

ROAD

DOCKET No. 6

Number

4

Term

Feb. SS

Year

1939

Petition of Lynn J. Peters and

Dorothy Peters for assessment of
damages to property in Bradford Twp.

Versus

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA,

IN RE;-

Assessment of Damages to Property of
LYNN J. PETERS AND DOROTHY PETERS,
husband and wife, in the Township of
Bradford, County of Clearfield, Pennsylvania.

TO HONORABLE W. WALLACE SMITH, PRESIDENT JUDGE:-

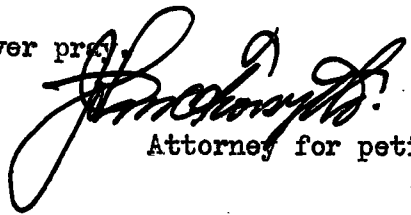
The Petition of Lynn J. Peters and Dorothy Peters, his wife, represents:-

1. That heretofore their petition was presented and filed to No.
2. That in the preparation of said petition there was inadvertently missed and not included be metes and bounds the hereinafter described parcel of land.
3. That the lands hereinafter described were included by reference to the recorded deed.
4. That the resolution of the County Commissioners of the County of Clearfield whereby the County of Clearfield, Pennsylvania, assumed full responsibility and liability for all damages done in the construction, etc., of the highway in said petition mentioned, was not included verbatim.

WHEREFORE YOUR PETITIONERS PRAY THE COURT:-

- 1a. That their said petition be amended in the following particulars:-
 - a. By adding to paragraph 2 of said petition the following:-
ALSO, All that parcel of land bounded and described as follows;
BEGINNING at a point or post corner on line of Joseph Peters; thence by lands of Isaac Kline and Jonathon Boynton East 48 perches to post corner of line of J. K. Pearce; thence North by lands of J. K. Pearce 175 perches to post corner; thence by lands of George Berger (now Lumadue) West 48 perches to post corner; thence by lands of Joseph Peters South 175 perches to post corner and place of beginning. Containing 50 acres more or less. Being a part of the lands described in Deed Recorded in Deed Book 305 page 430, and owned by the petitioners.
 - b. By adding the following:- That the County of Clearfield, Pennsylvania, has assumed full liability and responsibility for all property damage s resulting from the construction of the highway, and also all damages resulting or arising out of any change or alteration of drainage resultiing from the construction of said highway, as will more specifically appear by the copy of the resolution of the Commissioners of Clearfield, Penna. hereto attached marked Exhibit A and made a part hereof.

And they will ever pray.


Attorney for petitioners.

PETITIONERS EXHIBIT A.

" RESOLUTION "

Be it resolved by the County Commissioners of Clearfield County, that the plans submitted by the Department of Highways for the changing of State Highway Route 57, in Boggs and Bradford Townships and Wallacton Borough, between Stations 480/00 and 855/86, have been examined and the County Commissioners agree that, except as hereinafter expressly provided, the County of Clearfield will assume liability for any or all property damages resulting from the construction of the highway as contemplated by these plans, and also all damages arising out of any change or alteration of drainage resulting from the construction of the highway; provided however no such liability or responsibility for property damages, or damages incidental thereto is assumed by Clearfield County in respect to coal or clay mine drifts at Station 642/62, St Station 765/19.5 or station 849/68.5; or railroad grade crossings at Station 588/25/90. Station 624/35.28 or Station 782/35.

(County Seal)

Signed, J. C. Gatehouse
T. R. Weimer
W. V. Carr,
County Commissioners.

I hereby certify that the foregoing resolution was duly adopted at a meeting of the County Commissioners held May 6, 1938, and that it has been recorded as required by law.

Signed, Myra E. Lucas,
Clerk.

(County Seal,)
May 6, 1938.

No <u>4</u> Sessions, 1938.	
IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD CO. PA.	
IN RE:- Assessment of Damages to Property of Lynn J. Peters and Dorothy Peters, Husband and wife, in Bradford Twp. Clfd. Co. Pa.	
Petition and motion to amend original petition.	
Nov 6 ^{February} 1939, the within petition and motion having been presented and considered, the motion to amend the original petition is allowed, and the original petition is amended as within prayed for.	
By the Court, <i>James P. O.</i>	
JAN 6 1939	
SERVE ALL PAPERS ON	
JOHN C. FORSYTH ATTORNEY-AT-LAW CLEARFIELD, PENNA.	

Commercial Printing Co., Clearfield, Pa.

*Now Feb 6, 1939, served accepted
Frank G Smith
County Solicitor*

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA.

