2011 WL 5103231 (Alaska) (Appellate Brief)
Supreme Court of Alaska.

David MCCARREY and Donna McCarrey, Appellants.,
v.
Ronald KAYLOR and Jean K. Kaylor, Appellees.

No. S14114.
September 1, 2011.

Superior Court Case No. 3AN-10-7799 Civil
Appeal from the Superior Court Third Judicial District At Anchorage the Honorable Judge John Suddock Presiding

Appellees' Brief

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*1 I. STATEMENT OF THE CASE

A. Statement of the facts.

Ronald and Jean K. Kaylor ("the Kaylors") are the owners of Lot Seven (7), Block Two (2), of Olson Heights Subdivision according to Plat 79-68 filed within the Anchorage Recording District. The Kaylors purchased the subject property in 1988. (Exc. 019; R-158).

The Appellants, David and Donna McCarrey ("the McCarreys") purchased their property which described as Lot Fourteen (14), Block two (2), Olson Heights Subdivision in December of 2009. (R-0133). The McCarreys' lot is located directly south of the Kaylors' Lot Seven (7); the McCarreys have a graveled roadway on the north side of their lot. This roadway runs easterly from Elmore Drive and ends at Davis Road for a distance of a block. Plaintiffs' Exhibit 1 (Exc. 135 - 144) shows photographs of the signage of both East 136th Avenue and East 135th Avenue that fronts the Kaylor residence. The Municipality of Anchorage Section Grid Map shows Lot 14, owned by the McCarreys and directly north of Lot 14, it shows lot 7, owned by the Kaylors. The Grid Map notes the reference of the McCarreys' lot "50" Roadway Reserve US Patent 1220803. [1]

*2 To further the Court's perspective on the locations of both East 135th and East 136th Avenues, Elmore Road and Davis Street run a north-south direction, both roads being perpendicular to East 135th Avenue and East 136th Avenue. East 136th Avenue is approximately 1300 feet long (Tr. 25). A 2005 aerial photograph further aids in envisioning the locations of the subject homes and roads (R-0154; Exc. 42). One can see the roundabout to the west on Elmore Road located at the top of the photo opposite the "Exhibit G..." at the bottom of the page to which East 135th Avenue runs into, and East 136th Avenue which is immediately south of East 135th Avenue. Davis Street, the next street to the east of Elmore Street, runs north and south. This aerial photo (Exc. 071) was taken in the fall on September 21, 2005, and thus, because of less vegetation, makes it easier to visualize 136th Avenue and the parties' respective lots. Davis Street is east and one lot removed from both the Kaylor Lot 7 within its block and likewise as to the McCarrey Lot 14 (Exc. 002 MOA Street Grid Map). The 2005 aerial photo (Exc. 071) shows the Kay residence as one lot removed from Davis Street. The Kaylor lot early shows: (a) a driveway onto East 135th Avenue (2) several cars/vehicles to the rear of the Kaylor house in a parking area exiting onto East 136th Avenue; and (3) the McCarrey house directly across to the south of the rear Kaylor parking area in (2) above. The McCarrey house is located to the rear of their lot that has the "Y" driveway within the lot with a large parking area.

The Kaylor lot is what is know as a "through lot" (Tr. 36) which is defined within Blacks Law Dictionary as a lot that abuts upon a street at each *3 end, i.e. it abuts both 135th Avenue and 136th Avenue [2]. In fact, as shown by the aerial photo, the Kaylor lot appears not to be the only through lot abutting both Avenues in that two or possibly even three lots within the same block as the Kaylor residence have exits on both 135th and 135th Avenues. The same is also true as to the block in which the McCarrey house fronting East 136th Avenue is located. At least three houses on that block have such dual entries and exits of their lots.

II. ARGUMENT

A. THE APPELLANTS WERE NOT DENIED DUE PROCESS.

The McCarreys assert that they were denied due process on the grounds that the trial court's decision that East 136th Avenue is a public right-of-way rather than a private prescriptive easement. The Kaylors' Complaint alleged two counts, namely (1) a claim for a prescriptive easement; and (2) a claim for injunctive relief to bar interference with the easement.

