

IN THE COURT OF QUARTER  
SESSIONS OF  
CAMBRIA COUNTY, PENNSYLVANIA

IN RE: APPEAL OF RUSSELL F.  
WALLACE AND BETTE J. WALLACE  
FROM THE ORDINANCE OF  
RICHLAND TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA

ANSWER OF RICHLAND TOWNSHIP

Filed - Aug. 18, 1959  
J. C. Wynn

MARLIN B. STEPHENS  
Attorney and Counselor at Law  
JOHNSTOWN, PA.

*Handwritten:*  
Hans, - this is a copy of Aug 1959, & hereby  
acknowledges a copy of the within enclosed  
Sharon Kaminski  
atty for respondents

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY,  
PENNSYLVANIA

IN RE: APPEAL OF RUSSELL F.  
WALLACE AND BETTE J. WALLACE  
FROM THE ORDINANCE OF  
RICHLAND TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA

ROAD DOCKET NO. 2  
SEPT. TERM, 1959

ANSWER OF RICHLAND TOWNSHIP

AND NOW COMES the Township of  
Richland, Cambria County, Pennsylvania, and files this, its  
Answer, to the Complaint heretofore filed to the above number and  
term.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. The allegation contained in  
the fifth paragraph of the Complaint to the effect that the  
Ordinance was duly filed in the Clerk of Courts Office on July 6,  
1959, without a Plan attached setting out the location of the  
road is admitted, but such failure to attach a copy of the print  
is immaterial in the present case because the parties concerned  
are familiar with the entire length of the Old Shaffer Road and,  
in particular, with that portion of the road which was to be  
vacated, as the Complainants appeared at the hearing on May 1,  
1959, when the Ordinance herein complained of was adopted.

6. The allegations contained in  
the sixth paragraph of the Complaint are immaterial and irrelevant  
to the issue of whether or not the Ordinance was legally adopted  
and whether or not it was an abuse of discretion of the power of  
eminent domain vested in the Township of Richland.

7. The allegations contained in the seventh paragraph of the Complaint to the effect that the Ordinance was illegal, improper and an abuse of power and discretion in exercise of the power of eminent domain, in view of the object to be attained and under all the circumstances, the vacation is unnecessary, unreasonable and arbitrary, capricious, oppressive and contrary to the public interest is denied, and it is averred to the contrary that the vacation of that portion of the Old Shaffer Road which was vacated by the Ordinance of Richland Township dated May 1, 1959, was in all ways legal and proper and in accordance with the Acts of Assembly made and provided and was a proper exercise of the power of eminent domain vested by the various Acts of Assembly in the Township of Richland and that said vacation was to the best interest of not only the residents of the Township of Richland but of the County of Cambria and surrounding counties in that said vacation was made necessary by the extension of the ground to be acquired for the purpose of airport uses and, in particular, for the extension of a runway at the Johnstown-Cambria County Airport, and that said Johnstown-Cambria County Airport is operated by the Johnstown-Cambria County Airport Authority which has vested in it the powers of eminent domain by virtue of the Authorities Act and could have exercised its powers of eminent domain and have condemned that portion of the Old Shaffer Road which was vacated by reason of the aforementioned Ordinance.

8. The allegation contained in the eighth paragraph of the Complaint to the effect that the vacation of said highway has no substantial relation to the public necessity is denied, and it is averred to the contrary

that the vacation of said highway was made necessary as set forth in paragraph No. 7 above. That portion of paragraph No. 8 to the effect that the vacation of the highway is a confiscation in violation of the Fourteenth Amendment to the Constitution of the United States and of Article 1, Section 10, of the Constitution of Pennsylvania is denied, and it is alleged to the contrary that under the laws of the Commonwealth of Pennsylvania a property owner whose property does not abut upon that portion of the road or highway vacated has no cause of action for damages unless by specific statutory authorization, and no specific statutory authorization exists in the Commonwealth of Pennsylvania for actions against townships of the second class, such as Richland Township, for damages which may or may not result from the vacation of a portion of a highway upon which said property does not abut.

WHEREFORE, your Respondent prays your Honorable Court to dismiss said Complaint at cost of the Complainants.

RICHLAND TOWNSHIP SUPERVISORS

BY

Herman O. Weaver  
President

ATTEST:

Harold P. Trent  
Secretary

STATE OF PENNSYLVANIA  
COUNTY OF CAMBRIA

)  
) SS:  
)

On this 6<sup>th</sup> day of August,

1959, before me, a Notary Public in and for said County and State, personally appeared Herman O. Weaver, President of the Richland Township Supervisors, who being duly sworn according to law, deposes and says that the facts set forth herein are true and correct to the best of his knowledge, information and belief.

