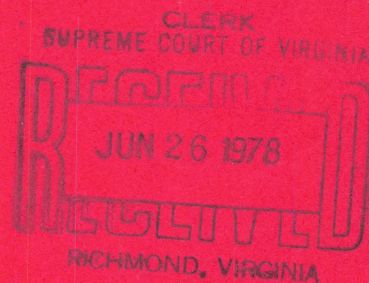


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IN THE
SUPREME COURT OF VIRGINIA

Record No. 780006

STATE HIGHWAY AND TRANSPORTATION
COMMISSIONER OF VIRGINIA

Appellant,

v.

TRUSTEES OF THE PARSONAGE OF THE BROADFORD
METHODIST EPISCOPAL CHURCH, SOUTH

Appellees.

APPENDIX

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PETITION

Filed: May 3, 1977

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

(1) John S. Bundy is the duly authorized agent and attorney for the State Highway Commissioner of Virginia for the purposes 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 John S. Bundy is authorized to file this proceeding in the name and on behalf of the State Highway Commissioner of Virginia.

(2) Real estate which is affected in this proceeding lies in the North Fork Magisterial District, Smyth County, Virginia, and is further described as follows:

Being as shown on Sheet 4 of the plans for Route 42, State Highway Project 0042-086-103, RW-201, and lying on the southwest (right) side of and adjacent to the existing southwest right of way line of present Route 42, from a 30-foot dedicated street opposite approximate survey centerline Station 122+36 to the lands of Edward L. Roberts and Ella Mae Roberts opposite approximate Station 123+80 and containing 0.10 acre, more or less, land.

This property is also shown on the plans on file in the central office of the State Highway Department, Richmond, Virginia, identified as Project No. 0042-086-103, RW-201, a copy of which plan is 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 ownership to the land shown within red on the aforesaid plans along with such easements as are needed, all of which is described and set forth in Exhibit B and described in detail in Paragraph 2 of this Petition.

(4) The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenance and repair of State Highway System known as Route 42, Smyth County, Virginia, all of which property is declared in Exhibit A attached hereto.

(5) This project is for the improvement of a section of Primary Highway System Route 42 between 0.042 miles north of the intersection of Route 91 and 2.944 miles north of the intersection of Route 91 and will include the right to construct, reconstruct, repair, improve, alter and maintain the said Route 42 in accordance with the attached plans marked Exhibit B. It also includes the right to utilize the land in the future (1) for construction, reconstruction, alteration, improvement, repair and maintenance of the said Route, (2) for all other Highway purposes, and (3) in accordance with all the rights and incidents normally acquired in the property by fee simple, easements, etc.

(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 upon the the purchase price.

(7) On or about the 28th day of March, 1977, the Petitioner caused to be recorded in the office of the Clerk of your honor's Court in Deed Book 283, page 398, Certificate No. C-27208, as

provided by Title 33.1, Chapter 1, Article VII, Code of Virginia (1950) as amended.

(8) Thereupon pursuant to the provision of the aforesaid Title 33.1, Chapter 1, Article VII of the Code of Virginia (1950) as amended, title to the land described in Paragraph 2 is vested in the Commonwealth of Virginia.

(9) Your Petitioner is of the opinion that the only persons who are entitled to an interest in the compensation to be ascertained by this proceeding the Trustees of the Parsonage of the Broadford Methodist Episcopal Church, South, as disclosed by a title examination of the above described land.

WHEREFORE, your Petitioner respectfully prays to this honorable Court in accordance with provision of Title 25, Chapter 1.1 of the Code of Virginia (1950), as amended, that the Commissioners may be summoned and appointed to ascertain and report the value of the land taken (including easements and including the easement for the relocation of utilities if such relocation is required) and damages, if any, which may accrue on the residue beyond the enhancement and value, if any, to such residue, by the reason of the taking; that this Court be directed to confirm the vested 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 VII of the Code of Virginia (1950), as amended, as may be necessary; and that your Petitioner may have such other and general relief as the nature of this cause may require.

ORDER CONFIRMING
COMMISSIONERS' REPORT

Entered: October 5, 1977

This day came the State Highway Commissioner, by his attorney, and it appearing to the Court that the report of the commissioners hereinbefore appointed with the certificate of the Judge of this Court administering the oath to the said commissioners, was on the 27th day of July, 1977, duly returned to and filed by the Court herein, and that no exceptions have been filed to said report and no cause having been shown against said report, the same is accordingly confirmed.

