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Notice of Appeal.

(Filed Feb. 8, 1929.)

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New Jersey Supreme Court

LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY; FRANK HAGUE,
ARTHUR POTTERTON, JOHN J.
BEGGANS, MICHAEL I. FAGEN and
WILLIAM B. QUINN, Board of
Commissioners of Jersey City;
EDWARD J. SPOERER, Superin-
tendent of Buildings, and ED-
WARD HOLLAND, Clerk of the
said The Mayor and Aldermen
of Jersey City,

Defendants.

20

On Certiorari.

30

The Defendants, The Mayor and Aldermen of Jersey City; Frank Hague, Arthur Potterton, John J. Beggans, Michael I. Fagen and William B. Quinn, Board of Commissioners of Jersey City; Edward J. Spoerer, Superintendent of Buildings, and Edward Holland, Clerk of the said The Mayor and Aldermen of Jersey City, do hereby appeal to the New Jersey Court of Errors and Appeals from the

40

Notice of Appeal.

10 judgment entered in this Court setting aside the Resolution adopted by the Board of Commissioners of The Mayor and Aldermen of Jersey City on the 18th day of December, 1928, and finally passed and adopted by the said Board of Commissioners on the said 18th day of December, 1928, revoking a building permit known as No. 37361, name of applicant, Lehigh Valley Railroad Company, dated November 19, 1928, for the erection of two buildings known as coal pockets and trestle, as per plans filed for Lot 22, Block 60, Canal Street, foot of Grove Street in said Jersey City.

THOMAS J. BROGAN,
Attorney for Defendants.

20 Dated February 5, 1929.

30

40

Reasons for Reversal.

(Filed Feb. 20, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

LEHIGH VALLEY RAILROAD COMPANY, a corporation,
Prosecutor-Appellee,

v.

THE MAYOR AND ALDERMEN OF JERSEY CITY; FRANK HAGUE, ARTHUR POTTERTON, JOHN J. BEGGANS, MICHAEL I. FAGEN and WILLIAM B. QUINN, Board of Commissioners of Jersey City; EDWARD J. SPOERER, Superintendent of Buildings, and EDWARD HOLLAND, Clerk of the said The Mayor and Aldermen of Jersey City,

Defendants-Appellants.

10

On Certiorari.

20

The defendants-appellants write the following reasons for the reversal of the judgment rendered by the Supreme Court in setting aside the resolution of the Board of Commissioners of The Mayor and Aldermen of Jersey City rescinding the permit theretofore granted to the prosecutor-appellee for the erection of coal pockets:

30

1. The Supreme Court erred in distinguishing the case *sub judice* from the case of *Freeman v. Hague*, No. 228, October 1928 Term, Supreme Court.

40

Reasons for Reversal.

10 2. Defendants-appellants have the power to correct an error in the granting of a permit when the permit was granted in violation of an ordinance of Jersey City entitled "An Ordinance to regulate the erection and alteration of all buildings and structures to be used for any purpose other than residences or for living apartments" passed June 3rd, 1924.

20 3. Under the ordinance referred to, *supra*, the Board of Commissioners of The Mayor and Aldermen of Jersey City grant permits for structures other than residences only after an investigation and finding of fact, which procedure was not followed in this case prior to the issuance of the permit.

4. The Supreme Court erred in deciding that the blanket resolution of the Board of Commissioners which approved the recommendations of the Superintendent of Buildings was a determination "after the Board of Commissioners had inspected or caused to be inspected the premises mentioned in the application filed."

30 5. The Supreme Court erred in setting aside the resolution revoking the permit because the permit was irregularly granted in the first instance.

6. The judgment of the Supreme Court is erroneous for divers other reasons and should be set aside and for nothing holden.

THOMAS J. BROGAN,
Attorney for Defendants-Appellants.

Writ of Certiorari.

NEW JERSEY, SS.: THE STATE OF NEW JERSEY

To: The Mayor and Aldermen of Jersey City;
 Frank Hague, Arthur Potterton, John
 J. Beggans, Michael I. Fagen and
 William B. Quinn, Board of Commis- 10
 sioners of Jersey City; Edward J.
 [L. S.] Spoerer, Superintendent of Buildings,
 and Edward Holland, Clerk of said
 the Mayor and Aldermen of Jersey
 City, GREETING:

We being willing for certain reasons to be cer-
 tified of a certain resolution adopted by the Board
 of Commissioners of The Mayor and Aldermen of
 Jersey City on the eighteenth day of December, A. 20
 D. 1928, and finally passed and adopted by said
 Board of Commissioners on the said eighteenth
 day of December, A. D. 1928, revoking a building
 permit known as No. 37361, name of applicant,
 Lehigh Valley Railroad Company, dated Novem-
 ber 19, 1928, for the erection of two buildings
 known as coal pockets and trestle, as per plans
 filed for Lot 22, Block 60, Canal Street, foot of
 Grove Street, in said Jersey City aforesaid, to-
 gether with all matters and proceedings of the said 30
 Board of Commissioners of The Mayor and Alder-
 men of Jersey City and of said Edward J. Spoerer,
 Superintendent of Buildings of said City, touching
 and concerning the same, Do COMMAND YOU that
 the said resolution, together with all matters and
 proceedings touching and concerning the same to
 our Supreme Court of Judicature at Trenton, on
 the Tenth day of January, A. D. 1929, you certify
 and send together with this writ that therein may 40

Allocatur.

be done what of right and according to the laws
and constitution of this State ought to be done.

10 WITNESS, WILLIAM S. GUMMERE, Esq., Chief Jus-
tice of our Supreme Court, at Trenton, this 21st
day of December, in the year of Our Lord, One
Thousand Nine Hundred and Twenty-eight.

A true copy.

FRED L. BLOODGOOD,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

20 I allow this writ. Let it be sealed. Depositions
may be taken by either party on two days' notice.

JAMES F. MINTURN,
J. S. C.

Dated Dec. 21, 1928.

30

40

Return.

(Filed January 8, 1929.)

NEW JERSEY SUPREME COURT.

LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Applicant,

10

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY; FRANK HAGUE, AR-
THUR POTTERTON, JOHN J. BEG-
GANS, MICHAEL I. FAGEN and
WILLIAM B. QUINN, Board of
Commissioners of Jersey City;
EDWARD J. SPOERER, Superinten-
dent of Buildings, and EDWARD
HOLLAND, Clerk of the said
Mayor and Aldermen of Jersey
City,

On Writ
of Certiorari.

20

Defendants.

To The Honorable, The Justices of the Supreme
Court of Judicature of New Jersey:

In obedience to the command of the within writ
I hereby certify and send to the Honorable Justices
of the Supreme Court of Judicature of New Jersey
all the proceedings and matters touching and con-
cerning the adoption by The Board of Commis-
sioners of The Mayor and Aldermen of Jersey City,
of a resolution passed on December 18, 1928, re-
voking a building permit known as No. 37361,
granted Lehigh Valley Railroad Company on No-
vember 19, 1928, for the erection of two buildings

30

40

Depositions.

known as coal pockets and trestle upon Lot 22,
Block 60, Canal Street, foot of Grove Street, Jersey
City.

10 IN WITNESS WHEREOF, I hereunto cause this re-
turn to be signed, this 7th day of January, 1929.

EDWARD J. HOLLAND,
City Clerk of The Mayor and
Aldermen of Jersey City.

THOMAS J. BROGAN,
Attorney for Defendants.

Depositions.

20

NEW JERSEY SUPREME COURT,

LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY, *et al.,*
Defendants.

30

Depositions in the above entitled cause, taken
before me, Harry Schirmer, a Supreme Court
Examiner of the State of New Jersey, at the office
of Messrs. Collins & Corbin, 1 Exchange Place, Jer-
sey City, New Jersey, this seventh day of Jan-
uary, 1929, at three o'clock in the afternoon, pursu-
ant to notice hereto annexed.

40

Charles W. Broadhurst, direct.

APPEARANCES:

MESSRS. COLLINS & CORBIN (MR. MARKLEY),
Attorneys for Prosecutor.

THOMAS J. BROGAN, Esq. (MR. HERSHEN-
STEIN), Attorney for Defendants.

10

It is stipulated that the depositions be taken stenographically and the signatures of the witnesses waived.

CHARLES W. BROADHURST, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Markley:

Q. Are you a member of the firm of Collins & Corbin, attorneys for the Lehigh Valley Railroad Company? A. I am.

20

Q. Did you have charge of the investigation of the records in the City Hall with respect to the construction of a coal trestle and coal pockets? A. Yes, sir.

Q. Starting at the beginning, did you find an application for the erection of the coal pockets and trestle? A. I found Application No. 5210.

30

Mr. Markley: We offer in evidence Application No. 5210 of the Lehigh Valley Railroad Company. A note on this application shows the words "received at meeting October 30, 1928, City Commissioners of Jersey City. Referred to Superintendent of Buildings."

(Marked Exhibit P-1.)

Q. Then did you find a supplemental application? A. Yes; I found Application No. 6115 also in the office of Edward J. Spoerer.

40

Charles W. Broadhurst, direct.

Mr. Markley: I offer that in evidence.
(Marked Exhibit P-2.)

10 Mr. Markley: I offer in evidence Permit No. 37361 from the City of Jersey City, dated November 19, 1928, to the Lehigh Valley Railroad Company, for permission to construct the coal pockets as per plans and application.

(Marked Exhibit P-3.)

Mr. Markley: I also offer in evidence the Permit Notice.

(Marked Exhibit P-4.)

20 Mr. Markley: I also offer in evidence the record of the permit in the office of the Superintendent of Buildings of Jersey City.

It is stipulated that the record in the permit book for this Permit No. 37361 is the same as P-3.

Q. Did you examine the Minutes of the City Commissioners with respect to the resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City, granting this permit? A. I did.

30 Q. What is the date of that meeting? A. The first record in the Minutes is on October 30, 1928. The Minutes show that the application had been made by the Lehigh Valley Railroad Company, was received by the City Commissioners and referred to the Superintendent of Buildings.

Q. What is next? A. The next meeting of the Commission, on November 5th, 1928, under the heading of recommendations, shows a resolution by Commissioner Quinn, on behalf of Mayor Hague, as follows:

40 "That permission be granted to the following applicants to do such work as is called for on the

Charles W. Broadhurst, direct.

sketches attached to their applications": Among those is application No. 5210, Lehigh Valley Railroad Company, to erect reinforced concrete coal pockets on reinforced concrete trestle, approaches and scale house, 334 feet long and 34 feet high, at Morris Canal and Grove Street, Lot 22 in Block 60.

10

Q. That also directed that a permit be granted?

A. Yes.

It is stipulated that the foregoing testimony of Mr. Broadhurst, and the following testimony of Mr. Broadhurst, in respect to the Minutes of the Board of Commissioners of Jersey City be regarded as competent and used instead of producing the original Minutes, with the same force and effect as though the originals were produced.

20

Q. Did you make an examination of the Minutes of the subsequent meeting of the Board of Commissioners of the Mayor and Aldermen of Jersey City, on December 4, 1928? A. I did.

Q. And what did you find? A. The Minutes disclose that on December 4th, 1928, a large delegation of property owners on Grand Street and Canal Street, between Henderson Street and Jersey Avenue, having as their spokesman Samuel Silverman, and made objection to the coal pockets being erected there.

30

Q. Then what happened? A. The Minutes further show that the Mayor then directed Commissioner Beggans to stop work pending an investigation and directed that the City Clerk arrange for a full hearing to be held on Tuesday, December 18th, 1928, at 11 A. M.

Q. Did you examine the Minutes for that meeting? A. Yes, sir.

40

Charles W. Broadhurst, direct.

10 Q. What appears in that meeting? A. The Minutes of the meeting of December 18th, 1928, show that a delegation of residents and property owners from Grand Street and in that neighborhood, Canal Street, appeared to protest to the erection of the coal pockets. I have a complete copy of the Minutes, which is quite lengthy. They show in substance that the basis of the protests was that there would be coal dust from the coal pockets, noise, and increase in the number of vehicles that would be using the streets adjacent to where the pockets would be located.

Q. Were there any other objections than to the noise and smoke? A. And the use of the trucks; those were the only three objections made.

20 Q. No other objections? A. No other objections.

Q. What was the action taken at that meeting? A. The Mayor offered a resolution that the permit previously granted to the Lehigh Valley Railroad Company should be revoked; and that resolution was moved and carried.

Mr. Markley: I offer in evidence the resolution revoking the permit, and ask that it be marked in evidence.

30 (Marked Exhibit P-5.)

It is further stipulated that the foregoing testimony of Mr. Broadhurst, with respect to the revocation of the permit, is given in lieu of the production of the original Minutes and is to be used with the same force and effect as if the original Minutes had been produced and offered.

40 Q. Did you examine the Zoning Ordinance of Jersey City? A. Yes, sir.

Q. Did you ascertain in what particular zone

Charles W. Broadhurst, direct.

this property was placed? A. Yes, sir; by use of the Zoning Ordinance and the Use District Map.

It is stipulated that the premises in question are in a district zoned for industrial purposes; and further that the proposed industry is not prohibited in an industrial zone.

10

Mr. Markley: We offer in evidence the detail plans accompanying the application for the permit and described therein.

(Marked Exhibit P-6.)

It is stipulated between counsel that these plans need not be printed as part of the record, but that the original plans may be produced if required.

20

Q. Did you go to the scene of the construction of these coal pockets and coal trestle? A. I did.

Q. Do you remember the date you went there?

A. On December 20th, 1928.

Q. Did you find that any work had been done on the ground? A. Yes; I found that an excavation had been made approximately 100 or 150 feet in length—that is a mere approximation—and 30 or 40 feet in width, to a depth of perhaps 15 or 20 feet.

30

Q. Did you also make an investigation to determine what else had been done by the Lehigh Valley Railroad Company in pursuance of the issuance of that permit? A. Yes, sir.

Q. What else did you find had been done, if anything? A. I examined the original records.

Q. What was the cost of this improvement to be? A. \$262,000.

Q. What contract, if any, did you find had been let? A. I found that a contract had been let to

40

Charles W. Broadhurst, direct.

the Raymond Concrete Pile Company, whereby said company was to furnish all of the tools, labor, materials and drive standard Raymond concrete piles by the usual method and perform all other work for the purpose of laying the foundations for said buildings, at a cost of \$30,000.

10 Q. What work had been done in pursuance of said contract? A. In pursuance of said contract, excavation work had been done for the purpose of permitting the driving of said piles covering an area of 37 feet by 337 feet. Also, three railroad freight cars of material and equipment had been transported to Jersey City for the purpose of proceeding with the said work.

20 Q. What items of expense did you find had been incurred up to December 20th, 1928? A. I found that the expenses of Superintendent Nalen of the Raymond Concrete Pile Company, bill rendered December 8, 1928, had been rendered in the amount of \$110.80; the expense of Superintendent Nalen, rendered December 15, 1928, for \$180.10; freight estimated in bringing machinery and equipment to and from the job, to the amount of \$840 had been incurred for 140,000 pounds of machinery and equipment; demurrage on three cars of equipment for 30 days, at \$414; wages paid Superintendent Nalen, \$225; rental paid for machinery being held at the job in cars for 30 days, at \$25 a day, \$750; rental for mixer and engineer for 30 days being held at the job, \$75; shells used in the work, \$112.50; and there was a freight charge of \$50; there was a charge against the Lehigh Valley Railroad Company for depreciation on materials and equipment of the Raymond Concrete Pile Company of \$533.10; there was an estimated cost of unloading and storing rigging if delay is extensive

Charles W. Broadhurst, cross.

of \$200; due to this revocation of the permit; and an item of insurance on payroll which had been paid of \$33.60.

Q. Was there also a contract made with the Henry Steers Company? A. Yes, sir.

Q. On what date? A. November 26, 1928. 10

Q. What was that for? A. For the construction and erection of the concrete coal trestle and pockets.

Q. In what sum was that contract? A. \$228,205.

Q. Under that contract had the Lehigh Valley Railroad Company obligated itself? A. Yes, sir.

Q. Did you find out whether the Raymond Concrete Pile Company had subcontracted any part of its contract, which was for \$30,060? A. They had. They had subcontracted part of the work to the International Excavating Company, under date of November 26, 1928, whereby the said Raymond Concrete Pile Company is obligated to pay \$7,200; and they had also subcontracted a further part of the contract to James Mitchell Company, for the amount of \$19,871.90. 20

Cross examination by Mr. Hershenstein:

Q. Mr. Broadhurst, the Minutes of November 5th, 1928, to which you referred, contain an item under the head of Recommendations, whereby permission was granted to a number of applicants to do the work called for in the sketches filed with their applications, and you testified that one of the items was Application No. 5210, being that of the Lehigh Valley Railroad Company to erect the coal pockets in question. A. That is correct. 30

Q. This resolution of November 5th, 1928, contained a great number of permissions granted to applicants, didn't it? A. About ten or fifteen. 40

Charles W. Broadhurst, cross.

