

205 Va 699
Vol. I Pages 1-286
(In Two Volumes)

Record No. 5762

**In the
Supreme Court of Appeals of Virginia
at Richmond**

SOUTHERN RAILWAY COMPANY

v.

CITY OF RICHMOND, ET AL.

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12 BRIEFS.

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. **SIZE AND TYPE.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5762

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1963.

SOUTHERN RAILWAY COMPANY, Appellant,

against

CITY OF RICHMOND, AND HENRY A. MAURICE, JR., JOHN PRUSSING AND OTHERS, INDIVIDUALLY AND AS MEMBERS OF THE FOREST HILL-WOODLAND HEIGHTS CITIZENS ASSOCIATION,

Appellees.

From the Law and Equity Court of the City of Richmond
Alexander H. Sands, Jr., Judge

Upon the petition of Southern Railway Company an appeal is awarded it from a decree entered by the Law and Equity Court of the City of Richmond on the 15th day of April, 1963, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and City of Richmond was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of one thousand dollars, with condition as the law directs.

RECORD

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page 1]

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Received and Filed Mar. 26 1962

Teste: LUTHER LIBBY, JR., Clerk
 By EDW. G. KIDD, D. C.

MOTION FOR DECLARATORY JUDGMENT

The plaintiff, Southern Railway Company (herein called Railway), respectfully represents the following:

1. Railway is a Virginia corporation authorized to transport persons and property by railroad in interstate and intrastate commerce.

2. The Railway is the owner of a tract of land containing sixteen (16) acres, more or less, located in South Richmond between the southern bank of the James River and its present main line right of way west of the Lee Bridge (herein called the Property), where the Railway has made certain surface improvements by way of grading and filling and where it desires to construct certain tracks and appurtenant facilities for use as an extension of its existing yard and for the storage and handling of trains (herein called proposed Facilities).

3. The construction and use of the Proposed Facilities on the Property is essential in order for the Railway to perform its public duties and to render safe and efficient railway transportation services because:

page 2] (a) Modern developments in railroad practices, particularly dieselization, requiring the use by the Railway of longer trains;

(b) Such longer trains cannot be stored and handled efficiently in the Railway's existing yard facilities at Richmond because of the extreme curvature and short length of tracks in such existing yards; and

(c) The location and layout of the Railway's existing facilities are such that they must be extended by locating the necessary additional track facilities on the Property.

4. The defendant (herein called City) is a Virginia municipal corporation and has, by virtue of Sections 17.10 *et seq.* of its Charter, and by virtue of Sections 15-819 *et seq.* of the Code of Virginia, power to adopt a comprehensive zoning plan for the purposes stated therein.

5. By Ordinance No. 60-141-146, adopted June 1, 1960 (herein called Zoning Ordinance), the City was divided into several zoning districts and provision was made for the regulation of land use in such zoning districts.

6. By such Zoning Ordinance all of the Property was included within the boundaries of zoning districts identified as R-3, R-4 or R-5 Dwelling Districts, with the result that only such uses as are permitted by the Zoning Ordinance in such districts may be made of the Property by the Railway.

page 3] 7. Prior to December 12, 1960, Section 39-12 of the Zoning Ordinance described one of the permitted uses in such districts as follows:

“(9) Rights of way and easements for public transportation and for public utilities.”

8. By Ordinance No. 60-326, adopted December 12, 1960, such Section 39-12(9) of the Zoning Ordinance was amended to add the following language:

“But not including railroad yards or yards for marshalling or classifying railroad cars, tracks for storage or parking cars or trains of cars, freight depots or stations, loading platforms, trainsheds, car or locomotive shops, motor vehicle repair shops or storage yards, generating plants or transformer stations.”

9. One of the purposes and intentions of the City in adopting this ordinance dated December 12, 1960, was to prevent, by the exercise of its zoning powers, the use by the Railway of the Property for the construction and operation of the Proposed Facilities, the grading and filling for which was commenced some five months before the adoption of such ordinance, and such ordinance prohibits, by its terms, the completion and use of the Proposed Facilities on the Property.

10. The Property is low, flat land fronting for its entire length along the south bank of the James River and, prior to the recent filling and dredging by Southern, was subject to periodic flooding; it is completely separated from the main land south of the River by Railway's 80 ft. right of way (on

which two tracks are presently operated) and is inaccessible from the nearest city street except by the construction of a grade or overhead crossing over the Railway's right of way.

Section 15-821 of the Code of Virginia and Section page 4] 17.12 of the City's Charter require that, prior to zoning any district, consideration be given to its character and peculiar suitability for the particular uses for which it is to be zoned. While the aforesaid ordinance of June 1, 1960 permitted the use of rights of way and easements for public transportation on property otherwise zoned as residential, the amendment of December 12, 1960 prohibits the operation in property so zoned of railroad yards or yards for marshalling or classifying railroad cars and tracks for storage or parking cars or trains of cars for which, because of its size, shape and location, the Property is peculiarly adapted, by reason of which the aforesaid ordinances zoning the Property for uses for which it is not suitable are arbitrary and unreasonable since they bear no relation to public health, welfare or safety, constitute an arbitrary and unreasonable exercise of its police power by the City, and are therefore invalid and unenforceable so far as they purport to restrict the Railway's right to construct the Proposed Facilities upon its Property.

11. The enforcement of the Zoning Ordinance, as amended, so that the Railway is prohibited from constructing and using the Proposed Facilities on the Property will interfere with the safe, efficient and economical operation by the Railway of its trains moving in local and interstate commerce and with the performance by the Railway of its public duties as imposed by law, so that such enforcement of the Zoning Ordinance would be contrary to provisions of the statutes and Constitution of Virginia and to the provisions of the Constitution of the United States and Acts of Congress pursuant thereto dealing with the regulation of interstate commerce.

page 5] 12. The City has taken the position that the Railway does not have the right under the Zoning Ordinance, as amended by such ordinance of December 12, 1960, to use the Property for the construction and use of its Proposed Facilities, and has threatened to seek to enjoin the construction of the Proposed Facilities on the Property.

13. There is an actual controversy between the Railway and the City concerning the validity and enforceability of the Zoning Ordinance, as amended, to the extent that it is claimed to prohibit the construction and use by the Railway of the Proposed Facilities on the Property, such controversy being

manifested by an antagonistic assertion by the City and denial by the Railway that such Zoning Ordinance is valid and enforceable to prevent such action by the Railway.

THEREFORE, the Railway moves for judgment declaring that the Zoning Ordinance, as amended, is unconstitutional and void to the extent that it is claimed to prohibit the construction and use by the Railway of the Proposed Facilities on the Property and enjoining the City from enforcing the Zoning Ordinance against the Railway to prevent the use of the Property for the construction and operation of its Proposed Facilities.

SOUTHERN RAILWAY COMPANY
By J. G. BEARD, Superintendent

Dated: March 26, 1962.

Thomas B. Gay
H. Merrill Pasco
Roderick D. Sinclair
1003 Electric Building
Richmond, Virginia
Counsel

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page 21]

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ORDER REQUIRING BILL OF PARTICULARS

On motion of the defendant, it is ordered that the plaintiff file on or before July 13, 1962, a bill of particulars, stating in detail:

1. The location and layout of the plaintiff's existing yard and facilities referred to in paragraphs 2 and 3 of the motion for declaratory judgment, showing, by means of a plat drawn to scale, the boundaries of said existing yard, and the location of all tracks and other facilities existing on said property on January 1, 1960.

2. The boundaries of the tract of land on which the plaintiff desires to construct tracks and appurtenant facilities, as alleged in paragraph 2 of the motion for declaratory judgment, showing, by means of a plat drawn to scale, the

proposed location and layout of each track and any other facilities proposed to be constructed there.

page 22] 3. In what respects enforcement of defendant's zoning ordinance will interfere with the safe, efficient and economical operation of the plaintiff's trains, and the performance of the plaintiff's public duties, as alleged in paragraph 11 of the motion for declaratory judgment.

4. What provisions of the statutes and Constitutions of Virginia and of the United States will be violated by enforcement of defendant's zoning ordinance as applied to the property in question, and in what manner said provisions will be violated, as alleged in said paragraph 11.

5. The names of all officials of the defendant who threatened to seek to enjoin the construction of said facilities, as alleged in paragraph 12 of the motion for declaratory judgment; the dates on which any such threats were made, and the names of the persons to whom any such threats were made.

Defendant is granted five days after receipt of a copy of said bill of particulars and plats in which to file its responsive pleadings and cross-bill.

I ask for this:

James A. Eichner
Counsel for defendant.

I have seen this:

Thomas B. Gay
Counsel for plaintiff.

Enter July 13, 1962.

A.H.S. JR.

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page 23]

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BILL OF PARTICULARS

Plaintiff, herein called Railway, for its Bill of Particulars, states as follows:

1. Attached hereto is a plat entitled "Richmond, Va., West-overhills Boulevard Bridge to Tunnel Under Atlantic Coast

Line," dated April 1961, which displays to scale the existing trackage in and dimensions of Railway's existing facilities at its Belle Isle Yards, which are the same as existed in January 1960, except that the scales were constructed in May, 1961, and the northernmost track extending from 26th Street to 32nd Street was installed in July 1960 incident to the construction of the proposed Facilities.

2. The facilities proposed to be constructed on the Property in question cannot be described in detail at the present time, but it is anticipated that Railway will construct on the Property two or more tracks, as its needs from time to time may require, parallel to the present main line track and between such main line track and the James River, together with other necessary facilities, on that part of its property shown in red on the aforesaid plat extending generally from a point opposite 26th Street to a point opposite 42nd Street.

3. As the Zoning Ordinance prohibits Railway from using the Property for marshalling, classifying, storing, and parking of cars or trains of cars, such ordinance interferes with the safe, efficient and economical operation by Railway of its trains in that the Railway is required to conduct such marshal-

ling, classifying, storing and parking on its existing facilities where excessive switching, handling and movement of cars is required because of the inadequate number and length of tracks therein, the result of which is (a) to cause delay in making up trains departing or forwarded from Richmond and in delivery of cars in the Richmond area, (b) to increase the dangers normally attendant to such movements by virtue of the increase in the number of movements, and (c) to increase the operating costs of the Railway.

4. The following statutes and constitutional provisions will be violated by enforcement of defendant's Zoning Ordinance as applied to Railway's property:

Constitution of the United States, §8; Amendment 14(§1)
United States Code, Title 49, §1

Constitution of Virginia, §11, §58, §156, §164
Code of Virginia, §§12-14, 56-371, 56-373.

5. On October 28, 1960, the City Manager informed counsel for the Railway by telephone that he had received complaints about activities of the Railway on its property in South Richmond, which is the subject of this litigation, that his investigation revealed the possible violation of law by the Railway, and that it was imperative that the Railway cease its activities

on the property until its representatives could meet with representatives of the City and resolve the problem. The City Manager explained the purpose of his call was to seek a prompt meeting for this purpose so that injunctive relief would not be required. Following this telephone conversation a meeting was held in the City Manager's office on Monday, October 31, 1960, attended by counsel and representatives of the Railway and representatives of the City Manager's office, the Department of Public Works, the office of the Building Inspector and the City Attorney. At this meeting, it was agreed that Railway had a clear legal right to continue the grading and filling of its property but the Railway was advised that the zoning laws prevented the construction of any railway facilities on the Property. While the Railway is unable to describe with particularity an affirmative statement concerning the threat of injunction, the representatives of the City made it clear to the representatives of the Railway that if the Railway undertook to construct the proposed railway facilities on the Property, the City would take action to stop it. Because of this, the Railway agreed not to undertake the construction of any railway facilities on the Property without first obtaining the necessary authority from the City or giving the City notice of its intention to proceed without this authority. This undertaking was confirmed in a letter from J. G. Beard, Superintendent of the Railway, to the City Manager, dated November 1, 1960.

SOUTHERN RAILWAY COMPANY

By THOMAS B. GAY
H. MERRILL PASCO
RODERICK D. SINCLAIR

1003 Electric Building,
Richmond, Virginia.

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Filed Jul. 13, 1962.

Teste:

LUTHER LIBBY, JR., Clerk

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page 33]

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Received and Filed Jul. 19 1962

Teste: LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

ANSWER

1. This Court has no jurisdiction to grant the relief prayed for, said relief being, in effect, an exception to the district regulations and restrictions contained in defendant's zoning ordinance, which relief this Court has jurisdiction to grant only on appeal from the Board of Zoning Appeals as provided in chapter 17 of the defendant's charter.

2. The allegations of paragraphs 1, 4, 7 and 8 of the motion for declaratory judgment are admitted.

3. The allegations of paragraphs 3, 10, 11 and 13 of the motion for declaratory judgment and paragraphs 3 and 4 of the bill of particulars filed July 13, 1962, are denied.

4. Defendant admits that the plaintiff owns certain land described in paragraph 2 of the motion for judgment, but neither admits nor denies the remaining allegations of said paragraph, or of paragraphs 1 and 2 of said bill of particulars, and calls for strict proof, in detail, of the use the plaintiff proposes to make of said land, both as stated in said bill of particulars and as to its ultimate use, including full disclosure of all plans therefor, whether finally developed or tentative.

page 34] 5. The defendant admits the allegation in paragraph 5 of the motion for judgment, alleges that said 1960 ordinance was adopted after prolonged and comprehensive study by its officials and others, and alleges further that the City, including the land of the plaintiff, was previously divided into zoning districts, and provisions made for regulation of land in each such districts, continuously since adoption of defendant's original zoning ordinance April 13, 1927.

6. Defendant admits that the property described in paragraph 2 of the motion for declaratory judgment was included within the boundaries of R-3 and R-4 Single-Family Dwelling Districts under said 1960 ordinance, as alleged in paragraph 6 of the motion for declaratory judgment, and alleges that the same land was included within boundaries of A-1 Residen-

tial Districts under defendant's said original zoning ordinance, adopted April 13, 1927; that said land continued to be so zoned until the effective date of defendant's comprehensive revised zoning ordinance adopted May 19, 1943; that under said 1943 ordinance part of said land was included in the B-Single Family Dwelling Districts and part in the C-Single Family Dwelling Districts; and that said land remained so zoned until the effective date of said 1960 ordinance. The defendant admits that only such uses as are permitted by the zoning ordinance in R-3 and R-4 Single-Family Dwelling Districts may be made of such property unless and until the owner is granted an exception to the use regulations of said ordinance relating to such districts as provided in chapter 17 of the defendant's charter.

page 35 } 7. The defendant admits that its present zoning ordinance prohibits by its terms, unless and until such an exception is granted, plaintiff's proposed use of said property, as alleged in paragraph 9 of the motion for declaratory judgment and alleges that such a use has been continuously so prohibited by the defendant's zoning ordinances since 1927. The defendant denies the remaining allegations of said paragraph 9.

8. The defendant admits that it has taken the position that the plaintiff does not have the right under said 1960 zoning ordinance, as originally enacted or as amended, to make the proposed use of said property, as alleged in paragraph 12 of the motion for declaratory judgment, and alleges that it had no such right under previous zoning ordinances. The plaintiff denies that it has threatened to seek to enjoin the construction of said facilities, except insofar as such threat may have been implied from the discussions recited in paragraph 5 of plaintiff's bill of particulars, which discussions dealt not only with the plaintiff's proposed use of its property, but also with a deliberate trespass by persons employed by the plaintiff on land of the defendant, located south of the plaintiff's right of way near the land of the plaintiff described in paragraph 2 of the motion for declaratory judgment. Said trespass, done without the consent of or notice to any official of the defendant, took place during or about the period plaintiff was engaged in its grading and filling operations on said land, and was connected with and part of said grading and filling operation. During the course of said trespass persons employed by the plaintiff, at its direction, changed the flow and location of the bed of Reedy Creek on the defendant's said land, reconstructed a sewer belonging to the defendant without its consent, and

page 36 }

otherwise trespassed on and damaged property of the defendant.

9. The defendant alleges that said trespass was deliberately committed by the plaintiff for the purpose of concealing from the defendant, and from other nearby property owners, its purpose of establishing a railroad yard on its property, until work on said yard was completed or virtually completed, and alleges that by its conduct in this regard, and in other respects, the plaintiff is barred from obtaining equitable relief.

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Respectfully submitted,

CITY OF RICHMOND
By: J. E. DRINARD
Counsel

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page 38 }

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REQUEST FOR ADMISSIONS

The defendant City of Richmond, pursuant to §8-111.1 of the Code of Virginia, calls on the plaintiff to make the following admissions within ten days after service hereof:

1. The plaintiff has never applied to the Council of the City of Richmond for rezoning of the land described in paragraph 2 of the motion for declaratory judgment.

2. The plaintiff has never applied to the Board of Zoning Appeals of the City of Richmond for an exception to the district regulations and restrictions permitting the plaintiff to use said land for the purpose it desires to use it, pursuant to Chapter 17 of the Richmond City Charter.

3. The portion of said land to the west of the center line of the former location of Reedy Creek, consisting of approximately 7.433 acres, was acquired by the plaintiff by deed dated October 5, 1917.

4. The portion of said land lying to the east of said center line consisting of approximately 8.86 acres, was acquired

by the plaintiff for a consideration of \$5,000.00, by deed dated April 20, 1960, and recorded May 17, 1960.

page 39] 5. None of said land has been used by the plaintiff for any purpose prior to the commencement of the grading and filling work described in paragraphs 2 and 9 of the motion for declaratory judgment.

6. All of said land was included in the A-1 Residential Districts under the zoning ordinance of the defendant adopted April 13, 1927.

7. The papers attached hereto marked "Exhibit A" are true copies of provisions of said 1927 ordinance.

8. Said land remained so zoned until adoption of defendant's revised zoning ordinance May 19, 1943 by terms of which part of said property was included in the B Single-Family Dwelling Districts and part in the C Single-Family Dwelling Districts.

9. The papers attached hereto and marked "Exhibit B" are true copies of provisions of said 1943 ordinance.

10. Said land remained so zoned until adoption of a revision of defendant's zoning ordinance on June 1, 1960, effective June 10, 1960.

11. By the terms of said ordinance part of said land was included in the R-3 Single-Family Dwelling Districts and part was included in the R-4 Single-Family Dwelling Districts and said land is presently so zoned.

12. The pamphlet attached hereto marked "Exhibit C" is a true copy of said 1960 ordinance, as amended to May 23, 1961.

13. The plaintiff's existing yard, described in paragraph 3 of the motion for declaratory judgment and
page 40] paragraph 1 of the bill of particulars filed July 13, 1962, has always been included in the M-2 Heavy Industrial Districts under said 1960 ordinance.

14. All similar railroad yards in the City of Richmond are also included in such M-2 Heavy Industrial Districts.

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Executed in the City of Richmond, Virginia this 20 day of July, 1962 by delivering a copy of the within named request for admissions

To: Thomas B. Gay

The Registered Agent of : Southern Railway Company place
of business of said Southern Railway Company being in said
City, Principal Office of said Corporation being in said City.

JAMES H. YOUNG
Sheriff, City of Richmond, Va.
By: E. L. McGREGOR
Deputy Sheriff

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page 51]

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ANSWERS AND OBJECTIONS TO REQUEST FOR
ADMISSIONS

Southern Railway Company makes the following reply to
defendant's Request for Admissions:

- 1. Paragraphs 1 through 5 are admitted.
- 2. Paragraphs 6 through 10 are objected to on the grounds
or irrelevancy.
- 3. Paragraphs 11 through 13 are admitted.
- 4. Paragraph 14 is objected to on the grounds of irrelevancy.

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Received and Filed Jul. 26, 1962.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D.C.

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page 56]

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Filed Aug. 20, 1962.

Teste:

LUTHER J. LIBBY, JR., Clerk

REQUEST FOR ADMISSIONS

The defendant City of Richmond, pursuant to Section 8-111.1 of the Code of Virginia, calls on the plaintiff to make the following admissions within ten days after service hereof:

1. No complaint has been filed with the United States Interstate Commerce Commission alleging inadequacy of the plaintiff's existing yard facilities in the City of Richmond, or the inadequacy of service rendered by the plaintiff due to the nature of said yard facilities.

2. No complaint has been filed with the Virginia State Corporation Commission alleging inadequacy of the plaintiff's existing yard facilities in the City of Richmond, or the inadequacy of service rendered by the plaintiff due to the nature of said yard facilities.

3. The plaintiff has received no complaint by any shipper, government official or other person concerning the inadequacy of said yard facilities or the inadequacy of service rendered by the plaintiff due to the nature of said yard facilities.

4. The pamphlet entitled "District Maps 1960," page 57] exhibited herewith and marked "Exhibit D," is a true copy of the district maps incorporated in defendant's 1960 zoning ordinance, and correctly shows the boundaries of districts as established by ordinance No. 60-141-146, adopted by the City Council of the defendant June 1, 1960, and effective June 10, 1960.

5. The paper exhibited herewith and marked "Exhibit E" is a true copy of the letter of November 1, 1960, referred to in paragraph 5 of the bill of particulars filed herein July 13, 1962.

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Timely and proper service accepted this 17th day of August, 1962.

RODERICK D. SINCLAIR
Counsel for plaintiff.

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page 67]

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ANSWERS AND OBJECTIONS TO REQUEST FOR ADMISSIONS

Southern Railway Company makes the following reply to defendant's Request for Admissions dated August 16, 1962:

1. Paragraph 1, 2 and 3 are objected to on the grounds of irrelevancy.
2. Paragraphs 4 and 5 are admitted.

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Filed Aug. 24, 1962.

Teste:

LUTHER LIBBY, JR., Clerk

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ORDER SUSTAINING AND OVERRULING OBJECTIONS TO REQUESTS FOR ADMISSIONS.

This cause came on to be heard again upon the defendant's request for admissions served on the plaintiff July 20, 1962, and the objections thereto filed by the plaintiff July 26, 1962, and upon the defendant's request for admissions served on the plaintiff August 17, 1962, and the plaintiff's objections thereto filed August 24, 1962, and was argued by counsel. Upon consideration whereof, it is ordered:

1. That the plaintiff's objections to paragraphs 6 through 10, inclusive, of said request for admissions served July 20, 1962, are overruled, to which action the plaintiff, by counsel, objected and excepted.

2. That the plaintiff's objection to paragraph 14 of said request for admissions is sustained, to which action defendant, by counsel, objected and excepted.

3. That the plaintiff's objections to paragraphs 1 and 2 of the request for admissions served August 17, 1962, are sustained, to which action the defendant, by counsel, objected and excepted.

4. That the plaintiff's objection to paragraph 3 of said request is overruled, to which action the plaintiff, by page 77] counsel, objected and excepted.

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Enter Sept. 11, 1962.

A.H.S., JR.

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AMENDMENT TO ANSWERS AND OBJECTIONS TO REQUEST FOR ADMISSIONS

Paragraph 1 of plaintiff's "Answers and Objections to Request for Admissions," which was filed on July 27, 1962, is amended to read as follows:

"1. Paragraphs 1 through 4 are admitted. Paragraph 5 is denied in so far as it relates to the land west of Reedy Creek."

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Filed Sep. 17 1962

Teste:

LUTHER LIBBY, Clerk

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page 83]

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ANSWER

The interveners, Henry A. Maurice, Jr, John Prussing and others, individually and as members of the Forest Hill - Woodland Heights Citizens Association for answer to the motion for declaratory judgment filed against the City of Richmond, in which cause they were allowed to intervene by order entered herein on September 18, 1962, says:

1. That they hereby adopt all pleadings, motions, answers and other acts heretofore taken in this cause by the Defendant, City of Richmond, as their own.

Respectfully,

Henry A. Maurice, Jr., John Prussing
and others, individually and as members
of the Forest Hill - Woodland Heights
Citizens Association

By Wm. ELDRIDGE SPAIN
Counsel

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Filed By Order of 9-18-62

Teste: EDW. G. KIDD, D. C.

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page 85]

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OPINION

This is a declaratory judgment action instituted by Southern Railway Company, hereinafter called "Southern," against the City of Richmond, hereinafter called "City," to challenge the validity of two City ordinances¹ as applied to Southern's proposed use of certain property owned by it in the City of Richmond.

1 Ordinance No. 60-141-146 adopted June 1, 1960,
Ordinance No. 60-326 adopted December 12, 1960.

The property in question is a strip of land of approximately 16 acres, varying in width from some 250 feet at its widest point to approximately 50 feet at its narrowest and eastern end. It is included within the boundaries of zoning districts devoted to one family residences,² and lies along the south bank of the James River west of the Lee Bridge and adjoins the main line right-of-way and the western end of the Belle Isle switching and storage yard of the Railway.

The property, prior to certain grading and filling operations conducted thereon by Southern in July 1960, was low, swampy and subject to periodic flooding. It lies below and to the north of a high bluff. Along the top of the bluff runs Riverside Drive, one of Richmond's most scenic drives, and substantial residences are located to the south of Riverside Drive, many fronting thereon.

The western portion of the tract consisting of approximately 7.4 acres has been owned by Southern since 1917. The remaining, or eastern portion, approximately 8.86 acres, was acquired by Southern on April 20, 1960.

Southern's Operations

Southern provides rail service (non-passenger) between Danville and West Point, and this part of its operation is known as its "Richmond Division." A branch line of the Richmond Division runs between Keysville, Virginia and Durham, North Carolina. Richmond is the principal station on the Richmond Division and here are maintained interchange points with C. & O., Atlantic Coast Line, page 87] Seaboard Air Line and R. F. & P. Railroads.

Richmond also serves as the terminal of Southern's trains to and from Danville and to and from West Point.

Southern's operations in Richmond involve such classification, building, breaking up and switching of cars as is incident to the serving of its customers in the Richmond area and along its Richmond Division line in general and the delivery to and receipt from other railroads of cars at the above named interchange points.

Southern's Facilities

In addition to two small storage yards and a general freight depot, together with several team tracks north of the James

2 It has been so zoned since 1927.

River (not here directly involved). Southern's Richmond operations are centered in its "South Richmond" and "Belle Isle" Yards. The South Richmond Yard, which lies immediately northwest of Hull Street, between Hull Street and the south end of the 7th Street overpass, was formerly the hub of Southern's Richmond operation. Due to the advent of the diesel engine and the resulting operational changes effected thereby, particularly the use of longer trains, the general uses to which the South Richmond Yard was formerly adapted have been curtailed. Because of the curvature of the tracks in the South Richmond Yard, necessitated by the topography of the yard, the limitation upon the length of the tracks, imposed by the impracticability of switching operations across Hull Street, the fact that the tracks are "stub end" tracks and the fact that the main line crossing the James River enters the yard at approximately its middle point, classification and building operations have been virtually abandoned in this yard, which is now primarily used for storage.

Several of the tracks in this yard have been abandoned and taken up by Southern and a part of the yard sold to Reynolds Metals Company in November 1960.

The main line of the Richmond Division leads westwardly out of the South Richmond Yard through a tunnel under the A. C. L. line referred to as the "A. C. L. tunnel" into the

page 88] Belle Isle Yard which lies between the A. C. L. tunnel and the Lee Bridge. This yard, unlike the South Richmond Yard, is open at both ends and has, at present, 15 tracks. Here Southern conducts all of its present, classification operations. The main body of the classification tracks of Belle Isle Yard terminates at about the south end of Lee Bridge but the switching leads extend westwardly from that point. Two of these lead tracks extend approximately 1600 and 6000 feet, respectively, west of the bridge paralleling the main track and upon these two lead tracks considerable switching around the clock has been conducted³ for several years past.

Proposed Use

Southern proposes to gradually extend its yarding operations, primarily classification, building and breaking up, now being conducted in the Belle Isle Yard, onto the land in question. Relocation of Southern's classification operations outside of the present area would be impossible due primarily

3 Such use predated both the June and the December 1960 Ordinances and would therefore, even if non-conforming, be permissible.

to the location of the interchange points with other railroads above referred to, since any classification yard must be in close proximity to these interchange points.

Ordinances Involved

Two present ordinances of the City of Richmond and two former ordinances are involved. Directly involved are Ordinance No. 60-141-146 adopted June 1, 1960 (Defendant's Exhibit T) and Ordinance No. 60-326 adopted December 12, 1960 (Plaintiff's Exhibit 14). Indirectly involved in the interpretation of these ordinances is the Ordinance approved April 13, 1927 (Defendant's Exhibit R) and Ordinance approved May 19, 1943 (Defendant's Exhibit S).

1. The Ordinance of April 13, 1927 listed Residential districts as A-1, A-2 and A-3. Under permitted uses for "A-1" districts it was provided (Art. 3, sec. 4) :

"(14) Railway passenger stations, railway right-of-way, not including railway yards."

This ordinance listed Business districts as B-1 and B-2, and under permitted uses for "B-2" districts it was provided (Art. 7, sec. 19) :

"(10) Freight and other railway yards."

2. The Ordinance of May 19, 1943 listed Residential districts as A, B, C, D, E and F. The permitted uses of land in none of these Residential districts specifically included either railroad rights-of-way or yards. Such uses (rights-of-way and yards) were, however, authorized by Article XI, sec. 2, in Light Industrial Areas J, by virtue of not having been *excluded* by the section. No specific mention of *any* railway facilities — rights-of-way or *otherwise* — appears anywhere in this ordinance.

3. Ordinance No. 60-141-146 as adopted June 1, 1960 under the permitted uses for R-1, R-2 and R-4 Dwelling districts listed (Art. 5, sec. 39-12 (9) :

4 Prior to the 1927 ordinance there were two tracks, crossing the property in question, in use, continued use of such therefore becoming a permissible non-conforming use after adoption of the ordinance.

“(9) Rights-of-way and easements for public transportation and for public utilities.”⁵

In none of the zoning classifications under this ordinance was the use for railroad yards expressly permitted, but such use would be permitted if not under a more restricted classification, under either M-1 (Light Industrial) or M-2 (Heavy Industrial) depending upon the interpretation placed upon the restrictive language of Section 39-40 (2) “* * * not likely to create any more offensive noise, etc. * * *.”

4. Ordinance No. 60-326 adopted December 12, 1960 is the ordinance here first under attack. This ordinance, upon its face, purports to amend and reordain Section 39-12 of Chapter 39 of the Richmond City Code of 1957 which embodies the Use Regulations for R-1, R-12, R-3 and R-4 Single-Family Dwelling Districts. This ordinance is identical with Section 39-12 of Ordinance No. 60-141-146 (the June 1, 1960 Ordinance) except that it amends Section 9 thereof by adding the following underscored language:

“(9) Rights-of-way and easements for public transportation and for public utilities *but not including railroad yards for marshalling or classifying cars, tracks for storage or parking railroad cars or trains of cars, freight depots*

page 91] *or stations, loading platforms, train sheds, car or locomotive shops, motor vehicle repair shops or storage yards, generating plants or transformer stations.”*

Otherwise Section 39-12 (9) of Article 5 of the Ordinance of June 1, 1960 is unchanged by the December 12 Ordinance.

Southern's Contentions

Southern's contentions are four in number.

1. The Ordinance of June 1, 1960 permits the proposed use of the property.

2. If it does not permit such use then it is unconstitutional and void as applied to the property in question because it

5 Defendant's Exhibit No. T is the June 1, 1960 Ordinance *as amended* to May 23, 1961, and thus carries the amendatory language of Ordinance No. 60-326 of December 12, 1960. The City admits, however, the allegation in Southern's initial pleading to the effect that Section 9 of Ordinance No. 60-141-146 as originally passed on June 1, 1960 was as here indicated.

prevents Southern from discharging its duties imposed by law.⁶

3. If it does not permit such use it is unconstitutional and void as applied to the property in question because it unlawfully imposes a burden upon local and interstate commerce in violation of the Virginia and Federal Constitutions and related State and Federal statutes.⁷

4. If it does not permit such use then it is unconstitutional to the extent that it includes the property in question in a district which does not permit the only use to which the property is suited and is therefore confiscatory, such classification of the property being an unreasonable and arbitrary exercise of the City's police power.⁸

Issues

The above contentions made by Southern present the issues before the Court. They will be considered in the order listed.

I

Is the proposed use permitted under the Ordinance of June 1, 1960?

This issue concerns the interpretation to be placed upon the words "right-of-way" as used in the June 1, 1960 Ordinance. City contends the commonly accepted definition which *excludes* station yards⁹ should control while Southern urges the broader definition, to *include* yards, which has been adopted in some jurisdictions.¹⁰ The 1927 Ordinance specifically excludes "yards" from the term "right-of-way" by placing yards in a less restricted category. The 1943 Ordinance, it is true, lists neither use under per-

6 These are first urged as grounds of the invalidity of the

7 Ordinance of December 12, 1960, to which the additional

8 ground that the Ordinance of December 12, 1960 was adopted for the express purpose of preventing the proposed use of the property and was not based upon the considerations required by enabling statutes. Considerations of the December 12, 1960 Ordinance would become necessary only in the event Southern's first *supra* be held to be sound.

9 Webster's New International Dictionary (2nd ed. 1941) page 2148 defines right-of-way, as applied to railroads, as: "the land, other than storage or station yards occupied by a railroad for its tracks, esp. for its main line;" (Emphasis supplied). See also *Gray v. Grand Trunk Western Ry.* (Mich.) 91 N.W. (2) 828.

10 *Pfaff v. Terre Haute & I.R. Co.* (Ind.) 9 N.E. 93; *Ill Cent. Ry. Co. v. Taylor* (Ky.), 175 S.W. 26.

mitted uses and both uses by implication fall into the same category, Light Industrial. The June 1, 1960 Ordinance then restores "rights-of-way" to the former restrictive classification by name, but does not mention "yards." It would, therefore, be inferred — if there were no testimony on the points — that Council in adopting the June 1, 1960 Ordinance intended leaving "yards" in the less restricted category where they had been specifically placed in 1927 and by inference in 1943. There is always the presumption that an old law is not intended to be changed by a new unless a contrary intention plainly appears in the new.¹¹

The minutes of the City Planning Commission, however, (Defendant's Exhibit DD) state that that body, in its preparation of the text for the June 1, 1960 Ordinance to be recommended to Council for adoption, had used the term "rights-of-way" in the sense defined in Webster's Dictionary. In what sense the Planning Commission used the term "rights-of-way" has no bearing, of course, upon the proper legal definition to be placed upon the term, but it is important upon the question of whether the Commission, as promulgators of the language of the June 1, 1960 Ordinance, intended to *broaden* or *change* the scope of the term "right-of-way" as used in the 1927 Ordinance.

From the evidence in this case, and from what the Court believes to be the better reasoned outside authorities, the Court is of opinion that the language "rights-of-way and easements for public transportation" as used in the June 1, 1960 Ordinance should be given the interpretation consistent with the commonly accepted definition appearing in Webster's Dictionary.

It is, accordingly, held that the Ordinance of June 1, 1960 as adopted, prevented the use by Southern of the property in question for an extension of its present yard facilities and storage tracks.

It is the further view of the Court, in the light of what has just been said, that the amendment of December 12, 1960 was merely definitive of the terms of the June 1, 1960 Ordinance, and did not — insofar as the question here involved is concerned — enlarge or change the effect of Section 39-12 of Article 5, Sub-section 9 of the June 1, 1960 Ordinance. Consideration from this point on, therefore, may be confined to the Ordinance of June 1, 1960, and further consideration of the December 12, 1960 amendment becomes unnecessary.

11 17 Mich. Jur. "Statutes" sec. 47; *Harrison v. Wissler*, 98 Va. 597, at page 599.

II

Does the Ordinance of June 1, 1960 prevent Southern from discharging its duties to the public as required by law?

The duty with which we are here concerned is that of *rendering reasonable and adequate service to the public without discrimination, at reasonable rates and without delay.*¹²

The evidence establishes without much question page 95] that there is much to be desired in the yarding facilities presently available to Southern in the Richmond area. Southern has also proven that the proposed extension of its facilities will enable it to operate its Richmond Division more economically from its standpoint, more, safely, perhaps, from the standpoint of yard personnel, and more efficiently — again from its own standpoint — in that it could handle its receiving and classifying more expeditiously and therefore with less effort and fewer manhours by its yard personnel. In short, the evidence shows beyond much question that Southern could improve its operation to a considerable extent by effecting the contemplated improvements in its yarding facilities at Richmond.

But the vital question before the Court is not whether or to what extent the contemplated improvements will *increase the efficiency* of Southern but rather whether such improvements are *necessary* in order to enable Southern to furnish “adequate service to the public (in the area served) without delay,” or, to state the problem differently, whether the service now being rendered to Southern’s customers is “inadequate” because of lack of the proposed facilities, and the burden is upon Southern to establish this.

The determination of the *adequacy* or *inadequacy* of the service being rendered would depend upon how well the needs of the particular area concerned were being served.¹³

It would seem that the best proof of present inadequacy would be in the nature of evidence (1) of specific complaints from customers, (2) instances where the needs or requirements of specific customers, either as to volume of transportation offered or desired time of delivery, were not being met, or (3) loss of specific customers or a part, at least, of customers’ business due to Southern’s inability to meet customers’ needs.

12 73 C.J.S. *Public Utilities*, Sec. 7.

13 *A.C.L. v. Wharton*, 207 U.S. 328, 52 L. Ed. 230; see also 2 *Words & Phrases* (Perm. Ed.) p. 558 and cases cited.

Yet, despite the comprehensive and detailed preparation of its case by Southern, and the plethora of testimony introduced, the evidence wholly fails to establish the existence of any one of the above indicia of inadequate service.

While it is true that Southern's witnesses state that its business over the Richmond Division is "static," and that it is suffering from truck and barge competition, it introduces no evidence that this situation in the Richmond area is in any way the result of any inadequacy of its Richmond facilities as opposed to the general pattern of inroads upon railroads' business by truck and barge competition nationwide over the past decade.

For the same reason it is perfectly apparent that the term "without delay," as used in the rule defining the general duties of a railroad,¹⁴ refers to delays which in some manner affect the welfare or business exigencies of the customer and not to delays which, though existing in the railroad's operational picture, do not adversely affect the business schedule of the customer. There is no evidence in this case that such yard delays as may presently exist adversely affect the business schedule of any member of the public served.

It is, accordingly, held that the evidence in this case does not establish that Southern is prevented, by the ordinance in question, from performing its public duty imposed by law to render to the public affected "adequate service without delay."

page 97]

III

(a) Is the June 1, 1960 Ordinance violative of the Virginia Constitution or statutes?

Southern contends that the effect of the Ordinance of June 1, 1960, as construed by City, is to control by zoning the use of Southern's property and that this constitutes an invasion of the field of railroad control given by the Virginia Constitution exclusively to the State Corporation Commission and that, to this extent, the ordinance violates the Virginia Constitution and those Virginia statutes which set out the duties of the Commission in respect to such control.¹⁵

This contention is untenable for two reasons. In the first place this argument presupposes that the zoning ordinance under review prevents Southern from the performance of

14 73 C.J.S. *Public Utilities*, Sec. 7.

15 Va. Constitution 156 (b). *Southern Ry. Co. v. Commonwealth*, 128 Va. 176.

some duty imposed upon it by the S.C.C. This, however, is not the factual situation presented. As heretofore held, it does not directly nor indirectly prevent Southern from rendering that degree of service to the public required by law, nor does the evidence disclose any directive of the S.C.C., either general or specific, which is affected by the ordinance.

Secondly, the Legislature up to this time has not granted the S.C.C. power to regulate the *use* of lands owned by public service corporations as distinguished from the *operations* of such corporations, this power to regulate the *use* being still left to the local governing bodies. The Virginia Supreme Court has recently adopted this view¹⁶ though in so doing it recognized that it was rejecting the rule followed page 98] in several other jurisdictions.¹⁷

It is held that the ordinance in question is in no way violative of the Virginia Constitution or statutes referred to.

(b) *Is the June 1, 1960 Ordinance violative
of the Federal Constitution or statutes?*

In this connection Southern asserts that the delays in the Richmond Yard caused by the lack of the proposed facilities constitute a burden and unreasonable restraint upon interstate commerce.

A local regulation to effectuate a legitimate local public interest is valid even where it affects an operation over which Congress has control unless (a) the field in which such local regulation operates is pre-empted by federal action, or (b) unless such regulation is unduly burdensome on such operation (here interstate commerce).¹⁸ It is not contended that the field of regulating the use of railroad owned land has been pre-empted by federal action but it is claimed that the zoning regulation here involved is unduly burdensome upon interstate commerce. Because a local regulation *indirectly affects* interstate commerce it does not thereby necessarily constitute any *control* over interstate commerce.¹⁹ Thus, while a local regulation having the effect of *preventing* page 99] the operation of transportation facilities in interstate commerce is repugnant to the United States Constitution and invalid, yet one which does not prevent the operation of such transportation facilities and which is

16 *Richmond v. Southern Railway Co.*, 203 Va. 220.

17 *Cf. Duquesne Light Co. v. Upper St. Clair Township*, 105 A. (2) 287.

18 *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 4 L. Ed. (2) 852.

19 *Idem*.

a valid exercise by the municipality of its police power is not a direct burden upon interstate commerce merely because it may have the effect of imposing regulation in some degree upon it.²⁰

It is held that the ordinance under review is in no way violative of the Federal Constitution nor of any federal statute referred to.

IV

Is the Ordinance of June 1, 1960 confiscatory in that it includes the property in question in a district which does not permit the only use to which the property is suited and does such classification of the property thereby constitute an unreasonable and arbitrary exercise of the City's police power?

Southern here contends that the property in question, because of topographical considerations, is unsuited to *any use* permitted in zoning classification to which as-
page 100] signed and that, therefore, its assignment to such classification deprives Southern of this property without proper compensation, is an arbitrary exercise of the City's police power in that the zoning of the property residential bears no relation to the health, welfare and safety of the public and is, for these reasons, unconstitutional.

While it is true that the general rule is to the effect that "zoning cannot render private property valueless,"²¹ yet any person attacking an ordinance upon this ground has the burden of proving that the ordinance, if enforced, will preclude the use of the property for *any* purpose to which it is reasonably adapted.²²

While Southern has proved conclusively, through the witness Brockenbrough, that the property is not adapted to use for single-family residence purposes, yet it has failed to show that it is *not* adaptable for both public and private park and recreational purposes. The burden is not upon City to prove its adaptability as Southern suggests (see footnote to page

20 Cf. *Gibbons v. Ogden*, (U.S.) 9 Wheat. 1 (holding that a state may not exclude from its waters a ship operating under a federal license) and *Cooley v. Board of Wardens*, (U.S.) 12 How. 299 (upholding the validity of local pilotage laws even though such applied to vessels in interstate commerce). See also *Southern Pacific Ry. v. Arizona*, 325 U.S. 761, 779; 89 L. Ed. 1915, 1930.

21 8 McQuillan *Municipal Corporations*, Sec. 25.45.

22 *Idem*.

100-a of Southern's original brief) but rather upon Southern to prove the contrary,²³ and Southern has failed to bear this burden. Indeed, City has proven not only that the property is practically adapted to public park use, but that such use has been envisioned by the City Planners for more than two decades. In the absence of evidence that the property is not adapted to use for a private, non-commercial club area for boating, fishing, water skiing, etc., the evidence introduced by City as to the general nature of the surrounding page 101] ings would compel the Court to find that it was peculiarly adapted to such use.

But even so, the action of Council in adopting the ordinance must not have been arbitrary, capricious or based upon considerations unrelated to the health, welfare and safety of the public, or without reasonable consideration for the character of the district and existing uses thereof.

The decided weight of the evidence is to the effect that the residential area immediately south of Riverside Drive is one of the most desirable of any area south of the James River; that it has been so considered for well over thirty years; that the proposed use by Southern of the property in question would definitely depreciate the values of the existing homes, curtail the enjoyment thereof and create a situation completely out of harmony with the residential surroundings, and at the same time deprive the City of one of its principal areas for park development which it has envisioned utilizing for this purpose in all of its planning steps beginning with the adoption of the City's Master Plan in 1947 down through the acquisition Ordinance of January 9, 1961; that these facts have been known to the City Planners for over thirty years, as is reflected by the consistent zoning of this land residential since 1927, which zoning had the twofold purpose of preserving one of the City's best residential areas and at the same time making possible the development of one of its best, if not indeed its best, natural park areas.

Finally, the evidence rather conclusively establishes that not only was the adoption of the ordinance in question not an arbitrary and capricious²⁴ act on the part of Council but that, on the contrary, the Ordinance of June 1, 1960, as amended December 12, 1960, the Ordinance of 1927 and that of 1943, were all directly based upon considerations of public

23 8 McQuillan *Municipal Corporations*, Sec. 25.45; *Board of Supervisors v. Davis*, 200 Va. 316.

24 See *West Brothers, etc. v. Alexandria*, 169 Va. 271; *Board of Supervisors v. Davis*, 200 Va. 316.

health, welfare and safety, and were not the zon-
 page 102] ing of any specific tract but rather of an entire
district and as such were consistent with and de-
 signed to implement an overall plan of City development,
 which plan culminated in the Master Plan for the City of
 Richmond, such overall plan envisioning the utilization of
 the entire tract in question as a scenic parkway.

The evidence further shows, it is felt, that Southern
 is not without an interested purchaser. While it is true that
 City has made no dollar offer for the property to date, the
 Ordinance of January 9, 1961 directed the proper officers of
 the City to take the necessary steps for the acquisition of
 this property for park purposes. Southern suggests that
 this ordinance was but "window dressing" adopted by the
 City in an effort to shore up what Southern contends to be
 the vulnerable Ordinance of December 12, 1960. This sugges-
 tion is inconsistent with the acts of the City as established by
 the record, to the effect that City has, since the adoption of the
 1946 Master Plan, envisioned the acquisition of this property
 for park purposes. Viewing all of the evidence on this point,
 it is fairly apparent that the failure of Southern to dispose
 of this property up to the present has not been due to the
 lack of a purchaser for a use permitted under the zoning
 ordinance but rather has been due to the desire on the part
 of Southern to develop the property for its own use — but
 a use which is prohibited under the ordinance.

Thus it is held that City was justified in its classification
 as applied to the *entire district* involved, exercising as it
 did, proper regard for the character and peculiar suitability
 of the *district* and that it has, therefore, met the requirements
 of Section 17.12 of the City Charter.

page 103] CONCLUSION

The powers of a Court in litigation attacking the validity
 of an ordinance are circumscribed with limitations well
 recognized in this state. A weighing of equities is not in-
 volved — nor is the Court at liberty to exercise its "best
 judgment" upon the merits as is true in other types of
 litigation. On the contrary, a Court *cannot* substitute its
 judgment for that of the legislative body enacting the ordi-
 nance.²⁵ Not only is an ordinance under review *presumed* to
 be valid²⁶ but if the reasonableness of the ordinance is fairly

25 *Blankenship v. Richmond*, 188 Va. 97; *Board of Supervisors v. Davis*, 200
 Va. 316.

26 *Ours Properties v. Ley*, 198 Va. 848.

debatable, the ordinance must stand.²⁷ Where, as here, the attack upon the ordinance is upon the ground that it is unconstitutional, the burden upon the attacking party is even heavier, proof being required not only that the legislative body in adopting the ordinance has been unreasonable and arbitrary, but that the reasonableness of the action of the legislative body is not fairly debatable.²⁸ Southern has failed to carry this burden.

For the above reasons the Ordinance of June 1, 1960, and the December 12, 1960 amendment thereto, must be held valid and the proposed use of the property in question by Southern prohibited thereunder.

April 1, 1963

ALEX. H. SANDS, JR., Judge

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page 105]

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FINAL DECREE

This cause came on to be heard on the motion for declaratory judgment, bill of particulars and answer; the pre-trial admissions; the Court's view on September 18, 1962, of the plaintiff's land involved in this suit, of the plaintiff's "South Richmond" and "Belle Isle" yards, and of the neighborhoods in the vicinity thereof; the exhibits and oral testimony introduced by the parties September 18, 19, 20, 21, 24, 26, 27 and 28, 1962; the transcript of said testimony consisting of 1355 pages; the briefs of counsel, and the oral arguments heard February 18 and 19, 1963.

Upon mature consideration whereof, for the reasons stated in the Court's opinion of April 1, 1963, filed herewith and made a part of this decree, it is hereby

ORDERED, ADJUDGED and DECREED:

1. That the use proposed to be made by the plaintiff of the land involved in this suit was and is prohibited under the terms of the zoning ordinance of the defendant
page 106] city, both as adopted June 1, 1960, and as amended December 12, 1960.

2. That said zoning ordinance, as applied to said land, is valid and enforceable; that it bears a substantial relation

²⁷ *Fairfax v. Parker*, 186 Va. 675; *West Bros. v. Alexandria*, *supra*.

²⁸ *West Bros. v. Alexandria*, *supra*.

to the public health, welfare and safety; that it is not confiscatory, that its application to said land does not violate or conflict with any provision of the Constitutions or laws of the United States or of the Commonwealth of Virginia.

3. That the prayer of the motion for declaratory judgment is denied.

The plaintiff, by its counsel, objected and excepted to all of the foregoing action of the Court upon the grounds stated in its motion for declaratory judgment and bill of particulars.

We ask for this:

James A. Eichner
Counsel for defendant City of Richmond

Wm. Aldridge Spain
Counsel for defendants Henry A. Maurice,
Jr., John Prussing, et al, individually
and as members of the Forest Hill-Woodland
Heights Citizens Association

I object to this:

Thomas B. Gay
Counsel for plaintiff

Enter April 15 1963

A.H.S., JR.

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page 107]

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Filed May 13, 1963.

Teste:

LUTHER LIBBY, JR., Clerk

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

*To: Luther Libby, Clerk Law and Equity Court of the City
of Richmond, Richmond, Virginia*

The plaintiff, Southern Railway Company, by its attorneys, hereby gives notice, pursuant to Section 4, Rule 5:1 of the

Rules of the Supreme Court of Appeals of Virginia, of its appeal from the final decree entered in this suit on April 15, 1963, in which its prayer for declaratory judgment was denied.

Further, pursuant to such rule, the plaintiff assigns the following errors:

1. The court erred in decreeing that the City ordinances adopted June 1, 1960 (No. 60-141-146) and as amended December 12, 1960 (No. 60-326) are valid and enforceable, that they bear a substantial relation to the public health, welfare and safety, and that they are not confiscatory as applied to the land of the plaintiff which is involved in this suit.

page 108] 2. The court erred in holding that the plaintiff had failed to carry the burden of proving that the proposed extension of the plaintiff's railroad yards and storage tracks and appurtenant facilities on to the land which is the subject of this suit was necessary in order to enable it to furnish adequate service to the public without delay.

3. The court erred in failing to decree that the zoning ordinances referred to in paragraph 1 above are invalid and unconstitutional as applied to the property of the plaintiff which is involved in this suit on the ground that such ordinances include such land in a zoning district which does not permit of the only use to which the land is suited, and that therefore such classification of the property constitutes an unreasonable and arbitrary exercise of the police power by the City.

SOUTHERN RAILWAY COMPANY

By THOMAS B. GAY
H. MERRILL PASCO
RODERICK D. SINCLAIR
Its Counsel

1003 Electric Building
Richmond, Virginia

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page 9]

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Mr. Gay: Your Honor please, Your Honor has heard a good deal about this case and I am sure is unusually familiar with it from pretrial phases.

So much depends upon the court's understanding of the

Morton G. Thalhimer

nature of this property, what we consider to be its potential uses or lack of them, that we will want to move the court — and I understand counsel for the City is agreeable — to come with us and view it this morning before we start in the trial. We have arranged to have a suitable conveyance to take

page 10] Your Honor up by rail through the property and an automobile to take you down Riverside Drive and through such part of the area as City Counsel or the Intervenor may wish you to observe. I believe, aided by that view, Your Honor will understand — and I am sure, realistically and fairly, understand many of the exhibits and testimony we will offer.

The Court: The court will certainly want to be able to have a view. Is that agreeable to counsel that that take place before going into the evidence?

Mr. Eichner: Yes, sir.

Mr. Spain: Certainly, Your Honor.

Note: Off-the-record discussion, following which court was recessed from 10:20 a.m. to 11:55 a.m., during which court and counsel viewed the property.

Court was reconvened at 11:55 a.m., at which time the court heard opening statements of counsel, following which the taking of testimony proceeded as follows:

page 11] MORTON G. THALHIMER,
a witness called by and on behalf of the plaintiff,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Gay:

Q. Will you please state your name and occupation?

A. My name is Morton G. Thalhimer. I am a real estate agent and appraiser and real estate consultant.

Q. How long have you been engaged in those occupations in the City of Richmond, Mr. Thalhimer?

A. For over forty years.

Q. Will you state your experience and what you consider to be your qualifications for testifying as an expert witness in this case on the question of the adaptability of real estate for particular uses?

A. I have been appraising real estate very actively for the last thirty years. During that time I have represented the

Morton G. Thalhimer

City of Richmond, for example, as their real estate expert in the last annexation proceeding. I have been the appraiser for the City of Richmond on many occasions in the acquisition of rights-of-way on properties needed for City use. I have been employed by the Commonwealth of Virginia and the federal government for appraisal work. I am thoroughly familiar with the type of land needed for various purposes, such as residential, industrial, business, and so forth.

Q. Do you have a written statement of what might be considered your professional experience in matters similar to those involved in this case?

A. Yes, sir, I have a brief statement — what I call a qualification statement — which I usually attach to appraisals.

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page 13] “QUALIFICATIONS OF APPRAISERS
“MORTON G. TALHIMER

“Experience:

Over thirty-five years’ experience in the management, leasing, and sale of real estate, including residential, commercial, industrial, and special-type properties.

Over thirty years in originating and servicing mortgage loans.

Over twenty-five years’ experience as an appraiser and real estate consultant to insurance companies, banks, corporations, and individuals.

Qualified as an expert in Federal and State Courts in the State of Virginia.

“Education:

Philadelphia Public Schools
Wharton School of the University of Pennsylvania

“Teaching:

Member of the faculty on several occasion for real estate appraisal courses conducted by the American
page 14] Institute of Real Estate Appraisers.

Taught appraisal course at University of Rich-

Morton G. Thalhimer

mond night school for four years.

“Clientele:

U. S. Government Agencies—such as Army, Navy, Veterans Administration, etc., State of Virginia—Department of Highways, City of Richmond—acted as appraiser in condemnations in its last annexation proceedings, and in the acquisition of land for the straightening of the James River.

Atlantic Life Insurance Company

Massachusetts Mutual Life Insurance Company

Liberty Life Insurance Company, and others

State Planters Bank of Commerce and Trusts

First and Merchants National Bank

General Baking Company

Colonial Williamsburg

Richmond Redevelopment and Housing Authority

Local and out-of-city corporations and individuals.

“Membership and Affiliation:

American Institution of Real Estate Appraisers, and former member of its Board of Governors

page 15] American Society of Real Estate Counselors,
International Federation of Real Estate Boards, National Association of Real Estate Boards, Real Estate Board of Richmond (Past President), Real Estate Management Institute, Virginia Real Estate Association (Past President), Mortgage Bankers Association”

Q. (By Mr. Gay) Mr. Thalhimer, this suit involves the proposed use by Southern Railway Company for storage yard purposes of two tracts of land, some sixteen acres, lying between the south bank of the James River and the north line of the company’s right-of-way, and extending westwardly about thirty-six hundred feet from a point opposite the end or approximately opposite the end of Twenty-Sixth Street, to Forty-Second Street, in South Richmond. Are you familiar with the property?

A. Yes, sir, I am.

Mr. Gay: We would like to offer in evidence, Your Honor

Morton G. Thalhimer

page 14] please, a copy of the City's plat which accompanied the councilmanic ordinance providing for condemnation of this property, of which I understand the City Attorney will provide us with an extra copy. We offer that as Plaintiff's Exhibit No. 2.

Note: Map entitled "Plan for Acquisition of property for municipal purposes between right-of-way of Southern Railway and James River in vicinity of Reedy Creek" marked Plaintiff's Exhibit No. 2 and filed.

Q. (By Mr. Gay) Mr. Thalhimer, have you at my request obtained from the City of Richmond copies of its metropolitan topographical survey, sheets 12 and 13, which shows the location of the subject property and the adjacent area of South Richmond?

A. Yes I have.

Mr. Gay: We offer this as Exhibit No. 3, sheets 1 and 2.

Note: Two sheets, Metropolitan Topographic Survey, marked Plaintiff's Exhibit No. 3, Sheet No. 1 and Sheet No. 2, and filed.

page 17] Q. (By Mr. Gay) Mr. Thalhimer, did you examine the eastern 8.86 acres of this property in 1959 with the view of appraising its value and potential uses?

