

W. W. L. 10/11/24

DOCKET No. 6

Number	Term	Year
3	Dec	1924

Petition of J. W. Whittaker for
viewers to assess damages

Versus

X

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

To the Honorable A. R. Chase, President Judge of said Court:

The Petition of J. W. Whittaker and Susie Whittaker, his wife, respectfully represents:

1. That they are the owners of a lot of land situate in Decatur Township, Clearfield County, Pennsylvania, bounded and described as follows:

Beginning at post corner of land formerly of William Cartwright, now of Emily Pearson and John Malen on the Township Road leading from Osceola Mills to Houtzdale; thence north thirty-three (33) degrees twenty-three (23) minutes west along line of Malen two hundred nine (209) feet to a post; thence in a south westerly direction one hundred thirty (130) feet to a post; thence in a south easterly direction along other land formerly of Wm. Cartwright, now of Emily Pearson, two hundred (200) feet to a post on Township Road west along said Township Road north fifty-six (56) degrees thirty (30) min. east one hundred sixty (160) feet to place of beginning.

which was conveyed to your Petitioners by Frank Rushin and Nancy his wife, by deed dated June 6th, 1918, recorded in Clearfield County in Deed Book 234, page 257.

2. That public road has long since existed running from the Borough of Osceola to the Borough of Houtzdale and adjoining the said lands.

3. The aforesaid public road has been improved as a permanent highway by action had by the Commonwealth of Pennsylvania, the County of Clearfield and the Township of Decatur, and has been re-located so that by the new location thereof a strip of land approximately twenty-six (26) feet in width has been taken for the purpose of construction of said highway across the lands of your petitioners, a distance of about one-hundred forty (140) feet.

4. That the Commonwealth of Pennsylvania, by its officers, agents and contractors went upon the said lands of the plaintiffs and took material portions thereof for the purpose of construction of the said highway, and appropriated lands of your petitioner

for highway purposes to a width which is not yet known to your petitioners and of which he has not yet any definite notice.

The said Commonwealth, as aforesaid, in the course of construction of said highway has built a high embankment across the land of your petitioners and coming to a distance of about three feet from the porch of the residence of your petitioners, and by the taking of said land and by the manner of construction of said highway, the fair market value of said property has been greatly lessened and the value of said property materially diminished

That your petitioners made effort to adjust this matter with the County Commissioners of Clearfield County and to avoid controversy, offered to take a sum which is much less than the amount in which they are actually damaged, but no agreement has been reached between your petitioners and the County.

Therefore, they pray your Honorable Court to appoint viewers to appraise and determine damages so suffered, and that further proceedings be had as provided by the Acts of Assembly relating thereto, and they will ever pray.

James W. Whittaker
Susan Whittaker
by her attorneys
Bell, Brinley & Forsyth

Clearfield County: SS:

Before me, the subscriber hereto, came J. W. Whittaker, who, being duly sworn according to law, deposes and says that the facts set forth in the above petition are true and correct.

James W. Whittaker

Sworn and subscribed before me

this 16 day of September, 1924.

Kirtley Bell
Notary Public

MY COMMISSION EXPIRES MARCH 5, 1927

Now, September 17th, 1924, petition considered, and

*A. I. Edwards Esq., H. A. Reese, and
J. W. Spangle.*

are appointed viewers to proceed as required by the Act of Assembly
relating thereto.

By the Court,

*A. R. Chase.....
P. J.*

IN THE COURT OF QUARTER SES-
SIONS, CLEARFIELD CO., PENNA.

3 Dec 20 1924

Petition of J. W. Whitaker,
re appointment of Viewers.

to assess damages

State Aid Highway.

Decatur Township

FILED

SEP 17 1924

Geo. W. RALSTON
CLERK

Bell, BOULTON, FORSYTH & BELL
ATTORNEYS AT LAW
CLEARFIELD, PA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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which was conveyed to your petitioners by Frank Rushin & Nancy, his wife, by deed dated June 6, 1918, recorded in Clearfield County in Deed book 234, page 257.

That public road has long since existed running from the Boro. of Osceola to the Boro. of Houtzdale and adjoining the said lands.

The aforesaid public road has been improved as a permanent highway by action had by the Comth. of Penna. and has been relocated so that by the new location thereof a strip of land approximately 26 feet in width has been taken for the purpose of construction of said highway across the lands of your petitioners, a distance of about 140 feet.

Therefore they pray your Honorable Court to appoint viewers to appraise and determine damages so suffered, and that further proceedings be had as provided by the Acts of Assembly relating thereto, and they will ever pray.

