

# MEMORANDUM

State of Alaska  
Department of Law

**TO:** John Bennett  
ROW Engineering Supervisor  
Northern Region, Fairbanks

**DATE:** December 15, 1997

**FILE NO:** 665-98-0061

**TEL. NO.:** 451-2828

**FROM:** Pamela A. Hartnell *PA-H*  
Assistant Attorney General  
AGO, Fairbanks

**SUBJECT:** Project TEA-0002(75)  
McGrath Road Bike Path  
"Green Strips"

*RECEIVED 4/0*  
**DEC 17 1997**

## CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

### FACTS

The Department of Transportation and Public Facilities (the Department) is currently working on two projects where the proposed right of way limits will overlap or incorporate dedications created by the platting process. The McGrath Road bike path project might require a portion of the bike path or relocated utilities to be placed in the "Green Strip" adjoining McGrath Road. The Airport Way Frontage Roads will require use of an area labeled "Public Parking and Access" according to the plats.

You have requested advice concerning whether these dedications can be converted to or used as a part of the projects' right of way and who are the owners.

### QUESTIONS PRESENTED AND SUMMARY OF ADVICE

#### McGrath Road

The McGrath Road bike path project may require a portion of the bike path or relocated utilities to be placed in the "Green Strip" area as identified on the plat for McGrath Estates - Portion 2. A label in the "Green Strip" refers to plat note 4 which reads "Clearing of natural vegetation not permitted with 50' of McGrath Road R/W, except for existing power and communication lines."

Question: Would the Department be subject to the clearing restriction if a portion of a lot covered by it was acquired? If so, how can the restriction be removed?

## CONFIDENTIAL ATTORNEY - CLIENT COMMUNICATION

John Bennett

December 15, 1997

Re: "Green Strips"

Page 2

Work Management # 665-98-0061

Answer: Yes. The Department would be subject to the clearing restriction if a portion of a restricted lot was acquired. The restriction can be removed by condemning in fee and indicating that we are also condemning any restrictive covenants.

### LEGAL ANALYSIS

The "Green Strip" as indicated on the McGrath Estates- Portion 2 plat is a part of the individual lots along McGrath Road. Note 4 restricts the manner in which the 50' Green Strip can be cleared. The Restrictive Covenants from McGrath Estates Subdivision, Book 40, page 279 to 281, includes Number 14, "Clearing: Trees or brush on property shall be to the extent possible, hand cleared to preserve the natural environment; no bulldozers or other heavy equipment shall be used to clear trees and brush except for building site, view and driveway." Because restrictive covenants run with the land, the Department will have to condemn for title.

During negotiations with the landowners you may negotiate a price that is equal to fair market value without the restriction on the property. However, the lot owners do not have legal authority to remove the restrictive covenant in their conveyances to the State. Therefore the Memoranda of Agreement with the landowners would have to include a provision under "Other Conditions" that the Department paid fair market value for the fee without the restrictive covenant and that the owners will not oppose our suit to condemn for title. A letter could be enclosed with the summons for the condemnation complaint indicating that we are filing for title and to remove the restrictive covenant. We could then move for summary judgment.

If negotiations are not successful, the Department can pursue the normal condemnation procedures. We will condemn the fee including removal of the restrictive covenant.

#### Airport Way Frontage Road

This project will require the use of an area labeled "Public Parking and Access." These areas are separate from the subdivision lots and dedicated roadways.

**CONFIDENTIAL ATTORNEY - CLIENT COMMUNICATION**

John Bennett

December 15, 1997

Re: "Green Strips"

Page 3

Work Management # 665-98-0061

Question: Do the adjoining lots have an ownership interest in these areas? If so, are adjoining lot owners due compensation if the areas are converted in whole or part to frontage road right of way under the Department's jurisdiction? If not, does the Department have to undertake any action to convert or incorporate the area into the project right of way?

Answer: No, the adjoining lot owners have no ownership interest in the Public Parking and Access Areas. Therefore, they are not due compensation if the areas are incorporated into the project.

Because the areas have been dedicated to the use of the general public, the Department may incorporate them into the project without any further action.

