

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Petition for a Way  
of Necessity by the McQuinn Family  
Pioneer Cemetery Association

ORDER 92-191

WHEREAS, the matter of the petition of the McQuinn Family Pioneer Cemetery Association for a way of necessity was heard by the Board of County Commissioners on September 1, 1992;

WHEREAS, petitioners appeared by and through their attorney, Lisa Kolve, and respondents appeared by and through their attorney, John Shonkwiler; and

WHEREAS, the Board heard testimony and took evidence on the issues presented by the petition for way of necessity; and

WHEREAS, the Board reconvened for the purpose of deliberation over the issues presented by the petition for way of necessity on October 20, 1992; and

WHEREAS, the Board, based upon the testimony and evidence presented, makes the following findings:

1. Given that Maxine Daily's 1986 quitclaim deed to the Association does not convey her ownership interest in the landlocked parcel; and given that Maxine Daily's ownership interest as a McQuinn heir in the one acre parcel is undisputed; and given that Maxine Daily's testimony was clear and convincing as to her desire to obtain this way of necessity, the Board, on its own motion, should amend the petition to include Maxine Daily as a named petitioner, as a way to clear the issue of lack of standing and to allow this Board to decide the issues before it.

2. The petitioners have shown the necessity for the establishment of a way of necessity to obtain access to the one acre landlocked parcel containing the pioneer cemetery.

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

4. The proposed way of necessity may be connected to a public road safely.

5. The specific location proposed for the way of necessity is the nearest practicable point for a connection to a public road.

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1 6. The petitioners do not have an existing easement or right  
2 to an easement to provide access to a public road.

3 7. The petitioners do not have any enforceable access to a  
4 public road.

5 8. The petitioners have not knowingly eliminated access to  
6 all public roads from the land by the sale of other land owned by  
7 petitioners.

8 THEREFORE, BE IT ORDERED, that the McQuinn Family Pioneer  
9 Cemetery Association's petition for way of necessity be amended to  
10 include Maxine Daily as a named petitioner,

11 That a twelve (12) foot way of necessity be established across  
12 Tax Lot 16 as follows:

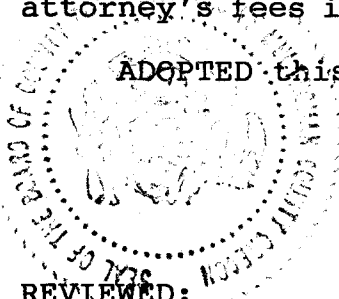
13 Beginning at intersection of the North right-of-way line  
14 of Lucy Reeder Road, No. 1191 with the West line of Tax  
15 Lot 16, thence North along the West line of Tax Lot 16,  
16 being the West line of the way of necessity, 820 feet;  
17 thence East along the line being the North line of the  
18 way of necessity 90.00 feet, more or less, to the  
19 Westerly boundary of the grave lot, Tax Lot 17.

20 That the petitioners are directed to pay to respondents the  
21 amount of \$1,300 as compensation for establishment of a way of  
22 necessity across respondents' land;

23 The cost incurred by the County in the procedures for the way  
24 of necessity are \$799.64. Petitioners are hereby directed to pay  
25 \$799.64, less \$300 previously paid, as costs to the County; and

26 Petitioners are directed to pay the costs and reasonable  
27 attorney's fees incurred by respondents in the amount of \$4,748.00.

28 ADOPTED this 5th day of November, 1992.



By Gladys McCoy  
Gladys McCoy  
Multnomah County, Oregon

REVIEWED:  
LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

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

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## EXHIBIT "A"

<u>DATE</u>	<u>SERVICES</u>	<u>HOURS</u>
6/5/92	Reviewed Petition for Way of Necessity, consulted Oregon Revised Statutes and Multnomah County ordinances.	1.2
6/8/92	Conferred with client regarding case.	1.3
6/9/92	Preparation of items for inclusion in answer to complaint.	1.8
6/12/92	Conferred with county council regarding status of surveyor's report and procedures board intends to follow.	.3
6/16/92	Reviewed history of sales, transfers, ORS chapter 376 and conferred with client, drafted response and multiple defenses.	2.6
7/3/92	Conferred with city attorney.	.3
7/10/92	Reviewed surveyor's comments, compared legal descriptions and checked calculation of square footages.	1.7
7/13/92	Research on adverse possession, taking requirements, preparation of final answer to be filed with Multnomah County, drafted exhibits A and B.	3.7
7/24/92	Received notice of hearing set for 9/1/92 at 1:30 p.m., call to client, interviewed for items and facts needed in clients affidavit.	1.4
8/19/92	Conferred with Allen Brickely of Chicago Title regarding preparation of Multnomah County Commission hearing and necessary certified copies of documents needed, reviewed petitioner's amended petition and response.	1.6
8/20/92	Preparation for hearing.	2.4
8/24/92	Visited site, took pictures for evidence, conferred with neighbors regarding history of property.	3.2
8/26/92	Conferred with client, preparation of the affidavits for submittal to the Board.	2.3

1 - EXHIBIT "A"  
(JWS\ANDERSON\1027.6JJ)

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8/27/92	Obtained documents for hearing, preparation of presentation.	4.4
8/28/92	Obtained certified copies of additional documents needed, conferred with attorneys in a conference call, preparation for hearing.	.6
8/29/92	Preparation of clients affidavit and documents for hearing.	3.9
8/31/92	Preparation for hearing.	1.8
9/1/92	Preparation for hearing, attended and made presentation before Board of County Commissioners, conferred with client regarding issues raised during proceeding and remaining rights of clients.	4.5