

Bennett, John F (DOT)

From: Hartman, James M (DOT)
Sent: Tuesday, August 14, 2012 9:53 AM
To: Bennett, John F (DOT)
Subject: RE: Crow Creek Road - Ownership v Management

John,

Thanks for taking the time to look at this and share your thoughts. Rob Campbell met with the Muni last week and told me that the Muni has come around to thinking they actually do have an interest in the Crow Creek Road. Enough to be sending letters out to the subdivision homeowners to start the process of a possible road improvement district.

Mike Hartman
Right of Way Chief
907-269-0711

From: Bennett, John F (DOT)
Sent: Tuesday, August 14, 2012 9:03 AM
To: Hartman, James M (DOT)
Subject: RE: Crow Creek Road - Ownership v Management

Mike, just ready to start a couple of days of master's hearing so I thought I would attempt to respond to your email and our conversation regarding Crow Creek road and the issue of ownership of streets dedicated by subdivision plat.

When we spoke I mentioned that I try to separate the issues of ownership vs. management. For example DOT manages many right of way interests for which we do not have clear ownership by deed. Under our Title 19 authority, we have assumed management of a variety of ROW interests that are considered to be held in trust for the public. This would include section line easements, RS2477 trails, patent reservations for roads (33' Small Tract Act reservations), public easements by prescription, common law dedication and street dedications by plat where the owner makes a dedication to the public and the platting authority accepts the dedication on behalf of the public.

There is also a distinction between ownership and maintenance obligation. The state owns a lot of right of way such as PLO ROW conveyed by Omnibus deed that has fallen off the State Highway system and therefore fallen off the maintenance system. We do have obligations to our funding agencies to maintain certain roads but in general, there are more roads to maintain than there are maintenance funds so the level of maintenance must be prioritized with some roads getting little or no maintenance. So just because a government entity owns a road ROW doesn't mean it must or will be maintained. In some cases they will post the road as not being maintained to provide notice to the public and limit liability.

But when you get to the issue of ownership and certificates of dedication, I mentioned that in my review, most platting authority certificates of dedication dedicate the "*streets, alleys, walks, parks, and other designated public spaces to the **public use***". In the FNSB the definition of "dedication" is "*the deliberate grant of land by and owner to the public for any general and public use, reserving to himself no other rights than such are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.*"

Mat Su's certificate dedicates all rights of way and public areas to the "Matanuska-Susitna Borough" or to the City of _____ as appropriate.

I noticed that the Muni has a web page titled "Easements and Rights-of-Way" <http://www.muni.org/Departments/OCPD/Planning/zoning/Pages/easements.aspx> in which they state: "A right-of-way is a matter of ownership. **The Municipality owns all municipal streets and alleys.** Rights-of-way are typically dedicated to the public when property is subdivided, and are shown on the plat. The right-of-way exists even if no roadway is ever constructed. **Since it is dedicated to the public, no individual may claim exclusive use or possession of a right-of-way.**"

The Muni ordinance on Dedication for Streets 21.80.010 - Dedication—Streets. Says: “*Except as provided in section 21.15.030.I, all street rights-of-way shall be dedicated to the public.*” The Muni certificate of dedication states that the dedication is made specifically to the **Municipality of Anchorage** for use as public streets etc.

So my thoughts are that while most platting authorities just dedicate streets to public use, it appears that Mat Su and MOA intended to clarify ownership of dedicated streets by having their certificates specifically dedicate the streets to Mat Su or MOA. The MOA Planning website that declares that MOA owns all municipal streets might be in support of the ownership of ROW or it might be just a statement that the MOA owns all of the improvements while they still consider the ROW to be dedicated to the public. Upon vacation of a dedicated ROW in the MOA, they do not charge FMV unless the ROW was specifically purchased as a part of a ROW acquisition so they are not considering the dedicated ROW to be in the same class as acquired ROW in which disposal requires payment. Also, the plat you referenced for Raven Mountain was old enough that the certificate of dedication was not even specifically to the Municipality of Anchorage, but just to the “public”.