**LEGAL ANALYSIS**

The adjoining lot owners do not have an ownership interest in the Public Parking and Access Areas because they were publicly dedicated by the 88/6/57 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 area publicly dedicated for parking and access is an incidental use by the adjoining lot owners. The Department is using the public access areas for their intended purpose. This is not a case where the Department is converting a private road to a public road. Rather it is using a public access area to enhance public access. Therefore, the landowners have no compensable interest in the areas in question.

The Borough does not have an interest in the public access areas either. This situation is similar to the Seavy Subdivision Green Arcas letter dated July 20, 1989. You may want to call the Borough to confirm my conclusion that it has no interest in the areas.

**CONFIDENTIAL ATTORNEY - CLIENT COMMUNICATION**

John Bennett

December 15, 1997

Re: "Green Strips"

Page 4

Work Management # 665-98-0061

**CONCLUSIONS AND RECOMMENDATIONS**

McGrath Road

I recommend that the Department negotiate for the required property and condemn for title. If the landowners agree to the value of the land without the restrictive covenants and also agree not to oppose condemnation for title, then the condemnations will move more quickly. However, we will have to condemn for title and to remove the restrictive covenants in either case.

Airport Way Frontage Road

I recommend that the Department use the publicly dedicated Public Parking and Access areas for its project. There is no need to compensate adjoining lot owners or the Borough since they do not have an ownership interest in the areas.

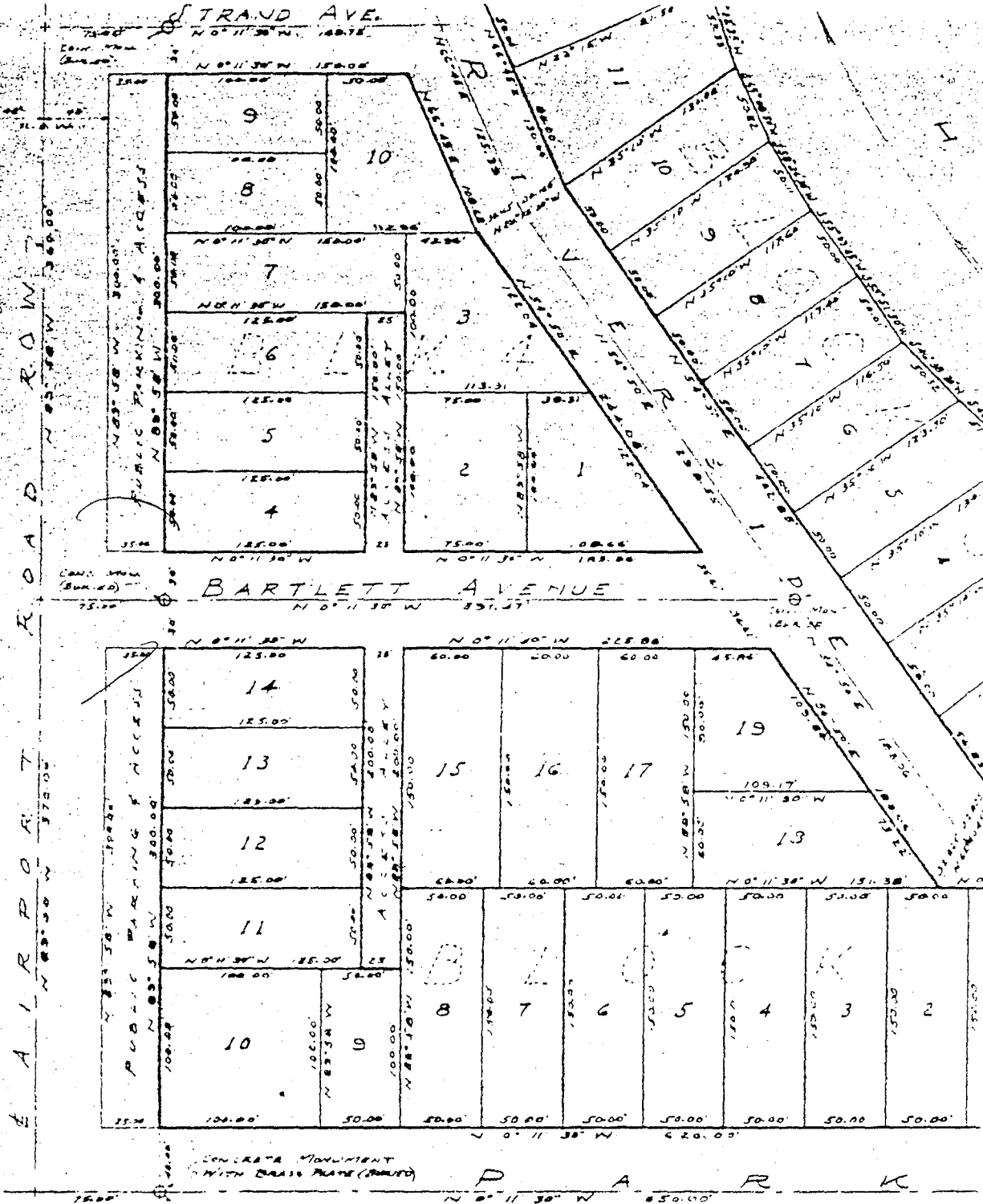
If you have any questions about this advice, please do not hesitate to contact me.

