

Presented by: The Manager
Introduced: 04/06/92
Drafted by: S.B.G./T.K.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1557

A RESOLUTION AUTHORIZING THE MANAGER TO CONVEY AN EASEMENT FOR THE CONSTRUCTION OF A DRIVEWAY ACROSS A PORTION OF U.S. SURVEY 3764 LOCATED OFF OF COHEN DRIVE NEAR THE NORTH TEE HARBOR SUBDIVISION; AND REPEALING RESOLUTION NO. 1198.

WHEREAS, Dan Malick has applied for an easement across a portion of U.S. Survey 3764 for the purpose of facilitating the construction of a twenty-foot wide driveway access to a residence on a portion of U.S. Survey 377, and

WHEREAS, following departmental review, the Planning Commission at its meeting of April 2, 1991, and the Assembly Lands Committee at its meeting of April 24, 1991, recommended approval of the easement subject to the terms and conditions set forth below, and

WHEREAS, a public right-of-way was dedicated by the State of Alaska in 1970 to provide access to the Dan Malick residence and other adjoining private properties, and

WHEREAS, the location of the existing right-of-way is not topographically situated to allow for suitable road construction, and

WHEREAS, the city and borough has become the owner of the property adjoining the Malick property, and

WHEREAS, it is in the public interest to facilitate safe access to the Malick residence and other adjoining private properties and provide an improved right-of-way alignment for access to the adjacent city and borough lands;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

* Section 1. Authorization. The manager is authorized to convey to Dan Malick an easement across a portion of U.S. Survey 3764, Juneau Recording District, for the purpose of facilitating the construction of driveway access to a portion of U.S. Survey 377 in accordance with the terms and conditions of this resolution.

* Section 2. Terms and Conditions. The easement shall be subject to the following terms and conditions:

(a) The easement shall conform essentially to the area described on the attached Exhibit "A"; provided, however, that the driveway and turnaround alignment may extend as minimally as possible into the adjacent city and borough property as determined by the city and borough engineering, fire, and parks and recreation departments.

(b) The easement shall reserve to the city and borough the right to utilize the easement for access to adjacent city and borough property, and shall remain open to public pedestrian use for access to and along the adjacent city and borough property.

(c) A gravel surface driveway shall be constructed with a minimum width of twenty feet, or as otherwise approved by the city and borough fire and engineering departments. The driveway shall be built to support emergency vehicle use in accordance with standards approved by the city and borough engineering department. In addition, turnarounds shall be constructed at the southern terminus of the driveway and at such intermediate points as required by the CBJ Fire Code, CBJ Chapter 19.26, and other applicable codes or standards, or as otherwise approved by the city and borough fire and engineering departments.

(d) Except as may be agreed in writing by the city and borough, the grantee shall maintain the driveway and the turnarounds and shall install a gate or similar device to control the use of the driveway. No owners of other property shall be permitted to use the easement without further authorization from the city and borough.

(e) Prior to any cutting of trees within the easement boundaries, the value of the timber shall be appraised by a qualified timber appraiser and the city and borough shall be paid the value of the timber to be removed.

(f) The city and borough shall have the right to relocate or otherwise modify the easement at any time.

(g) The easement shall be nonexclusive and shall accommodate overlapping easements or any other uses deemed in the city and borough's interest.

(h) The owner of any other property who subsequently seeks to use the easement must obtain a separate overlapping easement from the city and borough in accordance

with all of the following requirements:

(1) The overlapping easement may include a construction and maintenance agreement for access improvements within the easement authorized by this resolution.

(2) The applicant for an overlapping easement may be required to provide additional improvements, and will be required to reimburse the previous grantee or grantees for a fair and reasonable share of the development costs incurred by the grantee or grantees, less an amount equal to the applicant's development costs for any additional required improvements; provided, in no event shall the previous grantee or grantees be required to pay for the additional required improvements.

(3) The applicant for an overlapping easement and the grantee or grantees should also consider the following in their negotiations on cost reimbursement and cost sharing: any costs incurred by the applicant for previous work undertaken by the applicant in the identification and development of the easement which was authorized by Resolution No. 1198 which is of value to and used by the grantee or grantees in the development of the easement authorized by this resolution.

(4) In the event the grantee or grantees and the applicant for an overlapping easement are unable to agree on the terms of the easement, including cost reimbursement and cost sharing, the parties shall, at their sole cost and expense, submit the matter to arbitration under the procedures of the American Arbitration Association. The arbitrator's decision shall be considered by the city and borough in the issuance of the requested overlapping easement.

(i) The applicant shall provide documentation, as specified by the city and borough, clearly notifying the owners of the properties abutting the easement and the adjoining right-of-way that the city and borough is not obligated to construct or assist in construction of additional improvements within the easement or the adjoining right-of-way.

(j) The applicant shall submit an agreement acceptable to the city and borough manager holding the city and borough harmless with respect to any liability associated with the use of the easement, right-of-way, or improvements constructed therein by any person or entity other than the city and borough.

(k) The applicant must submit adequate pre-construction information, including engineering drawings and a survey of the easement boundaries. Within one year of completion of construction, as determined by the city and borough, the applicant shall submit a certified as-built survey of the completed driveway and appurtenances.

(l) The city and borough may at its discretion dedicate the easement or portions of the easement as public right-of-way, subject to the uses and limitations normally associated with public rights-of-way.

(m) The applicant must apply for all necessary permits for construction of the driveway within one year after the adoption of this resolution and must commence construction within one year after issuance of all necessary permits and receipt of all necessary approvals to proceed. In the event the applicant does not comply with both of these requirements, the city and borough may allow other grantees the right to construct a driveway in accordance with the conditions set forth in this resolution.

* Section 3. Easement Price. The applicant shall be required to pay \$3,800 for the conveyance of the easement.

* Section 4. Other Terms and Conditions. The manager may include in the easement agreement such other terms and conditions as are deemed in the public interest.

* Section 5. Repeal of Resolution No. 1198. Resolution No. 1198, which resolution authorized the manager to convey an easement to Thomas E. Kocyba for the construction of a road across city and borough property in the same area as the easement authorized by this resolution, is hereby repealed in its entirety.

* Section 6. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 6th day of April, 1992.



Mayor

Attest:



Clerk