

LD#4. Sept. 1907

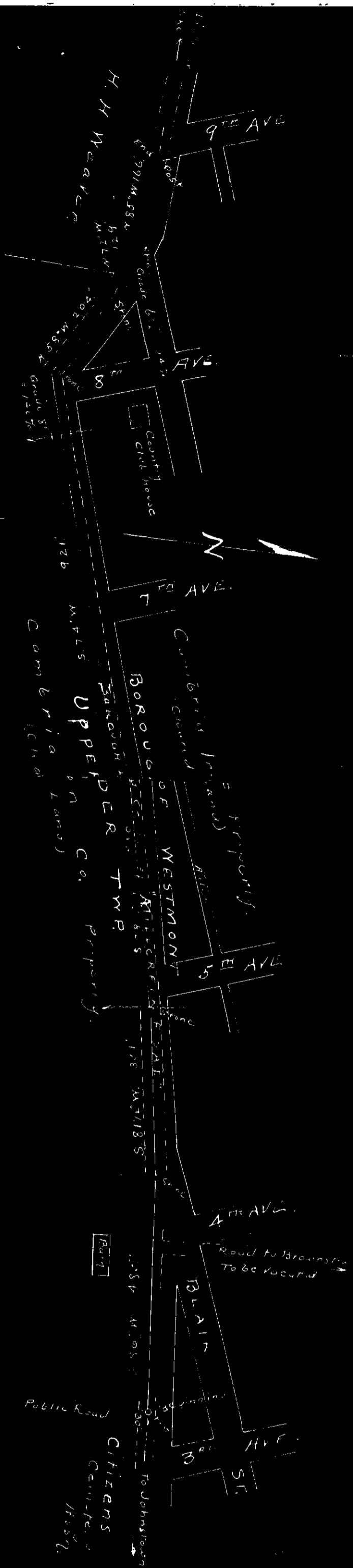
Rat Macrofilmed

This road is 23 ft. wide.  
Grades at certain points are  
as much as 4 to 5%.

## VACATE ROAD

Cambria Co. Pa.

Frank D. Hober, Surgeon.  
John, Harman  
Kitt, Sagerson.



IN THE MATTER OF THE ORDER TO  
VIEW AND VACATE A PORTION OF  
THE PUBLIC ROAD KNOWN AS THE  
MILLCREEK ROAD, THE CENTER LINE  
THEREOF BEING THE LINE DIVIDING  
THE BOROUGH OF WESTMONT FROM  
UPPER YODER TOWNSHIP.

IN THE COURT OF  
QUARTER SESSIONS  
OF CAMBERIA COUNTY.

#4 SEPTEMBER SESSIONS 1907.

To the Hon. Francis J. O'Connor,

President Judge of said Court.

The undersigned viewers named in the within order respectfully report;

1st - That notice to the public of the time and place of meeting of Viewers were put up in the most public places along the route of the road to be vacated, ten days before the time fixed for the holding of said view, and copies of the notices so posted are hereto annexed and made part of this report.

Written notices to the Supervisors of Upper Yoder Township and to the Street Commissioner of Westmont Borough, of the time and place of the meeting of Viewers were given more than ten days previous to the date of the view. A copy of said notice is also annexed and made part hereof.

2nd - We, the undersigned Viewers, were severally duly sworn to well and truly perform our duties as Viewers, impartially and according to the best of our judgment, and a true report to make, prior to the making of said view, which oath as sworn and subscribed by us is hereto annexed and made part hereof.

3rd - That we met at the time and place specified in the notice to view to wit: on Monday, the eleventh day of November, 1907, at nine o'clock A. M. at the Club House of the Johnstown Country Club, in Westmont Borough, on the line of said road, all of said Viewers being present.

