date it was canceled was
19 1976, according to the information I received and I think
20 I received this information from Mr. Sipler.

21 The date it began was in 1967, so that's
22 nine years. The term of the lease unused was eleven years.
23 The owner's cash flow of \$5,011.08 at nine percent at a
24 present value of \$34,101.36. The present worth of the land --
25 his portion, \$92,168.00, and I gave him a five percent

1 interest on inflation for eleven years and that -- using the
2 tables made that value -- made that property worth eleven
3 years down the road \$157,638.53. The reversionary factor
4 used -- the reversionary factor of that \$157,000.00, its
5 present worth was \$61,090.13. Add those two together and
6 the total value of the lessor's interest in the land
7 occupied by Exxon under the lease was \$95,191.49.

8 The estimated value of the land occupied
9 by Exxon -- and the building was certainly not any good
10 at the time -- was \$92,168.00. And deducting that from the
11 lessor's interest, Exxon is entitled to \$3,023.49.

12 Q That is your best estimate based upon the
13 formula that you have just recited as to the entire
14 leasehold interest of Exxon?

15 A Now, that's based on the lease itself
16 and Exxon had a right if they thought they had a better
17 leasehold interest to have salvaged that lease and gone
18 into the market and see if they could better it, but they
19 didn't choose to do that.

20 Q So their interest in this entire
21 \$118,500.00, according to your best judgment, is \$3,023.49?

22 A That's right.

23 Q Now, can you tell us something, Mr. Ripley,
24 about the new type of petroleum operations or filling
25 station operations in this area, if you're familiar with

1 that?

2 A New type of petroleum operations in the
3 area are all self-service with very few exceptions, and
4 those that are not self-service are trying to get that way
5 because -- and you go to any station almost anywhere you
6 will find a self-service island and a full-service station.
7 Station bays are going out of style. It's a pure
8 production thing.

9 I've just done eleven stations for Crown
10 Oil and they increased their gallonage by some triple,
11 some quadruple by just using that type of station.

12 I don't know what Exxon is doing at the
13 corner of New Great Neck Road and Colonial Road and the
14 new Colonial Road, but I would estimate based on what I see
15 riding up there that they're doing a considerable amount
16 more business there than they did at this location. This
17 location and with this type of station on it had a built-in
18 obsolescence as brought on by the economics of the market.

19 Q You tell us, then, Mr. Ripley, that the
20 particular station in question that was -- that the Exxon
21 Company vacated was obsolete for all intents and purposes
22 anyhow?

23 A I think they were glad to get rid of it.

24 Q And to open the new operation and modern
25 basis on First Colonial and Great Neck?

1 A Right.

2 Q Do you have a summary of the values because
3 of the taking that would make this a little simpler for
4 perhaps all of us to understand?

5 A The lessor's interest in the station at
6 \$95,191.49, the value of the take at \$4.00 a square foot is
7 \$41,418.00. The value of the construction easement I will
8 estimate to be \$1,254.00. The value of the utility
9 easement at \$11,820.00. A total of \$54,492.00. Damage to
10 the site occupied by Exxon is \$40,699.49, a total of
11 \$95,191.00. Damage to the remainder of the site \$36,090.00.
12 Total due the owners of \$131,281.00 less the leasehold
13 interest of \$3,023.00, net to the owner \$128,258.00.

14 Q I hand you a page of statements of figures
15 that you have just quoted and ask you if that's the way
16 you have arrived at that.

17 A Yes, sir.

18 MR. JOHNSON: I'd like to see that.

19 (Shown to opposing counsel for examination.)

20 MR. JOHNSON: Your Honor, I would object
21 to the statement that shows calculations going
22 into evidence.

23 MR. BRYDGES: Isn't that what we are
24 dealing with?

25 THE COURT: Let me suggest, Mr. Johnson,

1 I felt there was nothing unusual for appraisers
2 to testify and if he wished to do so to put in
3 as an exhibit their appraisal booklet or pamphlet
4 or whatever the case may be.

5 MR. JOHNSON: I've never known it to be
6 admissible, your Honor. I would very strenuously
7 object to it. We'd be glad to have this entire
8 transcript transcribed for the court.

