

Freightways Terminal Company v. Industrial and Commercial Construction, Inc.,

381 P.2d 977, 982, 984 (1963).

Easement:

“...the right which the owner of one parcel of land has by reason of such ownership to ***use the land of another*** for a ***specific purpose***, such use being distinct from the occupation and enjoyment of the land itself.” [***Emphasis added.***]

Servient Tenement:

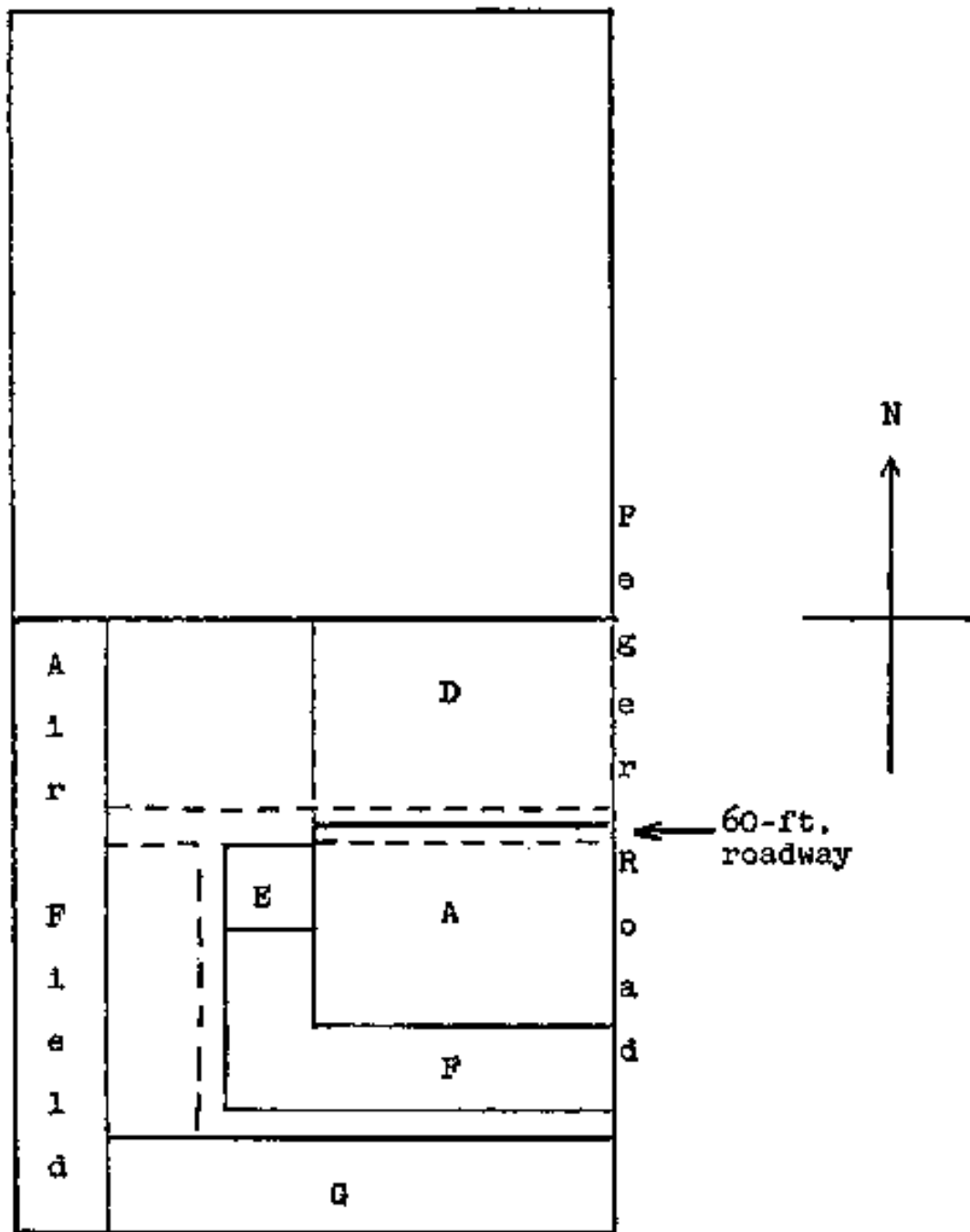
“The property subject to the easement is the servient tenement....”

Dominant Tenement:

“...the land enjoying the use of the easement is the dominant tenement.”

Contiguity Not Required:

“The servient and dominant estates or tenements do not have to be contiguous or adjoining.”



Quasi Easement:

One part of owner's property is used for the benefit of another part of the owner's property.

