

Agenda Item # 18
Date 1/13/21

NOTICE OF PUBLIC HEARING

Notice is hereby given the Dodge County Board of Supervisors will hold a public hearing at 9:30 A.M., January 13, 2021 in the Board Room, Third Floor, Courthouse, Fremont, Nebraska. The hearing is to consider the request of petitioners, Robert A. Johnson and Sharon G. Johnson, for an access road to their land under the "Isolated Landowners" statutes, 37-1713 through 37-1719. Their land location is described as the SE Quarter of the SE Quarter and Tax Lot 22, the west 30 acres of the NW Quarter of the SE Quarter, all in Section 32, Township 30 North, Range 7 East of the 6th P.M., Cuming Township, Dodge County, Nebraska, consisting of 70 acres more or less.

Fred Mytty
Dodge County Clerk

RECEIVED

DODGE COUNTY BOARD OF SUPERVISORS
STATE OF NEBRASKA

2020 NOV 23 AM 10:21

DODGE COUNTY, NEBRASKA
FRED HYTTY, COUNTY CLERK

ROBERT A. JOHNSON and)
SHARON G. JOHNSON,)
Husband and Wife.) VERIFIED PETITION FOR ACCESS ROAD
)
)

COMES NOW Robert A. Johnson and Sharon G. Johnson, husband and wife, Petitioners herein, being first duly sworn, and state to the Dodge County Board of Supervisors as follows:

1. Petitioners are residents of 1247 County Road 12, Scribner, Dodge County, Nebraska 68057.

2. Petitioners are represented in this matter by David C. Mitchell and Spencer B. Wilson of Yost, Lamme, Hillis, Mitchell, Schulz, Hartmann, & Wilson, P.C. located at 81 West 5th Street, Fremont, Nebraska 68025.

3. Petitioners are the owners of the following property legally described as:
The Southeast Quarter of the Southeast Quarter and Tax Lot 22, the West 30 acres of the Northwest Quarter of the Southeast Quarter, all in Section 32, Township 20 North, Range 7 East of the 6th P.M., Dodge County, Nebraska, consisting of 70 acres more or less. (The "Property")

4. The Property is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons. The Property is outlined in blue and marked with a star on Exhibit "A" attached hereto and incorporated by reference.

5. The properties outlined in black and marked with diagonal lines on Exhibit "A" attached hereto and incorporated by reference are owned by Nicole Dyer, Brett Clarke, and Anthony Clarke, as tenants in common, with a Life Estate expressly reserved by Don L. Clarke and Joann N. Clarke, or the survivor of them. (The "Clarke Properties")

6. Petitioners made a good faith effort to purchase an easement to access the Property through the Clarke Properties, but the owners of the Clarke Properties are unwilling to grant Petitioners any form of right-of-way over or through the same to a public road.

7. Petitioners had access to the Property at the time it was purchased by Petitioners.

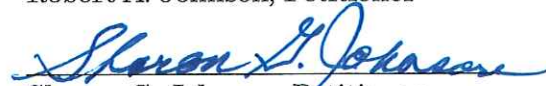
8. Petitioners did not cause the Property to become landlocked and isolated.

9. An access road to the Property is necessary for the existing utilization of the

Property by Petitioners.

WHEREFORE, your Petitioners pray that the Dodge County Board of Supervisors appoint a time and place for hearing on this Petition not more than thirty (30) days after the receipt of this Petition; that the Dodge County Board of Supervisors cause notice to be issued pursuant to Neb. Rev. Stat. § 39-1715; and, that the Dodge County Board of Supervisors grant an access road to Petitioners pursuant to Neb. Rev. Stat. § 39-1716.


Robert A. Johnson, Petitioner

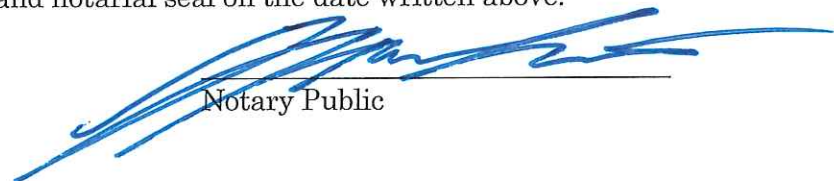

Sharon G. Johnson, Petitioner

STATE OF NEBRASKA)
COUNTY OF DODGE) ss.

