ARIZONA DEPARTMENT OF TRANSPORTATION

OFFICE MEMO

September 9, 1994

TO: HENRY VERDUGO
Acting Right of Way Plans Manager

THRU: MARTIN ROSS MR
Right of Way Titles Manager

FROM: BILL FORD BF
Resolution Team Leader

RE: Apportionment of Underlying Fee Interests in Highway Easement Areas to Abutting Property Owners

This memo will address the above issue raised by Robertson Specialty Company (RSC) in letter to Right of Way Plans dated September 7, 1994, and copied to this Section.

It does not appear that a consistent policy has in the past been followed by ADOT on this subject other than by Right of Way Titles in vacation actions.

This may be attributed to the fact that it was only recently that Titles and Plans were directed by the previous Chief Right of Way Agent to determine and apportion underlying fee interests to abutting property owners. This was primarily done because of the "jurisdictional control" issue and management's desire to include existing right of way as a gross area for appraisal purposes.

With numerous consultants now working for ADOT the need for a uniform policy is evident. ADOT cannot allow each consultant to interpret underlying fee interests according to their own opinions.

It should be noted that the responsibility of ensuring that the State acquires satisfactory title rests with the Titles Section and includes determination of underlying fee interests. That responsibility has not been delegated to other ADOT sections or consultants.

With that thought in mind specific issues raised by RSC will be addressed and a general policy guideline adopted to be followed by Plans staff and consultants in apportionment of underlying fee interests on right of way plans.

RSC contends that the underlying fee interests in highway easement areas be apportioned to an abutting property owner by using a "right angle" or "perpendicular" line extending from the highway centerline to the relevant approximate property line intersect with the existing right of way line.

To support this opinion RSC offers ARS 28-1902-A par. c and d. RSC failed to note however that lead paragraph No. 3 clearly shows that the provisions they reference apply only to a "city or county roadway" and have no legal application to a State Highway.

The Titles section cannot therefore accept RSC's contention that this statute supports their interpretation.

Nor can it be argued that it is implied or assumed that the Legislature meant to include the application of this stature to state highways. Arizona case law regarding statutory construction and interpretation is clear. The Legislature is presumed to know the law and to express their legal intentions. Had they intended to include state highways in the statute they would have.

Further evidence of this conclusion is provided by ARS 28-1902 par. 5 where the Legislature does specifically address state highways as to abandonments.

Even if RSC's statutory references were applicable to State Highways they would not support their interpretation. The statutory references they refer to do not specifically provide for a right angle or perpendicular extension of a property line to the centerline of a highway but only that "each abutting owner take that portion of the vacated roadway to which his land or any part thereof is in nearest proximity".

No statutory definition of "nearest proximity" is provided but I am confident that a court would be reluctant to interpret that as meaning taking a right angle turn off a record property line.

RSC offers no additional evidence to support their interpretation other than it is a "general practice."

This section did review the Book "Boundary Control and Legal Principles" on "How Surveyors locate land boundaries" for further information. (See Exhibit A)

RSC's interpretation was referenced by par. 8.8 of the Book. It was recommended as an interpretation by the author because the surveyors would otherwise have difficulty in determining ownership of a referenced parcel C.

This difficulty in determining the ownership of parcel C is understandable since surveyors are not title examiners.

An ownership determination of the referenced parcel C would have been a relatively easy matter for a qualified title examiner thus eliminating the justification used by the author in arriving at his interpretation.

It is therefore this Section's conclusion that RSC's interpretation will not be followed since it is not supported by statute nor justified as a "general practice" from a Title standpoint.

The general procedure used by the Titles Section for a number of years in apportionment of underlying fee interests has been to project the property lines of abutting property owners to the centerline of highway easement areas. Since there are no statutes on the subject and little case law, resort must be made to other legal sources to support our position.

The Book "Patton on Titles" is the legal reference by which all other title opinions are measured against or based on. It is used nationwide to clarify title issues.

Chapter 4 par. 143 of said Book clearly supports the Title Section's position by stating "Abutting owners take title to that portion of the thoroughfares comprised between extensions of the sidelines of their adjoining lands". (See Exhibit B)

Therefore, for all future projects, the following policy should be followed in the preparation of right of way plans: Apportionment of underlying fee interests to abutting property owners in highway easement areas will be made by extending property lines to the centerline of the highway or a portion thereof as set forth on the title report.

The above is a general policy and it should be recognized that case by case decisions may have to be made. This situation was also acknowledged in RSC's referenced letter.

