

DOCKET NO. 175

NUMBER	TERM	YEAR
<u>360</u>	<u>November</u>	<u>1961</u>

School District of Lawrence Township

Clearfield County, Pennsylvania

**VERSUS**

Winifred M. Aughinbaugh,  
Trustee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SCHOOL DISTRICT OF :  
LAWRENCE TOWNSHIP, :  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360 November Term, 1961  
vs : CONDEMNATION PROCEEDINGS  
WINIFRED M. AUGHINBAUGH, Trustee :

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : SS

WALTER SCIPIONE, being duly sworn according to law, deposes and says that:

On January 5, 1962, at 11:55 o'clock A.M. E.S.T., served the attached Notice of View and Hearing in the above caption case upon WINIFRED M. AUGHINBAUGH, Trustee, the within named Defendant, at her residence located at 507 Ogden Avenue, Borough of Clearfield, Clearfield County, Pennsylvania, by handing to her personally, a true and attested copy of the Notice of View and Hearing and made known to her the contents thereof. The person so served was known to be the Defendant by her own admission.

Further deponent saith not.

Walter Scipione  
Walter Scipione

Sworn to and subscribed  
before me this 10th  
day of January, 1962.

Carl E. Walker

PROTHONOTARY  
My Commission Expires  
1st Monday Jan. 1966

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SCHOOL DISTRICT OF :  
LAWRENCE TOWNSHIP :  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360 November Term, 1961  
vs : CONDEMNATION PROCEEDINGS  
WINIFRED M. AUGHINBAUGH, Trustee :

NOTICE OF VIEW AND HEARING

TO:

By Court Order dated December 29, 1961, John Scollins, John D. Haines and Ben Hughes were appointed Viewers by the Court of Common Pleas of Clearfield County, Pennsylvania, for the purpose of estimating and determining the amount of damages, if any, sustained by the owner, in the condemnation by the Board of School Directors of the School District of Lawrence Township, of the following described premises situated in Lawrence Township, Clearfield County, Pennsylvania.

BEGINNING at an iron pin on the Northwest corner of Highview Village plot plan; thence by lands of William J. Hoover Estate North Three ( $03^{\circ}$ ) degrees Forty-nine (49') minutes East Two Hundred Eighty (280) feet to an iron pin; thence by lands of Thomas H. and Winifred N. Aughinbaugh North Eighty-three ( $83^{\circ}$ ) degrees Fifty (50') minutes West Three Hundred Forty and Eight tenths (340.8) feet to an iron pin; thence by land of Thomas H. Jr., and Winifred N. Aughinbaugh South Twenty-seven ( $27^{\circ}$ ) degrees Forty (40') minutes West for a distance of Six Hundred Eighteen (618) feet to an iron pin on the North Right-of-Way line of Township Road No. 517; thence along Right-of-Way of said road South Fifty-seven ( $57^{\circ}$ ) degrees Nineteen (19') minutes East for a distance of Two Hundred Fifty-four and Three tenths (254.3) feet to an iron pin; thence along the land formerly of Robert Burns North Seventy-three ( $73^{\circ}$ ) degrees Thirty (30') minutes East for a distance of Three Hundred Ninety-two and Four tenths (392.4) feet to an iron pin; thence along the west boundary of Highview Village plot North Three ( $03^{\circ}$ ) degrees Forty-nine (49') minutes East for a distance of Two Hundred Fifty-eight (258) feet to the iron pin the place of beginning. Containing Six and Eight tenths (6.8) acres.

Notice is hereby given that said Viewers will meet on the premises in Lawrence Township on Tuesday, January 16, 1962, at 10:30 o'clock, A.M., to view the premises and to attend to the duties assigned them; and further that a Hearing for the purpose of determining the amount of damages, if any, sustained by the owner will be held in the Grand Jury Room of the Clearfield County Court House, Clearfield, Pennsylvania, on Tuesday, January 16, 1962, at 1:30 o'clock, P.M., at which time and place all persons interested may attend and be heard, if they so desire.

Stanley P. Thompson  
Secretary of the Board of School  
Directors of the Township of  
Lawrence

Dated at Clearfield, Pa.