A. Yes, I did.

Q. For whom did you make that examination?

A. I made the examination and appraisal for the Virginia Electric and Power Company.

Q. Have you recently examined the entire sixteen acres of the tract, including the western 7.43 acres, at the request of the Southern Railway, with a view of testifying in this case as to its potential uses?

A. Yes I have.

Q. Had any part of the property been filled and graded when you examined it in 1959?

A. No, sir.

Q. State what you found to be the nature of the property in 1959 before the filling and grading that was recently done by the company.

A. The property is extremely low, as shown on this topographic map on the board in back of me. It is quite swampy and wet off and on in a majority of the places, other than

Morton G. Thalhimer

the right-of-way of the tracks. The property was low and seemed to have very little use for any purpose except for a railway right-of-way or railroad uses, and for whatever use it might be in acting as a guide for the water to go through some of the canals of the power company further east on the river. There were many little low, swampy islands to the north of the property itself that was owned by the power company, which are shown on this map. I think you can probably see them here (indicating on map on board), this being the line of the property, the red line. All of these little enclosed places are small islands that separate the mainland from the main channel of the river and there were lots of eddies there. There were all sorts of indications that high water was quite frequent and came up on occasions directly to the tracks of the Southern Railroad — I don't think necessarily over the tracks, but covered a great deal of the land that would be north of the tracks.

All in all, it appeared to be somewhat of a swampy no-man's land.

Q. How did its elevation at that time and at the present time, generally speaking, compare with the elevation of Riverside Drive and the residential area lying south of it?

A. Well, the topography lines on this map speak very much for themselves. This is a sixty-foot elevation right here.

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page 19]

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I am pointing towards the eastern end of the property. All of this island in the topographic map runs from sixty to a high in spots of sixty-eight. Some right in the center is sixty-six and right up towards the western end there is a sixty-eight foot mark. Right here along Riverside Drive the residences show an elevation of, I think, a low of one hundred and a high of one hundred and twenty. Here is one in the center where the residences start at one hundred and forty. That is at Ferncliff Road and Thirty-First Street.

Q. When you use numerals sixty, sixty-six and sixty-eight, and one hundred and one hundred and forty, you mean so many feet, do you not?

Morton G. Thalhimer

A. This topo map indicates the footage above sea level. The island mostly is sixty feet above sea level and the land that separates Riverside Drive from the Southern Railway here, all of this land, slopes from Riverside Drive down and varies from one hundred and one hundred and forty feet above sea level. Shall we say the minimum would be about sixty feet from the bed of Riverside Drive — there might be one lower spot. I think the lowest spot on Riverside Drive is right where the existing road is that goes down to Reedy Creek.

The only entrance I could find from Riverside
page 20] Drive to any portion of this property marked in
red was the road that comes into Reedy Creek
and goes as far as you can walk, from there across the rail-
road tracks. Other than that, there is no way I know of of
getting into this property except by the railroad.

Q. What is the nature of the terrain between the southern
line of the company's right-of-way and the northern line of
Riverside Drive?

A. The terrain goes upward quite steeply. When you come
from the Southern Railroad on the south side of its right-
of-way the bank comes down. There isn't very much level
land. The land slopes very steeply from Riverside Drive on
all of this land in here between Riverside Drive and the
Southern's right-of-way. There is a steep incline.

Q. Did your investigation of the matter in 1959, and
recently, indicate who owned that property and to what, if
any, use it is put?

A. Well, this part of the property — the eastern part of
the property —

Q. I am not speaking of the property in suit. I am speaking
of the property between the south line of the Southern's
right-of-way and Riverside Drive.

A. The City of Richmond. It was sort of a natural
buffer, the railroad tracks being at the low spot,
page 21] the elevation of the railroad tracks above sea
level being approximately seventy feet, and from
seventy feet to Riverside Drive, the strip of land owned by
the City is a buffer strip with trees and normal wild under-
brush and growth of woods or plants or weeds.

Q. You may take your seat. You say from your examina-
tion of the premises, the only access road to it would be down
this road running parallel to Reedy Creek?

A. Yes, sir.

Morton G. Thalheimer

Q. To the south of the railway's right-of-way?

A. That is the only one I could find. At the far eastern end of the property there is a road that apparently goes down to City property that may have been used for storage or maybe even dump purposes years ago, but with a gate across there you can't get on to the property by that entrance.

Q. Do you think it would be practical or economical to develop this property for any of the uses contemplated or permitted by the City ordinance, with only one access to it, assuming that access was over the right-of-way of the Southern Railroad?

A. No, sir, I don't think it would be practical to use it for any of the purposes usually stipulated page 22] in a residential area.

Q. If that entrance were confined to a grade crossing, you think that would have any pertinent bearing on the *usability* of the property for any such purposes?

A. Well, I wouldn't think it could possibly be developed with a grade crossing over main tracks of any railroad at grade, but even if you were to assume that that were possible, and I myself think that would prohibit it — that alone — from being used, but even assuming that, this property is very narrow. The western end of the property and right here in the middle of the property (indicating on map on board) is only about two hundred and fifty feet wide at the widest point. I say approximately — at some points it could be two-sixty or two hundred and sixty-five. At this end it is fifty-two or fifty-four feet wide, at the eastern tip. If one wanted to develop it for any type of residential purposes, and assuming they went to the north side of the Southern right-of-way, you can hardly conceive of wanting to develop residential properties that would back up exclusively to a railroad right-of-way. To develop the property on Riverside Drive, it would have to sit back for a front yard. The zoning ordinance would insist on a front and rear yard, and the normal way would be to front on the river with a front or rear page 23] yard facing the railroad, and then the question, how would you get to the property?

If you assume that people would buy residential property or use any of these residential properties, crossing a railroad at grade, then you would have to leave at least a sixty-foot road all along here in order that when one got across the railroad track they could get to their respective properties,

Morton G. Thalhimer

or get to whatever use was permissible in this Residential 3 and 4.

Q. When you say "all along here" you mean a sixty-foot roadway along the southern line of the property from its western to its eastern end?

A. That's right. Thirty-five or thirty-six hundred feet from this end to this end. If it were going to be used for residential property, you certainly couldn't use this narrow fifty-two foot strip. You couldn't comply with any zoning ordinance to build a house. To stretch your imagination I would guess there would be twenty to twenty-five lots for residential houses facing the river with a sixty-foot road in back of those houses running parallel to the Southern Railroad tracks.

On the other hand, if the island were tremendously big and you didn't have many questions, such as fill and so on, the normal approach and the only approach I would think for the purposes allowed under the zoning ordinance page 24] that would be practical, would be a bridge crossing over these tracks. If you undertook to do that you would have to have ramps going down to get to the property and because of the height at which you would go across the railroad tracks, these ramps would probably have to be — I am not an engineer but my guess would be they would have to be three hundred feet long, and that would further encroach upon the available land for use, and if you cross the railroad by any type of overpass, there would actually be very little *usable* land left. The cost involved in making that land *usable* for any purpose, because of the fill alone, would be tremendous.

Q. Take your seat, Mr. Thalhimer. Are you sufficiently familiar with the ordinances and requirements of the City to be able to say whether or not permission, if the property otherwise permitted such a construction, to build residences down there would be granted unless it was so developed as to enable the City to provide police and fire protection?

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page 25]

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A. From my experience with the Department of Public

Morton G. Thalhimer

Works and the Building Inspector's Office, you could not get a permit for the development of this property for the purpose allowable under the ordinance, unless there were ample, adequate provision for entrances by the police and fire department, which includes their automobiles and fire apparatus, and you would not be able to get a permit from the Building Inspector's Office to erect a house unless there were land which had adequate foundation on it to build the house or improvements, any type of improvements.

Q. What is your opinion regarding the necessity of filling of the property?

A. It would be impossible to contemplate use of the property for any of these purposes unless it were filled above the high water mark, unless it were no longer subject to the overflow it is now subject to.

Q. How about the question of sewers? Did you make any investigation of that at the time you examined the property in 1959 when it wasn't filled?

page 26] A. Yes, sir. It was very doubtful that we could get sewerage. As you know, the sewer pipe that is shown at Reedy Creek empties raw sewage into the James River which, again, is very objectionable for its use. The City officials would not say we could get sewerage or that we could not get sewerage. It would depend on the construction, and how much load the sewer line was carrying, and whether or not the fill would be sufficient to give a fall to the sewage, and if the fill was not sufficient to give an adequate fall to the sewage, as I understand, what a developer would have to do, they would have to pump the sewage into the line.

Q. Mr. Thalhimer, I show you three colored pictures, Kodak pictures, which I will ask you to state whether you had taken during the process of your recent inspection of the property at the instance of the Southern Railway and whether they reflect to your knowledge truly the conditions they purport to portray?

A. Yes, sir, I had these pictures taken and they do portray the conditions.

Mr. Gay: We offer these pictures in evidence, Your Honor please.

Mr. Eichner: Has the date been stated?

Mr. Gay: I will ask that in a minute.

Morton G. Thalhimer

page 27] Note: Three color photographs marked Plaintiff's Exhibits Nos. 4, 5 and 6 and filed.

Q. (By Mr. Gay) when were these pictures taken, Mr. Thalhimer?

A. To the best of my knowledge and recollection, they were taken the latter part of July 1962 — sometime in July of 1962. I can ascertain the exact date for you, but that is the nearest I can remember.

Mr. Gay: I think that is sufficient.

Mr. Eichner: That is close enough.

Q. (By Mr. Gay) Mr. Thalhimer, I hand you these three exhibits, Nos. 4, 5 and 6, and ask you to state to the court briefly what they purport to show in relation to the property in question.

A. This one —

Q. Identify it by number.

A. No. 4, being the lowest number here, shows the Southern Railroad tracks looking east, and it shows the fill that the Southern Railroad put into the land.

Q. What does it show on the righthand side of the picture?

page 28] A. On the righthand side of the picture it shows the steep hill, being the property that belongs to the City of Richmond and going up from the right-of-way towards Riverside Drive.

Q. Is that typical of the timber and other foliage you mentioned a while ago in your testimony?

A. Yes, sir, I think this is more or less the character of it all. Probably when you get very, very far down towards the eastern end of it where the City had this gate it would be a little bit more cleared land, but past that spot going westward this is very typical.

Q. What have you to say about Exhibit 5?

A. Exhibit 5 is another picture of the track looking also in an easterly direction and shows the trees along the south side of the railroad track or north side of the City property, and shows some of the growth on the island where it had not been cleared away. The Southern had done some clearing along the line of the fill, as you see on No. 6, but all three of the pictures show the heavy growth all up and down along the right-of-way.

Morton G. Thalhimer

Q. All right. Mr. Thalhimer, are you familiar with the Provisions of Article V of the City Zoning Ordinance as amended in May of 1961, setting forth the regulations governing the use of buildings and premises in R-3 and page 29] R-4, single family dwelling districts of the City?

A. Yes, sir.

Q. In view of the conditions which you have described in your testimony, will you state whether or not in your opinion it is economically feasible to make use of this property for any of the purposes for which it is zoned, R-3 and R-4 residential?

A. It is my opinion that it is neither economically feasible nor practical to use this property for the purposes so specified.

CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. Thalhimer, on what dates did you examine the property?

A. I would have to go back to my file and give you the exact dates.

Q. Just give the approximate dates. In what months did you examine it?

page 30] A. I examined it, I am sure, recently in March of this year, approximately in March, middle of March or early April, and then again later I examined it again and rode all over the property on the same truck I imagine you rode on. Then I waited until July of this year when I walked on much of the property — walked down and looked at parts of the property. I cannot say I have walked over every square foot of the property, but I walked the eastern, central and western parts of it.

Q. You stated earlier, I believe, you examined the property in 1959?

A. Yes I did.

Q. What kind of examination did you make at that time?

A. At that time I was looking at the portion of the property on the eastern portion belonging to the Virginia Electric and Power Company, and I relied on my own transportation. I went down the Reedy Creek Road and looked at the property from the western end pretty far down towards the eastern end.

Q. Did you take pictures on any occasion other than July of this year?

Morton G. Thalhimer

A. The 1959 appraisal was made in cooperation jointly with Mr. John Bagby, and our appraisal sub-
page 31] mitted to the power company had pictures, I believe, that were taken by Mr. Bagby.

Q. Do you recall what month of 1959 that was?

A. Yes, I think so. I have it here in my papers. The appraisal itself is dated November 30, 1959, and I think we probably looked at the property in October, but I would like to correct the statement I just made. I think I made a wrong statement. I did not take any pictures in 1959 and I have my file copy of the appraisal in my hand and it has no pictures attached to it. I am not sure whether any pictures were taken in 1959, but Mr. Bagby can tell you.

Q. You did not take any pictures on your visit in March or April of 1962?

A. No. These are the only pictures, the only date I took any pictures. I didn't actually take the pictures, but I supervised one of the young men in my office who took them.

Q. You mentioned foliage on the trees in one of those exhibits. What kind of trees are those?

A. I think there are some evergreen trees there — probably some maples and poplars. I didn't examine the trees for their value as wood or anything, but it was quite a heavy growth of trees.

page 32] Mr. Gay: Mr. Eichner, I overlooked asking Mr. Thalhimer one phase of this matter that is very important to us, and if I may interrupt your cross-examination I would like to ask him a few more questions.

Mr. Eichner: Very well.

DIRECT EXAMINATION (Continued)

By Mr. Gay:

Q. Mr. Thalhimer, have you in the last few days, at my request, had prepared any sketches that would show the relative distance of houses in the Riverside Drive area from the Southern Railway's right-of-way and there respective elevations above its tracks?

A. Yes, sir, I have.

Q. Will you make them available to yourself? I want to examine you about that.

A. All right, sir.

Q. State just what you did and what your studies in that

Morton G. Thalhimer

page 33] respect show with respect to the relative elevation of some of the houses along Riverside Drive in distance and in elevation from the Company's tracks?

A. I took the track level, the level of the track, and undertook in my own fashion to make a cross section, and on this little plat are shown in profile, if you wish to look at it.

Q. State what the first one is.

A. The level of the track is taken as zero and this line shows the distance of the houses on Twenty-Sixth to Twenty-Seventh Street from the Southern Railroad right-of-way going south, and in this particular case the house is four hundred and fifty feet south of the railroad track.

Q. When you say "going south" —?

A. Going from the railroad track in a southerly direction, the railroad track being the north line and the house being the south line.

Q. And the distance is what?

A. In this particular location, four hundred and fifty feet.

Q. The elevation?

A. The elevation is shown on this line, and the elevation is fifty-five feet above the elevation of the railroad track. In other words, the distance from the front of the house on its ground level is four hundred and fifty feet south of the track, and the house rests on its foundation at fifty-five feet above the track.

page 34]
By Mr. Eichner:

Q. May I ask how you made these measurements?

A. I took them off the topo map. I am using the City's topo map, and using a scale and ruler, and these figures are based entirely on that map — there was no survey.

Q. With reference to the elevation and also the horizontal distances?

A. Yes, sir. I used the elevation lines and these distances. These distances are minimized because I used the straight line, and the hypotenuse of the triangle would actually be longer. I took it on this angle (indicating on sketch).

By Mr. Gay:

Q. You treated the distance figure as on the same level. Is that right?

A. That's right.

Mr. Gay: We would like to file this sketch.

Morton G. Thalhimer

page 35] The Witness: These are the only ones I have
and I don't have copies.

Mr. Gay: We will make copies.

Mr. Eichner: Could we have the houses identified by street number? I will have to object unless it is identified a little better.

Mr. Gay: The witness has identified the exhibit as being related to the house on Hillcrest Road at the intersection of Twenty-Sixth Street — I believe he said between Twenty-Sixth and Twenty-Seventh Streets.

Q. (By Mr. Gay) Can you identify it on the plat, Mr. Thalhimer, as to what the house is referred to in this exhibit?

A. Each of these is numbered, started at one on my map, which I will be very pleased to copy for you, and as we go to the other maps we will see the numbers — two is here and three and four. I have drawn a line on these maps from the railroad to the house, and they are all identified as to these streets.

Mr. Gay: I would like to say for the record that the witness' statements just made are in reference to copies of
page 36] the topographic map filed as Exhibit 3 on which he
has superimposed certain colored markings and
lines indicating the locations of the houses referred to in the exhibit and others of like nature which I am about to introduce, and counsel can correlate them by using this plat. We will introduce this evidence with the understanding we will make a copy and withdraw it, with the court's permission.

The Witness: I would like to say there are some other markings on this map that have nothing to do with any testimony up to now — some of my own notes. I would rather have a map made, a copy of this — but I have no objection.

Mr. Gay: We will make a copy of so much of the map as relates the exhibits you are now introducing to the topographic matter shown on it.

The Court: Is that agreeable?

Mr. Eichner: Yes, sir. Later on I will ask Mr. Thalhimer to connect each one with a street number by means of another map. Otherwise, I think they are most unintel-
page 37] ligible, with all due respects.

The Court: He is offering this map to be a key to the chart he is going to introduce? Is that correct?

Mr. Gay: That's right, and each of the individual sheets

Morton G. Thalheimer

showing distances and elevations are related numerically to a particular house on a particular street, whether it be two or two thousand it doesn't show — but they are related numerically.

The Court: As long as it is connected with the map —

Mr. Gay: It is shown by a line from the right-of-way to the house.

The Court: All right.

Mr. Gay: I will supply the record with the map.

The Witness: I would like to say I had no way to get these numbers without going over there. What I have prepared here is entirely from the City's topographic map. It would be no trouble for me to go there and identify each of these houses and put it on the map, but I had no way
page 38] when I was doing this to know the exact number of houses. This information I am now giving you is made entirely from this map, hoping it would give a visual picture of the conditions that exist and assuming the City's topographic map is reasonably accurate.

The Court: There is no need for the house designations as long as the map is filed and the number is keyed in with the chart.

Mr. Eichner: We can connect them up later.

Mr. Gay: We will supply duplicates of so much of these topographic maps as supports the witness' testimony on these individual sheets.

Q. (By Mr. Gay) Will you proceed with your testimony in connection with any other information you have developed similar to that about which you just testified?

A. Your Honor, you will notice in the lefthand corner at the top there is a little red number. These plats are numbered one to eight. Plat No. 2 is the northwest corner of Twenty-Eighth Street and Riverside Drive.

Q. Does the numeral in the upper lefthand corner of that plat to which you have just referred correspond to a numeral on the map from which it is prepared?

page 39] A. Yes, sir, exactly. I am now testifying to No. 2, which is the Twenty-Eighth Street property. At that point the residence is about three hundred ten feet south of the track and forty feet above it.

On No. 3, which is the northwest corner of Twenty-Ninth Street, the residence is fifty-four feet above the rack and two hundred thirty feet south of it.

Morton G. Thalhimer

At the corner of Thirtieth Street, my No. 4, the house is sixty feet above the track and three hundred sixty feet south of it.

Q. What is the location?

A. That location is the northeast corner of Thirtieth Street and Riverside Drive.

No. 5 is the northwest corner of Hillcrest Road and Riverside Drive. At that point, it is two hundred eighty feet south and about thirty-six feet above.

No. 6 is the northeast corner of Forty-Second Street and Riverside Drive. That house is eighty-six feet above the tracks and four hundred fifty feet south.

No. 7 is the northwest corner of Forty-Second Street and Riverside Drive. At that point the house is eighty-two feet above the tracks and about five hundred ninety feet south.

No. 8, the last one I have, is the house on Riverside Drive near Forty-Fourth Street. That house is ninety-four feet above the track, and sits back eight hundred ninety feet.

Mr. Gay: We offer those pencil sketches showing the respective distances and elevations from which the witness has just testified. You might combine them all as one exhibit.

Note: Eight sheets, stapled together, marked Plaintiff's Exhibit No. 7, Sheet 1, and filed.

Mr. Gay: That's all about that matter, Your Honor, Thank you.

CROSS EXAMINATION (Continued)

By Mr. Eichner:

Q. Mr. Thalhimer, how many houses are there between Twenty-Sixth and Forty-Second Street on Riverside Drive?

A. I made no attempt to count them.

Q. And this is only a partial sampling of the houses there — this Exhibit 7?

A. Yes, sir.

Q. Do you know whether or not there are any vacant lots fronting on Riverside Drive between Twenty-Sixth and Forty-Second Streets?

A. A very few, maybe. I did not make a careful survey of the houses, but I think some of the houses have larger lots on either side, but the vacant land is nearer the eastern end of the

Morton G. Thalhimer

property — Nineteenth, Twentieth and Twenty-First Streets.

Q. Do you think those vacant lots in that area are reasonably suited for single family dwellings?

A. In this general area?

Q. On Riverside Drive between Twenty-Sixth and Forty-Second?

A. Yes, I do.

Q. Do you think those vacant lots in that area would be more or less suited for single family dwellings if a railroad marshalling yard were constructed on the property in question?

Mr. Gay: May I interrupt counsel to clarify terminology?

We don't know what is meant by a marshalling
page 42] yard and if he wants to identify the operations
that would be involved on this property, I suggest he use the proper terminology so we will know what he means.

The Court: Suppose you amplify your description of marshalling yard.

Q. (By Mr. Eichner) Mr. Thalhimer, are you familiar with the Belle Isle Yard of Southern Railway Company?

A. Yes.

Q. If on the property in question, in red up there on the map, an eleven-track railroad yard were constructed for the switching of trains, without any limitation as to the hours of use, do you think it would make the vacant lands fronting on Riverside Drive between Twenty-Sixth and Forty-Second more or less suitable for dwellings?

Mr. Gay: Just a minute. Your Honor please, I understood from your opinion on that question that evidence would be admitted to show the general effect on the property resulting from the use of the subject property for yard purposes in determining the reasonableness of the City's councilmanic action in zoning this property residential. By that I mean I construed your opinion as weighing the relevant
page 43] interests of the two property owners, one against the other, and for that purpose evidence would be admitted to show the reasonableness or unreasonableness of the action of City Council as to the effect of the yards on the adjacent property.

We wish to note an exception to Your Honor's ruling in

Morton G. Thalhimer

that respect, as the order entered today indicates, and I also want to make the point that assuming its admissibility for that limited purpose, the plaintiff renews its objection as to the admissibility of this evidence in the sense that it can in no way be relied upon to justify the action by the Council which would impair or prevent the Southern Railway from performing its duty in engaging in interstate commerce as it does, and in that constitutional sense we don't think the evidence is admissible, and we do not understand that Your Honor has passed on its admissibility for that purpose.

The Court: That is correct, Mr. Gay. It was my thought it would be admitted for the limited purpose you page 44] have indicated, bearing on the reasonableness of the action of the Council in passing this ordinance. I thought that counsel for the plaintiff had admitted for that limited purpose it was admissible, but regardless of that, I have said it would be admitted for that purpose only.

Mr. Gay: I just wanted to keep the record straight.

Mr. Eichner: Read the question.

Note: The last question was read by the reporter.

A. That is a very difficult question to conscientiously answer, but I will do my very best if you will be patient with me.

The railroad is already there. There is hardly any place in Richmond you don't hear some noises from railroads. The increasing noises from truck traffic and automobile traffic —

Mr. Eichner: Your Honor please, I don't think the witness is being responsive.

The Court: Yes I think so. I think the witness has indicated in the preface to his answer he is going to have to page 45] give some explanation. If you can answer categorically and then explain you might do so, but if it is necessary for you to make this explanation you may do that. Go ahead.

A. (Continuing) I assure you I would like to use as few words as possible.

I am trying to say as traffic increases in all parts of the City, there are people who like to get away from traffic and get into more quiet places, and those types of people would not be attracted to Riverside Drive even now with the rail-

Morton G. Thalhimer

road track below them. If there are one or two or three more railroad tracks put below, I think it would enlarge the number of people who would prefer not being that close to a railroad. On the other hand, I think it is very significant on Riverside Drive there is a brand new thirty-five family apartment house at the eastern end, practically overlooking the existing railroad storage yard and the Coast Line yard. There is another one — I would like to show you (indicating on map) — a fifteen-story one that is being built, which is evidence there are many people who do not object to yards or noises of the kind generally. There is a question in my mind as to whether that is one percent or half of one percent or twenty percent, and the reason there is this question in my mind, in trying

to answer your question conscientiously, is because page 46] cause of the height of Riverside Drive, the distance back from the present and future tracks, and this large amount of land that the City now owns that would act as a buffer both from noise and sight.

This would be very much more likely to affect the usability of this land if it were level. If the marshalling yards, as you refer to them, were all on the same level with the houses, I would say there would be a considerably greater possibility of damage, but because of all the circumstances surrounding this land, I can only say it is my carefully considered opinion that it could narrow the market for potential buyers. I don't think it would destroy the market, but it would take a small percentage of the potential buyers who would not want to be that close to a railroad track. But there again, I don't think those buyers would be interested anyway because nobody can guarantee how many trains will be running up and down the existing tracks twenty-four hours a day, and I am not able to volunteer that information.

Q. (By the Court) Is this new apartment building in process, is that the one just to the west of the one already completed?

A. No, sir, there is one to the west that is almost completed. May I show you on this picture?

page 47] The Court: I was just trying to establish the location in my own mind.

Q. The two apartment houses you referred to, Mr. Thalhimer, are at what streets? Can you show them on the map?

A. Yes, sir, there is a thirty-nine family apartment house

Morton G. Thalhimer

located at the corner of Twenty-Second Street. That one is completed and practically entirely occupied. I think there are three vacant apartments.

Mr. Gay: May I interrupt the witness and have it understood that when we proffer a duplicate of these topographic maps showing the relation of these various sites he has testified about, of which there are photographs in evidence, we can show the location of these two apartment houses on it in color. Is that agreeable?

Mr. Eichner: I think so.

The Court: That should be sufficient.

Mr. Spain: I would like him to point them out on the map on the board.

page 48] The Witness: I will do the best I can.

Q. (By Mr. Eichner) If you know the street, please point them out, Mr. Thalhimer?

A. The one in existence that is now being occupied is at the corner of Twenty-Second Street (indicating on map). The one under construction is between Twenty-Fourth and Twenty-Third Street. The one that is being proposed to be built, and I will show you a picture of that, the fifteen-story building that will have 219 apartments, will be located between Nineteenth Street and Twenty-First Street, and those three locations are shown in green on my work map, with the distances that we referred to in this previous exhibit.

Q. Are you the agent for any of those apartment houses?

A. We are not agents for the two in existence, the one completed and the one under construction. We are agents for the one that is now being processed.

Q. Do developers of apartment houses check the zoning ordinances before they go ahead with their plans to construct them —

Mr. Gay: I think I might object to that question.

Q. (Continuing)— or do they rely on provisions
page 49] of zoning ordinance as to nearby property?

A. In this development and in all developments that I know of, the developing of apartment houses, there is considerable expense involved in engineers' and architects' fees. Marcellus Wright & Sons are architects for this project and they have submitted their tentative plans. To the best of

Morton G. Thalhimer

my knowledge, they were the ones that carried the ball with the zoning of the property, to see that the land is properly zoned, and I have been informed by them — I have not personally checked — but I have been informed this is in full compliance with all the City requirements.

Q. I think you misunderstood my question. In choosing a site for apartment houses, is any consideration given to the protection given by the zoning of surrounding properties?

A. I would say that was one of the factors, yes.

Q. You stated you thought the Riverside Drive property, about which I asked my question, a marshalling yard or switching yard, shall we say, on the same grade would be highly objectionable. Is that what you said?

A. I said more objectionable. I was trying to say it would create more noise and obstruct the view and therefore I would say if there were any objections there would be
page 50] more objections to one on the level than one below.

Q. It is just a quantitative matter — is that correct?

A. I would say so, provided the quantitative is not foolish, like two or three feet. When you are talking about twenty-five feet, that's one thing — five feet is another and fifty feet is still better.

Q. And it is also quantitative insofar as the size of the railroad yard is concerned, is it not?

A. I would think that would have a bearing, yes.

Q. You said if one or two or three tracks were put below, a large number of people would prefer not to be that close?

A. Something like that.

Q. And if eleven tracks were there, it would still further enlarge the number of people who would not want to be that close, would it not?

A. I would think there would be a formula. There would have to be tracks and noise and all the factors. Just simply tracks would not necessarily in themselves be controlling. It is a very complicated question to give an opinion on. Judging by yards I have seen in other sections, it is something
page 51] like you are either willing to live on a street that fronts to the marshalling yard or on a street where there is a terrific rush of traffic, and you don't measure whether there are fifty or five hundred cars. There are people who don't object to it, as evidenced by the fact that some of the very fine homes in Windsor Farms are along Riverside Drive on the north side of the river, built

Morton G. Thalhimer

page 54]

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A. In my considered opinion, trying to save as many words as I can for the sake of time, market value is the value that a piece of property will bring in the open market when both buyer and seller are fully aware of all the facts and conditions surrounding the individual piece of property. It is my opinion that any vacant property, in answer to your question, that is now located there could conceivably have a smaller percentage, or a percentage of fewer buyers, but to a buyer who wanted to live there, the actual fee market value of the land would be approximately the same. I tried to say in my first answer that it could conceivably limit the number of people who would want to live there, but it would not lower the intrinsic value of the property to anybody that would want the property. It could lessen the potential number of prospects for the property.

Q. (By Mr. Eichner) Leaving aside market value for the moment, do you think it would be a fair statement it would be less suitable for residential development?

A. No, I don't agree with that. It is still suitable. It still has all the open land in front of it. It is one of the few places in this whole City that has the wide expanse in front of Riverside Drive in which reasonably nothing could be built that would obstruct the view or light or air, because obviously, even the land with the sixty-foot topography level that is encompassed in the property under consideration, the zoning ordinance limits the construction there. I will be glad to read it for you but you probably know it. I don't remember it but it is either two stories or a certain height — twenty-five or thirty feet — and therefore any house on that property under the allowable zoning could not obstruct the view.

There are very few places in the City of Richmond where the view is as beautiful and there is as much open land, allowing light and air and so on, and because of the depression of this property below the level of Riverside Drive and of the lots on Riverside Drive, it is my opinion that the worst that could happen to this property there would be a lessening of the number of people who would want it, but there would be ample buyers who would want to build in that area.

Morton G. Thalhimer

Q. Now, assuming the same factors concerning the type of railroad yard to be built on the property, would it make the existing dwellings fronting on Riverside Drive between Twenty-Sixth and Forty-Second Streets more or less desirable as dwellings?

A. I think what I have said about lots would apply equally to the houses. In other words, it would not destroy the fair market value of the property, but it could lower the number of people who would want to live there because of the fact some people would not want any additional noise or light or any other thing that came from more tracks.

page 57] Q. Are you familiar with any residential areas in the City of Richmond as close to a railroad switching yard as the Riverside Drive properties I have just mentioned?

A. No, I cannot say that I am familiar with the switching yards being so located. Those of the Coast Line, C. & O., and R. F. & P., bordering or rather close to the Acca Yard, would have the proximity of the Bryan Park area where the land separating the yards from the residential property is considerably flatter and the tracks are much nearer on the level. You don't have the advantage of the buffer area which the City owns here. The distance, however, would be an engineering problem. My first thought is that the actual distance as a bird would fly would probably be closer to the Riverside Drive houses than it would be to the Bryan Park houses and those surrounding areas.

Q. You mentioned a moment ago that you did not believe that construction of this yard would lower the intrinsic value of the Riverside Drive property. Do you feel there would be any effective economic obsolescence?

A. I think economic obsolescence, if I understand that phrase correctly, would refer to depreciation in value or useful value. I think we are living in an age where we have that type of noise and sound and light and things that are going on all around us. I mean airplanes fly over
page 58] one's house which create loud noises.

I think it comes back to my original statement and that is what I think. It will lower to some extent — and I wish I could tell you how I could measure it, as an engineer measures distance — but it would lower between five and ten percent at the outside the number of people that would be interested in being owners of the property because of the added trackage, but it would not in my opinion change its

Morton G. Thalheimer

economic value. In other words, that building cost and the land cost would remain the same, and the actual physical depreciation would remain the same, but there could be a smaller demand or a demand from a smaller number of potential buyers or future buyers.

Q. Isn't economic depreciation a lessening in demand?

A. Perhaps so. I would look at it more as a lowering in value brought about by economic conditions.

Q. What kind of economic conditions?

A. It could be many economic conditions. In other words, if we would have a great panic, a repetition of what happened to the real estate market in 1930, we would have economic conditions which would lessen the number of people who were able to buy houses. If we would have a depreciation of the purchasing power or the value of money, rather
page 59] than an inflationary period. I think that would be an economic condition.

Q. You are a member of the American Institute of Real Estate Appraisers?

A. Yes I am.

Q. Are you familiar with the volume entitled "Appraisal of Real Estate," Third Edition, published by that Institute?

A. I have seen it, yes.

Q. Let me show you.

A. Yes I have seen the book.

Q. Do you accept that as an authentic text in the field?

A. I accept it as a well-documented book, yes.

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page 60] Q. (By Mr. Eichner) I would like to ask you to read the paragraph entitled "Components of Depreciation."

A. (Reading)

"An effect caused by deterioration or obsolescence or both. Deterioration is evidenced by wear and tear, decay, dry rot, cracks, encrustations, structural defects.

"Obsolescence is divisible into two parts, functional and economic.

"Functional obsolescence may be due to poor plan, functional inadequacy or overadequacy due to size, style, age or otherwise. It is evidenced by conditions within the property.

"Economic obsolescence is caused by changes external to the property, such as neighborhood infiltrations of inharmonious people or property uses, legislation and the like."

Morton G. Thalhimer

Q. Do you believe that the proposed switching yard falls into that category of exterior influences that would constitute economic obsolescence?

A. I think I can add very little, if anything, to what I have already said. Because of the height of this
page 61] property above the railroad tracks, and because of the shield of the railroad tracks by virtue of the land the City of Richmond already owns, I don't think that the construction of additional uses by the railroad will be any more destructive to this property than the normal things that happen when city streets are widened, when traffic artery loads are increased very heavily, when airplanes fly over cities and all the things that are happening in this generation that are parts of the evolution of our times.

I think that there will be people who will feel very honestly, very conscientiously, that this will be an infringement on their peaceful enjoyment of their property. In some cases it may be imaginary. I don't know in advance. I cannot visualize, the exact amount of noise. But it may be a mental hazard, just as when the Richmond-Petersburg Turnpike was put through, the people with property bordering that thought their properties were ruined. It is a mental hazard, such as having to drive a golf ball over water. There are certain people who would object to it, but there are other people who are so accustomed to the changing attitude of the times, noise and lights and traffic, the benefits the property will enjoy on this beautiful location and abnormal height and protection of its view by virtue of its relation to the depressed tracks,

I still think the property itself would have
page 62] the same fair market value. There could conceivably be some difficulty in getting the same number of customers that would want to buy the property.

Q. Now, Mr. Thalhimer, you identified Plaintiff's Exhibits Nos. 4, 5 and 6, some photographs which you say were taken in July of 1962. You also stated, I believe, you were out there in March or early April of this year. I hand you two photographs and ask you if these show the conditions — first, if this first photograph shows a part of the area as it looked during your visit in March or April of 1962?

A. I cannot identify this exact spot, but I would say generally that it appears to be as I remember it, yes.

Mr. Eichner: We offer this photograph as City Exhibit A.

Morton G. Thalhimer

Note: Marked City Exhibit A and filed.

Q. Now, Mr. Thalhimer, you referred to a road, I believe, in your testimony, down to the railroad tracks near Reedy Creek, did you not?

A. Yes.

Q. I hand you another photograph and ask you if that appears to be the way the road looked in March page 63] or April of this year when you were there?

A. I would say so. Does this road go all the way to the track? It appeared to me to be a little steeper, but I don't know the angle from which the photograph was taken. I drove my car from the bottom of the ridge to the little parking place on the south side of the tracks. I would say yes.

Note: Photograph marked City Exhibit B and filed.

Q. Now you examined the eastern portion of this property, this property formerly owned by Virginia Electric and Power Company prior to its filling?

A. Yes, sir.

Q. And at that time the Southern Railway right-of-way to the south was considerably higher than the VEPCO property, was it not?

A. I wouldn't say considerably higher, no sir. It may have been slightly higher.

Q. Have you ever seen that property flooded?

A. I have never actually been on any of the property when it was really flooded, but I have seen the water standing on both of the properties. I mean, the drainage from even the normal rain stays on there in little page 64] brooklets and things, and there are swampy, marshy places on it.

Q. In your opinion was the property in question, the whole sixteen acres, prior to the filing of any part of it in 1959 or before, suitable for use as a railroad marshaling yard or railroad yard of any sort?

A. I would think that to make it useable for additional tracks that filling would have to be done.

Q. Then it was not suitable for supporting tracks at that time?

A. That would be my impression, yes.

Q. You referred this morning, Mr. Thalhimer, to George-

Morton G. Thalhimer

town Apartments along the right-of-way of the R. F. & P. Isn't it true you sought last year to get the tax assessment reduced on that property?

A. I am still trying to get the assessment reduced, and as long as you bring up the question and the Assessor is in the room, it is assessed for more money than it actually cost.

Q. And your proposed reduction of assessment is based in part on income being less than expected, is it not?

A. No, sir.

Q. Did you not tell the Assessor one reason it should be reduced is because of the noise from the railroad?
page 65] A. Probably it could have been. I don't have the copy of the letter I wrote the Assessor before me.

Q. I hand you a letter dated February 1, 1961, addressed to Richard A. Chandler, Assessor of Real Estate, and ask if that is your letter?

Mr. Gay: You are not offering the letter?

Mr. Eichner: Not at this point.

A. Yes, sir, this is my letter.

Q. I would like to refer you to page 3 and ask you to read the second paragraph of your letter to Mr. Chandler.

A. The second paragraph reads:

"This land cannot be compared, in my opinion, to land being used for large twelve-family and up apartments located in other sections of the City which are not bound by any of the parking restrictions and where the owners did not have to actually give to the City, without compensation, any of their land."

In this particular case the City —

Mr. Eichner: Excuse me.

Mr. Gay: Let him explain that.

page 66] The Court: He can explain if he desires.

A. (Continuing) In this particular case the City would not grant a permit to build these apartments unless the property owner gave them, without compensation of any kind, land to widen Hamilton Street, the main thoroughfare there, and also agreed to leave an alley on the east side of the property.

Morton G. Thalhimer

Those rights to the use of the property were taken by the City in order to grant a permit and were not compensated, when it is normal that the City, when they take land to widen a street, compensate the landowner.

Continuing to read —

“We also call your attention to the fact the land is bounded on the west by Hamilton Street, which is a very heavily trafficked street. Indeed, it is an important traffic artery, which does not add to its usefulness or quietness for comfortable living for apartment houses; and it is bounded on the east by the railroad cut, which of course creates noises, vibration, some dirt, smoke, and fumes, and therefore not as good for apartment house use as that in many other sections of the City not located on traffic arteries and not so close to railroad tracks. It is for these reasons
page 67] that we believe the land itself is over-assessed.”

CROSS EXAMINATION

By Mr. Spain:

Q. Mr. Thalhimer, you cannot rightly compare trains passing on a track on certain given schedules with trains in a shifting yard, shifting at all hours of the day or night, can you?

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page 69]

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A. I don't happen myself to be an expert on noises and I can only speak from my own personal experience. Where I lived for thirty-six years I could hear the noises of railroad tracks and I have slept in Ashland where the main line of the R. F. & P. roars through the center of the city — I have spent many nights on that line, and it felt as if the passenger train was going to run right through the middle of the house. I have stopped at a hotel in Charlottesville down town for many years and there are railroad yards there which made not nearly so much noise as some of the main lines I have stayed on.

My answer to the question is I really cannot answer it except from my personal experience where I have been near

Morton G. Thalhimer

storage yards, and the noises have not bothered me personally as much as when I have been close to a main line, but I call your attention to the fact that it is very unfair, in my own opinion as an expert in real estate values, to generalize because certainly the distance from the actual track to the house, the distance and the elevation, has a great bearing on the amount of noise or the amount of light or the amount of smoke or fumes or anything else that is generated. Therefore, when you generalize and say is a straight through track more detrimental than a storage yard or marshaling yard, I don't think that question can be answered without consideration to all the facts and circumstances and distances and contour of the land.

Referring back to the letter that I quoted from, it was not saying this property was objectionable or keeping the people from renting it. I was trying to make the comparison to the City Assessor of people who had property on the Boulevard without apartments, being assessed at one dollar a square foot and they were not subject to all the restrictions on parking. The proof of the pudding, insofar as Georgetown is concerned, is that it is one hundred percent rented. The City Assessor knows that. Our books have always been open. When we go in for any tax adjustment, we tell the City Assessor anything he wants to know and give him access to the books.

Q. I appreciate that long explanation, but your answer is you cannot make a comparison?

A. My answer is under certain circumstances a storage yard can be less disadvantageous than a through line track, or vice versa. It takes knowledge of the circumstances in order to make an intelligent comparison.

page 71] Q. How about a switching yard where trains are made up?

A. I think it depends on the location of the yards, how far above the level or below the residential property lies and the distance and what protection, if any, in the way of screening and buffer area there is between such an operation and the residential property involved.

Q. And you did say this is one of the very few places in the City as beautiful as this place — referring to the residential section?

A. I think the area on the James River, both on the north and south side of the James River, where you have the open spaces, not obstructed, is one of the most beautiful places in Richmond. I like it.

Morton G. Thalhimer

close to the tracks or close to the Beltline bridge. For example, we are agents for the Georgetown Apartments on Hamilton Street that back right up to the R. F. & P. or Beltline bridge that carries all the traffic south from Richmond. There are 192 apartments backing up to the railroad right-of-way, and there are very definite noises from that. All the apartments were immediately rented and in the year they have been up they have been very well occupied.

Q. There is no railroad switching yard there near those apartments, is there?

A. No. The nearest one is the Acca Yards probably a mile and a half west.

Q. The Acca Yards are zoned for heavy industry, are they not?

A. Most of the land around it is zoned for some type of industry, not necessarily heavy industry.

Q. Including the yard itself?

A. I really don't know. I imagine so.

page 52] Q. Is there a switching yard in Windsor Farms?

A. No, there aren't any switching yards in any of these places I have mentioned. I hope I didn't infer there were, but there are tracks with innumerable trains and sometimes they stop there and so on, but there are no switching yards along the C. & O. tracks along the north side of the James or along the Beltline tracks.

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By Mr. Eichner:

Q. Now, Mr. Thalhimer, before lunch you recall I asked you, assuming an eleven-track switching yard were built on the railway property shown in red on the map and used for switching operations, such as those carried on at the Belle Isle Yard of the Southern Railway, whether that would make the vacant lots on Riverside Drive between Twenty-Sixth and Forty-Second Streets more or less suitable for single family dwellings. Is your answer to that they would be less suitable?

Morton G. Thalhimer

Q. Would the view from these houses to this yard, where trains were being made up, affect the value any, aside from the noises, when the trees are bare, as shown in City Exhibit A and B?

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page 73]

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The Court: Mr. Spain, direct your question to Defendant's Exhibit B because that purports to show one view, although it is a limited view, with the foliage as it would have been in the winter or early spring.

Mr. Spain: Yes, sir, I will do that.

A. (By Mr. Thalhimer) I remember the picture.

Q. All right. Now, with the picture in hand, can you answer the question?

A. To answer the question, my answer is it could be — the sight of trains being made up could offend the beauty of the scenery to some people and other people it wouldn't affect. Coming back to the statement I made some time ago, it is hardly conceivable people would invest large sums of money for residential units and properties facing a clear view of the present yards without knowledge of it. I can show you the pictures of the two new apartments that are very close to the existing yards. They didn't build those buildings without knowledge of it.

Q. As a matter of fact, one of those apartments is located at this point (indicating on map), at Twenty-Second and Riverside Drive?

A. Yes, I think that's right.

page 74] Q. All right. The other one is located about at Twenty-Third and Riverside Drive?

A. Yes.

Q. And the one you are building is going to be located between Nineteenth and Twenty-First?

A. I am not building it.

Q. You are agent for it?

A. That's right.

Q. That one you are agent for is some five blocks east of the eastern end of these yards, is it not?

A. Yes, sir.

Morton G. Thalhimer

Q. And the eastern end of the yards is the narrow end of the yards, is it not?

A. I am talking about the proximity to the existing yards.

Q. You are speaking of the Belle Isle yards?

A. Yes. Here is a picture of the fifteen-story building and I can show you maps. The yards are within clear view.

Mr. Spain: Your Honor, I don't think anything called for a picture of what he is going to build.

The Court: He gave his answer in reference to the view these present and proposed buildings would have
page 75] of the Belle Isle yard.

A. (Continuing) I am not talking about the new yards. I am talking about assuming no more yards would be built, they are getting the noise and view and effect from the yards that have been in existence for a number of years.

Q. (By Mr. Spain) Which are located east of the Lee Bridge. Is that correct?

A. Yes, sir.

Q. Now, with reference to Exhibit 7 introduced by the railroad, on one occasion you drew your line, your longest line, from the western terminus of the railroad to the furthest house on Riverside Drive. Is that correct?

A. Yes, sir.

Q. That was one you gave. You drew other lines to other points, but you didn't attempt to touch the houses in between, did you?

A. I believe that the total of all eight of those little diagrams or drawings will be typical of the entire area from east to west.

Q. On this one you show eight hundred ninety feet as the distance — from here to the furthest house in the block?

A. That's right.

page 76] Q. Can you say what block that would be?

A. Let's see — about Forty-Fourth to Forty-Fifth, I would judge. Here is Forty-Fifth (indicating on map) and that is probably Forty-Fourth Street extended.

Q. The only other house you touched in the block in drawing your examples would be the first house in that block. Is that right?

A. There is another one here that is nearer. This line is closer to the track.

Morton G. Thalhimer

Q. Above Forty-Second Street you touched two houses. Is that correct?

A. Yes, above Forty-Second.

Q. You took the first one in the Forty-Two Hundred block and the other which would probably be at Forty-Fourth Street extended.

A. At the other end.

Q. That is typical of all these examples? You took certain houses, but you didn't mean to intimate, did you, there were not numerous houses between those you touched?

A. Certainly not. I just picked them, trying to give you a cross section.

Q. But there are numerous other houses in between?

page 77] A. Oh, yes. As far as I know they are all shown on the topo map.

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Q. (By Mr. Spain) Now you have discussed the fact no one would likely build houses on this land. Are you familiar with the other uses permitted in this district, Mr. Thalhimer?

A. Yes, I am familiar with the zoning ordinance, with the requirements in R-3 and R-4 districts, or whatever the district is. I will get my zoning map if you wish.

Q. Is a park permitted in there?

A. Yes.

Q. How about the use of this land for a park on Riverside Drive?

A. Are you asking me what I think of the use of this land for a park?

Q. I am asking you do you think it could properly be used for a park.

A. I do not think it would be used for a park because, one, it is low; second, the only entrance I know to it would be through the street at Reedy Creek or by an overpass; and, third, the same reasons I have previously expressed. You

Morton G. Thalhimer

have an approximate width of two hundred fifty
page 79] feet at one end and fifty-two feet at the other.

The expense of filling that land above the low water mark would be tremendous, and then you would have a park backing up to a main line track on one side and to the river, subject to overflow, with little treacherous islands along its bank. It would not be a fit place for swimming or boating or any of the activities usually enjoyed when you want to be on the water, and I think it would be a very dangerous place. The amount of land you have after you do all these things would not justify it, certainly as compared with Forest Hill Park that is right by it.

Q. Will you point out where Forest Hill Park is to His Honor?

A. Where is the topo map? I think it would show up better on that.

Mr. Gay: With counsel's permission, we will color on this copy of this map we will file, in green, Forest Hill Park, if you like.

The Court: That would be helpful.

A. (Continuing) On this map, all this part colored in green — this is the map I used — all the part colored in green on this map is Forest Hill Park. The part colored in red is the property in question.

Q. (By Mr. Spain) Why do you think an over-
page 80] pass is the only way to cross the railroad?

Mr. Gay: Please read that question.

Note: The last question was read by the reporter.

A. Because of the danger for park purposes or residential purposes of crossing the railroad track level.

Q. What about an underpass?

A. I think you have a very serious question with an underpass because of the steepness or height of Riverside Drive above the level of this land. As a matter of fact, it would be a very steep approach from Riverside Drive to get to this land on a grade that normal transportation would be able to negotiate. An underpass would have to take a steeper grade or start further south of one of the other streets, either of which would be tremendously expensive in any relationship to the amount of land involved.

Morton G. Thalhimer

Q. That would not be so at the point shown in Exhibit B, would it, Mr. Thalhimer?

A. What point is that?

Q. You have the picture there — Exhibit B.

A. This is the less steep grade and I said that. The grade here is less than it is at any other point, but it is still a considerable grade. We can get the grade there. It
page 81] is a grade at Reedy Creek, apparently, going from one hundred down to sixty-six.

Q. You mean, from Riverside Drive?

A. From Riverside Drive at Reedy Creek, if I read this map correctly. We are going from one hundred feet above sea level to sixty-six feet. In other words, it is a thirty-four foot drop in, I think — I don't know. Could I have the topo map I marked with the distances?

Q. You have a thirty-four foot drop in how many feet?

A. Let's see. I would say in about one hundred fifty feet, roughly.

Q. All right, sir. Now, all of the objections you find for this land for a park, the islands, the marshes, the filling that must be done, also apply to its use for a railroad yard, do they not?

A. Yes.

page 82] RE-DIRECT EXAMINATION

By Mr. Gay:

Q. I think you stated, did you not, Mr. Thalhimer, it was incapable of economic use for a railroad yard until it had been filled?

A. Yes I did.

Q. Or any other purpose? Is that right?

A. That's right. It could not be used, in my opinion, for any purpose in its present condition.

Q. (By Mr. Spain) So the same objections that I enumerated, such as filling and the islands and the rapids — they apply equally? You raised them as objections to the park but they apply equally to the railroad yard?

A. Certainly they apply if the land has to be filled, for a park or a residence, but if a railroad was there I wouldn't imagine it would be open to the public, it would not be catering to young children, there wouldn't be the traffic in and out — but so far as the physical necessity of the fill, it would apply.

Morton G. Thalhimer

I don't imagine — I won't speak with absolute authority — but I don't imagine the fire department would have to have the same access, or the police department. I assume the railroad might do its own policing, and these fire and police people would not have to have the same access as they would if developed for residential purposes or park purposes.

In other words, I think there are many objections that apply to a park or residential use that do not apply to a railroad yard.

Q. (By the Court) You are saying you would not have the ingress and egress problems where it was used for a railroad — not to the same degree?

A. That's correct. The men could come to work through the railroad's own right-of-way.

Q. (By Mr. Gay) On these topographic maps that will be filed in connection with your testimony you have indicated in green the two apartment houses, one presently constructed and the other in process of construction. That is correct, is it?

A. Yes, sir, it is.

Q. I now hand you two photographs and ask you to state if they correctly reflect the buildings to which I have referred in my question, and if so, identify which is which and file them as exhibits with your testimony.

A. This is the most eastern building that is already completed and occupied.

page 84] Q. That is the first one, which will be Exhibit No. 8?

A. Yes. That is located at Twenty-Second Street and Riverside Drive.

The second one is now under construction.

Q. That will be Exhibit No. 9.

A. That one is now under construction and the picture shows it almost completed. That is between Twenty-Third and Twenty-Fourth Streets, facing on Riverside Drive.

This is the first one and this is the second one.

Note: Marked Plaintiff's Exhibits Nos. 8 and 9, respectively, and filed.

Q. (By Mr. Gay) What was the third apartment house you were asked about on cross examination? Where did you say that was to be located?

A. That is outlined in green here and starts at Nineteenth

Morton G. Thalhimer

and runs to Twenty-First Street, facing on Riverside Drive for two blocks, about three hundred feet, and is close to the existing Southern and Atlantic Coast Line yards. It is a high rise apartment and from the windows of this building both of those yards will be quite visible.

Q. I show you a photograph of what purports
page 85] to be a railroad yard and ask you from what point
was this photograph taken and what does it pur-
port to show?

A. I think, without referring to my notes, it is the existing Southern yard.

Q. Will you refer to your notes and see whether your answer is correct. If it is not, please correct it.

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A. These are duplicates of these pictures. That is a view of the Atlantic Coast Line yard, looking east from the southern end of the Robert E. Lee Bridge.

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page 86]

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Q. (By Mr. Gay) Referring to the topographic map you filed, how far is it from the eastern end of this proposed high rise apartment to the southern end of the Lee Bridge? How many city blocks is it?

A. One good city block. In other words, this will come to Nineteenth Street and Cowardin Avenue will be the equivalent of Eighteenth Street.

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. Thalhimer, in response to the first question by Mr. Gay on redirect examination, I understood you to say that the subject property owned by the railroad could not be used for any purpose in its present condition. Did you mean in its original condition?

A. I meant in the condition before any filling was put on it.

Morton G. Thalhimer

page 87] Q. Now the apartment house shown in Exhibit No. 8, the one on Twenty-Second Street, who is that owned by?

A. A man by the name of Nathan Petersiel.

Q. When was that built?

A. It was completed, ready for occupancy, within the last several months. It was built partly in 1962 and partly in '61.

Q. When was the property purchased for it?

A. I really don't know the exact date he acquired the land.

Q. What is the approximate date?

A. I would guess around 1960.

Q. Around '60?

A. Yes. I would be very glad to get the exact date if you wish me to do so.

Q. Would you do that please?

A. Yes.

Q. You don't have it with you at this time?

A. No, I do not.

Q. Who is the owner of the property shown in Plaintiff's Exhibit No. 9 which is under construction between Twenty-Third and Twenty-Fourth Streets?

A. I don't know. I could find that out for you. Just a private investor, so far as I know. I have
page 88] nothing whatsoever to do with the renting of it or any contact with it. I just know it is there.

Q. But you are the agent for Petersiel?

A. No, sir, I am not the agent for either of those.

Q. But you are the agent for the proposed new one?

A. That's right.

Q. Who is the owner, Mr. Thalhimer, of the proposed one?

A. A company headed up by Mr. Ralph May, who is a builder here in Richmond.

Q. Do you know of any other investors who have been thinking about building apartment houses along Riverside Drive in this area?

A. That's the only one I have any contact with.

Q. Have you heard of anyone thinking about building on the north side of Riverside Drive?

A. No, sir.

John Bagby, Jr.

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page 90] JOHN BAGBY, JR.,
a witness called by and on behalf of the plaintiff,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Gay:

Q. Please state your name and occupation.

A. John Bagby, Jr., President of Pollard & Bagby, Incorporated, real estate agents. I am an appraiser and consultant.

Q. How long have you been engaged in these occupations in the City of Richmond?

A. I have been with the company mentioned since 1931 — thirty-one years.

Q. All right. Mr. Bagby, have you prepared at my request a statement of your educational qualifications and your business experience which will enable you, in your opinion, to qualify as an expert witness on the question of the adaptability of real estate for particular uses that may be involved in this suit?

A. I have, sir.

page 91] Q. Is the statement I now hand you the data to
which you refer?

A. Yes, sir.

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“QUALIFICATIONS OF THE APPRAISER
“JOHN BAGBY, JR.

“1. B. S. in Business Administration, University of Richmond, Richmond, Virginia

“2. Director of the Richmond Chamber of Commerce, 1959-1961

“3. Director of the National Association of Real Estate Boards, 1959

“4. Five two-year terms on Board of Managers, Real Estate Board of Richmond

“5. Member of Appraisal Committee, Real Estate Board of Richmond, 1951-52

John Bagby, Jr.

page 92] “6. Chairman of Appraisal Committee, Real Estate Board of Richmond, 1954-55

“7. Director of the Virginia Real Estate Association, 1951-52 and 1955-56

“8. Vice-President of the Virginia Real Estate Association, 1957

“9. President of the Virginia Real Estate Association, 1959

“10. Vice-President of Real Estate Board of Richmond, 1954-55

“11. President of Real Estate Board of Richmond, 1956

“12. Served on the three man Board of Review of Real Estate Assessments for the City of Richmond for 4 years, 1956-1959 — Resigned January 12, 1960

“13. Member of American Institute of Real Estate Appraisers and President, Richmond Metropolitan Chapter #38 of the American Institute of Real Estate Appraisers, 1961

“14. Member of the American Society of Real Estate Counselors

“15. 31 years' experience in Real Estate Business, selling, leasing, appraising and financing real estate.”

page 93] Q. (By Mr. Gay) Mr. Bagby, this suit involves the proposed use by the Southern Railway Company for storage and yard purposes of two tracts of land aggregating some sixteen acres lying between the south bank of the James River and the north line of the company's right-of-way, extending westwardly about six hundred feet from a point opposite about the end of Twenty-Sixth Street to Forty-Second Street in South Richmond. Are you familiar with the premises?