10 Q. Do you know whether or not the City Commission held a public hearing upon the original application made to the Superintendent of Buildings on October 25th, 1928, prior to the time that the permit was revoked? A. I do not. I do know that the first reference to the matter in the Minutes of the Commission at all is on October 30, 1928, when it was referred to the Superintendent of Buildings for report.

Q. Whether or not there was any public hearing upon this application prior to the public hearing which was held on December 18th, you have no knowledge? A. No; except that I assume that the meeting of October 30, 1928, like all the meetings of the City Commission, was a public hearing.

20 Q. Do you know whether or not a full public hearing was held upon this application? A. You mean to protest?

Q. A hearing of the protestants and a hearing of the applicants, or their attorneys? A. I don't know personally whether there was any protest to this application prior to December 18th, 1928; but I assume that all of these meetings were public meetings.

30 It is stipulated that all of the meetings referred to by Mr. Broadhurst were public hearings of the City Commissioners of the Mayor and Aldermen of Jersey City.

40 Q. To clear up the situation, Mr. Broadhurst, I now want to direct your attention to whether or not the City Commissioners, at one of its public meetings, held a hearing upon this application before it was granted by the Building Superintendent. A. Yes; I would say they did under date of October 30th, and November 5th.

Q. Well, do you know if anybody was present

Charles W. Broadhurst, cross.

on behalf of the applicants? A. That I don't know.

Q. Do you know whether or not anybody was there opposing the application? A. That I don't know.

Q. You testified to a number of contracts which the applicant had made subsequent to the obtaining of the permit; are those contracts of your own knowledge? A. I examined the original records of the Lehigh Valley Railroad Company and saw the original contract with the Raymond Concrete Pile Company, which I have here, and the contract with the Henry Steers Company, I saw the original correspondence which awarded the contract. 10

Q. Of the items which you have enumerated as showing expenditures incurred by the applicant, can you tell us how much money was actually paid by the applicant by reason of the issuance of this permit? A. I don't know. 20

Q. Most of the items are merely estimates of what the Lehigh Valley Railroad Company had incurred, or would incur by reason of the building permit having been issued to it? A. Those are estimates of the Raymond Concrete Pile Company that I got personally from their personal records, or what they had incurred and were obligated to pay, due to the tying up of the machinery which was contained in these three cars at the job, and the excavating work which had been done. 30

Q. Has the Lehigh Valley Railroad Company actually paid by reason of this work? A. That I don't know.

Q. Were you present at the public hearing which was held by the City Commission on December 18th, 1928? A. No. 40

Q. Can you tell us about how many people were present at that hearing? A. Only by reference to

Charles W. Broadhurst, cross.

the Minutes. The Minutes show there were 41 people present for and against this application; and I do know that there were more present whose names do not appear on this record in the Minutes; that is, their names were not incorporated in the Minutes.

10

Q. There was a large crowd present at the meeting of the City Commission? A. Yes.

Q. And the greater percentage of the crowd was opposed to the granting of the permit, was it not? A. There were about 12 or 15 for the application, and about 30 opposed.

20

Q. And it is true that the protests made by those who were opposed to the application were because of the fact that the coal pockets would be built right in the rear yard of some of the buildings now erected on Grand Street, and because the resultant noise of the constant loading and unloading the coal would be detrimental to the health of the people in that community? A. The ground of the protest was that there would be noise and dust and an increase in the number of trucks using the streets adjacent to the pockets. There was no protest made that the coal pockets infringed on the back yards of anybody, as it appeared that these pockets are being constructed on what had been formerly the canal bed of the Morris Canal & Banking Company and the lands south of and away from their back yards.

30

Q. But it is true that the coal pockets would immediately adjoin some buildings on Grove Street, is it not? A. From my being on the ground, I should judge that they would be perhaps thirty or forty feet from the rear or back yard fences of residences facing on Grand Street.

40

Q. There were also present at this hearing two priests representing their congregations, who came

Charles W. Broadhurst, redirect.

to the meeting protesting on behalf of their parishioners and school children, both of whom stated that they came there on the urgent request of their parishioners to ask the Commission not to permit the erection of these coal pockets, because it would be a detriment to the homes, lives and welfare of the people whom they represented? A. There were two priests present at the hearing, Father Szudrowicz and Father McDermott; an examination of the Minutes indicates that both spoke against this project. 10

Q. There are in the immediate neighborhood nine schools and five churches, are there not? A. I don't know the exact number, but I know there are several schools and churches within a few blocks of that, on Grand Street, which would be to the north of this property; there is nothing to the south. 20

Q. On the south of this property there are freight yards? A. Freight yards entirely and industrial plants.

Redirect examination by Mr. Markley:

Q. There is no church on Canal Street, between Henderson Street and Jersey Avenue? A. No church or school. 30

Q. These coal pockets and trestle would be to the south of Canal Street? A. Yes, sir.

Q. And Canal Street is south of Grand Street? A. Yes, sir.

Q. Between Henderson Street and Jersey Avenue? A. That is right.

Q. And in the immediate neighborhood there is no church or school, is there? A. No.

Q. On the corner of York and Henderson Streets there is a Polish school? A. That is right. 40

Joseph C. Glavin, direct.

Q. And York Street is one block north of Grand Street; is that right? A. Yes.

Q. And fifty feet east of the corner of Henderson and Grand Streets is an annex to the Polish school referred to; is that right? A. That is right.

10 Q. And St. Peter's Church is the nearest church?
A. Yes, sir.

Q. And that is on the corner of Van Vorst and Grand Streets, which is a block further east than Henderson Street? A. Yes.

JOSEPH C. GLAVIN, being first duly sworn according to law, on his oath deposes and says:

20 *Direct examination by Mr. Markley:*

Q. You are connected with the office of Edward J. Spoerer, Superintendent of Buildings of Jersey City? A. Yes, sir; I am Custodian of Records.

Q. You are Custodian of Records in the office? A. That is right.

30 Q. I show you Exhibit P-3, and ask you whether that is the permit granted by Edward J. Spoerer, as Superintendent of Buildings of Jersey City, for the construction and erection of the coal pockets and coal trestle we are talking about in this case?
A. Yes; that is the original permit that was issued.

Q. I show you permit notice, which has been marked P-4; does that accompany that permit?

A. That accompanies the original permit in all cases.

40 Q. Is that for the purpose of displaying on the ground, to show the authority to erect and construct the structure that is allowed by this permit?
A. That is right.

Joseph C. Glavin, direct.

Q. I show you Applications Nos. 5210 and 6115, marked Exhibits P-1 and P-2; are those the applications upon which these permits were granted?

A. Yes; these are the applications.

Q. Your permit, of course, was granted after the City Commissioners had passed the resolution granting the permit. You would not give the permit without their resolution, would you? A. Permits are given without any resolution of the City Commissioners, other than a blanket resolution which is prepared in the Building Department and not presented in fact to the City Commission.

10

Q. There is a blanket resolution passed by the Commissioners? A. Well, there is a blanket resolution covering all buildings on which public hearings are not held.

20

Q. Have you seen the resolution for this permit? A. I don't recall that I did, but I probably did see it.

Q. You don't say that that permit was not properly granted, do you; you don't mean to say that? A. I mean to say that the permit was granted on a blanket resolution, which was prepared in the Building Department, and then passed by the City Commission.

30

Q. That is the way you usually do it, don't you? A. In some instances, but not in all instances.

Q. But here you followed the practice that you followed in some instances, by having the blanket resolution prepared in the Building Department, after the Building Department had given its approval to this structure; these coal pockets and coal trestle? A. That is right.

Q. Your Building Department—that is, Mr. Spoerer's Building Department—prepared the blanket resolution covering the structures which he approved? A. That is right.

40

George T. Hand, direct.

Q. And that resolution was passed by the City Commission? A. That is right.

Q. And after it was so passed by the City Commissioners, you granted the permit? A. We granted the permit.

10

No Cross Examination.

GEORGE T. HAND, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Markley:

Q. Mr. Hand, you are the Chief Engineer of the Lehigh Valley Railroad Company? A. Yes, sir.

20

Q. Did you have charge of the giving out of the work for these coal pockets and coal trestle which are the basis for the application for permit which has been marked in evidence as P-3? A. Yes, sir.

Q. What was the cost of these coal pockets and coal trestle to be? A. \$262,000.

Q. What is the area to be covered by this structure? A. 37 feet by 337 feet, without the approach.

30

Q. How about the approach? A. Approximately 525 feet long.

Q. What was done in pursuance of the construction and erection of the coal pockets and trestle prior to the revocation of the permit by the Board of Commissioners of the Mayor and Aldermen of Jersey City on December 18th, 1928? A. A contract was made with the Raymond Concrete Pile Company for the driving of concrete piles.

40

Q. How much was that contract? A. \$30,060.

It is stipulated by counsel that the contracts testified to by Mr. Broadhurst have

George T. Hand, direct.

actually been produced and examined by counsel for the City, who is satisfied that they have been duly executed and are the contracts made by the Lehigh Valley Railroad Company with the different contractors.

10

Q. Have you had occasion to build coal pockets in the past? A. Yes, sir.

Q. Over what period of time, approximately? A. About 25 years.

Q. Altogether, how many different times have you built coal pockets? A. About sixty different plants.

Q. These coal pockets that are to go up on the present site in Jersey City, are they of concrete construction? A. Yes, sir.

20

Q. What have you to say as to whether there would be any dust or noise? A. So far as the handling of the coal is concerned, there would not be any noise; there would be a little noise in the switching of cars on top of the trestle, the same as any other engines switching.

Q. These pockets are on what was formerly the Morris Canal? A. They are.

Q. That is, on that property and on property south of the Morris Canal? A. They are all on the old canal bed.

30

Q. Or on the south of it? A. Absolutely on it.

Q. Not to the north of it at all? A. No, sir.

Q. In the handling of coal there in this concrete plant, will there be any dust that will come out on the street or the houses that are protruding from Grand Street? A. No.

Q. Why is that; are they covered? A. There is no dust from the dumping of the coal in a building on a trestle of this kind; the coal we are

40

George T. Hand, direct.

handling is all washery coal; it is generally wet, and it is handled in the building that is practically all enclosed.

Q. Are the cars dumped inside the building? A. Yes, sir.

10 Q. Not outside? A. None outside.

Q. In other words, the cars come to the coal trestle, go up the incline onto the trestle; is that right? A. Yes, sir.

Q. And then go inside the concrete building? A. Inside the shed on top of the trestle, which shed is entirely closed, and it is tight.

Q. So that that is all done within the confines of the building; is that right? A. Yes, sir.

20 Q. There would not be any dust going on the outside, would there? A. No, sir.

Q. And certainly not to buildings which are facing on Grand Street and are 60 or 75 feet away from the trestle? A. Not in my judgment.

Q. Of course to the south of the canal bed upon which these pockets will be erected, there are no buildings or dwellings over there, are there? A. No, sir.

Q. That is all open country? A. Freight yards.

30 Q. That is given over to freight yards? A. Yes, sir.

Q. Are there any manufacturing concerns over there? A. Yes, sir.

Q. Are the plans for this building of the most modern type for such a building? A. They are.

Q. I show you a blueprint and ask you whether that shows a side view of what would be the coal pocket? A. It does.

40 Q. To the left of the blueprint does it show where the trestle will be? A. A portion of it.

Q. The portion of it leading into the coal pockets? A. Yes, sir.

George T. Hand, direct.

(Blueprint marked Exhibit P-7 in evidence.)

Q. I show you another blueprint, which shows a cross-section of the coal pockets; on this blueprint do you show a dust bin? A. It is marked "Dust Bin." 10

Q. What is that for? A. That takes the screenings from the chutes, where they load the coal into the wagons.

Q. Does this show the cars or trucks to be loaded? A. Coal wagons; yes, sir.

Q. On each side of the cross-section? A. It does.

Q. Up above, in the center of the cross-section, does that indicate the cars on the trestle? A. It shows two tracks where the cars are dumped. 20

Q. Where are the two tracks; what are these, rails (indicating)? A. These are stringers; the cars would be here (indicating).

Q. And the coal is dumped from the cars into a closed coal bin? A. It is all closed, except the opening between the rails and the small opening outside of the rail; the balance of it is floored over.

Q. Is that the most modern type of coal pockets that you know of? A. It is.

Q. Is it the most modern type known in the coal business? A. Yes, sir. 30

(Blueprint marked Exhibit P-8.)

Q. Coal cars will, of course, be drilled up on the trestle by drill engines, up into this coal pocket? A. They would.

Q. For the purpose of unloading; and when the cars are empty will engines be required to go up there and take them down from the coal pockets?

A. Yes. 40

George T. Hand, direct.

Q. It would be a constant movement; a continuous movement? A. Well, it would only be done once each day, or twice each day.

10 Q. How many cars would be run into these pockets a day, do you know? A. I should judge about 12 or 15.

Q. And 15 cars would be taken away from there every day? A. Yes, sir.

Q. And in addition to the drilling of these cars to and from these coal pockets, trucks would congregate below the pockets for the purpose of removing coal? A. They would.

Q. And that would be a continuous daily occurrence? A. Presumably.

20 Q. Do you know whether or not these cars are to be taken up to the coal pockets during the night time? A. I don't know any reason why they should be.

Q. You don't know that? A. No.

Q. There is, of course, resulting dust by reason of the putting of this coal into these pockets and taking the coal from these pockets? A. There is very little dust arising from dumping the cars.

30 Q. The fact that a dust bin has been provided indicates that there is resulting dust by reason of these car movements and car dumpings into these coal pockets, does it not? A. Well, that doesn't necessarily say that you get any dust.

Q. You mean that is just because of the construction? A. No; you see, there would be little material coming into that bin; it is screenings from the prepared sizes that go over that screen; there is only a small percentage of it taken off through that screen.

40 Q. Now, would there be any dust from these dumpings of coal into these coal pockets? A. Oh, there would be some.

Caleb Ringle, direct.

Q. You haven't seen a coal pocket yet without dust? A. No, sir.

Q. That is one of the necessary evils of a coal pocket? A. Yes, sir.

Q. So that the erection of these coal pockets would necessarily bring a quantity of dust to that neighborhood? A. At times. 10

CALEB RINGLE, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Markley:

Q. Mr. Ringle, where do you reside? A. On Harrison Avenue.

Q. Jersey City? A. Yes, sir. 20

Q. What business are you in? A. Roofing and sheet metal manufacturing.

Q. Are you a son of Jacob Ringle, who used to have a store on Newark Avenue in Jersey City? A. Yes, sir.

Q. Is your place of business near a coal pocket? A. Directly north of the R. H. Perry coal pockets.

Q. Where are the R. H. Perry coal pockets? A. On Grand Street and Pacific Avenue.

Q. How far is that from the proposed coal pockets on Canal Street, between Henderson Street and Jersey Avenue? A. Oh, about three blocks west. 30

Q. Grand Street runs east and west, does it not? A. East and west.

Q. And as you come up from the ferry at Jersey City, you strike Henderson Street, then Jersey Avenue, and that is about three blocks before you strike Pacific Avenue? A. Yes. 40

Q. To the south of Grand Street are the railroad

Caleb Ringle, direct.

yards of the Lehigh Valley Railroad and the Central Railroad of New Jersey? A. Yes, sir.

Q. And there is practically nothing else but railroad yards and manufacturing plants to the south?

A. That is all.

10 Q. No dwellings at all? A. No.

Q. These coal pockets that are proposed on Grand Street would be on the block south of Grand Street, would they not? A. That is correct.

Q. Between Grand Street and Jersey Avenue? A. Yes, sir.

Q. Are you acquainted with that neighborhood? A. Very well; yes, sir.

Q. Is it about the same as the neighborhood around Perry's coal pockets? A. About the same.

20 Q. That is three blocks west, you say? A. Yes, sir.

Q. What kind of business have you opposite the R. H. Perry coal pockets? A. Why, a manufacturing business; I employ on an average of twenty skilled mechanics there all the year round.

Q. Doing what? A. Sheet metal work.

Q. Are there also dwellings in your immediate neighborhood? A. Yes, sir.

30 Q. On Grand Street? A. On Grand Street.

Q. Do some of your workmen live behind your place of business? A. Yes, sir.

Q. And that is just across the street from the R. H. Perry coal pockets? A. Yes, sir.

Q. What have you to say as to whether or not there is any annoyance by reason of coal dust or noise coming from the coal pockets of R. H. Perry across the street from your place?

40 Mr. Hershenstein: I object to that; he is not qualified as an expert.

Caleb Ringle, direct.

Q. Are you there daily? A. Every day.

Q. And have you had occasion to observe the coal pockets across the street from your place? A. Yes, sir.

Q. Are those open coal pockets or closed pockets? A. Open coal pockets. 10

Q. What are the approximate dimensions of those coal pockets? A. Oh, I would say about 50 feet long and 60 feet high.

Q. Tell us from your personal observation there daily as to what annoyance you have suffered, if any, by reason of the dust or noise coming from those coal pockets across the street from your place.