And it appearing to the Court that the said commissioners ascertained that the value of the land taken herein was \$1,000.00, and that the damages to the residue, beyond the peculiar benefits in value to the residue by reason of the taking, was \$9,000.00, and it appearing that the said report should be confirmed; therefore, the Court doth approve, ratify and confirm said report in all particulars, and doth confirm unto the Commonwealth of Virginia the fee simple title to the following property:

Being as shown on Sheet 4 of the plans for Route 42, State Highway Project 0042-086-103, RW-201, and lying on the southwest (right) side of and adjacent to the existing southwest right of way line of present Route 42, from a 30-foot dedicated street opposite approximate survey centerline Station 122+36 to the lands of Edward L. Roberts and Ella Mae Roberts opposite approximate Station 123+80 and containing 0.10 acre, more or less, land.

And it appearing to the Court that the State Highway Commissioner has heretofore caused to be recorded in the Clerk's Office of this Court on the 28th day of March, 1977, in Deed Book 283, page 398, Certificate No. C-27208 for \$6,037.00, and

title to this aforesaid real estate and interest therein as aforesaid was vested in the Commonwealth of Virginia.

The Court doth Order and Decree that the State Highway Commission of Virginia pay the Clerk of this Court on behalf of the Trustees of the Broadford Methodist Episcopal Church South the sum of \$10,000.00 with interest at a rate of six per cent on said sum of \$3,963.00 from the 22nd day of July, 1974, which date was established by Order of this Court. The Court doth further order that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the certificate aforesaid; and that the proceedings herein be recorded and indexed as provided by Section 25-46.27 of the Code of Virginia (1950), as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where the said Certificate of Deposit No. C-27208 is spread.

It is further ordered that the necessary costs of this proceeding be taxed by the Clerk of this Court and paid by the State Highway Commissioner.

It is further ordered that the interest of the State and the parties of the property taken shall be terminated and all liens by way of Deeds of Trust, judgment or otherwise shall be transferred to the funds so paid into Court.

TO ALL OF WHICH, COUNSEL FOR PLAINTIFF EXCEPTS, FOR REASONS AS FOLLOWS:

Pursuant to Section 33.1-119 and 33.1-122 and 33.1-128 of the Code of Virginia, 1950, as amended, the date of taking as established in the condemnation proceeding is the date the Certificate was filed, and cannot be altered by action of a trial

Court, and interest should only be paid on the amount awarded over and above the Certificate filed herein from the date of the filing of Certificate No. C-27208 which date was 28 March 1977.

Therefore, Counsel for the State Highway Commissioner indicates the desire to petition the Supreme Court of Appeals of Virginia for a Writ of Error, it is therefore Ordered that the execution be withheld for a period of 3 months and longer, if plaintiff's petition for a Writ of Error is granted, or until other action by the Supreme Court of Appeals is Ordered.

Counsel for plaintiff takes no exceptions to the Commissioner's Report but only excepts to the ruling of the trial Court in regard to the date of the taking and the awarding of interest pursuant to the Court's ruling and a transcript of the proceeding is not requested.

NOTICE OF APPEAL

Filed: October 26, 1977

Plaintiff, State Highway Commissioner of Virginia, by counsel, hereby gives notice of appeal from the Final Order entered in this case on 5th of October, 1977. It further appears that in the Final Order entered in this matter that a transcript was not requested; however, since entering the Final Order plaintiff has requested the Court Reporter for a transcript of this proceeding and will present it to the Court when completed.

ASSIGNMENT OF ERROR

The court erred in establishing July 2, 1974, as the date of take and in awarding interest on the excess amount of the award from July 22, 1974, rather than from March 28, 1977.

1 This matter came on to be heard on the 27th day of
2 July, 1977, before the Honorable J. Aubrey Matthews, Judge of
3 the Circuit Court of Smyth County, Virginia, and a panel of
4 five Jury Commissioners.

5 Mrs. Jo Crewey, Court Reporter, was duly sworn in the
6 manner prescribed by law.

7 Thereupon, the Commissioners were excused from the
8 courtroom and the following proceedings were had out of their
9 presence.

10 D. B. GRAYBEAL: Your Honor, when the Commissioners were first
11 selected, we furnished the name of Charles T. Moore,
12 Charles Tate Moore, The Court mentioned that it had
13 asked us not to furnish Commissioners who were members
14 of the Church. According to our records, he is not a
15 member of the Church even though he said that he was,
16 and I was not in position to say in his presence that
17 he was not, but other members of the Church say that
18 his name is not on the roll, and the other matter of
19 Mr. Allen Frye, it was pointed out that he is a first
20 cousin of Mr. Guy Clear, one of the Trustees, and he
21 had discussed it with Mr. Clear. I think the inference
22 may have been created that the property owners sub-
23 mitted both of these names. I would like the Court
24 to, in some way appropriate, advise the Commissioners
25 that the Highway Department had suggested the name of
Mr. Frye.