The McCarreys cites *Price v. Eastham,* 75 P3d, 1051 (Alaska 2003), which involved a claim for a prescriptive easement that was awarded by the trial court to Eastham and ninety-one fellow snowmachiner plaintiffs. The servient property was a one hundred and sixty (160) acre parcel granted to Price by the State of Alaska. The trial court did not grant the prescriptive *4 easement in its ruling; rather it found that an RS 2477 right of way existed on the subject acreage. The landowner moved for reconsideration of the order. The trial court then supplemented its earlier ruling by finding that the plaintiffs had established a public easement by prescription on the subject property.

The Alaska Supreme Court affirmed the post-trial supplemental order as to the finding of a prescriptive easement and remanded the case to determine the scope of such easement, thereby making it clear that prescriptive rights were in issue.

Whether a prescriptive easement is sought for the benefit of an individual; a group of individuals; or for the public at large, the evidentiary elements of proof are almost identical. In this case there was a prescriptive easement count within the complaint for the Kaylors naming East 136th Avenue in front of the McCarrey property as the servient estate. It fundamental that amendments to pleadings can be made at trial or even after the close of evidence. Further evidence to which the other party does not object becomes admissible.

In *Dillingham Co. v. City of Dillingham,* 705 P.2d 410 (Alaska 1985) this court set forth that a roadway for public use may be obtained either by (1) dedication, or (2) by prescription for a public use. The decision notes that there is a split of authority as to whether a public highway may be created by prescription. The court determined that: “The majority view now is that a public easement may be acquired by prescription.” (Citations omitted). Under *Dillingham, supra.* the court states:

> *5 The Requirements for establishing a public easement by prescription are nearly identical to the requirements of adverse possession, and the string of adjectives used to describe prescripting have a familiar ring: the use must be open, notorious, adverse, hostile and continuous.

In *Shilts v. Young,* 643 P.2d 686 (Alaska 1981) the issue included a claim involving a six block area. Shilts filed a general denial to the claim as to the six blocks. The case was tried and an entire area in dispute was at issue. The court held that despite a general denial by Shilts as to Young's claim, the claimant was able to not only include the six blocks but also claim as to the balance of the remainder of the U.S. Survey.

Van Horn Lodge v. Ahern, 596 P.2d 1159 (Alaska 1979) a party was allowed to amend his answer to include a counterclaim. Civil Rule 15 liberally allows amendments to pleading in order “to facilitate a proper decision on the merits of the controversy, and to secure the just, speedy and inexpensive determination of every action. *Merrill v. Faltin,* 430 P.2d 913 (Alaska 1967).

In this case there is no record of objections by counsel for the McCarreys on any evidence that was admitted nor at the end of the hearing as to the final decision of the trial court deciding that the scope of the easement is a public road. Civil Rule 15(b) **Amendments to Conform to the Evidence** reads in pertinent part as follows:

Rule 15. Amended and Supplemental Pleadings. (b) Amendments to Conform to the Evidence.

*6 When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on

the grounds that it is not within the issues made by the pleadings the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Counsel failed to object to any testimony or exhibits that showed the general public use of East 136th Avenue. It is fundamental that amendments to pleadings may conform to the evidence. The court findings concluded the record revealed long term public use of East 136th and that such is a public road. It is submitted that East 136th Avenue, based upon the descriptions within the record and those that set forth herein by Appellees it is an undisputed fact that East 136th Avenue, while not maintained by the Municipality of Anchorage ("MOA"), is nonetheless a public road based upon extensive public use.