A. Yes, sir.

Q. Does the plat introduced in this evidence as Plaintiff's Exhibit No. 2 — not the one on the board but the other one — reflect your understanding of the boundaries of the property?

A. Yes, sir.

Q. Did you examine the eastern 8.86 acres of this property in 1959 with a view to appraising its value and potential uses?

A. I examined it to appraise its value for the Virginia Electric and Power Company, yes, sir.

Q. Have you recently examined the entire sixteen acres

John Bagby, Jr.

of the tract, including the western 7.43 acres, at the request of the Southern Railway Company, with the view to testifying in this case as to its potential uses?

A. Yes, sir.

page 94] Q. Had any part of the tract been filled and graded when you examined it in 1959?

A. It had not, so far as I know, no, sir.

Q. State what you found to be the nature of the property before filling and grading when you examined it in 1959?

A. We inspected the property in 1959 —

Q. May I interrupt to inquire, did you make that examination and appraisal alone or in company with some other appraiser?

A. In company with some other appraiser.

Q. Who?

A. Mr. Morton Thalhimer.

Q. Proceed with your answer to my prior question.

A. When we examined the property in 1959 we found the terrain was very rough and irregular.

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page 95]

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The terrain north of the tracks was very irregular and low, much lower in places than it was in others. It was pretty rugged terrain. South of the track, the land adjacent to it on the south was very high and went up abruptly to Riverside Drive. North of the track, this part we were
page 96] appraising was subject to overflow from the river, portions of it. There were some knobs in there that probably wouldn't be covered with water, but a large portion would be subject to overflow.

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page 97]

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A. I reported to my client they could not erect a building on this property.

Q. (By Mr. Gay) Did you tell them why in
page 98] your opinion they could not do that?

John Bagby, Jr.

A. They couldn't erect it because of access to and from the area and no protection from fire hazard, and until such time as all these accesses and things were available, they could not erect any building.

Q. How did the property lack access? What prevented access to it?

A. Well, the terrain, as I mentioned earlier, and they had this road that has been mentioned earlier today, that you can drive down with some difficulty, and if you were careful you could drive to the other tracks, but there was no access beyond the tracks.

Q. You couldn't get over the tracks?

A. No, sir — unless you walk over them.

Q. Was that the only known approach to the property?

A. Only one I knew anything about.

Q. All right. Go ahead. Did you note any sewer condition on the property at that time?

A. Yes, sir.

Q. Which you comment on in your report?

A. Yes, sir. I noted that sewage was being dumped into the James River, raw sewage.

Q. Dumped in the river or in Reedy Creek page 99] passing through this property?

A. As I recall, it went into the little inlet just at Reedy Creek — I wouldn't call it the river.

Q. Did that condition obtain when you recently examined the property?

A. Yes, sir.

Q. I don't think I have asked you specifically. When did you examine this property for the purpose of testifying in this case?

A. I don't remember the exact dates but I have examined it on three different occasions in the last several months since I was employed by the Southern Railway to do so.

Q. I hand you a photograph and will ask you who took it and what it purports to portray? Please answer my question specifically.

A. This picture was actually taken by one of my associates. I was with him at the time. It is the raw sewage coming towards this little inlet that it flows into.

Q. Flows into what?

A. This sewage flows into this little inlet. It is not the river proper but it is an inlet formed by one of the islands there.

John Bagby, Jr.

Q. Does Reedy Creek, as presently located
page 100] through the premises, empty into this little es-
tuary?

A. Yes, sir.

Q. Is that where the sewage flows in?

A. Not at the same point. The sewage is just east of
Reedy Creek.

Note: Photograph identified by the witness was marked
Plaintiff's Exhibit No. 12 and filed.

Q. (By Mr. Gay) You say you were present when this
photograph was taken. When was that?

A. Sometime last week, I believe. I don't remember the
date — may have been week before last.

Q. I show you another photograph and ask you to state
if you were present when it was taken and what it purports
to portray?

A. I was present when this photograph was taken.

Q. When?

A. Same time as the other one — last week or the last
part of the week before. I don't remember the exact date.
It shows the northernmost point of the fill and the man
standing in the picture gives some idea as to the height
of the fill.

page 101] Note: Photograph identified by the witness
was marked Plaintiff's Exhibit No. 13 and filed.

Q. (By Mr. Gay) Who is the person whose back is por-
trayed in that picture?

A. That's my back.

Q. Is the area of fill to your right what you speak of as
the northern line of the filling done by the Southern Rail-
way?

A. Let me get it straight. I am looking east and on my
right would be south — so it would be the north line of the
fill.

Q. Generally locate yourself as well as you can, for the
Court.

A. I would say, Your Honor, I was some fifty to one
hundred feet east of the point where this sewage enters
in east of Reedy Creek, which you can identify on this map.

Q. How far from the western end of the filling which the

John Bagby, Jr.

Southern Railway had done were you standing when the picture was taken?

A. That would be purely a guess. I was on a portion of the east track and I can look at the map and approximate for you how far away I was from the western end.

Q. I don't think you quite understood my page 102] question. I will have it read to you.

Note: The last question was read by the reporter.

A. I was standing, I would guess, about in this position (indicating on map) and they filled on up into this area up in here. I would guess it is probably six or seven hundred feet.

Q. I see. At the time you examined this property in 1959, did you make any inquiries of the City authorities regarding the availability of sewage facilities on the premises?

A. Inquiry was made. I did not personally make it.

Q. I hand you a copy of the amendment to the City zoning ordinance adopted on the 12th day of December, which amends Article 5 by changing certain provisions of Section 39-12 of Chapter 39. I will ask you if you have read and are familiar with its provisions?

A. Yes, sir, I have read it.

Mr. Gay: We offer that.

Note: Copy of Ordinance No. 60-326-289 marked Plaintiff's Exhibit No. 14 and filed.

page 103] Q. (By Mr. Gay) In view of the conditions to which you have referred, Mr. Bagby, will you please state whether or not in your opinion it is economically feasible to make use of the property of the Southern Railway involved in this suit for any of the purposes for which it is zoned, R-3 and R-4 residential?

A. I am convinced it would not be economically sound to attempt to use this property for any of the purposes outlined under the ordinance mentioned.

Q. Are there other reasons besides economic? Are there physical and practical reasons which would influence your judgment?

A. Yes, sir — the question of flooding, the raw sewage which exists, the lowness of the property, below the existing struc-

John Bagby, Jr.

tures and dwellings of the families living in the area at the present time.

Q. What about the question of access?

A. The question of access would, I figure, come under the problem of economics. It is one of the most costly items, I expect — the access and fill. That makes it prohibitive from an economic standpoint, in my opinion.

Q. Would it be practical in your opinion to use the property as it existed in 1959, the sixteen acres, for any purpose, without filling it?

page 104] A. No, sir, I don't think it would be.

Q. Do you think that the shape of the property, its width and length, has bearing upon its useability?

A. Unquestionably the shape has a good deal of bearing. As you know, it is some fifty-three or fifty-four feet at its eastern end and around two hundred fifty feet at this point, and maybe two hundred sixty feet here (indicating on map), but down in this part it is fifty feet, and you couldn't even meet the set-back requirements for residences or residential improvements there. Any street would have to come along this edge — I think would be the most practical way to attempt to develop it. Due to the costly access problem you couldn't have streets running across. It would be prohibitive. It would take up sixty feet of your width there, and you would have to stop here before you got to this point (indicating on map). I just don't think it is feasible to develop that property for any of the uses that are outlined under R-3 and R-4.

Note: Brief recess.

page 105] CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. Bagby, in connection with your appraisal of the property in 1959 for the Virginia Electric and Power Company, that was not in connection with residential development, was it?

A. No, sir.

Q. What kind of building was contemplated?

A. I was asked if any kind of building could be put up there.

Q. You stated it would not be economically feasible to make use of the property for any purposes for which it was

John Bagby, Jr.

zoned, and I believe you said the main factors in the economic infeasibility were cost and filling —

A. And lowness of the property.

Q. Now, the filling has taken place and that has eliminated the second factor, has it not?

A. Not in its entirety — it hasn't been entirely filled.

Q. But insofar as a portion has been filled —

A. Whether that fill is sufficient to take care of buildings or not I don't know. It eliminated it as far as page 106 } flooding of the property. I am not an engineer and not qualified to say how good or bad that fill is — I mean, the type of fill.

Q. The economic infeasibility prior to the filling was due to being subject to flooding?

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Q. (By Mr. Eichner) The reason the need for filling would make it economically infeasible would be because it would be subject to flooding, isn't that right?

A. I still don't —

Q. The reason there was need for filling in 1959 was because it was subject to flooding. Is that right?

A. That was one reason, yes, and it was a very irregular terrain, which I stated as another reason — up in one place and down in another place. As I stated, it was a very rough terrain and a large portion of it was subject to page 107 } flooding.

Q. Did you ever see any flooding on that land?

A. No, sir.

Q. Both of those factors of unevenness and lowness have been corrected in those areas which have been completely filled. Isn't that correct?

A. That is correct.

Q. You have heard Mr. Thalhimer's testimony here today, have you not?

A. Yes, sir.

Q. Are you familiar with houses in Richmond that are close to the James River on the lowland?

A. Some houses, yes.

Q. Are you familiar with residencies that have their only access over grade crossings of railroads?

A. I am familiar with residences or developments that that is an access, but whether that is the only access or not I

John Bagby, Jr.

can't think of one at grade crossing right now. There may be, but right now I can't think of one, that being the only access.

Q. Don't you know of homes along the north bank of the James River in or just outside Richmond where the only access is over the C. & O. Railroad?

A. That house of Cohen's and Freeman's house, page 108] and Carneal had a house in there one time — that's the only access you have, yes.

Q. The desirability of residential property close to the river depends to a certain extent on the design, does it not — the design of the house?

A. Yes.

Q. A house can be so designed, for example, on stilts, such as the houses on the north bank of the James east of the Huguenot Bridge, can it not?

A. That's right. There is no question in my mind a house could be built here. My argument is it is economically unsound to develop for that purpose.

Q. Economically unsound for the Southern Railway?

A. For anyone — for any prudent capital. If you and I had the money, you couldn't go in there and develop those properties and get out of the deal with our shirts.

Q. Doesn't it depend on how much you pay for the land?

A. I don't think the land question in this particular instance — I think it would be more or less a small item.

Q. Even on the area already filled, if the land page 109] could be acquired reasonably?

A. Even with the fill there, to develop proper access and utility for use, I think it would be economically unsound, yes, sir.

Q. You mentioned as another objection certain raw sewage being dumped in the James River.

A. Yes, sir.

Q. That is a remedial fact, is it not?

A. It probably could be. I understand there are some plans for an interceptor, and have been for a number of years, to take care of that, but the condition exists now and did exist in 1959 that raw sewage is going in there.

Q. Upon hooking the source of that sewage to an interceptor, that factor will go out of the picture, will it not?

A. As and when it is properly done, it will go out of the picture.

Q. Did you examine the property along Riverside Drive

John Bagby, Jr.

between Twenty-Sixth and Forty-Second Street?

A. Not in any detail, no, sir.

Q. Are you at all familiar with that property?

A. I have been by there many times and we have rented a house in there on occasion.

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page 111] Q. (By Mr. Eichner) Let me ask you this first, Mr. Bagby. Can you define the term economic obsolescence?

A. Yes, I think I can.

Q. What is the definition you would give for that?

A. My definition would be economic obsolescence consists of outside influences that affect the value of a certain piece of property. They are not built into the property or inherent in its construction, such as functional obsolescence or physical depreciation, but economic obsolescence — that is outside influences that come into the picture that adversely affect the property.

Q. Did you hear my question to Mr. Thalhimer this morning dealing with "The Appraisal of Real Estate," Third Edition, published by the American Institute of Real Estate Appraisers?

A. Yes, sir.

Q. Do you accept that as an authoritative work on the subject?

A. Yes, sir.

Q. Are you familiar with a book called "Encyclopedia of Real Estate Appraising," edited by Edith J. Friedman, 1959 Edition?

A. Yes, sir, I have it.

page 112] Q. Do you accept that as an authoritative work on the appraising of real estate?

A. Yes, sir.

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page 113] Q. (By Mr. Eichner) I will hand you the Encyclopedia of Real Estate Appraising and ask you to turn to page 162, the introductory paragraph on the top of the page. Please read that.

A. (Reading)

John Bagby, Jr.

“DEPRECIATION OF RESIDENTIAL PROPERTY.

Nature of Depreciation. Depreciation to which residential property is subject, and which must be given consideration in every residential appraisal, is divided into three categories: (1) physical deterioration, (2) functional obsolescence, and (3) economic obsolescence.”

Q. Now will you look at the bottom of page 163? Please read that paragraph about economic obsolescence.

A. (Reading)

“*Economic obsolescence.* This is defined as a loss in value arising from economic forces. It is sometimes called ‘lack of demand.’ Economic obsolescence is always evidenced by conditions outside the property lines. It can be caused by many factors, including (1) an over-supply of housing in the area, (2) serious unemployment conditions, (3) changes in zoning regulations, (4) infiltration of inharmonious racial, page 114 } social, or religious groups, (5) lack of good neighborhood planning as to architectural style and price range, (6) presence of commercial or industrial properties in a residential neighborhood, (7) unreasonably high real estate taxes, (8) presence of nuisances or hazards in the neighborhood, or (9) anything outside the property lines that would cause the home to have less appeal or marketability.”

Q. Do you agree with that statement?

A. I don’t agree with it in its entirety, no, sir.

Q. With what portion do you disagree?

A. The section where I hesitated there — it mentioned the architectural style of the building. I wouldn’t call that economic obsolescence. Neighborhood planning is all right and I think the rest of it is apropos, but this architectural design I think is a functional matter.

Q. In determining the suitability of the subject property owned by the Railway for uses permitted by the zoning ordinance, did you consider the effect of various uses on other property, and particularly property across Riverside Drive between Twenty-Sixth and Forty-Second Streets?

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A. Repeat it for me. I am not sure I understand.

Note: The last question was again read by the reporter.

John Bagby, Jr.

A. Let me see if I can clarify it. You mean, in considering the use of this property for residential purposes, or the uses permitted under R-3 and R-4 zoning, did I consider the effect that that use would have on the houses on Riverside Drive?

Q. Yes, sir.

A. I have never felt it had any potential for being developed for any of these purposes or uses, and never even gave it any consideration.

Q. Do you have an opinion as to how a railroad switching yard on the subject property, consisting of eleven tracks and being used to switch trains and make up trains without restriction as to hours of operation, the effect such an installation would have on the suitability of proper-
page 116] ty on Riverside Drive for residential uses?

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page 118]

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A. Yes, I have an opinion on that.

Q. (By Mr. Eichner) What is that opinion?

A. The opinion is based entirely on what they do with those eleven tracks that they put down there. If they create additional noise to any extent, if they create objectionable lighting, I think it would have some adverse effect on the properties on Riverside Drive and those right close to Riverside Drive.

Q. How far along Riverside Drive would you think that adverse effect would probably be felt?

A. I think with the terrain like it is, the lowest point being near Hillcrest where Reedy Creek and the road go into the property, it would be for within two blocks
page 119] west of the western boundary of the property and two blocks east of it, and for the block back of Riverside Drive.

Q. Point out on the map there if you don't mind, Mr. Bagby.

A. In other words, this border is approximately at Twenty-Sixth Street and I would say to Twenty-Fourth Street (indicating on map). This border is approximantely at Forty-Second Street, so it would be up here in the vicinity of Forty-Fourth Street if it came through. This is Forty-Fifth and

John Bagby, Jr.

this is Forty-Fourth here which doesn't come all the way through.

Q. All right, sir, and about one block back from Riverside Drive, you said?

A. Only one block, yes.

Q. Do you have an opinion on whether such a yard would affect the market value of real estate in that area?

A. Yes, sir, I believe it will affect it.

Q. In what way?

A. I think it will depend entirely on what they do with it. If they don't make any additional noise — I am not a railroad man and I don't know what they are going to do with it. I have heard from two tracks to eleven tracks — but if there is no additional noise or objectionable lighting, I don't think there is any depreciation. I think I made page 120] myself clear in my prior answer. It depends entirely on the use to which the railroad puts these eleven tracks and how much noise and how much objectionable lighting, if any, and if it develops there is a whole lot of it, it is my opinion there is going to be some decrease in the values of the properties in the area that I just mentioned.

Q. Mr. Bagby, I would like you to take a look at City Exhibit B. Would you say that the sight of a railroad yard, such as the Belle Isle Yard, from residential property, would make it less attractive or reduce its value?

A. I don't believe so, no, sir, not with the additional tracks in this particular location. I don't think the mere installation of two or three or five or even eleven tracks down there is going to make any difference in the value of these properties.

Q. As far as the sight of them is concerned?

A. The sight of them.

page 121] CROSS EXAMINATION

By Mr. Spain:

Q. Then I understand that the only diminution in value that you can see would be on noise and lighting and not upon looking upon a switching yard?

A. No, sir, not at this particular locality with the houses considerably above the tracks.

Q. But you do conceive of a diminution in values based upon noise and light?

A. If that is created, I think there is some diminution of value.

John Bagby, Jr.

Q. You are saying to the court you think a view upon a freight yard making up trains is as good as a view upon a woodland that now exists out there in the natural wild state?

A. I don't think I said that, Mr. Spain. I said I didn't think these additional tracks, the view of them at this particular location with the properties way above the tracks, would cause any lessening of the market value of the properties or diminution — or whatever word you used.

page 122 } RE-DIRECT EXAMINATION

By Mr. Gay:

Q. I have one question. You made some reference in cross examination about the subject of sewage on this property and about the possibility of its removal through utilization of a interceptor sewer the City has been talking about constructing on that side of the river. Are you sufficiently familiar with the problems involved in sewer construction to know whether the elevation of this property is such as would permit its connection up with an interceptor sewer?

A. No, sir, I am not. The question he asked me was if it was hooked to an interceptor sewer, would that relieve the problem.

Q. You don't know from an engineering standpoint whether it is physically possible to connect up a sewer serving this property to the City interceptor, do you?

A. No, sir, I do not.

page 123 } RE-CROSS EXAMINATION

By Mr. Eichner:

Q. You understood my question relating to the source of the sewage now coming in there? Didn't you understand that?

A. I thought the question was if it was hooked on this interceptor sewer, would that relieve the situation.

Q. If the source of the present sewage were hooked on to an interceptor —

A. I didn't get the word "source." I thought you said if the sewer was connected to the interceptor would it solve that problem.

Q. Let me put it this way. If whatever buildings are the source of the sewage now flowing down there which you have described, if they were hooked to an interceptor, would that

Austin Brockenbrough

remove the sewage as an element in your valuation of the subject property?

A. If they take it away and it is gone, it solves the problem. I don't know how they are going to do it.

Q. (By Mr. Gay) is the elevation of this property such that in your opinion it would be practical to connect it up with an interceptor sewer?

page 124] A. A portion of it I think you could and a portion of it you probably couldn't. That was testified to this morning.

RE-CROSS EXAMINATION

By Mr. Spain:

Q. You heard Mr. Thalhimer say if the elevation were not sufficient it could be handled by pumps?

A. Yes, it could be handled by pumps.

Q. So it could be handled in either event, could it not?

A. That is my impression, if you went to enough expense.

By The Court:

Q. I think I understand you, Mr. Bagby. Your testimony is that leaving out the question of the present open sewage on it, do I understand you to say because of the location and the depressed nature of the location of this property, everything else being equal, if houses were built there it would be more expensive and more difficult to furnish *sewage* to this particular area than it would if it were higher up? Is that your testimony?

A. I don't know whether they would allow any additional sewage to be dumped in there.

Q. I wasn't speaking of dumping. I was speaking of servicing the houses built on this tract of land. Would the furnishing of sewerage to those houses be more expensive than if the land were higher up?

A. If they have to put in a pumping station it would cost considerably more, is my understanding.

page 126] AUSTIN BROCKENBROUGH,
a witness called by and on behalf of the plaintiff,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Austin Brockenbrough

Q. State your name and occupation for the record.

A. Austin Brockenbrough. I am a consulting engineer in Richmond, Virginia, and my firm does a general civil engineering practice.

Q. How long have you been engaged in that profession, Mr. Brockenbrough?

A. I have been a consulting engineer since 1950. I have had my own firm since 1955.

Q. Outline briefly for the benefit of the court your educational qualifications, Mr. Brockenbrough.

A. I graduated from Virginia Military Institute in 1921; went with the Highway Department for one year; graduated from Cornell in 1923. I graduated from VMI with a B.S. degree in Civil Engineering, and Cornell with a degree of Civil Engineer. I have been in the practice of civil
page 127 } engineering from then on, doing all types of surveying work and construction, and since 1950, consulting work.

Q. Mr. Brockenbrough, are you familiar with the property of the Southern Railroad on the west of the Lee Bridge involved in this suit?

A. I am.

Q. Have you at my request, for the Southern Railway, made a study of this property to determine what it would cost to improve it in order to develop it as a residential area?

A. I did. I had to assume certain things, of course. One of them is in working out costs for any type of work of this type, you have to assume certain conditions and I therefore laid it out as a subdivision, trying to conform as much as possible to the conditions required by the City, except in laying out the lots, because they were rather short along that area — one hundred fifty to one hundred sixty down to one hundred forty feet, I think. I laid out the width of the lot at one hundred feet but that, of course, could vary. I think the City would allow you to go down to fifty feet — most of the lots in that area are sixty feet, but being river lots I put it at one hundred feet in width.

Q. Did you make an estimate of the cost of grading and draining this property for the purposes of
page 128 } developing it for residential purposes?

A. Yes, sir.

Q. Did the grading include filling?

A. I estimated the amount of excavation or cubic yards it would take to fill this property to the existing elevation of

Austin Brockenbrough

the railroad track, plus approximately one percent drainage to the river, which would be just about what would be required to take the water off.

Q. How much soil do you estimate would be required?

A. 144,228 cubic yards.

Q. How much have you estimated to be the cost to put that fill in place?

A. At \$1.50 a cubic yard, total cost would be \$216,342.00.

Q. Will you repeat that?

A. \$216,342.00.

Q. Did you consider providing any drainage for this fill?

A. The drainage was in there — two hundred feet from the railroad right-of-way there had been placed three 72-inch corrugated metal pipe. I estimated the cost of those of \$35.00 a foot — the cost of the metal pipe is \$27.00 a foot
page 129] and we allowed about \$8.00 a foot for putting it in, which is a rather reasonable price, I think, and that came out \$21,000.00 for existing drainage, which would make a total cost of grading and drainage, \$237,342.00.

Q. Now in computing the amount of soil required to do this grading and filling, did you consider what would have to be added to the present fill or what would be required before any fill was put there?

A. I went back and got some maps from the City of Richmond which were aerial maps which gave the contour of the area. Part of it has been filled and therefore I assumed the original grade on those, and then I laid the grade from the railroad at one percent. When I got to the place that had not been filled, I sent out a survey party and rechecked that and found the existing ground a little lower than what I had taken off the City map so I assumed what I had done before and I revised my quantities where there was no fill. This revision called for a total of 144,228 cubic yards.

Q. If no fill had been put on there, it would take 144,228 cubic yards. Is that right?

A. That's right.

Q. And you don't know what it cost the railroad to put that fill in there — the fill which is already in place?

A. No, sir, I do not.

page 130] Q. All right. What is your total for grading and drainage?

A. \$237,342.00.

Q. And that is for the sixteen and a half acres of land?

A. Sixteen and a half acres of land.

Austin Brockenbrough

Q. What other improvements did you as a consulting engineer believe would be necessary to complete this property for residential use?

A. It would have to have an access road, it would have to have a road through the property, it would have to have water, have to have sewage and paving and gutter and curb and sidewalk. All of that would be required. Power would be put in for nothing by the power company and gas would be put in for nothing by the City.

If they would enter into a contract with them, the City of Richmond would pay one-half of any additional drainage required. The City of Richmond would allow fifty feet of water line per lot, so I had to estimate the amount of water line required for the whole project, and I estimated thirty lots and allowed one thousand five hundred feet as the City's part, and I took the average cost of the whole job and took that off — the one-half the City would pay.

The sanitary sewer cost we estimated and al-
page 131 } lowed fifty feet per lot — half of that to the City.

On the paving the City will allow the base and asphalt surface but the owner has to pay completely for the curb and gutter and sidewalks. I estimated these at reasonable prices, which we keep up with, and I added to the original figure of \$237,342.00, — the total cost of additional drainage was \$12,780.00 of which the City would pay half, and therefore I added \$6,390.00 to the development costs.

Water will have to come from up on the hill on both ends of the tract and in order to be satisfactory it would have to go back to a six-inch main on one end and a six-inch main on the other end and come down the hill and under the railroad tracks, which would be very expensive due to the fact it will have to have a support pipe underneath. To run your pipe in the City would allow only one thousand five hundred lineal feet. I figured \$19,426.00 as the total cost of water, and deducting the credit from the City of \$8,520.00, the additional cost for water would be \$10,906.00.

The sanitary sewer, of course, we could hook the western part of the tract into the existing sanitary sewer that goes through Reedy Creek, pretty near to the river. We could go back to the east about one hundred to two hundred feet but
the grade sloping from the west to the east would
page 132 } not allow us to bring the sewer over the whole project. The City is talking about bringing up an interceptor which I am positive we could hook into all right,

Austin Brockenbrough

or the Water Control Board might allow us to take the sewage easterly and dump it raw into the James River in another location, provided they knew the City was going to make their changes at a certain time. However, we would still be putting raw sewage into the project at two locations.

Paving, curb and gutter — the paving would be \$12,840.00, half of which would go to the developer; curb and gutter, \$21,840.00, all of which would go to the developer; sidewalk, \$5,199.00, all of which must be paid by the developer. So when we add all those items, the total cost to the developer is \$294,489.00, and the City's cost would be \$27,510.00, provided they enter into a contract with them to do it.

The total development cost would be \$321,999.00 — total development cost.

Q. What does that come to per acre for the development expense alone?

A. \$17,740.00 per acre.

Q. Do those expenses you have outlined include the cost of any kind of crossing of Southern Railway?

A. That includes a grade crossing, provided that can be done.

Q. Did you consider the possibility of in-
page 133] stalling an overhead crossing or underpass crossing?

A. I considered the overhead crossing and of course the cost would be prohibitive, and in addition to that it would take up so much land you wouldn't have but so much left.

Q. What do you mean? Explain what you mean by that.

A. In going over the railroad track you have to be about twenty-four feet high and to get down, when you got to the water's edge to get down off the bridge you would be out in the river and therefore you would have to build a concrete structure in the river, coming back to the road. Therefore, you would kill your lots where the bridge went over and two or three more lots where it came back, and you are cutting yourself down to twenty-five or twenty-six lots. In addition to that, I believe that that type of structure would probably cost in the neighborhood of \$150,000.00 to \$200,000.00. I am not a structural engineer but I have just had one working in connection with us at Madison College where we are crossing a railroad track with a two hundred forty foot bridge and that was estimated at \$80,000.00 — and here we are getting into that plus the fill plus another structure at the river, and so I just didn't consider it.

Austin Brockenbrough

As far as the underpass was concerned, we are
page 134] running into a problem of a steep grade coming
down the grade, and we are in a possible flood
area so you would have to have a line of automatic pumps in
there so you would be able to take care of any flooding. Coming
back up again you would run into the river where you would
have to come around with another structure, so I don't believe
an underpass or overpass are practical in this area.

Q. Have you prepared a plat showing how you would lay
out this property for residential uses by lots, showing the
water lines and other improvements you propose?

A. Yes, sir.

Q. Can you identify this plat I hand you?

A. Yes, sir. This did not include sewer — only water. The
sewer would be right down the center of the street.

Q. Looking at this plat, what is the area right along the
north line of the right-of-way of the Southern Railway?

A. It is the James River.

Q. No — the north line of the right-of-way.

A. We have a road right there that we propose — a sixty-
foot road, which is the usual requirement of the City of Rich-
mond.

Q. And the lots would run from that road to
page 135] the river's edge?

A. Yes.

Q. Approximately at the depth shown on the plat? Is that
right?

A. Yes, sir.

Q. Have you provided for fire protection?

A. Yes, sir. We have a loop with two six-inch pipes so you
can feed from both ends and each fire hydrant about five
hundred feet apart.

Q. That was included in the cost?

A. Yes.

Q. And you just assumed access by the fire trucks, as I
understand it?

A. Yes, sir.

Mr. Pasco: We would like to file this as the next Plaintiff's
Exhibit.

Note: Plat entitled "Development study of 16.6 acres"
etc., prepared by Austin Brockenbrough and Associates,
marked Plaintiff's Exhibit No. 15, and filed.

Austin Brockenbrough

Q. (By Mr. Pasco) Mr. Brockenbrough, in your studies of this property, have you reached a conclusion as to whether development of this property for residential purpose page 136] poses is economically feasible?

Mr. Eichner: Your Honor, I submit this witness is not qualified as a real estate man.

Mr. Pasco: My question, Your Honor please, is whether in his studies of this property, as consulting engineer, he formed an opinion as to whether it is economically feasible to develop it for residential purposes.

The Court: Mr. Eichner, I think your objection would be sound if the question went to the cost of the dwellings proposed for the development, but it seems to me he would be qualified, through comparison with other developments he lays out from an engineering standpoint, to testify whether this development, from an engineering standpoint, would be in line or grossly out of line.

Mr. Eichner: I don't question his experience, Your Honor, but the question of whether it is economically feasible to develop this property is a question for the real estate market, and I respectfully submit Mr. Brockenbrough is not a real estate salesman.

page 137] The Court: He is not speaking of sales. He is speaking of the cost of engineering development.

Mr Eichner: He has already stated his expert opinion on that point.

The Court: Yes, but he has not stated how that compares with the others with which he is familiar.

Mr. Eichner: I would like to note my objection and exception to the question.

Mr. Gay: The court asked the question.

The Court: I will overrule the objection.

Mr. Spain: Your Honor, when we speak of comparison with others — do we mean others like this on the river? Are there any others like it? I don't think it can be compared with others in other sections.

The Court: No, but I think in a given area he is qualified to pass on and to testify to, which he has done, the necessary engineering undertakings before it can be used for housing purposes, and, secondly, as to the cost of that. It seems to me

M. P. Timmons

that he is qualified to say as an engineer whether
 page 138] it would be economically feasible to take this piece
 of land, or any piece of land, under certain cir-
 cumstances, and spend that much money for engineering
 projects necessary to make it useable for dwellings. It seems
 to me he is qualified for that.

Mr. Eichner: We respectfully except, on the ground that
 this is a question for a real estate expert.

Q. (By Mr. Pasco) Have you formed an opinion?

A. Yes, I have formed an opinion it is not economically
 sound for subdivision development from an engineering point
 of view, not from the real estate viewpoint.

Mr. Pasco: I have nothing further.

Mr. Eichner: No questions.

By The Court:

Q. Mr. Brockenbrough, the number of lots you had planned,
 they are shown on here?

A. Yes, sir.

Q. Does this show the engineering cost per lot? Have you
 given that?

page 139] A. I worked it out afterwards and I have it
 on another map. I had thirty lots laid out and one
 of them the drainage goes through, so it cuts it to twenty-
 nine lots, and it came out to \$10,155.00 as a development cost,
 per lot.

Q. (By Mr. Pasco) Does that consider the cost of the land
 itself?

A. I said the development cost — not the cost of the land.

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page 140]

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M. P. TIMMONS,

a witness called by and on behalf of the plaintiff, after being
 duly sworn, testified as follows:

M. P. Timmons

DIRECT EXAMINATION

By Mr. Pasco:

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page 142]

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Q. At our request have you prepared certain schedules of freight, revenue and traffic statistics involving the Southern Railway Company's operations in Richmond for recent years?

A. Yes, sir, I have.

Q. I hand you what appears to be such tabulations and ask if you can identify them?

A. Yes, sir, these are the schedules just re-
page 143] ferred to.

Q. Tell us what categories they are in and for what period of time.

A. The period of time is the year 1958, through the first six months of 1962, and they are broken down by traffic originating at Richmond, traffic terminating at Richmond, traffic received from connections at Richmond, traffic delivered to connections at Richmond, traffic moving through Richmond. They are further broken down by commodity groupings.

Q. They are the five general categories for each year?

A. Yes, sir.

Q. Is there anything else in these schedules besides those five categories for the periods indicated?

A. The last two sheets on this schedule are simply recapitulations. There are two because the sets were made in two parts. We originally made them for the years 1958, 1959 and 1960, and since then we have brought them up to date by including 1961 and half of the year 1962.

Q. So there are five sheets, for each year plus part of a year, and two recapitulation sheets?

A. Yes, sir.

Q. A total of twenty-seven sheets, I believe?

page 144] A. Yes, sir.

Q. Was this prepared under your supervision and direction?

A. Yes, sir, it was.

M. P. Timmons

Mr. Pasco: We would like to introduce this exhibit showing the revenue traffic in Richmond for the period indicated, as Plaintiff's Exhibit No. 16.

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CROSS EXAMINATION

By Mr. Eichner:

Q. How do these figures compare, Mr. Timmons, with the year 1952?

A. I have no idea.

Q. You were not asked to prepare any such evidence?

A. No, sir.

page 145] Q. Would you say that the information shown on this exhibit indicates the same increase or decrease as on the Southern Railway Company lines generally?

A. I have not made a study of the entire company as compared to this exhibit. From general knowledge and only from general knowledge, I would say that this does not indicate the same fluctuation of traffic pattern.

Q. There has been a decline in car loadings over the entire system for the past ten years, has there not?

A. I don't have any figures available. As I recall there has been some years it has increased over the previous years within this period.

Q. But you have no knowledge of the comparison between, say, 1961 and 1952?

A. 1961 and 1952? I believe there has been a decrease from 1961 as opposed to 1952.

Q. What do you do with statistics of this type besides using them for the Southern Railway System? Do you supply them to any other organization?

A. No, sir.

Q. You don't supply figures to the Interstate Commerce Commission?

A. No, sir, not of this nature.

Q. What do you supply the Interstate Commerce Commission?

A. Only commodity statistics. This is broken down by the various system lines, each system line standing on its own. They show the four classes of traffic — local, received, forwarded and intermediate. They show the revenue as a total figure.

M. P. Timmons

Q. They are broken down into these general categories — agricultural products, animals and products, etc?

A. They are broken down further. They are broken down to the two hundred and sixty-two individual commodities.

Q. You include a summary of products of agriculture, do you not?

A. Yes.

Q. So you do provide such a figure?

A. Yes, sir, but not for the system as a whole — for each individual company.

Q. You provide statistics for the Southern Railway Company and for other companies within the system — they would be separately supplied?

A. That's true.

Q. Do you supply such information to the Association of American Railroads?

page 147] A. We supply them with car-loading figures.

This is not done from my office but I know it is done.

Q. Are accurate figures supplied to the Association?

A. To the best of my knowledge, yes.

Q. And therefore the publications of the Association of American Railroads, so far as they relate to the Southern Railroad, would be accurate, would they not?

A. Insofar as my knowledge, yes.

Q. Have you done any study of the average length of trains originating or terminating in Richmond?

A. No, sir, that is not part of revenue accounting.

Q. You mentioned waybills. Does not this indicate the number of cars shipped from this terminal — from Richmond?

A. Yes they do.

Q. And so the waybill data which you have under your control would indicate the length of trains, would it not?

A. I have no way of relating a waybill to a specific train.

Q. Where would information on the length of trains be found, from a given city such as Richmond?

page 148] A. I would say that would be found in either the Superintendent's or the Yardmaster's Office.

Q. You have here Plaintiff's Exhibit No. 16 — certain pages on carload traffic received from connections at Richmond, Virginia. We have the year 1958, for example — 1959, 1960, 1961 and the first six months of 1962. Did you break these down by what roads they were received from?

A. No, sir, I didn't.

M. P. Timmons

Q. You were not requested to do so?

A. No, sir, I was not.

Q. What does traffic received from connections constitute? Does it include a car that is merely picked up in Richmond from a siding owned by another railroad?

A. No, sir, that is handled in switching service.

Q. So this traffic received from connections in Richmond indicates only cars coming into Richmond from some other terminal on some other road, delivered to Southern and shipped out of Richmond by Southern?

A. That's true.

Q. It would not include any local switching?

A. No, sir, it does not.

Q. Would not include any car delivered to a local destination?

page 149 } A. No, sir.

Q. Nor any car originating with a local shipper? Is that true?

A. That's true.

Q. Now I am looking at your carload traffic received from connections in Richmond, 1958 and 1960. What was the total carload traffic received from connections at Richmond for the year 1958?

A. I will have to add the interstate and intrastate together. That total would be 4,442.

Q. What is the same total for the year 1960?

A. 4,841.

Q. Is the increase interstate or intrastate?

A. There is a decrease on interstate business and increase in intrastate business.

Q. I call your attention to the carload traffic originating in Richmond in 1958 and 1960. You have an increase in each category indicated there, do you not?

A. Yes, sir.

Q. And that is reflected entirely in the "Manufactures and Miscellaneous," is it not?

A. Yes, sir, it appears to be.

Q. Does that category "Manufactures and Miscellaneous" include less than carload shipments?

page 150 } A. No, sir, it does not.

Q. You have no data on less than carload shipments?

A. No, sir.

M. P. Timmons

Q. There has been a sharp decline in less than carload shipments, has there not?

A. Over the last few years.

Q. How do you define less than carload shipments? Is it any different than the way it sounds?

A. Our definition and that used in the ICC is any shipment less than ten thousand pounds.

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page 151]

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RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Was there any reason your statistics did not go back beyond the year 1958?

A. Yes, sir, we don't have those records.

Q. What has become of them?

A. The informaion is only kept for a certain length of time and is then erased from the tape.

Q. Do the rules and regulations of the ICC have any provision with respect to this?

A. To my knowledge there is no rule or regulation of the ICC that would have any regard to information held on magnetic tape. They do have regulations as to the time in which you can destroy original waybills, and that is three years.

Q. And the policy of retaining records on magnetic tape is a company policy — is that correct?

A. Yes, sir.

page 152] Q. Tell us what carload movements in the Richmond area are not included in the statistics you have presented?

A. There are no switching movements and by switching movements I mean any traffic on which we did not earn a road haul. There are no empty car movements, nor any movements of company material upon which we didn't earn revenue.

Q. Do I understand these statistics contain all other cars handled by the Southern Railway in the Richmond terminal during the years these statistics purport to cover?

Donald H. MacLeod

A. With the exception of less than carload loaded cars.

Q. They are not included?

A. Oh, no.

Q. What do you mean by the expression you just used — “unless the Southern has a road haul?”

A. I mean by that where the Southern earns a proportion of the through freight charges and not a switching revenue.

page 153]

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. What is the gross revenue figure? Is that the total freight charge for a shipment?

A. Yes, sir, that is a straight freight charge.

Q. So in the case of traffic originating in Richmond, this total would show the revenue received for the entire trip as being a Richmond figure — is that not right?

A. I am not quite sure exactly what you mean by that question. May I explain it in my own words?

Q. Let me reframe the question. If I ship a carload of freight from here to Keysville, you will charge less than if I ship a carload of freight from here to Jacksonville, will you not?

A. Usually, depending on the commodity.

Q. Let's assume all the intrastate figures are from here to Keysville, and all the interstate are from here to Jacksonville.

A. Yes.

Q. All those figures would appear in your exhibit as revenue for traffic originating in Richmond, would they?

page 154] A. As I understand your question, this is what we collect from the shipper or patron.

Q. And the same, of course, is true for traffic terminating in Richmond?

A. Yes.

Q. These figures, both intrastate and interstate gross revenue, do not purport to be any kind of allocation to the mileage travelled in Virginia. Is that true?

A. That's true.

page 155]

DONALD H. MacLEOD,

a witness called by and on behalf of the plaintiff,
after being duly sworn, testified as follows:

Donald H. MacLeod

Mr. Gay: Your Honor please, in order to facilitate Mr. MacLeod's testimony, we have prepared and submitted to him a series of questions we thought relevant to the matters involved in this case, and he has prepared and has written out the answers he proposes to make in written form. I have suggested to counsel, if it is agreeable with the court, I will ask these questions and let Mr. MacLeod read his answers in the record. It will facilitate the presentation of the evidence and at the same time give counsel for the City an opportunity to have before him what was said.

The Court: Is that agreeable?

Mr. Eichner: That is agreeable. I take it we will complete the prepared testimony and after that the record will indicate that we are going off of it.

Note: The prepared testimony was read, with Mr. Pasco reading the questions and the witness reading the page 156] answers, as follows:

PREPARED TESTIMONY

Q. State your name, age, residence and present occupation.

A. Donald H. MacLeod, 39, 502 Cathedral Drive, Alexandria, Virginia, presently Vice President — Operations, Southern Railway System.

Mr. Spain: I would like to suggest the answers be read exactly as they are typed without enlargement, as seems to have been done on that first answer — inadvertently, I am sure.

Q. State briefly the responsibilities of your position as Vice President — Operations, and the extent of your experience in the railroad industry.

A. The Operating Department is responsible for the physical plant and the trains that operate over this plant, including the crews and the maintenance of the way and equipment. I was first employed by Southern in 1950 as a student apprentice in the Maintenance of Way Department. I later worked as the Assistant Track Supervisor and Track Supervisor in this department. In 1953, I was transferred to the Transportation Department and was Assistant Trainmaster in Knoxville, Tennessee. I then became the Trainmaster of the Atlanta Division. Later I was Assistant Division Superintendent of the Knoxville Division and subse-

Donald H. MacLeod

quently became Division Superintendent at Birmingham. I was made Vice President in charge of Operations in February, 1962.

Q. By way of background, will you state any recent developments in railroad transportation that have in any way affected the adequacy of railroad facilities?

A. The most significant development is dieselization. The diesel locomotives, consisting of from one to six units, can pull extremely long trains with great economy and the result has been that the freight trains of the Southern, and of other railroad companies, are now considerably longer than they were when steam locomotive power was used. Other examples of recent developments include "Piggy-back" (which is the transportation of loaded trailers on extra long flat cars) and extra long freight cars sometimes called "Big Johns," and others. Dieselization has had a greater effect on the adequacy of railroad facilities than the other recent developments. Railroad yards and sidetracks have had to be altered and expanded. Seventy-five percent of all principal sidings of the Southern

Railroad have been lengthened between one and
page 158] three times, causing increases from 75 car lengths.

The Southern alone has spent over 100 million dollars in other Southern cities in making its trackage adequate for diesel trains. Yards have been expanded in such cities as Knoxville, Tennessee; Birmingham, Alabama; Chattanooga, Tennessee; Atlanta, Georgia, and Charleston, South Carolina. In fact we have altered yards in every principal city on the lines other than Richmond. Principal alterations have been in the lengthening of tracks. The long trains that can be pulled by diesel engines — which are used in groups of from one to six units — had rendered our former yard facilities over the entire Southern System completely or partially inadequate because the short tracks use in yards in the steam locomotive days cannot accommodate the longer trains.

Q. Why did you delay improving the yards in the City of Richmond?

A. We had to improve the yards throughout the system in the order of priority and need. We concentrated on the cities which were the crossroads of primary freight lines.

Q. What is the paramount problem created by the inability of the existing yards to handle diesel trains?

A. The paramount problem is delay. The railroad industry

Donald H. MacLeod

is unable to compete today with air and truck
page 159] transportation of freight unless it can provide
fast service. The greatest delays occur when the
trains arrive at the yards for switching for delivery or interchange. The yard becomes a bottleneck if it cannot accommodate the long trains which dieselization permits. For example, a freight train takes three days from New Orleans to Richmond. After its arrival in Richmond it frequently requires 24 hours before it is placed on the siding of the consignee. The advantage gained by the fast movement from New Orleans is lost because of the delay imposed by the inadequate yard facilities in Richmond.

Q. Addressing yourself to the role of the Southern in Virginia and in Richmond particularly, will you describe the service rendered by the Southern in and through Richmond?

A. Yes; the Southern provides interstate and intrastate railway service, other than passenger service, to the public along its line between Danville and West Point, Virginia. This is known as the "Richmond Division" and connects with one of the Southern's principal north-south arteries at Danville.

Q. Is the operation of the Richmond Division within your general jurisdiction?

A. Yes, it is.

Q. Are you familiar with the Southern's rail-
page 160] road facilities and its operations in Richmond?

A. Yes, I am.

Q. What role does Richmond play in the Danville to West Point line?

A. Richmond is the principal station served by this line and is the point of primary interchange with the C. & O. Railway, the A. C. L. Railroad, the Seaboard Air Line Railroad and the R. F. & P. Railroad. It is also the terminal of the Company's trains from Danville and from West Point.

For this reason, it is necessary for the Southern to maintain adequate facilities at *Richmond* for the loading and unloading, storage, switching and classification of railroad cars.

Q. What do you mean by "Classification?"

A. *Classification* is a railroad term which includes the breaking up of incoming trains, the building of outgoing trains and the "sorting" of cars in groups for inclusion in these outgoing trains or for delivery to consignees at various points in the City, or for interchange with the other railroads. The classification of cars to be included in an outgoing train must take into

Donald H. MacLeod

consideration the destination of the various cars, the point of interchange with other lines, if any, and the switching facilities available along the line toward the destination of the cars.

page 161 } Q. Specifically, what freight train service is provided to and from Richmond on the Richmond Division?

A. The Company operates a freight train from Danville to Richmond each day known as No. 56. This train leaves Danville at 10 p.m. daily and arrives in Richmond at 3 a.m. to 5 a.m. A train from Richmond to Danville each day known as No. 57 leaves Richmond 11:30 p.m. and arrives Danville at 7 a.m. These are known as through freights. In addition, local freight No. 61 moves from Richmond to Danville on Monday, Wednesday, and Friday of each week at 9 a.m. and local freight No. 62 moves from Danville to Richmond on Tuesday, Thursday, and Saturday of each week at 9:30 a.m. Further, there is a local freight train that makes the round trip from Richmond to West Point seven days each week. These are Trains Nos. 22 and 21. This train leaves Richmond at 6:45 a.m. The train from West Point arrives in Richmond between 2 and 4 p.m.

Q. Generally, what are the origin and destination of the cars making up these trains?

A. The trains *from Danville* consists of cars from other lines of the Company and from other railroads and cars originating along the line from Danville to Richmond. They are destined for consignees in Richmond or West Point or points between Richmond and West Point or for
page 162 } interchange with other railroads at Richmond.

The trains *to Danville* take cars received at Richmond by interchange, cars originating from shippers in Richmond and cars coming from West Point or from points along the line between Richmond and West Point.

The train *to West Point* consists of cars which have come on the Danville train destined to points between Richmond and West Point, cars originating in Richmond or received at Richmond by interchange destined to points between Richmond and West Point.

The train *from West Point* carries cars from West Point or from points between Richmond and West Point destined for consignees in Richmond, for interchange at Richmond or for forwarding in the Danville trains.

Donald H. MacLeod

Mr. Pasco: Departing from the prepared testimony a moment, we have a map of the system showing the other lines of the company, to which the witness referred, and I would like to ask him to identify this and submit it as an exhibit.

Q. (By Mr. Pasco) Mr. MacLeod, I will ask you if you can identify this map I hand you?

A. Yes, sir, this is a map of the Southern Railway System.

page 163] Q. What, generally, does it show?

A. It shows the lines of the various companies in our system and it also breaks it down by division.

Mr. Pasco: We would like to submit this as Plaintiff's Exhibit No. 17.

Note: Marked Plaintiff's Exhibit No. 17 and filed.

Mr. Pasco: That is one of the maps we have submitted to counsel for the City prior to trial, in response to request from counsel.

Q. (By Mr. Pasco) Mr. MacLeod, I hand you a plat purporting to show industrial interchange tracks, Richmond, Virginia, having certain colored additions to it, and ask you if you can identify this map and the colored additions?

A. This is a Southern Railway System Map, Richmond, Virginia, showing industrial and interchange tracks at Richmond, original map dated March 25, 1935, revised June 21, 1939 and September 17, 1962.

page 164] Q. Does this map, to your knowledge, accurately portray the facilities of the Southern Railway Company in Richmond?

A. It does, yes, sir.

Mr. Pasco: We would like to submit this as Plaintiff's Exhibit No. 18.

Note: Marked Plaintiff's Exhibit No. 18 and filed.

Note: The map, Plaintiff's Exhibit No. 18, was placed on the board.

Q. What facilities does the Southern own in Richmond for the handling of this freight traffic?

A. I can best answer your question by using this map showing industrial and interchange tracks, Richmond, Va., dated March 25, 1935, revised June 21, 1939, and September

Donald H. MacLeod

17, 1962. The facilities shown on the map are the same as presently exist with the exceptions which I shall point out later.

Some years ago, the Company's principal classification yard, locomotive shop, coach shops and tracks were located at what is generally known as its *South Richmond Yard* (pointing to the location of the yard on the map). Through the narrow tunnel under the Coast Line tracks to the west is a second yard known as the *Belle Isle Yard*, originally used as a supplement to the South Richmond Yard (pointing to the map). Belle Isle Yard terminates on the west approximately at the south end of the Robert E. Lee Memorial Bridge, except for two side tracks and the main line track. The two side tracks extend approximately 1600 and 6000 feet, respectively, west of the Bridge. These pick up right here. The two tracks I have just referred to are between these two points. The Company maintains an interchange track for the A.C.L. and R.R. & P. south of the Belle Isle Yard (pointing to the map). Interchange with the Seaboard Air Line Railroad is handled on interchange tracks located to the east of Hull Street in South Richmond (pointing to the map).

North of the James River the Company maintains a general freight depot and two team tracks at 14th and Canal Streets (pointing to the map). The only tracks connecting the Southern's facilities in South Richmond with those north of the River are on the Company's bridge shown here at the west end of Mayo's Island (pointing to the map). The Company also maintains north of the River two small storage yards used to hold cars for delivery. The first is located here (pointing to map), and is known as the *Ship Yard* and page 166] the second is located here (pointing to map) and is known as the *28th Street Yard*. Further to the east the Company maintains tracks for interchange with the C. & O. In addition to these facilities there are, of course, lead tracks and industrial tracks serving the various industries in the City springing from the facilities which I have just described.

Q. When were the yards at Belle Isle, South Richmond, Ship Yard, and 28th Street first used by the Company?

A. Belle Isle was constructed in 1912. The other yards were in use during the Civil War period.

Q. Are these yards currently in use?

A. All except the South Richmond Yard. After the Com-

Donald H. MacLeod

pany began using diesel engines on the Richmond Division in 1947, the South Richmond yards became more and more inadequate as the length of trains increased. Specifically, the inadequacies of the South Richmond Yard were the hazards to our employees due to the curvature and excessive amount of switching which caused at least twice as many movements with the yard engines than would have been necessary if this yard had been double-ended. The South Richmond Yard was a collection of stub-ended tracks for the most part, and this required the handling of all cars switched into these tracks at least twice, and in some cases more. It also had sharp turns which created some hazards to our employees. While there were a few tracks
page 167] that were double-ended, for all practical purposes they might as well have been stub-ended because it was not practical to switch across Hull Street. Also, the main line from West Point entered the yard in the center thereof and arriving and departing trains interrupted switching operations. It was necessary to leave such arriving trains on the bridge over the River or carry them through the yard to Belle Isle tracks. If the main line track had entered from North Richmond at the east end of the yard and space had existed for storage tracks adjacent to the classification tracks, the yard would have been more serviceable.

In addition, with Hull Street just to the east of South Richmond Yard, all switching had to be done from the west where vision was greatly restricted by the ACL tunnel and the high cut. These factors made yard operations uneconomical, inefficient, and dangerous to our employees if used extensively in classification work. Accordingly, the Company gradually shifted the majority of its train classification or yard work to its Belle Isle Yard and, except for temporary storage of industrial cars and empty equipment, etc., and some shifting and switching, has concentrated its classification work in the Belle Isle Yard.

Q. What are the present size of the several Southern Railway yards in Richmond?

page 168] A. *Belle Isle Yard* has 15 tracks, one of which is a stub-end track, with a total yard capacity of 220 cars. The longest track is 23 car lengths; the shortest is 7 car lengths. The average number of cars handled daily at Belle Isle is 375 cars. The greatest number of cars that can be handled at any specific time in Belle Isle Yard proper

Donald H. MacLeod

is about 180 cars. The passing track south of Belle Isle Yard will hold 125 cars.

28th Street Yard is made up of 6 "stub-end" tracks with total capacity of 130 cars. In addition, the running track from the switching lead to the Dock Street Industrial Lead (known as the connection) can be used for the temporary yarding of about 18 cars (pointing to map).

South Richmond Yard has a total of 3 tracks in the yard proper with a total capacity of 65 cars.

Ship Yard is made up of 6 double-end tracks with total capacity of 155 cars, although it is always necessary to hold one of these tracks open to permit the switching to four shippers in the area. The longest track will hold 35 cars.

Q. Which of these yards can be used for classification?

A. Only Belle Isle Yard can be used for classification; the remaining yards can be used only for storage.
page 169] Q. How do these facilities compare with the other four railroads in Richmond?

A. The Southern's facilities do not compare favorably with the facilities of the other railroads in Richmond.

Q. Returning now to the Southern's facilities in Richmond, can you state specifically the principal inadequacies?

A. Yes. I should first point out, generally, that the Southern's facilities are what you might describe as being "on-the-ground" here in Richmond. That is, the majority of its trackage, excluding yards, are located in city streets and definitely limited in operation. The Southern is restricted in its movements north of the James River primarily to night time hours and it must cross over many grade crossings in its movements about town. This "on-the-ground" situation can be contrasted to the other railroads which operate to a certain extent on trestles or underpasses, unhampered by City traffic.

With specific reference to our yards, short tracks and inadequate storage space are the principal inadequacies. Let me use classification as an illustration. Classification in our yards is generally performed with a series of parallel
page 170] parallel tracks at the end at an angle. There should be two ladder tracks, one at each end of the yard. This will permit classification of two or more trains at the same time. Cars are placed on the parallel tracks in groups according to destination or interchange and are moved onto the ladder track to form the train in

Donald H. MacLeod

a prearranged logical sequence. If the parallel tracks are short, more tracks are needed to accommodate the long trains and the same classification may have to be placed on two or more tracks. More switching movements are thereby required, thus increasing the time necessary to build the train.

The tracks used for classification cannot also be used for storage of interchange cars awaiting classification or for storage of arriving trains which contain cars that are to be interchanged or delivered locally. We do not have sufficient storage tracks to properly handle traffic simultaneously with respect to Belle Isle Yard. We have to use the main lines and sidings for storage purposes in and out of the yard of empty equipment, special movements, etc., which are located some distance from the yards. These additional movements, of course, take additional time which could be avoided if adequate facilities existed.

Q. What is the principal problem caused by this situation which you have described?

page 171] A. The delays resulting from our movements within Richmond on or across City streets and the delays from switching and classification in our limited yard space are our principal problems affecting our ability to render adequate service. Of course, delays mean increased operating expenses and poorer service to our shippers. The extra movements also increase the danger of injury to our employees.

Q. Can you give me examples of the effect of the inadequate facilities on the operations of the Southern?

A. Yes. I have already mentioned in a general way the use of main lines and sidings for storage purposes. The inadequate yard facilities at Belle Isle particularly with respect to the lack of car capacity, as concerns length of track, forces the use of excess switch engine time, and classifying and doubling into an outgoing unit of our trains. After an outbound train in excess of 35 cars is built, the entire present Belle Isle Yard is completely blocked until that train departs from that yard. When an outbound train is built as described, of course, no switching can be performed such as breaking up short trains, handling interchanges to or from ACL, nor can cars to and from other sections of the terminals be moved out of or into Belle Isle Yard. The above is true of all outbound trains

Donald H. MacLeod

with one exception in that local freight Train 61
page 172] from Richmond to Danville, Monday, Wednesday,
and Friday is made up on and departs from
the main line. All inbound trains are yarded in a passing
track south of Belle Isle Yard with the exception of Train
21 from West Point, which is yarded on the main line
between the ACL tunnel at the north end and one of the
two first crossovers at the south end, dependent on train
length.