4th - That we viewed the road proposed to be vacated, and are of the opinion that the same is unnecessary, inconvenient and burdensome, owing to the number of hills and heavy grades in the same; and we therefore report that the same is unnecessary, inconvenient and burdensome, and that the portion of said road specified in said order to view, and described by courses and distances following, be vacated,

viz:

Beginning at the western line extended of an intersecting public road distant at its southerly end thirty feet (30 ft.) from the north-western corner of land of the Citizens Cemetery Association in Upper Yoder Township, and distant at the northern side seventy-five feet (75 ft.) from the northwestern corner of the said Millcreek Road and Third Avenue in the Borough of Westmont; thence south eighty-six (86) degrees west, four hundred and eighty-five feet (485 ft.); thence south eighty-one and one-half ( $81 \frac{1}{2}$ ) degrees west three hundred and fifty-one feet (351 ft.); thence south seventy-eight and one-half ( $78 \frac{1}{2}$ ) degrees west five hundred and fifty feet (550 ft.); thence south seventy-four (74) degrees west nine hundred and twenty-one feet (921 ft.); thence north fifty-eight (58) degrees west two hundred and four feet (204 ft.); thence north seventy-two (72) degrees west one hundred and twenty-nine feet (129 ft.); thence north eighty-five (85) degrees west one hundred and sixty-six feet (166 ft.) to the easterly side of Ninth Avenue in the Borough of Westmont as extended across said Millcreek Road, a draft of said portion of said road being hereto annexed and made part of this report.

Your petitioners do further report that there are public streets of easy grade connecting with the said Millcreek Road beyond the termini of the portion hereby recommended to be vacated, which render that part of said road to be vacated useless, inconvenient and burdensome.

IN WITNESS WHEREOF, we, the Viewers mentioned in said order, have hereunto set our hands this Fifteenth day of November 1907.

Frank D. Baker,

John Harmon

Robert T. Sagona

Copy of Notice posted in the most public places along the route of the road to be vacated and served upon the Supervisors of Upper Yoder Township and the Street Commissioner of the Borough of Westmont.

N O T I C E .

Notice is hereby given that the undersigned, viewers appointed to view and vacate a part of the Millcreek Road, Beginning at the Western line extended of an intersecting Public Road, distant at its Southerly end 30 ft. from the Northwestern corner of land of the Citizens Cemetery Association in Upper Yoder Township, and distant at the Northerly side 75 ft. from the Northwesterly corner of said Millcreek Road and Third Avenue in the Borough of Westmont, and terminating at the Easterly side of Ninth Avenue extended across said Millcreek Road, will meet for the purposes of their appointment on Monday, November 11th. 1907, at 9 A. M. at the Johnstown Country Club house.

(Signed)

Frank D. Baker

John Hannan.

Robert Sagersen.

Viewers.

Notice posted along road October 25th 1907, served upon Supervisors of Upper Yoder Township and Street Commissioner of Borough of Westmont October 26th. 1907.

In the Matter of the Order to View and Vacate a Portion of the Public Road Known as the Millcreek Road, the Center Line Thereof Being the Line Dividing the Borough of Westmont From Upper Yoder Township.

#4 September Sessions 1907.

Viewers Bill of Costs.

Frank D. Baker, Surveyor, -	2 days,	\$10.00	
" " "	2 miles,	.10	\$10.10
John Hannan, Viewer, -	1 day,	3.00	
" " "	2 miles,	.10	3.10
Robert Sagerson, Viewer,	1 day,,	3.00	
" " "	2 miles,	.10	3.10
Charles Hurd, Chainman,	1 day,	2.00	2.00
<u>Leroy Lint, Chainman.</u>	<u>1 day,</u>	<u>2.00</u>	<u>2.00</u>

\$20.30

Notary Public. Swearing Viewers ~ - -

#  $\frac{75}{21.05}$

OATH OF VIEWERS.

State of Pennsylvania, ) ss:

County of Cambria, )

Before me, the subscriber, a Notary Public,

in and for said State and County, personally came Frank D. Baker,  
John Hannan and Robert Sagerson, Viewers appointed for the purposes  
mentioned in the within order, who being by me severally sworn, accord-  
ing to law, say that they will perform the duties of their appointment  
impartially and according to the best of their judgment.