Herman O. Weaver

Sworn and subscribed  
before me the day and  
year first above written.

Marian E. Goumerac

MARIAN E. GOUMERAC, NOTARY PUBLIC  
Johnstown, Cambria County, Pa.  
My Commission Expires January 11, 1960

No L.D. 2 Sept. 1959

Filed - 7-6-59  
J.E.W.

ORDINANCE TO VACATE ROAD

AN ORDINANCE VACATING THAT PORTION OF A PUBLIC ROAD OR HIGHWAY IN THE TOWNSHIP OF RICHLAND, COUNTY OF CAMBRIA, STATE OF PENNSYLVANIA, SAID ROAD BEGINNING AT A POINT ON STATE HIGHWAY ROUTE NO. 11091 LEADING FROM STATE HIGHWAY ROUTE NO. 53 TO THE JOHNSTOWN-CAMBRIA COUNTY AIRPORT AT A POINT BETWEEN THE LINE OF LAND OF JOHNSTOWN-CAMBRIA COUNTY AIRPORT AND LAND OF WILLIAM H. FYOCK, ET UX; THENCE ALONG SAID CENTER LINE OF SAID TOWNSHIP ROAD SOUTH  $28^{\circ} 51' 10''$  WEST A DISTANCE OF 1406.42 FEET TO LINE OF LAND OF DONALD ADAMS, ET UX. SAID ROAD BEING BOUNDED ON BOTH SIDES FOR THE ENTIRE LENGTH AS ABOVE SET FORTH BY LAND OF THE JOHNSTOWN-CAMBRIA COUNTY AIRPORT AUTHORITY.

THE TOWNSHIP OF RICHLAND, hereby  
ordains as follows:

That all that portion of the hereinafter specifically described road, which is generally described in the preamble of this Ordinance, which lies in the Township of Richland, Cambria County, Pennsylvania, be and the same is hereby vacated, which road is described as follows:

BEGINNING at a point on State Highway Route No. 11091 leading from State Highway Route No. 53 to the Johnstown-Cambria County Airport at a point between the line of land of Johnstown-Cambria County Airport and land of William H. Fyock, et ux; thence along said center line of said Township Road South  $28^{\circ} 51' 10''$  West a distance of 1406.42 feet to line of land of Donald Adams, et ux. Said Road being bounded on both sides for the entire length as above set forth by land of the Johnstown-Cambria County Airport Authority.

IT APPEARING that the Supervisors gave ten (10) days' written notice to the property owners affected thereby of the time and place when and where all parties interest might meet and be heard, and it further appearing that after such hearing, a majority of the Supervisors decided

in favor of exercising the power so conferred to vacate, the said Ordinance is hereby adopted and enacted, and a copy thereof, together with a draft and survey of said road showing the location and width thereof, be filed in the Office of the Clerk of Quarter Sessions of Cambria County, Pennsylvania.

ORDAINED AND ADOPTED this 12  
day of May, 1959.

TOWNSHIP OF RICHLAND

BY: Herman O. Weaver  
President

ATTEST:

Harold P. Lrent  
Secretary

L.D. 2 Sept. 1959

Filed: 7-6-59

Merlin B. Stephens



NO.

*L.D. 2*

*Sept.*

TERM, 1959

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY  
PENNSYLVANIA

IN RE: APPEAL OF RUSSELL  
F. WALLACE AND BETTE J.  
WALLACE FROM THE ORDINANCE  
OF RICHLAND TOWNSHIP,  
CAMBRIA COUNTY, PENNSYL-  
VANIA

COMPLAINT

*Filed July 27, 1959*

LAW OFFICES  
**HAROLD KAMINSKY**  
JOHNSTOWN, PENNSYLVANIA

701-03 FIRST NATIONAL BANK BUILDING

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA

IN RE: APPEAL OF RUSSELL F. )  
WALLACE AND BETTE J. WALLACE )  
FROM THE ORDINANCE OF RICH- ) NO.  
LAND TOWNSHIP, CAMBRIA COUNTY, )  
PENNSYLVANIA )

TERM, 1959.