PAH/arp

Attachments

I:\HARTNELP\BENNETT.M01



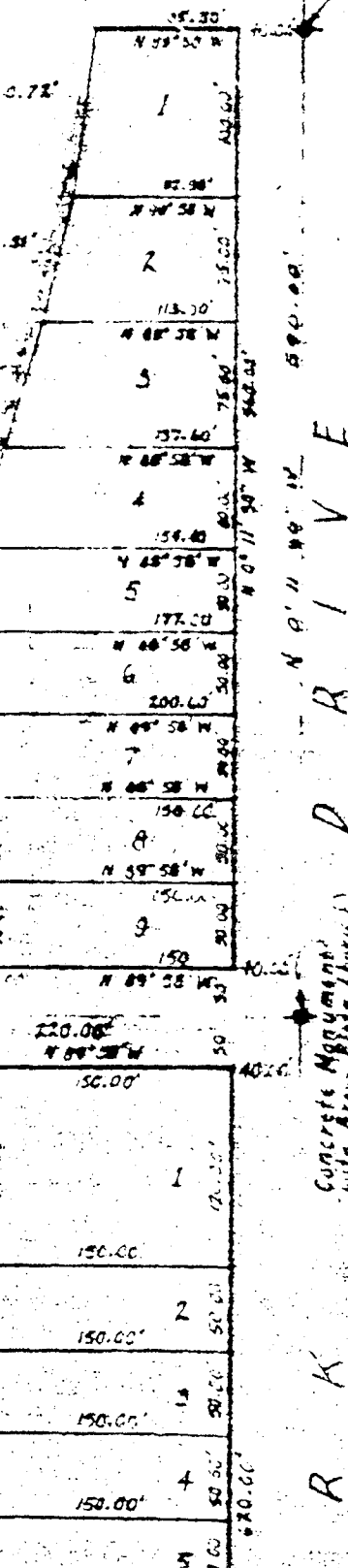


SANDWICH 33366  
 TO 1/4 CORNER SEC. 8/SEC. 17  
 T.15., R.1.W., T.17.  
 ORIGINAL U.S.G.L.O. MONUMENT  
 STARTING POINT OF SURVEY

Riverside Park Subdiv

Block 5 Addition to  
Riverside Park

East Boundary  
Lot 15, Section 8  
Concrete Monument  
with Brass Plate (buried)



CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREIN AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT, AND I HEREBY DEDICATE ALL RIGHTS AND ALLEYS, EASEMENTS, THE AREAS INDICATED IN PUBLIC HIGHWAYS AND ALLEYS, AND OTHER OPEN SPACES TO THE USE OF THE GENERAL PUBLIC FOREVER.