Mr. Hershenstein: I object to that on the ground that it is irrelevant and immaterial as to what annoyance may be caused to him. The question is what annoyance it may cause to people in the neighborhood of the proposed coal pockets to be built by the Lehigh Valley Railroad Company. 20

A. I would say, as far as I am concerned, there is nothing detrimental to the operation of our plant or the mechanics which we employ from the R. H. Perry coal pockets. Our line of business is such that if there was any quantity of dust coming from the coal pockets it would be necessary for us to keep our windows closed constantly, in order that the dust would not come in. Our windows are open most of the time and no dust of any kind is perceptible that might interfere with our particular line of business. 30

Q. What is your line of business? A. Sheet metal work.

Q. And if there was any considerable amount of 40

Caleb Ringle, cross.

dust coming from the coal pockets, would that interfere with your business? A. It would interfere with the soldering of the sheet metal work; it is very essential to have it clean.

10 Q. And you haven't had any such experience?
A. No.

Q. And you are right across the street from coal pockets? A. Right north of them.

Cross examination by Mr. Hershenstein:

Q. You are in the manufacturing business, are you? A. Yes, sir.

Q. And your manufacturing plant is opposite the Perry coal yards? A. Yes, sir.

20 Q. Your men go in and come out of the building during the daytime, do they not? A. No, sir.

Q. Are they stationed there continuously? A. They are at a bench all day long, from eight until five at night.

Q. You closed at five o'clock? A. At five o'clock.

Q. You don't know what the conditions are there during the night time? A. Well, we don't operate there in the night time.

30 Q. So that you don't know what the conditions are, do you? A. The only thing I might say, in connection with my employees that live in the back of my place, they have lived there the last forty years.

Q. That would be hearsay? A. No; they have raised their families there.

Q. Is there any dust from these coal pockets? A. Yes, there is a little, but not enough to interfere with the operation of my business.

40 Q. It is not enough to interfere with your manufacturing; is that right? A. That is correct.

William J. Dalton, direct.

Redirect examination by Mr. Markley:

Q. You say your windows are open practically all the time? A. Yes, sir.

Q. Is there a lot of window space in the front of your building on Grand Street? A. I would say that ninety per cent. of the area of my factory on Grand Street is windows. 10

Q. Does the fact that these coal pockets are across the street from your place require any extra cleaning of the windows? A. No, sir.

It is stipulated that the testimony of Mr. Broadhurst as to the items of expense incurred prior to the revocation of the permit may be taken as the testimony of the employees and accountants who are here ready to testify and who will testify to exactly the same items of expense as Mr. Broadhurst testified to, and his testimony may be used with the same force and effect as their testimony would be if it were taken. 20

WILLIAM J. DALTON, being first duly sworn according to law, on his oath deposes and says: 30

Direct examination by Mr. Markley:

Q. Mr. Dalton, are you Vice-President of Burns Brothers? A. Yes, sir.

Q. How many years' experience have you had in the coal business? A. Twenty-two.

Q. Are you familiar with the various coal pockets that exist in Jersey City? A. Yes, sir.

Q. Are you familiar with the one at Pacific Avenue and Grand Street, of R. H. Perry? A. Yes; I was there for a number of years when I was in 40

William J. Dalton, direct.

charge of the distribution of fuel for the Borough President of Manhattan. I weighed coal there and bought coal there.

Q. Talking about the R. H. Perry coal pockets?

A. Yes; then it was L. Wertheim & Company.

10 Q. Have Burns Brothers their own coal pockets?

A. Oh, yes.

Q. They have their own pockets? A. We have sixty-seven odd plants.

Q. And each plant has coal pockets? A. Yes, sir.

Q. And a trestle? A. Yes, sir; a trestle in some cases and in other cases just coal pockets.

20 Q. Are you acquainted with Grand Street, between Henderson Street and Jersey Avenue? A. I remember that very well. In fact, probably the reason that they allow coal pockets there today is that up to about fifteen years ago, practically on this identical site, there were the old coal pockets of the Central Coal Company and the Waddel Coal Company, practically on the same site as this.

Q. And by "this" you mean what? A. At Henderson Street.

30 Q. Between Henderson Street and Jersey Avenue, on Canal Street? A. Yes; just about that location.

Q. What pockets were they? A. The Waddel Coal Company and the Central Coal Company. They were there; and that is probably why the zoning laws allow coal pockets there today.

Q. In other words, between Henderson Street and Jersey Avenue, there were coal pockets there before this? A. Yes; old style open pockets, too.

40 Q. Of what companies? A. The Waddel Coal Company and the Central Coal Company. They were there a great many years; they were there

William J. Dalton, direct.

ever since I was born; I remember them up to about fifteen years ago.

Q. You heard Mr. Hand describe the coal pockets and coal trestle that are to be constructed there? A. Yes; they are the very latest.

Q. Under this permit granted by Jersey City which is here in question. A. Yes, sir. 10

Q. What have you to say as to their construction being modern? A. Why, they are ultra-modern; they are absolutely, in my judgment the best coal pockets that could be built.

Q. What have you to say about noise or dust? A. I think the noise from these pockets would be absolutely at a minimum; they are covered over, and the cars themselves dump inside the building.

Q. It is made of concrete, I believe. A. Yes; and then they have these traps down there to catch the screenings. 20

Q. And by screenings you mean what? A. Screenings are the smallest sizes of coal; for instance, say we run stove coal over the screen; stove coal in the first instance before it is loaded in the cars at the mine is screened and it comes down practically clean; it is stove coal; but there are naturally sometimes small particles broken off; but it has been my experience over twenty years that the depreciation there, even with the loss of weight where boys might steal a shovel full of coal and through breakage, it amounts only to three per cent. Now, that three per cent. would go, theoretically into the screening bin; as a matter of fact, about two per cent. will go into that screening bin; and of that two per cent., we will say in the first instance, of stove coal, it is possibly about fifty per cent. pea coal, about twenty per cent. of buckwheat, and about ten per cent. of barley, ten 30 40

William J. Dalton, direct.

10 per cent. of rice coal, and the rest would be what we call culm, or a fine dust; as a matter of fact, from prepared sizes, really, you get a very, very small percentage of fine dust; as a matter of fact, the dust adheres to the large sizes of coal, especially the Lehigh Valley preparation, inasmuch as the Lehigh Valley preparations are what we call wet mining; they have plenty of water, they are blessed with water up there and they use it, and the coal, I might say, I have never seen Lehigh Valley coal come down dry.

Q. Now, then, taking all these things into consideration, knowing the type of coal pockets to be used, would you say that this plant is practically dust proof? A. Yes, sir; I would say so.

20 Q. Also keeping in mind that the coal comes in on cars, the cars go up on the trestle into the building, and that trucks are loaded by coming in underneath the cars, I presume. A. They come in underneath the chutes; you see, the chutes themselves are trapped, inasmuch as the coal that goes over there comes through a screen and into a screening bin before it hits the trucks, before it hits the open air at all.

30 Q. It comes through to the trucks in the manner that you have described? A. Yes; so the only thing appearing to the open air would be the prepared sizes, large clean coal.

Q. What have you to say as to noise? A. There is practically a minimum of noise, except perhaps you might have the ordinary noises which you have anyway from the passing locomotives; they have that there now.

40 Q. In other words, the Lehigh Valley and Central Railroad run by there anyway? A. Yes, sir.

William J. Dalton, direct.

Q. And in fact, freight cars come to Colgate right on the street, do they not? A. Yes, sir.

Q. Within a block or two of this place. A. They do; in other words, there is nothing new that is being put in there that is not there now. That is why I can't understand the objections. 10

Q. They have the engines, they have the freight cars and they have the manufacturing concerns there right now? A. Yes, sir.

Q. Within a block or two of this place? A. Yes, sir; and they have open coal pockets and these will be closed coal pockets.

Q. The open coal pockets are the ones that have been referred to as R. H. Perry's? A. Yes, sir.

Q. Within two or three blocks of there; is that right? A. They are. 20

Q. So that there would be a minimum of dust and a minimum of noise from the unloading and loading of cars from these pockets. A. Surely.

Q. And the only real noise that they might have would be the noise of the locomotives. A. Yes.

Q. And the wagons and cars on the streets, just as they are now anyway? A. Just as they are anyhow; that is the present condition.

Q. Do you know that this is an industrial area of Jersey City? A. Yes, sir; and it always has been to my knowledge. 30

Q. It always has been on Grand Street there? A. Certainly.

Q. There is the Lavery-Daenhardt Lumber Yard close by, is there not? A. Yes; that was never intended to be used under the zoning law for anything else but that; it has never been changed and there has never been any move made to change that zoning law. 40

William J. Dalton, direct.

Q. There are a large number of manufacturing concerns all around there, are there not? A. Yes. In my opinion there can't be any objection to a coal trestle of this kind, made of concrete and enclosed. I would also say in reference to these
10 pockets that it is greatly superior to any that we have right within the confines of the City of New York. I might point out the coal pockets right next to the apartment on Sutton Place, on the East River, that is of the highest type, they rent from four thousand to eight thousand a year, and that is immediately contiguous to the apartment house. I might also point out the coal yard at 194th Street and Riverside Drive, 250 feet from the Drive and about 350 feet from some of the highest class
20 apartments they have in New York City. I would say that there is no dust from those pockets even, and they are of the oldest type. The one on 194th Street is semi-covered, but it has no such screening bins as this pocket; it has no such pockets as these pockets. I might mention also some twenty or thirty others. I might mention the old type of pockets that we have in Far Rockaway, right in the center of the town, at White Street, surrounded by residences and large buildings and mercantile
30 buildings. I might name any number of instances. I might name Mineola, where we have a coal yard surrounded entirely by residences, which is an enclosed pocket, but not as good a type as this. I might mention our coal yard at Hamilton Street, Jamaica, which is a new type, but not as good a type as this. We have never had a single objection in my twenty-two years of experience. I have never heard a word that any of the coal pockets were referred to as a nuisance; it has never been
40 held as a nuisance or a detriment to health; and I

William J. Dalton, cross.

am a pretty good example myself, because I lived around coal yards for over twenty-two years.

Cross examination by Mr. Hershenstein:

Q. You have not been in this neighborhood evidently for about fifteen years? A. Oh, yes. 10

Q. Are you familiar with the type of residences which are erected there? A. Yes, I am.

Q. Are you familiar with the type of small homes throughout there? A. Yes.

Q. The coal pockets stick right up on Canal Street, as contemplated by the Lehigh Valley Railroad; they would be a very prominent structure compared with these small houses around that section, would they not? A. Well, of course; here is the way I look at it: I think those families are just the kind that stay in there anyway, because those houses have existed that way for a good many years, with a large number of them for sale and to let, they have been that way for a great many years; of course I am not probably as close to that situation in Jersey City as the Chamber of Commerce, yet I heard a representative of the Chamber of Commerce at the hearing before Mayor Hague say that the fact that these pockets would come there would increase the value of that property. In other words, Mr. Hershenstein, I believe that the fact that all that property is commercial, and the fact that large enterprises of this kind come there, it will increase the value of that property. 20 30

Q. But of course coal pockets will bring to this locality additional dust, additional noise, from the loading and unloading of cars, and the loading and unloading of trucks? A. I don't believe that it will. In fact, that area the way it is there now, 40

William J. Dalton, redirect.

I think you would get more dust from that vacant area than you will if there is a coal pocket on it; in fact, I don't believe you will get any coal dust from that type of pocket, the way it is constructed.

Redirect examination by Mr. Markley:

10

Q. You are familiar with the neighborhood around there are you? A. Surely.

Q. The residences there are the very oldest type around the City, aren't they? A. They are.

Q. Consisting of stores and old tenements? A. And old tenements.

Q. Mostly frame dwellings one and two stories high? A. Yes, sir.

20

Q. All in a very dilapidated condition? A. Yes, sir.

Q. Many with To Let and For Sale signs on them? A. Yes, sir. In other words, I believe that the value of the land will be so greatly appreciated by more industries and structures coming there that it will more than make up for any depreciation in the buildings; in fact, I don't think the buildings can be depreciated any more than they are now; and I am basing that on the statements the Chamber of Commerce made there before
30 Mayor Hague.

Mr. Hershenstein: I object to any testimony respecting values given by this witness, on ground that he is not qualified as a real estate expert.

40

Max Feingold, direct.

MAX FEINGOLD, being first duly sworn, according to law, on his oath deposes and says:

Direct examination by Mr. Markley:

Q. You live on Grand Street, Mr. Feingold? A. Now, I am not living there; I moved a year now; before I lived there. 10

Q. Where did you live on Grand Street? A. 450 Grand Street.

Q. And you lived there until a year ago? A. Yes, sir.

Q. Is that near the Perry coal yard? A. It is right in the front of my building.

Q. That is right alongside of Ringle's place? A. Yes, sir.

Q. On Grand Street. A. Yes, sir. 20

Q. And that is about two or three blocks away from Jersey Avenue, isn't it? A. Just between Center Street and Brunswick Street, or Bates Street, they call it.

Q. That is about three blocks from Jersey Avenue and Grand Street? A. Yes, sir.

Q. How long did you live there? A. For the last 22 years.

Q. Have the Perry coal pockets been there all that time? A. Yes, sir. 30

Q. Do you also own property there? A. Yes, sir; I got three pieces there, or four.

Q. During that period of over twenty years did you experience any trouble from the Perry coal pockets?

Mr. Hershenstein: I object to this testimony on the part of the witness, on the ground that any trouble which he may have experienced by reason of the Perry coal pockets would not be material in this case. 40

Max Feingold, direct.

A. I got no objection; I don't see anything to complain about.

Q. Did you ever have any dust coming over to your place from the coal pocket? A. No, sir.

Q. Or any noise? A. No, sir.

10 Q. And you are right across the street from those coal pockets? A. It is right in the front.

Q. Have any of your tenants ever complained about that? A. Not so far.

Q. That is an open coal pocket, isn't it? A. Open, yes.

Q. Do you know Grand Street, from Pacific Avenue down to Henderson Street? A. I know it very good, yes.

20 Q. That is a very old neighborhood, isn't it? A. Yes.

Q. A pretty old place? A. Well, the property is old there.

Q. There are a lot of old shacks there; most of them are old shacks? A. Yes.

Q. With stores downstairs and tenants upstairs? A. You mean on Grand Street, further up?

Q. Around Henderson Street and Jersey Avenue? A. It is not much; all small houses.

30 Q. There are a lot of factories manufacturing things down there? A. Yes, sir.

Q. You know where the foot of Grand Street is? A. Yes, sir.

Q. Colgates have their factories down there, haven't they? A. Yes, sir.

Q. And they have a lot of freight cars out in the street there all the time? A. Yes; I know that very good.

Q. And there are other big factories like that down there? A. Yes, sir.

40 Q. And you know that, don't you? A. Yes, sure.

Joseph C. Glavin, direct.

Cross examination by Mr. Hershenstein:

Q. Do you know how many cars of coal come into the Perry coal yard a day? A. I can't say.

Q. Do you know how many trucks or wagons come into the Perry coal yards and load and unload each day? A. I don't know; I am not looking at them all day. 10

JOSEPH C. GLAVIN, being recalled as a witness on the part of the defendants, on his oath further deposes and says:

Direct examination by Mr. Hershenstein:

Q. You are the Custodian of Records in the Department of the Superintendent of Buildings of Jersey City? A. That is right. 20

Q. And you are present at the meetings of the Board of Commissioners of Jersey City, on each of their meeting days? A. Yes, sir.

Q. And particularly at the time when applications for building permits are considered; is that right? A. That is right.

Q. There is a class of cases where applications for building permits are always referred to the City Commissioners before the building permit is granted; is that right? A. Yes, sir. 30

Q. Which class of cases are they, Mr. Glavin? A. Well, any building other than a dwelling; when it is strictly a dwelling we do not have to refer it.

Q. I now ask you to produce the original ordinance known as the Fire Hazard Ordinance of Jersey City. A. (Witness produces ordinance as requested.)

Mr. Hershenstein: I now offer in evidence the ordinance commonly known as the Fire 40

Joseph C. Glavin, direct.

10 Hazard Ordinance, to regulate the erection or alteration of all buildings or structures to be used and designated to be used for any purpose other than a residence or living apartments, passed by the Board of Commissioners of Jersey City on June 3rd, 1924.

Mr. Markley: We object to this offer, not to the form of it, assuming that you produced the original and properly proved it, but on the ground that it is immaterial, irrelevant and incompetent to this proceeding, and has no relation to it.

Marked Exhibit D-1.

20 Q. Where applications are presented to your department upon which there are no public hearings, it is the usual custom for the City Commission to pass a blanket resolution after the Superintendent of Buildings has drafted it? A. Yes, sir.

Q. And that is the resolution to which Mr. Broadhurst has referred when he read from the minutes of the City Commission of November 5, 1928? A. Yes, sir; that is such a resolution.

30 Q. There were a number of applications granted that day, among which was the application of the Lehigh Valley Railroad Company for the coal pockets in question? A. That is correct.

