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CLACKAMAS, OREGON 97015

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ANNOTATED MINUTES

Tuesday, September 1, 1992 - 8:30 AM
Multnomah County Courthouse, Room 602

EXECUTIVE SESSION

- E-1 *The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(e), in Order to Discuss the Operational and Financial Aspects of a Proposed Purchase of Real Property by Multnomah County.*

CANCELLED.

Tuesday, September 1, 1992 - 9:30 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 *Discussion of Audit Entitled "MANAGEMENT OF FELONS: IMPROVE SENTENCING PRACTICES". Presented by Multnomah County Auditor Gary Blackmer.*

GARY BLACKMER INTRODUCED AUDITORS JUDITH DeVILLIERS AND SUZANNE FLYNN AND ACKNOWLEDGED THEIR EFFORTS WITH THE AUDIT. MR. BLACKMER PRESENTATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER ANDERSON ADVISED SHE WILL SUBMIT A MEMORANDUM WITH ADDITIONAL QUESTIONS AND REQUESTED THAT ANOTHER BRIEFING BE SCHEDULED IN ONE MONTH TO DISCUSS POSSIBLE REMEDIES, ATTENDED BY A JUDGE AND DISTRICT ATTORNEY, SHERIFF AND COMMUNITY CORRECTIONS STAFF.

- B-2 *Discussion of Columbia Villa Community Service Project Representatives' Participation in the Moral Rearmament Conference in Caux, Switzerland. Presented by Project Director Fred Milton and Villa Residents Tina Stalling and Ruby Foust.*

NORM MONROE, FRED MILTON, RUBY FOUST, TINA STALLING AND MICHAEL HENDERSON PRESENTATION AND RESPONSE TO BOARD QUESTIONS. MR. MILTON TO INVITE THE BOARD TO AN UPCOMING VILLA COMMUNITY LUNCHEON.

- B-3 *General Overview of Multnomah County Weatherization Program Operations, Accomplishments and 1993 Fiscal Year Goals. Presented by Program Staff Rey Espana and Tom Brodbeck.*

NORM MONROE, REY ESPANA AND TOM BRODBECK PRESENTATION AND RESPONSE TO BOARD QUESTIONS.

B-4 *Multnomah County Homeless Families Program Briefing and Update on Current Grant Initiatives and First Year Results of the Robert Wood Johnson Foundation Homeless Families Program. Presented by Project Director Paula Corey.*

**NORM MONROE AND PAULA COREY PRESENTATION AND
RESPONSE TO BOARD QUESTIONS.**

*Tuesday, September 1, 1992 - 10:45 AM
Multnomah County Courthouse, Room 602*

AGENDA REVIEW

B-5 *Review of Agenda for Regular Meeting of September 3, 1992.*

*Tuesday, September 1, 1992
1:30 PM TO NO LATER THAN 5:00 PM
Multnomah County Courthouse, Room 602*

PUBLIC HEARING

Chair Gladys McCoy convened the hearing at 1:33 p.m., with Commissioners Pauline Anderson and Gary Hansen present, and Vice-Chair Sharron Kelley and Commissioner Rick Bauman excused.

P-1 *Quasi-Judicial Hearing Followed by Board Deliberations and Order in the Matter of a Petition for Establishing a Way of Necessity for Property Described as Tax Lot 17, Located in the N.E. 1/4 of Section 6, T2N, R1W, W.M. and in the Alexander McQuinn D.L.C., Multnomah County, Oregon, Filed by the McQuinn Family Pioneer Cemetery Association, an Oregon Non-Profit Corporation. (Case No. 92-51C).*

TESTIMONY, REBUTTAL AND RESPONSE TO BOARD QUESTIONS FROM COUNTY COUNSEL JACQUELINE WEBER, SURVEYOR DENNIS FANTZ, PETITIONERS' ATTORNEY LISA KOLVE, McQUINN FAMILY PIONEER CEMETERY ASSOCIATION PRESIDENT MAXINE DAILY AND RESPONDENTS' ATTORNEY JOHN SHONKWILER.

MS. KOLVE DISCUSSED PETITIONERS' OWNERSHIP INTEREST IN THE PROPERTY AS EVIDENCED BY A DEED FROM THE UNITED STATES TO THE McQUINNS GRANTING THE CEMETERY TO THE McQUINNS AND THEIR HEIRS FOREVER, WHICH RIGHT WAS NEVER TRANSFERRED. MS. KOLVE ADVISED THEY ARE REQUESTING PUBLIC ROAD ACCESS TO THE CEMETERY IN THE LEAST DISRUPTIVE MANNER POSSIBLE WITH NO OR MINIMAL COMPENSATION TO RESPONDENTS.

MR. SHONKWILER SUBMITTED 4 EXHIBITS INTO THE

RECORD AND REQUESTED THAT THE BOARD MAKE A DETERMINATION THAT PETITIONERS FAILED TO PROVE STANDING TO FILE FOR A WAY OF NECESSITY AND/OR THAT THE PETITION SHOULD BE DENIED BECAUSE RESPONDENTS HAVE ADVERSE POSSESSORY RIGHT OF THE PROPERTY AS EVIDENCED BY DEED AND THAT PETITIONERS HAVE NOT MET STATUTE REQUIREMENTS TO ALLEGE AN ELEMENT OF FAIR AND ADEQUATE COMPENSATION FOR THE PROPERTY.

MS. WEBER EXPLAINED THAT THE BOARD'S OPTIONS FOR MAKING A DETERMINATION IN THIS MATTER WOULD BE TO FIND THAT PETITIONERS SUBMITTED SUFFICIENT EVIDENCE TO PROVE OWNERSHIP OF THE CEMETERY PROPERTY AND DECIDE THE OTHER WAY OF NECESSITY ISSUES, OR FOR THE BOARD TO FIND IT DOES NOT HAVE SUFFICIENT EVIDENCE OF OWNERSHIP AND DISMISS THE PETITION DUE TO LACK OF STANDING, ADVISING THAT THEN EITHER PETITIONERS OR RESPONDENTS COULD APPEAL THAT DECISION TO CIRCUIT COURT. IN RESPONSE TO A QUESTION OF CHAIR McCOY, MS. WEBER EXPLAINED THE BOARD NEEDS TO DELIBERATE REGARDING THE ISSUES, REVIEW THE DOCUMENTS AND TESTIMONY, BE BRIEFED BY COUNTY COUNSEL ON THE LEGAL ISSUES PRESENTED AND THE VARIOUS FINDINGS THE BOARD HAS TO MAKE IN LEADING TO ITS DECISION. MS. WEBER ADVISED A WRITTEN ORDER OF THE BOARD'S DECISION MUST BE FILED AND THAT EITHER PARTY MAY APPEAL TO CIRCUIT COURT. IN RESPONSE TO A QUESTION, COUNTY COUNSEL MATTHEW RYAN CITED PIKE vs WILEY, 100 OR AP 120 (1990) (GRANT COUNTY), IN WHICH AN APPEAL WAS HEARD IN CIRCUIT COURT BY DE NOVO REVIEW.

IN REBUTTAL, MS. KOLVE REQUESTED THAT THE BOARD CONSIDER THE COUNTY ENGINEER'S 1989 ESTIMATION OF VALUE AT \$1,000 TO \$1,500 PER ACRE AS BEING MORE APPROPRIATE COMPENSATION THAT THE AMOUNT SUGGESTED IN RESPONDENTS' AFFIDAVIT.

IN RESPONSE TO A QUESTION, MS. WEBER ADVISED THAT ATTORNEYS FOR BOTH PARTIES DID NOT HAVE EX PARTE CONTACT WITH COUNTY COUNSEL, BUT PARTICIPATED IN A CONFERENCE CALL ON MONDAY IN AN ATTEMPT TO SHORTEN THE PROCESS AND RESOLVE SOME ISSUES PRIOR TO THE HEARING.

IN RESPONSE TO A QUESTION OF COMMISSIONER HANSEN, MS. WEBER ADVISED A DECISION WOULD

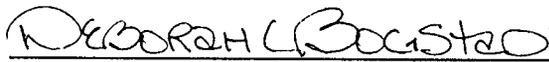
HAVE TO BE MADE BY A MAJORITY OF THE THREE COMMISSIONERS ATTENDING TODAY'S HEARING.

The hearing was recessed at 3:15 p.m. and reconvened at 3:25 p.m.

AFTER FURTHER DISCUSSION, CHAIR McCOY PROPOSED A 45 DAY CONTINUANCE IN ORDER FOR THE BOARD TO TAKE THE MATTER UNDER ADVISEMENT AND CONFER WITH COUNTY COUNSEL. THE HEARING WAS CLOSED WITH BOARD DETERMINATION TO BE MADE AT 1:30 PM ON TUESDAY, OCTOBER 20, 1992.

There being no further business, the hearing was adjourned at 3:39 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad

Thursday, September 3, 1992 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

Chair Gladys McCoy convened the meeting at 9:30 a.m., with Vice-Chair Sharron Kelley, Commissioners Pauline Anderson and Gary Hansen present, and Commissioner Rick Bauman excused.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSENT CALENDAR ITEM C-1 WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

C-1 *In the Matter of the Appointments Avel L. Gordly, Barbara Aho Grider, Myrthle B. Griffin, Gerald McFadden and Barry M. Maletzky to the MULTNOMAH COUNTY COMMUNITY CORRECTIONS ADVISORY COMMITTEE*

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 *PROCLAMATION in the Matter of Proclaiming the Week of September 6-11, 1992 as RETURN TO SCHOOL WEEK in Multnomah County, Oregon*

PROCLAMATION READ. COMMISSIONER KELLEY MOVED

AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-1. UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER KELLEY, AN AMENDMENT CHANGING "I" TO "WE" WAS UNANIMOUSLY APPROVED. PROCLAMATION 92-163 UNANIMOUSLY APPROVED AS AMENDED.

R-2 *RESOLUTION in the Matter of a Planning Process to Develop a Corrections Levy for March*

COMMISSIONER ANDERSON EXPLANATION. COMMISSIONER ANDERSON MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-2. BOARD DISCUSSION. RESOLUTION 92-164 UNANIMOUSLY APPROVED.

R-3 *Ratification of Intergovernmental Agreement Contract #500173 Between the City of Portland and Multnomah County, Providing Consolidation of the City of Portland Stores with Multnomah County Central Stores for the Purpose of Economic and Efficient Operations*

COMMISSIONER ANDERSON MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. LILLIE WALKER EXPLANATION. COMMISSIONER ANDERSON COMMENTS IN SUPPORT. AGREEMENT UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

R-9 *ORDER in the Matter of an Exemption to Waive the Competitive Bid Process and to Use a Request for Proposal for the Selection of a Construction Manager/General Contractor for the Juvenile Justice Complex Replacement*

MS. WALKER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER ANDERSON, ORDER 92-165 WAS UNANIMOUSLY APPROVED.

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

JUSTICE SERVICES

SHERIFF'S OFFICE

R-4 *Budget Modification MCSO #1 Requesting Authorization to Transfer \$46,250 in Dedicated Drug Forfeiture Funds from the Professional Services Line Item to Equipment Line Item, Enforcement Division, to Fund the Purchase of an Airplane to be Used for Air Surveillance in Drug Investigations*

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, R-4 WAS UNANIMOUSLY APPROVED.

- R-5 *Budget Modification MCSO #2 Requesting Authorization to Transfer \$4,484 from the Overtime Line Item to Permanent Line Item, Enforcement Division, to Pay for Reclassification of a Sergeant to a Lieutenant Position in the Sheriff's Enforcement Branch*

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, R-5 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

- R-6 *Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a One Year \$150,000 Grant from the Bonneville Power Administration, Providing Ten Bonneville Power Administration Job Slots for High Risk Gang Involved Youth as Part of the Youth Employment and Empowerment Project*

UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER KELLEY, R-6 WAS UNANIMOUSLY APPROVED.

- R-7 *Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a \$75,000 Grant from the Annie E. Casey Foundation, Providing a Nine Month Planning Grant to Develop a Plan for Revision of Juvenile Detention Policies and Practices, Including Establishment of Community-Based Alternatives to Detention*

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER ANDERSON, R-7 WAS UNANIMOUSLY APPROVED.

- R-8 *Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a One Year \$250,000 U.S. Department of Health and Human Services Grant, Providing Funding for a Homeless Families Support Services Demonstration Program*

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, R-8 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-10 *ORDER in the Matter of Multnomah County Appointing Planning and Zoning Hearings Officers*

UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER HANSEN, ORDER 92-166 APPOINTING LARRY EPSTEIN, PHILLIP GRILLO, ROBERT LIBERTY AND PAUL NORR WAS UNANIMOUSLY

APPROVED.

R-11

Continued Second Reading and Possible Adoption of an ORDINANCE Relating to Animal Control, Creating a Notice of Infraction Procedure, Expanded Hearing and Appeal Process, and Penalties for Violations of Animal Control Regulations and Amending Chapter 8.10 of the Multnomah County Code

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER ANDERSON MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF SECOND READING AND ADOPTION. MIKE OSWALD INTRODUCED AMENDED ORDINANCE. IN RESPONSE TO A QUESTION OF THE BOARD, COUNTY COUNSEL MATTHEW RYAN READ THE AMENDED LANGUAGE TO PAGE 3 OF 27, SUB-SECTION MCC 8.10.035(7), "A STATEMENT THAT AN ADMISSION OF INFRACTION WOULD BE ON RECORD AND COULD LEAD TO THE ENHANCEMENT OF FINE ON ANY SUBSEQUENT INFRACTION ISSUED UNDER THIS CHAPTER AS PROVIDED UNDER MCC 8.10.900(B)." AND ADVISED THE CHANGE IS NON-SUBSTANTIVE AND COULD BE ADOPTED WITH THE SECOND READING OF THE ORDINANCE. MICHAEL TWAIN AND NORMAN ROLEY TESTIMONY IN OPPOSITION AND RESPONSE TO BOARD QUESTIONS. DALE DUNNING TESTIMONY IN SUPPORT. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE AMENDMENT WAS UNANIMOUSLY APPROVED. ORDINANCE 632 UNANIMOUSLY APPROVED AS AMENDED.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.

P-11

CU 11-92 HEARING, ON THE RECORD PLUS ADDITIONAL TESTIMONY, WITH ADDITIONAL TESTIMONY TO BE RESTRICTED TO THE PHYSICAL CONSTRAINTS OF THE SITE RELATIVE TO THE PLACEMENT OF THE DWELLING, 10 MINUTES PER SIDE, in the Matter of an Appeal of a July 6, 1992 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Development of a Non-Resource Related Single Family Dwelling on 7.80 Acre Lot of Record in the MUF-19, Multiple Use Forest Zoning District, for Property Located at 43640 E LARCH MOUNTAIN ROAD

AT THE REQUEST OF COMMISSIONER KELLEY AND FOLLOWING EXPLANATION BY ROBERT TRACHTENBERG AND JOHN DuBAY, COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, THAT THE BOARD RECONSIDER PLANNING ITEM P-11 AND SET A HEARING DATE FOR THE RECONSIDERATION AT 9:30 AM ON

TUESDAY, SEPTEMBER 22, 1992. MOTION UNANIMOUSLY APPROVED, WITH COMMISSIONERS ANDERSON, KELLEY, HANSEN AND McCOY VOTING AYE ON A ROLL CALL VOTE.

There being no further business, the meeting was adjourned at 10:25 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad
Deborah L. Bogstad

*Thursday, September 3, 1992
(Immediately Following 9:30 AM Regular Meeting)
Multnomah County Courthouse, Room 602*

EXECUTIVE SESSION

E-1 *The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for the Purpose of Legal Counsel Consultation Pertaining to Possible Litigation.*

EXECUTIVE SESSION HELD.



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

AUGUST 31 - SEPTEMBER 4, 1992

Tuesday, September 1, 1992 - 8:30 AM - Executive Session . . .Page 2
Tuesday, September 1, 1992 - 9:30 AM - Board Briefings. . . .Page 2
Tuesday, September 1, 1992 - 10:45 AM - Agenda ReviewPage 2
Tuesday, September 1, 1992 - 1:30 PM - Public HearingPage 3
Thursday, September 3, 1992 - 9:30 AM - Regular Meeting . . .Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers
Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers
Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers
Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222 OR MULTNOMAH COUNTY TDD PHONE 248-5040 FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, September 1, 1992 - 8:30 AM

Multnomah County Courthouse, Room 602

EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(e), in Order to Discuss the Operational and Financial Aspects of a Proposed Purchase of Real Property by Multnomah County. 1 HOUR REQUESTED.
-

Tuesday, September 1, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 Discussion of Audit Entitled "MANAGEMENT OF FELONS: IMPROVE SENTENCING PRACTICES". Presented by Multnomah County Auditor Gary Blackmer. 15-25 MINUTES REQUESTED.
- B-2 Discussion of Columbia Villa Community Service Project Representatives' Participation in the Moral Rearmament Conference in Caux, Switzerland. Presented by Project Director Fred Milton and Villa Residents Tina Stalling and Ruby Foust. 15 MINUTES REQUESTED.
- B-3 General Overview of Multnomah County Weatherization Program Operations, Accomplishments and 1993 Fiscal Year Goals. Presented by Program Staff Rey España and Tom Brodbeck. 10 MINUTES REQUESTED.
- B-4 Multnomah County Homeless Families Program Briefing and Update on Current Grant Initiatives and First Year Results of the Robert Wood Johnson Foundation Homeless Families Program. Presented by Project Director Paula Corey. 10 MINUTES REQUESTED.
-

Tuesday, September 1, 1992 - 10:45 AM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-5 Review of Agenda for Regular Meeting of September 3, 1992.
-

Tuesday, September 1, 1992
1:30 PM TO NO LATER THAN 5:00 PM

Multnomah County Courthouse, Room 602

PUBLIC HEARING

- P-1 Quasi-Judicial Hearing Followed by Board Deliberations and Order in the Matter of a Petition for Establishing a Way of Necessity for Property Described as Tax Lot 17, Located in the N.E. 1/4 of Section 6, T2N, R1W, W.M. and in the Alexander McQuinn D.L.C., Multnomah County, Oregon, Filed by the McQuinn Family Pioneer Cemetery Association, an Oregon Non-Profit Corporation. (Case No. 92-51C).
-

Thursday, September 3, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointments Avel L. Gordly, Barbara Aho Grider, Myrthle B. Griffin, Gerald McFadden and Barry M. Maletzky to the MULTNOMAH COUNTY COMMUNITY CORRECTIONS ADVISORY COMMITTEE

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 PROCLAMATION in the Matter of Proclaiming the Week of September 6-11, 1992 as RETURN TO SCHOOL WEEK in Multnomah County, Oregon
- R-2 RESOLUTION in the Matter of a Planning Process to Develop a Corrections Levy for March
- R-3 Ratification of Intergovernmental Agreement Contract #500173 Between the City of Portland and Multnomah County, Providing Consolidation of the City of Portland Stores with Multnomah County Central Stores for the Purpose of Economic and Efficient Operations

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-4 Budget Modification MCSO #1 Requesting Authorization to Transfer \$46,250 in Dedicated Drug Forfeiture Funds from the Professional Services Line Item to Equipment Line Item, Enforcement Division, to Fund the Purchase of an Airplane to be Used for Air Surveillance in Drug Investigations

R-5 Budget Modification MCSO #2 Requesting Authorization to Transfer \$4,484 from the Overtime Line Item to Permanent Line Item, Enforcement Division, to Pay for Reclassification of a Sergeant to a Lieutenant Position in the Sheriff's Enforcement Branch

DEPARTMENT OF SOCIAL SERVICES

R-6 Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a One Year \$150,000 Grant from the Bonneville Power Administration, Providing Ten Bonneville Power Administration Job Slots for High Risk Gang Involved Youth as Part of the Youth Employment and Empowerment Project

R-7 Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a \$75,000 Grant from the Annie E. Casey Foundation, Providing a Nine Month Planning Grant to Develop a Plan for Revision of Juvenile Detention Policies and Practices, Including Establishment of Community-Based Alternatives to Detention

R-8 Request for Approval in the Matter of a NOTICE OF INTENT to Apply for a One Year \$250,000 U.S. Department of Health and Human Services Grant, Providing Funding for a Homeless Families Support Services Demonstration Program

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

R-9 ORDER in the Matter of an Exemption to Waive the Competitive Bid Process and to Use a Request for Proposal for the Selection of a Construction Manager/General Contractor for the Juvenile Justice Complex Replacement

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-10 ORDER in the Matter of Multnomah County Appointing Planning and Zoning Hearings Officers

R-11 Continued Second Reading and Possible Adoption of an ORDINANCE Relating to Animal Control, Creating a Notice of Infraction Procedure, Expanded Hearing and Appeal Process, and Penalties for Violations of Animal Control Regulations and Amending Chapter 8.10 of the Multnomah County Code

RICK BAUMAN
Multnomah County Commissioner
District 3



606 County Courthouse
Portland, Oregon 97204
(503) 248-5217

August 21, 1992

TO: Clerk of the Board

FR: Commissioner Rick Bauman *R Bauman*

RE: Calendar

I would like to amend my earlier memo regarding my attendance at Board meetings in August and September.

I will attend the Board meetings the week of August 24.

I will not be able to attend Board meetings on September 1 through September 17.

CLERK OF
COUNTY COMMISSIONER
1992 AUG 21 PM 2:02
MULTNOMAH COUNTY
OREGON

SHARRON KELLEY
Multnomah County Commissioner
District 4



Portland Building
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
(503) 248-5219

August 18, 1992

1992 AUG 18 PM 4 50
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONER

TO: Multnomah County Commissioners
Clerk of the Board

FR: Commissioner Sharron Kelley *SK*

RE: Absence on September 1

I plan to attend an AOC training session on September 1 and will be unable to attend the Board meeting scheduled for that day.

Meeting Date: SEP 01 1992

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: PUBLIC HEARING/DELIBERATIONS - BOARD DECISION

BOARD BRIEFING _____ (date) REGULAR MEETING SEPTEMBER 1, 1992 (date)

DEPARTMENT NON-DEPARTMENTAL DIVISION COUNTY COUNSEL

CONTACT JACQUELINE WEBER TELEPHONE 248-3138

PERSON(S) MAKING PRESENTATION JACQUELINE WEBER, VARIOUS LEGAL COUNSEL REPS.

ACTION REQUESTED: QUASI-JUDICIAL HEARING/BOARD ORDER

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1:30 PM TO NO LATER THAN 5:00 PM

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

QUASI-JUDICIAL HEARING FOLLOWED BY BOARD DELIBERATIONS AND ORDER IN THE MATTER OF A PETITION FOR ESTABLISHING A WAY OF NECESSITY FOR PROPERTY DESCRIBED AS TAX LOT 17, LOCATED IN THE N.E. 1/4 OF SECTION 6, T2N, R1W, W.M. AND IN THE ALEXANDER McQUINN D.L.C., MULTNOMAH COUNTY, OREGON, FILED BY THE McQUINN FAMILY PIONEER CEMETERY ASSOCIATION, AN OREGON NON-PROFIT CORPORATION

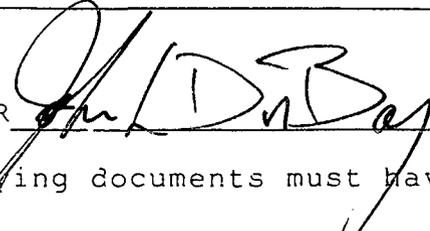
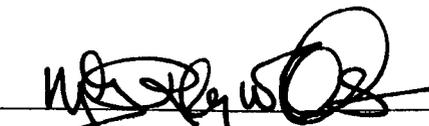
(92-51C)

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER  

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 JUL 15 PM 3:12

1 2. A review of the deed record of Multnomah County
2 establishes that since 1876, there was no proceeding deed
3 pertaining to Tax Lot 17 of Section 6, Range 2 North, Township 1
4 West (hereinafter the graveyard parcel).

5 My family heirs acquired title to all of the properties
6 surrounding the graveyard parcel through Isaac Thomas back on
7 October 28, 1876. Thereafter, the "McQuinn" family ceased usage
8 of the graveyard parcel and abandoned both their interest and any
9 pursuit of an access to said graveyard parcel. In essence the
10 graveyard parcel remained abandoned by the McQuinn family for the
11 last 116 years. If any ownership interest in the graveyard
12 parcel was transferred from the estate of Alexander and Rebecca
13 McQuinn to their heirs, such transfers had to have been
14 accomplished by last will and testament. As of today,
15 descendants of Alexander and Rebecca McQuinn exceed over six
16 hundred people. See Exhibit "B".

17 Presumably prior to 1876 when the property was sold Isaac
18 Thomas, at least one member of the McQuinn family was buried in
19 the graveyard (thus the designation as a graveyard in 1876).
20 However, there are only two clear graveyard sites on the
21 graveyard parcel. One grave site is completely unmarked and
22 undated. It is only distinguished by a cross with no name or
23 date inscribed. The second grave belonged to George Anderson,
24 born September 22, 1852 and died March 28, 1891. This grave is
25 surrounded by a fence with corner posts. As of 1891, the
26 graveyard was taken over by the Anderson family for their own

1 purposes and no more McQuinn descendants were permitted to be
2 buried in the graveyard parcel.

3 The "McQuinn Family Pioneer Cemetery" purports to have a
4 deed for the one acre parcel from Mrs. Maxine Daly that was
5 executed in the last few years. However, there is no record that
6 Mrs. Daly possess any verifiable claim to ownership of the
7 graveyard parcel resulting from a direct line of inheritance from
8 the original McQuinn estate proceeding 1876.

9 3. Prior to members of my family obtaining ownership of
10 Tax Lot 16 which surrounds the graveyard parcel from Isaac Thomas
11 (who purchased the property on October 28, 1876) the property was
12 owned by members of the McQuinn family. In 1873, the United
13 States of America deeded to Alexander H. McQuinn and Rebecca
14 McQuinn (husband and wife) 640 acres of land that later included
15 the cemetery (Tax Lot 17) and my other property (Tax Lot 16).
16 Attached hereto and incorporated herein is Exhibit "C" which is
17 the document representing that 1873 acquisition. By 1876, eleven
18 sets of heirs to this 640 acres owned all the land; and
19 participated in a partitioning request to the County Court to
20 have the land partitioned into eleven parcels among themselves.
21 The court determined that a partition could not be equitably
22 accomplished, and so the land was sold at public auction to Isaac
23 Thomas and confirmed by court order on October 28, 1876. Exhibit
24 "D" attached hereto and incorporates the documents involved in
25 these transactions. The land sold to Isaac Thomas excluded the
26 one acre cemetery and did not provide any access to the cemetery.