Following the testimony of the plaintiffs' second witness, the court made inquires as to both counsel related to the specific non-contested ***7** factual bases of their respective claims. (R 73-80). Following the questioning of both counsel, the court set forth its ruling and the associated evidence related thereto in pertinent part as follows:

THE COURT: All right, I find as a matter of law what you have there is a 1961 devolution of property from the *United States to a series of landowners that retained along the north side of Lots 13 to 20, including Lot 14, which is the McCarrev property, a 50 foot right-of-way for a road.* By history there's been on the stretch that runs between - from Davis Street past McCarrey/ Kaylor lots, *there's been a road there for a long time and then more recently and with the upgrade and the - it must be an extension of Elmore Road in the early 2000s the East 136th is presented* - is punched all the way through, running east/west from Elmore all the way to Davis. *It's recognized on Municipal plats as a roadway, the term it 136th Avenue, it's in logical sequence with 135th and 137th. It's signed by the Municipality at both ends. It's open to public access.* Any present in the courtroom or any present in Anchorage or tourists or an Afghani could legally drive from Elmore to Davis, it's a road. It's a road consistent with the 1961 deed conveying the McCarrey property from the United States to somebody else....

... I'm asked to read into that an implied limitation that it's therefore only to benefit the McCarrey property. Well, it's there to benefit the world, it's a road, an Afghani can use the road.

In terms of the linguistic and analytical technique the court uses to parse statutes, contracts, other writings, deeds, there's nothing in the wording of the right-of-way grant that suggests that the McCarreys can turn off of the 136th Avenue at point A, B, C ad infinitum of their property, but that a different condition applies on the north side of the right-of-way.

***8** The wording is this patent is subject to a right-of-way. A right-of-way in common parlance is an area in which a group of people or a political entity can do some specified thing. It's delineated as 50 feet in length and its purpose is both for public utility purposes and for a roadway to be located along the north boundary of the land. A road is a road, a road doesn't come attached with a fence on one side and no fence on the other. And so I can't read into this form the mere fact which it seems to me to be quite random or fortuitous that the easement structures or right-of-way structure that some federal functionary in 1961 happened to select was instead of straddling let's just encroach across the north side of each of a block of lots. And so I'm unable to construe the patent right-of-way in the form that Mr. Cole and his client want me to do. I think that's an unreasonable reading of the right-of-way. (Emphasis added)

The McCarreys cites *Price v. Eastham, supra,* which involved a claim for a prescriptive easement that was awarded by the trial court to Eastham and ninety-one fellow snowmachiner plaintiffs. The servient property was a one hundred and sixty (160) acre parcel granted to Price by the State of Alaska. The trial court did not grant the prescriptive easement in its ruling; rather it found that an RS

2477 right of way existed on the subject acreage. The landowner moved for reconsideration of the order. The trial court then supplemented its earlier ruling by finding that the plaintiffs had established a public easement by prescription on the subject property. Thus this case supports the Kaylors position by showing broad discretion is permitted in allowing the evidence admitted to conform to a legal theory that was not initially pled.

***9** The Alaska Supreme Court affirmed the post-trial supplemental order as to the finding of a prescriptive easement and remanded the case to determine the scope of such easement.

B. THE PROHIBITIONS SET FORTH IN THE PERMANENT RESTRAINING ORDER ARE NOT OVERLY BROAD.

The record in this case fails to show that Mr. and Mrs. Kaylor are in violation of any federal, state, or local code or ordinance relating to their exiting onto East 136th Avenue, or regarding the use and upkeep of their property. They do not have junk cars, construction equipment or other illegal large commercial vehicles on their lot, nor do they burn trash on their lot, or conduct loud or obnoxious undertakings on their property. What precipitated the filing of this action by Mr. and Mrs. Kaylor was a letter from counsel for the McCarreys stating that a six foot fence was being placed near their properties south/back property line which would be locked. The letter reads in pertinent part as follows:

Dear Mr. Kaylor:

This law firm has been asked to advise you on behalf of David and Donna McCarrey of their intention to install a six foot residential grade chain link fence on the northern boundary of their property beginning on or about Monday, May 24th, 2010. This fence will contain a gate which can allow access on to the southern portion of your property. However, the use of this gate will be at the sole discretion of Mr. and Mrs. McCarrey. If you need to use this gate, you can provide 72 hour notice to Mr. and Mrs. McCarrey and they will try to accommodate any reasonable requests. Mr. and Mrs. McCarrey retain the right to refuse use of the gate at any time and for any reason. (Exc. 024-025)