So my conclusion is that Crow Creek road as dedicated by the Raven Mountain subdivision plat dedicated the ROW to be held in trust for the public under what is now the authority of the MOA as platting authority. Like DOT whether the ROW is dedicated or owned by deed, they likely have authority to make management decisions as to how much or whether any maintenance is performed on this stretch of road. That’s all I can think of. JohnB

John F. Bennett, PLS, SR/WA | Chief, Right of Way | Alaska Department of Transportation, Northern Region
2301 Peger Road; Fairbanks, AK 99709-5399 | 📞: 907.451.5423 | 📠: 907.451.5411 | ✉: johnf.bennett@alaska.gov

From: Hartman, James M (DOT)
Sent: Tuesday, July 31, 2012 8:21 AM
To: Bennett, John F (DOT)
Subject: FW: Crow Creek Road

fyi

Mike Hartman
Right of Way Chief
907-269-0711

From: Schmitt, Steve G. [<mailto:SchmittSG@ci.anchorage.ak.us>]
Sent: Monday, July 30, 2012 3:54 PM
To: Hartman, James M (DOT)
Subject: RE: Crow Creek Road

Mike –

Thanks for the phone call this morning – I think there’s an elegant solution to this issue but I sure can’t find it....

Based on the research and our discussions regarding this issue it appears that there more than one way to view the question of who owns/has maintenance responsibility of this section of road.

The patent and subsequent ownership of the land which encompasses the mineral survey is not in question. The platted Certificate of Ownership & Dedication on the subdivision plat identifies the road and dedicates it to the public; the Municipal Attorney working on this issue feels confident that MOA does not ‘own’ this; I may not have the exact citations but the basis for this claim can be made based upon the following Alaska State Statutes:

AS 29.71.020. Dedication of Municipal Property.

Dedication of streets, rights-of-way, easements or other areas for public use may not be construed to require the municipality to maintain, improve, or provide for municipal services in the area dedicated and the dedication does not impose any liability on the municipality for the condition of the area dedicated.

AS 40.15.030. Dedication of Streets, Alleys and Thoroughfares.

When an area is subdivided and a plat of the subdivision is approved, filed, and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are considered to be dedicated to public use.

The section of road (through the Mineral Survey) was patented and in private ownership and the road was dedicated to the public by the subdivision plat. If it is determined that the SOA has no ownership/maintenance responsibility then ownership/maintenance would fall on the 'public'; in this case the public would appear to be the property owners within the subdivision. If so a Local Road Service Area would need to be established for maintenance of this section of road since MOA funding is not available.

Questions regarding the historical maintenance of this road and the Omnibus Act are sure to be thrown into any discussion regarding who in the future will be responsible for this road. I'm sure this will be a topic of discussion at Friday's meeting – something to look forward to.

From my perspective it appears that this section of road is dedicated to the public. Whether that means maintenance responsibility falls to SOA or MOA is the grey area which must be decided.

Steve

Steven G. Schmitt, PLS, SR/WA
Municipal Surveyor
Public Works, PM&E, ROW-Survey
4700 Elmore Road, Anchorage, AK 99507
907-343-8366 (phone) 907-249-7924 (fax)
schmittsq@muni.org

From: Hartman, James M (DOT) [<mailto:mike.hartman@alaska.gov>]
Sent: Monday, July 30, 2012 07:50
To: Schmitt, Steve G.
Subject: FW: Crow Creek Road

Mike Hartman
Right of Way Chief
907-269-0711

From: Morton, Kenneth M (DOT)
Sent: Friday, July 27, 2012 11:23 AM
To: Hartman, James M (DOT)
Cc: Hansen, Jerry; Rice, Kasandra K (DOT)
Subject: Crow Creek Road

Mike:

Please share the *Crow Creek Road Ownership* research developed by your section with the Municipal Surveyor and ask him:

- If the City is willing to share their research findings, and
- If there are elements of our research conclusions that they do not agree with.

It is my thought that the political appointees can be given a brief summary of the:

- right-of-way history of Crow Creek Road,
- areas in which we agree, and
- areas in which we do not have consensus.

Hopefully this will help make the meeting briefer.

Ken