

49th Annual Alaska Surveying & Mapping Conference
February 19, 2015
“ROW Mapping Case Studies: The Older I Get, the Less I Know...”

1. Presenters:

a. Karen F. Tilton, PLS, SR/WA, CFedS

i. Karen has more than 30 years of surveying experience in Alaska specializing in land titles, property rights and the history of public right of way (ROW) in Alaska. She worked for the Alaska Department of Transportation & Public Facilities (ADOT&PF), Northern Region, both as a ROW Engineer and Title and Plans Supervisor. Since returning to the private sector, Karen has continued to focus on ROW research and mapping projects, primarily under contract to ADOT&PF. Karen has an A.A.S. in Surveying Technology and a B.A. in Geography from the University of Alaska Fairbanks and presently leads the ROW Services Group at R&M Consultants in Fairbanks.

b. John F. Bennett, PLS, SR/WA

i. John commenced his surveying and mapping career with the Alaska Department of Highways in 1972. He retired in early 2014 after 28 years with DOT&PF Northern Region Right of Way, beginning as Titles and Plans Supervisor and ending with almost 15 years as Right of Way Chief. As Right of Way Chief, he managed the title research, surveys, mapping and platting of public and private lands for a variety of DOT&PF highway projects. John is a recognized leader in the research and analysis of historic rights-of-way and has testified as an expert witness in title defense cases. He is a certified instructor with the International Right of Way Association and has co-presented seminars relating to access law and highway rights-of-way in Alaska. He holds an A.A.S. in Survey Technology from the Anchorage Community College and is currently a senior land surveyor with the R&M Consultants Right-of-Way Services group.

2. Expanding upon “Access Law & Issues Affecting Public & Private Lands in Alaska”

a. Focus on law and authorities.

b. May 30, 2014 – Fairbanks / February 12, 2013 – Anchorage

c. John F. Bennett, PLS, SR/WA; Dan Beardsley, Esq., SR/WA; Rick Elliott, SR/WA

d. Focus on ROW mapping projects / case studies

3. Program:

- a. JohnB
 - i. Introduction
- b. KarenT
 - i. Glenn Highway MP 66.5-80 (Power Point)
 - ii. Handout: B&W Power Point slides
 - iii. Uploads: Power Point Slides
- c. JohnB
 - i. Nome-Council Road MP 14-32 (Power Point)
 - ii. Handout: B&W Power Point Slides
 - iii. Uploads: "ROW Case Studies 2015", "Highway ROW & Allotments" & ROW Case Studies Powerpoint.pdf
 - iv. Extras (If time allows)
 - 1. Taylor Highway Mining Claims
 - 2. Dedications – BLM Small Tracts
- d. JohnB & KarenT
 - i. Question & Answer

Welcome to "ROW Mapping Case Studies: The Older I Get, the Less I Know..."

Ok, I know what some of you are thinking..."As old as that guy looks, he probably doesn't know anything by now."

How I got here:

- It all has to do with high school Rock & Roll band.
- In May of 2014 I retired from DOT&PF after 27 ½ years with the NRROW section.
- Almost 15 years of that time was as the ROW Chief
- Remaining time as the ROW Engineering Supervisor.
- Although we still use the term ROW Engineering Supervisor, it is an anachronism dating back to the days when all of that work was performed by engineers.
- It was a bit of a change for the Region when I was the first licensed land surveyor to be hired into that position.
- Then fast forward to May of 2014 and I retired from the State.
- That lasted all of two weeks. Apparently I wasn't quite ready for retirement and so I was invited to join the Fairbanks office of R&M Consultants. This allowed me to get back into the work that I really enjoyed. The research, history, mapping, law, and math that all go into preparing a set of ROW plans. My only prerequisite was that I would never have to supervise anyone ever again. Not that supervision is such a bad thing, it's just that it distracted me from the fun stuff.
- Another bonus in joining R&M was that I would again get to work with Karen Tilton who I worked with at DOT Northern Region and who became the ROW Engineering Supervisor when I moved to the ROW Chief position. However, being much brighter than I, she moved over to the private sector many years before me.
- At R&M we have a ROW Services Group that includes myself, Karen, Charlie Parr and Julie Kotila. We all have varying backgrounds in ROW, title and mapping issues and it has been very educational as we draw upon each other's experiences.
- Since I've joined the group, Karen and I have collaborated on a couple of projects. Collaboration is a neat thing. It works like this: When Karen takes the lead in developing a project and I am asked to review and comment, I get to share in taking the credit. When I take the lead in developing a project and I ask Karen to review and comment, she gets to share in taking the blame. So far it's working out pretty well.

How we got here:

Some of you may have wondered about how I came up with the course title and what it means. The part about “The older I get, the less I know” is an often stated quote with many variations:

"The older I get, the less I know and by that I mean the less I am sure of."

"The older I get, the less I know and the more I want to know."

What does it mean with respect to ROW Mapping?

The idea behind the subtitle is that we should as we grow in experience and education; we often realize that things are not quite as simple as we thought when we started our profession.

If you reach a point after 20, 30 or 40 years of professional experience and claim that, "Now I know everything!" Well, I'm not sure I'm going to buy that.