Sworn and subscribed to

this 11th. day of

November A. D. 1907.

Frank D. Baker.

John Hannan

Robert Sagerson

Wm. Williams  
Notary Public

(My commission expires  
2nd Feby. 1910.)

Commonwealth of Pennsylvania, }  
County of Cambria. } ss

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg, in the said County, on the Eighth day of September A. D. 1907, before the Honorable Judge of the said Court: Upon the petition of divers inhabitants of the Township of Upper Yoder & Westmont Bor. in the said County, setting forth that they ~~labor under inconvenience for want of a~~ <sup>road or highway, to lead from</sup> ~~A road has long since been laid out extending from the Borough of~~ <sup>Johnstown, near the City of Johnstown, to the Logansville Pike, commonly and</sup> ~~properly known as the Millcreek Road, the center line of the part thereof~~ <sup>hereinafter described being the line dividing the Borough of Westmont from</sup> ~~Upper Yoder Twp; see record of original proceedings for said Road in~~ <sup>Road Docket, Vol. 2, Page 261, all of which Road has become useless, in-</sup> ~~convenient and burdensome to wit: Beginning at the western line extended~~ <sup>of any intersecting Public Road distant at its southerly end thirty (30)</sup> ~~feet from the north-western corner of land of the bitigords Cemetery Assoc-~~ <sup>iation in Upper Yoder Twp, and distant at the northerly side seventy</sup> ~~five (75) feet from the north-western corner of said Millcreek Road and~~ <sup>Third Avenue in the Bor. of Westmont, and terminating at the easterly</sup> ~~side of Ninth Avenue extended across said Millcreek Road. Your petitioners~~ <sup>further represent that the said portion of Millcreek Road has become burden-</sup> ~~some, useless and inconvenient to the inhabitants of the said Borough~~ <sup>and said Twp, and therefore pray the Court that the said portion of</sup> ~~said Road may be vacated, agreeably to the Acts of Assembly in such~~ <sup>case made and provided</sup>

and therefore praying the Court to appoint proper persons to <sup>vacate</sup> view and lay-out the same according to law. The Court, upon due consideration had of the premises, do order and appoint

J. L. Baker.....surveyor, and.....

John Hamman and Robt. Lagerson.....<sup>vacation</sup>

viewers, to view the ground proposed for said road, and if they <sup>no</sup> view the same, and shall agree that there is <sup>vacate</sup> occasion for such road, they shall proceed to lay-out the same, having respect to the shortest distance and the best ground for a road, and in such manner as shall do the least injury to private property, and also be as far as practicable, agreeable to the desires of the petitioners, and that they make a report of their proceedings to the next Court of Quarter Sessions to be held for said County, 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 it may pass.~~

By the Court.

Attest:

.....W. E. Proffitt....., Clerk.

NOTE. "It shall be the duty of all persons appointed in the several counties of this Commonwealth to view and review any public or private road or bridge, if they shall decide in favor of locating said road or bridge, to endeavor to procure from the person or persons over whose land such location may be made releases from all claims for damages that might arise from the opening of such road or the building of such bridge; and in every case where said viewers shall fail to procure such releases, and it shall appear to them that any damages will be sustained, it shall be their duty to assess the damages and make report thereof signed by a majority of their number, and return the same, together with all releases obtained, to the Court of Quarter Sessions, and the damages so assessed shall be conclusive, or may be subject to appeal, review or modification, as may be provided by existing laws in the different counties of this Commonwealth."

"The persons appointed as aforesaid shall view such ground, and if they shall agree that there is occasion for a road, they shall proceed to lay out the same, having respect to the shortest distance, and the best ground for a road, and in such manner as shall do the least injury to private property, and also be, as far as practicable, agreeable to the desire of the petitioners."

