

July 3, 2020

R&M No. 2xxxx.01



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RE: Kenai River Keys Subdivision (Plats 72-62 & 74-85)
Plat Dedication/Easement Review

Dear [REDACTED]

The following report contains review comments and conclusions regarding the status of the street rights-of-way within the Kenai River Keys Subdivision and re-subdivision of Tract A. This review has been limited to the materials that were provided by you, references from my professional library and documents that were readily available on-line.

Please note that R&M Consultants, Inc. is not a law firm, does not offer legal services and this letter is not presented as legal advice. It is offered solely to provide a discussion of the issues and present the views of the author. Should you require legal advice on the issues outlined in this paper, we recommend that you obtain the services of an attorney.

In your letter dated June 22, 2020 you request my assessment as to whether the extension of Sockeye Lane into Tract A according to Plat 74-85 constitutes a statutory dedication to the public or a platted extension of a private road easement. This issue is complicated by the fact that the Kenai River Keys Subdivision (Plat 72-62) was platted as a gated private subdivision which made it one of the few or possibly the only subdivision of that type in Alaska in 1972. My short answer is that I believe that the Plat 74-85 extension of Sockeye Lane did constitute a statutory dedication to public use.

Kenai River Keys Subdivision Plat 72-62

As a part of the platting process, the developer requested an exception to the Kenai Peninsula Borough Ordinance that each lot in the subdivision shall abut on a dedicated street. To avoid a conflict with Alaska Statute 40.15.030 that would have dedicated all streets and other public areas shown on the plat to public use, the developer proposed that streets and other public areas be dedicated to the City and Borough of Kenai and to the owners of the subdivision lots as easements for specific purposes. This exception was accepted and the plat approved.

Relating to the nature of the platted easements, the plat notes the following:

- *“Lot lines extend to the center lines of road easements and man made channels.”*

- “The road easements shown may be dedicate (sic) to public use if the majority of the lot owners so desire, this can be done by only the majority of the lot owners.”
- “Additional covenants are recorded in Bk68 Page 299.”

The Certificate of Ownership and Dedication was crafted to specify the intent of the platting exception regarding dedication of streets to public use as follows: “We hereby certify that we are the owners of said property, and request the approval of this plat showing such easements for public utilities, roadways, and channels for use by lot owners of this subd only, except Humpy Road which is dedicated to public use.”

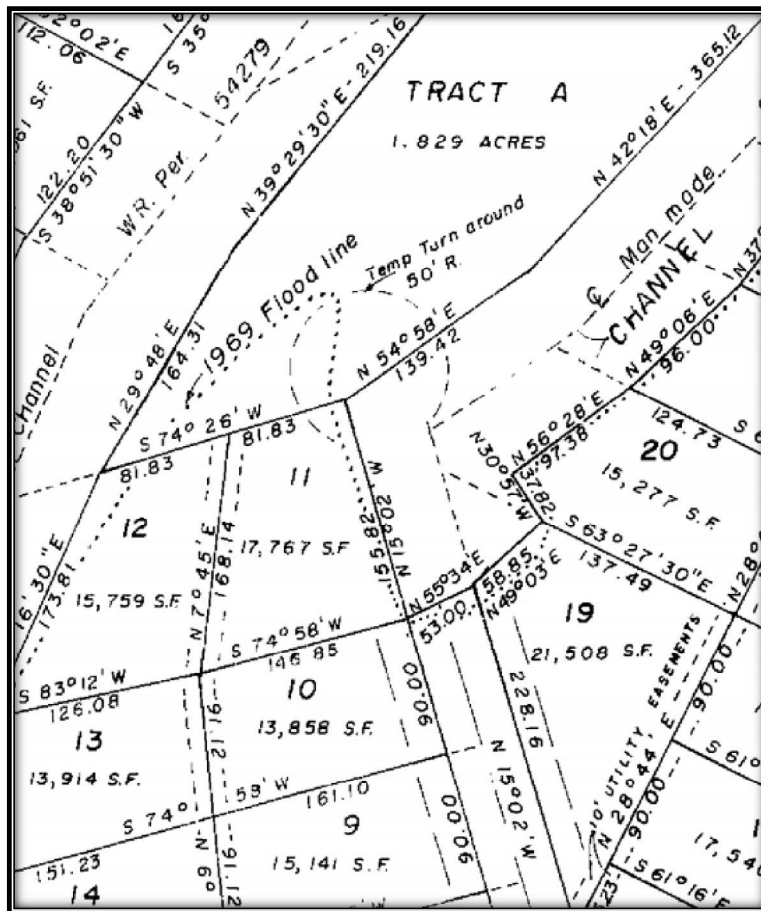


Figure 1 - Lot 11/Tr A Snapshot Plat 72-62

The issue at hand is the status of the 50' Sockeye Lane roadway easement/dedication located directly to the east of Lots 9-11 in Figure 1. Notable items include the following:

