

Kenai River Keys Subdivision

To Be Reviewed

- Chronology Documents
- 2019 Legal Terms Summary
- Clark on Boundaries – 8th Ed
- Cowan v. Yeisley (2011)– Dedication - “Alaska law allows for the dedication of land for public use through the subdivision process...When an area is subdivided and a plat of the subdivision is approved, filed, and recorded, all streets, alleys, thoroughfares, parks and other public area shown on the plat are considered to be dedicated to public use.”
- State v. Simpson (1964) “...title to streets created by dedication is held by the municipality in trust for the public and not in a proprietary capacity. A municipality cannot be divested of title to its streets held in trust for the public by adverse possession.”

Questions Proposed

- Did Plat 74-85 dedicate the Tract A road extension to public use? The POA believes it did. The issue arose when an adjacent landowner asserted the right to restrict use of the road extension for the parking of boats.

Location

- Approximately 3 miles south of Sterling Highway Milepost 77.
- Gov Lots 1 and 4, of Section 35, T5N, R8W, SM
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Chronology - Documents

- Warranty Deed – B66/P37, Kenai RD, 5/8/72
 - Vesting KRK property in Huggins, Groseclose, Linton
 - Gov Lots 1 and 4, of Section 35, T5N, R8W, SM
- Developers Letter Requesting Exception – 7/6/72 – Requesting exception to KPBSec 20.15.075(29) requiring each lot abut on a dedicated street.
 - Recreational purposes only – single family dwellings
 - Protection of recreational uses cannot be achieved if roads must be dedicated to the public. General access must be limited.
 - To prevent AS 40.15.030 regarding dedication from taking effect, streets will as easements dedicated to the City and Borough of Kenai as opposed to dedications. (This is not an AS 40.15.030 statutory dedication but an easement dedicated to the governmental entities representing the public???)
 - Easements dedicated but only for fire & police protection. Similar to a utility easement shown on plat not dedicated to the public (Chugach v. Calais 1966). Utility easements do not fall under AS 40.15.030 because they are not subject to general or public use by the public at large.

- Will insert restrictive covenants into deeds to preserve the government’s rights to use the easements. They would have the effect of a “negative easement” limiting the property owner’s use of his land in those areas.
 - No other private subdivisions in Alaska that they know of (Kennicott Subdivision – Chitina RD, Plat 77-1 – “Not for the public in general”)
- KPB Staff Report Recommending Exception – 7/24/72
 - “Alaska Statutes prohibit private roads.”
 - 60-foot easements will be granted except for east boundary.
 - Add note that majority of land owners may have easements dedicated to public.
- Reservations and Restrictive Covenants for Kenai River Keys Subdivision – B68/P299, Kenai RD, 11/3/72
 - “Easements for roadways within the subdivision are shown on the Recorded Plat. Such easements are reserved for the exclusive use of the 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.”
 - “If, at any time after there are 60 lot owners within the sub-division, a majority of such owners votes in a duly noticed and constituted meeting to dedicate some or all of the roadway easements within the subdivision to the public, then such public dedication shall become effective with respect to the roadways so designated, when the fact of public dedication is recorded.”
- Kenai River Keys Subdivision – Plat72-62, Kenai RD, 11/3/1972
 - Notes
 - “The lot areas shown are exclusive of road easements...”
 - “Lot lines extend to the center lines of road easements and man made channels.”
 - “The private road easements as shown do not prohibit their use for utilities.”
 - Covenants
 - “The road easements shown may be dedicate to public use if the majority of the lot owners so desire, this can be done by only the majority of the lot owners.
 - Certificate of Ownership and Dedication
 - “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 subdivision only, except Humpy Road which is dedicated to public use.”
 - Tract “A”
 - “Temp Turn around 50’ R” at northerly extension of Sockeye Lane.
- Declaration of Easements for Plat 72-62 – B68/P270, Kenai RD, 12/4/72
 - Recorded after Plat 72-62 and B68/P299 Covenants
 - “...to declare and reserve certain other easements and rights of way because of the possibility of a resulting diversity of ownership in and to the lots in such subdivision.”
 - Creates 20’ private easements along the Channel boundaries for the use of owners within the specified blocks and KPB municipal functions.
- Kenai Keys Subdivision Submittal – Stanly S. McLane, RLS – 6/3/74

