

John Bennett

From: John Bennett
Sent: Tuesday, September 14, 2021 4:14 PM
To: Steven Wells
Subject: RE: dedication of road ROW in unincorporated areas

Steve – What we have here is a typical “common law” dedication which was the norm prior to about 1988 when the legislature granted DNR the authority to act as the platting authority in the Unorganized Borough. A “common law” dedication requires an offer and an acceptance. In this case there is an express “offer” made by the owner/subdivider in the certificate of ownership where they state their intent to “dedicate all streets, alleys...to public or private use as shown on this plat.” There is no indication on the plat that suggests any of the streets were to be for private use only or use by the lot owners only and I only know of a couple of subdivisions in the state where that is the case. By definition, a “dedication” is a transfer to public ownership. The offer of dedication must be accompanied by an acceptance of the offer. In a platting authority this would be the certificate of approval signed by the appropriate representative of the platting authority. In a “common law” dedication, acceptance can be identified by construction, maintenance and use of the platted streets by the public. The acceptance could also be implied if the lots were sold to owners who relied upon the streets as shown on the plat to provide legal access to their lots. Dedications by plat are not really owned by any entity in particular but are considered to be held in trust for the public. If any of these streets are to be vacated, there are statutes in place that describe how each adjoining land owner will take title to the centerline.

Now having said all that the 1991 deed appears to convey all lots except for Lots 1,2 & 5 of Block 1 to Mark Huddleston. By that time (and actually before DNR became platting authority) DNR would have authority to approve all vacations of validly dedicated street ROW. So the question is whether the plat accomplished that through the “common law” method. Very likely not. Back in the late ‘60’s early ‘70’s when the Dept. of Highways was constructing the “new” Steese Highway from the front of Ft. Wainwright towards Fox, they needed to acquire ROW in front of the Moose Lodge. The lodge resided in an old subdivision that was platted before there was any local platting authority so there was no certificate of dedication or approval. DOH argued that the street ROW existed and that they could incorporate parts of it into the New Steese ROW. The problem was the streets had not been constructed and most of the lots had not been sold. So the case State v. Moose Lodge, the Supreme Court ruled that the original subdivider still had the opportunity to “erase” all of the ROW & lot lines as the common law dedication had not been perfected.

In the case of the Klutina Subdivision, they are effectively erasing those ROW and lot lines in the same manner but are leaving a 30’ dedication along Wrangell Street and Sanford Avenue to ensure that access to Lots 1 & 2 Block 1 remains in place. A couple of issues: Note that the recording date for the plat you sent me was August 11, 1972 while the deed cites a revised plat recorded on September 6, 1972 – so something must have happened to warrant a refile. Also, assuming Lot 5 of Block 1 had been previously sold, it’s now not so clear what the legal access is to get to it.

That’s it for dedications. I hope your Fisher question doesn’t relate to Mental Health Trust Lands because their interpretations make no sense whatsoever. I’m still looking every day for the ACS truck to park next to our 10 mile CHSR tower and start wiring things up but not yet. In all fairness I had two of the techs tell me that it would likely not be until September or October so I’m hoping they are still on schedule. That’s all. JohnB

From: Steven Wells [mailto:swells@mscon.com]
Sent: Tuesday, September 14, 2021 1:14 PM
To: John Bennett <JBennett@rmconsult.com>
Subject: dedication of road ROW in unincorporated areas

Hi John,

I am reviewing some property in the Glennallen / Klutina area which seems to have some interesting quirks to me.

In 1972 a subdivision plat was filed (Klutina Heights Subd, Revised)(308-1972-72-572) which shows street ROW's, and one of the notes references "and dedicated streets".

Who are street ROW dedicated to when in an unincorporated area?

I find a later document (308-1991-000676-0) where the original property owner sold the majority of the lots to her son, including "all street rights-of-way except as follows".

I would have thought by filing the original plat, those street ROW were dedicated to the public, and original owner would not have an ownership right to then transfer them to her son.

Honestly, this probably doesn't have a specific impact on the lands research I am doing, but I am looking for clarity on how this was done.

Comments????

p.s., I may need some additional guidance on how to make use of the Fisher vs. GVEA case-law coming up pretty soon. Even though I suppose it is fairly clear on page 12 of your book.

Steve Wells

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