

R.O. #2 Sept. 1925

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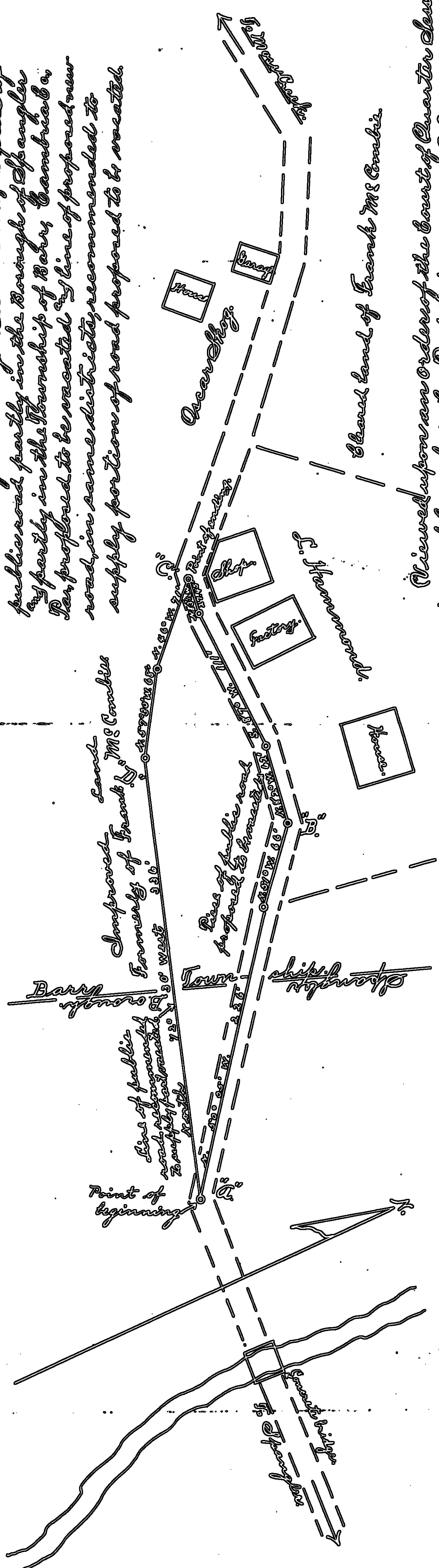
Hand-drawn map showing a proposed public road (dashed line) running from Town to Ship Cove. The road is labeled "Proposed public road" and "Proposed to be made by 1876". Key locations marked along the road include Oscar Shop, Shop, and Factory. A note indicates "Pieces of public road proposed to be made by 1876". The map also shows a "Main Road" and a "Ship Cove" area.

Shared land of Frank McComb.

Viewed upon an order of the Court of Quarter Sessions of Cambria Co., Pa. dated A.D., 1925.
A. M. Shoemaker, J. D. Ritter and Adam Shuman, Viewers.

Duplicate

Plot or draft showing the location of a piece of public road partly in the Borough of Springfield and partly in the Township of Barr, Cambria Co. Pa. proposed to be vacated and line of proposed new road, in same district, recommended to supply portion of road proposed to be vacated.



Viewed upon an order of the Court of Quarter Sessions of Cambria Co. Pa. dated A.D. 1925.
A.M. Shoemaker, J.D. Ritter and Adam Shuman, Viewers.

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA CO., Pa.
NO. 2 SEPTEMBER SESSION, 1925

IN RE VACATION AND SUPPLY
OF ROAD IN THE BOROUGH OF
SPANGLER AND THE TOWNSHIP
OF BARR, CAMBRIA COUNTY, PENNA.

EXCEPTIONS TO AMENDED REPORT

Filed 12 May 1926.

JOSEPH GRAY
ATTORNEY-AT-LAW
BARNESBORO, PA.

ATTORNEY FOR.....

IN RE VACATION AND SUPPLY OF * IN THE COURT OF QUARTER SESSIONS OF
ROAD IN THE BOROUGH OF SPANGLER * CAMBRIA COUNTY, PENNSYLVANIA
AND THE TOWNSHIP OF BARR, CAMBRIA *
COUNTY, PENNSYLVANIA. * NO. 2 SEPTEMBER SESSION, 1925..

* * * * *

EXCEPTIONS TO AMENDED REPORT.

Larry Hammond and Jane Hammond, his wife, by their Attorney Joseph Gray, come into Court and except to the proceeding in the above entitled cause for the following reasons:

FIRST--The amendment to the report of viewers does not show that there was a meeting of the viewers after the order of re-commitment was made.

SECOND--The amendment to the report of viewers is a statement relative to distances, grades, alignment, contour of ground, etc., which could be ascertained only by a view of the locus in quo; and no view was held since the order of re-commitment was made.

THIRD--The amendment to the report does not show that the portion of the road proposed to be vacated has become useless, inconvenient or burdensome; or that the portion of the road proposed to be supplied is necessary for a public or private road.

FOURTH--Legal written notices of the time and place of the application for appointment of viewers, or of the time and place of the meeting of viewers, were not given to the supervisors or commissioners of roads of Barr Township, or the supervisor of roads or street commissioner of Spangler Borough; or to the Spangler Borough Council. And the record does not contain any properly attested copy of the notices required.

FIFTH--The viewers have not had reference to the town plot of the Borough of Spangler and to the general arrangement, convenience, and advantage of the Borough of Spangler, and no facts relating thereto are

set forth in their report.

Sixth--All the exceptions taken to the proceedings after the filing of the original report of the viewers are renewed and re-taken to the petition, the original report of viewers, the amendment to the report, and the amended report.

Seventh--For these and various other reasons the proceedings are defective, irregular and invalid, and, therefore, should be set aside.

Joseph Gray
attorney for Exceptants.

STATE OF PENNSYLVANIA *
COUNTY OF CAMBRIA * SS.
*

Larry Hammond, being by me first duly sworn according to law, deposes and says that the matters of fact set forth in the foregoing exceptions are correct and true to the best of his knowledge and belief.

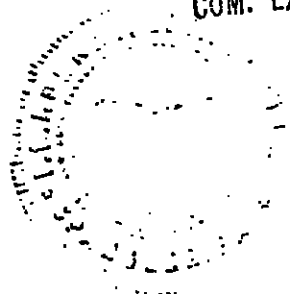
Sworn to and subscribed
before me this 12th day of
May, A. D., 1926.

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*

Laurence Hammond

J. M. Rodney
Notary Public

COM. EXPIRES MAR. 12, 1929



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

No. ~~2~~. ~~December~~ Sessions, 1925.