- A 50' Temporary Turn around was identified from the northerly end of the Sockeye Lane easement to Tract A. These generally provide a temporary easement for placement of a cul-de-sac with the expectation that upon further subdivision of Tract A, the location or type of the cul-de-sac may be revised.

- Consistent with the plat notes, the lot lines for lots 9, 10 and 20 are shown with dashed extensions to the centerline of Sockeye Lane or the centerline of the channel. As Sockeye Lane and the channels were established as easements, the abutting owner's title extends to their centerlines subject to the allowable uses by other lot owners and the Borough.
- No such dashed extension lines are graphically shown extending from the northeast or southeast corners of Lot 11 to the centerline of Sockeye Lane or the channel. It is not clear as to whether this was an oversight or a recognition that the developer intended to retain title to the underlying fee estate to the north and west of the channel centerline until such a time that Tract A was further subdivided.

The plat references recorded reservations and restrictive covenants that govern the land use and obligations of the lot owners. (B68/P299, KRD) Under the section labeled Easements (b), a more specific statement is provided. *"Easements for roadways within the subdivision are shown on the Recorded Plat. Such easements are reserved for the exclusive use of land owners in the subdivision, their guests, the Kenai Peninsula Borough, which shall have a right of access for the performance of municipal functions...All easements for roadways are private and are not available for use by the general public..."*

This section also provided a mechanism by which a majority of lot owners could vote *"...to dedicate some or all of the roadway easements within the subdivision to the public..."* The covenants did not contain any specific discussion regarding the channel easements, however the plat certificate of dedication stated that they were for use by the subdivision lot owners only.

Resubdivision of Tract A Kenai River Keys Subdivision Plat 74-85

This plat subdivided Tract A of Plat 72-62 into 6 lots. While I have not reviewed the KPB records regarding the platting approval for 74-85, the fact that it contains a more conventional certificate of ownership and dedication suggests that no special exception was requested of KPB to permit platting of private roadway easements rather than roadways dedicated to public use. This certificate reads as follows:

"We here by certify that Kenai Keys Development, Inc. is the owner of this property and request that approval of this plat showing such easements for public utilities, roadways and or streets dedicated by us for public use."

The plat notes and covenants provide the following:

- *"Lot lines extend to the center line of road easements and manmade channels."*
- *"The 50' road easement (Sockeye Lane) has been extended to Tract A."*
- *"The road easements shown may be dedicated to public use if the majority of the lot owners so desire. This can be done only by the majority of the lot owners."*
- *"Additional covenants are recorded in Book 68, Page 299, K.R.D."*

