

John F. Bennett

From: John F. Bennett [johnf_bennett@dot.state.ak.us]
Sent: Monday, May 14, 2007 9:42 AM
To: 'Barbara Gaston'
Subject: RE: Patent

Barbara, you probably had sent me the patent earlier, but I get so much stuff in my email that unless I am working on a long term project, I may have deleted it once I had answered the initial question. Because you mentioned that some one had said that the easement might be based on an RS-2477, I was concerned that the property might be next to a section line. That is not the case. The lot adjoins the center N-S section line and so there is no issue of a section line easement along your property. Only a section line easement would require the approval of the DNR/DOT commissioners. Your property according to the plat is subject to a 33' wide easement along the northerly and westerly boundaries. The original patentee, Marie Martin accepted this patent subject to those easements. The federal authority that allowed for patent of the small tracts essentially dedicated these easements to the public. The appropriate authority to consider the vacation of the easements is the local platting authority, in this case, the FNSB. A plat of vacation will have to be submitted to the FNSB platting authority. Hope this helps. JohnB

-----Original Message-----

From: Barbara Gaston [mailto:b60gaston@hotmail.com]
Sent: Friday, May 11, 2007 5:05 PM
To: johnf_bennett@dot.state.ak.us
Subject: Patent

John

I had sent you a copy and I will try again - sometimes my old machine doesn't do well with .pdf files.

I have read your highway report several times - I am so impressed.

I did start out with a registered surveyor.

No one told me that the plat had to be approved by the Commissioner of DOT and DNR.

Please take another look for me.

I really appreciate this.

Barb

PC Magazine's 2007 editors' choice for best Web mail—award-winning Windows Live Hotmail.
http://imagine-windowslive.com/hotmail/?locale=en-us&ocid=TXT_TAGHM_migration_HM_mini_pcmag_0507

John F. Bennett

From: John F. Bennett [johnf_bennett@dot.state.ak.us]
Sent: Friday, May 11, 2007 4:01 PM
To: 'Barbara Gaston'
Subject: RE: BLM Small Tract Easements

Barb, no problem with the questions...its way more fun than a lot of the other work I have to do.. I can't remember if you ever sent me a copy of your patent. I might need to see it to ensure there is nothing odd about it. As I mentioned previously, the Small Tract Act which authorized the conveyance of these parcels also provided the authority to create 33' road and utility easements along the boundaries of the parcels. RS-2477 is a completely separate right of way law, and is generally related to federal section line easements and historical trail easements, however, it is always possible that a Small Tract parcel is subject to both the specific easements named in the patent and a section line easement if the parcel adjoins a section line. And if a historical trail runs through the parcel, it could be subject to an RS-2477 trail easement. However, for a trail easement to exist there would have to be a physical trail used by the public and you say that this easement was never used. So you either have Small Tract easements or RS-2477 Section line easements or both. The fact that the easement has not been used really doesn't mean anything. There are miles of section line easements and other reservations in deeds and patents that have never been used but still legally exist. A public easement cannot be terminated by non-use or apparent abandonment. You ask how the easements could become public property without you or your predecessors dedicating them. In fact both of the easement types, the Small Tract easement and the section line easement would have been created prior to patent. So there was no need for them to have been subsequently dedicated, the patent was accepted subject to these easements. One item I might have led you astray on before. Generally, to vacate the Small Tract easements, you would process it through the local platting authority, in this case the FNSB. If we are in fact talking about a section line easement the process is more involved. Once again, this is requires the services of a licensed land surveyor to prepare a plat. Then it starts at the local platting authority, again the FNSB, but ultimately, the plat must be approved by the Commissioners of DOT and DNR. Any kind of vacation action would require some kind of public notice. So if there are parties out there who believe that this easement would provide them legal access to a parcel, it is possible they might protest. If you have the opportunity to send me a copy of the patent, I should be able to give you a better answer. JohnB

-----Original Message-----

From: Barbara Gaston [mailto:b60gaston@hotmail.com]
Sent: Friday, May 11, 2007 3:26 PM
To: johnf_bennett@dot.state.ak.us
Subject: BLM Small Tract Easements

John

I apologize for bothering you with more questions, but you seem to be quite knowledgable on Small Track easements.

I was told they were SR 2477 and anyone could use them at any time. You indicated to me that they were like normal subdivision easements.

I have one that was never used and one that is falling into the Chena River and probably always was there. At one point it was used by the neighbor to get to their place. I failed to get them vacated.

I guess I just don't know how they could become public property without me or my predecessors in title dedicating them to the FNSB. Do you know if they fall under AS 09.55.265.

Thank you
Barb

PC Magazine's 2007 editors' choice for best Web mail—award-winning Windows Live Hotmail.
http://imagine-windowslive.com/hotmail/?locale=en-us&ocid=TXT_TAGHM_migration_HM_mini_pcmag_0507

Fairbanks 09435

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at **Fairbanks**, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of **June 1, 1938 (52 Stat. 609)**, as amended by the Act of July 14, 1945 (~~59 Stat. 467~~) **Stat. 467**), the claim of **Marie C. Martin** has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Fairbanks Meridian, Alaska.

T. 1 S., R. 2 W.,

sec. 23, Lot 18.

The area described contains **2.48** acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: **Dependent Resurvey officially filed June 29, 1953.**

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States, all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right of way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the north and west boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in the District of Columbia, the ~~TWENTY-EIGHTH~~ day of **APRIL** in the year of our Lord one thousand nine hundred and **FIFTY-FIVE** and of the Independence of the United States the one hundred and **SEVENTY-NINTH**.

For the Director, Bureau of Land Management.

By _____

Chief, Patents Unit.

Patent Number 1151046