

## Dedication

**Dedication:** The appropriation of land, or an easement, by the owner, for the use of the public, and accepted for such use by or on behalf of the public. Such dedication may be express where the appropriation is formally declared, or by implication arising by operation of law from the owner's conduct and the facts and circumstances of the case.

**Common-Law Dedication:** A common-law dedication is one made as above described, and may be either express or implied. An express common-law dedication is one where the intent is expressly manifested, such as by ordinary deeds, recorded plats not executed pursuant to statute or defectively certified so as not to constitute a statutory dedication.

**Statutory Dedication:** A statutory dedication is one made under and in conformity with the provisions of a statute regulating the subject, and is of course necessarily express.

In essence, a dedication is a two part operation. It requires an offer by the land owner to dedicate, and it also requires the acceptance by the public. Statutory dedication formalizes this process.

A statutory dedication is provided under A.S. 40.15.010 Approval, filing, and recording of subdivisions. This statute reads as follows: "Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction, as prescribed in this chapter." "The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval. If no platting authority exists as provided in AS 40.15.070 and 40.15.075, land may be sold without approval." AS 40.15.070 and AS 40.15.075 cite that the Department of Natural Resources is the platting authority outside of the organized boroughs for the change or vacation of existing plats.

Although DNR is cited as the platting authority in the unorganized borough, its authority is limited by statute to the review of replats which modify land boundaries as depicted on existing plats or the vacation of street dedications which have been previously created. They do not have the authority to review and approve subdivision plats therefore cannot accept dedications on behalf of the public. A 1/11/83 AGO opinion on the "Eagle River Urban relinquishment" and a 7/10/89 AGO opinion on "Dedicated easements in Rocky Lake subdivision" have discussed this type of a scenario and stated that where there is no platting authority to approve or disapprove the plat, common law principles apply in determining whether lands were dedicated to public use.

The fact that DNR does not have complete platting authority in the unorganized borough is not lost on DNR or the private surveying community. Currently, subdivisions and dedications may be made in the unorganized borough by deed or plat, are not required to be surveyed and monumented, and require no approval prior to recording. At this time, only DEC has authority to review and approve a subdivision plat with regard to waste water adequacy. Complete platting authority in the unorganized borough may be extended to DNR in the near future by virtue of proposed legislation. Senate Bill 81, entitled "An Act establishing the Department of Natural Resources as the platting authority in certain areas of the state; relating to subdivisions and

dedications; and providing for an effective date" was offered in 1991 but has not passed the legislature to date.

Often a common-law dedication is based upon an offer to dedicate an easement to the public by virtue of an express reservation in a property conveyance document or in an easement deed specifically prepared to dedicate an easement. It is also possible to make the offer of dedication with a deed and an attached plat as an exhibit.

(extracted from Record of Survey document)