

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

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of Albert P. Kearney, a citizen and property owner in the Borough of Cresson, County of Cambria and State of Pennsylvania, respectfully represents:

That your petitioner is the owner of private property located in the Borough of Cresson, which property abuts and fronts on the boundary line between Cresson Township and Cresson Borough; that the Wm Penn Highway, which highway lies wholly within the Township of Cresson where the property of Albert P. Kearney abuts on said Wm Penn Highway, the aforesaid Wm Penn Highway, being State Highway Route No. 3, now known as Highway Route No. 22.

That a particular part of said State Highway, United States Route No. 22, was improved by the State Highway Department of Pennsylvania from Station 630 plus 30 to Station 1327 plus 32 according to Plans S-333 dated 5-15-26, S-420 dated 4-22-25 and S-180 dated 3-17-26.

That the above plans referred to for the reconstructing of the Wm Penn Highway constitutes a change of the original lines and location in the Township of Cresson and a change of the grade of the Wm. Penn Highway in the Township of Cresson just in front of your petitioner's property, the change of grade being approximately twenty-two to twenty-four inches.

That your petitioner, owner of said property in the Borough of Cresson, and which property abuts and fronts on the aforesaid highway, to-wit, the Wm Penn Highway, which highway is located wholly within the Township of Cresson, has been damaged by reason of the change of the grade of the said State Highway Route of the Wm Penn or the United States Highway Route No. 22 in the Township of Cresson, and is unable to enter into an agreement with the County Commissioners as to the amount of damage to be paid to your petitioner by the County of Cambria.

That the State Highway Commissioner has proceeded with the work of constructing the Wm Penn Highway or United States

Highway Route No. 22 and has constructed that part of said highway between Station 630 plus 30 to Station 1327 plus 32.

Your petitioner being the owner of the aforesaid property which has been damaged, therefore prays your Honorable Court to appoint three viewers of the Board of Viewers of Cambria County to meet on the line of said construction and improvement and to view and ascertain the damages done and the benefits which have accrued, if any, by reason of said taking, use, construction and improvement of said State Highway, to-wit, Wm Penn Highway, known as United States Highway Route No. 22, according to the Acts of Assembly made and provided, particularly with reference to the Act of Assembly approved the Sixth day of April, 1921, P. L. 107. Also under the provisions of the Act of the 18th day of July, 1917, P. L. 1040.

Albert P. Kearney

State of Pennsylvania

County of Cambria

SS:

Before me, the subscriber, a Justice of the Peace,
in and for the State and County aforesaid, personally appeared
Albert P. Kearney, the petitioner herein, who being by me duly
sworn according to law, deposes and says that the matters and
statements contained and set forth in the foregoing petition
are true and correct to the best of his knowledge and belief.

Albert P. Kearney

Sworn to and subscribed
before me this 11th day of
February, A. D., 1929.

Joseph M. Gougle
Justice of the Peace

My commission expires 1st Monday in January, 1932.

D E C R E E

AND NOW, the _____ day of February, A. D., 1929, the petition of Albert P. Kearney, a citizen and property owner of the Borough of Cresson, setting forth that the State Highway Department through the State Highway Commissioner has proceeded with the work of constructing and improving State Highway Route known as the Wm Penn Highway, now known as United States Highway Route No. 22, from Station 630 plus 30 to Station 1327 plus 32 where it passes through the Township of Cresson and immediately in front and abutting on the property of your petitioner; that compensation for all damage done and benefits accruing therefrom has not been agreed upon by Cambria County and your petitioner, the owner of this property which has been damaged; that the same cannot be amicably agreed upon between the County of Cambria and your petitioner, owner of the premises affected by said construction and improvement and praying for the appointment of three viewers of the Board of Viewers of Cambria County to ascertain the damages done and the benefits which have accrued, if any, by reason of said taking, use, construction, reconstruction and improvement was presented and read and the Court do grant the prayer thereof and appoint _____,

_____ and _____
of the Board of Viewers of Cambria County, viewers who shall meet on the line of said construction and improvement and view and ascertain the damages done and the benefits which have accrued by reason of said taking, use, construction and reconstruction and improvement.

The viewers shall meet on the _____ day of _____, A. D., 1929, at ten o'clock A. M., of which time and place of meeting, the petitioner in this petition shall give at least ten days notice to said viewers and all parties interested by publication in the Cresson Record and by hand bills posted on the premises. Said viewers shall be duly sworn or affirmed to faithfully, justly and impartially decide and a true report to make concerning all matters and things to be submitted to them

and in relation to which they are authorized to inquire and having viewed the premises shall estimate and determine the quantity, quality and value of said land so taken and occupied and injured by said construction, reconstruction and improvement of said Wm Penn Highway, now known as United States Highway Route No. 22 in the Township of Cresson, between Station 630 plus 30 and Station 1327 plus 32, and having due regard to, and making a just allowance for the damages which may have resulted, or which may seem likely to result to the owner of said land, in consequence of the construction, reconstruction and improvement of said State Highway Route in the Township of Cresson, known as the Wm Penn Highway or United States Highway Route No. 22, and having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine their value, whether any, and if any, to whom the same is payable, and after having determined the damages sustained to all of the parties by your petitioner affected by the aforesaid construction, reconstruction and improvement, together with the benefits resulting from said improvement, they shall prepare a schedule thereof, and give notice to all of the parties interested, of a time, not less than ten days thereafter, of the place where the said viewers shall meet and exhibit said schedule and hear all exceptions thereto and evidence.

