

No. *2* June Sessions, 1947

In the Court of ~~Quarter~~
~~Sessions~~ of Cambria County,
Pennsylvania.

In Re: Petition for Appoint-
ment of Viewers to Lay Out a
Public Road in East Carroll
Township, Cambria County,
Pennsylvania, adjacent to the
Borough of Patton, Cambria
County, Pennsylvania.

Petition for
Appointment of Viewers

FILED *22 July 47*
3:30 P.M.
John L. Kite

And now 25 July 1947 the
within proceeding is hereby
transferred to the Court of
Quarter Sessions

By the Court
Griffith

LAW OFFICES
FRED. J. FEES

EBensburg, PENNSYLVANIA

pd. Filed 7-25-47

7 V

\$5.00

Quarter Sessions
~~Common Pleas~~

IN THE COURT OF ~~QUARTER SESSIONS~~ OF CAMBRIA COUNTY, PENNSYLVANIA.

In Re: Petition for Appointment of Viewers to Lay Out a Public Road in East Carroll Township, adjacent to the Borough of Patton, Cambria County, Pennsylvania.

No. 2 June Sessions, 1947

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:-

1. The undersigned petitioners are residents and taxpayers and many of them owners of real estate in the Township of East Carroll, County of Cambria and Commonwealth of Pennsylvania.

2. The undersigned and others are owners of lots and lands abutting on a driveway which has been known as DONNELLY AVENUE for the purpose of United States Mail Service, said Service having been discontinued because of the deplorable condition of said driveway.

3. Said Donnelly Avenue, by name only, extends from the Southwest side of Magee Avenue in the Borough of Patton for a distance of approximately three fourths of a mile along and parallel with railroad indicated on the map of Cambria County as the Hudson River Railroad.

4. A brief description of the road desired to be laid out as a township road is as hereinabove referred to.

5. There is attached hereto and made a part of this petition, and marked Exhibit "A", a blueprint showing the location of said Donnelly Avenue as hereinabove described.

WHEREFORE your petitioners pray your Honorable Court to appoint Viewers to view and lay out a public road as herein prayed for and to make report of their proceedings to your Honorable Court at the next term thereof.

And they will ever pray, etc.

OWNERS OF LOTS AND PROPERTIES ADJOINING DONNELLY AVENUE.

NAME

NAME

Jack W Smith
 Emil Lenglet Jr
 Chas Durandette
 Louis Urbain
 Paul Urbain
 August Urbain
 Charles Bonvin Jr
 Mrs Eva Bonvin
 Mrs Henry Butler
 Mrs. Fred Swisher
 Fred Swisher
 Henry Butler
 Frank Polchla
 Rose Jallport
 Adam Turek
 Beatrice Paronick
 Paul Paronick
 John Mikula
 Geraldine Mikula
 Merino Lenglet

Leodore Lenglet
 James Lecount
 Frances Lecount
 Rose Zanone
 Loretto Durie
 Hubert Durie
 A Dolphine ogez
 Victor ogez
 Della Bootstrangh
 David Bootstrangh
 Andy Steine
 Joseph M. M. M.
 Myrtle Urbain
 William A. Urban
 Eleanor Urban
 Louis Cantreux
 Mary Smith
 Joseph Blake
 Mary Blake

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CAMBRIA :

Frederick L. Swisher, being

duly sworn according to law deposes and says that he is an owner of real estate, inhabitant and taxpayer of the Township of East Carroll, County of Cambria and Commonwealth of Pennsylvania; that he is one of the petitioners in the foregoing petition and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before
me this 21st day of July, A. D.
1947.

Frederick L. Swisher
Box # 442 - Patton, Pa.

Murtha C. Davis

Notary Public

My commission expires Jan. 7, 1951

34

The undersigned, being residents and taxpayers of the Township of ^{East} Carroll in the County of Cambria and Commonwealth of Pennsylvania and residing along Donnelly Avenue herein referred to desire to have said Donnelly Avenue laid out as a public highway and therefore join in the foregoing petition:-

RESIDENTS AND TAXPAYERS.

NAME

NAME

Salina Urbain

Sadie Lenglet

Julia Urbain

Paul Audry

Marie Audry

Just Butler

Anna Turek

Martha Turek

Walter Turek

Mrs. Leona Butler

Mrs. Joseph C. Noel

Mrs. Gertrude Nail

Hubert Diney Jr.