DATE 12 June 1959

WITNESSED BY:

Walter Rogers Lucie A. Hegert  
WITNESS JUDGE

UNITED STATES OF AMERICA  
TERRITORY OF ALASKA

ON THIS 12 DAY OF JUNE, 1959, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED WALTER ROGERS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS AND WHO EXECUTED THE ABOVE CERTIFICATE AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE ABOVE CERTIFICATE, AND WHO ACKNOWLEDGED TO ME THAT HE 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.

David L. ...

NOTARY PUBLIC IN AND FOR THE TERRITORY OF ALASKA, RESIDING AT FAIRBANKS, ALASKA.  
MY COMMISSION EXPIRES March 27 1962



CERTIFICATE OF APPROVAL

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT WHEREIN THIS HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS OF THE BOARD OF FAIRBANKS AREA PLATTING AUTHORITY, AND THAT SAID PLAT HAS BEEN APPROVED BY THE BOARD BY THE PLAT REGISTRATION DATE 12 June 1959, AND THAT THE PLAT WHEREIN HEREON HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE UNITED STATES DEPARTMENT OF AGRICULTURE, FAIRBANKS.

DATE June 10th 1959

Walter B. ...

CHIEF PLAN REGISTRATION AUTHORITY



# I D E P A R K

## I V I S I O N

IN LOT 15, SECTION 8,  
4th FAIRBANKS MERIDIAN

**CERTIFICATE OF APPROVAL AND DEDICATION**  
 I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY  
 INDICATED 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*                      *Luise O. Hagen*  
 OWNER                                      OWNER

UNITED STATES OF AMERICA }  
 TERRITORY OF ALASKA

ON THIS DAY OF JULY, 1957, BEFORE ME, THE UNDERSIGNED  
 OFFICER, PERSONALLY APPEARED LAISE O. HAGEN, THOMAS  
 WILSON, and I know them to be the persons 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.

I, WITNESS HEREOF, I HAVE HEREUNTO SET MY HAND AND  
 OFFICIAL SEAL OF OFFICE ON THE DAY AND YEAR INDICATED  
 IN THE ABOVE CERTIFICATE.

*La Rue C. Orend*  
 COUNTY CLERK, TERRITORY OF ALASKA  
 WASHINGTON OFFICE 7-28-57

**CERTIFICATE OF APPROVAL**

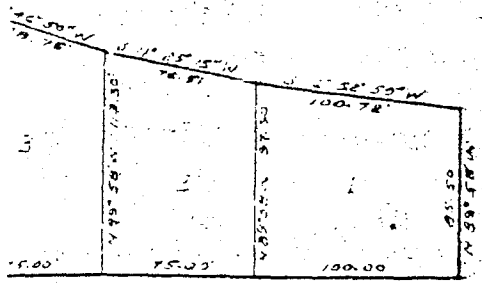
I HEREBY CERTIFY THAT THE SUBDIVISION PLAN SHOWN HEREON HAS  
 BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS OF THE  
 TERRITORY OF ALASKA'S AREA PLANNING AUTHORITY, AND THAT IT  
 HAS BEEN APPROVED BY THE BOARD BY THAT RESOLUTION  
 NO. 10, DATED JULY 10, 1957, AND THAT THE PLAN SHOWN  
 HEREON HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF  
 THE UNITED STATES COUNTY CLERK, AS OFFICER THEREOF, THIS DATE.

DATE: July 11, 1957

*William W. Marshall*  
 COUNTY CLERK, TERRITORY OF ALASKA  
 WASHINGTON OFFICE  
 APPROVED: *Edwin S. Phillips*  
 COUNTY CLERK