- Subdivision of Tract A into 6 lots.
- Access via channel easement or private road easement via Sockeye Lane extended.
- Resubdivision of Tract A Kenai River Keys Subdivision – Plat 74-85, Kenai RD 9/26/74
 - Notes
 - “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”
 - Covenants
 - “The road easement 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, KR.D.”
 - Certificate of Ownership and Dedication
 - “We hereby certify that Kenai Keys Development, Inc. is the owner of this property and request the approval of this plat showing such easements for public utilities, roadways and or streets dedicated by us for public use.”
 - Is this a statutory dedication of CDS within Tract A?
 - New Tract A lot lines appear to extend into Channel easement consistent with the B4 Lots to the south (Plat 72-62).
 - Temporary turnaround CDS now mathematically defined and fixed.
 - Who was owner of Lot 11 as of Plat 74-85 dedication? [R.E. & Patsy Ruth Timperly as of 12/29/72; recorded B69/P200, KR.D, 1/5/73 – Timperly was not signatory to Certificate of Dedication and Ownership so the portion of Sockeye Lane east of Lot 11 could not have been dedicated.]
- Declaration of Easements for Plat 74-85 – B80/P174, Kenai RD, 10/1/74
 - Recorded after Plat 74-85
 - Creates 20’ private easements along the Dolly Way Channel easement boundaries for the use of owners within the Tract A lots and KP.B municipal functions.
 - Say parallel with Westerly channel bank...should it be easterly?
 - Quote from the 6/6/78 Easement amendment summary below: “Access to lots created in the 1974 resubdivision of Tract A was platted as the extension of Sockeye Lane on Plat 74-85, but this road was never constructed. The Declaration of Easements filed by the subdivision developer dated September 30, 1974 did not grant lot owners in Tract A rights for use of the 1972 easements, and the Association believes the extension of Sockeye Lane remains their legal access. Lot owners in Tract A use the route established in the 1972 Declaration of Easements for Block 5 lot owners, and the Association believes this use is by the grace of their neighbors.”
- Declaration of Easements Amendment – B125/P923, Kenai RD, 6/6/78
 - Affects Block 4 – 20’ easements along Chum Way Channel
- Kenai Keys Subd. SLE Vacation – Plat 84-77, Kenai RD, 4/12/84 – Not relevant
- Kenai River Keys Vacation – Plat 84-126, Kenai RD, 6/1/84 – Not relevant
- Kenai River Keys Subd Amended Plat – Plat 92-44, Kenai RD 9/16/92 Corrected dimension along Lot 23, Block 6 – Not relevant

- Revocable License for Ingress and Egress – L8 B4 – B467/P371, Kenai RD, 7/25/95 – **Not relevant**
- Reservations and Restrictive Covenants for KRK Subd – 2002-008058-0, Kenai RD, 8/26/02
 - Revised covenants supersede prior covenants in B68/P299.
- Sample Deed Lot A-3 Plat 74-85 – 2004-007146-0, Kenai RD, 7/22/04
 - Subject to easements, covenants of record – oil, gas & mineral reservation.
- ROS L321 B6 KRK Am – Plat 2011-7, Kenai RD, 3/21/2011 – **Accretion survey – Not relevant**
- Letter to R&M Consultants from F. Turpin – KRK Subd, Street Dedication – 6/22/20
- Email Proposal Acceptance from F. Turpin - 6/28/20
- Kenai River Keys Subdivision – Declaration of Easements Summary
 - Prepared by F. Turpin (?)
 - These relate to 20' wide Channel Easement Access