

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: John Athens
Assistant Attorney General
Northern Region

DATE: October 23, 1997

FILE NO:

TELEPHONE NO: 451-5426

FROM: John F. Bennett, PLS
ROW Engineering Supervisor
Northern Region

SUBJECT: Project STP-F-0601(001)
/65412 Airport Way
Frontage Roads
Existing Dedications

We are currently working on two projects where our proposed right of way limits will overlap or incorporate dedications created by the platting process. This has not been a problem where the dedication is clearly for road purposes. Occasionally, however, we run into dedications for something other than a clearly defined access road. These may include dedications for "green belts" or "public parking". Our two most common questions in these cases are: Can these dedications be converted to or used as a part of our project right of way? – and – Who is the owner?

Before I get too far into this request for advice, please feel free to charge your time to the above referenced project. (LC 30701622)

Laurance Road: Now a little background. The last time we ran into this issue was in 1989-1990 during the development of right of way plans for Laurance road. The expansion of our existing right of way required the incorporation of a portion of Seavy Subdivision (Plat 76-86) which had been dedicated as a "Green Area". The "Green Areas" were clearly separate from the adjoining lots and the dedicated roadways. The plat included a typical certificate of ownership and dedication which claimed to "adopt this plan of subdivision of my (our) own free will(s) and dedicate all streets, alleys, walks, parks, and open spaces to public or private use as noted."

Initially we listed the Fairbanks North Star Borough as owner and proceeded to acquire the necessary interest. The FNSB planning staff responded with a letter (attached) in which they stated that the "Green Area" was a part of the Seavy road right of way and as such could be incorporated into our project without permission or action by the Borough. As a result we deleted this parcel from our proposed acquisitions and built the project.

McGrath Road: We are currently developing plans for a bike path along McGrath road. Part of the project might require a portion of the bike path or re-located utilities to be placed in the "Green Strip" adjoining McGrath road which was established as a part of the plat for McGrath Estates – Portion 2. A label in the "Green Strip" refers to plat note no. 4 which reads as follows: "*Clearing of natural vegetation not permitted within 50' of McGrath Road R/W, except for existing power and communication lines.*" In this situation, I interpret the "Green Strip" as clearly being a restriction placed upon and encompassed by the lots as opposed to an area dedicated to the public. I wrote a memo to our Design section regarding this on March 26, 1997.

(attached) I was of the opinion that it was more akin to a restrictive covenant that was intended to prevent the individual lot owners from clearing the 50-foot wide strip.

The subdivision covenants do not speak to the "Green Strip" specifically and only discuss the clearing of trees and brush to the extent that it must be accomplished by hand clearing as opposed to the use of heavy equipment.

Our question for the AG staff is whether the Department would be subject to the restriction if we acquired a portion a lot covered by it and if so, how would we go about removing it?

Airport Way Frontage Roads: This project will require the use of an area labeled "Public Parking & Access" according to the 8/6/57 plat of Riverside Park Subdivision (Instr. No. 174.026) and the 6/11/59 plat, Block 5 Addition to Riverside Park Subdivision (Instr. No. 189.794). Both plats have the following Certificate of Ownership and Dedication: *"I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of subdivision with my free consent, and I hereby dedicate all streets, and access alleys, the areas indicated as public parking and access, and other open spaces to the use of the general public forever."*

The areas described as "Public Parking and Access" are delineated as being separate from the subdivision lots and the dedicated roadways. Portions of these areas currently used for business and private parking and there also appears to be at least one private structure encroaching into the area.

Our question for your staff are as follows: Do the adjoining lots have an ownership interest in these areas? Are the adjoining owners due compensation if these dedicated "Parking Areas" are converted totally or in part to frontage road right of way under the Department's jurisdiction? If the adjoining owners have no interest, do we have to undertake any particular action to convert to incorporate the area into our project right of way?

As you would expect, both of these projects are on the front burner now. So any expedited help would be appreciated.