September

IN RE: The Vacation and Supply of the Highway leading from Spangler to Marsteller in the Borough of Spangler and Township of Barr.

Answer to Exceptions.

Filed 7 April 1926

LAW OFFICES OF
J. HARRISON WESTOVER
FIRST NATIONAL BANK BUILDING
SPANGLER, PENNSYLVANIA

IN THE COURT OF QUARTER SESSIONS FOR THE
COUNTY OF CAMBRIA, PENNA.

IN RE: The Vacation and Supply of a part
of the Highway leading from Span-
gler to Marsteller, in the Bor-
ough of Spangler and Township of
Barr.

NO. 5.

December Sessions, 1925.

Exceptions to the Report of Viewers in the above matter
having been filed on the part of Larry Hammond and Jane Hammond
by their Attorney, Joseph A. Gray, the Supervisors of Barr Township,
by their Attorney, J. Harrison Westover, make the following answer
thereto:

1. In answer to paragraph one, it is denied that Larry Hammond
and Jane Hammond are owners of land abutting on the road
marked "A"- "B"- "C" on the draft attached to the viewers report.
2. It is denied that the proceedings are in violation of Rule 306
of the Court of Quarter Sessions of Cambria County.
3. It is denied that the petition or application is in violation
of Rule 308 of the Court of Quarter Sessions of Cambria County.
4. Paragraph four is denied. The Report of Viewers adopts the
termini as described in the petition in the following form:
"We are unanimously of the opinion that the piece of road
described in the petition and indicated on the plot or draft
thereto attached and made a part of this report, as taking the
direction "A"- "B"- "C" should be vacated and a new road taking
the direction indicated on attached draft as "A"- "D"- "C"
should be supplied."
5. Paragraph five is denied. The report is full and complete
on the matters herein excepted to.
6. In answer to paragraph six, it is averred that the matters
therein set forth are irrelevant and immaterial and cannot
be considered on exceptions to this report.
7. Paragraph seven is denied and it is averred that the matters
therein set forth are not ^{to} be considered on exceptions to this

report.

8. Paragraph eight is denied.
9. Paragraph nine is denied.
10. Paragraph ten is denied.

William Austin
ATTORNEY FOR PETITIONERS.

STATE OF PENNSYLVANIA |
COUNTY OF CAMBRIA | SS.

W. F. Lumbur, Secy, being duly sworn, deposes
and says that the matters set forth in the foregoing answer are
true to the best of his knowledge and belief.

W. F. Lumbur
Sworn and subscribed to before me this 3rd day of April, 1926.

William Austin

NOTARY PUBLIC
My Commission Expires March 6, 1927

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNA.

Re Petition of Residents and tax payers of the Borough of Spangler and the township of Barr, Cambria county, Pennsylvania, for vacation and supply of a portion of a road located partly in the Borough of Spangler and Partly in the township of Barr, Cambria county.

No. 2, September Sessions, 1925.

MOTION FOR EXTENSION OF TIME IN
WHICH TO FILE EXCEPTIONS.

Now, May 5, 1926, upon motion of Joseph Gray, Attorney for Exceptants, the time allowed exceptants to file exceptions is extended to and including Wednesday May 12, 1926.

By the Court
E

No. 2 Sept. Sessions, 1925

IN THE COURT OF QUARTERSESS
SESSIONS OF CAMBRIA CO., Pa.

In Re Petition of Residents
and tax-payers of the
borough of Spangler and the
Township of Barr, Cam. Co.,
Pa., for vacation and supply
of a portion of a road
located partly in the
borough of Spangler and
Partly in the Twp. of
Barr,

MOTION FOR EXTENSION OF
TIME IN WHICH TO FILE
EXCEPTIONS.

Filed 5 May 1926.

GRAY

IN RE: VACATION AND SUPPLY OF : IN THE COURT OF QUARTER SESSIONS
ROAD IN THE BOROUGH OF SPANGLER : OF CAMBRIA COUNTY, PENNSYLVANIA.
AND THE TOWNSHIP OF BARR, CAMBRIA :
COUNTY, PENNSYLVANIA. : No. 2, Sept. SESSIONS, 1925.

EXCEPTIONS.

Larry Hammond and Jane Hammond, his wife, by their attorney, Joseph Gray, come into Court and except to the Petition and proceedings subsequent in the above entitled cause; for the following reasons:-

1. The exceptants are inhabitants of the Township of Barr, County of Cambria and State of Pennsylvania, and owners of a parcel of land which abuts upon the original road, which road is marked "A", "B", "C" on the draft attached to the Viewers' Report. The exceptants have resided on these premises more than thirty years, and here Larry Hammond has followed his occupation and business of wagon-making, repair-shop and mill-worker for the twenty-nine years last past. The road marked "A", "B", "C", as aforesaid, has been used by the traveling public for more than half a century.

2. The proceedings are in violation of Rule 306 of the Rules of the Court of Quarter Sessions because the application for the road in question was made and acted upon within one year from the sessions at which a procedure to obtain the same road was rejected.

3. The petition, or application, is in violation of Rule 308 of the Rules of the Court of Quarter Sessions in this respect that it contains no reference to the number and term of the original case, or to the number and page of the docket containing the record thereof.

4. The report does not show that the termini of the proposed new road are the same termini, or at the same points as the termini set forth in the petition.

5. The report of the viewers does not state or show that the proposed new road, or the vacation of the old road, is necessary for the public use; nor does the report show or state that the part of the road proposed to be vacated is, or has become, useless, inconvenient and burdensome, expensive to maintain, inconvenient or hazardous to the traveling public.

6. The report does not give as accurate, full, or complete description of the "place" as will be necessary for the Court to properly understand the whole situation as it actually is. No grade, or grades, are given; no designation of necessary "cuts" or fills or fences that will be required for the construction and maintenance of the proposed new road, are contained in the report. A cheaper, better, straighter and less expensive road to build and to maintain can be obtained between said termini.

7. The viewers have not obtained, or endeavored to obtain, release, or releases, of damages from the owner or owners of the land through which the proposed new road passes. Neither the borough of Spangler, or the township of Barr, can hold real estate for the purpose stated in the report.

8. If the present road is vacated as proposed, the property of the exceptants, for any practicable purpose, will no longer abut on the public road. That property would be enormously and permanently damaged thereby; and the exceptants would be put to great and continuous financial loss and expense.

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA CO.,
PENNA.

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IN RE: VACATION AND SUPPLY
OF ROAD IN THE BOROUGH OF
SPANGLER AND THE TOWNSHIP
OF BARR, CAMBRIA COUNTY,
PENNSYLVANIA.

