

ROAD

DOCKET No. 6

Number

Term

Year

3

MAY ss

1935

TRARD TOWNSHIP : PETITION FOR
PUBLIC ROAD

Versus

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA.

INRE: APPLICATION FOR PUBLIC ROAD

To the Honorable W. Wallace Smith, President Judge
said Court:

The petition of the undersigned, citizens of Girard
Township respectfully sets forth:

1. That there is no public road leading from Surveyor
up Surveyor Run to the Goshen Coal Company mines, a distance of
about one mile from the aforesaid public highway.

2. That at the said Goshen Coal Company Mines there
resides seven families occupying seven homes consisting of over
fifty people of which number seventeen are school children who
attend the public schools at Surveyor.

3. That there are several vacant houses which are
occupied when the coal mines are running.

4. That the citizens are greatly in need of a public
road leading from the aforesaid highway to the forementioned
village at the Goshen Coal Company Mines.

5. Your petitioners further set forth that there is
a private road which is not maintained in a traveable condition.

Your petitioners therefore pray the Honorable Court
to appoint Viewers to determine the necessity for a public road
and report to the court.

And they will ever pray.

<u>Jacob A. Cole</u>	<u>Surveyor</u>
<u>James G. Goshen</u>	<u>Postmaster</u>
<u>D. B. Hill</u>	<u>Surveyor</u>
<u>W. H. Hill</u>	<u>Surveyor</u>
<u>Mrs. J. Hill</u>	<u>Surveyor</u>

Miss M. C.	Surveyor Pa
Arthur E. Smith	Surveyor Pa
Wm. E. Smith	Surveyor Pa
Chas. E. Smith	Surveyor Pa
James B. Smith	Surveyor Pa
John A. Smith	Surveyor Pa
Alfred Smith	Surveyor Pa
Miss Alex. B. Smith	Surveyor Pa
Raymond Smith	Surveyor Pa
Miss Anna K. Smith	Surveyor Pa
Harold Smith	Surveyor Pa
Belmont Smith	Surveyor Pa
Chas. Smith	Surveyor Pa
Miss E. Smith	Surveyor Pa
John Smith	Surveyor Pa
Lulu Smith	Surveyor Pa
Edith Smith	Surveyor Pa
George Smith	Surveyor Pa
Mrs. Leona A. Smith	Surveyor Pa
Mrs. D. B. Smith	Surveyor Pa
J. Archie Smith	Surveyor Pa
James E. Smith	Surveyor Pa

ORDER OF COURT

Now, this 10th day of ~~March~~ ^{April}, A. D. 1935, the above petition
having been presented to the Court, John Coffins Esq.,
H. A. Reese, and H. A. Gile,
are appointed viewers to view and report to the Court.

By the Court.

W. Walter Smith

P. J.

Lap over margin

IN THE COURT OF QUARTER SESSIONS
OF CLEARFIELD COUNTY, PA.

IN RE: APPLICATION FOR
PUBLIC ROAD IN GIRARD TWP.

FILED
APR 11 1935
W. R. GALLAGHER
CLERK

LAW OFFICES
J. MITCHELL CHASE
CLEARFIELD, PA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA.

In re: Application for :
Public Road in Girard Township : No. 3 May Sessions, 1935.

OPINION

This matter is before us on exceptions to the Viewers' Report approving a road in Girard Township. The exceptions raise two substantial questions. The first of these is on the question of necessity. This application being for a road which does not have both termini in public roads is governed by the Act of 1919 P.L. 509 as amended by the Act of 1935, P. L. 732, 36 P.S. Sec. 1921. In such cases the finding of the Viewers is not conclusive upon the question of necessity as is the case generally in road matters, but "the finding of the Viewers that the road is necessary for public travel or for the use of property owners . . . shall be subject to the approval of the Court of Quarter Sessions, which may confirm or set aside said finding." The Court's duty in such cases is a discretionary one.

In exercising the discretion so imposed we find it impossible to approve of the Viewers' Report in this case. The report shows that the road in question has heretofore been maintained as a private road to a number of dwellings erected by a coal company whose operations have been suspended for some time. The proposed road would cross over a coal company's tipple improvements, which would necessitate the building of a bridge estimated by the engineer member of the Board of Viewers to cost \$991.00. It seems clear, therefore, that a substantial expenditure for the building and maintenance of this road would be required.

The difficult financial situation of rural, sparsely settled townships such as Girard Township, from which extensive coal operations formerly existing have been withdrawn in recent years, and the unanimous opposition of the Township Supervisors before the Viewers, lead us to believe that it would not be in the interest of the public of the Township as a whole to impose such a heavy burden upon them for a road which manifestly will benefit only a few people. We therefore find that this road is not necessary for the benefit of the public.