THE COURT: Well, is there any objection to the Commission,
Mr. Graybeal?

1 D. B. GRAYBEAL: No sir, but we just think that an inference
2 might have been created in their minds that we were
3 trying to....

4 THE COURT:no, I don't believe so.

5 JOHN S. BUNDY: Your Honor, there is one matter I would like
6 to take up with the Court too. We had to make up a
7 new certificate with regard to these two parcels of
8 land...

9 THE COURT: ...no substantial difference...

10 JOHN S. BUNDY: ...Yes sir, there is...approximately two and
11 a half years...two years.

12 D. B. GRAYBEAL: Well, there...they were trespassers on this
13 property prior to that time.

14 JOHN S. BUNDY: Yes sir.

15 D. B. GRAYBEAL: I would assume that you will use the earlier
16 date as the date you took possession?

17 JOHN S. BUNDY: No...as far as the Church property...the
18 parsonage, it would be the date that we filed the
19 certificate.

20 THE COURT: The parsonage?

21 JOHN S. BUNDY: The parsonage. Both of them would be the
22 date we filed the certificate. If Mr. Graybeal....
23 well, I just don't know of any other way we can do it,
24 Your Honor, even though....

25 THE COURT: ...well, what is the date of your take in
the parsonage property? That's the one we viewed first.

JOHN S. BUNDY: The 28th of March of this year.

THE COURT: Well, the road was constructed before then?

1 JOHN S. BUNDY: Yes sir. Yes sir, this was an over-sight
2 that I spoke to the Court about.

3 THE COURT: When? You had to file two...that's the only
4 thing...I didn't...

5 JOHN S. BUNDY: ! ...well, when we filed the first one on the
6 Church and were setting it for trial, I talked to
7 Mr. Graybeal and I think that he said he would rather
8 try them both at the same time, and at one term of
9 Court, I told the Court that there was not a certificate
10 filed or anything done as far as the parsonage was
11 concerned. It was an over-sight either in the Bristol
12 office or in the Richmond office about getting the
13 certificate filed. It was not filed until March of
14 this year and that's why....

15 THE COURT: Alright, gentlemen, when did you start the
16 work? When did you take the property?

17 JOHN S. BUNDY: Well, like Mr. Graybeal said, we were tres-
18 passers on it.

19 THE COURT: Well, you took it, Mr. Bundy. If you're
20 thinking about not paying what should be paid as
21 interest...I mean, right is right and wrong is wrong,
22 and as far as the Court is concerned, you're not going
23 to take these people's property and...in 1974...and if
24 they get an increase in award...the State should have
25 to pay the interest on it.

26 JOHN S. BUNDY: Well, Your Honor, that was not...for the
27 record, there was an appraisal made in 1974 and then
28 there was another appraisal made in 1977 before this

1 matter was filed which substantially increased the
2 certificate from what it was filed to what it was filed
3 in.....what originally was figured to what it was
4 figured in 1977.

5 D. B. GRAYBEAL: \$1500.00.

6 JOHN S. BUNDY: About \$1500.00. When they were first con-
7 tacted in 1974 and then there was about a \$1500.00
8 increase in reappraising the property during that
9 period of time.

10 THE COURT: Was that because values increasing that much
11 or because of the appraisals, Mr. Bundy?

12 JOHN S. BUNDY: Values increased. You can ask the appraiser
13 the question.

14 THE COURT: Well, is there any dispute on the Church
15 property then as to the date of the take?

16 JOHN S. BUNDY: No sir, it was in '74. March 6th, '74.

17 THE COURT: Alright, when do you say the take was on the
18 parsonage?

19 JOHN S. BUNDY: It was March 28th, 1977.

20 THE COURT: Well, how can you expect me to agree with that,
21 when you have been using it and the people of the
22 Commonwealth of Virginia have been running over it all
23 that time, Mr. Bundy?

24 JOHN S. BUNDY: Your Honor, I can't answer for the Common-
25 wealth of Virginia.

THE COURT: Well, you're representing the Commonwealth.

JOHN S. BUNDY: Yes sir, I'm representing them in this
proceeding. Your Honor, it was an over-sight; it is

1 something I have had no control over and I can't file
2 a petition to proceed with the cases until the
3 certificate is....

