

From: John F. Bennett <johnf_bennett@dot.state.ak.us>
Sent: Monday, December 10, 2001 3:44 PM
To: John Steiner
Cc: Pamela A Lewis; Kasandra K Rice
Subject: Re: Section Line Easements on Airports
Attachments: johnf_be.vcf

Hi John...I guess I got in the middle of this a while back when I talked to Sam Bacino about a section line easement across Anchorage International Airport. I have a couple of thoughts that I will address next to your questions below:

John Steiner wrote:

A little over two weeks ago, I sent the e-mail below (about section line easements and airports) to Transportation AAGs, a DNR AAG and to the international airports. I now send it also to DOT&PF regional right-of-way and leasing offices. I received replies from the ANC and FAI leasing offices, but no indication from anyone that these questions have been addressed in the past.

We have an issue in which we would like to determine whether a section line easement exists along and within the boundary of an airport, and I want to find out whether we have researched or taken a formal position on this question in the past. Please let me know by Monday, Dec. 10 if you are aware of answers or have helpful comments regarding these questions. Thank you.

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>>> John Steiner 11/19/01 04:59PM >>>

These questions are not new. Have they ever been answered? If not, can anyone give me good guidance, or do we need to research and develop statewide answer, and if so, who should do it? (The answer I really need is #5, but the rest way have to be answered to get there.)

Presumably federal land withdrawn for airport purposes was not affected by the dedication of public right-of-way by AS 19.10.010 in 1951 or '53 under RS 2477.

1. Did those lands remain free of the easements when the state received them
 - a. if the patent/quit claim was limited to airport use? [Patent/QCD still subject to prior existing rights]
 - b. in all cases since they had been withdrawn at the time of dedication? [Initial acceptance of RS-2477 section line easements (66', 33' each side of section line) became effective April 6, 1923.]

With regard to the federal section line easements (RS-2477), I would agree that if a reservation for airport purposes or most any other kind of purpose was in place prior to an approved township survey for the section line in question and a valid acceptance of the RS-2477 offer, then no section line would exist. But if the reservation came after the initial

territorial acceptance in April 1923 and the approved township plat, then I believe the section line easement would exist. Even if the patent/QCD was limited to airport use, the section line easement was a prior existing encumbrance that would require vacation by the appropriate authority to eliminate it. I suppose one thing that must be considered is that airport lands do not consist solely of federally withdrawn air navigation sites or lands patented for airport purposes. Each segment of a section line easement crossing an airport would need to be evaluated against the chain of title to determine whether a section line easement existed or not and what the width would be. It might not exist if the date of the original ANS precedes the 1923 acceptance or township survey, but it might exist on lands later acquired due to airport expansion.

OR

2. Did easements attach as soon as the state received the lands? We have argued in the past that upon unreserved federal lands (RS-2477), the section line easement attached the instant the other two requirements were met - acceptance of the RS-2477 offer and approval of the township survey as opposed to the date the state received title to the lands.

AND IF SO,

3. Do they, as statutory dedication, grant a public right-of-way that burdens other state uses, or does the "administrative dedication" to airport purposes (an Alaska transportation alternative to highway) merge with the right-of-way? We looked at the issue of merger of section line easements on a project up here in 1996 where we acquired the underlying fee estate for an access controlled project. Our local AG letter of advice concluded that "While DOT has the statutory authority to regulate and make use of section line easements, the nature of a public dedication and the specific language creating the dedication suggest that it is the public that technically holds the easement, subject to state authority and stewardship, until affirmatively vacated. The section line easement will remain valid until technically vacated." Many years back we argued that PLO's and other easements for highway purposes that crossed lands held in title by DNR did not merge with the fee estate as DOT has authority to acquire and hold title to real property interests in its own name. To suggest that because DOT and DNR are both state entities and therefore the easement interest and the fee interest merged would have presented a major problem as the majority of our highway interests are easements and are not otherwise protected over DNR (state) owned lands.

4. If and to the extent a section line easement exists on an airport, does the 1998 enactment of AS 19.30.410 limiting the vacation of RS 2477 limit the ability of DOT&PF to vacate section line easements over state airports? I am familiar with at least one example of a direct act taken to vacate section line easements across an airport. This was with regard to the Valdez airport when airports were handled by the Division of Aviation and roads by the Dept. of Highways. Land transactions between the two organizations were formal and memorialized in recorded conveyance documents. In this situation it was determined that section line easements existing across the Valdez airport. Aviation filed a request to have them vacated and the vacation was issued by DOH. Now that we are merged into DOT&PF, transactions between highway and airport property are informal and generally limited to a redrawing of a line for management purposes. Currently, the vacation of a section line requires the concurrence of DOT, DNR and the local government if the local government has platting authority. I believe the intent of AS 19.30.410 was to head off an attempt by groups desiring a limitation on access to somehow obtain a blanket vacation of RS-2477 rights of way. I believe there were discussions at the time about some kind of a sunset provision for RS-2477 assertions that was scaring some of the legislators. Assuming there was reasonable alternate access, I don't think the process would be any harder to complete than before the statute. The question now is whether it is necessary to vacate the section line easements if they are determined to exist.

5. If and to the extent a section line easement exists on an airport, are there precedents that enable DOT&PF to control, limit or forbid a local government from making use of a section line easement that crosses airport property (but does not directly conflict with a runway or other air navigation infrastructure)? DOT and DNR have completely differing philosophies regarding management of section line easements. And from what I understand from our Utilities section, we have differing philosophies between DOT regions. I recall back in the early 80's and 70's where people would request permission from DOT to use section line easements. As these were easements for highway purposes and we were the highway department, everyone assumed that we had to

issue a permit for use. At some point one of our Fairbanks AG's (might have been Satterberg back then) issued a letter of advice to us stating that as these grants for highway easements were to the public at large, an individual was not obligated to get our permission to use one that was not already under our management. Typically, a property owner wanted to construct a driveway along an unconstructed section line easement. From that point on our typical response would be a letter advising the requestor that the primary purpose of the easement was for highway purposes and at some point in the future, DOT might utilize it for highway purposes. We advised them to protect the section line monuments, not to construct improvements such as greenhouses and warned them about clearcutting the full width (Anderson v. Edwards) On the Utilities side of things, the Utilities regs say that a utility must request a permit from the Department to locate within a section line easement where we have constructed a road and are managing the ROW. The regs say that we do not have to get involved in an unimproved section line easement. I understand that Central Region ROW has in fact asserted authority over some unconstructed section line easements. DNR requires that a user obtain a permit to use a section line easement crossing DNR managed land. Once we incorporate a section line easement, a subdivision dedication or any one of the many other interests that make up our rights of way into a project, I believe that our authority to operate, maintain and control the facility would prevent a local government from asserting control. With regard to airports, it seems that Carolyn Jone's 1996 opinion about aviation zoning suggested that the Department's title 2 authority to operate, regulate and control airports was superior to a local government's assertion of control.

6. To the extent DNR is working on RS 2477 management regs, are they working with DOT&PF to ensure DOT&PF retains maximum control of any RS 2477 ROW, section line or otherwise, on a state airport? Don't know. I do know that RS-2477 rights of way that are a part of the Alaska Highway System are under DOT's jurisdiction while all other RS-2477's are under DNR's jurisdiction. It seems logical that the authority over airport lands granted under Title 2 is greater than the general police power authority we have over highways. Given the security and safety issues relating to airport operations I would be surprised that anyone could successfully argue that the existence of a section line easement across an airport provided uncontrolled free access. This is pretty much all from the hip. If there is any particular part of this meandering you would like to see more support for, please give me a yell. JohnB

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