

QUERIN LAW, LLC

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August 31, 2020

Ms. Lisa Estrin, Sr. Planner Multnomah County
Dept of Community Service
Land Use Planning Division
1600 SE 190th Ave
Portland, OR 97233-5910

RE: Application for Lot of Record Verification (Case #T2-2020-13067)

Dear Ms. Estrin:

I represent Sheryl Anderson and James and Gail Smith (collectively Anderson and Smith) co-owners¹ of the land located in Multnomah County, generally identified as Tax Lots 15, 16, and 17.

This responds to your letter of April 9, 2020. Set forth below are my answers and explanations to the items enumerated in your letter.

INFORMATION AND MATERIALS REQUESTED:

1) YOU ASK US TO SELECT THE OPTION(S) THAT COMPRISE(S) OUR REQUEST FOR A LOT OF RECORD VERIFICATION.

RESPONSE: We are seeking to verify that Tax Lots 15, 16, 17, combined, are a single Lot of Record.

2) FOR EACH LOT OF RECORD VERIFICATION REQUESTED, YOU WILL NEED TO PROVIDE A SEPARATE APPLICATION WITH THE FOLLOWING INFORMATION:

(a) GENERAL APPLICATION FORM LISTING ONLY THE TAX LOT(S) INVOLVED IN YOUR LOT OF RECORD REQUEST.

RESPONSE: See, attached **Exhibit 1**- Application signed by Sheryl Anderson, and James and Gail Smith, H&W.

¹ Their co-ownership is divided as follows: **(a)** Sheryl I. Anderson is the Trustee of the Sheryl I. Anderson Survivor's Trust under agreement dated June 1, 2010, own an undivided one-half interest, and **(b)** James L. Smith and Gail M. Smith, as tenants by the entirety, own an undivided one-half interest.

(b) SIGNATURES OF OWNERS.

RESPONSE: Signatures of Sheryl Anderson, Trustee, and James L. Smith and Gail M. Smith appear on the Application.

(c) CHAIN OF TITLE (TITLE PLANT RECORDS REPORT) FROM THE DATE OF CREATION AND ANY SUBSEQUENT RECONFIGURATION OF THE UNIT OF LAND (TAX LOT) - THE REPORT MUST ALSO IDENTIFY ALL CURRENT OWNERS OF EACH PROPERTY.

RESPONSE: See, attached **Exhibit 2** – Title Plant Records Report.

(d) READABLE COPIES OF THE DEEDS REFERENCED IN THE REPORT LISTED IN 2) (c) ABOVE.

RESPONSE: See, attached **Exhibit 3** - Deeds of Record. *[Note: Because of its size, Exhibit 3 is contained in a separately identified attachment, separate from those that have been included with this letter.]*

(e) APPLICABLE FEE OF \$1,088 PLUS \$183 NOTICE FEE.

RESPONSE: Already paid. See, **Exhibit 4** – Transmittal Letter to George Plummer.

3) THE NARRATIVE/ARGUMENT SUBMITTED FOR THE LOT OF RECORD APPLICATION PROVIDES CONFLICTING DOCUMENTATION REGARDING THE OWNERSHIP OF THE UNIT OF LAND CONTAINED IN TAX LOT R971060170 (TL 17).

(a) YOU WILL NEED TO PROVIDE ADDITIONAL DEEDS OR OTHER EVIDENCE, INFORMATION, OR EXPLANATION DEMONSTRATING THAT ANDERSON AND SMITH ARE THE SOLE PROPERTY OWNERS OF RECORD FOR TL 17.

RESPONSE:

VESTING DEED. On January 16, 1965, Reonne B. Smith conveyed the entirety of the two parcels (now known as Tax Lots 15 and 16) to her children, James L. Smith and his sister, Sheryl Smith (now known as Sheryl Anderson). The deed (“Vesting Deed”) did not exclude the Graveyard Parcel (defined below), now known as Tax Lot 17, which did not exist when the land was conveyed to Anderson and Smith. The Vesting Deed to Anderson and Smith is attached hereto as **Exhibit 5**. Anderson and Smith have continuously owned and possessed the same land conveyed to them by Reonne B. Smith on January 16, 1965.

