

Mr. Schmidt:

Jeff Landfield has forwarded to me your reply of 9/30/19 to him on the use of section-line and pedestrian access easements. Presumably your note to Mr. Landfield represents the official, informed position of the Municipality of Anchorage on the public use of reserved public pedestrian easements and section line easements within the Municipality.

As a lawyer with 48 years of knowledge and hands-on experience in Alaskan public land law, including easement law, I believe it is incumbent on me (or on any other person with similar knowledge and experience) to correct several legal misapprehensions that are apparent in your note to Mr. Landfield.

Before taking your statement to Mr. Landfield apart, I will quote it here in full:

Mr. Landfield-

The following information is specific to your question regarding the Section Line Easement (SLE) identified on Tract B-1A (Plat No. 2007-85, and adjacent to Lot 37, Block 1, Campbell Lake Heights Subdivision (Plat No. 63-12).

- The above noted lots are ‘private property’
- Lot 37, Block 1, Campbell Lake Heights is encumbered by a SLE
- A portion of the SLE which crosses Tract B-1A has been vacated by Plat No. 2007-85
- The vacated area (noted above) has a ‘Public Pedestrian Access Easement’ dedicated in its place

The mere existence of an easement does not convey to an individual the right to use said easement; there is a specific process required to do so. A private entity cannot legally enter another person’s property without permission, even if an easement exists. In this case the above noted easements reserve to an appropriate government authority, such as the Municipality of Anchorage (MOA), State of Alaska Department of Natural Resources (DNR) and the State of Alaska Department Transportation (DOT) the legal right to make use these easements for specific public use.

You asked about building a trail across the above noted lots by making use of these easements to access Campbell Lake. In order to do so permits and authorization from MOA, DNR, and DOT would be required which would include submission of an application for an Improvement of Public Place Agreement, submission of engineering plans and approval of these plans at a minimum. Permits and authorization from MOA, DNR & DOT would be required to make use of the SLE which crosses Lot 37, Block 1, Campbell Lake Heights; Permits and authorization from MOA would be required to make use of the platted ‘Public Pedestrian Access Easement’ which crosses Tract B-1A.

Personal property rights are protected by the Fifth Amendment to the United States Constitution – any ‘project’ which would make use of these easements would need to rise to the level where it is in the best interest of the public.

Steve

Steven G. Schmitt, PLS, SR/WA
Municipal Surveyor

Here is my critique (my comments in *italics*):

- The above noted lots are ‘private property’ *Yes, but they are subject to pre-existing public easements*
- Lot 37, Block 1, Campbell Lake Heights is encumbered by a SLE *Correct*
- A portion of the SLE which crosses Tract B-1A has been vacated by Plat No. 2007-85 *Correct*
- The vacated area (noted above) has a ‘Public Pedestrian Access Easement’ dedicated in its place *Correct*
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The mere existence of an easement does not convey to an individual the right to use said easement; there is a specific process required to do so. *Incorrect. No rights are being “conveyed” to an individual. However, if the easement is for public access, any member of the public may use it for that purpose, without any further “special process” needed. I would like to see the authority for your statement here.*

A private entity cannot legally enter another person’s property without permission, even if an easement exists. *Quite incorrect. A landowner whose land is burdened by an easement cannot deny the easement holder (here, the public) use of the easement consistent with its purpose. To make such a claim as you have made, would completely negate the legal purpose of an easement. I would like to see the authority for your statement here.*

In this case the above noted easements reserve to an appropriate government authority, such as the Municipality of Anchorage (MOA), State of Alaska Department of Natural Resources (DNR) and the State of Alaska Department Transportation (DOT) the legal right to make use these easements for specific public use. *Incorrect. The easements here are reserved for the public, but may be managed by the Municipality, DNR, or ADOTPF for the benefit of the public and consistent with their purposes – not for the exclusive benefit of the agencies. The specific public purposes here are “public pedestrian access” and “section-line easement access.” It is not necessary to construct a “highway” over the section-line easement for the public to have an access benefit from it. See the cases of Fisher v. Golden Valley Elec. Assn., 658 P.2d 127 (Alaska 1983) and Andersen v. Edwards, 625 P.2d 282 (Alaska 1981).*

I question what authority, if any the Alaska Dept. of Natural Resources retains over these access easements within the Municipality. Do you have any current evidence of any assertion of DNR authority?

You asked about building a trail across the above noted lots by making use of these easements to access Campbell Lake. In order to do so permits and authorization from MOA, DNR, and DOT would be required which would include submission of an application for an Improvement of Public Place Agreement, submission of engineering plans and approval of these plans at a minimum. *Correct – but only as far as it goes. If construction were required in order for the public to make use of these easements for pedestrian access, the necessary permits and reviews would be required. But if the existing easements can be used for*

pedestrian access without any significant physical improvements, then no permit and review process is applicable.

Permits and authorization from MOA, DNR & DOT would be required to make use of the SLE which crosses Lot 37, Block 1, Campbell Lake Heights; Permits and authorization from MOA would be required to make use of the platted 'Public Pedestrian Access Easement' which crosses Tract B-1A. *Incorrect. If no significant alteration of the ground or construction activities were being proposed, then the public has the absolute right to use the reserved access easements consistent with their purpose – which now provides overland pedestrian access to the lakeshore of Campbell Lake. Please provide any authority for your proposition that permits from governmental agencies are required before the public may use reserved public pedestrian easements for pedestrian access.*

You should be aware that so long as “public pedestrians” remain within the designated boundaries of these platted access easements, no claim of trespass could ever be found to be valid, whether raised by adjacent homeowners, or by a governmental agency. This fact points out the need to survey the boundaries of these easement on the ground, soon, to prevent any inadvertent straying outside the boundaries of the reserved easement. Until these boundaries are surveyed and marked on the ground, a user of the easements would bear the personal risk of inadvertently and unintentionally straying outside the boundaries of the easement.

Personal property rights are protected by the Fifth Amendment to the United States Constitution – any 'project' which would make use of these easements would need to rise to the level where it is in the best interest of the public. *Entirely incorrect – no Fifth Amendment personal or real property rights are involved here, at all. The original access easements existed before the land became private property, and were an existing legal burden on the lots when they were patented from the United States, surveyed, and sold to lot owners. As such, there are no “private-property takings” overtones here.*

The “best interest of the public” is determined by making the existing pedestrian and section-line access easements more usable by the public, to any extent that they may not already be usable. The “private interests” of the adjacent lot owners, and any Fifth Amendment claims, have no legal substance because they have no bearing on the uses to which the reserved and platted easements are put, consistent with their stated purposes (i. e., for pedestrian access and use).

Thank you for this opportunity to introduce some legal reality into the unfounded “municipal policy and law” statements you have made to Mr. Landfield in your e-mail to him of September 30, 2019. I hope that the Municipality as a whole does not follow the legal and policy mis-directions provided in that letter, to the detriment of the public.

Sincerely,

Tom Meacham
Alaska Bar No. 7111032