4 THE COURT: ...and I can't make you file them or the
5 Commonwealth file them, but I can rule on when the
6 date of the take is, and the date of the take, as far
7 as the Court is concerned, and I'm going to put them
8 both at the same time...March 6th, 1974.

9 JOHN S. BUNDY: Your Honor, I'll have to note an exception.

10 THE COURT: You may note it, and put in there that the
11 Highway took the property; built the road, and is
12 using it and attempting to fix the value of the take
13 in 1977.

14 JOHN S. BUNDY: Well, Your Honor is putting us in an awkward
15 position. We knew of this particular situation and
16 I

17 THE COURT:then it should have been corrected long
18 before it was.

19 JOHN S. BUNDY: Your Honor, there was nothing I could do to
20 correct it. It was an over-sight in the Richmond office...
21 the certificate never got filed and when it got filed,
22 they filed it in the Clerk's Office...it is not sent to
23 me; they are sent directly from Richmond to the Clerk's
24 Office and asked to be filed, and a copy is sent to me
25 at that time. As soon as I get the copy. .

THE COURT: You may note your exception to the Court's
ruling.

JOHN S. BUNDY: Well, Your Honor, I might have to ask for a

1 non-suit in this matter. I don't know what appraisal
2 to use and I don't think Mr. Hedrick has his old
3 appraisal and that was the date I think...

4 THE COURT: Well, has the take changed?

5 JOHN S. BUNDY: No, the take hasn't changed, but the time
6 of acquiring the property has been a three-year
7 difference and his appraisal that he prepared....

8 THE COURT: Well, he's been appraising property for
9 fourteen years...I believe that's his credentials...
10 I think then he ought to be able to figure the increase
11 in value of three years.

12 JOHN S. BUNDY: Can we have a few minutes recess, Your Honor,
13 to get this thing straight.

14 THE COURT: Alright.

15 * Thereupon, there was a brief recess after which the
16 following proceedings were had.

17 JOHN S. BUNDY: The date of the Church property is July 2nd,
18 1974.

19 THE COURT: I thought you said March....

20 JOHN S. BUNDY: ...Yes sir, I was asking him, Your Honor.

21 I didn't have it..my notes...in front of me. Right
22 here is the certificate that was sent to the Clerk.

23 THE COURT: Alright, that's fine...I can't check the
24 records for you, Mr. Bundy. You have to tell me the
25 date of the take or else I have to go in the Clerk's
Office and look it up myself.

JOHN S. BUNDY: Yes sir, I check my file and normally it's
the first thing I ask the witness to testify to.

1 JOHN S. BUNDY: Pursuant to the Court's ruling, we do not
2 have our appraisal that was made in 1974 and the
3 appraiser is going to go ahead and testify of his
4 appraisal which was effective..

5 THE COURT:just a minute, Mr. Bundy. You gave me
6 the wrong date of the take on the Church property,
7 which I wrote down and I believe now you say that is
8 July 2nd, 1974?

9 JOHN S. BUNDY: Yes sir.

10 THE COURT: That's the Church property?

11 JOHN S. BUNDY: Yes sir, that's the Church.

12 THE COURT: When did construction begin over there on
13 this project?

14 JOHN S. BUNDY: I'm not sure.

15 THE COURT: Well, approximately?

16 JOHN S. BUNDY: It was the last part of '74 or early '75.

17 THE COURT: Alright. Your appraisal was made when on the
18 parsonage property?

19 BILL HEDRICK: 3-28-77.

20 THE COURT: Certainly, somebody appraised it before that
21 time.

22 JOHN S. BUNDY: Yes sir.

23 THE COURT: 3-28-77. Alright, Mr. Graybeal, I don't know...
24 what do you all figure the property appreciated in value
25 over a period of a year since 1974?

26 JOHN S. BUNDY: Well, the total, I believe, was \$1500.00.

27 THE COURT: That's two different appraisers, Mr. Bundy?

28 JOHN S. BUNDY: The same appraisers. He made both appraisals.

1 THE COURT: Then he ought to could testify about them
2 if he made them both...that's alright. I don't worry
3 about it.

4 D. B. GRAYBEAL: Their letter in March of '74, the appraiser
5 at that time appraised the land - a tenth of an acre -
6 at \$880.00. Their appraisal in their letter to me in
7 March of '77, valued the land at about (inaudible).
8 The damage to the residue in '74 was \$3,668.00, and
in '77 they suggested \$5,037.00.