The other question deals with the location of the termini of the road. In the formal exceptions filed the Township Supervisors raise the question "that the proposed road does not have its termini in public highways". This does not accurately state the point which in our view is material, but at the argument counsel for exceptants asked leave to enlarge upon the exceptions and to file an additional reason. We do not find such additional reason has been filed of record, but as the point raised and argued goes to the jurisdiction of the Court, we deem that immaterial. The point is that under the Act of 1909, P.L. 142 "all petitions for the laying out of a public road. . . . shall fix definitely the point of beginning and the point of ending, mentioned in said petition, by giving the exact distance from an intersecting public road, street or railroad already open ." This statutory requirement has been held to be mandatory and to define the Court's power in matters of this kind. It has been construed in various cases, including Kennedy Township Road, 50 Pa. Superior 619; Portage Township Road, 50 Pa. Superior 626; Conemaugh Township Road, 109 Pa. Superior 396; In re: Road in Beaver etc. Townships, 13 D. & C.662;

In re: Public Road in Butler Township, 28 Sch. 353. Under these cases the construction of the Act is that the one terminus must not only be in an already existing public highway, but that it must be definitely located by its distance from some other public highway which intersects it.

The petition in this case is almost exactly like the one in Portage Township Road above cited, where the beginning terminus was described as "Old Sonman Station". Here the petition avers "that there is no public road leading from Surveyor up Surveyor Run" etc, and prays for the laying out of a public road there. It is obvious that this does not state a location in a public highway at all, the name Surveyor being merely a name loosely applied to a general locality or a village. The Viewers' Report, while more definite, does not meet the standard laid down by the Act of Assembly. It describes the proposed road as "beginning at the intersection of this proposed road (leading to No. 2 Mine of the Goshen Coal Company) with the improved highway leading from Karthaus to Clearfield via Surveyor; thence " etc. While this states a terminus in the Karthaus-Clearfield public highway, it fails to state its distance from any other point of intersection as required by the Act and decisions above referred to. This defect is fatal to the proceeding.

O R D E R

AND NOW March 14, 1936, for the reasons hereinabove stated, the exceptions to the Viewers' Report are sustained, and the award of the proposed road in Girard Township is disapproved. Exception noted and Bill sealed to the petitioners.

By the Court,

Dr. Wallace Smith
President Judge.

No. 3 May Sessions, 1925.

IN THE COURT OF QUARTER
SESSIONS OF CLEARFIELD COUNTY
PENNSYLVANIA.

In re: Application for
Public Road in Girard
Township

OPINION

FILED
MAY 14 1925
W. R. GALLAGHER
CLERK

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA.


In re: Application for Public :
Road in Girard Township. : No. 3 May Sessions, 1935.

Now, *Nov 8, 1935*, the Road Supervisors
of Girard Township except to the order of Court filed August 24,
1935, as follows:-

(1). The Viewers report erred in that the proposed
road does not have its termini at public highways.

(2). The Viewers erred in their report in returning
for public use the proposed road in that to supply said road
would place undue hardship on the taxpayers of the Girard Township
Road District.

(3). The Viewers erred in their report in recommending
said road, inasmuch as the financial situation in the Girard
Township Road District does not justify or permit the expenses
and costs incidental to the supplying of said road.


Attorneys for Girard Township
Supervisors.

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNA. No. 3 May Sessions, 1935. In re: Application for Public Road in Girard Township.	
EXCEPTIONS	
NOV 2 1935 W. R. GALLAGHER CLERK LAW OFFICES ARNOLD & CHAPLIN CLEARFIELD, PA.	

Now Nos 15th 1530.

Service accepted by Clerk

Charles H. Thomas
 Clerk

answered 1/29/36 leave requested
 to amend exceptions by additional
 exceptions as follows

That definite terms are not
 stated in petition and that terms
 stated in view are not same as stated in
 petition

by which served

by the court

Record of Chapter
 for road work

W. Haller Junr P.D.

Clearfield County, ss:

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 11th day of April
in the year of our Lord one thousand nine hundred
thirty five

Judge of the same Court: Upon the petition of sundry in-
habitants of the Township of Girard

in said County, setting forth that there is no public road
leading from Surveyor up Surveyor Run to the Goshen Coal Company mines,
a distance of about one mile from the aforesaid public highway.

That at the said Goshen Coal Company mines, there resides seven
families occupying seven homes, consisting of over 50 people of which 17
are school children who attend the public schools at Surveyor.

