

Regarding the Quiet Title Decision and the 11/10/21 KRKPOA Reply. I found the Reply to be very interesting on several points including the references to the Klutina RS-2477 case in which it seems that I spent half of my DOT career dealing with conflicts between Ahtna and our DOT maintenance forces as well as private parties attempting to use the road for access to Klutina Lake or the upper Klutina River. The cases swung between litigation and political settlement several times and unfortunately as the case never went to trial in Superior Court, the evidence supporting the full scope of use was never presented.

The judge's order dated 11-12-20 was a summary judgment decision in which she ruled the Association did not own any portion of Sockeye Lane. She did not dismiss Defendants from the case because she was still to decide whether there was an effective dedication to public use. If Sockeye Lane Extended were private, we would have responsibility to enforce covenants on its use.

On 1-25-21, the judge issued her decision on quiet title. She found the dedication to public use to be ambiguous and relied on the 1972 intent of the developers to create a private subdivision. She quieted title to the owner of Lot 11 to the center of the easement upon which Lot 11 fronts. This ruling raised confusion over the extent of quieted land. The Plaintiff asserts that the road easement contains a channel shoreline, and the center of the channel encompasses the entire road easement. This disregards interests of lot owners on the other side of the road easement.

The use of both road and channel easements bordering Lot 11 were then mediated. We agreed to interpret covenants applying to the shoreline of Lot 11 as we do for other privately-owned lots having a channel shoreline, i.e. boat parking only with permission of the lot owner. In return, the owner of Lot 11 agreed to allow continued use of the easements for launching boats in the portion of the easements historically used for that purpose. The mediation agreement was silent on other uses of the road easement and on attorney fees. Both parties and the judge signed the agreement, and it has been recorded. (See 2021-010667-0 Kenai Recording District 9/27/21)

At some point the owner of Lot 11 awoke to having spent \$150K in attorney fees to gain title to land encumbered by one or more easements, even if those easements are now interpreted to not allow boat parking. But, there is room in the boat launch area to park a boat while a boat trailer is taken home. So, before the judge signed the mediation agreement, the Plaintiff asked for termination of the road easement due to impossibility of use, arguing that a road could never be built. The judge scheduled a hearing for Dec 1<sup>st</sup> to consider this, and specifically asked for testimony from lot owners who use the easement for pedestrian access to Tract A.

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The judge decided the plat ambiguous and quieted title to centerline of the easement fronting the Plaintiff's lot. Mediation was used to arrive at agreement on how the easement could be used. Following execution of the mediation agreement and its recording, the Plaintiff asked Judge Wells to terminate the easement by judicial declaration. Defendant argues that the case was mediated to conclusion, and termination was not part of the Plaintiff's complaint. The Plaintiff argues that the easement was created for access to Tract A and is not now used for that purpose. This raises the issue of what a road easement can be used for. The defendants believe that it was created by plat and the developer identified access to Tract A via that easement. Plaintiff is making a case that it was created only for accessing Tract A. This is the universe of private easements, with murky rules, even though platted and approved by the Borough. Defendants lean toward compensation if the judge terminates an

easement right for a Tract A property. A hearing is scheduled on the first of December for testimony by lot owners on pedestrian use of the easement for access to Tract A.

In looking back at how the judge evaluated Bennett's testimony, she decided that the dedication to public use was ineffective and essentially absolved the Borough for accepting that dedication. She didn't dispute the developer's certificate of ownership on the 1974 plat, nor did she dispute their language of dedication. The developer subdivided Tract A and sold the lots, using the Borough to escape liability.