RETURN OF VIEWERS

To the Honorable the Judge of the Court of Quarter Sessions of the Peace for the County of Clearfield:

We, the undersigned viewers, duly appointed by your Honorable Court by the foregoing order from and among the County Board of Viewers who have been duly appointed by your Honorable Court and have filed their oaths of office in the Court of Common Pleas of Clearfield County, be leave to report as follows:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County and the Board of Supervisors of the Township of Decatur and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 31st day of December A. D. 1924, and the hearing to be held in the Arbitration Room, at the Court House, in Clearfield, Pa., on the 2nd day of January, 1925, at 10 o'clock A. M. That all the viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view J. W. Whittaker, Susie Whittaker, Samuel Cartwright and Axel Pearson

parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 2nd day of January A. D. 1925, when the following appearances were noted: Cortez Bell, Esq. of Bell, Boulton and Forsythe, Attys for petitioners; Board of Commissioners of Clearfield County with A.M. Liveright, Esq., Solicitor and L. C. Norris, Clerk; Samuel Cartwright of Decatur Township and Charles Stewart, witnesses on behalf of petitioners; the petitioners and witnesses each being duly sworn, examined and cross-examined by Counsel and your Board,

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that ~~there is no occasion for a road as desired by the petitioner, and that~~ damages have been sustained by the petitioners the same is ~~not~~ necessary for a ~~road~~ road: And ~~having had~~ respect to the shortest distance and the best ground for such road we have laid out in such manner as shall do the least injury to private property, and as far as practicable agreeably to the desire of the ~~petitioner, and do return for~~ petitioner, and do return for ~~use the following described road, to wit~~ Beginning We further find that Route #234 of the Pennsylvania State system of Highways leading from Osceola Mills Borough to Houtzdale Borough has been relocated, regraded and improved as a permanent highway, and that by the relocation, regrading and construction thereof a strip of petitioners' land, fronting thereon, was taken as shown on the map or draft thereof hereto attached and made a part hereof. That the relocation and change of grade thereof resulted in the destruction of the front fence, four (4) fruit trees and two (2) rose bushes, as well as a precipitious incline into petitioners property, necessitating the removal of petitioners dwelling house to a different location for convenient ingress and egress; there being no other entrance or exit thereto. The amount of damage as testified to by the petitioners is \$2500 to \$3000; one witness testifying that the value of the property depreciated from \$1300 to \$1400.

After viewing the premises and conditions and hearing the evidence, and taking into consideration the benefits accruing thereto by reason of the improvement of said Route #234 as a permanent highway, your viewers are of the opinion that the foregoing estimates are excessive; but that the petitioners should be compensated for the land taken and occupied and the damages caused to them.

Clearfield County, ss:

At a Court of Quarter Sessions of the Peace of the County of
Clearfield, held at Clearfield, Pa., in and for said County, on
the 17th day of September
in the year of our Lord one thousand nine hundred
twenty four

Judge of the same Court: Upon the petition of ~~sundry~~
J. W. Whittaker & Susie Whittaker
~~habitants~~ of the Township of Decatur

in said County, setting forth that they are owners of
a lot of land situate in Decatur Twp, bounded & described as follows; Beginning
at post corner of land formerly of Wm. Cartwright, now of Emily Pearson and John
Malen on the Twp. road leading from Osceola Mills to Hutzdale; thence north
33° 23' west along line of Malen 209 feet to a post; thence in a south westerly
direction 130 feet to a post; thence in a south easterly direction along other
land formerly of Wm. Cartwright, now of Emily Pearson, 200 feet to a post on
Twp. road west along said Twp. road north 56° 30' east 160 feet to place of
beginning.