"The viewers, as aforesaid, shall make report at the next term of said Court, and in the said report shall state particularly: First, who of them were present at the view, second, whether they were severally sworn or affirmed; third, whether the road desired be necessary for a public or private road; they shall also annex and return to the Court a plot or draft thereof, stating the courses and distances, and noting briefly the improvements through which it may pass; and, whenever practicable, the viewers shall lay out the said roads at an elevation not exceeding five degrees (except at the crossing of ravines and streams), where, by moderate filling and bridging, the declination of the road may be preserved within that limit."

NO. 4, September Session, 1907.

Order to view and vacate.....  
road in Westmont. Branch  
and Upper Yoder Township.

Viewers.

J. D. Baker.....  
John Hamman.....  
Robt. Larjerson.....

Clerk ..... 90 cts.

Endsley Hamilton

1907  
7.  
In the Court of Quarter Session:  
of Cambria County.

In the Matter of the Order to View  
and Vacate a Portion of the Public  
Road known as the Millcreek Road,  
the Center Line Whereof Being the  
Line Dividing the Borough of  
Westmont from Upper Yoder Township.

#4 September Sessions 1907.

Report of Viewers.

*Filed & Recd. 10/11*

H. S. Endcley,

F. B. Hamilton.

*10 March 1908 Reconfirmed in the  
Circuit Court  
Westmont  
Westmont*

IN the Court of Quarter Sessions of Cambria County.

#4 September Term 1906. Road Docket, In the matter of a private road in Barr Township.

I John W. Bland of Spangler Boro, County of Cambria and State of Pennsylvania, hereby certify that on March 23rd 1907, Mr. A.H. Euszkauckas, of the Boro of Barnesboro, tendered in lawful money of the United States, \$20.00 to Stephen Gallitzin, or his wife, who was present being the amount granted to them by the report of the Viewers, on a lot of ground, through which the said Road passes over the property of the said Stephen Gallitzin,

John W. Bland Seal.  
Seal.

In the Court of Quarter Sessions of Cambria County,  
#4 September Term 1906. Road Docket, In the matter of a private road in  
Barr Township,

I Thomas Brown, Justice of the Peace for Barnesboro, in the County of  
Cambria, and State of Pennsylvania, hereby certify that on March 23rd  
1907. Mr. A.H.Euszkauckas, of the Borough of Barnesboro, tendered in  
lawful money of the United States, \$20.00 to Stephen Gallitzin, or his  
wife who was present being the amount granted to them by the report of  
the viewers, on a lot of ground, through which the said Road passes over  
the property of said Stephen Gallitzin,

*copy of*  
Thos. Brown Seal.

Seal.

D. 7

In the Court of Quarter Sessions of Cambria County  
No. 4 Septemeber Term 1906 Road Docket.

In the matter of a Private Road in Barr Township.

To Stephen Gallitzin. Whereas: The Viewers Report as follows: " Stephen Gallitzin the owner of a lot of ground through which the road passes, refused to release damages, whercupon your viewers assess to him the sum of Twenty Dollars damages to be paid to him by said A.N. Euszkauckas. to said Stephen Gallitzin."

Now therefore to wit: this 23<sup>rd</sup> day of March A.D. 1907 I, the said A.N.Euszkauckas, hereby tender to said Stephen Gallitzin the said sum of Twenty Dollars being amount of the damages so assessed to him.

A. N. Euszkauckas

Received from said A.N.Euszkauckas The sum of Twenty Dollars being the amount of damages assessed to me by the viewers in the above stated Private Road.

Stephen Gallitzin

\$20.00

Witness to tender and receipt.

Jess W Bland  
Chas. W. Brown

In the Quarter Sessions

No. 4 Sept. Term 1906

Road Docket.

Private Road in Barr Tp.

Receipt of Stephen Gallitzin

to A.N. Euszkaukas for

Damages assessed to him

J.F. McKenrick, Atty.