***10** There is no noxious, loud, or illegal activity undertaken on the lot owned by Mr. and Mrs. Kaylor. Rather the McCarreys wish to screen their view[3] by the erection of a six foot high fence that they control entry through at their discretion. Furthermore, any fence they placed at the location they seek must be *within* the present fifty foot road easement and not on the Kaylor property. While East 136th Avenue is not an excessively busy street, the same being one block long and serving at most twelve houses, including the houses fronting 135th Avenue, some safety concerns as to a gated fence on the back of the Kaylor property are readily evident. A sliding gate of perhaps eight feet or more exiting directly onto East 136th Avenue would entail a poor line of sight up and down the road while exiting; the vehicle would have to exit partially out into the road to the driver's window to view traffic; a swinging gate would be equally a hazard by swinging out some eight feet or more into the roadway which the driver goes back to his car to exit, then leave his car in the road to close a gate of either type, sliding or swinging.

While the McCarreys state they are willing to allow access by the Kaylors to East 136th Avenue, their primary motive is to simply screen their view of the Kaylor lot. The photographic evidence shows the rear of Kaylor lot to have lawn furniture, and two vehicles (R-199-200). The Kaylors have a seventy (70) year old tenant, with medical problems, who accesses her downstairs apartment from 136th Avenue and she also accesses her vehicle in

***11** and out of the Kaylor lot onto 136th Avenue. (R-188-191).[4] The reservation in the letter by McCarrey to refuse access could cause loss of the tenant (R 134)

This Court has been reluctant to allow the use of gates that restrict travel on roadways. In a recent case, *Williams v. Fagnani,* 228 P.3d 71, (Alaska 2010) involving a road easement, a party to the case was, as the case herein, seeking to establish a locked gate. The Court, with reference to gates restricting road access stated:

Williams v Fagnani 228 P.3rd 71 (Alaska 2010)

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.*

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 ***12** gates were necessary for the servient owner to make reasonable use of the servient land.

As indicated by this summary, courts have recognized that gates, especially locked gates, amount to a significant burden on a rural homeowner's right of access. Every time a homeowner drives from or to his home he must stop, exit his vehicle and open the gate, get back in his vehicle, drive through, stop and exit again to close the gate, and then get back in his vehicle and drive on. In the ice and darkness of an Alaska winter these multiple operations can be especially trying. Further, a gate may bar or deter guests, visitors, delivery and service providers, and emergency vehicles from reaching a home served by a roadway easement.

[4] For the reasons, gates must serve a substantial benefit to the servient land if they are to be maintained across a roadway to a home. Typical examples of benefits found sufficient are to prevent livestock from straying, to prevent valuable property from being stolen or vandalized (usually in light of a history of such conduct), or to protect personal safety. (Id at p. 75 of decision)

The McCarreys have full and reasonable use of their lot, even though it has a 50 foot wide roadway occupying its most northerly border; the same as to the remaining lots the length of East 136th Avenue. The McCarreys nonetheless wish to control their view while burdening a 70 year old tenant to deal with a gate along the Kaylors property line. Also it creates a burden on the Kaylors in moving their boat or motorhome(s) out from the back of their house.[5] The more likely reason for the proposed fence and gate is a ***13** matter as to view; a view that existed when they purchased the house. The McCarrey residence is located to the back of their lot (R 192; photo R 199), and it is submitted while they may not like the view of the Kaylor lot, the Kaylors are within their rights to maintain access to East 136th Avenue.

C. THE SUPERIOR COURT CORRECTLY DETERMINED THE McCARREY PROPERTY WAS SUBJECT TO A PUBLIC RIGHT OF WAY.

The emphasis of the oral decision rendered by Judge Suddock was that the roadway, designated by the Municipality of Anchorage (“MOA”) as East 136th Avenue is in fact a public road. While Judge Suddock utilized the fifty (50') foot right-of-way as set forth in the original patent issued in 1961 (R 1), the focus of the decision is grounded upon the conclusion that East 136th Avenue is utilized by the public. Such public use is evident from the aerial photography since 1980.

