
TURNAGAIN COMMUNITY COUNCIL

Council Special Meeting | October 17, 2016 | 7:00 – 9:00 p.m.
Federation of Community Councils, 1057 West Fireweed Lane
Chaired by Jonathan Tarrant, TCC President

WELCOME & APPROVE AGENDA

- The meeting was called to order at 7:00 p.m. About 65 people (members and guests) attended.
- President Jonathan Tarrant presented the format of the meeting, and process for considering the proposed resolution:
 - The property owner and community members will present a summary of both sides of the issue at hand.
 - The rest of the meeting will be a discussion of the issue, at which point a resolution can be introduced at any point.
 - Individual comments will be limited to three minutes, in order to give everyone a chance to speak if they wish; the meeting chair will moderate discussion.
- The agenda being a single item, no formal approval occurred.

SYDNEY'S SHORTCUT (PATH BETWEEN 2803 MARSTON DRIVE AND THE COASTAL TRAIL)

Presentation by William Wailand, resident of Arctic Cir.

- Mr. Wailand provided an overview of the property, location of the former path known as Sydney's Shortcut, the easement platted which is located on the property but not in specific location as the path, and the legal documents depicting the location of the easement and its purpose: "to give access to and from the beach across such property."
- In May 2015, this path was blocked off because the property was being developed with a new house. It has remained inaccessible since that time, during and after construction.
- **Questions**
 - *What are the boundaries for the Turnagain Heights Subdivision?* The boundaries of the subdivision, originally platted in 1947 and 1952, are the houses along Marston, McCollie, Illiamna to Lyn Ary and Loussac, and Loussac houses to and beyond Arctic Circle. The original right of way was platted for the use of residents in this subdivision only.
 - *Did the 2003 law regarding prescriptive easements based on ten years of continuous usage impact this property?* Yes, he believes that the definition (at least 10 years of use) would apply to this property.
 - *Was the easement included on the original plats?* It was depicted on the 1952 plats (both completed in that year) and in the 1991 plat the easement was included.

Presentation by Mark Tabbutt, property owner at 2803 Marston Dr.

- Mr. Tabbutt purchased the property three years ago and is currently constructing a home there. He has lived in Anchorage in 1991, and has lived and/or owned property here since that time. He helps run his wife's family's transportation business. He currently lives in Seattle but continues to consider Anchorage a home and has enjoyed living in multiple neighborhoods in the city. His family and his wife's sister purchased the vacant lot in order to build a new home.
- While he and his family are happy to have good relations with adjacent neighbors (Kurt Lindsey and Ed and Kathy Rasmuson), he is distressed to have experienced a negative response from several neighbors about this easement and personal comments made about himself and legal representation.
- Mr. Tabbutt offered a matching fund of up to \$25,000 for trail improvements at Lyn Ary Park at Marston Drive, approximately three houses down from the former trail and at the location of an informal trail. Mr. Kurt Lindsey offered to meet the match with \$25,000.

- **Questions**

- *When was Mr. Tabbutt aware of the presence of this easement at the time of purchasing the property or while preparing the house?* He received documentation but was not aware of this easement at the time of purchase, just a utility easement. He did not review the title insurance thoroughly but was informed by his real estate broker that there is no law of adverse possession in Alaska.