Q. Was there a full public hearing held upon the application of the Lehigh Valley Railroad Company, which was made in October, 1928, at which the applicants appeared or any persons opposed to the application were heard? A. No; not prior to the time the permit was issued.

Q. There was no full public hearing held before that time? A. No, sir.

40 Q. Under the Fire Hazard Ordinance, should

Joseph C. Glavin, direct.

this application have been referred to the City Commissioners for a full hearing before the application was granted?

Mr. Markley: I object to that on the ground, first, that the witness' construction of the Fire Hazard Ordinance which has been marked Exhibit D-1 is immaterial, that it is for the Court to determine; and second, that it does not appear that the City Commissioners did not have a hearing, even though it may not have been that some members of the public were present either for or against the permit.

10

A. Yes; the application should have been referred to the full Board of Commissioners, and a public hearing called, at which time any property owner interested in the application could appear and voice his opinion on it.

20

Q. From your knowledge of the proceedings before the City Commission at which you are always present, at these public hearings upon applications where all parties concerned are heard, the City Commission gives a hearing to anybody and everybody who desires to be heard upon the application, doesn't it? A. Yes, sir.

30

Q. Then the City Commissioners, after hearing all the parties, determine as a matter of fact whether or not the granting of the application would or would not jeopardize the life, limb and public welfare, and will not increase the fire hazard in the locality where the proposed erection or alteration is to be made? A. Yes.

Q. And if they so find, then they grant the permit? A. That is right.

40

Joseph C. Glavin, direct.

Q. If they find that the application would so jeopardize the life, limb and public welfare, or will increase the fire hazard in the locality, what does the City Commission do?

10 Mr. Markley: I object to that as immaterial.

A. They would reject the permit.

Q. And that has been the general and common practise and procedure before the City Commission upon these applications or similar applications? A. Yes.

20 Q. After the public hearing had on December 18th, 1928, with reference to the application of the Lehigh Valley Railroad Company for the construction of these coal pockets, the City Commissioners passed a resolution in which they made their findings of fact, did they? A. Yes, sir.

Q. And that is the resolution which was offered in evidence as Exhibit P-5? A. Yes.

Q. Had a protest been filed with your department prior to the issuance of the permit, what would have been the practise of your department?

30 Mr. Markley: I object to the practise as immaterial and irrelevant to this inquiry.

A. If a protest had been filed prior to the time the permit was issued, then the Superintendent of Buildings would have referred the entire matter to the City Commission for a public hearing.

Q. And in this case, prior to the actual issuance of the permit, Exhibit P-3, no protest was filed with your department, or, so far as you know, with the City Commission? A. No.

40

Joseph C. Glavin, cross.

Cross examination by Mr. Markley:

Q. This Application No. 5210, which is P-1, appears on its cover to have been received as an application by Edward J. Spoerer, Superintendent of Buildings of Jersey City, on October 30th, 1928; is that right? A. That is right. 10

Q. And there also accompanied it the plans and specifications? A. No, I don't believe they had plans and specifications.

Q. Well, there is a plan right on the back here. A. Yes, that is the plot plan, showing the location of the erection.

Q. And the Minutes of the Board of Commissioners of Jersey City for October 30, 1928, show that that was received by the Board of Commissioners—that is, Frank Hague, Arthur Potterton, John J. Beggans, Michael I. Fagen and William B. Quinn—on that date, and referred by them to Mr. Spoerer, the Superintendent of Buildings; were you present at that meeting? A. Yes. 20

Q. Have you any recollection of that action? A. No; those resolutions are never read out.

Q. But you don't dispute the fact, though, do you? A. No; not if that is part of the minutes.

Q. After this matter was referred to Mr. Spoerer, looking at the application marked P-2 in evidence, it appears that he approved the plans and the application under date of November 19, 1928; is that right? A. That is correct. 30

Q. And that appears in the form of a stamp on Exhibit P-2, does it not? A. Yes, sir.

Q. So that presumably he investigated the application which came to him on October 30th, 1928, and on November 19th, 1928, he voiced his approval by saying, "Plans approved November 19, 1928, Edward J. Spoerer, Superintendent of 40

Joseph C. Glavin, cross.

Buildings of Jersey City," as appears on P-2? A. No; there is no direct connection between Exhibits P-1 and P-2. Exhibit P-1 is purely an application for the purpose of getting permission to erect the building.

10 Q. Yes. A. And is addressed to the City Commission, although in some instances the City Commission never sees it; and Exhibit P-2 is the application which is made in all cases where a building permit is requested and is purely a matter of record for the Building Department.

Q. That is made directly to the Building Department? A. That is made directly to the Building Department and is acted upon by the Superintendent of Buildings.

20 Q. Now, having approved the plans, in fact, on November 19, 1928; there is no question about that, is there? A. No question about that.

Q. The matter was then referred back by the Superintendent of Buildings to the Board of Commissioners, was it not? A. No.

Q. In this case, as you stated to us before when I was examining you, the Building Department makes up a resolution to approve it? A. Yes.

30 Q. After the Building Department has approved of the application? A. As approved by the City Commission, the Application Exhibit P-1.

Q. Then that resolution was passed by the City Commissioners, as appears here? A. Yes, sir.

Q. And after the City Commission had finally approved it, then the Superintendent of Buildings grants the permit, does he not? A. That is right.

Q. And that is the permit which is Exhibit P-3 in this case? A. That is right.

40 Q. Then that is handed out with the card which goes up on the job? A. Yes; and a copy of the plans stamped approved.

Joseph C. Glavin, redirect.

Q. That was all done in this case? A. Yes, sir.

Q. And that is the way you usually did it, isn't it? A. That is the way our permits are usually handled, yes.

Q. You said to Mr. Hershenstein that every building permit is sent over to the City Commissioners, except certain permits; which ones are not sent over? A. I don't recall having said that. 10

Q. I think you said excepting a permit for an apartment house; did you say that? A. Oh, no; every application for the erection of any building other than strictly a private dwelling is referred to the City Commission; in other words, the application is to be approved by the City Commission.

Q. How about private dwellings? A. A permit for a private dwelling is issued directly by the Superintendent of Buildings. 20

Q. He doesn't have to refer that to the City Commissioners? A. No; they have nothing to do with that.

Redirect examination by Mr. Hershenstein:

Q. When the Superintendent of Buildings approves an application, it does not necessarily mean that he has investigated the facts surrounding the applications; what he approves are the plans and specifications, isn't that so? A. Are you referring to a building application? 30

Q. Yes. A. Yes; that is true.

Q. And when he puts his stamp upon the application and plans approving it, that simply means that he has gone over the plans, and structurally they are approved? A. That is correct.

Q. He doesn't pass upon the fact as to whether or not the building will in anywise jeopardize the life, health or welfare of the community in the 40

Joseph C. Glavin, redirect.

location where the building is to be erected? A. No.

10 Q. So in this case, when the Superintendent of Buildings approved the plans, he did not approve the building in that particular location, did he?
A. Well, he did; he must have to approve it in that location to have approved the plans.

Q. What I mean is, he did not necessarily go out and investigate the facts surrounding this application? A. No.

20 Q. Under the Fire Hazard Ordinance, which has been introduced in evidence here and marked Exhibit D-1, all applications for buildings, other than residential buildings, are first referred to the Board of Commissioners; and it is after they have considered the application and the facts surrounding the same, and after they have made their findings as to whether or not it would jeopardize the health and general welfare of the community, that the application is either granted or denied, is it?

30 Mr. Markley: I object to that on the ground that the witness is asked to testify to something which he knows nothing about, as to what is in the minds of the Commissioners and what they do or might do under the Fire Hazard Ordinance; and I object to it as immaterial, irrelevant and incompetent; and also on the ground that the permit was not revoked on any such grounds.

A. That is true; but in some instances they hold a public hearing before they find the facts in the case.

40 Q. But they either grant or deny the permit after they find as a fact whether or not, under this so-

Joseph C. Glavin, redirect.

called Fire Hazard Ordinance, the erection will or will not jeopardize the health or public welfare and will not increase the fire hazard?

Mr. Markley: I object to that as immaterial, irrelevant and incompetent. 10

A. Yes.

Q. And the City Commission made no findings of fact in this case until after the public hearing which was held on December 18th, 1928, did it?

Mr. Markley: I object to that on the ground that it did make a finding of fact when it granted the permit; the matter was referred to them and they granted the permit, after the plans had been approved by the Superintendent of Buildings; and that was a finding of fact; whether it is based on a public hearing or not is immaterial. The revocation of the permit was not based on the violation of the Fire Hazard Ordinance, but simply on the grounds that there were some objectors at the hearing, who said that there was some smoke and noise that might be expected from the construction and erection of these coal pockets. 20 30

A. No, they did not.

Q. Now, what the City Commissioners did on November 5, 1928, when the resolution was adopted under the title of recommendations, in which resolution a number of permits were granted, among which was that of the Lehigh Valley Railroad Company, was simply the passage of this blanket resolution which your department prepares in cases where there is no possibility of a doubt as to whether or not the application should be granted? 40

Continuation of Depositions.

10 Mr. Markley: I object to that as leading, calling for a conclusion, and as being immaterial, irrelevant and incompetent, because the resolution must speak for itself; and it says in so many words that it grants the application to do the work called for by the plans, and the witness' version or theory of what went on in the Commissioners' minds when they gave that permission is immaterial.

A. That is correct; they accepted the recommendations of the Superintendent of Buildings without any further consideration.

20

Continuation of Depositions.

Continuation of depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Messrs. Collins & Corbin, 1 Exchange Place, Jersey City, New Jersey, this tenth day of January, 1929, at twelve-thirty o'clock in the afternoon, pursuant to agreement of counsel.

30

APPEARANCES:

MESSRS. COLLINS & CORBIN, Attorneys for Prosecutor; EDWARD A. MARKLEY, Esquire, CHARLES W. BROADHURST, Esquire, Of Counsel.

THOMAS J. BROGAN, Esquire, Attorney for Defendants; CHARLES HERSHENSTEIN, Esquire, Of Counsel.

40

James J. Hagan, direct.

JAMES J. HAGAN, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Hershenstein:

Q. You are the Health Officer of Jersey City?

A. Yes, sir; for over twenty years past.

10

Q. You are familiar with the application made by the Lehigh Valley Railroad Company for the erection of coal pockets at the foot of Grove Street? A. Yes, sir.

Q. You have been informed as to the application made by the Lehigh Valley Railroad Company for the erection of those coal pockets? A. Yes, sir.

Q. You have examined the testimony given by some of the witnesses for the prosecutor with regard to the erection of similar coal pockets in New York City, and from which testimony they have made it appear that the coal pockets and their operation are practically dustless? A. Yes, sir.

20

Q. Have you gone to New York City and examined those coal pockets? A. Yes, sir.

Q. With whom did you go? A. I went with Doctor Edward Salmon.

Q. Is he connected with your department? A. Yes; he is Chief of the Division of Communicable Diseases.

30

Q. What pockets have you examined? A. We examined the pocket at 54th Street and Sutton Place.

Q. And where else? A. And another pocket at 96th Street and Riverside Drive.

Q. Those are the coal pockets to which the witnesses have testified in their testimony are pockets similar in construction to the pockets they contemplate erecting in Jersey City? A. These are the pockets that are referred to in their testimony.

40

James J. Hagan, direct.

10 Q. What did you find? A. Well, the pocket at 54th Street and Sutton Place is one that is oldest, in my opinion, it holds not more than thirty tons of coal; it is a pocket that is used to store coal for a short time, and allows a wagon to pass underneath to receive a cargo or load as it is discharged by gravity into the wagon. The pocket is filled with the aid of a steam shovel from a scow on the East River; it is a very crude affair, in my opinion; the steam shovel was not operating.

Q. So the coal dock was not operating? A. No.

20 Q. Describe the pockets at 96th Street and Riverside Drive. A. There was a coal pocket operated by Burns Brothers Company at about 300 feet south of 96th Street, near Riverside Drive; there was one wagon loading coal at the time of our inspection; the coal descended from the pocket over a screen and then into a wagon; great clouds of dust, black coal dust, filled the air at the loading point, and was emitted to the outside of the building. There was a great deal of coal dust there, so much so that we backed up and got further away from it so that we would not get covered with the dust; and I remarked to Doctor Salmon who was present with me—

30

Mr. Markley: I object to any remarks.

40 Q. Tell us what you found. A. We placed ourselves about the distance away from the pocket that we considered would be the distance the houses on Canal Street are from the contemplated pocket to be built by the Lehigh Valley Railroad Company. In my estimation, at that distance, if the contemplated pockets are operated in a similar manner to those of Burns Brothers, it would cause a nuisance to the people residing nearby; the

James J. Hagan, cross.

coal dust would enter their houses, causing discomfort and injury to the property.

Q. You are, of course, familiar with the neighborhood where these coal pockets are to be erected? A. Yes, sir.

Q. And you know the character of the buildings there? A. Yes, sir. 10

Q. What, in your opinion, would be the effect of the erection of those coal pockets in Jersey City, in that particular location, upon the people living in that community?

Mr. Markley: I object to that question on the ground that the witness is not qualified to answer, and his opinion is immaterial, irrelevant and incompetent to the issues in this case; and furthermore, he has not indicated that he is familiar with the character of the structure to be erected or the method of operation to be employed in loading the coal or unloading it. 20

A. If the contemplated pockets were operated as I saw the pockets operated by the Burns Brothers Company, in my opinion there would be a sufficient amount of dust emitted from the premises to cause injury to the health of the people residing nearby, also discomfort and injury to the property. 30

Q. And you make that statement as the result of your experience in the line and field of your work? A. I do.

Cross examination by Mr. Markley:

Q. You were not present at the hearing at the City Hall when some proceedings were had there, were you? A. No, sir. 40

James J. Hagan, cross.

Q. You had not been consulted prior to that time? A. No, sir.

Q. You were not consulted at that time? A. No, sir.

10 Q. And you were not consulted at all in regard to this matter until when? A. It was a week ago; last Friday it was, to be certain.

Q. That was on the 4th of January? A. About the 4th of January.

Q. So that, although you were the Health Officer of Jersey City, your opinion was not sought by the City Commissioners at the time of the public hearing, was it? A. No, sir.

Q. Who first consulted you on January 4th in regard to this matter? A. Counselor Hershenstein.

20 Q. And that was for the purpose of testifying here? A. Yes, sir.

Q. The extent of your investigation is that you examined the coal pockets at 54th Street and Sutton Place, New York City, and also the coal pockets at 96th Street and Riverside Drive, New York City? A. Yes.

Q. When did you make those examinations? A. On January 10th.

30 Q. Of this year? A. 1929.

Q. With Doctor Edward Salmon? A. Yes, sir.

Q. You went to look at those at the request of Mr. Hershenstein? A. Why, I suggested that myself.

Q. Well, he told you about these pockets, didn't he? A. Yes.

Q. You haven't seen any of the testimony in this case yet? A. Yes; he showed me the typewritten testimony that was taken at the hearing before the City Commission.

40 Q. I am talking about the testimony taken in this

James J. Hagan, cross.

case. A. No; I know of no testimony taken in this case.

Q. You haven't seen any of the testimony in this case? A. Not at all.

Q. Did you go to 194th Street and Riverside Drive? A. No, sir. 10

Q. You didn't look at that coal pocket? A. No, sir.

Q. Did you look at the coal pockets and yards at Hamilton Street, Jamaica, Long Island? A. No, sir.

Q. These coal pockets that you looked at in New York, at 54th Street and Sutton Place, and 96th Street and Riverside Drive, are not similar to the contemplated structure that is in question in these proceedings, are they? A. The one at 54th Street and Sutton Place is not similar, but the Burns Brothers pocket at 96th Street and Riverside Drive, I would say, is similar, outside of the fact that it is a wooden structure. 20

Q. It is a wooden structure? A. Yes; and I understand that the Lehigh Valley Railroad structure is to be of concrete construction.

Q. Will you describe the construction of the Burns Brothers pockets at 96th Street and Riverside Drive? A. They are of wooden construction, and the coal is received by scows on the Hudson River, and is conveyed by— 30

Q. A steam shovel? A. A steam shovel, to the top of the building; then deposited within a covered structure and loaded into the pockets, and there descends by gravity to the loading point.

Q. How does it go from the steam shovel into the building; does the steam shovel go into the building? A. I am not quite certain whether it has any carrier or not, whether they employ a car- 40

James J. Hagan, cross.

rier or whether the steam shovel itself enters the top of the building; I think that is what happened.

Q. What? A. That the coal is scooped out of the scow and hoisted to the top of the building, and enters into the covered structure.

10 Q. The steam shovel does? A. Yes; the coal does, anyhow, whether it is the steam shovel or not I don't know.

Q. You know the coal gets into the building, and it goes in through the top of the building. A. Yes.

Q. You think the steam shovel takes it into the top of the building? A. Yes.

20 Q. What kind of opening is there at the top of the building? A. I didn't get to the top; but you could just simply see it was operated by a steam shovel at the time.