1 Attached hereto and incorporated herein is Exhibit "E". Our
2 review of the court records and deed records establishes that
3 none of the eleven McQuinn heirs objected to the property sale,
4 the description used in the property sale, nor the absence of a
5 right of access across my Tax Lot 16 to the graveyard parcel,
6 prior to or during the sale to Isaac Thomas. Further, no appeals
7 were ever filed by these eleven heirs of the court's decision to
8 sell the property to Mr. Thomas.

9 4. The land surrounding the graveyard parcel that Mr.
10 Thomas acquired in 1876 ultimately was sold to my family. From
11 1876 until today the cemetery was abandoned by the McQuinn
12 family. No McQuinn family members or relatives were buried in
13 the cemetery after 1876. No McQuinn heirs ever asked for or
14 sought to acquire access to the graveyard parcel until just
15 before this proceeding.

16 5. As of 1965, my brother and I acquired complete
17 ownership of Tax Lot 16 which incorporates in its legal
18 description the graveyard parcel. However, prior to my personal
19 ownership of both Tax Lot 16 and the graveyard parcel, my family
20 and proceeding owners (after 1876) have controlled and exercised
21 rights of adverse possession starting from March 28, 1891. On
22 March 28, 1891, George Anderson died and was buried in one of the
23 two graves located in the graveyard parcel. Attached hereto and
24 incorporated herein is Exhibit "F" which is a photograph of the
25 grave marker that was located in the large grave site on the
26 graveyard parcel. The other grave site in the graveyard parcel

1 is unmarked and has had no marker on it since at least 1948 (the
2 time I started living at the property and started inspecting the
3 graveyard parcel). George Anderson was not an heir or member of
4 the "McQuinn" family, and was buried as part of the family
5 members of the owners of Tax Lot 16 as of 1891. From that point
6 thereafter, no "McQuinn" family members were permitted to visit
7 or be buried in the graveyard parcel. The only permitted
8 visitors and persons to be buried in the graveyard parcel from
9 1891 on were family members of the owners of Tax Lot 16.

10 6. Between 1958 and 1960 the photograph identified as
11 Exhibit "F" herein was taken at the graveyard parcel where the
12 grave marker was located. Soon thereafter, the grave marker was
13 removed for the purposes of preservation, as the marker was made
14 of wood and was rapidly deteriorating due to the wet conditions
15 in that location. An artist had also taken interest in the grave
16 marker and my family allowed him to safeguard the marker while he
17 was drawing its image and doing a "rubbing" of the recesses on
18 its surface. This same grave marker will be made available for
19 display to the County Commissioners. This marker was on the same
20 graveyard site that the Petitioners eventually attempted to claim
21 as the grave of one of the original McQuinn family members.
22 However, they are clearly in error and it has long been
23 established that George Anderson is the person buried in that
24 grave site.

25 7. From 1891 and continuously through until today, both my
26 predecessors in ownership and myself have exercised dominion over

1 the graveyard parcel and excluded all others from exercising any
2 ownership rights to the land. Since 1891, my predecessors in
3 ownership and myself have refused anyone other than our own
4 family members from being buried in the graveyard parcel. We
5 have precluded all other persons, excepting our own family
6 members from having access to or rights of entry onto the
7 graveyard parcel.

8 The graveyard parcel has been maintained in a forest
9 condition. This has provided my family members and myself with
10 fire wood for well over the last fifty years. We have also cut
11 our Christmas trees each year from this graveyard parcel. We
12 have also collected blackberries on an annual basis from the
13 graveyard parcel. My family has annually conducted picnics on
14 the site and we have buried our family pets within the graveyard
15 parcel. From before 1948 through until recently, my father and
16 my family members have hunted game in the graveyard parcel. One
17 of the reasons the site was maintained in its forest condition
18 was to allow it to continue as a game preserve within our
19 property. This has been an important function to my family as it
20 has provided both fruits and meat for our family table since well
21 before 1948 until today.

22 My family has posted the property with "No Trespassing"
23 signs over the last fifty years to preserve the uses we have been
24 making of the graveyard parcel. We have precluded other hunters,
25 berry pickers, picnickers and persons intending to bury deceased
26 people or creatures on this property for well over fifty years.

1 Recently, the "No Trespassing" signs that I have posted on the
2 property have been taken down by persons unknown immediately
3 after the Petitioners became interested in using the graveyard
4 for their personal family graveyard site. Exhibit "G" are
5 pictures that I took of these signs prior to them being taken
6 down or stolen. The signs were photographed approximately two
7 years ago and included some signs that had been on the site prior
8 to the Petitioners interest in the property. All of these signs
9 were taken down and stolen without my permission.

10 8. Members of the Petitioner's association did not know of
11 this graveyard parcel for approximately the last 100 years. No
12 member of their family ever approach us or the site during that
13 100 year period until around 1989. Heirs of the McQuinn family
14 did not pass down the knowledge of the existence of the graveyard
15 because it was apparently lost to them back in the late eighteen
16 hundreds. Members of the Petitioner's Association only learned
17 of the existence of the graveyard through a record of pioneer
18 graveyards maintained by the State of Oregon.

19 Upon entering our property without permission and
20 trespassing across Tax Lot 16 and trespassing upon Tax Lot 17,
21 members of Petitioner's Association discovered that the two grave
22 sites located in the graveyard parcel were unmarked. These grave
23 sites were surrounded by wooden fences so they could notice that
24 they were in fact grave sites. From the last fifty years until
25 the present, these two grave sites have not been maintained and
26 completely overgrown with the vegetation commonly found in the

1 heart of this small woods.

2 Since this trespass occurred, members of Petitioner's
3 association attempted to place a marker on one of the unmarked
4 graves. This grave site is actually the grave site for George
5 Anderson. I was informed of this by Maxine Daly and her
6 attorney. Upon inspection of the site during the year 1990, I
7 could not find any trace of this marker. Apparently it was
8 either hidden or removed by members of Petitioner's association
9 or someone else trespassing on the property.

10 However, I have discovered that a cross that does not belong
11 there has been placed on the smaller grave site in the graveyard
12 parcel. This cross, which has no name or date on it, is
13 identified in Exhibit "H" (which is a photograph attached
14 hereto). This is not an original feature of this grave site and
15 has been artificially created and been placed there recently.
16 You will note from the photograph that the cross is held together
17 by three galvanized nails. Galvanized nails did not even exist
18 in the late eighteen hundreds. Also the cross does not show any
19 sign of deterioration at the time the photograph was taken (moss,
20 dry rot, degradation of the corners of the boards, etc.).
21 Clearly from the face of this photograph, this cross must have
22 been placed by someone, without my authorization, within the last
23 one to three years.

24 9. As no "McQuinn" family member has even attempted to
25 maintain this graveyard site or bury any of its family members
26 over at least the last fifty years prior to the date of the

1 Petition for Establishing a Way of Necessity, I am requesting as
2 part of my Answer and Memorandum in Opposition to the Petition
3 for Establishing a Way of Necessity that ORS 97.450 be applied to
4 qualify this site for a complete termination as a recognized
5 cemetery. In addition, make this request, based upon the fact
6 that the only known and provable family member buried in this
7 location is that of George Anderson. Mr. Anderson died in 1891
8 and is not a member of the "McQuinn" family. On behalf of the
9 Anderson family we waive any rights to maintaining this site as a
10 cemetery.

11 10. Since I have acquired ownership of the property in 1965
12 from my mother (which legal description included Tax Lot 17 the
13 graveyard parcel), I have paid the taxes for both parcels (Tax
14 Lot 16 and 17) on a continuous basis. After Maxine Daly
15 purportedly provided the Petitioner with a deed for her alleged
16 interest in the graveyard parcel, the Petitioner attempted to pay
17 and reimburse these taxes. I protested such action and between
18 my attorney and Petitioners' attorney, it was agreed that I or my
19 attorney would hold the refunded tax payments in trust and allow
20 the Petitioner to maintain payments until this ownership matter
21 and rights of access could be resolved. Attached hereto and
22 incorporated herein is Exhibit "I" which identifies that we are
23 so holding these funds in trust.

24 11. Since Petitioner and Maxine Daly have "discovered" my
25 graveyard parcel, I have found cigarette butts and other trash
26 left in and around the graveyard site. I have informed Maxine

1 Daly and her association (through attorney letters) that they are
2 not to trespass upon my property including the graveyard parcel.
3 Attached hereto as Exhibit "J" are letters from my attorney
4 identifying that the Petitioners and their association members
5 are not to trespass on my property.

6 In addition, it has become necessary to set up blockages or
7 barriers around the small pathways that have been created by
8 Petitioner's association members who have trespassed on my
9 property. Attached hereto is Exhibit "K" identifying brush that
10 has been placed around the graveyard parcel to prevent access to
11 the graveyard sites. This form of blockage became necessary when
12 someone tore down and stole my "No Trespassing" signs posted on
13 the property.

14 12. The land has been continuously farmed since well before
15 1891. Attached hereto as Exhibit "L" are photographs depicting
16 my property in cultivation and surrounding the graveyard. My
17 brother and I agree that the value of our property is \$17,250.00
18 per acre. Attached hereto is Exhibit "M" identifying comparable
19 sales of farm land on the same island and in close proximity to
20 my property. These comparable sales indicate that the value of
21 my land is approximately \$17,281.00 per acre. Also attached as
22 the same Exhibit is a letter from a real estate evaluator who is
23 familiar with land values on the island and my property in
24 particular. This real estate appraiser evaluated the value of my
25 property as \$ _____ per acre.

26 13. In the event, that this Board should approve

1 Petitioner's request, I am entitled to just compensation for the
2 fair market value of my property (as identified in the preceding
3 paragraph and Exhibit "M", under my rights in the United States
4 Constitution and the Oregon Constitution. The use of a portion
5 of my property for an access will prohibit me from using any
6 portion of that property for cultivation. It will also preclude
7 adequate turning space for farm vehicles in the cultivation
8 process. That is, you cannot cultivate right up to the edge of a
9 road way or path way. Therefore, I will lose an additional 10
10 feet in width from the side of this way of necessity for crop
11 production. Ten feet will be needed to allow for the turning of
12 farm vehicles on my property during the crop cultivation and
13 harvesting process. The width of the way of necessity plus the
14 ten foot turning area is what I would be deprived of in the use
15 of my property. I should be so compensated for that loss. My
16 evaluation of the value of the property and Exhibit "M" represent
17 the true market value for the property.

18 14. Since November 22, 1988, I have been in contact with
19 Petitioners or members of their association. We have discussed
20 the possibility of allowing some form of access back to the
21 graveyard parcel, if the Petitioner could provide us with proof
22 that they have a legal right to possession of the cemetery.
23 Since 1988, we have not received from Petitioner any
24 identification of proof that they have a legal right to possess
25 the graveyard site. See Exhibit "J". Instead, they merely
26 "drafted" a deed from Maxine Daly (purportedly a legal heir to

1 the "McQuinn" estate) to the Petitioner. Petitioners have not
2 provided us any proof nor could we find it the deed records that
3 Maxine Daly has any legal right to ownership of the graveyard
4 parcel. In essence, if Petitioner has a legal right to
5 possession of the cemetery parcel, Petitioner had an opportunity
6 to obtain a license or easement for access through the legal
7 action of purchase and recording of such easement or license.
8 Thus, the Petition is premature and must be denied pursuant to
9 ORS 376.180(9).

10 15. In the event this Board approves Petitioners request, I
11 request that the way of necessity be restricted to a five foot
12 wide pedestrian pathway. For the past one hundred and sixteen
13 years there has been no "McQuinn" family heir visiting this
14 graveyard parcel. Only recently have the Petitioner's
15 association members come to the site. It is quite clear that all
16 access to the site has been by pedestrian method only. In fact,
17 when the graveyard was in existence prior to 1876, there were no
18 automobiles and the site was accessed by pedestrian traffic only.
19 In those days, the farm fields surrounding the graveyard parcel
20 were continuously cultivated and no road (gravel or other
21 improvements) have ever been provided to the graveyard parcel.

22 In addition, there are only two verifiable graves at the
23 graveyard parcel. If the graveyard is deemed a history site, no
24 additional graves would be allowed and very little alteration of
25 the site would be permitted under current state and local
26 regulations. A larger permanent access to the graveyard parcel

1 would incorporate valuable land needed for cultivation and
2 production of farm crops. Already in Oregon have lost too much
3 class I and class II soils to development in the state. An
4 unnecessary incorporation of land greater than a five foot wide
5 pedestrian pathway would violate the Oregon Statewide Planning
6 Goal 3 for preservation of agriculture lands. It would also
7 violate ORS 376.155 and 376.180 by allowing for uses unnecessary
8 to provide "access" and causing substantially greater damage and
9 interference to the Anderson/Smith farm lands.

10 16. Petitioner has not complied with ORS 376.180(9) in that
11 Petitioners could acquire an easement for access from the
12 graveyard parcel to a public road through the legal action of
13 seeking a declaratory judgment under ORS 28.010 - 160. If
14 Petitioner actually had an ownership interest in the graveyard
15 parcel, the Circuit Court could grant an easement across the
16 Anderson-Smith lands under the common law theory of an "easement
17 implied from necessity." See, VanNatta v. Nys & Erickson, 203
18 Or. 204 (1955); Tucker v. Nuding, 92 Or. 319 (1919).

19 Petitioner could also include in the declaratory judgment
20 action a claim to clear their title to the graveyard parcel
21 (contested by Anderson-Smith) under ORS 105.605.

22 Petitioner has not sought to establish that they have a
23 superior right of ownership to Anderson-Smith's 1965 right of
24 adverse possession and deed, and have not sought a declaratory
25 judgement to grant it an easement implied from necessity.

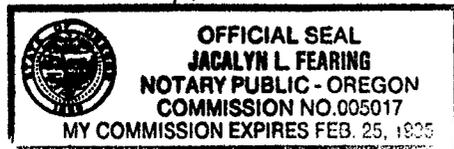
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DATED this 31st day of August, 1992.

Sheryl Anderson
Sheryl Anderson

SUBSCRIBED AND SWORN to before me this 31st day of August, 1992.



NOTARY PUBLIC OF OREGON
My Commission Expires: 2/25/95

Jacalyn L. Fearing

Page

AFFIDAVIT OF SHERYL ANDERSON
(RH\ANDERSON\0827.1JJ)

JOHN W. SHONKWILER, P.C.
ATTORNEY AT LAW
13425 SW 72ND AVENUE
TIGARD, OREGON 97223
624-0917
fax: 684-8971

4

241 24

DEED

REONNE B. SMITH, unmarried, conveys to JAMES L. SMITH, to the extent of an undivided one-half thereof, and to SHERYL ANDERSON, to the extent of an undivided one-half thereof -

All that portion of Tax Lot 9, Section 6, Township 2 North of Range 1 West of Willamette Meridian, lying northerly of Lucy Reeder Road, being County Road No. 1191-40 on Sauvier Island, in Multnomah County, State of Oregon, said Tax Lot 9 being described as:

Beginning in the south line of Alex McQuinn DLC on section line between Sections 6 and 5; thence north 751.35'; thence north 35° 14' west 1910.1'; thence west 251'; thence south 2000.7' to the south line of Alex McQuinn DLC; thence south 77° east 1389.29' to beginning. Except part in road #1191.

(The consideration for this deed is less than \$100.00.)

Dated this ____ day of January, 1965.

Reonne B. Smith
Reonne B. Smith

-000-

STATE OF OREGON)
County of Multnomah.) ss.

Personally appeared before me this 16th day of January, 1965, the above-named REONNE B. SMITH, and acknowledged the foregoing instrument to be her voluntary



Harlow F. Lewis

Notary Public for Oregon
My Commission expires:

Nov 16, 1965

(SEAL) DOCUMENT 8328 RECORDED MAR 2 1965 10:04A

BOOK OF RECORDS

STATE OF OREGON }
COUNTY OF MULTNOMAH }SS

I do hereby certify that the foregoing copy
of *Book*

has been by me compared with the original,
and that it is a correct transcript therefrom,
and the whole of such original, as the name
appears on file and of record in our office and
in our care and custody. IN TESTIMONY
WHEREOF, I have hereunto set my hand and
affixed our seal this

27th day of August, 19 92

MULTNOMAH COUNTY RECORDING DEPT.

BY: *B. Bety*
DEPUTY

Book 241 Page 24

Family traces roots down Oregon Trail

By LINDA McCARTHY
Correspondent, The Oregonian

CHAMPOEG — It took the diligence of Sherlock Holmes for Maxine Daly to track down the family history of her relatives who traveled the Oregon Trail in 1844 before settling on Sauvie Island.

The 72-year-old Seattle woman has spent the last six years searching for information on the Alexander and Rebecca McQuinn family. Her research led to the discovery of a family cemetery on Sauvie Island and the formation of the McQuinn Family Pioneer Cemetery Association, Inc.

Some 60 descendants of the McQuinns gathered at Champoeg Park on Saturday for the first meeting of the association, which was formed Feb. 18, 1986. The oldest member of the family at the reunion was William Edward "Dick" Toelle, 83, of Hillsboro. The youngest was Daly's great-grandson, Tyler Edwards, 2, of Tacoma.

Daly is the granddaughter of Peter Enyart McQuinn, who was the fifth son of Alexander and Rebecca McQuinn. He was only 6 months old when the family set out from St. Joseph, Mo., in 1844 for the 2,000-mile trek to Oregon.

It was Daly's longing to find her roots that led to her search for family descendants. After taking a course in genealogy, she made four trips to Salt Lake City to find clues in the libraries there that

are filled with family histories. She also visited Ohio, Indiana, Kentucky and Tennessee last year in a monthlong research venture.

She discovered that the family spans seven generations with some 600 descendants. Family members have been eager to help in the search for descendants, she said.

"I find a cousin and pretty soon, they're work-

"The stones have been carried off, but there are remains of a fence around individual graves."

ing on it. We find artifacts and share things. It's been a wonderful experience," Daly said.

The cemetery association was formed as a non-profit group to gain possession of the 1-acre family cemetery on Sauvie Island where Alexander and Rebecca McQuinn and at least two of their children are buried. Daly said she discovered the grave site in a state directory of cemeteries.

"I also had the opportunity to meet a woman who lived on the island, and she showed me where the cemetery was. The property has been sold, divided and re-divided, but this 1 acre has

always been preserved," she said. "The stones have been carried off, but there are remains of a fence around individual graves."

Daly has captured all her research efforts in a spiral-bound book that she put together, using her home computer to punch out the information.

"Oregon Bound, the Overland Journey of Alexander and Rebecca McQuinn," tells the story of the pioneer family and includes a list of all known descendants.

Like many of those who headed west in the mid-1840s, the McQuinns were lured to Oregon by the promise of free land at the end of the Oregon Trail.

"There are no diaries or letters left to us to provide clues as to why (they) left Missouri. Our imaginations are about all we have to guide us," Daly wrote in her book.

The family farmed the 640 acres they got through a donation land claim. Rebecca McQuinn, who was born in 1820 in Illinois, died in 1869. Her husband, a North Carolina native, died in 1871.

Daly hopes her efforts in tracing the family tree will be enough to keep the younger family members interested.

"Our group is growing. We're trying to interest the young people — the heritage belongs to them. We can establish it and get it all written down," she said.

Aug 4, 1987

whereas, except as to the above sewer assessments.

IN WITNESS WHEREOF, we the grantors above named hereunto set our hand and seal this 20th day of February 1906.

Signed, sealed and delivered in the presence of us as witnesses:
Core Samp

A. S. Ellis
Pasa A. Ellis

Seal
Seal

Gentebain and Winifred Gentebain, husband and wife, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal the day and year last above written.

A. L. Veale,

(Notarial Seal)

Notary Public for Oregon.

Rec. for record Mar. 14, 1906 at 3:04 P. M.

M. S. 56006

UNITED STATES OF AMERICA TO MC QUIN,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, there has been deposited in the General Land Office of the United States Certificate numbered three thousand five hundred and sixty nine of the Register and Receiver at Oregon City Oregon whereby it appears that under the provisions of the act of Congress approved the 27th day of September, 1850, entitled "An Act to create the Office of Surveyor General of the Public Lands in Oregon, and to provide for the Survey and to make Donations to Settlers of the said public lands", and the legislation supplemental thereto, the claim of Alexander H. McQuin and his wife Rebecca McQuin, of Washington County, Oregon, Petitioner No. 447 has been established to a donation of one section, or Six hundred and forty acres of land, and that the same has been surveyed and designated as Claim number fifty, being parts of Sections five and six in Township Two North, of Range One West, and claim number forty one being parts of Sections thirty one and thirty two, in Township three North, of Range one West according to the official plat of survey returned to the General Land Office by the Surveyor General; being bounded and described as follows: to-wit;

Beginning at a point Twenty one chains and forty two links, East of the North West corner of said Section five, in Township Two, North of Range one West, and running thence North forty chains; thence West sixty one chains and forty two links; thence South ten degrees and forty five minutes East forty chains and eighty six links; thence West forty seven chains; thence South fourteen degrees and fifteen minutes East, nineteen chains and sixty six links; thence South fourteen degrees East, twelve chains and eighty links; thence South seventy seven degrees East, ninety five chains and thence North fifty two chains and twenty eight links, to the place of beginning, in the district of lands subject to sale at Oregon City, Oregon, containing six hundred and thirty three acres, and thirty four hundredths of an Acre.

Now KNOW YE, that the United States of America, in consideration of the Premises, and in conformity with the provisions of the act aforesaid, have Given and Granted, and by these presents do give and grant, unto the said Alexander H. McQuin, and to his heirs, the East half, and unto his wife, the said Rebecca McQuin and to her heirs, the West half, of the tract of land above described.

TO HAVE AND TO HOLD the said tract with the appurtenances, unto the said Alexander McQuin, and his wife Rebecca McQuin, and to their heirs and assigns forever, their respective portions aforesaid.

IN WITNESS WHEREOF, I, Elvace S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto

Given under my hand, at the City of Washington, this twenty first day of July, in the

EXHIBIT
PAGE 1 OF 3

STATE OF OREGON }
COUNTY OF MULTNOMAH } SS

I do hereby certify that the foregoing copy
of Deed

has been by me compared with the original,
and that it is a correct transcript therefrom,
and the whole of such original, as the name
appears on file and of record in our office and
in our care and custody. IN TESTIMONY
WHEREOF, I have hereunto set my hand and
affixed our seal this

22nd day of August, 19 92

MULTNOMAH COUNTY RECORDING DEPT.

BY: B. Bely
DEPUTY

Book 355 Page 254

5472-75

No. 5254 X case

In Circuit Court,
October Term, 1876

JUDGMENT RENDERED

October 28th 1876

vs John F. Sinder et al
George W. ^{vs} Queen et al

JUDGMENT FOR

Partition & Conf. of sale

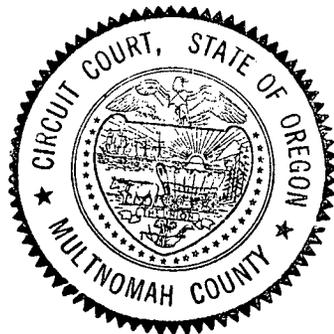
dated December 26 1876

James A. Smith

Clerk.

By A. J. Marshall Deputy.

[Handwritten signature]



STATE OF OREGON } ss

County of Multnomah

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

AUG 28 1992

Court on:
CIRCUIT COURT
Administrator

By Robin R. Newman
Deputy

up

Be it remembered, that at a special term of the Circuit Court of the State of Oregon, for the county of Multnomah, begun and held at the county Court House, in the city of Portland, in said county and State, on Monday the 17th day of July A. D. 1876 at the hour of 9 o'clock A. M., pursuant to an order of said court made and entered in term time, to wit: on Saturday the 15th day of July A. D. 1876 the same being the 18th judicial day of the term of said court.

Present:

Wm. E. D. Shattuck Judge, presiding

Whereupon, a term of said court is begun and holden on Tuesday the 25th day of July A. D. 1876, the same being the 8th judicial day of said term of said court, and among other proceedings, the following was had, to wit:

- John F. Sinder and M. J. Sinder his wife } 3
- vs } 3
- Wm. M. Queen, Geo. W. Queen and Anna } 3
- M. Queen his wife, Geo. Hain and Sarah Hain } 3
- his wife, William Forrest and Margaret Forrest his } 3
- wife, Clinton Benson and Mary A. Benson his } 3
- wife, Alzada M. Queen, James M. Queen, John } 3
- M. Queen a minor and Elizabeth M. Queen a } 3
- minor } 3

Now at this time comes the Plaintiff John F. Sinder

D
 EXHIBIT
 PAGE 2 OF 19

James Walker
John Howells

Deputy

Refused

Be it remembered, that at a special term of the Circuit Court of the State of Oregon, for the county of Multnomah, begun and held at the county Court House, in the city of Portland, in said county and State, on Monday the 17th day of July A. D. 1870 at the hour of 11 o'clock A. M., pursuant to an order of said court made and entered in term time, to wit: on Saturday the 13th day of July A. D. 1870 the same being the 13th judicial day of the term of said court.

Present:

Hon. W. D. Shullman

Judge,

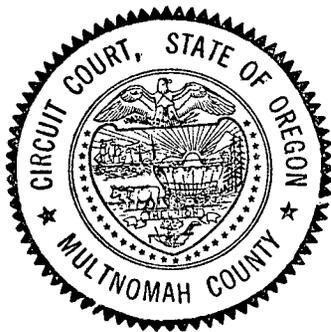
presiding

Whereupon, a term of said court is begun and holden on Tuesday the 20th day of July A. D. 1870, the same being the 16th judicial day of said term of said court, and among other proceedings, the following was had, to wit:

- John F. Smith and W. D. Smith vs. ... 3
- Geo. W. Quinn, Geo. H. Quinn and Anna ... 3
- W. D. Quinn vs. Geo. H. Quinn and Anna Quinn ... 3
- ... vs. ... 3

and Margaret Sinder by Robert E. Byble Esq their
attorney and moves the Court to grant and make an
order directing the referees heretofore appointed herein to
sell the premises described in Plaintiff's Complaint
and it appearing to the Court that the said referees
C. A. Burrage, James Walker and John Howell
heretofore appointed by this Court and ordered and
directed to report whether or not said land can be par-
titioned by metes and bounds without great prejudice
to the owners have heretofore, to-wit: on the 22nd day of
May 1876 made and caused to be filed in this Court
their report wherein they find and report that said
premises cannot be partitioned without great prejudice
to the owners thereof, and the Court being fully satisfied
that partition cannot be made without great prejudice
to the owners of said premises, and that said report is
correct, and no objections having been filed or made
to said report. It is therefore ordered and adjudged
that said Referees be and they are hereby ordered
and directed to sell the said property at public
auction to the highest bidder in the manner re-
quired for the sale of real property in execution, and
after completing the sale that the said referees shall
report the same with their doings therein to this
Court on or before the October term thereof, and after
paying the expenses of such sale deposit the re-
mainder of the money arising therefrom in the
registry of this Court.