EXCEPTIONS.

Filed 1 March 1926

JOSEPH GRAY
ATTORNEY-AT-LAW
BARNESBORO, PA.

ATTORNEY FOR...*Exceptants.*.....

No.2 September Sessions,1925.

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

IN RE VACATION AND SUPPLY
OF ROAD IN THE BOROUGH OF
SPANGLER AND THE TOWNSHIP
OF BARR, CAMBRIA COUNTY,
PENNSYLVANIA.

OPINION AND DECREE OVER-
RULING EXCEPTIONS AND CON-
FIRMING REPORT OF VIEWERS

Filed 26 July 1926.

J. C. Sharbaugh

Official Stenographer

For the

Forty-Seventh Judicial District

Pennsylvania

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY
PENNSYLVANIA.

No.2. September Sessions, 1925

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IN RE VACATION AND SUPPLY OF ROAD IN THE BOROUGH OF
SPANGLER AND THE TOWNSHIP OF BARR, CAMBRIA COUNTY,
PENNSYLVANIA.

EXCEPTIONS TO AMENDED REPORT OF VIEWERS

HEARD BEFORE EVANS, P.J., McCANN, J., AND REED, P.J.O.C.,
SPECIALLY PRESIDING.

OPINION BY EVANS, P.J.:-- Seven separate reasons or
exceptions are filed which will be considered in their
numerical order.

FIRST. This exception complains that the amended
report of the viewers does not show that there was a meeting
of the viewers after the order of recommitment was made.

In the first place we would call attention to
the fact that the report was recommitteed to the viewers not
for the purpose of having them ^{give} ~~ex~~ further consideration but
"for the purpose of having them amend the same by placing
therein the reasons for reaching their conclusion that the
road should be vacated and their reasons for supplying the
new part or portion." The viewers, as shown by their
original report, had met, consulted together and reached
their conclusion. The only place wherein the report was
short is found in the failure of the viewers to give the
reasons for their conclusion. The amended report gives
these reasons in detail and is signed by all three of the
viewers. Even if it were necessary that the viewers should

meet together and consult further the presumption is that their duty was regularly performed. In this particular instance, however, there was no occasion for consultation, deliberation and conclusion but a statement of the reasons which controlled the viewers in the conclusion they have set forth in their original report should be given for the benefit of the court. This the viewers have done.

SECOND. The second exception complains that the amendment to the report of viewers is a statement relative to distances, grade, alignment, contour of ground etc., which could be ascertained only by a view of the locus in quo and no view was held since the order of recommitment was made.

It was not necessary for the viewers to again view the premises, this had already been done. The only thing the viewers had to do was to place in their report by amendment the facts which led them to reach the conclusion that the piece of road should be vacated and supplied.

THIRD. The third exception complains that the amendment to the report does not show that the portion of the road proposed to be vacated has become useless, inconvenient or burdensome or that the portion of the road proposed to be supplied is necessary for a public or a private road.

The report shows both of these things. The original report has stated the conclusion of the viewers upon the petition to vacate and supply that the portion of the road should be vacated and supplied by the new part suggested. The amended report shows plainly that the portion of the old road was inconvenient and burdensome and that the new part was necessary to supply the part to be vacated. These facts appear clearly and plainly in the reasons indicated in the

amended report.

FOURTH. The fourth exception complains that notices were not given of the time and place of meeting of the viewers. No such notice was required. Notices to the parties concerned had been given prior to the original view at which time they all had an opportunity to be present and to be heard. There was no occasion whatever for calling them in or giving them notices such as is required in the original proceeding at a time when the viewers are only required to set forth certain reasons in their amendment which would be no matter requiring the presence of the parties concerned. It is presumed that all the information available had been furnished the viewers at the time of their meeting and prior to their consideration of the matter and making their original report.

FIFTH. The fifth exception relates to no matter which has arisen since the filing of exceptions to the original report and, therefore, is not properly before the Court for consideration.

SIXTH and SEVENTH. The sixth and seventh exceptions are general and require no discussion.

And now July 26, 1946, after due consideration the exceptions are overruled and the report of the viewers as amended is confirmed absolutely. *By the Court*

To which order or decree of the Court overruling the exceptions and confirming the report of viewers absolutely, counsel for the exceptants except and pray that a bill of exceptions be granted them. All of which is, the day and year above-noted, accordingly done:

John E. Evans, P.J. (SEAL)

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

IN RE PETITION OF RESIDENTS
AND TAX PAYERS OF THE BOROUGH
OF SPANGLER AND THE TOWNSHIP
OF BARR, CAMBRIA COUNTY, PA.,
FOR VACATION AND SUPPLY OF A
PORTION OF A ROAD LOCATED
PARTLY IN THE BOROUGH OF
SPANGLER AND PARTLY IN THE
TOWNSHIP OF BARR, CAMBRIA
COUNTY.

OPINION, ORDER AND DECREE
OVERRULING ALL EXCEPTIONS
EXCEPTING THE FIFTH etc.

Filed 30 April 1926

J. C. Sharbaugh

Official Stenographer

For the

Forty-Seventh Judicial District

Pennsylvania

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNA.

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IN RE PETITION OF RESIDENTS AND TAX PAYERS OF THE
BOROUGH OF SPANGLER AND THE TOWNSHIP OF BARR, CAMBRIA COUNTY,
PENNSYLVANIA, FOR VACATION AND SUPPLY OF A PORTION OF A ROAD
LOCATED PARTLY IN THE BOROUGH OF SPANGLER AND PARTLY IN THE
TOWNSHIP OF BARR, CAMBRIA COUNTY.

No. 2. September Sessions, 1925.

EXCEPTIONS TO REPORT OF VIEWERS

HEARD BEFORE EVANS, P.J., McCANN, J., AND REED, P.J.O.C.,
specially presiding.

OPINION BY EVANS, P.J.:-- The petition in this
proceeding sets forth in part that a public road long since
laid out, opened and used, which extends from a point on
Bigler Avenue in the Borough of Spangler to the village of
Marstellar or Moss Creek, in the Township of Barr, and particu-
larly described in the petition, has become useless, inconvenient
and burdensome because of the steep grade and a sharp curve at
the summit thereof making the road in its present location
dangerous to the traveling public, expensive to the tax payers
to maintain and inconvenient and hazzardous to automobile traffic
for the reason that the view of the road at the aforesaid curve
is obstructed by buildings and praying that the said road be
changed. Upon this petition viewers were appointed who have
reported in favor of the vacation of the portion of the road as
prayed for in the petition and the supplying of a piece of road

in place thereof. To the report of the viewers exceptions have been filed by Larry Hammond and Janet Hammond, property owners along said road in the Township of Barr.