January 5, 1962

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
SCHOOL DISTRICT OF :  
LAWRENCE TOWNSHIP :  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360 December Term, 1961  
vs : CONDEMNATION PROCEEDINGS  
WINIFRED M. AUGHINBAUGH, Trustee :

ORDER

NOW, December 29, 1961, Petition for Condemnation having been presented by the Board of School Directors of the School District of the Township of Lawrence and it appearing from the Petition that they have entered upon and occupied lands described in the said Petition and have set forth facts including a description by metes and bounds and the names of the owners, it is on motion of Donald R. Mikesell, Attorney for the School District of the Township of Lawrence, ORDERED AND DECREED that JOHN SCOLLINS, JOHN D. HAINES, Jr.  
and BEN HUGHES are hereby appointed a Jury of Viewers from the County Board of Viewers and within thirty (30) days shall fix a time for hearing when they shall view the premises provided, however, that the Petitioner shall give five (5) days' notice of the time and place for the first meeting and that the said notice to Winifred M. Aughinbaugh, Trustee, shall be by Certified Mail, Return Receipt Requested to her last known address.

On completion of the hearing and view, the Jury of Viewers shall make a true report to the Court, taking into consideration the quality and location of the improvements upon the lands taken and occupied for school purposes, and also taking into consideration the damages sustained and the benefits accruing and further shall estimate and determine what amount of damages, if any, have been sustained by the owners of such premises by reason of the taking of the said lands by the School District, and to whom said amount or amounts is payable.

BY THE COURT

S/ JOHN J. PENTZ, P.J.

Certified from the Records  
this 5th day of January 1961.2

Carl E. Walker  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SCHOOL DISTRICT OF LAWRENCE TOWNSHIP: *December*  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360, New, Term, 1961  
VS. :  
: CONDEMNATION PROCEEDING.  
WINIFRED M. AUGHINBAUGH, TRUSTEE. :

REPORT OF THE JURY OF VIEWERS

To the Honorable John J. Pentz, President Judge of said Court:

The undersigned Jury of Viewers respectfully reports upon the matter deemed pertinent to the above entitled case as follows:

THE FACTS:

1. The School District of the Township of Lawrence discussed the building of an addition to the present Elementary School building at Hyde, to accomodate the children of school age and upon submitting the matter to the Department of Public Instruction at Harrisburg for approval, the Department refused to approve the plans submitted and suggested a New Elementary Six-Room building of modern construction for school purposes.

2. The School Board considered several sites in the vicinity, to wit: The Aughinbaugh tract, the Armory, and the William J. Hoover sites, finally selecting and approving part of a 37-acre tract of land, the record owner of which is Winifred M. Aughinbaugh, Trustee. After determining the quantity of land desired, efforts were made to agree upon a price for the same. Upon failure to agree upon a price, the School District decided to take the land by condemnation proceeding. It appears that the steps antecedent to the appointment of Viewers were properly taken.

3. We find that on August 7, 1961, the Board of School Directors of said district adopted a resolution providing for the acquisition of the land selected by it for school purposes, and that on August 9, 1961, said Board of School Directors did enter upon, take possession of, and occupy the land selected and designated, and marked the boundary lines thereof by erecting permanent corners in accordance with the survey made by the engineer they had employed, who made a map of the land taken, situate, lying and being in said Township of Lawrence, bounded and described as follows, to wit:

BEGINNING at an iron pin on the Northwest corner of Highview Village plot plan; thence by lands of William J. Hoover Estate North Three (3) degrees Forty-nine' (49) minutes East Two Hundred Eighty (280) feet to an iron pin; thence by lands of Thomas H. and Winifred N. Aughinbaugh North Eighty-three (83) degrees Fifty (50) minutes West Three Hundred Forty and Eight-tenths (340.8) feet to an iron pin; thence by land of Thomas H. Jr., and Winifred N. Aughinbaugh South Twenty-seven (27) degrees Forty (40) minutes West for a distance of Six Hundred Eighteen (618) feet to an iron pin on the North Right-of-Way line of Township Road No. 517; thence along Right-of-Way of said road South Fifty-seven (57) degrees Nineteen (19) minutes East for a distance of Two Hundred Fifty-four and Three-tenths (254.3) feet to an iron pin; thence along the land formerly of Robert Burns North Seventy-three (73) degrees Thirty (30) minutes East for a distance of Three Hundred Ninety-two and Four tenths (392.4) feet to an iron pin; thence along the west boundary of Highview Village plot North Three (3) degrees Forty-nine (49) minutes East for a distance of Two Hundred Fifty-eight (258) feet to the iron pin the place of beginning. Containing Six and Eight tenths (6.8) acres.