Implied Easement:

- Common owner
- Severance (subdivision) of a property
- Apparent, continuous and necessary use of one portion of the property for another at the time of the severance

General Rule:

Implied easements are not favored.

Implied Reservation:

An implied easement across land conveyed to the grantee in favor of the grantor

Implied Grant:

An implied easement in favor of the grantee across the grantor's land

Necessity:

The test for necessity is “whether the easement is reasonably necessary for the beneficial enjoyment of the property as it existed when the severance was made, regardless of whether the easement is one of implied grant or of implied reservation.”

Estoppel:

An easement may be created by an oral grant and improvements made by the grantee in reliance on the oral grant.

Wessells v. State Department of Highways, 562 P.2d 1042, 1046 (1977).

Right of Way:

"A 'right-of-way' is generally considered to be a class of easement."

"Reserves the right to grant":

ADL reserved the right to grant easements or rights of way in the lease. The Language was ambiguous.

Wessells:

- Grant is a conveyance to a third party.
- ILMT – transfer not a grant

DOH:

- Transfer is a grant – DNR & DOH have specific and different statutory authorities.

Court:

- Right to grant an easement to another state entity was reasonable interpretation of lease.

Scope of Easement:

State

- Terms easement and rights-of-way created an unlimited easement – use entire estate

Court:

- Use of all 12 acres not reasonable
- Typical highway 100 feet per AS 19.10.015 and 19.10.010 (neither specifically applied).

General Rules:

- Ambiguities are to be construed against the lessor and the drafter of the instrument.
- Ambiguous lease provisions should be interpreted to permit the continued performance of the lease.
- Doctrine of unlimited reasonable use only a factor

***Swift v. Kniffen*, 706 P.2d 296, 301, 302, 303 (1985).**

Common Law Dedication:

Implied dedication requires:

- (1) manifest intent to dedicate the road or easement to a public use, and
- (2) acceptance of that dedication on behalf of the public.

- Filing of a preliminary plat showing a roadway did not establish an intent to dedicate when that plat was subsequently rejected.
- Acquiescence in the public's use of a roadway is not sufficient proof of intent to dedicate.
- Some affirmative acts of dedication by the owner must be shown.
- "[E]stoppel may be the basis for finding an implied intent to dedicate property for a public use...."

Easement by Estoppel:

Oral Grant

Detrimental Reliance

Prescriptive Easement: (Covered Later Today)

Abandonment:

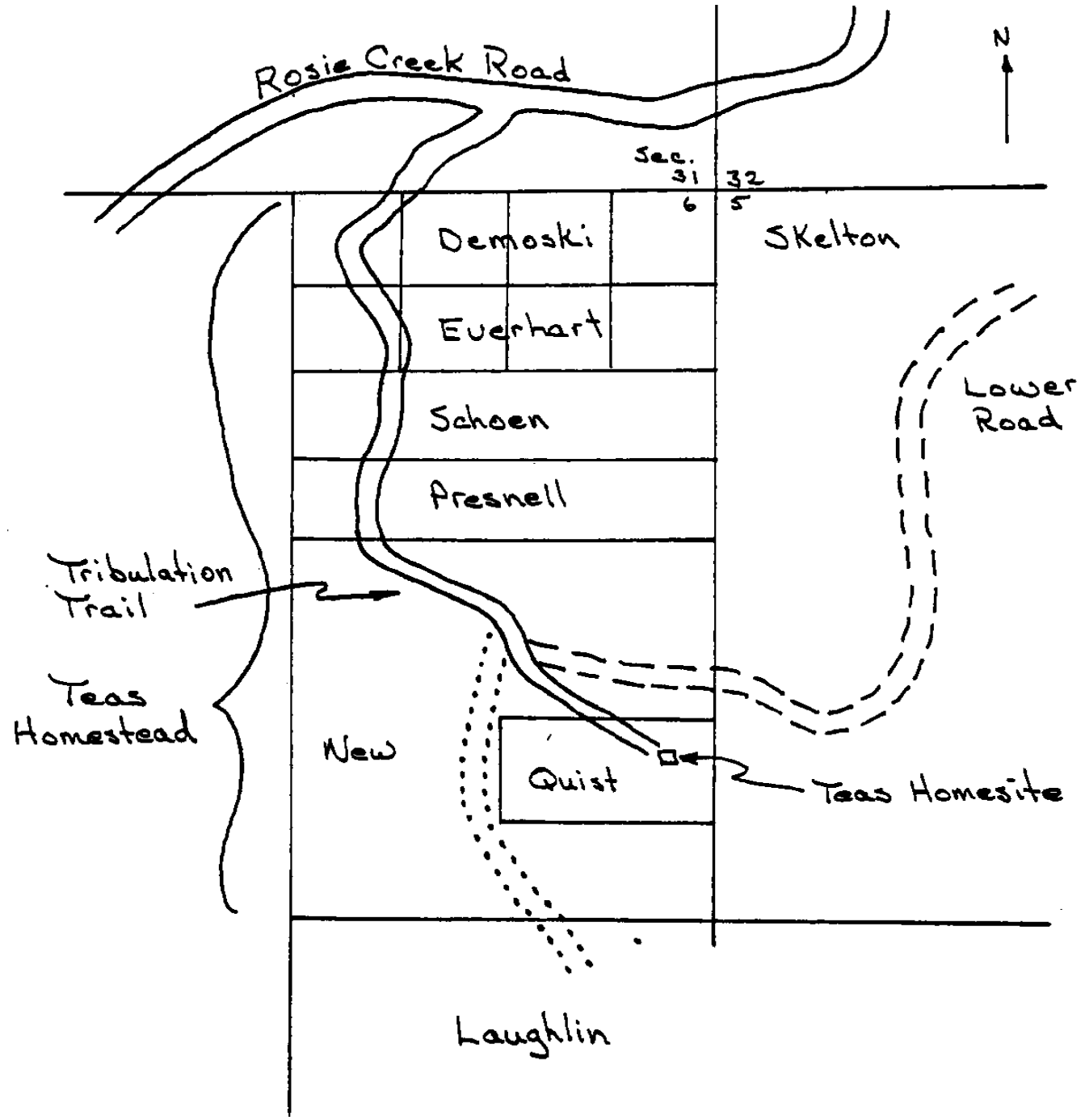
“First, to establish abandonment the period of non-use must indicate that the adverse user had ceased his use and claim.”