IN RE:-

Assessment of Damages to Property of

LYNN J. PETERS AND DOROTHY PETERS,

Husband and Wife, in the Township of

Bradford, County of Clearfield, Penna.

TO HONORABLE W. WALLACE SMITH, President Judge:-

The petition of Lynn J. Peters and Dorothy Peters, his wife, respectfully represents:-

1. That your petitioners are residents of the Township of Bradford, County of Clearfield and Commonwealth of Pennsylvania.
2. That they are the owners in fee simple of a certain tract of land situate in the Township of Bradford, County of Clearfield and Commonwealth of Pennsylvania, being bounded and described as follows:- BEGINNING at a post corner, thence by lands of Isaac Kline and Jonathon Boynton East 48 perches to a post corner; thence by lands of Alexander Dugan North 175 perches to post corner; Thence by lands of Geroge Berger (now Lumadue) West 48 perches to post corner; thence by lands formerly of Jonathan Boynton South 175 perches to post corner and place of beginning.
3. The deed conveying said lands to your petitioners is dated 1st March 1933 and recorded among the records for Clearfield County in Deed Book 305 page 430, reference being thereunto had will more fully and at large appear, and the same being incorporated herein by reference.
4. That the Department of Highways of the Commonwealth of Pennsylvania is engaged at this time in the construction of a concrete Highway, known as State Highway Route No , which highway passes through and over the premises of your petitioners.
5. That previous to the present construction of said highway, no highway passed over and through the lands of your petitioners.
6. That the property of your petitioners has been damaged and its value lessened, by the construction of said state highway, in the following respects:-
 - (a) By the taking of a strip of land, over, across and through said property.
 - (b) By the making of cuts and fills in the construction of said highway, so that the

property of your petitioners, remaining, is cut up into small parcels, difficult to work.

(c) By rendering the portion of the lands not appropriated for Highway purposes valueless for farming purposes, in that the parcels thereof are so small that it is impossible to farm or work said lands so as to produce crops therefrom at a profit.

(d) By making a deep cut through a portion of said lands, making the portions of the land not appropriated for Highway Purposes, difficult of access, and requiring the building of fences to protect your petitioners and their life stock.

(e) By making a deep or high fill, immediately back of the dwelling house, and close the barns of your petitioners, preventing the natural flow of water from said building as well as the other but buildings.

(f) By appropriating the foundations of a part of the barns of your petitioners, and the whole of the manure pits.

(g) By appropriating the garage of your petitioners.

(h) By destroying the water lines, which water lines supplied your petitioners with water for use in the dwelling house, garage, chicken coops, cow and horse barns, and for such other uses as petitioners from time to time required.

(i) By the construction of fills, ditches and cuts, rendering access of your petitioners to their home, barns, and buildings difficult and hazardous.

(j) By the construction of fills, ditches, and cuts, rendering access to the various portions of the lands remaining unappropriated, difficult, hazardous and expensive.

(k) By the construction of fills, ditches and cuts, rendering it expensive for all time to come, the working of the portions of the lands unappropriated for highway purposes.

(l) By the appropriating of and making it illegal to mine a valuable seam of coal, which coal underlies the lands over which said Highway is constructed and as well the entire portion of said lands appropriated for highway purposes

(m) By the construction of fills and taking of right of way, rendering access to the barns of petitioners, and the making of use thereof as used in the past, impossible, rendering it necessary for petitioners to excavate a large quantity of earth, construct a new foundation and make a new entrance to said barns, and place new timbers in barn at the place the new entrance is required to be made.

(n) By the making of fills and cuts along said highway, making access to the various field of petitioners impossible, without a large expense on the part of the petitioners in the making of cuts and fills so as to gain access thereto, all of which is absolutely necessary to afford the petitioners opportunity of enjoying their dwelling house and farming operations.

(m) By the making of cuts and fills and the construction of an open ditch, running parallel with said highway, whereby water is conducted for quite a distance from and over lands other than that of petitioners onto the lands of petitioners, and there dumped on and over lands of petitioners to their great damage, in that the surface of the lands are washed away and the field where the ditch water is dumped rendered worthless.

7. That the Department of Highways of the Commonwealth of Pennsylvania duly notified and advised the Commissioners of the County of Clearfield, Pennsylvania, of the appropriation of the said lands, route of highway, and otherwise, so that said County Commissioners were and are fully advised according to law, of the construction of said highway and the appropriation of lands therefor.

8. That no compensation has been paid or given to your petitioners, nor has your petitioners been offered any compensation, for, on account of or by reason of said damage.

WHEREFORE, your petitioners pray that viewers be appointed, to ascertain and determine the extent of damage sustained by yours petitioners according to law.