That the citizens are greatly in need of a public road leading from
the aforesaid highway to the aforementioned village at the Goshen Coal
Company mines

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 John Scollins, Esq
H. A. Reese and H. A. Giles

who have been duly appointed by the Court and filed their oaths of office and are duly quali-
fied to perform the duties of their appointment with impartiality and according to the best of
their judgement, 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.

W. Wallace Smith, P. J.

W. P. Gallagher, Clerk.

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, be 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 Supervisors of the Township of

Girard and that three notices thereof were posted along the route of the proposed road, that the said view would be held on the 30th day of April

A. D. 1935, and the hearing to be held in the ~~Appellate~~ ^{Grand Jury} Room, at the Court House, in Clearfield, Pa., on the 3rd day of May, 1935, at 10 o'clock M. That

three viewers appointed by the said order viewed the ground proposed for the above mentioned road, and that there were present at the view Lloyd Leigey, Supervisor
Raymond Rougeux, Jacob Cole, Merritt Rougeux, Elzie Shirey and
Walter Conroy.

parties in interest. That the hearing was held in the ~~Appellate~~ ^{Grand Jury} Room, in the Court House, at Clearfield, Pa., on the 3rd day of May A. D. 1935, when the following appearances were noted: A.R.Chase, Esq., Attorney for petitioners, with Jacob Cole, Raymond Rougeux, James Shaw, S.A. Smith, Byron Cole, Harold Rougeux, Robert Rougeux, James Cole, Elzie Shirey. J.C. Arnold, Esq., Solicitor of Girard Township, with Lloyd Leigey and Norman Jury, Supervisors, and P.B. McHenry, E.D. Billotte, exceptants. J.C. Gatehouse, Esq on behalf of the County Commissioners.

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 petitioner, and that the same is necessary for a public 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 petitioner, and do return for public use the following described road, to wit

Beginning at the intersection of this proposed road (leading to No. 2 Mine of the Goshen Coal Company) with the Improved Highway leading from Karthaus to Clearfield, via Surveyor: thence North 16 degrees East 300 feet to a post; thence North 42 degrees East 416 feet to a post; thence North 31 degrees East 387 feet to a post; thence North 7½ degrees East across an Incline Plane, 683 feet to its intersection with a private road at the property of E.D. Mulson; thence North 8½ degrees East across a tributary creek to Surveyor Run 600 feet to a post; thence North 34 degrees East 181 feet to a post; thence North 56½ degrees East 386 feet to a post; thence North 41 degrees East 300 feet to a post; thence North 35 degrees East 178 feet to a post; thence North 12½ degrees East 260 feet to a post; thence North 15½ degrees East 408 feet and ending at the private road leading to No. 2 Mine of the Goshen Coal Company, near the property line of Henry Smith.

At the hearing aforesaid, the following witnesses were sworn, examined and cross-examined by Counsel, to wit: E. D. Billotte, Jacob Cole, Raymond Rougeux; and at the adjourned hearing, May 31, 1935, Lloyd Leigey, Norman Jury and Blair McGovern, the following findings of fact were agreed upon:

1. That the proposed road will serve 7 families and 46 people; 2 of which families and 7 persons have another out-let by another road.
2. That the proposed road is necessary for a public road.
3. That the existing indebtedness of said Road District is \$2418.60.
4. That the Northern terminus of said proposed road is the property line of Henry Smith and the private road leading to No. 2 Mine of the Goshen Coal Company.
5. That there are 6 occupied Coal Company houses and 12 un-occupied, along the route of the proposed road.

6. That an accurate estimate of the cost of building the proposed road be made by H. A. Reese, Esq., a member of the Board of Viewers.

7. That the bridge over the Incline Plane and its approaches is dangerous and unfit for vehicular travel thereover.

8. That the estimated itemized cost of the said proposed road as set forth in Exhibit "A" hereto attached and made a part of this report is \$991.45.

From the foregoing findings of fact, your Board concludes as a matter of law that the said proposed road is necessary for public use, and recommends that it be confirmed as viewed and laid out by your Board.

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 practical 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 reason of the location and opening of the said road, we, the undersigned viewers, after having considered the advantages to be derived to them, do assess them damages and make report thereof as follows: E. D. Mulson, \$1.00; Surveyor Run Lumber Co., \$1.00; Goshen Coal Company, \$1.00

and we herewith return releases obtained and copy of the notices.

WITNESS our hands and seals this 23rd day of August

A. D. 1935.

John Scellina Seal
H. A. Reese Seal
H. G. Giles Seal
Seal

ORDER

To view _____ a
road for public _____ use in the
township of Girard,
Clearfield County _____

September Sessions, 1935,

read and confirmed Ni. Si. Road to be
opened 33 feet wide, except where there
is side hill cutting or embankment and
bridging, there to be 16 feet wide.

