

Evidence

The evidence is the written promise:
"A road way is to be provided for a foard [ford] crossing at appx sta 1094+50"



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

January 5, 1995

Route 220
Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

Transportation Secretary Robert E. Martínez asked me to investigate the matter outlined in your November 25, 1994, letter and advise you of my findings.

The deed you provided indicated that the Hiners conveyed the necessary right of way to construct what is now known as Route 220 on October 21, 1935. As shown in the last paragraph, the Hiners agreed to a monetary compensation in lieu of damages to the residue. This is further documented by the attached copy of the option agreement, which confirms that the consideration included all damages to the residue including loss of the entrance.

In reviewing Section 33.1-199 of the Code of Virginia, we found it was enacted into law on March 12, 1938. Obviously, since this statute did not exist in 1935, it is not applicable to the acquisition of the Hiner property. It is our view that landowners do have a right to voluntarily waive various provisions concerning their property. Therefore--since the previous landowner agreed to give up the original entrance--you, as a successor in title, did not obtain a right to require that an entrance be constructed.

While the river is a physical barrier to your construction of an entrance, the Virginia Department of Transportation's (VDOT's) ownership of the river and both banks should not be a legal obstacle. As Secretary Martínez indicated, VDOT can issue a land use permit to you to construct an entrance across the highway right of way. The actual construction of the entrance would be your responsibility and VDOT would only need to review the plans with regard to safety and other aspects provided for in the permit.

It appears that VDOT does have some excess right of way through this property. If you are interested in acquiring some of this right of way, we need to know what portion you would like so it can be reviewed by all of our affected divisions. To pursue the repurchase of any of this property, mark the area on a print of the attached plan and return it to me. Please remember that you do not need to own the river or the banks in order to be able to construct an entrance to your property.

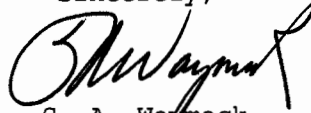
Letter to Mr. Anthony O'Connell

Page 2

January 5, 1995

I hope this clears up any issues regarding the original right of way acquisition and your options for constructing an entrance to your property. Should you wish to pursue the construction of an entrance, the permit requirements should be coordinated through our residency office in Verona.

Sincerely,



S. A. Wasmack

State Right of Way Engineer

RRB:efs

Attachment

.cc: The Honorable Robert E. Martínez
Mr. David R. Gehr
bc: Mr. J. S. Hodge
Mr. J. J. Beall, Jr.
Mr. R. L. Moore
Mr. J. R. VanLear

Anthony M. O'Connell
216 Governor's Lane Apt 12
Harrisonburg, Virginia 22801
July 20, 1996

Mr. Stuart A. Waymack
State Right of Way Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Ref. Your letter of January 5, 1995

Dear Mr. Waymack:

You mentioned in your letter of January 5, 1995, that the Hiners had agreed to a monetary compensation and that there was an attached copy of an option agreement. Would you be kind enough to send me any and all documentation concerning the specifics of that monetary consideration, and another copy of the option agreement? The copy you mentioned must have been lost.

I thank you in advance.

Sincerely,



Anthony M. O'Connell

Enclosure: Copy of deed between the Hiners and the Commonwealth of Virginia

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
August 19, 1996

The Honorable Warren E. Barry
P. O. Box 1146
Fairfax, Virginia 22030

This letter to Senator Barry is the same letter that I wrote to the 140 members of the Virginia General Assembly. I did not have a copy of the 1935 Agreement when I wrote this letter.

Dear Senator Barry:

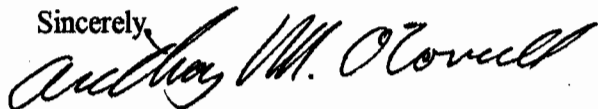
My situation may be one of a kind.

The Highway Department destroyed the entrance to my property by running a river through it. The Highway Departments position is that the landowner is responsible for replacing the entrance. I believe they are responsible under Virginia General Assembly Act Chapter 126 of 1938, Code of Virginia § 33.1-197 and § 33.1-199, and court precedences concerning ambiguous language.

Since interpretation is influenced by public policy and the General Assembly's intent, and you are the forefront of public policy and a General Assembly member, I am writing to ask if you would be willing to give your interpretation as to whether the Highway Department, or the landowner, is responsible for bridging the river.