On this 18 day of November, 2020, before me, a Notary Public duly commissioned and qualified, personally appeared Robert A. Johnson and Sharon G. Johnson, who are personally known to me to be the identical persons whose names are affixed to the foregoing Petition.

WITNESS my hand and notarial seal on the date written above.




Notary Public

Prepared and Submitted by:
David C. Mitchell, #18133 and Spencer B. Wilson, #26125
YOST, LAMME, HILLIS, MITCHELL,
SCHULZ, HARTMANN, & WILSON, P.C.
A Limited Liability Organization
81 West 5th St.
Fremont, NE 68025
402-721-6160
dcm@yostlawfirm.com
sbwilson@yostlawfirm.com

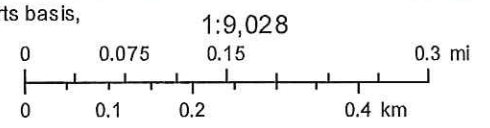
PENGLD-Byronic, N. 1.
EXHIBIT
A



October 14, 2019
14:16 PM

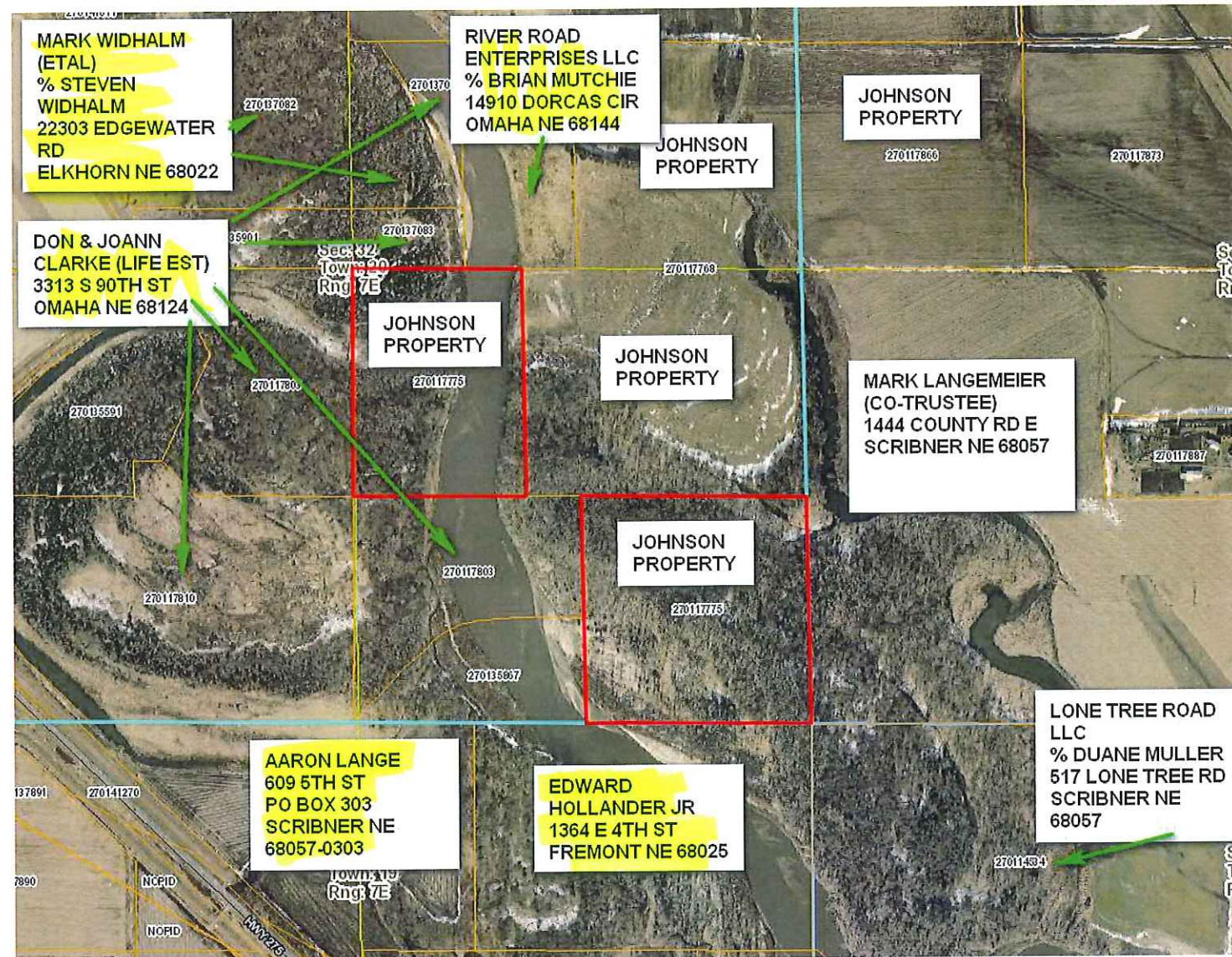
DISCLAIMER: This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.