Charles D. Caskey

Columbia Getay

Andy Getay

Madeleine Urbain

CERTIFICATE

And now, to wit: this 21st day of July,
A. D. 1947, the Commissioners of Cambria County join herein
and respectfully request the Court to enter an Order waiving the
provisions of Rule No. 301 1/2 of the Rules of Court.

H. F. Don
Clerk.

O R D E R.

And Now, to wit: this 21st day of July,
A. D. 1947, the within petition presented and upon motion of
Fred J. Fees, Attorney for petitioners, S. H. Tenches,
M. H. Baumgardner and W^m Mc Grain,
are hereby appointed Viewers to view the ground proposed for the
road described in the within petition and to make report of their
findings to this Court.

Returnable the first Monday of September,
A. D. 1947.

BY THE COURT

Griffith
Judge

And now, 25 July 1947, due to the absence
of S. H. Tenches, the order of July 21st 1947 is hereby
modified as follows: - Upon motion of Fred J. Fees
Esq. the following are hereby appointed Viewers
to view the ground proposed for the road within
described and to make report of their findings to the
Court viz: M. H. Baumgardner, Chairman, W^m J. McGrain
and Theodore Hunt.

By the Court
Griffith

County of Cambria

J. DEAN JOY
CLERK OF COURTS



G. E. BLANKENHORN
DEPUTY

Clerk of Courts Office

EBENSBURG, PA.

July 28, 1947.

I, Mahlon H. Baumgardner, hereby acknowledge receipt of the Order to View a proposed public road, East Carroll Township, Cambria County, Pennsylvania, adjacent to the Borough of Patton, and entered to # 2 June Sessions 1947, this 28 day of July 1947.

Mahlon H. Baumgardner
MAHLON H. BAUMGARDNER

Card - Mahlon H. Baumgardner

IN RE: Order to View Proposed Public
Road, in Township of East Carroll,
County of Cambria, Pennsylvania,
adjacent to the Borough of Patton.

In the Court of Quarter Sessions
Cambria County, Pennsylvania.

No. 2 June Sessions, 1947

To the Honorable, the Judges of Said Court.

The petition of Mahlon Baumgardner, Chairman of the Board of Viewers of the above order to view, respectfully represents that pursuant of the receipt of the Order to View from the office of the Clerk of Courts of Cambria County, Pa. notices to view were prepared setting forth the time and place of making the view which said notices were duly posted and acceptances of service had thereon.

Your petitioner further represents that on the date of said View it developed that there was not sufficient ground available for the laying out of a public road because of the fact that more than twenty house were fronting off this private road sought to be made a public road and the Right-of-Way of the Pennsylvania Railroad Company would be available.

Your petitioner also avers that all parties in interest met on the 16th day of August, 1947 but that the view was continued until such date when a conference may be arranged for between the petitioners, the officials of the Pennsylvania Railroad Company and the Viewers; whereupon Fred J. Fees, Esq., Counsel for the Petitioners and your petitioner had a conference with Mr. Howard Mellon, an official of the Pennsylvania Railroad Company in the district invilving the view. Said Conference was held in the office of said Howard Mellon on the 19th day of August 1947. The matter at issue will be worked out if it is convenient or feasible to the said Railroad Company. No word as yet has been received from said Mr. Mellon.

Your petitioner avers that no continuance of the Order of Court was obtained from your Honorable Court continuing the return date from the First Monday of September A. D. 1947 to the first Monday of December, 1947.

Wherefore your Petitioner prays your Honorable Court to continue the Return day from first Monday of September 1947 to the First Monday of December nunc pro tunc and further order or decree the continuance of the return day from the first Monday of December 1947 to the First Monday of March, A. D. 1948. And he will ever pray.

Mahlon Baumgardner

State of Pennsylvania:
County of Cambria : SS.

On this first day of December, 1947 appeared Mahlon Baumgardner petitioner within named and having first been duly sworn according to law deposes and says that the facts her in above recited are true and correct.

Mahlon Baumgardner

Sworn to and subscribed the
day and year above mentioned.

J. H. [Signature]

NOV December 1, 1947 the within petition read and considered and the return day to December 1st, 1947 be decreed nunc pro tunc and also the return day from Dec. 1st be continued to the First Monday of March, A. D. 1948

By the Court
Griffith
J.

IN THE COURT OF QUARTER SESSIONS
CAMBRIA COUNTY, PENNSYLVANIA.

No. 2 June Sessions 1947

IN RE: Order to View Proposed
Public Road in Township of East
Carroll, County of Cambria, Penna.