Would you also forward this to Attorney General Gilmore and request an independent ruling? If the ruling is that the Highway Department is responsible, I ask that it include the completion date of the bridge.

Sincerely,



Anthony M. O'Connell

Enclosures



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

August 19, 1996

Route 220 - Project 724-F
Highland County
Former Property of D. H. A. &
H. T. Hiner - Parcel 011

Mr. Anthony O'Connell
216 Governor's Lane, Apt. 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

In response to your recent letter, attached is a copy of the option agreement between the Commonwealth of Virginia and the captioned landowners in consideration for our acquisition of this parcel. The agreement specifies \$750.00 as the monetary consideration for land, fencing, tearing down or moving 3 buildings, apple and sugar trees, and all damage to the residue.

Sincerely,

A handwritten signature in black ink that reads "S. A. Waymack".

S. A. Waymack
State Right of Way Engineer

SMC/bam
Attachment
bc: Mr. Jerry R. VanLear
Mr. A. H. Taylor, III

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
August 26, 1996

Mr. S. A. Waymack
State Right of Way Engineer
Department of Transportation
401 East Broad Street
Richmond, Virginia 23219-1939

Ref. Your letter of August 19, 1996

Dear Mr. Waymack:

Thank you for sending me a copy of the option agreement.

I'm having difficulty reading parts of it and don't want to misquote it. Is it possible to obtain a cleaner copy and a printed version of the handwritten portion?

Sincerely,


Anthony M. O'Connell



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

August 29, 1996

Route 220 - Project 724-F
Highland County
Former Property of D. H. A. and H. T. Hiner
Parcel 011

Mr. Anthony M. O'Connell
216 Governors Lane, Apt. 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

The option agreement mailed to you on August 19 was copied from our microfilm records. I am sorry that you are having difficulty reading the handwritten portion of the agreement, but that is the clearest copy that we are able to provide.

If you would like to come to our office in Richmond to look at the document on the microfilm reader which may provide a clearer view of the document, we will be glad to make the necessary arrangements with our file room. You may contact Ms. Beverly Todd of this office at (804) 786-4366 to set up an appointment to view the records.

Sincerely,

A handwritten signature in cursive script that reads "S. A. Waymack".

S. A. Waymack
State Right of Way Engineer

BDT:awm



COMMONWEALTH of VIRGINIA

Richard Cullen
Attorney General

Office of the Attorney General
Richmond 23219

900 East Main Street
Richmond, Virginia 23219
804 - 788 - 2071
804 - 371 - 8848 TDD

September 16, 1997

I don't understand why the AAG does not address: "A road way is to be provided for a foard [ford] crossing at appx sta 1094+50", but suggests that I consult with private counsel.

I don't understand why the AG never addresses "A road way is to be provided for a foard [ford] crossing at appx sta 1094+50". This is the evidence for the issue.

Mr. Anthony M. O'Connell
216 Governor's Lane, Apt 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

Attorney General Cullen asked that I respond to your letter dated September 23, 1997. In that letter you have asked the Attorney General to address a particular phrase in a 1935 contract between the Commonwealth and the Hiners.

A review of the materials you mailed with your September 3, 1997 letter (in particular, page 501-504) demonstrates that your concerns involve issues related to what may amount to a private cause of action. Accordingly, I would suggest that you consult with private counsel.

As I mentioned in my previous reply, a letter which you referenced, the Office of the Attorney General is the law firm for the various state agencies of the Commonwealth, accordingly, we are unable to assist you in this matter.

With kindest regards, I remain

Very truly

Stephen U. Baer
Assistant Attorney General



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
DIRECTOR, RIGHT OF WAY AND UTILITIES

November 17, 1997

Mr. Anthony M. O'Connell
216 Governor's Lane, Apartment 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

As I promised when we met on Friday, November 14, 1997, enclosed is a copy of the September 15, 1935, agreement between VDOT and the "Hinners". Also enclosed is a copy of the actual deed conveying the property to VDOT, which is dated October 21, 1935, and recorded in the Highland County Courthouse in Deed Book 29, Pages 503 through 505.

For your benefit, the Virginia Department of Transportation reads the handwritten section of the agreement with the Hinners to be as follows:

Consideration: \$750.00 for land, fencing, tearing down or moving three buildings, apple and sugar trees, and all damages to residue.