9 THE COURT: Is that the Church or the parsonage?

10 D. B. GRAYBEAL: The parsonage. Construction was in September
11 of '74.

12 JOHN S. BUNDY: Your Honor, I don't know about these things..
13 I know what is on the..

14 THE COURT:Well, I know what's right and what's
15 wrong and you took the property and it's got to be ...
the take has got to be before '77.

16 JOHN S. BUNDY: Well, Your Honor, the only thing that I can
17 say is that the only provision in the Code when the
18 Department acquires the property is filing the
19 certificate, which I have nothing to do with...it is
20 done out of the Richmond office.

21 THE COURT: Well, you didn't file a certificate, but you
took it...they took it.

22 JOHN S. BUNDY: Yes sir.

23 THE COURT: So...

24 JOHN S. BUNDY:What I'm saying, Your Honor, is that I
25 feel that we were trespassers during this period of

1 time and I think the Commonwealth of Virginia would be
2 subject to an action for trespassing.

3 THE COURT: It's not subject to any action, but I can't
4 tell the Commission that you fix a value of one at one
5 time and another three years later on the same project
6 after completion.

7 JOHN S. BUNDY: Yes sir, I....

8 THE COURT: ...so, I suggest, and I'm going to tell them
9 that the values are to be determined by the Commission
10 as of July 2nd on both pieces of property.

11 JOHN S. BUNDY: For the record, Your Honor, if I might state
12 my objection to that. The only basis we have for
13 making an appraisal is the date the property was
14 acquired by certificate filed in the Clerk's Office,
15 and...

16 THE COURT: ...well, your man here is going to testify
17 as to values....you said he made both appraisals.

18 JOHN S. BUNDY: Yes sir, but their appraisals are quite
19 detailed and he doesn't have the information from the
20 first appraisal...doesn't have anything at all from the
21 first appraisal.

22 THE COURT: So far as the property is concerned, what
23 changed?

24 JOHN S. BUNDY: Nothing changed.

25 THE COURT: Okay.

26 JOHN S. BUNDY: But for the record, I'm objecting to it on
27 the basis that interest would have to be figured....

28 THE COURT: ...I'm not talking about interest or anything

1 else...I'm talking about when value is to be fixed.

2 JOHN S. BUNDY: Yes sir, I realize that, but for my protection
3 when the Commonwealth of Virginia figures this interest
4 and I have to inform them by order or however that we're
5 testifying and going to testify here today to our
6 appraisal and our values of March 28th, 1977, and say
7 our basis, if there is an increase, that the increase
8 should be based on that date...interest arrived at on
9 that date. That is my basis. I just want something in
the record.

10 THE COURT: Well, you can put anything in the record you
11 want to put in there. You can say that you or somebody
12 "goofed up" for the Highway Department. I take it
13 that's what happened.

14 JOHN S. BUNDY: Well, Your Honor, the only person that I know
"goofed up" was the Richmond office.

15 THE COURT: The Richmond office of what?

16 JOHN S. BUNDY: Virginia Department of Highways. The
17 certificate is sent from that office directly to the
18 Clerk's Office and a copy is sent to me when it's done.

19 THE COURT: Your appraiser still made an appraisal at
that time.

20 JOHN S. BUNDY: Yes sir, but he doesn't...

21 THE COURT: He's here to testify.

22 JOHN S. BUNDY: Your Honor, that was three years ago and
23 he is not prepared, nor does he have his appraisal here
24 to testify to those figures, so that's our basis. I
25 talked with Mr. Graybeal...we're going to go ahead...

1 we realize this thing has been long and drawn out and
2 should have been concluded a long time ago and it is
3 totally the fault of the Virginia Department of Highways
4 that the certificate was not filed. But, be that as it
5 may, we're proceeding under those circumstances.

6 Thereupon, the Commissioners returned to open court and
7 the following proceedings were had.

8 BILL HEDRICK,

9 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION:

11 BY: JOHN S. BUNDY:

12 Q. Would you state your name, please?

13 A. Bill Hedrick.

14 Q. Mr. Hedrick, who are you employed by?

15 A. The Virginia Department of Highways and Transportation.

16 Q. In what capacity, sir?

17 A. As an appraiser.

18 Q. How long have you been so employed?

19 A. Fifteen years.

20 Q. How long have you been in the appraisal field?

21 A. Ten years.

22 Q. Where have you appraised property, please, sir?

23 A. Throughout Southwest Virginia, the Richmond area, the
24 Culpepper area and Roanoke area.

25 THE COURT: Mr. Graybeal, you were present in the court-
room when his qualifications were given to this
Commission in the other case. Do you have any objection
that they be stipulated in this case?