- Signs
- Parcels
- Sections



From: "Debbie Churchill" <debbie.churchill@dodgecounty.ne.gov>
To: "Dodge County Clerk" <Clerk@dodge.naconc.org>
Subject: Johnson Property
Date: 12/16/2020 3:21:50 PM

Below is our GIS map. I have listed all the property owned by Johnson, as well as the surrounding properties. I only found the property owners touching the 2 parcels outlined in red. If you need the property owner touching the 2 Johnson properties at the very top of the map, let me know.



Debbie Churchill

Dodge County Assessor

Dodge County Assessor's Office: 435 N Park Ave Rm 202, Fremont NE 68025

PH: (402) 727-3918 | FAX (402) 727-3913

Dodge County Assessment Website: <https://dodge.nebraskaassessors.com>

Dodge County Assessment GIS Website: <https://dodge.gworks.com>

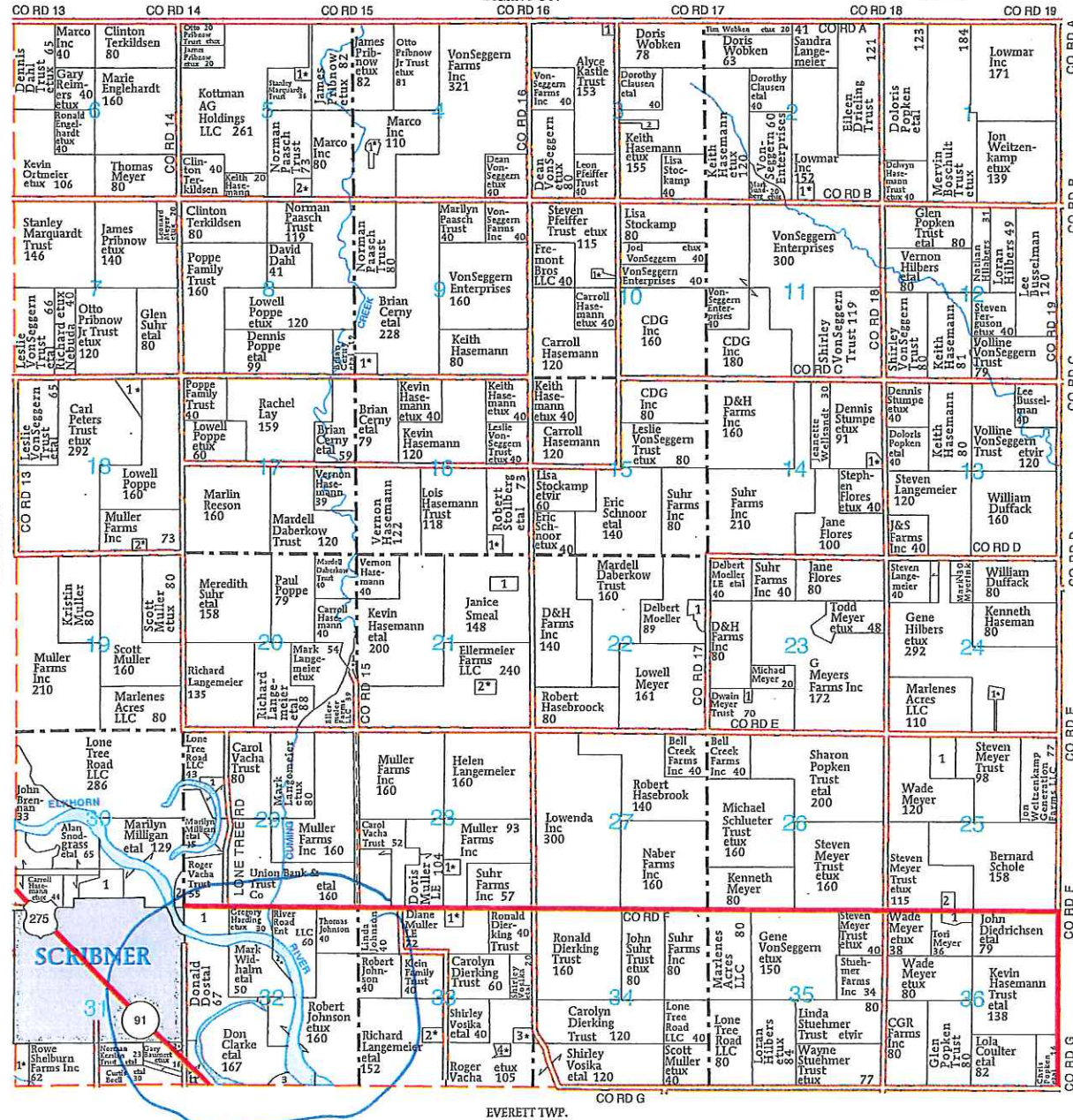
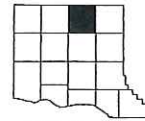
Dodge County Website: <https://dodgecounty.nebraska.gov>