“Second, interruption of possession or use must be caused by the record owner or third parties.”

Continuity:

“An interruption of possession caused by the record owner or third parties or

Laughlin v. Everhart
678 P.2d 926 (1984)



Laughlin v. Everhart
678 P.2d 926 (1984)

- Owners' failed to properly subdivide property.
- Improper subdivision does not constitute an implied dedication.
- The owner of dominant tenement may be the holder of implied easement.
- The dominant estate owner may subdivide the dominant estate and use the implied easement for access.
- Only those properties part of the original dominant estate can use an implied easement.
- The owner of the dominant estate cannot convey his rights to benefit another property that is not part of the dominant estate.

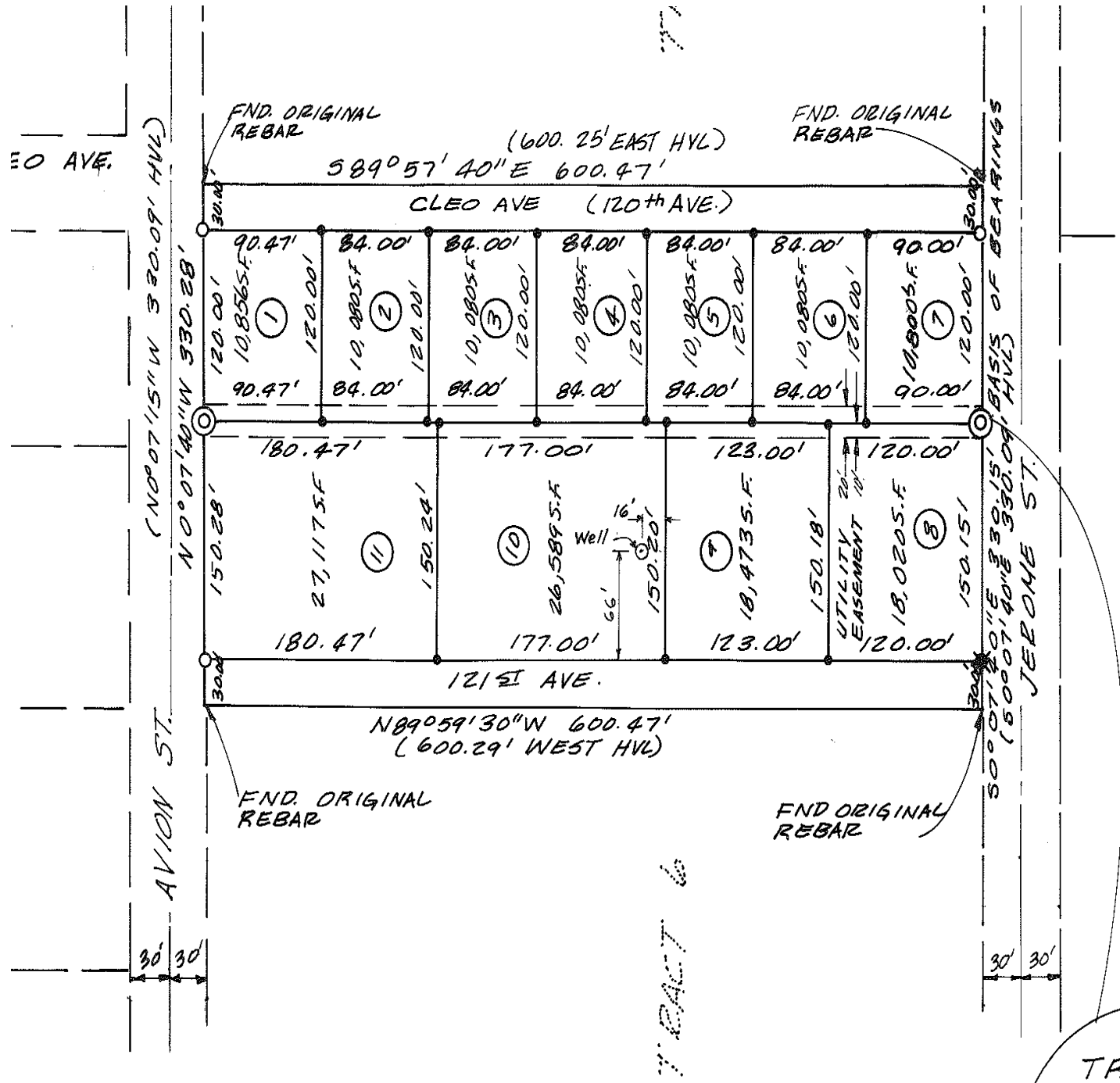
Demoski v. New
737 P.2d 780 (1987)