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TAX LOT 17. This is a one-acre graveyard (“Graveyard Parcel”) illegally created by Maxine Daly, who purportedly is an heir of Alexander and Rebecca McQuinn, owners of the Donation Land Claim property in which it was located.

The chain of title for the Graveyard Parcel reveals that Ms. Daly never had a deeded or probated interest in TL 17. Nevertheless, using a Stevens-Ness Law Publishing Co. form Quitclaim Deed, she conveyed the land to a corporation she created, the “McQuinn Family Pioneer Association, Inc.” (“McQuinn Association”). (See, **Exhibit 6**, attached).

The legal description was created for Ms. Daly by a surveyor she employed to trespass upon the Anderson and Smith property and perform a survey in the middle of TL 16. (See, **Exhibit 7**, attached.)

She then persuaded the County Tax Assessor to designate it as “Tax Lot 17” and showing her Pioneer Association as the owner. Thus, by having the tax bill sent to her, she prevented Anderson and Smith from paying taxes on their own land.

At the time of this bogus conveyance, Ms. Daly also recorded 90 signed, but unnotarized documents titled “Designation of Heir Representative” (hereinafter “Designations”) by persons also alleging to be heirs of Alexander and Rebecca McQuinn. A copy of one of the signed Designations is attached hereto as **Exhibit 8**. Except for different names, they all contain substantially the same text.

The Designations authorized Ms. Daly to “...receive property valuation notices, tax statements, and communications relating to” the Graveyard Parcel. The Designations neither instructed, nor authorized, Ms. Daly to falsify the public records by recording a deed from herself to her corporation and carving the Graveyard Parcel out from the rest of the Anderson and Smith property.

Using her illegal 1986 Quitclaim Deed, Ms. Daly has created on the public record an *appearance* that the McQuinn Association owned TL 17, although it was never excepted out of the Reonne B. Smith conveyance to James L. Smith and his sister, Sheryl Anderson. Maxine Daly never owned, and therefore could not convey, title to any portion of the Anderson/Smith property, including the Graveyard Parcel.

The McQuinn Family Pioneer Association, Inc. was administratively dissolved on April 19, 2018 by the Oregon Corporation Commissioner. See, Oregon Corporation Commissioner records attached as **Exhibit 9**. It has never been reinstated.

Adverse Possession. As discussed below, attached as **Exhibit 10** is an August 31, 1992 Affidavit signed by Sheryl Anderson² in a proceeding before the Multnomah County Board of Commissioners brought by the McQuinn Family Pioneer Association, Inc. to establish a Way of Necessity to the Graveyard Parcel. At Para. 5 *et seq.* of her Affidavit, Ms. Anderson explained

² The exhibits referred to therein have never been located.

that commencing on March 28, 1891, her predecessors owned and possessed TL 16, and the statute of limitations ran against any McQuinn heirs' (potential) claims of ownership ten years hence. She stated:

As of 1965, my brother and I acquired complete ownership of Tax Lot 16 which incorporates in its legal description the graveyard parcel. However, prior to my personal ownership of both Tax Lot 16 and the graveyard parcel, my family and preceding ownership (after 1876) have controlled and exercised rights of adverse possession starting from March 28, 1891. On March 28, 1891, George Anderson died and was buried in one of the two graves located in the graveyard parcel.

Attached hereto and incorporated herein is Exhibit "F" which is a photograph of the grave marker that was located in the large grave site on the graveyard parcel. The other gravesite in the graveyard parcel is unmarked and has had no marker on it since at least 1948 (the time I started living at the property and started inspecting the graveyard parcel).

George Anderson was not an heir or member of the "McQuinn" family, and was buried as part of the family members of the owners of Tax Lot 16 as of 1891. From that point thereafter, no "McQuinn" family members were permitted to visit or be buried in the graveyard parcel. The only permitted visitors and persons to be buried in the graveyard parcel from 1891 on were family members of the owners of Tax Lot 16.

If the McQuinn family heirs ever wanted to claim an interest in the Graveyard Parcel they could have done so through an action in ejectment against Anderson and Smith after their mother's 1965 conveyance (or before that by bringing a claim against their predecessors in interest).³ They did not do so. Ms. Daly could have filed in 1986, but chose instead to falsify the public deed records to achieve her ends.