The exceptants have filed ten exceptions which we will notice in the order in which we find them in papers filed.

The first exception is not an exception in fact but merely a statement of who the exceptants are and the length of ~~time~~ time they have resided along the road in question.

The second exception complains that the proceedings are in violation of Rule 306 because the application for the road in question was made and acted upon within one year from the ~~xx~~ session at which a procedure to obtain the same road was rejected. For the purpose of having these exceptions disposed of it was agreed as a fact that the supervisors of Barr Township had undertaken to make a change in the public highway in question at the same point covered by the present proceeding within the past year under the provisions of the Act of May 5, 1911 (P.L. 123) as amended by the Act of July 11, 1917, (P.L. 777) which Act authorized the supervisors to change or alter any part of any public road under their supervision within this Commonwealth when they could agree with the property owners affected by such change as to the damages, provided, however, that the damages should not exceed three hundred dollars and provided further that a petition, accompanied by a map showing the change, should be presented to the Court and approved before the new location should become a public road. When the petition of the supervisors was presented to the Court these same exceptants filed exceptions complaining among other things that damages had not been settled with them. For this reason the proceeding was set aside.

Our Rule 306 reads as follows: "When a procedure to obtain a road, bridge, or division of a township has failed another application shall not be acted upon within one year from the sessions at which the same was rejected." In the first place this Rule only relates to a proceeding to obtain a road etc., and not to a proceeding to vacate and supply. Second, the Rule applies only to a proceeding which has been carried through and the Court has refused to grant the opening of the road and does not apply to a case where for some technical reason the matter is not finally heard and concluded by the Court. The case of Towamencin Road, 10 Pennsylvania, 195, bears upon the question which we have here in that a Rule of Court somewhat similar to our rule was up for consideration. It is true that in that case the rule spoke of an application "finally rejected" while our rule does not have the word "finally" in it. However, it is our opinion that the rules mean one and the same thing. In that case Mr. Justice Bell said in that part of the opinion found on page 197: "But it cannot be said to be finally rejected, merely by setting aside, for some technical reason, the report of viewers. This does not touch the merits. The Terms of the Rule of Court are only satisfied by the regular progression of the proceedings through all the stages authorized by the Acts of Assembly and the practice under them. When the merits of the proposed thoroughfare have been examined and reported upon by succeeding viewers, and disapproved by them, with the concurrence of the Court, it may be said to be 'finally rejected', but not before."

The third exception complains that the petition is in violation of Rule 308 of the Rules of Court of this County in that it contained no reference to the number and term of the

original case or to the number and page of the docket containing the record thereon.

Rule 308 provides as follows: "Every petition for the review, or vacation, or change of a road, shall contain a reference to the number and term of the original case, or to the number and page of the docket containing the record thereof."

This Rule is one that has been in force in this County for a great number of years but its use has become ~~almost obsolete~~ almost obsolete, in the cases relating to old roads for the reason that it is practically impossible to find any reference to the same in the records. While the Rule has been continued on the books it is a fact that it is ~~really~~ rarely complied with particularly in the cases of old roads because of the fact that the information required by the Rule cannot be obtained. The petition in this case shows that this is an old road. No record of this road has been found and we feel warranted in the present case in waiving the requirements of the Rule.

The fourth exception complains that the termini of the proposed new road are not shown to be the same termini as that set forth in the petition. This exception is not well taken and is ~~answered~~ answered by the report of the viewers which specifically sets forth that the points of beginning and ending of the new location are the identical points set up in the petition.

The fifth exception complains that the report of the viewers does not show that the portion of the road vacated has become useless, inconvenient and burdensome nor any reasons for making the vacation, nor does it show that the new road is

necessary for use of the public.

This exception is well taken. While it is true that the map accompanying the report of the viewers shows that there is a sharp turn in the old highway and that the view around this turn is interfered with by a building yet there is nothing in the report itself to show why the road is inconvenient, burdensome or useless. The report shows only the conclusion of the viewers that the road should be vacated. Reasons for this conclusion are not given and we shall therefore recommit the report to the viewers for the purpose of having the omission included. It is true that the report does not show the need or necessity for the new part supplied but does report ~~re~~ in favor of supplying the same without giving any reasons. ~~That~~ we have amply authority for recommitting the report to the viewers for the purpose of having these omissions included in an amended report is sustained in the following cases: Road in Hempfield Township 122 Pa. 439; ~~Potts's~~ Appeal, 15 Pa., 414; In re Road in Springdale Township, 91 Pa., 260; Thompson's Private Road, 154 Pa., 541. In Hempfield Township Road, supra, it is said, "It is settled that a report may be sent back to the viewers, to note the improvements or to correct errors or omissions."

The sixth exception complains that the report does not give a full, accurate and complete description of the place nor does it give the grade, cuts or fills which will be required in connection with the new road. There is nothing in any Act of Assembly with which we are familiar that requires the report of the viewers to contain any data as to details of the construction of a new road other than the courses and distances. The particular place is definitely located in the

report. This same exception also complains ~~of~~ that a cheaper, better, straighter and ~~xxxxxx~~ less expensive road can be built and maintained between said terminals. This is the question that was before the viewers and was considered and determined by them.

The seventh exception complains that the viewers had not obtained or endeavored to obtain releases of damages from the owners of land through which the proposed new road passes. It further complains that the Borough of Spangler and the Township of Barr cannot hold real estate for the purposes of constructing a road thereon.

The Township code and the Borough code each place in the Township and Borough respectively power to hold and acquire such real estate as ~~may be~~ ^{may be} necessary for the benefits of the inhabitants of the municipality. It is evident that in the present case the Borough and Township acquired this piece of ground using this as a method of adjusting the damages for taking the ground to place the road thereon. At any rate it is ~~conceded~~ ^{acknowledged} that the Borough and Township do own the ~~ground~~ ^{ground} upon which the new road as laid out will locate and it does not lie in the ~~mouth~~ of the exceptants to question the same.

The eighth exception complains that if the road is vacated as proposed, the property of the exceptants, for any practicable purpose, will no longer abut on ~~the~~ ^a public road. That the property would be ~~xxxx~~ enormously damaged and exceptants put to great and continuous financial loss and expense. These are all matters that are not the subject of exception to these proceedings but solely matter of claim for damages.