I D E P A R K

D I V I S I O N

1/4 LOT 15, SECTION 8,
W. FAIRBANKS MERIDIAN

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT, AND I HEREBY DEDICATE ALL STREETS AND ACCESS ALLEYS, THE AREAS INDICATED AS PUBLIC PARKING AND ACCESS, AND OTHER OPEN SPACES TO THE USE OF THE GENERAL PUBLIC FOREVER.

DATE: July 13, 1957

WITNESSED BY:

Carl Hansen
WITNESS

Laure O. Hagen
OWNER

UNITED STATES OF AMERICA
Territory of Alaska

On this day of July, 1957, before me, the undersigned officer, personally appeared LAURE O. HAGEN, formerly L. O. HAGEN, to me known to be the person described in and who executed the above certificate, and she acknowledged to me that she executed the same freely and voluntarily and for the purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year indicated on the above certificate.

Laure O. Hagen

WITNESS MY HAND AND SEAL OF THE TERRITORY OF ALASKA, RECORDS AND COURTESY DIVISION, FAIRBANKS, ALASKA, THIS 28th day of July, 1957.

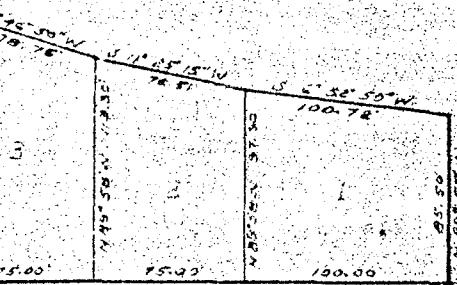
CERTIFICATE OF APPROVAL

I HEREBY CERTIFY THAT THE SUBDIVISION THAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS OF THE GREATERTERRITORY AREAS PLANNING AUTHORITY, AND THAT THIS PLAN HAS BEEN APPROVED BY THE BOARD OF PLANNING REGULATION NO. 2, DATED JULY 10, 1957, AND THAT THE PLAN SHOWN HEREON HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE UNITED STATES COMMISSIONER, AS OFFICER RECORDER, FAIRBANKS.