And they will ever pray,

Lynn J. Peters
Dorothy Peters

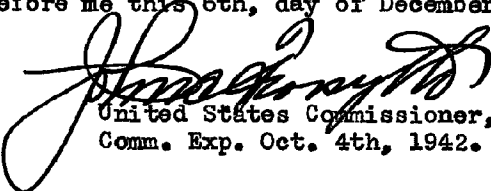
COMMONWEALTH OF PENNSYLVANIA,

COUNTY OF CLEARFIELD,

SS.

Before me, the subscriber, came, Lynn J. Peters, who being duly sworn according to law, deposes and says that the facts set forth in the within petition are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 6th, day of December, 1938.


United States Commissioner,
Comm. Exp. Oct. 4th, 1942.

ORDER OF COURT.

Now, December 27, 1938, the within petition having been read and considered- John Collins, Esq. ; - H. A. Ruse - - - - and H. A. Gilre - - - - -, are hereby appointed viewers to go upon the premises herein mentioned and, after view and hearing, to determine and assess any damages sustained by reason of the appropriation of the lands of petitioners and the construction of the highway, etc., as therein averred, and then to make report thereof.

By the Court,


P. J.

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 27th day of December in the year of our Lord one thousand nine hundred and thirty-eight

Judge of the same Court: Upon the petition of ~~sumbrin~~ Lynn J. Peters and Dorothy Peters for assessment of ~~damages~~ ^{damages} ~~habituats~~ of the Township of Bradford

in said County, setting forth that they are the owners of a certain tract of land situate in the Township of Bradford, being bounded and described as follows: Beginning at a post corner, thence by lands of Isaac Kline and Jonathon Boynton East 48 perches to a post corner, thence by lands of ~~Isaac Kline and Jonathon Boynton~~ ~~East~~ Alexander Dugan North 175 perches to post corner; thence by lands of George Berger (now Lumadue) West 48 perches to post corner; thence by lands formerly of Jonathan Boynton South 175 perches to post corner and place of beginning. and therefore, praying the Court to appoint proper persons to ^{assess damages} view and ~~lay out the road~~ ~~xxbetween 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 and H. A. Giles

who have been duly appointed by the Court and filed their oaths of office and are duly qualified 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.

W. P. Gallagher, Clerk.

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 Bradford and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 24th day of January A. D. 1939, and the hearing to be held in the ^{Grand Jury} ~~Assessment~~ Room, at the Court House, in Clearfield, Pa., on the 27th day of January, 1939, at 10 o'clock A.M. That the three viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view F. B. Wilson, John C. Graham, A. B. Shirey and Lynn J. Peters, the petitioner,

parties in interest. That the hearing was held in the ^{Grand Jury} ~~Assessment~~ Room, in the Court House, at Clearfield, Pa., on the 27th day of January A. D. 1939, when the following appearances were noted: J.C. Forsyth, Esq., for petitioners; R.V. Maine, Esq., County Solicitor; Lynn J. Peters, petitioner; and F. B. Wilson, John C. Graham and A. B. Shirey, witnesses. Petitioner and witnesses all being sworn, examined and cross-examined by Counsel and your Board. Stipulation agreed to by counsel that petition be amended to include the whole of petitioners' property, as viewed.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that ~~there is xxx occasion for a road as desired by the petitioner, and that the same is xxx necessary for a xxx 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 have known for xxx the following described road, to wit~~ Beginning at the intersection of the improved New State Highway with petitioners' property line on the East from the village of Bigler and extending to its western boundary, toward Mineral Spring, a distance of 1786 feet, sixty feet in width, comprising 2.44 acres of petitioners' land is taken and appropriated in the new improvement, dividing petitioners' land into several parcels and with cuts and fills rendering it difficult to work and farm.

We further find that petitioners' Farm consists of approximately 98 acres, 58 of which are in a good state of cultivation; well stocked and with good buildings, well kept, painted dwelling-house of commodious size, with a gravity water line piped from a Spring on petitioners' land. The property was formerly served by a public road passing in front, or on the south side of petitioners' place, but this has now been changed to the centre of the Farm and rear of the buildings, dividing the Farm in two pieces, and requiring an over-pass to accomodate the Fire-clay tramroad passing north and south through said Farm at a lower level and further dividing the Farm into four pieces. The sloping lay of the land, the low under-pass for the tramroad, the cuts and fills make approaches to petitioners' buildings difficult and dangerous; their water supply has been cut off, and the value of the property as a Farm has been damaged.