(Signed) E. D. Shattuck. Judge



STATE OF OREGON }
County of Multnomah } ss

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: **AUG 28 1992**
CIRCUIT COURT
Administrator

By: *Robin S. Newman*
Deputy

In the Circuit Court of the State of Oregon, for Multnomah County.

John F. Linder and
Mrs. F. Linder his wife

Plaintiffs

Peter Modensen, Geo. W. MacQueen, and Anna Mac
Queen his wife, Geo. Ham and Sarah Ham his wife,
W. W. Lane Street and Margaret Street his wife, Clinton
Benson, and Mary A. Benson his wife, Algada
MacQueen, James MacQueen, John MacQueen
a minor and Elizabeth MacQueen a
minor.

Defendants

To Hon. E. D. Shattuck Judge of said Court

STATE OF OREGON,
Multnomah County.

We the Referees heretofore duly appointed by Your Honor
I, E. J. JEFFERY, Sheriff of Multnomah County, State of Oregon, do certify that we

the annexed Decree and Order of Sale, issued in the above entitled suit in the above named
Court, on the 15th day of August 1876, and on the 25th day
of August 1876 we advertised

and Order of Sale, which is as follows: The Donation Land Claim

No 80 of Alexander MacQueen and wife deceased
being sections five (5) and six (6) Township two (2)
North Range one (1) West. Also Claim No 41 sections
31 & 32 Township (3) three North Range one (1) West.
containing six hundred and forty (640) acres, more
or less (Save and except one acre thereof upon
which there is a family graveyard) lying and being
situate on Sauvie Island, Multnomah County,
State of Oregon.

In the Circuit Court
of the State of Oregon
for Multnomah County

John F. Linder and wife

v.s

McLennan et al.

Report of Referee

Filed May 22^d 1876

Geo. C. Gray, Clerk

By J. P. Marshall
Deputy

In the Circuit Court of the State of Oregon, for Multnomah County.

John F. Linder and
Mrs. F. Linder & wife

Plaintiff

The Defendant Geo. C. Gray and others do hereby certify that the above is a true and correct copy of the report of the referee in the above entitled case, as the same appears from the records of this court.

Witness

To Hon. T. S. Clabbe, Judge of said Court

STATE OF OREGON,

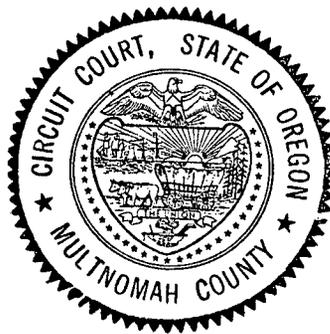
Be it remembered that on the 22^d day of May 1876, the above entitled report of the referee was filed in the office of the Clerk of the Circuit Court of the State of Oregon, for Multnomah County, and on the 22^d day of May 1876, the same was read and approved by the Court.

And after having duly advertised the said above described real estate by posting ^{written} ~~printed~~ notices of the time and place of sale, particularly describing said real estate for four weeks successively prior to the day of sale in three public places of the County of Multnomah, State of Oregon, and by publishing said notice of said sale once a week for four weeks, successively prior to the said day of sale, by all of which said notices and publications the said real estate was particularly described and advertised to be sold on Saturday the 30th day of September 1876, at 10 o'clock, A.M., at public auction at the Court House door in said County, which said notice of sale was published in the Weekly Standard (a weekly newspaper of general circulation, published in Multnomah County Oregon and on Saturday the 30th day of Sept. 1876 at 10 o'clock A.M., deeming it to the interest of all persons concerned, we postponed said sale, of said real estate, by public proclamation, until Saturday October 7th 1876 at 11 o'clock A.M. at the same place.

and on Saturday the 7th day of October 1876 at 11 o'clock, A.M., at the Court House door in said County, ^{we} offered the said before described real estate, ~~subject to redemption~~ ^{at public auction}, and then and there struck off and sold the said real estate, ~~subject to redemption~~, as follows: To Isaac Thomas for four thousand dollars (\$4000) U.S. gold coin.

he being the highest bidder and the ~~highest~~ ^{highest} and best bid for the said real estate, offered by any person at said sale, and of said sum of \$4000. I have obtained the ~~sum of \$~~ ^{sum of \$} 4000, 00 being my fee and the expense of said sale, and paid the balance \$4000, 00 to James J. Smith, Clerk of Multnomah County, and return this ~~certificate~~ ^{deed} and order of sale for the further action of this Honourable Court

C. W. Burrage
James Walker
John Howitt
Referees



STATE OF OREGON } ss
County of Multnomah }

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: **AUG 28 1992**
CIRCUIT COURT
Administrator

By Robert R. Newman
Deputy

In the Circuit Court of the State
of Oregon for Multnomah County.

John F. Linden and
The J. Linden his wife
Plaintiffs

VS

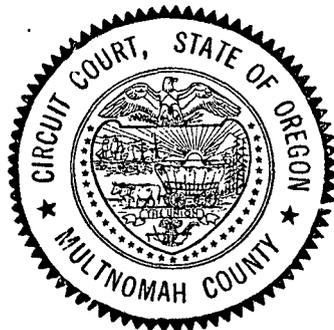
Peter & McQueen
vs H. McQueen et al
Defendants

Now comes the defendants John McQueen
a minor and Elizabeth McQueen a
minor by J. J. Brown their guardian
for this suit and for answer to
the plaintiffs complaint filed in
this case, allege that they are
minors of tender age and that they
have not sufficient knowledge of
the matters and things contained
in said complaint, upon which to
form a belief, that they therefore
deny each and every allegation
averred in said complaint and things con-
tained in said complaint (ex-
cept that their defendants are each
the owner of an undivided interest in
the land described in said complaint)
and ask the honorable court
that the plaintiffs be required

matter and things alleged in
said Complaint.

The said defendants pray for judg-
ment for their costs and disbursements
and for such affirmative relief as
equity and the facts in said ^{cause} may
entitle them.

J. J. Brown
Guardian ad litem for John and
Elizabeth McQueen.



STATE OF OREGON } ss
County of Multnomah }

The foregoing copy has been compared and
is certified by me as a full, true and correct
copy of the original on file in my office and in
my custody.

In Testimony Whereof, I have hereunto set
my hand and affixed the seal of the

Court on: AUG 28 1992

CIRCUIT COURT
Administrator

By: Robin L Newman
Deputy

In the Circuit Court of the State of Oregon
for the County of Multnomah.

John F. Linder and
Mrs. J. Linder, his wife. Plaintiffs

vs.
Peter C. McQueen, Geo. W. McQueen, and
Anna McQueen, his wife, George Ham
and Sarah Ham, his wife, William
Forest and Margaret Forest, his wife,
Clinton Rouser and Mary A. Rouser,
his wife, Azada McQueen, John
McQueen, a minor, and Peggy McQueen, a
minor. Defendants

The above named plaintiffs complaining of the
defendants in the above entitled suit allege:
That said plaintiffs are husband and wife, and
said defendants George W. McQueen and Anna McQueen
are husband and wife, that said defendants George
Ham and Sarah Ham are husband and wife,
that said defendants William Forest and Margaret
Forest are husband and wife, that said defend-
ant Clinton Rouser and Mary A. Rouser are
husband and wife, that John McQueen, is a minor
of the age of 17 years, that Peggy McQueen is a
minor of the age of 16 years, that said plaintiff
John F. Linder is owner and the purchaser of the interest
of Beattie Smith, one of the heirs at law, and Mrs.
Linder, his wife, one of the plaintiffs, and the said
defendants Peter McQueen, George W. McQueen, Sarah

D
EXHIBIT
PAGE 9 OF 19

Ham, Margaret Forest, Mary A. Hensley, Myada
 McLean, John McLean a minor and Lizzie Mc
 Lean, a minor, are in possession as tenants in
 common and are the owners in fee simple of
 the following described real property, situated in
 said county of Multnomah in the State of Oregon
 to-wit: Section 36 in the name of
 Alexander McLean, being Section Six (6) Town-
 ship Two (2) North Range One (1) West, contain-
 ing ~~Two~~ ^{thirty} hundred and ~~two~~ and ninety hundredths
 (632.90) acres, being the same of which Alexander
 McLean, and McLean, his wife, late of said
 county, deceased, died seized. That Alexander Mc
 Lean and McLean, his wife, died intestate.
 That John McLean, a minor, and Lizzie McLean, a
 minor, are the owners in fee simple of ~~an~~ un-
 divided one-tenth, each, of all the above described
 premises. That the said plaintiff John F. Linder
 and M. J. Linder, his wife, paid said defendants
 Peter C. McLean, George W. McLean, Sarah Ham,
 Margaret Forest, Mary A. Hensley, Myada McLean
 John McLean and Lizzie McLean each one in fee
 simple, the undivided one-tenth, each, of all of
 said described premises. That the said property
 is so situated that partition cannot be made
 without great prejudice to said owners.

Therefore plaintiffs ask that a guardian be
 appointed in this matter for the said owners
 John McLean and Lizzie McLean. That per-

EXHIBIT D
 PAGE 10 OF 19

items of the interest of said parties in said pre-
 mises, be made and that the said premises
 save and except 1 acre upon which there is a good yield
 may be sold according to law, and that the
 proceeds of such sale be distributed among
 said owners in accordance with the interests
 of each and that plaintiffs have and will
 cover their costs and disbursements of this
 said suit and that this Court enter a decree
 accordingly and that plaintiffs have such
 other and further relief as to this Court shall
 seem equitable.

Robt. Wyke
 Atty for Plaintiffs

State of Oregon 3
 Multnomah County 3

John H.

I, under being first duly sworn say
 that I am the Pff in the above
 entitled suit and that the foregoing
 complaint is true as I verily believe.

Subscribed and
 sworn to before me John H. Under.
 this 24th day of July
 1875.

J. H. Under
 Justice of the Peace

EXHIBIT
 PAGE 11 OF 19

1 Isabella Smith Alzada McQueen
 2 and Lizzie McQueen a minor
 3 that the said Isabella Smith and
 4 Smith duly conveyed her interest into
 5 and to the estate of said Alexander McQueen
 6 and wife deceased by deed to the P.H.
 7 Long before the commencement of
 8 this suit and that P.H. is the owner of
 9 the interest of said Isabella Smith and
 10 Smith her husband that the P.H.
 11 and Mrs. Linda are husband and wife
 12 that the said Mary De Boser and Clinton
 13 Boser are husband and wife and
 14 that the said Sarah Thomas and Fayette
 15 are husband and wife and that
 16 Margaret Horvath and William Horvath
 17 are husband and wife and that Peter E
 18 McQueen George W McQueen and
 19 James McQueen and John Mc
 20 Queen ~~and~~ a minor and Alzada
 21 McQueen and Lizzie McQueen a
 22 minor are the owners of ^{each of said premises in common} the undivided
 23 one eighth of the following described
 24 real estate situated in Jones Island
 25 Mallenock County, Iowa as shown

EXHIBIT D
 PAGE 12 OF 19

Land Claim No 50 in the 1st section
S 4 (6) Township 22 N 1st Range 10 E (11)
west containing six hundred and thirty two
90/100 (632 2/100) acres being the same land
that Alexander McQueen and McQueen
his wife did seized of that the property
(real estate) is so situated that partition
cannot be had or made without ~~and~~ great
inconvenience. Wherefore plaintiffs
ask that a guardian ad litem be
appointed in this suit for the said
minors John McQueen & Sizzie McQueen
that partition of the interest of said
parties in said premises be made
and that the said premises sell
and except one acre upon which there
is a gran yard may be sold according
to law and that the proceeds of such
sale be distributed among said minors
in accordance with the interests of
each and that plaintiffs have and
recover their costs and disbursements
of this suit and that a decree be
given accordingly and that plaintiffs
have such other and further relief

Table.

R. C. Byler and
E. Mendenhall atty for Def

State of Oregon
Multnomah County } ss

I R. C. Byler being
sworn say that I am ^{one of} the attorneys of
the above named plaintiffs John F.
Sinder & M. J. Sinder his wife who
are the plaintiffs in the above
entitled action that they said
John F. Sinder & M. J. Sinder
are not within & do not reside
within Multnomah County
in the State of Oregon, that
I know the contents of the
above amended complaint
& that the same is true as
I verily believe.

Subscribed and sworn to by R. C. Byler
Deputy Clerk this 1st day of Nov 1875

D
EXHIBIT
PAGE 14 OF 18

In the Court
of the State of Oregon
for Multnomah
County.

John F. Sinder
vs

John F. Sinder
et al.

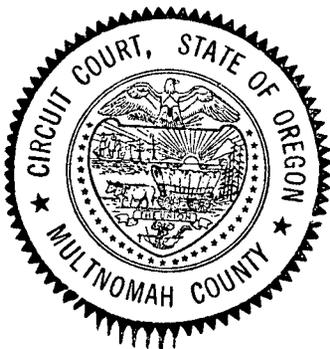
Amended
Complaint

J. Allen Macomber
Notary Public for
Oregon

Subscribed & sworn to
by R. C. Byler
Deputy Clerk

R. C. Byler
Deputy





STATE OF OREGON } ss
County of Multnomah }

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of

AUG 28 1992

Court on: _____
CIRCUIT COURT
Administrator

By: Robert J. Newberry
Deputy

In the Circuit Court of the State of Oregon
for Multnomah County
John F. Linder and
M. J. Linder his wife, Plffs

vs
Peter E. McQueen, Geo. W. McQueen
and Anna McQueen, ^{his wife} Fay Ham and Sarah
Ham his wife, William Forrest and Margaret
Forrest his wife, Clinton Bonser & Mary A.
Bonser his wife, Alzada McQueen, James McQueen
John McQueen a minor & Elizabeth McQueen
a minor Defts

The Plaintiffs in this their amended complaint allege that the Defts are husband and wife, that the Defts Geo Ham - Sarah Ham are husband and wife - William Forrest and Margaret Forrest are husband and wife - Clinton Bonser and Mary A. Bonser are husband and wife - that the Plaintiffs and the Defts are in possession of tenents in common of the following described real estate to wit: Donation Land Claim No 58 fifty being section six (6) Township No 2 North Range one met containing six hundred and thirty two - 9/100 (632.99/100) acres, being the same land that Alexander McQueen and McQueen

5472
Circuit Court
State of Oregon
Multnomah
County — 5472

John F. Linder et

vs
Peter E. McQueen
et al —

in and to the said
County of Multnomah
State of Oregon
in and to the said
County of Multnomah
State of Oregon

Dec. 12 1875
Geo. L. Shroy Clerk

J. Parkman
Deputy
Clerk
in and to the said
County of Multnomah
State of Oregon

In the Circuit Court of the State of Oregon
for Multnomah County
John F. Linder and
M. J. Linder his wife, Pliffs
vs
Peter E. McQueen, Geo. W. McQueen
and Anna McQueen, ^{his wife} Geo. Ham and Sarah
Ham his wife, William Forrest and Margaret
Forrest his wife, Clinton Bonser & Mary A.
Bonser his wife, Alzada McQueen, James McQueen

his wife died seized of, that said decedent
 real estate is situated on Jannis Island in
 Multnomah County and State of Oregon
 that the Plaintiff M. J. Linder, wife of the
 said John F. Linder, has an estate of inheri-
 tance therein, consisting of an undivided ~~one~~
 eleventh part thereof as tenants in common
 with the heirs Peter C. McQueen, Mrs
 W. McQueen, ~~Anna McQueen~~, John & Ann
 wife of the said Geo Stans, Margaret Forrest
 wife of the said William Forrest, Mary A. Linder
 wife of the said Clinton Linder, Algada McQueen
 James McQueen, John McQueen a minor and
 Elizabeth McQueen a minor each has an
 undivided one eleventh part thereof. That the
 Plaintiff John F. Linder, husband of the said
 Plaintiff M. J. Linder. ~~That~~ is the owner
 of an undivided eleventh of the above describe
 d real estate and is in the possession
 thereof as tenant in common with the
 above named heirs who are tenants in
 common with the said M. J. Linder her
 wife each having an estate of inheritance
 therein as aforesaid. That the said John
 F. Linder, purchased on the 7 day of Feb-
 1871 of one Isabella McQueen
 Isabella ~~McQueen~~ ^{now husband of} ~~W. Smith~~

D
 EXHIBIT
 PAGE 15 OF 19

she being

she ^{being} ~~was~~ ^{being} an estate of inheritance in the
said real estate consisting of one undivided
element part of the above described real estate
as tenants in common with the wife of the
Deft Wm M. J. Linder, and with those
who are herein named as ^{holding as} tenants in common
with M. J. Linder wife of John F. Linder
one of the Defts, for a valuable consideration
the said one undivided ~~or~~ element part of
the above described real estate, by deed duly
executed. That the one undivided ~~or~~ element
part of the above described real estate was
at the time of the commencement of this
action - is now the separate property of
the said M. J. Linder wife of the said
John F. Linder one of the Defts herein and
that she holds the same separate - apart from
her said husband as her own individual
and separate estate. That said Anna McQueen
is the wife of the Deft Geo W. McQueen
That the Defts John McQueen and
Elizabeth McQueen are minors. That the Defts
or either of them now or her land in
the said County of State in common with the
said persons who are named as holding as
tenants in common with them

that the above described real estate is so situated and cut up divided or interested with small taxes and charges that it will be impossible to make a just and equal division thereof among the said tenants in common.

Wherefore the Plaintiffs ask judgment against Defendants for a partition of said real property according to the respective rights of the parties aforesaid and by a sale thereof and a division of the proceeds between the parties according to their rights and for their costs & disbursements of this suit.

R. E. Byler and E. M. Mendenhall
State of Oregon - enhance attorneys for Plaintiffs
Multnomah County, Ore.

I R. E. Byler being first duly sworn say that the foregoing recited Complaint is true as I verily believe and the reason I make this declaration is because the Defendants are not within this State or County and that all of the statements are within my personal knowledge and that I am the attorney for Plaintiffs.

Subscribed & sworn to before me this
9th of March, 1876

R. E. Byler

Geo. L. Stone Clerk for W. L. Daubman Deputy

In presence of Court at the within

between the parties, according to their rights
and for their costs & disbursements of this
suit

R. E. Byler and E. Munde
State of Oregon - authorized attorneys for Plaintiff
Multnomah County } ss

I R. E. Byler being first
duly sworn say that the foregoing Comended
Complaint is true as I verily believe and
the reason I make this declaration is because
the Defts are not within this State or
County and that all of the statements
are within my personal knowledge and
that I am the attorney for Pltff

Subscribed & Sworn to before me this
9th of March 1876

R. E. Byler

Geo. L. Stone Clerk for W. L. Deaneham Deputy

I have received a copy of the within
and hereby accept it, March 1876

O. P. Mason

Attorney for
Administrators of the estate
of H. McLean deceased

5472

To the Sheriff's Court
of the State of Oregon
for Multnomah
County

John F. Green
vs

John F. Green
et al

Amended Draft
-sint-

Filed March 9, 1876

Geo. L. Shryver Clerk

By A. J. Green
Deputy

W. J. Green

E. W. Green

Attorney for Plaintiff

State of Oregon }
Multnomah County } ss

Service of the within copy
accepted this 18th day of March 1876
in Multnomah County of State of Oregon

J. J. Brown
Guardian for the said
John McLean and Elizabeth
McLean -

EXHIBIT PAGE 18 OF 18



STATE OF OREGON } ss
County of Multnomah }

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: **AUG 28 1992**
CIRCUIT COURT
Administrator

By: *Robin A. Abusman*
Deputy

D E E D

Charles W Burrage, John
Howell and J.W.Walker,
referees appointed by the
Circuit Court of the State
of Oregon for Multnomah
County

Book 30 page 307
Date December 18 1876
Rec. January 9 1877
Con \$4000.00
DEED RECORDS

To

Isaac Thomas

WHEREAS by virtue of an order of sale duly issued out of and under the seal of said Court dated 28th day of October 1876 upon a decree of partition duly made and rendered in said Court on the 25th day of July 1876 in a suit for the partition of said property in which John F. Linder and M.J.Linder his wife, were plaintiffs and George McQueen, James McQueen, Peter McQueen, John McQueen Lizzie McQueen, George Ham, Sarah Ham, Clinton Bonser, Mary Ann Bonser, S. E. McEvers, Alzada McEvers, William Forest, Margaret Forest, Robert Imbrie and Benjamin Cornelius were defendants, to us directed and delivered commanding us to make sale of the property hereinafter described and in said decree and order of sale specified and

WHEREAS in obedience to said command and under and by virtue of said order we did on the _ day of October 1876 sell all the right title and interest of said parties plaintiff and defendant in said premises at public auction at the Court House door in the said County of Multnomah, State of Oregon at 10 o'clock A M of said day after having first given due notice of the time and place of said sale by posting notices of the time and place of sale particularly describing the property for four weeks successively

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prior to the day of sale in three of the most public places in the County of Multnomah and also by publishing a copy of such notice once each week for four weeks successively prior to said day of sale in the Weekly Standard and Daily Oregonian a weekly newspaper of general circulation printed and published in Multnomah County, Oregon, at which sale all the right title interest and claim of said parties plaintiff and defendant in and to said premises were struck off and sold to said party of the second part for the sum of \$4000.00 the said party of the second part being the highest bidder and that being the highest sum bidden therefore, whereupon we, after receiving from said purchaser the said sum of money so bid as aforesaid gave said purchaser the party of the second part such certificate of said sale as by law directed to be given and the matters contained in said certificate were substantially stated in the return of our proceedings upon said order of sale to the clerk of said court;

AND WHEREAS the said court by an order made the ___ day of October 1876 duly confirmed said sale and directed us to execute a conveyance to said purchaser in pursuance thereof;

AND WHEREAS we the said parties of the first part did on the 4th day of November 1876 make executed and deliver to said purchaser Isaac Thomas a certain paper intended for a good and sufficient deed of conveyance of said premises under said order of said court intending thereby to convey to said purchaser all the right title and interest of the said parties plaintiff and defendant in and to said premises, and

WHEREAS in said paper intended for said deed of conveyances thereof there were and is certain errors in dates, rendering the reading thereof inconsistent and defective,

NOW THEREFORE*** by virtue of said order of sale and in pursuance of the statute in such case made and provided and in confirmation of said deed of 4th day of November 1876 and for and in consideration of said sum of money to us in hand paid, the receipt whereof is hereby acknowledged and in consideration of the premises have granted, bargained sold conveyed and confirmed and by these presents do grant, bargain sell convey and confirm unto said party of the second part his heirs and assigns forever all the right title interest and claim which the said parties to said suit or either of them had on the day of said sale or at any time afterwards or now have in or to that parcel of land in Multnomah County, State of Oregon, which is described on the maps and plats of the United States Surveys as the Donation Land Claim of Alexander McQueen and wife, in townships 2 and 3 north of range 1 West of the Willamette Meridian, containing 631.74 acres, excepting therefrom 1 acre in a square form used as a burying ground.

Two witnesses to each signature. Charles W. Burrage (seal)
John Howell (seal)
James W Walker (seal)

Acknowledged.

30



TAKEN ON TAX LOT 17 AT LARGEST GRAVE SITE
BETWEEN 1958 - 1960







HENNAGIN & SHONKWILER

ATTORNEYS

624-0917

JOHN W. SHONKWILER, P.C.
ROGER HENNAGIN, P.C.

KRUSE WOODS ONE
5285 MEADOWS ROAD, SUITE 191
LAKE OSWEGO, OREGON, 97035

November 22, 1988

Mr. W. Dean Fitzwater
Fitzwater and Fitzwater
Attorneys at Law
15431 SE 82nd Drive, Suite G
Clackamas, OR 97015

Re: McQuinn Family Pioneer Cemetery Association, Inc.

Dear Mr. Fitzwater:

My office represents James L. Smith and Sheryl Anderson regarding a pioneer cemetery located on Sauvie Island. My clients have informed me that your office represents the McQuinn Family Pioneer Cemetery Association, Inc., an organization created for the purpose of apparently maintaining and preserving the small cemetery located within the boundaries of my clients' property.

It has become apparent from my conversations with my clients and review of the Deed Records that we need to reach an understanding as to the extent of legal rights possessed by both parties in this matter. I think it would be in everyone's best interest that the parties establish between themselves the extent of their legal rights, and avoided the necessity of litigation. Essentially, I would like to know: (1) the legal basis for your clients' claim to ownership of the cemetery; (2) claim of access to the cemetery; (3) authority of McQuinn Family Pioneer Cemetery Association, Inc., to have governing power over the cemetery (has it received a Deed from a lawful possessor of title following in a sequence of estates probated from each estate since the estate of Alexander H. McQuinn and Rebecca McQuinn).

I view that the issues involved in this matter are as follows. First, there is the question of the ownership of the cemetery. If your clients can prove a continuous line of transfers of ownership down to the McQuinn Family Pioneer Cemetery Association, Inc., there still remains the factual issue of abandonment by the McQuinn family and adverse possession by my clients and their family. Second, I believe that there is a serious issue related to access to the cemetery. My review of the Deed Records shows that none was granted. It appears that there was an initial reservation by the

Mr. W. Dean Fitzwater
November 22, 1988
Page 2

original owner of the property to reserve himself the cemetery. However, he did not reserve an access across the surrounding property. The common law theory of implied access would not apply in that circumstance. It only applies where the grantor sells to a third party a land-locked piece of property of which the original owner or grantor reserves the surrounding property to himself. In this case the opposite is true. I further think that given the subsequent clear family abandonment of the cemetery after the sale of the surrounding property shows the grantor's intention not to provide an access to the cemetery. Third, in the absence of a lawful right of access to the cemetery, your clients appear to be trespassing upon my clients' property and causing some damages. This is an area I think we need to immediately resolve. Further, this letter is notice to your clients that they have no right of access and they are to cease all trespass immediately. Fourth, my clients have not been provided with any identification of how the McQuinn Family Pioneer Cemetery Association, Inc. has the right to govern the use of the cemetery. As I stated above, I think we need to see the Deed or some similar authority granted to this corporation from a lawful possessor of title to the cemetery. Fifth, it appears that there has been an interruption of the burial plots and the plot markers. For example, apparently one grave was originally marked with a marker identifying the burial of George Anderson, died March 28, 1891. It now appears that this grave has been given or is intended to be given a different marker with a different name.