It is not the legal responsibility of Anderson and Smith to "prove" they own the property conveyed to them by their mother in 1965; it is the legal responsibility of the McQuinn Family to prove they have a superior interest. They have never done so, which is why the deed records continued to show Anderson and Smith as legal owners of Tax Lots 15 and 16, until the illegal Daly deed was recorded in 1986 and TL 17 was created. If she truly believed the McQuinn family had a superior claim to the Graveyard Parcel, Ms. Daly could have brought legal action. She did not.

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³ ORS 105.005(1) (Right of Action; recovery; damages), provides: 105.005 Right of action; recovery; damages. (1) Any person who has a legal estate in real property and a present right to the possession of the property, may recover possession of the property, with damages for withholding possession, by an action at law. The action shall be commenced against the person in the actual possession of the property at the time, or if the property is not in the actual possession of anyone, then against the person acting as the owner of the property.

Exclusive use and occupation of TL 17 remained with the predecessors of Anderson and Smith since 1891. There was no other legal access to it. Even ignoring the long history as described in the Anderson Affidavit (Exhibit 10), once Anderson and Smith personally acquired title from their mother in January 1965, ownership vested in them by common law adverse possession⁴ at least by January 1975, i.e. ten years after they acquired title in January 1965. (Exhibit 5.) There were no other persons with legal access to the Graveyard Parcel.

The Title Plant Records Report (Exhibit 2) show that in the initial conveyance by Sunderland, and by occasional later conveyances, a one-acre “cemetery tract” was reserved – although no right of access was ever reserved or recorded. According to Ms. Anderson’s Affidavit (Exhibit 10) it appears to have come into existence when Alexander and Rebecca McQuinn owned their Donation Land Claim. In 1876 it was sold at public auction to Isaac Thomas excluding the graveyard - but no easement for access was reserved. All of this land was ultimately sold to the heirs of Anderson and Smith. From 1876 until 1986, when Ms. Daly surreptitiously deeded it to her corporation and got a separate tax lot number assigned to it, no McQuinn heirs had ever sought access to, or made any claim of ownership to, the Graveyard Parcel.

The purpose of conveying title to the surrounding land to Isaac Thomas, but excluding the one-acre Graveyard Parcel is unclear since there was no legal way to visit or maintain it.

As described by Ms. Anderson in her Affidavit (Exhibit 10), ever since 1876, her heirs used and exclusively possessed the Graveyard Parcel, and the McQuinn family heirs (numbering over 600 people, per her 1992 Affidavit, Exhibit 10) never filed a probate proceeding on it, and equally important, never had any means of legal access to it since 1876.

(b) IF ANDERSON AND SMITH ARE NOT THE SOLE OWNERS OF TL 17, OR DO NOT OWN TL 17, PLEASE PROVIDE WRITTEN AUTHORIZATION FROM ALL OTHER PROPERTY OWNERS OF THAT UNIT OF LAND IN ORDER TO MAKE A LOT OF RECORD VERIFICATION REQUEST INVOLVING TL 17.

RESPONSE: Anderson and Smith are the sole and rightful owners of TL 17. They acquired unencumbered fee title to what became Tax Lots 15 and 16 in January 1965 from their mother, Reonne Smith. (See, Vesting Deed, Exhibit 5 attached.) The Graveyard Parcel was not excepted out, but as explained by Sheryl Smith in her Affidavit (Exhibit 10), it continued to be maintained by the Anderson and Smith family.

Yet by: (a) Creating a corporation bearing her family name (“McQuinn Family Pioneer Association, Inc.”); (b) Authorizing a surveyor to trespass upon the Anderson and Smith Property to survey the Graveyard Parcel; (c) Drafting and recording a Quitclaim Deed from herself to her corporation, and (d) Persuading the county to give it a separate tax lot number

⁴ Common law adverse possession was replaced by a statutory scheme on January 1, 1990. See, ORS 105.620.

(17), carved out of Tax Lot 16 which was already owned by Anderson and Smith, Ms. Daly has been able to create the public appearance of lawful ownership to a “historic cemetery” that had actually been abandoned by the McQuinn heirs in 1876.

Based upon my telephone conversation with you some weeks ago, you stated that the “tax lot” designation was unimportant to the Lot of Record analysis. This is consistent with MCC 39.3070(D)(1), which provides that an area of land described as a tax lot solely for assessment and taxation purposes “shall not be deemed a Lot of Record”. The recorded Designations appeared devised by Ms. Daly to have the property tax for the Graveyard Parcel sent to her and the other “heirs” to further their claim that this one-acre parcel somehow became the property of the McQuinn Association.