PETITION FOR DECREE ON
RETURN DAY.

Decree Inside.

Wahlon Baumgardner
Chairman Board of Viewers
in above Proceedings.

Filed 12-1-47

IN THE COURT OF QUARTER SESS.
CAMBRIA COUNTY, PENNSYLVANIA.

No. 2 June Sessions, 1947

IN RE: Petition for the Appointment of Viewers to View Proposed Public Road in East Carroll Township, Cambria County, Pennsylvania, Adjacent to the Borough of Patton.

REPORT OF VIEWERS

Filed 3-6-48

MAHLON J. BAUMGARDNER
ATTORNEY AT LAW
JOHNSTOWN, PENNA.
SWANE BLDG.

March 10-1948

Report approved

By the Court

McKenrick
Judge

IN RE: Petition for the Appointment : In the Court of Quarter Sessions
of Viewers to View a Proposed Public :
Road in East Carroll Township, Camb- : Cambria County, Pennsylvania.
ria County, Pennsylvania, adjacent :
to the Borough of Patton. : No. 2 June Sessions, 1947.

REPORT OF VIEWERS

We, the undersigned Viewers appointed by the above named Court for the purpose to view a certain public road and to determine the necessity of same in the Township of East Carroll, County of Cambria and State of Pennsylvania known as Donnelly Avenue in name only for the purpose of United States Mail Service, said service having been discontinued extending from the Southwest side of Magee Avenue in the Borough of Patton for a distance of approximately three fourths of a mile along and parallel with the railroad to view the location and determine the advisability or otherwise the said proposed public highway.

That we have been duly qualified as Members of the Permanent Board of Viewers of Cambria County as is shown by the records in said county; that we gave due public notice of the time and place of the meeting of the Board of Viewers as required by law by posting ten notices along the route of the proposed road and at the termini of same and by notice and acceptance thereof by Fred J. Fees, Counsel for the Petitioners and upon Aaron Prosser, Secretary of the Board of Supervisors and by leaving a copy of same, said notice having been signed by Mrs. Marie Prosser, wife of Aaron Prosser, aforesaid and upon Frank Dorr, Chief Clerk to the Board of County Commissioners of Cambria County, same having been attached hereto and made a part of this report and further that a copy of said notice was given to each of the said parties aforesaid.

The Report shows that on August 14, 1947 a letter was received from the law offices of Shettig and Swope, Esqs., stating that the law firm aforesaid is Solicitor for the Board of Supervisors. The letter further states that the petition for the appointment of viewers sets forth that a map is attached to the petition but that as a matter of fact, no map was attached to the petition.

He further stated that Mr. Dorr, the engineer who is to make the survey for the proposed road and advised Mr. Swope of the law firm aforesaid that the survey had not actually been made on August 12 and further that the law firm represents the supervisors of East Carroll Township and that they would like to inspect the line of the proposed road before the time set for the view. ** Therefore it would be very much appreciated if you would continue this hearing from August 16th to August 23d. In view of the fact that no map had been made upon the receipt of the letter and the date advertised for the view was set and duly advertised for August 16th, 1947 at 10 o'clock Eastern Daylight Time the View was continued. Messrs McGrain and Hunt were called on the telephone and advised of the continuance of the view. Pursuant to said continuance, Mahlon Baumgardner, Chairman of the Board of Viewers appeared at the View as duly advertised on August 16th, 1947 at the place of beginning for the purpose of continuing said View. Upon his appearing at the place of Beginning of the proposed road a large number of property owners were present together with their Counsel Fred J. Fees and several members of the Board of Supervisors and also one Mr. Stratton who represented the Pennsylvania Railroad Company, he representing a Mr. Miller out of the Cresson P. R. R. Office. Supervisors for the Township of East Carroll A. L. Miller and W. A. Miller were present. All of those present walked over the proposed road and found a number of serious obstacles involved. It appeared that not sufficient ground was available to lay out a forty foot wide road because of infringing on the right-of-way of the Pennsylvania whose branch #2 abuts the property owners involved. A number of houses are built on the proposed road and thereby making it impossible to make a road of forty feet in width possible. It was suggested that a possibility lies in the fact that the Pennsylvania Railroad Company may release ten feet of its right-of-way abutting on said Donnelly Avenue which is the extension of Donnelly Avenue in the Borough of Patton. Mr. Stratton the Pennsylvania Railroad Representative after consultation by the Property owners, the Supervisors, Mr. Fees and Mahlon Baumgardner, Chairman of the Board of Viewers in question that a conference be arranged for between Mr.