Notice of the time and place of said meeting shall be given to all parties interested, by personal service upon some adult member residing or living on the premises affected by said construction, reconstruction and improvement, by publication in two issues of the Johnstown Daily Tribune.

After making whatever changes are deemed necessary, said Viewers shall make report to the Court, showing the damages and benefits allowed and assessed in this case, and to whom and by whom payable, and file therewith a plan showing the improvement and the property affected, injured or destroyed and the property benefited thereby. When said report is filed, notice thereof shall be given by publication in one issue of the Johnstown Daily Tribune. Said notice shall state the date of filing of the report, and shall contain a schedule of damages and benefits as assessed therein

and shall further state that unless exceptions thereto be
filed within thirty days from the date of the filing of said
report, the same may be confirmed absolutely.

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

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of Albert P. Kearney, citizen and property owner of the Borough of Cresson, Cambria County, Pennsylvania, and owner of private property located in said Borough of Cresson, and which property fronts and abuts on State Highway Route No. 3, known as the Wm. Penn Highway, now known as United States Highway Route No. 22, having been presented on the 18th day of February, A. D., 1929, praying that viewers be appointed to view and assess the damages done and the benefits accruing by reason of taking, use, construction, reconstruction and improvement of State Highway Route No. 3, known as the Wm. Penn Highway, now known as United States Highway Route No. 22, according to the Acts of Assembly made and provided, and the County Commissioners of Cambria County, through their Solicitor, L. S. Jones, Esq., having disclaimed liability on the part of the County of Cambria for damages that have accrued by the taking of private property for the use, construction, reconstruction and improvement of State Highway Route No. 3, known as the Wm. Penn Highway, now known as United States Highway Route No. 22, in the Township of Cresson, said petitioner therefore prays that a rule be granted to show cause why viewers should not be appointed to view and ascertain the damages done and the benefits accruing above mentioned.

Returnable Monday, , 1929, at ten o'clock A. M.

Albert P. Kearney

State of Pennsylvania

County of Cambria

SS:

Albert G. Kenney, being duly sworn according to
law, deposes and says that the matters set forth in the
foregoing petition, are true and correct.

Albert G. Kenney

Sworn to and subscribed
before me this 16th day of
February, A. D., 1929.

William J. Franey
Justice of the Peace.

My commission expires 1st Monday in January, 1932.

O R D E R

AND NOW, *Febury 18th*, 1929, the within
petition having been read and considered, a rule is granted
as within prayed for. Returnable Monday, *Febury 25th*,
1929 at ten o'clock, A. M..

By the Court
Evan P. J.

No. 9, *December* Sessions, 1928

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

Albert P. Kearney

vs.

County Commissioners
of Cambria County.

P E T I T I O N

Filed 18 July 1929

10:15 A.M.

THOMAS W. BENDER
ATTORNEY AT LAW
SMITH BUILDING
LILLY, PA.

G. A. STEIN PRtg. CO., CRENSON, PA.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA
TO THE HONORABLE THE JUDGES OF SAID COURT:

L. S. Jones, Solicitor of Cambria County, Respondent
makes answer to said petition as follows:-

1. He admits that Albert P. Kearney is the owner of a property in the Borough of Cresson which abuts on the William Penn Highway and that the State Highway lies wholly within the Township of Cresson.

2. He admits that there was a change of grade in the State Highway immediately east of the undergrade crossing of the Pennsylvania Railroad in front of the property of Albert P. Kearney.

3. He denies that there was any change in the original lines and locations of the State Highway.

4. He avers that there is no Act of Assembly which will permit the County to pay damages for a change of grade in a State Highway and further avers that unless there is legislative authority the abutting owner cannot recover an award though damages result from a change of grade.

5. He avers further that in the opening and improving of a public highway the land owners are only entitled to such redress as is given them by the statutes, inasmuch as their claim is a matter of grace and not of constitutional right.

6. He avers further that the Commonwealth in exercising its sovereign authority in the construction of public highways is not liable for damages occasioned thereby, unless made so by express enactment.

Your Respondent therefore prays that the petition be dismissed at the cost of the petitioner.

And he will ever pray, etc.


Solicitor of Cambria County.

STATE OF PENNSYLVANIA)
COUNTY OF CAMBRIA) SS:

L. S. Jones being duly sworn according to law deposes and says that he is the duly appointed and acting Solicitor of Cambria County and that the matters set forth in the foregoing petition are true and correct as he verily believes.

Sworn and subscribed before
me this 25th day of
February, 1929.

Frank C. Robb.
~~Prothonotary.~~

Clark.

L. S. Jones

No. 9 December Sessions, 1928
~~Road bucket~~

IN THE COURT OF QUARTER
SESSIONS OF CAMBRIA COUNTY

Albert P. Kearney

vs.

County Commissioners.

Answer to Rule to Show Cause

Filed 25 July, 1929.

L.S. JONES
ATTORNEY AT LAW
EBENSBURG, PENNA.