EAST SINGAPORE LOT 15, SECTION 8 2

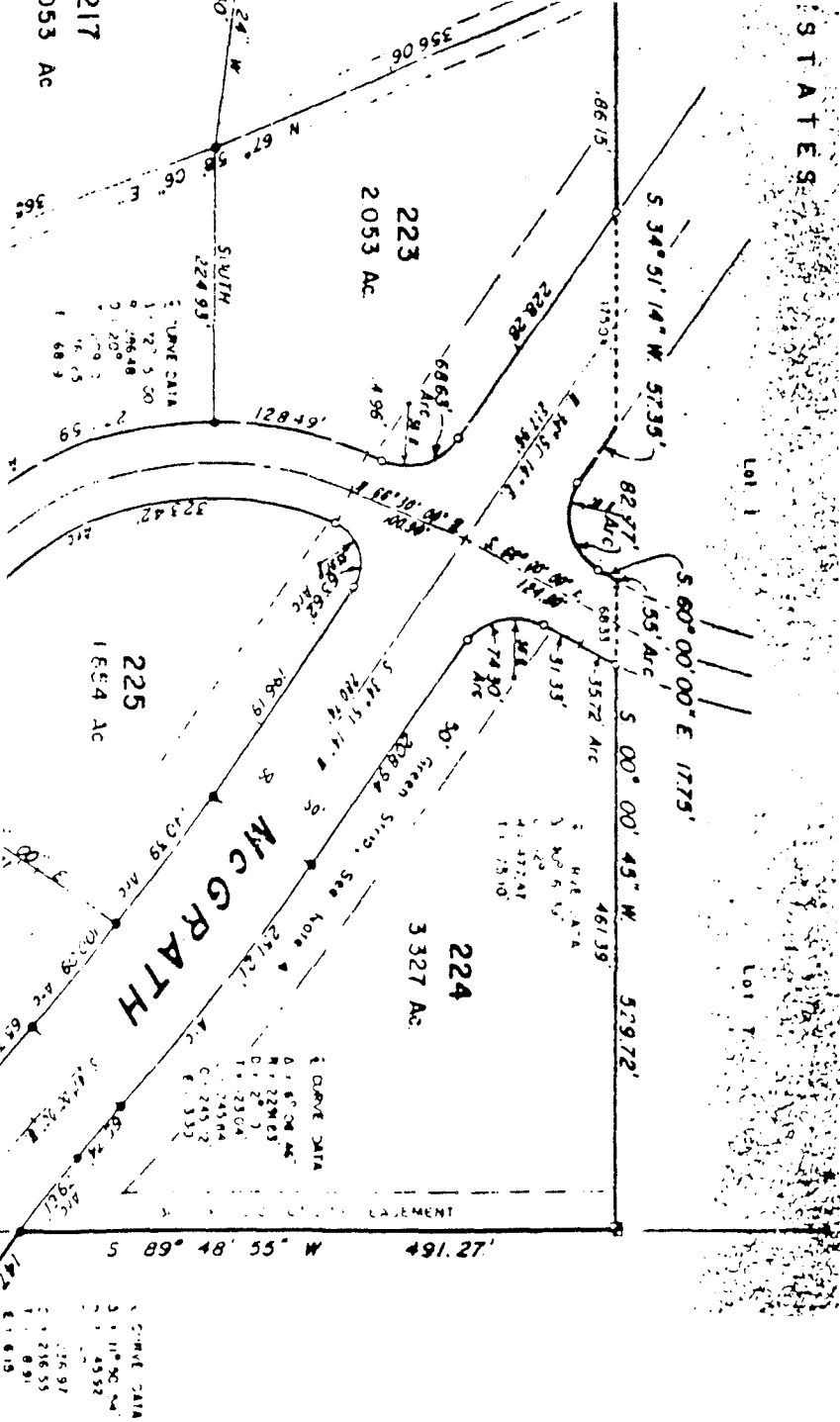


ENCLOSURE ATTACHED  
 WITH GRAY PLATE (A-1115)



NOTES

1. This area overlain by Fairbanks Soil Series as per USDA, SC9 Publ No 25 (1969).
2. This area not flooded in August 1967.
3. Utility Easements to also be used for non-scheduled recreational trails.
4. Clearing of natural vegetation not permitted within 50' of McGrath Road R/W, except for assisting power and communication lines.
5. No lots shall have direct access to McGrath Road.
6. All of the lots within this subdivision are subject to PROTECTIVE COVENANTS, as recorded in the Fairbanks District Recording Office in instrument no. 11-01272.
7. In addition to the specific easements shown hereon it hereby created an easement of 10' width on each side of each and every lot and back lot line for the construction & maintenance of underground utilities and surface drainage facilities.