COMPLAINT

RUSSELL F. WALLACE and BETTE J. WALLACE, landowners, being specifically aggrieved by an ordinance of Richland Township, Cambria County, Pennsylvania, appeals therefrom pursuant to the Act of April 9, 1957, P. L. 54, No. 29, Section 1 (53 P.S. Section 66102) and respectfully represents:

1. Russell F. Wallace and Bette J. Wallace are citizens of the Township of Upper Yoder, County of Cambria and State of Pennsylvania and own a tract of land in Richland Township, more particularly described as follows:

BEGINNING at a fallen Chestnut tree in the southerly line of lands now or formerly of Ira Berkebille; thence along said southerly line South 61 degrees 23 minutes East 1543.34 feet to a point in a public road; thence along the northwesterly and northerly lines of lands now or formerly of Caspar Staffer South 40 degrees 02 minutes West 1126.92 Feet to the stump of a chestnut tree; thence North 72 degrees 50 minutes West 328.36 feet to the stump of a poplar tree; thence along the northeasterly lines of lands now or formerly of William Crist and lands now or formerly of Salem F. Shank North 26 degrees 08 minutes West 571.29 feet to stones; thence along the northerly lines of said lands of Salem F. Shank and lands now or formerly of lines of said lands of Salem F. Shank and lands now or formerly of William Storck South 85 degrees 15 minutes West 646.55 feet to stones; thence along the southeasterly line of lands now or formerly of Jacob Noon North 29 degrees East 1195.67 feet to the place of beginning; containing 34.5 acres of land being part of lands warranted by said commonwealth in the name of John Noon.

BEING the same parcel or piece of land which August Schneider and Mildred Schneider, husband and wife, and Russell

F. Wallace and Bette J. Wallace, husband and wife, by their deed dated the 24th day of September, 1956, and recorded in the Office of the Recorder of Deeds in Deed Book Volume 683, page 180, conveyed to Russell F. Wallace and Bette J. Wallace, husband and wife.

Said land is immediately adjacent to the road hereinafter referred to.

2. On May 1, 1959, an Ordinance was presented to the Supervisors of Richland Township to vacate a portion of a public road or highway in the Township of Richland, County of Cambria and State of Pennsylvania.

3. Prior to the said meeting a ten (10) day written notice was given by the said Supervisors to the complainants. The said complainants did appear at the said hearing and protested the vacating of the said road. Nevertheless, subsequent to the said hearing, the said Ordinance was passed.

4. Said Ordinance states:

"That the Township desires to vacate the portion of a public road or highway in the Township of Richland, County of Cambria and State of Pennsylvania, said road

BEGINNING at a point on State Highway Route No. 11091 leading from State Highway Route No. 53 to the Johnstown Cambria County Airport at a point between the line of land of Johnstown-Cambria County Airport and land of William H. Fyock, et. ux.; thence along said center line of said township road South 28 degrees 51 minutes 10 seconds West a distance of 1406.42 feet to a line of land of Donald Adams, et. ux. Said road being bounded on both sides for the entire length as above set forth by land of the Johnstown-Cambria County Airport Authority."

5. The Ordinance was subsequently filed in the Clerk of Courts Office on July 6, 1959, but the said Supervisors failed to attach a plan setting out the location of the portion of the road, which was to be vacated in accordance with the Act of Assembly.

6. Russell F. Wallace and Bette J. Wallace aver that by vacating the said road they are being deprived of the use of their property in that

(a) They do not have proper means of ingress and egress to their said property.

(b) They have turned a valuable piece of land into an isolated lot.

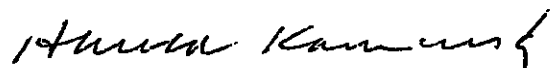
(c) That by vacating the said highway they have caused irreparable harm to the use of the said property.

(d) That by vacating the said highway they have caused considerable damage to the property, which belongs to the said complainants.

7. Russell F. Wallace and Bette J. Wallace aver that the Ordinance is illegal, improper and an abuse of power and discretion in exercise of the power of eminent domain, in view of the object to be attained and under all the circumstances, the vacation is unnecessary, unreasonable and arbitrary, capricious, oppressive and contrary to the public interest.

8. The vacation of the said highway under all the circumstances has no substantial relation to the public necessity, and is a confiscation in violation of the Fourteenth Amendment to the Constitution of the United States and of Article I Section 10 of the Constitution of Pennsylvania.

WHEREFORE, Russell F. Wallace and Bette J. Wallace appeal from the said Ordinance and pray your Honorable Court to declare the Ordinance to be illegal, void and of no effect.

  
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Attorney for Plaintiffs

STATE OF PENNSYLVANIA )  
COUNTY OF CAMBRIA ) SS:

RUSSELL F. WALLACE and BETTE J. WALLACE, being duly sworn according to law, depose and say that the facts set forth in the foregoing complaint are true and correct to the best of their knowledge, information and belief.

Russell F. Wallace  
Russell F. Wallace

Bette J. Wallace  
Bette J. Wallace

Sworn and subscribed before me  
this 23 day of July, 1959.

Mrs. Jo Ann Brewer  
NOTARY PUBLIC

MY COMM. EXPIRES: MRS. JO ANN BREWER, NOTARY PUBLIC  
Johnstown, Cambria County, Penna.  
My Commission Expires November 7, 1961