Presentation by Joan Travostino, K&L Gates, attorney for Mr. Tabbutt

- Ms. Travostino represents the Tabbutt family on this issue, and has advised him on the legal issues at hand. She presented on two issues: the 1955 right of way, and the issue of prescriptive easements.
- The original right of way was set aside on the west 20 feet for Lot 7 (the property at hand) as it existed in 1955. The reservation was made for residents of the Turnagain Heights Subdivision, and the two original owners, Mr. Morris and Mr. Marston. The right of way was platted the length of Lot 7; the lot was platted before the 1964 earthquake. The path known as Sydney's Shortcut is located on the other side of the property, about 100 feet to the east.
- Lot 7 has since been re-platted, and is now Lot 7A-1 based on a 1991 plat. The municipal surveyor who prepared the plat drew the original right of way, 20 feet wide and 300 feet long. Because of the land shifting after the earthquake, the length of the right of way is 100 feet short of the coastal trail easement, as the distance between the edge of the lot at Marston Drive and the coastal trail easement is 400 feet. The municipal surveyor did not draw the right of way on the plat for the remaining 100 feet. The last 100 ft. of the route from Marston Drive to the Coastal Trail is not currently platted a right of way.
- In 2003 the Alaska Legislature voted to remove most parts of the law granting property rights for public prescriptive easements (right of adverse possession) from state law, with some exceptions. The rationale is that adverse possession causes problems for property owners. The law changes do not apply to uses that could demonstrate continuous use for the last ten years prior to enacting the law (i.e., used on or before 2003). An aerial photo from 1993 demonstrates that people were using many informal paths on the vacant properties along Marston Drive.
- The group clarified that Marston Drive was paved in the 1990s, and the current property owners were not able develop the property until the early 1990s. The Coastal Trail was developed in 1986.
- A photograph from 2003, following the Rasmuson family installing grass on their property, shows that the specific path of the shortcut has changed to avoid walking on that grass. There was evidence of people walking through any of the vacant lots—many of the lots along this area were used as cut-throughs, until the properties were developed with houses. The path shifted approximately 50 feet, according to the surveyor's measurement secured by the property owner, from 1993 to 2003.
- Because the actual location of the path has changed over ten years, she believes that it would be problematic and likely not successful to make a claim of a prescriptive easement. Additionally, she stated that it will be very difficult to prove the other elements that must be proved for a prescriptive easement.
- She concluded stating that if the neighborhood would like to pursue a lawsuit to secure rights to this easement, it would be a long and difficult process and would be costly for the Municipality as well as damaging to relationships between neighbors.
- **Questions**
 - *Was the easement ever removed by the owner on the plat?* No, owners of this property have not removed the right of way legally.
 - *Who was Sydney?* Sydney is the Rasmuson family's housekeeper's (female) dog, who used that route regularly. The sign used to be at the Coastal Trail, but had been vandalized multiple times, so the sign was relocated to the Rasmuson family's lawn.
 - *Was the path currently being used as of 2003 also being used in 1993 and intervening years?* The slides with aerial photos from 1993, 1997, 1998 and 2003 show that the specific route has moved 50 feet after the Rasmusons put in their lawn.

- *What is the appropriate period to measure the potential prescriptive easement, given that it has been used for more than ten years? Would the period be less than ten years? Does this in any way color the title?* She does not believe this is the case. She further qualified that the previous law stated that adverse possession must be measured by at least ten years of use.
- *What about the element of adverse possession involving the word “hostile,” does this portion of the claim have any validity?* “Hostile” generally applies to the user continuing to use the route in spite of the landowner’s restriction of that use. In this case, it appears that a change to the Rasmuson property, for example, shifted public use of the path to a different route, which does not imply hostile use.
- The group discussed the viability of reaching the beach on the pre-earthquake terrain (the land had a bluff between the lots and the beach), and whether it was feasible to consider this reasonable access, and whether there was other public access to the shore in the subdivision at the time of the plat (1950s). The language of the original easement stated that the access is “to the beach” but did not physically extend to the beach at that time. The additional 100 ft. of land platted in 1991 can be accounted for by the movement of land following the 1964 earthquake. The group also discussed the mean high tide line, and points at which it was measured in 1916 and prior dates.
- The group also discussed other solutions, such as developing a new trail connecting at a different point along Marston Drive.

Discussion about Sydney’s Shortcut

- One person asked Mr. Tabbutt about why he did not honor the existing path along the property, given its longtime use?
 - Mark replied that he perceived the informal trail as being well used, but not protected or officially developed, and not identified as a legal right of way.
- Win Faulkner prepared comments and shared that he is a resident of Illiamna St. He has lived in Anchorage for over 50 years, and has used Sydney’s Shortcut as well as other official public trails that have been developed over time. He appreciated the use of this trail and that the previous landowner allowed this use, but believes that the neighbors should now respect the landowner’s rights to provide private property. There have been several criminal incidents (gunshots, break-ins for vehicles and houses) and safety is a concern, he would not like to see people crossing his property at all hours.
- Bob Loeffler commented that there is a difference of opinion on whether the original intent of the easement was to provide access “to the beach.” The language also provided that users of that route should install walkways and retaining walls to secure access to the beach. He also believes that the resolution as presented does not necessarily result in a lawsuit against the property owner, but compels the Municipality to work further with the property owner to ensure access of this easement. He supports retaining access.
- A resident commented that she and her son use the trail regularly on bikes, heading to school. They have encountered moose and appreciate alternative ways to get off the trail if a moose is approaching, including stepping onto private property as necessary. She supports retaining access.
- A resident stated that she lives in the area and has used the trail for a long time. She is also a real estate broker, and noticed that the property had taken a while to sell, she speculates in part because of the presence of this easement. She attempted multiple times to contact the real estate broker to inform them and encourage the new property owner to consider adjusting the site plan.
- Bill Britt commented that he has used the trail for many years, and feels that there has been a lack of due diligence about this issue while the property was being acquired and developed. He is aware that there has been a path discussed in the past following the original easement. He has also experienced moose issues and has had to detour on a private lot to avoid it. He feels the path is important to the community.