G. E.

In the matter of the Private Road in Barr Township.

No. 4 September Sessions 1906 Road Docket.

Camphria County ss:-

Before me personally came E. E. Euszkaukas who being by me duly sworn according to law, saith:- That he is personally acquainted with Stephen Gallitzin, of Barr Township in said County.

- That he did at the request of Mrs. A.N. Euszkaukas, go to the residence of said Stephen Gallitzin, some time about the month of January 1907 and inform him that he was authorized by Mrs. A.N. Euszkaukas to pay to him the said Stephen Gallitzin the sum of Twenty Dollars, the amount of the Damages assessed to him by the Viewers, in the View of a private road through his lot and that he then and there made him a tender of twenty Dollars in lawful money of the United States, and requested said Stephen Gallitzin to sign a receipt for the said Damages.

That the said Stephen Gallitzin refused to accept said twenty Dollars and also refused to sign any receipt or release for said damages.

That affiant was with the road viewers at the time the view was made and that said Stephen Gallitzin was present, and was informed by the viewers that they would assess his damages at the said sum and that he was also informed by affiant when making said tender, that it was the amount awarded him for his damages.

Affiant also says: that when said money was not accepted by said Stephen Gallitzin, he informed him that he would be paid his said damages at any time, he would call at the Meat Market of A.N. Euszkaukas in Barnesboro or give her instructions where and to whom to pay same.

Sworn and subscribed before me this E. E.

23<sup>rd</sup> day of September 1907

Herbert Brown (Seal)

E. Euszkaukas

Justice of the Peace.

MY COMMISSION EXPIRES IN MAY, 1910.

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In-Re. Petition of Stephen Gallitzin, to Vacate an Order to Open, and set aside, the proceedings in Private Road, to No. 4 Sep. Sess. 1906 Road Docket Vol. 5 page 176-495.

Answer of Anna, N. Euszkaukas.

To the Honorable the Judge of the Court of Quarter Sessions.

To the petition of Stephen Gallitzin, filed on 2nd April 1907 and to Rule granted thereon, and the order of the Court made therein; The Respondent replies.

That whatever apparent defects there may seem to appear upon the face of the record, yet under the facts, there should be no vacation of the Order to view, nor setting aside of the proceedings had in the said Road View.

As shown by the records, to wit- In No. 7 Mar. Sess. 1906 Road Docket Vol. 5 page 152, a view was had upon the same premises, wherein Joseph J. O'Kowicz, was the petitioner, and was then the owner of the farm mentioned therein, but subsequently, and before the institution of the proceedings in this case. No. 4 Sep. Sess. 1906 R.D. page 176 &c. sold and conveyed the said farm to the Respondent, who presented her petition for said private road. This conveyance is evidenced by a deed dated ( ) 190.

That the viewers in said first proceedings, assessed to Stephen Gallitzin damages to the amount of Twenty Dollars. from which award, he did not appeal.

Respondent, says, that on the confirmation by the Court of said first report of viewers, Tender was made of said damages in lawful money, in the presence of witnesses, and was by said Stephen Gallitzin, and by his wife Mrs. Stephen Gallitzin refused. That on January 16th 1906 a petition was presented to said Court, alleging said refusal to accept, and praying for leave to pay same into Court to await his acceptance of same; which was granted.

That owing to exceptions, then pending by one S.S. Cyphers, which were afterwards sustained, said Twenty Dollars were not paid into Court.

That when said second petition and the view in pursuance thereof, was made, said Stephen Gallitzin was present, and was awarded damages in the sum of Twenty Dollars; and did not appeal from said award.

That as soon as the said report was confirmed, the Respondant sent her agent with the money and in the presence of witnesses, the Sum of Twenty

dollars lawful money was again tendered to said Stephen Gallitzin and was by him refused.

That frequent offers to pay him said damages were made, and by him refused; whereupon he was informed that at any time that he assented<sup>n</sup> to acceptance of same, it would be paid him immediately.