Howard Mellon, Superintendent of the Cresson Branch of the P. R. R. and Messrs. Fees and Baumgardner. During the period -to wit: 16th August 1947 a draft of a map was shown but it was not complete as to lines of the right-of-way of the P. R. Branch and the location of the properties fronting on Donnelly street extension. It was suggested that the Pennsylvania Railroad Company may give ten feet of its right-of-way on said Branch leading from Patton into the country. The right-of-way is in very bad shape hundreds of ties have been "pulled" and many hundreds of feet of railroad rails have been lifted and further more at the upper terminus where said public road ends all of the ties, tracks and foundation have been washed away. Pursuant to the agreement between the property owners, the two Supervisors, Mr. Stratton, Attorney Fees, Counsel for the petitioners and the Chairman of the Board of Viewers in this view a meeting between Mr. Mellon was arranged for on 19th day of August, 1947 at the office of Mr. Mellon in Cresson. The day thus arranged Attorney Fred Fees and Mahlon Baumgardner aforesaid met in the office of Mr. Mellon at Cresson and had an interview with said Mr. Mellon with reference to a grant of ten feet from the right-of-way of the Patton Branch #2 of the Pennsylvania Railroad Company to make the distance 40 feet the legal requirement of width of a public highway possible. The draft of map not complete, prepared by H. Frank Dorr, Civil Engineer was used in the interview. We were advised to write to D. E. Smucker, Superintendent Pittsburgh Division of the Pennsylvania Railroad Central Region Western Pennsylvania Division. After going into a complete discussion relative to the ten feet of right-of-way discussed Fred Fees, Esq., sent a letter together with a copy of the incomplete draft to D. E. Smucker, Superintendent aforesaid setting forth the matter and issues involved in the matter.

On or about the 18th day of August, 1947 Mr. Frank Dorr, Civil Engineer, who was employed by the petitioners to prepare a plot or draft was stricken with paralysis which up to this time has incapacitated him. The print which Mr. Dorr used was turned over to Mr. S. H. Jencks for attention and he subsequently died. The matter of a blue print has very seriously handicapped the viewers. However to bring the matter to a head a view was called for by giving notice to the Attorney for the petitioners

for the petitioners, Shettig and Swopes, Esqs, Solicitor for the Board of Supervisors and a notice to Fred Swisher one of the petitioners and to William J. McGrain and Theodore Hunt Viewers calling for a meeting on January 17, 1948 and notices having been mailed on 4 January. Pursuant to said notice setting January 17th, 1948 at 1:30 o'clock P. M. as the time and the beginning of the proposed road as the place Mahlon Baumgardner, William J. McGrain, and Theodore Hunt appeared with many of the petitioners and we proceeded to travel over the course of the proposed public highway. No supervisor was present nor were they represented by their Counsel. We entered into a hearing and the matter of the right-of-way of the Pennsylvania Railroad Company sought to be granted to the Supervisors to make the width of the proposed public forty feet in width so as to conform with legal requirements. It appeared that a number of the houses have been built on the right of way or rather proposed street or highway known as Donnelly Avenue as shown a Plan of Lots of W. J. Donnelly & Company- Addition to the Town of Patton of record in the Recorder's Office of Cambria County, Pennsylvania. The Chairman of the Board of Viewers of the above View read a letter he had been handed by Fred Fees, Esq., he had received from Superintendent D. E. Smucker in response to the letter written by Mr. Fees on 20 September 1947. We quote the body of the letter, viz:

"Reference is made to your letter of Sept. 20th relative to the residents of East Carroll Township, who reside along our railroad on our Patton No. 2 Branch, desiring to procure a portion of our right of way.

Since the grade of the present roadway adjacent to our right of way is somewhat higher than our tracks, the fill required to bring the roadway to the same elevation for the additional 10 ft. would encroach on our tracks and eliminate any possibility of providing a ditch along the track, which is vitally important in the maintenance of track structures. In addition, the drainage from the roadway would be toward our tracks and would result in our track serving as a drainage ditch for the roadway.

In considering selling your clients the 10 ft. strip of property, it would be necessary to include in the cost of construction, a concrete or masonry crib wall along the new right of way line so provisions could be made for a standard ditch along our tracks. In addition a complete drainage system along the roadway to take care of the roadway surface must be provided. The estimated cost of the retaining wall is \$36,000.00

If your clients are willing to bear the expense of this wall and the cost of the construction of the drainage system, which should have our approval, please advise and we will consider the sale of the property.