Q. How high a building is this? A. About sixty feet high.

Q. A one-story building? A. Well, you know how coal pockets are constructed; you wouldn't call them stories.

Q. The scows are open flat bottom boats, aren't they, that come up the river and moor alongside this dock? A. Alongside the coal pocket.

30 Q. And then the steam shovel is a big container that they dip into the scows and holds a number of tons of coal? A. Yes.

Q. And that steam shovel is on an arm, isn't it, that is swung around and over to the top of the building? A. Yes; and it enters into the building.

Q. And then dumps. A. Yes, sir.

40 Q. There is no such operation contemplated in this Lehigh Valley construction, is there, that you know of? A. No; I understand—

James J. Hagan, redirect.

Q. This is a closed concrete structure; you know that, did you not? A. That is my impression.

Q. Did you know that the coal was to be brought there in coal cars? A. Yes.

Q. And not taken on a scow or up the river; there is no river there, is there? A. No.

10

Q. You understand that these cars will go right into this enclosed concrete structure? A. No.

Q. Do you know that there is a method of construction in there known as dust bins? Do you know that, or don't you know it? A. No, I didn't read the plans.

Q. You don't know how they intend to operate within the building? A. No, I really don't know.

Q. Or anything about the operation of the dust bins within the building? A. No, I didn't know of any dust bins.

20

Q. You did know, though, that there is to be no coal put in through the roof of this building? A. Yes.

Q. You knew that? A. Yes.

Q. That is entirely a different method of operation, is it not, from Burns Brother over at 96th Street and Riverside Drive? A. I don't know whether Burns Brothers have any dust bins or not, but I don't think so.

30

Q. At any rate, the two methods of operation are entirely different, aren't they? A. Yes.

Q. This other coal pocket that you looked at was that wooden coal pocket at 54th Street? A. Yes, sir.

Q. An old type of construction? A. Yes.

Redirect examination by Mr. Hershenstein:

Q. You went to New York at my suggestion, after my conversation with you to the effect that there was testimony in this case that there were

40

Edward Salmon, direct.

coal pockets erected in New York City of similar construction, which witnesses for the prosecutor testified were practically dustproof, and you went there for the purpose of investigating and examining those coal pockets?

10

Mr. Markley: I object to that question on the ground that no witness in this case has said that the method of construction or the method of operation of these pockets in New York were similar to that proposed in this Lehigh Valley coal pocket construction; on the contrary, the witness Dalton, who testified on this subject, said that the pockets proposed to be constructed were greatly superior to any that the coal companies had within the confines of the City of New York, and he pointed to the Sutton Place coal pocket and to several others for the purpose of showing how ultra-modern the proposed construction was as compared with those right in the heart of New York City, in the midst of the high-class residential neighborhood on Riverside Drive.

20

A. Yes.

30

EDWARD SALMON, being first duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Hershenstein:

It is stipulated that the testimony of Doctor Edward Salmon, Chief of the Bureau of Communicable Diseases of Jersey City, would be to the same effect as that of Health Officer Hagan, and in addition, the following:

40

Edward Salmon, cross.

Q. Doctor, Salmon, should dust result from the operation of the coal pockets as contemplated to be erected by the Prosecutors at the foot of Grove Street, Jersey City, would the coal dust emanating from those coal pockets be detrimental to the health of the people living in that immediate vicinity? A. If the same quantity of coal dust were emanated from these coal pockets—I mean as we saw at the pockets at 96th Street and Riverside Drive—I would say yes. First off, it would be a nuisance, it would permeate the air, discolor the buildings, get into their homes and on their furniture, their dishes, and so on; and any resident of that community breathing in the coal dust who was in anyway reduced in health, or had a weak throat or anything of that kind, it would not be conducive of their life or their health, but would be detrimental to their health.

10

20

Cross examination by Mr. Markley:

Q. Doctor, you don't know what method of operation is intended to be used at these coal pockets in Jersey City? A. I have read about it in the newspapers, and I read over a description of it in a brief, or whatever you might call it.

Q. Well, what I am getting at is, you know the method of operation at this 96th Street coal pocket was from scows; don't you? A. Yes, sir.

30

Q. With a steam shovel to put that coal into the top of the building? A. Yes; they had a platform erected at the top floor of this building, which was about four stories high compared with an ordinary building.

Q. There is no such operation contemplated here in Jersey City; you know that, don't you? A. Yes.

Q. That was a wooden structure over there, wasn't it? A. Yes.

40

Edward Salmon, cross.

Q. And you know this is a fireproof concrete structure? A. Yes.

Q. Have you examined the plans for this structure to see how it is to operate? A. No.

10 Q. Have you examined into the construction of these coal pockets, as to how that was to be worked? A. No; I read about it in the newspapers.

Q. All I understand you to testify to is that if the same amount of coal dust comes from these coal pockets that are proposed by the Lehigh Valley, as you saw coming from these pockets at 96th Street, you think that that dust would be detrimental to the health of any persons that might come in contact with it? A. Yes, sir.

20 Q. Have you gathered together statistics to show what the expectancy of life is of persons engaged in the coal business? A. Yes.

Q. You have? A. Yes, sir.

Q. When did you gather them? A. Oh, for the past two or three years.

Q. Where from? A. From the Health Reports from Pittsburgh and from several other coal mining centers.

30 Q. But you haven't made any personal examination yourself into the subject? A. No.

Q. You never investigated complaints or took a census of your own motion to see what effect it had on their health, of people that worked around coal pockets? A. No.

Q. So you don't know anything about that of your own personal knowledge, do you? A. No.

40 I, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of the depo-

Exhibits.

sitions in the above entitled cause, taken by and before me at the times and place hereinbefore mentioned; and I believe said transcript fairly and accurately states the testimony given.

HARRY SCHIRMER,
Supreme Court Examiner.

10

Exhibit P-1.

NEW BUILDINGS

Application No. 5210

Application to erect Two buildings where same are to be used or parts of same are to be used for any other purpose than for living apartments 20

Jersey City, Oct 25th 1928

To the Board of Commissioners of Jersey City:

Lehigh Valley Railroad Co.—J. J. McCleece, Architect, hereby applies for permission to erect a reinforced concrete coal pocket with a reinforced concrete trestle approach also Scale House. Street Address Morris Canal Lot No. 22 Block No. 60 30

STATE IN FULL DETAIL THE FOLLOWING:

What is building to be used for? Retail coal business

Will any part be used for living apartments? If so, state in full No

Will building comply with all now existing Building Laws and Regulations? Yes

40

Exhibits.

Give size and all dimensions of all buildings above referred to: Length 862 ft. Width 38 ft. Height 34 ft. No. of Stories one

Is Building Frame or Brick? Reinforced concrete on concrete piles

10

FILL OUT DIAGRAM ON BACK SHOWING LOCATION OF PROPOSED BUILDING OR BUILDINGS AND ALL ADJACENT BUILDINGS ON ALL SIDES

State of New Jersey }
County of Hudson } ss.:

20

J. J. McCLEECE Residing at 340 Rock Road City of Glen Rock State of New Jersey, being duly sworn according to law, deposes and says that he is the person who signed the above application and that the matters and things set out in said application are true, and that the plans filed with this application show the true conditions as they do and will exist on above named premises.

JOHN J. McCLEECE.

30

Sworn to and subscribed before me }
this 25th day of October A. D., 1928. }

JOHN JOSEPH RONAN.

(Seal)

40

Exhibits.

Exhibit P-2.

Appl. No. 6115

APPLICATION FOR THE ERECTION

OF ALL

10

NEW BUILDINGS

EXCEPT DWELLINGS AND APARTMENT HOUSES, FIVE
STORIES OR LESS IN HEIGHT

Application is hereby made to erect two Buildings as per subjoined detailed statement of specification for Erection of such buildings and I herewith submit Plans and drawing of such proposed Buildings, and I do hereby agree that the provisions of the Building Code will be complied with whether the same are specified herein or not.

20

Jersey City, October 26th 1928

(Sign here) J. J. McCLEECE

1. Number of Buildings to be Erected two
2. Give Name of Street or Avenue Foot of Grove St., Canal number thereof.....
3. Give Lot Number 22 Block Number 60
Also fill in diagram on back
4. Give size of lot, front irregular rear.....
..... depth
5. State Cost of each Building, \$ Trestle & Pockets \$262,000.00 State Cost of all Buildings, \$262,000.00
6. Occupancy (in detail) Retail Coal Pockets.
7. Is Building Fireproof? Yes
8. Size of building: At street level Approach Trestle 525' long feet front Pockets 37' x 337' feet deep

30

40

Exhibits.

- At typical floor level Scale Office—25' x 50' feet
front feet deep
Height stories feet
9. Foundation: Character of ground Fill on
hard sub soil
- 10 (Footings)
Depth below curb
Material on which they rest concrete piles—
"Raymond"
10. Foundation Walls: Material Concrete
Nature of Mortar: 1:2:4 Portland Cement Con-
crete.
11. Upper Walls: Material Reinforce Concrete
Nature of Mortar 1:2:4 Portland Cement Con-
crete
- 20 Thickness of Ashler (if any)
12. Party walls: Any to be used?
13. Floor Construction: First floors
Upper floors
14. Safe Carrying capacity for Floors per
square foot
15. Partitions: Interior
(Material and Thickness)
Stair Halls
Elevators
Dumbwaiters
- 30 16. Roofing: Material Johns-Manville Cor-
rugated "Transite"
17. Fireproofing: Columns
(Material and Thickness)
Girders
Beams
- 40 18. Interior Finish: Floor Surface
(Materials)
Trim, Sash, Doors, etc.

Exhibits.

19. Outside Window Frames and Sash: Materials: Steel Sash and Frames
 Owner Lehigh Valley R. R. Co., Edward E. Loomis, Pres.

Address 143 Liberty St., N. Y. City.
 Architect J. J. McCleece 10
 Address Glen Rock, N. J.
 Piles Raymond Concrete Pile Company
 Address 140 Cedar St., N. Y. City.
 Contractor Owner
 Address 143 Liberty St., N. Y. City.

State of New Jersey, }
 County of Hudson, } ss.:

J. J. McCLEECE being duly sworn according to law, deposes and says that he is the person who signed the above application and that the matters and things set out in said application are true, and that the plans filed with this application show the true conditions as they will exist on the above named premises. 20

J. J. McCLEECE Applicant

Sworn to and subscribed before me }
 this 26 day of Oct A. D., 1928 } 30

CLARENCE R KELLER
 (Seal) Notary Public
 New Jersey

Stamped:

OFFICE OF
 SUPERINTENDENT OF BUILDINGS
 City Hall, Jersey City

Plans approved 11/19 1928 40
 By EDW J SPOERER

C

Exhibits.

Exhibit P-3.

THIS PERMIT MUST BE KEPT ON THE
PREMISES

This Permit Expires One Year from Date of Issue

10

OFFICE OF SUPERINTENDENT OF BUILDINGS

City Hall

No. 37361

Jersey City, 11/19 1928

Application having been made to me by Lehigh
Valley R R Co for permission to erect coal pockets
as per plans filed

Lot No. 22 Bk 60

20

Henderson St

Now therefore, by virtue of the power conferred
upon me by the Building Code, APPROVED OCTOBER
1, 1907, and the supplements thereto, I hereby
grant permission to the said Lehigh Valley R R
Co to perform such work as is set forth in said
application.

Plan No. 314QQ

30

EDW J SPOERER

Superintendent of Buildings

Cost of this Permit \$525

40

Exhibits.

Exhibit P-4.

DEPARTMENT OF BUILDINGS, CITY HALL, JERSEY CITY

THIS PERMIT NOTICE

To be fastened on a part of building for which it
is issued where it may be seen plainly by all
persons 10

Permit No. 37361 Erect has been issued for this
building

No. Henderson St Street

(All work on this building must be done in ac-
cordance with the Ordinances of the City of
Jersey City)

DEFACING THIS NOTICE IS A VIOLATION OF 20
A CITY ORDINANCE

Date 11/19/28

EDW J SPOERER
Superintendent of Buildings

30

40

*Exhibits.***Exhibit P-5.**

10 WHEREAS a protest was filed by a great number of property owners and residents in the location where the Lehigh Valley Railroad Company contemplates the erection of coal pockets, immediately adjacent and adjoining the buildings of the protestants; and

20 WHEREAS, it appears to the Board of Commissioners of Jersey City that a permit known as No. 37361 was heretofore issued on November 19, 1928, for the erection of said coal pockets by the Superintendent of Buildings without first having referred the matter to The Board of Commissioners of Jersey City for a hearing thereon; and

 WHEREAS, a public hearing was held by The Board of Commissioners of Jersey City upon said protest on December 18, 1928, at which there were present a great number of protestants and representatives of the Lehigh Valley Railroad Company, Burns Brothers, Jersey City Chamber of Commerce and other persons interested in the proceedings; and

30 WHEREAS, it appears to the Commission, after hearing all of the parties concerned, that the erection of the coal pockets would depreciate their property and cause their tenants to vacate the premises they now occupy and would also cause the residents in that particular location much inconvenience and disturb their peace and quiet and would otherwise be detrimental to their health and general welfare, now, therefore, be it

40 RESOLVED: That the Board of Commissioners of Jersey City hereby find as a fact that the erection,

Exhibits.

by the Lehigh Valley Railroad Company, of the coal pockets on Lot 22, Block 60, on Canal Street, foot of Grove Street, Jersey City, would depreciate their property and cause their tenants to vacate the premises they now occupy and would also cause the residents in that particular location much inconvenience and disturb their peace and quiet and would otherwise be detrimental to their health and general welfare; and be it

FURTHER RESOLVED: That permit known as No. 37361, heretofore issued on November 19, 1928, for the erection of said coal pockets and trestle upon Lot 22, Block 60, Canal Street, foot of Grove Street, in the said City of Jersey City, be and the same is hereby revoked and the application for a permit for the erection of the same is hereby denied.

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Exhibits.

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Exhibit P-7.

(See blueprint opposite.)



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Exhibit P-8.

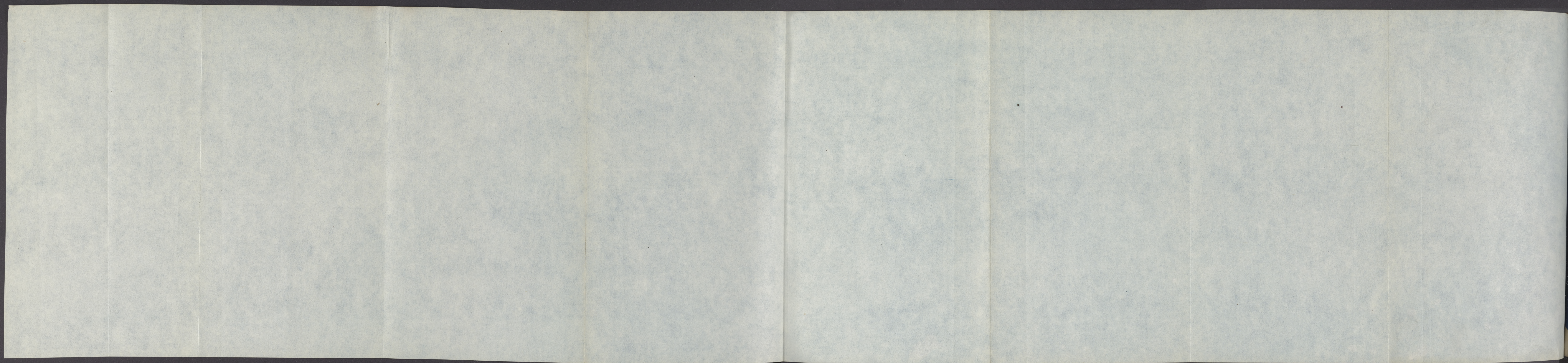
(See blueprint opposite.)