The ninth exception complains that the Court of Quarter Session has no jurisdiction in the premises. Counsel for exceptants ~~explains~~ explains that this exception was intended to raise the question that the road being partly in the Borough and partly in the Township could not be vacated and supplied in this proceeding. This position was evidently taken without investigation of the decisions of the appellate court of this State. The case of Palo Alto Road, 160 Pa., 104, determines this question if there were any doubt about it.

The tenth exception is simply a general regime and covers only the complaints made in the preceding exceptions specifically set forth in them.

For the reasons given above we enter the following

ORDER

And now, *April 29th* 1926, after due consideration all of the exceptions excepting the fifth are overruled; the report is recommitted to the viewers for the purpose of having them amend the same by placing therein the reasons for reaching their conclusion that the road should be vacated and their reasons for supplying the new part or portion, and the viewers are directed to make such amendment and file their report on or before the first Monday of May, 1926, and exceptants shall have until the Monday following within which to file exceptions to any of the matters set up in the amended report.

By the Court
To all of which exceptants take exception and ask that their exceptions be noted and bill sealed which is accordingly done the day and year aforesaid.

In the Court of Quarter Sessions, Cambria County, Penna.

No. 2, September Sessions
1925.

In Re: Vacation and Supply of Road in the Borough of Spangler and the Township of Barr, Cambria County, Pennsylvania.

Petition for the Appointment of Viewers.

And now October 26, 1925 the within petition having been read and considered,

Alfred Shumaker
J. D. Ritter and
Edgar Shumaker are
appointed viewers as within
prayed for.

By the Clerk
M
Filed 26 Oct. 1925
10:50 A.M.

LAW OFFICES OF
J. HARRISON WESTOVER
FIRST NATIONAL BANK BUILDING
SPANGLER, PENNSYLVANIA

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

In Re Vacation and Supply of Road
in the Borough of Spangler and
the Township of Barr, Cambria
County, Pennsylvania.

No. _____

_____ Sessions 1925.

To the Honorable, the Judges of the aforesaid Court:

The petition of the undersigned residents and taxpayers
of the Borough of Spangler and the Township of Barr, respectfully
represents:

1. That a public ^{road} has long since been laid out by authority
of law, opened and used beginning at a point on what is
now Bigler Avenue, now a part of State Highway, Route
number 6, and extending Westwardly by way of North First
Street and North Second Street in the Borough of Spangler
to the line separating the Borough of Spangler and the
Township of Barr and from thence in the Township of Barr
to the Village of Marsteller or Moss Creek.
2. That a part of said road to wit: Beginning at a point
in the Borough of Spangler two thousand thirty two
(2032) feet Westwardly from its intersection with Bigler
Avenue, now a part of State Highway, Route number 6, al-
ready opened and ending two thousand five hundred seven-
ty five (2575) feet from its intersection with the dirt
road, already opened, leading to Nicktown, near the res-
idence of Frank Farrell, has become useless, inconven-
ient and burdensome because of the steep grade and a
sharp curve at the summit thereof, making the road in
its present location dangerous to the traveling public;
expensive to the taxpayers to maintain and inconvenient

and hazardous to automobile traffic for the reason that the view of the road at the aforesaid curve is obstructed by buildings.

3. The said road would be much improved by a change of its route between said terminal points.

Your petitioners therefore pray the Court to appoint qualified persons to view the premises and to inquire into the expediency of making said change and otherwise proceed as directed by the Act of Assembly in such case made and provided.

And they will ever pray, etc.

W A Hummermacher
W J Plaster
A F Raubon

Mrs Michael Platto
Frank Farrell

Steve Platto
Mrs Platto

Bernadette Kline

Anelia Kisch

Barbara Shank

Frank Shank

Mary Reber

Frank Reber

Thomas J Bolger

Mrs Thos J Bolger
Edmund Bolger
Mrs Ed Bolger

John Norton
Joseph Norton

Mrs Joseph Norton
Thomas Dailey Sr
Mrs Thomas Dailey

Thos. Zimmer
Mrs Thos Zimmer
HR Lee

Elizabeth Lee
Charles A. Resciniti

Amedeo Casagrande

John Masseris
Julia Masseris
Victor Montello
Emanuel Good
Domenick Montello
Peter Pharrar
Sampson
Bernard Timms
Joseph Gardner
Annie M. Gardner
Anthony Schnabel
Geom Schnabel
Catherine Schnabel
Emma McCombie
Frank McCombie
M. F. Doran
Bernard Doran
Mrs M Doran
Bert Hamberger
Mary Hamberger
J. H. Farrell

Ernest King
Wm Whalen
Archie Peter
Mrs A. Ch. Whalen
Emerson King
Mrs. Lawrence King
Theodore Peters
Paul Whalen
Lion Taffino
Leo Kirsch
Edward J. Schmitt
Louis Tranya
M. J. Lonerger
Lamin Kappel
Thomas Kirsch
Sam S. Tillo
A. H. Kline

State of Pennsylvania

SS.

County of Cambria

J. H. Farrell., being duly sworn
according to law, deposes and says that the facts set forth
in the foregoing petition are true and correct to the best
of his knowledge and belief.

J H Farrell

Sworn and subscribed to before me this 23 day of October, 1925.

J. H. Rooney
Notary Public

COM, EXPIRES MAR. 12, 1929

To the Commissioners of Cambria County, the Supervisors of the Township of Barr and the Council of the Borough of Spangler.


Notice is hereby given you that a petition will be presented to the Court of Quarter Sessions for the County of Cambria on Monday, the 26th day of October, 1925, praying for the appointment of viewers to view the premises and to inquire into the expediency of vacating and supplying a part of the public highway leading from Spangler to Marstellar, to wit: Beginning at a point in the Borough of Spangler two thousand thirty two (2032) feet Westwardly from its intersection with Bigler Avenue now a part of State Highway Route number 6, already opened, and ending two thousand five hundred seventy five (2575) feet from its intersection with the dirt road, already opened, leading to Nicktown, near the residence of Frank Farrell.


Attorney for Petitioners.

Service of a copy of the foregoing notice is accepted this 26 day of October, 1925 for the Commissioners of Cambria County.


Chief Clerk.

Service of a copy of the foregoing notice is accepted this 24 day of October, 1925, for the Supervisors of the Township of Barr.


Secretary for Supervisors
of the Township of Barr.

Service of a copy of the foregoing notice is accepted
this 24 day of October, 1925, for the Council of the Bor-
ough of Spangler.

Paul M. Lantzy
Secretary for the Council of
the Borough of Spangler.

In the Court of Quarter
Sessions for the County of
Cambria. *September*
No. 2 ~~December~~ Sessions, 1925.