There are other specific illustrations. For example, there
is the delay in switching Train 56 by the making up of
Trains 22 and 61. Train 56 yarded in the "long" siding,
which is parallel to the main line west of Belle Isle Yard.
It remains there until departure of local freight Train 22
to West Point, about 7 a.m., seven days per week and it
remains there on Monday, Wednesday and Friday of each
week until No. 61 is built, which departs about 9 a.m. to
Danville. Therefore, Train 61 is moved to the main line
where it is left until the road locomotive is attached and
brake test and required inspections are completed. This
extra movement is necessary to avoid further delay to the
switching of Train 56, as Train 61, after completion, would
block the switching lead. The late switching of Train 56
causes delays in delivery cars for interchange to ACL, SAL,
RF&P, and C&O. Another result is that cars for local in-
dustries in the South Richmond-Hull Street areas are placed
during late afternoon and evening hours rather than before
mid-day. Cars for delivery to North Richmond
page 173] are delayed until the following day for unload-
ing. Deliveries which are now made to ACL
and RF&P between 11:30 a.m. and 1 p.m. to SAL about 2
p.m., and to the C&O about 2 p.m., would be advanced from
one to two hours if the necessary improvements in our yard
facilities could be made.

Again, local freight Train 22 (Richmond to West Point)
usually departs from Belle Isle at 7 a.m. When the train
consists of more than 30 cars, it blocks the yard for switch-
ing purposes between the time the train is completed and
the time it departs. If the tracks were long enough to con-
tain Train 22, clear of adjacent tracks and clear of the
switching lead, it would permit the switching of cars
arriving in Train 56 for the West Point line. These cars
are now delayed until the next day, even though Train 56
arrives several hours before Train 22 departs.

Donald H. MacLeod

Train 62 from Danville which arrives between 2:30 and 7 o'clock p.m. is yarded in "long" siding and cannot be switched until Train 57 is built and departs to Danville at 11 or 11:30 p.m. For this reason the 3 p.m. crew does not classify Train 62 even though the train arrives during their shift, and the 11:55 crew has to classify and deliver the cars from Train 62 to consignees in Richmond. Delivery in Richmond is not the same day as arrival. Also, delivery in Richmond to other railroads is delayed until after midnight, which requires the Southern to pay to
page 174] the owner of each railroad car in its possession a *per diem* of \$2.88 per car. Also since Southern cars are not delivered for interchange until after midnight, Southern loses its *per diem* on each car for that one day. With the additional tracks extended at Belle Isle No. 62 could be partially switched daily and in some cases completely switched.

A final illustration shows how the inadequate classification facilities can cause delays and expenses in other locations. Train 57 to Danville departs nightly at 11 or 11:30 p.m. Because of yard limitations, cars in Train 57 for Danville and beyond are not classified in terminal order, but are lumped in a single block. This makes it necessary to switch all such cars in Dundee Yard at Danville for the various main line connecting trains, both northbound and southbound, placing extra burden and expense on that terminal and resulting in some of the cars missing connecting trains at Dundee. The proper method of classification, yard space permitting, would be to have cars classified before leaving Richmond in separate blocks, as follows: 1 — Cars for Danville, proper, including cars for Carolina and Northwestern and Atlantic and Danville Railways. 2 — Cars destined to local points between Danville and Monroe. 3 — Cars for Greensboro, N. C., including Winston-Salem Division and Danville Division between Greensboro, N. C.
page 175] and Selma, N. C. 4 — Cars destined for Spencer, N. C. and beyond, south and west. With the extension of tracks at Belle Isle as proposed, this method of classification could be accomplished.

Q. You mentioned earlier that the curvature of tracks in a yard is undesirable. Why is this?

A. When a cut of cars is being moved adjacent to a track on which cars are standing, and such track is on the inside of the curve, the standing cars block the visibility of hand

Donald H. MacLeod

or lantern signals. Consequently, it is necessary to proceed slower to relay the signals around the curves. This increases the delays and the costs and dangers of switching.

Q. Do any of the Southern's yards in Richmond have curved tracks?

A. The South Richmond Yard had curved tracks and as I have previously stated for this and other reasons was not suitable for use as a classification yard.

Q. Could the tracks of the South Richmond yard have been laid out in a manner which would have permitted use of the yard for classification purposes?

A. No. The length of the land area was insufficient for a classification yard and the yard could not be expanded as there was no available land on any side. As I mentioned before, the yard was hampered by the fact that page 176 } the main line from and to West Point entered the center of the yard. The location of the main line could not be changed as it would require relocation of the bridge over the River. If a lead or ladder track had been installed in this yard for use in classification, the length of the remaining tracks would not have been sufficient to provide an efficient classification yard, particularly since additional work space would have been required for the engines at each end of the classification track. Also, it would have been impossible to switch on the Hull Street end of such a yard without stopping traffic on Hull Street for substantial lengths of time, which would not have been permitted.

Q. To what use is the South Richmond yard now put?

A. Several years after it was decided the yard had become obsolete, a small portion of the yard was sold to the Reynolds Metals Company. This property is shown in yellow on this map of our facilities in Richmond that I have been referring to. Some of the remaining portion of the yard is now devoted to piggy-back service.

Q. Have you caused to be prepared statistics for the years 1958 through June of 1962, which show the freight traffic of the Southern in and through Richmond?

A. Yes, Mr. Timmons has presented them. Mr. page 177 } Beard, I believe, will have some supplemental figures to present.

Donald H. MacLeod

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page 178]

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Q. Have you reviewed these statistics that Mr. Timmons has presented?

A. Yes, I have.

Q. What conclusion have you drawn from these statistics?

A. It is very clear to me that our business is static from observing these figures; in fact, they are very disappointing to a person in the railroad business. It is my opinion that the most significant reason why our traffic has not increased in Richmond has been due to our inability to expand and improve our physical facilities.

We are not now nor have we in the last several years been able to give service to our present customers in Richmond that would meet present day competition. As to the future, we on Southern feel that Eastern Virginia has a great potential in industrial development, and Richmond today is the railroad center, and we feel that it will continue to be. To serve this area, therefore, if we intend to share in this new business, we must prepare to handle it properly. This fact was recognized in 1953, and plans were commenced then to improve our facilities here in Richmond.

Q. On the basis of the current traffic of the
page 179] Southern in and through Richmond and the future increase which you visualize, can you state what additional facilities, if any, are necessary in order that the Southern may efficiently and economically perform its public duties and state the most suitable location of these facilities?

A. Additional facilities are definitely required here in Richmond. While the Southern has not received any complaints from any of its shippers or consignees as to delays incurred in transportation of freight, its operation in Richmond is definitely inefficient and should have been remedied several years ago. A railroad cannot defer the expansion of its facilities until the time when its shippers begin to complain of inferior service, because by that time it will have ceased to perform its public duties and will probably

Donald H. MacLeod

have lost a large part of its business to other modes of transportation. Consequently, on the basis of the many delays incurred in train movements in and through Richmond and of the probable increase in freight traffic due to expansion of industrial areas of Eastern Virginia, the Southern must expand its yard facilities as soon as possible.

The most suitable property for this expansion is that located adjacent to the James River west of Belle Isle (indicating on topographical map). The immediate needs of the Company would require construction at the page 180] present time of two or three tracks. The first would be a track of approximately 6000 feet in length running from the western end of Belle Isle Yard to the extreme western end of the property which I have pointed to on the map and which I shall call the James River property. Two other tracks of a minimum length of 3500 feet, running the full length of the James River property, would also be required at the present time. Of course, more tracks would be installed later as Richmond grows and as the freight traffic increases as expected.

Q. What types of railroad operations would be conducted on these two or three tracks when built on the James River property?

A. These tracks would be used primarily for storage of trains awaiting classification or awaiting departure. This would free the main line, "long" siding and Belle Isle yard from the restrictions imposed by the storage of trains or cuts of cars on those tracks. This would also permit the classification of two trains, such as Trains 57 and 22, in Belle Isle Yard at the same time and materially reduce the delays presently encountered.

Q. Would night time movements be involved that would involve loud noise and other objectionable features?

A. Some night time movements, of course, would be necessary, but there is no reason to expect any more page 181] noise than there is at present, and we do not intend to install any lighting system at the present time. Switching is not a silent operation, but it does not involve loud noises.

Q. What noise and different operations would you have on this property when these new tracks are built than exists at the present?

Donald H. MacLeod

A. First I would like to explain the type of movements we now have at the west end of Belle Isle Yard, which extends westward to approximately 42nd Street. We presently have road engines passing this location that stop and enter the tracks. We have yard engines that do occasional switching particularly when it is necessary to switch out rush cars and inbound Trains 56 and 62 and 21. It is also necessary to switch out cars that are bad ordered after outbound trains are built at this end of the yard. We now do some occasional freight switching when it is expedient to do so in this area.

When the tracks are extended westward from the present Belle Isle Yard south of the main line they will terminate at approximately the same location as they do on the opposite side of the main line, i.e., 42nd Street. We will continue to have the same type of movements that we have now at this location. For obvious reasons with the additional tracks there will be additional movements, but
page 182] they will be of the same type and will be no more objectionable than from what they are now.

Q. Are there any other suitable places to construct additional tracks in order to properly handle the Company's business in Richmond?

A. I have explored the possibility of locating these tracks elsewhere and have concluded that there are no other suitable alternatives. I considered construction at Robious, which is about seven miles southwest of Richmond. There is a 1% grade from Richmond to Robious. The grade and long distance would make movements back and forth very time consuming. There would be no increase, in fact a decrease in efficiency, and it would not solve the Southern's problem in Richmond.

If a yard were created in the *Sandston-Highland Springs* area, traffic between such yard and the City of Richmond would impede city vehicular traffic at approximately 10 grade crossings. Further, cars from Richmond destined Danville would first have to be shuttled to this yard site and then moved back through Richmond to Danville. The reverse would be true with regard to trains from Danville. Again, there would be no increase in efficiency, in fact, a serious decrease would be the result.

Donald H. MacLeod

The third alternative would be the *Rocketts* page 183] area on the James River east of South Richmond Yard. A yard in this location would not be suitable. In fact, it would accentuate the problem, as a "stub-end" yard would be created. The main line would not enter at one end and come out at the other end, as is most desirable, but all movements would enter and leave from the western end on the same tracks. Also, Rocketts is subject to frequent flooding. Even if the Rocketts area was filled and graded, it would not be suitable because it would be a "stub-end" yard. Further, the area cannot be used for yard purposes because it crosses Hull Street which is a main north-south artery of City vehicular traffic. This would create a problem similar to the crossing at 14th and Canal Streets. At the present time we experience difficulty in crossing 14th Street except in night time hours, and it is reasonable to expect that our operations back and forth across Hull Street would be limited to hours of light vehicular traffic. Clearly, such operations would not be feasible.

Q. What effect do the inadequate yard facilities at Richmond have on Southern's ability to handle shipments efficiently and competitively to and from other points in Virginia and elsewhere in the country?

A. Survival of the railroad industry is dependent on its ability to remain competitive. This involves saving every possible moment in handling freight traffic at page 184] the most economical cost. Unless we have modern yard facilities in Richmond, we will be unable to provide adequate and competitive service and this will effect not only local industry, but shipments to Richmond from elsewhere in Virginia and from other states and shipments from Richmond to these points.

Mr. Pasco: Let the record show that completes the prepared testimony.

page 185] DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. MacLeod, have you caused some photographs to be made of the two extremities of the Belle Isle Yard?

A. I have, sir.

Donald H. MacLeod

Q. Approximately when were those photographs taken?

A. In September.

Q. Of this year?

A. Yes, sir.

Q. I hand you three photographs. Look at them and see if you can identify them, and if so, tell us what they show. Take each one and let us mark it when you finish your comments with respect to each.

A. The first is looking into the A. C. L. tunnel, looking towards Seventh Street Bridge.

Q. What tracks are those that go through this underpass?

A. It is the main line from Richmond to Danville.

Note: Photograph marked Plaintiff's Exhibit No. 19, and filed.

page 186] A. (Continuing) The second photograph is looking into this same tunnel, the A. C. L. tunnel, looking towards Lee Memorial Bridge.

Q. Where was it taken from?

A. It was taken from a point east of the A. C. L. tunnel, looking westwardly.

Note: Photograph marked Plaintiff's Exhibit No. 20, and filed.

A. (Continuing) The third photograph is a picture of the western end of Belle Isle Yard under Lee Memorial Bridge. The photographer was east of the bridge and looking westwardly.

Note: Photograph marked Plaintiff's Exhibit No. 21, and filed.

Mr. Pasco: Your Honor please, this is a colored map, copies of which were produced at the request of counsel some time ago and to be introduced by agreement of counsel. I would like to ask Your Honor to mark this.

Note: Colored map marked Plaintiff's Exhibit No. 22, and filed.

Donald H. MacLeod

page 187] Mr. Pasco: I will ask Mr. MacLeod one or two questions with respect to Plaintiff's Exhibit No. 22, and then I will be through with him.

Note: The map, Plaintiff's Exhibit No. 22, was placed on the board.

Mr. Pasco: Let the record show we have agreed with counsel for the defendant that to the extent that the elevation lines of this map might vary from the City map earlier introduced, we are conceding that the City map elevations are correct and will be controlling.

Q. (By Mr. Pasco) Mr. MacLeod, tell us very briefly what this map purports to portray — this Exhibit No. 22.

A. This is a topographic map showing Southern's facilities at Belle Isle and west of Belle Isle to approximately Forty-Second Street. It also shows the islands which are colored green in the James River and the area where water normally stands, and it also shows in red the outline of the so-called James River property, and it shows the present tracks of Southern Railway between the Atlantic Coast Line tunnel and Boulevard Bridge. It shows the contours —
page 188] they are numbered. It shows Riverside Drive and the location of the various streets and residences adjacent to Riverside Drive.

Q. In your prepared testimony you spoke of the present Belle Isle Yard extending west of Forty-Second Street. Indicate on the map what tracks were included in that description.

A. This is Belle Isle Yard (indicating on map), and the tracks that extend westward from Belle Isle are shown here to approximately Forty-Second Street.

Q. Those tracks are there now, are they not?

A. That is correct.

Q. And have been for some time?

A. That is correct.

Q. What are they used for?

A. The main line, and the long siding is used for yarding inbound trains and for building outbound trains and the storage of cars. We have a track in the middle of the so-called James River property which was built as a construction track which is now not being used.

Q. That is a temporary track?

Donald H. MacLeod

A. That is a temporary track. We have also a spur track at this location that serves the City of Richmond for unloading of materials.

Q. Approximately what street is that opposite?
page 189] A. Opposite Twenty-Second Street.

Q. You spoke of switching going on in the western end of the Belle Isle Yard. At what point did you have reference?

A. At this point. There is a crossover here (indicating on map) and between approximately Twenty-Sixth Street and the Robert E. Lee Bridge is where the switching is presently being done, other than the switching I referred to in my testimony at approximately Forty-Second Street. Moreover, it is necessary to switch rush cars from trains that arrive in Richmond from this end if they are closer to the Forty-Second Street end and it is also necessary at this time to switch out any bad orders that may be joining any trains that are built. We also conduct any switchings that may be necessary at Forty-Second Street and we are now switching in the Twenty-Sixth and Twenty-Second Streets and Lee Bridge vicinities — that is, on a twenty-four hour operation.

Q. I take it from your last statement the switching is not confined to any particular period of time.

A. We are now switching in the Twenty-Sixth and Twenty-Second Street area and the Lee Bridge area on a twenty-four hour basis and are subject to switching in the Forty-Second Street area twenty-four hours a day if necessary.

page 190] Q. For the record, will you explain, Mr. MacLeod, what you mean by a bad order car?

A. After a train has been built it is inspected by car inspectors from the mechanical department. If they find some defect in that car, it is bad ordered by the car inspector and has to be removed from the train. It may be a broken flange on the wheel, it may be a defective brake, it may be some defective safety appliance, such as grabiron or step.

Mr. Pasco: I think that's all. This completes our direct examination of this witness.

By The Court:

Q. Let me ask you one thing, Mr. MacLeod. Did I understand from your testimony that the interchange points with the four railroads here, or the three railroads here, are all

Donald H. MacLeod

localized in this general area you have described on this other map and your facilities — in other words, those points would not be changed, they could not be changed, and whatever marshaling facilities you had would have to operate with the present point of interchange. Is that correct?

A. That is absolutely correct, Your Honor.
page 191 } The present interchange with the A. C. L. will remain the same as it is. That is also true with the Seaboard at Hull Street and the C. & O. at park siding. The lines shown in green on this map are the interchange points in Richmond.

Q. And they are to remain the same regardless of any changes in the James River property. Is that correct?

A. That is correct, until such time as we by mutual agreement would select some other point.

Note: Brief recess.

CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. MacLeod, the twenty-three page prepared testimony you just completed, who was that written by?

A. The questions were asked by Mr. Pasco and answered by me, and transcribed by my secretary.

Q. Nobody edited this or made any changes or suggested any changes to you?

A. I had advice of counsel and I made some
page 192 } changes myself.

Q. In other words, it was edited by counsel?

A. Yes, sir.

Q. So it was not entirely written by you?

A. The questions were asked me and I replied to them. As I said, I changed some of the answers myself and it was edited by counsel.

Q. And some of the answers changed by counsel — is that correct?

A. Changed in collaboration with me.

Q. A joint effort?

A. Yes.

Q. Now, Mr. MacLeod, on page 21 of your prepared testimony, it is said at the bottom of the page, "I have explored the possibility of locating these tracks elsewhere." When did you explore that possibility, Mr. MacLeod?

Donald H. MacLeod

A. In July — sometime in July I made a trip to Richmond.

Q. July of what year?

A. 1962.

Q. Did you have any connection with this project prior to that time?

A. The first connection I had with this project was in the spring of this year.

page 193] Q. What previous efforts were made to find other suitable locations?

A. I cannot answer that.

Q. You have no knowledge of the planning that went into this yard prior to the time you came here in 1962?

A. There has been a great deal of planning done but I can't say exactly what it is. I have read the file and there has been a great deal of discussion.

Q. What file is that?

A. The file in my office, from Washington.

Q. What is the description of that file?

A. I can't say positively. It deals with the expansion of the Belle Isle yards — the court case now at hand.

Q. Does it contain all the sketches that have been made in connection with this plan?

A. It contains some sketches.

Q. Where are the other sketches?

A. What other sketches?

Q. You said it contained some of the sketches that were made.

A. I will correct that to say that it contains some sketches.

Q. Does it contain all the sketches?

page 194] A. I do not know to what sketches you refer.

Q. You referred to sketches concerning the proposed construction of a railroad yard in South Richmond on the Riverside Drive property. Will you answer the question, please?

A. There are some sketches in that file. I would have to get the file and review it to say positively what sketches are in the file. We have Mr. Kidd, Assistant Chief Engineer, here in this room, who has been familiar with this study since the beginning of it.

Q. When was the beginning of it?

A. In reading the file in this case, it appears that this idea started in 1953, to expand our facilities here at Richmond.

Q. And when the idea started in 1953, how many parallel tracks were proposed to be constructed?

Donald H. MacLeod

A. I am not sure that I know that.

Q. What did the file indicate? What do you recall from reading the file?

A. As I recall the original yard was to have eleven tracks.

Q. That is still the plan, is it not?

A. No, sir. The present plan is to build one track approximately six thousand feet long and two adjacent tracks approximately thirty-five hundred feet long.

Q. The present plan is to build three tracks?

A. That's right.

Q. How much space do you need for that, outside of your present eighty-foot right-of-way?

A. Approximately thirty feet beyond our present right-of-way.

Q. In other words, if you extend the present right-of-way thirty feet to the north you will have adequate space?

A. Adequate for today.

Q. How about tomorrow?

A. Well, we feel that the business in Richmond will increase. We feel that, as I have stated before, present facilities are inadequate. We feel that building these three tracks will immediately relieve the situation. If the business increases in Richmond, as we anticipate, we will build more tracks.

Q. When?

A. I cannot say.

Q. But the plan still is ultimately to build eleven tracks, is it not?

A. That is not my plan, sir.

Q. What is Mr. Brosnan's plan?

page 196] A. You will have to ask him.

Q. You don't know what his plan is?

A. I do not know.

Q. Did you read his deposition?

A. I did.

Q. And you don't know what his plan is?

A. He indicated in his deposition that in several years it might be necessary to build, as I recall, four or five tracks, and if the business would warrant it, to go ahead — I am not trying to quote him, but we would ultimately build as many tracks as we could on the property.

Q. It is limited to eleven, is it not?

A. As I recall, it was eleven.

Donald H. MacLeod

Q. Do you believe what is stated in the deposition is what in fact is Mr. Brosnan's plan?

A. I have just related what I thought, without trying to quote. I have just related what I thought his intentions were. As Operating Vice President I will make the decision when to build the tracks.

Q. Subject to the President's approval?

A. I have to ask him for the money. I approve the tracks myself.

Q. But it has to be approved by the President, does it not?

page 197] A. The plan does not have to be approved by the President. I have to get authority to spend the money. The plans are left up to me.

Q. So you regard a distinction between approval and authority to spend the money?

A. There is a distinction. He must authorize the expenditure. He leaves the planning up to me.

Q. So the three tracks you have just mentioned would be adequate for existing business. Is that correct?

A. It is our considered opinion that these three additional tracks at the present time will relieve the conditions I outlined in my testimony.

Q. So permission to use an additional thirty feet would be adequate for the railway's present needs?

A. I don't know that I follow you — permission to use thirty feet of what?

Q. Assuming you are permitted to operate a switching yard on the additional thirty feet — that's all you need?

Mr. Gay: I would like counsel to indicate to whom he is referring when he says permission to use thirty feet.

Mr. Eichner: By law or the court, or City Council or the zoning board.

page 198] Mr. Gay: We don't recognize any authority from that source.

The Court: Ask him whether or not an additional so many feet would serve his present purposes.

Mr. Gay: He has already answered that.

Mr. Eichner: I think the answer to that was yes.

The Court: All right. Go ahead, Mr. Eichner.

Q. (By Mr. Eichner) How far does that eighty-foot right-of-way extend along Riverside Drive?

A. The eighty-foot right-of-way extends for several miles from Belle Isle. Is that what you mean?

Donald H. MacLeod

Q. Yes, sir. How far west does it extend?

A. I cannot say exactly.

Q. Approximately?

A. I do not know.

Q. How long has the railroad had that eighty-foot right-of-way?

A. I do not know, sir.

Q. You stated in your prepared testimony at page 8 that Belle Isle yard was constructed in 1912.

A. Yes.

page 199 } Q. Was the eighty-foot right-of-way owned by the railway before then?

A. I do not know when this original road was built or how far the eighty-foot right-of-way extends.

Q. You don't know whether it was there before 1912. Is that what you are saying?

A. The eighty-foot right-of-way?

Q. Yes.

A. I do not know.

Q. Now, when you were referring to the colored map, which is Plaintiff's Exhibit No. 22, you were referring to the western end of the Belle Isle yard as being on the eighty-foot right-of-way at Forty-Second Street, isn't that correct?

A. The tracks that extend from Belle Isle yard run to approximately Forty-Second Street. That is correct.

Q. The tracks?

A. That's right.

Q. Now in referring to Plaintiff's Exhibit No. 21, you said that picture of the end of Lee Bridge was the western end of the Belle Isle yard. That is a more accurate statement, is it not?

A. The photo, as I recall, was taken looking westerly from the western end of the short tracks at Belle
page 200 } Isle yard — not with reference to any of the longer tracks in this yard. These tracks are continuous from this end, the eastern end, right on through. They pick up here (indicating on map) and come through to approximately Forty-Second Street.

Q. What is that last track you were pointing to?

A. It is referred to as long track, switching lead — which is an extension of the number one track in Belle Isle yard, sir. It is also shown here as passing track, switching lead. We refer to it as long siding. It is known as long siding locally.

Q. Now, Mr. MacLeod, in answer to the court asking you

Donald H. MacLeod

a question about interchange points with other railroads, is it proposed to keep those interchange points the same as they are at present?

A. For the time being it is proposed to keep them as they are.

Q. How about the future? What are the plans?

A. From experience we often find — other railroads change facilities and we find better ways and quicker ways to make interchange, sometimes through other railroads' intermediation, so my point was this could not be fixed for all time. They are fixed for the present and the immediate future, but they are subject to change.

page 201 } Q. You will continue to interchange with the C. & O. in the Fulton area?

A. That is a very poor interchange and we would like to find some other way, but until we do we will continue to use it.

Q. Is it contemplated to shift that to the Belle Isle yard?

A. It is not contemplated to do that, no, sir. We would like to find some other means of interchange with the C. & O., and I have instructed local people to take a look at it and make a survey and see what we can do.

Q. In your prepared testimony on page 2, you said — second sentence from the bottom: "Yards have been expanded in such cities as Knoxville, Tennessee; Birmingham, Alabama; Chattanooga, Tennessee; Atlanta, Georgia, and Charleston, South Carolina." Are you familiar with the location of the yards in those cities?

A. Yes, sir.

Q. When you say in Charleston, you meant outside of Charleston, did you not?

A. That is Seven-Mile Yard, outside of Charleston.

Q. Outside the City of Charleston?

A. In North Charleston.

page 202 } Q. Not within the city limits of Charleston?

A. No, sir.

Q. In the County of Charleston, an unincorporated area?

A. I believe the yard is in North Charleston.

Q. So the statement "In the City of Charleston" is erroneous, is it not?

A. We have "expanded in Charleston." That could be construed to be erroneous.

Q. I see.

A. On my report —

Donald H. MacLeod

Q. You have answered the question.

The Court: If he wants to elaborate, that's his privilege.

A. (Continuing) We still refer to the yard as our facility in Charleston, South Carolina. A technical point has been raised. It is actually now outside the city limits of Charleston, South Carolina.

Q. (By Mr. Eichner) In an area without a zoning ordinance, isn't it?

A. I do not know, sir.

Q. Do you know how any of the land in these other yards you have mentioned is zoned?

page 203] A. No, sir, I do not.

Q. You have made no inquiry as to that?

A. No, sir.

Q. Referring to page 5 of your prepared testimony — would the Sheriff please hand the witness some timetables in an envelope on the desk, filed by the railway in answer to *subpoena duces tecum*? Would you take out of that the timetables — I believe there are five of them — numbers 33 through 37. Now, what is the current timetable for the Richmond Division?

A. No. 37, effective 12:01 p.m., Sunday, May 15, 1960.

Mr. Eichner: I offer those five timetables as City Exhibits.

Note: The timetables were marked as Exhibits and filed, as follows:

Timetable No. 33	City Exhibit C
Timetable No. 34	City Exhibit D
Timetable No. 35	City Exhibit E
Timetable No. 36	City Exhibit F
Timetable No. 37	City Exhibit G

Q. (By Mr. Eichner) Now, referring to timetable No. 37 — is that Exhibit G, Mr. MacLeod?
page 204] A. That is, sir.

Q. Referring to your prepared testimony on page 5, I note that Train No. 56 you have testified leaves Danville at 10:00 p.m.

A. That's right, sir.

Q. And arrives in Richmond from 3:00 a.m. to 5:00 a.m.

A. That is correct, sir.

Donald H. MacLeod

Q. Now, Exhibit G here shows Train No. 56 as leaving Dundee at 8:45 p.m. and arriving at Belle Isle at 2:10 a.m. What is the reason for the discrepancy?

A. The timetable that we put out, as is noted on the front, is for the governing of employees only.

Q. It is inaccurate only insofar as the times are concerned?

A. As far as No. 56 is scheduled, from an operating standpoint we could have him scheduled to leave as early as 2:00 or 3:00 p.m. The schedule remains in effect for twelve hours and it is used purely for operating purposes — does not necessarily reflect the actual performance of the train.

Q. In other words, actually the train would not necessarily travel on either the schedule you have testified to in your prepared testimony or the schedule set forth page 205] in City Exhibit G?

A. The time I outlined in my testimony is the actual performance of the train. It normally leaves Dundee at 10:00 p.m. or around 10:00 p.m. and normally arrives at Richmond from 3:00 to 5:00 p.m.

Q. Aside from the time element, do these timetables, City Exhibits C through G, accurately show the number of trains that operate to and from Richmond?

A. I will have to go through all of them.

Q. I will just ask you about No. 37, City Exhibit G, at this time.

Mr. Gay: The question is confined to the number of trains on the schedule?

A. Yes, sir. To answer your question, it does reflect the number of trains that operate.

Q. There are no extra trains not shown on the schedule?

A. There are on occasion extra trains if any reason arises.

Q. Referring you now to City Exhibit C, D, E and F — those also, I take it, accurately show the number of trains each day or three times a week, as the case may be, on the dates on which those timetables were in effect. Is page 206] that correct?

A. I don't know exactly when these passenger trains came off.

Q. Referring just to the freight trains?

A. As far as freight trains, I assume that this reflects what actually took place, yes, sir.

Q. Now, City Exhibits C through G inclusive show a steady

Donald H. MacLeod

decline since 1953 in the number of freight trains operated by the Southern in and from Richmond, do they not?

A. No, sir, I cannot agree with that. We have the same trains here in 1953 and 1960. In 1953 we have 61, 57, 56 and 62. In 1960 we have 61, 57, 56 and 62, which seem to be the same number of trains.

Q. And the others, Nos. 11 and 7, were they passenger trains in 1953?

A. Yes, sir.

Q. Do you know when passenger service between Richmond and Danville was discontinued?

A. I do not know, sir.

Q. Would you say approximately 1955 on two trains and 1957 on the last two? Would that be about right?

A. I do not know.

Q. At what point in Richmond did passenger page 207] trains used to come to?

A. It is my understanding the trains terminated at the Hull Street Station.

Q. On what side of Hull Street is that?

A. That is on the east side of Hull Street.

Q. Did the passenger trains, before moving out, normally stay on the track there for a long period of time — several hours?

A. I do not know, sir.

Q. Do you know when passenger services was last in force between Richmond and West Point?

A. No, sir, I do not.

Q. Didn't the Southern Railway formerly connect with a Steamship Line at West Point?

A. I do not know, sir.

Q. Who does know?

A. I do not know, sir.

Q. What kind of communications are maintained in the switching area at Belle Isle between men working on the trains? Do they have radios?

A. On the lead locomotive there is a radio.

Q. How about the switchers?

A. There is not a radio on the switcher.

Donald H. MacLeod

Q. A switcher is strictly a yard engine, is page 208] it not?

A. That is how it is usually referred to. However, the other type of engine we operate in and out of Richmond is known as a road switcher.

Q. What is that?

A. That is a road switcher. We use a yard switcher in the yard.

Q. What is the difference between a road switcher and a general purpose engine?

A. There is no difference between a road switcher and a general purpose engine.

Q. General purpose or road switcher — one could be used either on the road to haul trains or in the yard for switching. Is that correct?

A. Yes, sir.

Q. You have mentioned on page 16 of your prepared testimony, the first full answer on that page, you refer to moving a cut of cars on a track adjacent to a track on which cars were standing, and the necessity for relaying signals around the curve. How are signals relayed?

A. By hand signals in the daytime and by lanterns or lamps at night.

Q. Could this be done by radio?

A. It could be done by radio.

page 209] Q. So that would eliminate the problem of relaying signals if you equip your cars with walkie-talkies?

A. It would alleviate it to a certain extent.

Q. Has any effort been made to employ such a device?

A. Not at Richmond.

Q. It has been done elsewhere but not here?

A. It has been done in four large hump yards only.

Q. How many accidents causing personal injury have occurred in the Belle Isle yard or the South Richmond yard in the last three years?

A. I do not know.

Q. Who does know?

A. Our legal department would have that information.

Q. Does Mr. Beard know?

A. I do not know whether Mr. Beard knows or not.

Q. Do you know whether such accidents are reported to the ICC?

A. If they were disabled more than seventy-two hours it

Donald H. MacLeod

would have been reported to the ICC.

Q. But you would not report such accidents
page 210] involving personal injury if the persons injured
were disabled less than seventy-two hours?

A. That is correct — that is, seventy-two hours within the first ten days after the injury.

Q. Has any complaint been filed with the ICC concerning the adequacy of service provided at Richmond because of the yard facilities existing here?

A. Not to my knowledge.

Q. Has any such complaint been filed with the Virginia State Corporation Commission?

A. Not to my knowledge.

Q. If such complaints were filed, it would come to your attention, would it not?

A. Not necessarily.

Q. To whose attention would it come?

A. The Superintendent or the General Manager.

Q. Will you give us the names of those persons?

A. The General Manager is John A. Rust, Charlotte, North Carolina. The Superintendent, Richmond Division, is Mr. Beard.

Q. What is the chain of command from you to Mr. Beard? Who is immediately under you in the Operating Department as far as this area is concerned?

A. As Operating Vice President I have charge
page 211] of the physical plant on the whole system. The
system is broken up now into two lines — the
Eastern Line in charge of a General Manager, with head-
quarters at Charlotte, North Carolina —

Q. That is Mr. John Rust?

A. Yes, sir.

Q. All right. Proceed.

A. The Western Line, with headquarters at Knoxville, Tennessee, also under the command of a General Manager.

Q. And the two General Managers report to you?

A. That is correct.

Q. Does the Eastern Line have its Engineering Department?

A. It does.

Q. Who is in charge of that?

A. Mr. James Peak, Chief Engineer.

Q. And Mr. Kidd is his Assistant?

A. That is correct.

Donald H. MacLeod

Q. And Mr. Kidd I believe you said had considerable information about the planning of the yard?

A. It is my understanding he has been connected with it since its inception.

Q. As the Chief Engineer at Charlotte, he is page 212] under the supervision of the General Manager, Mr. John Rust?

A. For line duties, yes, sir. He also reports to the System Chief Engineer and the Assistant Chief Engineer in Washington, insofar as many staff functions are concerned.

Q. Mr. Rust is General Manager of the Eastern Lines and had a hand in the planning of this proposed yard, did he not?

A. I do not know.

Q. Would the General Manager be supervising the work of the Chief Engineer or his Assistant Engineer for the Eastern Lines on such a project?

A. I would think he would certainly have some knowledge of it, but to what extent I do not know.

Q. And directly under Mr. Rust, General Manager of the Eastern Lines, would be the Division Superintendents — such as Mr. Beard, Superintendent of the Richmond Division?

A. That is correct.

Q. Part of the Richmond Division includes the main line of the Southern between Washington and Danville and points south, does it not?

A. No, sir, it does not.

Q. That is the Danville Division?

A. That is the Danville Division and the Washington Division. I would be glad to point it out to you page 213] on the map.

Q. Could we have Plaintiff's Exhibit No. 17, the system map? Now, Mr. MacLeod, looking at that map on the board, in Virginia we have the main line extending from Washington to Danville and points south. Is that correct?

A. That is correct.

Q. And we have two branch lines — one going from Manassas to Harrisonburg and the other from Danville to West Point. Is that correct.

A. We have a line from Manassas to Harrisonburg which is a branch line of the Washington Division, Your Honor, which is shown here in black and white, from Alexandria to Lynchburg. We do not consider the Richmond Division as a branch line. The main line of the Richmond Division, which

Donald H. MacLeod

is dotted here, runs from Danville to West Point. It has a branch line which we referred to between Keysville and Durham.

Q. Now does that map, Plaintiff's Exhibit No. 17, indicate what portions of the road are double tracked?

A. It does.

Q. What portions are those in Virginia?

A. We have double track from Washington to Orange, and we have CTC, double track for ten miles, single track for ten miles, double track for ten miles — and that continues on to Danville.

page 214] Q. Did you say CTC? What does that mean?

A. Centralized train control.

Q. Will you describe that?

A. Yes, sir.

Mr. Gay: Your Honor please, I don't want to limit counsel's examination in any sense, but it seems to me he is going pretty far afield.

The Court: I don't know the ultimate relevancy, but I imagine he is trying to establish the importance of the Richmond line in the system.

Mr. Gay: We are entitled to know what his purpose is.

The Court: What is the purpose of this line?

Mr. Eichner: The court has stated it.

The Court: I think he is justified in exploring that. Go ahead.

A. (Continuing) You asked about CTC, centralized train control. That is a system of signals and switches that permit the passage of trains and control from the particular location.

For instance, on the Washington Division, the page 215] dispatcher at Alexandria, Virginia, controls the operation of trains on the Washington Division.

Q. CTC takes the place of double tracking, does it not?

A. We also have CTC on double track. CTC may be on single track, double track, three tracks. Some railroads have as many as four or five.

Q. You need this CTC for volume of traffic that is heavy. Isn't that correct?

A. It is good to have it anywhere. Our primary reason for going to CTC is to be able to retire large portions of track where we have double track. With CTC you can get about eighty percent efficiency, taking up ten miles and having ten miles of single track and then ten of double. The greatest

Donald H. MacLeod

saving and one of the most important reasons for going to CTC is to reduce your plant and get about eighty percent of effective control in the moving of your trains.

Q. Is any part of the Richmond Division double tracked?

A. Not to my knowledge. It doesn't indicate it on this map and I do not think it is.

Q. Do you have any CTC in any part of the Richmond Division?

A. Not to my knowledge.

page 216 } Q. That is because traffic doesn't justify such an investment?

A. That among other things. On our eight thousand miles of railroad CTC only exists on three portions — this portion between Cincinnati and Chattanooga (indicating on map), a small portion between Greenville and Atlanta, and the Washington Division.

Q. Thank you, sir. That's all, as far as this exhibit is concerned. Take your seat. What is the weight of the rail between Richmond and Danville?

A. I do not know, sir.

Q. Does Mr. Beard know?

A. You would have to ask him. I do not know whether he knows or not. I assume he would.

Q. What weight of rail is Southern Railway laying now?

A. When we lay new rail, we lay 132-pound rail.

Q. You don't lay any lighter rail?

A. When we lay 132-pound new rail, we are releasing usually rail of a lighter weight, maybe 131-pound rail or 100-pound rail or 85-pound rail.

Q. By 85-pound rail, what do you mean?

page 217 } A. Eighty-five pounds to the yard. This rail released is cropped, the end cut off that has been encompassed by this joint, and this rail is welded together and relaid. This has been true on the Southern for the last four or five years.

Q. I take it 85-pound or 90-pound or 100-pound rail is obsolete?

A. No, sir.

Q. You are not laying any of it.

A. Yes, sir, we use it in yards all over — long sidings. We have a great demand for 85-pound rail.

Q. Do you use it on main line tracks?

A. We have lots of main line tracks that are 85-pound rail, yes, sir.

Donald H. MacLeod

Q. But you are not laying it any place except sidings and yards?

A. We are trying to upgrade these lighter lines and we do not, as a policy, lay 85-pound rail back into main lines, that is true.

Q. That is because for that purpose it is considered obsolete, isn't it?

A. It is certainly not obsolete. The reason that we don't lay 85-pound rail back into main lines is that it requires more maintenance, doesn't have the beam strength between the ties that heavy rail has and therefore is more
page 218] costly to maintain. The steel in 85-pound rail is better than the steel we buy today, and at scrap prices brings more than 130-pound rail.

Q. Mr. MacLeod, what classification used to be done in the South Richmond yard?

A. I do not know, sir.

Q. When did classification stop at the South Richmond yard?

A. Its classification was gradually moved to Belle Isle yard after dieselization started.

Q. When was that?

A. On the Richmond Division, about 1947.

Q. When was dieselization completed on the Richmond Division?

A. I do not know, sir. It was completed on the system in July of 1953.

Q. When were the tracks taken up in the South Richmond area?

A. I do not know the date for each track. These tracks, I understand from the local people, were removed gradually.

Q. Approximately when did it start?

A. Between 1947 and the present time, they have been gradually removed.

page 219] Q. Are you familiar with the layout of the South Richmond yard prior to removal of the tracks?

A. Only to the extent I can see it on the print. With a background of civil engineering I can understand it.

Q. Which exhibit are you referring to now, Mr. MacLeod?

A. This map we have here, sir.

Q. Plaintiff's Exhibit No. 18. I am going to hand you a map, City of Richmond Metropolitan Topographic Survey, Sheet No. 11 of this series, Edition of 1957 — we will put this

Donald H. MacLeod

one on the board too. I will ask you if you think you can, by looking at Plaintiff's Exhibit No. 18 and at this map, state whether that fairly shows the former layout of the South Richmond yard?

A. My answer to that is that generally it does. This is an accurate reproduction of the facilities that existed.

Q. What do you mean by "this?"

A. Exhibit No. 18. However, this other one seems to be sort of a hand drawn affair that represents generally what was in the area, not in fact a detailed engineering map.

Q. Look at Plaintiff's Exhibit No. 18 then.
page 220 } Is it correct to say that the dark black lines indicate the tracks that used to be in the South Richmond yard, whereas the red lines indicate existing tracks?

A. That is correct, sir.

Q. Looking at Plaintiff's Exhibit 18 again, would you indicate Mr. MacLeod, with a pointer, the Ship Yards?

A. Ship Yard — singular (indicating on map).

Q. The area just south of that — that is where the Richmond Steel Company is located on that exhibit?

A. Yes, sir.

Q. That was formerly occupied by the Southern Railway tracks, was it not?

A. I do not know, sir. It is my understanding Ship Yard is essentially the same as it has been a good many years.

Q. And that property in there between the Ship Yard and the James River, that is owned by the Georgia Industrial Realty Company?

A. It is my understanding we have some property in there, but to what extent I do not know.

Q. Georgia Industrial Realty Company is a wholly owned subsidiary of Southern Railway Company, is it not?

A. That is correct.

page 221 } Q. That's all for that exhibit. I would like to move back to your prepared testimony, Mr. MacLeod. On page 9, the last paragraph, you said that the longest track is twenty-three car lengths. What is the length of that track in feet?

A. I don't know offhand. I would be glad to measure it for you.

Q. Could you scale it on the exhibit?

A. I think so. It scales approximately one thousand feet.

Q. And that is from the east side of the Lee Bridge?

A. No, sir, that is from the clear point of the longest track.

Donald H. MacLeod

That is the point at which your tracks are thirteen feet apart — to the clear point on the opposite end — approximately one thousand feet. With fifty-foot cars that would be twenty car lengths.

Q. Is that to the point where the yard narrows to a single track going through the tunnel?

A. No, sir, that is the longest track that now exists in the Belle Isle yard from clear point to clear point — that is, where the cars will clear each other and not sideswipe when moving on adjacent tracks. It is approximately one thousand feet long.

page 222] Q. I see. And that's about fifty car lengths. Is that right?

A. No, sir.

Q. Twenty car lengths. Excuse me.

A. Fifty-foot car, it would be twenty. Actually, the average it would hold would be approximately twenty-three cars.

Q. So in all of your computations you figure fifty feet for a car. Is that correct?

A. Not necessarily.

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page 223] A. (Continuing) Today's cars run anywhere from thirty-six to eighty-six feet, and in our time-tables we figure the length of tracks on fifty-foot cars as an average. Formerly this was done on a forty-five-foot car basis. This is strictly an arbitrary way to arrive at the capacity of the track.

Q. All right.

A. So, in the testimony when we say twenty-three cars, that is an approximation. It obviously wouldn't hold twenty-three eighty-six-foot cars, and at the same time it would hold more than twenty-three thirty-six-foot cars. So, the type of cars that come to Richmond, the local people figure that track will on an average hold twenty-three cars.

Q. Then when you say in connection with Belle Isle yard the longest track is twenty-three car lengths, do you mean twenty-three multiplied by fifty is the length of it?

A. That's an average. If you counted the cars one day on this track you might count fifteen and it would be full. Another day you would count the cars and it might have twenty-eight cars in it, depending on the type of car that happens to be in the yard at that particular time. Locally, we calculate

Donald H. MacLeod

by the general run of traffic that comes into this yard — coal cars, wood racks — and fifty feet is about the average. On the basis of that, we say that this track will hold approximately twenty-three cars.

Q. But that is not necessarily based on an average of fifty-foot cars?

A. No, sir, it is not based on anything except the experience of local people.

Q. So there is no way to translate your car length figures in your testimony into feet?

The Court: I understood the witness to say at the outset that was an arbitrary method he had for arriving at track capacity, and it was adopted as the best they could put the estimate of the capacity.

Mr. Gay: May I very deferentially take exception to Your Honor's use of the word "arbitrary?"

The Court: I think he used that word.

The Witness: I did say in our timetables we arbitrarily used a figure of fifty feet. In this particular instance we used a figure based on experience.

The Court: I see.

Q. (By Mr. Eichner) You stated in your prepared testimony, on page 20, "and we do not intend to install any lighting system at the present time." Meaning, I take it, the Riverside Drive yard. You need lights for a yard operation, don't you?

A. Not necessarily. Depends on what type of work you are doing.

Q. If you are going to do switching you need lights, don't you?

A. Not necessarily at all. We don't have lights there now and we do considerable switching.

Q. What do you mean — you don't have lights there?

A. I forget the exhibit number, Your Honor, but the map you have in front of you, sir, by way of reference, I indicated we did considerable switching around the clock in the Twenty-Sixth Street area, here (indicating on map on board). In the Twenty-Second Street area here and the Lee Bridge area here.

Q. You mean Belle Isle yard when you say the Lee Bridge area?

A. Where the short tracks are in the Belle Isle yard in the vicinity of the Lee Bridge.

Donald H. MacLeod

Q. There are lights on Lee Bridge, are there not?

A. I don't know whether there are lights on page 226] Lee Bridge or not. I didn't see any in the photograph.

Q. Most classification yards have light towers in them, don't they?

A. Some of our larger yards are lighted. Some are lighted by towers with clusters of lights on them, but that type of lighting has been discontinued and in all the yards that have been built since approximately 1954 we have used fluorescent lighting. These lights usually are strung on a messenger cable with posts on either side of the number of tracks you span. We require that they be twenty-two feet above the rail and they are hooded — that is, you cannot see the light above the twenty-two foot level. These hoods come in various shapes and sizes to illuminate any particular thing you wish to have illuminated on the ground.

Q. Moving on, Mr. MacLeod, on page 21 of your prepared testimony, at the bottom of the page, it is stated, "I have explored the possibility of locating these tracks elsewhere —" and you deal first with Robious, and on page 22 with the Sandston-Highland Springs area. There is property available near the Southern tracks there suitable for such a yard, is there not, Mr. MacLeod?

A. I don't know whether that property is available, but the area in the Byrd Airport region — the lay of the land is suitable for a yard.

page 227] Q. Do you know what the zoning is?

A. No, sir, I do not.

Q. When you say you don't know whether it is available, what do you mean by that?

A. I don't know whether it could be obtained for that purpose.

Q. What would prevent you from obtaining it?

A. Well, the people may not want to sell it, whoever owns it.

Q. The Railway has the power of condemnation, does it not?

A. I understand it does.

Q. So the unwillingness of the owners to sell would not necessarily be an obstruction, would it?

A. I do not know whether it would or not. We often have great difficulty in obtaining property we don't own.

Q. Your great difficulty in condemnation would be that the

Donald H. MacLeod

price might be more than you are willing to pay — isn't that correct?

A. I am not familiar with the legal matters, Your Honor. I can only state we often have great difficulty in obtaining properties we desire to obtain and do not own.

Q. On page 22 of your prepared testimony, page 228] MacLeod, you state, "If a yard were created in the Sandston-Highland Springs area, traffic between such yard and the City of Richmond would impede city vehicular traffic at approximately 10 grade crossings." Now that objection could, of course, be eliminated by underpasses or overpasses, could it not?

A. Yes, sir.

Q. Now the third alternative — again on page 22 of your prepared testimony — you state is the Rocketts area. Would you mind pointing that out again to me?

A. I don't know where the original name came from. It indicates on the print it is Rockett's Wharf. All of these tracks are not as shown here (indicating on map). This track terminates at the present sewage disposal plant but this is the area I referred to as the Rocketts area.

Q. Just to the west of the place where it shows Rocketts Wharf on Plaintiff's Exhibit 18 — is that correct?

A. This general area is the area I referred to (indicating on map), between Rocketts Junction and what was formerly known as Rocketts Wharf.

Q. As those words are indicated on this exhibit — is that correct?

A. Yes.

page 229] Q. There is vacant land there — is that correct?

A. Some of this land, I observed from an airplane, is occupied by a sewage disposal plant, and there is some that is vacant.

Q. As far as the area is concerned, is there adequate vacant land there to build the facilities you need?

A. I cannot say positively. I have not made that detailed a survey.

Q. Do you know how that land is zoned?

A. No, sir, I do not.

Q. In your prepared testimony on page 22, you say in the last paragraph, among other things, that the Rocketts area is subject to frequent flooding. That, of course, was true of the Riverside Drive property, the subject of this suit, prior to the filling.

Donald H. MacLeod

A. That is correct.

Q. And it could be remedied in the same manner, could it not?

A. That is correct. I so stated.

Q. Now the activity that would be carried on on the proposed new tracks on the Riverside Drive property between Twenty-Sixth and Forty-Second Street, that would go on all night, various hours, around the clock, could it page 230] not?

A. I understand, sir, that we would have the same type of activity going on at Lee Bridge, Twenty-Second Street, Twenty-Sixth Street and Forty-Second Street we now have at Lee Bridge, Twenty-Second Street and Twenty-Sixth Street. We are now switching twenty-four hours a day and we would continue to do that.

Q. You mean, for example, Train No. 56 which arrives in Richmond from 3:00 to 5:00 a.m. That of course, would be broken up promptly on arrival, would it not?

A. That is correct. That is now being done and would be done in a similar fashion in essentially the same area. There is a crossover here at Twenty-Sixth Street (indicating on map) known as South crossover, a crossover at Twenty-Second Street known as Pumphouse crossover, and a crossover at Lee Bridge. All of these crossovers are now used twenty-four hours a day.

Q. (By the court) Does that mean a crossover from one track to another track?

A. Yes, sir.

Q. (By Mr. Eichner) The alternative locations you have mentioned in your prepared testimony are the only ones you have considered. Is that correct?

A. The three areas I mentioned in the prepared testimony are the ones I have considered. That is correct. page 231]

Q. Do you know whether any others have been considered before you became Operating Vice President?

A. None that I know of. I observed this area very carefully for several hours in a airplane and they are the only three places I could find.

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Donald H. MacLeod

page 232]

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By Mr. Eichner:

Q. Mr. MacLeod, referring again to your prepared testimony on page 10 you said in the second paragraph, "South Richmond Yard has a total of three tracks in the yard proper with a total capacity of sixty-five cars."

A. Yes, sir.

Q. Before lunch you will recall that we looked at Plaintiff's Exhibit 18 and you identified the black lines as showing the tracks that formerly existed in the South Richmond yard.

page 233] A. Yes, sir.

Q. Can you calculate for us the capacity of the South Richmond yard at the time those tracks were in there?

A. Your Honor, I certainly can but it will take quite a while to measure or scale each track.

Q. Could you estimate it?

A. I would hate to estimate it. There must be thirty or more tracks there.

Q. Thirty or more tracks?

A. Yes.

Q. Would you scale off the longest one, please?

A. This is the longest one I see (indicating on map). It is fifteen hundred feet.

Q. What would you estimate the storage capacity of that track is?

A. Approximately forty cars.

Q. How many feet did you say it was?

A. Fifteen hundred.

Q. Fifteen hundred feet?

A. Yes, sir. Just a minute, please. I am not sure about that. If you use forty-five-foot cars, it would hold thirty-three cars. On the basis of fifty-foot cars, it would hold thirty cars. On the old basis of forty-foot cars, it would hold thirty-seven cars.

page 234] Q. The removal of the tracks in the South Richmond yard has substantially diminished the Southern Railway's storage capacity in Richmond, has it not?

A. It has, yes.

Q. And the lack of storage capacity is one of the inadequacies you mentioned, is it not?

Donald H. MacLeod

A. It is. The great inadequacy is to have storage facilities adjacent to your classification yard.

Q. Is that not adjacent to the Belle Isle yard?

A. It is not.

Q. How far from the Belle Isle yard is the South Richmond yard?

A. Approximately half a mile.

Q. Also on page 10 of your prepared testimony, sir, the third paragraph from the bottom, you say, "The Southern's facilities do not compare favorably with the facilities of the other railroads in Richmond." Is the type of business done by Southern comparable in volume to that of the other railroads?

A. I do not know exactly what volume of business the other railroads in Richmond have.

Q. Southern runs fewer trains per day than any other road in Richmond, does it not?

A. I do not know that. I would assume that page 235] we do.

Q. Without knowing the business done by the other railroads serving Richmond, how can you make a proper comparison as to how other facilities compare with Southern's?

A. I made this comparison by flying over these facilities in a low-flying, slow-flying airplane, a good many times in one day. As I have described in my testimony, their tracks are laid out as a classification yard should be. They are long tracks. I would estimate the Acca yard, Hermitage yard and Fulton yard tracks are anywhere from seventy-five to one hundred and fifty car lengths. There are numerous tracks. I counted eighteen to twenty in Acca yard, and as many or more in Hermitage yard, and considerably more in Fulton yard of the C. & O. These yards are well designed and laid out, relatively free from road crossings. It is for that reason that our yards, the way they are situated and the fact that all except Belle Isle have been in existence since Civil War days — that they do not compare favorably with the other yards in Richmond.

Q. In comparing yard facilities of various railroads, whether one compares favorably with another, you would have to consider, in addition to the physical layout and size, the amount of traffic they had, would you not?

Donald H. MacLeod

A. Absolutely.

page 236] Q. What is the average length of a freight train on the Southern Railway during the last year?

A. That figure is available but I do not have it with me.

Q. I have here a pamphlet which says, "Sixty-Eighth Annual Report, Year Ended December 31, 1961, Southern Railway Company." I would like to hand it to you and ask you to identify that as the annual report to stockholders for that year.

A. That is correct.

Mr. Eichner: I offer that —

Mr. Gay: Just a moment. I ask counsel to indicate for what purpose he is introducing the report. It contains greatly extraneous matter and I don't want to leave myself in a position to examine the witness on all the other matters in this exhibit.

The Court: Is the purpose merely in relation to that portion of it which I assume relates to the average length of a freight train?

Mr. Eichner: At this time, that's it. I think I may also go into what has been said about industrial development.

The Court: I think Mr. Gay's objection page 237] to the general introduction of it is well taken.

Any portion of it you want to examine him on would be proper, but I think to introduce the whole report without a reference to any particular part you are going to examine him on would not be proper.

Mr. Eichner: All right, sir.

Q. (By Mr. Eichner) Mr. MacLeod, I will ask you to turn to page 37 and I believe there is a table there headed "Operating Statistics." I will ask you again what is the average length of freight trains in the Southern Railway Company?

A. Under the caption "Statistics" and the heading "Average number of freight cars on each train" — for 1961 it is 61.3 cars.

Q. What is it for 1960?

A. For '60 it is 62.8 cars.

Q. Aren't the figures you just read the percentage of loaded cars rather than the total number of cars?

A. You are correct, yes. The average number of cars in each freight train in 1961 was 73.7 cars, and for 1960, 72.3 cars, an increase of 1.9 percent.

Donald H. MacLeod

Q. Thank you, sir.

page 238] A. I might add, Your Honor, that that includes all freight trains, short local freight trains and long through freight trains.

Q. In designing a classification yard, is not the length of trains a major factor?

A. Absolutely.

Q. In a community where the average length of freight trains was substantially lower than in another community, the need for long classification yards would be less, is that not correct?

A. No, that is not correct. You should design your yards to accommodate the longest type of train you have to handle. For instance, while I don't know the average length of cars in and out of Richmond, if we had four or five trains a week that would have seventy-five or eighty cars in that train, we would certainly need a receiving track to accommodate that many cars. I appreciate the fact if you had a hundred and fifty car train twice a year, you would not want to have a hundred and fifty car track necessarily, but you want to design your yards to handle the longest train that you frequently have to enter that yard or leave it.

Q. What would you say would be the longest length of track you would need in your yard for a one hundred car train?

page 239] A. If I understand you correctly, certainly we would want one hundred car lengths.

Q. What would that be in feet?

A. Roughly five thousand feet.

Q. While you have that annual report in front of you, Mr. MacLeod, look at the map in the back, please.

A. Yes.

Q. Would you describe that, please?

A. This is a geographically correct map of the Southern Railway System dated 1962.

Q. That has on it certain information that is not shown on the system map you introduced earlier — for example, the CTC is shown on there and is not shown on your Exhibit 17.

A. It may not be shown on Exhibit 17 — I don't know whether it is shown on Exhibit 17 or not.

Mr. Eichner: Never mind going into that. If you will detach that, I offer that map as City Exhibit H.