Extends Its *Thanks* To All The Businesses
Who Have Made This Plat & Directory Possible
Through Their Advertisements. These Advertisers Are
Community-Minded Individuals Who Are Willing
To Support This Plat & Directory.
Support These Fine Businesses!

T-20-N

CUMING PLAT

R-7-E



- | | | | | |
|------------------------|---------------------------------|--|--------------------------|-------------------------------|
| CUMING TOWNSHIP | SECTION 9 | SECTION 21 | SECTION 28 | SECTION 33 |
| SECTION 2 | 1. Petersen, Merlin etux 11 | 1. Joe Smeal Inc 12 | 1. Poppe, Russel etux 7 | 1. Garretson, Jason etux 8 |
| SECTION 3 | 1. Mowinkle, Dan etux 8 | 2. Wagner, Casey etux 8 | SECTION 29 | 2. Schlueter, Cory etux 9 |
| SECTION 3 | 1. Mahnke, Eric etal 5 | SECTION 22 | 1. Robart, Joann 17 | 3. Mortensen, Jefferey etux 8 |
| SECTION 4 | 1. St Johns Lutheran Church 6 | 1. Powell, Dennis 9 | SECTION 30 | 4. Vacha, Brady etux 7 |
| SECTION 4 | 2. Grunke Trust, Ardene 5 | SECTION 23 | 1. School District 62 27 | SECTION 36 |
| SECTION 4 | 1. Stump, Dennis etal 9 | 1. Meyer, Scott 10 | 2. Vacha Trust, Roger 9 | 1. Meyer Family Trust 9 |
| SECTION 5 | 1. Slama, Garwood etux 7 | SECTION 24 | 1. Schnoor, Eric etal 10 | |
| SECTION 5 | 1. Hetzel Trust, Kristy etal 10 | 1. Hilbers, Chad etux 6 | 2. Dostal, Donald etux 8 | |
| SECTION 5 | 2. Cordes, Kevin etux 7 | SECTION 25 | SECTION 32 | |
| SECTION 5 | 1. Pribnow, Jeffery etux 5 | 1. St. Paul's Lutheran Church of Hooper 22 | 1. City of Scribner 33 | |
| SECTION 5 | 2. Paasch, David etux 7 | 2. Smeal, Bryan 5 | 2. Clarke, Don etal 10 | |
| | 1. Hasemann, Kevin etal 6 | | 3. Lange, Aaron 10 | |

DODGE COUNTY CLERK
Fred Mytty

Deputy Clerk – Micki Gilfry
Clerical - Kelly Irvin, Shauna Neal, Lori Welbes

Courthouse – Room 102, 435 North Park, Fremont, Nebraska 68025-4977
Phone (402)727-2767, Fax (402) 727-2764

December 16, 2020

Dear landowner,

You are hereby notified of the following public notice because it may affect your property because your land may prevent access to the petitioner's property.