Dr. J. J. J. J.

AUG 24 1935
W. R. CALLAGHER
Chase & Chase, Attys

Filed _____ 19____
Fees \$1.25 paid by _____

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 their return.
Reviewers 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	AM'T.
H. A. Reese-Viewer	4	160	\$48.00
H. A. Reese-Estimate	2	56	\$22.80
H. A. Giles-Viewer	3	29	\$31.45
John Scollins,	4	174	\$48.70
E. D. Billotte,			\$2.57
Notices			

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 respectfully 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. 192_____.

Seal
Seal
Seal
Seal

✓ *Lloyd Zeigey* ✓

TO: ~~Isaac Condon~~, Norman Jury, ~~G. E. Rongens~~ and Blair McGovern,
Supervisors of Girard Township, Clearfield County:-

You are hereby notified that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield County to No. 3, May Sessions, 1935, to view and lay out a public road in the Township of Girard, leading from Surveyor up Surveyor Run to the Goshen Coal Company Mines, a distance of about one mile from the aforesaid public highway, in Clearfield County aforesaid, will meet at the Goshen Coal Company Mine in said Township of Girard on Tuesday, the 30th day of April, A. D. 1935, at two (2:00) o'clock P. M., to attend to the duties assigned them: all parties interested will take notice.

And that the public hearing as required by Act of Assembly and 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 Road an opportunity to be heard will be held in the Grand Jury Room in the Court House in Clearfield on Friday, the 3rd day of May, A. D. 1935 at ten (10:00) o'clock A. M., or as soon thereafter as counsel can be heard, at which time and place all parties interested may attend and be heard.

Dated, April 13th, 1935.

John Collins
N. A. Reese
N. A. Gillet
Viewers

CLEARFIELD COUNTY, SS:

Now, this 18th day of April, A. D. 1935, service of the above Notice is accepted for the Supervisors of Girard Township, Clearfield County.

Norman Jury
Lloyd Zeigey
Blair McGovern
Supervisors

TO: The County Commissioners of Clearfield County, Pennsylvania:-

You are hereby notified that the undersigned Viewers, appointed by the Court of Quarter Sessions of Clearfield County to No. 3, May Sessions, 1935, to view and lay out a public road in the Township of Girard, leading from Surveyor up Surveyor Run to the Cochran Coal Company Mines, a distance of about one mile from the aforesaid public highway, in Clearfield County aforesaid, will meet at the Cochran Coal Company Mine in said Township of Girard on Tuesday, the 30th day of April, A. D. 1935, at two (2:00) o'clock P. M., to attend to the duties assigned them: all parties interested will take notice.

And that the public hearing as required by Act of Assembly and 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 Road an opportunity to be heard will be held in the Grand Jury Room in the Court House in Clearfield on Friday, the 3rd day of May, A. D. 1935 at ten (10:00) o'clock A. M., or as soon thereafter as counsel can be heard, at which time and place all parties interested may attend and be heard.

John Scollins
H. A. Reese
H. A. Kille
Viewers

Dated, April 15th, 1935.

CLEARFIELD COUNTY, SS:

Now, this 15th day of April, A. D. 1935, service of the above Notice is accepted for the Commissioners of Clearfield County.

L. C. Norris
Clerk

ESTIMATE OF COSTS

(PROPOSED ROAD IN GIRARD TOWNSHIP)

Bridge over Plane

Abutments & Wing Walls 16 Cu. Yds. Concrete @ \$9.00	\$144.00
73 Cu. Yds. Filling @ 75¢	54.75
700 Ft. No. 1 Oak Lumber (3 X 12 Joists- 2" Plank)	28.00
2 - "A" Trusses, wood and irons, nails.	12.00
Carpenter (3 Days)	15.00

Sewer at Run

24 feet of 4 foot Concrete Sewer @ \$4.85	116.40
331 Cu. Yds. Filling @ 90¢ (12 Foot Road)	297.90
Head & Foot Walls (18' X 8' X Av. 10" & Footers - 10 Cu. Yds.) @ \$9.00	90.00
Exc. Ditches for Concrete footers (6 Days)	18.00
36 Ft. Cor. Iron Sewers - 12 Inch @ 65¢	23.40
80 Ft. Cor. Iron Sewers - 9 Inch @ 55¢	44.00
Placing Sewers (5 Days)	15.00
2313 Ft. Side Ditch (23 Days)	69.00
3 Days with drag (3 men @ \$3.00 - 1 man @ \$4.00)	39.00
Changing location of Water Line - Approx.	25.00
	<u>\$991.45</u>

L. A. Reese

Exhibit "A"

[illegible]