Donald H. MacLeod

Note: Map detached from annual report of Southern Railway Company, marked City Exhibit No. H and filed.

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page 241]

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Q. (By Mr. Eichner) I would like to refer you again to Plaintiff's Exhibit No. 22, the long colored map, Mr. MacLeod, on the board. Just west of the Lee Bridge, I believe you have three tracks in place on your right-of-way.

A. That is correct.

Q. How long a distance does that third track run to the west?

A. About eighteen hundred feet west of Lee Bridge.

Q. Eighteen hundred feet west, and under Lee Bridge the three tracks turn into six tracks, or just west of the bridge, I believe, *Is that not correct?*

A. Depending on what location there are some switches. Directly under Lee Bridge there are approximately five or six, depending on where you stood under the bridge.

Q. Where the triple track is located, there is plenty of room on the roadbed for a fourth track, is there not?

A. It has been graded and there is sufficient room on the river side for a fourth track.

page 242] Q. Is there room for a fifth track?

A. There is not.

Q. How far to the west of Lee Bridge is the roadbed sufficiently wide for a fourth track?

A. Your Honor, I would have to determine that on the ground.

Q. All right, sir. Between the South Richmond yard and the Belle Isle yard, you have the underpass or tunnel that goes under the A. C. L. tracks, is that not correct?

A. Yes, sir.

Q. That has one track going through it?

A. That is correct.

Q. What consideration has been given to widening that tunnel to handle two, three or four tracks?

A. No consideration that I know of.

Q. Would not the widening of that tunnel by two or three more tracks provide you with sufficiently long track space to

Donald H. MacLeod

handle your immediate classification problems?

A. Your Honor, as you probably observed from the pictures, the A. C. L. Railroad goes over the tunnel. It is in a very high cut here (indicating on map). This is a physical possibility, to enlarge this tunnel to put several tracks under it. However, approximately two or three hundred feet — east of the A. C. L. tunnel we go under the Seventh page 243] Street Bridge on a very sharp curve, so actually you would be gaining about two or three hundred feet of track at a tremendous expenditure in enlarging that tunnel. This distance to the point of this curve (indicating on map) is approximately three hundred feet.

Q. (By Mr. Gay) What do you mean?

A. From the A. C. L. tunnel to where the curve starts, from the tunnel eastwardly to Seventh Street, to a point where the curvature starts, is approximately three hundred feet. If the A. C. L. tunnel were enlarged to accommodate, as counsel said, three or four tracks, it could be done at a great expenditure but that great expenditure would only enable us to extend these tracks approximately three hundred feet, or about six car lengths. In my opinion that would not be feasible.

Q. (By Mr. Eichner) The three hundred feet which you mentioned goes to the place labeled "Ninth Street Underpass" on Plaintiff's Exhibit 18 near Semmes Avenue, isn't that correct?

A. That is correct.

Q. What additional length would you gain by continuing on in an easterly direction until you reached somewhere in the vicinity of the point labeled "Locomotive Shops?"

A. If these tracks were extended eastwardly page 244] to the vicinity of the locomotive shops, you could extend these tracks approximately one thousand feet, but in the middle of the extension would be this extremely sharp curve which would be most undesirable. I might add that under no circumstances would we undertake this.

Q. If you added to that a fourth track west of Lee Bridge, for the same distance you now have the third track, I believe eighteen hundred feet, then you would have a substantial classification facility there, would you not?

A. I am not sure I understand the question.

The Court: I don't either. Suppose you read it.

Donald H. MacLeod

Note: The last question was read by the reporter.

Q. (By Mr. Eichner) I will rephrase the question. The proposal we have just discussed, namely, extending Belle Isle yard eastwardly approximately one thousand feet, plus adding a fourth track to the length of the third track west of Lee Bridge — that is a total of twenty-eight hundred feet added. Would not that provide you with adequate classification facilities?

A. I have already stated it is impractical to make the extension one thousand feet eastwardly, so it would
page 245] seem to me since that cannot be done, or we would not do it because of this curve, I would be unable to answer the question. I will say this. Assuming that was done, that would give us more lineal feet of track but it would not solve our problem because it would be impractical to extend Belle Isle yard eastwardly.

Q. The impracticability you refer to is mainly financial, is it not? It would cost too much money?

A. It would cost a tremendous amount of money but it would still leave us with a very sharp curve in the middle of the extension which would be most undesirable and something we would not do. In fact, that is one of the primary reasons we moved out of South Richmond.

Q. You can classify trains with a long curving track, can you not?

A. It can be done. It is most undesirable.

Q. Thank you, sir. You don't have any of the so-called piggy-back operations in Richmond now, do you?

A. We have the facilities to handle the piggy-back traffic into Richmond. We had anticipated this early this year and we spent some sixty thousand dollars in this area to be ready for this traffic if and when our sales people can develop it.

Q. The steel structure there — I don't know
page 246] how to describe it at all — kind of like a box without the sides — a four-legged structure in the South Richmond yard — that is a piggy-back device, is it not?

A. That is a gantry crane.

Q. That is used for placing trailers on flat cars?

A. Used for placing containers and trailers on flat cars, and to take them off.

Q. Wasn't it originally proposed to put that installation on the Riverside Drive yard?

Donald H. MacLeod

A. Not to my knowledge. I might say, Your Honor, I came to Richmond myself back in the spring and picked this location for the piggy-back facilities.

Mr. Gay: Just a minute. I would like to hear that again.

Note: The last question and answer were read by the reporter.

Q. (By Mr. Eichner) The history of railroading in the last few years has been one of steady loss of traffic to the trucks and certain non-rail carriers, has it not — percentage-wise?

A. Percentage-wise, that is correct.

page 247] Q. The trucks have made the biggest inroads, percentage-wise, into the traffic formerly carried by the railroads?

A. Trucks and barges.

Q. And this is particularly true in territories where railroad lines are parallel or very close to a motor highway, is it not?

A. That is not necessarily true at all. We have lost this business primarily due to our inability to quote minimum rates.

Q. The Southern is engaged in litigation about that right now, about grain?

A. That is correct.

Q. That is not in this area, is it?

A. We intend to haul grain throughout the south if and when we are permitted to do so, and that would certainly include Virginia.

Q. Would you say it is a correct statement that for railroads generally 1961 was the lowest year in number of car loadings since the depression year of 1932?

A. I am not qualified, Your Honor, to answer that. There are records available, I am sure, but I cannot answer that question.

Q. Do you accept as authoritative the statistical publications of the Association of American Railroads?

A. Generally, yes.

Q. I hand you a pamphlet entitled "Revenue of Railroad Operations in 1961" and ask if you recognize that as an AAR publication?

Donald H. MacLeod

A. I do not think this is an official publication of the AAR. It seems to have been written jointly by the Vice President of the AAR and the Director of the Bureau of Railway Economics.

Q. The Bureau of Railway Economics is a division of the AAR, is it not?

A. I am not sure of that at all.

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page 252]

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Q. Are you familiar with the Weekly Reports of Revenue Freight Loaded and Received from Connections of the Association of American Railroads?

A. I am.

Q. I hand you several papers answering this description — this is what is referred to as Form CS-54A. These are pamphlets which state they are for the week ended October 18, 1962; October 17, 1953; October 16, 1954; October 15, 1955; October 20, 1956; October 12, 1957; October 18, 1958; October 17, 1959; October 15, 1960, and October 14, 1961. Do you recognize those?

A. I have not seen this report in its present form, but it is an official publication of the Association of American Railroads.

Q. Carloadings is supposed to be a major economic indicator, is it not?

A. It is certainly one of them for the whole country.

Q. I ask you — on the 1952 pamphlet there, turn to page 2, I believe, towards the bottom, under the heading "Southern District" you will find "Southern System." What was the total carloads for that week in 1952?

Mr. Gay: Just a moment. I would like to inquire of counsel what is the purpose of this line of testimony.

Mr. Eichner: Generally showing the decline in the amount of freight traffic carried by the railroads over the past ten years.

The Court: All right.

Donald H. MacLeod

Q. (By Mr. Eichner) Will you answer the question? Just give the total.

A. The total for 1952 was 25,291, for the week ending October 18, 1952.

page 254] Q. Is that total loads or loads received from connections?

A. That is total loads received from connections.

Q. That means interchange traffic, does it not?

A. That is correct.

Q. The next item to the left, the total, is the number of loads actually loaded by the individual railroad, is it not?

A. That is correct.

Q. What is the figure for the Southern Railway System in that pamphlet for October 18, 1952?

A. It is 24,233 for the week ending October 18, 1952.

Q. Now, sir, turn to the pamphlet for the week ended October 14, 1961 — the last one, and turn to the same page of that pamphlet. Opposite the Southern Railway System, again state what the total is for cars loaded by the Southern and the total loads received by Southern from connections for the week ending October 14, 1961.

A. The figure is 20,030, total cars loaded, and total loads received from connections for the week ended October 14, 1961, is 21,177.

page 255] Mr. Eichner: Your Honor please, I offer those pamphlets collectively as City Exhibit I.

Note: Group of pamphlets, stapled together, entitled "Association of American Railroads, Car Service Division, Washington, D. C., Revenue Freight Loaded and Received from Connections" marked City Exhibit I and filed.

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page 256]

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Q. (By Mr. Eichner) Mr. MacLeod, do you know anything about industrial development along the line of the Southern between Danville and Richmond?

A. Not specifically, no.

Q. That is not in your department, is it?

Donald H. MacLeod

A. That is not in my department.

Q. What is that department called in the Southern — which department would know about that?

A. It was formerly in the Traffic Department and recently we established a new department.

Q. Which is called what?

A. Industrial Development.

Q. Thank you, sir. You stated once before, sir, that the line from Richmond to Danville should not be referred to as a branch line, did you not?

A. That is correct.

Q. It is so referred to, is it not, on your report to the State Corporation Commission and the Interstate Commerce Commission?

A. I do not know.

Q. Don't you know that those reports divide page 257] the length of track into main line and branch line?

A. I do not know that either. I can only state as far as I am concerned the line between Danville and West Point is the main line of the Richmond Division.

Q. But it is not the main line of the Southern Railway in Virginia, is it?

A. I don't know that we have a main line of the Southern Railway in Virginia.

Q. What is the approximate distance from Alexandria to the North Carolina line? Would you say about two hundred and thirty-two miles?

A. That is approximately correct.

Q. What would it be exactly, or do you have it, Mr. MacLeod?

A. It would be in the neighborhood of two hundred and forty-five miles, I guess.

Q. I don't think I have asked you this, What is the distance from Danville to Richmond?

A. It is 139.6 miles.

Q. And from Richmond to West Point?

A. 39.4 miles.

Q. Out of curiosity, from what point in Richmond do you measure those?

Donald H. MacLeod

A. It doesn't indicate on the timetable.
page 258]

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CROSS EXAMINATION

By Mr. Spain:

Q. Mr. MacLeod, you are Vice President of Operations of the Southern Railway System, are you?

A. Yes, sir.

Q. And you tell the court you don't know the difference between the main line of the Southern in Virginia and its branch lines?

A. Your Honor. I don't think I stated I don't know the difference. We have several —

Q. Well, what is the main line?

Mr. Gay: Let him finish his answer.

A. (Continuing) We have several main lines in Virginia.

Q. All right. Give me one of them.

A. We have a main line on the Washington
page 259] Division between Alexandria and Monroe. We
have a main line in the Danville Division between
Monroe and Greensboro. We have a main line on the Rich-
mond Division from Danville to West Point. We have a
main line on the Knoxville Division from Bulls Gap, Ten-
nessee, via Gate City, Virginia, to Appalachia.

Q. All right. That's enough. Since Richmond to Danville is a main line, do you keep it in good shape?

A. Yes, sir.

Q. Wasn't your road fined in June of this year in Chesterfield County for failure to keep this right-of-way clear?

Mr. Gay: We object to that.

The Court: What relevancy would that have?

Mr. Spain: To show the road isn't as important as the witness said it is.

The Court: I think if it tended to prove that fact it might be relevant, but I don't see that that would necessarily have any relevancy, as to whether they considered it a main line or branch.

Mr. Spain: I think it would be a just as true if it were not

Donald H. MacLeod

page 260] a main road, sir, if they were not keeping the road clear they did not consider it terrifically important, and I want to go into their reasons for not keeping it clear.

The Court: Objection overruled.

Mr. Gay: Note an exception.

Q. (By Mr. Spain) Wasn't your company fined in Chesterfield County Court in June of this year for failure to keep its right-of-way clear for a distance of fifteen miles across the county?

A. I understand we were. I also understand we were fined in Albemarle County.

Q. I didn't know about that. Wasn't your defense in the County Court of Chesterfield County you didn't have money enough to keep the right-of-way clear?

A. Your Honor, I didn't handle that case and I do not know what was pleaded there.

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page 262]

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Q. (By Mr. Spain) Mr. MacLeod, the yellow area colored on the map which I believe is the Plaintiff's Exhibit No. 18, what does that represent?

A. That represents property that was sold to Reynolds Metals Company.

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page 264]

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Note: Certified copy of deed dated November 10, 1961, from Southern Railway Company to Reynolds Metals Company, marked Interveners' Exhibit A-1 and filed.

Q. (By Mr. Spain) How did you become interested in looking for other places for a railroad yard in July of 1962, Mr. MacLeod?

Donald H. MacLeod

A. You are speaking of me personally, or the Railway?

Q. You personally.

A. This matter came before me in the Spring of 1962 and I made an on-the-ground and in-the-air survey of page 265 } this property in July 1962, I believe it was.

Q. At that time you knew your company had already purchased the piece of property containing eight acres more or less which forms the southern portion of the property here under discussion, did you not?

A. I did.

Q. You also knew that they had already spent a great amount of money in clearing and filling that property did you not?

A. My predecessor, I understand, spent a large amount of money on the property.

Q. Who was your predecessor?

A. E. M. Tollerson.

Q. Do you know when that was purchased by the Railroad?

A. No, sir, I do not.

Mr. Gay: The deed is the best evidence of that.

Mr. Spain: I just asked him if he knew.

Mr. Pasco: We have admitted the date of the acquisition of both parcels. We filed the City's plat that shows the deed book references.

The Court: I understand that has all been ad- page 266 } mitted, but I take it he has some purpose for this.

Mr. Spain: Yes, sir, I do. I would like to offer as Interveners' Exhibit R-2 deed from Virginia Electric and Power Company to Southern Railroad Company dated April 20, 1960, recorded May 17, 1960, in the clerk's office of Hustings Court, Part II, in Deed Book 255, page 170, together with the plat which was furnished me by the clerk with that deed, and call the court's attention to the fact and ask it to take judicial notice of the fact that at that time the state recording tax on deeds was fifteen cents per hundred.

Note: Marked Interveners' Exhibit A-2 and filed.

Q. (By Mr. Spain) Now, Mr. MacLeod, will you tell me which one of the company's attorneys assisted you in editing the prepared testimony which you gave here today?

A. Mr. Pasco.

Q. Looking at this annual report for 1961, page 37, I notice

Donald H. MacLeod

when you were reading it that you gave the percentage of increase in 1961 over 1960 of all cars handled, but you didn't give the percentage and which direction of page 267] loaded cars handled that year.

A. As I recall, Your Honor, I was reading the wrong line and was stopped and was asked to give the average number of cars in each freight train, which I did.

Q. And then you added a percentage increase, and so on, as I recall. Now, give us the figures on loaded cars handled as shown there.

A. For 1961, 61.3; for 1960, 62.8 — a decrease of 1.5 percent. We are hoping this trend will continue, that the average number of cars in the freight trains will increase —

Q. And that the loaded ones will decrease?

A. That is correct, because we are building cars now that haul one hundred tons as compared with the average car of fifty tons. That more or less accounts for the decrease in the number of loaded cars. All the new cars we are buying are either seventy tons or one hundred tons. While they comprise a small percentage today, in the future that picture will change very radically.

Q. Mr. MacLeod, speaking of your Exhibit 18, you said that as you come east of the underpass of the Atlantic Coast Line you had a rather sharp curve as you come under the Ninth Street Bridge.

A. That is correct, sir.

page 268] Q. Couldn't you widen that curve out by moving the tracks closer to the river as they come under the Ninth Street Bridge?

A. Mr. Spain, I don't know whether you are an engineer or not —

Q. No, sir, I am not.

A. If you move in this direction (indicating on map), you increase the curvature — if you move in the river direction you increase the degree of curvature.

Q. May I, not being an engineer, try to show you what I mean with a pointer, and ask you if I am correct? I take it this is the sharp curve you are speaking of (indicating on map).

A. That is correct.

Q. If the curve were brought out more in this manner, to the north and more towards the river, and the track kept closer to the river, wouldn't that lessen the abruptness of the curve?

Donald H. MacLeod

A. That would. You would end up with a compound curve that would certainly lessen the degree of curvature east of Seventh Street, but it would make very little change, if any, under the Seventh Street Bridge and in this area (indicating on map). At the same time I would like to point out the further you move over this way, we still have to
page 269] negotiate this bridge. We already have a twenty-degree angle here and if we did as Mr. Spain suggests, it would only accentuate that problem. We are just about as close now as we can possibly get in here in order to get across the river. If we move in this direction, you end up with almost a ninety-degree angle, as you can see — in this manner (indicating on map). He has suggested that the curve from Seventh Street be put closer to the river. You would actually end up crossing this main line at an angle, which would be impossible.

Q. Your problem is in bringing trains across the trestle. That is one of your problems, I understand, but isn't your principal problem the storage and making up of trains east and west, up and down the river?

A. As I stated in my testimony, Mr. Spain, the principal inadequacies of our facilities in Richmond are the shortness of the tracks and the inability to store cars adjacent to our classification facilities.

Q. Do you know how many tracks you have pulled up in the Southern yards in the last four years — the Hull Street yards in South Richmond?

A. No, sir. I think I could count them — the difference between the red lines and the black lines.

Q. I believe earlier you estimated there were some thirty tracks in there at one time.

page 270] A. That is correct?

Q. And now —?

A. Three side tracks — storage tracks — and we have a main line and of course we have some other industrial tracks and a loop track to our piggy-back facilities.

Q. Wasn't the economic consideration of the value of the property shown in yellow on Exhibit No. 18 to the industry or the firm which bought it a strong contributing factor to disposing of that land?

A. It absolutely was not. That came about after we moved out of South Richmond yard. As I pointed out in my testimony, as this South Richmond yard became obsolete for the purposes we wanted to use it, that is, classification, we

Donald H. MacLeod

gradually moved our classification to Belle Isle. As we moved out we gradually took up the tracks. I might also add, Your Honor, these tracks not only served the purpose for classification, but as you can see on the print, Exhibit No. 18, we had a large foundry, we had a large pattern shop where we made locomotive parts, cylinders and any number of parts, we had a large locomotive shop, we had a large blacksmith shop, we had a large storehouse, we had a pipe shop, we had a planing mill, we had these coach yard facilities for the passenger coaches. When we went to dieselization we set up our maintenance of the locomotives and the cars at centralized points. When this facility was in full operation, each division was maintaining its own locomotives and its own cars. In the last ten years this work has been centralized until today we only have two locomotive shops for our entire system and two car shops for our entire system. We only make line running repairs at places like Richmond.

My point is that when these facilities were gradually moved out, the need for these tracks dissipated. We simply didn't need them.

Mr. Gay: Let the record show the witness is pointing to that part of the map colored yellow.

Q. (By Mr. Spain) The five buildings pulled down, as you have named them, increased your land area towards the north or river side for tracks, did it not?

A. I don't know as I understand the question, Your Honor. It is easy to see on this Exhibit 18 where the buildings were. They were not located where the South Richmond yard was located.

The Court: Mr. Spain, are you referring to the area where he says he now has piggy-back facilities?

Mr. Spain: Yes, sir.

page 272 } Q. (By Mr. Spain) Will you point out where the piggy-back facilities are?

A. Right here (indicating on map). The red line is the piggy-back track.

Q. All the rest of the area shown north of your tracks, between the tracks and the river, has that been now cleared of the buildings shown on the map?

A. It has.

Donald H. MacLeod

Q. Couldn't you put storage track in there?

A. We could put track anywhere, Mr. Spain, but they wouldn't be adjacent to our classification facilities at Belle Isle. This is where we need the storage tracks.

Q. Throughout your prepared testimony you used the word "uneconomical." You used that word repeatedly to describe what would make it impossible to put your storage yards or marshaling yards elsewhere. Isn't that the true reason you don't put them elsewhere?

A. That is certainly one of the reasons, the other reasons being, as I pointed out, the bad delays that would be incurred in trying to switch on these curved tracks and the hazards to our employees. The paramount problem in this area on these Civil War vintage facilities is delay in our traffic.

Q. Do you use any other type of communication page 273] at your yards except light, hand signals and radio?

A. We have at Richmond a public address system that is broadcast from this building I pointed to.

Q. Describe its location.

A. In the area labeled "Southern Railway Shops" on Exhibit 18, which is known as the yard office, there is a public address system that is broadcast from this location (indicating on map) and we have speakers located in the Fourteenth Street yard area, at each end of Ship Yard and at the eastern end of the Twenty-Eighth Street yard. We have a speaker at the western end of Belle Isle yard and one approximately here, near this scale.

Q. You said the western end of Belle Isle yard, but you were pointing to the eastern end.

A. I meant eastern. If I said western, I meant eastern. I would like to correct that. Thank you, sir.

Q. Those speaker systems must be loud enough for the switchmen and those working on the railroad to hear them above the noise and traffic of the trains and any other noises such as noises up on the bridge and nearby, must they not?

A. That is not the purpose of these speakers. These speakers are roughly a foot in diameter, located on a pole approximately eight or nine feet high, and it is page 274] necessary to be reasonably close to them to hear.

It is a very antiquated system. Any speakers that we put in today in our modern yards are ground speakers about every ten car lengths — about every five hundred feet.

Q. Are the speakers which you operate now —

Donald H. MacLeod

Mr. Gay: Wait a minute. He hasn't finished.

A. (Continuing) These speakers are not loud at all. In fact, they are in a conversational tone of voice. You can only be heard approximately fifty to seventy-five feet away. If someone is paging you, if you were standing still in between these speakers, you couldn't hear them, but as you move around in the yard and people page you, sooner or later you come close enough to one of the speakers so that you can hear it. It has a little lever on it you depress with your foot and in a normal conversational voice you speak, without bending down. You can talk as I am talking here — with the speaker on the floor — and it will pick it up. That is the new type of communication we use today and it is not unusual to have several hundred of them around the yard — but it is not like a telephone even so. They don't interfere, they are not noisy — no problem at all.

Q. Is the type of speaker you now have com-
page 275 } monly referred to by the railroad people and
others as a "bull horn?"

A. I have never heard that particular expression. I have heard the expression "squawk box" — but usually they are referred to as speakers.

Q. How far away can they be heard on a quiet night?

A. I have never listened to the ones in Richmond on a quiet night but I would say they could certainly be heard several hundred feet — maybe five hundred feet.

Q. I ask you as a matter of fact can't they be toned up and heard for as much as half a mile?

A. I am not familiar with this type of speaker. We have very few of them left on our railroad yards and these will be replaced in due time.

Q. But you are using them at the present time?

A. At the locations I referred to. We do not plan to install that type of speaker again.

Q. Do you have any problem in your yards with undesirable persons?

A. No, sir. I understand that that was a problem a good many years ago but to my personal knowledge that has not been a problem since I have been with the railroad.

Q. No tramps or hobos?

A. Oh, yes, from time to time there will be

Donald H. MacLeod

page 276] a hobo.

Q. They and railroads kind of go together — railroad yards, I mean. Isn't that correct?

A. I cannot say there is any particular relationship. I have been with the railroad twelve years and I have seen very few hobos.

Q. Where you usually see them is when the trains are brought into the yards, isn't it?

A. What few hobos I have seen have been on minor roads and they usually get off before they get to the yards. As a matter of fact, as the train slows down coming into a city, the hobos usually get off just outside, and quite often you hear of hobos that build little shacks and what have you, but we don't allow it on our property and most of the hobos depart before the train arrives at the yard because the railway policemen are on hand and if they are spotted, they are reported. They try to leave us before the train stops.

Q. If you establish this yard, where would the train start slowing down coming in from Danville?

A. Our yard limit board is about the Atlantic Coast Line bridge, the high bridge that crosses the James River. That is our yard limit board. Our trains have to run within yard limits at a speed that will permit them to stop within one-half the range of vision.

page 277] Q. You are talking about the high bridge that comes into Westover Hills?

A. Yes, sir. By operating rules that is where our trains have to reduce the speed, which is a very slow operation — eight or nine or ten miles an hour.

Q. And that's where hobos usually get off?

A. If there were any hobos. I testified that as a usual thing they get off as our trains slow down approaching town.

Q. The file you mentioned earlier this morning, as to when you began to consider this site, you say you left it in Washington?

A. Part of it is in Washington and I think my secretary has part of it.

Q. Where is she?

A. He — he is in the room.

Q. Does he have part of it?

A. I don't know that he has it with him in this room but he has part of the file, yes, sir.

Q. You knew you were coming here today to testify in this matter, did you not?

Donald H. MacLeod

A. I certainly did.

Q. And you didn't bring that file?

A. It is not in the room to my knowledge
page 278] unless he brought it. I will be glad to ask him.

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page 279] RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. MacLeod, you spoke earlier in your testimony on cross examination about four large hump yards. Tell us briefly what a hump yard is.

A. We have large hump yards at Knoxville, Chattanooga, Birmingham and Atlanta. We handle through these yards anywhere from three to six thousand cars a day. The yards are constructed in three parts. We usually have a receiving yard the length of these tracks, to accommodate from one hundred to two hundred and fifty cars. Usually they run from twelve to fifteen of those tracks.

Trains enter those tracks and after they have been inspected and the brakes released, they are shoved up over a hump. As the cars pass over this hump these cars are humped from the receiving yard into the classification yard. These classification yards have anywhere from forty-four tracks, a minimum, to around sixty, and there is this panel in front of the hump conductor with a corresponding button for each track, and as the cars are pushed over the hump he merely pushes these buttons and the cars automatically go into the various tracks. They are also automatically re-

page 280] tarded by retarders that squeeze the wheels
enough so they enter the classification tracks at
not over four miles an hour.

When trains are built, the cars are pulled from the classification tracks and shoved into a third yard which is a forwarding yard, and that is the way the trains are made up in the large yards. All three yards, receiving yard, classification yard and forwarding yard, are adjacent to each other.

Q. Do you have anything similar to a hump yard in the Richmond area?

A. We do not.

Q. I believe your yard here is a flat switching yard, Is that correct?

A. That is correct.

Donald H. MacLeod

Q. You spoke of railroad cars as long as eighty-six feet. Are they the "Big Johns" you referred to in your testimony this morning?

A. No, sir. The eighty-six foot cars are the flat cars that handle piggy-back. They will handle two forty-foot containers or trailers and, of course, the extra six feet is for your couplers and so forth.

The "Big John" is approximately sixty feet long. That has a covered hopper.

We have many other types of long cars that page 281 } average anywhere from fifty to eighty feet.

Q. This morning I believe you testified, in respect to interchange points, that you were interested in the possibility of moving the C. & O. interchange point. I would like to ask you whether any consideration is now being given to moving any other of the interchange points about which you testified?

A. No, sir, there is not. As you can see, the interchange track with the A. C. L. is ideally located. You could not improve on that. Also, the interchange to the R. F. & P. is through the A. C. L. The A. C. L. goes into Acca Yard and we have no physical connection with the R. F. & P. The Seaboard interchange is not too badly located. It is on the same side of the river as our classification yard. So there is no plan on foot to change those two at all.

Q. Would the changing of the C. & O. interchange in any way change your requirements for a classification yard?

A. None whatsoever.

Q. You testified first this morning on cross examination with respect to City Exhibit G, which was a timetable, and then you were later questioned about the other timetables — Exhibits D through F, I believe — and in response to a question asked you by counsel for the City as to page 282 } whether these timetables reflected what actually happened, my recollection was that your answer was yes. I would like to ask you what you meant by an affirmative answer to that question.

A. While the schedules as shown on the timetables are for operating purposes and do not conform exactly to the schedules that we make, I can only assume that in years past the timetables and the information shown therein would approximate the schedules in effect at that time.

Q. Now in response to questions by counsel for the City concerning the business lost to the trucking industry, you

Donald H. MacLeod

mentioned the problem of inability to make rate changes as one of the principal reasons. Are there any other reasons that come to your mind that hamper the railroad in competition with truckers?

A. Yes. One of the basic problems we have in competing with trucks is at our terminals. For instance, we can take a carload of freight from New Orleans to Potomac Yards in Washington in two days. It would be difficult for a truck leaving New Orleans at the same time to keep up with our train. However, when the car does get to Potomac Yards, as an example, or any other terminal, we are hampered because we have to switch this car out of a train along with hundreds of others and get it placed or inter-
page 283] changed at destination, whereas the truck goes directly to his destination. That is one reason that the Southern has spent over one hundred million dollars in trying to modernize its terminal facilities, in order to better compete with our competition because our main delay — and this has been historical in the railroad industry — is not in getting the car from A to B, but getting it into a train at A and out of the train at B.

Q. Does inadequacy of classification yards at the terminal have any effect on your speed in making delivery of cars?

A. Absolutely. That is the reason we have put so much emphasis and money in the alteration of our terminal facilities all over the system.

Q. What is the situation in that respect at Richmond?

A. There have been no alterations at Richmond and, as I pointed out in my testimony, delay is the paramount problem we have, in addition to the short tracks and storage facilities near our classification yards.

Q. If you could ignore the Coast Line tunnel and the problems of crossing over roads, would the expansion of tracks through that tunnel facilitate the speed with which you could handle delivery of cars in Richmond?

A. As long as we have to build trains on this
page 284] curve, we would be getting back to the identical situation we had when we were situated here (indicating on map).

Q. I believe that's the main line of the Southern to West Point that comes across the river at Mayo's Island. Is that correct?

A. That is correct.

Q. Do I understand from your testimony that because of

Donald H. MacLeod

the location of that line in that area —

Mr. Eichner: I object to him leading the witness.

Q. (By Mr. Pasco) What effect does the location of the main line in that area have on the storage tracks you can build in that area?

A. For obvious reasons you can see that when we had the old South Richmond yard that this line entered about the middle of the yard, this being one end (indicating on map) and this being the other. This main line entered about the middle, which is really an untenable situation. To have any kind of operation at all, the main line should enter one end of the yard and come out at the other.

Q. What is the principal requirement for an adequate piggy-back loading facility, in your judgment?

A. Number one, it has to be reasonably close to page 285] your classification yard. Number two, it has to be readily accessible to trucks; that is, with these piggy-backs your trailers are taken off and put on the ground, and you have to have a good ingress and egress for the tractors to come to pick up these piggy-backs and to deliver them at the side to be loaded on the flat car. They are the two prime considerations.

Number three, you need parking area adjacent to your piggy-back facility to store trailers or empties and to temporarily park the load.

Q. Which of those considerations do you find present on the James River property you referred to?

A. Absolutely none. That would not be suitable for piggy-back facilities at all.

Q. If you are permitted to build the track you contemplate at this time, would that require a change of the location of your yard board from where it is located, as you testified, near the Coast Line high bridge?

A. I do not think it will be necessary to change it.

Q. That situation will continue as it is at present?

A. That is correct. However, if we wanted to change it, it would have to be done by agreement with the page 286] operating unions, switchmen and engineers, conductors and firemen, and so forth.

Q. Tell us whether or not in your opinion the tracks that were taken up on the property that was sold to Reynolds Metals Company could be used for classification purposes?

Donald H. MacLeod

A. They were used for classification purposes before we moved out of the South Richmond yard, but this was an uneconomic, slow, hazardous process.

Q. Most of those tracks were stub-end tracks?

Mr. Eichner: Object to leading the witness.

Q. (By Mr. Pasco) Describe the type of tracks that were taken up within the limits of the property sold to Reynolds Metals.

A. Referring to Exhibit No. 18, as you can see, most of the tracks were stub-end tracks. There were six tracks that were double-ended but for all practical purposes these might as well have been stub-end because we were unable to switch across Hull Street. That necessitated doing the classification from this end (indicating on map).

Q. You mean the west end?

A. That is, the Seventh Street end. That was also very unsatisfactory because of the high bluff, the
page 287] curvature and the Seventh Street underpass. We could only handle approximately ten or fifteen cars. This being the beginning of the classification tracks, when the locomotive pulled back in a western direction, he was soon out of sight of any switchman. The same thing was true when he shifted around eastwardly into the body of the old South Richmond yard. Of course, this was a very slow process.

Mr. Pasco: No further questions.

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. You have stated, I believe, the reason you want to make these alterations in the property under consideration is because of the short tracks and lack of storage space —

A. Adjacent to the classification yards. That is correct. That is the primary reason.

Q. I believe you stated — and please correct me if I am wrong — you don't consider the South Richmond yard adjacent to the Belle Isle yard. Is that what you stated?

Donald H. MacLeod

page 288] A. It is approximately half a mile from the old South Richmond yard to the Belle Isle yard.

Q. And you don't consider the South Richmond yard adjacent within your definition of storage space adjacent to the classification yard?

A. It is not.

Q. Now how far is it from Lee Bridge to Twenty-Sixth Street on Riverside Drive?

A. That is up approximately half a mile, as is the old South Richmond yard, but bear in mind that this is a continuation of Belle Isle for all practical purposes.

Q. Is Twenty-Sixth Street adjacent to Lee Bridge, within your definition?

A. No, sir.

Q. So the facilities to the west of Twenty-Sixth Street on Riverside Drive would not be adjacent to the Belle Isle classification yard?

A. Not adjacent to — connected to.

Q. But they would not be helpful there, between Twenty-Sixth and Forty-Second Street, would they?

A. They most certainly would because they are all part of and a continuation of Belle Isle yard, in a similar manner that the receiving yard is adjacent to your classification yard in the hump yard I described. They are
page 289] all together. But it is not a fact that the storage tracks in South Richmond are adjacent to Belle Isle — in no sense of the word.

Q. The Southern has a double track that runs approximately to opposite Forty-Second Street on Riverside Drive, has it not?

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page 290]

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Q. (By Mr. Eichner) From Forty-Second Street where the double track begins to the Lee Bridge is how far?

A. Approximately six thousand feet.

Q. If that were triple track, you would have adequate room for handling a one-hundred car train, would you not?

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Donald H. MacLeod

page 291 }

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Q. (By Mr. Eichner) If you have the third track from Forty-Second Street all the way to Lee Bridge, that would be adequate to handle any incoming one-hundred car train, would it not?

A. It would be approximately six thousand feet and that is longer than a hundred-car train. If your question is could we yard a one-hundred car train between Lee Bridge and Forty-Second Street, the answer is yes.

Q. Construction of eleven tracks here on the Riverside Drive property would give you sufficient facilities to abandon the Belle Isle yard entirely, would it not?

A. I didn't understand the question.

Mr. Gay: That certainly is not recross examination.

The Court: I don't think that could be contemplated in redirect. The question of *abandonment* of Belle Isle was never suggested on redirect, I don't believe.

Mr. Eichner: All right, sir.

Q. (By Mr. Eichner) You mentioned there is no hump yard in Richmond at this time.
page 292 }

A. That is correct.

Q. What sort of yard is proposed on Riverside Drive — flat or hump?

A. Any yard built in Richmond would be a flat yard — at any location.

Q. So it is a flat yard your propose on Riverside Drive?

A. The tracks would be nearly level in that area. That is correct.

RE-CROSS EXAMINATION

By Mr. Spain:

Q. You mentioned the problem of the main line to West Point practically bisecting your South Richmond yards.

A. The former South Richmond yards, yes.

Q. How many trains a day do you have to West Point?

A. We have one train — No. 22 leaves at 6:45 a.m., and

Donald H. MacLeod

Train No. 21 arrives back at Richmond from 2:00 to 4:00 p.m.

page 293] Q. One train down and one back a day?

A. That is correct.

Q. So your problem would be one incoming train a day?

Mr. Gay: The witness hasn't said that.

The Court: You mean, from West Point?

Mr. Spain: Yes, sir — one incoming train a day from West Point.

A. To answer your question specifically, we have one train to West Point a day and one train from West Point a day — in and out of Richmond.

Q. What I am getting at is the problem of trains coming in there which you spoke of — that is limited to that one train a day?

A. No, indeed.

Mr. Spain: I have nothing else.

page 294] RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. MacLeod, what other movements would come across the Mayo Bridge?

Mr. Eichner: I think if we are going to insist on the rules, they should apply to both sides. We have already had a redirect examination.

The Court: This is a matter that has just been brought up and the court would ask the question if counsel didn't. It stands now that the City's examination has left him where he said there was one movement a day to and from West Point. I recall there were other movements and I don't recall what they were, and I think that is a proper question. Mr. Spain could have asked him that — he didn't have to ask him, but I think the court wants to know the answer.

A. If I understand the question correctly, we have one train from West Point across this bridge, and one

Donald H. MacLeod

page 295] that goes out over it. We have numerous yard movements over this bridge each day. We have five switch engines here and they are all constantly using this bridge — some of them use it several times a day.

Q. (By Mr. Pasco) How do your switch engines get from the Southside to the C. & O. interchange?

A. They cross the Southern's bridge at Mayo's Island.

Q. And they come back across that bridge?

A. Yes, sir, and do all the other switching movements necessary from time to time.

Q. And to get to the Twenty-Eighth Street yard and to Ship Yard in the Southside —

A. It is necessary to cross the bridge.

Q. And they have to come back across the bridge?

A. That is correct.

Q. And is that also true of movements to the tobacco industries on Hull Street?

A. Yes, sir. Of the five switch engines we operate here, most of them use this bridge several times a day.

Q. And the cars stub-ended up in the Fourteenth Street storage tracks have to use this bridge, do they not?

A. That is correct.

page 296] By The Court:

Q. Let me ask one question. It is the Railroad's intention to continue to use Belle Isle as one of the major parts of the Richmond operation?

A. Absolutely.

Q. That is more or less the hub of the whole plan, is it not?

A. It is indeed and the work we plan to do is merely an extension to get longer tracks, which would still be continuous to and right into Belle Isle yard. This mark matches this one (indicating on maps) and the extensions we plan — the one long track begins roughly here and goes to this point on the opposite side of the track. The short tracks we are going to build would be from this vicinity to this point — two short tracks. As you can see on the map, it would be near milepost 138 westward to the Forty-Second Street area. The only reason for not doing that here is just simply you have the James River here.

Q. What do you mean by "here" — for the record?

A. In the Twenty-Sixth Street area.

P. A. Rice

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page 297]

P. A. RICE,

a witness called by and on behalf of the plaintiff,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. Will you state your name and residence, please?

A. My name is P. A. Rice. I am a resident of the City of Richmond.

Q. What is your profession, Mr. Rice?

A. I am and have been for many years a professional civil engineer certified by the State of Virginia, having graduated in civil engineering from Tufts University in 1914. I was employed by the R. F. & P. Railroad Company for a period of over thirty-eight years, thirty-four of which were in the Engineering Department, the last four of which were in the Traffic Department as Manager of Real Estate and Industrial Development.

Q. Describe briefly what your services in the Engineering Department have been.

A. In the Engineering Department I assisted in the expansion of the company's yards, among other
page 298] things, and am familiar with the area and capacity requirements for a railroad classification yard under modern diesel operation.

Q. What yards does the R. F. & P. have?

A. The R. F. & P. has hump yards at Potomac Yards in Alexandria and flat yards at Acca in Richmond.

Q. Have you had any experience with respect to railroad yards other than with the R. F. & P.?

A. Yes. I may say that I retired from the service of the R. F. & P. on April 30 of this year, and since that time I have done some consulting work, and within the last few weeks I have laid out for a consulting firm in Philadelphia a two-track railroad, including a small railroad yard, through the City of Alexandria. This will become a part of the new rapid transit system to serve Washington, D. C.

Q. At our request have you examined the operating properties of the Southern Railway located in Richmond, and are you generally familiar with the yard facilities of that company in the City?

P. A. Rice

A. Yes I have, and I am familiar with them.

Q. From your examination and in your judgment is there any area available to the Southern Railway that is suitable for the extension of its tracks other than those proposed along the property on the south side of the James River west of the Lee Bridge?

page 299] A. In my opinion, the proposed area is the only suitable area that is available to the Southern in the City of Richmond.

Q. Would you mind giving us the reasons for that opinion?

A. The anticipated requirements of the Southern as given to me were for yard facilities capable of taking care of one hundred and fifty car trains —

Mr. Eichner: Objection. There is no evidence on the anticipated requirements.

The Court: I think this witness is testifying as an expert, and I believe he can testify to any data, including the requirements that might have been given to him, on which he bases his opinion.

Mr. Eichner: The previous witness has stated he doesn't know how long the trains are in and out of Richmond.

The Court: You will have an opportunity to cross examine, if you care to do so, to attack the basis or bring out anything you want in connection with the basis on which he forms his opinion, but he has to be able to state the basis for his opinion. Objection overruled.

page 300] A. (Continuing) The requirements of the Southern, as I understood them to be and as they were given to me, were for yard facilities capable of taking care of a one hundred and fifty car train, which would mean tracks with clear lengths of from six to seven thousand feet. To this length, the length of the ladder tracks at either end must be added, but I haven't taken that into consideration. The only place long enough and suitable for such a yard is at the location here under consideration, with two or three long receiving tracks and advance tracks extending from this location to Belle Isle Yard.

With the coming of diesel operations, the length of freight trains has increased considerably and many railroads have had to increase the length of existing yards to accommodate the longer trains. The tracks in such a yard should be preferably straight or as nearly straight as possible, and if they

P. A. Rice

are on a curve the curve should be preferably wholly in the same direction, not too sharp and not reversed. The R. F. & P. Railroad increased the length of Potomac Yard in Alexandria and Acca Yard in Richmond in the 1950's. At Potomac Yard the northbound receiving yard —

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page 303]

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Q. What is your opinion as to the adequacy of the Southern's yard facilities in Richmond?

page 304] Mr. Eichner: Objection. No foundation has been stated for the question.

Mr. Pasco: The witness testified he has had thirty-four years experience in building and constructing yards; he has examined the Southern's yard facilities in Richmond. I submit he is qualified to answer this question.

The Court: Objection overruled.

Mr. Eichner: Note our exception, on the ground there is no evidence of the amount of traffic or the length of the trains.

The Witness: Will you repeat the question?

Note: The last question was read by the reporter.

The Court: Based on the needs anticipated, which the railroad has given him.

Mr. Pasco: Yes, sir.

A. The present Belle Isle yard located at the end of Lee Bridge extended from one end to the other is approximately one thousand seven hundred and eighty feet. It is limited for any extension on the east by the underpass under the A. C. L. tracks, and on the west by Lee Bridge piers and by the narrowness of the existing right-of-way. It is not suitable for the handling of the longer trains now being
page 305] handled by railroads because of diesel power, and cannot be expanded at this location alone to make it so, in my opinion.

The Southern has a small yard between Seventh Street and Hull Street which is limited on the west by the Seventh Street

P. A. Rice

overpass and on the east by Hull Street. The distance between these two points is twenty-seven hundred feet —

Q. (By Mr. Eichner) Excuse me — what two points?

A. Seventh Street overpass and Hull Street.

Q. (By Mr. Pasco) Go ahead.

A. (Continuing) — which of itself would make yard facilities at this point inadequate. In addition, these yard tracks were on a sharp curve on the eastern end and a reverse sharp curve on its western end, and the layout is entirely unsuitable for any yard extension because of the curvature and length restrictions. Also, the main line of the Southern comes into it on a sharp curve almost in the center of this area.

The Southern owns no other land on the south side of the James River that could be used for the required yard purposes, in my opinion. The area the Southern owns running from Stockton Street to Rocketts has a length of about forty-

four hundred feet, but its east end is over a
page 306] mile east of the main line tracks of the Southern,
and the property is not suitable for yard purposes because it has no connection to the east, is subject to overflow, and long trains pulling into a yard at this location would block Hull Street for long periods of time.

The land owned by the Southern on the north side of the James between the river and the canal, known as “Ship Yard” and extending from approximately opposite Eighteenth Street to Twenty-Sixth Street has a length of only about twenty-five hundred feet and is not long enough nor wide enough to accommodate the required yard facilities. The Twenty-Eighth Street yard located between Twenty-Third and Twenty-Eighth Streets, which has a length of only about fourteen hundred feet, has no connection to the west and is neither wide nor long enough for the required purposes.

These are the reasons I think the proposed location of the Southern is the only one in the City of Richmond that is available to the Southern for purposes they desire.

page 307] CROSS EXAMINATION

By Mr. Eichner:

Q. You have been reading from your prepared testimony?

A. I read from notes I made, yes.

Q. What lands not owned by the Southern Railroad did you examine in connection with this study?

A. I didn't examine any land not owned by the Southern.

P. A. Rice

Q. In saying this is the only land suitable for their purposes, you are of course ignoring the zoning ordinance, are you not?

A. I haven't considered the zoning ordinance.

Q. In your experience with the R. F. & P. don't you normally consider zoning ordinances in determining whether land is suitable?

Mr. Gay: Object to that.

The Court: It seems to me that is the question we are in court over. I would think when he referred to suitability he was referring to physical suitability, so far as location and proximity of the various tracts were concerned, page 308] without any regard to zoning prohibitions, because that is the point at issue here.

Mr. Eichner: Your Honor please, I certainly do not accept the argument that zoning has nothing to do with suitability.

The Court: Ultimately that's true, but as to this testimony the witness could preface it with the statement it is without any regard to zoning about which he made no investigation. His expert opinion relates to the physical location, as I understand, and I don't feel that zoning would have any bearing on that aspect of it.

Mr. Eichner: We respectfully except to the ruling of the court.

Q. (By Mr. Eichner) That is a fact — you ignored zoning in your study?

A. That's right.

Q. Were you asked to seek out any land zoned for industry in this study?

A. No.

Q. What examination did you make into the length of trains operating in and out of Richmond by the Southern Railway?

page 309] A. I didn't make any.

Q. Was any information offered you on that subject?

A. No.

Q. What inquiry did you make as to the number of trains pulled in and out of Richmond by the Southern?

A. I didn't make any.

Q. No information was given you by the Southern as to that?

A. No.

P. A. Rice

Q. Can you tell us how many trains come in and out of the Acca yards each day?

A. You are talking about freight trains?

Q. Freight and passenger both.

A. Passenger traffic has no connection with the yards, although they run through the yards.

Q. How many passenger trains run through the yards?

A. Passenger trains on the R. F. & P.?

Q. Yes, sir.

A. The main line tracks of the R. F. & P. are located between the southbound classification yard and the northbound classification yard, and they run down between the two yards.

As to the number of trains on the R. F. & P. over page 310] those tracks daily, I will have to refer to the schedule. It shows twenty-two.

Q. Passenger trains?

A. Yes, part of which are Seaboard and part of which are Coast Line, originating on the Seaboard.

Q. Actually, anything moving over the R. F. & P. is an R. F. & P. train, is it not?

A. That's true.

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page 311]

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Q. Does the Coast Line also occupy the Acca yard?

A. It comes into Acca yard from the south and comes in about at Westwood Avenue bridge — comes over the R. F. & P. tracks from the middle of the James River bridge but it is a Coast Line train until it gets to Acca.

Q. And classification for the Coast Line as well as the R. F. & P. is at Acca?

A. Partially.

Q. So Acca serves as the classification yard page 312] for two railroads and not one?

A. Yes.

Q. Richmond is the northern terminus for the Seaboard and the Coast Line, I believe?

A. That's right.

Q. Substantially all freight from Washington or points north is brought to the Seaboard or Coast Line by the R. F. & P.?

P. A. Rice

A. Not all freight. I wish we did have all the freight. We have a substantial amount, but some comes over the C. & O.

Q. I am talking about traffic from Washington and points north — if it is going south from Richmond over the Coast Line or Seaboard it must travel over the R. F. & P. Am I right about that?

A. Oh, yes.

Q. What is the number of freight trains daily the R. F. & P. runs in and out of Richmond?

A. All trains? May I have a minute?

Q. Certainly. Take your time.

A. About seven trains a day, each way. They vary from day to day, of course.

Q. But seven would be a minimum?

A. I wouldn't say that is a minimum, no.
page 313] Sometimes we don't have but three or four.

Q. That seven you said was each way?

A. Yes.

Q. What is the average length of those freight trains?

A. Well, I can't tell you the exact average length of them. We take as many as one hundred and fifty or one hundred and sixty cars at times. Some of the trains, daily trains, are very much shorter.

Q. Would you say it is a common thing to have a R. F. & P. freight train one hundred and fifty cars long?

A. I should think so. We try to run them that long.

Q. Ever run any as much as two hundred cars long?

A. Seldom on the R. F. & P. I don't know any instance where it got as high as that.

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page 314]

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Q. You have heard Mr. MacLeod's testimony about examining the Highland Springs, Sandston and
page 315] Robious areas, have you not?

A. Yes.

Q. You have read his prepared testimony, haven't you?

A. No, I never read his testimony. I heard him on the stand and that's the first time.

Q. Did you examine the Highland Springs and Robious

P. A. Rice

area in this connection?

A. No, sir, I did not.

Q. The Acca yard and Hermitage yard and the Fulton yard of the C. & O. are in Henrico County, are they not?

A. The Acca yard is presently just beyond the city line.

Q. How about the Hermitage yard?

A. Hermitage yard? That's in the city. The Seaboard Hermitage yard is in the city.

Q. And the C. & O. is part in and part out, is it not?

A. I am not familiar with the C. & O. yard. You are talking about the Fulton yard?

Q. Yes. You didn't examine that?

A. No, sir.

Q. How is Acca yard zoned by Henrico County?
page 316] A. Industrial.

Q. What category?

A. Part heavy and part light.

Q. Is that the general zoning for a railroad yard in your experience?

Mr. Gay: Object to that question. So many factors might be involved I respectfully submit it cannot be relevant here.

The Court: I will admit the question. Go ahead.

A. When the classification was changed in Henrico County, it was changed from the blanket — as I remember it was changed from the blanket Agricultural, which everything that wasn't specifically zoned was left in — it was changed to Industrial, similar to the land that the company owned that ran from Acca all the way to the James River bridge which was zoned for Residential at the time, but the railroad was on it and they didn't pay too much attention to zoning in those days. Recently they have zoned the yard at Acca to Industrial. I say recently — actually it was some time ago.

Q. It was a good number of years, wasn't it?

A. Yes.

Q. Are you aware of any yard comparable in
page 317] any way to the Acca yard which is located in a district zoned for Residential?

A. The Hermitage yard of the Seaboard.

Q. That is currently zoned Residential?

A. No. I can't say as to what it is zoned for. All I know is that the residential area runs right up to it.

Q. When the Southern Railway retained you to make this

P. A. Rice

study and stated to you what their requirements were, I believe you stated they wanted a yard capable of handling one hundred and fifty car trains. Is that correct?

A. That is my understanding — they required a yard to handle up to one hundred and fifty car trains.

Q. What other requirements were mentioned?

A. They asked me to find out if there was any place in the City of Richmond owned by the Southern Railway where such a yard could be put, in my opinion.

Q. The requirements, I take it from your testimony, were these — it must be land owned by the Southern Railway and it must be an area of sufficient size to accommodate a yard capable of handling one hundred and fifty car trains. Were there any other requirements?

A. No — no more.

Q. Was this stated to you to be requirement that would fill their needs in the foreseeable future, page 318] jected to any particular year?

A. I understood they were considering, as any company would, the prospective need of the company.

Q. Prospective needs?

A. Yes.

Q. Do you know how the Southern Railway rates with the other four railways serving Richmond in the number of industrial customers served?

A. No I do not, as to a comparison between the two. I know they have a number of industrial customers in the city.

Q. They don't have anywhere near as many as the R. F. & P., do they, Mr. Rice?

A. I am afraid they have more. I don't know.

Q. You don't know?

A. No.

Q. Are you familiar with a document known as Directory of Industries put out by Mr. R. B. LaGrand? Have you ever seen this document?

A. No, sir, I have not.

Q. In your study did you take into consideration the fact that west of the Lee Bridge the Southern Railway right-of-way is wide enough to put a fourth track down?

A. I know that it probably would accommodate page 319] another track.

Q. Did you take that into consideration in reaching your conclusion?

A. Yes.

P. A. Rice

Q. Did you take into consideration the number of trains operating in and out of Richmond each day?

A. No, that wasn't a concern of mine.

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page 324]

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RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. Rice, are you familiar generally with the Highland Springs and Robious and Rocketts area about which Mr. MacLeod testified?

A. If you mean generally. I know the area, but I haven't looked at it in this connection at all.

Q. You stated that the requirements given to you by the Southern were up to one hundred and fifty cars, which would give a track of seven thousand feet. If the distance required were from five to six thousand feet, would your answers to my questions on direct examination have been any different?

page 325] A. No.

Q. Now, would you look at Exhibit 18 and with your scale tell us what is the length of the longest track in Belle Isle yard?

A. You mean, outside the main line track?

Q. Outside the main line track.

A. From point of switch to point of switch?

Q. I think it ought to be from clear point to clear point, which would be inside the two points of switch.

A. It scales to a little less than eleven hundred feet on the map.

Q. You testified on cross examination about the number of trains, passenger and freight, that come into the R. F. & P. facilities at or near their classification yards. Do you happen to know what number of those trains go south over the Belt Line past the Georgetown Apartments?

A. Yes, about twelve Coast Line trains — six each way — and about twelve passenger trains.

Q. In the makeup and layout of a classification yard, is the fact that passenger trains passes through it on the main

P. A. Rice

line a consideration in determining the adequacy of the yard?

A. No, it has no relation to it.

page 326] RE-CROSS EXAMINATION

By Mr. Eichner:

Q. Don't passenger trains take up track?

A. Not the freight tracks. They run on their passenger tracks.

Q. But it is the same track when you get out of town?

A. Once you get out on the main line, to be sure — but not in the yard area.

Q. Now these trains you just referred to as going — as it was put — past the Georgetown Apartments, are these trains that don't have to be classified in the Acca or Hermitage yards?

A. Oh, yes, they are Coast Line trains coming in and Coast Line trains going out — both freight and passenger. If they were passenger trains they would go to Broad Street Station, but the freight trains leave Acca yard and are received into Acca yard.

Q. But the fact they go past these apartments has nothing to do with the yard requirements?

A. No.

Q. Have you sold any land in that vicinity for
page 327] single-family dwellings adjoining the Belt Line?

A. Yes.

Q. When.

A. Two or three years ago we sold two lots on Cary Street and single-family dwellings were constructed on them.

Q. About how wide were the lots?

A. I believe they were sixty by one hundred and forty foot lots, on Cary Street west of the Belt Line, opposite Windsor Farms.

By The Court:

Q. Let me ask one question. I don't know whether I understand this from your testimony or not. Do you have enough familiarity, regardless of whether you encompassed it in this work you did, do you have enough familiarity with the property, including Robious and Rocketts and lying between Robious and Richmond, unimproved property, to have an opinion as to whether there is any unimproved property, regardless of ownership and regardless of zoning, that would

James G. Beard

be adequate for the needs represented to you by the railroad?

A. No. The only piece of property I know about page 328] is the property that lies between Gillis Creek and the Southern Railway that is vacant, but it is subject to the flow of Gillis Creek and so low it is practically of no value, and I think it is just beyond the limits of the City of Richmond. It is the only piece of property outside the Southern properties that I saw.

Q. Would that be adequate, in your opinion?

A. No, indeed.

Q. (By Mr. Spain) It would be just as adequate as this property was before it was filled, would it not?

A. As to physical characteristics, that is, building tracks on it, perhaps yes; but as to location, no.

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page 329]

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JAMES G. BEARD,

a witness called by and on behalf of the plaintiff, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. State for the record your name and age and residence, please.

A. My name is James Garland Beard. I am forty-six years old, and I reside at 405 Glendale Drive, Richmond 29, Virginia.

Q. By whom are you employed, Mr. Beard?

A. Southern Railway.

Q. In what capacity are you employed by the page 330] Southern Railway?

A. Superintendent.

Q. Superintendent of what?

A. Of the Richmond Division.

Q. And what area does that include?

A. The Richmond Division includes the line from Danville to West Point, Virginia; it includes the line from Keysville, Virginia to Durham, North Carolina; and the line from

James G. Beard

Portsmouth, Virginia to Selma, North Carolina.