4) IF YOU ARE SEEKING A DETERMINATION THAT TL 17 IS PART OF A SINGLE LOT OF RECORD WITH TAX LOT 16, PLEASE CLARIFY, WITH SUPPORTING EVIDENCE, WHO OWNED BOTH TAX LOTS AS OF FEBRUARY 20, 1990. [MCC 39.3070(A)(2)]

RESPONSE: See Vesting Deed attached as Exhibit 5 from Reonne B. Smith to her children, dated January 16, 1965, showing that the entirety of the parcel described therein (i.e. Tax Lots 15 and 16) were a *single parcel and did not exclude Tax Lot 17* - which did not even exist at that time.

See, also, Title Plant Records Report, Exhibit 2, showing that Anderson and Smith are the owners of Tax Lots 15 and 16 (denominated as “Parcel 1” in said Report).

We concede that for estate planning purposes, Ms. Anderson did convey her undivided portion of the Anderson/Smith Property to her trust on June 17, 2010, and in the legal description of property her attorney used a legal description that *excepted out* the Graveyard Parcel, which is why the Title Plant Records (Exhibit 2) also excepted it out from Parcel 1, and identified it as “Parcel 2”. This is discussed and clarified in the Anderson and Smith Declaration below.

5) PLEASE PROVIDE SIGNED COPIES OF THE SETTLEMENT AGREEMENT TO SHOW IT WAS EXECUTED.

RESPONSE: We are unable to obtain a signed copy. All that my clients have is the unsigned draft attached hereto as Exhibit 11. They do confirm that the litigation was settled, but do not recall any specific terms. I contacted the remaining attorneys/firms on both sides of the litigation and cannot locate copies of their files.

I have also confirmed that no final Settlement Agreement was filed with the Multnomah County Circuit Court; the case was simply reported as “settled” and thereafter dismissed by stipulation.

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(a) IN THE SUBMITTED SETTLEMENT AGREEMENT BOTH SHERYL ANDERSON AND JAMES SMITH “RELINQUISHED ANY AND ALL CLAIMS OF OWNERSHIP” TO TL 17. PLEASE EXPLAIN WHY THIS PART OF THE SETTLEMENT AGREEMENT DID NOT TRANSFER OWNERSHIP OF THE LAND OR CLARIFY ITS TITLE. IF THERE IS A DEED OR OTHER DOCUMENT OVERTURNING THIS PART OF THE AGREEMENT, PLEASE PROVIDE IT.

RESPONSE: First, we cannot say with certainty that the unsigned Settlement Agreement represents the final agreement between Anderson/Smith relating to Tax Lots 15, 16, or 17. We know (a) it was never submitted to the court for review and approval, as it was not a part of the case file; and (b) the lawsuits were reported settled and dismissed.

Secondly, there is no recorded document of conveyance of the Graveyard Parcel from Anderson and Smith to the McQuinn Family Pioneer Association, Inc.

Oregon law is clear on the proper methods to convey title to land. ORS 93.020 (Creating, transferring, or declaring estates or interests in realty) provides:

(1) No estate or interest in real property, other than a lease for term not exceeding one year, nor any trust or power concerning such property, can be created, transferred or declared otherwise than by operation of law or by a conveyance or other instrument in writing, subscribed by the party creating, transferring or declaring it, or by the lawful agent of the party under written authority, and executed with such formalities as are required by law. (Emphasis added.)

(2) This section does not affect the power of a testator in the disposition of real property by a last will and testament, nor to prevent a trust from arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel the specific performance of an agreement in relation to such property.

There is no deed of conveyance, court order, judgment or decree conveying the Graveyard Parcel to anyone. If it were probated, a court record would so reflect. The Settlement Agreement does not, by its terms, purport to be a document of conveyance, and with no signatures, does not comply with the Oregon Statute of Frauds for the conveyance of real property.⁵

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⁵ ORS 41.580(1): In the following cases the agreement is void unless it, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party to be charged, or by the lawfully authorized agent of the party; evidence, therefore, of the agreement shall not be received other than the writing, or secondary evidence of its contents in the cases prescribed by law. (Emphasis added.)