NOTICE OF PUBLIC HEARING

Notice is hereby given the Dodge County Board of Supervisors will hold a public hearing at 9:30 A.M., January 13, 2021 in the Board Room, Third Floor, Courthouse, Fremont, Nebraska. The hearing is to consider the request of petitioners, Robert A. Johnson and Sharon G. Johnson, for an access road to their land under the "Isolated Landowners" statutes, 37-1713 through 37-1719. Their land location is described as the SE Quarter of the SE Quarter and Tax Lot 22, the west 30 acres of the NW Quarter of the SE Quarter, all in Section 32, Township 30 North, Range 7 East of the 6th P.M., Cuming Township, Dodge County, Nebraska, consisting of 70 acres more or less.

Fred Mytty
Dodge County Clerk

Attached are the statutes regarding "isolated" land.

Sincerely,


Fred Mytty
Dodge County Clerk

39-1713. Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section [39-1716](#), the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections [39-1713](#) to [39-1719](#):

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section [39-1716](#); and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Source:Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; [Laws 1999, LB 779, § 4](#); [Laws 2017, LB339, § 142](#).

Annotations

Under subsection (2) (now subdivision (1)(b)) of this section, land may be isolated if the land is shut off from all public roads, other than a waterway, by (1) being surrounded on all sides by real estate belonging to other persons or (2) being surrounded on all sides by real estate belonging to others and by water. A writ of mandamus is the proper remedy to compel a county board, in accordance with this section and section 39-1716, to lay out a public road for access to isolated land. *Young v. Dodge Cty. Bd. of Supervisors*, 242 Neb. 1, 493 N.W.2d 160 (1992).

A road established hereunder is a public road and this section is constitutional. *Moritz v. Buglewicz*, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1714. Isolated land; access by private road only; affidavit; petition; hearing before county board.

Whenever all the other conditions prescribed by section [39-1713](#) are present and, instead of being entirely shut off from all public roads, the only access by any owner of real estate to any public road is by an established private road less than two rods in width, the county board shall,

upon the filing of an affidavit or affidavit and petition asking that an access road be provided in accordance with section [39-1716](#), substantially in the manner set forth in section [39-1713](#), setting forth such facts, appoint a time and place and hold a hearing thereon in the manner set forth in section [39-1713](#).

Source:Laws 1957, c. 155, art. IV, § 14, p. 545; [Laws 1999, LB 779, § 5.](#)

Annotations

This section provides that whenever the county board finds that such conditions set forth in section 39-1713 are present and, instead of being entirely shut off from all public roads, that the owner has access to any public road only by an established private road less than 2 rods in width, the county board is required, upon the filing of an affidavit or affidavit and petition to hold a hearing on the matter. *Lewis v. Board of Comrs. of Loup Cty.*, 247 Neb. 655, 529 N.W.2d 745 (1995).

Establishment of a public road upon satisfaction of statutory requirements is a ministerial duty within the power of the county board. *Burton v. Annett*, 215 Neb. 788, 341 N.W.2d 318 (1983).

39-1715. Isolated land; access; hearing; notice; service; posting.

When a hearing is to be held as provided in sections [39-1713](#) and [39-1714](#), the county board shall cause notice of the time and place of the hearing to be given by posting notices thereof in three public places in the county at least ten days before the time fixed therefor. At least fifteen days' written notice of the time and place of the hearing shall be given to all of the owners and occupants of the lands through which the access road may pass. The notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant of such lands and, whenever possible, by either registered or certified mail to the owners of such lands.

Source:Laws 1957, c. 155, art. IV, § 15, p. 545; Laws 1982, LB 239, § 2; [Laws 1999, LB 779, § 6.](#)

39-1716. Isolated land; access road; damages; powers of county board; costs; maintenance.

(1) The county board shall, if it finds (a) that the conditions set forth in section [39-1713](#) or [39-1714](#) exist, (b) that the isolated land was not isolated at the time it was purchased by the owner or that the owner acquired the land directly from the State of Nebraska, (c) that the isolation of the land was not caused by the owner or by any other person with the knowledge and consent of the owner, and (d) that access is necessary for existing utilization of the isolated land, proceed to provide an access road and, if it finds that the amount of use and the number of persons served warrants such action, may lay out a public road to such real estate.