*McGrath Estates*

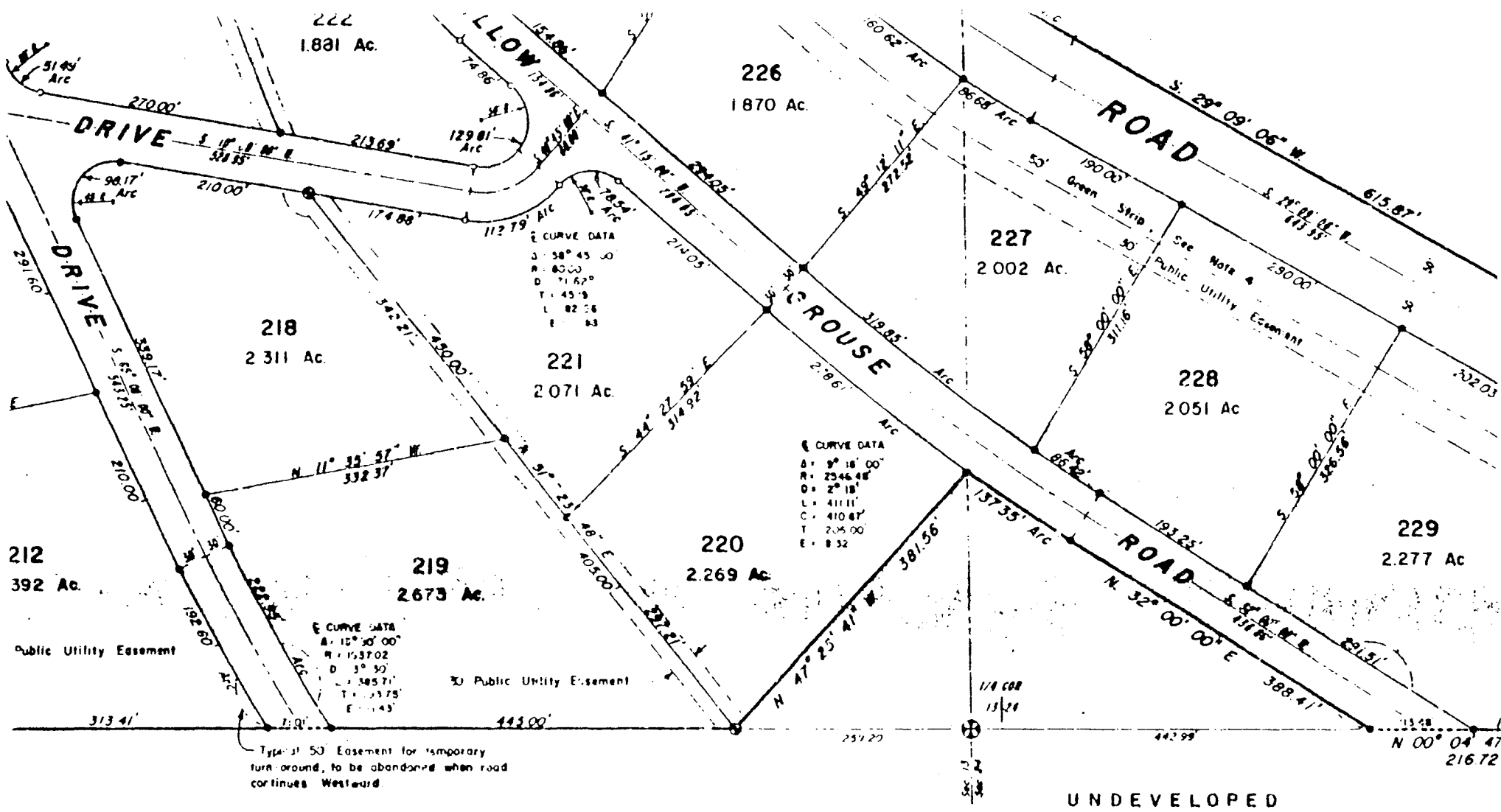
053 Ac

217

1. CURVE DATA  
 2. 117° 30' 00"  
 3. 1.4552  
 4. 1.1697  
 5. 1.21655  
 6. 0.91  
 7. 6.619

1. CURVE DATA  
 2. 117° 30' 00"  
 3. 1.4552  
 4. 1.1697  
 5. 1.21655  
 6. 0.91  
 7. 6.619

1. CURVE DATA  
 2. 117° 30' 00"  
 3. 1.4552  
 4. 1.1697  
 5. 1.21655  
 6. 0.91  
 7. 6.619



# ITES - PORTION '2'

3 and the N 1/2 NW 1/4 NE 1/4 Sec. 24,  
F.M.

*McGraw-Hill Estates*

| Lot Acres

RESTRICTIVE COVENANTS FOR MCGRATH ESTATES  
SUBDIVISION

BOOK 40 PAGE 279  
Fairbanks, Alaska

PART A. PREAMBLE

DATE: June 7, 1976

OWNERS: McGrath Estates Investment Group, a limited partnership.  
General Patners: William K. Simon, Ed Martin and Damon Thomas,  
Fairbanks, Alaska.

The restrictive covenants hereinafter set forth are to apply to the McGrath Estates Subdivision, located in the SE 1/4 of Section 13, 14N, R2W, Fairbanks Meridian, Alaska.

The purpose of these covenants is to establish minimum standards for each individual property owner and / or builder, in order to insure and perpetuate to the owners of the property, both severally and collectively, the beauty and integrity of the McGrath Estates Subdivision.

PART B. COVENANTS

1. PROTECTIVE COVENANTS FOR MCGRATH ESTATES SUBDIVISION: We, the undersigned owners of land situated in the McGrath Estates Subdivision, according to the written plat, for and in consideration of the mutual advantages which will accrue to us by virtue thereof, do by these presents adopt and agree to be bound by the following protective covenants for said subdivision.
2. LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) or two (2) family dwelling not to exceed three (3) stories in height nor forty-five (45) feet in total height above the natural ground level of the building location and a private garage for not more than four (4) cars.
3. DWELLING COST, QUALITY AND SIZE: No dwelling shall be permitted on any lot at a cost of less than \$55,000 based upon cost levels prevailing on the date these covenants are recorded. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,200 square feet for a one-story dwelling, nor less than 900 square feet for a dwelling of more than one story.