Even if the elements of an implied easement exist, there will not be an implied easement where the parties intend that such an easement does not exist.

A section line easement was sufficient to prevent easement by necessity where there was no showing that beneficial use of the property was for subdivision purposes.

The casual use by hunters and sight-seers in this case was insufficient to create public road by implied dedication.

Methonen v. Stone
941 P.2d 1248 (1997)



General Rule:

“...the intention to create a servitude must be clear on the face of an instrument; ambiguities are resolved in favor of use of land free of easements.”

AS 40.17.080

Effect of recording on title and rights; constructive notice. (a) Subject to (c) and (d) of this section, from the time a document is recorded in the records of the recording district in which land affected by it is located, the recorded document is constructive notice of the contents of the document to subsequent purchasers and holders of a security interest in the same property or a part of the property.

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation

Notice:

“... a purchaser is bound by an unrecorded easement under [AS 40.17.080](#)'s actual notice provision when it would be valid against him under the common law doctrines of implied easement or inquiry notice.”

Inquiry Notice:

“... a purchaser will be charged with notice of an interest adverse to his title when he is aware of facts which would lead a reasonably prudent person to a course of investigation which, properly executed, would lead to knowledge of the servitude. The purchaser is considered apprised of those facts obvious from an inspection of the property.”

If a purchaser ... has information of extraneous facts ... sufficient to put him on inquiry respecting some unrecorded conveyance, mortgage, or incumbrance, or ... some outstanding interest, claim, or right which is not ... of record, and he omits to make proper inquiry, he will be charged with constructive notice of all the facts which he might have learned by means of a due and reasonable inquiry.”

“Generally, a proper investigation will include a request for information from those reasonably believed to hold an adverse interest. Should these sources mislead, the purchaser is not bound. Reliance on the statements of the vendor, or anyone who has motive to mislead, is not sufficient.”

Implied Easement:

“Once an easement is implied, it runs with the land and is enforceable against subsequent purchasers of the servient estate so long as it retains its continuous and apparent nature and remains reasonably necessary to the enjoyment of the dominant estate.”

Gates - Locked Gates

Absent an express arrangement for an open way, courts generally permit a landowner to maintain an unlocked gate if such structure is necessary for the enjoyment of the servient estate. For example, use of the burdened land to raise cattle or for other agricultural purposes might be significantly hindered without appropriate gates to prevent passage of animals or trespassers. On the other hand, courts are likely to find that a gate that serves no purpose concerning the use of the burdened land is an unreasonable obstruction of an easement.^[10]

The right of a servient owner to erect locked gates presents an additional issue. Generally, courts hold that a locked gate constitutes an unreasonable interference with the use of the easement, even though the dominant owner is furnished a key. A locked gate, notwithstanding the presentation of a key, curtails the dominant owner's use by restricting deliveries and social visits....

Each situation, however, is governed by its particular set of facts, and courts have permitted locked gates when such gates were necessary for the servient owner to make reasonable use of the servient land.