The Titles Section generally agrees with RSC's contention that the calculations have no consequential effect except to arbitrarily increase the total area of the subject parcel. It may have an effect if the jurisdictional control issue is challenged by property owners.

The above policy will not require that any revisions be made to right of way plans in progress.

BF:ra

Attachments

cc: RSC
Jim Havins
Steve Hansen

boundary control & legal principles

how surveyors locate land boundaries

By Curtis M. Brown with contributions by
H. Frederick Landgraf and Francois D. Uzes

EXHIBIT

Descriptions of property on a highway and without words expressly including the highway, but with words granting an easement in the highway, are construed to indicate an intent not to convey the bed of the street. The fact that it was necessary to convey an easement indicates that the fee to the bed did not pass.

APPORTIONMENT OF REVERSION RIGHTS

8.7.

The problem of apportioning the limits of ownership arising from the presumption that fee up to the center line of the street is conveyed is sparsely found in the court records. Within subdivisions, where the limits of private ownership are seldom defined, the problem becomes complex on curved and irregular streets. The following rules, partially based upon the customs of surveyors and a few court cases, represent the accepted practice.

8.8. General Principle

Unless a deed or map indicates otherwise, reversion rights extend from the street termini of the property lines to the center line or thread of the street in a direction that is at right angles to the center line of the street.

Prolongation of the lot line to the center line of the street is not recognized as a means of determining the rights in the bed of a street. Dashed lines opposite lot 1 in Fig. 8.8 illustrate the difficulties that result from an attempt to prolong lot lines. Who would own area *C*?

In making street assessments for paving a street, the adjoining property owner must pay for the paving in front of his property in accordance with the above principle. If assessments are paid on that basis, reversion rights should follow the same lines.

8.9. Reversion Rights of a Lot on a Curved Street

Principle. The reversion rights of a lot in the middle of a block extends radially to the center line of the street (see Fig. 8.9).

Radial lines are at right angles to a tangent of a curve. If the previous principle is interpreted in a broad manner, this principle can be considered a special application of the former principle. Figure 8.9 illustrates the more common applications of the principle.

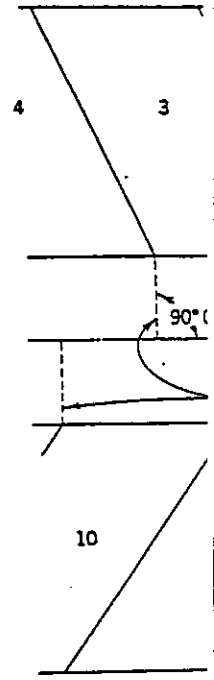

Figure 8.8 Reversion rights, un
center-line of the street.

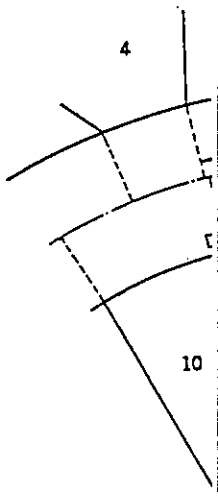

Figure 8.9 Reversion righ

EXHIBIT A

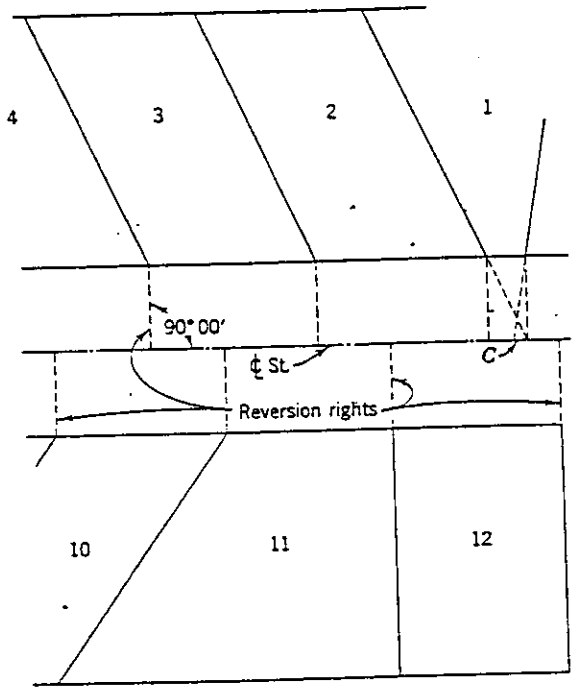

Figure 8.8 Reversion rights, unless otherwise indicated, are at right angle to the center-line of the street.