Q. State briefly what your professional training has been.

A. In 1938 I received a B.S. degree in Civil Engineering from V.M.I. I was employed first by the Southern Railway in September 1938 as a Student Apprentice in the Maintenance of Way Department. In 1939 I was promoted to Assistant Track Supervisor, and later Assistant Bridge Supervisor. In 1941 I was promoted to Track Supervisor, and from 1942 to 1946 I was in the Army with the American Expeditionary Forces, with the title of Division Engineer. I served in seven countries with the Expeditionary Forces as Division Engineer of the Railroad, which comprised rebuilding of structures. The main structure that I worked on was the Mannheim Yard, which at that time was one of the most modern yards in the world.

page 331] I returned in 1946 as Supervisor of Track, at my old job, and was promoted to Assistant Trainmaster in 1947; Trainmaster in 1948 in the Transportation Division; Superintendent in 1951, and transferred to the Third Division, at which I have been Superintendent of the Richmond Division since 1958.

Q. Describe briefly what the responsibility of the Superintendent of the Richmond Division involves.

A. The Superintendent of the Richmond Division involves direct responsibility for the employees of the Division and for the operation of the trains and the maintenance of the equipment and properties, as well as the responsibility for all of the land and right-of-way and properties of the Division.

Q. Mr. Beard, does the Division keep any records of the lengths of trains on the Richmond Division?

A. Yes, sir.

Q. Where are those records kept?

A. They are kept in my office, sir.

Q. What is the nature of those records?

A. They show the trains that operate each day on the Division.

Q. What do you call the documents that record that information?

page 332] A. It is called a trainsheet, prepared by the dispatcher.

Q. At my request have you caused schedules to be prepared showing the length of the various trains in and out of Richmond by cars, from July 1959 through the first six months of 1962?

James G. Beard

A. Yes, sir.

Q. I hand you what appears to be a twenty-four page set of schedules and ask if you can identify that?

A. Yes, sir. This was prepared in my office under my supervision, and these are records obtained from the trainsheets, showing the trains that were operated on the Division daily and by month and by year.

Q. What trains, by number, do they include, Mr. Beard?

A. The sheet has Train No. 57, Train No. 61, No. 62, No. 56, No. 22 and No. 21.

Q. I believe there is an entry for each day during the period covered. Is that correct?

A. There is an entry for each day that the train operated.

Q. What does the number opposite that date for each train indicate?

A. The number shows the number of cars
page 333] arriving or departing Richmond on each day.

Q. Does that include empties as well as full cars?

A. Yes, sir.

Mr. Pasco: Your Honor please, I offer this twenty-four page schedule as Plaintiff's Exhibit No. 23.

Note: So marked and filed.

Q. Mr. Beard, at my request have you studied these exhibits so that you can attempt to summarize them in some meaningful form for the court?

A. Yes, sir, I have, sir.

Q. Will you state what you have concluded from your studies of this exhibit with respect to trains — but first let me ask you, which are the longest trains of the number you listed?

A. Through Trains Nos. 57 and 56, which operate daily between Richmond and Danville, and Danville and Richmond.

Q. They are regularly longer than the other trains to which you just referred?

A. Yes, sir.

Q. Tell us what you have found from a study of those statistics with respect to Trains Nos. 56 and 57.

James G. Beard

page 334] A. During the year 1959 I compiled these statistics for July through December. There is nothing significant, Your Honor, sir, about the time I started compiling this data because the records in my office include a good many years before 1959. However, I did start at this time — July of 1959 — in order to compile statistics during the time we bought the property and started construction. I have listed only Trains 56 and 57 and the number of trains, meaning the numerical days that these trains operated, from July to December, which was one hundred and eighty-one days.

Q. That is in 1959?

A. 1959, yes, sir. The average number of cars on Train 56 operating one hundred and eighty-one days was sixty-five cars.

The average number of cars on Train 57 operating from Richmond to Danville during those one hundred and eighty-one days was fifty-five cars.

The number of trains with eighty cars or more, of the one hundred and eighty-one trains, Train No. 56, we had forty-two such trains.

Q. (By the court) Averaging how many?

A. Over eighty cars — eighty cars or more.

On Train No. 57, the days it averaged more than eighty cars departing Richmond was eighteen.

page 335] The number of trains with one hundred cars or more, Train No. 56, were three.

The number of trains with one hundred cars or more, Train No. 57, was one.

That concludes 1959 of my statistics.

In 1960, same information as listed above — the number of trains operated are listed as Train No. 56, we operated during the year 1960, three hundred sixty-one trains, and three hundred and sixty trains on Train No. 57.

The average number of cars on Train No. 56 for the entire year 1960 was sixty-seven.

The average number of cars for Train No. 57 during the year 1960 was sixty.

The number of trains with eighty cars or more during the year 1960, on Train No. 56, one hundred and three.

Number of trains with eighty cars or more during the year 1960, Train No. 57, fifty.

Number of trains with one hundred cars or more during the year 1960, Train No. 56, twelve.

James G. Beard

Number of trains with one hundred cars or more during the year 1960, Train No. 57, one.

That concludes the year 1960.

During the year 1961, we operated three hundred and sixty
Trains No. 56 and three hundred and sixty Trains
page 336] No. 57.

Average number of cars on each of these trains
— Train No. 56, sixty-one. Average number of cars for Train
No. 57, fifty-four.

Number of trains with eighty cars or more, Train No. 56,
during the year 1961, fifty-eight.

Number of trains with eighty cars or more, Train No.
57, during the year 1961, twenty-six.

Number of trains with one hundred cars or more, Train
No. 56, during the year 1961, six.

Number of trains with one hundred cars or more, Train
No. 57, during the year 1961, none.

That concludes the year 1961.

For the year of 1962, from January to June, the next group
of figures. Number of trains, Train No. 56, one hundred and
eighty-one.

Number of trains, Train No. 57, January to June 1962, one
hundred and eighty-one.

Average number of cars for this period, including one
hundred and eighty-one trains for Train No. 56, fifty-seven.

Average number of cars from January to June 1962, in-
cluding one hundred and eighty-one trains, for Train No. 57,
fifty-nine.

page 337] Number of trains with eighty cars or more,
Train No. 56, January to June 1962, thirteen.

Number of trains with eighty cars or more, Train No. 57,
January to June 1962, twenty-three.

Number of trains with one hundred cars or more, Train
No. 56, January to June 1962, none.

Number of trains with one hundred cars or more, Train
No. 57, January to June 1962, six.

That concludes my recapitulation, sir.

Q. (By Mr. Pasco) Mr. Beard, at my request have you
prepared from Exhibit No. 23 a summary showing the number
of cars in each of the six trains, local and through, by months
during the period July 1959 to June 1962?

A. Yes, sir, I have, sir.

Q. I hand you such a document which appears to be that
summary and ask if you can identify it.

James G. Beard

A. Yes, sir. This is, sir, the exhibit showing the number of cars on Trains Nos. 56 and 57, Nos. 61 and 62, and Nos. 21 and 22, each month for the period July 1959 through June of 1962.

Q. I notice in the first column before the train numbers the word "Ex." and some train numbers below that. Explain that please.

A. That means the extra trains operated and page 338] also the number of cars these extras had, either departing or arriving at Richmond.

Mr. Pasco: We offer that as the next exhibit.

Note: Tabulation summary marked Plaintiff's Exhibit No. 24 and filed.

Q. Mr. Beard, you heard Mr. MacLeod's testimony yesterday, did you not?

A. Yes, sir.

Q. I call your attention to his testimony about the delays experienced by the Southern Railway in Richmond in switching and delivering cars.

A. Yes, sir.

Q. Can you tell us, if you know, economically what effects these delays have on the operation of the Richmond Division?

A. Yes, sir. Your Honor, sir, we have these delays which cause additional waste of time as well as cause overtime to be made by our crews working in Richmond, which is a waste.

Q. How frequently do you have to pay overtime, Mr. Beard?

A. Your Honor, sir, it is about every day we page 339] have to pay overtime.

Q. Mr. Beard, have you prepared or had prepared under your supervision a table showing the number of hours and the cost of overtime worked by employees of the Southern Railway Company in Richmond for the years 1958 through 1962?

A. Yes, sir, I have.

Q. Can you tell us whether or not these figures represent overtime for your operating personnel exclusively?

A. Yes, sir, these figures do represent overtime paid our switching crews that work in the Richmond yards.

Q. I hand you what appears to be such a schedule and ask if you can identify it. If so, tell the court generally what it purports to show without going into the figures.

A. Your Honor, sir, this shows the number of hours and

James G. Beard

cost of overtime of employees of the Southern Railway Company in Richmond for the years 1958 through June of 1962, sir.

Q. Can you tell us from this exhibit, Mr. Beard, for the record, for each of the years in question the monthly average and the total number of hours worked and the cost of the amount of overtime paid in dollars?

Mr. Eichner: We object to the admission of this exhibit as not relevant.

page 340] The Court: Mr. Eichner, wouldn't that be one of the elements? If I understand the testimony correctly, the railroad contends that the failure to have what they consider to be adequate yard facilities results in additional operating expense in the form of overtime necessary to pay the switchmen to take care of the problem. Wouldn't that be one of the elements?

Mr. Eichner: No, sir, I don't think cost to the property owner, unless it is very, very extreme, is a proper element in determining the constitutionality of a zoning ordinance.

The Court: When we come to the element of reasonableness. I think this would be proper. The objection is overruled.

Mr. Eichner: We respectfully except.

Mr. Spain: We except also, for the same reason.

Note: Schedule of number of hours and cost of overtime worked, marked Plaintiff's Exhibit No. 25 and filed.

page 341] Q. (By Mr. Pasco) I will ask if you will state for the record the total number of hours average per month in each year, and the total for the year, with the dollar amounts involved.

A. Your Honor, sir, the monthly average for 1958, sir, was 180.02 hours, \$710.42.

Monthly average for the year 1959, 159.83 hours, \$652.50.

Monthly average for the year 1960, 276.83 hours, monthly, \$1,130.25.

Monthly average for the year 1961, 211.67 hours, \$895.25.

Monthly average for the first six months of 1962, 246 hours, \$909.17.

That is the monthly average for the six months of 1962.

Q. What are the annual totals for these periods?

A. Annual totals for the year 1958, total hours 1,980; amount, \$7,814.61.

James G. Beard

For the year 1959, total hours 1,918; amount, \$7,830.00.

For the year 1960, total hours, 3,322; amount, \$13,563.00.

For the year 1961, total hours, 2,540; amount
page 342] \$10,743.00.

For the six months in 1962, total hours, 1,476;
amount, \$5,455.00.

Q. Thank you, Mr. Beard. I direct your attention now to Plaintiff's Exhibit No. 23 which shows the number of cars by days. Tell us whether this exhibit includes all cars handled by the Southern Railway through its yard in South Richmond?

A. It does not, sir.

Q. Which ones does it not include?

A. These statistics do not include the cars that we handled on switching order from A. C. L. and R. F. & P. to industries on our line and then handled the same cars back to those railroads without getting a line haul on either the empty or the load.

Q. Why didn't you include these cars on your Exhibit No. 23?

A. Because we didn't receive a line haul and they neither went out nor came into Richmond on our through trains. These cars are not covered by waybill and they are not taken into account.

Q. Have you got any statistics showing the number of cars of this type handled by the Southern in the yards in South Richmond in recent years?

page 343] A. I have, sir.

Q. What years do your figures cover?

A. My figures cover the years 1958, 1959, 1960, 1961 and January to June of 1962.

Q. Were these taken from records in your office and gotten under your supervision?

A. They were, sir.

Q. What is the nature of those records?

A. They are called switching order records and they are held on file for as long as three years, and it is from these records we bill the railroad that sends these cars to us for the service of switching these cars, as well as the per diem reclaim on these cars.

Q. How many of these cars did the Southern handle in these years?

A. In 1958 we handled two thousand seven hundred and seventy-six of these cars. In 1959, we handled two thousand one hundred and twenty-four of these cars.

James G. Beard

Q. 1960?

A. In 1960 we handled two thousand five hundred and one of these cars.

Q. And 1961?

A. We handled four thousand five hundred and twelve of these cars in 1961.

page 344] Q. For the first six months of 1962, how many?

A. First six months, 1962, we handled one thousand nine hundred and sixty-three such cars.

Q. Mr. Beard, how many customers does the Southern Railway serve on its yards from side tracks or team tracks in Richmond?

A. Eighty-one.

Q. Those are regular customers, are they?

A. Yes, sir.

Q. For the purpose of testifying in this case, have you examined the switching yard facilities of the other railroads in Richmond?

A. I have, sir.

Mr. Pasco: Your Honor please, before examining Mr. Beard on this line of questions, I would like to submit Plaintiff's Exhibit No. 26, map prepared by the State of Virginia, Division of Mineral Resources, showing the downtown Richmond area, for the purpose of showing the relation of installations in Richmond and the city streets.

Note: Map marked Plaintiff's Exhibit No. 26 and filed.

page 345] The Exhibit was placed on the board.

Q. From your personal knowledge, will you describe briefly the switching facilities of the R. F. & P. Railroad in Richmond?

A. The R. F. & P. Acca Yard is up in this area (indicating on map). The R. F. & P., the A. C. L. and the Seaboard operate in and out of Richmond. The C. & O. and Southern operate through Richmond. So the R. F. & P. yard extends down to Westwood Boulevard up to approximately Dumbarton Road — in that area. Two main lines extend through the R. F. & P. yard. On the east side of the main lines there are eighteen tracks which range from one hundred and sixty cars down to approximately ninety cars. On the west side of two main lines there are fourteen tracks that range from

James G. Beard

approximately one hundred and sixty to one hundred and seventy cars down to ninety cars in capacity.

There are in addition twenty shorter tracks which are used for yard facilities — servicing facilities.

Mr. Eichner: Excuse me. It is understood I object to this line of testimony on the same grounds stated yesterday, on the lack of similarity between the requirements of these railroads?

page 346] The Court: It is understood your objection goes to this whole line of questioning.

A. (Continuing) There are two long tracks which parallel the main line for approximately one mile beyond Dumbarton Road, which makes four tracks at this point, including the two main lines.

The R. F. & P. handles approximately twenty-two hundred cars at this yard per day, and the R. F. & P. works twelve switch engines five days per week, and the other two days from eight to ten engines. The engines I am speaking of are the crew of five men for an eight-hour period for each of those engines mentioned.

Q. (By Mr. Pasco) Now will you describe the A. C. L. facilities from your personal knowledge?

A. Yes, sir. The A. C. L. operates into and out of Acca Yard up here (indicating on map). They have physical connections with the main line — southbound is the only direction they operate out of Richmond — at Clopton and at Meadow. Clopton is in the vicinity of DuPont, and Meadow is in the vicinity where Highway No. 60 crosses the A. C. L. main tracks. The principal yard of A. C. L. is just above our yard on the river.

Q. By “our yard” — you mean —?

page 347] A. Our Belle Isle yard — above us on the opposite side from the river, at Semmes and Cowardin.

This yard of A. C. L. consists of fourteen tracks ranging from a capacity of sixty-seven car lengths down to eight car lengths. This track also has a long switching lead which extends up to Hull Street with a capacity of approximately one hundred and twenty cars. The principal switching of A. C. L. is done at this yard, and the main line trains set off and pick up principally at Clopton. There is a double switching track that extends most of the way between the yard at Semmes

James G. Beard

and Cowardin and Clopton, and industries are located on both sides of this double switching lead.

The A. C. L. works five switch engines per day and reduces the number on the sixth and seventh day to as few as four.

A. C. L. handles approximately six hundred and fifty cars per day at their Semmes and Cowardin yard.

Q. Now will you refer to the Seaboard Air Line Railroad switching facilities?

A. Yes, sir. Your Honor, sir, the Seaboard Air Line Railroad operates in and out of Hermitage Yard which connects with the R. F. & P. near Westwood Avenue and extends down to the vicinity of North Boulevard. This is called Hermitage Yard (indicating on map). The yard consists of
page 348] two main tracks and approximately twenty tracks ranging from eighty to sixty car capacity in length. The shop facilities and other facilities have additional short tracks at Hermitage. Switching leads extend from Hermitage down to either Brown Street or it is in the vicinity of Medical College of Virginia, just north of Main Street. This yard consists of thirteen tracks on the west side, ranging in capacity from sixty-five to forty-five car lengths, and on the east side are the interchange tracks, three in number, that the Seaboard interchanges with the C. & O. Railway. These tracks hold approximately one hundred and fifty cars combined.

A double track extends to the river on the Seaboard Air Line and across the river there are two long switching leads which parallel their main track all the way down to the vicinity of Ninth Street Road, which is approximately two miles. The industries are worked off of these long switching leads.

The Seaboard Air Line works eleven switch engines in Richmond and reduces their number on the sixth and seventh day down to as few as eight. The Seaboard Air Line handles approximately twelve hundred cars per day in their Hermitage and Broad Street yards and vicinity.

Q. Will you locate for us the C. & O. yards and tell us what you know of them from your personal knowledge?
page 349] A. The principal yard of the C. & O. is a flat switching yard at Fulton. The C. & O. has the largest yard perhaps in Richmond. It is a fine railroad. They operate coal trains in from the west and empties back to the west — trains up to two hundred and twenty cars in length. Most of these trains are handled from one of the main tracks.

James G. Beard

They are double tracks through the yard, and also they have CTC operation east out of Richmond. These trains are operated from one of two main lines. On each side of the two main lines, they have three on one side and four on the other side, there are tracks with a capacity of one hundred and eighty to one hundred and ninety cars each. They have twenty-three additional tracks with a capacity from ninety to sixty cars each, and they have approximately eighteen additional tracks for the shop and service area.

The C. & O. operates fifteen switch engines at Fulton five days per week, and reduces on weekends down to as low as eleven. The C. & O. handles approximately two thousand cars per day at Fulton Yard.

In addition to the Fulton Yard, the C. & O. has another yard adjacent to the Seaboard Broad Street Yard which comprises the interchange and some servicing area. The capacity of the tracks in that area is approximately four hundred cars, total capacity.

page 350] In addition, the C. & O. has a yard on the opposite side of Lee Bridge from Belle Isle Yard which is known as Second Street Yard. This yard is a stub-end yard and is used principally for interchange with the A. C. L. and for city switching.

Q. Do you happen to know how many industries the R. F. & P. serves in Richmond by siding and team tracks?

A. Yes, sir. I have counted them. It is one hundred and forty-nine.

Q. How about the C. & O.? How many does it serve?

A. Eighty-seven.

Q. The Coast Line?

A. Thirty-nine.

Q. And the Seaboard?

A. One hundred and three.

Q. Mr. Beard, Mr. Spain put in yesterday certified copy of deed showing acquisition by the Southern east of Reedy Creek. Can you tell us when the Southern acquired the property west of Reedy Creek that is the subject of this litigation?

A. Yes, sir, I can.

Q. What was the date?

A. Your Honor, sir, the date was October 5,

James G. Beard

page 351 } 1917, when we acquired 7.4 acres. We purchased it from a party by the name of Smithdeal.

Q. When did the grading and filling start on this property that is involved in this case?

A. The grading and filling started, sir, on July 6, 1960.

Q. Who did that work?

A. Columbus Construction Company, a Georgia construction company which was the low bidder.

Q. Did you have any part in letting the contract?

A. No, sir, I did not.

Q. Where was the contract let?

A. The contract was let through the General Manager, John A. Rust, and his staff, located at Charlotte.

Q. When did it first come to your attention there was any objection on the part of the residents of the area or the city to the work the Southern was doing?

A. Your Honor, sir, it was sometime in October, after the work had been in progress since July, that it came to my attention by articles in the paper, and I received a letter from the City Building Inspector asking me what work we were doing over there.

Q. Do you recall any meetings with city representatives about that time?

A. Yes, sir.

Q. What meetings do you recall?

A. On October 31 I was present at a meeting with our legal associates with representatives from the City Manager's office.

Q. And what was the result of this meeting, if you recall?

A. The City Manager's representatives who were present stated that we could continue filling and grading but we could not build any tracks or structure before giving them the information what we were going to do and getting their sanction.

Q. Did you agree to that?

A. We did.

Q. What course did the matter take following that meeting, Mr. Beard?

A. Well, the next thing of any significance was at the City Council meeting where citizens were given an hour which was set aside at the Council meeting for people to make complaints, and to be heard by our city government. It was during this hour that the people protesting our construction over in that area had about four or five hundred in number gathered there

James G. Beard

and they had a spokesman and he utilized some
 page 353] time in telling the objections to our construction,
 and many other things that were going on over
 in the South Side which these people present were protesting,
 and after his presentation some Councilman —

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page 355]

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Q. Were you present at the subsequent meeting of Council in December?

A. Yes, sir, I was present.

Q. Do you recall the date?

A. December 12. I was present at the next Council meeting when an ordinance was passed by the Council of the City of Richmond which prohibited us under the zoning ordinance to build any facilities on the property in question.

Mr. Eichner: I move that answer be stricken out as a legal conclusion on the part of the witness.

The Court: Your objection goes to the language that the ordinance “prevented us from doing certain things?”

Mr. Eichner: Yes, sir — it is an interpretation of the ordinance.

Mr. Gay: Certainly, Your Honor, the ordinance is the best evidence of the precise phraseology Council employed. This is a lay witness interpreting what
 page 356] the effect of that ordinance was on him and his activities.

The Court: This is his understanding of the ordinance.

Mr. Eichner: We submit it is a legal conclusion and we do not agree with it.

The Court: The court will not be governed by that legal conclusion, if it is one.

Mr. Eichner: We note an exception.

The Court: Go ahead.

Mr. Pasco: I have no further questions at this time.

CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. Beard, at the Council meeting on November 14, did

James G. Beard

you explain to the Council what was proposed to be constructed on the Riverside Drive property?

Mr. Gay: I want to have the record clearly show page 357] that counsel cannot have their cake and eat it too.

They cannot except to the court's ruling as to the inadmissibility of evidence and then attempt to cross examine the witness about it.

Mr. Eichner: I am asking the witness what he said, not what somebody else said.

The Court: You are not going into any evidence relating to motive?

Mr. Eichner: Certainly not, Your Honor.

Q. (By Mr. Eichner) At that November 14 meeting did you explain to Council what Southern Railway proposed?

A. I did not, sir.

Q. Did anyone?

A. No, sir.

Q. At the meeting on December 12, 1960, did you explain to Council what the Southern Railway proposed to build?

A. I did not.

Q. Did anyone?

A. I don't recall.

Q. What were the plans at that time? What kind of facility was to be constructed on the property in question?

A. All the plans I saw were preliminary plans. page 358] I didn't see any final plans. This matter was handled through our General Manager's office and many days I didn't see any of his representatives in Richmond. My responsibility was not in connection with the yard construction.

Q. But you did see the preliminary plans?

A. I did see some preliminary plans, sir.

Q. What did they show?

A. There again, Your Honor, sir, I don't know exactly all the details that were in those plans. They are in some files which I am sure could be obtained, but I am just not the authority to answer him as intelligently as to the plans that were made in Charlotte and executed from the Charlotte office.

Q. When were the first of those preliminary plans known to you?

A. Your Honor, sir, I cannot recall the date as to the first preliminary plans of the yard I saw, but I think it was some-

James G. Beard

time in the neighborhood of about the time they started in July 1960.

Q. About how many tracks do you recall these preliminary plans showed the Railway planned to build on the Riverside Drive property?

A. Your Honor, I saw more than one preliminary plan. page 359]

Q. Describe what you remember as to the number of tracks on each of these preliminary plans?

A. Your Honor, sir, I saw a plan with eleven tracks on it. I also saw a plan with four tracks on it.

Q. Would you say this was during the first half of 1960?

A. Your Honor, I revert back — the first plan I saw was around July of 1960.

Q. Just about the time the contract was let for the grading and filling — is that correct?

A. Your Honor, sir, as far as I remember that's the only two plans I saw — the two plans I have mentioned.

Q. Do you recall if those plans for eleven tracks and four tracks were made public?

A. Your Honor, sir, I don't have those plans he is speaking about in my file. I didn't have them. I just saw them.

Q. But do you know whether or not they were made public?

Mr. Gay: What do you mean by "making public" may I ask?

Mr. Eichner: Revealed to the press or to city officials.

Mr. Gay: I submit what the company may have revealed to the press would not be relevant here. What they have shown or not shown to city officials might be. page 360]

The Court: Suppose you limit it to any city officials, or any members of Council.

Q. (By Mr. Eichner) Were either of the preliminary plans for eleven tracks or four tracks shown to city officials during 1960?

A. I did not, Your Honor, sir, show any plans to any city officials.

Q. These plans also provided, did they not, for moving the yard office out on the Riverside Drive property?

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A. Your Honor, sir, one of them did and one of them did not.

James G. Beard

Q. (By Mr. Eichner) You referred to some files, Mr. Beard, where these plans are kept. Are these files here, or in Charlotte, or in Washington, or where?

A. Your Honor, I don't know exactly where are the files that contain everything that has been asked me.
page 361] I know what is in my files. As to these others, I know they will probably be either in Charlotte or in Washington.

Q. Your file does not contain these preliminary plans?

A. They do not.

Q. Does it contain a final plan?

A. Your Honor, sir, my files do not.

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page 362]

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Q. (By Mr. Eichner) When you referred to eleven tracks and four tracks, do you mean tracks approximately parallel to the existing two tracks on the right-of-way between Twenty-Sixth and Forty-Second Street on Riverside Drive on the property in question?

A. I did.

Q. I will hand you a newspaper advertisement and ask you if you have seen that? Do you recall seeing that in the Richmond Times-Dispatch on November 20, 1960, or in the Richmond News Leader on November 19, 1960?

A. I recall it, yes, sir.

Mr. Eichner: I offer that as City Exhibit J.

page 363] Note: So marked and filed.

Q. (By Mr. Eichner) I hand you similar advertisement from the Richmond News Leader. Do you also recall that?

A. Yes, sir.

Mr. Eichner: I offer that as City Exhibit K.

Note: So marked and filed.

Q. (By Mr. Eichner) Mr. Beard, will you look at those two

James G. Beard

exhibits? Do you agree that they are identical?

A. They seem to be.

Q. Would you be kind enough to read one of them, Mr. Beard?

A. (Reading)

“STATEMENT OF SOUTHERN RAILWAY CO.
to
THE CITIZENS OF SOUTH RICHMOND LIVING
BETWEEN 26TH AND 42ND STREETS NEAR RIVER-
SIDE DRIVE

“The purpose of this statement is to correct many erroneous statements made in your behalf before the City Council on November 14, 1960, as well as page 364] those which have been currently circulated in the community with respect to the effect of Southern’s plans to increase its facilities along the south bank of the James River, and to relieve your unjustified apprehensions concerning the value and enjoyment of your property.

THE SOUTHERN RAILWAY COMPANY:

“1. Does not propose to build any marshalling or classification yards, any buildings or sheds of any kind, or any shops, towers or roundhouses in your neighborhood.

“2. Does propose to construct in your neighborhood only two tracks which will be parallel to the present tracks and as near to them as possible. These tracks will not be used for switching of cars, but solely for the temporary stopping of in-coming and out-going trains so as not to block the main line or the classification tracks in the Company’s yard to the east of the Lee Bridge.

“3. Is clearing and filling considerably more of its property than is to be occupied by its proposed new tracks. This will have the effect of eliminating the swampy con- page 365] dition of this area which had become a “hobo jungle” and could not be properly policed.

“4. Assures you that the two additional tracks will add no noise or disturbance to the neighborhood and will actually reduce the number of movements in that neighborhood because the longer tracks will eliminate some intermediate movement and cutting of cars which are now necessary to keep the main line track open.

James G. Beard

“5. Believes that the two proposed auxiliary tracks are essential to the Company’s continuing to provide the essential freight service required by the businesses of the City of Richmond.

“YOUR HOMES WILL NOT BE DISTURBED AND YOUR PROPERTY WILL NOT BE DEPRECIATED BY THE EXTENSION OF THE TWO TRACKS ALONG THE COMPANY’S PRESENT RIGHT-OF-WAY.

JOHN A. RUST
General Manager
Southern Railway Company”

Q. That is the Mr. Rust whom you previously referred to — the General Manager of the Eastern Line. Is that correct?

page 366] A. He is.

Q. Now, those paragraphs you have just read do not correctly state the intentions of Southern Railway at that time, do they?

A. Your Honor, I do not know.

Q. Was General Manager Rust in Richmond supervising the yard project on Riverside Drive?

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page 368]

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Q. (By Mr. Eichner) Mr. Rust, of course, is your immediate superior, is he not?

A. Yes, sir, he is General Supervisor.

page 369] Q. Is the Chief Engineer for the Eastern Line under Mr. Rust’s office?

A. Yes it is.

Q. What engineer from what office was in direct charge of the design of the Riverside Drive yard?

A. Your Honor, sir, I don’t have personal knowledge or know that there has been a plan prepared in its final stages for the Riverside Drive property. As far as I know there has never been a final plan for the Riverside Drive property.

Q. Of your own personal knowledge, what man from the

James G. Beard

Engineering Department of the Charlotte office, Eastern Line, was in Richmond in connection with this project?

A. There has been at least five — four to five different men out of the Charlotte office, to my knowledge, that have come to Richmond to see what could be worked out in the way of alleviating this condition we have here in Richmond.

Q. You referred, I believe, to a meeting you had with the City Manager's office in 1960, on October 31. Do you recall that? You testified to being present on that date, did you not?

A. Yes, sir.

Q. Was Mr. Kidd, Assistant Chief Engineer, page 370] with you at that time?

A. Your Honor, sir, I am not positive he was with me but I believe he was with me.

Q. Is Mr. Kidd here today?

A. I have seen Mr. Kidd this morning. I don't know whether he is here now or not.

Q. Going back to preliminaries, if you don't mind, you became Superintendent of the Richmond Division, I believe you stated, in 1958. Were you in the Richmond Division prior to that? I don't remember what you said.

A. Your Honor, I was not.

Q. What Division were you in at that time?

A. Birmingham, Alabama.

Q. In connection with the grading and filling contract to which you have just testified, Mr. Beard, did you observe any of that work going on on the property near Riverside Drive?

A. Your Honor, sir, I didn't make periodic inspections over there. I maybe went over there an average of once a week, but not from the standpoint of inspection, but from the standpoint of operating the railroad. I was responsible for operating the railroad, but I had no responsibility for the area in question.

Q. When we were on the view two days ago I page 371] believe you pointed out Reedy Creek and a sewer line running under the eighty-foot right-of-way, did you not?

A. Your Honor, I did.

Q. The contract to which you have referred included moving the sewer and changing the bed of the creek, did it not?

Mr. Gay: Your Honor please, if we are going into what I imagine counsel is laying the foundation for going into —

James G. Beard

testimony having to do with the matters set up in their cross bill in respect to which Your Honor sustained our demurrer — I submit the line of examination is improper.

The Court: It certainly would not be proper if that is the purpose of its introduction — if the purpose is to go into the question involving trespass.

Mr. Eichner: The purpose is to go into that insofar as it is set up in the answer, not the cross bill. In the answer we have alleged there was a high degree of secrecy about this project and that included trespass on the city land, unauthorized moving of the creek bed on city property, page 372] the removal and reconstruction of the city sewer, with no notice whatsoever to the city. All this is alleged in the answer, setting up what is in effect a clean hands defense to this suit, and we believe it is part of this whole case.

The Court: Aside from the clean hands doctrine, assuming that secrecy was exercised and everything you say was true, would that have any bearing on the validity of the ordinance?

Mr. Eichner: It would have bearing on the right of plaintiff to seek equity relief, which is the only way to get at the validity of the ordinance.

The Court: All right. I will permit you to pursue that line of examination.

Mr. Gay: We note an exception, respectfully.

The Court: This is not in regard to any relief sought in the cross bill?

Mr. Eichner: No, sir, that is understood. I will have to ask Mrs. Pole to read the question.

page 373] Note: The last question was read by the reporter.

A. It is my understanding, from observing on the right-of-way, that the flow of the stream was improved by making it more direct, and also I know from smelling that area, they had an open sewer there, and our people did put in some pipe to close a condition that existed there which was pretty rough. I know that, but the details of it were not handled through me at all. It was handled by the City Works Department and our Engineering Department.

Q. You say it was handled through the City Works Department?

A. As far as I know.

James G. Beard

Q. Who told you that?

A. Your Honor, sir, at the meeting around October 31, I was present when the City Works Department asked one of our engineers to submit a print showing what we did there and said that such a print would be all that they would want — just to know exactly what we had done, and immediately we said we would do it, and that's all I know about it.

Q. That was with reference to what had already been done prior to October 31. Is that not correct?

A. That is correct.

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page 374]

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Q. (By Mr. Eichner) I hand you a group of photographs, Nos. 1 through 15, and ask if any one of these you can recognize as showing the area where the sewer or
page 375] Reedy Creek work was being done and, if so, will you state the numbers of the ones you can so identify?

The Court: Mr. Eichner, I take it you have some further cross examination.

Mr. Eichner: Yes, sir.

The Court: Suppose we take a brief recess at this time and the witness can look over the photographs.

Note: Brief recess.

By Mr. Eichner:

Q. Mr. Beard, have you recognized any of those photographs?

A. Yes, I recognize the location where these photographs were taken.

Q. Which of those photographs show the sewer and creek work to which I have referred?

A. Your Honor, this shows the location where work was going on at the sewer pipe.

The Court: In the Reedy Creek area?

James G. Beard

Mr. Gay: Which ones do you mean?

page 376] A. The ones he referred to as showing the sewer.

Q. (By Mr. Eichner) You will find identifying numbers in the righthand corner.

A. No. 3, on the upper stream side, and No. 9. I don't recognize No. 14.

Q. (By the Court) Just No. 3 and No. 9 — just those two?

A. On the upstream side he is talking about.

Q. (By Mr. Eichner) How about on the down stream side?

A. There is No. 6 and No. 7 and No. 10 on the opposite side.

Q. When you say "downstream" and "upstream" you are referring to the flow of Reedy Creek?

A. I am.

Q. By "upstream" you mean to the south of the right-of-way of the Southern Railway, and by "downstream" you mean to the north of it — towards the James River?

A. Upstream is between Riverside Drive and the railroad; downstream is between the railroad and the river.

Mr. Eichner: I offer those photographs, Nos. 3, 9, 6, 7 and 10, collectively, as City Exhibit L, all of which
page 377] appear to be dated October 31, 1960.

Note: Marked City Exhibit No. L and filed.

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page 380]

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Q. (By Mr. Eichner) Now, Mr. Beard, going back to the exhibits which you have identified in your direct examination here, Plaintiff's Exhibit No. 23, I believe, was the one dealing with the number of cars by train and you restricted this entirely, as I understand it, to the Richmond-Danville trains, did you not?

A. Which exhibit are you speaking of?

page 381] Q. Exhibit 23.

A. May I see it?

Q. Yes. That relates only to Richmond-Danville trains, does it not?

A. Yes.

Q. The trains that run from Richmond to West Point and

James G. Beard

back are considerably shorter than those, are they not?

A. Generally they are shorter than No. 57 and No. 56.

Q. So if the West Point to Richmond run were included, the average number of cars shown would be substantially lower, would it not?

A. I do not know what he is referring to, sir.

Q. If you had compiled these figures, including all trains in and out of Richmond, rather than just those on the Richmond-Danville run, then your average number of cars per train would be substantially lower, would it not?

A. Your Honor, sir, I don't know what he is referring to when he mentions the average.

Q. All right. I will see if I can explain what I mean. You testified on direct examination, Mr. Beard, — let's look at the year 1961.

A. On Exhibit 23?

page 382] Q. You testified on direct —

The Court: Mr. Eichner, let me ask you — to save time — I understand he testified his longest trains were the Danville to Richmond trains, and he took those two as being the longest, and took his average from that, and he testified the other runs were in general shorter than those, so it seems to me perfectly obvious all of them would bring the average down.

Mr. Eichner: My recollection of his testimony is when he got to the average, Mr. Beard testified to Trains 56 and 57 which run from Richmond to Danville, and he came up for the year 1961, for example, average number of cars per train, sixty-one cars for Train 56, and fifty-four cars for Train 57.

Q. (By Mr. Eichner) Is that correct, Mr. Beard?

A. It is not Exhibit 23. I gave in addition to that an exhibit showing the length of Trains 57 and 56. I compiled the number of trains on No. 57 and the number of trains on No. 56 that were in excess of eighty cars, and page 383] then showed another number in excess of one hundred cars during each year, and they were the statistics I was giving — not on Exhibit 23 but separate from that.

Q. With your testimony, but not shown on an exhibit? Isn't that correct?

A. Right.

Q. Actually, if you took all the trains to West Point and to Danville, both of them, the average would be about forty-five cars, would it not?

James G. Beard

A. I don't know, Your Honor, sir. I didn't figure it, but I can if you wish.

Q. As far as the length of trains and need for yard facilities in Richmond concerning the West Point run, it doesn't require any longer tracks, does it?

A. Your Honor, sir, we have to run the yard for all the trains, not just one train. In addition to the West Point train we have trains going to Danville — we have Nos. 61, 62, 57 and 56. To say the tracks will take care of one train — we want tracks to take care of all our trains.

Q. For what reason did you select the average number of cars on the Richmond-Danville trains only and eliminate the number of cars on the West Point-Richmond line?

A. Your Honor, sir, I could do the same for the trains on the West Point line, the same as I did on the page 384] Danville line, and the figures are available in this exhibit.

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Q. (By Mr. Eichner) I will call your attention to Plaintiff's Exhibit 25 dealing with overtime. You have a monthly average of \$710.42 for the year 1958 for overtime work. How does that compare with — let us say — the year 1948?

A. Your Honor, sir, I have those statistics but I didn't compile them. I have them all for 1948.

Q. Do you have any recollection of them?
page 385] A. I was not here in 1948.

Q. Could you provide us with that information after lunch?

A. It would take me sometime. I say I have it but I might find to get the entire year it might take me sometime to get it.

The Court: Would it serve the purpose if he will produce and file that during the course of the trial?

Mr. Eichner: Yes, sir.

The Court: It may be that he cannot do it in the short time during the lunch recess.

Mr. Gay: I would certainly not want him to be committed to do that during the duration of the trial. This matter of going back and picking up records from thirteen years ago is a very laborious undertaking. If counsel thinks it is material, we will permit the witness to prepare them and file them in the case, but not during the course of the trial.

James G. Beard

Mr. Eichner: I will leave that up to counsel, whether they wish to do it or not.

The Court: Does defense counsel consider that page 386] an important part of the city's case? If so, I think you are entitled to request that it be filed, but I don't think we could put a time limit on it which they may consider unreasonable.

Mr. Eichner: Not particularly, Your Honor. I was wondering why these particular years were selected.

Mr. Gay: He is leaving an implication of why these years were selected. Ask the witness why he selected these years and do not leave the improper implication in the record we had an ulterior motive in their selection.

The Court: I think if counsel felt it was important, he could request and the court would order that the records be produced. If counsel does not consider it important, I don't think any implications can be drawn.

Mr. Eichner: I will ask him the question.

Q. (By Mr. Eichner) Why were these years selected, Mr. Beard?

A. These years were selected because they were in the period in question, during the time we started negotiations.

Q. Has the number of employees who are page 387] covered by the statistics shown in Plaintiff's Exhibit No. 25 increased or decreased between 1958 and 1961 or 1962?

A. We are working the same number of switch engines now that we did in 1958 and 1959.

Q. How about the number of men? How does that compare?

A. Your Honor, sir, there might be a few less men. However, I have those statistics if they are needed.

Q. With the smaller number of men, the tendency would be to have more overtime for those remaining, would it not?

A. Not necessarily.

Q. What is overtime, Mr. Beard? Anything over eight hours a day?

A. Your Honor, it is over eight hours for each train.

Q. And the reason there is overtime is because federal law restricts the work day to eight hours. Isn't that correct?

A. Your Honor, sir, I know nothing about such federal law.

Q. Does the Union agreement require an eight-hour day with overtime for excess of that?

James G. Beard

A. Your Honor, that is correct.

page 388] Q. Now in addition to the type of expenses that has been indicated here, what does it cost Southern Railway in Richmond to comply with the Federal Safety Appliance Act?

A. I don't have those figures, Your Honor.

Q. Isn't it considerably more than these overtime figures?

A. Your Honor, I don't have those statistics in Richmond.

Q. How about the Federal Power Brake Act? That's pretty expensive to comply with, is it not?

A. Your Honor, I don't have those statistics in Richmond.

Q. You don't know whether you spend more than \$895.00 a month in Richmond complying with those Acts?

A. Those figures are not compiled here in Richmond.

Q. You have referred to Southern Railway as now having eighty-one, I believe you said, industrial customers with sidings. Is that what you meant to indicate?

A. To what are you referring?

Q. You gave us some figures, Mr. Beard, for all five railroads, industrial customers, as I understood it, and I believe you said the Southern had eighty-one?

page 389] A. Yes, I did, sir.

Q. Those were the figures from ten or twenty years ago, were they not?

A. I don't know. I wasn't here ten or twenty years ago.

Q. What was the number when you came here in 1958?

A. Your Honor, the industries when I came here in 1958 are very little different than what they are here today.

Q. Just about eighty-one, would you say — approximately?

A. That is correct.

Q. Now, Mr. Beard, referring to the eighty-foot right-of-way which runs along Riverside Drive, you may remember I asked Mr. MacLeod yesterday how wide the right-of-way was just to the west of the Lee Bridge. You may recall his testimony there was room in there for a fourth track where you now have three. How wide is the right-of-way at that point, Mr. Beard?

A. Your Honor, I believe the question is between Lee Bridge and opposite Forty-Second Street. The right-of-way is eighty feet.

James G. Beard

Q. It is eighty feet right down to the mouth of the Belle Isle yard?

page 390] A. I don't know exactly where the line breaks to widen out to Belle Isle yard, but generally from Lee Bridge south to Forty-Second Street — opposite Forty-Second Street — it is eighty feet of right-of-way.

Q. How far to the west does that eighty feet of right-of-way run approximately?

A. It runs quite some distance. I don't have the maps before me but it is at least a mile or two.

Q. And then you have single track, of course, from here to Danville, do you not?

A. That is correct.

Q. And you have a narrower right-of-way, I take it, along that track?

A. I don't know what he means by "narrower" right-of-way, Your Honor, sir.

Q. About how wide is the right-of-way most of the distance between Richmond and Danville once you get out of the city?

A. Generally forty feet on each side — eighty feet of right-of-way.

Q. How long has the Southern had this eighty feet of right-of-way in the city limits of the City of Richmond to the best of your recollection?

A. To the best of my knowledge most of the
page 391] right-of-way was here when the line was originally constructed. Specifically, I cannot answer, but generally it was back before the Civil War.

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Q. (By Mr. Eichner) Mr. Beard, Exhibits 23
page 392] and 24 indicate the number of trains running and the number of cars on them for the periods in question. Did you have any scheduled trains cancelled or annulled in that period?

A. Could I have the exhibit back?

Q. Yes.

A. On this exhibit it shows the days the train is cancelled by a dash — a blank spot where the train is cancelled.

Q. Why are these trains cancelled?

A. Your Honor, Train 61-62 is a tri-weekly local. It doesn't operate every day. It operates on Mondays, Wednesdays and Fridays out of Richmond. That explains some of the blank

James G. Beard

marks on here. And then at various times deep snows, business on a line not loading at certain times, bad weather — we do cancel trains when we have nothing to haul on those days, or else we put it on another train, and during holidays, such as Christmas, the Fourth of July, and so forth, we reduce the number of trains operating.

Q. Getting back to the question I asked before — and we are now outside the scope of the direct examination — what is the weight of the rail between here and Danville?

A. The rail between here and Danville generally is 85 and 100-pound rail — about forty-five percent 100-pound rail and the remaining sixty-five percent is 85-pound rail.
page 393] In Richmond proper we have a mixture of rail.
Are you talking about the main line?

Q. That is correct.

A. We have some that weighs 155 pounds per yard. The rail we laid last year in Richmond was 155-pound per yard rail.

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page 394]

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Q. When were the tracks removed from the South Richmond yard?

A. The beginning of it was before my knowledge, Your Honor, sir.

Q. When did you know the tracks were being removed there?

A. Your Honor, sir, ever since I have been here we have been removing, periodically, tracks from that area, and the last we removed were removed from South Richmond yard this year — 1962.

page 395]

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Q. Now during the past four years while you have been Superintendent, Mr. Beard, you have had a number of reductions in service to patrons along the line between Richmond and Danville, and between Richmond and West Point.

James G. Beard

A. Your Honor, I don't know what he is referring to.

Q. Southern Railway has petitioned the State Corporation Commission on a number of occasions to discontinue service at certain locations or to change to a different type of service — a less costly type of service. Isn't that true?

A. Your Honor, I don't know what he is referring to now. If he will be specific I might be able to answer.

Q. Let me ask you specifically. I am going to page 396] hand you a number of papers from the State Corporation Commission and ask you if you are familiar with them. I hand you first copy of order dated June 26, 1962, which has to do with discontinuance of an agency station at Meherrin, Virginia. Are you familiar with that proceeding, sir?

A. Yes, sir.

Q. What is the purpose of discontinuing the agency station in a station like that?

A. Your Honor, business dried up to where the Public Service Commission granted us permission to discontinue open agency and now it is a prepaid station where patrons can use it as before on carload shipments, other than the fact the waybill will have to be prepaid at another station.

Q. I hand you several similar papers and ask you if they involve substantially the same situation?

A. Your Honor, these have relation to dismantling of the depot building at Meherrin. This was in 1951 which I have no knowledge of. This one was in 1954 which I have no knowledge of. This one is '53 — another one in '53 — one in '54 — one in '56.

This one in 1958, authority to discontinue agency station at Saxe. Business at Saxe had become of such proportions through our agency station we could do away with the agency station and handle it at another station.

page 397] In 1960, dismantling of station at Mattoax.

That was a building there and a side track and we asked for authority to discontinue the non-agency station at Mattoax, which is only about a mile and a half from Amelia station.

Here is one I don't know anything about.

Excuse me a minute. I will have to read this one. I wasn't Superintendent in 1957 when this application was made for authority to discontinue non-agency station at Mattoax. In 1960 this is authority to discontinue non-agency station at Mattoax and authority to dismantle building and remove side

James G. Beard

track from said station. Mattoax is only a mile and a half from Amelia and we asked for authority to do just that.

Q. Now, Mr. Beard, all of those stations you have referred to in looking through those papers are between Richmond and Danville, are they not?

A. Your Honor, they are, sir.

Mr. Eichner: I would like to offer as a single exhibit consisting of State Corporation Commission orders and one application as Defendant's Exhibit No. M. Does the court want me to read the order number into the record, or shall we let the reporter get them later?

page 398] Note: Off-the-record discussion.

Note: Group of State Corporation Commission orders and one application marked Defendant's Exhibit No. M and filed. The exhibit consists of fourteen separate documents which are identified as follows:

1. Order dated December 21, 1960, Case No. 15011, Application of Southern Railway Company for authority to discontinue non-agency station at Mattoax, Virginia, and dismantle and remove the side track at said station.

2. Order dated July 15, 1958, Case No. 13904, Application of Southern Railway Company for authority to discontinue agency station at Saxe, Virginia, and operate same in future as prepay station.

3. Order dated February 6, 1956, Case No. 12763, Application of Southern Railway Company for authority to discontinue agency station at Hallsboro, Virginia, dismantle and retire depot building and erect waiting booth.

4. Order dated September 16, 1954, Case No. 12306, Petition of Southern Railway Company to dis-
page 399] mantle and retire combination freight and passenger depot building at Bon Air, Virginia, and erect combination waiting booth and freight shed.

5. Order dated October 28, 1954, Case No. 12307, Petition of Southern Railway Company to dismantle and retire combination freight and passenger depot building at Randolph, Virginia, and erect combination waiting booth and freight shed.

6. Order dated October 28, 1954, Case No. 12308, Petition of Southern Railway Company to discontinue Pilkinton, Vir-

James G. Beard

ginia, as a station for less than carload freight and retire and remove freight wareroom.

7. Order dated October 16, 1953, Case No. 11738, Application of Southern Railway Company for authority to dismantle the public spur track at Clayville, Virginia.

8. Order dated February 8, 1954, Case No. 11927, Application of Southern Railway Company for authority to dismantle public spur track at Simplicity, Virginia.

9. Order dated February 27, 1953, Case No. page 400] 11413, Application of Southern Railway Company for authority to dismantle, remodel or construct new buildings at Covessville, Tye River, Pace, Sutherlin, Mattoax and Otter River, Virginia.

10. Order dated October 28, 1954, Case No. 12305, Petition of Southern Railway Company to dismantle and retire combination freight and passenger depot building at Midlothian, Virginia, and erect standard waiting booth.

11. Order dated September 5, 1951, Case No. 10598, Application of Southern Railway Company for authority to discontinue agency station at Midlothian, Virginia.

12. Order dated June 26, 1962, Case No. 15789, Application of Southern Railway Company for authority to discontinue agency station and dismantle depot building at Meherin, Virginia.

13. Application of Southern Railway Company for authority to discontinue the non-agency station at Mattoax, Amelia County, Virginia, and to dismantle and remove the side track at said station.

14. Order dated April 18, 1961, Case No. page 401] 15154, Application of Southern Railway Company for authority to discontinue the agency station at Scottsburg, Virginia, and thereafter maintain same as a prepay station for carload freight only, and to dismantle the depot building at said station.

Q. (By Mr. Eichner) I hand you some similar orders relating to points between Richmond and West Point. When you have had an opportunity to examine them, I would like to ask you if substantially the same condition prompted abandonment of those, to the extent you know about them.

A. There is one here at Meadow I am familiar with; and White House was tearing down the building and discontinu-

James G. Beard

ing the non-agency station; and the same for Allens, Virginia, that is, to discontinue the non-agency station. We wanted authority to discontinue that.

Mr. Eichner: I offer these State Corporation Commission orders concerning points between Richmond and West Point collectively as Defendant's Exhibit No. N.

page 402 } Note: Group of State Corporation Commission orders and petitions marked Defendant's Exhibit No. N and filed. The exhibit consists of seven separate documents which are identified as follows:

1. Order dated September 8, 1955, Case No. 12675, Petition of Southern Railway Company for authority to discontinue agency station at Lester Manor, Virginia, and remove present depot facilities and erect in lieu thereof a freight shed at said station.

2. Petition of Southern Railway Company for authority to discontinue the agency station at Lester Manor, King William County, Virginia, and to remove the present depot facilities and erect in lieu thereof a freight shed at said station.

3. Order dated September 18, 1957, Case No. 13554, Application of Southern Railway Company for authority to discontinue agency station at Quinton, Virginia, and to remove present combination depot building and erect in lieu thereof a freight shed at Quinton, Virginia.

page 403 } 4. Order dated November 5, 1958, Case No. 14004, Application of Southern Railway Company for authority to discontinue non-agency station at White House, Virginia, and dismantle and remove side track at said station.

5. Order dated November 5, 1958, Case No. 14005, Application of Southern Railway Company for authority to discontinue non-agency station at Meadow, Virginia, and dismantle and remove side track at said station.

6. Petition of Southern Railway Company for authority to discontinue the non-agency station at Meadow, Henrico County, Virginia, and dismantle and remove the side track at said station.

7. Order dated November 5, 1958, Case No. 14006. Application of Southern Railway Company for authority to discontinue non-agency station at Allens, Virginia, and dis-

James G. Beard

mantle and remove side track at said station.

Q. (By Mr. Eichner) Would you not say, sir, that these State Corporation Commission proceedings in-
page 404 } dicate a steady decline in demand for Southern
Railway's services at the point indicated in those
orders?

A. Your Honor, that is not exactly true, other than the fact that in a lot of cases we have good highways, improvements to the highways, making our existing agency station nearer and more convenient than the stations we abandoned, and also no doubt the business has shifted away from these agency stations to some degree; otherwise, the Public Service Commission would not grant permission to discontinue it.

Q. One further question, Mr. Beard. In reference to the property in question owned by the Railway between Forty-Second and Twenty-Sixth Streets, did the City of Richmond ever offer to buy that from Southern Railway?

A. Your Honor, sir, I haven't seen a written request from the city to buy that piece of property.

Q. I hand you, sir, a letter dated February 7, 1961, and attached to it a thermofax copy of letter dated January 24, 1961, and ask you if the February 7 letter is yours? Is that your letter, sir?

A. Yes it is.

Q. Do you recognize the attached copy as a letter which you were replying to?

A. I will have to check my files. I just don't remember these letters, but evidently that's my signature.

page 405 } Mr. Eichner: I offer these two letters as De-
fendant's Exhibit No. O.

Note: So marked and filed.

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page 408 }

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Q. (By Mr. Eichner) Read the letter to you, Mr. Beard.

A. (Reading)

"Our City Council has authorized the acquisition of certain

James G. Beard

railroad property for the establishment of a public park and park facilities on the southern bank of the James River in the vicinity of Reedy Creek. This property is shown outlined in red and green on DPW drawing #0-14507.
page 409] “Our office is authorized to negotiate for the purchase of this property. I understand from my conversation today with you and Mr. Pasco that the railroad does not wish to sell this property. If this is the case, I would appreciate a written confirmation from you.”

Q. Who was that from?

A. That was signed by Mr. S. S. Richardson, Assistant City Real Estate Agent.

Q. And your reply?

A. My reply was addressed to Mr. Richardson. (Reading)

“This letter is in reply to your letter of January 24, 1961 in the above matter.

“I am now authorized to advise you that the Southern Railway Company is not willing to sell the property which is the subject of the above ordinance because such property, or a substantial portion of it, is considered essential to the Railway Company’s future performance of its public transportation duties.

“It is the position of the Railway Company
page 410] the City does not have the power to acquire this property by condemnation.

“You should be advised that if the City succeeds in establishing the right to acquire this property by condemnation, over the Railway Company’s objection, the unique value of the property to the remainder of the Railway Company’s property in Richmond is such that the Railway Company will suffer substantial damage to the residue of its property if this land is taken, and the Railway Company would expect the City to compensate it for such damage in addition to paying the fair value of the land taken.”

Q. Who was that signed by?

A. Signed by me.

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James G. Beard

page 413]

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CROSS EXAMINATION

By Mr. Spain:

Q. Mr. Beard, will you state in full what your title is with the railroad?

A. My title, sir, is Superintendent, Richmond Division.

Q. In charge of what?

A. In charge of operating trains and the employees on the Richmond Division.

Q. And you have been in that position since 1958?

A. Here at Richmond I have, yes, sir.

Q. And did I understand you to say that as far as you know, no final plan has ever been evolved concerning what type of yard they want to put at Riverside Drive?

A. Your Honor, sir, I made mention of two tentative drawings I have seen. We tried to appease the people in the City of Richmond in that meeting on October 31. We
page 414] told them we would not do this — wouldn't do that — and when we left we had an understanding they were agreeable if we did so, and so that was the way it was concluded there. We were to build just the two tracks in question.

Q. My question was, did you state on direct examination or at some other stage during your testimony, "As far as I know, I know of no final plan yet?"

A. Your Honor, I did say that but I meant, just as I explained, by the fact we tried to appease them with the plan we had at that time.

Q. Do you mean the railroad has no final plan as far as you know, or if it does they have not entrusted you with it?

A. Your Honor, sir, all that we are asking for is to alleviate the situation, one long track and two short tracks, and that will take care of our business as it now stands.

Q. But you want the authority to keep adding to that up to as many tracks as you can put in this area. Is that correct?

A. Your Honor, I have not been apprised of exactly what we will have in the future. No one knows — but we will get by and reduce our overtime with the long track and the two

James G. Beard

short tracks we are asking for.

page 415 } Q. Wasn't that the object of the advertisement that was run in the newspapers, which has now been introduced as Exhibits J and K, to allay the fears of the people living in that area, and to assure them all you wanted was two additional tracks?

A. Your Honor, the notice — would you let me see the notice?

Q. Yes.

A. Would you repeat the question?

Note: The last question was read by the reporter.

A. (Continuing) This notice was given at that particular time.

Q. You had started your construction?

Mr. Gay: Let him finish.

A. (Continuing) At this particular time this was giving notice to the people at this particular time that two tracks would be sufficient and as outlined in the notice — the tension at that time —

Q. (By Mr. Spain) It says no buildings or yards also, doesn't it?

A. The reading of it speaks for itself.

page 416 } Q. What I said was correct, was it not?

