

Frank G. Turpin
 Kenai River Keys Property Owners Association
 PO Box 1113
 Sterling, AK 99672
 Phone: 907-953-9775
 fgturpin@gmail.com

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT KENAI

PATSY RUTH TIMPERLEY,)
 now known as PATSY RUTH SHAW,)
 in her personal capacity and as)
 TRUSTEE of the SHAW TRUST DATED)
 MARCH 02, 2018,)
)
) **Plaintiff,**)

v.)

KENAI RIVER KEYS PROPERTY)
 OWNERS ASSOCIATION, an Alaska)
 Non-profit Corporation)
) **Defendant.**)

Case No. 3KN-19-00797 CI

DEFENDANT'S STATEMENT OF PURPOSE FOR EVIDENTIARY HEARING
STATEMENT OF THE ISSUE TO BE TRIED
AND FINAL WITNESS LIST

Kenai River Keys Property Owners Association hereby moves the Court for summary judgment dismissing Plaintiff's Complaint on the grounds specified in Defendant's Motion for Summary Judgment. There is no genuine issue of material fact for which Defendant has authority to remedy and Defendant is entitled to judgment as a matter of law. Defendant hereby files and serves notice of the Evidentiary Hearing to be held June 9, 2020 and final witness list relative to that Hearing.

I. NOTICE OF THE SUBJECT OF THE EVIDENTIARY HEARING

The purpose of the hearing is to confirm ownership of a strip of land adjacent to Plaintiff's property in Kenai River Keys Subdivision. The land is depicted on Plat 74-85 KRD as an extension of Sockeye Lane, and the extension is dedicated to public use. The plat of subdivision

was properly considered and approved in 1974 by the Planning Commission of the Kenai Peninsula Borough which has authority by law over land dedications in subdivided property. The Defendant has no claim of ownership to this land and has no authority to enforce restrictive covenants of the subdivision on land held in trust for the public by Kenai Peninsula Borough.

The Defendant relies on subdivision plats to enforce restrictive covenants but has no authority to accept Plaintiff's interpretation of plats other than as these plats were approved by the Borough Planning Commission. Defendant has no authority to address validity of these plats or the dedications they contain and can only defer to approvals granted by the Planning Commission. The Defendant advises its membership that the land in dispute is available for use consistent with a road easement.

Defendant filed a Motion for Summary Judgment based on Plaintiff's failure to name the essential party, the Kenai Peninsula Borough, which is vested with sole and exclusive authority to grant, vacate or enforce rights in public rights-of-way. Defendant does not represent the public interest and cannot defend the ownership interest held by the public. Nor can Defendant address a restriction of use beyond its authority to regulate. Plaintiff's Complaint fails to state a claim which this Defendant can relieve.

A street within the length of the right-of-way was never constructed but the right-of-way is used for access to the shoreline of a manmade canal. Uses include access to boats tied up at the shoreline, launching and retrieving boats, and accessing frozen canals in winter.

The subdivision contains 4 platted private road easements, 2 streets within rights-of-way dedicated to public use, and 3 driveway easements between lots that are used as streets. Of the 122 lots within this subdivision, 14 lots do not have a shoreline and depend on shorelines along road easements for access rights to waters of the Kenai River. Eleven of these 14 lots are on Sockeye Lane. One of those eleven is owned by the Plaintiff who is claiming ownership of the street right-of-way for extension of Sockeye Lane and the right to restrict its use.

The subdivision entrance is gated, and Defendant maintains all streets in the subdivision including those streets constructed on public rights-of-way. Defendant does not advocate for public or private ownership of rights-of-way within the subdivision, and it defers to the Borough for designation and approvals of such. Defendant has no obligation to prove dedication of any street right-of-way when such was approved by statutory authority of the Borough.

Kenai River Keys Property Owners Association, Inc.
PO Box 1113, Sterling, Alaska 99672
Phone 907-553-9775

II. DEFENDANT'S WITNESS

Charles E. Aiken
c/o Frank G. Turpin
907-953-9775 (phone for Frank G. Turpin)
907-306-7638 (Mr. Aiken's phone number for Court Contact)
fgturpin@gmail.com

Mr. Aiken will explain lot boundaries depicted on the subdivision plats and the meaning and applicability of lot line extensions based on plat notes appearing on both subdivision plats. Mr. Aiken holds a Professional Land Surveyor license in Alaska and owns a lot within Kenai River Keys Subdivision adjacent to the right-of-way for extension of Sockeye Lane. Mr. Aiken will base his testimony on the subdivision plats approved by the Planning Commission of Kenai Peninsula Borough.

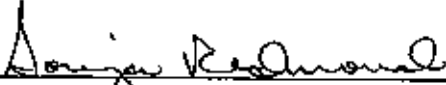
Dated this 19th day of May, 2020.

By:


Frank G. Turpin

Subscribed & sworn to or affirmed before me at Soldotna, Alaska on 5-19-2020




Clerk of Court or Notary Public
Authorized to administer oaths.

My commission expires: 10/23/23