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of any interest therein (Emphasis added.)

To conclude that a phrase “relinquishing all claims of ownership” in an unsigned document, operates as a “deed” to convey fee title to land is misplaced. All of the parties to the litigation were legally represented. It is highly doubtful that the phrase “relinquishing of claims” was used in lieu of “conveying all right, title and interest” – as found in most deeds. If a conveyance of land was contemplated by the unsigned Settlement Agreement, a deed most certainly would have been properly executed before a notary public and recorded to finalize the transaction. That never happened.

Secondly, Oregon law is quite clear that *after* title by adverse possession has vested, i.e. upon the running of the ten-year statute of limitations, statements that *could* be construed as establishing a contrary belief are moot.⁶

Please understand unless and until the McQuinn heirs file for ejectment, or bring some other claim based upon their claim of superior ownership, Anderson and Smith do not have any legal duty to prove they own the entirety of the land conveyed to them by their mother, Reonne Smith, in 1965.

In 1992-93 Anderson and Smith filed two lawsuits in Multnomah County, one against the Cemetery Association and Maxine Daly for their shenanigans, and the other against Multnomah County for granting a Way of Necessity to the Graveyard Parcel. The cases were consolidated and ultimately resolved, resulting in the execution, and recording of an Easement. A copy of the recorded 1993 Easement is enclosed herewith as **Exhibit 12**.

It appears that whatever final settlement agreement was reached between Anderson and Smith and the McQuinn Association, the parties and their attorneys *did* recognize that the Association, by the passage of time and death of the heirs, might lose interest in maintaining the Graveyard Parcel, located as it was, in the middle of the Anderson and Smith property.

Section 1.3 of the Easement provides:

In the event that Parcel B is sold, transferred, assigned or hypothecated in any form or McQuinn becomes dissolved or no longer is in compliance for more than one year as a corporation under the laws and regulations of the State of Oregon, this Easement, Covenants, Conditions and Restrictions shall become null and void, and have no legal effect.

Section 1.3 lends credence to the belief that the parties *did* contemplate the possibility that the Graveyard Parcel might no longer be used as such, in which case, they agreed that the Easement

⁶ See, *Fitts v. Case*, 243 Or App 543, 549, 267 P3d 160 (2011). This case is dispositive. It stands for the proposition that once title by adverse possession has vested after the running of ten years' time, a court will give no weight to statements or actions by the current owner to destroy the adversity and other elements thereafter.

would become “null and void”, thus leaving it without access, and effectively returning it to its status when Reonne Smith conveyed it to her children in 1965 - before the illegal 1986 Daly Quitclaim Deed.

Clearly, without access, the Graveyard Parcel could no longer serve as a “family cemetery” for the McQuinn family heirs to visit. In such case, it would make no sense in a final settlement for Anderson and Smith to “convey” a one-acre parcel in the middle of TL 16, to the same people who might lose interest in maintaining it.

Section 2 of the Easement called for construction of a pathway, gate, lock, sign, and fence for the Graveyard Parcel “on or before May 1, 1994”. None of these tasks were ever performed by the McQuinn Association, and as noted above, it was administratively dissolved on April 19, 2018. (Exhibit 9.)

And a loss of interest is precisely what happened. Not only did no McQuinn heirs visit or use the Graveyard Parcel after 1891 (See, Anderson Affidavit, Exhibit 10); but Maxine Daly passed away in 2010 (**Exhibit 13**); the putative heirs never completed the improvements agreed upon as required in the Easement; and eventually they lost interest in keeping the corporation administratively current with the State of Oregon. Accordingly, we submit that there was a sound rationale in not irrevocably “conveying” ownership of the Graveyard Parcel to the McQuinn Association.

The current Declaration of Mr. Smith and Ms. Anderson lend credence to the idea that Tax Lot 17 was never considered or intended to be a separate parcel. (See, **Exhibit 14**, attached.)

DISCUSSION OF OREGON LAW

ORS 92.010 (3)(a) defines a “lawfully established unit of land” to mean:

- (A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or
- (B) Another unit of land created:
 - (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
 - (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.
- (b) “Lawfully established unit of land” does not mean a unit of land created solely to establish a separate tax account.