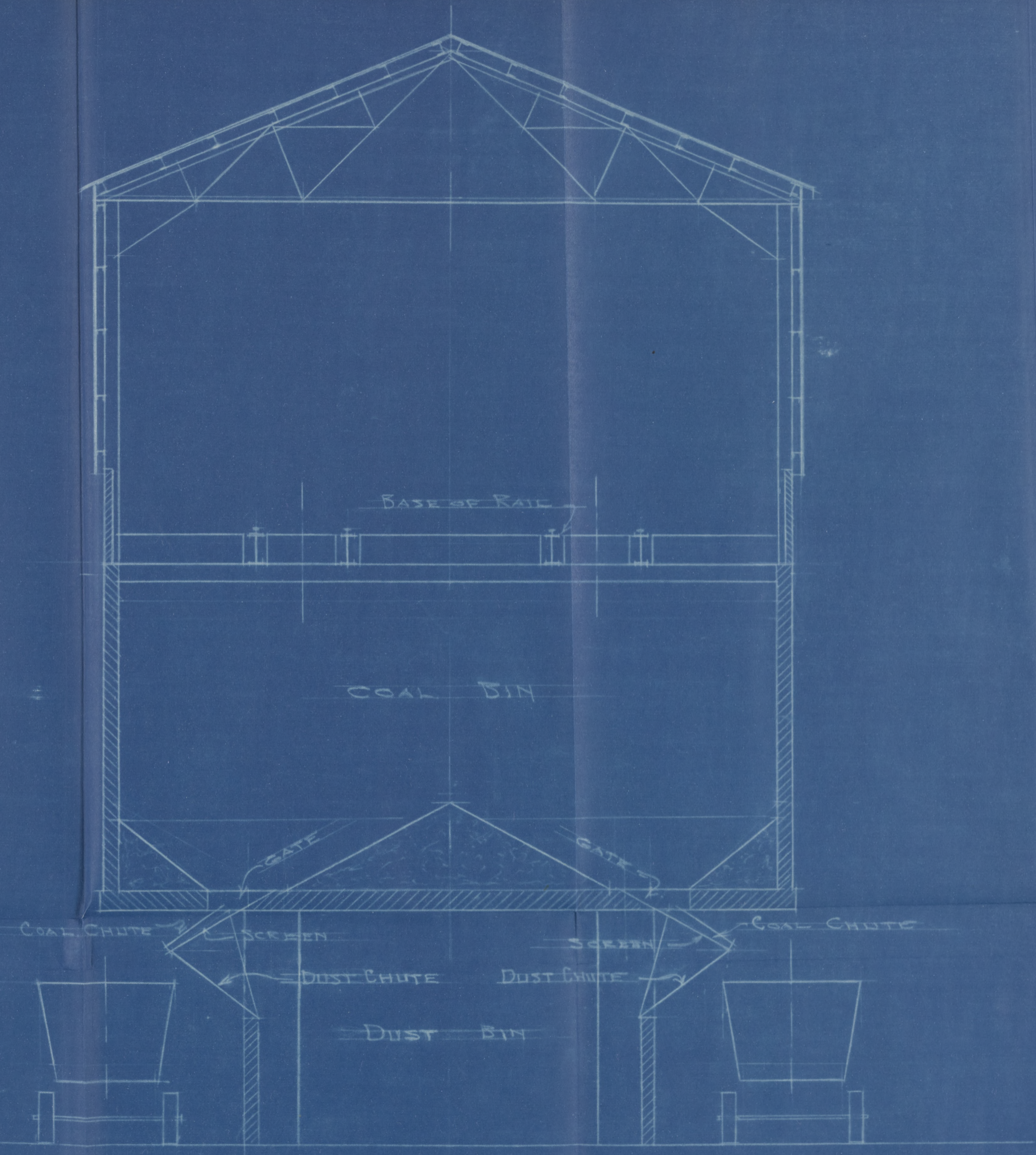
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SIDE ELEVATION
SCALE 1" = 10'





CROSS SECTION

SCALE $\frac{3}{16} = 1'-0"$

P-8

*Exhibits.***Exhibit D-1.**

AN ORDINANCE

entitled

“An ordinance to regulate the erection and alteration of all buildings and structures to be used or designed to be used for any purpose other than as residences or for living apartments.” 10

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain as follows:

Section 1. Before any person, firm or corporation shall begin work or obtain from the Building Department of Jersey City any permit for the erection of any building or structure to be used or designed to be used for any purpose other than as a residence or for living apartments, or before any person, firm or corporation shall begin work or obtain from the Building Department of Jersey City any permit for the alteration of any building now used as a residence or for living apartments, if the same is to be used or altered to be used for any other purpose, they must first obtain from the Board of Commissioners permission so to do, said permission to be obtained in the manner hereinafter prescribed. 20 30

Section 2. All applications to do such work as mentioned in Section 1 of this ordinance shall be made in writing in duplicate on proper printed forms furnished by the Building Department, of which one copy shall be filed with the City Clerk for the Board of Commissioners, and one copy with the Building Department. All questions appearing on such applications shall be answered in 40

Exhibits.

detail stating all the facts, and that the statements made and set forth are true, shall be duly acknowledged on the affidavit form appended to said application blanks, which shall also bear the date on which they are filed.

10 Section 3. After the Board of Commissioners has inspected or has caused to be inspected the premises mentioned in the applications filed, and if the statements set forth in the applications are found to be true and the judgment of the majority of the Board of Commissioners is that if permission is granted same will not jeopardize life, limb or public health and will not increase the fire hazard in the locality where the proposed erection or alteration is to be made, the Board shall have
20 the power to direct the Building Department to issue all necessary building permits to perform such work as set out in the applications filed with the City Clerk for the Board of Commissioners and with the Building Department.

30 Section 4. All such buildings or structures as described in this ordinance to be erected, and all such to be altered, shall comply in every respect with all building laws and ordinances that may exist at the time the applications are filed.

Section 5. No building permit shall be issued by the Building Department to erect or alter any such building as described in this ordinance to any person, firm or corporation unless the applicant has first complied with all the requirements of this ordinance.

Exhibits.

PENALTIES AND FINES.

Section 6. Any person, firm or corporation violating this ordinance or any part of same, upon being found guilty by any Police Court Judge of Jersey City, shall forfeit and pay a penalty of One Hundred Dollars (\$100.00) for each and every offense, and all work on any building or structure being done in violation of this ordinance or any part of same, shall be stopped by the police and remain stopped until this ordinance has been complied with in every respect. 10

Section 7. This ordinance shall take effect immediately upon its final passage.

JOHN SAUL,
MICHAEL I. FAGEN,
WILLIAM B. QUINN,
A. HARRY MOORE,
FRANK HAGUE,
Commissioners. 20

Passed June 3, 1924.

EDWARD J. HOLLAND,
City Clerk. 30

Reasons.

(Filed Jan. 8, 1929.)

NEW JERSEY SUPREME COURT.

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LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, *et al.,*
Defendants.

} On Certiorari.

20

The prosecutor writes down the following reasons in support of the writ of certiorari herein:

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The resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City, adopted December 18, 1928, revoking a building permit known as #37361, name of applicant Lehigh Valley Railroad Company, dated November 19, 1928, for the erection of two buildings known as coal pockets and trestle as per plans filed for lot 22, block 60, Canal Street, Foot of Grove Street, in said Jersey City, is illegal, unlawful, null and void for one or more of the following reasons:

(a) Said resolution was adopted after the prosecutor had acquired vested rights in said permit #37361 which could not be taken from it by said resolution.

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(b) The said permit #37361 was lawfully granted by resolution of the said Board of Commissioners of the said Mayor and Aldermen of Jersey City on November 5, 1928, and in pursuance

Reasons.

thereof and prior to said resolution of revocation dated December 18, 1928, the prosecutor made purchases of labor and material and proceeded with the work of construction of said buildings and executed contracts for large sums of money and incurred other expenses in availing itself of the benefits of said permit, and therefore, the said Mayor and Aldermen of Jersey City aforesaid had no right to pass said resolution revoking said permit. 10

(c) The said resolution of revocation is in other respects unlawful, illegal, null and void and contrary to law.

Dated January 8, 1929.

COLLINS & CORBIN, 20
Attorneys of Prosecutor.

Service acknowledged of a copy of the within reasons this 8th day of January, 1929.

THOMAS J. BROGAN,
Attorney of Defendant.

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Opinion of Supreme Court.

(Filed Jan. 31, 1929.)

NEW JERSEY SUPREME COURT.

No. 217, JANUARY TERM, 1929.

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LEHIGH VALLEY RAILROAD COM-
PANY,
Prosecutor,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, *et als.*,
Respondents.

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Argued January 16, 1929; decided January 31,
1929.

On certiorari.

Before—Justices MINTURN, BLACK and CAMPBELL.
For Prosecutor—EDWARD A. MARKLEY,
CHARLES W. BROADHURST.
For Respondents—THOMAS J. BROGAN,
CHARLES HERSHENSTEIN.

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Per Curiam:

On October 25, 1928, an application, in writing,
was made, on behalf of the prosecutor, to the
Board of Commissioners of Jersey City for a per-
mit to erect a reinforced concrete coal pocket with
reinforced concrete trestle approach and scale
house on Morris Canal Lot 22, Block 60. This was
received by the Commissioners at a meeting held
October 30, 1928, and by that body referred to the
Superintendent of Buildings. An application was

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Opinion of Supreme Court.

also made on October 26, 1928, to the Superintendent of Buildings.

On November 5, 1928, the Board of Commissioners at a meeting held on that date by resolution directed that permits be issued to certain applicants including the prosecutor.

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Pursuant thereto the Superintendent of Buildings, on November 19, 1928, approved the plans filed with him by the prosecutor and issued the building permit. Prosecutor then proceeded with the work of construction and for that purpose entered into binding contracts.

On December 4, 1928, owners of property and residents in the neighborhood of the proposed coal pockets made objection thereto at a meeting held that day by the Board of Commissioners and the latter by resolution directed that the work of construction be stopped and that a public hearing be had before the Board on December 18, 1928, at 11:00 A. M. On such latter date a public hearing was had and the result was the adoption of the resolution brought up by this writ for review.

20

By way of preamble such resolution recites the filing of a protest, that the permit in question was issued by the Superintendent of Buildings without first having referred the matter to the Board of Commissioners, and after such hearing it appears that the erection of such coal pockets would depreciate the property of the protestants and cause the residents inconvenience and disturb their peace and quiet and would otherwise be detrimental to their health and general welfare, and then resolves—

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“That the Board of Commissioners of Jersey City hereby find as a fact that the erection, by the Lehigh Valley Railroad Company, of the coal

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Opinion of Supreme Court.

pockets on Lot 22, Block 60 on Canal Street foot of Grove Street, Jersey City, would depreciate their property and cause their tenants to vacate the premises they now occupy and would also cause the residents in that particular location much inconvenience and disturb their peace and quiet and would otherwise be detrimental to their health and general welfare” and

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“That permit known as No. 37361, heretofore issued on November 19, 1928, for the erection of said coal pockets and trestle upon lot 22, block 60, Canal Street, foot of Grove Street, in the said City of Jersey City, be and the same is hereby revoked and the application for a permit for the erection of the same is hereby denied.”

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The contention of the prosecutor is that the permit or license having been issued and it having proceeded thereunder and expended and obligated itself to expend moneys it was irrevocable except for fraud or deception.

That this was and is the situation we think is controlled by the finding of this Court in *Citizens Holding Company v. Board of Adjustment of Newark*, No. 249 of the October Term (not yet officially reported).

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Respondent relies upon *Freeman v. Hague, et als.*, No. 228 of the October Term of this Court (not yet officially reported) but that case is clearly distinguishable from the one now before us. In that case the structure contemplated was or might reasonably be said to be in violation of the provisions of an existing zoning ordinance and its inclusion with a number of others in a report of the Building Superintendent was clearly an error.

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Here the structure contemplated was of a character clearly permitted by the Zoning Ordinance in the locality where it was proposed to be erected

Opinion of Supreme Court.

and the application was initially made to the Board of Commissioners, by that body referred to the Superintendent of Buildings and by that officer subsequently included with others and included in a resolution of the Commissioners directing the issuance of a necessary permit.

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Therefore the elements of error, and prohibition under the Zoning Ordinance, presenting the dominant and controlling elements in *Freeman v. Hague, supra*, are lacking here.

Respondents further urge that under a certain ordinance of the City entitled "An Ordinance to regulate the erection and alteration of all buildings and structures to be used for any purpose other than residences or for living apartments," passed June 3, 1924, it was a necessary prerequisite to the granting of the permit that a public hearing, upon notice, be had before the Board of Commissioners, and that Board should thereupon have found that the granting of the permit would not result in the erection of a structure that would jeopardize life, limb or public health or increase the fire hazard.

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The answers to this are:

1. There is nothing in such ordinance requiring a public hearing such as was held on December 4, 1928, and

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2. The application in question was first made to the Board of Commissioners and by that body referred to the Superintendent of Buildings who by reporting it to the Commissioners at a subsequent date with a resolution directing the issuance of the permit without any showing to the contrary must be considered as a recommendation from that officer that the permit be granted is, we think,

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Rule for Judgment of Reversal.

in entire consonance with the provision of section 3 of the ordinance in question providing that "after the Board of Commissioners has inspected or caused to be inspected the premises mentioned in the applications filed * * *."

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We conclude therefore that the resolution of December 18, 1928, revoking the permit of November 19, 1928, must be set aside.

Rule for Judgment of Reversal.

NEW JERSEY SUPREME COURT.

20

LEHIGH VALLEY RAILROAD COMPANY, a corporation,
Prosecutor,

v.

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THE MAYOR AND ALDERMEN OF JERSEY CITY; FRANK HAGUE, ARTHUR POTTERTON, JOHN J. BEGANS, MICHAEL I. FAGEN and WILLIAM B. QUINN, Board of Commissioners of Jersey City; EDWARD J. SPOERER, Superintendent of Buildings, and EDWARD HOLLAND, Clerk of the said Mayor and Aldermen of Jersey City,

Defendants.

} On Certiorari.

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The writ of certiorari in the above case having been duly argued at the January Term, 1929, of the above named Court and the Court having duly considered said writ of certiorari, the proceedings

Rule for Judgment of Reversal.

brought up for review thereby and the reasons in support thereof and the briefs and arguments of counsel,

It is on this first day of February, 1929, ORDERED that the resolution dated December 18, 1928, of the Board of Commissioners of The Mayor and Alderman of Jersey City, revoking building permit known as 37361, name of applicant—Lehigh Valley Railroad Company, dated November 19, 1928, for the erection of two buildings known as coal pockets and trestle as per plans filed for Lot 22, Block 60, Canal Street foot of Grove Street in said Jersey City aforesaid, be and the same hereby is set aside and reversed and for nothing holden, with costs to the prosecutor.

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Rule actually entered this 2nd day of February, 1929, on motion of

COLLINS & CORBIN,
Attorneys of Prosecutor.

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Notice of Motion for Stay Pending Appeal.

(Argued and Filed February 8, 1929.)

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

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LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor,

v.

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THE MAYOR AND ALDERMEN OF
JERSEY CITY; FRANK HAGUE, AR-
THUR POTTERTON, JOHN J. BEG-
GANS, MICHAEL I. FAGEN and
WILLIAM B. QUINN, Board of
Commissioners of Jersey City;
EDWARD J. SPOERER, Superinten-
dent of Buildings, and EDWARD
HOLLAND, Clerk of the said The
Mayor and Aldermen of Jersey
City,

Defendants.

} On Appeal.

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Please take notice that we will apply to the New Jersey Court of Errors and Appeals on Friday, February 8th, 1929, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the State House, Trenton, New Jersey, for an order staying the revocation and the setting aside of a certain resolution adopted by the Board of Commissioners of The Mayor and Aldermen of Jersey City on the 18th day of December, A. D., 1928, and finally passed and adopted by said Board of Commissioners on the said 18th day of December, A. D., 1928, revoking a building permit known as No. 37361, name of applicant, Lehigh Valley

Notice of Motion for Stay Pending Appeal.

Railroad Company, dated November 19, 1928, for the erection of two buildings known as coal pockets and trestle, as per plans filed for Lot 22, Block 60, Canal Street, foot of Grove Street in said Jersey City, and for such other relief in aid of the appeal taken by the defendants to this Court; 10

And, take further notice in making application we will urge that defendants will lose the benefit of any appeal if the prosecutor is permitted to erect the coal pockets before the New Jersey Court of Errors and Appeals determines and decides the appeal.

THOMAS J. BROGAN,
Attorney for Defendants.

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**Rule Denying Motion for Stay Pending
Appeal.**

(Filed February 9, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor-Respondent,

v.

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THE MAYOR AND ALDERMEN OF
JERSEY CITY; FRANK HAGUE, AR-
THUR POTTERTON, JOHN J. BEG-
GANS, MICHAEL I. FAGEN and
WILLIAM B. QUINN, Board of
Commissioners of Jersey City;
EDWARD J. SPOERER, Superinten-
dent of Buildings, and EDWARD
HOLLAND, Clerk of the said
Mayor and Aldermen of Jersey
City,
Defendants-Appellants.

On Certiorari.

On Appeal from
Supreme Court.

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Notice of motion having been served on the prosecutor-respondent by the defendants-appellants for an order staying the judgment of the Supreme Court from which the appeal has been taken, and the motion having been duly argued before the Court on February 8, 1929, by Charles Hershenstein, Esq., of counsel with the defendants-appellants, for the motion, and Edward A. Markley, Esq., for the prosecutor-respondent, *contra*, and the Court having duly considered the motion;

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Rule Denying Motion for Stay Pending Appeal.

It is on this eighth day of February, 1929, ORDERED that the said motion be and the same hereby is denied with costs.

Rule actually entered this 9th day of February, 1929, on motion of

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COLLINS & CORBIN,
Attorneys of Prosecutor-Respondent.

A True Copy.

JOSEPH B. FITZPATRICK,
Clerk.