It is agreed the State is to lay a 1" water line from the north side of road at Station 1077+90 to a point back of her house and construct a concrete watering trough 2' x 4' x 2'.

A road way is to be provided for a foard crossing at approximate Station 1044+50. The timber is reserved by the owner and is to be cut under the standard timber clause.

The owner agrees to clear the right of way before payment is made and in the event they should fail to do so, the State has the right to remove same and deduct the cost from the above consideration.

(Where handwriting was not clear, the words have been underlined and italicized.)

The correct station is 1094+50. Station 1044+50 is not on the landowners property. Reference sheet 13 of State Highway Project 724-F.

Mr. Anthony M. O'Connell

Page 2

November 17, 1997

As I indicated to you, I have no reason to believe the consideration described was not provided to the Hiners some 62 years ago. Also, the Attorney General's Office has provided comments on the legal aspects of this situation.

Should you need to meet with me again in the future, an appointment arranged through my secretary will assure that I will be here.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Waymack". The signature is fluid and cursive, with a long horizontal stroke at the end.

S. A. Waymack, Director
Right of Way and Utilities Division

RRB:efs
Enclosures

This Agreement, Made this 11 day of Sept., 1935, by and between D. H. Hiner, Harry J. Hiner & Mary J. Hiner of Highland County, Virginia, of the first part, hereinafter called "Landowner," and COMMONWEALTH OF VIRGINIA, of the second part, hereinafter called "Commonwealth,"

Witnesseth: That, Whereas, It is proposed by the Commonwealth to construct or otherwise improve a part of the State Highway No. 18, Project 724 F, between Bath Co. Line and Vanderpool in Highland County, Virginia, in accordance with the plans and specifications thereof on file in the office of the Department of Highways, Richmond, Virginia;

Now Therefore, For and in consideration of the premises, and of the benefits accruing or to accrue to the landowner by reason of the location and construction, or other improvements of said road, and for the further consideration of one dollar in hand paid to the landowner, receipt of which is hereby acknowledged, the landowner doth hereby covenant and agree to grant and convey in fee simple unto the Commonwealth of Virginia by good and sufficient deed of general warranty, properly executed, acknowledged and delivered, and free from encumbrances, and with usual covenants of title, upon demand of the Commonwealth, and upon payment to the landowner of the additional consideration as hereinbelow detailed a strip or parcel of land as shown by the plat and survey of said road along, through or over said lands, said plat and survey being on file in the office of the Department of Highways, at Richmond, Virginia, identified as Sheet No. 13 & 14, Project No. 724 F, Route 18, all of the said strip or parcel of land being located in Highland County, Virginia, and briefly described as follows:

Beginning at a point on the center line of Route # 18 between Bath Co. Line and Vanderpool, shown on the plans as being Sta. 1085+60 and adjoining the lands of Henkle Terry thence N15°54'W 207.6 ft. to Sta. 1087+67.6 thence with a 7°-00 curve (right) 1028.6 ft. to Sta. 1097+96.2; thence N56°06'E 287.5 ft. to Sta. 1100+83.5; thence with a 16° curve (left) 7.5 ft. to the lands of J. E. Hiner, being Sta. 1100+91.

The land to be conveyed hereunder being a strip or parcel of varying width lying on the West (left) side of and adjacent to the herein above described centerline, and being 40 ft. in width at Sta. 1085+60 thence narrowing to 35 ft. at Sta. 1087+00; and to 30 ft. from Sta. 1088+50 to Sta. 1096+00; thence widening to 35 ft. at Sta. 1097+00 and thence narrowing to 25 ft. at Sta. 1098+00 and continuing 25 ft. to Sta. 1100+91.

Also a strip or parcel of varying width lying on the East (right) side of and adjacent to said centerline and being 85 ft. wide at Sta. 1085+60; thence narrowing to 83 ft. at Sta. 1088+00 and to 75 ft. at Sta. 1089+00; thence widening to 85 ft. at Sta. 1098+00; thence narrowing to 25 ft. at Sta. 1099+00 and continuing 25 ft. to Sta. 1100+91.

Said strips or parcels containing 3.5 acres, more or less, ~~more or less~~

acres are included in the present right of way, leaving _____ acres, more or less additional land.