Under the above definition, the Graveyard Parcel cannot be a lawfully established unit of land. There is no deed conveying it out except the bogus Daly Quitclaim Deed transferring it to the

McQuinn Association, which no longer exists. Since Ms. Daly was never vested in title, she had nothing to convey, and the McQuinn Association received nothing. It would have the same legal effect as if Ms. Daly quitclaimed the Hawthorne Bridge to a corporation she created and named it the “McQuinn Family Pioneer Bridge”.

97.910 (Disuse as prima facie evidence of abandonment) provides:

In all cases arising under ORS 97.870 to 97.900⁷, the fact that the owner, holder or interested party, of the unused and unimproved portion of the cemetery has not, for a term of 20 years or more, used the plot and has failed to keep it clear of weeds or brush is prima facie evidence that the owner, holder or interested party has abandoned it. (Emphasis added.)

6) PLEASE PROVIDE THE DEED LOCATED AT BOOK 1927, PAGE 2527 EXCEPTION AS REFERENCED IN THE RECORDED SURVEY 50760 (1988) FOR THE RECORD OF SURVEY FOR TL 17. [MCC 39.1125]

RESPONSE: See, attached Exhibit 15. This is a June 18, 1986 Quitclaim Deed from Pete Patterson, Grantor, to James L. Smith and Sheryl Anderson, FKA Sheryl Smith, as to an undivided one-half interest, as tenants in common.

The stated purpose of the conveyance was to cancel a recorded lease between the Grantor, - Patterson, as Lessee, and Grantees, Anderson, and Smith, as Lessors, and thereby remove it as an exception to title in the Anderson/Smith Property.

The metes and bounds legal description attached to the Peterson Quitclaim Deed describes the Anderson/Smith Property, but excepts a “1-acre grave lot”. The legal description of the grave lot is substantially the same – though not exactly – as the metes and bounds description found in the July 9, 1986 Quitclaim Deed from Maxine Daly to the McQuinn Family Pioneer Association, Inc.

7) ASSESSMENT AND TAXATION RECORDS AND THE BARGAIN AND SALE DEED RECORDED ON SEPTEMBER 11, 2014 AT INSTRUMENT #2014-090130 SHOWS THAT GAIL M SMITH IS A PROPERTY OWNER OF TL 15 AND TL 16. PLEASE PROVIDE A LETTER OF AUTHORIZATION FROM GAIL SMITH OR OTHER DOCUMENTATION THAT SHOWS SHE IS NO LONGER AN OWNER. [MCC 39.1115]

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⁷ Unused and uncared for portions of cemetery declared common nuisances.

RESPONSE: James and Gail Smith are husband and wife and are jointly named in the General Application Form accompanying this material. See, page 1 from Preliminary Title Report, dated April 20, 2020, attached hereto as **Exhibit 16**.

8) PLEASE PROVIDE A READABLE COPY OF ALL DEEDS LISTED IN THE TITLE PLANT RECORDS REPORT. IF A READABLE COPY IS NOT FEASIBLE. THE TITLE CO. NEEDS TO PROVIDE A TRANSCRIBED COPY WHICH INCLUDES THE LEGAL DESCRIPTION, BOOK AND PAGE AND GRANTOR AND GRANTEE FOR THE DEED AND CERTIFY THAT IT MATCHES THE ORIGINAL RECORDED DEED.

RESPONSE: This request is duplicative of No. 2(d) above. If you believe any of the attached deeds at Exhibit 3 are incapable of reading, even though Lawyers Title identified them in the Title Plant Records Report, attached as Exhibit 2, we can have them certified.

CONCLUSION

The one-acre Graveyard Parcel appears to have been excepted from the McQuinn Family DLC land when it was first conveyed in 1897. There was no legal description, just a physical identification. The parcel was never probated by the McQuinn estate, and having conveyed the surrounding property with no easement, there was never any legal access to it except by trespassers. As such, the Graveyard Parcel remained a part of what had always been Tax Lot 16, until Ms. Daly came upon the scene in 1986.

The failure to probate the Graveyard Parcel does not confer on it the status of a “lawfully created unit of land”. Similarly, some deeds in the chain of title reserving the Graveyard Parcel from the conveyance, implies that it remained with the grantor. But that reservation does not confer on the parcel the status of a “lawfully created unit of land”.