- Matt Nedom commented that he is also disappointed by the lack of due diligence and consideration for the trail when the site was being designed. He is grateful that the other access point further west by the sewage pump station has been preserved.
- Louke Ellenbroek commented that she used the trail regularly and appreciated using it to get to and from work and her house. She is also concerned about the trend of property owners along the Coastal Trail fencing off their properties, as this reduces the ability to dodge hazards like moose on the corridor. She speculated that the recent break-ins and other criminal incidents did not originate from people on the Coastal Trail, but likely people driving to Lyn Ary Park. [Note: there is a separate effort among several neighbors surrounding Lyn Ary Park to address an increase in crime, littering and other issues in the area—contact TCC if you would like to be put in touch with this group of neighbors].
- A resident commented that he welcomed Mr. Tabbutt to the neighborhood, and likes the design of his house. He stated that he is not interested in litigation per se, but would like to find a resolution of this issue that is mutually agreeable to all parties.
- Laile Fairbairn commented that she is also not necessarily interested in litigation, and the intent of the resolution, in her opinion, is elevate the discussion after neighbors who have been discussing the issue for several months have not felt sufficiently heard by the property owner.
- Mark Wiggin commented that as a longtime community council member, he is impressed and encouraged by the turnout, and that he does not feel that the interest from the neighbors about this issue is a sign of desire for litigation, but for finding a resolution.
- A resident commented on the previous plan for a path along that easement was very large, he described as a “Cadillac” of a trail—he feels that a much smaller, narrower path would be sufficient and not intrusive on the property owner and meet the desires of the neighbors. He would personally be willing to provide some of his own money to help develop and maintain a modest trail. He would like to see a trail like this.
- Jennifer Wagner commented that she views the easement as platted as a property right for the neighbors in the subdivision, not just the owner of the lot.
- Jennifer Wagner introduced the resolution, Tim Seaver seconded.

Resolution for Consideration: A Resolution in Support of Sydney’s Shortcut

- The resolution, provided as a handout in the meeting, was introduced by Jennifer Wagner, and seconded by Tim Seaver.
- Jonathan Tarrant read the text of the resolution as it was provided in the meeting (*see attached handout*). He also clarified the process for discussion, amendments and voting.
- **Amendments**
 - Andrew Lebo proposes adding the phrase “**to compel or persuade**” to the resolution’s final statement. Amendment accepted.
 - Win Faulkner proposes adding “**Whereas, the owner of 2803 Marston Drive has made a matching offer to the Turnagain Community Council of up to \$25,000 to improve the unpaved path in Lyn Ary Park, next to the ball fields, in place of improvements to the original easement.**” [This reflects the statement made by the property owner in this meeting.]
 - A resident stated that she is concerned about the implication of including this, as it does not reflect any consent by or discussion with the property owner adjacent to that path. She would not like to include this in the resolution.
 - A resident stated that she does not agree with including this amendment, she does not believe it solves the issue at hand.
 - Win clarified that he wanted to include this statement to accurately record an alternative solution, and wanted to ensure that it was represented in the record.
 - **Vote: 8 yes, 43 no. Amendment fails.**
- **Discussion**
 - No further discussion after this morning.
- **Vote**

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- Mark Wiggin called the question; Andy Lebow seconded.
- The resolution, with the amendment, was presented for a vote.
 - **Vote: 49 yes, 8 no. Resolution passes.**

CLOSING

- The meeting was adjourned at 9:00 p.m.
- The resolution will be provided to the group who brought the issue forward, who will provide a copy to the Municipality. The resolution and the minutes will be available on the website.
- The next regular meeting will be **Thursday, November 3, 2016** at this same location: Lake Hood Elementary Library.

Minutes prepared and submitted by Secretary/Treasurer Anna Brawley on 10/22/16.

Minutes approved by the council at its next regular meeting on 11/3/16.