The Appellant is correct that with the 1976 repeal of the Small Tracts Act, 33 U.S.C. Sec. 682, and with the absence of East 136th Avenue having been constructed prior to the 1976, the roadway provisions of the small tract were inapplicable. However, for the reasons stated herein such inapplicability does not affect the plaintiffs' claims regarding their entitlement to the unrestricted use of East 136th Avenue. The fact of the matter is that East 136th Avenue was partially constructed in 1980 from Davis Street past the McCarreys' Lot 14 as shown by the 1980 aerial photograph (Exc. 063) down the end of the block, i.e. Lot 20. Commending with the 1995 aerial photograph (Exc. ***14** 067), all lots excepting the McCarrey Lot 14 have constructed housing. [6]

As to the McCarreys' Lot 14, they accepted a deed from their seller that contains a reservation as follows:

> Reservation of a right of way not exceeding 50 feet in width for roadway and public utilities, to be located along the north boundary of said land including terms and provisions thereof, to the record of which is hereby made. [7]

It is readily evident that the McCarreys as of the date of their deed, December 14, 2009, actually or constructively had notice of the fact that East 136th Avenue was in use by the public for its entire length between Elmore Road and Davis Street. In its findings the trial court cites a number of factors which sustain it ruling that East 136th Avenue is a public road. The court, in pertinent part, stated in its findings with reference to East 136th Avenue:

> It's signed by the Municipality at both ends. It's open to public access. Any present in the courtroom or any present in Anchorage or tourists or an Afghani could legally drive from Elmore to Davis; it's a road. It's road consistent with the 1961 deed conveying the property to somebody else. [8] I'm asked to read into that an implied limitation that it's therefore only to benefit the McCarrey property. Well, it's there to benefit the world, it's a road... A right of way in common pods (ph) is an area in which a group of people or a political entity can do some specified ***15** thing. It delineated as 50 feet in length and its purpose is both for public utilities and for a roadway to be located along the north boundary of the land.... there's nothing in the wording of the right of way grant to suggest that the McCarreys can turn off the 136th Avenue at point A, B, C ad infinitum of their property, but that a different condition applies on the north side of the right-of-way.

The road in front of the McCarrey lot existed as early as 1980 and at the time served three built out lots on the south side of East 136th Avenue and the lots on the North side. The 1985 aerial photograph (Exc. 065) shows the entire block of eight houses built out that front 135th Avenue, with several houses in the block with exits also onto East 136th Avenue. The 1995 aerial photograph (Exc. 065) shows all houses built out in both blocks except for Lot 14 which the McCarreys purchased in 2009. The McCarreys with regard to their Lot 14 accepted a Deed which burdened the North side of their lot with a 50' roadway easement which was constructed and in use. (Exc. 003) It is the only way to get to their property. Likewise they were aware that the East 136th Avenue provided access to the lots facing 136th Avenue and was thus needed for neighborhood access to the individual houses.

Thus, during the entire period from the partial construction of East 136th Avenue shown on the 1980 Aerial Photograph (Esc. 063) to the 2005 photographs that show all lots both on 136th Avenue and 135th Avenue built out, the homeowners utilized East 136th Avenue for access to the lots fronting the road, and for lots fronting East 135th Avenue that had exits onto 136th Avenue to the rear of their houses (four lots -2005 Aerial Photo Exc., 071). During this 1980-2005 time frame, and up to the McCarreys purchase ***16** of their home in 2009, (Exc. 003) the homeowners, family members,

guests, repairmen, utility personnel, deliverymen, UPS & Fedex personnel, etc. used East 136th Avenue for access to the homes located both on 136th Avenue and to the rear of homes as needed on 135th Avenue. The foregoing demonstrates long term use by the public of East 136th Avenue.

Other states recognize that a public roadway may be acquired through public use by prescription. *Stramel v. Bishop,* 15 P.3d 368 (Kansas 2001). The elements of such acquisition of a public roadway by prescription mirror those same elements utilized on behalf of an individual to acquire such prescriptive rights. Such rights must be acquired by a showing of a (1) claim of right by the plaintiff; (2) implied or actual notice of the owner of the use of the area claimed; (3) non-permissive use; and (4) uninterrupted use for the applicable time period required by statute.