The witnesses produced in behalf of petitioners all testified that the damages occasioned by the improvement were \$2500.00:

Witness Shirey basing his opinion upon sales of Farms similarly situated, such as the "Fink", McDowall" and "Irwin" places; Witness Wilson, the "Eurey Dickson" and "Woolridge" places; and Witness Graham, a practical farmer of 40 years experience and well acquainted with the Peters' Farm and conditions prior and subsequent to the improvement.

Your Board, however, considers these estimates too high, and after having carefully viewed the premises and conditions and taken into consideration the advantages to be derived by the petitioners from such improvement, we are of the opinion that the petitioners have sustained damages by reason of the New State Highway passing through their land, to the amount of \$965.00, and we do accordingly assess the same at that sum;

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.

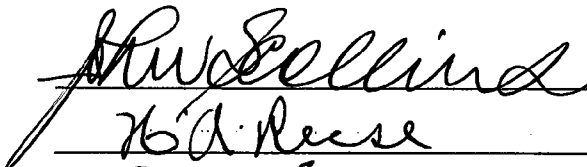

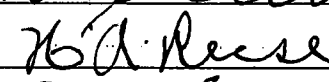

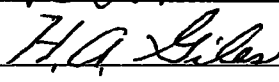


The undersigned further report that they endeavored to procure from all the owners of the land over which the said road passes releases in writing of all claims to damages that may arise from opening the same, and that they procured such releases from

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:

Lynn J. Peters and Dorothy Peters, husband and wife, \$965.00

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

WITNESS our hands and seals this 3rd day of March
A. D. 1939.

ORDER

To view and assess damages to property of LYNN J. PETERS & DOROTHY PETERS
DOROTHY PETERS
township of Bradford
Clearfield County

March 20, Sessions, 1939

read and confirmed Ni. Si. Road-to-be opened 33 feet wide except where there is side ditch cutting across and where bridges there to be 16 feet wide

J. Haller for J. Peters

Notice of filing this report computed March 6, 1939
J. Haller for J. Peters

FILED

MAR 3 1939

GALLAGHER CLERK

Filed _____ 19__

Fees \$1.25 paid by _____

John C. Forsyth, Atty.

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	AM'T.
H. A. Giles	2	21	\$21.05
H. A. Reese	3	74	\$33.70
John Scollins	3	100	\$35.00

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

TO: The County Commissioners of Clearfield County:-

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY,
PENNSYLVANIA.

In re: Order to view and assess damages:
to land of Lynn J. Peters and Dorothy :
Peters, in the Township of Bradford. : No. 4, February SS., 1939.

You are hereby notified that the undersigned Viewers,
appointed by the Court to the above number and term, "to view
and assess damages to a certain tract of land situate in the
Township of Bradford, being bounded and described as follows:

Beginning at a post corner, thence by lands of Isaac
Kline and Jonathon Boynton East 48 perches to a post corner,
thence by lands of Alexander Dugan North 175 perches to post
corner; thence by lands of George Berger (now Lumadue) West
48 perches to post corner; thence by lands formerly of Jona-
thon Boynton South 175 perches to post corner and place of
beginning", in the County of Clearfield aforesaid, will meet
at the house of Lynn J. Peters and Dorothy Peters in Bradford
Township on Tuesday the 24th day of January, 1939 at 10:00 A. M.,
to attend to the duty assigned them, of which time and place
aforesaid, all parties interested will take notice.

And that the public hearing 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 damages an opportunity to be heard, will be held in
the Grand Jury Room in the Court House, in Clearfield, on Friday,
the 27th day of January, 1939 at 10:00 o'clock A. M., or as soon
thereafter as counsel can be heard, at which time and place all
parties interested may attend and be heard.

Ohu Scollins
N. A. Reese
N. A. Giles
Viewers.

Dated: January 4th, 1939.

CLEARFIELD COUNTY, SS:

Now, this 9th day of January, 1939, service of the
above Notice is accepted for the Commissioners of Clearfield
County.

Myra Lucas
Clerk

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY,
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thereafter as counsel can be heard, at which time and place all
parties interested may attend and be heard.

John Scollins
N. A. Reese
N. A. Giles
Viewers.

Dated: January 4th, 1939.

CLEARFIELD COUNTY, SS:

And now, this day of January, 1939, service of
the above Notice is accepted for the Township of Bradford,
each of us having received an attested copy thereof.

Board of Supervisors.

PROPERTY OF LYNN PETERS ET AL.
IN BRADFORD TOWNSHIP, CLEARFIELD CO. PA.
VIEWED ON A QUESTION OF DAMAGE
JAN. 24 - 1939 BY JOHN SCOLLINS ESQ
H. A. REESE
SCALE 1" = 200'
H. A. GILES