Consideration: \$ ⁷⁵⁰ 750.00 for land, furrows, treeing down or mooting three buildings, apple and sugar trees, and all damage to residence

It is agreed the State is to lay a 1" water line from the north side of road at sta 1097+90 to a point back of here house and construct a concrete watering trough 6 x 4 x 2.

a road way is to be provided for a foard crossing at appx sta 1094+50 The timber is reserved by the owner and is to be cut under the Standard Timber clause.

the owner agrees to clear the right of way before payment is made, and in the event they should fail to do so, the State has the right to remove a mill and deduct the cost from the above consideration.

In event the additional consideration hereinabove referred to is, in the opinion of the road officials of the Commonwealth, excessive, the Commonwealth shall not be obligated by this agreement.

This agreement shall be binding upon the landowner from and after execution thereof by the landowner, and shall become null and void one year from the date hereof, and the rights of all parties shall cease and determine, unless further extended by the landowner, or unless within that time, or any extension thereof, the Commonwealth shall have commenced construction or improvement of said road along, through or over said strip or parcel of land, or shall have notified the landowner of its intention to demand deed under the provision hereof, or shall have demanded a deed.

The landowner covenants and agrees for himself, his heirs and assigns and successors, that the considerations herein mentioned shall be in lieu of any and all claims to compensation and damages by reason of the location, construction and maintenance of said road.

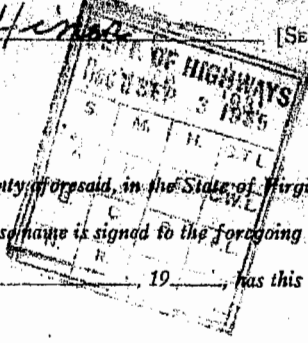
WITNESS the following signatures and seals:

"A road way is to be provided for a foard crossing at appx sta 1094+50"

H. H. a Hiner [SEAL]
Harry S. Hiner [SEAL]
Mary J. Hiner [SEAL]

STATE OF VIRGINIA,
COUNTY OF _____

To-wit:



I, _____, a Notary Public, in and for the County of _____, in the State of Virginia, do certify that _____ whose name is signed to the foregoing and annexed writing, bearing date on the _____ day of _____, 19____, has this day acknowledged the same before me in my County aforesaid.

Given under my hand this _____ day of _____, 19____.

Notary Public.

My Commission expires _____

This Deed, Made this 21st day of October, 1935, by
and between D. H. A. Hiner, Harry T. Hiner and Mary T. Hiner

of Highland County, Virginia, hereinafter designated as grantor (even though more than one), and
the COMMONWEALTH OF VIRGINIA, Grantee:

Witnesseth: In consideration of the benefits accruing or to accrue to the said grantor, by reason of the location and
construction, or other improvement of part of Route No. 18 and Project No. 724-F between
Bath County Line and Vanderpool

State Highway System, along, through, or over the lands of the grantor, and for further consideration paid by the
grantee to the grantor, receipt of which is hereby acknowledged, the said grantor hereby grants and conveys unto said
grantee with general warranty of title, a strip or parcel of land over the lands of the grantor needed for the location and
construction or other improvement of said road, the said strip or parcel of land being as shown on a plat and survey of
the said road, along, through or over said lands, on file in the office of the Department of Highways at Richmond, Vir-
ginia, identified as Sheet No. 13 & 14, Project No. 724-F Route No. 18, the said strip or
parcel of land being in Highland County, Virginia, and described as follows:

Beginning at a point on the centerline of Rt. 18, between Bath County
Line and Vanderpool, shown on plans as Sta. 1085+60, adjoining the lands of
H. Henkle Terry; thence N. 15° 54' W., 207.6 Ft. to Sta. 1087+67.6; thence
with a 7° 00' curve to the right, 1028.6 Ft. to Sta. 1097+96.2; thence N.
56° 06' E., 287.3 Ft. to Sta. 1100+83.5; thence with a 16° curve to the
left, 7.5 Ft. to the lands of J. E. Hiner, et al, being Sta. 1100+91.

The land conveyed hereunder being a strip or parcel of varying width,
lying on the West (left) side of and adjacent to the hereinabove described
centerline, being 40 Ft. in width at Sta. 1085+60; thence narrowing to 35
Ft. at Sta. 1087+00; thence narrowing to 30 Ft. from Sta. 1088+50 to Sta.
1096+00; thence widening to 35 Ft. at Sta. 1097+00; thence narrowing to
25 Ft. at Sta. 1098+00; and continuing 25 Ft. in width to Sta. 1100+91.