Stramel, supra., involved the use of an alternate route into a subdivision; at times such use was a necessity due to non-plowing and heavy snowfall regarding the other road entry into the subdivision. Minor county maintenance was performed on the subject roadway and was utilized by the court to impart knowledge of use of the subject road by the subdivision residence.[9] Other public use in *Stramel, supra.,* included a showing that ***17** school children were transported by school bus of the subdivision; an individual in the subdivision plowed the road. The court held that ample evidence existence existed showing the public's use of the road for the necessary period thereby making the disputed road one for public use.

In *Dillingham Commercial Company, Inc. v. City of Dillingham,* 705 P2nd 410 (Alaska 1985)), this Court noted that there was a split of authority as to whether a *public highway* may be created by prescription. This Court adopted what is the majority view, stating that:

> "The majority view now is that a public easement may be acquired by prescription. We impliedly joined the majority in *Hammerly,* and do so explicitly now... The requirements for establishing a public easement by prescription are nearly identical to the requirement s of adverse possession, and the string of adjectives have a familiar ring: the use must be open, notorious, adverse, hostile and continuous.[10] (citations omitted) (Id # pp10)

The McCarreys claim the ability to treat the portion of 136th Avenue fronting their house as a private road which they can control. East 136th Avenue is not posted as a private road; no signage exists informing the public not to enter. Rather the east end of 136th Avenue intersection with Davis Road is signed designating the two cross streets at that intersection (Exc. 140). At the intersection of 136th Avenue and Elmore Road the MOA has placed a stop sign, street signage designating both Elmore and 136th ***18** Avenue, along with a "Dead End sign (TR 19; Exc. 139).

CONCLUSION

The Superior Court concluded that East 136th Avenue was utilized by the public at large while not utilizing the terminology of a public prescriptive easement the trial court arrived at the current decision permanently enjoining the cutting off of the access to the fifty feet of road easement on the McCarrey property that has been labeled 136th Avenue. In questioning the parties counsel to establish undisputed facts, the Court utilized the same for his decision that East 136th Avenue is in use for and by the public. The Trial Court's granting of the permanent injunction should be sustained.

DATED this *29* day of *Aug,* 2011.

Footnotes

1 On this trial exhibit an "M" (for McCarrey) is marked on Lot 14, and a "K" marked upon the Kaylor lot. (Exc. 002).

2 Mr. Bolles in his testimony further explains what is meant by a through lot. “A through lot or a double frontage lot is a lot other than a corner lot in which you have frontage to two streets and then between that you have your two side yards. There's a primary front yard and then there's a secondary front yard”. (TR 54)

3 It is suggested that the can easily screen their view of the Kaylor lot by placing the six foot fence on their own side of the road which grants to them both higher security for the property and screening the back of the Kaylor lot.

4 Admittedly some visitors have parked in the roadway, but there is no evidence that such occurs chronically. (R 145-146; The defendants affidavit in this case only recites an instance when such vehicles parked overnight; the photographs do not depict that East 136th Avenue was not capable of being used by other traffic. (R 034)

5 The Kaylors have a 70 year old tenant whose apartment is located in the southwest corner of their house. She has restrictions in her movement and parks her vehicle on the rear portion of the Kayior lot. She enters and exits the apartment from the back of the Kaylor house that fronts 136th Avenue. (R 0190-0192)

6 Thus within the block where the McCarreys reside, seven out of eight lots are constructed; all lots were constructed within the block fronting 135th Avenue where the Kaylors reside; several in the 1995 aerial photograph, like the Kaylors, have dual exits both on 135th and 136th Avenues

7 This language is derived from the original patent (Exc. 001) dated June 28, 1961.

8 It may also be noted the existence of the roadway comprising East 136th Avenue is also delineated in the deed accepted by the McCarreys which sets forth a fifty foot road easement on the north side of their Lot 14. See Deed, (Exc. 92-93).

9 It should be noted that in the present case, the MOA has placed traffic signage and at both ends placed street signs at both ends of East 136th Avenue.

10 See also *Swift v. Kniffen,* 706 P.2d 296, (Alaska 1985) that also set forth the requirements for a public easement established by prescription. (case remanded for further findings of fact).

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