In re Vacation and Supply of
Public Road in the Borough
of Spangler and the Township
of Barr, Cambria County, Penna.

BOND

Now October 26, 1925, the
within bond approved.

[Signature]
M

Filed 26 Oct. 1925
10:50 A.M.

LAW OFFICES OF
J. HARRISON WESTOVER
FIRST NATIONAL BANK BUILDING
SPANGLER, PENNSYLVANIA

KNOW ALL MEN BY THESE PRESENTS, that we, W. A.

Krummacker, W. J. Pfister and
N. F. Lamborn, of the Township of Barr, Cambria County, Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of one hundred dollars, lawful money of the United States of America, to be paid to the said Commonwealth or its certain Attorney or assigns, to which payment well and truly to be made we do bind ourselves, our heirs, executors and administrators and every of them firmly by these presents.

Sealed with our seals and dated the 24th day of October, 1925.

Whereas a petition has been presented to the Court of Quarter Sessions for the County of Cambria, Pennsylvania, praying for the appointment of viewers to view the premises and to inquire into the question of vacating and supplying a part of the public road leading from Spangler to Marsteller, which petition is entered to number _____ of _____ Sessions, 1925.

Now the condition of this obligation is such that if the petitioners or any of them, for said appointment of viewers, shall pay the costs and expenses which shall be ordered and decreed by the said Court of Quarter Sessions to be paid by reason of such view, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in
presence of:

Johnson Master

W. A. Krummacker (SEAL)

W. J. Pfister (SEAL)

N. F. Lamborn (SEAL)

State of Pennsylvania |
County of Cambria | SS.

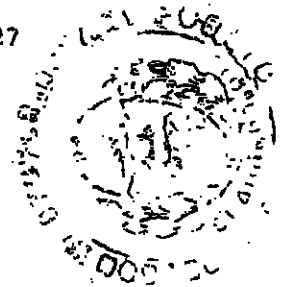
W. J. Fisher, one of the sureties
in the foregoing bond, being duly sworn according to law,
deposes and says that the sureties on said bond are owners
of real estate worth the penalty expressed therein over and
above their just debts, liabilities and all legal exemptions.

W. J. Fisher

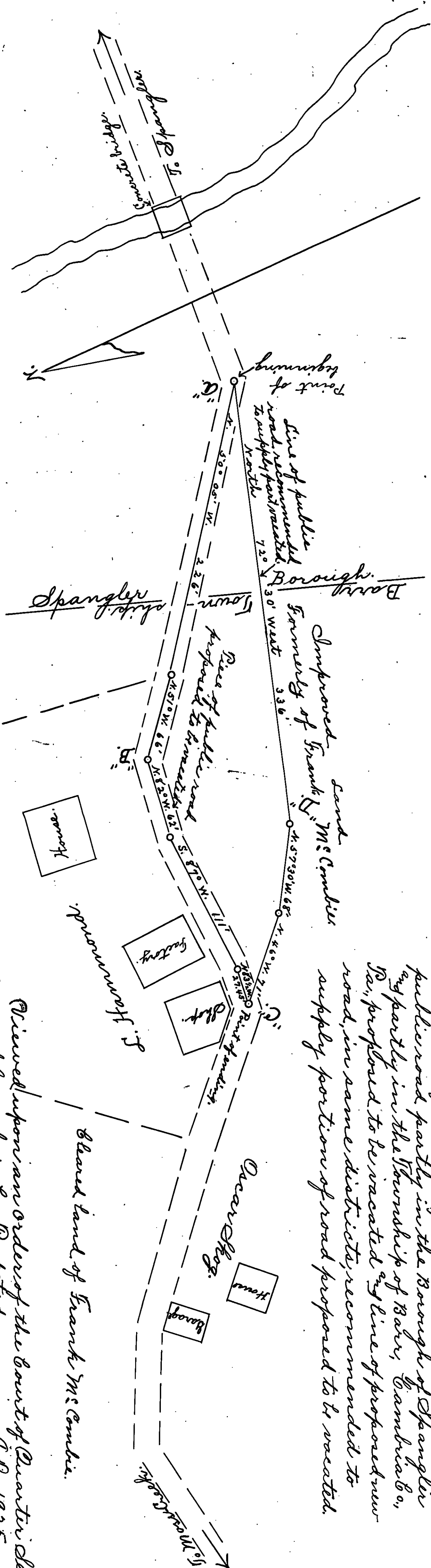
Sworn and subscribed to before me this 24 day of October, 1925.

John W. Weston

NOTARY PUBLIC
My Commission Expires March 6, 1927



Plot on draft showing the location of a piece of public road partly in the Borough of Shanghai and partly in the Township of Bain, Cambria Co., Pa., proposed to be vacated and line of proposed new road, in same districts, recommended to supply portion of road proposed to be vacated.



Viewed upon an order of the Court of Quarter Sessions of Cambria Co., Pa. dated A.D., 1925.
A.M. Shoemaker, J.D. Ritter and Adam Shuman, Viewers.

REPORT OF VIEWERS .

To the Honorable, the Judges of the Court of Quarter Sessions of
Cambria County, Pennsylvania.

We, the undersigned members of the Board of Viewers of Cambria county, appointed by your honorable Court to view and determine as to the propriety of vacating and supplying a certain piece or portion of a certain street and of a tion of township road, particularly described on the attached order of court, in Barr Township and Spangler Borough, Cambria County, Pennsylvania, respectfully report:-

That having given due notice of the view and of the time and place of meeting of the viewers to the Commissioners of Cambria County, the Borough Council of the Borough of Spangler and the Supervisors of the Township of Barr; and having them accept service of notices hereto attached; and to the traveling public by printed hand bills posted in public and conspicuous places at and near the termini and along the route of road to be viewed, and in the vicinity thereof: and having been first duly qualified according to law to perform the duties of our appointment faithfully, impartially and to the best of our judgment and ability, all of us met at the time and place appointed, in accord with the notices so given, as aforesaid, and having gone over and carefully viewed the piece of road desired to be vacated and that proposed to be supplied, as well as another suggested location for the proposed new road, and having heard all the parties concerned and considered all the information we were able to obtain; we are unanimously of the opinion that the piece of road described in the petition and indicated on the plot or draft hereto attached and made a part of this report, as taking the direction "A" "B" "C", should be vacated and a new road taking the direction indicated on attached draft as "A" "D" "C" should be supplied.

