

Road DOCKET No. 5

Number	Term	Year
3	Feb	1922

Petition for viewers to assess
damages to New Salem cemetery

Brady Twp

Versus

TO THE HONORABLE, THE JUDGE OF THE COURT OF QUARTER
SESSIONS OF THE COUNTY OF CLEARFIELD:

The petition of the undersigned, on their own behalf, as well as on the behalf of the public, who are interested in the New Salem Cemetery respectfully represents:

That one of the State Highways, known as Route No. 59, leading from Dubois to Luthersburg, passes along what is known as the "New Salem Cemetery". That during the year 1920, the State of Pennsylvania improved said highway leading past said Cemetery. That in the improving of said highway, the State encroached upon the land occupied by said Cemetery and lowered the grade, leaving a high embankment and cut into said bank in such a manner that it endangers the graves located along said highway. That the approach to said Cemetery has been practically destroyed so that there is no means of access to said Cemetery. That your petitioners own lots in said Cemetery, some of which are endangered by the encroachment made by the said highway and all of which are inconvenienced and made almost inaccessible by reason of the taking out of the approach to said Cemetery. That your petitioners have tried to settle with the County of Clearfield for said damages and have been unable to make any arrangement or come to any agreement with the Commissioners of Clearfield County for that purpose.

Your petitioners, therefore, pray the Court

to appoint competent viewers to view and assess the damages for the change of grade along said Cemetery.

And, they will ever pray, etc.

R H Weaver Mrs W G Russell
W J Marsh Mrs Katherine Reisinger
Wm Lonsdale W H Overholser
W H Reisinger J H Shaffer

STATE OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

Personally appeared before me, a Notary Public in and for said County and State, R H Weaver, who being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are correct and true to the best of his knowledge and belief.

Sworn and subscribed before me
this 14 day of November, 1921.

R H Weaver

John J. Reng

NOTARY PUBLIC
COMMISSION EXPIRES MARCH 7, 1925

3 February 1928

In re:

NEW SALEM

CEMETERY

PETITION FOR VIEWERS.

6 Dec 1927 Petition was
made to the Hon. Wm. H. Kinnane
of the Bureau of Land Management
for information concerning
the afforestation areas

as regard to the
Lakewood Game & Coal
Company.

By W. H. Confer

Supt. of Forests

DEPT. OF THE INTERIOR
U. S. FOREST SERVICE
1021 FALSTON ST. W. D. C.

PENTZ & PENTZ
ATTORNEYS AT LAW

DUBOIS, PA.

Washington Office Supply Co., Washington, D. C.

The petition, of the undersigned, Mrs. W. L. Russell, Mrs. Catherine Reasinger, W. H. Overdorff, F. M. Shaffer, et al., on their own behalf, as well as on the behalf of the public, who are interested in the New Salem Cemetery respectfully represents: That one of the State Highways, known as Route No. 59, leading from Du Bois to Luthersburg, passes along what is known as the "New Salem Cemetery". That during the year 1920, the State of Penna improved said highway leading past said Cemetery. That in the improving of said highway, the State encroached upon the land occupied by said Cemetery and lowered the grade, leaving a high embankment and cut into said bank in such a manner that it endangers the graves located along said highway. That the approach to said Cemetery has been practically destroyed so that there is no means of access to said Cemetery. That your petitioners own lots in said Cemetery, some of which are endangered by the encroachment made by the said highway and all of which are inconvenienced and made almost inaccessible by reason of the taking out of the approach to said Cemetery.

That your petitioners have been unable to come to any agreement as to damages due them from the County Commissioners.

RETURN OF VIEWERS.

To the Honorable the Judge of the Court of Quarter Sessions of the Peace for the County of Clearfield:

We, the undersigned viewers, duly appointed by your Honorable Court by the foregoing order, from and among the County Board of Viewers who have been duly appointed by your Honorable Court and have filed their oaths of office in the Court of Common Pleas of Clearfield County, beg leave to report as follows:

That notice of the time of view and of the hearing day was duly served according to law upon the Commissioners of Clearfield County and the ~~Board of Commissioners of the Township of~~ ~~Petitioners~~ and that ~~Notice was~~ notice was posted along the route of the proposed road, that the said view would be held on the ~~10th day of~~ ~~January 1922~~, and the hearing to be held in the Arbitration room, at the Court House, in Clearfield, Pennsylvania, on the ~~10th day of~~ ~~January 1922~~, at ~~10 o'clock~~ ~~Mr.~~ That ~~said~~ viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view R. H. Weaver with a number of others representing the Cemetery with W. C. Pentz Esq representing the petitioners and T. R. Weimer and M. L. Farrell of the Board of the County Commissioners and several of the State Engineers, ~~Youngell Chamber of Dubois Pa;~~ parties in interest. That the hearing was held in the Arbitration Room, in the Court House, at Clearfield, Pa., on the 27th day of January A. D. 1922, when the following appearances were noted: R. H. Weaver W. H. Hockman, William March W. H. Reisinger and others representing the Cemetery and T. R. Weimer and M. L. Farrell of the Board of the County Commissioners Also W. C. Pentz Esq representing the petitioners, and A. H. Woodward Esq Solicitor for the County Commissioners including several witnesses.

After the view and hearing above mentioned, the undersigned, the majority of the said viewers, do agree that there is ~~an~~ occasion for a road as desired by the petitioners, and that the same is ~~an~~ necessary for a ~~road~~ road. And having had respect to the shortest distance and the best ground for such road we have laid out in such manner as shall do the least injury to private property, and as far as practicable agreeably to the desire of the petitioners and do return for ~~use the following described road to wit:~~ ~~the following~~

That a number of years ago a road claimed to have been the Packer'sville and Erie Turnpike running through the Township of Brady in the County of Clearfield Penna; and was used as such for a number of years which it is claimed was incorporated as a Turnpike in 1821 and later on was converted into a Township road and about 1911 or there abouts was taken over by the State Highway Commission as a State road on Route Number 59, and made a state highway and the part thereof from DuBois to Luthersburg has lately been improved and converted into an improved State Highway.

About 1830 as the inscriptions on some of the stones or may have been earlier a Cemetery was laid out along the said road or Highway in Brady Township now known as the New Salem Cemetery and has ever since been used and is still used as such and is one of the oldest Cemeteries in Brady Township, where are buried a number of the pioneers of that section of Brady Township. In 1919 or 1920 the part of said road from DuBois to Luthersburg was improved and in doing so they encroached on the said Cemetery by digging away the bank of the Cemetery about two hundred feet in length, five feet wide into the bank of the Cemetery on the side next the said road near or about two hundred feet in length from five to seven feet in height within a few feet of several of the graves on the side of the Cemetery next the road. ~~who~~ ~~have~~ been buried there for a number of years destroying the road into the Cemetery which left a perpendicular bank from five to seven feet in height to get up into the Cemetery on that side. So that in order to protect the Cemetery and keep several of the graves from sliding down into the road, will require a retaining wall

Clearfield County, Pa. TO WALTERS

At a Court of Quarter Sessions of the Peace of the
County of Clearfield, held at Clearfield, Pa., in and
for said County, on the 6th day of
December, in the year of our Lord
one thousand nine hundred and twenty-one.

Present and of record, the undersigned
Judge of the same Court, Upon the petition of
the undersigned inhabitants of the Township of Sandy
in said County, setting forth that

and therefore, praying the Court to appoint proper persons to view and
lay out the road between the points mentioned, whereupon the Court upon
due consideration had of the premises, do order and appoint from and
among the County Board of Viewers A. G. Kramer Esq.,

E. D. Billotte and J. S. Michaels

who have been duly appointed by the Court and filed their oaths of office and
are duly qualified to perform the duties of their appointment with impartiality and according to the best of their judgment, are to view the ground
proposed for the said road, and if they view the same, and a majority of
the actual viewers agree that there is occasion for such road, they shall
proceed to lay out the same, as agreeable to the desire of the petitioner, as
may be, having respect to the best ground for a road and the shortest distance,
in such a manner as to do the least injury to private property; and
shall make report thereof, stating particularly whether they judge the same
necessary for a public or private road, together with a plot or draft thereof,
and the courses and distances and references to the improvements through
which the same may pass; (and wherever practicable, the viewers shall lay
out the said road at an elevation not exceeding five degrees, except at the
crossing of ravines and streams, when by moderate filling and bridging the
declination of the road may be preserved within that limit,) to the next Court
of Quarter Sessions to be held for the said County.