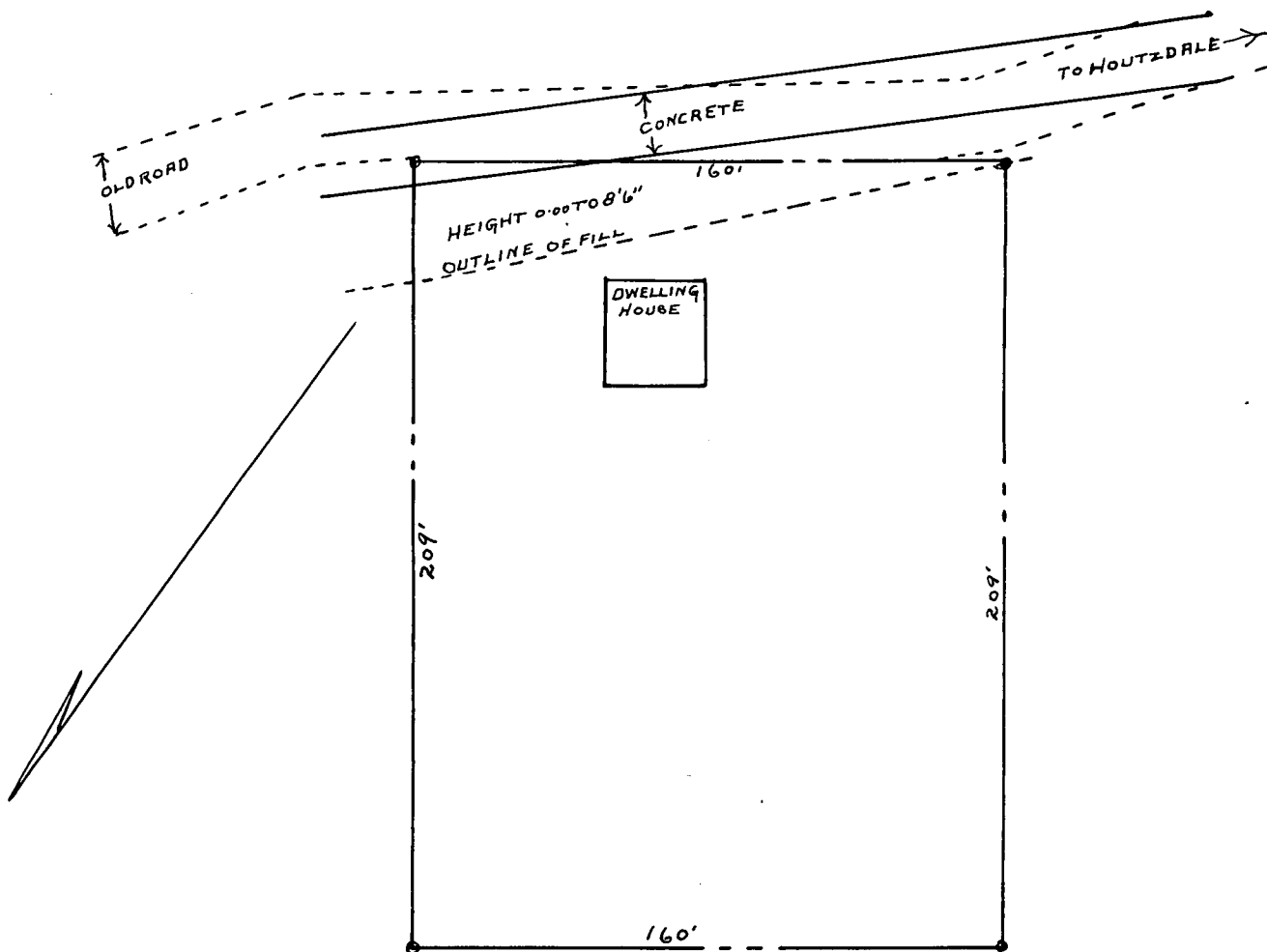
and therefore, praying the Court to appoint proper persons to ~~view and lay out the road~~ ^{assess damages}
between the points mentioned, whereupon the Court upon due consideration had of the premises,
do order and appoint from and among the County Board of Viewers JOHN SCOLLINS, Esq.,
H. A. Reese, J. W. Spangle

who have been duly appointed by the Court and filed their oaths of office and are duly quali-
fied to perform the duties of their appointment with impartiality and according to the best of
their judgement, ~~are to~~ view the ground proposed for the said road, and if they view
the same, and a majority of the actual viewers agree that there is occasion for such road
they shall proceed to lay out the same, as agreeable to the desire of the petitioner as may,
be, having respect to the best ground for a road and the shortest distance, in such a manner
as to do the least injury to private property; and shall make report thereof, stating particularly
whether they judge the same necessary for a public or private road, together with a plot or
draft thereof, and the courses and distances and references to the improvements through which
the same may pass; (and wherever practicable, the viewers shall lay out the said road at
an elevation not exceeding five degrees, except at the crossing of ravines and streams, when
by moderate filling and bridging the declination of the road may be preserved within that
limit,) to the next Court of Quarter Sessions to be held for the said County.