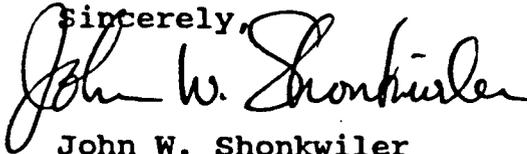
A sixth issue relates to the confusion over real property taxes and who is responsible for paying them. I am presently evaluating the rightful ownership of the cemetery property. As I stated above, this letter is an inquiry into your clients' claimed interest. As this matter has not been finalized, my clients will hold in trust all monies received from your client regarding a reimbursement for property taxes. They will hold this money until this issue of ownership is resolved, or you may have the money returned immediately upon your request.

Finally, my clients inform me that a grave marker was removed from the cemetery many years ago by an artist for the purposes of making an artistic rendering or etching. The removal of this marker was not at the acquiescence of my clients. However, it has been returned to a family member. If my clients are not the lawful owners of the cemetery, they are ready and willing, upon request, to make arrangements to have the marker delivered to the cemetery or rightful owner.

Mr. W. Dean Fitzwater
November 22, 1988
Page 3

I realize that there is a high degree of emotional involvement by both parties to this matter. Before that emotional reaction gets out of hand, I strongly suggest that we get together and resolve what are the facts and the extent of legal rights in this case. I would hope that we can reach an understanding that is acceptable to everyone.

Sincerely,



John W. Shonkwiler

JWS:sc

cc: James L. Smith
Sheryl Anderson

JWSG

HENNAGIN & SHONKWILER

ATTORNEYS AT LAW
624-0917

JOHN W. SHONKWILER, P.C.
ROGER HENNAGIN, P.C.

KRUSE WOODS TWO
5335 SW MEADOWS ROAD, SUITE 251
LAKE OSWEGO, OREGON 97035

*file in
Anderson/
Smith
JH*

January 24, 1991

Multnomah County Assessor
Multnomah County Division
of Assessment & Taxation
610 SW Alder
Portland, OR 97205-3603

Re: Account No. 97106-0170 Tax Roll Description Section 06-2-N-1W, Tax Lot 17

Dear Sirs/Madams:

My office represents James Smith and Sheryl Anderson who share ownership of the one acre parcel (Tax Lot 17 described above) which lies within the center of their mother's farm on Sauvie Island. Back in 1988 and 1989 there was some confusion as to the ownership of this property. An organization was created entitled "McQuinn Family Pioneer Cemetery Association, Inc." that began asserting ownership of the one acre parcel. At that time they sought to pay the property taxes and exercise ownership rights on the parcel.

However, my clients contested their claims of ownership and challenged the Association to prove their ownership rights. The Association failed to prove any ownership rights. Indeed, our investigation of the county records establishes that Mrs. Reonne Smith acquired ownership of the parcel as ownerships have long since been merged by a single ownership of both parcels several generations ago.

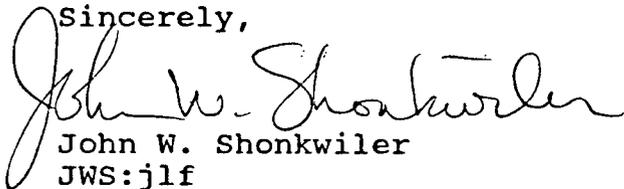
This letter is notice to you that in accordance with the county's deed records, James Smith and Sheryl Anderson fully assert ownership of the one acre parcel; and instruct that all tax statements pertaining to the parcel be sent to them in accordance with their previously recorded deed. Under those former instructions, all tax statements are to sent Mr. Smith and Ms. Anderson care of: Reonne B. Smith at 16800 NW Lucy Reeder Road, Portland, OR 97231. This letter is also notice that you are not to except instructions to the contrary from any parties other than Mr. Smith and Ms. Anderson or their legal representative. In

Assessor Letter
January 24, 1991
Page 2

particular, the "Association" has no legal capacity to require different instructions. The "Association" has not identified a deed showing a subsequent or superior ownership interest in the property, nor have they initiated litigation to clear a "cloud of title" on the property. Therefore, only my clients may provide you with instructions pertaining to the tax assessments on the property.

Please feel free to call if you have any questions.

Sincerely,



John W. Shonkwiler

JWS:jlf

cc: Sheryl Anderson
James Smith

HENNAGIN & SHONKWILER

ATTORNEYS

624-0917

JOHN W. SHONKWILER, P.C.
ROGER HENNAGIN, P.C.

KRUSE WOODS ONE
5285 MEADOWS ROAD, SUITE 191
LAKE OSWEGO, OREGON, 97035

November 22, 1988

Mr. W. Dean Fitzwater
Fitzwater and Fitzwater
Attorneys at Law
15431 SE 82nd Drive, Suite G
Clackamas, OR 97015

Re: McQuinn Family Pioneer Cemetery Association, Inc.

Dear Mr. Fitzwater:

My office represents James L. Smith and Sheryl Anderson regarding a pioneer cemetery located on Sauvie Island. My clients have informed me that your office represents the McQuinn Family Pioneer Cemetery Association, Inc., an organization created for the purpose of apparently maintaining and preserving the small cemetery located within the boundaries of my clients' property.

It has become apparent from my conversations with my clients and review of the Deed Records that we need to reach an understanding as to the extent of legal rights possessed by both parties in this matter. I think it would be in everyone's best interest that the parties establish between themselves the extent of their legal rights, and avoided the necessity of litigation. Essentially, I would like to know: (1) the legal basis for your clients' claim to ownership of the cemetery; (2) claim of access to the cemetery; (3) authority of McQuinn Family Pioneer Cemetery Association, Inc., to have governing power over the cemetery (has it received a Deed from a lawful possessor of title following in a sequence of estates probated from each estate since the estate of Alexander H. McQuinn and Rebecca McQuinn).

I view that the issues involved in this matter are as follows. First, there is the question of the ownership of the cemetery. If your clients can prove a continuous line of transfers of ownership down to the McQuinn Family Pioneer Cemetery Association, Inc., there still remains the factual issue of abandonment by the McQuinn family and adverse possession by my clients and their family. Second, I believe that there is a serious issue related to access to the cemetery. My review of the Deed Records shows that none was granted. It appears that there was an initial reservation by the

EXHIBIT J
PAGE 1 OF 5

Mr. W. Dean Fitzwater
November 22, 1988
Page 2

5. original owner of the property to reserve himself the cemetery. However, he did not reserve an access across the surrounding property. The common law theory of implied access would not apply in that circumstance. It only applies where the grantor sells to a third party a land-locked piece of property of which the original owner or grantor reserves the surrounding property to himself. In this case the opposite is true. I further think that given the subsequent clear family abandonment of the cemetery after the sale of the surrounding property shows the grantor's intention not to provide an access to the cemetery. Third, in the absence of a lawful right of access to the cemetery, your clients appear to be trespassing upon my clients' property and causing some damages. This is an area I think we need to immediately resolve. Further, this letter is notice to your clients that they have no right of access and they are to cease all trespass immediately. Fourth, my clients have not been provided with any identification of how the McQuinn Family Pioneer Cemetery Association, Inc. has the right to govern the use of the cemetery. As I stated above, I think we need to see the Deed or some similar authority granted to this corporation from a lawful possessor of title to the cemetery. Fifth, it appears that there has been an interruption of the burial plots and the plot markers. For example, apparently one grave was originally marked with a marker identifying the burial of George Anderson, died March 28, 1891. It now appears that this grave has been given or is intended to be given a different marker with a different name.

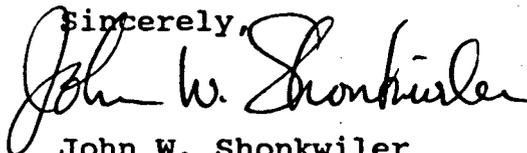
A sixth issue relates to the confusion over real property taxes and who is responsible for paying them. I am presently evaluating the rightful ownership of the cemetery property. As I stated above, this letter is an inquiry into your clients' claimed interest. As this matter has not been finalized, my clients will hold in trust all monies received from your client regarding a reimbursement for property taxes. They will hold this money until this issue of ownership is resolved, or you may have the money returned immediately upon your request.

Finally, my clients inform me that a grave marker was removed from the cemetery many years ago by an artist for the purposes of making an artistic rendering or etching. The removal of this marker was not at the acquiescence of my clients. However, it has been returned to a family member. If my clients are not the lawful owners of the cemetery, they are ready and willing, upon request, to make arrangements to have the marker delivered to the cemetery or rightful owner.

Mr. W. Dean Fitzwater
November 22, 1988
Page 3

I realize that there is a high degree of emotional involvement by both parties to this matter. Before that emotional reaction gets out of hand, I strongly suggest that we get together and resolve what are the facts and the extent of legal rights in this case. I would hope that we can reach an understanding that is acceptable to everyone.

Sincerely,



John W. Shonkwiler

JWS:sc

cc: James L. Smith
Sheryl Anderson

JWSG

file
Anderson
Smith

HENNAGIN & SHONKWILER

ATTORNEYS AT LAW
624-0917

JOHN W. SHONKWILER, P.C.
ROGER HENNAGIN, P.C.

KRUSE WOODS TWO
5335 SW MEADOWS ROAD, SUITE 251
LAKE OSWEGO, OREGON 97035

January 24, 1991

Mr. W. Dean Fitzwater
FITZWATER & FITZWATER
Attorneys at Law
15431 SE 82nd Drive
Clackamas, OR 97015

Re: Cemetery Property Owned by James Smith and Sheryl Anderson on
Sauvie Island

Dear Mr. Fitzwater:

Back in late 1988, you apparently represented the newly formed "McQuinn Family Pioneer Cemetery Association, Inc.". This organization was apparently created for the purpose of maintaining and preserving a small cemetery within the boundaries of client's property. On November 22, 1988, I sent you a letter identifying my clients position, assertion of property rights and made a request that your clients provide us with some evidence of a superior property right to the cemetery.

A lot of time has gone by, but your clients have not provided any proof of a superior property right. As I identified in my November 22, 1988 letter, your clients were put on notice not to trespass on my clients' property in their pursuit of visiting the abandon cemetery site. Apparently, acts of trespass have been occurring and my clients have incurred property damage. If you still represent these people, I suggest that you immediately inform them to cease such trespass or my clients will have no recourse but to seek litigation to obtain recovery of their damages and attorneys fees. You might also inform them that under ORS 105.810, my clients would be entitled to treble damages for the injuries to their property.

Finally, it is now quite apparent that this "Association" can not provide any proof of a continuous line of title transferring ownership of this abandoned cemetery to them; that the cemetery use and maintenance has been abandon for well over fifty years; that past ownership transfers of the property and surrounding property have caused an extinguishment of any easement or assess rights to

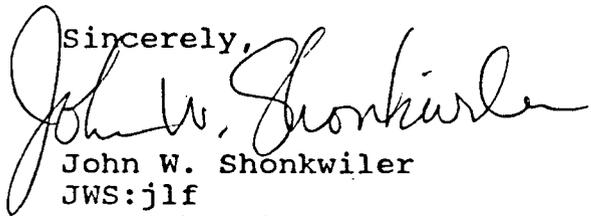
Fitzwater Letter
January 24, 1991
Page 2

the cemetery, and have merged all property rights into one ownership; and that no easement or assess rights have been granted by my clients to this "Association". Even for the sake of argument that this "Association" could produce a line of title to the property in question, that hypothetical title has been long lost by my clients actions that have clearly established a full ownership right through adverse possession.

I trust that you will inform your clients that they are to cease all further trespass on my clients' property. Hopefully, that will be the end of this matter.

Thank you for your cooperation.

Sincerely,



John W. Shonkwiler

JWS:jlf

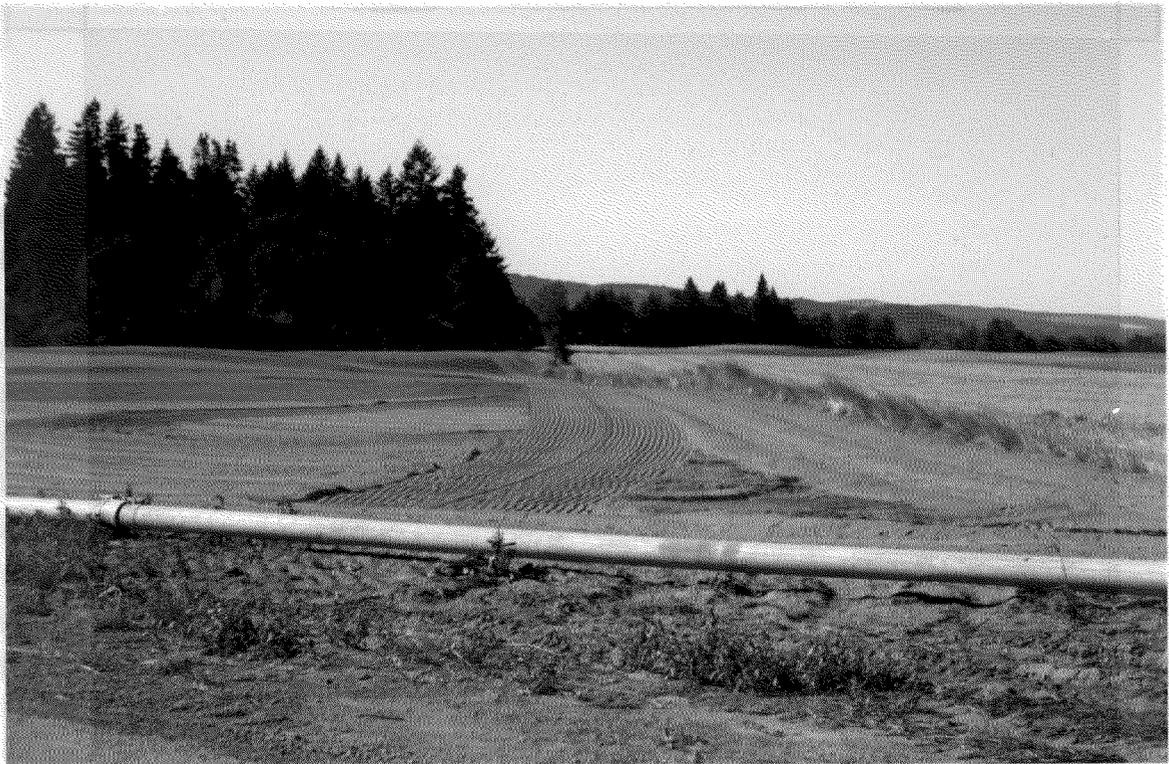
cc: Sheryl Anderson
James Smith

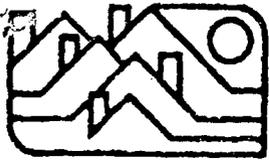












**REAL
ESTATE
ASSOCIATION**

August 27, 1992

Mr. John Shonkwiler, Attorney
13425 S. W. 72nd Ave.
Tigard, Or 97223

Dear Mr. Shonkwiler:

Enclosed is a list of comparable sales on Sauvie Island on vacant land. Since the zoning is so restrictive on the Island and the population is sparse, the list of available properties is limited.

I have worked the Sauvie Island real estate market since 1975 and have participated in upwards of 70% of the transactions on the Island in that period of time, as well as having three transactions in process now.

I'll be anxious to hear the outcome of this difficult matter.

Very truly yours,

Donna Mohr Allen

cc- Sheryl Anderson

Satellite Office & Mailing Address: 10601 N.W. 4th Street, Portland, OR 97231

Main Office: 1901 N.E. Broadway, Portland, OR 97232

(503) 286-4717 • FAX (503) 286-9239

EXHIBIT M
PAGE 1 OF 2

VACANT LAND SALES - SAUVIE ISLAND

<u>ADDRESS</u>	<u>NO. ACRES</u>	<u>CLOSING DATE</u>	<u>SALE PRICE</u>
16200 N. W. Gillihan Rd.	9.4	5-90	\$ 120,000
17631 N. W. Lucy Reeder Rd.	8.78	7-90	122,000
38504 N. W. Reeder Rd.	10	2-90	162,500
W. of 16416 N. W. Lucy Reeder	3.21	8-92	88,000 *
25602 N. W. Reeder Rd.	8.48	11-91	136,357

* to close week of 8-24-92. Selling agent Tom Brewer
Equity Group, Lake Oswego

AVERAGE PRICE PER ACRE = \$ 17,281

ATTORNEYS AT LAW
624-0917
fax #684-8971

JOHN W. SHONKWILER, P.C.
ROGER HENNAGIN, P.C.

13425 SW 72nd Avenue
Tigard, Oregon 97223

FACSIMILE TRANSMITTAL COVER SHEET

TO: LISA ROWE : JACKIE WEBBER FAX NUMBER: 650-0968
248-3277
FROM: JOHN SHONKWILER
DATE: 8/31/92

NUMBER OF PAGES 2 (INCLUDING TRANSMITTAL COVER SHEET)

INSTRUCTIONS:

CONFIDENTIALITY NOTICE

This facsimile transmission (and or documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

4

WV 244 no 24

DEED

REONNE B. SMITH, unmarried, conveys to JAMES L. SMITH, to the extent of an undivided one-half thereof, and to SHERYL ANDERSON, to the extent of an undivided one-half thereof -

All that portion of Tax Lot 9, Section 6, Township 2 North of Range 1 West of Willamette Meridian, lying northerly of Lucy Reader Road, being County Road No. 1191-40 on Sauvie Island, in Multnomah County, State of Oregon, said Tax Lot 9 being described as:

Beginning in the south line of Alex McQuinn DLC on section line between Sections 6 and 5; thence north 751.35'; thence north 35° 14' west 1910.1'; thence west 251'; thence south 2000.7' to the south line of Alex McQuinn DLC; thence south 77° east 1389.29' to beginning. Except part in road #1191.

(The consideration for this deed is less than \$100.00.)

Dated this ____ day of January, 1965.

Reonne B. Smith
Reonne B. Smith

-000-

STATE OF OREGON)
) ss.
County of Multnomah.)

Personally appeared before me this 16th day of January, 1965, the above-named REONNE B. SMITH, and acknowledged the foregoing instrument to be her voluntary act.



Carlom E. Lewis

Notary Public for Oregon
My Commission expires:

Nov 16, 1965

BOOK OF RECORDS

STATE OF OREGON }
COUNTY OF MULTNOMAH }SS

I do hereby certify that the foregoing copy
of

has been by me compared with the original,
and that it is a correct transcript therefrom,
and the whole of such original, as the name
appears on file and of record in our office and
in our care and custody. IN TESTIMONY
WHEREOF, I have hereunto set my hand and
affixed our seal this

27th day of August, 19 92

MULTNOMAH COUNTY RECORDING DEPT.

BY: B. Betty
DEPUTY

Book 241 Page 24



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

CERTIFICATE OF MAILING

I hereby certify that on Monday, August 10, 1992, I mailed certified true copies of an AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY and PETITIONER'S REPLY TO ANSWER AND MEMORANDUM OF SHERYL ANDERSON AND JAMES L. SMITH, case number 92-51C, filed by Fitzwater & Fitzwater, attorneys representing McQuinn Family Pioneer Cemetery Association, in connection with the September 1, 1992 Way of Necessity Hearing before the Multnomah County Board of Commissioners:

John W. Shonkwiler, PC
Attorney at Law
13425 SW 72nd Avenue
Tigard, Oregon 97223

Representing Anderson & Smith

Steven M. Berne
Bullivant Houser Bailey, et al
Attorneys at Law
300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089

Representing David & Jack DeFazio

Mary Anne Sohlstrom, President
McQuinn Family Pioneer Cemetery Assn.
108 NE 40th Avenue
Hillsboro, Oregon 97124

Deborah Bogstad
Office of the Board Clerk

0044C/18/db
enclosures
cc: Jacqueline A. Weber
Lisa L. Kolve

LAW OFFICES

FITZWATER & FITZWATER

CLARENCE L. FITZWATER 1903-1979
W. DEAN FITZWATER
WALLACE FITZWATER
LISA L. KOLVE
AUDREY LOWEN, LEGAL ASSISTANT

15431 S.E. 82ND DRIVE - SUITE G
CLACKAMAS, OREGON 97015
TELEPHONE 503/655-3963
FAX 503/650-0968

August 6, 1992

Deborah Bogstad
Office of the Board Clerk
Multnomah County Board of County Commissioners
Portland Building, Suite 1510
1120 SW Fifth Avenue
Portland, OR 97204

RE: Petition for Way of Necessity
McQuinn Family Pioneer Cemetery Association

Dear Deborah:

Enclosed for filing with the Board is Amended Petition and Reply to Anderson-Smith's Answer. Please note that the Amended Petition adopts the county surveyor's alternate route and therefore deletes David Fazio as an affected owner. Mr. Fazio's attorney has been copied with these documents, as has John Shonkwiler, attorney for Anderson-Smith.

Very truly yours,

FITZWATER & FITZWATER



Lisa L. Kolve

LLK:bh
Enclosures
cc: John Shonkwiler
Mary Sohlstrom

BOARD OF
COUNTY COMMISSIONERS
1992 AUG - 7 PM 3:31
MULTNOMAH COUNTY
OREGON

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

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IN THE MATTER OF:)
McQUINN FAMILY PIONEER CEMETERY) No. 92-51-C
ASSOCIATION, an Oregon Non-Profit) AMENDED PETITION
Corporation,) FOR ESTABLISHING WAY
) OF NECESSITY
)

COMES NOW the McQUINN FAMILY PIONEER CEMETERY ASSOCIATION, an Oregon Non-profit corporation, by and through their attorney Lisa L. Kolve, of FITZWATER & FITZWATER ATTORNEYS, and Petitions the BOARD OF COUNTY COMMISSIONERS, MULTNOMAH COUNTY, to establish a way of necessity pursuant to the provisions of ORS 376.150 to 376.200, stating as follows:

1.

The location and legal description of property to be served by proposed way of necessity is tax Lot 17, located in the N.E. 1/4 of Section 6, T2N, R1W, W.M., and in the Alexander McQuinn D.L.C., Multnomah County, Oregon.

2.

The location of public road located in the vicinity of the property to be served by the proposed way of necessity that is capable of being used to provide access to the property is Lucy Reeder Road No. 1191, which extends in generally Northwest and Southeast directions.

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 AUG - 7 PM 3:31

3.

1 The specific location of the proposed way of necessity is
2 beginning at the north right of way line of Lucy Reeder Road, No.
3 1191 with the west line of Tax Lot 16; thence north along the west
4 line of Tax Lot 16, being the west line of the Way of Necessity
5 90.00 feet more or less to the westerly boundary of the grave lot,
6 Tax Lot 17, as set out by the County Surveyor. The width of the
7 access is to be 12.00 feet. This is the nearest practical point
8 for connection to a way of necessity to a public road, and the
9 proposed way of necessity may be connected to the public road
10 safely.

11 4.

12 Necessity for establishment of an access is based upon need of
13 your Petitioner, the heirs of the McQuinn Family and owners of the
14 cemetery land, to have access from said Lucy Reeder Rd. No. 1191 to
15 the cemetery plot for visitation and maintenance. James L. Smith
16 and Sheryl Anderson, owners of Lot 16, which property land locks
17 subject cemetery property, refuse to grant unto Petitioner roadway
18 access.

19 5.

20 Petitioner does not have an existing easement, right to an
21 easement or any other enforceable access to provide access to a
22 public road.

23

24

25

26

2 - AMENDED PETITION

Page

6.

1 The proposed way of necessity does not connect to a public
2 road that has access rights acquired and limited by the state or
3 county.

7.

4
5 The names and addresses of persons who are owners upon which
6 proposed access could be located are:

7 A. JAMES L. SMITH and SHERYL ANDERSON, each to an undivided
8 one-half interest of Lot 16, whose address is: 922 SE 66th Place,
9 Portland, Oregon, 97215.

8.

10
11 No compensation is proposed to persons who are land owners for
12 reasoning that owners and their predecessors in interest were and
13 have for time being, been aware of the ownership interest of
14 petitioner and their traditional access to the cemetery back to the
15 common ownership of the property by the McQuinn family.

9.

16
17 Petitioner attaches hereto a survey of the proposed access, as
18 prepared by Louis J. Spisla, filed with Multnomah County Surveyor,
19 October 9, 1988, as Survey No. 50760. Said survey establishes the
20 specifics of points and location, and as iron rods were set, with
21 legal description and distance. Petitioner has highlighted the way
22 of necessity by yellow felt pen.

23

24

25

26

3 - AMENDED PETITION

Page

1 REQUEST IS HEREWITH MADE for the establishment of the proposed
2 way of necessity.

3 DATED the 6th day of August, 1992.

4 By: *Lisa L. Kolve*
5 Lisa L. Kolve, OSB #90316
6 Of Attorneys for Petitioner

7 STATE OF OREGON)
8) ss.
9 County of Clackamas)

10 I, Lisa L. Kolve, attorney for Petitioner McQuinn Family
11 Pioneer Cemetery Association, being first duly sworn, depose and
12 say that I have read this Amended Petition for Establishing Way of
13 Necessity, know the contents thereof and believe it to be true and
14 accurate.