The piece of road recommended to be vacated, as indicated on draft takes the following courses and distances, viz: Beginning at the Northerly termini, in the Borough of Spangler, and extending thence North 50°05' West 226 ft., North 51° West 66 ft., North 82° West 62

ft., South 87° West 111 ft. and North 83° 30' West 27.45 ft. to a point in the present road opposite to corner of blacksmith shop of one L. Hammond: and the piece or portion of road recommended to be supplied, also beginning at the Northerly termini, in the Borough of Spangler, and extending thence along the line indicated on attached draft the following courses and distances, viz: North 72° 30' West 336 ft., North 57° 30' West 68 ft., & North 46° West 71 feet, to the same point of ending, which said point of ending of each portion of road is in the Township of Barr.

Said piece of road proposed and recommended to be supplied passes through and over land formerly of Frank McCombie, which has recently been by him deeded to the Borough of Spangler and Barr Township for the purpose of constructing the new proposed piece of road over, hence we have assessed him no damages. The property of L. Hammond still abuts on the public road and to which he still will have easy access and said property, in the minds of the viewers is not otherwise injured, hence no damages have been awarded him.

Witness our hands this 11th.
day of December, A. D., 1925.

Adam Shuman
A. M. Shoemaker
J. D. Ritten

Viewers.

LOAD NOTICE

Notice is hereby given that the Viewers appointed by the Court of ...Quarter.....
...Sessions..... of Cambria County, Pa., to view and determine as to...
the propriety of vacating and supplying a part of a certain public
road, which leads from Bigler Ave. in Spangler Boro. to the Vill-
age of Moss Creek, in Barr Twp.: Said portion of the referred to
public road desired to be vacated and supplied begins at a point..
on said road, in the Boro. of Spangler, 2032 ft. Westward from its
intersection with Bigler Ave., in said Boro., and ends at a point..
in said road 2575 ft. from its intersection with the dirt road ...
leading to Nicktown, near the residence of Frank Farrell, in Barr
Twp.:

will meet AT THE PLACE OF BEGINNING.... Above mentioned, in the
Borough..... of Spangler..... aforesaid,
on the... 10th... day of November, 1925, at ... 9:30 o'clock A.M.,
for the purpose of performing the duties of their appointment.

A. M. Shoemaker,
COUNTY CLERK AND ADMINISTRATOR OF CAMBRIA COUNTY, PA. J. D. Ritter and
JAMES H. Shuman,
Ebensburg, Pa. ... 10/27/1925. Viewers.

Now, October 27th., 1925, service of the within notice is hereby
accepted for the Commissioners of Cambria County, Pennsylvania.

A. S. Kitchard,

clerk,

LOAD NOTICE

Notice is hereby given that the Viewers appointed by the Court of ...Quarter.....
...Sessions..... of Cambria County, Pa., to view and determine as to..
the propriety of vacating and supplying a part of a certain public
road, which leads from Bigler Ave., in Spangler Boro. to the Village
of Moss Creek, in Barr Twp.: Said portion of the referred to pub-
lic road desired to be vacated and supplied begins at a point on
said road, in the Boro. of Spangler, 2032 ft. Westward from its
intersection with Bigler Ave., in said Boro., and ends at a point
in said road 2575 ft. from its intersection with the dirt road ...
leading to Nicktown, near the residence of Frank Farrell, in Barr
township:

will meet ...AT THE PLACE OF BEGINNING, ...above mentioned, in the
..... Borough..... of Spangler..... aforesaid,
on the .. 10th, .. day of November..... 1925, at .. 9:30. o'clock A.M., ..
for the purpose of performing the duties of their appointment.

..... A. M. Shoemaker,

..... J. D. Ritter and

..... Adam Shuman

Viewers.

Ebensburg, Pa. 10/27/19.25.

Now, October 1925, service of the within notice is hereby accepted by the undersigned Supervisors of the Township of Barr, Cambria County, Pennsylvania.

W. P. Rister

W. A. Krumeracker

Frank Stiles

Viewers.

Paul M. Lantieri
Secretary of the Borough of
Spangler.

NO. 2 September SESSIONS, 1925

Order to view, vacate and supply
road in the Borough of Spangler
and Township of Barr.

Report of Viewers

CERTIFIED

Jacob M. Hoffmann

COUNTY CONTROLLER

Filed 12 December 1925

A. M. Shoemaker

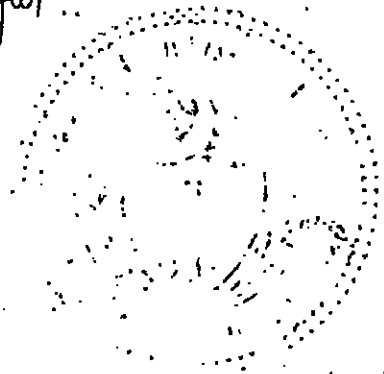
J. D. Ritter

Adam Shuman

Viewers

Clerk 90 cts.

14 Dec. 1925 Approval and breadth fixed at forty feet
By the Court
E



NO. It shall be the duty of all persons appointed in the several counties of this Commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or endeavor to procure from the person or persons over whose land such location may be made releases from claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and it shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof signed by a majority of their number, and return the same, together with all releases obtained, to the Court of Quarter Sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this Commonwealth."

"The persons appointed as aforesaid shall view such ground, and if they shall agree that there is occasion for a road, they shall proceed to lay out the same, having respect to the shortest distance, and the best ground for a road, and in such manner as shall do the least injury to private property, and also be, as far as practicable, agreeable to the desire of the petitioners."

"The viewers, as aforesaid, shall make report at the next term of said Court, and in the said report shall state particularly: First, who of them were present at the view, second, whether they were severally sworn or affirmed; third, whether the road desired be necessary for a public or private road; they shall also annex and return to the Court a plot or draft thereof, stating the courses and distances, and noting briefly the improvements through which it may pass; and, whenever practicable, the viewers shall lay out the said roads at an elevation not exceeding five degrees (except at the crossing of ravines and streams), where, by moderate filling and bridging, the declination of the road may be preserved within that limit."

Commonwealth of Pennsylvania, }
County of Cambria. } SS.