A copy of the letter above recited is hereto attached and made a part of this report marked Exhibit B.

Much discussion took place at the time of the view and hearing and we continued the hearing until a later date . .

The Board of Viewers to wit: Theodore Hunt, William J. McGrain met at the home of Mahlon Baumgardner, Ebensburg, Pennsylvania with Fred J. Fees, Esq., Attorney for the petitioners on Tuesday March 2, 1948 for the purpose of arriving at a conclusion of all the matters presented to the Viewers. The Viewers are unanimously of the opinion that a public road is necessary but under all of the facts involved they find it impossible to grant same. No map was produced showing right-of-way of Branch #2 of the Pennsylvania Railroad as it relates to the homes of the petitioners of which there are about twenty-eight many of which are built on the proposed highway. It is our of the question to secure any land from the right of way of the Pennsylvania Railroad which was taken up through Mr. Mellon nor can the Viewers lay out a road that would involve the Township of East Carroll with an expense so high as to make it prohibitive for the township to engage in laying out the road and maintaining same. The letter Exhibit #2 is self explanatory and is made a part of the Report to show the position of the Pennsylvania Railroad Company and the demands made by it upon the township.

Mr. McGrain was instructed about August 20th, 1947 to make a check on the proposed road to be laid out and he made a report stating that upon taking measurements it would be impossible to lay out a road between the right-of-way and the houses of the petitioners. Attorney Fred Fees who represents the petitioners sat in on the discussion and he advised the Viewers that he too believes that the laying out of said road while necessary is impractical and prohibitive. Every phase of the matter at issue was discussed most fully and carefully. The Viewers feel and are convinced that should they lay out a public road under the above facts that a grave injustice would be done to all of the ~~taxpayers~~ of the Township of East Carroll and to the petitioners as well.

WE THEREFORE REFUSE to lay out the road above prayed for for the reasons above recited but recommend that the petitioners prepare a petition addressed

to the Council of the Borough of Patton praying said Borough of Patton
to annex said real estate and property and incorporate same into the
Borough of Patton, Cambria County, Pennsylvania.

WITNESS our hands this sixth day of March, A. D. 1948.

Michael Brumgardner

W. J. McGowan

Theodore W. Hunt
Viewers.

IN RE: Petition for the Appointment
of Viewers to View a Proposed Public
Road in East Carroll Township, Cam-
bria County, Pennsylvania, adjacent
to the Borough of Patton

In the Court of Quarter Sessions
of Cambria County, Pennsylvania
No. 2 June Sessions 1947

TO MAHLON J. BAUMGARDNER, WILLIAM J. McGRAIN
AND THEODORE HUNT, DEBTORS

Mahlon J. Baumgardner Dr.

1947			
Aug. 2	Data and Preparing Notices to View	\$12.00	
Aug. 4	Posting Notices to View and Acceptances of Service	12.00	
	Mileage 30 miles	3.00	
Aug. 16	View continued, on the ground by request	12.00	
	Mileage 30 miles	3.00	
Aug. 19	Conference with Fred Fees at office of Howard Mellon in Cresson	12.00	
	Mileage 16 miles	11.60	
1948			
Jan. 17	View and hearing East Carroll Twp.	12.00	
	Mileage 30 miles	3.00	
Mar. 2	Viewers Conference with Fred Fees at Ebensburg	12.00	
Mar. 5	Preparing Report	12.00	
	Numerous Telephone calls	2.00	
	Numerous conferences throughout this period	APR 7	1948 CERTIFIED
			\$96.60

William J. McGrain, Dr.

1947			
Aug. 20	Checked on Right of Way and Properties	12.00	
	Mileage 32 miles	3.20	
	Isadore Lenglet, helper	4.00	
	James Lacourt helper	2.00	
		6.00	
1948			
Jan. 17	View and hearing East Carroll Twp.	12.00	
	Mileage 32 miles	3.20	
Mar. 2	Viewers Conference with Fred Fees at Ebg.	12.00	
	Mileage 16 miles	1.60	
			1948 CERTIFIED
			\$50.00

Theodore Hunt, Dr.