Under §39.3070 (Lot of Record – EFU) of the Multnomah County Zoning Code, “a Lot of Record is a parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, is a ‘lawful unit of land’”.

Anderson and Smith acquired what became Tax Lots 15 and 16 on January 16, 1965 which is now identified as Tax Lots 15, 16 and 17. (See, Vesting Deed, Exhibit 3 No. 5.) The land was conveyed to them by their mother, Reonne B. Smith. Prior to that time, their family had owned and occupied the entirety of the parcel since 1891. (See, Affidavit of Sheryl Anderson, Exhibit 10.)

The Anderson and Smith parcel was not contiguous to any other parcel under their ownership as of February 20, 1990. The family lived on the land and continuously cultivated and farmed it. No McQuinns ever sought to probate the Graveyard Parcel.

Recognizing this, Maxine Daly chose the illegal and unethical route: On July 9, 1986, she created a ruse to make it appear that this single acre of land was under the ownership of “McQuinn Family Pioneer Association, Inc.”, thus fictionally separating it from the surrounding land owned by Anderson and Smith. But that illegal act did not create a “separate parcel” under separate ownership - Ms. Daly did not have fee title ownership in the Graveyard Parcel before her conveyance, so she could transfer nothing to the McQuinn Family Pioneer Association, Inc.

Even if she was an McQuinn heir, with no probate, it still remains a part of Tax Lot 16. For all intents and purposes, this unmaintained, landlocked parcel, had been abandoned by the McQuinn family for nearly a hundred years,⁸ until Maxine Daly decided to take matters into her own hands.

Since then, the McQuinn Association has been administratively dissolved by the State of Oregon. None of the requirements of the recorded access Easement (Exhibit 12) were honored, and per Section 1.3, the Easement itself automatically became void.

PROPOSAL

Up to the time of filing this Application, Anderson and Smith had continuously maintained the Graveyard Parcel. In my accompany letter to you regarding the sale to Pinky Smith, LLC, I enclosed a copy of the recorded Deed, which provides that the Graveyard Parcel will remain a historic cemetery. (See, attached Exhibit 17.)

Accordingly, we believe that Multnomah County should recognize Tax Lots 15, 16, and 17, for what they are, a *Lawful Unit of Land and Lot of Record*. To do otherwise would reward Maxine Daly and the McQuinn heirs for the improper recording of the Daly Quitclaim Deed, instead of making a claim to the Graveyard Parcel through the legal process.

It would also create the anomalous situation of the County finding that TL 17 is *not owned* by Anderson and Smith, even though there is no court decree or judgment saying so, and no deed transfer or probate proceeding to support that conclusion.

Moreover, given the McQuinn heirs’ failure to probate the Graveyard Parcel, and the fact that it was never excluded from the 1965 Reonne B. Smith deed of the entire parcel to her children, we submit that in making a finding *against* a Lot of Record status, the County would be doing so without knowing who – other than Anderson and Smith (or their successor in interest) – actually owns it.

The fact that Ms. Anderson and Mr. and Mrs. Smith as grantors, and their successor in interest, Pinky Smith, LLC, as grantee, have already created a restrictive covenant over the one-acre parcel for a historic cemetery, demonstrates their good faith. This protects the status of the

⁸ I.e. from the Anderson Ownership in 1891 to the Daly Quitclaim Deed in 1986.

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cemetery without changing fee ownership, thus preserving Lot of Record status. In short, this solution is a win-win for all concerned.

We are hopeful you agree with this analysis, so that Tax Lots 15, 16 and 17 will be recognized as a single parcel and Lot of Record. That way, the Graveyard Parcel can remain a historic cemetery and continue to be owned and maintained by those persons in the best position to do so - the owners of the surrounding land; the same people that have always done so.

If the McQuinn heirs want to mount a legal claim to the Graveyard Parcel, they are free to do so. But the mere assertion of a 130-year-old unprobated claim of ownership should not be equated as an outright conveyance of title, needlessly destroying a Lot of Record status that has existed since Reonne Smith conveyed the single parcel to her children in 1965.

Very truly yours,

A handwritten signature in black ink, appearing to read "Phillip C. Querin", with a stylized flourish at the end.

Phillip C. Querin
QUERIN LAW, LLC
PCQ: abm
Enclosure