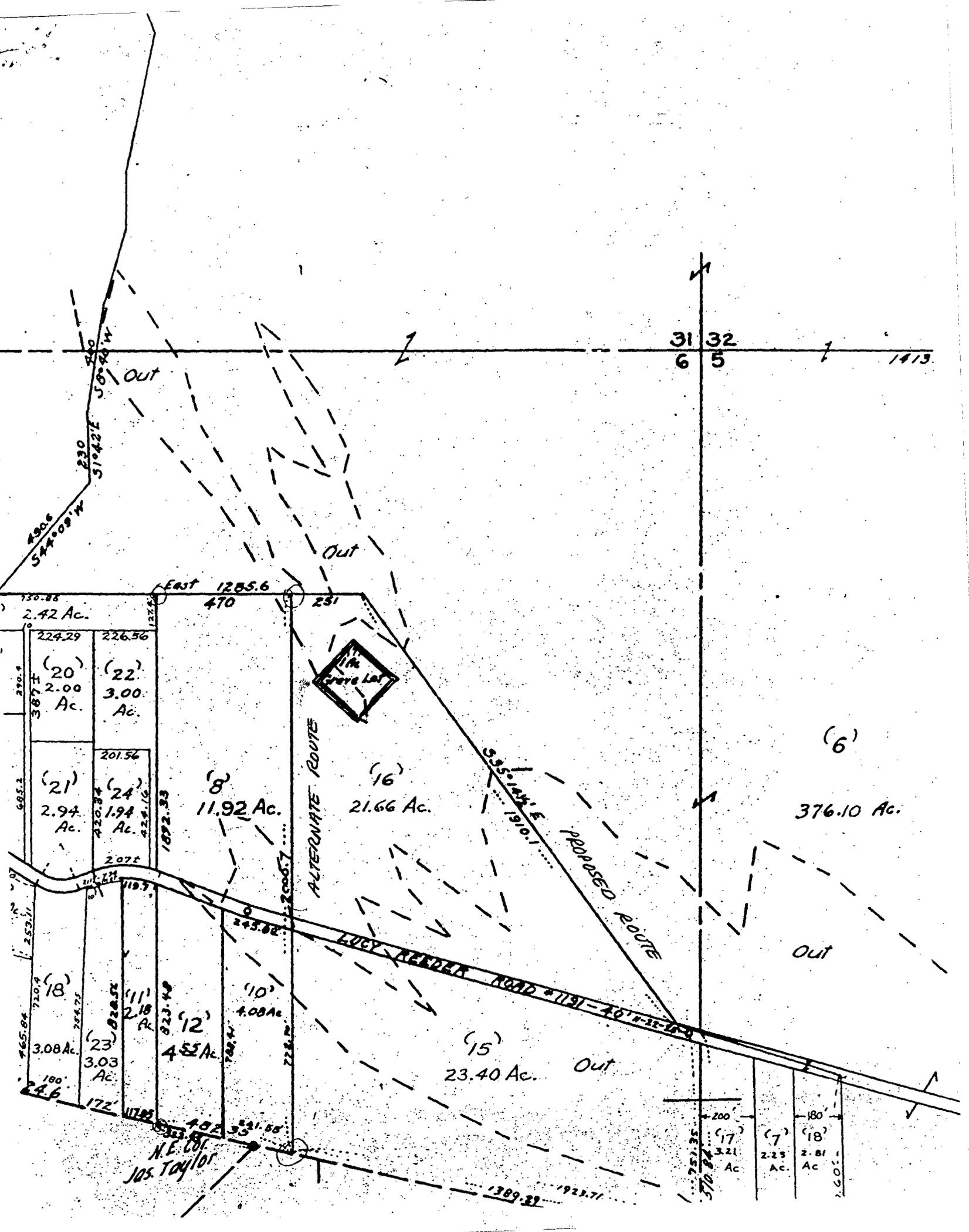
15 *Lisa L. Kolve*
16 Lisa L. Kolve

17 SUBSCRIBED AND SWORN to before me this ___ day of August,
18 1992.

19 _____
20 Notary Public for Oregon

21
22
23
24
25
26 4 - AMENDED PETITION

Page



31 32
6 5 1 1413

Out

Out

(6)

376.10 Ac.

Out

Out

230
54°40'W
51°42'E
230
54°40'W

2.42 Ac.

224.29
226.56
(20)
2.00
Ac.
(22)
3.00
Ac.

(21)
2.94
Ac.
(24)
1.94
Ac.

(18)
3.08 Ac.
(11)
2.18
Ac.
(12)
4.55 Ac.
(23)
3.03
Ac.

24.6
172'

N.E. COR.
JOS. TAYLOR

1389.32 1923.71

East 1255.6
470

231

(8)
11.92 Ac.

(10)
4.08 Ac.

(15)
23.40 Ac.

241.55



ALTERNATE ROUTE

(16)
21.66 Ac.

LUCY RENDLER ROAD = 1191 - 40' N 35° 15' W

PROPOSED ROUTE
595.14 N 1910.1

(17)
3.21
Ac.
(7)
2.23
Ac.
(18)
2.81
Ac.

260'

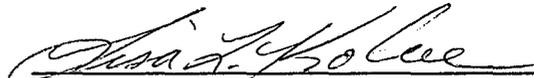
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on August 6, 1992, I served a true copy of the foregoing AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY, on the following persons, by placing the same in the United States Post Office at Clackamas, Oregon, first class postage prepaid addressed to:

STEPHEN F. ENGLISH
STEVEN M. BERNE
Bullivant Houser Bailey
Attorneys at Law
300 Pioneer Tower
888 SW 5th Ave.
Portland, OR 97204-2089

DATED this 6th day of August, 1992.

FITZWATER & FITZWATER



Lisa L. Kolve, OSB No. 90316
of attorneys for plaintiff

CERTIFIED TO BE A TRUE COPY:

Lisa L. Kolve, OSB No. 90316

FITZWATER & FITZWATER
Attorney at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015
Telephone: 655-3963

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

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IN THE MATTER OF:)
) No. 92-51-C
McQUINN FAMILY PIONEER CEMETERY)
ASSOCIATION, an Oregon Non-Profit) PETITIONER'S REPLY TO
Corporation,) ANSWER AND MEMORANDUM
) OF SHERYL ANDERSON AND
) JAMES L. SMITH

The petitioner McQuinn Family Pioneer Cemetery Association (hereinafter "Association") responds to Sheryl Anderson and James L Smith's (hereinafter "Anderson-Smith") Answer and Memorandum in Opposition to Petition for Establishing Way of Necessity as follows:

1.

[QUESTION OF STANDING]

Anderson-Smith have objected to petitioner's request for a way of necessity on the grounds that petitioner lacks standing. Anderson-Smith argue that because the Association has not obtained valid titles from "all" current heirs the Association does not have standing to bring this action. Oregon Revised Statute 376.155(1) states:

To establish a way of necessity under ORS 376.150 to 376.200, a landowner shall file a petition with the governing body of the county in which the land is located. (emphasis added).

The statute simply refers to "a landowner." There requirement that all owners of the land file a petition.

1 - PETITIONER'S REPLY

Page

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 AUG - 7 PM 3:31

Therefore, Anderson-Smith's objection to the way of necessity on
1 this ground fails and petitioner should be granted a way of
2 necessity.

3 Anderson-Smith also argue that petitioners lack standing
4 because the petition fails to allege that the Association is the
5 fee simple owner of the one acre cemetery. Paragraph 7 of the
6 petition arguably alleges ownership of the cemetery by the McQuinn
7 heirs, of which the Association is comprised. In any event, the
8 Association does hold recorded title to the cemetery by deed
9 granted to the Association by one of the heirs, Maxine Daly. A
10 copy of the deed is attached hereto as Exhibit 1. Therefore,
11 Anderson-Smith's argument on this ground also fails and petitioner
12 should be granted a way of necessity.

13 2.

14 [REQUIREMENTS UNDER ORS 376.180(12)]

15 Anderson-Smith argue that the way of necessity should be
16 denied because the facts of this case fall under ORS 376.180(12)
17 which states: "A way of necessity established under ORS 376.150 to
18 376.200 shall: Not be established for any land if the owner of the
19 land had knowingly eliminated access to all public roads from the
20 land by the sale of other land owned by the landowners."

21 Anderson-Smith argue that because the heirs to Alexander H.
22 and Rebecca McQuinn in 1876 sold all the land surrounding the
23 cemetery to Isaac Thomas, the heirs knowingly eliminated all access
24 to the cemetery. However, what the facts of this case show is that
25 the eleven heirs were unsuccessful in their attempt to partition

26 2 - PETITIONER'S REPLY

Page

1 the land. In order for the estate to be settled, the court ordered
2 the property to be sold. The heirs did not willingly sell the
3 property or knowingly fail to provide access to the cemetery.
4 These issues were not within their control. Therefore, this
5 statutory requirement is not applicable to this case and the
6 petition should be granted.

7 3.

8 **[ADVERSE POSSESSION]**

9 Anderson-Smith argue that petitioner does not currently have
10 legal title to the one acre cemetery plot because Anderson-Smith
11 have obtained title by adverse possession. In order for Anderson-
12 Smith to quiet title by adverse possession they must file an action
13 with the circuit court of the county in which the property is
14 located and prove by clear and convincing evidence each and every
15 element of adverse possession. Anderson-Smith have not attempted
16 to acquire title by adverse possession through the circuit court of
17 the state and cannot plead and prove such a case in this forum.
18 County records clearly show petitioner as owner of the one acre
19 cemetery. Therefore, the petition should be granted.

20 4.

21 **[ABANDONMENT]**

22 Anderson-Smith argue that the cemetery has been abandoned and
23 request under ORS 97.450 that the County Commissioners order the
24 cemetery declared abandoned. However, ORS 97.450 does not give
25

26 3 - PETITIONER'S REPLY

Page

Anderson-Smith the right to petition the county for such an order,
1 nor does the county have authority to make such an order unless the
2 county themselves owns the cemetery. ORS 97.450 states:

3 Whenever any cemetery which is within the
4 limits of any county, city, or town has been
5 abandoned, or it is desirable to abandon such
6 cemetery, or such cemetery has been allowed to
7 remain in a dilapidated condition for a period
8 of five years or longer, the governing body of
9 any county, if the cemetery is owned by the
10 county, or the corporate authorities of the
11 city or town, if the cemetery is owned by the
12 city or town, or the trustees or directors, if
13 the cemetery is owned by an association or
14 corporation, may order that such burial ground
15 be discontinued...(emphasis added).

16 The statute simply gives the owner of the property the right to
17 declare the cemetery discontinued. It does not give a non-owner
18 the right to make such a declaration or request such an order from
19 the county. Therefore, this statute is not applicable to this
20 case, Anderson-Smith's request should be denied and the Petition to
21 Establish a Way of Necessity should be granted.

22 Even if the County Commissioners believe this statute is
23 applicable, the statutory requirement that the cemetery be left in
24 dilapidated state for a period of five years has not been met.
25 Petitioners have attempted to maintain this cemetery since 1986.
26 Therefore, the statute is again not applicable and the way of
necessity should be granted.

5.

[COMPENSATION]

Anderson-Smith argue that the petition should be dismissed
because it states no specific compensation for the way of

4 - PETITIONER'S REPLY

Page

necessity. Oregon Revised Statute 376.155(2)(i) requires
1 petitioner to propose an amount of compensation to person's owning
2 the land across which the way of necessity is proposed. The
3 petition does address the issue of compensation and proposes that
4 no compensation be awarded. Therefore, the petition stands for
5 your consideration.

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6.

[ORS 376.180(9)]

Oregon Revised Statute 376.180(9) requires the petitioner to
9 take other legal action to acquire access to the property prior to
10 petitioning for a way of necessity. "Legal action" refers to
11 action to enforce an existing legal right such as enforcing a
12 contract or an action for adverse possession of the property.
13 "Legal action" does not refer to or require petitioner to purchase
14 an easement or offer to purchase an easement. Anderson-Smith's
15 argument is without merit and should be disregarded. The petition
16 should be granted.

7.

[ORS 376.155(2) AND 376.180(1) AND (4)]

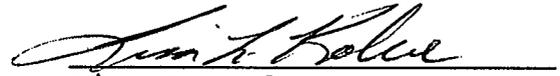
Petitioner is in agreement with the recommended alternative
20 route of the county surveyor, Larry F. Nicholas. Petitioner is
21 filing an amended petition in this regard. Anderson-Smith's
22 arguments concerning the route proposed in the initial petition

are, therefore, no longer at issue. Anderson-Smith have stated in
1 their answer that they are for the most part in agreement with the
2 county surveyor's alternate route. Therefore, the petition as
3 amended should be granted.

4
5 WHEREFORE, the Petition For Establishing a Way of Necessity
6 should be granted.

7 DATED this 6th day of August, 1992.

8 Respectfully Submitted,
9 FITZWATER & FITZWATER

10
11
12
13 
14 Lisa L. Kolve
15 OSB# 90316
16 Of Attorneys for Petitioner
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26 6 - PETITIONER'S REPLY

Page

OK

QUITCLAIM

BOOK 1920 PAGE 589

KNOW ALL MEN BY THESE PRESENTS, That MAXINE E. DALY, as McQuinn family
 heir representative (per recorded designations) hereinafter called grantor,
 for the consideration hereinafter stated, does hereby remise, release and quitclaim unto MCQUINN FAMILY
PIONEER CEMETERY ASSOCIATION, Inc.
 hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest
 in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any-
 wise appertaining, situated in the County of Multnomah, State of Oregon, described as follows, to-wit:

A one acre grave lot described as follows:

Commencing at the Southeast corner of McQuinn Donation Land Claim; thence North
 77° West on the South line of said DLC 858 feet; thence North 35° 14½' West
 2679.4 feet; thence South 42° 52' West 79 feet to the East corner of said
 grave lot; thence South 42° 52' West 208.72 feet to the Southeast corner of
 said grave lot; thence North 47° 08' West 208.72 feet to the West corner of
 said grave lot; thence North 42° 52' East 208.72 feet to the North corner of
 said grave lot; thence South 47° 52' East 208.72 feet to the East corner and
 point of beginning.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 0

However, the actual consideration consists of or includes other property or value given or promised which is the whole part of the consideration (indicate which). (The sentence between the symbols ©, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 7 day of July, 1986; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Maxine E. Daly

STATE OF OREGON, Washington } ss.
 County of Thurston }
July 9, 1986
 Personally appeared the above named

STATE OF OREGON, County of _____) ss.
 _____, 19____
 Personally appeared _____ and
 _____ who, being duly sworn,
 each for himself and not one for the other, did say that the former is the
 _____ president and that the latter is the
 _____ secretary of _____

and acknowledged the foregoing instru-
 ment to be her voluntary act and deed.
 Before me: Walter H. Hite
 Notary Public for Oregon Washington
 My commission expires June 19, 1987

and that the seal affixed to the foregoing instrument is the corporate seal
 of said corporation and that said instrument was signed and sealed in be-
 half of said corporation by authority of its board of directors; and each of
 them acknowledged said instrument to be its voluntary act and deed.
 Before me: _____ (SEAL)
 Notary Public for Oregon
 My commission expires: _____ (If executed by a corporation,
 affix corporate seal)

GRANTOR'S NAME AND ADDRESS

GRANTEE'S NAME AND ADDRESS

After recording return to:

MAXINE E. DALY
100 WARD STREET #204
SEATTLE WA 98109
 NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address.

MAXINE E. DALY
100 WARD ST # 304
SEATTLE WA 98109
 NAME, ADDRESS, ZIP

STATE OF OREGON, } ss.
 County of _____ }
 I certify that the within instru-
 ment was received for record on the
 _____ day of _____, 19____
 at _____ o'clock _____ M., and recorded in
 book/reel/volume No. _____ on
 page _____ or as document/fee/file/
 instrument/microfilm No. _____
 Record of Deeds of said county.
 Witness my hand and seal of
 County affixed.

NAME _____ TITLE _____
 By _____ Deputy

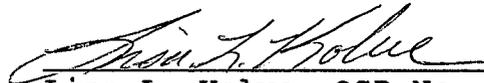
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on August 6, 1992, I served a true copy of the foregoing AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY and PETITIONER'S REPLY TO ANSWER AND MEMORANDUM OF SHERYL ANDERSON AND JAMES L. SMITH, on the following persons, by placing the same in the United States Post Office at Clackamas, Oregon, first class postage prepaid addressed to:

JOHN SHONKWILER
Attorney at Law
P.O. Box 1568
Lake Oswego, OR 97035-0768

DATED this 6th day of August, 1992.

FITZWATER & FITZWATER



Lisa L. Kolve, OSB No. 90316
of attorneys for plaintiff

CERTIFIED TO BE A TRUE COPY:

Lisa L. Kolve, OSB No. 90316

FITZWATER & FITZWATER
Attorney at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015
Telephone: 655-3963

TR41

MULTNOMAH COUNTY

PERIOD BEGINNING 05/30/92

REPORT DATE 07/28/92

DEPARTMENT OF ENVIRONMENTAL SERVICES

PERIOD ENDING 06/30/92

COST ACCOUNTING SYSTEM

PAGE 36

MANUAL BILLING REPORT

WORK ORDER YA1066

BILLING NAME MCQUINN-CEMETERY
BILLING ADDRESS 100-030-7650

DIVISION: TRANSPORTATION

JOB TITLE	EMPLOYEE NAME	NO.	TYPE OF WORK	HOURS	COST
SURVEY SPEC	RUSSELL, HAROLD J	0018	344 RIGHT OF WAY SURVEY	3.5	105.22
COUNTY SURVEYOR	FANTZ, DENNIS V	3499	344 RIGHT OF WAY SURVEY	8.0	308.88
WORD PROC OPER	JUSTICE, ROSEMARY	0802	527 WORD PROCESSING/TYPING	0.5	9.19
LABOR SUBTOTAL				12.0	423.29

WORKORDER YA1066 TOTAL COST (LESS GENERAL OVERHEAD) 423.29

TOTAL (LESS GENERAL OVERHEAD) 423.29
GENERAL OVERHEAD 72.81

TOTAL BILL 496.10

303.54

TOTAL 799.64

TR41

MULTNOMAH COUNTY

PERIOD BEGINNING 04/18/92

REPORT DATE 06/22/92

DEPARTMENT OF ENVIRONMENTAL SERVICES
COST ACCOUNTING SYSTEM
MANUAL BILLING REPORT

PERIOD ENDING 05/29/92

PAGE 54

WORK ORDER YA1066

BILLING NAME MCQUINN CEMETERY
BILLING ADDRESS

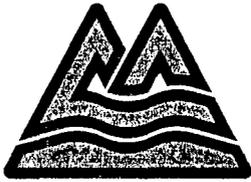
DIVISION: TRANSPORTATION

JOB TITLE	EMPLOYEE NAME	NO.	TYPE OF WORK	HOURS	COST
SURVEY SPEC	RUSSELL, HAROLD J	0018	344 RIGHT OF WAY SURVEY	3.5	104.56
COUNTY SURVEYOR	FANTZ, DENNIS V	3499	344 RIGHT OF WAY SURVEY	4.0	154.44
LABOR SUBTOTAL				7.5	259.00

WORKORDER YA1066 TOTAL COST (LESS GENERAL OVERHEAD) 259.00

TOTAL (LESS GENERAL OVERHEAD) 259.00
GENERAL OVERHEAD 44.54

TOTAL BILL 303.54



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

CERTIFICATE OF MAILING

I hereby certify that on Monday, August 10, 1992, I mailed certified true copies of an AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY and PETITIONER'S REPLY TO ANSWER AND MEMORANDUM OF SHERYL ANDERSON AND JAMES L. SMITH, case number 92-51C, filed by Fitzwater & Fitzwater, attorneys representing McQuinn Family Pioneer Cemetery Association, in connection with the September 1, 1992 Way of Necessity Hearing before the Multnomah County Board of Commissioners:

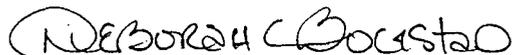
John W. Shonkwiler, PC
Attorney at Law
13425 SW 72nd Avenue
Tigard, Oregon 97223

Representing Anderson & Smith

Steven M. Berne
Bullivant Houser Bailey, et al
Attorneys at Law
300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089

Representing David & Jack DeFazio

Mary Anne Sohlstrom, President
McQuinn Family Pioneer Cemetery Assn.
108 NE 40th Avenue
Hillsboro, Oregon 97124



Deborah Bogstad
Office of the Board Clerk

0044C/18/db
enclosures
cc: Jacqueline A. Weber
Lisa L. Kolve

LAW OFFICES

FITZWATER & FITZWATER

CLARENCE L. FITZWATER 1903-1979
W. DEAN FITZWATER
WALLACE FITZWATER
LISA L. KOLVE
AUDREY LOWEN, LEGAL ASSISTANT

15431 S.E. 82ND DRIVE - SUITE G
CLACKAMAS, OREGON 97015
TELEPHONE 503/655-3963
FAX 503/650-0968

August 6, 1992

Deborah Bogstad
Office of the Board Clerk
Multnomah County Board of County Commissioners
Portland Building, Suite 1510
1120 SW Fifth Avenue
Portland, OR 97204

RE: Petition for Way of Necessity
McQuinn Family Pioneer Cemetery Association

Dear Deborah:

Enclosed for filing with the Board is Amended Petition and Reply to Anderson-Smith's Answer. Please note that the Amended Petition adopts the county surveyor's alternate route and therefore deletes David Fazio as an affected owner. Mr. Fazio's attorney has been copied with these documents, as has John Shonkwiler, attorney for Anderson-Smith.

Very truly yours,

FITZWATER & FITZWATER



Lisa L. Kolve

LLK:bh
Enclosures
cc: John Shonkwiler
Mary Sohlstrom

BOARD OF
COUNTY COMMISSIONERS
1992 AUG - 7 PM 3:31
MULTNOMAH COUNTY
OREGON

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

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IN THE MATTER OF:)
) No. 92-51-C
McQUINN FAMILY PIONEER CEMETERY)
ASSOCIATION, an Oregon Non-Profit) AMENDED PETITION
Corporation,) FOR ESTABLISHING WAY
) OF NECESSITY
)

COMES NOW the McQUINN FAMILY PIONEER CEMETERY ASSOCIATION, an Oregon Non-profit corporation, by and through their attorney Lisa L. Kolve, of FITZWATER & FITZWATER ATTORNEYS, and Petitions the BOARD OF COUNTY COMMISSIONERS, MULTNOMAH COUNTY, to establish a way of necessity pursuant to the provisions of ORS 376.150 to 376.200, stating as follows:

1.

The location and legal description of property to be served by proposed way of necessity is tax Lot 17, located in the N.E. 1/4 of Section 6, T2N, R1W, W.M., and in the Alexander McQuinn D.L.C., Multnomah County, Oregon.

2.

The location of public road located in the vicinity of the property to be served by the proposed way of necessity that is capable of being used to provide access to the property is Lucy Reeder Road No. 1191, which extends in generally Northwest and Southeast directions.

1 - AMENDED PETITION

Page

RECORDED
COUNTY COMMISSIONERS
1992 AUG - 7 PM 3:31
MULTNOMAH COUNTY
OREGON

3.

1 The specific location of the proposed way of necessity is
2 beginning at the north right of way line of Lucy Reeder Road, No.
3 1191 with the west line of Tax Lot 16; thence north along the west
4 line of Tax Lot 16, being the west line of the Way of Necessity
5 90.00 feet more or less to the westerly boundary of the grave lot,
6 Tax Lot 17, as set out by the County Surveyor. The width of the
7 access is to be 12.00 feet. This is the nearest practical point
8 for connection to a way of necessity to a public road, and the
9 proposed way of necessity may be connected to the public road
10 safely.

11 4.

12 Necessity for establishment of an access is based upon need of
13 your Petitioner, the heirs of the McQuinn Family and owners of the
14 cemetery land, to have access from said Lucy Reeder Rd. No. 1191 to
15 the cemetery plot for visitation and maintenance. James L. Smith
16 and Sheryl Anderson, owners of Lot 16, which property land locks
17 subject cemetery property, refuse to grant unto Petitioner roadway
18 access.

19 5.

20 Petitioner does not have an existing easement, right to an
21 easement or any other enforceable access to provide access to a
22 public road.

23

24

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2 - AMENDED PETITION

Page

6.

1 The proposed way of necessity does not connect to a public
2 road that has access rights acquired and limited by the state or
3 county.

7.

4
5 The names and addresses of persons who are owners upon which
6 proposed access could be located are:

7 A. JAMES L. SMITH and SHERYL ANDERSON, each to an undivided
8 one-half interest of Lot 16, whose address is: 922 SE 66th Place,
9 Portland, Oregon, 97215.

8.

10
11 No compensation is proposed to persons who are land owners for
12 reasoning that owners and their predecessors in interest were and
13 have for time being, been aware of the ownership interest of
14 petitioner and their traditional access to the cemetery back to the
15 common ownership of the property by the McQuinn family.

9.

16
17 Petitioner attaches hereto a survey of the proposed access, as
18 prepared by Louis J. Spisla, filed with Multnomah County Surveyor,
19 October 9, 1988, as Survey No. 50760. Said survey establishes the
20 specifics of points and location, and as iron rods were set, with
21 legal description and distance. Petitioner has highlighted the way
22 of necessity by yellow felt pen.

23

24

25

26

3 - AMENDED PETITION

Page

1 REQUEST IS HEREWITH MADE for the establishment of the proposed
2 way of necessity.

3 DATED the 6th day of August, 1992.

4 By: *Lisa L. Kolve*
5 Lisa L. Kolve, OSB #90316
6 Of Attorneys for Petitioner

7 STATE OF OREGON)
8) ss.
9 County of Clackamas)

10 I, Lisa L. Kolve, attorney for Petitioner McQuinn Family
11 Pioneer Cemetery Association, being first duly sworn, depose and
12 say that I have read this Amended Petition for Establishing Way of
13 Necessity, know the contents thereof and believe it to be true and
14 accurate.