And if the viewers aforesaid shall decide in favor of locating a public
road, they shall obtain from the persons through whose lands the said road
shall pass, releases from any damages that may arise to them on opening
the same; but if the owner or owners of such land, refuse to release their
claim to damages, the said viewers shall assess the same, taking into view
the advantages as well as disadvantages arising from said location, and
make report of such assessments, which report they shall in like manner
transmit to the next Court of Quarter Sessions, with the draft or plot
aforesaid. In which said reports they shall state that they have been
sworn or affirmed according to law, and that due and legal notice was
given of the time when, and place where, they should meet, to view and
lay out said road, and the time and place of hearing.

By order of the Court. Geo W. Ralston, Clerk.

150 feet in length, six feet in height and one fifty feet in length and four feet in height eighteen inches thick to protect the side of the Cemetery next the road from sliding down and destroying some of the graves and the filling in on the Cemetery side of the wall and Concrete steps eight feet in length seven feet high to enable the people to get into the Cemetery; also a private or public road over private property to the back or opposite side of the Cemetery from the road in order to get into the Cemetery with a conveyance.

In the opinion of the viewers there was no necessity in widening the road to dig and haul away the bank of the Cemetery as in case it was necessary to increase the width of the road there was lots of room on the opposite side of the road from the Cemetery where there was nothing to interfere with extending the road out the necessary width five feet or more, the only difference it would have made would have been a slight increase of the curve in the road which would have been that slight that it would hardly been noticed. The only object that the viewers can see was to get the dirt to fill in.

The digging away of the bank of the Cemetery that had been there for almost a hundred years was in direct violation of the Act of Assembly of April 5th 1849 P L 67; which reads as follows:

It shall not be lawful to open any street, lane, alley or public road through any burial ground or Cemetery within this Commonwealth; any laws therefore passed to the contrary notwithstanding: Provided that it shall not apply to Philadelphia.

In the case of Egypt Street 2, Grant State Report page 455 it was held, that in laying out a street that the street can not be laid out through a Cemetery or so as to cut off or interfere with a Cemetery by cutting of a corner or strip of the Cemetery. In that case Justice Knox in delivering the decision of the Court says. The exercise of the right of eminent domain can only be justified, upon the principle of public necessity and when this necessity does not exist, private property should never be taken for public use. That there is no necessity which requires the invasion of the resting place of the dead by public highways, is evidenced alike by the dictates of reason, and the mandate of the legislature. We cannot permit this highly beneficial statute to be disregarded, whilst in existence, nor to be destroyed by any power save that which created it.

In this case there clearly was no necessity as above stated for the interfering with the Cemetery while there was lots of room on the opposite side of the road to have widened the road to any extend; Besides that by changing the line of the road which was clearly done by digging into and extending the side of the road five feet onto the ground of the Cemetery which clearly renders the County liable for the damages the Cemetery sustains which is the cost of the erection of a retaining wall 150 feet six feet in height and fifty feet four feet in height and the filling in of the wall on the cemetery side and the erection of concrete steps eight feet in length seven feet in height and the construction of a private road around to the rear side of the Cemetery so as to get into the cemetery with a conveyance will cost not less than one thousand (\$1000.00) dollars They therefore assess the damages at one thousand (\$1000.00) dollars to the trustees of the said Cemetery Company.

TO: T. R. WEIMER, JESSE, E. DALE AND M. L. FARRELL; COUNTY
COMMISSIONERS OF CLEARFIELD COUNTY, PA.

You are hereby notified; That the Undersigned viewers appointed by the Court of Quarter Sessions of Clearfield County Pa; to view and assess the damages caused to the new Salem Cemetery by the change of the grade in the construction and repair of the State Highway; Route Number (59), between DuBois and Luthersburg, along the new Salem Cemetery; by the lowering of the grade of the said road leaving a high embankment, thereby obstructing the entrance into the said Cemetery, and by cutting away the bank so as to endanger the graves on the side of the Cemetery next the said State road; for which damages the County of Clearfield is liable.

In pursuance whereof the said viewers will therefore meet at the said Cemetery in the Township of Brady in the County and State aforesaid on Thursday the 26th day of January A. D. 1922 at (2.15) o'clock P. M. to attend to the duty assigned them, of which time and place aforesaid all parties interested will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers before the filing of their report in Court, in order to give all parties interested in the said Cemetery a chance to be heard by the viewers, will be held at the City Council Chamber in the City of DuBois on Friday the 27th day of January A. D. 1922 at nine (9), o'clock A. M. when and where all parties interested may attend and be heard.