DATE: July 10, 1957

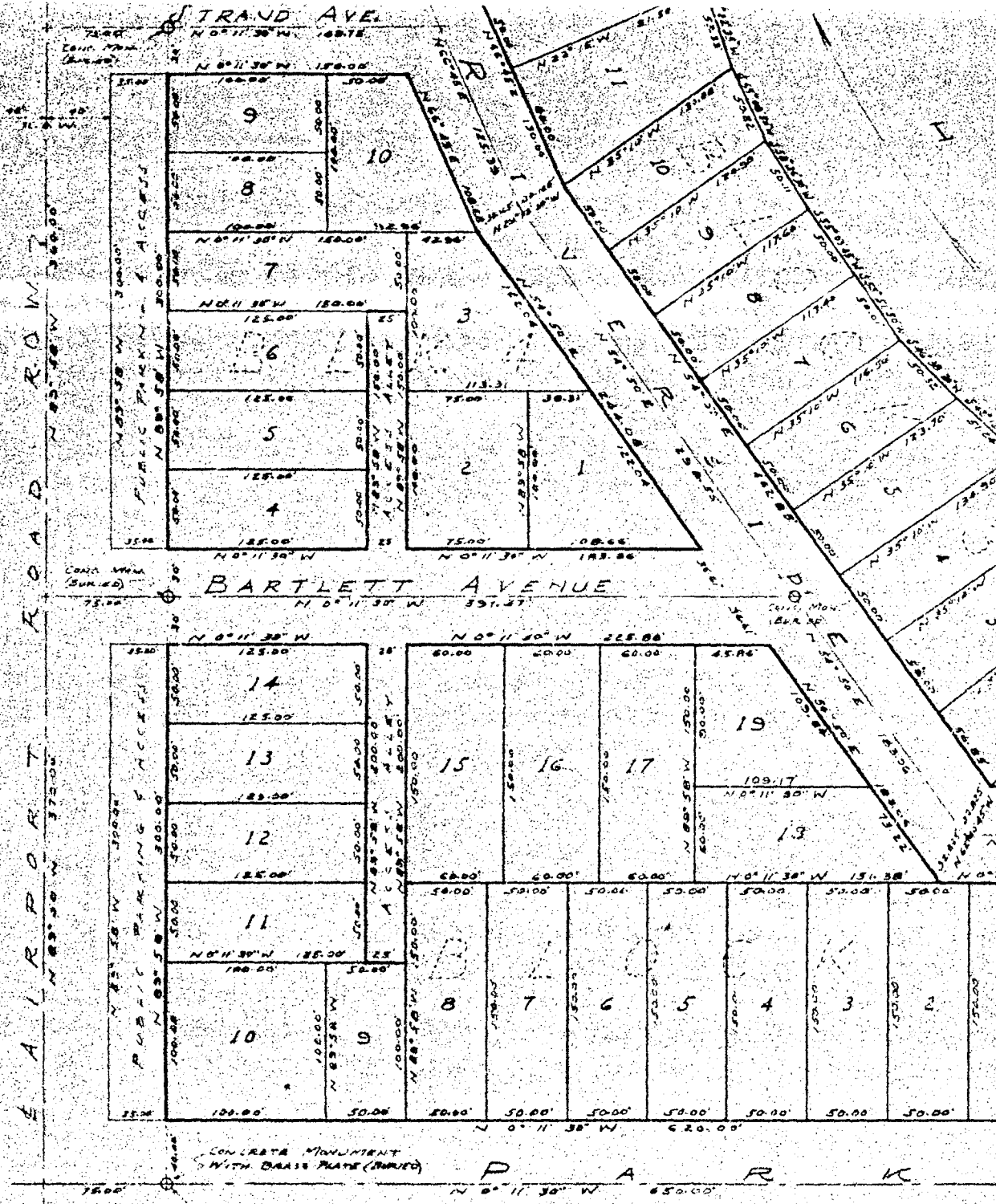
William W. Marshall
CHIEF OF BUREAU, GREATERTERRITORY AREAS PLANNING AUTHORITY

Edgar L. Phillips
ATTORNEY



EAST BOUNDARY LOT 15, SECTION 8

CONCRETE MONUMENT WITH BRASS PLATE (NINES)



S. 1/4 CORNER SEC. 8/SEC. 17
 T. 13, R. 1 W., A. 1 N.
 ORIGINAL U.S.G.L.O. MONUMENT
 STARTING POINT OF SURVEY

Riverside Park Subd



Fairbanks North Star Borough

Silver Anniversary

July 20, 1989

Karen Toney, Right-of-Way Agent
State of Alaska, Department of Transportation
600 University Ave., Suite 'F'
Fairbanks, Alaska 99709-3695

SUBJECT: *SEAVY SUBDIVISION - GREEN AREAS*

Dear Karen:

This letter is a follow-up to our telephone conversation of July 19 regarding the ownership of the "green areas" in Seavy Subdivision. The ownership question needs to be settled so that the Laurance Road upgrade can begin.

It is the Borough's opinion that the green area that is subject to the upgrade project is part of the Seavy Road right-of-way, and that the Borough has no interest in it. Many older plats in the Fairbanks area have similar areas shown on them. However, the Borough must specifically accept ownership of such areas for them to become owned by the Borough. Currently, the platting regulations require that a subdivider make arrangements for the future ownership of non-lot areas (except roads) if these areas are not accepted for public use by the Borough.

The monumentation for Seavy Subdivision as shown on the plat additionally appears to indicate that this green area is part of the Seavy Road right-of-way. The green area is not monumented and the road width from the section line (50 feet) is shown to include the green area.

In the case of the subject green area, it is possible that a local resident would object to the idea that the green area is part of the right-of-way and thus able to be used for road construction. Martin Gutoski, of the Borough's Platting Section, has recommended that DOT could pursue a vacation of the portion of the green area needed for the road upgrade project. While technically not necessary, this action would serve to give interested parties a chance to comment.