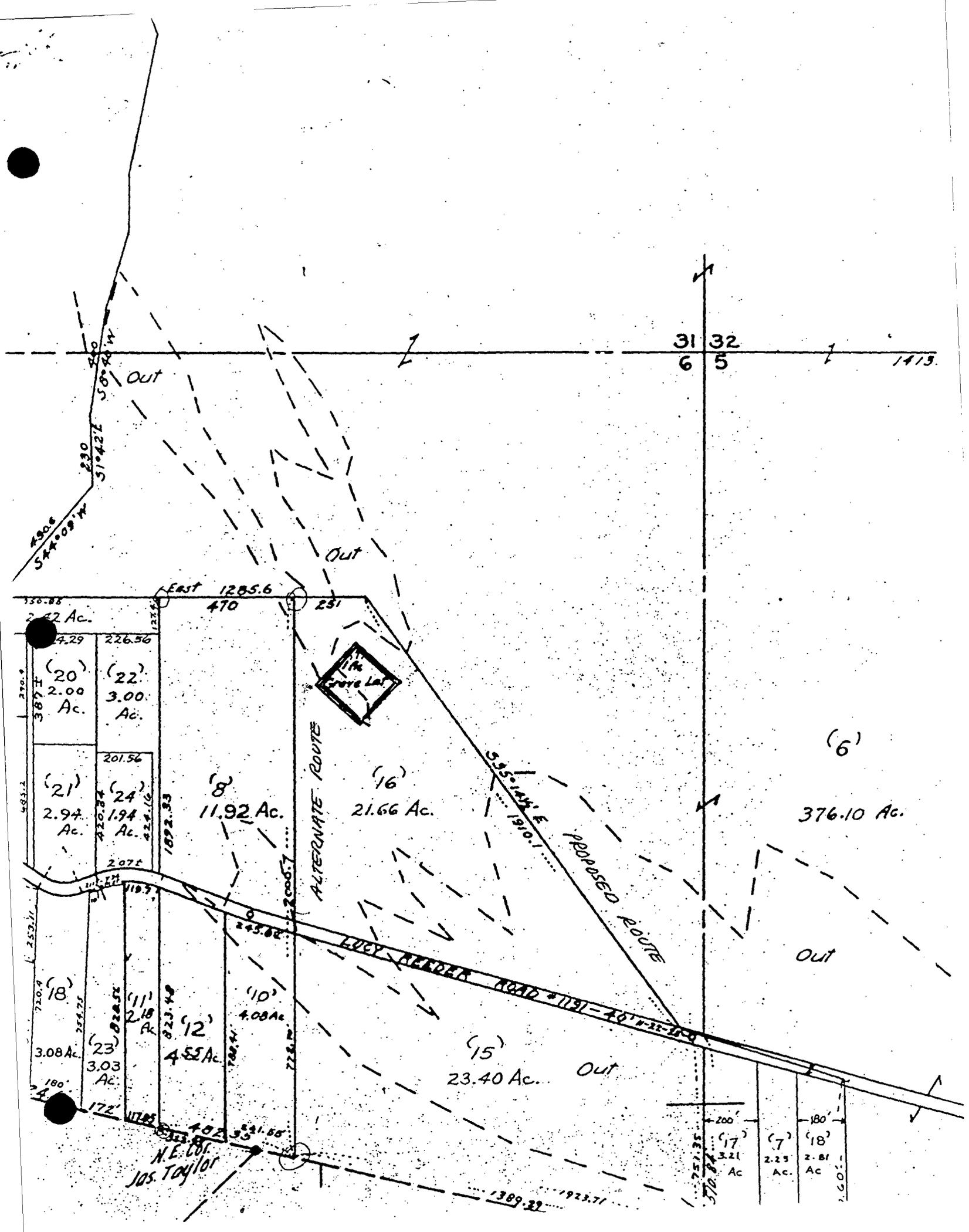
15 *Lisa L. Kolve*
16 Lisa L. Kolve

17 SUBSCRIBED AND SWORN to before me this ____ day of August,
18 1992.

19 _____
20 Notary Public for Oregon

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26 4 - AMENDED PETITION

Page



31 32
6 5 1413

2.42 Ac.
4.29
2.00 Ac.
226.56
(22)
3.00 Ac.

(20)
2.00 Ac.
387.1
270.9

(21)
2.94 Ac.
420.34
483.2

(24)
1.94 Ac.
201.56
229.10

(18)
3.08 Ac.
720.4
253.11

(23)
3.03 Ac.
172'
180'

East 1285.6
470 251

(8)
11.92 Ac.

(11)
2.18 Ac.
1892.33
207.1

(12)
4.55 Ac.
1892.33
223.49

(10)
4.08 Ac.
1892.33
228.27

(15)
23.40 Ac.
1892.33
228.27

ALTERNATE ROUTE



(16)
21.66 Ac.

LUCY HENDER ROAD 1191-40' W-35-16-0

PROPOSED ROUTE
S 55° 12' 14" E 1910.1

(6)
376.10 Ac.

(17)
3.21 Ac.
200'
370.84

(7)
2.25 Ac.

(18)
2.81 Ac.
180'
260.1

N.E. COR.
JOS. TAYLOR

1389.39 1923.71

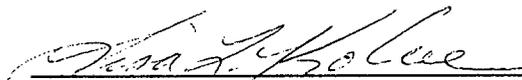
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on August 6, 1992, I served a true copy of the foregoing AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY, on the following persons, by placing the same in the United States Post Office at Clackamas, Oregon, first class postage prepaid addressed to:

STEPHEN F. ENGLISH
STEVEN M. BERNE
Bullivant Houser Bailey
Attorneys at Law
300 Pioneer Tower
888 SW 5th Ave.
Portland, OR 97204-2089

DATED this 6th day of August, 1992.

FITZWATER & FITZWATER



Lisa L. Kolve, OSB No. 90316
of attorneys for plaintiff

CERTIFIED TO BE A TRUE COPY:

Lisa L. Kolve, OSB No. 90316

FITZWATER & FITZWATER
Attorney at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015
Telephone: 655-3963

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

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IN THE MATTER OF:)
) No. 92-51-C
McQUINN FAMILY PIONEER CEMETERY)
ASSOCIATION, an Oregon Non-Profit) PETITIONER'S REPLY TO
Corporation,) ANSWER AND MEMORANDUM
) OF SHERYL ANDERSON AND
) JAMES L. SMITH

The petitioner McQuinn Family Pioneer Cemetery Association
(hereinafter "Association") responds to Sheryl Anderson and James
L Smith's (hereinafter "Anderson-Smith") Answer and Memorandum in
Opposition to Petition for Establishing Way of Necessity as
follows:

1.

[QUESTION OF STANDING]

Anderson-Smith have objected to petitioner's request for a way
of necessity on the grounds that petitioner lacks standing.
Anderson-Smith argue that because the Association has not obtained
valid titles from "all" current heirs the Association does not have
standing to bring this action. Oregon Revised Statute 376.155(1)
states:

To establish a way of necessity under ORS
376.150 to 376.200, a landowner shall file a
petition with the governing body of the county
in which the land is located. (emphasis
added).

The statute simply refers to "a landowner." There
requirement that all owners of the land file a petition.

1 - PETITIONER'S REPLY

Page

BOARD OF
COUNTY COMMISSIONERS
1992 AUG -7 PM 3:31
MULTNOMAH COUNTY
OREGON

Therefore, Anderson-Smith's objection to the way of necessity on
1 this ground fails and petitioner should be granted a way of
2 necessity.

3 Anderson-Smith also argue that petitioners lack standing
4 because the petition fails to allege that the Association is the
5 fee simple owner of the one acre cemetery. Paragraph 7 of the
6 petition arguably alleges ownership of the cemetery by the McQuinn
7 heirs, of which the Association is comprised. In any event, the
8 Association does hold recorded title to the cemetery by deed
9 granted to the Association by one of the heirs, Maxine Daly. A
10 copy of the deed is attached hereto as Exhibit 1. Therefore,
11 Anderson-Smith's argument on this ground also fails and petitioner
12 should be granted a way of necessity.

13 2.

14 [REQUIREMENTS UNDER ORS 376.180(12)]

15 Anderson-Smith argue that the way of necessity should be
16 denied because the facts of this case fall under ORS 376.180(12)
17 which states: "A way of necessity established under ORS 376.150 to
18 376.200 shall: Not be established for any land if the owner of the
19 land had knowingly eliminated access to all public roads from the
20 land by the sale of other land owned by the landowners."

21 Anderson-Smith argue that because the heirs to Alexander H.
22 and Rebecca McQuinn in 1876 sold all the land surrounding the
23 cemetery to Isaac Thomas, the heirs knowingly eliminated all access
24 to the cemetery. However, what the facts of this case show is that
25 the eleven heirs were unsuccessful in their attempt to partition

26 2 - PETITIONER'S REPLY

Page

1 the land. In order for the estate to be settled, the court ordered
2 the property to be sold. The heirs did not willingly sell the
3 property or knowingly fail to provide access to the cemetery.
4 These issues were not within their control. Therefore, this
5 statutory requirement is not applicable to this case and the
6 petition should be granted.

7 3.

8 [ADVERSE POSSESSION]

9 Anderson-Smith argue that petitioner does not currently have
10 legal title to the one acre cemetery plot because Anderson-Smith
11 have obtained title by adverse possession. In order for Anderson-
12 Smith to quiet title by adverse possession they must file an action
13 with the circuit court of the county in which the property is
14 located and prove by clear and convincing evidence each and every
15 element of adverse possession. Anderson-Smith have not attempted
16 to acquire title by adverse possession through the circuit court of
17 the state and cannot plead and prove such a case in this forum.
18 County records clearly show petitioner as owner of the one acre
19 cemetery. Therefore, the petition should be granted.

20 4.

21 [ABANDONMENT]

22 Anderson-Smith argue that the cemetery has been abandoned and
23 request under ORS 97.450 that the County Commissioners order the
24 cemetery declared abandoned. However, ORS 97.450 does not give

25
26 3 - PETITIONER'S REPLY

Page

Anderson-Smith the right to petition the county for such an order,
1 nor does the county have authority to make such an order unless the
2 county themselves owns the cemetery. ORS 97.450 states:

3 Whenever any cemetery which is within the
4 limits of any county, city, or town has been
5 abandoned, or it is desirable to abandon such
6 cemetery, or such cemetery has been allowed to
7 remain in a dilapidated condition for a period
8 of five years or longer, the governing body of
9 any county, if the cemetery is owned by the
10 county, or the corporate authorities of the
11 city or town, if the cemetery is owned by the
12 city or town, or the trustees or directors, if
13 the cemetery is owned by an association or
14 corporation, may order that such burial ground
15 be discontinued...(emphasis added).

16 The statute simply gives the owner of the property the right to
17 declare the cemetery discontinued. It does not give a non-owner
18 the right to make such a declaration or request such an order from
19 the county. Therefore, this statute is not applicable to this
20 case, Anderson-Smith's request should be denied and the Petition to
21 Establish a Way of Necessity should be granted.

22 Even if the County Commissioners believe this statute is
23 applicable, the statutory requirement that the cemetery be left in
24 dilapidated state for a period of five years has not been met.
25 Petitioners have attempted to maintain this cemetery since 1986.
26 Therefore, the statute is again not applicable and the way of
necessity should be granted.

5.

[COMPENSATION]

Anderson-Smith argue that the petition should be dismissed
because it states no specific compensation for the way of

4 - PETITIONER'S REPLY

Page

necessity. Oregon Revised Statute 376.155(2)(i) requires
1 petitioner to propose an amount of compensation to person's owning
2 the land across which the way of necessity is proposed. The
3 petition does address the issue of compensation and proposes that
4 no compensation be awarded. Therefore, the petition stands for
5 your consideration.

6 6.

7 [ORS 376.180(9)]

8 Oregon Revised Statute 376.180(9) requires the petitioner to
9 take other legal action to acquire access to the property prior to
10 petitioning for a way of necessity. "Legal action" refers to
11 action to enforce an existing legal right such as enforcing a
12 contract or an action for adverse possession of the property.
13 "Legal action" does not refer to or require petitioner to purchase
14 an easement or offer to purchase an easement. Anderson-Smith's
15 argument is without merit and should be disregarded. The petition
16 should be granted.

17 7.

18 [ORS 376.155(2) AND 376.180(1) AND (4)]

19 Petitioner is in agreement with the recommended alternative
20 route of the county surveyor, Larry F. Nicholas. Petitioner is
21 filing an amended petition in this regard. Anderson-Smith's
22 arguments concerning the route proposed in the initial petition
23
24
25

26 5 - PETITIONER'S REPLY

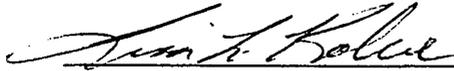
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are, therefore, no longer at issue. Anderson-Smith have stated in
1 their answer that they are for the most part in agreement with the
2 county surveyor's alternate route. Therefore, the petition as
3 amended should be granted.

4
5 WHEREFORE, the Petition For Establishing a Way of Necessity
6 should be granted.

7 DATED this 6th day of August, 1992.

8 Respectfully Submitted,
9 FITZWATER & FITZWATER

10
11
12
13 
14 Lisa L. Kolve
15 OSB# 90316
16 Of Attorneys for Petitioner
17
18
19
20
21
22
23
24
25

26 6 - PETITIONER'S REPLY

Page

Or

QUITCLAIM DEED

BOOK 1920 PAGE 589

KNOW ALL MEN BY THESE PRESENTS, That MAXINE E. DALY, as McQuinn family heir representative (per recorded designations) hereinafter called grantor, for the consideration hereinafter stated, does hereby remise, release and quitclaim unto PIONEER CEMETERY ASSOCIATION, Inc. hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any-wise appertaining, situated in the County of Multnomah, State of Oregon, described as follows, to-wit:

A one acre grave lot described as follows:

Commencing at the Southeast corner of McQuinn Donation Land Claim; thence North 77° West on the South line of said DLC 858 feet; thence North 35° 14' West 2679.4 feet; thence South 42° 52' West 79 feet to the East corner of said grave lot; thence South 42° 52' West 208.72 feet to the Southeast corner of said grave lot; thence North 47° 08' West 208.72 feet to the West corner of said grave lot; thence North 42° 52' East 208.72 feet to the North corner of said grave lot; thence South 47° 52' East 208.72 feet to the East corner and point of beginning.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 0

However, the actual consideration consists of or includes other property or value given or promised which is the whole part of the consideration (indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 9 day of July, 1986; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Maxine E. Daly

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

STATE OF OREGON, Washington }
 County of Thurston } ss.
 July 9, 1986
 Personally appeared the above named

STATE OF OREGON, County of _____) ss.
19 _____

Personally appeared _____ and _____ who, being duly sworn, each for himself and not one for the other, did say that the former is the _____ president and that the latter is the secretary of _____

MAXINE E. DALY

and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me: WALTER HUB

Notary Public for Oregon Washington
My commission expires June 19, 1987

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me: _____ (SEAL)
Notary Public for Oregon
My commission expires: _____ (If executed by a corporation, affix corporate seal)

GRANTOR'S NAME AND ADDRESS

GRANTEE'S NAME AND ADDRESS

After recording return to:
MAXINE E. DALY
100 WARD STREET #304
SEATTLE WA 98109
NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address:
MAXINE E. DALY
100 WARD ST # 304
SEATTLE WA 98109
NAME, ADDRESS, ZIP

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON, } ss.
County of _____

I certify that the within instrument was received for record on the _____ day of _____, 19 _____ at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as document/tee/tile/instrument/microfilm No. _____ Record of Deeds of said county.

Witness my hand and seal of County affixed.

NAME TITLE
By _____ Deputy

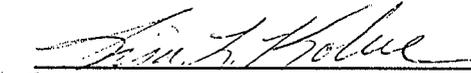
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on August 6, 1992, I served a true copy of the foregoing AMENDED PETITION FOR ESTABLISHING WAY OF NECESSITY and PETITIONER'S REPLY TO ANSWER AND MEMORANDUM OF SHERYL ANDERSON AND JAMES L. SMITH, on the following persons, by placing the same in the United States Post Office at Clackamas, Oregon, first class postage prepaid addressed to:

JOHN SHONKWILER
Attorney at Law
P.O. Box 1568
Lake Oswego, OR 97035-0768

DATED this 6th day of August, 1992.

FITZWATER & FITZWATER



Lisa L. Kolve, OSB No. 90316
of attorneys for plaintiff

CERTIFIED TO BE A TRUE COPY:

Lisa L. Kolve, OSB No. 90316

FITZWATER & FITZWATER
Attorney at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015
Telephone: 655-3963



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

CERTIFICATE OF MAILING

I hereby certify that on Friday, July 24, 1992, I mailed a certified true copy of the ANSWER AND MEMORANDUM IN OPPOSITION TO PETITION FOR ESTABLISHING A WAY OF NECESSITY, submitted by John W. Shonkwiler, attorney representing Sheryl Anderson and James Smith, to each of the following persons in connection with the September 1, 1992 Way of Necessity Hearing before the Multnomah County Board of Commissioners:

W. Dean Fitzwater Representing Petitioners
Fitzwater & Fitzwater
Attorneys at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015-9675

Mary Anne Sohlstrom, President
McQuinn Family Pioneer Cemetery Assn.
108 NE 40th Avenue
Hillsboro, Oregon 97124

Steven M. Berne Representing David & Jack DeFazio
Bullivant Houser Bailey, et al
Attorneys at Law
1400 Pacwest Center
1211 SW Fifth Avenue
Portland, Oregon 97204-3797


Deborah Bogstad
Office of the Board Clerk

0044C/19/db
cc: John Shonkwiler
Jacqueline Weber



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
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GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

CERTIFICATE OF MAILING

I hereby certify that on Tuesday, July 21, 1992, I mailed a Notice of Hearing to each of the following persons in connection with the September 1, 1992 Way of Necessity Hearing before the Multnomah County Board of Commissioners:

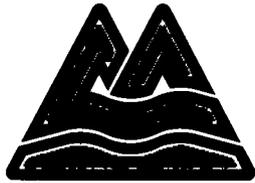
W. Dean Fitzwater Representing Petitioners
Fitzwater & Fitzwater
Attorneys at Law
15431 SE 82nd Drive, Suite G
Clackamas, Oregon 97015-9675

Mary Anne Sohlstrom, President
McQuinn Family Pioneer Cemetery Assn.
108 NE 40th Avenue
Hillsboro, Oregon 97124

John W. Shonkwiler Represents Smith & Anderson
Hennagin & Shonkwiler
Attorneys at Law
P.O. Box 1568
Lake Oswego, Oregon 97035-0768

Steven M. Berne Representing David & Jack DeFazio
Bullivant Houser Bailey, et al
Attorneys at Law
1400 Pacwest Center
1211 SW Fifth Avenue
Portland, Oregon 97204-3797

Deborah Bogstad
Office of the Board Clerk



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

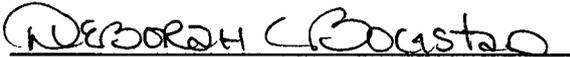
NOTICE OF HEARING

PLEASE BE ADVISED that pursuant to ORS 376.150 to 376.200, the Multnomah County Board of Commissioners will conduct a Public Hearing on **TUESDAY, SEPTEMBER 1, 1992**, at 1:30 p.m. in Room 602 of the Multnomah County Courthouse, 1021 SW Fourth Avenue, Portland, Oregon, for consideration in the matter of a petition for establishing a Way of Necessity for property described as Tax Lot 17, located in the N.E. 1/4 of Section 6, T2N, R1W, W.M. and in the Alexander McQuinn D.L.C., Multnomah County, Oregon, filed by the McQuinn Family Pioneer Cemetery Association, an Oregon non-profit corporation.

Interested parties are invited to attend and to present and rebut evidence before the Board pursuant to Rules for the Conduct of Hearings established regarding statutory Ways of Necessity, copies of which are available at the hearing and upon request.

Answers should be mailed to the Commissioners in care of the Office of the Board Clerk at the address above. For additional information, please contact Jacqueline Weber, Assistant County Counsel, 248-3138 or Deb Bogstad, Office of the Board Clerk, 248-3277.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Deborah Bogstad
Office of the Board Clerk

0044C/20/db
cc: Jacqueline Weber
mailed 7/21/92

JOHN W. SHONKWILER, P.C.

ATTORNEY AT LAW
13425 SW 72nd Avenue
Tigard, Oregon 97223
fax: 684-8971
624-0917

July 13, 1992

Board of County Commissioners
MULTNOMAH COUNTY
1021 SW Fourth Avenue
Portland, OR 97204

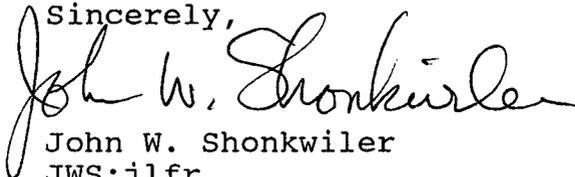
Re: In the Matter of: McQuinn Family Pioneer Cemetery Association
Case No. 92-51-C

Dear Commissioners:

Enclosed for filing is an original Answer and Memorandum in Opposition to Petition for Establishing Way of Necessity in the above referenced case. A certified true copy has been provided to Jacqueline A. Weber.

Thank you for your attention in this matter. If you have any questions, feel free to contact me.

Sincerely,



John W. Shonkwiler
JWS:jlfr
cc: Sheryl Anderson
James Smith

BOARD OF
COUNTY COMMISSIONERS
1992 JUL 24 AM 8:52
MULTNOMAH COUNTY
OREGON

BOARD OF
COUNTY COMMISSIONERS
1992 JUL 24 AM 8:52
MULTNOMAH COUNTY
OREGON

BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

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IN THE MATTER OF:)
McQUINN FAMILY PIONEER CEMETERY) No. 92-51-C
ASSOCIATION, an Oregon Non-Profit) ANSWER AND MEMORANDUM
Corporation,) IN OPPOSITION TO
) PETITION FOR ESTABLISHING
) WAY OF NECESSITY

COME NOW, SHERYL ANDERSON and JAMES L. SMITH (hereinafter
"Anderson-Smith"), by and through their attorney, JOHN W.
SHONKWILER, file the following objections and responses to the
"Petition for Establishing Way of Necessity" filed before the
above described Board by the "McQuinn Family Pioneer Cemetery
Association," stating as follows:

1.

[LACK OF STANDING]

ORS 376.155(1) requires that to establish a "way of
necessity" by petition one of the essential elements is that the
petitioner be "a landowner." This means the petitioner in this
proceeding must be the actual owner of the one acre cemetery for
which access is being requested.

A. Petitioner does not own the one acre of land containing
the cemetery. This one acre parcel was reserved by the "McQuinn"
family in 1876 while the surrounding property was sold to Isaac
Thomas. Thereafter, the one acre cemetery was never sold.
Instead, title to this parcel has periodically passed to an ever
expanding number of heirs through probate as each prior

1 owner/owners died. The Petitioner has not obtained valid titles
2 from all of these current heirs. In accordance to ORS
3 376.155(1), the petition must be denied.

4 B. The petition fails to allege that the "McQuinn Family
5 Pioneer Cemetery Association" is the owner in fee of the one acre
6 cemetery. None of the current heirs of Alexander and Rebecca
7 McQuinn (last recorded owner of the one acre cemetery as of 1873)
8 have been named as co-petitioners in this proceeding. In
9 accordance with the requirements of ORS 376.155(1), the petition
10 must be denied.

11 2.

12 [VIOLATION OF ORS 376.180(12)]

13 ORS 376.180(12) sets forth that: "A way of necessity
14 established under ORS 376.150 to 376.200 shall: Not be
15 established for any land if the owner of the land had knowingly
16 eliminated access to all public roads from the land by the sale
17 of other land owned by the landowner." Thus, if the one acre
18 cemetery and surrounding lands were all owned by the same person
19 or persons, and all the surrounding lands were later sold off to
20 a different person with the result that no access to the one acre
21 cemetery was knowingly reserved, Petitioners are not allowed to
22 be awarded a way of necessity.

23 A. The history of ownerships of the one acre cemetery and the
24 surrounding lands establishes that the owner(s) of the land had
25 knowingly eliminated access to all public roads from the cemetery
26 and by the sale of other surrounding land owned by the

1 landowner(s). In 1873, the United States deeded to Alexander H.
2 McQuinn and Rebecca McQuinn (husband and wife) 640 acres of land
3 that later became a cemetery. See Exhibit "A". By 1876, eleven
4 heirs to this 640 acres owned all the land; and voluntarily
5 participated in petitioning the County Court to have the land
6 partitioned into eleven parcels among them. The Court determined
7 that a partition could not be equitably accomplished, and so the
8 land was sold at public auction to Isaac Thomas and confirmed by
9 Court Order on October 28, 1876. See Exhibit "B". The land sold
10 to Isaac Thomas excluded the one acre cemetery and did not
11 provide for any access to the cemetery. See Exhibit "C". Thus,
12 all the lands surrounding the cemetery were knowingly sold by the
13 heirs to Mr. Thomas, and thereby knowingly eliminated all access
14 to their one acre cemetery parcel.

15 B. The surrounding lands owned by Mr. Thomas ultimately
16 were acquired by James L. Smith and Sheryl Anderson. From 1876
17 until recently, the cemetery was abandoned by the "McQuinn"
18 family. The clear intention in 1876 was to protect the cemetery
19 plots from interference by Mr. Thomas's farming (clearing of the
20 ground and cultivation). However, the heirs did not intend to
21 provide access to the cemetery, nor actively use the site. As a
22 result, the site was abandoned for well over the last 10 years
23 (actually about 100 years) by the "McQuinn" family. For 116
24 years, no "McQuinn" heir has ever sought to obtain legal access
25 to the cemetery. Therefore, ORS 376.180(12) requires denial of
26 the petition.

[ADVERSE POSSESSION]

Petitioners are not legal landowners of the one acre cemetery parcel because prior to 1986, Sheryl Anderson, James L. Smith and their families acquired the one acre parcel through adverse possession; and ORS 376.155(1) thereby preventing Petitioner from being able to obtain a way of necessity. ORS 12.050 sets forth that statutory period of 10 years for establishing a claim of adverse possession. Under Oregon law, title (full ownership) to real property will be established without an express grant or transfer of title if all elements of adverse possession are present. As a result, Anderson-Smith own the one acre cemetery parcel.

A. From before 1976 through today, Anderson-Smith and their predecessors preserved the one acre parcel, exercised dominion over the improvements on the site (including protecting and maintaining grave markers), and passed title to the site by deed to such family heirs.

B. Anderson-Smith and their predecessors have had open, hostile and exclusive possession of the one acre cemetery parcel continuously for more than ten (10) years under claim of right and possession of such property is in no other.

C. Petitioner claims some interest in the one acre cemetery parcel adverse to Anderson-Smith, but Petitioner's claim is without any right whatsoever and Petitioner has no estate, valid title or interest in said property.

1 D. Therefore, Anderson-Smith requests a ruling from this
2 Board that they are entitled to title to the one acre cemetery
3 parcel, that Petitioner is not the owner of said property in
4 violation of ORS 376.155(1), and that this petition for way of
5 necessity be denied.

6 4.

7 [ABANDONMENT]

8 The one acre cemetery parcel and specifically the cemetery
9 itself has been abandoned by the "McQuinn" family and heirs for a
10 period in excess of 50 years prior to the date of the Petition
11 for Establishing a Way of Necessity. ORS 97.450 entitles the
12 site to qualify for complete termination as a recognized
13 cemetery. The only need for access to the property expressed by
14 Petitioner (paragraph 7 of the Petition) is for the purpose of
15 access to the cemetery. Therefore, Anderson-Smith request the
16 cemetery be terminated for abandonment pursuant to ORS 97.450 and
17 this Petition to Establish a Way of Necessity be denied.

18 5.

19 [TAKING WITHOUT DUE COMPENSATION]

20 Petitioner alleges in paragraph 9 that no compensation
21 should be awarded to Anderson-Smith for acquisition of this way
22 of necessity.