(2) The county board shall appraise the damages to be suffered by the owner or owners of the real estate over or through which the access road will be provided. Such damages shall be paid

by the person petitioning that the access road be provided. For any real estate purchased or otherwise acquired after January 1, 1982, for which public access is granted pursuant to sections [39-1713](#) to [39-1719](#), the person petitioning for such access shall also reimburse the county for all engineering and construction costs incurred in providing such access.

(3) Notwithstanding any other provisions of law, an access road provided in accordance with this section shall not be subject to Chapter 39, article 20 or 21. The designation of such an access road shall not impose on the State of Nebraska or any political subdivision any obligation of design, construction, or maintenance for the access road nor give rise to any cause of action against the state or any political subdivision with respect to the access road.

Source:Laws 1957, c. 155, art. IV, § 16, p. 545; Laws 1982, LB 239, § 3; [Laws 1999, LB 779, § 7.](#)

Annotations

This section provides that the county board may lay out a public road of not more than 4 nor less than 2 rods in width to isolated real estate, if it finds that the amount of use and the number of persons served warrant such action. *Lewis v. Board of Cmrs. of Loup Cty.*, 247 Neb. 655, 529 N.W.2d 745 (1995).

A writ of mandamus is the proper remedy to compel a county board, in accordance with this section and section 39-1713, to lay out a public road for access to isolated land. This section applies prospectively, that is, to real estate acquired after January 1, 1982. *Young v. Dodge Cty. Bd. of Supervisors*, 242 Neb. 1, 493 N.W.2d 160 (1992).

The duty of the board of county commissioners under this section, to lay out a public road upon a showing that the statutory conditions of section 39-1713, R.R.S.1943, exist, is ministerial. *Singleton v. Kimball County Board of Commissioners*, 203 Neb. 429, 279 N.W.2d 112 (1979).

A road established as provided herein is a public road. *Moritz v. Buglewicz*, 187 Neb. 819, 194 N.W.2d 215 (1972).

39-1717. Isolated land; location of access road.

Whenever possible, an access road provided in accordance with section [39-1716](#) shall be along section lines. When the most practicable route for the access road is adjacent to a watercourse, the land to be taken for the access road shall be measured from the edge of the watercourse.

Source:Laws 1957, c. 155, art. IV, § 17, p. 546; Laws 1982, LB 239, § 4; [Laws 1999, LB 779, § 8.](#)

39-1718. Isolated land; access road; order of county board; award of damages; payment; filing of order.

If the county board decides to provide an access road in accordance with section [39-1716](#), the county board shall make and sign an order describing the same and file it with the county clerk, together with its award of damages which order shall be recorded by the clerk, except that the amount assessed as damages to the owner or owners of the real estate shall be paid to the county treasurer before the order providing for the access road is filed.

Source:Laws 1957, c. 155, art. IV, § 18, p. 546; Laws 1982, LB 239, § 5; [Laws 1999, LB 779, § 9.](#)

39-1718.01. Isolated land; changes in law; applicability.

Sections [39-1713](#) to [39-1719](#) shall not apply if public access has been granted prior to July 17, 1982.

Source:Laws 1982, LB 239, § 6; [Laws 1999, LB 779, § 10.](#)

39-1719. Isolated land; access road; award; appeal; procedure.

Any party to an award as provided by section [39-1718](#) may, within sixty days after the filing thereof, appeal therefrom to the district court of the county where the lands lie. The appeal shall be taken by serving upon the adverse party a notice of such appeal and filing such notice and proof of service thereof with the clerk of the court within the sixty days. Thereupon the appeal shall be set down for hearing at the next term of the court. It shall be heard and determined in like manner as appeals from awards in condemnations as provided in sections [76-704](#) to [76-724](#). Such appeal shall not affect the right or authority of the petitioner to the use of the access road under the award of the appraisers.

The applicant shall in case of appeal file such additional security as may be required by the county board for such costs and damages as may accrue against him or her by reason of such appeal. If on appeal the appellant does not obtain a more favorable judgment and award than was given by the appraisers, such appellant shall pay all the costs of such appeal. Either party to such suit may appeal from the decision of the district court to the Court of Appeals, and the sum deposited as provided in this section shall remain in the hands of the county treasurer until a final decision is had.

Source:Laws 1957, c. 155, art. IV, § 19, p. 546; Laws 1961, c. 189, § 8, p. 583; Laws 1991, LB 732, § 99; [Laws 1999, LB 779, § 11.](#)