

From: John Bennett
To: [George Stefan \(GStefan@fnsb.us\)](mailto:GStefan@fnsb.us)
Cc: "[Kellen Spillman \(kspillman@fnsb.us\)](mailto:kspillman@fnsb.us)"
Subject: Small Tract ROW
Date: Wednesday, April 17, 2019 8:58:00 AM

Good morning George/Kellen – I remember that George was at the IRWA lunch when I gave my Small Tract ROW presentation. I don't recall if Kellen was there or not. You may have noticed also that Barbara Gaston and her attorney Robert Sparks were there. Full disclosure: Barbara Gaston has just hired me to assist with the purported Small Tract ROW that crosses her property at the end of Supply Road and that leads to the Chena River. Her property is GL-18, Section 23, T1S, R2W, FM (PAN 0176435 & 0176443). I am not completely familiar with her previous attempts to have the patent ROW vacated although I understand her request to vacate was denied. Before I spend a lot of time reviewing files I thought I would first discuss the subject with you to see if my presentation might now lead the FNSB to a different conclusion.

I'm also not sure if a new request for vacation is the appropriate mechanism. Applying the logic provided in the 2013 McCarrey v. Kaylor decision, our position is that the common law ROW offered in the patent for GL-18 was never accepted by official action or public use prior to termination of the Small Tract classification on February 12, 1964. Without acceptance, the ROW was never perfected and would be invalid with respect to Gaston's GL-18. I have attached both Small Tract Classification Order No. 16 dated November 2, 1949 that included GL-5 of Section 23 and the Termination Order identifying the same parcel. Note that the Small Tract Lots including GL-18 were a part of the 1953 BLM subdivision of Section 23 and that GL-18 came out of the GL-5 that was defined in the original 1913 Township survey.

I mentioned during my presentation that I had the experience while DOT NR ROW Chief where I issued a Commissioner's Quitclaim Deed to clear title for a ROW that I did not believe existed but the title company believed it did. The FNSB process for vacating an existing ROW requires the preparation of a plat and a platting action along with a public hearing. It would seem that this level of effort where the evidence is that the ROW does not exist would be an excessive burden both for Gaston and the FNSB. But Gaston does need something official in the record that will show that the FNSB acknowledges this particular ST ROW is invalid. I'm hoping you or the legal department will have some ideas for that. In the alternative, or if FNSB contests the validity, Gaston would likely have to file a quiet title action to set the record straight.

This is just a quick preliminary message to get the discussion going. I am willing to meet with you and provide any level of evidence you require to resolve this issue. My goal is to start low key and try to keep the costs for Ms. Gaston to a reasonable level. Thanks for your consideration, JohnB

John F. Bennett, PLS, SR/WA Senior Land Surveyor – Right of Way Services

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