

Agenda Item # 17ai
Date 4/20/22

Don Clarke
3313 South 90th Ave
Omaha, Nebraska 68124

April 7, 2022

To Dodge County Clerk, Fred Mytty and the Dodge County Board of Supervisors,

Having received a copy of the petition filed by Robert and Sharon Johnson, I believe it is necessary to inform you of the context for the petition and respond to it.

I purchased the property described in the petition as "Clarke Properties" in 2000. As part of the purchase agreement the seller negotiated easements with the various land owning parties so that I would have authorized access to my land. I have three easements to get to my land from a public road. I was aware that Mr. Johnson had land on the west side of the Elkhorn River that was land locked. I understand that this land had been landlocked for several years and for whatever reason, he had not negotiated an easement to it. I specifically asked at the time of purchase if any easement existed and was told it did not. Additionally I understood that I was purchasing a parcel of land which, in part, was land locked on the east side of the river that did not have an easement for access.

Within a couple of years of purchase Mr. Johnson made several assertions that he was entitled to access his property without an easement. For whatever reason Mr. Johnson has focused all of his efforts on me regarding easement and only this year included the other parties from which he must obtain an easement in order to access the land locked portion on the west side of the Elkhorn. I can only describe it as a campaign of harassment for the past 20+ years. As I have no authority to grant the other easements required and as we both have approximately equal sized land locked portions of property on opposite sides of the river I suggested that we should swap land. He was not amenable to this suggestion. We went so far as to go to arbitration which was unsuccessful.

He has made a single offer in 20 years – that being that I give him an easement and he will give me one as well. He believes this to be a reasonable and equal exchange when it is not. He has a well-established road he uses for agricultural purposes and I do not. His 'offer' would have me build and maintain a road that I have neither the equipment to build nor the ability to maintain. His offer would compel me to a commitment I could not fulfill and compel future owners of the land to being caretakers of a road to his small piece of property on this side of the river. In short this would benefit only him. Further, it would still not solve his need for easements from the other land owners. Yet for 20 years he has harassed me again and again.

His petition implies that he would like to access his property. Based upon conversations with people trespassing on our property looking for this isolated portion of land along the river, he does not intend to use the land but rather sell it. Again, if he would like to no longer own this land because it is isolated from the rest of his property, my offer to swap land making both our property holdings contiguous is still on the table.

As to the petition itself, 39-1713(c) states that he is to state the lowest price for which he could purchase an easement from each of the land owners from which he must do so. He has failed to supply this information. It is important to note that the land isolation is not a recent event for Mr. Johnson. The river channel moved 30 or more years ago. Meaning, when I purchased the property I now own, Mr. Johnson also had the same opportunity. He could have purchased sufficient land and/or easements necessary (there were multiple parcels, he would not have had to purchase everything I now own) to connect his now land locked property to a public road and at a fair and reasonable (not exorbitant) price. The land was for sale publically. This was not a family sale. For this fact alone the petition should fail as his situation fails to meet this important aspect of the petition. He made a choice not to purchase access when he was given the opportunity to do so. That was a choice he made. It may be one he now regrets, but he cannot now claim he has never been given a reasonable price to secure access to his landlocked property.

Further, 39-1716(1d) calls for a decision as to whether or not the amount of use warrants that a public access road be granted. He has been consistent that his only interest in the land is to hunt the two weeks of the November firearm season. That amount of land would, at most, serve two hunters.

39-1716(2) calls for Mr. Johnson to compensate me and the other land owners for the portions of our land that would be seized to establish such a road. Further, this remedy calls for Mr. Johnson to pay for the costs of planning and building the road. (see the attached article by J. David Aiken, Extension Water and Agricultural Law Specialist, paragraph 6) So, to avoid swapping land with me, he is willing to pay hundreds of thousands of dollars to have a road built so he can sell land for less than it cost him to build a road to it. I assure you, other than tell him that what he offers is not of equal value to me and point out that he must obtain other easements that I have no authority to grant, I have done nothing to warrant this level of animosity or harassment.

I would ask that the board decline this petition. The amount of use that would be gained does not warrant a road or the impact to me and the other landowners. Mr. Johnson has never really offered to purchase an easement but rather asserted that what he is offering is of equal value. That is his opinion; it is not mine. He has been offered time and time again an alternative solution and has not in 20 years been willing to move toward any form of compromise. This petition is just the latest in his 20+ years of efforts to harass me.

I am now, at 92 years old, an old man. I am tired of this. I do not understand why he will not negotiate a swap of land. Perhaps the board declining this petition will finally move him to a more reasonable position.