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New Jersey Court of Errors and Appeals

LEHIGH VALLEY RAILROAD COM-
PANY, a corporation,
Prosecutor-Appellee,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY; FRANK HAGUE,
ARTHUR POTTERTON, JOHN J.
BEGGANS, MICHAEL I. FAGEN and
WILLIAM B. QUINN, Board of
Commissioners of Jersey City;
EDWARD J. SPOERER, Superin-
tendent of Buildings, and
EDWARD HOLLAND, Clerk of the
said Mayor and Aldermen of
Jersey City,

Defendants-Appellants.

On Certiorari.

On Appeal from
Supreme Court.

BRIEF OF DEFENDANTS-APPELLANTS.

This is an appeal from the judgment entered in the Supreme Court directing that the resolution passed by the Board of Commissioners of Jersey City bearing date December 18th, 1928, revoking the building permit granted to the Lehigh Valley Railroad Company, whom we will refer to hereafter as the prosecutor, for the erection of two buildings known as coal pockets on Canal Street at the foot of Grove Street in Jersey City, be set aside and reversed. Upon the filing of this appeal, the defendants made an application for a stay pending appeal, but the motion was denied and the prosecutor proceeded with the work under the permit granted to it.

Facts.

The prosecutor made application on October 30, 1928, to the Superintendent of Buildings of Jersey City for a permit to erect two buildings, commonly known as coal pockets, at the foot of Grove Street in Jersey City, the coal pockets to extend both north and south of Grove Street and a portion of the buildings would be erected directly in the rear of residences now built upon Grove Street. The Superintendent of Buildings approved the plans structurally and reported to the City Commissioners that he had approved the plans as presented, and the City Commissioners, on November 5th, 1928, by a blanket resolution presented by the Superintendent of Buildings directed a permit to issue to the prosecutor. There were about fifteen names included in this blanket resolution to whom permits were granted, among which names is to be found that of the prosecutor, the Lehigh Valley Railroad Company (Case, p. 15, lines 30-40).

Thereupon the Superintendent of Buildings on November 19, 1928, granted a permit for the erection and construction of the coal pockets. As soon as work was commenced upon these buildings a protest was filed with the City Commissioners by almost every resident and real estate owner in that particular locality alleging that the erection of these coal pockets would be detrimental to the health and welfare of that community by reason of the dust, attending noise and constant hauling of coal from the coal pockets which would be loaded upon trucks in the vicinity of the contemplated pockets (Case, p. 18, lines 18-35).

Thereupon the City Commissioners ordered a public hearing to be had pursuant to the ordinance passed June 3, 1924, and entitled:

“An ordinance to regulate the erection and alteration of all buildings and structures to be used or designed to be used for any purpose other than as residences or for living apartments” (Exhibit D-1).

This ordinance has been before this Court upon many occasions and has been uniformly upheld as vesting in the City Commissioners the right to determine whether or not the erection of any structure other than a residential building will or will not jeopardize life, limb or public health, or will or will not increase the fire hazard, and after this determination to either grant or withhold the granting of a permit.

At the hearing which was held on December 18, 1928, after due notice to the prosecutor, a great number of people were present including two priests representing over fifteen hundred parishioners, who objected to the granting of the permit to the prosecutor because of its resultant detriment to the lives, health and well-being of their parishioners (Case, p. 19, lines 1-25). A full and impartial hearing took place at which the prosecutor's attorneys and representatives were heard and after due consideration of the entire matter, the City Commissioners by resolution (Exhibit P-5, Case, p. 68) found as a fact that the erection of these coal pockets would be detrimental to the general welfare of the community and directed the permit heretofore issued to be revoked. Depositions were taken pursuant to the order of the Court in the certiorari proceedings, which discloses that the resolution of November 5, 1928, directing the permit to issue included the name of the prosecutor through error because of the fact that no public hearing was had upon the application by the City Commissioners pursuant to the ordinance hereinabove referred to, and the

application was not referred to the City Commissioners for hearing thereon before the permit was granted (Case, p. 49, lines 30-40).

The Supreme Court in its opinion held that the fire hazard ordinance does not provide for a public hearing such as is contended by the defendants is necessary before the granting of a permit, and it further decided that the application having initially been made to the Board of Commissioners and by that body referred to the Superintendent of Buildings and by that officer subsequently included with others in the resolution of the Commissioners directing the issuance of the permit, does not present any element of error, and the report by the Superintendent to the Board of Commissioners with a resolution directing the issuance of the permit *sub judice* is a compliance with the language of the fire hazard ordinance that the Board of Commissioners be given an opportunity to inspect or cause to be inspected the premises in question.

We respectfully submit that it has already been decided by the Supreme Court under a similar state of facts that the inclusion of a permit in a blanket resolution where no hearing was held thereon, does present a question of error which it is within the province of the City Commissioners to correct by revoking the permit, after the Commissioners have found as a fact that the granting of the same would jeopardize the lives and general welfare of the community.

POINT I.

It is within the province of the City Commissioners to correct an error by revoking the permit, having found as a fact that the granting of the same jeopardizes the life and general welfare of the community.

The fire hazard ordinance, as is set out in Case, page 71, has been sustained by this Court in a number of cases, chief of which are:

Caldwell v. Jersey City, 5 Misc. 165; 135 Atl. 691;

Freeman v. Hague, Opinion, Case No. 228, October Term, 1928, not yet officially reported.

The section of the ordinance applicable to a determination of the question presented in this case is Section 3 of the ordinance, which reads as follows:

“SECTION 3.—After the Board of Commissioners has inspected or has caused to be inspected the premises mentioned in the applications filed, and if the statements set forth in the applications are found to be true and the judgment of the majority of the Board of Commissioners is that if permission is granted same will not jeopardize life, limb or public health and will not increase the fire hazard in the locality where the proposed erection or alteration is to be made, the Board shall have the power to direct the Building Department to issue all necessary building permits to perform such work as set out in the applications filed with the City Clerk for the Board of Commissioners and with the Building Department.”

It is to be noted that this provision of the ordinance provides for a determination of the fact, *viz.*, "if permission is granted same will not jeopardize life, limb or public health or will not increase the fire hazard."

The facts in the case *sub judice* are analogous to the facts as presented and determined by this Court in the case of *Freeman v. Hague, supra*. In this case as in the *Freeman* case the Building Department presented to the Board of Commissioners a blanket resolution containing a number of names to whom permits should be issued which is the general practice where there is no question that a permit should be granted. All permits are granted by direction of the Board of Commissioners and for that reason a resolution by the Board of Commissioners is necessary before the Superintendent of Buildings issues any permits, but all applications dealing with buildings other than those to be used for residential purposes must go before the Board of Commissioners for a hearing thereon and it is not until the Board of Commissioners makes a determination as to whether or not the application will or will not jeopardize life, limb or public health and will or will not increase the fire hazard in the locality of the contemplated building, that a permit is either granted or denied. It was, therefore, an error to have included the name of the prosecutor in the resolution of November 5, 1928, for no hearing was had up to that time before the City Commission upon this application.

The facts which were developed at the hearing resulted in the passage of the resolution of December 18th, 1928, under review, which rescinded the permit.

In this case, as well as in the *Freeman* case, the work had been commenced and stopped. In view of the fact that the *Freeman* decision has not as yet been officially reported, we quote from the opinion:

"The facts out of which the controversy arose are these: the Board of Commissioners passed a blanket resolution on December 13th, 1927, concurring in the recommendation of the Superintendent of Buildings; 'as per the attached list of applications for building permit'; that permission 'be granted to the following applicants to do such work' &c. This was done apparently, because these enumerated applications on their face seem to be the type that would not require a public hearing. This application was erroneously included in the recommendation of the Building Department.

"After the permit had been issued, a petition signed by thirty-eight of the property owners or residents in the vicinity, *i. e.*, on Clerk Street, between Carteret and Claremont Avenues opposed the construction of the building or garage. The Board of Commissioners ordered a public hearing to be held.

"The prosecutor was notified to appear at the meeting of the City Commissioners to be held on April 10th, 1928, for the consideration of the matter of revoking the permit. Record p. 21. The work was commenced about April 2nd, 1928; on April 6th, work was stopped. The facts that developed at the hearing resulted in the passage of the resolution under review rescinding the permit. Record p. 13.

"The resolution rescinding the permit recites that an investigation by the Commission discloses the fact that the permit was erroneously granted in violation of the ordinance passed June 3rd, 1924. The only question involved in the case is, whether the City Commission had the power and a right to rescind the permit under the ordinance passed June 3rd, 1924.

“The title of the ordinance is, ‘An ordinance to regulate the erection and alteration of all buildings and structures to be used or designed to be used for any purpose other than as residences or for living apartments.’ The third section provides ‘after the Board of Commissioners has inspected or has caused to be inspected the premises mentioned in the application filed,’ &c. This, as stated above, through an error, was not done. It also provided ‘that if permission is granted same will not jeopardize life, limb or public health and will not increase the fire hazard in the locality,’ &c. ‘The Board shall have the power to direct the Building Department to issue all necessary building permits’ &c. The prosecutor argues, that under the ordinance, the Board of Commissioners had no power to revoke the permit.

“It seems to us, that under the facts as stated above, the Board of Commissioners had an implied power to revoke what had been granted through a mistake and to correct the error. The case of *Citizens Holding Co. v. The Board of Adjustment of the City of Newark*, No. 249, the present October Term of the Supreme Court, is distinguished from this on the facts.

“The resolution dated April 10th, 1928, by the Board of Commissioners of Jersey City, rescinding a permit theretofore issued by Edward J. Spoerer is affirmed and the writ of certiorari is dismissed.”

Had a public hearing been had upon this application prior to the passage of the resolution of November 5th, 1928, there is no doubt but that the action of the City Commissioners would have resulted in a denial of the application. The prosecutor is bound by the ordinances of Jersey City and is presumed to have knowledge of their existence and if, with such knowledge, it accepts a permit from the Superintendent of Buildings upon an application such as is now before this

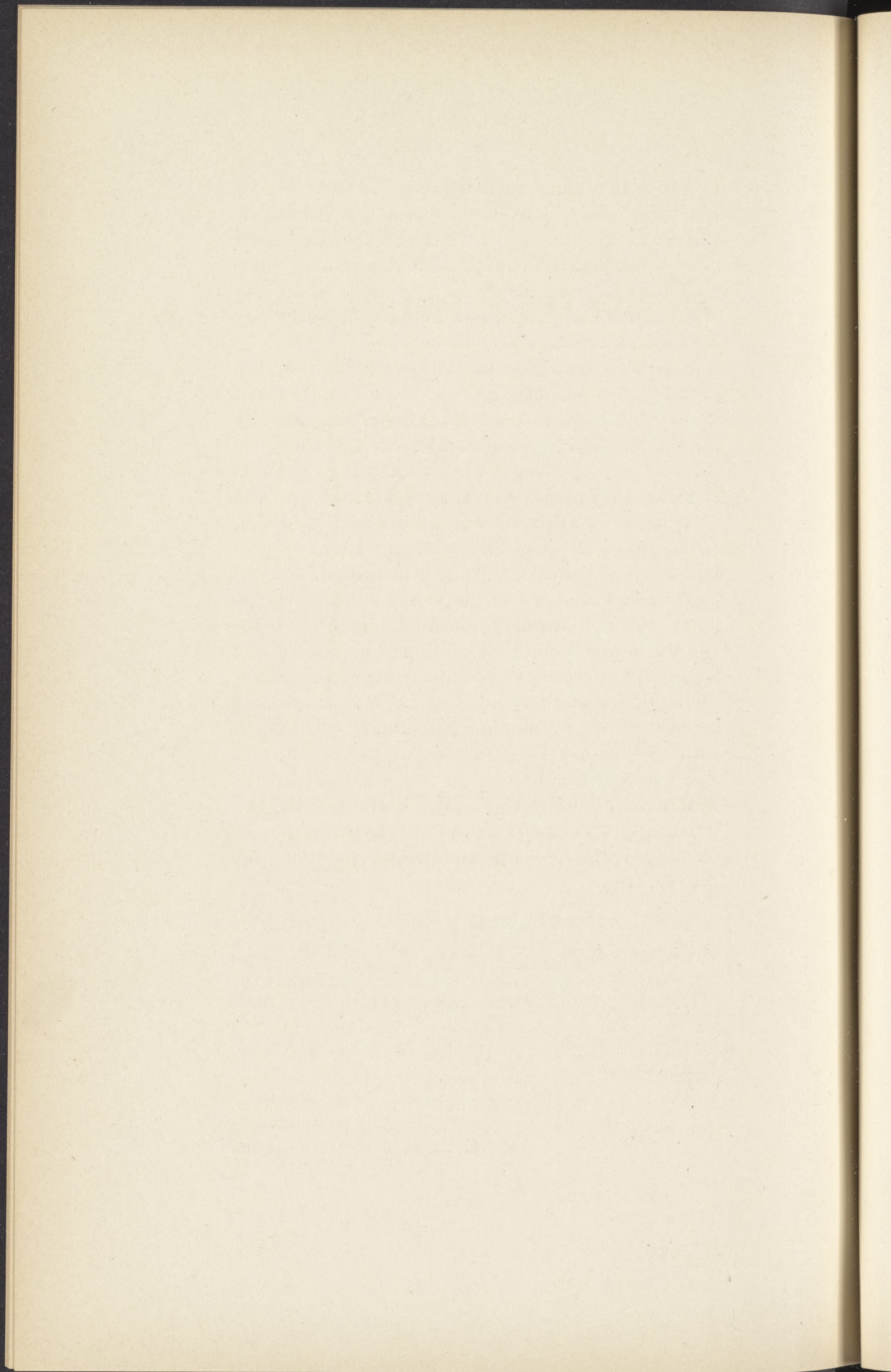
Court, without having first brought the matter of the application to the attention of the Board of Commissioners so that a full, fair and impartial hearing may be had thereon, it cannot now complain it has been damaged by reason of having acted under the permit and had expended money because of the same.

It is true that the Courts have held that the granting of a permit creates a vested right in those who accept the same, but that rule of law must be limited in view of the decision in the *Freeman* case to those applicants who procure their permits in the regular, legal and orderly manner and not through error on the part of those who grant them.

We, therefore, respectfully submit that this permit, having been granted through error inasmuch as the name of the Lehigh Valley Railroad Company, the prosecutor, should not have been included in the blanket resolution prepared by the Building Department without a determination having first been made by the Board of Commissioners as to whether or not the granting of the permit "will jeopardize life, limb or public health and will increase the fire hazard," the said Board of Commissioners of Jersey City are empowered and have a right to revoke the permit by virtue of the ordinance which was passed and adopted on June 3rd, 1924.

We therefore submit that the judgment of the Supreme Court is erroneous and that the resolution of the Board of Commissioners of December 18th, 1928, rescinding the permit should be affirmed and the writ of certiorari dismissed.

THOMAS J. BROGAN and
CHARLES HERSHENSTEIN,
Of Counsel with Defendants.



New Jersey Court of Errors and Appeals

LEHIGH VALLEY RAILROAD COMPANY,
a corporation,
Prosecutor-Respondent,

v.

THE MAYOR AND ALDERMEN OF JERSEY
CITY; FRANK HAGUE, ARTHUR POTTER-
TON, JOHN J. BEGGANS, MICHAEL I.
FAGEN and WILLIAM B. QUINN, Board
of Commissioners of Jersey City;
EDWARD J. SPOERER, Superintendent
of Buildings, and EDWARD HOLLAND,
Clerk of the said Mayor and Alder-
men of Jersey City,
Defendants-Appellants.

On
Certiorari.

BRIEF IN BEHALF OF THE LEHIGH VALLEY RAILROAD COMPANY, PROSECUTOR-RESPONDENT.

1.

Statement of the Case.

The appeal in this case brings before this Court for review a judgment of the Supreme Court reversing a resolution of the Board of Commissioners of Jersey City which revoked a previous resolution of that Board granting a permit for the erection of two buildings, known as coal pockets and

trestle, the cost of which was \$262,000 (p. 80). The resolution of revocation was passed after the prosecutor-respondent had expended a large sum of money and had proceeded with the construction work under the resolution granting the permit. The prosecutor, therefore, had a vested right in the permit which under the authorities could not be taken away by a subsequent resolution. Since the brief for the prosecutor-respondent in the Supreme Court fully covers the point involved as well as the facts, we shall hereinafter repeat it verbatim.

The certiorari was argued in the Supreme Court before Justices MINTURN, BLACK and CAMPBELL. Because of the importance of the matter involved and the fact that construction work was stopped on buildings costing approximately \$300,000 by reason of the resolution revoking the building permit, the Supreme Court was asked for a prompt decision. The writ was argued on January 16, 1929, and the decision was rendered in favor of the prosecutor on January 31, 1929 (p. 76). After the decision was rendered, the appellants took the appeal to this Court and moved at the last term of this Court for a stay of the work pending the appeal. The motion (p. 82) for a stay was argued before this Court on February 8, 1929, and the motion was denied (p. 84). The reasons urged for the denial of the motion were as follows:

An appeal from a judgment of the Supreme Court on a certiorari does not act as a stay. The appeal is like a writ of error under the old practice.