Respondant says: that whilst the records show the issuing of an opening order for the said road, yet as a matter of fact, said road had been open and in daily use for a period of more than thirty years, prior to said Stephen Gallitzin acquiring title to the lands, for which said damages were awarded; and had been used daily by persons going to and from said farm, now owned by respondent; therefore, there was no formal opening of said road by virtue of said opening order.

Respondant avers, that she has been ready and very desirous to pay to said Stephen Gallitzin, or to any person he might name, the said damages and is now ready and makes tender to pay into Court, or to the Counsel for Stephen Gallitzin, all said damages, upon receiving therefor a receipt, or evidence of such payment.

In so far as the regularity of the proceedings are concerned, respondent is not informed, but does aver that On the first day of the December sessions, 1906 to which said return of viewers was to be made, all the work had been done and the duties of the viewers performed, except to obtain the formal written releases from persons who had agreed to release damages, that the printed form had been given to them to sign and return to the viewers, but several of the parties had neglected to do so.

That on Monday Dec. 3d. 1906 an application was made to the Court to extend the time of filing said report of viewers to Monday Dec. 10th 1906 stating the reasons to be, the neglect of the persons to send in their written releases of damages. That again on December 10th one written release had not been received, and leave of Court was again asked to extend the time of filing said report to the December Argument Court. which was granted.

Wherefore respondent says: that all the proceedings had therein were bona-fide, and intended to comply with the law and practice; that she has made every effort to cause the damages to be paid, and is now ready to pay them; and avers that whatever apparent neglect there has been, was caused by the refusal of the said Steve Gallitzin, that his damages were ample, and

were fixed by two sets of viewers, Respondant therefore prays your Honorable Court, to direct the acceptance of the said Sum of Twenty Dollars as damages awarded, and to discharge said Rule, making such disposition of the costs as may be right and equitable.

And your Respondant will ever pray. &c.

*A. W. Enzykner*

Cambria County ss.

Before me personally came *A. W. Enzykner* who being by me duly sworn according to law, saith: That the facts set forth in the foregoing answer, are true as stated, in so far as affiant has personal knowledge, and in so far as she derives her information from other sources she verily believes them be true as stated.

Sworn and subscribed before me this

*A. W. Enzykner*

<sup>23<sup>rd</sup></sup> day of September A.D. 1907

*Hoar Brown* (Seal)

Justice of the Peace.

MY COMMISSION EXPIRES IN MAY, 1910.

In the Quarter Sessions.

In-re, Private Road in Barr Tp.

No.4 Sept. Sess. 1906

(R.D.Vol.5 p.176-495.

Answer to Petition and Rule to  
show cause.

Filed. 23 September 1907

McKenrick, Atty.

In the Court of Quarter Sessions of Cambria County

To the Honorable Francis J. O'Connor President Judge of said Court

The Petition of Annie E. Euszkauckas of said County respectfully represents, that she is the owner of a certain farm situate in Barr township in said County.

That your petitioner labors under great inconvenience for want of a private road to lead from at or near the barn situate on said farm to a point on the Public road leading from Barnesboro to Moss Creek, at or near the Pump-house of the West Branch Mine

Therefore prays your Honorable Court to appoint proper persons to view and lay out the same and make report thereof to your Honorable Court as provided by law.

And your petitioner will ever pray &c.

Annie E. Euszkauckas

By her Agent

E. Euszkauckas

Cambria County ss:-

Before me personally came E. Euszkauckas, as agent of Annie E. Euszkauckas who being by me duly sworn according to law saith: that he is well acquainted with the facts above stated, and that the same are substantially true and correct as stated.

Sworn and subscribed before me this

E. Euszkauckas

17 day of August A.D. 1908.

