

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities
Northern Region Design & Engineering Services

TO: G.E. "Rick" Kauzlarich, State ROW Chief
Regional ROW Chiefs

DATE: April 12, 2003

FILE NO:

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FROM: Regional ROW Engineering Supervisors

SUBJECT: Airport Platting Obligations

This memorandum serves to address the platting obligations that the Department may have with regards to our airport properties.

It is quite clear that Title 2 Superior Court that AS 09.55.275 required the Municipality to obtain "preliminary approval of a replat" because each of the takings "resulted in a boundary change." Alaska Statute 09.55.275, entitled "Replat approval," states: "*An agency of the state or municipality may not acquire property located within a municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) that results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.*" The Municipality asserted that "boundary change", as used in the statute, is a "term of art" that refers exclusively to changes in the boundary of a fee simple estate and that it does not apply to creation or expansion of easements. The Supreme Court disagreed and affirmed the Superior Court decision that required the Municipality to obtain preliminary replat approval.

Generally, the three ADOT&PF regions have been operating under the premise that acquisition of easements in most communities will not trigger any sort of replat action. This too is the case in the Unorganized Borough where the Department of Natural Resources is the platting authority. They have also recently reiterated that they do plan to continue operating as such. Several communities throughout the state have specific ordinances that address rights of way and acquisition of property for them. Some are definitely better than others and it is our opinion that we can continue to work with these communities to fine tune their ordinances so they better accommodate our process. When we are working in a community without these ordinances we

generally attempt to suggest a process that has worked in other places and most seem willing to work with us.

We feel that the Black Angus decision will not substantially impact the way that we are currently doing business and we should attempt to continue to cooperate with local platting authorities to the fullest extent possible.

At this point we have only addressed how our highway projects may be affected. We have not yet discussed what impact this decision may have on our airport projects. In general, we have not submitted for any replat action on airport projects, but it would appear that under certain circumstances we would be subject to local platting regulations. We will be discussing this issue in the coming weeks.

Cc: John F. Bennett, PLS, SR/WA, Chief, Right of Way, Northern Region
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