9 THE COURT: Have you ever given your report
10 as an exhibit, Mr. Sears?

11 MR. SEARS: Not in writing, your Honor.

12 THE COURT: Mr. Economidis?

13 MR. ECONOMIDIS: No, sir.

14 THE COURT: Mr. Ripley?

15 MR. RIPLEY: I've had them taken away from
16 me.

17 THE COURT: I'll take the two of the three
18 and limit it to the testimony.

19 In some cases I've had it that nobody has
20 objected to it.

21 MR. JOHNSON: I've known them to come in
22 for rebuttal to refute the witness's testimony,
23 but only for that.

24 THE COURT: Like in the instance where he
25 may have testified to one thing being different

1 from what his own appraisal sheet was?

2 MR. JOHNSON: Yes, sir.

3
4 BY MR. BRYDGES:

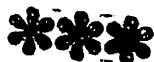
5 Q Mr. Ripley, about the remaining portion
6 of the land that Mr. and Mrs. Marrow are utilizing, that
7 is the store area?

8 A Well, the store area -- it's still there
9 in the same tract, they just took some off the front.

10 Q Is there any advantage -- it's been
11 testified here that the property is more valuable now than
12 it was before it was taken by the city. Do you have any
13 comments to make on that or what is your judgment about
14 that, Mr. Ripley?

15 A Well, if you take the stores off of the
16 property and leave a vacant piece of land and grade it down
17 to the level of the road, it would become a valuable corner,
18 but you can't afford to take the stores off the property
19 because they're encumbered by mortgages and you just can't
20 get rid of them.

21 MR. BRYDGES: Answer Mr. Johnson, if you
22 will. ✓



A -- four hundred and eighteen dollars.

Q What does that work out per square foot?

A Four dollars.

Q How much square footage was there in the leased site -- the entire leased site?

A Fifty-six percent of the total or 23,042 square feet.

Q In round figures let's use 23,000 square feet. So the value of that times \$4.00 would be what, \$92,000.00?

A \$92,168.00.

Q What is a fair return on a lease of bare land?

A I didn't get into the economic rents. I only did the -- because the lease had been canceled. And the reason -- that was the only reason I didn't get into economic rents. If the lease had been a going lease and had been on the station and the station had not been closed and Exxon had not left it, I would have done an entirely different approach to it, but they were gone and I was interested in what the owner, himself, was entitled to.

Q Your entire appraisal is based on the presumption that Exxon had just abandoned the site?

A They had abandoned the site. When I looked at the property, they were gone.

Q I don't doubt that, Mr. Ripley. Let's get into this, now. What is a fair return on a lease of land such at this, ten percent? Is that generally accepted?

A About ten percent, yes.

Q That would make economic rent on this parcel by your testimony about \$9,200.00 a year?

A I'm not prepared to answer your question. I will take time, if you want me to, and recess the court and figure out what you want to know.

Q I don't think it's necessary to recess, Mr. Ripley. You've said that the value of the entire site was \$92,000.00, that ten percent is a fair return for leased property and I'm asking you --

A You're trying to make me make a calculation on the stand that I don't have before --

Q It's a simple calculation.

A I'm not going -- it might be simple to you.

Q It works out, to help you along, to \$9,200.00 a year, does it not, ten percent rate of return on \$92,000.00?

A Yeah, if you're going into that, sure.

Q That would represent, then, the market rent under your testimony?

A Ten percent is a reasonable return for land.

Q All right. So this was an advantageous

relating to things generally, so I'll allow the question.

Now, repeat your question because I missed your question.

MR. JOHNSON: The last question I'll withdraw. I'll pursue another line.

THE COURT: After making that ruling on your behalf?

BY MR. JOHNSON:

Q Mr. Ripley, you say that your information as to Exxon leaving the property came from Mr. Sipler?

A Yes, I talked with him.

Q And did it come from any other source?

A No, other than the owners said that they left.

Q So the basis of your appraisal is that Exxon abandoned the property after the date of the take?

A My basis of my appraisal is that they left the property, yes. And I've calculated what the owner is entitled to receive today, the present value of income stream that he has been denied.