Thank you for your consideration.
Don Clarke

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Nebraska Isolated Lands Statutes

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October 5, 2011

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Nebraska Isolated Lands Statutes

Market Report	9/27/11	9/20/11	9/13/11
Livestock and Products			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight.....	\$96.48	\$114.00	\$120.14
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb....	123.51	161.95	152.32
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb....	110.07	131.78	138.77
Choice Boxed Beef, 600-750 lb. Carcass.....	156.27	183.22	183.19
Western Corn Belt Base Hog Price Carcass, Negotiated.....	76.64	82.08	89.26
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean.....	88.43	97.02	97.83
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct.....	142.12	184.87	174.25
National Carcass Lamb Cutout, FOB.....	329.95	406.99	409.37
Crops			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Imperial, bu.....	5.20	7.67	5.91
Corn, No. 2, Yellow Omaha, bu.....	4.11	7.48	5.83
Soybeans, No. 1, Yellow Omaha, bu.....	10.05	14.11	11.14
Grain Sorghum, No. 2, Yellow Dorchester, cwt.....	7.25	12.39	9.66
Oats, No. 2, Heavy Minneapolis, MN, bu.....	3.28	3.84	3.45
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.....	*	185.00	185.00
Alfalfa, Large Rounds, Good Platte Valley, ton.....	*	117.50	140.00
Grass Hay, Large Rounds, Good Nebraska, ton.....	75.00	85.00	92.50
Dried Distillers Grains, 10% Moisture, Nebraska Average.....	127.50	209.00	202.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.....	47.00	110.25	69.50
No Market			

Nebraska statutes establish a procedure for owners of land that does not have access to a public road, to have the county build an access road at the landlocked landowner's expense. These statutes are called the Isolated Lands Statutes (NRS §§ 39-1713 to -1719). The process to provide access to isolated lands is not simple, and probably costly. **The best way to avoid these situations is to make sure your land has access to a public road before you buy it.** This newsletter provides a general overview of the isolated lands statutes. If you have questions regarding the isolated lands statutes, contact an attorney.

Most landowners assume that if they don't have direct access to a public road they can gain this access by going to court. In most cases this is incorrect. If you used to own the access road, and sold the land containing the road and failed to retain the right to continue to use the access road, Nebraska courts have recognized your right to continue to use the access road. This is called an **implied easement of necessity**. *Johnson v. Mays*, 216 Neb. 890 (1984). But if you **bought** land with no access to a public road, you can't get that access by going to court. In Nebraska, your only option (besides getting the neighbor to allow you to use his/her private road for access), is provided in the isolated lands statutes.

If you have isolated lands (and didn't sell the access road to the neighbor), your first step is to attempt to obtain or purchase an easement to go across your neighbor's land, in order to have access to a public road. If you obtain such an easement or right of way, it should be recorded with the county real estate records. You should retain an attorney to make sure the proper legal procedure is followed.

If you are unsuccessful in obtaining a right of way across the neighbor's land, you may then request that



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the county establish an access road, for which you would be required to pay the entire cost. To begin this process you file an affidavit with the County Board containing the following:

- a statement that you own land within the county, and providing the land's legal description;
- a statement that the land is shut-off from all public access (other than a waterway), by being surrounded on all sides by land belonging to other persons, or by such real estate and water;
- that you are unable to purchase a right of way from any of your neighbors, or that the only price you can obtain is exorbitant, and the amount of that exorbitant price, and;
- requesting the county to provide public access pursuant to the isolated lands statutes.

To consider whether the provision of access is required, the County Board must determine that all the facts contained in the affidavit are correct. In addition, the board must also determine whether there is private access to the public road, and whether that private road is less than two rods (33 feet) in width. If so, the board must hold a hearing on the request within 30 days of its submission, after ten days public notice and 15 days written notice to the affected landowners.

After the hearing the board determines:

- whether the conditions asserted in the petition are true, and that the only access (if any) is by way of a private road less than 33 feet in width;
- whether the isolated land was not isolated when it was purchased;
- whether the isolation of the land was not caused by the landowner or by anyone else with the landowner's knowledge and consent;
- that access is necessary to use the isolated land, and;
- that the number of persons served justify providing public access.

If the answer to all these questions is yes, then the board must proceed to provide an access road of between 33-66 feet in width. The County Board must determine the damages to be paid to the landowner through which the access road will be built, and the isolated landowner must pay the full costs of developing the access road (including the damages to the neighboring landowner), before the access road is built. The county is not responsible for access road maintenance unless the access road is a public road. Whenever possible, access roads shall be located along section lines.