Lo. Co. Lytle  
Bv

In the Court of Quarter Sessions

No. 4 September Sessions 1906

Petition of Annie N. Euszkauckas  
for a Private Road to lead from  
a point, at or near the barn on  
her farm in Barr Township, to a  
point on the Public road leading  
from Barnesboro to Moss Creek, at  
or near the Pump-house of the  
West Branch Mine,

Filed. 10 September 1906

And now Sep. 10 1906 The within  
petition read, and upon due con-  
sideration thereof;

J. M. Haubner, James T.

Miller and Joseph B. Gardner

are appointed viewers, to view  
and make report to the Court as  
provided by law.

By the Court

J. F. McKenrick, Atty.

To the Hon. Frances J. O'Connor,  
President Judge of the Court of Quarter Sessions,  
of Cambria County.

The petition of the undersigned  
inhabitants of the Borough of Westmont and the  
Township of Upper Yoder, in said County, respectfully  
represents that a Road has long since been laid out  
extending from the Borough of Johnstown, now the City  
of Johnstown, to the Ligonier Pike, commonly and  
properly known as the Millcreek Road, the center line  
of the part thereof hereinafter described being the  
line dividing the Borough of Westmont from Upper Yoder  
Township; see record of original proceedings for said  
Road in Road Docket, Volume 2 Page 24  
(17)

1843

part of which Road has become useless, inconvenient  
and burdensome, to wit;

Beginning at the western line extended  
of an intersecting Public Road distant at its southerly  
end thirty (30) feet from the  
north-western corner of land of the Citizens Cemetery  
Association in Upper Yoder Township, and distant at  
the northerly side seventy-five (75) feet  
from the north-westerly corner of said Millcreek Road  
and Third Avenue in the Borough of Westmont, and ter-  
minating at the easterly side of Ninth Avenue extended ~~across~~  
said Mill Creek Road.

Your petitioners further represent that  
the said portion of said Millcreek Road has become  
useless, inconvenient and burdensome to the inhabitants

of the said Borough and said Township, and therefore  
 pray the Court that the said portion of said Road may  
 be vacated, agreeably to the Acts of Assembly in such  
 case made and provided; and they will ever pray.

Westmont. Borough Signatures

H. S. Rudley  
Robt. Hutchinson  
C. F. Rice  
W. W. Volk  
Edw. Tankhurst  
W. S. Moor  
Geo. C. Miller  
D. James  
James A. Hamilton  
J. P. Finkbeiner  
DM. Grackhouse  
W. R. Plogle  
Gustav A. Kahn  
Alfred M. Haines  
W. H. Cullers  
N. B. Smith  
C. P. Collins  
Geo. R. Thompson  
H. M. Jones  
John Weather

Upper York Township Signatures

L. E. Petersen <sup>Supervisor</sup>  
J. W. Harnett <sup>Supervisor</sup>  
W. S. Stutzman  
Joe B. Howard  
Adam Kopp  
William Palliser  
Frank Palliser  
Christopher Palliser  
George Palliser  
Jacob R. Berkey  
George Roberts  
Hayes Dunkle  
A. L. Stutzman  
J. C. Kuller  
Milton Zager  
Andy. Hershman  
H. W. Neave  
J. S. Stutzman  
S. S. Petersen  
B. H. Stutzman

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SS

AB Cooper

AB Cooper

*S Jones*

COMMISSION EXPIRES FEB. 2ND, 1949

4 #September Sessions, 1907.

Q. S., CAMBRIA COUNTY.

Petition of  
Citizens of Westmont Borough  
and  
Upper Yoder Township.

FOR VACATION OF PART OF THE  
ROAD KNOWN AS THE MILL CREEK ROAD,  
LYING PARTLY IN SAID BOROUGH AND  
PARTLY IN SAID TOWNSHIP.

Sept 11, 1907. Filed.

Sept. 11, 1907, this pe-  
tition presented, consid-  
ered and J. D. Baker,  
John Hainan and Robt.  
Dagueron an appointed  
newer. By the Court

Leave order to H. V. Emmons

H. J. Emmons  
J. B. Hamilton  
Attorneys