Q All right. Now, let's talk about that income stream. You have an income of \$5,400.00 a year; is that correct?



A Yes.

Q Gross income. Now, if you convert that under a capitalization approach to value at ten percent, you would get the value of the total parcel of \$54,000.00; is that correct?

A Say that again.

Q Well, you've done an income approach on many properties, have you not, Mr. Ripley?

A I didn't understand your question.

Q Answer this one then. Have you not done the income approach on quite a number of properties in your appraisal experience?

A Yes.

Q And the way you perform an income approach to value is you capitalize the annual rent; is that correct?

A You can, yes.

Q And in this case would not ten percent be a fair capitalization rate? I think you've already answered that question earlier.

A Not on income -- the income approach. I gave a net cash flow of nine percent with income stream.

Q Let's use the nine percent capitalization rate. What would that make the value of the entire leased parcel?

A \$5,011.08 times the table of factor of

6.805191 gives it a present value of \$34,101.36. ✓

MR. JOHNSON: All right. Thank you. That's all.

MR. BRYDGES: Thank you.

Does the court have any questions?

THE COURT: No.

MR. BRYDGES: Thank you, Mr. Ripley.

THE WITNESS: May I be excused?

MR. BRYDGES: Yes.

MR. JOHNSON: At the appropriate time I'm going to move to strike Mr. Ripley's testimony. I don't know whether the court wants to hear my argument now or later.

THE COURT: Well, let's see if he has any additional evidence.

Do you have any additional evidence?

MR. BRYDGES: Not along this line, your Honor.

THE COURT: You may go one way or the other.

MR. BRYDGES: I would like Mr. Ripley to stay while the motion to strike --

THE COURT: All right. All I want to do is get him off the stand and move on to something.

MR. BRYDGES: I think that the motion --

THE COURT: Make your motion.

and objection thereto.

BY MR. BRYDGES:



Q My question was to you, Mr. Quimby, on the day of the taking or when it became known to you for the first time that this road was coming through and taking a portion of your land, when did you first hear from Exxon that they were going to vacate the premises?

A We received a formal letter from Exxon one month before they were going to vacate.

Q Did that letter indicate anything to you about why they were leaving?

A Yes. Due to the widening of the road, that the piece of property would no longer be feasible to use as a service station and they were leaving.

Q Did they in the letter or thereafter discuss with you the possibility of any more land so that they could stay at that location?

A No, sir.

Q So you received the one document about a month before they left that they were leaving and they vacated at that time?

A Right.

Q Were they under construction at that time on their new location up the street?

A No, sir.

Q They built that later on?

A Yes, sir. ***

MR. BRYDGES: All right. Answer Mr. Johnson,
if you will.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Quimby, do you have a copy of the letter
that you had received cancelling Exxon's lease, as you called
it?

A Not with me.

Q But you say you received that letter about
a month before they actually left?

A Right.

Q And they actually left sometime in 1976?

A Right.

Q So on November 13, 1975, you had no
indication at that time that Exxon intended to leave the
premises?

A No, sir.

Q Now, the property that you referred to
to the rear, that is, the store building, what is your
gross annual rent on that property?

1 HOWARD D. SIPLER, called as a witness in rebuttal
2 on behalf of Exxon Corporation, having been previously
3 duly sworn, was examined and testified as follows:

4
5 DIRECT EXAMINATION (Reb.)

6
7 BY MR. JOHNSON:

8 Q Mr. Sipler, prior to the date of this
9 taking on November 13th, '75, did you or Exxon or anyone
10 on behalf of Exxon give any notice of cancellation of the
11 lease on the subject property?

12 A No, sir, we did not. We had discussed --
13 I talked to Mr. Quimby on a few occasions concerning the
14 condemnation, in fact, to keep us informed of what
15 negotiations or development occurred with the state and we
16 agreed that it was inoperative or would probably be
17 inoperative after the take but we did not cancel it prior
18 to the take.

19 Q When did you cancel the lease? ✓

20 A We canceled the lease effective, I believe,
21 May 1st of '75 -- or '76 which was the vacation date that
22 the city had given us. ✓

23 Q You received ~~no~~ notice from the city to
24 vacate the property?

25 A That's correct. The condemnation