4. TEMPORARY STRUCTURE: No structure of a temporary character including house trailers, tents, shacks, garages or barns or other buildings shall be used on any lot at any time as a residence. A basement will not be used as a temporary residence .
5. TIME LIMIT FOR CONSTRUCTION: The exterior of the building constructed on said premises must be fully completed within two (2) years from the date of the commencement of its construction which will be considered commenced upon with the start of excavation for footings or foundation.

6. NUISANCE: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

7. PARKING AND STORAGE: No lot shall be used for the storage of any commercial vehicles, machinery, surplus equipment or scrap of any kind. Only items directly connected with use of the land for strictly residential purposes may be kept on any lot. No overnight parking shall be permitted on any subdivision street.

8. STORAGE TANKS: All storage tanks for oil, gas and deisel oil will be stored in underground tanks installed in accordance with the regulations of the State of Alaska Fire Marshall.

9. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or a sign by a builder to advertise the property during the construction and sales period.

10. LIVESTOCK AND POULTRY: No poultry or other animals including dogs, cats and livestock shall be permitted on any lot or part thereof for commercial purposes nor shall any pet or animal be allowed to constitute a nuisance.

11. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, in accordance with the regulations of the State of Alaska Department of Health.

12. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot.

13. DRAINAGE DITCHES AND CULVERTS: No obstruction shall be placed in drainage ditches adjoining any lot. Metal culverts of a diameter of not less than 12 inches and 30 feet in length, or as required by the Division of Highways shall be placed under driveways leading from roads or streets onto said lot, to avoid obstruction of said ditch.

14. CLEARING: Trees or brush on property shall be to the extent possible, hand cleared to preserve the natural enviornment; no bulldozers or other heavy equipment shall be used to clear trees and brush except for building site, view and driveway.