And if the viewers aforesaid shall decide in favor of locating a public road, they
shall obtain from the persons through whose lands the said road shall pass, releases from any
damages that may arise to them on opening the same; but if the owner or owners of such land
refuse to release their claim to damages, the said viewers shall assess the same, taking into
view the advantages as well as disadvantages arising from said location, and make report of
such assessments; which report they shall in like manner transmit to the next Court of Quarter
Sessions, with the draft or plot aforesaid. In which said reports they shall state that they
have been sworn or affirmed according to law, and that due and legal notice was given of the
time when, and place where, they should meet, to view and lay out said road, and the time
and place of hearing.

By order of the Court.

Geo W Palston, Clerk.

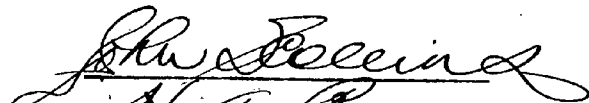
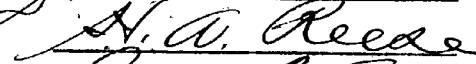
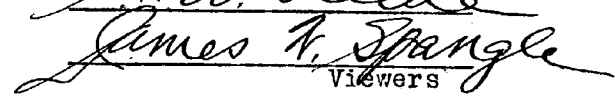


PROPERTY OF JAMES WHITAKER
 IN DECATUR TOWNSHIP
 CLEARFIELD COUNTY PA.
 VIEWED UPON A QUESTION OF DAMAGE
 BY JOHN SCOLLINS ESQ.
 H.A. REESE
 J.W. SPANGLE.
 SCALE 1"=50'

TO: The Commissioners of Clearfield County, Pennsylvania.

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, in re: No. 3, September Sessions, 1924, to view and assess damages done to the property of J. W. Whittaker and Susie Whittaker in the construction of the State Highway, commonly known as Route No. 234 in Decatur Township, in the County aforesaid, will meet at the house of J. W. Whittaker in said Township on Wednesday, the 31st day of December, A.D. 1924 at ten (10) o'clock A.M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and Rules of Court to be held by the viewers before the filing of their report in Court in order to give all parties interested in the said road a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 2d day of January, A.D. 1925, at ten (10) o'clock A. M., at which time and place all parties interested may attend and be heard.




Viewers

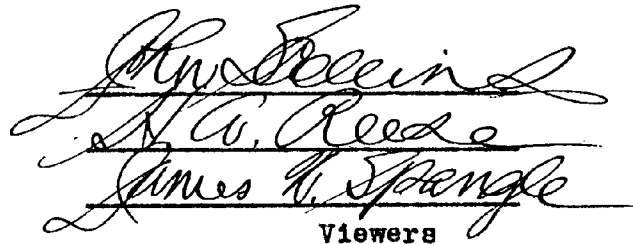
Now, December 15 1924, service of the above notice is accepted for the Commissioners of Clearfield County, Pennsylvania.


Clerk

TO:- Joseph A. Ashcroft, Robert N. Showers and K. O. Kephart, Supervisors of Decatur Township, Clearfield County, Pa.:

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, in re: No. 3, September Sessions, 1924, to view and assess damages done to the property of J. W. Whittaker and Susie Whittaker in the construction of the State Highway, commonly known as Route No. 234 in Decatur Township, in the County aforesaid, will meet at the house of J. W. Whittaker in said Township on Wednesday, the 31st day of December, A.D. 1924 at ten (10) o'clock A.M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and Rules of Court to be held by the viewers before the filing of their report in Court in order to give all parties interested in the said road a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 2d day of January, A.D. 1925, at ten (10) o'clock A. M., at which time and place all parties interested may attend and be heard.


Viewers

Now, December 12, 1924, service of the above notice is accepted for the Road Supervisors of Decatur Township.


Supervisor

TO:- Joseph A. Ashcroft, Robert N. Showers and K. O. Kephart, Supervisors of Decatur Township, Clearfield County, Pa.:

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, in re: No. 3, September Sessions, 1924, to view and assess damages done to the property of J. W. Whittaker and Susie Whittaker in the construction of the State Highway, commonly known as Route No. 234 in Decatur Township, in the County aforesaid, will meet at the house of J. W. Whittaker in said Township on Wednesday, the 31st day of December, A.D. 1924 at ten (10) o'clock A.M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and Rules of Court to be held by the viewers before the filing of their report in Court in order to give all parties interested in the said road a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 2d day of January, A.D. 1925, at ten (10) o'clock A. M., at which time and place all parties interested may attend and be heard.

John P. Collins
A. C. Reese
James W. Spangle
Viewers

NOTICE AND DESCRIPTION BEFORE ME THIS 15TH DAY OF DECEMBER, 1924.