As you can see, this is not a simple process. Your best bet is to try to work something out with a neighbor to give you access to a public road. The isolated lands process is clearly something that should be attempted only as a last resort, when all other options have failed.

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April 8, 2022

To Dodge County Clerk, Fred Mytty and the Dodge County Board of Supervisors,

I sent a letter with most of my thoughts regarding the petition filed by Robert and Sharon Johnson. Having received a copy of the affidavit and exhibits he submitted to you at the last meeting, I believe it is necessary to address a couple of points in the affidavit. I would wait to speak at the meeting, but I think I can more clearly express myself by writing and it might save time.

In point 6 he claims he had permitted ingress and egress across the various properties to access the isolated property. He offers no proof to back this claim. It is important however that he describes this as permission. Permission is not an easement. When I bought the property I asked if there were any easements and I was told that there were none. In fact there are none.

Permission is a temporary arrangement. If I were to grant permission for someone to ride their horse on my property, they are permitted to do so as long as I allow it. I can tell them at any time I no longer wish them to be on my property... that is my right as a property owner. And, should I sell the property they could not expect that the permission would continue. They would have to ask the new owner, and that owner would have every right to say no; for whatever reason. If they wanted to ensure that they could continue to ride there, they should buy the property when it is for sale.

If Mr. Johnson ever had permission to access his property as he claims, this was the kind of permission he would have had, and he should not expect that it would last in perpetuity. He seems to recognize this in point 12 when he changes his language from permission to easement. He knows the difference. He wants you to treat them as the same. They are not.

In points 6 and 7 he refers to an "established access road". I can only assume he is referring to the residential driveway to BK farms. This is not a road, but a private drive. The city has extended this driveway to the treatment plant. Any sense of this drive being "established" ends at the dike as that is where the gravel ends.

After which the Widhalm's and I have what can only be referred to as trails, not roads, cut through thick woods. Floods and storms require that paths change. A large tree goes down and the trail must be rerouted. This happens annually and thus it cannot be

claimed that these trails are established. So, the "established road" he is asking you to declare or enhance to become an access road on my property does not exist.

As to the map he addresses in point 7, that map is from 2009. We surveyed trails after a storm by walking the property with a gps unit. I don't do Facebook so I don't know what was said about it, but that is what the map was. It does not represent everything that can be accessed by a vehicle.

The trail marked in exhibit 2 is inaccurate on several accounts. If you compare exhibits 2 and 3 you will see the maps are different in the first 100 feet. If one were to follow the path Mr. Johnson has marked you would be very quickly stopped by downed trees.

Further there have been three floods and numerous windstorms and some of the trails that appear to have tire marks are no longer accessible and are not in use. This further proves the point that this is not an established road or even an established trail as most of it is no longer in use.

Mr. Johnson wants you to overlook several things. One of them, which I think is pretty important, is the disclaimer on exhibit 2. **DISCLAIMER:** This map is not intended for conveyances, nor is it a legal survey and should not be relied upon for making financial, survey, legal or other commitments. I believe what he is asking you to do is make a decision with financial and legal implications.

I know my land better than Mr. Johnson does. There is no existing established road. Mostly we use utility vehicles and, until it died last month, an old 4 wheel drive truck that we didn't care if it got scratched. You might call this "off-roading". As such... there is no road.

It seems he is trying to cleverly disguise his effort to get you to force us to allow him to have unfettered access to our lands. This is not right and it is not the intent of the statute. He wants something for nothing. The statutes call for him to ask the county to survey a road, build it and have him pay for it.

He doesn't really want a road for farm equipment to access isolated agricultural land, he just wants you to sanction his trespassing. He wants you to say that there is already a road and so he doesn't really need to pay for anything, and that is the crux of it. He wants something for nothing. Not just from me, but from everyone else and that includes you too.

It is interesting that he shows you his 2021 tax information showing that he is taxed at about \$1200 an acre, but if you look at this year's tax information you will see that he has managed get his land rated as "waste" and "waste 12" taxed at about \$160 per acre. It seems he is very skilled at finding ways to not pay what things are worth. So for land that the county has valued at \$3200 he is doing all of this. If that is all he believes his land is worth I'll buy it for \$3200 and there won't need to be a hearing.

Finally, I have offered to negotiate a land swap. Mr. Johnson would like you to believe that he has sought negotiation. He has not. He has stated what he wants but has never moved toward any sort of compromise. His petition is yet another way he is trying to get what he wants for nothing and he cares nothing for the impact on others. This petition negatively affects far more people than it could ever benefit and I ask that you do not grant it.

Thank you for your consideration.

Don Clarke