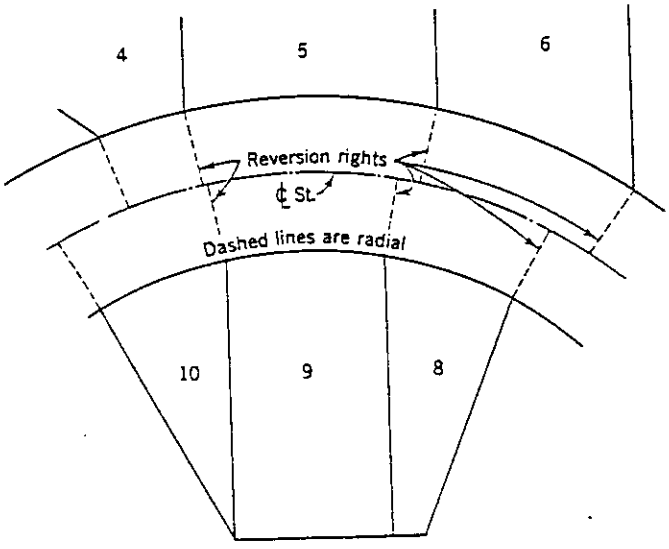

Figure 8.9 Reversion rights, unless otherwise indicated are on radial lines.

EXHIBIT A

PATTON
ON
TITLES

Sections 1 to 280

EXHIBIT B

and streets, but also alleys.[55] And if the thoroughfare is laid out on an owner's land along the margin thereof, so that he owns nothing beyond, a conveyance of the land or of a lot bounded on the street carries the fee title to the entire street, alley, or highway.[56]

In order to come within the rule, it is not necessary that the conveyance describe the land as bounded by a street or highway,

upon the lot conveyed even though no such street has ever been opened. Freelon v. Adrian, 118 P. 220, 161 Cal. 13.

Bissell v. New York Cent. R. Co., 23 N.Y. 61.

Easton Boroughs Appeal, 81 Pa. 85.

Jahrstadt v. Morgan, 4 N.W. 27, 48 Wis. 245.

Rule Includes Streets of Federal Townsites

A conveyance by a trustee under the federal townsite law passes to the grantee title both to the lot and to the adjoining street or alley up to the center, subject to the public easement in the latter. Mankato v. Willard, 13 Minn. 13, 97 Am.Dec. 208.

Harrington v. St. Paul & S. C. R. Co., 17 Minn. 215.

Mankato v. Meagher, 17 Minn. 265.

End Boundaries of Vacated Strips

Such authority as there is on the subject is to the effect that the abutting owners take title to that portion of the thoroughfares comprised between extensions of the sidelines of their adjoining lands even though the course of said lines or the curve of the street or road may create triangles or segments which do not attach to any adjoining land. State v. Superior Court for King County, 173 P. 186, 102 Wash. 331 (rule based upon statute). There appear to be no decisions as to the rule when, instead, extensions of the sidelines produce overlaps.

55. Gilbert v. Emerson, 61 N.W. 820, 60 Minn. 62.

Snoddy v. Bolen, 24 S.W. 142, 25 S.W. 932, 122 Mo. 479, 24 L.R.A. 507.

Carder v. Lebzelter, 45 Pa.Super. 478.

Oliver v. Ormsby, 73 A. 973, 224 Pa. 564.

56. Watrous v. Southworth, 5 Conn. 305.

Johnson v. Arnold, 18 S.E. 370, 91 Ga. 659.

In re Robbins, 24 N.W. 356, 34 Minn. 99, 57 Am.Rep. 40.

Wait v. May, 51 N.W. 471, 48 Minn. 453.

Wolff v. Veterans of Foreign Wars, 74 A.2d 253, 5 N.J. 143.

Haberman v. Baker, 28 N.E. 370, 128 N.Y. 253, 13 L.R.A. 611.

Johnson v. Grenell, 81 N.E. 161, 188 N.Y. 407, 13 L.R.A.,N.S., 551.

Rowe v. James, 128 P. 539, 71 Wash. 267.

Land Beyond Highway

But such a boundary cannot be extended by construction to include a small detached triangle of land on the opposite side of the highway. Tierney v. Second Ecclesiastical Society, 130 A. 286, 103 Conn. 332. Nor to include tidewater flats adjoining the highway. Norwalk v. Podmore, 86 A. 582, 86 Conn. 658.

See a contra holding, Gould v. Wagner, 82 N.E. 10, 196 Mass. 270; also comment, Swaim, Crocker's Notes, § 109.

EXHIBIT B