McMichael v. Barefoot, 85 N. J. E. 139, 142;
Handwerk v. Guttenberg, 92 N. J. L. 181.

The party appealing who seeks a stay pending appeal must have at least an arguable case and if

he has not, his appeal is sham and frivolous and may be dismissed for that reason and the stay denied. An appellate court has the inherent power to dismiss an appeal which is manifestly and palpably frivolous and without merit. This power is necessary in order to prevent the court itself from being imposed upon and the administration of justice being trifled with and perverted for mere purposes of delay.

McMichael v. Barefoot, 85 N. J. E. 139, 142;
2 Comp. Stat. 2212, Sec. 20.

In the case at bar the respondent, Jersey City, after investigation by its building department, passed a resolution on November 5th, 1928, granting a permit for the construction on the prosecutor's property of coal pockets and a coal trestle costing \$262,000.

This permit was revoked by Jersey City by resolution on December 18th, 1928.

During the month and a half that elapsed the prosecutor obligated itself by contracts for \$292,000 and actually proceeded with the work and incurred an expense in the prosecution of the work of over \$10,000. In preparation for the work an additional \$100,000 was incurred. This preparation consisted of having the materials moved by rail to the scene of the work and the purchasing of the material necessary to build the structures.

The writ of certiorari was granted by the Supreme Court on December 21st, 1928; it was argued on January 16th, 1929, and decided on January 31st, 1929. Upon the decision of the case by the Supreme Court the work was again proceeded with so that the buildings are now partly up. The law is settled by repeated decisions that the prosecutor acquired a vested right in the permit which could not be taken from it and even if the permit

were invalid, which we deny strenuously, it was not for the municipality to pass judgment upon its own act.

- Hudson Telephone Co. v. Jersey City*, 49 N. J. L. 303;
Decker v. Elizabeth, 57 N. J. L. 603;
Phillipsburg Electric Co. v. Phillipsburg, 66 N. J. L. 505;
Vanaman v. Adams, 74 N. J. L. 125;
Stemmler v. Madison, 82 N. J. L. 596, 597;
Montefiore Cemetery Co. v. Newark, 130 Atl. 730; 3 N. J. Misc. 1100 (not yet officially reported);
Peerless Oil Co. v. Hague, 132 Atl. 332; 4 N. J. Misc. 148 (not yet officially reported);
Rockland Electric Co. v. Montvale, 141 Atl. 673 (not yet officially reported);
East Orange v. Suburban Electric Light Co., 59 N. J. E. 563, 568;
Asbury Park Ry. Co. v. Neptune Township, 73 N. J. E. 323, 331, 332;
Public Service Co. v. Westfield, 80 N. J. E. 295, 301;
Public Service Ry. Co. v. Hudson & Essex Freeholders, 85 N. J. E. 290, 294.

There is no decision to the contrary. This appeal is utterly devoid of merit and the case is not even arguable. The stay should therefore be denied. Further, the inherent power of this Court to dismiss this appeal should be exercised. This vexatious litigation is entirely unlawful and the prosecutor is suffering tremendous expense as a result.

Notwithstanding the denial by this Court of the motion for a stay, the defendants-appellants have persisted in prosecuting the appeal. It is need-

less to say that the question involved, if there is any merit to the appellants' contention, is merely academic.

Counsel for the appellants in his brief has made a statement, "As soon as work was commenced upon these buildings, a protest was filed with the City Commissioners by almost every resident and real estate owner in that particular locality alleging that the erection of these coal pockets would be detrimental to the health and welfare of that community by reason of the dust, attending noise and constant hauling of coal from the coal pockets which would be loaded upon trucks in the vicinity of the contemplated pockets." If the reference given for this statement of fact is examined (Case, p. 18, lines 18-35) it will be found that what really appears in that reference is that there were twelve or fifteen persons present in favor of the permit at the time it was revoked, while there were thirty present who opposed the permit. However, not one of the thirty had the nerve to come into this proceeding as a witness and testify that the coal pockets were in any way detrimental to health. The record will be examined in vain for any such testimony by any property owner on the street, whereas there were a number who testified that the coal pockets and trestle were of ultra-modern construction and entirely enclosed (as will appear from the exhibit of the blue-prints annexed to the state of case).

Furthermore, it will be found that these coal pockets and trestle are being constructed on what was formerly the bed of the Morris Canal between Henderson Street and Jersey Avenue, south on what is known as Canal Street. This neighborhood is and always has been a railroad and manufacturing neighborhood. Numerous industries are located in the immediate vicinity of these coal

pockets. A number of the residences are old and dilapidated and deserted and that condition has existed for years.

2.

The brief in the Supreme Court is as follows:

NEW JERSEY SUPREME COURT

LEHIGH VALLEY RAILROAD COMPANY, a corporation,
Prosecutor,

v.

THE MAYOR AND ALDERMEN OF JERSEY CITY; FRANK HAGUE, ARTHUR POTTERTON, JOHN J. BEGGANS, MICHAEL I. FAGEN and WILLIAM B. QUINN, Board of Commissioners of Jersey City; EDWARD J. SPOERER, Superintendent of Buildings, and EDWARD HOLLAND, Clerk of the said The Mayor and Aldermen of Jersey City,
Defendants.

} On Certiorari.

BRIEF IN BEHALF OF THE PROSECUTOR.

(1)

Statement of the Case.

This certiorari brings up for review a resolution of the Board of Commissioners of Jersey City adopted on December 18, 1928, revoking a building permit known as 37361, in favor of the prosecutor, dated November 19, 1928, for the erection of two buildings known as coal pockets and trestle, together with all matters and proceedings

of the said Board of Commissioners touching and concerning the same. This resolution of revocation was adopted approximately a month and a half after the granting of the permit, grant thereof having been by resolution of the Board of Commissioners of Jersey City dated November 5, 1928. The cost of erection and construction of the coal pockets and trestle is \$262,000 and the coal pockets are to cover an area of approximately 337 feet in length and 37 feet in width. The trestle is of a length of approximately 525 feet. This structure is to be placed on the bed of the old Morris Canal which ran through Jersey City south of Grand Street. Grand Street runs generally east and west and this structure is to be a short block south of Grand Street and south of what is known as Canal Street between Henderson Street and Jersey Avenue. This area is in the industrial zone of Jersey City which is the zone in which such structures should be placed under the zoning ordinance of Jersey City. Furthermore, this location consists of nothing but factories and railroads and a few old tumble-down dwellings, most of which are either to let or for sale. The testimony of the witnesses Ringle, Dalton and Feingold, none of whom is connected in any way with the prosecutor, shows clearly that this structure will enhance the value of the property in the neighborhood where it is to be located, and, as a matter of fact, according to Mr. Dalton, there were coal pockets and trestles located on this particular site or in the immediate vicinity thereof for many years last past, but those coal pockets were the old-fashioned, open construction type, whereas it will be perceived from the testimony of the chief engineer of the prosecutor, Mr. Hand, as well as from the testimony of the witness Dalton, that the proposed structure is ultra-modern in every respect and is an enclosed coal pocket building made of fireproof concrete, as also appears from the Exhibits P-7 and 8, which are blueprints showing a cross-section and side view of the proposed concrete coal pockets. In short, instead of being a detriment, these coal pockets would be an advantage and would tend to increase the values of the real estate in that vicinity. The testimony of Mr. Broadhurst shows that the only reason for revoking the permit which had been duly granted was that the coal pockets might cause the residents of this industrial neighborhood some inconvenience and possibly disturb their peace and quiet (see also Exhibit P-5; Resolution of Revocation).

As a matter of fact, the testimony indicates that there would be no more noise than is now experienced from the operation of the railroads and factories in the immediate vicinity of this property and within a few feet thereof, and that so far as dust is concerned there would be practically no dust since the entire structure is enclosed, and, according to Exhibit P-8, dust bins are provided within the enclosed buildings to take care of any dust (see Exhibit P-8).

These objections, therefore, are not real ones but merely supposititious in their nature. No testimony has been offered by the defendants to prove that they would in fact exist. However, even if they did, we intend to show that they are not good grounds to be urged in support of the resolution of revocation.

(2)

The Law.

The prosecutor acquired vested rights in the permit and the resolution granting the permit which could not be taken from it.

As shown in the statement of the case, the permit was granted by resolution of the Board of Commissioners of Jersey City on November 5, 1928. The permit itself was issued on November 19, 1928. A month later comes the resolution of revocation on December 18, 1928. In the meantime, the prosecutor expended large sums of money and incurred additional expenditure of even greater sums and had proceeded with the work of construction. The testimony of Mr. Broadhurst contains the facts with respect to this change of position of the prosecutor by reason of the issuance and acceptance of the permit. A contract was made by the prosecutor with the Raymond Concrete Pile Company whereby that company was to furnish all of the tools, labor and materials and drive standard Raymond concrete piles and perform all of the other work for the purpose of laying the foundations of the buildings at a cost of \$30,060. In pursuance of that contract and prior to the revocation of the permit, excavation work was done covering an area upon which the buildings were to rest of 37 feet by 337 feet to a depth of 10 to 15 feet. Also, three

railroad freight cars of material and equipment had been transported to Jersey City for the purpose of proceeding with that work and other work. An expense of approximately \$3,000 was incurred for excavation alone.

In addition, other contracts were made and the prosecutor obligated thereby to an expenditure of large sums of money. For instance, a contract was made with Henry Steers Company on November 26, 1928, for the construction and erection of the concrete coal trestle and pockets for the sum of \$228,205. Under this contract the prosecutor obligated itself to pay that sum to the Henry Steers Company and is liable in damages for a very substantial sum as the profits on that contract to be made by the said Henry Steers Company in the event that performance thereof is rendered impossible by the revocation of this permit.

The Raymond Concrete Pile Company has subcontracted various parts of its contract to subcontractors. For instance, there is a subcontract between the Raymond Concrete Pile Company and the International Excavating Company under date of November 26, 1928, whereby the Raymond Concrete Pile Company is obligated to pay \$7,200, and still another contract with the James Mitchell Company whereby the Raymond Concrete Pile Company is obligated to pay \$19,871.90. These contracts cannot be unravelled or rescinded and in each instance there is liability for damages in the event that the contracts are not performed on the part of the prosecutor and its immediate contractors.

The law is settled that the prosecutor acquired vested rights under this permit which cannot be taken from it, and even if the permit were invalid, which we deny most strenuously, it was not for the municipality to pass judgment upon its own act. This is clearly established by all of the cases.

Hudson Telephone Co. v. Jersey City, 49 N. J. L. 303;

Decker v. Elizabeth, 57 N. J. L. 603;

Phillipsburg Electric Co. v. Phillipsburg, 66 N. J. L. 505;

Vanaman v. Adams, 74 N. J. L. 125;

Montefiore Cemetery Co. v. Newark, 130 Atl. 730; 3 N. J. Misc. 1100 (not yet officially reported);

Peerless Oil Co. v. Hague, 132 Atl. 332; 4 N. J. Misc. 148 (not yet officially reported);
Rockland Electric Co. v. Montvale, 141 Atl. 673
 (not yet officially reported).

We shall give quotations from two of the foregoing cases for the purpose of indicating how well settled the rule is upon which we rely.

In *Montefiore Cemetery Co. v. Newark*, *supra*, this Court held as follows (*italics ours*):

“The certiorari in this case was issued to review the legality of a resolution of the Newark board of commissioners rescinding a cemetery permit previously granted to one Adas Israel, from whom by assignment the prosecutor claims title and the right to operate a cemetery. *The permit itself was granted on April 11th, 1922, and the rescinding resolution was passed on April 18th, 1923, the prosecutor in the meantime having made purchases of land and incurred expenses in availing itself of the benefits of the permit.*

“It is contended by the defendants that the original resolution granting the permit was invalid, for the reasons that no written application for the permit had been presented or filed; that no map was filed with the city clerk; that the original permit should have been by ordinance; that the permit violated a zoning ordinance in Newark; that it was contrary to an ordinance prohibiting burials and cemeteries within city limits, and, finally, that the cemetery company, being organized under the General Incorporation Act, was incompetent to receive the permit.

“It seems to us clear that none of these reasons avail the defendants. They all pertain to conditions anterior to the passage of the original resolution, none of which indicate fraud in procuring the permit. *The prosecutor, if the permit was valid, acquired vested rights thereunder which could not be taken from it. Hudson Telephone Co. v. Jersey City*, 49 N. J. L. 303; *Phillipsburg Electric Co. v. Phillipsburg*, 66 *Id.* 505; and, even if invalid, it was not for the municipality to pass in judgment upon its own act. This is clearly established by our cases, such as *Phillipsburg Electric Co. v. Phillipsburg*, *supra*; *Decker v. Elizabeth*, 57 *Id.* 603, and *Vanaman v. Adams*, 74 *Id.* 125.

If the grant was, in the first place, wrongful, this could be reviewed and determined in a direct attack upon that proceeding only before some competent tribunal; it was not open to the commissioners in this summary fashion, with or without notice, to recall their earlier action.

"The validity of the original resolution is not before us on this writ, and we have therefore not given it consideration.

"The repealing resolution, for the reasons stated, will be set aside."

In *Peerless Oil Co. v. Hague, supra*, we have a case directly in point, resulting from the revocation of another permit by the Board of Commissioners of Jersey City. In that case this Court held (*italics ours*):

"From a stipulation of facts it appears that the Peerless Oil Company, the relator, is the lessee of a vacant lot of ground at the northeast corner of the Hudson Boulevard and Pavonia Avenue, in Jersey City, under a lease for five years; that it made application to the zoning commission of that city for permission to erect a motor vehicle service station on the lot thus leased; that the application and accompanying plans and specifications were in conformity with the regulations of the department and with the law of the state; that the application was approved on June 2d, 1925, by the commission, and that a permit was issued to the relator by the building department of the city; that the relator then engaged a contractor to build the station and that work had actually been begun under the permit; that by reason of protests from residents of the neighborhood the contractor was prohibited by the police department from proceeding with the work, and that, finally, on July 7th, 1925, the permit was revoked by formal resolution of the commission.

"On these facts a rule was granted to the relator to show cause before this court why a peremptory or alternative writ of mandamus should not issue to compel the respondents to issue to it a new permit, or to renew the old permit to construct and operate the motor vehicle service station at the place named.

"It is clear that the relief desired by the relator cannot be accorded. The permit already granted was

still existent and was either valid or invalid. *If valid the commission could not revoke it after acceptance and the expenditure of money upon it; and even if invalid by reason of anything but fraud in its procuring or of statutory prohibition, the commission was not the tribunal to pass upon such invalidity.* *Montefiore Cemetery Co. v. Newark*, 3 N. J. Mis. R. 1104, and cases there cited."

For these reasons we respectfully submit that the resolution adopted by the Board of Commissioners, the Mayor and Aldermen of Jersey City, dated December 18th, 1928, revoking permit known as permit #37361, should be set aside and for nothing holden.

Submitted January Term, 1929.

Respectfully submitted,

EDWARD A. MARKLEY,
CHARLES W. BROADHURST,
Of Counsel.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Reply to Brief of Defendants.

The sole reliance of the defendants is on the case of *Freeman v. Hague*, No. 228, October Term 1928, not reported. This case is not in point. We have examined the record and find that the permit was erroneously granted. The record in that case discloses that the resolution of revocation was put on the ground that the permit for the erection of the garage was erroneously granted in violation of the city ordinance relating to the erection and alteration of buildings, and also it was in violation of the zoning ordinance of Jersey City (see p. 13 of State of Case, *Freeman v. Hague*). The testimony in the case shows that the permit was granted through an error of the building department in permitting a permit to go out in violation of the zoning ordinance (p. 35 of Record in *Freeman* case, lines 20-40; p. 36, lines 1-15). In the case at bar there was no such error. The permit was not in

violation of any ordinance but was strictly in accordance with the provisions of the zoning ordinance which the record concedes placed the location of these coal pockets in the industrial zone in which the coal pockets should be erected. In short, the permit for these coal pockets comes strictly within the letter of the building and zoning ordinances (p. 13, lines 10-20).

Furthermore, no real expense was incurred in the *Freeman* case, whereas in the case at bar, on the strength of the permit, the prosecutor incurred upwards of \$200,000 of expenses and had actually proceeded with the work for the erection of the coal pockets as shown in the brief proper. The permit was granted in that case on April 2 and the work stopped four days later, on April 6, when practically nothing had been done. It is therefore clear that no great harm was done to the prosecutor, whereas here, under the cases cited in our main brief, the prosecutor has obtained a vested right in the permit (which was legally issued and does not violate any law or ordinance) which cannot be taken from it by the whim or fancy of the city commissioners.

3.

CONCLUSION.

For these reasons we respectfully submit the judgment in the Supreme Court should be affirmed, with costs.

Submitted May Term, 1929.

Respectfully submitted,

EDWARD A. MARKLEY,
CHARLES W. BROADHURST,
Of Counsel.

COLLINS & CORBIN,
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