23 A. ORS 376.155(2)(i) specifically requires as an element
24 of the petition to establish a way of necessity that the petition
25 shall contain a "proposal for the amount of compensation" to be
26 awarded to persons owning the land across which the way of

1 necessity is proposed to be located. Petitioner has failed to
2 set forth a statement of such just compensation; and from the
3 wording of paragraph 9, appears unwilling to consider any
4 expenditure of funds for the way of necessity. Therefore, the
5 petition must be denied as a violation of ORS 376.155(2)(i).

6 B. The taking of Anderson-Smith's property, as proposed in
7 the petition, deprives them of all ownership and uses of the
8 access strip of property in relation to their reasonable
9 expectations that the property would be used for commercial
10 farming purposes, and have further prevented them from earning a
11 reasonable return on their investment commensurate with their
12 reasonable investment-backed expectations, and thereby having
13 taken the property without just compensation in violation of the
14 Fifth and Fourteenth Amendment of the United States Constitution,
15 and Article I, Section 18 of the Oregon Constitution.

16 6.

17 **[VIOLATION OF ORS 376.180(9)]**

18 ORS 376.180(9) sets forth that a petition for establishing a
19 way of necessity shall not be approved if the petitioner could
20 acquire an easement for access to a public road through other
21 legal means or action.

22 A. Prior to November 22, 1988, Petitioner requested from
23 Anderson-Smith the dedication of an easement for access to the
24 cemetery. Anderson-Smith, by letter dated November 22, 1988,
25 stated they would consider providing an access to the cemetery
26 once the Petitioner provided proof that Petitioner actually owned

1 the cemetery parcel by valid deed or inheritance.

2 B. Since November 22, 1988, Anderson-Smith have not
3 received from Petitioner any information, correspondence or
4 documentation to substantiate the Petitioner is the lawful owner
5 of the one acre cemetery parcel. Petitioner has continuously
6 refused to provide such information after reiterated requests.
7 As a result, Anderson-Smith have continuously refused Petitioner
8 access to and use of the parcel.

9 C. If Petitioner has a legal right to possession of the
10 cemetery parcel, Petitioner could obtain an easement from
11 Anderson-Smith through the legal action of purchase and recording
12 of such easement access. Thereby, this petition is premature and
13 must be denied pursuant to ORS 376.180(9).

14 7.

15 [VIOLATION OF ORS 376.155(2)(G) and ORS 376.180(1) and (4)]

16 A. ORS 376.155(2)(g) requires that the proposed way of
17 necessity be the "nearest practical point for connection to a way
18 of necessity to a public road." The proposed route for the way
19 of necessity from the cemetery to a public road (Lucy Reeder
20 Road) is along an easement along the eastern boundary of the
21 Anderson-Smith property of approximately 1800 feet in length.

22 The shortest route would be along the western boundary of
23 the Anderson-Smith property setting a distance from Lucy Reeder
24 Road at approximately 850 feet, plus 90 feet across the property
25 to the graveyard.

26 B. ORS 376.180(1) and (4) requires that the way of

1 necessity cause the "least possible damage to land across which
2 it is located" and "be established only for uses in connection
3 with the property for which the way of necessity is sought." The
4 way of necessity is sought to provide "access" to an old
5 graveyard. Historically, this graveyard has been accessed only
6 by pedestrian traffic. No road for automobiles was ever built or
7 temporarily used when the graveyard was used. No automobile
8 access has been required or used to reach this site for the last
9 100 years. Access to maintain and view the graveyard can be
10 fully accomplished by a pedestrian path way.

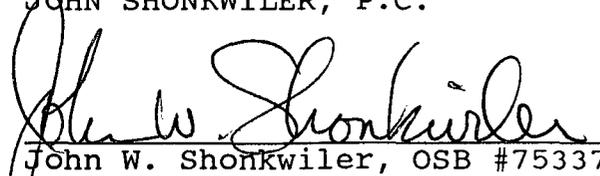
11 The Anderson-Smith property is currently being farmed for
12 profit. The least possible damage to the land and the land uses
13 would be restricting the way of necessity to a 5 foot wide
14 pedestrian pathway. Anything larger would violate ORS 376.155
15 and 376.180 by allowing for uses unnecessary to providing
16 "access" to the graveyard and causing substantially greater
17 damage and interference to the Anderson-Smith farm lands.

18 WHEREFORE, Anderson-Smith requests that this Petition for
19 Establishing a Way of Necessity be denied.

20 DATED this 13th day of July, 1992.

21
22 Respectfully submitted,

23 JOHN SHONKWILER, P.C.

24 
25 John W. Shonkwiler, OSB #75337
26 Of Attorneys for Anderson-Smith

DEED RECORDS

United States of America

Book 355 page 254

To

Date July 21 1873

Alexander H McQuin and Rebecca

Rec. March 14 1906

McQuin

TO ALL TO WHOM THESE PRESENTS SHALL COME GRANTING:

WHEREAS there has been deposited in the General Land Office of the United State_ a certificate numbered 3569 of the Register and receiver at Oregon City, Oregon whereby it appears that under the provisions of the act of Congress approved the 27th day of September 1850 entitled an Act to create the Office of Surveyor General of the Public Lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands, and the legislation supplemental thereto, the claim of Alexander H McQuin and his wife Rebecca McQuin, of Washington County, Oregon Notification No 4485 has been established to a donation of one section or 640 acres of land, and that the same has been surveyed and designated as Claim number 50 being parts of Sections 5 and 6 in township 2 north of range 1 west and claim number 41 being parts of sections 31 and 32 in township 3 north of range 1 west according to the official plat of survey returned to the General Land Office by the Surveyor General; being bounded and described as follows, towit:

Beginning at a point 21 chains and 42 links east of the northwest corner of said section 5 in township 2 north of range

1 west and running thence north 40 chains; thence west 61 chains and 42 links; thence south 10° and 45' east 40 chains and 86 links; thence west 47 chains; thence south 14° and 15' East 19 chains and 66 links; thence south 14° East 12 chains and 80 links; thence south 77° East 95 chains and thence north 52 chains and 28 links to the place of beginning in the district of lands subject to sale at Oregon City, Oregon, containing 633.34 of an acre.

Now Know Ye . . . do give and grant unto the said Alexander H McQuin and to his heirs, the East half and unto his wife, the said Rebecca McQuin and to her heirs, the west half of the Tract of Land above described.

By the President. U. S. Grant.

By S. D. Williamson, Secretary

V. A. Fiske, Recorder of the General
Land Office, ad interim

(U S Land Office Seal)

Recorded Vol 10 page 250

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

John F Linder and M. J.

Linder, his wife, Plaintiffs

vs

Peter E McQueen, Geo. W. McQueen and
Anna McQueen, his wife, George Ham,
and Sarah Ham, his wife, William
Forrest and Margaret Forrest, his wife,
Clinton Bonser and Mary A. Bonser,
his wife, Alzada McQueen, John McQueen,
a minor and Lizzie McQueen, a minor.

Reg No. 5472

Jdg. No. 5751

Defendants.

Complaint filed July 28 1875.

Summons filed August 18 1875

Do hereby acknowledge and confess service of the
within summons and enter an appearance in the within entitled
suit and waive service of copy of complaint this _ day of
February 1875.

G.W.McQuin

Annie McQuin

Summons filed September 27 1875

The return of the sheriff of Multnomah County
Oregon shows that he served the within summons within said
state and county on September 24 1875 on the within named
Alzada McQueen by delivering a copy thereof prepared and
certified to by him as sheriff together with a copy of the
complaint prepared and certified to by George L Story, Clerk of

said County to the said Alzada McQueen, in person; that he served the within summons within said county and state on September 24 1875 on the within named Mary A. Bonser by delivering a copy thereof prepared and certified to by him as sheriff together with a copy of the complaint prepared and certified to by George L Story, clerk of said County to the said Mary A Bonser, in person.

That after due and diligent search he was unable to find defendant Clinton Bonser, and served the within summons on said Clinton Bonser, within said county and state by delivering a copy thereof prepared and certified to by him as sheriff together with a copy of the complaint prepared and certified to by George L Story clerk of said County to Mary A Bonser, wife of said Clinton Bonser, a white person of the family over the age of 14 years at the usual place of abode, or dwelling house of said Clinton Bonser, within said county on Sept 24 1875.

Summons filed October 5 1875

The return of the sheriff of Multnomah County, Oregon, shows that he served the within summons within said county and state on September 30 1875 on the within named George Ham and Sarah Ham his wife and Margaret Forrest defendants, within named by delivering a copy thereof prepared and certified to by him as sheriff together with a copy of the complaint herein prepared and certified to by George L Story clerk of said County to each of them in person.

After diligent search he was unable to find defendant William Forrest, and served the within summons in said county and State on said William Forrest on September 30 1875 by delivering a copy thereof prepared and certified to by him as sheriff together with a copy of the complaint prepared and certified to by George L Story, clerk of said County to Margaret Forest, wife of said Forrest, a white person of the family over the age of 14 years at the residence and usual place of abode of the said William Forrest, within said county

Summons filed November 23 1875.

The return of the sheriff of Multnomah County Oregon shows that he served the within summons within said county on the within named John McQueen and Lizzie McQueen and on George Ham their guardian on November 4 1875 by delivering a copy thereof prepared and certified to by him as sheriff to each of them as named in person.

Appearance of James McQuin filed October 12 1875.

I, James McQueen hereby acknowledge due service of complaint and summons in the above action and enter my appearance and ask that I may be made a party deft therein.

James McQuin.

Amended complaint filed November 2, 1875.

Making James McQueen a party defendant.

Order entered November 29 1875 Jr 11 page 197

Appointing J.J. Brown guardian ad litem for John and Elizabeth McQueen minors.

Making Robert Imbrie a party defendant to this suit.

Answer of defendant Robert Imbrie, filed February 15 1876.

Second Amended complaint filed March 9 1876.

Suit to partition the following described real estate by a sale thereof, and a division of the proceeds according to their rights.

Donation Land Claim No 50 being section 6 township 2 north range 1 West containing 632.90 acres, being the same land that Alexander McQueen and _ McQueen his wife died seized of, situate on Sauvies Island in Multnomah County and State of Oregon.

Answer of defendants John McQueen and Elizabeth McQueen, minors, by their guardian ad litem, filed March 30 1876.

Order entered March 31 1876 Jr 11 page 503

Ordered adjudged and decreed that John F. Linder, M. J. Linder, P. E. McQuinn, Geo. W. McQuinn, James McQuinn, John McQuinn, a minor, Elizabeth McQuinn, a minor and Alzada McQuinn, Sarah Ham, Margaret Forrest, and Mary A. Bonser have each an undivided 1/11 interest in fee simple of the Donation Land Claim of Alex McQueen, deceased and _ McQuinn, his wife, deceased, situated on Sauvies Island, Multnomah County, Oregon, and the same ought to be partitioned among the parties according to their respective interests.

And it being alleged that it is impracticable to make partition by metes and bounds,

It is further decreed that C.W.Burrage, John Howell and James W Walker be and are hereby appointed by the Court Referees and they are directed to view said land and to receive such evidence as they may deem proper and thereupon report to this court, whether or not said land can be partitioned by metes and bounds, without great prejudice to the owners.

Report of Referees filed May 22, 1876.

***We are of the opinion that the claim cannot be divided without great prejudice to the owners.

Order entered July 25 1876 Jr 11 page 751.

Ordered and adjudged that said Referees be and they are hereby ordered and directed to sell the said property at public auction to the highest bidder in the manner required for the sale of real property on execution and after completing the sale that the said referees shall report the same with their doings therein to the court on or before the October term thereof, and after paying the expenses of such sale deposit the remainder of the money arising therefor in the registry of this court.

Report of sale filed October 9 1876.

The report of C.W.Burrage, James W. Walker and John Howell referees shows that he gave notice of sale by posting written notices of the time and place of sale particularly describing said real estate for four weeks successively prior to the day of sale in three public places of the County of Multnomah, State of Oregon and by publishing said notice of said sale once a week for four weeks successively prior to the said day of sale by all of which said notices and publications the said real estate was particularly described

and advertised to be sold on Saturday the 30th day of September 1876 at 10 o'clock A M at public auction at the Court House door in said county which said notice of sale was published in the Weekly Standard a weekly newspaper of general circulation published in Multnomah County, Oregon.

Sale postponed until October 7 1876 when they sold the following described real estate to Isaac Thomas for \$4000.00.

The donation land claim No 50 of Alexander McQueen and wife, deceased, being sections 5 and 6 township 2 north range 1 west, also claim No 41 sections 31 and 32 township 3 north range 1 West containing 640 acres more or less, save and except one acre thereof, upon which there is a family graveyard, lying and being situate on Sauvies Island, Multnomah County, State of Oregon.

Affidavit of Publication of Notice of Sale filed (among papers)
The affidavit of Chas J Christie shows that he is the foreman of the Weekly Standard a paper of general circulation printed in Portland, Oregon; and that the annexed notice of Referee's Sale was published four successive weeks in said paper; from September 8, 1876 to September 29; (Attached to said affidavit is a newspaper clipping of notice that C.W.Burrage, John Howell and James W Walker referees on September 30 1876 will sell at public auction to the highest bidder the following described real estate; The donation land claim No 50 of Alexander McQueen and wife, deceased, being sections 5 and 6 township 2 north range 1 West also claim 41 Sections 31 and 32 township 3 north range 1 West containing 640 acres more or less, save and except 1 acre thereof upon which there is a family graveyard, lying and being situate on Sauvie's Island, Multnomah county, Ore

Answer of B. Cornelius filed October 9 1876.

Shows that he is now the owner of the interest
of James McQueen, Peter E. McQueen and George W. McQueen,
and prays that he be substituted defendants in this suit,
in their place and stead.

Order entered October 28 1876 Jr page

Confirming sale to Isaac Thomas.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION DIVISION
1620 S.E. 190TH AVE.
PORTLAND, OREGON 97233
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

A REPORT TO THE BOARD OF COUNTY COMMISSIONERS BY THE COUNTY SURVEYOR

June 10, 1992

RE: McQuinn Family Pioneer Cemetery Association Petition for Statutory
Way-of-Necessity

BOARD OF
COUNTY COMMISSIONERS
1992 JUN 11 PM 12:34
MULTNOMAH COUNTY
OREGON

We have reviewed the petition for the McQuinn Family Pioneer Cemetery Association to acquire a statutory Way of Necessity, and we have conducted an investigation of the property to be served. The following is our report and recommendation.

We found the "grave lot," Tax Lot 17 in a wooded area, about 400' by 400' in size. The woods are surrounded by cultivated fields. We walked the proposed Way of Necessity and found no evidence of a roadway being used at this time. There was a crop of grain two feet tall over the area. The proposed access way can be safely connected to Lucy Reeder Road.

The proposed Way of Necessity meets the requirements under ORS 376.150 to 376.200, except for ORS 376.155(2)(9) being the nearest practical point for connection to a public road.

The reasonableness of the proposed access route is defended by Section 4 of the petition. Section 4 notes that the owner of Tax Lot 6 has provided a letter authorizing the use of their land for access. This would provide for all but 79.00 feet of the proposed route.

The proposed access way is not the shortest distance to the public road. An alternative route along the west property line of Tax Lot 16 would be the most direct route.

I recommend the following described alternate route: beginning at intersection of the north right of way line of Lucy Reeder Road, No. 1191 with the west line of Tax Lot 16, as noted in the petition; thence north along the west line of Tax Lot 16, being the west line of the Way of Necessity, 820.00 feet; thence east along a line being the north line of the Way of Necessity 90.00 feet more or less to the westerly boundary of the grave lot, Tax Lot 17.

Page 2

This alternate route would affect approximately one-half of the amount of land under cultivation.

It is recommended that the width of the access way, in any case, be 12.00 feet.

See attached map showing proposed and alternate access way.

An accounting of the actual costs incurred by the County Surveyor will follow by July 10, 1992.

Very truly yours,

LARRY F. NICHOLAS, P. E.
County Engineer/Director

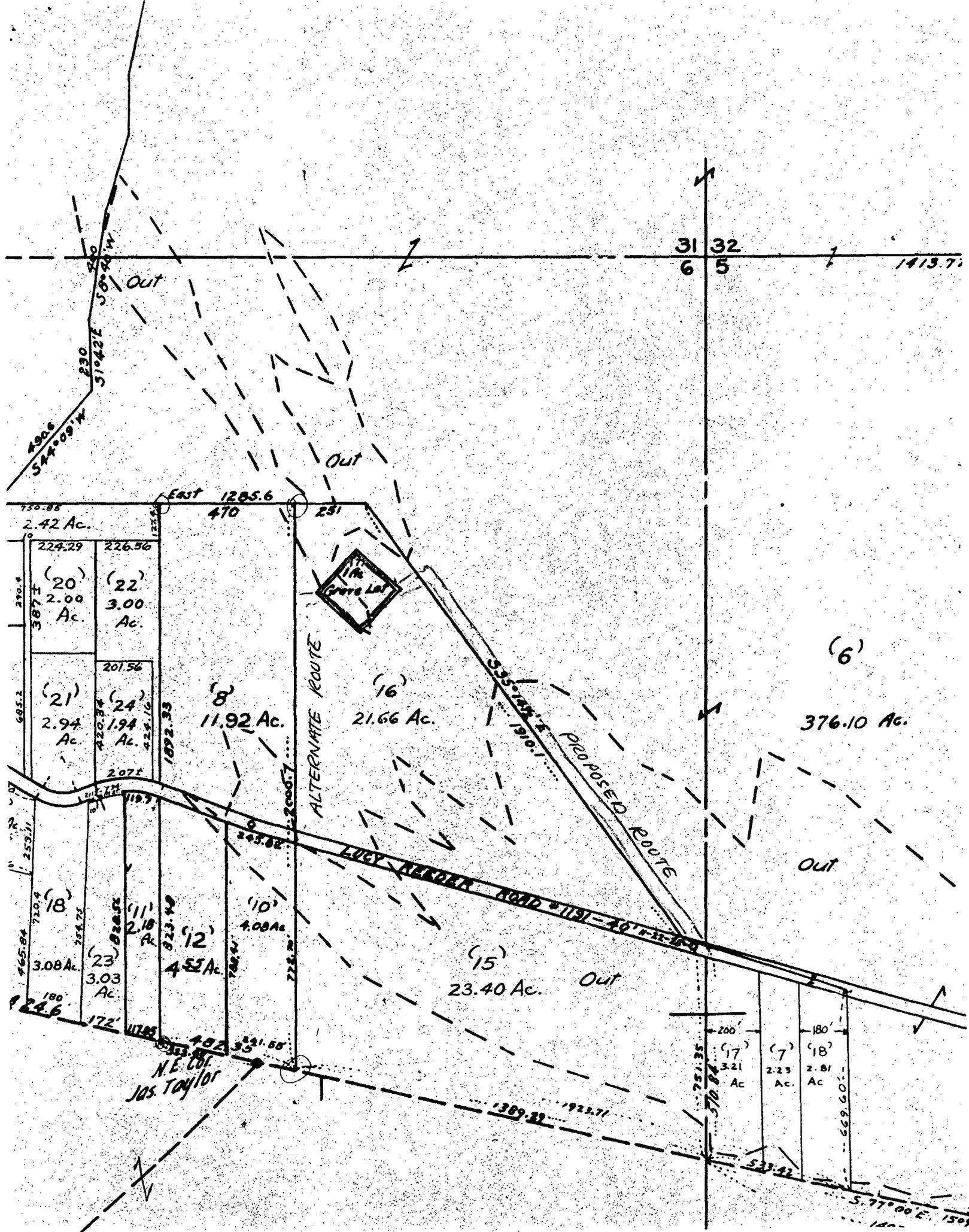
A handwritten signature in cursive script, appearing to read "Dennis V. Fantz".

Dennis V. Fantz, P. L. S.
County Surveyor

DVF:vh

cc: Jacqueline Weber

2515W



STATE OF OREGON
County of Columbia

} ss.

I hereby certify that I have served the within Summons & Petition 92-51-C

within said State and County, on the 5th Day of June, 19 92 at 8:53 ~~PM~~ A.M.

o'clock on the within named Defendent (s) David DeFazio

at JD Ranch NW Lucy Reeder Rd., Sauvies Island, Or.
(address)

by personally delivering a copy thereof, prepared and certified to by Jacqueline Weber

Attorney for the Plaintiff to

David DeFazio

personally and in person.

Bruce Oester
Sheriff of Columbia County, Oregon

By L. Knowles Deputy

BOARD OF
COUNTY COMMISSIONERS
1992 JUN - 9 AM 11:58
MULTNOMAH COUNTY
OREGON

June 3, 1992

008067
by 1288

_____ O'clock and _____ Min. _____ M

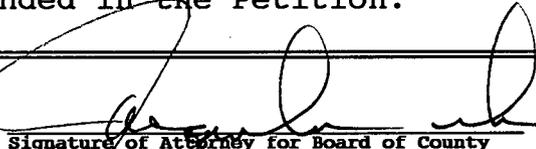
BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

MAY -7 PM 3:52
SHERIFF'S EXECUTIVE OFFICE

In the Matter of the Petition)
for Statutory Way of Necessity.) SUMMONS
_____) No. 92-51-C

TO: David DeFazio, c/o J D Ranch
29244 NW Sauvie Island Rd.
Portland, OR 97221 Respondent(s)

YOU ARE HEREBY REQUIRED TO APPEAR and defend the Petition for Statutory Way of Necessity filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, petitioner(s) will apply to the Board of County Commissioners for the relief demanded in the Petition.

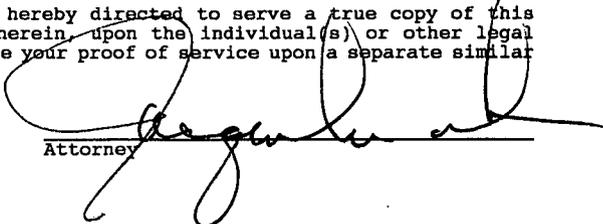
<p>NOTICE TO THE RESPONDENT: READ THESE PAPERS CAREFULLY!</p> <p>You must "appear" in this case or the other side will win automatically. To "appear" you must file with the County Commissioners a legal paper called an "answer." The "answer" must be given to the Clerk of the Board of County Commissioners within 30 days at Multnomah County Courthouse, 1021 SW Fourth Avenue, Room 606A, Portland, Oregon 97204.</p> <p>If you have any questions, you should see an attorney immediately.</p>	 Signature of Attorney for Board of County Commissioners <u>Jacqueline A. Weber OSB #82424</u> Attorney's Name (Typed or Printed) Bar No. <u>P. O. Box 849</u> Address <u>Portland, OR 97207-9849 248-3138</u> City State Zip Phone
--	--

STATE OF OREGON)
County of Multnomah) ss.

I, the undersigned attorney for the Board of County Commissioners, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Attorney

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: you are hereby directed to serve a true copy of this summons together with a true copy of the petition mentioned therein upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service upon a separate similar document which you shall attach hereto.



Attorney



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY, CHAIR
PAULINE ANDERSON
RICK BAUMAN
GARY HANSEN
SHARRON KELLEY

M E M O R A N D U M

TO: Deb
Board Clerk's Office (101/606A)

FROM: Marilyn (106/1530) *MW*
Office of County Counsel

DATE: June 8, 1992

SUBJECT: Summons and Petitions for Statutory Way
of Necessity 92-51-C
No. 92-51-B; 93-62-C

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
JOHN L. DU BAY
ASSISTANTS
J. MICHAEL DOYLE
SANDRA H. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. KEMIROV
MATTHEW O. RYAN
JACQUELINE A. WEBER

Enclosed for placing in the appropriate files are returns of service on O. J. Mitchell, Stuart B. Sandler, David DeFazio and James L. Smith. Since service on O. J. Mitchell was made by substitution, I have effected service by certified mail.

K:\JAW\581MW.MEM\mw

1992 JUN - 9 AM 11: 57
CLERK OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON



Multnomah County Sheriff's Office

ROBERT G. SKIPPER
SHERIFF

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

(503) 255-3600

COUNTY:
COURT CASE#: 92 51 C
MCSO CASE #: 92-8066
COURT:

RE: IN THE MATTER OF
SMITH, JAMES L VS.

I HEREBY CERTIFY THAT THE ATTACHED
SUMMONS
PETITION

WAS/WERE DELIVERED TO ME FOR SERVICE ON THE
07 DAY OF MAY , 1992 , , AND WAS/WERE DULY CERTIFIED
TO BE A TRUE COPY BY JACQUELINE WEBER.

I FURTHER CERTIFY THAT I SERVED THE PAPERS UPON
SMITH, JAMES L

ON THE 26 DAY OF MAY , 1992 , AT 8 :50 PM , AT
922 SE 66TH PL , PORTLAND .

ROBERT G. SKIPPER, SHERIFF
MULTNOMAH COUNTY, OREGON

BY: Jon Woodward
WOODWARD, JON ; BPST #: 7309

BOARD OF
COUNTY COMMISSIONERS
1992 JUN - 1 AM 10:21
MULTNOMAH COUNTY
OREGON

RECEIVED

JUN 02 1992

COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OR

DT 382
 MAF
 5D 2
 707

#1 SERVED:

AT:

DATE: 5/26/92 TIME: 2005

DEPUTY: 7309

#2 SERVED:

AT:

DATE: TIME:

DEPUTY:

#3 SERVED:

AT:

DATE: TIME:

DEPUTY:

CIVIL COURT
 CASE #: 92-8066 CASE #: 92 51 C

SERVE ON DATE: BY DATE:

APPEAR ON DATE: EXPIRE:

GARN DATE:

#1: SMITH, JAMES L

#2:

#3:

ADDR: 922 SE 66TH PL

PORTLAND

TYPE OF PROCESS: SUM PET

REMARKS:

CO-DEF SHERYL ANDERSON

OFF YAMHILL AT EAST END OF GRAYEL ROAD

DEPUTY	DATE	TIME	REMARKS
JA	5/13	1000	NR
JA	5/14	920	NR CAMAROTER IN DRIV
JA	5/15	1330	✓
JA	5/19	1025	Camera 5CM 749 & 1/6 PCL 118. N/R
JA	5/26	2005	Camera & new

92 MAY -7 PM 3: 50

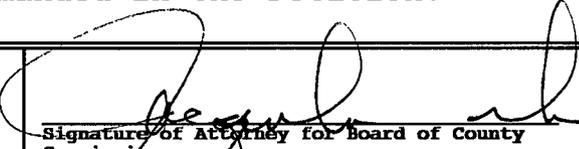
BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

SHERIFF'S EXECUTIVE OFFICE

In the Matter of the Petition)
for Statutory Way of Necessity.) SUMMONS
_____) No. 92-51-C

TO: James L. Smith and Sheryl Anderson
922 SE 66th Place
Portland OR 97215 Respondent(s)

YOU ARE HEREBY REQUIRED TO APPEAR and defend the Petition for Statutory Way of Necessity filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, petitioner(s) will apply to the Board of County Commissioners for the relief demanded in the Petition.

