

Sample Beardsley

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

HERBERT AND JACQUELINE SIMON )  
Husband and Wife, d/b/a LITTLE )  
NELCHINA FARM, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
STATE OF ALASKA; and QUALITY )  
ASPHALT PAVING, INC., )  
 )  
Defendants. )

Case No. 3AN-95-7554 CI

**AFFIDAVIT OF JOHN F. BENNETT**

I, John F. Bennett first being sworn depose and say:

1. I have personal knowledge of the matters stated in this affidavit.

John, I prepared the caption and above intro fo you. The rest of the affidavit was done by Dan Beardsly.

2. I am the Chief Right-of-Way Agent for the State of Alaska, Department of Transportation and Public Facilities, Central Region which includes the Kenai Peninsula.

3. Prior to my employment by the State of Alaska, I was a practicing attorney in Fairbanks, Alaska. I devoted a significant portion of my practice to right-of-way and real property disputes.

4. Between 1973 and 1985, I was an employee of Land Field Services, Inc. as a right-of-way agent. In that capacity, I was one of several agents responsible for the acquisition of

right of way for the Trans Alaska Pipeline. Part of my responsibilities as a right of way agent was to determine the status of the title of the various properties which the pipeline crossed, determine ownership, encumbrances from liens, judgments, and easements. I have performed reviews on highway, hydroelectric, transmission line, sewer and water line, gas line and airport projects.

5. As part of my duties as the chief right of way agent for DOT&PF Central region, it was my responsibility to review the right of way for the Sterling Highway Project No. IR-0A3-3(3)/56375 mile 79 to 94. In the course of that review, I became aware of the dispute concerning the width of the right of way as it relates to the Precision Marine Business owned by the Knowltons.

6. In my investigation of the dispute, I first determined when the property was entered by the original homesteader of this parcel. See attached BLM docket sheet. That investigation revealed that Edward Griffith entered this property on September 15, 1958. I next determined when the road was constructed, and what was the basis for the right of way. I did this by reviewing Bureau of Public Roads records. Construction of the Russian River-Homer Road, which is today known as the Sterling Highway, began in 1947, and reached the area of the Griffith homestead in 1948. Public Land Order 601 (PLO 601) was

enacted on August 10, 1949. It withdrew public land for highway purposes using a pre-determined width of right-of-way based on the classification of the road. PLO 601 classified through roads at 300 feet, feeder roads at 200 feet, and local roads at 100 feet in width. Public Land Orders are only effective as to public lands held by the federal government. In PLO 601, Russian River to Homer Road, the Sterling Highway, is referred to as the Kenai Lake-Homer Road and was therefore classified as a 200 foot feeder road. See State v. Alaska Land Title Assn., 667 P.2d 714, 718 n.4. The Griffith/Precision Marine property was still unreserved public domain in August 1949. In 1951, PLO 601 was repealed by public Land Order 757, and simultaneously replaced by Secretarial Order 2665 which converted the withdrawn public land to a public easement. In Secretarial Order 2665, the Kenai Lake-Homer Road is now referred to as the Sterling Highway, and its width remains 200 feet. On September 15, 1956, Secretarial Order 2665 was amended for the second time converting the Sterling Highway to a 300 foot right-of-way. On September 15, 1958, Edward Griffith became a homestead entryman on the property which now encompasses the Precision Marine property.

7. My interpretation of applicable right of way law, leads me to conclude that the Precision Marine property is subject to a 150 foot right-of-way by reason of Amendment Number 2 to Secretarial Order 2665, and the fact that the Griffith

homestead was public land subject to the effect of Secretarial Order 2665 at the time of the Griffith entry.

8. The effect of the 150 right-of-way width is to create a right-of-way line which extends 150 from centerline of the Old Sterling Highway. The building encroaches approximately three feet± into the right-of-way and the right-of-way takes in all of