Now, December 20, 1924, service of the above notice

is accepted for the Road Supervisors of Decatur Township.
J. W. Whittaker
Susie Whittaker
Supervisor

CERTIFICATE OF J. W. Whittaker
Supervisor of Decatur Township

TO:- Joseph A. Ashcroft, Robert N. Showers and K. O. Kephart, Supervisors of Decatur Township, Clearfield County, Pa.:

You are hereby notified that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County, Pennsylvania, in re: No. 3, September Sessions, 1924, to view and assess damages done to the property of J. W. Whittaker and Susie Whittaker in the construction of the State Highway, commonly known as Route No. 234 in Decatur Township, in the County aforesaid, will meet at the house of J. W. Whittaker in said Township on Wednesday, the 31st day of December, A.D. 1924 at ten (10) o'clock A.M. to attend to the duties assigned them; all parties interested will take notice.

And that the public hearing as required by Act of Assembly and Rules of Court to be held by the viewers before the filing of their report in Court in order to give all parties interested in the said road a chance to be heard will be held in the Arbitration Room in the Court House in Clearfield on Friday, the 2d day of January, A.D. 1925, at ten (10) o'clock A. M., at which time and place all parties interested may attend and be heard.

Wm. B. Reese
James H. Stangle
Viewers

Now, December 1924, service of the above notice

is accepted for the Road Supervisors of Decatur Township.

and making the contents known to him.
Now, this 1st day of December 1924, signed the
Supervisor

County of Clearfield : 22
State of Pennsylvania :

and that a plan or draft of said road showing courses and distances and the properties affected is hereto attached and made a part hereof, ~~said road being at an elevation not exceeding five~~ degrees, excepting

~~when it was not practical to preserve it within that limit.~~

The undersigned further report that they endeavored to procure from all the owners of the land over which the said road passes releases in writing of all claims to damages that may arise from opening the same, and that they procured such releases from

the following persons having refused to release the damages to which they respectfully may be entitled by reason of the location and opening of the said road, we, the undersigned viewers, after having considered the advantages to be derived to them, do assess them damages and make report thereof as follows: To J. W. Whittaker and Susie Whittaker,
Seven Hundred (\$700.00) Dollars, damages assessed.

and we herewith return releases obtained and copy of the notices.

WITNESS our hands and seals this 2nd day of January
A. D. 1925.

John Deakin Seal
H. A. Reese Seal
James W. Spangle Seal
Seal

No. 3 Dec Sessions, 19

ORDER

To view and assess damages to road for J. W. Whittaker use in t
Susie Whittaker, his wife
township of Decatur
Clearfield County

Sessions, 19

read and confirmed Ni. Si. Road to
opened 33 feet wide, except where it
is side hill cutting or embankment
bridging, there to be 16 feet wide.

Now February 3rd 1910
confirmed above
By the Court
Appld
p. 7

Filed 19
Fees \$1.25 paid by

Dell, Boulton & Forsyth, At

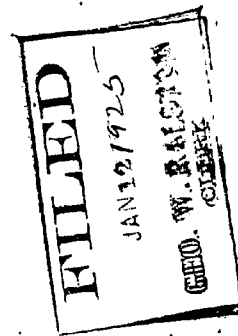
NOTE.—In case of a private road, the release must be executed in favor of the petitioner for said road.

Also, viewers will carefully note the number of days employed and set the amount out at the foot of their return.

Reviewers cannot interfere with the damages assessed by the original viewers, except so far as the location may be changed by the reviewers.

N. B.—If the viewers believe the parties are not entitled to damages, taking into consideration the advantages as well as the disadvantages of the road, they will report to that effect.

	DAYS	MILES	AMT.
H. A. Reese	3	96	\$27.30
Jas. W. Spangle	2	102	\$20.10
John Scollins	3	62	\$25.60



RELEASE OF DAMAGES

Know all Men by these Presents, that we, the undersigned, owners of lands through which the road located by the viewers, under the annexed order, passes for and in consideration of the sum of one dollar to us respectively paid by

at and before the ensealing and delivery hereof, have remised, released and forever quit-claimed, and do hereby remise, release and forever quit-claim to the said

all damages that may arise to us respectfully by reason of the location and opening of the said road, so that neither we nor any of us, nor any person claiming under us, can or may hereafter ask, sue for, demand, have or receive any damages for injuries arising or growing out of the location and opening of the road aforesaid.

Witness our hands and seals this _____ day of _____
A. D. 192_____.

Seal

Seal

Seal

Seal