Also a strip or parcel of varying width, lying on the East (right) side of
and adjacent to said centerline, being 85 Ft. in width at Sta. 1085+60;
thence narrowing to 83 Ft. at Sta. 1088+00; thence narrowing to 75 Ft. at
Sta. 1089+00; thence widening to 85 Ft. at Sta. 1098+00; thence narrowing
to 25 Ft. at Sta. 1099+00, and continuing 25 Ft. in width to Sta. 1100+91.

Said strips or parcels contain 3.55 acres, more or less.

From: "Waymack, Stuart A." <Stuart.Waymack@VDOT.Virginia.gov>
Subject: **RE: 1935 Agreement**
Date: June 13, 2005 7:43:49 AM MST
To: "South, Lynda J." <Lynda.South@VDOT.Virginia.gov>, "'Anthony O'Connell'"
<anthony@esedona.net>

Dear Mr. O'Connell,

Our Public Relation Department has requested that I respond to your request for information on a 1935 agreement.

In order to do so, I need more specific information as to the parties in the agreement, the location in the Commonwealth, and any other detailed information that might assist me in helping you with your request.

-----Original Message-----

From: South, Lynda J.
Sent: Monday, June 13, 2005 10:37AM
To: 'Anthony O'Connell'
Cc: Waymack, Stuart A.
Subject: RE: 1935 Agreement

Good morning. I have been out for some weeks due to an illness in the family and have just seen your message. I will pass this request on to our Right-of-Way Division here in VDOT. I'm unfamiliar with the clause that your refer to and will have someone in that division respond.

Lynda J. South
Chief of Communications
Virginia Department of Transportation
804 786-2715
Cell 804 317-3560

Please note new e-mail address: Lynda.South@vdot.virginia.gov

-----Original Message-----

From: Anthony O'Connell [<mailto:anthony@esedona.net>]
Sent: Friday, June 03, 2005 08:22AM
To: South, Lynda J.
Subject: 1935 Agreement

Dear Virginia Governor Warner, Attorney General Jagdmann, the Virginia General Assembly, VDOT, and to whom it may may concern,

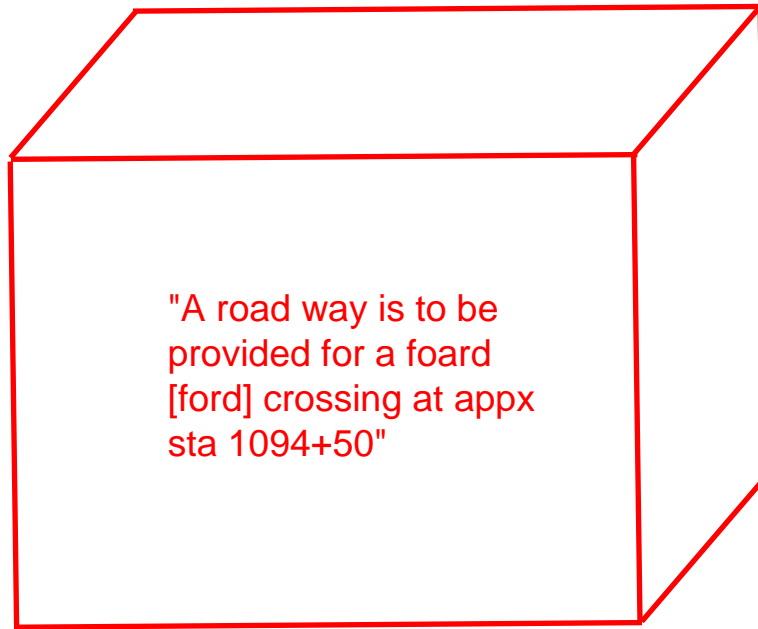
There is a clause in a 1935 Agreement between the State and a landowner that says "A road way is to be provided for a foard crossing at appx sta 1094+50." This clause promises to provide a roadway for a ford crossing [of a river] at approximate station 1094+50. This clause has

been overlooked.

Can the landowner draw the State's attention to this clause? Please see the 1935 Agreement and past correspondence at www.roadway1094.com

Thank you.

Sincerely, landowner@roadway1094.com



"A road way is to be provided for a foard [ford] crossing at appx sta 1094+50"