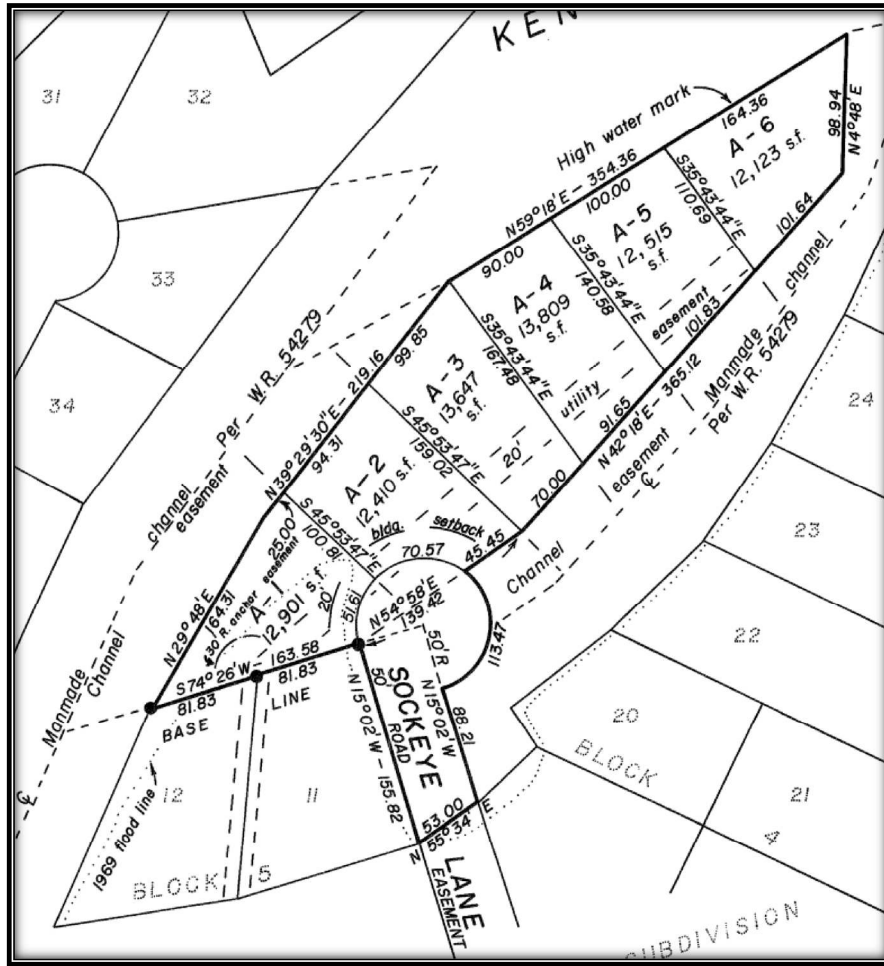


Figure 2- Lot 11/Tr A Snapshot Plat 74-85

Graphically and according to the plat notes, this plat intended to extend the 50' wide right-of-way for Sockeye Lane from its Plat 72-62 terminus at the southeast corner of Lot 11, Block 5, northwesterly to the northeast corner of Lot 11 where the existing 50' standard cul-de-sac temporary turn around easement was reconfigured to an offset (elephant ear) cul-de-sac. This extended roadway right-of-way consists in part of the original Tract A and a portion of the Dolly Way channel easement. Plat 72-62 indicated that a portion of the temporary standard cul-de-sac encumbered a portion of the northeast corner within Lot 11. The redesigned cul-de-sac is shifted to eliminate this encumbrance.

Maintaining the convention established in Plat 72-62, the lot lines for the Plat 74-85 Lots A-1 through A-6 extend to the centerline of the channel easement or in the case of the southeast extension of the lot line between A-1 and A-2, to the original southerly boundary for Tract A. As in Plat 72-62, these extension lines are not present with regard to easterly boundary of Lot 11, Block 5.

Was the Plat 74-85 Sockeye Lane Extension Dedicated to Public Use?

My review of the record documents leads me to conclude that the Sockeye Lane Extension as shown on Plat 74-85 was dedicated to public use. This conclusion is based on the following:

- The subdivision owners according to Plat 72-62 include Delbert Groseclose, J. M. Linton and G. J. Huggins. The July 6, 1972 platting exception request for Plat 72-62 indicates a clear knowledge by the owners of the differences between the typical subdivision dedication of roadways for public use and the platting of private easements along with their desire to limit the use of these roadways to future lot owners.
- The subdivision owner of Plat 74-85 was Kenai Keys Development, Inc., whose owners once again are Groseclose, Linton and Huggins. The fact that another platting exception would have been required to avoid the public dedication of the Sockeye Lane extension would have been known to them. The absence of both a request for a subsequent platting exception and KPB approval suggests that the owners intended to allow the Sockeye Lane extension to be dedicated to public use. While it may seem inconsistent for the subdivision owners to proceed with a public dedication after the effort they made to ensure restricted access by private roadway easements, they may have done so for good reason. First, avoiding another request for a platting exception would have expedited the platting process. Second, the effect of establishing the Sockeye Lane extension as a dedication for public use in no way diminishes the restricted access within the subdivision as intended in the platting for the original Kenai River Keys subdivision. While the extension is dedicated to public use, its location and connection with the other private roadway easements within the subdivision will result in its use being limited to subdivision lot owners and other authorized municipal uses.
- The language used on the Certificate of Ownership and Dedication for Plat 74-85 is consistent with the standard language used for other KPB subdivisions where the intent is to dedicate roadways for public use. This language is clearly inconsistent with that used on Plat 72-62 where the intent was to establish roadway easements that were limited for use only by lot owners of this subdivision. (Except for Humpy Road) The difference between the certificates indicates a clear intent to adopt language for Plat 74-85 that would dedicate the Sockeye Lane Extension for public use.
- Would a dedication to public use for the Sockeye Lane Extension (Plat 74-85) require the signed approval of the Certificate of Ownership and Dedication by the owner of Lot 11, Block 5? If the Lot 11 owner had an ownership interest underlying the Channel easement to the east of Lot 11, a public dedication of the channel easement would require their approval and signature as a statutory dedication to public use involves a change in ownership. In Alaska, a statutory dedication of streets transfers title to the public trust. (State v. Simpson 1964) Plat 72-62 notes that the subdivision lot lines extend to the center lines of road easements and man made channels. These dashed line extensions are shown for most of the subdivision lots but not for Lot 11. According to