A. I will read it. (Reading)

“Does not propose to build any marshalling or classification yards, any buildings or sheds of any kind, or any shops, towers or roundhouses in your neighborhood.”

Q. Now the next question I asked you was, at the time your company put that ad in the two newspapers, it had been working on filling this land since the previous July, the advertisement being dated November of 1960.

A. Your Honor, as I stated in original testimony, in October we had this general uprising —

Q. I don't believe that is responsive to my question.

The Court: Wait a second.

A. (Continuing) That was the first official —

The Court: Wait a second. Did your question call for a yes or no answer, Mr. Spain?

James G. Beard

Mr. Spain: I think it did. I will ask the question be read.
page 417 } Note: The question was read by the reporter.

The Court: If you know the answer, you should answer yes or no, but you can explain in any way you want.

A. (Continuing) It would be a qualified yes. I want to say in the meantime we were negotiating with the City Manager and I went up there with the local counsel and we satisfied them of the conditions that they had outlined to us that was bothering them in our October 31 meeting, and then this was another uprising after that. That was October 31 and this was November 14, when we told them we would be satisfied with the two tracks — that is all we needed at the time, and that was outlined as a proposition.

Q. (By Mr. Spain) Is Mr. Brosnan the President of your company?

A. Yes, sir, he is.

Q. Were you present with him at a meeting held with representatives from South Richmond in the basement of the Capitol in January of 1961?

A. Thereabouts I was, yes, sir. I don't remember the exact date.

Mr. Gay: It wasn't January 1961.

page 418 } Q. (By Mr. Spain) At that meeting when you met with representatives from South Richmond, what did Mr. Brosnan tell those representatives he was going to put there?

A. You are referring to the gentlemen there? I don't know who was from South Richmond and who was from any other part of town. I do know that the meeting was held there.

Q. All right. What did Mr. Brosnan tell them, whoever they were?

A. There were various questions asked and the answers given to the question. If you would be more specific I could help you.

Q. What did he tell —

The Court: Mr. Spain, it looks as if your cross examination will take a considerable time. This might be a good point to recess for lunch.

James G. Beard

Note: Recessed for lunch, 1:00 to 2:00 p.m.

page 419]

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JAMES G. BEARD,
resumed the stand for further testimony.

CROSS EXAMINATION (Continued)

By Mr. Spain:

Q. Mr. Beard, at this meeting in the basement of the Capitol which you stated you remember, attended by Mr. Brosnan and certain citizens interested in this project, I ask you specifically what did Mr. Brosnan tell them relative to the number of tracks he proposed to put down in the Riverside Drive yard?

A. Your Honor, sir, he proposed to put down two tracks and the counter proposal, at which Mr. Spain was present, put some other stipulations in it which were not
page 420] agreeable.

Q. What you say was not agreeable was that there would be no guarantees of no further tracks. Isn't that correct, Mr. Beard?

A. Does Mr. Spain mean to say he was asking Mr. Brosnan to guarantee no other tracks?

Q. Yes.

A. Mr. Brosnan wouldn't guarantee that proposition.

Q. I ask you did Mr. Brosnan state that his only concern was making money for his railroad?

A. I don't remember that, sir.

Q. But you don't say he didn't say that?

A. I don't say he did not.

Q. Are you, in your capacity with the railroad, able to tell us as of this moment exactly what the railroad wants to put in the Riverside yard?

A. Your Honor, sir, that has been given in testimony by my superior.

The Court: I think the question has also been asked you as to whether you knew of any plans. If you know the answer to the question, you will have to answer. If you do not, of course you may just say so.

James G. Beard

page 421] A. (Continuing) Could I have the question read to me?

Note: The last question was read by the reporter.

A. (Continuing) For the immediate future, we want to put one long track and I believe the print shows, and I believe the discussion has shown, two short tracks.

Q. What kind of lights?

A. I don't know.

Q. What kind of communication system?

A. I heard the evidence that it would not be the same as we have now.

Q. The type referred to as "squawk boxes?"

A. It has been said it would not be the "squawk box" type.

Q. Your only knowledge is what you heard in court yesterday?

A. That is correct.

Q. And yet you are the man in charge of this section of the railroad?

A. Your Honor, sir, I do report to officers superior to me. In that capacity I can only recommend.

Q. Then you would have no control over what
page 422] went in there except your recommendation?

A. Well, I can strongly recommend, and it was previously stated that they would not have that type you referred to as the installation.

Q. Are you in position to say there will be no other type of communication, as a matter of fact?

A. The only thing I can say is what has previously been stated in testimony.

Q. And you heard that yesterday here?

A. I did.

Q. And that gentleman is your superior?

A. He is, sir.

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page 423]

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Q. In talking about your overtime work, I believe you said you are employing fewer men than you were when you came here?

James G. Beard

page 424] A. I am employing the same men as when I came here. They are regular men — some men have retired but the same engines are working and they are manned by the same number of men.

Q. Was I mistaken when I thought you said there were possibly fewer men?

A. There might be fewer men on my seniority list, but as far as men working I have the same number of men.

Q. Have wages gone up since 1958 for railroad employees?

A. They have, sir.

Q. So in showing this increase in salaries for overtime, that also reflects the fact that wages have gone up. Is that not correct?

A. Read the question, please.

Note: The last question was read by the reporter.

A. Yes.

Q. What percentage have railroad wages gone up since 1958?

A. I don't have the schedule. It is a matter of percentage and hourly increases and, therefore, I would prefer to wait until I could get something official to sub-
page 425]stantiate my answer, but there have been two or three raises and some fringe benefits.

Q. Do I understand one of the principal items that is keeping your railroad from competing in the transportation market properly are delays occasioned by the lack of facilities in your yards?

A. That is correct, sir.

Q. Mr. Beard, the odd-numbered trains run south and west, I believe?

A. Yes.

Q. And even numbers run north and east?

A. Yes.

Q. Therefore, Train No. 57 goes from Richmond to Danville?

A. Right.

Q. And Train No. 62 from Danville to Richmond?

A. Correct.

Q. I have here approximately some five hundred dispatchers' records of movement of trains, timetables, and I will hand you one marked Timetable 37, Thursday, August 30, 1962, Superintendent, J. G. Beard, Trainmaster, I. Y.

James G. Beard

Cox, Chief Dispatcher, R. T. Newcomb, and ask you on this date when Train No. 57 left Richmond and arrived at Danville?

A. Train No. 57 left Belle Isle yard at 11:55 page 426] p.m. and arrived at Dundee at 9:15 a.m., with twenty-four loaded and thirty-six empties, two thousand two hundred and fourteen tons.

Q. Dundee and Danville are the same?

A. That is correct.

Q. Take No. 62 and tell me when it left Danville and arrived at Richmond?

A. No. 62 didn't leave Danville.

Q. What was its time for the 139.6 miles between these points?

A. This particular one, it left Dundee at 9:00 a.m., and arrived at Belle Isle at 9:05 p.m.

Q. That would be twelve hours and five minutes, would it not?

A. Yes.

Q. To negotiate 139.6 miles?

A. Correct.

Q. Your engines that load cars, what do you call them?

A. Road switchers.

Q. Doesn't that mean they also stop off along the way and do switching and hauling of ballast and railroad work along the way?

A. Yes.

page 427] Q. All of your trains do that along the way?

A. Not all of them. We have nobody working in the maintenance-of-way department at night unless it is an emergency. Night trains don't do that.

Q. Help me a moment with your night train. That's the one going from Richmond to Danville, is it not?

A. Correct.

Q. No. 62 is the one that came from Danville to Richmond?

A. Correct.

Q. What did No. 62 do that day?

A. No. 62 picked up one car at South Boston, loading between mile F-33 and F-35, delayed one hour and twenty-five minutes, by request of Supervisor Barksdale.

Q. So on that day that particular train took twelve hours and five minutes to move one hundred and thirty-nine miles, of which one hour and twenty-five minutes it was working on the railroad and doing railroad work along the run?

James G. Beard

A. Correct.

Q. At the request of Supervisor Barksdale?

A. Correct.

Mr. Spain: Your Honor please, we would like to introduce this sheet and have it identified and I would like page 428] to have it back. I believe that would be Interveners' Exhibit No. A-4.

The Court: You are offering it for identification?

Mr. Pasco: Those are the original records of the railroad. I think counsel should have a photostat in the record.

The Court: Will that be agreeable insofar as the railroad is concerned, if it is introduced subject to that understanding, that it will be withdrawn and a photostated copy substituted?

Mr. Spain: That's all right with us.

The Court: Is this offered for identification or as an exhibit?

Mr. Spain: We offer it as our Exhibit.

Mr. Pasco: We understand that is being introduced for the purpose for which Mr. Beard has been questioned about it and not in relation to anything else on that sheet.

The Court: That is my understanding.

Note: Marked Interveners' Exhibit No. A-4 and filed.

page 429] Mr. Spain: I want it back to ask him further questions about it.

Q. (By Mr. Spain) Now, Mr. Beard, when Train No. 57 left Richmond, as shown upon Interveners' Exhibit A-4, on Thursday, August 30, headed for Danville, it carried how many full cars and how many empties?

A. Left Belle Isle yard with nineteen loads and thirty-seven empties, two thousand and fifty tons, and arrived Dundee with twenty-four loads and thirty-six empties, two thousand two hundred and fourteen tons. We handled twenty-six loads and fifty-four empties.

Q. There is a column on this sheet called "Capacity of Siding" and it has the word "Yards" on it. These figures below that indicate the length of the siding, I take it?

A. No, sir. The "yard" indicates the particular yard — this one is Belle Isle yard. Moseley has a siding of sixty-seven car lengths.

James G. Beard

Q. What is the longest siding you have on your route between Richmond and Dundee?

A. Seventy-nine car lengths — two of those seventy-nine-car sidings.

Q. And they vary down to what?

A. They vary down, as listed on the trainsheet, to fifty-seven.

page 430] Q. Don't you see one that says thirty?

A. Yes, sir, there is one thirty — at Scottsburg, but that's only used as a siding.

Q. So you don't have a siding between here and Danville to handle more than seventy-nine cars?

A. That is correct.

Q. Coming on to Train No. 62 coming back towards Richmond on August 30, tell us how many full cars and empties left Dundee that day?

A. Left Dundee with fourteen loads and six empties, one thousand tons. Arrived Belle Isle with thirty-four loads and four empties, two thousand four hundred and ninety-four tons.

Q. Take another sheet. This is August 27, 1962, a Monday, identical with the previous one. I will ask you to tell me how long it took Train No. 57 to go from Richmond to Danville on that day?

A. Train No. 57 departed Belle Isle yard at 10:55 p.m., arrived at Dundee, which is Danville, at 5 a.m. on that trip.

Q. I don't believe No. 62 appears on here, does it?

A. Correct.

Q. How many full cars and empties did it
page 431] leave Richmond with?

A. Fourteen loads and thirty-seven empties.

Q. Will you read under remarks what railroad business it did on its own besides transportation on that day?

A. No remarks in relation to No. 57.

Q. I see Train No. 61 on there. Where does that run?

A. It runs from Belle Isle yard to Dundee.

Q. That is Danville, is it not?

A. Correct.

Q. How long did it take that train to make the trip?

A. Left Belle Isle yard at 9 a.m., arrived Dundee 7:35 p.m.

Q. What did that train do for the railroad while hauling goods?

A. Handled eight cars of ballast for unloading, starting

James G. Beard

at milepost F36.8, request of Supervisor Barksdale, use only one hour.

Q. What did Train No. 56 do that day?

A. From Dundee to Belle Isle.

Q. How long did it take Train No. 56 to come up the track that day?

A. 9:30 p.m. to 3:30 a.m.

page 432] Q. So when you state you had no minimum speed to run on those tracks, but that forty-five miles an hour was maximum — actually you come up the track sometimes taking twelve hours to negotiate this distance, do you not?

A. Yes, sir.

Q. That happens pretty often, does it not?

A. Yes, sir, sometimes it takes twelve hours.

Q. These several hundred dispatchers' records here will indicate it is not unusual for you to take twelve hours to negotiate that distance.

A. What train do you mean?

Q. Any train between Danville and Richmond.

A. It is noted there that the local frequently uses twelve hours to make the trip. However, it is very seldom the through train uses twelve hours to make the trip.

Q. Is No. 62 a through train?

A. No — local.

Q. Which are the through trains?

A. No. 57 and No. 56.

Q. What is the average time on your through trains?

A. Five and a half to about seven hours.

Mr. Spain: I offer this sheet dated August 27, 1962.

page 433] Note: Marked Intervenors' Exhibit No. A-5 and filed.

★ ★ ★ ★ ★

Q. (By Mr. Spain) Now, Mr. Beard, I hand you a similar sheet dated July 11, 1962, and ask you to look at Train 61 and tell me where did it leave from and go to?

A. It left Belle Isle yard at 9:10 a.m., and arrived at Dundee at 9:10 p.m.

Q. That is how many hours?

A. Twelve hours.

James G. Beard

Q. What did it do on the way?

A. No. 61 handled three cars of ties for unloading between F83 and F80 mileposts.

Q. Is that a through train?

A. No, sir, it is a local.

Q. Is No. 56 a through train?

A. Yes.

Q. How long did it take to make the trip from Dundee to Richmond?

page 434] A. Departed Dundee 9:30 p.m., arrived Belle Isle 3:35 a.m.

Q. Is No. 57 a through train?

A. It is, sir.

Q. When did it leave Richmond?

A. Left Richmond 11 p.m.

Q. When did it arrive at Danville?

A. Arrived Dundee 6:30 a.m.

Q. That is how many hours?

A. Seven hours and thirty minutes.

Mr. Spain: We offer this as Interveners' Exhibit No. A-6.

Note: So marked and filed.

Q. (By Mr. Spain) I hand you a similar sheet dated Friday, May 26, 1961, and ask you about Train No. 57 — where did that leave from and go to and how long did it take?

A. Train No. 57 departed Belle Isle yard at 12:45 a.m., arrived Dundee 6:15 a.m.

Q. How many full cars did it have?

A. It had twenty-two loads leaving Belle Isle.

Q. How many empties?

A. Forty-two empties leaving Belle Isle.

Q. Tell us what it arrived with?

page 435] A. Arrived at Dundee with twenty-four loads and forty-two empties.

Q. Will you read the memorandum and tell us what the remarks refer to?

A. Which one, sir?

Q. Both.

A. (Reading) "AAR rail test found quota of rails inside yard limits Moseley then ran to Belle Isle light." "61 unloaded 12 cars ballast between Burkeville and F84 milepost."

James G. Beard

Q. Do your trainmen ever take out time for lunch and mark it down under remarks?

A. No, they do not. Your Honor, sir, I am speaking in general terms. There might be some minor item I could be a little wrong on but in general terms they don't do that.

Q. But they do sometimes?

A. I didn't say that. It wouldn't be the usual procedure.

Q. Do you mean to state categorically they do not?

A. I am stating it would be very unusual if they did.

page 436] Mr. Spain: We offer this record dated May 26, 1961, as Interveners' Exhibit No. A-7.

Note: So marked and filed.

Q. (By Mr. Spain) I hand you a similar sheet for Monday, May 1, 1961, and ask you to tell me what happened to through Train No. 57 on that day?

A. If you will find me the next sheet — this says on the next sheet.

Q. What are those names at the top — Simmons and Westmoreland?

A. They are proper names.

Q. Names of whom?

A. Mr. Simmons and Mr. Westmoreland.

Q. What do they do?

A. Mr. Simmons is engineer and Mr. Westmoreland is conductor.

Q. Look at local Train No. 61 that day.

A. Train No. 61 departed Belle Isle at 10 a.m., arrived Dundee 9:40 p.m.

Q. What did it do on the way?

A. On the note on the bottom "61 handling two cars poles for unloading between Chula and F94 milepost."

Q. How many cars did it carry?

page 437] A. Departed Belle Isle with nine loads and thirty-five empties.

Q. And how many did it have when it arrived?

A. Arrived Dundee with seven loads and seventeen empties.

Q. Train No. 56 — a through train — tell me what happened to it that day?

A. Departed Dundee 10 p.m., arrived Belle Isle yard 4:30 a.m.

James G. Beard

Q. And how many full cars did it depart with and how many did it arrive with?

A. Train 56 departed with thirty-one loads, ten empties, two thousand two hundred and fifty-one tons; arrived Belle Isle yard with fifty loads and ten empties, three thousand five hundred and eighty-five tons.

Mr. Spain: We offer this as Interveners' Exhibit No. A-8.

Note: So marked and filed.

Q. (By Mr. Spain) Mr. Beard, you are also delayed frequently along this line because of engine trouble, are you not?

A. I wouldn't say frequently. I would say in-frequently, sir.

page 438] Q. I hand you a sheet similar to the one previously identified, dated Thursday, May 23, 1961, and ask you what the remarks say about local Train No. 62?

A. Remarks about local Train No. 62 — "62 delayed Dundee engine trouble." That was before it left Danville.

Q. But it was a delay anyhow?

A. It was at Dundee, yes, sir.

Mr. Spain: We offer this as Interveners' Exhibit No. A-9.

Note: So marked and filed.

Q. (By Mr. Spain) I hand you another sheet dated May 24, 1961, and ask you what happened to local Train No. 61 on that day?

A. Remarks on No. 61 — "Delayed Richmond work on engine."

Mr. Spain: We offer that as Interveners' Exhibit No. A-10.

Note: So marked and filed.

Q. (By Mr. Spain) According to this, Engine No. 61 was delayed two days in a row because of engine
page 439] trouble?

A. It could have been no engine trouble. They work on the engines at Richmond and Dundee other than for engine trouble. They service the engines at that point. They could have been putting sand in.

James G. Beard

Q. One says engine trouble and one says working on the engine.

A. Correct. Sand is very necessary for the engine.

Q. You do have delays for other reasons other than the inadequacy of the facilities of your yards?

A. Sometimes, yes.

Mr. Gay: Your Honor please, the testimony adduced here concerning delays with respect to which the plaintiff is concerned is related to those that occur after a train arrived in Richmond. If it is ten hours late it has nothing to do with the load service. This case is directed towards inadequacy of yard facilities to deliver to consignees after it arrives, and this testimony has nothing to do with the issue before Your Honor.

The Court: I understand this testimony relates to delays outside the points where the yard facilities are located, and I take it their purpose in introducing this is one of the positions of the plaintiff railroad is that the competition comes from a certain group of carriers and one of the main problems the railroad has to contend with is a time problem, and the major time problem, as I understand the testimony, occurs at the terminal; but I understand the city is trying to show in addition to that there are other time losses; but I would think that would compound the problem if that did exist. I see their point and I think it is relevant.

Q. (By Mr. Spain) I hand you a similar sheet dated Thursday, May 25, 1961, and ask you to read the remarks relative to local Train No. 62.

A. (Reading) "62 delayed Dundee, installing traction motor on unit 6880."

Mr. Spain: We offer this as Interveners' Exhibit No. A-11.

Note: So marked and filed.

Q. (By Mr. Spain) On Saturday, May 27, 1961, you have a similar sheet. I will ask you to read the re-

James G. Beard

page 441] marks relating to through Train No. 56 on that date.

A. Train 56 departed Dundee 11 p.m., arrived Richmond 4:05 a.m. Remarks (reading), "56 delayed Dundee account of G. D. engine broke down. Had to go to diesel shop to get another one, finish making up train."

Q. Whose handwriting is that?

A. I don't recognize it but it is one of the gentlemen here.

Q. He was pretty disturbed about the engine breaking down, wasn't he?

A. It is unusual that the engine would break down in such a manner as that, without any of the people to fix them at the terminal.

Q. This is a through train, is it not?

A. Yes — engine for a through train.

Mr. Spain: We offer this as the next exhibit.

Note: Marked Interveners' Exhibit No. A-12 and filed.

Mr. Pasco: I understand it is Mr. Spain's obligation to furnish copies of those records.

Mr. Spain: We will take care of that.

page 442] Q. (By Mr. Spain) Does your communication system ever break down along the way and cause delays?

A. Infrequently.

Q. I hand you a similar sheet marked Saturday, February 25, 1961, and will ask you to read both remarks in pen and ink under "Remarks."

A. (Reading) "Richmond phone 501 unable to ring anyone but can talk with Danville at 2:40 p.m. Noisy line, unable to talk with Danville."

"56 reports crankcase explosion on Engine 6219 at 3 milepost. Yard crew at Dundee went to 3 milepost to get train and pull back to Dundee."

Mr. Spain: We offer that as Interveners' Exhibit No. A-13.

Note: So marked and filed.

Q. (By Mr. Spain) I now hand you five sheets as have been described, dated February 26, 1961, February 27, 1961,

James G. Beard

February 28, 1961, March 1, 1961 and March 2, 1961. Tell us under "Remarks" what each one says.

A. (Reading) "57 has 2227 30 mph in tow to D."

Q. What does that mean?

A. I don't know.

Q. No. 57 did something, didn't it?

page 443] A. No. 57 had 2227.

Q. All right, sir. You don't know what it means?

A. I think I might.

Q. Tell me what you think it means.

A. I think it means the engine on 57 was No. 2227, and had a reduction to thirty miles per hour to Danville.

Q. All right, sir. Coming to the next day, read what it says under "Remarks."

A. (Reading) "61 handled two cars poles for unloading between milepost F122 and Chula."

"No. 15 wire between Oxford and Clarksville down from 7 a.m. to —" and they didn't finish the hour. That wire was down from Oxford to Clarksville.

Q. The next day, February 28?

A. (Reading) "53 delayed 50 minutes McKinley with hotbox."

"56 Keysville reports a kicking ground relay will not stay on line. Instructed 56 to swap this unit for one from 57. Dundee notified."

Q. All right. The next day, please.

A. March 1, 1961. (Reading) "About 8:30 a.m. 3 cars rolled from Lorillard truck milepost F2.9 to main line. Split switch. Barksdale notified 9:23 a.m."

page 444] Q. The next day?

A. (Reading) "62 delayed Dundee; wait for Engine 2025 off 58."

"57 set off at Keysville 14 empty cars account of Engine 2045 had crankcase explosion at milepost 84. Dundee notified."

"These cars being picked up by 61, 3/3."

"Engine 2045 failed at 86 milepost, delayed one hour. Keysville reducing tonnage."

Mr. Spain: Your Honor, I would like to introduce these as a group, covering February 26, 1961, through March 2, 1961. May I say that the previous one read was for the 25th and they had been handed to me as consecutive days. I

James G. Beard

would like for those to be attached and have the same number.

The Court: All right.

Note: The last five sheets handed to the witness were attached to and made a part of Interveners' Exhibit No. A-13.

Q. (By Mr. Spain) Now, Mr. Beard, did anyone call you, identifying themselves as people living in the neighborhood, and inquiring as to what your railroad was doing page 445] when you commenced your fill work in July of 1960?

A. I recall one conversation with one of the consultants for the city, by the name of Warren Sadler.

Q. What did you tell him you were doing?

A. Warren Sadler called me and asked me what we were doing over there, and he is a consultant for the city and was interested in his sewer pipe going through that area and I mistook his question — he asked me about the interceptor and I told him there was a parking lot where his interceptor was supposed to be, and I remembered that and straightened that out with him after I had seen him.

Q. As you have pulled up your tracks in the South Richmond yards, you have at the same time increased your shifting on the double track as far west as Forty-Second Street, have you not?

A. Read that question.

Note: The last question was read by the reporter.

A. I would say there is no increase that far up on account of any moving out of any other area.

Q. The cars that used to stay on those tracks shown in yellow on Exhibit 18 on the board, where do those cars go now?

page 446] A. They are handled across the river —

Q. (By the court) What area is that?

A. This area here, this yellow area (indicating on map). They are handled here and at Stockton Street and Fourteenth Street.

Q. (By the court) They are handled at Ship Yard?

A. The Twenty-Eighth Street yard.

Q. (By Mr. Spain) Do any of them go on these tracks up

James G. Beard

to Forty-Second Street?

A. No.

Q. None of those cars go that way? They go every other way on the system except west. Is that correct?

A. Your Honor, sir, I am assuming he is talking about switching.

Q. Switching or storing — either one.

A. No, we don't store any cars in the vicinity of Forty-Second Street other than those that arrive in from Dundee. They pull in there on that long siding and we have to keep our line open.

Q. You say those cars that used to be stored there go in every direction except west?

The Court: You mean in the yellow area?

Mr. Spain: Yes, sir.

page 447] Q. (By Mr. Spain) What were the cars doing in the yellow area on Exhibit 18 that you now say go to Ship Yard, over town and easterly on the track?

A. They are where our industries are. We handle one industry here and that is Reynolds Metals.

Q. Didn't you use to store cars on these tracks?

A. We have cleared up the cars we had here (indicating on map). We don't have any cars we want to store in that area now. We send them to Stockton Street and to other areas for switching.

Q. Some of them you now store on the double track running from Twenty-Sixth to Forty-Second Street — some percentage of those cars at least?

A. No.

Q. You say the A. C. L. main switching yard is just above yours at Belle Isle yard?

A. Yes, sir.

Q. And it has fourteen tracks?

A. It does.

Q. And a maximum capacity of six or seven hundred cars?

A. Yes, sir, in that yard.

Q. Does it have the same difficulty with curves

James G. Beard

page 448] that your yard has?

A. They have a curve in the yard.

Q. Where do they make up their main trains?

A. The Acca yard.

Q. Didn't you say the Clopton yard earlier?

A. I did not.

Q. Do they make up any of them in Clopton yards?

A. Clopton yard is used principally for removing cut offs of the through trains.

Q. So they make up their trains all the way over at Acca yards even though this yard is their principal yard — the yard next to your Belle Isle yard is their principal yard?

A. Correct.

Q. Pointing out the business done by the various railroad yards in Richmond — Acca, Hermitage, and so forth — you don't propose to say to the court that Southern is doing the same volume of business in Richmond and vicinity that these other lines are doing, do you?

A. I didn't say that, sir.

Q. In fact, it is not doing the same volume of business or as much business as these other lines, is it?

A. That is correct, as a general broad statement.

page 449] Q. These eighty-one customers you have mentioned, how did you say they compared with 1958?

A. I said they would compare favorably with the customers we had in 1958.

Q. Does that mean more or less?

A. I would say about equal.

Q. Do you have the figures?

A. I do not — with me.

Q. How about the volume of business compared with 1958?

A. Very little change, sir.

Q. Does that mean more or less?

A. That could mean a little more, and it could mean a little less. It is very little, percentage-wise.

Q. In other words, you don't know?

A. I know it is very little difference.

Q. I believe you say you have no figures on earlier years, as compared with the freight handled last year?

A. I said I did have them, the cars handled. But I don't have that with me.

James G. Beard

page 450] By The Court:

Q. Mr. Beard, one question. Did I understand that the three main functions of a yard of the sort you propose are classification and the making up of trains and storage? Is it your intention, or is it the railroad's intention in this proposed yard primarily to use it for classification and making-up, or do they also propose to use it for storage?

A. It will be for holding trains for switching and also to hold trains after they are switched — to hold them for departure.

Q. That would be part of the making-up process, I take it.

A. Yes, sir, more than it would be from the standpoint of storage.

RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. Beard, you testified this morning that one of the plans for the extension of these tracks involved
page 451] the moving of the yard office. Please tell us what the yard office consists of.

A. The yard office would be just a little shack to house one or two people in. We have such a shack at Belle Isle yard.

Q. With respect to the yard capacity of the Atlantic Coast Line, I don't recall whether you testified this morning as to the capacity of the Coast Line yard near Belle Isle or not.

A. Somewhere between six and seven hundred cars, capacity of the yard.

Q. What is the capacity of the Belle Isle yard as it presently exists?

A. Two hundred and twenty cars.

Q. What would you say would be the principal yard of the A. C. L. for making up its trains?

A. The Acca yard.

Q. For what purpose does it use the yard near Belle Isle?

A. They use that principally for switching industries and interchange with other railroads, switching cars that come in from interchange and switching cars going to interchange, as well as the industries on their line.

James G. Beard

page 452] By The Court:

Q. Did you say Acca Yard has a seven hundred car capacity?

A. The yard near Belle Isle yard was the question asked.

Q. And that was the one with seven hundred capacity?

A. Yes, sir, six or seven hundred.

Q. And that is a secondary yard?

A. That is the yard the Atlantic Coast Line had here to break up for their interchange and for switching of cuts to their industries. I said their principal train yard was at Acca.

Mr. Eichner: Your Honor, is it understood the city's objection previously made runs through this line of testimony on redirect?

The Court: Yes, sir.

By Mr. Pasco:

Q. What do you understand to be the capacity of the Acca Yard?

A. Somewhere in the neighborhood of twenty-page 453] four or twenty-five hundred cars.

Q. Where is this parking lot you misunderstood Mr. Sadler about?

A. It is on our right-of-way where the interceptor sewer is.

Q. In what part of town?

A. Opposite the road going into the property up near Hillcrest and Riverside Drive.

Q. May I see the two newspaper advertisements which have been filed as exhibits? Mr. Beard, I direct your attention to Defendant's Exhibit J, the Times-Dispatch and News Leader ad. I would like to ask you about those ads. Tell the court, if you know, what you understood to be the purpose of those ads when they were published?

A. The purpose of these ads was to reach some agreement or appeasement with the people who have protested against our doing anything on our property in the Riverside Drive area, and this was one of the tools that was used trying to reach that appeasement.

Q. Do you have any reason to believe that the railroad intended to depart from what was stated in that ad, if it was satisfactory to the people?

James G. Beard

A. No, they would not depart from it. I am positive of that.

page 454] Q. To your knowledge, was that satisfactory or unsatisfactory to the objectors?

A. It was not.

Q. When did you find that out from them?

A. December 12, I believe, when they passed the ordinance.

Q. These advertisements refer to the location of the two tracks. Do you have any familiarity with the preliminary plan for location of the two tracks?

A. Yes, sir.

Q. Do you know what was done with those plans, so far as distribution is concerned?

A. No, I do not.

Q. You don't know whether the city was given a copy or not?

Mr. Eichner: Objection. That is a leading question. He is telling him what he should say.

The Court: What was the question? Suppose you read it, Mrs. Pole.

Note: The question was read by the reporter.

The Court: Objection overruled.

Mr. Eichner: Note our exception.

page 455] A. My understanding they were given a copy of it.

Mr. Spain: We object to the answer. He says it is his understanding. He can answer yes or no.

A. (Continuing) They did see the plan.

The Court: The question was whether they were given a copy, and if you know, you may answer. If you don't know, you will have to so state. I believe you answered that you understood that was the situation. Do you know of your own knowledge whether they were given a copy of it?

A. No, sir.

Q. (By Mr. Pasco) Do you know whether a copy was given to the interveners here in this case?

James G. Beard

A. No, sir, I do not.

Q. I will ask you whether or not delays in the arrival or departure of the through trains for a matter of an hour or an hour and a half would affect the use of the Belle Isle yard for switching purposes materially?

A. It would not.

page 456] Q. What is the purpose of having the entry on these trainsheets of the remarks with respect to delays in the operation of the trains?

A. The purpose of that is to show where delays occur and it has nothing to do with any of the statements I have shown about overtime to the yard crews.

Q. It relates to what sort of crews?

A. It relates only to the road crews.

Q. What is the scheduled time for Train No. 57 — the number of hours it is scheduled to take between Danville and Richmond?

A. On the schedule, No. 57 is scheduled as due to leave Richmond at 9:30 and arrive at Dundee at 2 a.m. That is five and a half hours.

Q. Is it the same time for No. 56?

A. No. 56 is due at Dundee at —

Q. Just give us the number of hours.

A. Five hours and twenty-five minutes.

Q. What is the scheduled time between terminals for the two local trains between Danville and Richmond? What is it for Train No. 61?

A. It is seven and a half hours.

Q. And the other one is about the same, is it?

A. Six hours and twenty-five minutes.

page 457] Q. What determines the actual time that these local trains use in going between two terminals?

A. The actual time is determined by the amount of work at the interchange tracks, and of course the time they get out of the initial terminal determines the time they arrive at the final terminal.

Q. Do they do any switching along the line other than at the interchange tracks?

A. Just at the interchange — about four places.

Q. What interchange points do you have between Danville and Richmond?

A. South Boston and Keysville, with the line to Durham; Virso with the Norfolk & Western; and Burkeville with the Norfolk & Western.

James G. Beard

Q. Which trains handle most of the switching at the interchanges, the local or through trains?

A. All trains, local and through.

Q. Do local trains do any other switching along the line?

A. Yes they do, at all the local stations between Danville and Richmond.

Q. What would you say was the purpose of publishing a schedule of local and through freight trains?

A. It is for the governing of the employees page 458] only. Our instructions are not to disclose our timetables because it is not public information. It is for the operation of trains only.

Q. Can you tell us whether or not it is intended to reflect the actual time required by the trains to go from one terminal or the other?

A. Generally it is. However, it is for operations only and it is not from station to station as it is generally with public information. It is just for the operations of these trains that are on the schedule and the opposing train on the schedule. Under the timetable they have certain authority and that is the purpose of the schedule listed as such — the time shown on the station.

Q. Mr. Beard, tell us the primary purpose for the station agents at the stations between Richmond and Danville — what their primary function was before they were discontinued largely?

A. They were principally handling LCL business, at the points where we have discontinued agencies.

Q. Is there a question of any telegraph operator being involved?

A. On the line between Richmond and Danville, it is very little telegraphing being performed.

Q. But there was in the past?

page 459] A. Many years ago there perhaps has been quite a bit of it.

Q. Did these agents sell tickets when the passenger trains were operating?

A. They did.

Q. Does the local agent perform any function with respect to carload business?

A. He performs the same function with respect to carload business as he does with respect to LCL. However, the carload business is much simpler. They can telephone in and bill cars out.

James G. Beard

Q. Telephone where?

A. To the nearest station other than the one being discontinued and usually that's the provision given in the discontinuance.

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. By "LCL," you mean less than carload shipments?
page 460] A. Yes, sir.

Q. That's the kind of business you are particularly losing to truckers on this line?

A. Generally, yes.

Q. Of course, you are losing larger business to truckers too, are you not?

A. Yes we are.

Q. Mr. Pasco asked you about these newspaper advertisements, City Exhibit J. You stated earlier on redirect that one set of plans of developments of the railroad's property on Riverside Drive called for the movement of the yard office, which you said was just a little shack for one or two people, such as you presently have.

A. I said that's what we presently have on Belle Isle.

Q. And the plan which you were speaking of was to construct such a shack on the Riverside Drive property?

A. Generally, yes.

Q. Isn't the present yard office that large red building there?

A. That large red building there is in addition to the yard office. We could get by with much less than that. That building has been there for many years.

Q. Referring again to City Exhibit J, paragraph 461] graph 1 states that the railroad doesn't propose to build any shop or building of any kind on the property. Isn't that what it says in paragraph 1, among other things?

A. The question before — you asked me what plans had I seen and I told you I had seen a preliminary plan with a certain number of tracks on it and the yard office. That was what I said I had seen. This was appeasement we offered to the people in settling the differences we had with respect to which that notice meant just exactly what this thing said — to please the people. It was not accepted.

James G. Beard

Q. I refer you to the last paragraph, the boldface paragraph, which says this (Reading):

“Your homes will not be disturbed and your property will not be depreciated by the extension of the two tracks along the company’s present right-of-way.”

What investigation was made to determine whether there would be depreciation of property values before this statement was published?

A. There was a question of building two tracks and we were going to put in additional switching up there.

Q. Was this statement made after any study by real estate men?

page 462] A. That I don’t remember.

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page 463]

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The Court: Mr. Eichner, I would like to ask you, to be sure I understand your position in reference to this notice and these meetings, I understand that the railroad’s position is that this notice was put out as a part of and during negotiations they had with the property owners hoping to arrive at some amicable solution whereby the railroad would go as far as they stated there and no opposition would be made, and for some reason the negotiations fell through and the railroad takes the position the negotiations having fallen through, they were back to their rights, whatever they might be. Are you going to have evidence to the contrary, or just what relevancy would the notice have, if that is the correct situation?

Mr. Eichner: I know nothing about any negotiations of that sort. There have been references to one meeting with Mr. Brosnan and various residents of South Richmond.

The Court: Is it your position that these things were not issued as a part of certain negotiations for amicable settlement?

Mr. Eichner: I know of no negotiations that the city had to change the zoning in any fashion, but if the court wants to refer to the meeting held with some citizens as negotiations — I don’t know that I agree that is the proper term. Quite frankly, I think it is an attempt to mislead as to what the plans are.

Mrs. Margaret Terry

page 465] The Court: That is your purpose for introducing those — you contend that goes to the question of equitable clean hands, so to speak, and the right of the railroad to assert any rights in equity?

Mr. Eichner: Yes, sir, to show what was stated at the time.

The Court: What I had in mind originally is not important at all because I thought at the outset that might have some bearing on what the railroad's real intention was. I see your point now.

Mr. Eichner: It certainly is not offered for that purpose — it is what the railroad told the public at that time.

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page 466] Mr. Gay: As long as you have asked the City Attorney, in the interest of clear understanding I think the same question should be asked of Mr. Spain, because it was with his clients that these negotiations were taking place.

The Court: I will ask you the same question Mr. Spain. Is your only purpose in introducing these exhibits, Nos. J and K, the notice, — is your only purpose in introducing those the same as the city? In other words, it is an effort to show bad faith on the part of the railroad in misleading the citizens?

Mr. Spain: Yes, Your Honor.

The Court: I take it both you and the city deny the fact these were a part of negotiations conducted in good faith that fell through?

Mr. Spain: We propose to show we had requested that meeting with the railroad.

The Court: Your position is the same as the city's?

Mr. Spain: We take the position there never were any negotiations, Your Honor. We couldn't get any
page 467] negotiations. There was one meeting which we requested.

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page 471] MRS. MARGARET TERRY,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. What is your name?

Mrs. Margaret Terry

A. Margaret Terry.

Q. Where do you reside, Mrs. Terry?

A. 4101 Hillcrest Road — right at the entrance of this thing they are going to put on Riverside Drive.

Q. When did you move there?

A. We built there eight years ago, the 31st of December.

Q. Did you buy a house already constructed?

A. We bought our lot and inquired in the neighborhood about the people and the conditions, because it was an established neighborhood, and we liked it. We are both South Richmond people. We bought it with the understanding it would be a parkway where they want to put the marshaling yard now.

page 472] Mr. Gay: Object to that.

The Court: I don't think she can state the assurances given her by anyone else.

Mr. Spain: That is correct.

Mr. Gay: Wait a minute. Let's see what her answer is.

Note: The last answer was read by the reporter.

Mr. Gay: I move that all of that part of the answer that has to do with the use of this property be stricken.

The Court: Sustained. Strike out beginning with the words "with the understanding" — from there on.

Q. (By Mr. Spain) I hand you herewith City Exhibit B, being a photograph heretofore introduced, and ask you do you recognize the house in that picture?

A. Yes, that's our home.

Q. Who widened that road to the width shown there in the picture?

A. The contractors.

Mr. Gay: What road are you speaking of?

page 473] Mr. Spain: The road shown in this photograph, which is the only road shown.

A. (Continuing) The road to the railroad.

Mr. Gay: Is that material to the question of the constitutionality of this ordinance?

The Court: Which road are you referring to?

Mrs. Margaret Terry

A. (Continuing) The road that goes from the Drive to the railroad.

The Court: I will permit it.

A. (Continuing) On Sunday afternoon we saw a large construction truck drive up with a bulldozer on it. I was sitting in the living room and I could see them through the picture window. It was a bunch of workmen and they unloaded the bulldozer and made this road — I was watching the whole thing. It was a walking path before, but not a driveway.

Q. (By Mr. Spain) Who did that, Mrs. Terry?

A. I don't know who the construction people were, but they came over there and talked to us.

Q. Will you point out to His Honor on this map which is your house?

A. This is our home right here (indicating on page 474 } map).

Q. Will you mark with a pencil the letter "T" where your house is?

Note: The witness did so.

Q. How far is it from your home to the railroad track?

A. It is between two hundred and seventy-five and three hundred feet from our front entrance to the railroad track — approximately three hundred feet. From the picture window to the railroad track looking diagonally across it is not that far.

Q. Do you know how much higher your house sits than the railroad tracks?

A. I would judge that it is between fifteen and twenty feet. It is much lower than the other lots because we had to cut the lot down in order to have a front yard, so it wouldn't be so steep. We had to drop the hill quite a bit so we could fix a lawn there.

Q. Are you concerned with any noises of an unusual nature going on in that neighborhood?

Mr. Gay: Just a moment.

Q. (Continuing) — caused by the railroad.

Mrs. Margaret Terry

page 475] Mr. Gay: This is referring to conditions that presently obtain, Mr. Spain?

Mr. Spain: Yes, sir.

Mr. Gay: This is not the place to try that issue, Your Honor please.

The Court: Well, I can see that it perhaps would be relevant. Go ahead. I will admit the question.

Mr. Spain: Please read the question.

Note: The last question was read by the reporter.

A. Of course we are.

Q. (By the court) You mean at the present time?

A. At the present time. We went down to measure it day before yesterday to try to give you the proper footage, and it was a train parked there then and when they hook up on these boxcars it is a tremendous bump, bump, bump — all down the line. That goes on at night as well as day. In the daytime I work but at night it is real bad. It jars the house.

Q. (By Mr. Spain) What hours of the nighttime do you hear these noises?

page 476] A. Most any hours real often. Real often it is after twelve o'clock.

Q. Is this fill area that has been put in, that has been referred to *at Belle Isle yard*, visible from your house?

A. It is, especially in the wintertime when there are no leaves on the trees. If they put this marshaling yard there that's what we will look at all winter from the picture window.

Q. What do you see there at the present time?

A. Mostly now it is trees. Of course, with this roadway they have cut you can see the train parked there, and you can see it when it is moving.

The Court: Let me ask you, Mr. Spain, it is not your contention, nor the city's, that the present tracks are in any way a violation of the ordinance, if valid — that is not your contention?

Mr. Spain: I cannot say they are, Your Honor. I cannot say they are a violation at the present time.

The Court: What would be the relevancy of evidence as to any present inconvenience?

Mrs. Margaret Terry

page 477] Mr. Spain: To show the build-up of that type of activity since the sale of the South Richmond yard and to project it into what would be true if the marshaling yard were allowed there on a large scale.

Mr. Gay: I respectfully submit, Your Honor please, that the witness' testimony thus far does not support the first phase of counsel's statement, and as to the latter, she certainly is incapable and incompetent to testify because she has no personal knowledge of what will be there.

The Court: In the absence of a challenge, Mr. Spain, to the present activity and the present tracks, that evidence would not be admissible. I did admit it a moment ago, but on reflection it seems to me that if they are there on their own property at the present time, operating under what is a valid ordinance and not in violation, why would this have any bearing? If she knows the type of thing to expect in the future, and knows what is going to be put there, I think perhaps that would be relevant.

page 478] Mr. Eichner: As far as the eighty-foot right-of-way is concerned, that land is not involved in this suit in any fashion.

The Court: Why would this evidence be relevant as to what is going on on the right-of-way?

Mr. Eichner: I should think to the extent the switching operations are going on, it would indicate what disturbances future switching operations would cause in the neighborhood.

Mr. Gay: Anything we continue to do on our right-of-way is *damnum absque injuria* as to the city ordinance, and no complaint has been made we are violating any city ordinance.

The Court: Sustain the objection as to evidence to present conditions unless they have some bearing, and I don't think this has any bearing, Mr. Spain.

Mr. Spain: Your Honor, I have been here three days and I am not sure at this moment what the railroad's future plans are. I don't think it has ever been made clear by them, except that a marshaling yard of some type is contemplated.

The Court: What about Mr. Brosnan's deposition? page 479]

Mr. Spain: I have been told about that and I saw it very briefly this morning. I was not a party to the suit then.

The Court: As I read that deposition it gives a right clear picture as to what the prospect is, but I don't see the relevancy

Mrs. Margaret Terry

of evidence as to what is going on now on their right-of-way that is not in violation of the ordinance.

Mr. Eichner: Your Honor please, I don't think it is clear whether it violates the ordinance or not, but it simply is not a part of this case. It is not involved in this suit in any way, on the point of whether it makes community living more harmonious or interferes with the comfort and general welfare. I think the type of activity which involves cars bumping together, this is activity which goes on in switching yards generally.

The Court: I will admit it for this purpose only — to show she has some yardstick to evaluate what the noise of a railroad track would amount to in the vicinity of her home. I suppose for that purpose it would be admissible. In page 480] other words, I think it would be admissible for this witness to state she has had an opportunity to hear noises made by trains operating on two tracks in the vicinity of her home. I don't know what further questions you intend to ask, but I will admit that question.

Mr. Gay: Note our exception.

Mr. Spain: That was the purpose of the question, Your Honor.

Q. (By Mr. Spain) Now, Mrs. Terry, has this noise increased since you have been there or remained pretty much as it was when you came, or just which way has it gone?

Mr. Gay: By reason of what?

Q. (By Mr. Spain, continuing) — by reason of the shifting of cars and bumping as you have described.

A. It appears to be more shifting at night particularly.

Mr. Gay: That is all within the present power and authority of the railroad to operate, Your Honor. We are not doing any property owner any injury. They bought there with full knowledge of the existence of this railroad. page 481] We are not violating any city zoning ordinance nor any property rights. I respectfully submit that kind of testimony is completely incompetent.

The Court: I think your objection is well taken with this exception, and this is the only reason I am admitting it. If there were no railroad tracks there at all and this witness undertook to say if so many tracks were laid there, what the

Mrs. Margaret Terry

result would be. If she doesn't know what noise a track makes or what the result of a track being there would be, I don't see how that could be admissible. I think this is admissible only for the purpose of showing this witness, within three hundred yards of a track, has had the experience of hearing the noise. Whether they can develop anything else on that I don't know, but I think it is admissible for that purpose.

Mr. Gay: Your Honor understands we except to Your Honor's ruling?

The Court: Yes, sir, to this whole line.

Q. (By Mr. Spain) Mrs. Terry, what would the effect of nine additional tracks in this area have upon your property?

page 482] Mr. Gay: Object to that question.

The Court: Sustained. She is not a real estate expert. You might ask her the degree of discomfort she gets from the present operations, whether they are valid or not.

Q. (By Mr. Spain) Mrs. Terry, what does this noise made by the trains which you have described do to you?

Mr. Gay: Object to that question, Your Honor please. Present conditions there with which this witness is familiar and in the light of which she bought and improved her property certainly could have no bearing whatsoever on the question involved in this case, whether this property is validly zoned and whether our use of it as a yard would be constitutional or otherwise.

The Court: Suppose the present noise were not objectionable to her at all?

Mr. Gay: She would be a phenomenon.

The Court: I think that's the only purpose in asking the question. Objection overruled.

Mr. Gay: Note an exception.

Mr. Spain: Please read the question.

page 483] Note: The last question was read by the reporter.

A. Well, the noise now don't do a whole lot, any more than I expected when we moved there, but if they put nine tracks there it would mean to sell our property. You couldn't live with that noise.

Mrs. Margaret Terry

Mr. Gay: I move the answer be stricken out.

A. (Continuing) If they was to put a marshaling yard there I don't think anybody could stay where we are when they are shifting and bumping those cars. You would have to sell and take a great loss on your property.

The Court: Just a minute. I will strike the part about the loss on the property. I will admit that part of the answer about the witness stating if the present noise were increased materially she would feel she would want to move. I will strike out the portion as to the sale of the property.

Q. (By Mr. Spain) Would you have built your house at this location, Mrs. Terry, if you had known that there was a probability of a marshaling yard being put where
page 484] the yards are proposed to be put?

Mr. Gay: Object to that question.

The Court: On what ground?

Mr. Gay: It calls for her to testify to her state of mind. How can this witness testify about what her state of mind would be about something she knows nothing about?

The Witness: I do know something about it.

Mr. Spain: Just a minute, Mrs. Terry.

The Court: I think the objection is well taken. I will sustain your objection, Mr. Gay.

Q. (By Mr. Spain) Do you propose to stay in this neighborhood if the marshaling yard is put there, Mrs. Terry?

A. No I do not.

Mr. Gay: Mrs. Terry, please give me an opportunity to object or not before you answer, if you will. I treat you with the greatest deference, Ma'am, and I ask that you give me the opportunity to object before you start answering the questions. Now, will you read the last question and answer, please, Miss Reporter?

page 485] Note: The last question and answer were read by the reporter.

Mr. Gay: I object to that question and answer as being irrelevant. This witness cannot testify as to intention with respect to matters about which she has no present knowledge.

The Court: Overruled.

Mrs. Margaret Terry

Mr. Gay: Note an exception.

Mr. Spain: Go ahead and answer, Mrs. Terry.

A. I said no, I would not.

Q. Why wouldn't you?

A. Who would want to live in a railroad yard, Mr. Gay?

Mr. Spain: Don't argue with him. Just answer the question.

A. I don't think this gentleman would want his home he sacrificed to build —

The Court: Just answer the question, if you can. Please read the question to her.

Note: The last question was read by the reporter.

page 486] A. Because I wouldn't want to live there.

Mr. Gay: Your Honor, there is one other thing. I wish to call attention to the fact counsel has continued to use the expression "marshaling yard." There is not a scintilla of evidence in this record to justify that or to indicate what a marshaling yard is.

The Court: I think the objection is well taken. I think the question should be directed to an increase in the present number of tracks and the resulting operation of trains thereon. I don't think there has been any definition of marshaling yard or that this railroad intends to install one.

Mr. Spain: That's my real objection — we don't know.

Q. (By Mr. Spain) Mrs. Terry, if additional tracks are installed at this location and are lighted at night, will those lights be visible from your house?

Mr. Gay: I object to that question. All the testimony on lights is that of Mr. MacLeod who said they would not be
more than twenty feet off the ground and covered
page 487] by hoods which would direct the light immediately
below them, if they were put in.

The Court: That would go to the weight of the testimony. Even under Mr. MacLeod's testimony, there will be some increase in the lighting conditions. I think that goes to the weight of the testimony. Go ahead.

Mr. Spain: I will ask you to read the question.

Mrs. Margaret Terry

Note: The last question was read by the reporter.

A. I should think so.

Mr. Gay: I move the answer be stricken out. It is expressing an opinion on a fact of which she has no knowledge.

The Court: The objection is overruled. Go ahead.

Mr. Gay: It is pure speculation on the part of the witness. Note an exception.

Q. (By Mr. Spain) Were you living at your present address when the railroad was grading and filling this page 488] property?

A. Oh, yes.

Q. Will you describe what noises, if any, went on during that time?

A. There was terrific noise then — scraping and scratching from morning until night with these things that was lifting the dirt, and there was terrific noise. Not only me but everyone in the neighborhood said something about it.

Mr. Gay: I question the relevancy of that or its admissibility. We had a right under the zoning ordinance and the opinion of the building inspector to go there and grade and fill our property. Every piece of property in the City of Richmond that is improved goes through the same process. If this witness had any grievance recognizable in law she had a right to assert it, and I submit this is not the time or place to litigate that grievance.

The Court: Mr. Spain, aren't we concerned now with the question of the existence of the yard there and what effect the additional tracks would have and the noise that would accompany the tracks?

Mr. Spain: I think that is so, Your Honor.

page 489] The Court: I will sustain the objection to that.

Mr. Gay: I move that the question and answer be stricken.

The Court: It is so ordered.

Mr. Eichner: There is no question about it, it is conceded that grading and filling property in any district is perfectly all right under the zoning ordinance.

The Court: All right. Go ahead.

Mr. Spain: No further questions.

Mrs. Margaret Terry

CROSS EXAMINATION

By Mr. Eichner :

Q. I have one question, Mrs. Terry. In your opinion would the operation of additional tracks on the property in question adversely affect the comfort or general welfare of residents of the community?

Mr. Gay: I object to that question as calling for page 490] an opinion on a matter about which this witness is not qualified to testify.

The Court: Sustained. That is a conclusion the court would have to draw.

Mr. Eichner: This was used in the *Cherrydale Cement case* reported in 180 Virginia.

The Court: Was it objected to?

Mr. Eichner: I don't believe it was. We respectfully except to Your Honor's ruling on that ground, and we would like to make the exception run through similar questions of these lay witnesses, to save time.

The Court: Questions directed at the existence of facts would be admissible, but I think that is a conclusion.

Q. (By Mr. Eichner) Anticipating an objection, I will ask this question, but please don't answer it until the court has ruled —

Mr. Gay: I question the propriety of counsel asking a question which he prefaces by saying he knows it is objectionable.

The Court: He said he thought perhaps he might get an objection. Go ahead.

page 491] Q. (By Mr. Eichner) In your opinion, do you think the extension of the track facilities on the Riverside Drive property of Southern Railway, and the conducting of railroad operations on the additional tracks, will make the community less convenient, attractive or harmonious?

Mr. Gay: Object to that.

The Court: Convenient, attractive or harmonious to whom?

Mr. Eichner: To residents of the community. This is based on language of the 1962 statute, Section 15-968.3, that being one of several elements included in the purposes of zoning ordinances.

Mrs. Margaret Terry

The Court: I haven't heard an objection yet. Is there an objection?

Mr. Gay: On the same grounds I objected to the previous question.

The Court: I think she could be asked that question as to whether it would make it more or less desirable to her. I don't think she could be asked whether it would make it more or less desirable to the community.

Mr. Gay: The question in respect to which coun-
page 492] sel is directing the witness' attention, with which
the law expects Your Honor to deal, in the light
of the reasonableness or unreasonableness of this ordinance,
is not with respect to this fair lady or her neighbor, but the
community. I respectfully submit Your Honor cannot hold
this ordinance constitutional because the railroad offended
her. It has got to bear on the surrounding property as such,
and what effect it might have on her is utterly irrelevant.
There may be competent expert testimony, when properly
presented, that would bring this issue before Your Honor,
but this witness cannot do it, I respectfully submit.

The Court: She cannot testify as to the effect, as an ex-
pert, but wouldn't the feeling of the aggregate community
on that subject be the test? She is just one member of that
community, but it seems to me she could answer that as to
herself. There again that would go to the weight and whether
or not there is sufficient testimony to evidence the fact there
had been an adverse effect on the community, she being a
small part of it, but she could say what effect it
page 493] has on her. I will permit the question.

Mr. Gay: Note our exception.

Mr. Eichner: I will ask the reporter to read the question.

Note: The last question was read by the reporter, as follows:

“Q. In your opinion, do you think the extension of the track facilities on the Riverside Drive property of Southern Railway and the conducting of railroad operations on the additional tracks will make the community less convenient, attractive or harmonious to residents of the community?”

The Court: Objection sustained to the question in that form. Do you want to amend it?

Mr. Gay: I have one other objection, Your Honor. It does

Mrs. Margaret Terry

not comprehend the facts that the record shows in this case will obtain. No hypothetical question can be admitted that does not state what the record discloses as to what will be the conditions. If counsel wants to frame a hypothetical question, he must get all the facts.

page 494] The Court: Please read the question again, Mrs. Pole.

Note: The last question was read by the reporter.

The Court: I think the qualifying term "railroad operations on the additional tracks," in view of the evidence in this case, would meet the requirements for a hypothetical question. I will admit the question.

Mr. Gay: Note our exception.

Mr. Eichner: Do you want the question read back again, Mrs. Terry?

The Witness: One more time.

Note: The last question was again read by the reporter.

A. I think it will make it much less attractive.

Mr. Eichner: Thank you. That's all.

page 495] CROSS EXAMINATION

By Mr. Gay:

Q. Mrs. Terry, I believe you said you lived at this location for about eight years.

A. It will be eight years the 31st of December. We built our own home.

Q. Were you among the citizens of that area, or was your husband among the citizens' group opposing the construction of these facilities by the company?

A. Well, he was a block chairman, if that's what you mean — just to notify the neighbors when they had Council meetings and stuff.

Q. To notify the neighbors when they had Council meetings?

A. That's right.

Q. Did you ever attend a Council meeting or, to your knowledge, did your husband ever attend a Council meeting in opposition or in support of the passage of an ordinance that

Mrs. Margaret Terry

would stop this development?

Mr. Eichner: We object to that question. It is assuming the conclusion to one of the legal issues in this page 496] case, namely, the effect of the December ordinance. The contention of the city has been the ordinance has always prohibited this yard activity on any sort of R-4 property, as originally enacted in the previous ordinance, and the city's position is the December amendment had nothing to do with it. Therefore, I object to counsel characterizing it as such.