1948			
Jan. 17	View and Hearing East Carroll Twp.	12.00	
	Mileage 52 miles	5.20	
Mar. 2	Viewers Conference with Fred Fees at Ebg.	12.00	
	Mileage 26 miles	2.60	
			APR 7 1948 CERTIFIED
			\$ 31.80

IN RE: Order to View Proposed Public
Road, in the Township of East Carroll,
County of Cambria, Pennsylvania,
adjacent to the Borough of Patton

| In the Court of Quarter Sessions
| County of Cambria, Pennsylvania.
|
| No. 2 June Sessions, 1947

ORDER TO VIEW

Be, the undersigned Viewers, appointed by the above named Court
to view a proposed public road in East Carroll Township, Cambria County,
Pennsylvania known as Donnelly Avenue in name only for the purpose of
United States Mail Service, said service having been discontinued extend-
ing from the Southwest side of Hages Avenue in the Borough of Patton for
a distance of approximately three fourths of a mile along and parallel
with the railroad will meet at the place of beginning on Saturday,
August 16th, 1947 at 10 o'clock Eastern Daylight Time for the purpose
of performing the duties of our appointment and the hearing of all evi-
dence pertaining thereto.

H. H. Baumgardner

William J. McGrain

Theodore Hunt
Viewers

2 August 1947

4 Aug 19 47

I hereby accept service of the
within notice to view in the absence
of my 7 ~~transferred~~ who is Secretary for
Board of Supervisors of East Carroll Town-
ship.
Marie Prosser.

PHILIP N. SHETTIG

THOMAS A. SWOPE

SHETTIG & SWOPE
ATTORNEYS AT LAW
EBENSBURG, PA.

August 13, 1947.

Mahlon J. Baumgardner, Esq.,
Ebensburg, Pa.

Dear Mr. Baumgardner:

This letter is written to you relative to the petition for the appointment of viewers and Order of Court thereon wherein you have been appointed the Chairman of the Board of Viewers to lay out and locate a road in East Carroll Township from the south-westerly line of the Patton Borough line, and continuing thence toward Rileys for a distance of about three-fourths of a mile.

The petition for the appointment of viewers sets forth that a map is attached to the petition. As a matter of fact, no map was attached to the petition. We talked to Mr. Doerr, the engineer who is to make the survey for the proposed road, and he advised that the survey had not actually been made on August 12th. We represent the supervisors of East Carroll Township, and would want to inspect the line of the proposed road before the time set for the view.

Your notice fixes Saturday, August 16, at ten o'clock, A.M., D. S. T., on the property, as the time and place for the view.

In addition to not having been afforded the opportunity to inspect the print showing the location of the road, the writer is going on a vacation beginning today and will not return until August 17th. Mr. Shettig is tied up in the Andy McDevitt hearing and will not have an opportunity to appear at the view.

Therefore, it would be very much appreciated if you will continue this hearing from August 16th to August 23rd.

Thanking you very kindly in advance, we are,

Very truly,

Shettig, Swope

TAS/P

THE PENNSYLVANIA RAILROAD
Central Region
Western Pennsylvania Division

Pittsburgh 22, Pa. Nov 17, 1947

P-3-6

D.K.Chase
General Superintendent
D.E.Smucker
Superintendent Pittsburgh Division
G.M.Sixsmith
Superintendent Conemaugh Division
H.B.Stetson
Superintendent, Monongahela Division

Mr. Fred J. Fees,
Attorney at Law
Ebensburg, Pa.

Dear Sir:

Reference is made to your letter of Sept. 20th relative to the residents of East Carroll Township, who reside along our railroad on our Patton No.2 Branch, desiring to procure a portion of our right of way.

Since the grade of the present roadway adjacent to our right of way is somewhat higher than our tracks, the fill required to bring the roadway to the same elevation for the additional 10 ft. would encroach on our tracks and eliminate any possibility of providing a ditch along the track, which is vitally important in the maintenance of track structures. In addition, the drainage from the roadway would be toward our tracks and would result in our track serving as a drainage ditch for the roadway.

In considering selling your clients the 10 ft. strip of property, it would be necessary to include in the cost of construction, a concrete or masonry crib wall along the new right of way line so provisions could be made for a standard ditch along our track. In addition a complete drainage system along the roadway to take care of the roadway surface must be provided. The estimated cost of the retaining wall is \$36,000.00.

If your clients are willing to bear the expense of this wall and the cost of the construction of the drainage system, which should have our approval, please advise and we will consider the sale of the property.

The Patton Branch is not on record to be retired in the near future as there is a large quantity of unmined coal in the region which we expect to move over the branch.

Exhibit B

Very truly yours
D. E. Smucker (S)
Superintendent.