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg, in the said County, on the 26th day of October A. D. 1925, before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the Township of Barr and Bor. of Spangler in the said County, setting forth that ~~the public road~~

~~road or highway to be laid out~~
a public road has long since been laid out by authority of law, opened and used beginning at a point on what is now Bogler Avenue, now a part of State Highway, Route Number 6, and extending Westwardly by way of North First Street and North Second Street in the Borough of Spangler to the line separating the Borough of Spangler and the Township of Barr and from thence in the Township of Barr to the Village of Marsteller or Mess Creek. That a part of said road to wit: Beginning at a point in the Borough of Spangler two thousand thirty two (2032) feet Westwardly from its intersection with Bigler Avenue, now a part of State Highway Route number 6, already opened and ending two thousand five hundred seventy-five (2575) feet from its intersection with the dirt road, already opened, leading to Nicktown, near the residence of Frank Farrell, has become useless, inconvenient and burdensome because of the steep grade and a sharp curve at the summit thereof, making the road in its present location dangerous to the traveling public; expensive to the taxpayers to maintain and inconcvenient and hazardous to automobile traffic for the reason that the view of the road at the aforesaid curve is obstructed by buildings. That said road would be much improved by a change of its route between said terminal points. Your petitioners therefore pray the Court to appoint qualified persons to view the premises and to inquire into the expediency of making said change and otherwise proceed as directed by the Act of Assembly in such cases made and provided.

and therefore praying the Court to appoint proper persons to view and lay out the same according to law. The Court, upon due consideration had of the premises, do order and appoint

A. M. Shoemaker

surveyor, and

J. D. Ritter and Adam Shuman

viewers, to view the ground proposed for said road, and if they view the same, and shall agree that there is occasion for such road, they shall proceed to lay out the same, having respect to the shortest distance and the best ground for a road, and in such manner as shall do the least injury to private property; and also be as far as practicable, agreeable to the desires of the petitioners, and that they make a report of their proceedings to the next Court of Quarter Sessions to be held for said County, 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 it may pass.

By the Court.

Attest:

Frank B. Roth

Clerk.

Cost of View

A. M. Shoemaker

Preparing notices of view	_____	\$ 7 50
stereographer	_____	5 00
Posting notices	_____	7 50
Auto hire	_____	4 50
serving notices	_____	3 75
View	_____	7 50
Auto hire	_____	4 50
Discussion & determination with viewers	_____	7 50
Preparing report	_____	7 50
stereographer	_____	4 00
Going over report with viewers having same signed, assembling and filing	_____	15 00
Time surveying drafting & tracing 3 1/2 da @ 75°	26 25	60
Tracing cloth	_____	11 25
Helpers (2) at \$3.75 - Pda.	_____	11 25
2 blue prints	_____	1 20
		<u>\$112 35</u>

J. D. Ritter

4 Days @ 75°	_____	\$ 30 00
46 miles	_____	2 30
Auto hire 2 trips at 25°	_____	5 00
		<u>\$ 37 30</u>

Adam Shuman

4 Days	_____	\$ 30 00
Auto hire 2 trips	_____	8 00
78 mi at 5¢	_____	3 90
		<u>\$ 41 90</u>

APPROVED FOR PAYMENT

[Signature]

COUNTY CONTROLLER

CERTIFIED

COUNTY CONTROLLER

CERTIFIED

No. 2. Sept Sessions, 1925

In the Court of Quarter Sessions of Cambria County, Pennsylvania. 498

In re Petition to Vacate ^{and} Supply portion of public road partly in Barr Twp. and partly in Spangler Boro., Cambria County, Pennsylvania.

Order to amend report of Viewers ^{and} amendment to said report.

Filed 3 May 1926.

ALFRED M. SHOEMAKER
ATTORNEY-AT-LAW
EBENSBURG, PA.

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

No. 2 September Sessions, 1925.

IN RE PETITION OF RESIDENTS AND TAX PAYERS OF THE BOROUGH OF SPANGLER AND THE TOWNSHIP OF BARR, CAMBRIA COUNTY, PENNSYLVANIA, FOR VACATION AND SUPPLY OF A PORTION OF A ROAD LOCATED PARTLY IN THE BOROUGH OF SPANGLER AND PARTLY IN THE TOWNSHIP OF BARR, CAMBRIA COUNTY.

O R D E R .

AND NOW, April 29th, 1926, after due consideration all of the exceptions excepting the fifth are overruled; the report is recommitted to the viewers for the purpose of having them amend the same by placing there the reasons for reaching their conclusion that the road should be vacated and their reasons for supplying the new part or portion, and the viewers are directed to make such amendment and file their report on or before the first Monday of May, 1926, and exceptants shall have until the Monday following within which to file exceptions to any of the matters set up in the amended report.

By the Court,

E.

Extract from the Record.

Certified this 30th day

of April, A. D. 1926.

Frank E. Roth

Clerk of the Court of Quarter
Sessions.

In re Vacation and Supply of
piece of Public Road in the
Township of Barr and Borough
of Spangler, Cambria County,
Pennsylvania.

No. Sessions, 1925.
In the Court of Quarter Sessions
Cambria County, Pennsylvania.

A M E N D M E N T T O R E P O R T . O F V I E W E R S .

The Report of Viewers is hereby amended by the addition of the following reasons for the action of the viewers, upon the original order of the Court, in recommending the vacation and supply in accord with the prayer of the petitioners.

First. The alignment of the old road between the termini is exceedingly bad, entirely unnecessary and very dangerous.

Second. That as about one half of the old road, between the Northerly termini and the blacksmith shop of one L. Hammond, is practically level and the whole difference in the elevation overcome in a few hundred feet the grade of the steep portion at places will approximate twenty per cent.

Third. For the reason that the turn in the old road, at the corner of the blacksmith shop of said L. Hammond, is very abrupt and quite narrow making traffic over said old road at this point exceedingly dangerous and cannot be widened without doing considerable damage to the Hammond property and going to considerable expense.

Fourth. Because the location of the new road as laid out to supply that portion recommended to be vacated wonderfully improves the alignment and by the new route the difference in the elevation, between the Northerly termini and said blacksmith shop, can easily and inexpensively be overcome by making same a uniform grade between the two points and reducing the grade to about seven and one half per cent.

Fifth. The new portion of road as laid out will slightly shorten the distance, to a very great extent do away with the bad turns and almost entirely eliminate the danger at the corner of the Hammond shop, without doing much, if any, damage to private property.

Sixth. The cost of the change as compared with the improvement it will make will be almost nothing.

Seventh. The location of the supply road, as recommended, is the

Eighth. That it would be difficult, if not impossible, to streighten, widen and to any extent eliminate the turns and the real danger of traffic on the old road without changing the location and placing the new road almost in the identical place where it has been laid out.

Accordingly, in our opinion, the old road should be vacated; as indicated on draft attached to original report; and as the location indicated is the only reasonable and practical place for the public road, we urge that the change as referred to in our original report, dated 11 December, 1925, should be made.

Witness our hands this 3rd. day of May, 1926.

J. D. Ritter
Adam Shuman
A. M. Shoemaker

Viewers.