4. After the appropriation a petition was presented to the Court for the appointment of Viewers to assess the damages, whereupon we were appointed. Pursuant to the Order of Court and notice given according to law we made the view and examined the premises January 24, 1962 @ 10:30 o'clock A.M., and thereafter, on January 24, 1962 @ 1:30 o'clock P.M., we held a hearing in the Grand Jury Room of the Court House on the question of damages.

5. We find that the land entered upon and taken is the property described in Paragraph 3 hereof, and that the quantity thereof is 6.8 acres; and is a part of the farm the ownership of which is conceded to be in Winifred M. Aughinbaugh, Trustee, consisting in its entirety of about 37 acres of land; there being no improvements on the premises.

6. As to the quality of the land taken, it has not been under recent cultivation, but is good farming land, fronting on Township Road No. 517, and located on the Northwest corner of built-up Highview Village, (and adjoining the 1.5 acre tract of land owned by Frederick L. Hoover, Sr., and the Heirs of William J. Hoover, i.e., Minnie Hoover, widow, Frederick L. Hoover, son, and Lois H. Read, daughter, and condemned at Condemnation Proceeding entered to No. 361, November Term, 1961 and viewed and heard concurrently herewith). The part (6.8) acres taken for school purposes would be available for building lot purposes, but the whole tract in its entirety did not appear to have any immediate prospect of being used for such purpose.

7. At the hearing in the Grand Jury Room there appeared Donald R. Mikesell, Esq., Attorney for the School District, with Stanley R. Thompson, Secretary of the Board, and Gilbert R. Cowder and M. Austin Turner, Members of the Board, with Hugh A. Lawhead, a witness in behalf of the School District.

Also, William T. Davis, Esq., attorney for Winifred M. Aughinbaugh, Trustee, together with Donald F. Meckley, a witness in behalf of the Aughinbaugh Estate.

The official plan and survey of the land appropriated by the School District for any and all purposes, as well as the record papers in the proceeding were offered in evidence

by Donald R. Mikesell, Attorney for the Lawrence Township School District.

Clarence R. Kramer, Attorney for the William J. Hoover heirs objects generally to the proceeding in Eminent Domain contending that the matter should be heard In Equity.

The proceeding being in compliance with Section 721 of the Act of 1949, Art. VII, P.L. 30 (24 P.S.7-721) the objection was over-ruled, and exception noted.

Stanley R. Thompson, Secretary; Gilbert L. Cowder and M. Austin Turney, Members of the Board of Directors; Hugh A. Lawhead and Donald F. Meckley, witnesses were sworn, examined and cross-examined by Counsel.

#### DISCUSSION.

In determining the damages to which the owner is entitled for the taking of his property under the right of eminent domain is as to the value of the property in its entirety before and after the taking. The 6.8 acres taken by the School District is the most valuable part of the 37 acre tract; and is so located as to hinder the proper development of the property after, for any practicable use.

The testimony of the witnesses produced by both parties in interest was a matter of opinion, though they both were conversant with values in that vicinity of Lawrence Township in real estate transactions in which their clients and principals were involved. Witness Lawhead estimated the value of the whole tract before the taking @ \$4300.00, and after @ \$900.00, or damage to the amount of \$3400.00. Witness Meckley valued the whole tract before the taking @ \$6500.00, and after the taking @ \$1400.00, or damage to the amount of \$5100.00.

There has been considerable improvement in that vicinity of Lawrence Township, such as Susquehanna Terrace, Country Club Hills and Highview Village at the edge of the appropriated land, with improved highways, sewerage, and utilities, except that there is a lull in home building activities at the present time.

CONCLUSION AND AWARD.

Having taken into consideration the quality and location of the of the land taken and occupied for school purposes as aforesaid, and having taken into consideration the damages sustained and the benefits accruing, we estimate and determine that damages have been sustained by the owner of said land, Winifred M. Aughinbaugh, Trustee, to the amount of \$5440.00 by reason of the taking of said land by the said school district, and that said amount is payable to her by said School District.

Dated: March 23, 1962.

Respectfully submitted:

Benj. Hughes

John D. Haines Jr.

John Scollins

JURY OF VIEWERS.