Many years ago I participated in the development of the AKLS portion of the surveying exam. We had about a dozen PLS in the room with varying subject matter expertise. We got off to a rocky start. Initially there was a bit of trying to impress each other with our knowledge, but that tapered off to just trying to impress the applicants with the complexity of our questions. The Warner brothers (testing experts), hired to ensure that the exam questions were statistically defensible, straightened us out. They said the difficulty of the exam questions had to be written such that the exam could be passed by the "minimally competent" applicant. We didn't like that term. Who in their right mind would want to hire a "minimally competent" professional surveyor? But reality set in. Whether you are a doctor, lawyer or land surveyor, you do not start as a professional with 30 years of experience. You start with minimum requirements for education and experience and then you build on that.

That is the point of the title. The older we get, the more surveys you perform, the more cases you review and the more layers of the onion get peeled back to reveal new issues and information. Sometimes this information confirms your existing beliefs. Sometime it conflicts with what you had previously known. There is no point in your career at which you will know everything! You will just know more of what you know and what you don't know.

Getting started: When I began my career, I understood that if you owned a parcel of land, you needed to be able to get to it. You needed access. In the context of a subdivision, you had to design a layout of streets that would provide access to each of the newly created lots. In the context of a retracement, you would research the basis of the easement or ROW that provided access to the subject property. In my early years, I figured that research would consist of going to the recorder's office and pulling a copy of the relevant ROW deed.

I soon found out once I began mapping rights-of-way that the interests they were based on would be anything but uniform. I then began to refer to them as a "*patchwork quilt of title interests.*"

After a few years of working in ROW Engineering I realized that as I learned about each of these varying interests, I would need to document my findings to keep them straight and to support any conclusions I reached with regard to mapping the existing ROW. This was also necessary for "*defense of right-of-way*" or "*defense of the public right-of-way*". This was both an educational and an enforcement issue. In the context of enforcement, as our property management staff cleared encroachments or assisted maintenance in asserting the full width of the public ROW, we would have to present an argument to the offender or their representatives that they were in fact using the public ROW in an impermissible manner. This was often a bit of a challenge because citizens, particularly Alaska citizens don't like bureaucrats telling them what they may or may not do.

With regard to education it was a lot more civilized, just as we are and hope to remain today. A part of my job was to present courses like this to surveyors, realtors, title agents and others who by the nature of the work would often deal with public rights-of-way but did not have a very good understanding of the issues. I had started writing my paper on Highway Rights-of-Way in Alaska in early 1992. About that time, we found that the International Right of Way Association had awarded the 1997 Annual Education Conference to Anchorage. Recognizing the amount of money it takes to get a program like that off the ground, I joined Dan Beardsley and Jay Sullivan in a full day presentation called Access Law & Issues Affecting Public & Private Lands in Alaska. We put this course on a half dozen times between 1992 and 1996 as a fundraiser for the 1997 IRWA conference. We updated and presented the seminar again in 1997 with about 170 people in attendance indicating the impact that right-of-way has in the work we do. Anchorage was again selected to host the IRWA Education Conference in 2017 and to initiate the fundraising effort; the seminar was presented again in Anchorage in February of 2013 and then Fairbanks in May of 2014.

30 years ago, DOT and their consultant staff could get away with a basic presentation of the existing highway ROW on their preliminary maps, with few notes or explanations supporting their research and conclusions. Who was going to argue? Who was going to have conflicting evidence? Effectively it boiled down to “*it is what it is because we say so...*” That isn’t going to fly any more. Certainly land costs more but the cost of acquisition in many cases costs more than the land itself. People are more litigious. They aren’t going to accept the government’s word without supporting documentation and a good argument. And so today Karen and I have a couple of projects that include a variety of ROW research issues that will provide good examples of how deep you might have to dig to get to the answers you need.

Now that my “*Highways*” paper has grown to almost a hundred pages in the most recent edition, I find that I have never had the time to present all of the components of ROW research that I would like to. While your project may include one or more of these elements, today we will only touch on those items related to the case study projects. But they could include the following:

- Public Land Orders
- RS-2477 Trails
- RS-2477 Section Line Easements
- State Section Line Easements
- 1917 Territorial dedication of right of way
- Federal Patent Reservations (’47 Act)
- 44 LD 513
- Federal ROW Grants (Title 23 Highway Easement Deed & FLPMA Title V)
- Alaska DNR (ROW & Tidelands permits, ILMA/ILMT)
- Negotiated Acquisition by DOT&PF (Easement/Fee)
- Dedications (Statutory & Common Law)
- Federal Patent Reservations (Small Tracts)
- Public Prescriptive Easements
- ANCSA 17(b) Easements & 14(c)(3) Re-conveyances)
- Other Federal Agencies (BLM/BIA/Forest Service)
- ANILCA Title XI (In-holder and Transportation & Utility System Access)
- ROW Disposal & Vacations

In the “*Highways*” paper, I covered the history, development and authorities for the above cited rights-of-way in some detail. In this presentation we will apply some of those authorities to determine the location, width and nature of interest in certain highway right-of-way and show that no matter how far down you dig, there is always more to be uncovered.