A. G. Kranner

E. D. Billotte

J. J. Michaels

VIEWERS.

Now Jany 18 1922 service accepted for the County Commissioners of Clearfield County Pa.

L. C. Morris

Clerk.

TO, R. H. Weaver, W. J. Marsh, William Conrad, W. H. Reasinger, W. L. Russell, Mrs Catherine, Reasinger, W. H. Overdorf, and F. M. Shaffer. Petitioners:-

You and each of you are hereby notified, that the undersigned viewers, appointed by the Court of Quarter Sessions of Clearfield County Pa, to view and assess the damages caused to the new Salem Cemetery by the change of the grade in the construction and repair of the State Highway; Route Number(59), between DuBois and Luthersburg, along the new Salem Cemetery by the lowering of the grade of the said road leaving a high embankment, thereby obstructing the entrance into the said Cemetery, and by cutting away the bank so as to endanger the graves on the side of the Cemetery next the said State road for which damages the County of Clearfield is liable.

In pursuance whereof the said viewers will therefore meet at the said Cemetery in the Township of Brady in the County and State aforesaid on Thursday the 26th day of January A. D. 1922 at (3.15) o'clock P. M. to attend to the duty assigned them, of which time and place aforesaid all parties interested will please take notice.

And that the public hearing required by the Act of Assembly and the Rules of Court to be held by the viewers before the filing of their report in Court, in order to give all parties interested in the said Cemetery a chance to be heard by the viewers, will be held at the City Council Chambers in the City of DuBois on Friday the 27th day of January A. D. 1922 at nine (9), o'clock A. M. when and where all parties interested may attend and be heard.

Service accepted Jan 14
1922
Duz & Duz
all up

A G Kramer
E D Billotte
J S Michaels

VIEWERS.

and that a plan or draft of said road showing courses and distances and the properties affected is hereto attached and made a part hereof, said road being at an elevation not exceeding five degrees excepting

when it was not practicable to preserve it within that limit.

The undersigned further report that they endeavored to procure from all the owners of the land over which the said road passes releases in writing of all claims to damages that may arise from opening the same, and that they procured such releases from

the following persons having refused to release the damages to which they respectfully may be entitled by the reason of the location and opening of the said road, we, the undersigned, viewes, after having considered the advantages to be derived to them, desase their damages and make report thereof as follows:

and we herewith return releases obtained and copy of the notices. *Copy of Notices served*
IN WITNESS our hands and seals this 27 day of January

A. D. 1882

A. G. Krassell
E. B. Billotte
J. L. Michael.



No. 3 Feb Sessions, 1922

ORDER

To view & assess damages
Salem Cemetery
Zone 7
township of
Clearfield County

NOTE.—In case of a private road, the release must be executed in favor of the petitioner for said road.

Also, viewers will carefully note the number of days employed and set the amount out at the foot of the return.

Viewers cannot interfere with the damages assessed by the original viewers, except so far as the location may be changed by the reviewers.

N.B.—If the viewers believe the parties are not entitled to damages, taking into consideration the advantages as well as the disadvantages of the road, they will report to that effect.

	Days	Miles	Amt.
A. G. Braemer	2	22.00	
E. K. Bellotte	3	22.00	
J. J. Nichols	2	15.00	

RELEASE OF DAMAGES.

Know all men by these presents, that we, the undersigned, owners of lands through which the road located by the viewers, under the annexed order, passes for and in consideration of the sum of one dollar to us respectively paid by

at and before the ensealing and delivery hereof, have remised, released and forever quit-claimed, and do hereby remise, release and forever quit-claim to the said

all damages that may arise to us respectively by reason of the location and opening of the said road, so that neither we nor any of us, nor any person claiming under us, can or may hereafter ask, sue for, demand, have or receive any damages for injuries arising or growing out of the location and opening of the road aforesaid.

Witness our hands and seals this _____ day of

A. D. 1911

RECORDED IN THE OFFICE OF THE CLERK OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA, THIS 9TH DAY OF FEBRUARY, 1922.

CLERK OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

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CLERK OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

19
Filed
Fees \$1.25 paid by
Pentz & Pentz, Atty's
D

FILED

FEB 9 1922
GEO. W. RALSTON
CLERK