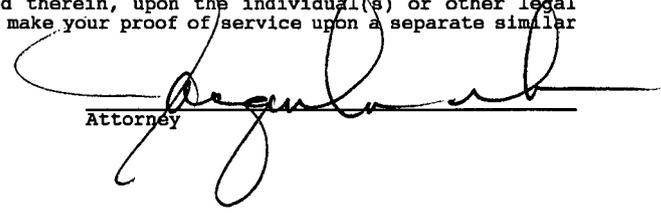
<p>NOTICE TO THE RESPONDENT: READ THESE PAPERS CAREFULLY!</p> <p>You must "appear" in this case or the other side will win automatically. To "appear" you must file with the County Commissioners a legal paper called an "answer." The "answer" must be given to the Clerk of the Board of County Commissioners within 30 days at Multnomah County Courthouse, 1021 SW Fourth Avenue, Room 606A, Portland, Oregon 97204.</p> <p>If you have any questions, you should see an attorney immediately.</p>	 Signature of Attorney for Board of County Commissioners <u>Jacqueline A. Weber OSB #82424</u> Attorney's Name (Typed or Printed) Bar No. <u>P.O. Box 849</u> Address <u>Portland OR 97207-0849 248-3138</u> City State Zip Phone
--	--

STATE OF OREGON)
County of Multnomah) ss.

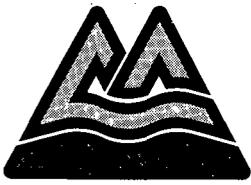
I, the undersigned attorney for the Board of County Commissioners, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Attorney

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: you are hereby directed to serve a true copy of this summons together with a true copy of the petition mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service upon a separate similar document which you shall attach hereto.



Attorney



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION DIVISION
1620 S.E. 190TH AVE.
PORTLAND, OREGON 97233
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

MEMORANDUM

TO: 101/606A Office of the Board Clerk
Deb Bogstad

FROM: 425/County Surveyor *DF*
Dennis Fantz

DATE: June 1, 1992

SUBJECT: McQuinn Family Pioneer Cemetery Association, Petition for
Statutory Way of Necessity and Mr. & Mrs. Ronald Brown and Mr. &
Mrs. David Smith Petition for Statutory Way of Necessity

The investigation and report regarding the above petitions, by the County Surveyor will not be completed by June 5, 1992. However, a written report and itemized statement of costs, will be submitted on or before June 12, 1992.

1992 JUN - 3 AM 10:09
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

M E M O R A N D U M

TO: 425/County Surveyor
Dennis Fantz

FROM: 101/606A/Office of the Board Clerk
Deb Bogstad *Deb Bogstad*

DATE: May 6, 1992

RE: McQuinn Family Pioneer Cemetery Association Petition for
Statutory Way of Necessity

Enclosed please find a copy of a Petition for Statutory Way of Necessity filed on behalf of the McQuinn Family Pioneer Cemetery Association and Multnomah County Resolution 92-51 adopting rules for the Board to process petitions for statutory ways of necessity.

Pursuant to the criteria set forth in the enclosed Rules of Conduct, Section II, please submit a written report and itemized billing of the costs incurred in your investigation and preparation of same to this office, on or before June 5, 1992.

If you need additional time, please notify this office with a date certain in which you will be able to furnish your report.

If you have questions, please contact Assistant County Counsel Jacqueline Weber at 248-3138. Thank you for your courtesies and assistance in this matter.

0044C/4/db
enclosures
cc: Jacqueline Weber

Copies of Rules of Conduct of Hearings Regarding Statutory Ways of Necessity and surveyor's report on McQuinn Family Pioneer Cemetery sent on June 30, 1992 to:

MCQUINN FAMILY PIONEER CEMETERY ASSN.

Attorneys:

OK John W. Shonkwiler (represents Smith & Anderson)
Hennagin & Shonkwiler
Attorneys at Law 624-0917
PO Box 1568
Lake Oswego OR 97035-0768

OK Steven M. Berne (represents Fazzio)
Bullivant Houser Bailey et al ^{DAVID & JACK}
Attorneys at Law CHECKING WITH CLIENTS FIRST
1400 Pacwest Center 228-6351
1211 SW 5th Avenue
Portland OR 97204-3797

OK W. Dean Fitzwater (represents Petitioners McQuinn)
Fitzwater & Fitzwater
Attorneys at Law
15431 SE 82nd Drive Ste G
Clackamas OR 97015-9675 655-3963

OK Mary Anne ~~McQuinn~~ SOHLSTROM
President
McQuinn Family Pioneer Cemetery Assn. 9/1/92 1:30pm
108 NE 40th Avenue
Hillsboro OR 97124 640-9215

BROWN AND SMITH

Attorney:

8/4/92 1:30pm

OK L. Leslie Bush (represents Sandler)
Parker & Gush 241-1320
Attorneys at Law
1618 SW 1st Avenue Ste 205
Portland OR 97201-5752

OK Peter L. Osborne (represents O. J. Mitchell)
Schwabe, Williamson & Wyatt
Attorneys at Law
Suites 1600-1950, Pacwest Center
1211 SW Fifth Avenue
Portland OR 97204-3795
222-9981

Robert Quist &

OK
Brian Cavaness, Esq.
Land Development Consultants, Inc.
233 SE Washington
Hillsboro OR 97123

648-4061

copies for
Brown &
Smith

(house counsel for
engineering firm preparing
petition for Mr. & Mrs.
Ronald Brown and Mr. & Mrs.
David Smith, petitioners)

FINLEY AND MEYERS PETITION

Copies of surveyor's report on Finley and Meyers' petition
mailed on July 9, 1992, to:

David B. Smith
Attorney at Law
8255 SW Hunziker, Ste 200
P. O. Box 230637
Tigard, OR 97223

(represents Finley & Meyers)

Harry Auerbach
City Attorney's Office
1220 SW Fifth Avenue, Room 315
Portland, OR 97204

(represents City of Portland)

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Rules to Process
Petitions for Statutory Ways of
Necessity

RESOLUTION 92-51

WHEREAS, a Petition for Statutory Way of Necessity has been filed with the Board of County Commissioners by each of the following petitioners:

JERRY M. FINLEY and PHILLIP R. MEYERS
MR. AND MRS. RONALD BROWN and MR. AND MRS. DAVID SMITH
THE McQUINN FAMILY PIONEER CEMETARY ASSOCIATION

WHEREAS, ORS 376.150 to 376.200 gives the Board of County Commissioners jurisdiction to grant a Statutory Way of Necessity and establishes statutory procedures therefor, and

WHEREAS, the Board does not have an established process for the purpose of implementing ORS 376.150 to 376.200,

THEREFORE BE IT RESOLVED, that the Board of County Commissioners adopt the rules set out in Exhibit A attached hereto to process the petitions for Statutory Ways of Necessity specified above.

ADOPTED this 16th day of April, 1992.



By Gladys McCoy
Gladys McCoy, Chair
Multnomah County, Oregon

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Jacqueline A. Weber
Jacqueline A. Weber
Assistant County Counsel

K:\JAW\509JAW.RHS\mm

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Petition)
for Statutory Way of Necessity.) SUMMONS
_____)

TO: _____

_____ Respondent(s)

YOU ARE HEREBY REQUIRED TO APPEAR and defend the Petition for Statutory Way of Necessity filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, petitioner(s) will apply to the Board of County Commissioners for the relief demanded in the Petition.

<p>NOTICE TO THE RESPONDENT: READ THESE PAPERS CAREFULLY!</p> <p>You must "appear" in this case or the other side will win automatically. To "appear" you must file with the County Commissioners a legal paper called an "answer." The "answer" must be given to the Clerk of the Board of County Commissioners within 30 days.</p> <p>If you have any questions, you should see an attorney immediately.</p>	<p>_____ Signature of Attorney for Board of County Commissioners</p> <p>_____ Attorney's Name (Typed or Printed) Bar No.</p> <p>_____ Address</p> <p>_____ City State Zip Phone</p>
---	---

STATE OF OREGON)
) ss.
County of Multnomah)

I, the undersigned attorney for the Board of County Commissioners, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Attorney

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: you are hereby directed to serve a true copy of this summons together with a true copy of the petition mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service upon a separate similar document which you shall attach hereto.

Attorney

RULES FOR THE CONDUCT OF HEARINGS
BEFORE THE MULTNOMAH COUNTY BOARD OF COUNTY COMMISSIONERS
REGARDING STATUTORY WAYS OF NECESSITY

I. FILING AND SERVICE OF PETITION

- A. Filing shall be accomplished by mailing the original petition to the Multnomah County Board of County Commissioners. The filing shall be complete upon receipt of the petition by the Board of County Commissioners.
- B. Upon filing of a petition, the Clerk of the Board shall cause a copy of the petition to be served upon all persons owning land across which the Way of Necessity could be located as identified in the petition. Service shall be by summons as specified in ORCP 7, and in the form specified in Addendum A. The Clerk shall direct the Sheriff to serve summons.

II. INVESTIGATION AND REPORT BY COUNTY SURVEYOR

- A. Upon filing of the petition, the Clerk of the Board shall forward a copy of the petition to the County Surveyor, directing the County Surveyor to investigate the proposed Way of Necessity and issue a written report. The County Surveyor shall submit to the Board of County Commissioners a written report no later than 30 days from the date the petition is forwarded by the clerk. If the County Surveyor cannot issue the report within 30 days, he must so notify the Clerk and identify a date certain upon which the report will be provided to the Board.
- B. The report of the County Surveyor shall conform with ORS 376.160(2) and shall include:
 - 1. Possible alternate routes for Ways of Necessity to the property;
 - 2. A determination of whether the proposed Way of Necessity meets the requirements under ORS 376.150 to 376.200;
 - 3. The reasonableness of the Way of Necessity proposed in the petition; and
 - 4. A recommendation for a specific location and width for a Way of Necessity.

- C. The County Surveyor shall submit to the Board an accounting of the actual costs incurred in the investigation and preparation of the written report.
- D. Upon receipt of the Surveyor's report by the Board of County Commissioners, the County Clerk shall cause a copy of said Report and Petition to be served on all persons owning land across whose property the Way of Necessity is proposed to be located in the report and in the petition. Service of the Surveyor's report shall be accomplished in the same manner as described in IB above.

III. FILING OF ANSWER BY LANDOWNER

- A. Any person owning land across which a Way of Necessity is proposed to be established under ORS 376.150 to 376.200 may file an answer controverting any matter in the petition or report and alleging any new matter relevant to the proceedings. An answer must be filed within 30 days from the date of service of the petition and report. Filing of an answer shall be accomplished by mailing the original to the Board of County Commissioners and shall be deemed filed on either the date of receipt, or the date of mailing.
- B. The Clerk of the Board shall provide for service of the answer upon the petitioner in the same manner provided for service of summons in Section IB above.
- C. The petitioner may file a reply controverting any matter presented in the answer. A reply must be filed within ten days after receipt of service of the answer by the petitioner and shall be filed with the Board of County Commissioners. Filing shall be complete on either the date of receipt by the Board of County Commissioners, or the date of mailing. The Clerk of the Board shall provide for service of the reply upon the person filing the answer in the manner provided for service in Section IB above.

IV. HEARING ON THE PETITION

A. Notice of Hearing

Hearing shall be before the Multnomah County Board of County Commissioners. The notice of hearing will be issued by the Clerk of the Board to the petitioner and to all persons across whose property a Way of Necessity could be located as specified in the Petition and the Surveyor's Report, specifying the date, time and location of the hearing. Hearing shall be scheduled no later than 45 days from the date the Surveyor's report is received by the Multnomah County Board of County Commissioners.

B. Conduct of Hearing

1. The Board, in conducting a hearing on a petition for a statutory Way of Necessity pursuant to ORS 376.150 to ORS 376.200, is acting in a quasi-judicial capacity. Interested parties are entitled to an opportunity to be heard, to present and rebut evidence to a tribunal which is impartial, to have the proceedings recorded, and to have a decision based on evidence offered supported by findings of fact as a part of that record.
2. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.
3. No person shall speak more than once without obtaining permission from the presiding officer at the first opportunity.
4. No person shall testify without first receiving recognition from the presiding officer and stating his or her full name and residence address.
5. No person shall present irrelevant, immaterial or repetitious testimony or evidence.
6. There shall be no audience demonstrations, such as applause, cheering, display of signs, or other conduct disruptive of the hearing. Such conduct may be cause for immediate termination of the hearing by the Board.
7. The presiding officer and Board members may question any person who testifies.

V. CHALLENGE FOR BIAS, PREJUDGMENT OR PERSONAL INTEREST

- A. Any party to an appeal to be heard by the Board may challenge the qualification of any Board member to participate in such hearing and decision. Such challenge must be by affidavit and state the facts relied upon by the submitting party relating to a member's bias, prejudice, personal interest, or other facts from which the party has concluded that the member will not participate and make a decision in an impartial manner.
 1. Such challenge shall be incorporated into the record of the hearing.
- B. No commissioner shall participate in a hearing or a decision on a proposal when he/she:
 1. Is a party to or has a direct personal or pecuniary interest in the proposal;

2. Is related to the proponent or opponent;
3. Is in business with the proponent or opponent; or
4. For any other reason, has determined that he/she cannot participate in the hearing and decision in an impartial manner.

VI. PRESIDING OFFICER

- A. The Presiding Officer shall have authority to:
1. Regulate the course and decorum of the hearing;
 2. Dispose of procedural requests or similar matters;
 3. Rule on offers of proof and relevancy of evidence and testimony; and
 4. Take such other action authorized by the Board appropriate for conduct commensurate with the nature of the hearing;
 5. Impose time limits on those appearing before the Board.

VII. ORDER OF PROCEDURE. The presiding officer, in the conduct of the hearing, shall:

- A. Commence the hearing. Announce the nature and purpose of the hearing and summarize the rules for the conduct of the hearing.
- B. Abstentions. Any member announcing his/her abstention shall not participate in the hearing, participate in discussion of the question, or vote on the question.
1. Any member whose participation has been challenged by allegation of bias, prejudice, personal interest, or partiality or who has been subject to significant ex parte or prehearing contact from proponents or opponents may make a statement in response thereto or in explanation thereof, for the record, and his decision to abstain or not. This statement shall not be subject to cross-examination, except upon consent of that member, but shall be subject to rebuttal by the proponent or opponent, as appropriate.
- C. Staff Report. The Presiding Officer may request the representative of the County Surveyor to summarize the nature of the proposal, explain any graphic or pictorial displays which are a part of the record, summarize the

Surveyor's report, and provide such other information as may be requested by the Board.

D. Petitioner's Case.

1. The petitioner shall be heard first. Petitioner may appear personally, or by a designated representative. Petitioner may present testimony and/or documentary evidence in support of the petition.
2. Failure of the petitioner or designated representative to appear shall be cause to dismiss the petition.

E. Respondent's Case. At the conclusion of the presentation of petitioner's case, respondent(s) personally or by representative, shall be recognized by the Presiding Officer, and shall have the opportunity to present respondent(s)' case through testimony or documentary evidence.

1. If there is more than one respondent, they shall be heard in the order designated by the Presiding Officer.

F. Rebuttal. The petitioner may offer rebuttal of respondent(s)' case within the time limits established.

G. Close of Hearing and Deliberation by Board. The Presiding Officer shall conclude the hearing and the Board shall deliberate concerning the petition. The Board shall either make its decision and state its findings, or may continue its deliberations to a subsequent meeting, the time and place of which shall then be announced. The subsequent meeting shall be for the purpose of continued deliberation and shall not allow for additional testimony or evidence, except upon decision of the Board.

H. Order of the Board of County Commissioners.

Following hearing and consideration of the matters and issues presented to the Board by petitioner and respondent(s), the Board shall enter an order granting or denying the Way of Necessity. The order shall conform with ORS 376.175(2) and shall:

1. State whether the Way of Necessity is granted or denied;
2. Declare as established any Way of Necessity that it granted;

3. Describe the exact location and width of any Way of Necessity established;
4. Describe those uses that are permitted on any Way of Necessity established;
5. Direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's action for a Way of Necessity;
6. Establish the amount of compensation due to any owner of land across which any Way of Necessity has been established and direct the petitioner to pay the compensation; and
7. Establish the costs incurred by the County in the procedures for the Way of Necessity and direct the petitioner to reimburse the County for those costs. Any costs assessed to the petitioner under an order shall be paid within 60 days after the entry of the order pursuant to ORS 376.175(4).

I. Appeal of Order of the Board of County Commissioners.

Appeal from the order of the Board of County Commissioners shall be as specified in ORS 376.175(5).

VIII. RECORD OF PROCEEDINGS.

- A. The Clerk of the Board or a designee of the Presiding Officer shall be present at each hearing and shall provide that the proceedings be electronically or stenographically recorded.
- B. The Presiding Officer shall, where practicable, cause to be received all physical and documentary evidence presented which shall be marked to show the identity of the person offering and whether presented on behalf of petitioner or respondent(s). Such exhibits shall be retained by the Board until after any applicable appeal period has expired, at which time the exhibit shall be released upon demand to the person identified thereon.

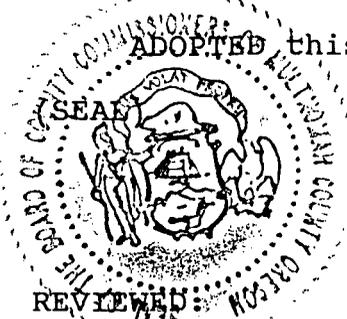
IX. PUBLICATION OF RULES.

These rules shall be placed on record with the Clerk of the Board of County Commissioners and be available to the public at all Board hearings. These rules are supplementary to the Rules of Procedure previously adopted for the Board of the conduct of Board meetings on March 29, 1973; provided, however, these rules shall control where there are conflicting provisions.

X. AMENDMENT AND SUSPENSION OF RULES.

Any rule of procedure not required by law or the Charter for Multnomah County may be amended, suspended or repealed at any hearing by majority vote of those Board members present and voting.

ADOPTED this 16th day of April, 1992.



By Gladys McCoy
Gladys McCoy, Chair
Multnomah County, Oregon

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Laurence Kessel
Jacqueline A. Weber
Assistant County Counsel

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BEFORE THE BOARD OF COMMISSIONERS
FOR MULTNOMAH COUNTY

IN THE MATTER OF:)
) No.
MCQUINN FAMILY PIONEER CEMETERY)
ASSOCIATION, an Oregon) PETITION FOR ESTABLISHING
Non-profit Corporation) WAY OF NECESSITY

COMES NOW the MCQUINN FAMILY PIONEER CEMETERY ASSOCIATION, an Oregon Non-profit Corporation, by and through their attorney W. DEAN FITZWATER, of FITZWATER & FITZWATER, and Petitions the BOARD OF COMMISSIONERS, MULTNOMAH COUNTY, to establish a way of necessity pursuant to the provisions of ORS 376.150 to 376.200, stating as follows:

1.

The location and legal description of property to be served by proposed way of necessity is Tax Lot 17, located in the N.E. $\frac{1}{4}$ of Section 6, T2N, R1W, W.M., and in the Alexander McQuinn D.L.C., Multnomah County, Oregon.

2.

The location of public road located in the vicinity of the property to be served by the proposed way of necessity that is capable of being used to provide access to the property is Lucy Reeder Road No. 1191, which extends in generally Northwest and Southeast directions.

3.

The specific proposed location for the proposed way of necessity is beginning at the Southeast corner of the McQuinn D.L.C.; thence North 77° 00' 00" West on the South line of said McQuinn D.L.C. 858.00 feet; thence North 35° 14' 30" West 1091.83 feet, more or less, to the North boundary of Lucy Reeder Rd., No. 1191 as per survey of record No. 50760, the true point of beginning for the Westerly line of the proposed way of necessity; thence continuing North 35° 14' 30" West 8.15 feet to a 5/8" x 30" iron rod with yellow cap set and inscribed "L. J. Spisla P.L.S. 870"; thence North 35° 14' 30" West 1579.42 feet to a like iron rod was set; thence South 42° 52' 00" West along the Southerly line of the proposed way of necessity 79.00 feet to subject property.

4.

Necessity for establishment of way of necessity is based upon need of your Petitioner and heirs of the McQuinn Family to have roadway access from said Lucy Reeder Rd. No. 1191 to cemetery plot. Kopplin Estate, through its Personal Representative, Kenneth McAdams, owner of the property from Lucy Reeder Rd. to iron rod 1, North to iron rod 2, have provided to your Petitioner a letter authorizing use of access, copy attached marked Exhibit "B".

James L. Smith and Sheryl Anderson, owners of Lot 16, which property land locks subject cemetery property, refuse to grant unto Petitioner roadway access.

5.

The proposed way of necessity does not connect to a public road that has access rights acquired or limited by the State or County, in that Lucy Reeder Road, No. 1191 is a general public access road.

6.

The access to the proposed way of necessity can safely be connected to the public road, Lucy Reeder Road by means of the current travel control signing and fact that the present access comes into Lucy Reeder Rd. property radiused to the County road.

7.

The proposed way of necessity is the closest available access and is the access route heretofore utilized by your Petitioners, their heirs and family members of all times, back to dedication of the cemetery property by the McQuinns some 140 years ago.

8.

Names and addresses of persons who are owners upon which proposed access could be located are:

A. JOHN W. KOPPLIN ESTATE, Kenneth McAdams, Personal Representative, David McAdams, Attorney, 720 SW Washington, Suite 750, Portland, OR 97205, as relates to parcel of land from Lucy Reeder Road, point 1, along fence and existing roadway Northwest to point 2; and

B. JAMES L. SMITH and SHERYL ANDERSON, each to an undivided one-half interest, as relates to the 79 feet from point 2 to point 3, whose address is, 922 SE 66th Place, Portland, OR 97215.

9.

No compensation is proposed to persons who are land owners for reasoning that owners and their predecessors in interest were and have for time being, been aware of the now proposed way of necessity, back to the common ownership of the property by the McQuinn family.

10.

Although the proposed access had been heretofore utilized by the McQuinn family in years past no easement was reserved or granted and recorded as such to perpetuate the proposed way of necessity. The McQuinn family and heirs may well have acquired a prescriptive right to said access to their cemetery lot.

11.

Petitioner beleives that ORS 376.155 provides for establishing of a way of necessity, wherein property is land locked, and no legally recorded easement, right-of-way or access is existing.

Petitioner attaches hereto survey of proposed access, as prepared by Louis J. Spisla, filed with Multnomah County Surveyor, October 9, 1988, as Survey No. 50760. Said survey establishes the specifics of points and location, and as iron rods were set, with legal description and distance.

Petitioner has highlighted the way of necessity by yellow felt pen.

Request is herewith made for the Establishment of the proposed way of Necessity.

DATED this 12th day of April, 1989.

By: *W. Dean Fitzwater*
W. Dean Fitzwater
Attorney for McQuinn Family
Pioneer Cemetery Association
an Oregon Non-profit
corporation

STATE OF OREGON)
) ss.
County of Clackamas)

I, W. DEAN FITZWATER, attorney for MCQUINN FAMILY PIONEER CEMETERY ASSOCIATION, being first duly sworn, depose and say that I have read this Petition for Establishinf Way of Necessity, know the contents thereof, and that same is true as I verily believe.

W. Dean Fitzwater
W. Dean Fitzwater

SUBSCRIBED AND SWORN to before me this 12th day of April, 1989.

Audrey Louren
Notary Public for Oregon
My Commission Expires: 1/22/93

HILL, HUSTON, FERRIS & WALKER

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720 S. W. WASHINGTON SUITE 750
PORTLAND, OREGON 97205

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MICHAEL G. ALLPORT

DAVID K. McADAMS
OF COUNSEL

October 20, 1987

Mrs. Maxine E. Daly, President
McQuinn Family Pioneer
Cemetery Association, Inc.
100 Ward Street, No. 304
Seattle, Washington 98109

RE: Estate of John W. Kopplin, Deceased ("Estate");
Proposed access to McQuinn Cemetery, Sauvie
Island, Oregon ("McQuinn Cemetery")

Dear Mrs. Daly:

My father stated that you wish to have a letter from me, in my capacity as attorney for the Estate, outlining the Estate's position regarding your association's use of a portion of the Estate's Sauvie Island farm to gain access to the McQuinn Cemetery.

The Estate is in the process of trying to sell its Sauvie Island farm and is not able to give any permanent access easements to your association or its members. However, the Estate gives its permission to your association, and to its members, to use existing farm roads (as they may from time to time be moved or otherwise changed about by the Estate or its tenants) providing the most direct access between Lucy Reeder Road over Estate real property to the McQuinn Cemetery. The permission granted to your association, and its members, may be revoked by the Estate at any time, with or without cause in any manner selected by the Estate. Any damage inflicted on the Estate's property by the association, or by any of its members, will be the responsibility of the association and of the member inflicting such damage. The association, and each of its members must hold the Estate harmless and indemnify the Estate against any and all claims arising out of use of any of the Estate's property for access to the McQuinn Cemetery by the association, or by any of its members.

The permission granted by the Estate in this letter is conditioned upon the association, and each of its members, waiving any and all rights that the association, or each of its members, may have by reason of any injury, to person or property, incurred by the association, or by any of its members, arising out of any condition of the Estate's property, or the conduct of the Estate's tenants, employees, agents, or

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EXHIBIT II

HILL, HUSTON, FERRIS & WALKER

Mrs. Maxine E. Daly, President
McQuinn Family Pioneer Cemetery
Association, Inc.
October 20, 1987
Page 2

any other person, in connection with use by the association, or any of its members, of any of the Estate's property for such access. Any use of the Estate's property for such access shall be such that it shall not interfere with or injure the farm operations and other activities being carried on by the Estate, its tenants, agents, contractors, employees, or invitees on its properties.

If you have any questions regarding this letter, please do not hesitate to write or to give me a call.

Very truly yours,



David K. McAdams

DKM:lr
cc: Kenneth K. McAdams

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