The Court: The question was whether or not she or her husband assisted in getting a group of citizens to attend the meeting.

Mr. Eichner: Your Honor, he went further and assumed that which is in issue, namely that the December ordinance was to prevent what the Railway wishes to do.

The Court: I think the question was whether or not this witness, or her husband, participated in that meeting and were present there and participated in the arrangements prior to the meeting.

Mr. Eichner: I have no objection to that, as long as the legal conclusion is not thrown in.

Mr. Spain: Your Honor, we submit this line page 497] of cross examination is exceeding the scope of direct and therefore counsel should properly adopt the witness as his own.

The Court: I take it this is directed toward establishing interest or bias on the part of the witness. I think it is proper. Go ahead.

Mr. Gay: Please read the question, Ma'am.

Note: The last question was read by the reporter.

Mr. Spain: The last part of the question is the one to which Mr. Eichner objected, and we must raise the same objection. We say that didn't stop them — they were stopped before they got to that position.

The Court: It was the purpose of the ordinance, wasn't it?

Mr. Eichner: The city contends it was not. It has been prohibited since 1927.

The Court: Overruled.

Mr. Eichner: Note our exception.

Mrs. Margaret Terry

A. Yes, we attended the Council meeting — both of us.
page 498] Q. (By Mr. Gay) Did you have a spokesman at that meeting?

A. We didn't suggest any. People spoke but we didn't ask them to.

Q. But your group did have a spokesman?

A. I think Eldridge got up to speak, but he didn't tell us what he would say before he made the speech.

Q. Mr. Spain was there as a lawyer representing the citizens' organization, was he not?

A. I couldn't tell you.

Q. You don't know why he was there?

A. I didn't ask him.

Q. I say, you don't know why he was there?

A. To protect himself as well as we were there to protect ourselves.

Q. That meeting was on the 14th of November, was it not, Mrs. Terry — excuse me, the 30th of November, 1960?

A. Yes.

Q. Did Mr. Poehler speak in behalf of your group at this November meeting?

A. He spoke, but I don't even know him personally.

Q. Your acquaintance with him wouldn't have
page 499] any relation to what I asked you. Did he speak in the interest of the citizens advocating the passage of the pending ordinance?

A. Yes, he spoke.

Q. Are you willing to hazard an approximation, Mrs. Terry, of how many citizens from your area were in the courtroom on that occasion?

A. To tell you the truth, I really wouldn't want to say because I really wouldn't know.

Q. Wasn't the room packed?

A. It was packed.

Q. And that was in City Council chamber?

A. Yes.

Q. You say your husband was a block chairman?

A. Yes.

Q. Were all the blocks in this area organized and directed in their activities in this matter through a block chairman?

A. They had one person to notify the block to keep from having to mail notices to them. You could make a phone call or two and say, "They are going to have a meeting, Attend

Mrs. Margaret Terry

in your own interest.”

Mr. Gay: I will ask that the reporter read the question. You did not answer my question, Ma'am.

page 500] Note: The last question was read by the reporter.

A. I guess you would say it was.

Q. How many blocks, if you know, were so organized?

A. I couldn't tell you on any of that.

Q. Would you say five or twenty-five?

A. I wouldn't want to even guess. I have no idea.

Q. Do you know what area around your property was considered to be concerned with this matter and had citizens' organizations in the way you have indicated they were on your block?

A. I understood at the Council meeting it went to Forest Hill Avenue.

Q. Clear back to Forest Hill Avenue?

A. From Forest Hill to Riverside Drive — that it would affect that many people. I don't know how many it took for a block though.

Q. Is your house air conditioned?

A. No. We don't need it.

Q. How do you arrive at the figures you gave a moment ago — that distance of two hundred and seventy-five to three hundred feet from the railroad track?

page 501] A. Measured it.

Q. You measured it?

A. Yes.

Q. How did you determine the elevation?

A. I asked my husband.

Q. Just a moment. How did you determine the elevation of that part of your house or yard you said was fifteen to twenty feet above the railroad track?

A. I asked my husband. He had the lot graded and I felt like he ought to know.

Q. But you don't know of your own knowledge?

A. I live there, and I feel like I can take his word for it.

Q. But it is not your word you are giving the court — it is his?

A. It could be my word too.

Q. You are willing to give your word on something you

Mrs. Margaret Terry

don't know the actual facts about?

A. I am willing to take his word — to repeat it.

Q. That's the best answer you can give to my question?

A. You can take my word for it, if that's the way you want it.

page 502] Q. You say you are presently concerned by the noises arising from the operation of the Southern Railway's trains. Can you give us any idea how many trains are moved back and forth a day in front of your property?

A. I don't know how many a day. I work nine hours a day.

Q. So you are not there in the daytime?

A. I would love to be there but I am not.

Q. So your testimony as to noise is confined entirely as to what transpires at night?

A. And weekends.

Q. Can you tell us how many trains disturb you at night?

A. I can't tell you exactly. Sometimes we get two and sometimes three. It may be more. It just depends on how well you are sleeping.

Q. You have lived there eight years, you say?

A. Yes.

Q. And the railroad was there and operating when you first went there?

A. Yes.

Q. Is it fair to say that the extent of your disturbance from these noises is greater or less today than it was when you built your house there eight years ago?

page 503] A. When we built there eight years ago it was two trains — the West Point train and the Danville train — that went through then.

Q. You say the West Point train?

A. That train that has all that pulpwood or whatever it is on it. It is a long train.

Mr. Gay: I will ask Miss Reporter to read the question I asked the witness.

Note: The question was read by the reporter, as follows:

“Q. Is it fair to say that the extent of your disturbance from these noises is greater or less today than it was when you built your house there eight years ago?”

Mrs. Margaret Terry

A. It is more shifting at night.

Q. Can you give us the names of some of the other block chairmen that you referred to who performed the function similar to that of your husband on your block?

A. No.

Q. You don't know any of them?

A. No.

Q. Can you give us the names of any of the
page 504] property owners who participated in this appearance before the City Council?

A. Well, I think a lot of owners — in fact, I know a lot of property owners came to the Council. You mean, that came to Council meeting?

Q. The ones you spoke of a moment ago. There were two Council meetings you attended?

A. I saw quite a few neighbors there. You mean call them out by name?

Q. Yes. Have any of them been sitting in the courtroom since this case started?

A. Yes.

Q. All of those ladies back here?

FROM THE AUDIENCE (In Chorus) : Yes, we were there.

Q. (By Mr. Gay) They were all in the Council meeting?

A. I don't know about those ladies. I couldn't point out those who were there and who wasn't. Those ladies that are here I don't know, except my neighbor there and my husband. I know only two people, other than Mr. Spain.

Q. Do you know Mr. Wilbur Walker?

A. Yes, I know him.

page 505] Q. Do you know what part he took in this citizen's movement?

A. No, I am not that familiar with Mr. Walker.

Mr. Eichner: I don't see the relevancy of this kind of questioning.

Mr. Gay: I am trying to develop what we think is a fact. We cannot, under Your Honor's ruling, prove what motives Council had in mind in adopting this ordinance, but I believe we are able to show the surrounding circumstances and the events which led up to the passage of this ordinance, and the reason it was adopted. They may not have paid any attention to any of those things, but I think we are clearly entitled to

Mrs. Margaret Terry

show what human nature would record is a reason for doing what it did.

Mr. Eichner: I think the reason Council did what it did is not admissible in any event, nor is this the proper approach to get the evidence, assuming it were admissible.

The Court: The motive I have ruled is not admissible. However, it is my understanding from the authorities, and I don't know anything to the contrary, that the page 506] surrounding circumstances can be shown, the argument being that motive has nothing to do with it. It may be that surrounding circumstances do have — pressures, and one thing and another.

Mr. Eichner: Factual circumstances, certainly — but would the interest of Council?

The Court: The interest of Councilmen as such, individually, would be pertinent, I think. I will overrule the objection.

Mr. Eichner: Note an exception.

Mr. Spain: We object and except on the same grounds.

Q. (By Mr. Gay) Now, Ma'am, you were shown a picture of this road that leads down from Riverside Drive to the right-of-way of Southern Railway and said that a bulldozer went down there and worked on it?

A. I did.

Q. When was that?

A. When they started to filling in. I can't remember the date when they started to filling in, but they started to do the work around then.

Q. Hasn't that road been an accessible road ever since you occupied your residence there?

page 507] Mr. Eichner: Your Honor, we submit that is irrelevant.

The Court: She testified on direct examination it had been widened. He is entitled to explore that. Go ahead.

Mr. Gay: Please read the question.

Note: The last question was read by the reporter.

A. Well, it has been accessible to some extent but not like it is now. You couldn't have driven by and seen it was a roadway.

Q. Automobiles went up and down it, did they not?

A. Not like it is now. They would back in and turn around, but not like it is now.

Mrs. Mildred Deane

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page 509] MRS. MILDRED DEANE,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Please state your name.

A. Mrs. Mildred Deane.

Q. Where do you live, Mrs. Deane?

A. 4103 Hillcrest Road.

Q. Where is that situated with reference to Mrs. Terry's home?

A. I am just on the upper side of Mrs. Terry's home, to the west.

Q. How long have you been living there?

A. Since October 1, 1952.

Q. Have you been trying to sell your home recently?

A. Yes we have.

Mr. Gay: Excuse me. Could I have the question and answer read to me?

page 510] Note: The last question and answer were read
by the reporter.

Q. (By Mr. Spain) What is one of the major objections to your residence against selling it that you may have heard?

Mr. Gay: We object to that question.

The Court: I think she can testify she has been unable to sell — that wouldn't be hearsay. But she cannot tell what reason has been given to her for this. I think counsel should be entitled to an opportunity to cross examine the persons who put up the opposition. Your objection is sustained.

Q. (By Mr. Spain) Have you had difficulties in selling your house?

A. Yes we have.

Q. How long have you had your house for sale?

A. We first put it on the market in November 1960.

Q. Why did you put it on the market?

Mrs. Mildred Deane

A. We were anxious to get a little further out into Chesterfield, in the county.

Q. Was there any other reason?

page 511 } A. No.

Q. Can you see this cleared area we are talking about here from your home?

A. Yes.

Q. Would you be able to observe it at night if it were lighted?

A. Oh, yes.

Q. Are you troubled with noises from the railroad as it presently exists?

Mr. Gay: We make the same objection, Your Honor please, as we made to the same question put to the prior witness.

The Court: Same ruling. It is understood the objection goes to this whole line.

Q. (By Mr. Spain) Are you troubled with noises the railroad presently makes?

A. Yes, I am, particularly at night.

Q. At what hours?

A. In the latter part of the night. Any time after midnight.

Q. What is the trouble, Mrs. Deane?

A. The shifting of the cars.

Q. How long does this shifting go on?

page 512 } A. I will say anywhere from fifteen or maybe twenty minutes — the length of the number of cars they are shifting. At that time of night it is hard to judge.

CROSS EXAMINATION

By Mr. Eichner:

Q. In your opinion, Mrs. Deane, would the extension of the track facilities on the railroad yard property of the Southern Railway, and conducting railroad operations on additional tracks, make the community less convenient, attractive or harmonious —

Mr. Gay: Objection.

The Court: Overruled, and the same objection will be

John B. Madden

understood to go to this line of testimony.

A. Yes it would.

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page 518] JOHN B. MADDEN,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. State your name, address and occupation?

A. John B. Madden, 2500 Riverside Drive, Richmond, Virginia. I am employed by Richmond Public Schools as Principal of Chandler Junior High School.

Q. Mr. Madden, are you one of the members of the steering committee of the Forest Hill-Woodland Heights Citizens Association?

A. I am.

Q. How far do you live from the tracks of the Southern Railroad?

A. My home is on the corner of Twenty-Fifth and Riverside Drive, facing Riverside Drive. Our house sits back approximately thirty-five feet from Riverside Drive, and the railroad tracks are down over the hill. I
page 519] would have to estimate, and I would estimate
one hundred or one hundred and twenty-five feet
from the railroad tracks.

Q. Will you put the letter "M" on your house, if you can find it on this exhibit, which I believe to be Exhibit No. 22?

Note: The witness did so.

Q. Mr. Madden, have you attended these meetings to which Mr. Gay has referred?

A. I have.

Q. Have you taken part in all of them you could take part in?

A. I have.

Q. Why did you take part in meetings such as this?

A. Well, as an individual citizen I didn't know what the zoning laws were or the ordinances, and I was seeking the help and assistance of friends in the neighborhood.

Q. About what?

John B. Madden

A. About whether or not it was proper to add additional railroad tracks to the present tracks along Riverside Drive.

Q. Tell us why you didn't want tracks added along Riverside Drive.

page 520 } Mr. Gay: He didn't say that.

Q. (By Mr. Spain) Did you want additional tracks?

A. No, I did not.

Q. Why not?

A. It is my opinion that additional tracks have no place in a residential area of that kind.

Q. For what reason?

A. For whatever reason might be established by the railroad. I do not believe additional tracks would be good for the neighborhood.

Mr. Gay: I object to that question and answer, Your Honor please.

The Court: On what grounds?

Mr. Gay: On the ground it is an opinion based, so far as his testimony is concerned, on no statement of facts to support his reasoning.

The Court: Objection sustained. I think the same objection was made to Mrs. Terry's testimony, and I permitted the question, confined to the effect on the one witness himself.

Q. (By Mr. Spain) What effect do you think the establishment of additional railroad tracks in the Riverside Drive yard would have upon you as an individual?

A. I am convinced that the addition of tracks to be used for storage, which would cause the movement of trains, cars, engines and other railroad equipment, would add to the noise that presently exists with the movement of trains, as of the present time.

Q. Can you see this filled area outlined in red on Exhibit 22 on the board, from your house?

A. No, I cannot.

Q. Can you hear noises from it?

A. I am not certain.

Q. Within how many blocks do you live east of the proposed yard?

A. The proposed yards are to run from Forty-Second to

John B. Madden

Twenty-Sixth Street. I live one block from Twenty-Sixth.

Q. Has there been an increase or a decrease in the last two years in the noise over the present tracks?

A. I am not prepared to answer the question over the period of the last two years, but in the last six to eight months I believe there has been an increase in the amount of noise, especially in the vicinity of eleven, twelve or one o'clock in the morning, including signals given by the men who operate the engines.

page 522] Q. What do these signals sound to you like, or what kind of signals are they?

A. I have heard several times — I don't want to say "blasts" — it would be more like toots on the type of horn the engine has.

Q. What time of day or night?

A. Between twelve and one o'clock.

Q. What other noises, if any, have you heard?

Mr. Gay: Just one moment. I move that that question and answer be stricken because they reflect present operations which are not in issue in this case, and any inconvenience or noise from present operations cannot be relevant to what we are concerned with here.

The Court: I think this is offered for the purpose of establishing his knowledge as to what noise a railroad yard will make and how the noises affect him. I overruled that objection before and will make the same ruling now. It is understood that your exception will be noted to this entire line.

Q. (By Mr. Spain) What other noises, if any, have you heard?

page 523] A. The bumping of cars as they are shifted, and I would say that would be all.

Q. Were you present in the basement of the State Capitol on November 30 when Mr. Brosnan came down from Washington to meet with several of the members of the steering committee of the Citizens' Association?

A. I was.

Q. Tell us very briefly what Mr. Brosnan told that committee about any compromise in this matter?

A. It is my considered reflection that Mr. Brosnan stated flatly he was not there to make a deal with anyone, that his entire concern with the additional tracks had to do with

John R. Weaver

the railroad and the financial position of the railroad, and it involved money, and he would fight this issue to the bitter end.

Q. Did you hear the proposal made to him to limit his scope of operation improvement to two additional tracks?

A. I did.

Q. What was his reply?

A. He said he would refuse to limit the number of tracks that the railroad might wish to put into this area. He said that it was impossible for him to state what might be done in five years or ten years from that time.

page 524] Q. Was there evidenced on behalf of Mr. Brosnan or on the part of Mr. Brosnan any desire whatsoever to reach an amicable adjustment with the people living in that neighborhood?

Mr. Gay: We object to that question as leading and as calling for indication of a state of mind.

The Court: Objection sustained as to the leading form. I think the question is proper if it is reframed.

Q. (By Mr. Spain) Did Mr. Brosnan offer any counter proposal to those offered by the committee?

A. To the best of my recollection he did not.

CROSS EXAMINATION

By Mr. Eichner:

Q. Was any official of the city government present at this meeting?

A. I am certain there was not.

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page 531]

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JOHN R. WEAVER,

a witness called by and on behalf of the Interveners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. What is your name, sir?

John R. Weaver

A. John R. Weaver.

page 532] Q. What is your occupation, Mr. Weaver?

A. Real Estate Appraiser for the City of Richmond.

Q. How long have you been in that work?

A. Four years with the City of Richmond.

Q. Mr. Weaver, have you at the request of the defendants in this case prepared a series of photographs showing houses in the immediate vicinity of the proposed railroad yard of the Southern to be constructed on Riverside Drive?

A. Yes, sir.

Mr. Gay: Just a moment. I ask that counsel be more specific. I don't think the term "immediate vicinity" is specific enough.

The Court: Mr. Spain, define the vicinity more specifically.

Mr. Gay: That's like saying "going too fast."

Q. (By Mr. Spain) Can you identify the vicinity, either from these photographs and from the legends, or from the map you see behind you there, as to what streets and what distances they may be from this yard?

A. From the present railroad tracks you are speaking of?

page 533] Q. Yes, sir.

A. Those pictures were beginning at 2806 Riverside Drive, and extending west to the 2900 block of Riverside Drive, the 3000 block of Riverside Drive, the 4100 block Hillcrest Road, 4200 block Riverside Drive.

Q. Now how far back, if any way, from Riverside Drive do these pictures extend?

A. From Riverside Drive?

Q. Yes.

A. The 2900 block borders Riverside Drive. The 3000 block of Ferncliff Road is approximately a block away from Riverside Drive. The 4100 block of Hillcrest Road, on the north side homes are backed up to Riverside Drive, and it comes to and extends to Riverside Drive. These in the 4200 block of Riverside Drive are facing Riverside Drive.

Q. Now, then, I take it that none of the photographs of these houses which you are showing would be more than one block south of Riverside Drive?

A. That is correct.

Q. How many pictures of houses do you have on the two

Louise P. Weisiger

cardboards forming the exhibit which you have in your hand?

A. Forty-three or forty-four.

Q. What information do you have typed under page 534] each house and where did you receive that information?

A. I have the owner's name, his address, the date the home was constructed, present total assessment. I received this information from our records in the Assessor's Office.

Mr. Spain: I now offer these two cardboards just described by the witness as Interveners' Exhibits A-15 and A-16.

The Court: Have counsel seen those?

Mr. Gay: Yes, Your Honor. I don't recall that counsel has asked the witness whether he took these pictures or who took them.

Q. (By Mr. Spain) Did you take these pictures?

A. Yes I did.

Note: Two cardboards with pictures attached marked Interveners' Exhibits No. A-15 and No. A-16, and filed.

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page 547] LOUISE P. WEISIGER,
a witness called by and on behalf of the Interveners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Dr. Weisiger, please state your name.

A. My name is Louise P. Weisiger.

Q. And where do you reside?

A. 2722 Hillcrest Road.

Q. And what business or profession are you engaged in?

A. Director of Research for Richmond Public Schools.

Q. And what was the address on Hillcrest Road?

A. 2722 Hillcrest Road.

Q. How long have you lived at that address?

A. Since 1911.

Q. Are you a member of the Forest Hill-Woodland Heights Citizens Association?

A. I am.

Louise P. Weisiger

page 548] Q. Doctor, I will ask you are you familiar with the site where the Southern Railroad proposes to put a railroad yard?

A. I am.

Q. Can you say in blocks how far that is from you?

A. Well, Hillcrest Road is a block south of Riverside Drive, and I would approximate the place where the increased tracks will be as about another block.

Q. Doctor, do you believe that the operation of a railroad yard there on eleven tracks would make your neighborhood less convenient, attractive or harmonious?

Mr. Gay: Just a moment, Doctor, please. I would like to note the same objection, and also call attention of the court the question, being hypothetical, does not contain a statement of facts established in this record in respect of which any opinion, expert or personal, should be predicated.

The Court: Mr. Spain, I think the objection as to the content of the question is a proper objection. Could you enlarge that in the manner that the question was admitted on yesterday? I have forgotten the exact language page 549] but it took in more than just the operation on eleven tracks.

Mr. Gay: As I understand you, I don't know whether this lady had answered the question or not before I had an opportunity to object. If she did I ask that her answer be stricken.

The Court: Just strike the last question and answer, if there was an answer.

Q. (By Mr. Spain) Doctor, do you believe that the operation of a railroad yard at the location proposed, that the movement of cars, switching of trains around the clock, would make the neighborhood less convenient, attractive or harmonious to you?

Mr. Gay: Just a moment. I want to note the same objection.

The Court: Yes, sir, and it will be understood your objection goes to this whole line.

Mr. Gay: And our exception.

Q. (By Mr. Spain) You may answer now, Dr. Weisiger.

A. I do.

Q. Will you tell us why, please?

Louise P. Weisiger

A. I think that the proximity of the proposed
page 550] freight yard will add a great deal to the noise
in the neighborhood; it will detract from the
scenery of the neighborhood; it will lower property values;
and decrease the dignity of our neighborhood.

Mr. Gay: Within the scope of Your Honor's ruling and having proper and due deference to it, I submit that that part of the witness' answer which has to do with the reduction of property values is not proper and should be stricken.

The Court: Objection sustained as to that. The reporter is directed to strike that portion of the answer that relates to depreciation of property values.

Q. (By Mr. Spain) Will you now come over to the map which is on the board, Doctor, Exhibit No. 22, and locate your house and mark it with a "W" on the map?

Note: The witness did so.

A. It is on the south side of Hillcrest Road.

Mr. Eichner: No questions.

page 551] CROSS EXAMINATION

By Mr. Gay:

Q. Doctor, have you ever lived as near to a railroad yard as you are assuming you will be if the property in question is improved as a railroad yard?

A. No.

Q. Aren't you just drawing on your imagination as to what noise would emanate and what effect it would have on your esthetic values when you say construction of the type Mr. Spain asked you about would have these effects on you?

A. I know that there is noise connected with the shifting of trains, and I feel quite sure that an increase in the trackage will bring increased noise.

Q. If the tracks are used?

A. If the tracks are used. There would be no point in having the tracks if they are not used, would there?

Q. I am not testifying, Doctor. You say you are a member of the Forest Hill-Woodland Heights Citizens Association. How long have you been a member?

Louise P. Weisiger

A. That was organized, I think, about two years ago. I went to all the meetings when they were called in connection with the Southern Railroad.

page 552] Q. The purpose of this organization, was it not, was to oppose what you then understood to be the plans of the Southern Railway to develop this property?

A. Yes, sir, I understood it to be.

Q. Were you in the jurisdiction of a block chairman?

A. No. My sister was.

Q. Your sister was a block chairman?

A. Yes.

Q. Did she distribute handbills or other notices of meetings being called to discuss this matter?

Mr. Eichner: Your Honor, it is understood the city's objection runs through this whole line?

The Court: Yes.

Mr. Gay: Read the question to the witness.

Note: The last question was read by the reporter.

A. I don't know whether she distributed handbills. I know she visited many homes. I don't know whether she carried handbills or not.

Q. Were handbills distributed?

page 553] A. I think so. I am not quite positive about that. I am employed all day by the School Board, and I am not always at home. I think some handbills came to our home — those calling attention to the meetings and that type of thing but I wouldn't want to answer that question too positively.

Q. Did you attend meetings of the City Council when the requested adoption of an amendment to the zoning ordinance was up for consideration?

Mr. Spain: Just a moment. We understand that our objection to this line of questioning runs throughout, as having no purpose except to inquire into the motive of Council in passing the ordinance it did pass.

The Court: It is understood your objection and the city's goes to this whole line of testimony.

Mr. Gay: Please, ma'am, read the question.

Note: The last question was read by the reporter.

Louise P. Weisiger

A. I did.

Q. You were not in the courtroom when Mrs. Deane and Mrs. Terry testified on yesterday?

A. I was not. I am extremely busy at this time of year.

I asked Mr. Spain to excuse me until he was ready
page 554] for me to testify. I stayed about three-quarters
of an hour yesterday morning and he told me it
would be today before he would get to me, so I went back to
my office.

Q. So you were not here when they testified?

A. I was not.

Q. How many meetings did you attend?

A. Two, I think.

Q. Were they largely or sparsely attended?

A. Very largely.

Q. Is it fair to say that the Council Chamber was full of people?

A. Overflowing.

Q. Is this property in question and about which you have been referring in your testimony visible from your residence?

A. It is not visible in the summer when the foliage is on the trees. I am not sure whether it would be visible in the winter. It is visible, however, from our garden. We have a tract of land on the north side of Hillcrest Road which we bought and upon which we have developed a garden by the name of Rosemary Garden. We have expended a good deal of time and money upon it. The dirt or clay which lies where the proposed tracks might be is visible from our garden. The
undergrowth, the green foliage, and so forth, has
page 555] been removed and we have that view from our
garden.

Q. Were the activities of this Forest Hill-Woodland Heights Citizens Association headed up by a committee?

A. Yes, sir.

Q. Can you name the members of the committee?

A. I cannot name them all. I believe I can name some of them.

Q. Will you do so?

A. Yes, sir. Mr. John Madden, Mr. Henry Poehler, and I think Mr. Maurice and Mr. Spain. I recall Mr. Prussing — and I don't recall the other names.

Q. Did any one or more of these gentlemen address the Council meeting or meetings that you attended advocating the purposes of your association?

John E. Norvell, Jr.

A. Yes, sir.

Q. Who were they?

A. Mr. Poehler presented the case for the citizens and I think Mr. Spain spoke.

Mr. Gay: Thank you, Doctor.

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page 556 } JOHN E. NORVELL, JR.,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Please state your name, residence and occupation, Mr. Norvell?

A. John E. Norvell, Jr., and I am a resident of Chesterfield County — Bon Air. My vocation — realtor, and I am President of the Richmond Bank and Trust Company.

Q. Where is the Richmond Bank and Trust Company located?

A. 2604 Hull Street.

Q. How long have you been in the real estate business?

A. I have been associated with this office for forty years.

Q. When you say “this office” what office do you mean?

A. My father had a real estate office there
page 557 } and I came into my father’s office forty years ago.
It was my father’s office and now mine.

Q. Has your experience and work in the real estate field been largely confined to the area of South Richmond and Chesterfield?

A. It has.

Q. Will you say to the court what experience you have had in appraising real property?

A. I make the appraisals for the bank; I serve on the Appraisal Committee of the Real Estate Board of Richmond; I am a member of the Appraisal Panel for the Veterans Administration for GI home loans. I have appeared as an expert witness in condemnation proceedings for gas transmission lines, widening of streets, city improvements.

Q. Is it fair to say that a large part of your work in the real estate field has been devoted to appraisal work over forty years?

John E. Norvell, Jr.

A. Yes, in connection with appraisal and selling. Of course in selling you become involved in the appraisal or valuation of property.

Q. Have you been qualified and admitted as an expert by other courts of record in this area?

A. Yes.

Q. Are you familiar with the area shown on page 558] Exhibit 22 now on the board which shows the proposed Riverside Drive railroad yard and the land south thereof for a short distance?

A. You are referring to the top map on the board?

Q. Yes.

A. Yes I am.

Q. How long have you been familiar with that area, Mr. Norvell?

A. All of my life. I will reveal my age — fifty years. I was a boy in that community. I would have had to be about nine years old before my mother would let me go over there.

Q. Mr. Norvell, will you describe this area to the court now, as to what kind of area it is?

A. The property to which I will refer is a most desirable residential section with stable values —

Mr. Gay: Just a moment. Would the witness preface his answer by stating what area he is attributing these features to?

Q. (By Mr. Spain) What area will you have under consideration in your testimony from here on unless otherwise noted?

page 559] A. The area known as Woodland Heights, which in my mind begins at Twenty-Fourth Street and Forest Hill — it is the property east and west of Forest Hill Park and into the edge of Westover Hills. That is the general area to which I will refer.

Q. Now having located the property to which you are referring, will you describe the neighborhood to the court?

A. A most desirable private residential area.

Q. Do you have an aerial photograph of the area which has been furnished you by me?

A. I have.

Q. Bring it here, please. Mr. Norvell, could you, by the use of pen and ink, outline the area to which you refer on this photograph?

John E. Norvell, Jr.

Note: The witness did so.

A. This would be Twenty-Fourth Street, here (indicating on photograph). This is Forest Hill Park.

Q. Put two "X's" there.

Note: The witness did so.

A. Up to this point, where it becomes Hillcrest.

Q. Put two "X's" at what you are now indicating page 560] the western end of Forest Hill Park.

A. I have done that — right here — and this is Forty-Second Street.

Q. The next "X" — going west on the photograph?

A. Yes — where the track comes back to a single track — about at that area.

Q. Coming southerly off of Riverside Drive, to what extent are you going to give your testimony, moving southwardly off the Drive?

A. I am considering the area back to Semmes or Forest Hill Avenue.

Mr. Spain: All right. I want to introduce this.

Mr. Gay: I think if counsel expects to use this exhibit it should be identified by someone who took it and when it was taken.

Mr. Spain: We will have that.

Mr. Gay: Until that is done, I respectfully submit counsel cannot examine the witness about it. If he states the facts I may be willing to agree to them.

The Court: I think the objection is well taken. Can you state the facts, Mr. Spain, and see if they can be page 561] agreed to? Otherwise, I will have to sustain the objection until the photograph is identified.

Mr. Spain: All right. I will get the photographer in.

The Court: All right.

Q. (By Mr. Spain) Will you describe —

Mr. Gay: Excuse me. I don't want to interpose a frivolous objection, Your Honor. If he will just say when this photograph was taken and by whom and under what conditions, I will accept it as a statement of fact.

John E. Norvell, Jr.

Mr. Spain: Yes, sir, I will be glad to say.

Mr. Gay: I will accept any fact counsel will vouch as such.

Mr. Spain: Yes, sir. I would like to say this is an aerial photograph made by Mr. Rice of Adolph Rice Studios, and it was made approximately January 10, 1961 — if that is sufficient. That is as close as I can give you.

Mr. Gay: That is sufficient.

Mr. Spain: All right. Thank you, Mr. Gay. I understand Your Honor will now admit the photograph.

page 562] Note: Aerial photograph marked Interveners' Exhibit No. R-17 and filed.

Q. (By Mr. Spain) Mr. Novell, will you now describe for the court the type of homes in the immediate vicinity of Riverside Drive along this area of the railroad yard?

A. Generally speaking, they are single-family, one or two story private residences.

Q. Are they all about the same age?

A. No. Some of those houses are more than fifty years old, and some have been built within the last two years.

Q. Mr. Norvell, I ask you what is your opinion as to the effect of the building of a railroad yard as shown in red on Exhibit No. 22 now on the board upon the property in the immediate vicinity, and to such extent from the immediate vicinity as you think it will have an effect?

Mr. Gay: Just a moment. I make the same objection which Your Honor sustained a moment ago.

The Court: Yes, sir. This is a hypothetical question and you will have to go into more detail.

page 563] Q. (By Mr. Spain) The building of such a yard having up to eleven tracks with the switching and shifting of trains without regard to time, that is, night and day — what is your opinion of the effect of such an activity?

A. I would consider it a detrimental influence to the community.

Q. For what reason?

A. Noise, disturbing the peace of the people who live nearby, the general trend of industry or commercial activities to lower residential values, the possibility of the "gentlemen of the road" who will ride these cars entering and leaving through this residential community.

John E. Norvell, Jr.

Q. Are you familiar generally with the other railroad yards in the City of Richmond?

A. I will say I am aware of them — I have seen them.

Q. Do you know of any other railroad yard in the City of Richmond located in a residential neighborhood of this type?

A. No I do not.

Q. Would a railroad yard be likely to have a more serious effect upon single-family dwellings of the type in the neighborhood than upon apartment-type buildings?

page 564] Mr. Gay: I object to the leading question.
The Court: Sustained as to form.

Q. (By Mr. Spain) Are you familiar with the building of certain apartments to the east of the proposed location of the railroad yard?

A. Yes.

Q. Can you say whether there is any difference between that type of building and single-family residences?

A. I think that there is.

Q. Give us your reasons.

A. The apartment houses, generally speaking, are sound-proof and air conditioned, which excludes the noise.

Q. Would that be true of these single-family dwelling in the neighborhood?

A. Most of the people want the windows up and enjoy living there with all the breeze, and are not closed up.

Q. As to desirability, how does the area immediately adjoining the railroad and the area to which you have alluded compare with other residential areas in the city for natural beauty?

A. In some instances it is superb. With the elevation above the tracks, it gives you a commanding view of the city. It is a most pleasant vista in which to find yourself.

page 565] Q. What would the establishment of a railroad yard on some sixteen acres in the vicinity do to this vista, in your opinion?

A. It would certainly, in my opinion, destroy the desirability or the effect. Diesel engines do not make the smoke that the old steam engine did, but there is a certain amount of smoke from them from the exhaust and you would be conscious of something that disturbed you, and I think that would affect your whole attitude towards your outlook.

Q. Mr. Norvell, are you prepared to say how far south of

John E. Norvell, Jr.

Riverside Drive this effect would be discernible?

A. Two squares or more. You have to remember the terrain. There are various elevations, and some of these elevations are seventy to eighty feet above the track — some are only twenty or thirty feet above the track. Sound is affected by atmospheric pressure and wind direction and all those things, so that in some instances it would affect a piece of property and the next time it wouldn't. I am aware of noises where I live. On some evenings we can hear noises miles away, and another night we hardly hear them on the highway.

I am talking in the general realm of the desirability of this community and, as I stated before, this contemplated construction would generally devalue or affect
page 566] the desirability of the community.

CROSS EXAMINATION

By Mr. Gay:

Q. Could I see the photographs? Mr. Norvell, I hand you Interveners' Exhibit No. A-17, the photograph which you have filed with your direct examination, and ask you to state for the record what is the well-defined thoroughfare pictured on it that runs from the bottom nearly to the top of the photograph near the lefthand side of it?

A. This one (indicating on photograph)?

Q. Yes.

A. I am not certain whether Stonewell or New Kent. Without looking on the map I am under the impression it is New Kent Avenue.

Q. Take the photograph and lift up the maps on the board until the big blue one is before you, and orient yourself on the photograph with respect to the streets that are identified on that map.

A. Let me be certain I am at the correct street.
page 567] This would be Stonewall (indicating on map) —
first, second, third — let's be sure. Yes, sir, that would be Stonewall Avenue.

Q. Then the street I have been asking you to identify is Stonewall Avenue?

A. Yes, sir.

Q. Put an "N" on this Exhibit No. 26 as being the street to which you now refer.

A. Is this Exhibit No. 26?

Q. Yes.

W. B. F. Johnson

Note: The witness did so.

Q. Take your seat, sir. How far south of Stonewall is Forest Hill Avenue?

A. It would be Semmes Avenue in Woodland Heights. Semmes Avenue becomes Forest Hill Avenue at Patrick Henry School.

Q. One is just an extension of the other?

A. Yes, sir. It would be Stonewall, Springhill and Semmes.

Q. Stonewall is two blocks further back?

A. Yes, sir.

Q. I understood you to say on direct examination that the opinions you were about to express related to page 568] the area or areas that you have marked on this photograph in red pencil, and extend back to Semmes Avenue or Forest Hill Avenue, as the case may be.

A. Yes.

Q. Do you want the court to believe that in your opinion any question of vista would be involved in respect to property south of a block, at most, from Riverside Drive?

A. I defined this area to be bounded by Semmes Avenue. The vista would be involved from this area from which you could see. Of course, back there you wouldn't have a view.

Q. It doesn't have any application to the area which you have described except that part of it?

A. The question of vista would be restricted to that.

Q. You said the yard would destroy the vista and I am trying to have you clarify that answer by saying to what part of the area you think the factor of vista has any application.

A. Due to the terrain of the subdivision, it would be maybe one square and maybe three, depending on where you are standing and looking. This is in a continuous line (indicating on photograph), it follows the contour of the river and the topographic contour.

★ ★ ★ ★ ★

page 569] W. B. F. JOHNSON,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Please state your name, age, residence and occupation?

W. B. F. Johnson

A. W. B. F. Johnson, fifty years old, 3226 Archdale Road. I am in the real estate business, associated with A. L. Adamson Realtor, 913 Hull Street.

Q. Mr. Johnson, how long have you been engaged in the real estate business, and what other firm, if any, have you been with?

A. I have been with A. L. Adamson Realtor since 1930 — no other realtor.

Q. Has your experience been confined chiefly to South Richmond and Chesterfield County properties?

A. Yes.

Q. Will you state for the court what experience you have had in appraising property and for whom you page 570 } have appraised property?

A. I have appraised property for various banks — Central National Bank, First & Merchants, Bank of Virginia, Richmond-Petersburg Turnpike Authority, VEPCO, and various estates.

Q. Have you been admitted as an expert witness in the appraisal field by other courts of record in this area?

A. Yes.

Q. Have you recently at my request examined the land where the proposed Riverside Drive railroad yard is to be constructed?

A. Yes.

Q. Have you examined the residential territory immediately south thereof and somewhat also to the east and west thereof?

A. Yes.

Q. Mr. Johnson, how long have you known of this area?

A. Since I have been in the real estate business, since 1930.

Q. Who developed this real estate area as it lies west of Forest Hill Park?

A. West of Forest Hill Park, I sold the land myself in 1940 — from William Schmidt to Frank A. page 571 } Simon, and he developed it, and I sold the houses, or helped sell the houses.

Q. In selling these houses what, if any, were the assets or selling points, and what, if any, were the detriments to selling those houses?

Mr. Gay: Object to that.

Mr. Spain: I withdraw the question.

W. B. F. Johnson

Q. (By Mr. Spain) Will you describe the residential neighborhood for the benefit of the court and how it compares with other residential neighborhoods you know of of similar nature, if there are any?

Mr. Gay: In what area?

Mr. Spain: In the City of Richmond.

Mr. Gay: You are asking about some area generally. I think the witness ought to be asked to state what area he is using.

Mr. Spain: I thought I asked him the area a little bit east and west of the yard, and a few blocks south of the yard.

The Court: That's all right.

A. This area, along with Westover Hills, fronts on Riverside Drive and it is all in a good residential section, with good environment, good view, nice trees, and I consider it one of the best locations around for a residential area.

Mr. Gay: Please read the answer the witness gave to the question.

Note: The last answer was read by the reporter.

Q. (By Mr. Spain) Mr. Johnson, will you tell us what in your opinion will be the effect on real estate adjoining the proposed tracks or railroad yard within the area previously defined, if an eleven-track yard is established with the moving, storing, switching, making and breaking of trains, without regard to the time. Do you understand the question?

A. Yes. I think on account of these noises and so forth that you have stated, it will decrease the value of the property in this section. The percentage, I think, would be greater along Riverside Drive and would decrease as you go away from Riverside Drive. The amount of percentage is one's own view, and it is hard to tell exactly how much it would be in dollars and cents.

Q. Mr. Johnson, look at Exhibit A-17 and tell us how far south of Riverside Drive you think this decreased value would

W. B. F. Johnson

be felt?

page 573] A. I would say three or four blocks — I think it is about four blocks to Semmes Avenue. It would be approximately to Semmes Avenue in Woodland Heights and approximately to Forest Hill Avenue or Springhill in Forest Hill. As I said, I think the noise will be less as you get further away.

Q. Now as to the view, how far do you think it would be affected?

A. It would be affected mostly where you can see. If you are away from Riverside Drive, I think your lot you had to sell, if you want a view of the river or trees it would be less valuable. A lot on Riverside Drive is worth more money and usually they are made into larger lots too.

Mr. Gay: Please read that answer to me. I don't believe it was responsive to the question.

Note: The last answer was read by the reporter.

The Court: Mr. Spain, I believe that the answer was more directed at the asset a view would be to the property itself, and I don't think it was responsive to your question.

Mr. Spain: I thought it was, Your Honor.

page 574] The Court: Suppose you read both the question and the answer.

Note: The last question and answer were read by the reporter.

The Court: I suppose that is responsive. I will overrule the objection.

Mr. Gay: Your Honor, I did not object. I simply could not follow the responsiveness of it and still cannot.

The Court: The way he answered, I think it answered the question as to what affect taking away the view would have on the lots.

Mr. Gay: The first part of it appears to be responsive. The latter part does not appear to be responsive to the question.

The Court: Go ahead.

Q. (By Mr. Spain) Are you familiar with the fact that two apartment buildings have been built, one completed at Twenty-Second and Riverside Drive and one between

W. B. F. Johnson

Twenty-Third and Twenty-Fourth on Riverside Drive, and another one is proposed between Nineteenth and Twenty-First?

A. Yes, I know the locations.

Q. Is it your opinion that a yard such as has
page 575] been described would have the same effect upon
this type of building as it would upon single-
family residences?

A. No.

Q. Why?

A. Well, number one, a single-family residence is more individually owned and the people live there longer, whereas in an apartment house they move in and move out, and also, number two, an apartment house is more compact and gets less noise than you would have in a private home.

Q. Is there generally any difference in the construction of these apartments with which you are familiar and the construction of the one-family dwellings now located opposite the railroad yard?

A. Usually new apartments are air conditioned and, therefore, your windows are closed in the summertime, and in the wintertime you have heat, so therefore you wouldn't hear the noises you would in a private residence.

Q. I have spoken of an eleven-track yard. What would be your opinion if the yard were to be increased to a four, five or six track yard?

A. Increased or decreased?

Q. Increased from the present two tracks.

A. I think the larger you make it and the most fuss you have, the more percentage you depreciate the property.

page 576] CROSS EXAMINATION

By Mr. Gay:

Q. Mr. Johnson, are you familiar with the two new apartments, one that has been completed and the other very nearly completed to which you have been testifying?

A. I know where they are and I have seen them. I have not been in them.

Q. Do you know whether they are air conditioned?

A. I understand they are.

Q. But you don't know that?

A. I don't know for sure. I understand they are.

Q. Do you know whether the property in question is visible

W. B. F. Johnson

from those apartment houses?

A. I would say so. I haven't looked but from there in the wintertime I imagine it would be, but now, this time of year, I doubt it.

Q. That's true of a large part of the property along Riverside Drive, is it not?

A. Not on Riverside Drive. Maybe a little off of it, but on Riverside Drive where it would be down low —

Q. I don't think you understood my question.
page 577 } For a considerable part of the year property
fronting on Riverside Drive — this property is
not visible to a large part of the property on Riverside Drive
on account of the trees and foliage, is it not?

A. That is correct.

Q. So the element of the view to which you refer would not obtain during that part of the year when foliage or vegetation growth there would obstruct it?

A. On some of the property that would be true as far as the view is concerned.

Q. Do you know whether the Coast Line yards or the existing Belle Isle yard of the Southern Railway are visible from these properties, these two apartment houses?

A. Which ones are you talking about?

Q. Maybe you don't know what we mean by Belle Isle yard. Do you know whether these two apartment houses have a view of the present Southern Railway Belle Isle yard or the Coast Line?

A. I don't think so.

Q. Are you familiar with what has been referred to in this testimony as the new high-rise apartment being planned?

A. No.

Q. You are not?

page 578 } A. I don't know anything about a high-rise
apartment being planned there. No I don't.

Q. Do you know whether any of these residences along Riverside Drive are air conditioned?

Mr. Spain: I submit that question has been asked. He said he understood they were.

Mr. Gay: I am asking him now about the residences.

A. I have not checked the residences to find out whether they are air conditioned.

Q. To the extent any of them are air conditioned, noises

John Prussing

would not be a factor in forming an opinion such as you have expressed, would it?

A. It would still be a factor, but not as much.

Q. I believe you also stated in reply to counsel for the interveners that the less use made of this property the less effect it would have upon the surrounding property. Is that correct?

A. More tracks, I believe — if you had more tracks.

Q. Is it not a fact that the extent of the use of the tracks is a real consideration that moves you to express the opinion you do?

page 579] A. Partly, as far as noise is concerned. You would still have the tracks instead of your trees there. As far as sight it wouldn't make any difference. As far as noise it would.

★ ★ ★ ★ ★

page 580] JOHN PRUSSING,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. State your name, age, residence and occupation.

A. My name is John Prussing; age thirty-two; I live at 804 West Twenty-Ninth Street; and I am an advertising copy writer for Southern States Cooperative.

Q. How far is your home in city blocks from the proposed railway yard, Mr. Prussing?

A. About three-quarters of a block.

Q. You are a member of the Forest Hill-Woodland Heights Citizens Association?

A. Yes I am.

Q. Have you been a member of its Steering Committee since it began?

A. Yes I have.

Q. How long have you lived there, Mr. Prussing?

page 581] A. Since 1959.

Q. When the work was commenced to clear this railroad yard, did you personally make any effort to learn what was going on?

A. Yes I did.

Q. What did you do?

John Prussing

A. In September a shower of very fine ashes was falling around the neighborhood, blowing in the windows and on cars, and I tried to find out where they were coming from. I called the Southern Railroad and after being referred to many different offices I was given a telephone number of the contractor. I called this contractor and was told that they were burning some trees —

Mr. Gay: We object to that.

Mr. Spain: I don't believe you can tell what he told you.

Q. (By Mr. Spain) Mr. Prussing, without quoting what anyone told you, did you make any inquiry from the Southern Railway people as to what was going on?

A. Yes I did.

Q. What kind of answer were you given?

Mr. Gay: Wait a minute.

The Court: He can state whether he got an answer.

page 582] Q. (By Mr. Spain) Did you get any answer?

A. I got no answer from the Southern Railway, except to refer me to the contractor.

Q. When was the first you knew of what the railroad proposed to do?

A. I believe it was in a newspaper article in October 1960.

Q. May I have Exhibit J? I ask you if this is the article to which you refer?

A. That's the first I heard from the Southern Railroad. There was an article a few days before that, I think in October, about the yard they were constructing.

Q. What kind of article? Was that an advertisement in the paper?

A. It was an editorial — an article in the paper written by the paper.

Q. You said it was an editorial?

A. It was not advertising material.

Q. Had you been trying to find out what was going on there?

A. I had.

John Prussing

Mr. Gay: I object to the question as leading.
page 583] The Court: Sustained.

Q. (By Mr. Spain) Getting back to the article of a few days earlier, may I ask you, was it a news story or an editorial?

A. News story.

Q. Mr. Prussing, will you look at Exhibit 22 on the board and put a "P" on your house as it is shown on that map?

Note: The witness did so.

Q. Mr. Prussing, I ask you do you believe that the operation of an eleven-track railroad yard, for the making and breaking of trains, switching and storage of cars, at the location shown on Exhibit 22, will make the neighborhood in which you live less convenient, attractive or harmonious to you?

A. Yes, definitely.

Mr. Gay: Just a moment. I object to the question.

The Court: I believe you made the same objection before, as to the leading nature of the question.

Mr. Gay: I also object on the grounds of irrelevancy.

page 584] The Court: Overruled on the ground of irrelevancy but the form was leading.

Mr. Spain: Your Honor, we have been reading the same question all day.

The Court: Perhaps the objection wasn't made prior to this.

Q. (By Mr. Spain) May I ask you what effect you think the establishment of a railroad yard of eleven tracks, operating in the location shown on Exhibit 22, for the making and breaking of trains, switching and storage of cars, without regard to time, will have upon you personally?

Mr. Gay: I think that question is leading, Your Honor.

The Court: I will overrule the objection.

Mr. Spain: You may answer the question.

A. I think it will make my enjoyment of this property — decrease my enjoyment of this property because it will cause

John Prussing

noise; there will be lights; there may be undesirable elements brought into the neighborhood. I also think it will make it very difficult for me to sell this property at anywhere near the price I bought it for —

Mr. Gay: We move to strike the latter part of page 585] that.

The Court: Strike out the latter part that relates to value.

Q. (By Mr. Spain) Were you present in the basement of the State Capitol on November 30, 1960, when Mr. Brosnan, the President of the company, visited us?

A. Yes I was.

Q. Have you ever seen this map before?

A. Yes I have.

Q. Who did you first see with it?

A. I think I saw this map in the fall of 1960 at one of our meetings. I believe it was our co-chairman that showed it to me.

Q. Do you know what that map purports to show?

A. I understand it is the plan for the proposed freight yard.

Q. And how many tracks does it show between Twenty-Sixth and Forty-Second Streets?

A. It shows a total of four tracks, two old and two new.

Mr. Spain: I offer this map, Your Honor.

Note: Map marked Interveners' Exhibit No. A-18 and filed.

page 586] Q. (By Mr. Spain) Will you say to the court what the legend shows as the dates on this map?

A. June 15, 1960, revised November 4, 1960.

Q. Have you ever seen this telegram before?

A. Yes I have.

Q. Will you read it in its entirety to the court?

A. (Reading)

"Mr. Harry A. DeButts, President,
Southern Railway System
15th and K Streets
Washington, D. C.

We represent a large number of citizens *effected* by the new yard being constructed in Richmond on Riverside Drive.

INDEX TO RECORD

	page
Appeal awarded	1
Record	2
Motion for Declaratory Judgment	2
Order Requiring Bill of Particulars — July 13, 1962	5
Bill of Particulars	6
Answer	9
Request for Admissions	11
Answers and Objections to Request for Admissions	13
Request for Admissions	14
Answers and Objections to Request for Admissions	15
Order Sustaining and Overruling Objections to Requests for Admissions (Sept. 11, 1962)	15
Amendment to Answers and Objections to Request for Admissions	16
Answer	17
Opinion	17
Final Decree, April 15, 1963	30
Notice of Appeal and Assignment of Errors	31
Proceedings	32, 239, 300, 576
Witnesses:	
Bagby, John, Jr.	71
Bailey, O. R.	518, 576
Beard, James G.	179
Brauer, Rudolph C.	337, 459
Brockenbrough, Austin	85
Brosnan, D. W., Deposition of	327
Chandler, Richard A.	444
Cheadle, George W.	325
Deane, Mrs. Mildred	259
Dolbeare, Walter I.	291
Higgins, Kenneth R.	311
Hopson, Robert S.	318
Hudson, Mrs. Charles E.	308
Johnson, W. B. F.	277
Kidd, J. W.	491
Lancaster, G. Graham	401
MacLeod, Donald H.	98, 556
Madden, John R.	261
Maurice, Henry A., Jr.	294
Norvell, John E., Jr.	271
Pasco, H. Merrill	323

INDEX—Continued

	page
Prussing, John	283
Rice, P. A.	168
Tarrant, Julian W.	371
Terry, Mrs. Margaret	240
Thalhimer, Morton G.	33
Timmons, M. P.	92
Todd, A. Howe	364, 464
Walker, Wilbur	573
Weaver, John R.	264
Weisiger, Louise P.	266
Wilson, George Weir	475

October 9, 1964

BY HAND

RE: Southern Railway v. City of Richmond.

Mr. H. G. Turner, Clerk
Supreme Court of Appeals
Library Building
Richmond, Virginia

Dear Mr. Turner:

Pursuant to the leave granted by the Chief Justice at the conclusion of the oral argument of the above case yesterday, we wish to add the citation of the following case to the citations listed on Page 38 of the petition for the writ of error which was adopted as the appellant's opening brief:

Morris County Land Improvement Company,
etc., v. Parsippany-Troy Hills TP.
193A.2D 232 (N.J., 1963).

This case was decided on July 23, 1963 after appellant's petition for writ of error which it relied on as its opening brief was filed with the Court. Sufficient copies of this letter are enclosed for each of the Justices, and copies are being sent to counsel for the City and for the intervenors.

Very truly yours,


Division Counsel

25/225

cc Mr. James Richner
Mr. William Eldridge Spain

October 2, 1954

BY HAND

22: Southern Railway v. City of Memphis

U.S. Supreme Court
Department of Appeals
Library Building
Washington, D.C.

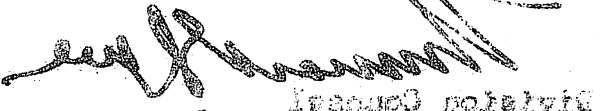
John W. Trotter

Reference to the leave granted by the Chief Justice at the conclusion of the oral argument of the above case and to the grant of the writ of habeas corpus and the writ of certiorari to the Supreme Court of the State of Tennessee is hereby made. The writ of certiorari is granted on the basis of the opinion of the majority of the Justices of the Supreme Court of the State of Tennessee, which is hereby affirmed.

James H. Thompson, Jr.
Attorney General
State of Tennessee
Nashville, Tennessee

This case was decided on July 22, 1954 after the Supreme Court of the State of Tennessee had rendered its decision. The writ of certiorari was granted on the basis of the opinion of the majority of the Justices of the Supreme Court of the State of Tennessee, which is hereby affirmed. The writ of certiorari is granted on the basis of the opinion of the majority of the Justices of the Supreme Court of the State of Tennessee, which is hereby affirmed.

Very truly yours,


John W. Trotter
Division Counsel

22:22
cc Mr. James Thompson
Mr. William H. Hodge

October 12, 1964

Re: Southern Railway v.
City of Richmond, et al
Record No. 5762

Pursuant to leave granted at the conclusion of oral argument October 8, the City of Richmond files this comment in reply to the appellant's memorandum of October 9:

Morris County Land Improvement Company v. Parsippany-Troy Hills Township, 193 A. 2d 232 (N. J. 1963), is distinguishable from the present case in that:

(1) There the plaintiff's land was part of a 1500 acre swamp, and adjoined the plaintiff's industrially-zoned property in another township. There were "practically no active land uses" in the area. 193 A. 2d at 234-5. (In this case, the trial court found the subject property is part of a district which has long been one of the City's most desirable residential areas. R. 28-29; City brief pp. 35-40.)

(2) The property was zoned residential when the plaintiff acquired it in 1952, and later was twice rezoned more restrictively, in 1954 and 1960. Id. at 235-236. (In this case,

April 5, 1964

Dear Mr. [Name]
[Address]
[City, State, Zip]

I am writing to you regarding the [Topic] which you mentioned in your letter of [Date]. I am sorry that I cannot provide you with a more definitive answer at this time, but the [Topic] is still under review. I will be sure to contact you again as soon as a final decision has been reached.

I am sure that you will understand the need for thoroughness in this process. We are committed to providing you with the best possible service, and we will not rest until we have resolved this matter to your satisfaction. Please be patient, and we will be in touch with you again soon.

the trial court found the property has been zoned single-family residential, and the proposed use has been forbidden, continuously since 1927. R. 20-23.)

(3) The plaintiff unsuccessfully applied for industrial rezoning, and later for a special exception. Id. at 235, 237. (Here, Southern never made application for rezoning or for an exception. R. 11, paragraphs 1, 2; R. 13, paragraph 1.)

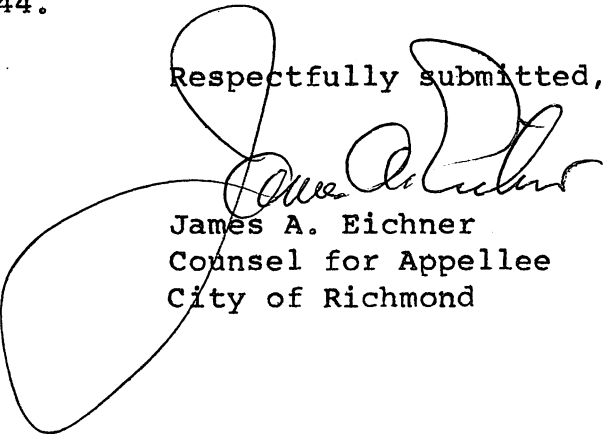
(4) The plaintiff's land was "unsuited for any of the permitted active uses, except possibly the raising of fish and aquatic plants." Id. at 239. (Here the trial court found Southern's property suited for two expressly permitted uses, and there was no evidence that it was not suited for conditionally permitted uses. R. 27-28; City brief pp. 45-52.)

(5) The New Jersey Court pointed out that "public acquisition rather than regulation" is required when no private use is possible, and no public acquisition was contemplated. Id. at 241-242. (Here, the trial court found public acquisition is contemplated. R. 29; City brief pp. 40-42.)

The New Jersey Court was concerned about the fact that granting the relief prayed for "leaves the area unzoned";

therefore it stayed the final order to permit further re-zoning. Id. at 243-244.

Respectfully submitted,



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