Plat 72-62, Lot 11 does not abut a platted roadway easement and only abuts the Dolly Way channel easement along the easterly lot boundary. Lots to the south of Lot 11 along Sockeye Lane clearly show the dashed extension lines going to the roadway centerline. Lots to the east of Lot 11 clearly show the dashed extension lines going to the channel centerline. The Plat 72-62 graphical representation of the future extension of Sockeye Lane through the existing channel easement along the east boundary of Lot 11, the temporary cul-de-sac location and the lack of lot line extensions from Lot 11 suggests that the developers recognized the need to limit Lot 11 to its platted boundaries. This would have been necessary to facilitate a future extension of Sockeye Lane. While the plat note calling for lot line extensions to roadway and channel centerlines appears to conflict with the graphic representation, I believe the more specific graphic representation would control over the more generalized plat note. The original subdivision owners (Plat 72-62) remained the owners of Tract A and the real property interest underlying that portion of the channel easement from its centerline to the south boundary of Tract A and to the east boundary of Lot 11. Consistent with the original developer's intent to limit Lot 11 to its platted boundaries, the Plat 74-85 owners proceeded to dedicate the Sockeye Lane Extension to public use and re-design the cul-de-sac to its ultimate location and shape. In summary, the Tract A subdividers dedicated the Sockeye Lane Extension to public use on the basis that they had full ownership interest in both Tract A and the portion of the channel easement to the east of Lot 11, therefore no approval or signature was required from the owner of Lot 11.

Note that this analysis fails when applied to Lot 20 of Block 4. A comparison of the lot line extensions to the northwest of Lot 20 on both Plat 72-62 and Plat 74-85 indicates that a portion of the newly platted cul-de-sac was within the lot line extensions for Lot 20 and so would have required the Lot 20 owner's signature on the Certificate of Ownership and Dedication in order to validate that portion of the public dedication.

- Both a note on Plat 72-62, the Covenants recorded in B68/P299, KRD, and a note on Plat 74-85 indicate that the road easements may be dedicated to public use upon vote of the majority of lot owners. These provisions were not triggered for the Plat 74-85 public dedication of the Sockeye Lane Extension as the areas subject to the public dedication were either a portion of Tract A or the Dolly Way channel easement. No part of the Plat 74-85 public dedication was previously included in the private roadway easements established by Plat 72-69.

The standard for Alaska courts with regard to deed interpretation is to discern the intent of the parties by first looking to the "four corners of the document to see if it unambiguously presents the parties' intent." If the deed has only one reasonable interpretation, then that will stand. If the deed is ambiguous, the court may look to extrinsic evidence and if that is insufficient, to rules of construction.

In this situation, the deed for Lot 11 refers to the recorded subdivision plat 72-62. That makes the plat a part of the deed. The plat then links the recorded covenants to the deed so they will be all viewed

together when interpreting the intent of the parties. The conflict on the plat between the graphic lot line extensions and the plat note generally stating that lot lines extend to the road/channel easement centerlines may create an ambiguity sufficient to generate a challenge to my opinion that the Sockeye Lane Extension was established as a statutory dedication to public use by the current owner of Lot 11. If that were to happen and the intent of the parties regarding the Lot 11, Block 5 deed was deemed to be ambiguous, I believe that additional extrinsic evidence that the court would consider would still support a conclusion that the Sockeye Lane extension was dedicated to public use by Plat 74-85.

Should you have any further questions regarding this report, please feel free to contact me at any time.

Sincerely,

R&M CONSULTANTS, INC.



John F. Bennett, PLS, SR/WA
Senior Land Surveyor

