

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

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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>
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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, prejudgment, 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

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Laurence Kessel
Jacqueline A. Weber
Assistant County Counsel

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