Costs:

	Days	Miles	Total:
Benj. Hughes, Layman,	1½ @ \$10	50 @ 5c	\$17.50
John D. Haines, Surveyor	1½ @ \$10	15 @ 5c	15.75
John Scollins, Lawyer	2 @ \$10.	60 @ 5c	<u>23.00</u>
			\$56.25

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

SCHOOL DISTRICT OF LAWRENCE TOWNSHIP: *December*  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360, ~~Nov.~~ Term, 1961  
VS. :  
WINIFRED M. AUGHINBAUGH, TRUSTEE. : CONDEMNATION PROCEEDING.

ORDER OF COURT.

AND NOW, March 29 1962, the within Report  
of the Jury of Viewers presented, read and considered:

Whereupon the Report is confirmed Ni.Si., ordered filed  
in the Prothonotary's Office, and written notice of the filing  
to be given to Counsel for the parties in interest, stating  
the date of the filing of the Report and the amount of damages  
allowed; and that unless exceptions are filed thereto, or an  
appeal to the Court of Common Pleas is taken therefrom within  
thirty days from the date of filing the Report will be con-  
firmed absolutely.

BY THE COURT

*John J. Pugh*  
President Judge.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

SCHOOL DISTRICT OF LAWRENCE TOWNSHIP : No. 360, *Decembe* Nov. Term, 19661  
CLEARFIELD COUNTY, PENNSYLVANIA :  
VS. :  
WINIFRED M. AUGHINBAUGH, TRUSTEE. : CONDEMNATION PROCEEDING.

NOTICE OF FILING VIEWERS' REPORT.

To: William T. Davis, Esq.,  
Counsel for Condemnee,  
Clearfield, Pa.

And:

Donald R. Mikesell, Esq., and  
Joseph Work, Esq.,  
Counsel for Condemner,  
Clearfield, Pa.

Notice is hereby given that the Jury of Viewers appointed in the above entitled proceeding will have filed their Report on March 29, 1962, upon confirmation Ni. Si., a copy of which is hereto attached, stating the amount of damages allowed.

Unless exceptions are filed thereto, or an appeal to the Court of Common Pleas is taken therefrom within thirty days from the date of filing, the Report will be confirmed absolutely.

Respectfully yours

JURY OF VIEWERS

By: *John S. Seelers*  
Member of the Board.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SCHOOL DISTRICT OF  
LAURENCE TOWNSHIP  
CLEARFIELD COUNTY, PENNSYLVANIA : *December*  
No. 360 November Term, 1961

vs : CONDEMNATION PROCEEDINGS

WINIFRED H. AUGHINBAUGH, Trustee :

NOTICE OF VIEW AND HEARING

TO: John Scollins, Esquire  
615 Brisbin Street  
Houtzdale, Pennsylvania

By Court Order dated December 29, 1961, John Scollins, John D. Haines and Don Hughes were appointed Viewers by the Court of Common Pleas of Clearfield County, Pennsylvania, for the purpose of estimating and determining the amount of damages, if any, sustained by the owner, in the condemnation by the Board of School Directors of the School District of Lawrence Township, of the following described properties situated in Lawrence Township, Clearfield County, Pennsylvania.

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*Stanley R. Thompson*  
Secretary of the Board of School  
Directors of the Township of  
Lawrence

Dated at Clearfield, Pa.

January 5, 1962

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

SCHOOL DISTRICT OF LAWRENCE TOWNSHIP: *December*  
CLEARFIELD COUNTY, PENNSYLVANIA : No. 360, Nov. Term, 1961  
VS. :  
WINIFRED M. AUGHINBAUGH, TRUSTEE : CONDEMNATION PROCEEDING.

DECREE OF COURT.

AND NOW, April 30, 1962, No exceptions  
having been filed to the Report of the Viewers filed on March  
29, 1962 in this proceeding, that Report is hereby confirmed  
absolutely by me under the authority of the Act of May 16, 1891,  
P.L. 75, Section 6, as amended by the Act of April 2, 1903,  
P.L. 124, Section 2, 53 P.S. Section 1090.

Date:

*Carl E. Walker*  
Prothonotary.

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENN'A.

NO. 360, November Term, 1961

SCHOOL DISTRICT OF LAWRENCE  
TOWNSHIP, CLEARFIELD COUNTY,  
PENNSYLVANIA.

VS.

WINIFRED M. AUGHINBAUGH,  
TRUSTEE.

CONDEMNATION PROCEEDING

REPORT OF JURY OF VIEWERS

1962  
C. C. R.  
1962

JOHN SCOLLINS  
ATTORNEY AT LAW  
HOUTZDALE, PA.